

**NIRS FORAGE AND FEED TESTING CONSORTIUM  
LICENSE AGREEMENT  
WITH MEMBER**

(Company/Institution Name) \_\_\_\_\_,  
(Company/Institution Address) \_\_\_\_\_,  
(Member) and NIRS Forage and Feed Testing Consortium, E17995 Western Rd, Hillsboro, WI  
54634 (Consortium) enter into this Agreement as of April 29, 2020 (Effective Date). This  
Agreement is renewed every year with the timely payment of Member annual Consortium dues.

**Background**

- A. The Consortium is a nonprofit 501(c)(6) organization which has as its purpose the development of calibrations for use in the characterization and analysis of feedstuff and feedstock materials.
- B. Member is either a commercial, research/non-profit, or collaborator (by special application only).
- C. The Consortium wishes to allow Member to use the Consortium Predictive Calibrations Library pursuant to the terms of this Agreement.

In consideration of their mutual promises, the parties agree:

**1. Definitions and Outline of Development Process of Consortium Predictive Calibrations Library**

- A. The “Library of Physical Samples” consists of samples of feedstuff and feedstock material contributed by Consortium Members or other sources to the Consortium on an ongoing basis. The Consortium owns the samples which it stores and compiles by labeling each sample with a unique code.
- B. Based on the Library of Physical Samples and other sample data, the Consortium creates and maintains a “Consortium Sample Database” which is the compilation of unique coded physical samples and other sample data with their respective “Compositional Data” and other Data, e.g. geographical location, species, environmental conditions, management practices, and names of donors.
- C. Using “Master Instrument System” which includes both the devices for collecting spectra and attached computers with dedicated software, the Consortium creates Consortium Spectra based on the Library of Physical Samples. The Master Instrument System also serves as instruments against which Consortium Members may standardize their instrument.

D. “Consortium Spectra” refers either to spectra the Consortium creates using its Master Instrument System based on the Library of Physical Samples, or spectra contributed from other sources.

E. The compilation of the Consortium Spectra and associated Compositional Data of each physical sample, e.g. crude protein, lignin, and starch; constitutes the “Consortium Calibration Files”. Also included are spectra for which there are no physical samples currently stored in the Library of Physical Samples as well as donated spectra and associated compositional information.

F. The Consortium has developed the “Consortium Predictive Calibrations Library” which is a collection of calibrations derived from Consortium Calibration Files to characterize different kinds of feedstuff and feedstock materials. A single calibration is used to create predictions at the constituent level, e.g. crude protein, lignin, dry matter; based on many calibration data per “Product” under the Consortium Predictive Calibrations Library, e.g. Grass Hay, Mixed Hay.

G. “Consortium Assets” include collectively the Library of Physical Samples, the Consortium Sample Database, the Consortium Spectra, the Consortium Calibration Files, the Consortium Predictive Calibrations Library.

H. “Alfalfa Breeder Assets” is a subset of the Consortium Assets as described above, based on a set of physical samples of alfalfa contributed by the Consortium Alfalfa Breeder Group.

## **2. Physical Samples, Spectra and Compositional Data from Members**

A. If a Member contributes sample material; the Member agrees that the Consortium owns such materials.

B. If a Member contributes spectra or related Compositional Data and other sample data to the Consortium, the Member agrees that Consortium owns all rights in the spectra and other information (including the copyright), and such spectra and other information are Consortium Assets. Further, the Consortium may incorporate any Compositional Data associated with such spectra into its Consortium Assets, and any sample data into the Consortium Samples Database.

## **3. Consortium Licenses**

A. The Consortium grants the Member a limited term, non-exclusive license to use the most current version of the Consortium Predictive Calibrations Library on instrument system(s) which it owns or has the right to use.

B. The Member may not copy, modify, share, distribute, and/or reverse engineer the Consortium Predictive Calibrations Library, or any of the other Consortium Assets.

C. Only Members who are part of the Alfalfa Breeder Group are permitted to use the Alfalfa Breeder Calibration.

D. On non-renewal or termination of the Agreement, the Member must stop using all Consortium Assets, and within thirty (30) days destroy all copies in its possession of the Consortium Assets. The Member will provide written confirmation that it has taken this action in a letter addressed to the Consortium business office: NIRS Forage and Feed Testing Consortium, E17995 Western Rd, Hillsboro, WI 54634

E. The Member agrees that if it continues to use any of the Consortium Assets after its membership has expired, this will cause the Consortium immediate and irreparable harm. Accordingly, the Consortium will have the right to seek and obtain preliminary and final injunctive relief to enforce this Agreement in case of any actual or threatened breach, in addition to its other rights and remedies.

#### **4. Publication**

If the Member publishes information based on the use of the Consortium Predictive Calibrations Library it is encouraged to add the following statement to the publication citing the calibration(s) that were implemented: *“Forage quality (or nutritive value) parameters were generated using the “e.g. XXXX (year) Grass Hay or Legume Hay” calibration developed by the NIRS Forage and Feed Testing Consortium (Hillsboro, WI).”*

#### **5. Term and Termination**

A. This Agreement will automatically renew annually on timely submission of the Member dues payment.

B. This Agreement may be terminated upon sixty (60) days written notice by either party at any time for any reason, or on thirty (30) days written notice of a material breach of this Agreement.

#### **6. Limited Warranty and Limitation of Liability**

A. Consortium Limited Warranty. Consortium uses commercially reasonable efforts to create useful databases and libraries, and to verify that the data contained therein have been selected on the basis of sound scientific judgment. However, Consortium makes NO EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER, INCLUDING NO WARRANTY OF MERCHANTABILITY AND NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY OF THE RESOURCES IT MAKES AVAILABLE TO MEMBER INCLUDING THE LIBRARY OF PHYSICAL SAMPLES, THE CONSORTIUM SAMPLE DATABASE, THE CONSORTIUM SPECTRA, THE CONSORTIUM CALIBRATION FILES, THE CONSORTIUM PREDICTIVE CALIBRATIONS LIBRARY, AND ALFALFA BREEDER ASSETS (INCLUDING ALL DERIVATIVE VERSIONS BASED ON SUCH DATABASES OR LIBRARIES). THE LIBRARY OF PHYSICAL SAMPLES, THE CONSORTIUM SAMPLE DATABASE, THE CONSORTIUM SPECTRA, THE CONSORTIUM CALIBRATION FILES, THE CONSORTIUM PREDICTIVE

CALIBRATIONS LIBRARY, AND ALFALFA BREEDER ASSETS (INCLUDING ALL DERIVATIVE VERSIONS BASED ON SUCH DATABASES OR LIBRARIES) ARE EXPRESSLY MADE AVAILABLE ON AN “AS IS” BASIS. Note the legal term “AS IS” does not have the same meaning as the laboratory chemical term “as is.”

B. Limited Liability. The Consortium is not liable for any loss of profits, loss of use, business interruption, loss of data, or indirect, special incidental or consequential damages even if advised of the possibility of such damages related to Member use of the Consortium Assets. But in no event will Consortium liability exceed the amount of annual dues paid by Member in the twelve months prior to the claim.

## **7. General**

A. This Agreement contains the entire agreement and understanding between the parties and supersedes all prior discussions and writings. No modification of this Agreement is effective unless made in writing and signed by both parties.

B. This Agreement is governed by the laws of the State of Wisconsin.

C. This Agreement may not be assigned without the prior written permission of both parties.

D. If any term or provision of this Agreement is found to be invalid, unlawful or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law.

E. This Agreement may be signed in counterparts and executed by digital or faxed signatures.

Understood and Agreed:

### **MEMBER**

Signature: \_\_\_\_\_

Company/Institution: \_\_\_\_\_

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

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

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

**NIRS Forage and Feed Testing Consortium (NIRSC)**

Signature: Chris D. Teutsch

Printed Name: Chris Teutsch

Title: President

Date: 4-29-20