

Non-Binding Term Sheet Covering Research Project

The signatories are currently contemplating a sponsored research project ("Project"). This document is not intended to be legally binding. It is intended to identify the terms expected to form the basis for a legally binding agreement once the Project and a Project Agreement are approved and signed in accordance with the internal requirements of each of the parties.

The signatures indicate that the signatories intend to recommend and support the Project on the terms identified and, should the Project proceed, to participate in the Project in the manner specified herein or as otherwise agreed.

1. Who will be the legal parties to the Project Agreement?

- a. University of Victoria, 3800 Finnerty Road, Victoria, BC, V8P 5C2, will be the legal party to the Agreement. The work will be performed within the following faculty/center/department: _____ and _____ will act as Principal Investigator ("PI") and will be the scientific contact.
- b. _____ (the "Company") with offices at _____ will be the legal party to the Agreement. _____, telephone _____, email _____ will be the scientific contact for the Company and _____, telephone _____, email _____ will be the contact for contract discussions.

2. Project Description:

- a. **Timeline:** The Project will be conducted from _____ (start date) to _____ (end date).
- b. **Description:** The parties will jointly investigate the following:

_____.
- c. **Costs:**
 - i. Industrial cash contribution: \$ _____
 - ii. Industrial in-kind contribution: \$ _____
 - iii. Projected 3rd party funding (see section 4): \$ _____
 - iv. UVic cash contribution: \$ _____
 - v. UVic in-kind contribution: \$ _____

3. **Payments (select one of the following):**

- Option One: Flat Fee. Company will pay the following amounts on the following dates:

Payment Amount	Payment Date

OR

- Option Two: Expense Reimbursement. Company will reimburse UVic for the expenses UVic incurs in performing the Project to the maximum amount of \$_____.
(Consider attaching a draft budget)

4. **3rd Party Funding:**

- a. The parties intend to apply for the following additional funding to support the Project:

- b. It will be the responsibility of (choose one) **UVic** / **Company** to prepare the application which will name **UVic** / **Company** as the lead applicant, and to obtain any necessary approvals. **UVic** / **Company** will assist as necessary in the preparation of the application.

- c. In the event that the funding application is unsuccessful or only partially successful, the parties agree that **(select one of the options identified below):**

- The parties will work together to modify the Project to reflect the reduction in funding;

OR

- The Company will increase its payments to cover the shortfall;

OR

- The Company will increase its payments to cover the shortfall to a maximum of \$_____ and, to the extent net funding is still less than expected, the parties will work together to modify the Project to reflect the reduction in funding;

OR

- The parties will seek alternate funding from _____ and (choose one) UVic / Company will be responsible for making an application to this funder;

OR

- The Project will not proceed.

5. Other Company Contributions/Responsibilities:

- a. In addition to the payments identified above, the Company will make the following contributions to the Project:

- b. If Company is contributing research materials to the Project:

- UVic may retain any portion of Company materials not used in the Project, and may use such retained materials for educational and non-commercial research purposes.

OR

- UVic will have no rights to utilize Company materials for any purpose other than the Project, and must, at the conclusion or termination of the Project,

- return any unused Company materials.

OR

- destroy any unused Company materials.

6. Deliverables/Reporting:

- a. UVic will be required to provide the following deliverables on the following dates:

Description of Deliverable	Date to be Provided

- b. UVic will provide the following reporting in addition to the deliverables identified above:

- c. The Company will provide the following reporting: [Note: to the extent 3rd party funding is being applied for in connection with this Research Project, the Company will be required to provide reporting necessary for UVic to comply with the requirements of the 3rd party funder.]

7. Intellectual Property (“IP”):

- a. **Background Intellectual Property:** The parties anticipate that the following background IP will be used in the Project:

Description of Background IP	Owner/Licensor of Background IP

- b. **3rd Party Intellectual Property:** The parties agree that they will be using the following 3rd party IP (**describe below**) in the Project and the identified party will be responsible for obtaining the necessary rights to use such 3rd Party IP:

- c. **Creation of Arising IP:** The parties anticipate that the following arising IP will result from the Project and that the parties identified will contribute to inventorship of such IP:

Description of Arising IP	Type of IP (copyright, patent, trade secret, knowhow)	Contributors to inventorship and/or authors (e.g. UVic or Company)

Note: for copyright the authors should be identified, for patentable IP those who are anticipated to make an inventive contribution. It may be difficult to anticipate in advance which specific individuals will be involved but to the extent you can identify what organization potential inventors will be attached to – e.g. “UVic” or “Company”

- d. **Rights in Arising IP.** The parties expect to be able to use the arising IP in the manner identified:

Description of Arising IP	Party (UVic or Company)	Rights to Use

- e. **Patentable IP.** In the event it is anticipated that patentable IP will result from the Project, and the Company wishes to have commercial access to such IP please complete the Option Schedule. The costs for patenting arising inventions will be the responsibility of (choose one) UVic / Company.

8. Confidential Information:

- a. The Company (choose one) will / will not be providing confidential or proprietary information to UVic. All obligations with respect to confidential information will survive for a period of five years after project completion.
- b. UVic (choose one) will / will not be providing confidential or proprietary information to the Company. All obligations with respect to confidential information will survive for a period of five years after project completion.

9. Publication of Research Results:

- a. UVic (choose one) will / will not provide the Company with __ days to review any proposed publication (or presentation) in advance to ensure that Company confidential or proprietary information is not included.
- b. UVic (choose one) will / will not be required, at the request of the Company, to delay publication for a period of ___ months to enable the parties to seek patent protection. [NOTE: the total delay (including both the review period and any delay for IP protection) cannot exceed six months]
- c. The Company (choose one) will / will not be entitled to publish Project findings. In the event the Company does publish, the following requirements will apply [insert description of any acknowledgements required].

10. Additional Terms and Conditions: The parties have agreed to the following additional terms and conditions:

- a. _____

- b. _____

- c. _____

- d. _____

- e. _____

11. UVic Standard Terms: The parties acknowledge that, as a public body, UVic is required to ensure that certain terms are included in its research contracts. The Company representative

confirms that he/she has been advised of these terms and of UVic's limited ability to modify these terms:

- a. **No Secret Research/Publicity:** UVic is prohibited from engaging in secret research. Therefore, all UVic research agreements provide that UVic may disclose the title of the research project, the funder, the contract period, the name of the PI, and the amount of funding being provided by the Company. Additionally, it is expected that the results of the Project will be publishable subject to very limited exceptions. Press releases, use of UVic's name or the name of researchers in publicity or for commercial purposes and use of UVic's logo must be approved by UVic and/or the researcher as applicable. To the extent required, UVic would agree to similar restrictions in favour of the Company.
- b. **No Warranty:** UVic will agree to carry out the research in accordance with scientific and professional standards but does not provide any assurance of success in achieving any desired result. UVic provides no warranty, express or implied, on the results of the research or the background IP used including, without limitation all implied warranties or conditions of merchantable quality and fitness for a particular purpose and all warranties arising from course of dealing and trade usage. UVic does not conduct searches or other due diligence to determine whether IP arising from a given project infringes any pre-existing IP and, therefore, disclaims all warranties of non-infringement. Additionally to the extent UVic IP will be used commercially, UVic requests that the Company assume responsibility for any claims arising from the Company's use of such IP.
- c. **Indemnities:** As identified above, to the extent UVic IP is being used, UVic requires in the ordinary course, that the user (Company) assume responsibility for the risks of such use. More general or reciprocal indemnities are subject to the requirements of the Minister of Finance of British Columbia with respect to the granting of indemnities. In the ordinary course, UVic will not provide an indemnity. The Company understands that, if an indemnity is required, as much notice as possible will be provided to UVic of the content of the required indemnity to allow time for consideration of the proposed language and necessary negotiation. Absent extraordinary circumstances non-reciprocal indemnity will not be approved by the University.
- d. **Licensing IP:** In the event the Company wishes to obtain a license from UVic to use arising IP, such use will be at the Company's risk. As indicated in the no warranty section, UVic will not provide any warranties and in the event external or commercial use is intended may require an indemnity to protect UVic from third party claims which result from the Company's use of arising IP. UVic expects to retain academic and research rights to IP generated through research conducted through UVic.
- e. **Insurance:** UVic can, if required, provide insurance certificates. UVic is prohibited by its insurers from providing copies of its insurance policies.

- f. **Payment Terms:** UVic's ability to carry the expenses of a research project is limited. Therefore, absent extraordinary circumstances UVic would expect to be able to invoice at least quarterly and/or when the expenses incurred exceed what is determined to be an appropriate amount. Alternatively an advance payment can be arranged.
- g. **Availability of the PI:** Given the unique qualifications of faculty, UVic cannot guarantee that, in the event the PI is not available to complete a research project, an acceptable substitute will be available. Therefore, in the event that a PI is not available to complete project, UVic's obligation is limited to working with the Company to try and find an acceptable alternative PI. If the parties are unable to agree on an acceptable substitute, the Project is wound down. In the ordinary course, UVic is not able to provide any refund or reimbursement to the Company for any expenses or uncancellable commitments.
- h. **Policies & Procedures:** Should one party's personnel attend at the other party's premises to participate in Project activities, the visiting personnel shall comply with regulations and policies of the other party. The parties also recognize that certain Project activities may be subject to review by the parties' research ethics committees or other regulatory committees.
- i. **Limitation of Liability:** No party shall be liable for failure or delay in performance beyond its control, nor for any indirect, incidental or consequential damages.
- j. **Company materials:** If Company is providing UVic with materials for the conduct of the Project, Company will normally be asked to certify that it has the right and authority to provide such materials to UVic, that the materials were collected lawfully and with all necessary consents and approvals, and that if biological materials are provided the materials are in compliance with regulatory requirements UVic is subject to (including the *Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans*, policies and guidelines of the Canadian Council on Animal Care, and Health Canada's Laboratory Biosafety Guidelines). UVic will also normally require that Company agree to provide, upon request by UVic, copies of any applicable institutional review board certification forms or approvals.
- k. **Termination:** Each party may terminate this agreement in the event of a material breach by the other party, subject to a 30-day cure period. As a general rule, when a project cannot be completed for reasons beyond UVic's reasonable control (e.g., loss of funding, non-availability of PI or a mutually acceptable alternative, etc.) the project is wound down with the Company expected to pay UVic for project costs incurred to the date of termination including any uncancellable commitments made prior to termination. To the extent the Company has advanced funds and such funds are not spent/committed UVic would return the unspent/uncommitted funds to the Company. When a third party funding agency (e.g., NSERC) is involved, their program requirements

also apply to the return of funds. UVic is not, in the ordinary course, in a position to provide refunds of funds already spent or committed which is a reflection of the university research model in which research is conducted on a cost recovery or even subsidized basis meaning amounts are not accrued to cover off such contingencies.

- I. **Applicable Law:** The laws of British Columbia and the laws of Canada in force therein shall be applicable.

We agree to work together to propose the Project on the terms and conditions set out above. We confirm that we do not necessarily have authority to bind our respective organizations and that this letter of intent is not intended to be legally binding.

University of Victoria

Company

To be signed by the proposed Principal Investigator

Date

Date