



Date: _____

Endurance Testing Agreement

This Agreement is made and entered on this date, by and between BAYFLEX TESTING (principal office located at 2320 Pacific Avenue, Alameda, California) and CLIENT (located at _____).

Whereas, BAYFLEX TESTING is the operator of endurance testing laboratories which perform various mechanical tests and continuous data measurements for the purpose of providing failure analysis; and

Whereas, CLIENT desires to obtain the services of BAYFLEX TESTING on the terms and conditions below;

Upon receipt of samples, BAYFLEX TESTING shall conduct analysis and provide CLIENT with analytical reports in accordance with established protocols. BAYFLEX TESTING will not modify or change said protocols without the prior written consent of CLIENT.

BAYFLEX TESTING will maintain records to conduct an audit of testing services as set in Exhibit A.

The total cost of analytical services in connection with this Agreement shall not exceed this amount without prior, written approval of CLIENT. If additional analyses are required for this Agreement, BAYFLEX TESTING agrees to charge no more than set in Exhibit B.

BAYFLEX TESTING shall invoice CLIENT for testing performed during that month. All invoices submitted by BAYFLEX TESTING shall identify the services rendered by test, and testing date. CLIENT shall remit payment to BAYFLEX within thirty (30) days after receipt of invoice. Checks shall be made payable to BAYFLEX SOLUTIONS.

CLIENT agrees to indemnify and hold harmless BAYFLEX TESTING and its employees from any loss, claim of damage, or liability of any kind involving the sole negligent acts of an employee arising out of or in connection with this Agreement.

During the term of this Agreement, CLIENT may provide to BAYFLEX TESTING information related to research programs being conducted by CLIENT. BAYFLEX TESTING understands that CLIENT considers certain information to be confidential and shall not disclose to use for the benefit of others. BAYFLEX TESTING agrees to exercise reasonable efforts not to disclose such information unless information is generally available in the public domain.

BAYFLEX TESTING will report the results of all analyses performed upon the CLIENT’s materials (collectively, “Customer Data”) only and directly to CLIENT. CLIENT shall be the owner of any patent covering the use of CLIENT’s material or covering any product containing CLIENT’S material. Notwithstanding the foregoing, BAYFLEX TESTING may collect, develop, create, extract, compile, synthesize, analyze and commercialize statistics, benchmarks, measures and other information based on Aggregated Data (collectively, “Blind Data”). Blind Data will be owned solely by BAYFLEX TESTING and may be used for any lawful business purpose without a duty of accounting to CLIENT. “Aggregated Data” means Client Data that is: (i) anonymized and not identifiable to any person or entity; (ii) combined with the data of other customers or additional data sources; and (iii) presented in a way which does not reveal any information that may be used to identify CLIENT or CLIENT’s products.

BAYFLEX TESTING is performing the services and duties required hereunder as an independent contractor and not as an employee, agent, partner of or joint venture with CLIENT.

No party in this Agreement shall be liable for failure to perform any duty or obligation that said party may have under this Agreement where such failure has been occasioned by any act of God, fire, strike, inevitable accident, war or any cause outside the reasonable control of the party who had the duty to perform.

BAYFLEX TESTING makes no warranties, express, or implied, concerning the result of this study or the ownership, merchantability, or fitness for a particular purpose of such results. BAYFLEX TESTING shall not be liable for any direct, consequential, or other damages suffered by CLIENT or any others as a result of this Agreement.

In witness whereof, CLIENT and BAYFLEX TESTING have duly executed this Agreement on the first day written above.

CLIENT

BAYFLEX TESTING

By: _____

By: Robert Hopkins

Title: _____

Title: Principal