

Research and Graduate Studies

**National Science and Engineering Research Council
Engage Grant
Collaborative Research Agreement**

This **AGREEMENT** dated for reference, [..., 20...]

BETWEEN:

Thompson Rivers University, through its Office of Research and Graduate Studies, and having administrative offices at 900 McGill Road, Kamloops, BC, V2C 0C8, (hereinafter referred to as "**TRU**"),

AND:

[...], having a place of business at [...] (hereinafter referred to as "**Company**").

WHEREAS

- A.** TRU and the Company have submitted an application and have been awarded a grant by the National Science and Engineering Research Council ("NSERC Engage Grant") to conduct a project entitled [" ... "] (the "Project").
- B.** TRU and the Company wish to enter into this agreement (the "Agreement") in compliance with the conditions of the NSERC Engage Grant.

NOW THEREFORE in consideration of the mutual covenants of the parties herein and other good and valuable consideration, TRU and the Company agree as follows:

Article 1 – NSERC Engage Grant

The parties acknowledge that this Agreement is governed by and is subject to the conditions of the NSERC Engage Grant, including NSERC's Policy on Intellectual Property, General Intellectual Property Considerations and Guidelines for Collaboration, and Guidelines for Organizations Participating in Research Partnerships Programs ("NSERC Engage Grant Conditions"), dated copies of which are attached as Schedule A.

In the event of any inconsistency between this Agreement and the NSERC Engage Grant Conditions, the NSERC Engage Grant Conditions prevail.

Article 2 – Role of the Company and TRU

The role of each party in performing the Project, including supervision of the [research associate and undergraduate researcher], will be in accordance with the application for the NSERC Engage Grant incorporated in this Agreement as Schedule A and in accordance with Schedule B. TRU must conduct the Project in accordance with the timeframes in the application for the NSERC Engage Grant and promptly deliver to the Company all reports specified in Schedule A, and deliverables as set out in Schedule C.

Article 3 – [In-kind] Contribution from the Company

The Company acknowledges that a condition of the NSERC Engage Grant is the receipt by TRU of the [cash and] in-kind contributions specified in Schedule B.

In consideration of TRU carrying out the Project as set out in Schedule B, the Company agrees to provide in a timely manner the [cash and] in-kind contributions specified in Schedule B.

Article 4 – Principal Investigator(s):

The Principal Investigator (s) for the Project shall be: [...].

The Principal Investigator is responsible for the technical content of the Project. If for any reason the above-designated Principal Investigator is unable to complete the Project, TRU shall be free to replace the Principal Investigator with an alternate acceptable to the Company. If the Company does not accept the successor proposed by TRU, acting reasonably, the parties will take all reasonable steps to wind down the Project with a minimum of costs.

Article 5 – Liaison

The Company representative for the Project, who is responsible for technical liaison and management of the Project on behalf of the Company shall be [...].

Article 6 – Term

The present Agreement shall have an effective date of [..., 201X] and shall terminate on [..., 201X].

Article 7 – Amendments to Agreement

The terms herein stipulated may not be modified in any way without the mutual consent of the parties in writing.

Article 8 – Assignment

No right or obligation related to this Agreement shall be assigned by either party without the prior written permission of the other, such permission not to be unreasonably withheld, provided that Company may assign this Agreement to a wholly-owned subsidiary or to a successor of all or substantially all of Company's business without such permission.

Article 9 – Equipment

Unless otherwise agreed, any equipment, machinery, data, or other property, provided by the Company to TRU for the purposes of this Agreement will be the exclusive property of the Company and forthwith be delivered by TRU to the Company on written notice to TRU requesting delivery of the same at the Company's cost, whether such a notice is given before, upon, or after the expiration or sooner termination of this Agreement.

Equipment purchased by TRU for use in the Project will be the property of TRU, and the Company acknowledges that TRU's insurance is applicable only to such equipment owned by TRU.

Article 10 – Confidentiality

Company and TRU may wish to disclose confidential information that is non-public, confidential or proprietary in nature to each other to facilitate work under this Agreement ("Confidential Information"). TRU and the Company agree to keep confidential and not disclose to others information designated as "confidential" and supplied by them for the purpose of developing the research work under this Agreement. The parties agree to advise and notify the other as to which information disclosed, if any, constitutes Confidential Information. All written materials disclosed, and all materials disclosed in electronic form, shall be clearly marked as "confidential", while any oral disclosures shall be followed by a written memorandum (which may be in electronic form) outlining the information disclosed and its confidential nature within five (5) days of disclosure.

Confidential Information shall be safeguarded and not disclosed to anyone without a "need to know" within Company or TRU or to third parties, and then only with appropriate Confidentiality Agreements in place on terms no less stringent than set out herein, being signed.

The obligation to keep confidential shall not apply to information which is already known to the party to which it is disclosed; becomes part of the public domain without breach of this Agreement; is independently developed by the recipient party by someone without access to or use of the Confidential Information; is obtained from third parties that have no obligation of confidentiality to the parties to this Agreement; or is required by law to be disclosed.

In the event that information is required by law to be disclosed, the party required to make the disclosure shall notify the other and allow that party to assert whatever exclusions or exemptions may be available to it under such law.

The Company contemplating the disclosure of Confidential Information acknowledges that TRU is by its very nature an open, public research institution with students passing through in an open and uncontrolled manner and therefore cannot provide the same degree of security for its

own Confidential Information as that which is customary in an industrial research centre. However, TRU will use the same care and discretion to avoid disclosure of Confidential Information as it uses for its own similar Confidential Information that it does not wish to disclose.

Unless otherwise agreed to in writing, the terms and conditions of this Agreement are confidential.

The obligation of confidentiality shall survive any termination of this Agreement.

Article 11 – Publicity

Each party agrees that it shall not use the name, logo, trademark or any other identifying mark, or the names of any staff member of the other party in any advertising or publicity material, or make any form of representation or statement in relation to the Project that would constitute an express or implied endorsement by the other party of any product or service, without obtaining the prior written approval of an authorized representative of the other party.

Notwithstanding this Article, TRU shall be entitled to include a description of the Project in any list of research projects that it produces from time to time, including but not limited to lists of current research projects produced for reports to government funding sources. Such lists of current research projects may include the title of the Project and/or a short description agreed to by the parties, the name of the Principal Investigator, the term, the Company name, and the dollar value of the contract.

All other terms of the agreement shall not be disclosed without the express written approval of the other party.

Article 12 – Publication

The parties agree that it is part of TRU's function to disseminate information and make it available for the purpose of scholarship. In the event a student of TRU works on the Project and that student completes a thesis or academic report relating to the Project, the parties acknowledge and agree that (a) the student may include all reports and any other material developed in connection with the Project, in whole or in part, in the thesis or academic report; (b) copyright in the thesis or academic report belongs to the student; and (c) the right of the student to have the thesis or academic report examined is not inhibited. TRU will require any such student to comply with the provisions of Article 12 with respect to the publication of that thesis or academic report. Notwithstanding anything else in this Agreement, unless the Company reasonably objects to the publication or defense of a thesis on the basis that it will result in the authorized disclosure of Confidential Information, publication or defense of a thesis or education report may only be delayed in accordance with applicable policies and practices of TRU.

Dissemination includes presenting publications at symposia, national or international professional meetings, or the publication in journals or other publications of accounts of the work pertaining to this Agreement.

Within the period of this agreement, the Company shall be advised in writing of the substance of

any proposed disclosure related to this Project at least sixty (60) days in advance of submission for publication in a journal and at least forty-five (45) days in advance of disclosure at a conference, seminar, meeting or thesis examination.

Company shall have thirty (30) days after receipt of the proposed disclosure in which to issue a written request that publication or presentation be delayed or amended on the basis that the publication or presentation exposes intellectual property that requires proprietary protection or Confidential Information, the disclosure of which is prohibited under this Agreement. In the event that written objection is made, the parties shall endeavor to negotiate an acceptable version of the proposed disclosure, including the release date, within the original notice period. If an acceptable version is not agreed upon, TRU shall be free to publish the original disclosure, subject to compliance with its obligations of confidentiality under this Agreement, six months after the date on which it was submitted to the Company.

All publications and disclosures under this Article shall acknowledge support of the Company.

Article 13 - Intellectual Property and Grant of Rights

Intellectual Property means any and all knowledge, know-how, technology or other intellectual property which is conceived, invented, developed, improved or acquired solely by TRU, or solely by the Company, or jointly by TRU and the Company during the term of this Agreement in the performance of the Project.

TRU acknowledges and agrees that the Company owns all right, title and interest in and to Intellectual Property. TRU will cause the Principal Investigator (including any replacement thereof) and any other student or employee of TRU involved with the Project to waive any and all moral rights that such persons may have in connection with the Project.

TRU will, at the Company's cost, promptly execute and deliver to the Company any assignment or documents the Company deems necessary to vest in the Company all right, title and interest relating to Intellectual Property.

The Company acknowledges and agrees that TRU may use Intellectual Property without charge for research, educational and all other non-commercial purposes.

Article 14 - Liability and Indemnity

TRU indemnifies, holds harmless and defends the Company, its directors, officers, employees, invitees and agents against all and any claims that arise, directly or indirectly, out of the negligence or willful misconduct of TRU or its, Board of Governors, directors, officers, employees, faculty, students, invitees and agents in the performance of the Project.

The Company indemnifies, holds harmless and defends TRU, its Board of Governors, directors, officers, employees, faculty, students, invitees and agents against all and any claims that arise, directly or indirectly, out of the negligence or willful misconduct of the Company or the Company's officers, directors, employees or agents in the performance of the Project.

The Company indemnifies, holds harmless and defends TRU, its Board of Governors, directors, officers, employees, faculty, students, invitees and agents against all and any claims (including

reasonable legal fees and disbursement) arising out of the receipt or use by the Company of any of TRU's Confidential Information, Intellectual Property, or any data or results arising from the Project including, without limitation, any damages or losses, consequential or otherwise, however they may arise.

Article 15 - Warranty

TRU agrees to carry out the research in accordance with appropriate scientific and professional standards but does not promise to achieve any desired result. TRU expressly disclaims any warranty, express or implied, on the results of the research, 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. TRU, its employees or agents shall not be liable for any direct, indirect, special, incidental, consequential, or any other damage suffered by the Company or others resulting from the use of the research results, any deliverables or intellectual property developed by TRU under this Agreement, including without limitation damages for lost data or economic loss, regardless of the legal theory (including any negligence theory, except in connection with personal injury or property damage), even if TRU has been advised of the possibility of such damage and even if arising from a fundamental breach.

Article 16 - Termination for Default

Either party may terminate this Agreement thirty (30) days after written notice of default is given to the defaulting party and if the defaulting party does not take immediate action to correct such default within such period.

No condoning, excusing or overlooking by any party of any default, breach, or non-observance by another at any time or times in respect of any covenants, provisos or conditions of this Agreement, shall operate as a waiver of such party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance, so as to defeat in any way the rights of such party in respect of any such continuing or subsequent default or breach and no waiver shall be inferred from or implied by anything done or omitted by such party, save only an express waiver in writing.

No exercise of a specific right or remedy by any party precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining any action to which it may otherwise be entitled either at law or in equity.

Article 17 - Notices

Notices under this Agreement shall be sent by registered mail, return receipt requested or delivered by hand, return receipt requested to the following address of either party unless changed by written notice. Notice may also be sent by facsimile. Any notice sent by facsimile will be deemed to have been received one clear day after transmittal.

TRU: Thompson Rivers University
900 McGill Rd

Kamloops, BC V2C 0C8
Fax: (250) 371-5821
Tel: (250) 371-5586
ATTN: Associate Vice-President,
Research and Graduate Studies

Company: [...]
[...]
[...]
[...]
Fax: [...]
Tel: [...]
ATTN: [...]

Article 18 - Force Majeure

Neither party to this Agreement shall be liable to the other for any failure or delay in performance caused by circumstances beyond its control, including but not limited to, acts of God, fire, labor difficulties, unusually severe weather, or governmental action.

Article 19 - Entire Agreement

This Agreement shall supersede all prior documents or agreements, whether written or verbal, in respect of the subject matter thereof.

Article 20 - Choice of Law

This Agreement shall be governed by and interpreted in accordance with the Laws of the Province of British Columbia and both parties expressly attorn to the jurisdiction of the courts of British Columbia for enforcement thereof.

Article 21 - Arbitration

It is the intention of the parties to settle any dispute relating to the Agreement among themselves, but if at any time during the term of this Agreement, or after its termination, any dispute arises between the parties respecting any matter which they cannot settle among themselves, then the dispute will be settled by a single arbitrator appointed by agreement between both parties, under the provisions of the Commercial Arbitration Act (British Columbia) and the rules of the British Columbia International Commercial Arbitration Centre, as from time to time amended or substituted. If the parties cannot agree on an arbitrator within 10 days after referral of a matter to arbitration, then the single arbitrator shall be appointed by the British Columbia International Commercial Arbitration Centre. The decision of the arbitrator will be final and binding on the parties. The costs of the arbitration will be apportioned between the parties, or against any one or more of the parties, as the arbitrator may decide.

Article 22 - Relationship of Parties

The relationship of TRU to the Company is that of an independent contractor and nothing in this Agreement shall be construed as establishing an agency, partnership, or employment relationship between the parties.

Article 23 - Severability

In the event that any part, section, paragraph or sub-paragraph of this Agreement shall be held to be indefinite, invalid, illegal or otherwise voidable or unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.

Article 24 - Survival of Articles

Articles 10 (Confidentiality), 11 (Publicity), 12 (Publication), 13 (Intellectual Property and Grant of Rights), 14 (Liability & Indemnity), 15 (Warranty), and 21 (Arbitration) shall survive the termination of this Agreement for any reason in addition to those articles surviving by operation of Law.

Article 25 - General

TRU will not in any manner whatsoever commit or purport to commit the Company to the payment of money to any person, firm or corporation.

IN WITNESS THEREOF, duly authorized officers of the Parties hereto have executed duplicate copies of this Agreement as of the day and year first written above.

SIGNED FOR AND ON BEHALF OF
THOMPSON RIVERS UNIVERSITY:

SIGNED FOR AND ON BEHALF OF
[...]:

Dr. Will Garrett-Petts
AVP, Research and Graduate Studies
Authorized signatory

Name: _____
Title: _____
Authorized signatory

Date:

Date:

Schedule A

Application by TRU and the Company to NSERC for the project entitled [“ ... ”]

[Attach entire NSERC application here]

Schedule B

Contribution by the Company

Schedule C
Deliverables