**EQUIPMENT LOAN AGREEMENT**

**BETWEEN**:

**Dalhousie University**

( “**Dalhousie**”)

- and -

**To be added by the Borrower**

(the “**Borrower**”)

(collectively referred to as the “Parties”)

**WHEREAS** the Borrower requires the use of the Equipment; and

**AND WHEREAS** Dalhousie is willing to loanthe Equipment to the Borrower for research purposes.

**NOW THEREFORE,** in consideration of the following mutual promises, terms and conditions, the Parties agree as follows:

**1. DEFINITION OF EQUIPMENT**

1,1 In this Agreement **“Equipment”** means the following:

|  |  |  |
| --- | --- | --- |
| **Qty** | **Description** | **Serial#** |
| TBD | TBD | TBD |

**2. LOAN OF EQUIPMENT**

2.1 Dalhousie agrees to loan the Borrower the Equipment identified below on the terms and conditions set out in this Agreement.

**3. PURPOSE OF THE LOAN**

3.1Dalhousie agrees to provide the Borrower with the Equipment for the purpose of meeting the objectives set out the Project Plan which was submitted by the Borrower, recommended by the OTN redeployment committee, and approved by the OTN Council.

**4. VALUE OF THE EQUIPMENT**

4.1 Dalhousie and the Borrower agree that the replacement cost of the Equipment being loaned is $ **TBD** CDN Dollars.

**5. EFFECTIVE DATE AND TERM**

5.1 This Agreement shall be effective as of TBD and shall expire on TBD unless terminated earlier in accordance with Article 13. Either party may request a renewal of this Agreement, but any such renewal is subject to the approval of OTN Council.

**6. OBLIGATIONS OF THE PARTIES**

6.1 The Borrower shall be responsible for customs procedures and applicable duties, keep the Equipment in good repair, fair wear and tear excepted, and shall return the Equipment in as good condition as when taking possession.

6.2 Dalhousie shall be responsible for the preparation and packing and transportation costs of the Equipment being loaned under this Agreement of the said Equipment between the places of business of Dalhousie and the Borrower.

6.3 The Borrower will be responsible for the deployment, and operations and maintenance costs (including re-batterying) for the receivers during the period of the loan.

6.4 The Borrower shall only use the Equipment for the purpose described in Article 3 of this Agreement, and must not use the Equipment for any other purpose without the written consent of Dalhousie.

6.5 The Borrower shall protect, maintain, clean and repair the Equipment as a prudent owner would.

6.6 The Borrower shall not modify the Equipment without prior written approval from Dalhousie. If the Equipment is modified, unless Dalhousie in writing agrees otherwise, the Borrower must restore it to the condition in which it was before the Borrower took possession under Article 6.1 before returning it to Dalhousie.

6.7 The Borrower shall not cause or permit the Equipment to be made the subject of any claim, lien or encumbrance.

6.8 The Borrower shall provide via email (otndc@dal.ca) all associated receiver metadata (deployment, download, recovery using OTN’s templates) and detection data (VRL receiver files) from the loaned receivers to the OTN data warehouse for safekeeping. The existing OTN Data Policy will govern use of the data in this warehouse. The OTN Data Policy and latest versions of OTN operational policies, templates and checklists for data collection are available online at:

https://members.oceantrack.org/data/policies

6.9 The Borrower must also provide a copy of the metadata, detection data (VRL receiver files) from the loaned receivers and any associated receivers used in fulfillment of the project, as well as tagging metadata on animals tagged in fulfillment of the project, to the OTN data warehouse. The existing OTN Data Policy will govern the use of the data in this warehouse. The latest version of the OTN Data Policy and latest versions of OTN operational policies, templates and checklists for data collection are available online at:

https://members.oceantrack.org/data/policies

6.10 As identified in the application form, the Borrower shall, on an annual basis, provide to OTN management a report on their project activities, the highly qualified personnel trained in the project, and the contributions (cash and in-kind) that have been provided to operate and maintain the Equipment. This information is required for Dalhousie’s annual report to the organizations supporting OTN.

**7. NOTICES**

7.1 Any notice or other communication between the Parties shall be in writing and shall be: a) delivered personally; or b) mailed by registered mail, return receipt requested; or c) sent by facsimile transmission, and addressed to the other Party as provided below or as either Party shall later designate to the other in writing:

|  |  |
| --- | --- |
| **To the Borrower:**  **X**  **X**  **X**  **X**  **x**  **Attention:**  **Telephone:**  **Email:** | **To Dalhousie University**  Faculty of Science  Biology Loading Bay  1355 Oxford St.  Halifax, Nova Scotia  B3H 4J1  **Ocean Tracking Network**  **902-494-2357**  **oceantrackingnetwork@dal.ca** |

7.2 Any notice addressed by mail pursuant to this Article shall be deemed to have been effectively given on the 7th business day following the date of mailing unless the day the notice is effective falls on a day when Dalhousie is normally closed for business, in which case the notice shall not be effective until the next day that is a day when Dalhousie is normally open for business. In the event of any disruption of postal service, notices shall be delivered personally or sent by facsimile transmission.

**8. INDEMNITY BY THE BORROWER**

8.1        The Borrower will be responsible for all costs, claims, losses, demands, damages, and expenses attributable to the Borrower’s (including its servants, agents or employees) negligence or breach of its obligations set out in this Agreement.

**9. APPLICABLE LAWS**

9.1 This Agreement shall be governed by the laws applicable in the Province of Nova Scotia.

**10. AMENDMENTS**

10.1 This Agreement may be amended at any time by mutual consent of the Parties. In order to be valid, any amendment to this Agreement shall be in writing and signed by the Parties.

**11. ASSIGNMENT**

11.1 The Borrower shall not assign its rights and obligations under this Agreement without the prior written consent of Dalhousie.

**12. TERMINATION**

12.1 Notwithstanding the expiration date stipulated in Article 5.1,

(a) The Parties may, on mutual consent in writing, terminate this Agreement at any time; and

(b) Either Party may terminate this Agreement at any time, without cause and for its sole convenience, by giving at least 60 days written notice of its intention to terminate to the other Party.

12.2 In the event of a breach of this Agreement by a Party, the other Party may, by giving written notice, require the defaulting Party to cure the breach. If, within 30 days of receiving such notice, the defaulting Party has not cured the breach, the other Party may terminate this Agreement at any time by providing notice to the defaulting Party. Termination for breach of this Agreement will not limit any other rights the terminating Party may have at law or in equity to claim damages or other remedies against the defaulting Party.

12.3 Upon termination of this Agreement, the Borrower shall return the Equipment to Dalhousie. Borrower shall be responsible for all preparation, packing and transportation costs associated with the return of the Equipment to Dalhousie.

**13. SURVIVAL**

13.1 Notwithstanding the expiration or early termination of this Agreement, it is expressly agreed that Article 6.8, Article 6.9 (only for the year in which this Agreement is terminated), Article 8 and Article 15 shall survive the expiration or early termination of this Agreement. Furthermore, all rights and obligations which, expressly or by necessary implication, are required or might reasonably be expected to survive the expiration or termination of this Agreement shall continue to be in effect notwithstanding the expiration or termination of this Agreement until such time as the Parties may mutually agree to the release of the obligations contained therein or until they expire by their nature.

**14. SEVERABILITY OF PROVISIONS**

14.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement and any invalid or unenforceable provision shall be deemed to be severed.

# **15. CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY**

# 15.1 Neither party shall have any liability for loss or damages hereunder for failure to perform in accordance with the terms of this Agreement to the extent that and so long as such failure occurs for a reason beyond the reasonable control of the non-performing party, including, without limiting the generality of the foregoing, any act of violence, strike or other labour difficulty, embargo, fire, storm, flood, explosion, riot, insurrection, sabotage, war, rebellion, act of God, act of any governmental authority or any other occurrence which is beyond the reasonable control of the non-performing party.

**16. ENTIRE AGREEMENT**

16.1 This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

**IN WITNESS WHEREOF** the Parties have executed this Agreement in duplicate by the hands of their duly authorized officers as follows:

|  |  |
| --- | --- |
| **To be added by the Borrower**  By:  Title:  Signature:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **DALHOUSIE UNIVERSITY**  By: Martha Crago  Title: Vice President Research Services  Signature:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |