

## HOPS TESTING TERMS AND CONDITIONS

These Terms and Conditions apply to the hop analytical testing services described in the “AGC hops Testing Services” (the “**Testing Services**”) provided by Kwantlen Polytechnic University (“**KPU**”) through its Applied Genomics Centre to any entity (referred to herein as the “**Customer**”), whether KPU is engaged through an agreement in writing (including through completing an electronic form or signing an invoice or order form) or through the submission of samples to KPU for one or more Testing Services directly by the Customer or by an intermediary or agent.

### 1. Provision of Services

- (a) The Testing Services involve utilizing Customer-provided samples (collectively, the “**Samples**”). The Customer will be solely responsible for selecting the Samples and identifying such Samples through the use of the Customer’s own taxonomy (codes, markings, product names, etc.).
- (b) Prior to delivering the Samples to KPU, the Customer shall advise KPU, in writing, of any known hazards or dangers, actual or potential, associated with the Samples, including but not limited to any toxic, noxious, poisonous or explosive elements or materials, or any materials which could lead to contamination or equipment damage. If, in the sole discretion of KPU, any Sample is deemed to be too hazardous or dangerous for the performance of the Testing Services, KPU may terminate this Agreement and, at the sole cost of the Customer, return the Sample to the Customer if safe to do so, or dispose of the Sample in a safe manner in compliance with all applicable laws and procedures, at the Customer’s sole cost.
- (c) KPU shall document the results of the Testing Services in a written report or certificate (the “**Report**”), and deliver same to Customer at the address provided by the Customer on the invoice, or as otherwise indicated in writing. The Report is provided for the benefit and use of the Customer only, and may not be relied upon by any third party. The Customer shall communicate this limitation to every third party the Customer shares any Report with.
- (d) Unless the Customer instructs KPU to the contrary in writing, the performance of the Testing Services may be partly or wholly subcontracted at KPU’s discretion.
- (e) Unless otherwise agreed to in writing prior to the commencement of the Testing Services, the Samples will, as far as reasonably feasible, be retained by KPU, in a manner and form which KPU in its sole discretion deems appropriate, for a maximum of 30 days after the date on which the Report is delivered by KPU, after which the Samples will be disposed of at KPU’s discretion and KPU shall cease to have any responsibility for the Samples. Any costs associated in retaining and disposing such samples will be incorporated into the agreed rate(s) between the parties.

### 2. Rates and Payment

- (a) The Customer must pay, without any discount or right of set off, within 10 business days from date the Report is delivered, all fees due and payable to KPU for performance of the Testing Services, plus all applicable taxes. Interest of 6% per annum shall be added to any payments in arrears.

### 3. Warranty and Liability

- (a) KPU warrants that the Testing Services will be performed in accordance with the standards identified in the “**AGC hops Testing Services**” document. The Customer shall have thirty days after receiving the Report to report any deficiency in the Testing Services to KPU. No warranty claims may be made thereafter.
- (b) In the event of a breach of warranty (a) KPU shall re-perform or otherwise correct the Testing Services performed at no additional charge to the Customer, or (b) in the event KPU is unable to re-perform or otherwise correct the deficiency after good-faith efforts, KPU shall refund Customer amounts paid that are attributable to the defective Testing Services. The remedies set forth in this Section shall be the Customer’s sole remedy and KPU sole liability under this Agreement.
- (c) Except as expressly provided above and to the maximum extent permitted by applicable law, KPU makes no warranties of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose.
- (d) The Customer is solely responsible for maintaining, at its sole cost, any and all insurance coverage normally obtained by prudent business owners in the Customer’s industry, including general liability and income loss coverage.

- (e) Without limiting the foregoing, in no event shall KPU be liable for any indirect or consequential loss claimed by the Customer, including without limitation loss of profits, loss of business, loss of opportunity, or loss of goodwill.
- (f) In the event of a claim against KPU by any third party that arises out of or relates to the Testing Services, the Customer shall indemnify, defend and hold KPU harmless from all such claims, liabilities, damages, costs and expenses, including, without limitation, reasonable legal fees, except to the extent finally determined to have resulted from KPU's own negligence or intentional, deliberate or fraudulent misconduct. The Customer shall advise KPU promptly of any claim the Customer receives and KPU shall provide the Customer with reasonable cooperation and assistance in responding to such claim. This section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.

#### 4. General

- (a) Notwithstanding anything in this Agreement to the contrary, KPU will not be deemed to be in default in respect of a delay in performing the Testing Services is due to any cause beyond KPU's control and occurring without KPU's fault or negligence, including any strike, lockout or labour or civil unrest, sabotage, acts of terrorism, mass-casualty event, outbreak of virulent disease or other public health emergency, governmental regulations or controls, serious weather event that disrupts services to the KPU campus (including road access, water, electricity and telecommunications), earthquake, Acts of God, and computer attacks or other malicious acts, such as attacks on or through the Internet, any Internet service, telecommunications provider or hosting facility but excluding a lack of funds or other financial reasons.
- (b) The Customer acknowledges that KPU is subject to the B.C. *Freedom of Information and Protection of Privacy Act* ("FIPPA"). Upon receipt of a request regarding information regarding the relationship of KPU and the Customer, the terms of this Agreement and any Report (including draft Reports), KPU shall comply with its obligations under FIPPA and, where required, notify the Customer of the request and provide at least 20 days (or less, if required by law) for the Customer to consider its response. If the Customer consents to the disclosure, KPU will comply with the disclosure request. If Customer does not consent to the disclosure, the Customer must make take its own action, at its own cost, to prevent or limit disclosure. KPU is not obligated to participate in such action, and will comply with the rulings of the applicable administrative or judicial bodies. If the Customer fails to seek or achieve protection within a reasonable period of time, KPU may fulfil the disclosure request in accordance with law without liability to the Customer.
- (c) The Customer will not at any time use KPU's corporate name or trademarks, whether registered or unregistered, for any purpose without the prior written consent of KPU.
- (d) These terms and conditions shall not be waived or amended, and no statement that is any way contrary to any of these terms and conditions will be made, except in writing signed by the respective authorized signatories of the parties.
- (e) The Customer may not assign this Agreement without prior written approval from KPU, which will not be unreasonably withheld or delayed.
- (f) This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors, and permitted assigns.
- (g) This Agreement and all claims arising out of or relating to this Agreement, including disputes regarding its validity or interpretation and the exercise of any right or the enforcement of any obligation arising hereunder, will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein, and the parties hereby exclusively attorn to the jurisdiction of the Courts of competent jurisdiction of British Columbia in any proceeding hereunder.