



"Serving those In The Arena"

Testing Agreement

The following Master Services Agreement terms and conditions ("Agreement") govern any and all Services ITA International LLC. ("ITA") (including its employees, agents and licensees) performs for the Customer ("Company") pursuant to the further terms of one or more executed Statements of Work (each a "SOW") referencing this Agreement and entered on an original effective date ("Effective Date") that is within the timeframe during which this version of the Agreement is the most recent version of the Agreement published on the ITA website. This Agreement is hereby incorporated into each such SOW for the Service period set forth therein, including as extended. ITA and Company are also referred to herein individually as a "Party" and collectively as the "Parties".

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. **NanoSafe Testing.** The Company hereby engages ITA to perform the testing services ("**Services**") for the Company set forth in the agreed to Statement of Work. ITA accepts such appointment and agrees to render the Services to the Company in accordance with the terms of this Agreement.

2. **Duties of ITA.** ITA will (a) perform the Services in accordance with the level of skill and care customary in ITA's business and complete the processes and any deliverables listed in the Statement of Work.

3. **Duties of the Company.**

(a) During the testing period the Company will:

(i) Provide ITA with all technical material, company documents, software, hardware, and any and all related documentation necessary to perform the Services including but not limited to the items set forth in the SOW (collectively, "**Equipment**");

(ii) Cooperate with ITA to develop and implement the testing criteria; and

(iii) Designate a representative of the Company as a point of contact for ITA to work with during the testing period.

(b) In addition to the other covenants mentioned in this Agreement, following the completion of the testing period and receipt of Deliverables the Company will:

(i) Follow the terms and limitations of use of the Deliverables as set forth in the SOW ("**Terms of Use**"); and,

(ii) Only utilize the deliverables pursuant to the Terms of Use.

4. **Compensation.** The Company will pay ITA the fees set forth in the SOW and will not reimburse ITA for any expenses except as set forth in the SOW. Any payments contemplated under this Agreement not paid within thirty (30) calendar days will accrue interest at a rate of twelve percent (12%) per annum until paid in full.

- ITA reserves the right to revise any quote if a customer elects to place a partial order for services.
- Travel estimates are based on rates available at time of quote, and are subject to change depending upon the actual date an acceptable purchase order is received.
- The total quoted price includes all applicable sales tax, unless a Sales and Use Tax Certificate of Exemption is submitted by the customer prior to release of the quote.

- This quote, and all modifications or amendments thereto, incorporates the terms and conditions as set forth in (name and date of agreement here) whether or not physically attached to this quote.
- The Company accepts the rates and terms as shown above. Any further services will be separately quoted as needed.

5. **Confidentiality.**

(a) “**Confidential Information**” means information marked as “Confidential” and written or in electronic media relating to (i) a disclosing party’s existing and future services and/or products, including, without limitation, works of authorship, proprietary technology, techniques, procedures, algorithms, trade secrets, discoveries, ideas, inventions (whether patentable or not), concepts, know-how, designs, schematics, specifications, drawings, diagrams, data, formulae, models, reports, studies, statistics, prototypes, computer programs, patent disclosures, patent applications, development or experimental work, formulae, engineering or test data, product specifications, product development plans, structures, methods and processes disclosed by either Company or ITA pursuant to this Agreement; (ii) marketing (including without limitation marketing strategies, customer lists and requirements and product prices); (iii) future product or service plans; (iv) personnel (including without limitation contractor or employee compensation); and (v) other confidential business information. Confidential Information also includes descriptions of the existence or progress of the above-described information.

(b) At all times during this Agreement and at all times thereafter, either party will keep in strict confidence and trust all Confidential Information of the other party, and neither party will use, reproduce, or disclose any Confidential Information without the written consent of the other party, except as may be necessary in the ordinary course of performing the party’s duties under this Agreement. The foregoing obligations will continue until such time as the Confidential Information is publicly known, without fault on the part of the non-disclosing party.

(c) Each party recognizes that the other party has received, and in the future will receive, information from third parties which is confidential and/or proprietary information subject to a duty on the party’s part to maintain the confidentiality of such information and to use it only for certain limited purposes. Each party agrees that during the term of this Agreement and thereafter, the non-disclosing party owes the disclosing party and such third parties a duty to hold all such confidential or proprietary information in the strictest confidence and not to disclose it, except as necessary in carrying out the party’s work pursuant to this Agreement and then only as consistent with the disclosing party’s agreement with the applicable third party, and not to use it for the benefit of anyone other than for the disclosing party or such third party consistent with the disclosing party’s agreement with such third party.

6. **Representations and Warranties.**

(a) *ITA*. *ITA* hereby represents and warrants to the Company as follows:

(i) *ITA* has all required corporate power and authority to own its respective properties and to carry on its respective business as presently conducted and as proposed to be conducted. *ITA* has all required corporate power and authority to execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement or any other documents executed pursuant to this Agreement; and,

(ii) *ITA*’s execution and delivery of this Agreement, its performance of the transactions contemplated by this Agreement, and the performance of the businesses of *ITA* as now conducted, does not and will not violate any terms of any material contract or obligation of *ITA* or, to the best of *ITA*’s knowledge, any statute, rule or regulation of any Federal, state or local government or agency applicable to *ITA*, or any material contract to which any employee of *ITA* is bound.

(b) *The Company*. *The Company* hereby represents and warrants to *ITA* as follows:

(i) *The Company* has all required corporate power and authority to own its respective properties and to carry on its respective business as presently conducted and as proposed to be conducted. *The*

Company has all required corporate power and authority to execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement or any other documents executed pursuant to this Agreement; and,

(ii) The Company's execution and delivery of this Agreement, its performance of the transactions contemplated by this Agreement, and the performance of the businesses of the Company as now conducted, does not and will not violate any terms of any material contract or obligation of the Company or, to the best of the Company's knowledge, any statute, rule or regulation of any Federal, state or local government or agency applicable to the Company, or any material contract to which any employee of the Company is bound. No consent, approval or filing with any regulatory agency is required to be taken by the Company in connection with the transactions contemplated by this Agreement.

(iii) The Company owns the Equipment and the product being tested and has the right to have the product tested.

(iv) The Company understands the terms and limitation on the use of the Deliverables and will only use the Deliverables pursuant to the Terms of Use.

(c) THE PARTIES' MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT OR RELATED TO THE SUBJECT MATTER HEREOF IS LIMITED TO THE MAXIMUM AGGREGATE FEE, WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR OTHER INDIRECT DAMAGES OF ANY KIND.

7. Termination.

(a) *Term.* This Agreement will commence as of the Effective Date and will remain in effect until the completion of the Statement of Work.

(b) *Termination.* The Agreement may be terminated:

(i) By either party, upon giving written notice to the other party, if the other party or its employees breaches any provision of this Agreement and the violation is not remedied within five (5) calendar days of the party's receipt of written notice of the violation;

(ii) By the Company, if at any time after the commencement of the Services, if ITA fails to perform the Services in a manner consistent with the Statement of Work and fails to cure any allegation of such failure by the Company within five (5) days of ITA's receipt of written notice describing the problem; provided, however, the unacceptable provision of Services is not a result of the lack of cooperation or inappropriate interference of the Company;

(iii) By ITA if (a) the Company fails to pay amounts due under this Agreement when due, and (b) thereafter ITA has provided at least ten (10) calendar days written notice to Company of such failure to pay and ITA's intention to terminate this Agreement; or,

(iv) By either party, at any time in the event the other party terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, or becomes subject to direct control by a trustee or similar authority.

Further, in the event that (i) through (iv) occur, the party claiming the occurrence of such an event will immediately notify the other party of such occurrence.

(c) *Obligations Upon Expiration or Termination.*

(i) *Obligations of ITA.* Upon expiration or termination of this Agreement, ITA will cease all testing services promptly return to the Company all Company equipment, computer programs, files,

documentation, media, related material, and any other material provided by the Company. Expiration or termination of this Agreement will not relieve either party of its obligations regarding confidential information under Section 5; provided, however, no obligation exists to disclose incomplete test results should the tests not be completed.

(ii) *Obligations of the Company.* Upon expiration or termination of this Agreement, all outstanding invoices shall be immediately due and payable, including such invoice as ITA may provide to the Company upon notice of termination of the Agreement or upon the expiration of the Agreement. Expiration or termination of this Agreement will not relieve either party of its obligations regarding confidential information under Section 5.

8. Rights in Data.

(a) *Ownership.* The Company is the owner of the Company Intellectual Property Rights of the Products. ITA is the owner of the ITA Intellectual Property Rights. Neither party will directly or indirectly contest the ownership rights of the other party.

(b) *Limited License.* If the Company designates, promotes, markets, or otherwise discloses that the Products have completed the testing described in the Agreement, then the Company hereby grants ITA a paid up royalty-free non-exclusive worldwide license to post the testing regime and a summary of the results on NanoSafe's website for informational purposes and to disclose that ITA performed services for the Company.

(c) *Use of NanoSafe Logo.* If the Company subscribes to the NanoTech Registry™ NanoSafe will grant to the Company a limited license to use the NanoSafe Tested mark as described in Exhibit A; *provided, however,* the Company uses the NanoSafe Tested mark it will do so in the manner described in guidelines from ITA from time to time. In the event that the Company fails to use the NanoSafe Tested mark in a manner consistent with ITA guidelines, as determined by ITA in its sole discretion, the license granted under this Section 8(c) will automatically terminate.

(d) *Misuse of Deliverables or NanoSafe Tested Mark.* If ITA determines that the Company misuses the Deliverables, the NanoSafe Tested mark, or otherwise violates the Terms of Use ("**Violation**"), ITA will notify the Company in writing of such Violation and the Company shall have five (5) business days to either correct such Violation or notify ITA in writing of its objection to the determined Violation ("**Objection**"). Upon receipt of an Objection, ITA and the Company will attempt to resolve the disputed determination during the five (5) business day period following receipt of the Objection. If the parties cannot agree, the determination by ITA shall be controlling.

(e) *Defined Terms.*

(i) "**Intellectual Property Rights**" means any and all rights existing now or in the future under patent law, copyright law, industrial design rights law, trade secret law, trademark law, unfair competition law, publicity rights law, and any and all similar proprietary rights, and any and all renewals, extension and restorations thereof, now or herein in force and effect worldwide.

(ii) "**Company Intellectual Property Rights**" means any and all Intellectual Property Rights in (x) the Equipment of the Company and the product supplied by the Company being tested; (y) all related material that are provided by the Company and used by ITA in connection with the performance of the Services provided by ITA before or after the date set forth above; and, (z) the Deliverables.

(iii) "**ITA Intellectual Property Rights**" means any and all Intellectual Property Rights in the material, processes, and testing strategies of ITA either (y) existing prior to the date of this Agreement that may be used by ITA in the provision of Services or (z) created in the provision of Services.

9. Indemnification.

(a) *Obligations of the Company.* The Company, agrees to defend, indemnify and hold harmless ITA (which for the purposes of this Section 9 includes ITA's subcontractors, affiliates, directors, officers,

employees, agents, advisors and representatives) from and against, and to reimburse ITA with respect to, all liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements (“*Losses*”), asserted against or incurred by ITA by reason of, arising out of, or in connection with (each of (i) through (iii) an “*Indemnifiable Claim*.”):

(i) Any breach of any representation, warranty, covenant, or agreement contained in this Agreement made by the Company or in any document or certificate delivered by The Company to ITA pursuant to the provisions of this Agreement;

(ii) Any costs, expenses, or fees of any type incurred by ITA due to failure of the Company to fulfill its obligations under Section 3;

(iii) Any claim that any act or omission of the Company in connection with this Agreement, the performance of the Services or activities relating thereto caused personal injury, death, or property damage, or constituted any other legal or equitable wrong; and,

(b) *Indemnification Procedure.*

(i) ITA will give written notice (“*Claim Notice*”) to the Company as promptly as practicable of the existence of an Indemnifiable Claim.

(ii) Upon receipt of a Claim Notice, the Company has ten (10) calendar days in which to dispute the claim asserted by sending written notice thereof to ITA (“*Dispute Notice*”). The Company is not entitled to dispute a claim based on a final judgment or order of a court of competent jurisdiction. If no Dispute Notice is received prior to the expiration of the ten (10) calendar day period, ITA will be entitled to receive full payment of the amount of the claim. If a Dispute Notice is received prior to the expiration of the ten (10) calendar day period, ITA and the Company will negotiate in good faith to resolve the dispute. If ITA and the Company are unable to resolve the dispute within thirty (30) calendar days of the receipt of the Dispute Notice, the dispute will be submitted to arbitration. Such arbitration regarding the Indemnifiable Claim will be conducted according to the applicable rules of the American Arbitration Association and will take place in the County of Fairfax, Virginia before a single arbitrator, who will be designated by ITA and the Company or, if they are unable to agree within ten (10) calendar days after the dispute is submitted to arbitration, by the American Arbitration Association. The decision of the arbitrator is final and binding upon the parties hereto, with regard to the subject matter thereof.

10. Miscellaneous Terms.

(a) *Merger.* This Agreement, including its Exhibits and the Deliverables comprise the entire agreement between the parties with respect to the subject matter of this Agreement, and it supersedes all prior representations and agreements with respect to the subject matter hereof. This Agreement can be amended or modified only by a writing signed by duly authorized officers of the parties hereto. This Agreement, together with the Exhibits hereto and the instruments and agreements to be executed pursuant to this Agreement and the Deliverables, sets forth the entire understanding of the parties hereto with respect to its subject matter, merges and supersedes all prior and contemporaneous understandings with respect to its subject matter and may not be waived or modified, in whole or in part, except by a writing signed by each of the parties hereto. No waiver of any provision of this Agreement in any instance will be deemed to be a waiver of the same or any other provision in any other instance. Failure of any party to enforce any provision of this Agreement will not be construed as a waiver of its rights under such provision.

(b) *Survival.* The following provisions will survive the termination or expiration of this Agreement: Section 3(b), Section 5, Section 6, Section 7(c), Section 8, Section 9 and Section 10.

(c) *Successors and Assigns.* This Agreement is binding upon, enforceable against, and inures to the benefit of, the parties hereto and their respective heirs, administrators, executors, personal representatives, successors, and assigns, and nothing herein is intended to confer any right, remedy, or benefit upon any other person, which consent will not be unreasonably withheld.

(d) *Counterparts.* This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(e) *Third Party Beneficiaries.* Except as specifically set forth or referred to herein, nothing herein is intended or will be construed to confer upon any person or entity other than the parties hereto and their successors or assigns, any rights, or remedies under or by reason of this Agreement.

(f) *Independent Contractor.* ITA is an independent contractor of the Company, and nothing in this Agreement or the course of the parties' dealings will establish a relationship of employer/employee, principal/general agent, master/servant, franchisor/franchisee, joint ventures, or partners. Neither party has any authority to make representations on behalf of or to bind the other, or to hold itself out as having authority to do so.

(g) *Force Majeure.* ITA will not be liable for any damages or penalty for delay in performance or its obligations hereunder or failure to give notice of delay when such delay is due to the elements, acts of God, or any other causes beyond reasonable control of ITA.

(h) *Further Assurances.* From time to time after the date of this Agreement, each of the parties hereto, at the request of the other, and without further consideration, will execute and deliver such further documents or instruments and will take such other actions as the requesting party may reasonably request in order to effect complete consummation of the transactions contemplated by this Agreement.

(i) *Governing Law and Venue.* This Agreement is governed by the laws of the Commonwealth of Virginia, without regard to that or any other jurisdiction's choice of law rules. Any claim arising from this Agreement or goods or services provided pursuant to this Agreement will be commenced and maintained solely in a state or federal court of competent subject matter jurisdiction within the Commonwealth of Virginia in the Circuit Court of the County of Montgomery or in the United States District Court for the Western District of Virginia, and both parties hereby consents to personal jurisdiction and venue in any such court.

(j) *Export Control.* ITA, International is a U.S. company that complies with all applicable export laws and regulations, including the Export Administration Regulations (EAR) administered by the U.S. Department of Commerce, Bureau of Industry and Security (BIS), and the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC). By accessing, using, or purchasing our services, the Company agrees to abide by these laws and regulations and not to export, re-export, or transfer our products to any restricted or prohibited destination, end-user, or entity without proper authorization from the U.S. government.

(k) *Waiver.* Waiver of any breach or failure to enforce any term of this Agreement will not be deemed a waiver of any breach or right to enforce which may thereafter occur.

(l) *Severability.* If any provision of this Agreement or application thereof to anyone or under any circumstances is adjudicated to be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability will not affect any other provisions or applications of this Agreement that can be given effect without the invalid or unenforceable provision or application and will not invalidate or render unenforceable the invalid or unenforceable provision in any other jurisdiction or under any other circumstance.

(m) *Headings.* The headings in this Agreement are for the convenience of the reader and do not modify, limit, or enlarge the substance of any term.

EXHIBIT A

What Does NanoSafe Tested Mean?

1. What “NanoSafe Tested” Means.

“NanoSafe Tested” means that ITA subjected the Manufacturer’s product (“Product”) to agreed upon testing criteria (“Criteria”) under the conditions described in the NanoSafe Tested Report. The purpose of the “NanoSafe Tested” mark (“Mark”) and the NanoSafe Tested Report is to indicate third party testing was performed following the Criteria.

2. What “NanoSafe Tested” Does Not Mean.

Due to the developmental nature of nanomaterials, “NanoSafe Tested” does not mean anything other than the Product was subjected to the Criteria. It does not mean that the Products are safe for human, animal, or plant interaction nor that the Product will satisfy governmental standards of safety or compliance. ITA, in performing its functions in accordance with its objectives, does not assume or undertake to discharge any responsibility of the Manufacturer or any other party. The Product is not owned, controlled, or manufactured by ITA. The opinions and findings of ITA represent its professional judgment given with due consideration to the necessary limitations of practical operation and state of the art at the time the Product is “NanoSafe Tested” and ITA has no obligation to update the NanoSafe Tested Report. ITA is not responsible to anyone for the use of or reliance upon the Mark or this Report. ITA will not incur any obligation or liability for damages, including consequential damages, arising out of or in connection with the use, interpretation of, or reliance upon the Mark or this Report. The testing performed by ITA was performed solely for the Manufacturer’s benefit and there are no intended third party beneficiaries of such testing.

3. Future Testing.

ITA recognizes that the current science, regulation, and standards of nanomaterials is in its infancy and is changing and developing rapidly leading to new nanomaterials being developed and a better understanding of the testing and effect of such nanomaterials. The Manufacturer has requested ITA test the developmental stage products and nanomaterials described in the ITA Report. As a result, the Manufacturer may request ITA periodically retest the Product and accordingly this Report will be amended to reflect such new testing. In addition, the Mark may be altered to reflect such additional testing.

5. Use of “NanoSafe Tested” Mark and Report.

- a. “NanoSafe Tested” Mark. Upon the successful completion of testing of the Product, the Manufacturer is granted a limited license to use the Mark provided by ITA to signify that the Product has undergone NanoSafe Testing. The limited license persists for as long as the Company subscribes to the NanoSafe Tested Registry. A period of 12 months following execution of this contract is provided without fee followed by payment of a fee negotiated with the Company assessed on an annual basis.

The inappropriate use of the Mark will automatically terminate the license to use the Mark without further action from ITA. In the event that the Manufacturer desires to use the Mark with the Product, all uses of the Mark must conform to the NanoSafe Mark guidelines as amended time to time. Any time the Mark is used the Manufacturer must also include the following sentence in the legal notice or other appropriate section of marketing material:

The mark is a registered trademark of ITA. Further information regarding the testing criteria and results are provided at www.NanoSafeinc.com and available from ITA upon request.

6. Copyright.

To clarify the significance and effect of the copyright notice that appears in ITA’s material including this Report, ITA’s material are copyrighted to protect ITA’s publication rights, not to restrict their use in product design or evaluation.

ITA believes that products and materials that have been “NanoSafe Tested” constitute a significant contribution to public safety by providing third party testing on products. However, the Criteria are developed in concert with the Manufacturer and ITA shall not incur any obligation or liability for damages arising out of, or in connection with the use, interpretation of, or reliance upon any Report or the Mark by anyone.