



## Independent Contractor Services Agreement

### For Subcontractor Test Labs

This Independent Contractor Services Agreement for Subcontractor Test Labs together with the Quality Agreement (collectively, this “Agreement”) is made as of the date of the Quality Agreement between the Lab identified in the Quality Agreement, and TÜV SÜD America Inc., with an address of 401 Edgewater Place, Suite 500, Wakefield, MA 01880, on behalf of itself and its wholly-owned subsidiary, TÜV SÜD Canada Inc., 1229 Ringwell Drive, Newmarket, ON L3Y 8T8 (collectively, “TÜV SÜD”).

**Section 1. Background.** TÜV SÜD desires to retain the Lab on a non-exclusive basis to subcontract testing services and other related services upon the terms and conditions set forth below and incorporated herein. The Lab desires to be retained by TÜV SÜD in the capacity of an independent contractor to provide such services to TÜV SÜD upon such terms and conditions.

**Section 2. Term.** The term of this Agreement (the “Term”) shall begin on the date first written above and shall continue until terminated as provided in Section 11 (*Termination*) below.

#### Section 3. Scope of Services.

(a) The Lab agrees to be available during the Term to provide such services as may be assigned by TÜV SÜD. The services that the Lab will provide under this Agreement (the “Services”) shall be as described in Section 1 (*Background*) above, and to make the details of the Services to be provided even more clear, the Lab and TÜV SÜD may describe those Services in a descriptive document that both parties sign. That descriptive document is sometimes called a “Project Supplement”; if no Project Supplement is entered into for a particular project, references in this Agreement to the applicable Project Supplement shall be deemed to be references to this Agreement itself. TÜV SÜD America Inc. and TÜV SÜD Canada Inc. shall each be entitled to order Services from Lab under this Agreement. The TÜV SÜD entity that orders the Services from the Lab shall be considered TÜV SÜD for such Services.

(b) Lab shall provide TÜV SÜD, upon request, any information necessary to demonstrate the correctness of the project-specific consulting and testing Services provided. The Lab shall be responsible for providing and maintaining any office space and furnishings that the Lab needs, and unless the parties otherwise agree, the Lab shall also be responsible for supplying any equipment and tools that may be required for the performance of the Services.

(c) All of the Services shall be performed in a workmanlike and professional manner by the Lab and its employees having a level of skill in the area commensurate with the requirements of the work to be performed and the applicable standards then recognized in such field.

**Section 4. Independent Contractor.** The parties acknowledge and agree that the Lab’s relationship with TÜV SÜD is that of an independent contractor and that neither this Agreement nor any Project Supplement creates an employee/employer relationship between them. Accordingly, the manner and means of accomplishing the projects or assignments assigned to the Lab shall, subject to the limitations set forth in Section 3 (*Scope of Services*) above, be determined by the Lab using Lab’s best professional and independent judgment, with consideration given to the best interests of TÜV SÜD. TÜV SÜD reserves the right, however, in its sole discretion to define the Lab’s assignments and to limit the Lab’s authority in performing Services with respect to such assignments. The Lab and its employees, if any, shall not have the right, power, or authority to enter into contracts or commitments on behalf of TÜV SÜD, to prepare any type of written correspondence on TÜV SÜD stationery, or otherwise to obligate or purport to obligate TÜV SÜD in any manner.

#### Section 5. Confidential Information.

(a) As used in this Agreement, “Confidential Information” means all information and materials provided by TÜV SÜD or its affiliates and/or customers to the Lab which constitute a trade secret, or which are of a confidential or proprietary nature, including production or testing data, financial information, processes, formulae, know-how, improvements, inventions, applications, engineering and marketing techniques and data, customer and prospect lists, and sales and product information. Confidential Information also includes this Agreement and the Project Supplements.

(b) The Lab shall hold, and shall cause its employees and consultants to hold, all Confidential Information in trust and confidence and to not divulge any such information to third parties. Upon any termination of this Agreement, the Lab shall, and shall cause its employees and consultants to, immediately return to TÜV SÜD the originals and all copies of Confidential Information, as well as any other property provided by TÜV SÜD or its affiliates or customers to the Lab or its employees, without retaining any copies thereof, except that the Lab may retain archival copies of this Agreement and the Project Supplements, subject to Lab’s continuing confidentiality obligation as provided above.



(c) Nevertheless, Confidential Information shall not include information which:

- (i) is now in the public domain or subsequently enters the public domain through no action or fault of the Lab or its employees;
- (ii) is known by or available to the Lab or its employees from Lab's own independent sources prior to receipt thereof under this Agreement;
- (iii) the Lab or its employees receive from any third party having a legal right to transmit such information without any obligation to TÜV SÜD or its affiliates or customers to keep such information confidential; or
- (iv) is independently developed by the Lab or its employees, agents, or contractors, as established by written documentation.

(d) Furthermore, in the event that the Lab or its employees are ordered by a court or other governmental entity having jurisdiction to disclose any Confidential Information, they shall be permitted to so disclose that Confidential Information. If permitted, the Lab shall give TÜV SÜD prompt written notice of the order so as to allow TÜV SÜD or its affiliates or customers to seek a protective order or similar relief.

**Section 6. Fees and Payment.** For Services rendered by the Lab hereunder, TÜV SÜD shall pay the Lab fees as set forth in the Project Supplement. If such fees are expressed as a percentage of the rates that TÜV SÜD charges its customers for services comparable to the Services (the "TÜV SÜD Billing Rates"), then TÜV SÜD shall notify the Lab (from time to time when Services are being performed) of changes in the TÜV SÜD Billing Rates, and the fees that TÜV SÜD pays the Lab shall be subject to change (whether upward or downward) in proportion to any change in the TÜV SÜD Billing Rates for the corresponding period of time. The Lab shall only be entitled to fees for Services which are billable to TÜV SÜD's customers. Promptly after each month, the Lab shall invoice TÜV SÜD for the Services that were performed in the then-just-completed month, providing detailed information on the work performed, including service calls and visits as applicable, and the hours spent. The invoices shall also identify any reimbursable expenses, consistent with Section 9 (*Travel and Related Expenses*) below, and shall be accompanied by all required supporting documentation, such as receipts. TÜV SÜD will, within forty-five (45) days after receipt thereof, pay undisputed invoices which are complete and comply with these requirements.

**Section 7. Inventions and Improvements.**

- (a) All inventions, improvements, and ideas which the Lab or its employees jointly or singly develop, or of which the Lab or its employees become aware, and which are developed by the Lab, its employees or others while acting on behalf of TÜV SÜD pursuant to this Agreement, or which are developed utilizing TÜV SÜD's facilities or Confidential Information, are and shall be the property of TÜV SÜD.
- (b) Furthermore, the Lab shall, and shall cause its employees to, assign to TÜV SÜD all right, title and interest in all such inventions and improvements, as well as any and all patents and applications therefor in the United States and all foreign jurisdictions, regardless of whether such patents are issued, or applications therefor filed, during or after the Term. Both during and after the Term the Lab shall, and shall cause its employees to, (i) execute and deliver any and all papers, instruments, and documents reasonably requested by TÜV SÜD, including patent applications and assignments of patents and applications, and (ii) assist TÜV SÜD, at TÜV SÜD's expense, in whatever way reasonably requested by TÜV SÜD in carrying out the purposes of this Section 7.
- (c) The Lab expressly acknowledges that all copyrightable materials written, developed, or produced or which otherwise arise out of Services shall be considered works made for hire and as a consequence, all copyrights shall be exclusively owned by TÜV SÜD. The Lab hereby transfers and assigns, and shall cause its employees and others performing Services to transfer and assign, to TÜV SÜD all right, title and interest in and to the same.
- (d) The Lab shall maintain agreements with any employees or others who perform Services under this Agreement to ensure the effectiveness of the transfers of rights described in this Section 7.

**Section 8. Benefits and Taxes.**

- (a) This Agreement does not create a contract of employment between TÜV SÜD and the Lab or any employee of the Lab involved in the provision of Services hereunder. Therefore, neither the Lab nor its employees shall be eligible to participate in, or
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receive, any employee benefits that TÜV SÜD makes available to its employees, and the Lab shall be solely responsible for any benefit coverage for himself/herself (if applicable) and for the Lab's employees, if any.

(b) TÜV SÜD shall not withhold from the Lab's fees hereunder, and the Lab shall be responsible for paying, any federal, state or local payroll, social security, disability, workers' compensation, self-employment insurance, income and other taxes or assessments against the Lab and/or its employees on account of the services performed hereunder. TÜV SÜD shall have no liability for any payments to any employee of the Lab, including without limitation, salaries, per diem allowances, and insurance payments. The Lab shall, at the Lab's own expense, pay and be fully liable and responsible for, and indemnify and hold harmless TÜV SÜD (including its officers, directors, shareholders, employees and agents) and its customers from any liability for the foregoing amounts and any liability for any violation of this Section 8.

**Section 9. Travel and Related Expenses.** Except as otherwise specified, TÜV SÜD shall reimburse the Lab for all travel and related expenses incurred by Lab or its employees only in accordance with this Section 9. Travel must be deemed necessary by TÜV SÜD for the performance of Services under this Agreement and further pre-approved by an authorized representative of TÜV SÜD. Travel mileage shall be paid at the current IRS rate. All other travel related expenses shall be reimbursed at actual cost. Travel time is not billable. In addition to complying with the requirements described in Section 6 (*Fees and Payment*) above, the Lab's invoices covering travel and related expenses shall comply with TÜV SÜD's travel expense policies (which TÜV SÜD shall make available to the Lab if requested) and related procedures, and the Lab shall provide the documentation required by those policies and procedures.

**Section 10. Warranty.** The Lab warrants that the Services will substantially conform to the descriptions and other requirements contained in this Agreement and the requirements and specification for each project hereunder. Lab further warrants that all Services performed under this Agreement for each assignment shall be performed in accordance with current, sound and generally accepted industry practices by personnel who are appropriately experienced and trained. Lab warrants that it will not do or omit to do anything which may cause TÜV SÜD to lose any license, accreditation, authority, consent or permission on which it relies for the purposes of conducting its business, and the Lab acknowledges that TÜV SÜD may rely or act on the Services. If the Lab fails to perform the Services as required herein, TÜV SÜD shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate this Agreement and the Project Supplement with immediate effect by giving written notice to the Lab;
- (b) to refuse to accept any subsequent performance of the Services which the Lab attempts to make; or
- (c) where TÜV SÜD has paid in advance for Services that have not been provided by the Lab, to have such sums refunded by the Lab.
- (d) to set-off amounts proportionate to the non-conforming Services.

The foregoing are in addition to all other rights and remedies available to TÜV SÜD.

**Section 10. Termination.** If either party materially breaches this Agreement, the non-breaching party may terminate this Agreement effective immediately upon written notice to the other party. Without limiting the foregoing, if the Lab fails to perform the Services hereunder to the reasonable satisfaction of TÜV SÜD, TÜV SÜD may terminate this Agreement effective immediately upon written notice to the Lab. Additionally, either party may terminate this Agreement without cause upon thirty days' advance written notice to the other. Upon any termination of this Agreement other than by TÜV SÜD for cause, the Lab shall be entitled to any accrued and unpaid fees and any outstanding expense reimbursements for satisfactorily performed Services, and as noted above, any termination of this Agreement shall trigger the return requirements described in subsection (b) of Section 5 (*Confidential Information*) above. The terms of Sections 5 (*Confidential Information*), 7 (*Inventions and Improvements*), 8 (*Benefits and Taxes*), 10 (*Warranty*), 12 (*Other Activities; Non-Solicitation*), 13 (*Indemnity*), 14 (*Insurance*), 15 (*Code of Ethics; Compliance With Laws*), 16 (*Limitation on Liability*), 17 (*Enforcement and Remedies*), 19 (*Jurisdiction and Severability*), and 22 (*Dispute Resolution*) in addition to those sections that, by their nature and the context in which they appear would reasonably be expected to survive termination or expiration of this Agreement, shall survive any termination of this Agreement.

**Section 12. Other Activities; Non-Solicitation.** The Lab may engage in other assignments with other parties, provided such assignments do not create a conflict of interest with TÜV SÜD on the part of the Lab or any of its employees. Lab understands and acknowledges that because of the Lab's Services under this Agreement Lab will have direct contact with TÜV SÜD's customers, Lab agrees not to directly solicit any TÜV SÜD customer that Lab has been introduced to in performance by Lab  
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under this Agreement or to encourage any such customer terminate or reduce a business relationship with TÜV SÜD or its affiliates. The foregoing does not apply to TÜV SÜD customers that are already customers or customer prospects of Lab prior to any introduction via this Agreement or to any contact made by the customer to the Lab without any direct solicitation or encouragement by the Lab. The Lab will not during the Term and for one year thereafter solicit, encourage, or otherwise aid any employee or salesperson of TÜV SÜD or its affiliates, whether on the Lab's behalf or on behalf of another, to leave the employ of TÜV SÜD or its affiliates without the prior written consent of TÜV SÜD.

**Section 13. Indemnity.** The Lab agrees to take all necessary precautions to prevent injury to any persons (including the Lab and its employees and employees of TÜV SÜD or its customer) or damage to property (including TÜV SÜD's or its customer's property) during the Term of the Agreement. The Lab shall indemnify, defend and hold TÜV SÜD, and its affiliates and their respective directors, officers, employees, consultants, agents, and customers ("Indemnified Parties") harmless against any and all damages, costs, loss and expenses (including reasonable attorneys' fees) ("Losses") incurred or suffered by Indemnified Parties resulting from (i) any act or omission on the part of the Lab or its employees or others performing Services under this Agreement (ii) a claim that use of the deliverables or Services provided under this Agreement infringe the intellectual property rights of a third party; (iii) any other third party claim related to use of deliverables or Services provided to TÜV SÜD SÜD under this Agreement; and (iv) any other claim arising out of Lab's or its employees ordinary or gross negligence, willful misconduct, or any failure to comply with any applicable law or ordinance.

**Section 11. Insurance.** Unless TÜV SÜD in its discretion executes a written waiver of the application of this Section 14, the Lab shall maintain at its expense during the Term and for three years thereafter: (a) comprehensive general or public liability insurance with a minimum limit per occurrence or accident of \$2,000,000; (b) workers' compensation or employer's liability as required by local law, (c) Employer's Liability of \$1 million each employee and \$1 million policy limit;; (d) errors and omissions of \$5 million per claims made basis and in the aggregate, and (e) automobile liability insurance as required by local statute but not less than \$1,000,000 if a vehicle will be used in the performance under this Agreement. The foregoing policies shall waive any subrogation rights against TÜV SÜD and its customers. Insurance required under clauses (a) and (c) of this Section 15 will name TÜV SÜD America Inc. and TÜV SÜD Canada Inc. as an additional insured with respect to TÜV SÜD's insurable interest, will be primary or noncontributory regarding insured damages or expenses, and will be purchased from insurers of sound financial standing. The Lab will give TÜV SÜD certificates evidencing this insurance from time to time upon request. The Lab shall give TÜV SÜD at least thirty days' prior written notice of cancellation or other termination of such insurance, and in addition the insurance certificate shall provide that the insurance company or broker shall endeavor to give TÜV SÜD at least thirty days' prior written notice before the cancellation or other termination of such insurance.

### **Section 15. Code of Ethics; Compliance With Laws.**

- (a) Lab agrees to comply with TÜV SÜD's Code of Ethics currently available at: <https://www.tuvsud.com/en/about-us/code-of-ethics> ,as the same may be updated by TÜV SÜD in its sole discretion from time to time.
- (b) Lab agrees to undertake all necessary actions in order to ensure that any of Lab's employees abide by all applicable laws including, but not limited to those concerning wages, benefits, liability, insurance, fair employment practices, data privacy, import and export control, customs, the environment, and transportation, and refrain from any illegal activities within Lab's professional activity.
- (c) Lab shall not export, re-export or disclose the Confidential Information to any foreign country, agency, group, company or individual, including but not limited to foreign nationals employed by or associated with Lab, except in strict compliance with all applicable domestic and foreign export control laws.
- (d) Lab hereby represents and warrants to TÜV SÜD that neither Lab nor any of its employees, consultants, subcontractors or agents have in connection with this Agreement committed any act that could constitute bribery.
- (e) Lab hereby represents and warrants to TÜV SÜD that all necessary consents and authorizations have been obtained prior to providing services to TÜV SÜD.
- (f) Lab hereby represents and warrants to TÜV SÜD that Lab and all of its employees, consultants, subcontractors or agents will refrain from all activities, which could constitute a criminal act of fraud, embezzlement or bribery.



Without limiting the Lab's obligation to ensure that Lab and its employees, consultants, subcontractors or agents who perform Services under this Agreement in the United States (or other country where the Services are to be performed) are legally permitted to work in the United States (or the country where the services are to be performed, the Lab shall, upon request, provide to TÜV SÜD and, if required, TÜV SÜD's customer, copies of documentation showing their legal right to work in the United States (or such other applicable country applicable to the Services).

(g) Lab shall ensure that Lab and its employees, consultants, subcontractors or agents performing Services on the premises of TÜV SÜD or a customer comply with the rules which TÜV SÜD or that customer, as applicable, requires of its on-premises contractors and has furnished to the Lab.

(h) Equal Opportunity. Lab, and any approved subcontractor of Lab, shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Furthermore, Lab agrees to comply with Executive Order 13496 (Notification of Employee Rights Under Federal Labor Laws), 29 CFR Part 471, Appendix A to Subpart A." Appendix A is available at [www.dol.gov/olms/reg/compliance/EO13496.htm](http://www.dol.gov/olms/reg/compliance/EO13496.htm).

In case of violation of any of the provisions in this clause, TÜV SÜD has the right to immediately terminate this Agreement or rescind from this Agreement and any Project Supplement hereunder. In case TÜV SÜD will be held liable by any third party due to a violation of any undertaking in this Agreement by Lab, Lab hereby agrees to indemnify, defend, and hold harmless Indemnified Parties of any such claims. In addition, Lab hereby agrees to indemnify TÜV SÜD for all Losses caused by such third-party claim.

**Section 16. Limitation on Liability.** TÜV SÜD SHALL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES OR LOST PROFITS IN CONNECTION WITH OR ARISING FROM ANY ACTION OR OMISSION OF TÜV SÜD RELATING IN ANY WAY TO THIS AGREEMENT OR ANY PROJECT SUPPLEMENT, EVEN IF TÜV SÜD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. FOR BREACH OR DEFAULT BY TÜV SÜD OF ANY OF THE PROVISIONS OF THIS AGREEMENT OR ANY PROJECT SUPPLEMENT, TÜV SÜD'S ENTIRE LIABILITY, REGARDLESS OF THE FORM OR NATURE OF THE ACTION, SHALL IN NO EVENT EXCEED THE FEES PAID OR PAYABLE BY TÜV SÜD UNDER THE APPLICABLE PROJECT SUPPLEMENT.

**Section 17. Enforcement and Remedies.** The parties acknowledge that a breach by the Lab or the Lab's employees of the terms of Sections 5 (*Confidential Information*), 7 (*Inventions and Improvements*), 12 (*Other Activities*) and/or 15 (*Compliance with Laws; Code of Ethics*) above could injure TÜV SÜD or its affiliates in a way which could not be adequately compensated for by damages. The Lab therefore agrees that in the event of any such breach or threatened breach by the Lab or any of its employees, TÜV SÜD or its affiliates may enforce those sections of this Agreement by injunction (in which case no bond shall be required) or by specific performance. Nothing herein shall be construed, however, as prohibiting TÜV SÜD from pursuing other available remedies or recovering on any claim for damages for such breach or threatened breach. Furthermore, TÜV SÜD or its affiliates shall be entitled to costs and attorneys' fees relating to any proceeding or any other legal action to enforce the terms of this Agreement.

**Section 18. Entire Agreement; Modifications and Waivers.** This Agreement, the Quality Agreement, and the Project Supplements constitute the entire agreement between the parties with respect to their subject matter and cancel and supersede any prior understandings or agreements between the parties with respect to that subject matter. The General Terms and Conditions of Purchase (GTCP) for third-party supplies and services provided to legal entities of the TÜV SÜD Group as amended will apply in addition and are currently available at: <https://www.tuvsud.com/en-us/-/media/regions/us/pdf-files/customer-forms/tuv-sud-america-and-tuv-sud-canada-purchase-order-terms.pdf>. In case of conflict between the provisions of this Agreement and the GTCP of TÜV SÜD, the provisions of this Agreement will prevail over those of the GTCP of TÜV SÜD as they represent the more specific terms and conditions. In order to be binding, any modification or amendment to this Agreement must be in writing and executed by the Lab and an authorized representative of TÜV SÜD. No waiver of any rights, obligations, or defaults with respect to this Agreement shall be effective unless in writing and signed by the party making the waiver. One or more waivers of any right, obligation, or default shall not be construed as a waiver of any subsequent right, obligation, or default. No delay or

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failure of either party in exercising any right under this Agreement and no partial or single exercise thereof shall be deemed to constitute a waiver of that right or any other rights.

**Section 19. Jurisdiction and Severability.** This Agreement shall be governed and construed under the laws of the Commonwealth of Massachusetts without regard to its choice of law provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remaining provisions. Furthermore, the parties agree to construe or apply any provision that is determined to be invalid or unenforceable to the maximum extent permitted by law.

**Section 20. Notices.** All notices under this Agreement must be in writing and shall be delivered personally, sent by pre-paid registered or certified mail, or sent by reputable overnight courier. Notices shall be sent to the party's address specified on the Quality Agreement, or as a party may otherwise specify in a notice to the other party. Notices shall be effective when delivered personally, on the next business day after delivery to the overnight courier, or three business days after deposit in the mail, as applicable. Copies of legal notices sent to TÜV SÜD shall also be sent by email to [Contracts-NA@tuvsud.com](mailto:Contracts-NA@tuvsud.com).

**Section 21. Subcontracting and Assignment.** While the Lab may arrange to have its employees perform Services under this Agreement on behalf of the Lab and subject to the provisions of the Quality Agreement, the Lab may only subcontract its duties under this Agreement to another entity if TÜV SÜD has given its prior written consent to that subcontracting. A party may only assign its rights and obligations under this Agreement with the written consent of the other party, except that in the case of a sale of all or substantially all of the assets of TÜV SÜD, the Lab's consent shall not be required for the assignment of this Agreement to the purchaser of those assets, provided that the assignee agrees to be bound by the terms of this Agreement and that the Lab is notified in writing of the assignment.

#### **Section 22. Dispute Resolution.**

(a) In the event of any dispute or disagreement between the Lab and TÜV SÜD with respect to the interpretation of any provision of this Agreement or any Project Supplement, the performance of TÜV SÜD or the Lab or its employees, consultants, subcontractors or agents, or any other matter related to this Agreement or any Project Supplement, upon the written request of either party, authorized representatives of the Lab and TÜV SÜD will meet for the purpose of resolving such dispute or disagreement. Those representatives will discuss the problem and negotiate in good faith without the necessity of any formal proceedings related thereto.

(b) If a dispute or disagreement described in subsection (a) of this Section 24 is not resolved as described in that subsection, that dispute or disagreement shall be finally settled by binding arbitration held according to the commercial Arbitration Rules of the American Arbitration Association, by which TÜV SÜD and the Lab agree to be bound. The sole venue for any arbitration shall be the Commonwealth of Massachusetts, unless the parties otherwise agree in writing. The Lab shall promptly select one arbitrator, TÜV SÜD shall promptly select one arbitrator, and those two arbitrators shall promptly select a third arbitrator. Unless the parties consent in writing, each arbitrator shall be an individual with at least fifteen years' experience in the relevant technology industry. The decision of the majority of the arbitrators shall be the decision of the panel. The arbitrators shall have no authority to add to, change, or disregard any lawful terms of this Agreement or any Project Supplement, nor to award punitive damages. The decision of the panel shall be final and binding, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. Arbitration shall be the exclusive final remedy for any dispute between the parties; provided, however, that this provision shall not prevent a party from seeking injunctive relief in accordance with Section 17 (*Enforcement and Remedies*) above.

**Section 23. Interpretation; Language.** The division of this Agreement into Sections and the insertion of headings in this Agreement or any Project Supplement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any Project Supplement. The parties hereto acknowledge and confirm that they have requested that this Agreement as well as all notices and other documents contemplated hereby be drawn up in the English language. Les parties aux presentes reconnaissent et confirment qu'elles ont convenu que la presente convention ainsi que tous les avis et documents qui s'y rattachent soient rediges dans la langue anglaise.

**Section 24. Counterparts.** The parties may sign different counterparts of this Agreement, and those counterparts together shall constitute a single instrument.

#### **Section 25. Electronic Signatures; Authority.**

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The parties agree that the execution of the Quality Agreement shall include acceptance of the terms and conditions of this Agreement. Such signature to the Quality Agreement is agreed by exchanging pdf signatures, and/or by industry standard electronic signature software, shall have the same legal force and effect as the exchange of original signatures. In any proceeding arising under or relating to this Agreement, each party hereby waives any right to raise any defense or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed agreement electronically. The officers or employees executing the Quality Agreement, incorporating the terms of this Agreement, have been duly authorized to enter into it.



## Sample Project Supplement

This Project Supplement is hereby incorporated into and made a part of that certain Independent Lab Agreement for Subcontracted Test Labs dated \_\_\_\_\_, \_\_\_\_\_, including the Quality Agreement incorporated therein by reference, (the “Agreement”) by and between TÜV SÜD America Inc. [or TÜV SÜD Canada Inc.] (“TÜV SÜD”) and \_\_\_\_\_ Lab.

### Objectives

### Labs agrees to perform the following Services

### Deliverables

### Acceptance Criteria

Lab shall inform TÜV SÜD when the deliverable is available for testing and acceptance, which shall be no later than \_\_\_\_\_. TÜV SÜD shall have a period of thirty (30) days to test the deliverable with assistance from Lab as TÜV SÜD may require. In the event that the deliverable does not meet the satisfaction of TÜV SÜD, Lab shall repair or replace the deliverable at no cost to TÜV SÜD within fourteen (14) days of TÜV SÜD’s notice of deliverable non-conformance to Lab. TÜV SÜD shall then have an additional thirty (30) day period to test the deliverable. If the deliverable still does not confirm with TÜV SÜD’s requirements, then, at TÜV SÜD’s sole discretion, Lab shall refund fees paid for the services and deliverable.

### Lab Point of Contact

### TÜV SÜD Point of Contact

### Lab Fees





Upon Lab's successful completion of the Services and upon TÜV SÜD's final acceptance of the deliverable per this Project Supplement, TÜV SÜD shall pay to Lab a fee not to exceed \$ \_\_\_\_\_, inclusive of all fees and expenses. The foregoing is based on an hourly rate of \_\_\_\_\_

\_\_\_\_\_  
Lab's legal name

TÜV SÜD America Inc. [or TÜV SÜD Canada Inc.]

By \_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_