

Appendix “A”
TERMS AND CONDITIONS
OPERATING AGREEMENT

Certain capitalized terms used herein are defined in Section 14 of this Agreement. Any capitalized terms used but not defined in this Agreement have the meaning ascribed to them in a SOW.

THE COMPANY AND THE CLIENT HEREBY AGREE AS FOLLOWS:

1. SERVICES AND SCOPE OF WORK

1.1 **Services and Deliverables** – Subject to the terms and conditions of this Agreement and any applicable SOWs, in exchange for the Fees, the Company, its Affiliates or both will provide to Client various business support services including the following (set forth in more detail in **Schedule 1** hereto) as requested:

- Accounting
- Paralegal
- Administrative Services
- Product Development
- Supply Chain and Logistics
- Technology and ECommerce
- Marketing
- Sales

The foregoing services shall be collectively referred to in this Agreement as “**Services**”. Notwithstanding the foregoing, Services shall not include any services provided by Penny White, Rick Huang, Tamara Melck, Amy Frankel, or any Director or named executive officer of the Client.

1.2 **Use of SOWs** - Client and Company may describe Services and Deliverables with specificity in a SOW in the form attached as **Appendix “B”** or in whatever alternative written form the parties may mutual agree upon from time to time. If one party requests in writing to the other party that a SOW be prepared for particular Services or Deliverables, the other party shall cooperate and Company shall not provide any related Services until the SOW is agreed upon and signed by both parties. Requesting a SOW shall not relieve Client of the obligation to pay Fees incurred for related Services performed prior to a party requesting a SOW. This Agreement and any SOWs shall be read together wherever possible, but in the event of an inconsistency between the terms of the Agreement or a SOW, the terms of the SOW shall govern.

1.3 **Subcontractors** – Subject to any restriction expressly provided in a SOW, the Company may engage third parties (which includes without limitation independent contractors) to perform any part of the Services or obligations hereunder (each, a “**Subcontractor**”). Use of Subcontractors will not release the Company from its obligations under this Agreement.

1.4 **Non-Exclusivity** – Notwithstanding anything to the contrary herein, the Client acknowledges that this Agreement does not prevent or restrict the Company from engaging in agreements with any other person under the same, or substantially similar, terms as this Agreement.

2. FEES, EXPENSES, PAYMENTS AND TAXES

- 2.1 **Fees** – Effective as of April 1, 2020, the Client will pay to the Company a fee of **\$10,000 per month** for the Services and Deliverables. Effective as of June 1, 2020, the Client will pay to the Company fees computed based on the actual time spent by the Company and actual expenses incurred providing the Services and Deliverables to the Client (the “**Fees**”). If there is not an applicable SOW or a SOW does not provide a payment schedule, the Company will invoice the Client on a monthly basis for Services rendered during the previous month, and payment for Fees will be due upon receipt. For the period June 1 – August 30, 2020 the Company will submit one invoice for the entire period.
- 2.2 **Fee Advance and Deposit** – No initial retainer, fee advance or deposit shall be required upon execution of this Agreement. The Company reserves the right to require the Client to pay a deposit (“**Deposit**”) that will be held and used as security until Company ceases to provide services to Client under this Agreement and Client has paid all outstanding fees and expenses for the services provided, at which time the Deposit shall be returned to Company.
- 2.3 **Taxes** – The Client is responsible for all applicable taxes, duties or other charges, including sales or use taxes, imposed by any federal, state or local governmental entity on Services furnished by the Company under this Agreement (“**Taxes**”), except for taxes based on the Company’s net income, gross revenue or employment obligations. If the Company is obligated by applicable law or regulation to collect and remit any Taxes, then the Company will add the appropriate amount to the Client’s invoices as a separate line item.
- 2.4 **Expenses** – Subject to any SOW, the Client will prepay or promptly reimburse the Company for any expenses incurred by the Company that are pre-approved in writing by the Client (including under a SOW) in connection with the Services.
- 2.5 **Failure of Payment** – In the event that the Client’s payment obligations are overdue and outstanding and the Client fails to pay in full all of such payment obligations within ten (10) days after notice from the Company of same, the Company may, without limiting any other remedy available to the Company, and in its sole discretion, deduct outstanding payment obligations from the Deposit (if any) and suspend its obligations relating to the delivery of Services and Deliverables to the Client under this Agreement until such time as all amounts due and owing to the Company are paid in full, including replenishment in full of the Deposit. If the overdue and outstanding payment obligations exceed the amount of the Deposit, Company reserves the right to increase the required Deposit prior to commencement of Services under this Agreement.

3. PROPRIETARY RIGHTS & LICENSING

- 3.1 **Ownership of Company Materials** – The Company will retain, and exclusively own, all right, title and interest (including all Intellectual Property Rights) in and to any Materials that are conceived, made, discovered, written, created, contributed to, or otherwise owned by the Company or its licensors, outside of this Agreement or prior to the Effective Date (collectively, the “**Company Materials**”). Except as expressly provided in this Agreement, the Company will retain all right, title and interest (including without limitation all Intellectual Property Rights) in and to the Company Materials. No Intellectual Property Rights or any other right, title or interest in the Company Materials is granted to the Client under this Agreement other than as expressly set forth herein.

- 3.2 **License to Company Materials.** Subject to any additional restrictions expressly set out in a SOW, if the Company incorporates or has incorporated Company Materials into a Client product, process, machine or Deliverable, the Company hereby grants to the Client a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, sell and otherwise distribute such Company Materials as part of or in connection with such product, process, machine or Deliverable (the “**Client License**”). The Client will strictly comply with any and all restrictions, rules, notices and guidelines provided by the Company from time to time in its sole discretion in relation to the Client License.
- 3.3 **Ownership of Client Materials.** Subject to the terms and conditions of this Agreement, the Client will retain all right, title and interest (including all Intellectually Property Rights) in and to any Materials that are conceived, made, discovered, written, created or otherwise owned by the Client, outside of this Agreement or prior to the Effective Date, provided such Materials do not contain Confidential Information of the Company (collectively, the “**Client Materials**”).
- 3.4 **License to Client Materials.** The Client hereby grants to the Company (together, the “**Company Licenses**”):
- (a) a limited, revocable, non-exclusive, royalty-free, fully-paid, worldwide right and license to access, use, exploit, display, reproduce, modify and alter the Client Materials in connection with the Services; and
 - (b) a perpetual, irrevocable, non-exclusive, royalty-free, fully-paid, worldwide right and license to access, use, exploit, display, reproduce, modify and alter the Client Materials to the extent that they are included in or reasonably necessary for the proper use or operation of the Deliverables.
- 3.5 **Assignment of Work Product.** Subject to the terms of a particular SOW, Company agrees that any and all Deliverables (including all Intellectual Property Rights therein) together with any Materials that are otherwise conceived of or reduced to practice by Company alone or with others in the course of providing the Services pursuant to this Agreement and that directly relate to the Client’s business, but excluding all Company Materials (collectively “**Work Product**”), shall be owned solely and exclusively by the Client, and the Company hereby irrevocably and unconditionally assigns to the Client (and its respective successors and assigns) any and all of Company’s right, title and interest in and to the Work Product without payment by Client (the “**Work Product Assignment**”). For certainty, the Work Product Assignment includes any future-arising Work Product, which Company will be deemed to have automatically assigned to the Client pursuant to this Section 3.5 as it arises, and for which the Company will promptly provide confirmatory assignment agreements, in the forms provided by the Client, if and as requested from time to time by the Client.
- 3.6 **Moral Rights.** To the extent that any of the Work Product entitle the Company to any Moral Rights, the Company hereby irrevocably and unconditionally waives its Moral Rights in the works for which the Company’s copyright is assigned hereunder (“**Works**”). For the purpose hereof the term “**Moral Rights**” means any and all moral rights arising under the *Copyright Act* (Canada) as amended (or any successor legislation of similar force and effect) or any similar legislation in other applicable jurisdictions or at common law that such person, as author, has with respect to any copyrighted works prepared by such person, including without limitation, the right to attribution of authorship, the right to restrain or claim damages for any distortion,

mutilation or other modification of such work, and the right to prohibit any use of any such work in association with a product, service, cause or institution that might prejudice the Company's honour or reputation. The Company will confirm such waiver in writing or any other format from time to time as requested by Client. This Section 3.6 will survive the Term of this Agreement.

3.7 **Representations and Warranties Relating to Client Materials.** The Client hereby represents and warrants to the Company that:

- (a) the Client has all right, title and interest (including all Intellectual Property Rights) in and to the Client Materials to grant the Company Licenses and otherwise comply with the terms and conditions of this Agreement relating thereto, and the Client has not assigned, licensed or otherwise conveyed rights and licenses to any other person such that it would conflict with the Company License;
- (b) the Client Materials do not and will not infringe or misappropriate the Intellectual Property Rights of any third party or be subject to any restrictions not contemplated herein, and the Client has no knowledge of any third-party infringement or misappropriation of the Intellectual Property Rights relating to the Client Materials;
- (c) the Client has required each current and former employee, contractor and consultant of the Client who has contributed to the creation or development of the Client Materials to sign valid and enforceable agreements that include confidentiality obligations in favour of the Client, a present assignment to the Client of all right, title and interest (including all Intellectual Property Rights) in and to all of the Client Materials, and a waiver of any and all Moral Rights such person may possess in such Client Materials;
- (d) the Client Materials are free from: (i) any virus, corruptant, "back door," "drop dead device," "time bomb," "Trojan horse," "virus," "worm" (as such terms are commonly understood in the software industry); and (ii) any programming, design or documentation error that would have a material effect on their operation or use;
- (e) to the extent that the Client Materials include any information or data created or collected about an identifiable person, the Client has obtained and retained satisfactory proof of the full and informed consent, from all applicable individuals, to collect, use, disclose and transfer such information and data, and the Client has only collected, used, disclosed, and transferred such information and data in accordance with such consent and all applicable law; and
- (f) the Client Materials do not contain any Publicly Available Software.

This Section 3 survives the Term of this Agreement.

4. **TERM AND TERMINATION**

4.1 **Term and Termination** – This Agreement will commence on the Effective Date and will continue until terminated in accordance with this Section 4 (the "**Term**").

4.2 **Termination for Convenience** – Either party may immediately terminate this Agreement or any SOW for convenience upon delivery of written notice to the other party. If an individual SOW is terminated, this Agreement will continue in full force and effect unless separately terminated.

4.3 **Effect of Termination** - Upon expiry or earlier termination of this Agreement:

- (a) all SOWs in effect as at the time of termination will immediately terminate;
- (b) the Company will deliver to the Client a final statement of account and/or invoice for Fees and expenses accrued up to and including the date of termination, and the Client will immediately pay to the Company any unpaid Fees and expenses outstanding as of such date; and
- (c) without limiting Section 12 of this Agreement, the Company will promptly take any and all action and execute any and all instruments, agreements or documents reasonably requested by the Client to confirm, effect or perfect the Work Product Assignment and the delivery of Materials relating thereto.

5. **CONFIDENTIALITY**

5.1 “**Confidential Information**” will mean any and all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by one party (the “**Disclosing Party**”) to the other (the “**Recipient**”) whether before or after the Effective Date, which is or has been identified as proprietary or confidential at the time of disclosure, or which by the nature of the circumstances surrounding disclosure or the subject matter of the information disclosed should in good faith be reasonably understood to be proprietary or confidential, and which includes, without limitation, information of the Disclosing Party relating to any operations, processes, technical data, know-how, patents, works, trademarks, technology, software, hardware and other intellectual property and information technology, research, business or product plans or intentions, products, presentations, decks, services, design rights, trade secrets, market opportunities, customers, customer lists, developments, inventions, formulas, designs, drawings, marketing, financial or other business information, compilations, business development programs, business opportunities, business affairs, notes, memoranda or other Materials, but does not include information which the Recipient can demonstrate:

- (a) is or becomes generally available to the public other than as a result of a disclosure by the Recipient (or its related parties);
- (b) was in the Recipient’s possession on a non-confidential basis prior to its being provided to the Recipient by or on behalf of the Disclosing Party;
- (c) is or becomes available to the Recipient on a non-confidential basis from a source other than the Disclosing Party or which source, to the knowledge of the Recipient, is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation; or
- (d) is independently developed by the Recipient without the use of the Disclosing Party’s information.

For certainty and without limiting the foregoing, all Company Materials are the Confidential Information of the Company.

5.2 **Non-Disclosure** – Both parties agree that, the Recipient will not disclose to any person or use for any purpose Disclosing Party’s Confidential Information, except: (a) to provide or receive the

Services as provided in this Agreement (which includes all SOWs); (b) as required pursuant to an order or requirement of a court, administrative agency, or other governmental body of competent jurisdiction (in which case the Recipient will, if permitted under such order or requirement, promptly notify the Disclosing Party of the order or requirement prior to such disclosure in order for the Disclosing Party to have an opportunity to seek a protective order at its cost); or (c) as otherwise authorized by the Disclosing Party in writing from time to time.

- 5.3 **Confidential Information on Termination** – Recipient will, upon request by the Disclosing Party at any time during or after the Term of this Agreement, return or irretrievably destroy, as requested and directed by the Disclosing Party in writing, the Confidential Information within thirty (30) days. The Recipient will thereafter, upon request, certify, by way of affidavit or statutory declaration, that all such Confidential Information has been returned or irretrievably destroyed, as applicable.
- 5.4 **Injunctive Relief** – Each party acknowledges and agrees that any breach by the Recipient of this Section 5 would result in harm to the Disclosing Party that would not be adequately compensated by monetary damages. Accordingly, the Recipient hereby agrees that in the event of any such breach, in addition to all other remedies available to the Disclosing Party at law or equity, the Disclosing Party will be entitled as a matter of right, and without posting bond or proving damages, to apply to a court of competent jurisdiction for such equitable relief by way of restraining order, injunction, decree or otherwise as may be appropriate to ensure compliance by the Recipient with this Agreement.
- 5.5 **Disclaimer** – Except as expressly provided otherwise in this Agreement: (a) the Disclosing Party makes no representation or warranty to the Recipient relating to the Confidential Information, including without limitation, any implied warranty of accuracy, completeness or non-infringement; and (b) the Discloser hereby disclaims any and all liability with respect to the Confidential Information.
- 5.6 **Prior Agreements** – This Agreement will supersede any non-disclosure agreement or confidentiality agreement entered into by the parties prior to the date hereof (“**Prior NDA**”), and the parties expressly agree that any such Prior NDA is hereby terminated.

This Section 5 survives the Term of this Agreement.

6. **NON-SOLICITATION**

During the Term of this Agreement and for a period of one (1) year thereafter (the “**Restriction Period**”), the Client will not, in any capacity or manner, either directly or indirectly, individually or jointly or in conjunction with any person: (a) solicit any Customer, if that solicitation is intended or calculated to obtain the custom or trade of that Customer for a business that competes with the Company’s Business; (b) induce or attempt to induce any Customer to reduce or curtail its business with the Company or to terminate its relationship with the Company; (c) induce or encourage any employee to leave the employment of the Company or authorize, assist, approve or encourage any such action by any other person; or (d) hire or attempt to hire or otherwise solicit any employee or contractor of the Company, or authorize, assist, approve or encourage any such action by any other person.

This Section 6 survives the Term of this Agreement.

7. **NON-DISPARAGEMENT**

The Client will not reveal, disclose or use, or cause to be revealed, disclosed or used, any Materials with respect to the Company (which term will, for the purposes of this Section only, include the Company and its affiliates and their respective officers, directors, shareholders, agents, employees and contractors) which is or may reasonably be expected to be injurious to any of the Company's interests. Without limiting the generality of the foregoing, the Client will privately and publicly support the Company and not make any private or public statement of the business affairs, policies or the like of the Company that disparages the Company, directly or indirectly, in any respect. This Section 7 survives the Term of this Agreement.

8. **INJUNCTIVE RELIEF**

The Client acknowledges and agrees that any breach by Client of Sections 6 or 7 of this Agreement would result in harm to the Company that would not be adequately compensated by monetary damages. Accordingly, the Client hereby agrees that in the event of any such breach, in addition to all other remedies available to the Company at law or equity, the Client will be entitled as a matter of right, and without posting bond or proving damages, to apply to a court of competent jurisdiction for such equitable relief by way of restraining order, injunction, decree or otherwise as may be appropriate to ensure compliance by the recipient with this agreement. This Section 8 survives the Term of this Agreement.

9. **INDEMNITY**

Each party (the "**Indemnitor**") will indemnify and hold harmless the other party and its officers, directors, contractors and employees (each, an "**Indemnitee**") against and from any and all third party claims, demands, actions, causes of action, damage, loss, suits, proceedings, costs, liabilities, expenses and charges (collectively the "**Damages**") incurred or suffered by the Indemnitee, to the extent resulting from the Indemnitor's material non-fulfillment or breach of any warranty or covenant, or any material misrepresentation, under this Agreement (which includes any SOW), provided that:

- (a) the Indemnitee notifies the Indemnitor in writing within twenty (20) days of any such claim;
- (b) the Indemnitor, at its cost, is granted the right to solely control the defense and all related settlement negotiations in connection with such claim (provided that the Indemnitor may not settle any claim without written consent from the Indemnitee, unless such settlement unconditionally releases Indemnitee of all liability); and
- (c) the Indemnitee provides the Indemnitor with the assistance, information and authority reasonably necessary to perform the foregoing. The Indemnitor will reimburse the Indemnitee for its reasonable out-of-pocket expenses incurred in providing such assistance.

This Section 9 survives the Term of this Agreement for a period of three (3) years.

10. **REPRESENTATIONS AND WARRANTIES**

10.1 **Mutual Representations and Warranties** - Each party hereby represents and warrants to the

other that:

- (a) it is duly incorporated, organized and validly existing under the laws of its incorporating jurisdiction; and
- (b) the execution and delivery of this Agreement by such party and the completion of the transactions contemplated in it have been duly and validly authorized by all necessary corporate action on the part of such party and this Agreement constitutes a valid and binding obligation of such party enforceable against it in accordance with its terms.

10.2 **Disclaimer of Warranties** – EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS PROVIDED IN THIS AGREEMENT, THE COMPANY HEREBY DISCLAIMS ANY AND ALL GUARANTEES, REPRESENTATIONS, CONDITIONS AND WARRANTIES REGARDING THE SERVICES, THE DELIVERABLES, AND ANY OTHER OF THE COMPANY MATERIALS, WHETHER IMPLIED OR STATUTORY, ORAL OR OTHERWISE, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, TITLE, DURABILITY, PERFORMANCE, ACCURACY, RELIABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES, DELIVERABLES AND COMPANY MATERIALS ARE PROVIDED “AS-IS” AND “AS-AVAILABLE”. THIS DISCLAIMER OF WARRANTIES WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

11. **LIABILITY LIMITATION**

11.1 **Indirect Damages.** IN NO EVENT WILL THE COMPANY HAVE ANY LIABILITY TO THE CLIENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 **Liability Limitation.** THE COMPANY’S MAXIMUM AGGREGATE LIABILITY TO THE CLIENT FOR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, IS LIMITED TO THE TOTAL AGGREGATE AMOUNT OF FEES PAID BY THE CLIENT TO THE COMPANY DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF A CLAIM.

This Section 11 survives the Term of this Agreement.

12. **FURTHER ASSURANCES**

The Company will take all actions reasonably requested by the Client, at Company’s expenses, and execute any documents reasonably requested by the Client, from time to time, to evidence, vest and perfect in the Client all worldwide right, title and interest (including all Intellectual Property Rights) in and to Work Product, and to otherwise effect the obligations and transactions contemplated in this Agreement. Should the Company fail to reasonably comply, cooperate or

take any action to comply, with a request made by the Client pursuant to this Section 12, then any senior officer of the Client (or its affiliates) will be deemed to be irrevocably appointed as the true and lawful attorney of the Company, with full power of substitution, to take all steps and execute with authority all things, and execute and deliver, on behalf of and in the name of the Company, all applications, specifications, oaths, documents, certifications, assignments and all other instruments which the Client may deem necessary in order to evidence, vest or perfect in the Client all worldwide right, title and interest (including all Intellectual Property Rights) in and to the Work Product, and to otherwise effect the obligations and transactions contemplated in this Agreement. This power of attorney granted to the Client is coupled with an interest and is given to secure the performance of the Company's obligations and duties under this Agreement. This power of attorney will be transferable and assignable by the Client. This Section 12 survives the Term of this Agreement.

13. **GENERAL**

- 13.1 **Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, except that either party may assign this Agreement, with prior written notice and without the prior consent of the other party, to a successor in interest in the event of a merger, reorganization or sale of substantially all of its assets or stock. In no event will said assignment have an adverse material effect on either party from what is provided and contemplated by this Agreement or any uncompleted SOW. This Agreement will be binding upon the parties' respective successors and permitted assigns.
- 13.2 **Independent Contractors.** The parties are and will be independent contractors and neither party by virtue of this Agreement will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party. No joint venture, agency, partnership or employment relationship will arise between the parties as a result of this Agreement.
- 13.3 **Notices.** Any notice provided for or permitted under this Agreement will be treated as having been given: (a) when delivered personally, sent by email or sent by confirmed fax, on the next business day after the day on which it is personally delivered or confirmed as delivered; (b) when sent by commercial overnight courier with written verification of receipt, on the next business day after its delivery by the courier; or (c) when mailed postage prepaid by certified or registered mail, return receipt requested, on the fifth (5th) business day after its date of posting. Any notices required or permitted to be given will be in writing and sent to the address provided by the receiving party in this Agreement or a SOW.
- 13.4 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein, and the parties hereby submit to the exclusive jurisdiction of the courts of British Columbia, Canada. Notwithstanding the foregoing, either party may seek injunctive or equitable relief pursuant to this Agreement in any other applicable jurisdiction.
- 13.5 **Modifications.** No modification, amendment, supplement to or waiver of this Agreement (or any SOW) will be binding upon the parties hereto unless made in writing with mutual consent.
- 13.6 **Waiver.** A failure of either party to exercise any right provided for herein will not be deemed to be a waiver of such right. A waiver or extension is only effective if it is in writing and signed by the party granting it. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

- 13.7 **Cumulative Rights.** Other than as expressly stated in this Agreement, the remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 13.8 **Entire Agreement.** This Agreement, which includes any SOWs, and any other documents expressly referenced herein, constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations, conditions, representations, warranties, discussions and understandings, written or oral, with respect to such subject matter.
- 13.9 **Severability.** If a court or other arbiter of competent jurisdiction determines that any one or more of the provisions contained in this Agreement or an applicable SOW is invalid, illegal or unenforceable in any respect in such jurisdiction, the validity, legality and enforceability of such provision or provisions will not in any way be affected or impaired thereby in any other jurisdiction and the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.
- 13.10 **Currency.** All monetary amounts under this Agreement will be in Canadian Dollars, unless expressly stated otherwise.
- 13.11 **Force Majeure.** If either party (the “**Affected Party**”) fails to, is prevented from, or is interfered with in any manner whatsoever in performing its duties or obligations hereunder, by reason of any event beyond such party’s reasonable control (an “**Event of Force Majeure**”), then the Affected Party’s failure or non-performance will not be deemed a breach of this Agreement provided that notice is given to the other party without delay, and the Affected Party’s obligations hereunder will be extended without penalty to the extent of any delay resulting from any such Event of Force Majeure. During an Event of Force Majeure, the other party may similarly suspend its performance obligations without liability until such time as the Affected Party resumes performance. Notwithstanding any of the foregoing, Events of Force Majeure will not excuse any failure or delay of the Client to fulfill its payment obligations under this Agreement.
- 13.12 **Interpretation.** To the extent of any conflict between this Agreement and a SOW, this Agreement will prevail. The headings contained herein are for convenience only and will not be construed to be part of this Agreement.
- 13.13 **Counterparts.** This Agreement (and any SOW) may be executed and delivered electronically and in one or more counterparts, and such counterparts together will together constitute one and the same instrument and notwithstanding the date of execution will be deemed to bear the Effective Date.

14. **DEFINITIONS**

- 14.1 “**Affiliate**” means, with respect to an entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity or one or more of the other Affiliates of that entity (or a combination thereof). For this definition, an entity will control another entity if the first entity: (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity; or (ii) has the ability to elect a majority of the directors of the other entity.

- 14.2 “**Change Order**” means a written amendment to a SOW, executed by both of the parties hereto, in a written form agreed upon from time to time by the parties hereto.
- 14.3 “**Client Developments**” means, collectively: (a) any modifications, additions or derivatives of the Company Materials that are conceived, made, discovered, written, created or otherwise contributed to by the Client, whether jointly or individually, directly or indirectly.
- 14.4 “**Customer**” means any actual or prospective customers and clients of the Company which were known by the Client, or which the Client ought reasonably to have known, during the Term of this Agreement.
- 14.5 “**Deliverables**” means the deliverables that Company agrees to provide to Client under this Agreement in connection with the Services, as expressly specified and described in a SOW.
- 14.6 “**Intellectual Property Rights**” means (a) copyrights and copyrightable works, whether registered or unregistered; (b) trademarks, service marks, trade dress, logos, registered designs, trade and business names (including Internet domain names, corporate names and e-mail address names), whether registered or unregistered; (c) patents, patent applications, patent disclosures and inventions (whether patentable or not); (d) trade secrets, processes, methods, data privacy rights, know-how and rights in designs; and (e) all other forms of intellectual property or any other proprietary rights in every jurisdiction worldwide.
- 14.7 “**Materials**” means, collectively, all works or materials in any form (including verbal, visual, electronic, or physical), including any information, files, reports, documents, designs, mock-ups, compilations, products, works, software and computer programs (including all source code, object code, compilers, libraries and developer tools, and any manuals, descriptions, data files, resource files and other such materials relating thereto), and any and all revisions and improvements relating to any of the foregoing.
- 14.8 “**Publicly Available Software**” means: (a) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software or any similar licensing and/or distribution models; and (b) any software that requires as a condition of use, modification, and/or distribution of such software that such software or other software incorporated into, derived from, or distributed with such software be: (I) disclosed or distributed in source code form; (II) licensed for the purpose of making derivative work(s); or (III) redistributable at no or minimal charge. Publicly Available Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models similar to any of the following: (A) the GNU General Public License (GPL), the Affero General Public License (AFL), the GNU Affero General Public License or Lesser/Library GPL (LGPL); (B) the Artistic License (e.g. PERL); (C) the Mozilla Public License; (D) the Netscape Public License; (E) the Sun Community Source License (SCSL); (F) the Sun Industry Source License (SISL); and (G) the Apache Server License.
- 14.9 “**Services**” means the services the Company agrees to provide to the Client under this Agreement, as defined in Section 1 of this Agreement or as expressly specified and described in a SOW.
- 14.10 “**SOW**” or “**Statement of Work**” means a document, or a series of documents, executed by both of the parties hereto, under and governed by the terms and conditions of this Agreement, in the form attached hereto as Appendix “B” or in whatever alternative written form the parties may

mutually agree from time to time, which document(s) describe, among other things, the specifications of the Services and Deliverables to be provided by the Company to the Client hereunder, and the specific terms and conditions relating to same. SOWs (as such term is used herein) include: (a) any and all renewals thereof agreed to between the parties in writing; and (b) any and all Change Orders relating thereto. Each SOW is subject to and forms a part of this Agreement and is hereby incorporated by reference.

Appendix “B”
FORM OF STATEMENT OF WORK
OPERATING AGREEMENT

This Statement of Work (“SOW”) forms part of and is incorporated in the Operating Agreement (the “Agreement”) entered into by and between **BETTER PLANT SCIENCES INC.** (the “Company”) and the Client, as such party is identified and defined below, as of the effective date specified below. Capitalized terms used but not defined in this SOW have the meaning ascribed to them in the Agreement.

1. GENERAL INFORMATION

CLIENT: (the “Client”)	
AGREEMENT EFFECTIVE DATE:	

SOW EFFECTIVE DATE: (the “SOW Effective Date”)	
SOW PROJECT #:	

COMPANY PRIMARY CONTACT:	
CLIENT PRIMARY CONTACT:	

2. SERVICE & DELIVERABLE ORDER

Subject to the terms and conditions of the Agreement, the Company wishes to engage the Client to provide the following services (the “Services”) and deliverables (the “Deliverables”).

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3. **FEES**

Subject to the terms and conditions of the Agreement, the Company will pay the Client the following fees (the “Fees”) for the Services under this SOW:

(a) Fixed Fee in the total amount of \$ _____ CAD, payable pursuant to the payment schedule set out below:

Service Description	Invoice Date	Payment Amount
1.		
2.		
3.		

OR

(b) Time and Materials billing, invoiced on a monthly basis, and calculated in accordance with the terms of the Agreement and the following billing rate schedule:

<i>No.</i>	<i>Position</i>	<i>Hourly Rate (CAD \$)</i>
1.		
2.		
3.		
4.		
5.		

Under Time and Materials billing, direct, verifiable material costs or expenses reasonably incurred by the Company in the course of providing the Services under this SOW will be billed to the Client and will additionally form part of the Fees.

4. **PAYMENT TERMS**

The Fees under this SOW, plus applicable taxes, will be payable by the Company in the manner, at the times and according to the terms contemplated in the Agreement:

SOW PAYMENT TERMS <i>(If different than standard payment terms set out in the Agreement)</i>

5. **ADDITIONAL LICENSE RESTRICTIONS**

During the term of this SOW, the Client License will be subject to the following additional restrictions, if any:

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4. **TERMINATION**

The term of this SOW will commence on the SOW Effective Date and will expire on the earlier of: (a) the full delivery of the Services (and associated Deliverables) expressly contemplated herein; (b) mutual consent by the parties in writing; or (c) the expiry or earlier termination of the Agreement pursuant to the terms and conditions therein.

[SIGNATURE PAGE FOLLOWS]

<u>STATEMENT OF WORK</u> SIGNATURE PAGE
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This SOW is entered into by and between the Company and the Client as of the SOW Effective Date. By signing this SOW, the parties hereby agree to be bound by the terms and conditions of this SOW.

SOW PROJECT #:	
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BETTER PLANT SCIENCES INC.

CLIENT

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

Name:
Title:

Name:
Title: