

UVIC STANDARD SPONSORED RESEARCH TERMS

WHEREAS:

- A. UVic and Sponsor have completed the Express IP Agreement (Acknowledgement of UVic Standard Sponsored Research Terms) (the “**Acknowledgement**”); and
- B. UVic and **Sponsor** (as defined in Acknowledgements) (the “**Parties**”) wish to engage in a research project entitled **Project** (as defined in Acknowledgment), to be performed by UVic researchers under the oversight of Principal Investigator (as defined in Acknowledgment); and
- C. A description of the Project “**Project Proposal**” is attached to or referenced in Acknowledgment as Schedule C; and
- D. The Parties wish to define their respective roles, responsibilities, obligations and interests with respect to the Project.

NOW THEREFORE the Parties agree as follows:

1. Project

- 1.1 Performance of the Project may be conditional on the receipt of funding from **Funder** (as defined in Acknowledgment); under its grant program(s). Should the funding not be received or applied for, the portions of the **Agreement**, including the Project Proposal specific to the Funder’s funding shall automatically be null and void.
- 1.2 The Parties acknowledge and agree that this Agreement is subject to the terms and conditions of the Funder’s program(s) (the “**Funder’s Terms**”). Should any right or benefit conferred under this Agreement contravene or be incompatible with the Funder’s Terms, such right or benefit will be amended or modified so as not to contravene or be incompatible with the Funder’s Terms.
- 1.3 The Parties shall conduct the Project in accordance with this Agreement, the Funder’s Terms, the research plan set forth in the Project Proposal and all applicable laws and regulations.
- 1.4 Sponsor agrees to provide funding and in-kind contributions for the Project in accordance with the budget and payment schedule attached to Acknowledgment as Schedule ‘A’ (the “**Budget**”).
- 1.5 The performance of the Project shall be dependent upon UVic’s receipt of the anticipated Funder’s grant funding and Sponsor funding and in-kind contributions, and the availability of Principal Investigator or a mutually acceptable alternative to act as Principal Investigator to oversee the conduct of the Project. In the event that any of these conditions are not met or any circumstance beyond the reasonable control of a Party prevent or delay the completion of the Project, the Parties agree to work together to adjust the Project activities or timelines. If agreement cannot be reached

within 30 days and both parties do not agree in writing to continue discussions , the Project will be discontinued and either Party may terminate the Agreement under s. 2. All changes must be in accordance with Funder's requirements.

- 1.6 No Party shall make any change to the Project without the prior written consent of the other Party and any required consent by any Funders.
- 1.7 All equipment, including but not limited to hardware and software, purchased by UVic for the Project (including equipment purchased with funding supplied by Sponsor) shall become and remain the property of UVic unless agreed otherwise in writing by the Parties.

2. Term and Termination

- 2.1 The term of this Agreement shall be from the **Effective Date** (as defined in Acknowledgment) until the end date of the Project, unless terminated unilaterally as set out herein or terminated or extended by mutual agreement of the Parties.
- 2.2 This Agreement may be terminated by either Party, subject to Funder's approval if required, in the event that:
 - a) the Principal Investigator leaves UVic or is otherwise unable to complete the Project and no mutually acceptable replacement has been agreed upon within thirty (30) days; or
 - b) the other Party is in default of its obligations or any conditions hereunder and fails to cure such default within thirty (30) days after receipt of notice of such default from the non-defaulting Party.
 - c) the parties are unable to reach an agreement under 1.5.
- 2.3 In the event of termination of this Agreement, the Parties shall take all necessary steps to effect the orderly termination of the Project and Sponsor agrees to reimburse UVic in accordance with the Budget for costs incurred by UVic in the conduct of the Project to-date, including non-cancellable commitments made prior to the date of termination.
- 2.4 No failure or delay of either Party to exercise its right of termination hereunder for any one or more defaults shall be construed to prejudice their respective rights of termination for any other subsequent defaults.

3. Confidentiality

- 3.1 In this Agreement, "**Confidential Information**" means all oral, written or machine readable information and data disclosed by one Party to the other Party that:
 - a) if disclosed in tangible form, is clearly marked "CONFIDENTIAL" at the time of disclosure;

- b) if disclosed orally, is identified as confidential or proprietary at the time of disclosure and which is summarized in a tangible format which is clearly marked as “CONFIDENTIAL” and delivered to the receiving Party within fifteen (15) days of the original disclosure; or
- c) was provided under a non-disclosure or confidentiality agreement made between the Parties for the purposes of allowing the Parties to engage in discussions prior to the commencement of this Agreement about a potential research project (the “**Discussions NDA**”) and which will be used by the Parties in the performance of the Project.;

Confidential Information does not include information or data that:

- a) is disclosed by a third party, acting independently, who acquires and delivers such information lawfully and without breaching any agreement, including this one ;
- b) can be demonstrated by written evidence to have been in the possession of the receiving Party without restriction and prior to disclosure thereof by the disclosing Party hereunder;
- c) is already in the public domain or, after disclosure, is published or otherwise becomes part of the public domain through no fault of the receiving Party;
- d) is required to be disclosed by law or by the order of any judicial, administrative, or similar body of competent jurisdiction provided that, where permitted by law, the receiving Party promptly notifies the disclosing Party of the requirement and co-operates reasonably at the disclosing Party’s expense, in preventing and minimizing the extent of the disclosure; or
- e) Is developed independently by the receiving Party as demonstrated by written evidence.

Project methods, methodology and results, and “**Arising IP**” (as defined in Appendix 1 of the Agreement) shall not be considered Sponsor Confidential Information.

- 3.2 The receiving Party shall only use the disclosing Party’s Confidential Information for the purpose of the Project, and shall not disclose such Confidential Information, or any portion thereof, to any other individual, person, firm or corporation, provided, however, that the receiving Party may disclose Confidential Information to its employees, adjunct faculty, postdoctoral fellows, grant funded employees, students, and agents with a need to know in connection with the Project and who are bound by obligations of confidentiality substantially similar to those set out in this Agreement.
- 3.3 All right, title and interest in Confidential Information disclosed by the disclosing Party to the receiving Party remains the property of the disclosing Party.
- 3.4 The receiving Party shall within 21 (twenty-one) days of the receipt of written demand by the disclosing Party, destroy or return all Confidential Information to the disclosing Party, uncopied and undistributed, whether or not the receiving Party has completed the Purpose for which the Confidential Information has been disclosed and delivered. For the avoidance of doubt, any Confidential Information that is stored on routine back-up media solely for the purpose of disaster recovery will be subject to destruction in due course, provided that employees shall not access such

Confidential Information in the ordinary course of business prior to destruction. Notwithstanding the foregoing, latent data such as deleted files, and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can only be retrieved by computer forensics experts and is generally considered inaccessible without the use of specialized tools and techniques will not be within the requirements for return or destruction of Confidential Information as set forth by this provision.

- 3.5 The terms of this Agreement shall supersede and replace the terms of any applicable Discussions NDA with respect to Confidential Information used in the Project.

4. Intellectual Property

- 4.1 The terms and conditions respecting Intellectual Property shall be set out in Appendix 1 of the Agreement 1 and as selected in the Acknowledgment.

5. Publication

- 5.1 It is the intent and desire of the Parties to enable UVic researchers to openly and expeditiously publish and present accounts of the Project, including Results and description of the development of Arising IP, and Sponsor intends to promote publication of such material as appropriate through journals, meetings and symposia. Accordingly, UVic Members shall have the rights to publish and present works relating to the Project in accordance with the terms set out in this Agreement.

- 5.2 The process set out below shall be followed for all publications and presentations relating to the Project (together "**Publications**"):

5.2.1 At least thirty (30) days prior to disclosure of any Publication, Principal Investigator shall provide Sponsor with a copy of the proposed Publication.

5.2.2 UVic shall be free to proceed if Sponsor does not object in writing within fifteen (15) days of receipt of the proposed Publication.

5.2.3 Sponsor may object to the proposed Publication within the specified time period on the basis that the proposed Publication:

a) includes Sponsor's Confidential Information, in which case UVic shall remove Sponsor's Confidential Information following which UVic shall be free to publish or present the revised Publication; or

b) discloses patentable subject matter or other potentially commercially valuable Arising IP which Sponsor wishes to seek to protect, in which case UVic shall delay disclosure of the Publication for up to ninety (90) days for Sponsor to pursue patent or other protection.

5.2.4 The Parties agree that there can be no delay for the defence of a student's thesis.

- 5.3 In the event that Sponsor wishes to publish the Results, in part or in whole, Sponsor will follow the review process set out in section 5.2 to enable UVic to review any proposed Publication. Unless otherwise agreed by UVic, UVic Members shall be provided with the opportunity for first academic or scholarly Publication and Sponsor will acknowledge UVic and include the Principal Investigator and any other Project participants identified by the Principal Investigator, as an author or authors of the same in accordance with commonly accepted standards of the academic community.
- 5.4 Unless otherwise requested in writing by Sponsor, Sponsor's contribution shall be acknowledged in any Publication by UVic Members.

6. Limitation of Warranties, Liability and Insurance

- 6.1 UVic will carry out the Project using high scientific and professional standards, but Sponsor acknowledges that the Project is experimental and exploratory in nature and that no promise is made by UVic with respect to the achievement of any results, desired or otherwise. Sponsor agrees to undertake its own due diligence prior to any use of the Arising IP or "**Background IP**" (as defined in Appendix 1). No warranty or representation is given with respect to the Arising IP or Background IP including, without limitation, any implied warranties as to merchantability, fitness for a particular purpose or of non-infringement. UVic, its researchers and employees expressly disclaim all obligations and liabilities for damages of any kind or nature whatsoever including, but not limited to, direct, indirect, special, incidental, punitive and consequential damages, solicitors' and experts' fees, and court costs (even if they have been advised of the possibility of such damages, fees or costs), arising out of or in connection with the Project or any use in any manner whatsoever of any Arising IP or Background IP.
- 6.2 Sponsor will hold harmless and indemnify UVic, its researchers, Board of Governors, executives, faculty, staff, employees, agents, successors and assigns from and against any and all claims or judgments, including all associated legal fees, expenses and disbursements actually incurred, on a solicitor and own client basis, from or arising out of the use by Sponsor, or anyone for whom Sponsor is in law responsible or any of their successors or assigns, of Arising IP or Background IP, including without limitation any damages of any kind or nature whatsoever (including but not limited to direct, indirect, special, incidental, punitive or consequential), losses of any kind or nature (including without limitation loss of revenues, profits, savings, business, data or records) or costs arising in any manner whatsoever (including arising from or incidental to any product liability or other lawsuit, claim, demand or other action brought), directly or indirectly, from or out of any use whatsoever of Arising IP or Background IP.
- 6.3 Each Party shall at its own expense maintain appropriate insurance sufficient to cover its obligations under this Agreement. Upon request, each Party shall provide to the other a certificate of insurance.

7. General Provisions

- 7.1 **Use of Name.** Notwithstanding anything in this Agreement, either Party may disclose the identity of the other, the title of the Project, the name of the Principal Investigator, the Project term and the amount of funding being provided for the Project. Except as provided by the foregoing, no Party may use the others logo or name, nor the name of any member of the other Party's staff, in any

publicity, advertising, or news release without the prior written approval of an authorized representative of such Party.

- 7.2 **Headings.** The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 7.3 **Governing Law.** This Agreement shall be governed and construed, and all claims arising out of or related to it shall be determined in accordance with, the laws of British Columbia (without regard to any conflict of laws principles) and any laws of Canada applicable therein.
- 7.4 **Forum.** The courts of British Columbia shall have exclusive jurisdiction over all claims, disputes and actions arising out of and related to this Agreement and the Parties hereby attorn to the jurisdiction of the courts of British Columbia.
- 7.5 **Severability.** In the event that any provision of this Agreement shall be held to be, invalid, illegal or - unenforceable, that will not affect the validity or enforceability of the remaining provisions of this Agreement and the balance of the Agreement shall continue in full force and effect.
- 7.6 **Force Majeure.** No failure or omission by either Party in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the same is due to a reason or circumstance beyond the reasonable control of such Party, including, without limitation, changes to applicable laws or government regulations, fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, invasion, public health emergency, pandemic, epidemic, labour dispute, labour shortage, third party non-performance, or failure or malfunction of computer or telecommunications hardware, equipment or software, provided that the other Party is notified and that such failure or omission is cured as soon as it is practicable after the occurrence of the event of force majeure. In no event shall lack of funds be considered to be a default of delay beyond the reasonable control of a Party.
- 7.7 **Notices.** All notices, documents, statements, reports and other writings required under this Agreement will be sufficient if given in writing and delivered in person, by registered mail, or by electronic mail, to the addresses set out below or as may be changed from time to time by either Party upon written notice to the other Party. Notices under this Agreement will be deemed to have been duly given upon delivery if delivered in person or on the next business day if delivered by registered or electronic mail.

For Sponsor:

For legal or administrative matters:

See Sponsor Contact (Legal and Admin) in Acknowledgement

For financial matters:

See Sponsor Contact (Financial) in Acknowledgement

For scientific matters:

See Sponsor Contact (Scientific) in Acknowledgement

If no specific contacts are listed, the Main Sponsor Contact in Acknowledgement shall be used.

For UVic:

For legal or administrative matters:

Office of Research Services, attn: Contracts
University of Victoria
Michael Williams Building, Room B202
3800 Finnerty Road (Ring Road)
Victoria, BC, Canada V8P 5C2
Email: contract@uvic.ca

For financial matters:

UVic Accounting- Research Accounting
researchbank@uvic.ca

For scientific matters:

Principal Investigator
See contact info in Acknowledgement

- 7.8 **Independent Parties.** Nothing contained in this Agreement shall be deemed or construed by the Parties, or by any third party, to create the relationship of partnership or joint venture between any of the Parties, it being understood and agreed that no provision contained herein shall be deemed to create any relationship between the Parties other than the relationship of independent Parties contracting for services.
- 7.9 **Waiver.** No provision of this Agreement and no breach by either Party of any such provision will be deemed to have been waived by the other Party unless such waiver is in writing signed by the other Party. The written waiver of any breach of any provision of this Agreement will not be deemed a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 7.10 **Entire Agreement.** This Agreement (including exhibits and schedules) constitutes the the entire agreement between the Parties pertaining to its subject matter , and supersedes all prior and contemporaneous agreements, understandings , negotiations and discussions, whether oral or written, of the Parties, and there are no warranties, representations or other agreements between the Parties in connection with its subject matter except as specifically set forth in this Agreement.
- 7.11 **Amendment.** This Agreement may only be modified or amended in writing signed by the Parties.
- 7.12 **Assignment.** A Party may not sell, assign, encumber, license or otherwise transfer any of its rights, duties or obligations under this Agreement without the express written consent of the other Party, which consent shall not be unreasonably withheld.
- 7.13 **Enurement.** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective heirs, successors, executors, personal representatives and permitted assigns.
- 7.14 **Surviving Terms.** All terms of this Agreement which by their nature have continuing effect shall survive the termination or expiration of this Agreement. The obligations set out in section 3

(Confidentiality) shall survive termination or expiration of this Agreement for a period of five (5) years.

- 7.15 **Rights and Remedies.** The rights and remedies available under this Agreement shall be cumulative and not alternative and shall be in addition to and not a limitation of any rights and remedies otherwise available to the Parties at law or in equity. No exercise of a specific right or remedy by either Party precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.
- 7.16 **Currency.** Unless otherwise specified, all references to currency in this Agreement are in Canadian dollars (CAD).
- 7.17 **Counterparts.** This Agreement may be signed and delivered in one or more counterparts and each such counterpart may be transmitted by electronic mail in portable document format (PDF) or similar format or by facsimile and each will constitute an original document and such counterparts, taken together, will constitute one and the same instrument.

Appendix 1 Intellectual Property Schedule

A1 Definitions

In this Agreement, the following terms shall have the following meanings:

- A1.1 **“Intellectual Property”** or **“IP”** means the right, title or interest in or to any products of the mind or the imagination, tangible or otherwise, and including, without limitation, all works, inventions (whether patentable or not), discoveries, designs, developments, algorithms, compilations of information and all derivations, modifications, enhancements, and improvements, and computer software, in all cases that is capable of being legally protected, except that IP does not include Scholarly Work.
- A1.2 **“Scholarly Work”** means an original literary or academic work that is protectable pursuant to Canadian copyright legislation and that is created primarily for an academic or scientific purpose such as publication in a scientific outlet, presentation at a scientific conference or professional meeting, or completion of a student paper, thesis, or other requirement of an academic program.
- A1.3 **“Background IP”** means any IP which is created or acquired by any Party prior to or outside the scope of the Project, and is necessary for use into the Project and may be identified in Schedule ‘B’ of Acknowledgment.
- A1.4 **“Arising IP”** means any IP which is created or conceived in the performance of the Project.
- A1.5 **“Sponsor Arising IP”** means Arising IP where all the creators are Sponsor personnel including Sponsor’s employees, agents or any person having an obligation to assign his or her rights in any Arising IP to Sponsor.
- A1.6 **“UVic Arising IP”** means Arising IP where all the creators are UVic personnel or members including UVic employees, adjunct faculty, postdoctoral fellows, grant funded employees, students and agents working on the Project (“UVic Members”), or any person having an obligation to assign his or her rights in any Arising IP to UVic.
- A1.7 **“Joint Arising IP”** means Arising IP where one or more creators are UVic Members or any person having an obligation to assign his or her rights in any Arising IP to UVic, and one or more creators are Sponsor personnel or any person having an obligation to assign his or her rights in any Arising IP to Sponsor.

Option 1: Sponsor Owned Terms

A2 Intellectual Property and Scholarly Work

Sponsor-Owned terms shall apply to the Project if selected in the Acknowledgment or if NO option is selected.

- A2.1 Nothing in this Agreement will be interpreted as implicitly or explicitly transferring any right, interest or title in or granting any license to Background IP, other than as specifically provided herein. All rights not expressly granted by this Agreement are expressly reserved by the owner of the Background IP.
- A2.2 Where a Party makes its Background IP available to another Party for the purpose of undertaking the Project, the first Party hereby grants the other Party a non-exclusive, royalty-free, fully paid-up license to use such Background IP for the sole purpose of performing the work in the Project. This grant of license shall terminate upon completion of the Project or termination of this Agreement.
- A2.3 All Arising IP shall be owned by the Sponsor. UVic hereby conveys, transfers and assigns to Sponsor all right, title and interest in and to all UVic Arising IP including any interest in Joint Arising IP.
- A2.4 Sponsor hereby grants to each of the UVic creators of the Arising IP, for themselves, and to UVic, for itself, its faculty, employees, students, subsidiaries, affiliates and assignees (to the extent that such assignees are academic institutions) an irrevocable, royalty-free, fully paid-up and perpetual right and license to use the Arising IP for non-commercial purposes including teaching, research and academic or scholarly purposes including but not limited to use in any Scholarly Work.
- A2.5 Copyright in Scholarly Work shall be governed by the UVic Intellectual Property policy.

Option 2: Creator Owned Terms

A2 Intellectual Property and Scholarly Work

Creator-Owned terms shall apply to the Project if selected in the Acknowledgment.

- A2.1 Nothing in this Agreement will be interpreted as implicitly or explicitly transferring any right, interest or title in or granting any license to Background IP, other than as specifically provided herein. All rights not expressly granted by this Agreement are expressly reserved by the owner of the Background IP.
- A2.2 Where a Party makes its Background IP available to another Party for the purpose of undertaking the Project, the first Party hereby grants the other Party a non-exclusive, royalty-free, fully paid-up license to use such Background IP for the sole purpose of performing the work in the Project. This grant of license shall terminate upon completion of the Project or termination of this Agreement.
- A2.3 All UVic Arising IP is the sole and exclusive property of UVic. UVic hereby grants to Sponsor a non-exclusive, fully paid-up, royalty-free, worldwide and perpetual license to use UVic Arising IP, including any interest in Joint Arising IP for internal research and development purposes, and not for any commercial purpose.
- A2.4 All Sponsor Arising IP is the sole and exclusive property of Sponsor. Sponsor hereby grants to UVic a non-exclusive, fully paid-up, royalty-free, irrevocable and perpetual right and license to use the Sponsor Arising IP, including any interest in Joint Arising IP, for non-commercial purposes including teaching, research and academic or scholarly purposes including but not limited to use in any Scholarly Work.
- A2.5 All Joint Arising IP shall be jointly owned by UVic and the Sponsor. Co-owners of Joint Arising IP may use such Joint Arising IP for non-commercial purposes including, without limitation, in the case of UVic, research and academic purposes and, in the case of the Sponsor, internal research and development purposes. No co-owner will use the Joint Arising IP for commercial purposes without the permission of the other co-owner.
- A2.6 Copyright in Scholarly Work shall be governed by the UVic Intellectual Property policy.