**[Rs. 200 Non-Judicial Stamp paper]**

**MATERIAL TESTING AGREEMENT- TEMPLATE**

This **MATERIAL TESTING AGREEMENT** (hereinafter referred to a Two Thousand and Sixteen (\_/\_/2017) (also referred to as the “Effective date”).

**BY AND AMONG**

**INDIAN INSTITUTE OF SCIENCE**, a trust registered under the Charitable Endowments Act of 1890 and a centrally funded Technical institution, a Deemed University and an autonomous body funded by Ministry of Human Resource Development, Government, situated at Sir C.V. Raman Road, Bangalore– 560012, Karnataka, represented by its Registrar/ Duly Authorized Signatory, (hereinafter referred to as “the Institute/IISc”) which expression shall, unless repugnant to the context or meaning thereof, include its affiliates, successors-in-interest, nominees and assigns of the FIRST PART).

**AND**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a company incorporated under the Companies Act, 1956 and existing under the provisions of the Companies Act, 2013[[1]](#footnote-1) and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “the Company” which expression shall mean and include its successors-in-business and permitted assigns of the SECOND PART;

IISc and the Company shall hereinafter individually be referred to as a “**Party**” and collectively as the “**Parties**”.

**WHEREAS:**

I. The Company is desirous of conducting certain Technical Tests (hereinafter referred to as the “Tests”) that require use of Institute Equipment and Facilities (hereinafter referred to as the “Facilities”) and the Institute agrees to allow the Company to use the Facilities according to the Institute’s rules, regulations and procedure.

II. NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

**1) PERFORMANCE OF TESTS**

1. The Institute shall conduct the Tests as prescribed in the Statement of work and attached as Exhibit A, which will identify the Institute’s Facilities to be used, the objectives to be achieved and the specific testing methods (if any).
2. The Institute will perform the Tests in accordance with its standards, procedures and rules. The Tests will be conducted under the direction and supervision of Faculty Member Name, with assistance from associates, staff and colleagues, as required, in the Department or Center. The Company agrees that the Institute shall have discretion to involve its students in the conduct of the Tests.
3. The Institute may decline to carry out the services, if for any reason it is unable to do so, including lack of resources or Material, unsuitability of Material provided or safety and ethical considerations.
4. In no event will the Institute provide expert interpretation or analysis of Test Results under this Agreement. The Company will secure by separate agreement the related expert/consultant services that it may require.

**2) COMPANY’S OBLIGATIONS**

The Company agrees to:

1. provide the Institute the materials, samples, information, data or/ and resources

(hereinafter referred to as the “Material”) as may be reasonably required by the Institute for conducting the required Tests;

1. notify the Institute of any unusual risks or dangers in its Material that the Company is aware of; and
2. comply with all safety, security and other procedures notified to it either orally or in writing by the Institute while on any Institute site;
3. Assure the Institute that the Company has validly and has legally become entitled to hold and test the Material and that there are no legal impediments in engaging in the Tests upon the Material.

**3) TEST RESULTS**

The Institute will deliver to the Company all observational data, measurement data, and other results specified under the statement of work (Test Results). As the Institute will be conducting only Tests, and will not be providing expert interpretation or analysis of said Test Results, Institute claims no ownership of such Test Results. All rights to the Test Results shall belong to the Company. However, Institute shall be allowed to retain a copy of the Test Results for its internal records[[2]](#footnote-2).

**4) PAYMENT**

The Company agrees to make a payment to the Institute within twenty business days of receipt of an invoice (from the Institute) the sum described in Exhibit B. All such payments shall be sent to the Institute at the address and in the manner specified in Exhibit B. Payments not made in full within the stipulated period will bear interest at the rate of eighteen percent (18%) per annum on the amount due, computed for the period commencing the end of the aforesaid twenty-day period. Company will be liable for any and all costs and expenses incurred by the Institute in enforcing this Agreement. All amounts payable to the Institute under this Agreement are exclusive of applicable taxes which the Company will be obliged to pay at the rate from time to time prescribed by Law.

**5) SCHEDULING OF TESTS**

The Institute agrees to make available laboratory facilities, equipment, and support personnel for the Tests. The scheduling of such Tests shall be arranged in such a way as to avoid conflict with the Institute’s educational and research programs. The Institute shall control the scheduling of such Tests, but will try to meet the convenience of the Company to the extent possible.

**7) CARE AND MAINTENANCE OF EQUIPMENT AND FACILITIES**

Company agrees that in the event, it or its employees, agents or representatives, damage any Institute facilities or equipment’s, the Company will bear the sole financial responsibility for such damage.

**8) TERM AND TERMINATION**

1. This Agreement shall terminate on the first anniversary from its Effective date, unless extended through the mutual consent of both Parties in writing, or unless terminated earlier as hereinafter provided.
2. Either party may terminate this Agreement upon written notice to the other at the address set forth in Clause 10 below, except that each Party agrees to fulfill its obligation to the other Party, as set forth hereinabove, on any Tests that have already been scheduled or being carried out. Company shall reimburse the Institute all reasonable costs and non-cancelable obligations incurred by the Institute at the time of termination. At Company’s request and expense, the Institute will return to the Company all unused Material provided by the Company.
3. The Institute shall have the right to immediately terminate this Agreement and suspend company’s use of Institute facilities and equipment in the event the Institute determines, in its sole discretion, that the Company has made a misrepresentation, failed to abide by a representation or warranty or covenant, failed to meet or maintain our eligibility or content standards, or in any manner has failed to comply with the terms and conditions of this Agreement.

**9) CONFIDENTIALITY**

“Confidential Information” shall mean any Material (or portion thereof), written information, and marked “Confidential” by the Company or non-written information and data disclosed by the Company that is clearly and conspicuously identified at the time of its disclosure to the Institute as Confidential and is reduced to writing and transmitted to the Institute within thirty (30) days of any un-written disclosure. The Institute agrees to use the same degree of care it uses to protect its own confidential information and, to the extent permitted by law, to maintain as confidential for a period of one (1) year the Confidential Information that the Company discloses to the Institute under this Agreement. Institute’s obligations hereunder do not apply to any information which:

1. is independently developed by the Institute, without access/use or reference to the Company's confidential information
2. is acquired by the Institute from an independent third Party who has the right to disclose such information and has done so in good faith; or
3. is at the time of disclosure or later becomes part of public domain for reasons not attributable to any unauthorized or wrongful act or omission of the Institute;
4. was in the Institute’s possession prior to the disclosure thereof by the Company;
5. is ordered to be disclosed by a Court of Law or other directions from Government or Government authorities.

**10) ADDRESS OF THE PARTIES AND COMMUNICATION**

All notices and other communications required or permitted under this Agreement shall be deemed to be proper when given in writing and sent by registered post acknowledgement due or facsimile and confirmed by mail, postage prepaid, or by courier of repute along with proof of delivery to the designated Party at the addresses set below, or at such other address as the addressee-Party may in writing designate from time to time for these purposes. Any Party may by notice in writing to the other Parties change the addresses and/or address to which such notices are to be delivered or mailed.

If to the Institute : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Indian Institute of Science

Bangalore – 560 012, INDIA

With a copy to : Prof.

If to the Company :

**11) WARRANTY AND LIABILITY**

The Institute makes no representations or warranties, express or implied, regarding its performance under this Agreement, including but not limited to, the marketability, use or fitness for any particular purpose of the Test Results provided under this Agreement. Further, it is understood that the Institute shall not be liable to the Company for any consequential or incidental damages or loss of profits, revenue, goodwill or opportunities in contract, tort, under any statute or otherwise (including negligence) arising from or in any way related to this Agreement or the use of Test Results contained therein or any other information otherwise provided by the Institute. The Company agrees to indemnify, defend and hold harmless the Institute against any claims arising out of the Company’s use, commercial sale, or distribution of the Test Results or products or processes resulting therefrom or Company’s reliance upon the Test Results. This provision shall survive any termination or expiration of this Agreement.

**12) SETTLEMENT OF DISPUTES**

In the event of any dispute or difference between the parties hereto, such difference or dispute shall be resolved amicably by mutual consultation and discussions. However, If such a resolution is not possible within 30 days from the date on which one Party is put on notice of such dispute, then, only the unresolved portion of the dispute/s or difference/s shall be referred for arbitration as per the provisions of the Indian Arbitration and Conciliation Act 1996 and subsequent amendments thereto. The considered decision of a Sole Arbitrator, who is appointed by the mutual agreement of parties, shall be final and binding on the Parties. The Arbitration shall be conducted in Bengaluru, India. The language to be used in the arbitration proceedings shall be English. Only the competent Courts in Bengaluru City shall have jurisdiction in respect of this Agreement.

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**13) GOVERNING LAW**

This Agreement shall be construed, interpreted, and governed by the laws of India and to the extent applicable the laws of the State of Karnataka.

**14) ENTIRE AGREEMENT**

This Agreement, including the attached Exhibits A and B, constitutes the entire and only Agreement between the Parties relating to the Tests, and all prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof, including the exhibits attached hereto may be made except by a written document signed by the duly authorized representatives of the Parties.

**15) USE OF INSTITUTE’S NAME AND TEST RESULTS**

The Company agrees not to use the Institute’s name in any publicity, advertising, or news release; the Company agrees not to attribute the Test Results to the Institute in public; and the Company agrees not to use the Institute’s name in seeking any Government or non-government approvals or in any other manner without the prior written consent of the authorized representatives of the Institute, which consent the Institute may either grant or withhold in its sole discretion.

**16) GENERAL**

This Agreement is non-assignable and non-transferable. The Company certifies that it is duly authorized to enter into this Agreement and that this Agreement is binding upon it. For the purposes of this Agreement and all the Tests to be provided hereunder, each Party shall deemed to be, an independent contractor and not an agent or employee of the other Party. Invalidity or unenforceability of one or more provisions of this Agreement shall not affect the remaining provisions of this Agreement.

**IN WITNESS WHEREOF**, the Institute and the Company hereby enter into this Agreement as of the Effective Date, and execute two original counterparts.

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| For Indian Institute of Science  (*By its authorized signatory*)  Name:  Title: The Registrar, IISc | For Company  (*By its authorized signatory*)  Name:  Title: |
| Seal: | Seal: |
| **WITNESSES**:  1.  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:  Address: | 2.  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title:  Address: |

1. This will change in accordance with the constitution of the contracting party. [↑](#footnote-ref-1)
2. Signing Authority to please note that there may be a requirement of maintaining cyber and/or physical security of the Test Results. Security issue to be decided appropriately. [↑](#footnote-ref-2)