**SIMON FRASER UNIVERSITY**

**SPONSORED RESEARCH AGREEMENT**

**MITACS-NSERC ALLIANCE**

University and Sponsor signing below agree to proceed with the project (the “**Project**”) described in the Project Description immediately following this page. The Project was approved for funding by MITACS and NSERC (the funding decisions are attached as Schedule B).

|  |  |
| --- | --- |
| **University** | |
| Name: | Simon Fraser University (“**University**” or“**SFU**”) |
| Project Leader/Principal Investigator: | {\*} |
| Address For Notices: | Simon Fraser University  Research Services,  Discovery 2, 8888 University Drive,  Burnaby, British Columbia, Canada V5A 1S6  Attn: Director |
| Contract Contact: | Aniko Takacs-Cox, Director, SFU Research Services |
| Phone & Email: | {\*} |
| Technical Contact: | {\*} |
| Email: | {\*} |
|  | |
| **Sponsor** | |
| Name: | {\*} |
| Address For Notices: | {\*} |
| Contract Contact: | {\*} |
| Phone, Fax, & Email: | {\*} |
| Technical Contact | {\*} |
| Phone, Fax, & Email: | {\*} |

SIGNED FOR **SFU** by SIGNED FOR **SPONSOR** by:

Name and Title: Name and Title:

##### Date: Date:

1. **Project Title:** {\*}
2. **Project Description:** as described in the applications attached as Schedule A
3. **Project Period:** {\*}
4. **a. Sponsor Cash Contribution to SFU:** {\*}

**b. Sponsor In-kind Contribution: $**

1. **Project Budget**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **1st Phase** | **2nd Phase** |  |  |
| **FROM**: |  |  |  |
| **TO**: |  |  |
| Personnel salary costs (including benefits) |  |  |
| Release Time Stipend / Replacement Costs |  |  |
| Principal Investigator Fees |  |  |
| Equipment (incl. 8.65% TAX) |  |  |
| Other Direct Costs (e.g. travel, supplies, |  |  |
| [open access charges)](http://www.lib.sfu.ca/help/publish/scholarly-publishing/tri-agency-open-access-policy) |
| **Total Direct Costs** (generated automatically) |  |  |
| SFU Indirect Costs/Overhead (25%TDC)) |  |  |
| **Totals** (generated automatically) |  |  |

1. **Payment & Contribution Schedule**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sponsor Cash Contribution** | |  | **Sponsor In-kind Contribution** | |
| **Amount** | **Due Date** |  | **Amount** | **Due Date** |
| **$** | **Upon execution of this Agreement** |  |  |  |
| **$** |  |  |  |  |

1. **Deliverables, including reports, to be provided to Sponsor**: as stated in Schedule A
2. **Ownership of Project Results and Intellectual Property Rights in Project Results**

The Parties agree that any Intellectual Property arising out of the Project shall be governed by this Agreement, not the SFU Standard Intellectual Property Terms for MITACS-funded Projects.

{\*}

* 1. **Definitions:** The following words and expressions have the following meanings in the Agreement:
  2. **Agreement:** the agreement, including the Project Description and any schedules, as amended from time to time, in which these Terms are incorporated by attachment or reference;
  3. **Background:** information, technique, Know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) that are provided by one party to the other for use in the Project (whether before or after the date of the Agreement), except any Project Results;
  4. **Sponsor Cash Contribution:** the cash contribution payable by Sponsor to SFU for the Project described in the Project Description;
  5. **Sponsor In-kind Contribution:** the in-kind contribution by Sponsor to the Project described in the Project Description;
  6. **Intellectual Property:** patents, trade-marks, industrial designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognized from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;
  7. **Know-how**: unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
  8. **Project Leader**: the SFU project leader for the Project named in the Project Description;
  9. **Project Period:** the period commencing on the Project Start Date and concluding on the Project End Date, both as specified in the Project Description; and
  10. **Project Results:** all information, Know-how, and other results, including data, inventions, software and other Intellectual Property, identified or first reduced to practice or writing during the term of this Agreement in the course of the Project by one or more SFU Researchers named in the Project Description.
  11. **Project and Project Leader:** SFU shall conduct the Project under the supervision of the Project Leader named in the Project Description. If the Project Leader cannot continue the Project for any reason and a successor acceptable to both Sponsor and SFU cannot be found, either party may terminate the Agreement by providing the other with written notice of termination.

1. **Project Limitations:** The Project is research. As such, SFU does not represent that the Project will lead to any particular result, nor does it guarantee a successful outcome to the Project.
2. **Sponsor Cash Contribution & Sponsor In-kind Contribution:** Sponsor shall pay SFU the Sponsor Cash Contribution for the Project by immediately negotiable cheque or cheques made payable to “Simon Fraser University”, delivered to Manager, Research Accounting, SFU, and contribute any Sponsor In-kind Contribution for the Project, both in accordance with the Payment and Contribution Schedules in the Project Description.
   1. **Taxes:** All amounts payable to SFU are exclusive of HST, GST, PST, and any related tax, which taxes Sponsor shall pay from time-to-time if and when due.
3. **Deliverables:** SFU shall provide to Sponsor the deliverables, including reports, described under Deliverables in the Project Description. Each Deliverable will be deemed accepted unless Sponsor notifies SFU to the contrary in writing within 10 days of Sponsor’s receipt of the Deliverable.
4. **Background IP:** The Agreement does not affect ownership of any Intellectual Property in any Background or in any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Project Results unless specifically provided to the contrary in the Project Description.
5. **Project Results:** The respective interest of each party in, and right to use, the Project Results is as set forth in the Project Description.
6. **Ownership of Equipment/Materials:** SFU owns all equipment or materials purchased by SFU with all or any portion of the Sponsor Cash Contribution or provided to SFU by the Sponsor. All Sponsor materials must be provided to SFU under a separate material transfer agreement.
7. **Confidential Information:** Each party shall (i) respect the other’s Intellectual Property, and (ii) protect the other’s proprietary data, commercially sensitive information, and potentially valuable results or ideas from unauthorized, inadvertent or untimely disclosure. In this regard, the parties do not expect to exchange confidential information in support of the Project, but in the event it is necessary to do so, the parties shall do so only under a Non-Disclosure Agreement prescribed by SFU.
8. **Publications and Copyright** None of the intern/fellow, the principal investigator, or any associated researchers are restricted from presenting Results from the Project at symposia, professional meetings, or for academic evaluation or other purposes, or from publishing thesis, course reports, or in journals or other publications (“Publications”), provided that the Sponsor is provided with copies of the proposed disclosure at least thirty (30) days before the presentation or publication date and does not, within fifteen (15) days after delivery of the proposed disclosure, give written notice to author indicating that it objects to the proposed disclosure. The Sponsor may object to the proposed disclosure on the grounds that:

(1)  it contains confidential information (other than any Results) that was disclosed to the author by the Sponsor or

(2)  it discloses patentable subject matter belonging to the Sponsor which needs protection.

If the Sponsor makes an objection on the grounds of the inclusion of its confidential information, the author will remove such confidential information immediately from the proposed disclosure, after which the proposed disclosure may be presented or published. If the Sponsor makes an objection on the grounds of protection of patentable subject matter, the author will delay the proposed disclosure to permit the Sponsor to file one or more patent applications with one or more patent offices directed to such patentable subject matter (the “Delay”). A provisional patent application will be considered to be a patent application in the United States of America for these purposes. The Delay need be no longer than sixty (60) day from the date the proposed disclosure was delivered to the Sponsor, after which the proposed disclosure may be freely presented or published. The author of any publications, excluding software code and related technical documentation developed as Intellectual Property within any Project Results, will retain copyright therein.

1. Thesis Defence Delays Not Permitted: Despite anything to the contrary, no delay is permitted for the defence of a student researcher’s thesis based in whole or in part on the Project Results.
2. **Publicity:** Without SFU’s express prior written consent, Sponsor is not permitted to:
   1. use any SFU name, logo, trademark or other identifying mark, or the names of any SFU staff or researchers in any advertising or publicity material, or
   2. make any representation or statement in relation to the Project that would constitute an express or implied endorsement by SFU of any product or service.
3. **Approved Disclosure:** SFU may include a Project summary in any list of research or research service projects that it produces from time to time, including but not limited to lists of current research produced for reports to government funding sources, which summary may include the Project title, a short Project description, the Project Period, Sponsor name, and financial details of the Project.
4. **Freedom of Information and Protection of Privacy Act**: Sponsor acknowledges that all records prepared by SFU in the performance of the Agreement are in the custody and control of SFU. SFU is or will be subject to the access and privacy provisions of the *Freedom of Information and Protection of Privacy Act (British Columbia)* which creates a right of access to records under the custody and control of public bodies subject to specific limited exceptions.
5. **Limitations of Warranties:** SFU makes no representation and gives no warranty to Sponsor that any advice or information given by SFU or any SFU Researchers on the Project, or the content or use of any Background, Project Results, or materials, works, or information provided in connection with the Project, will not constitute or result in any infringement of third-party rights. Similarly, SFU gives no warranty, express or implied, on the Project Results, 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.
6. **Liability and Indemnity**:
   1. No party to this Agreement is liable to another for any failure or delay in performance caused by circumstances beyond that first party’s control, including but not limited to, acts of God, fire, labour difficulties, unusually severe weather, or governmental action.
   2. SFU, its governors, directors, officers, employees, students, researchers, and agents are not liable for any direct, indirect, special, incidental, consequential, or third party damage suffered by Sponsor or others resulting from the use of the Project Results, any Deliverables, or any Intellectual Property developed by SFU under the Agreement, including without limitation damages for loss of profits, loss of revenue, loss of data, loss of contracts, or loss of opportunity, whether direct or indirect, or economic loss, regardless of the legal theory (including any negligence theory, except in connection with personal injury or property damage), even if SFU has been advised of the possibility of such damage or the damage was within SFU’s contemplation and even if arising from a fundamental breach.
   3. Sponsor shall indemnify, defend, and save harmless SFU, and its governors, directors, officers, employees, students, researchers, and agents from and against all costs, suits, claims, losses, and expenses, including all reasonable legal fees and other costs of litigation, arising or resulting directly or indirectly out of the use by Sponsor, or any person or third party acting on behalf of or under authorization, delegation, or transfer from Sponsor, of the Project Results, any Deliverables, or any Intellectual Property developed by SFU under the Agreement, or any materials, product, works, thing, or information received from, or produced by, use of the Project Results.
7. **Prior Agreements:** With the exception of MITACS terms and conditions,the Agreement supersedes all prior documents or agreements, whether written or verbal, between all or any of the parties regarding the Project and shall be construed neither strictly for, nor strictly against, any party. In the event of conflicts between the MITACS terms and conditions and this Agreement, this Agreement shall prevail. For clarity, MITACS terms and conditions exclude SFU Standard Intellectual Property Terms for MITACS-funded Projects
8. **Relationship of Parties**: Nothing in the Agreement shall be construed as establishing an agency, joint venture, partnership, or employment relationship between the parties.
9. **Survival Clause**. Sections G, 10, 11, 12, 17.1, 17.2, 17.3 and 20 shall survive termination of the Agreement.
10. **Term, Termination, and Default**:

22.1 Subject to early termination as permitted under the Agreement or at law, the Agreement has a term commencing on the date it is last executed by SFU and Sponsor, and terminating six months following the Project End Date.

22.2 A party may terminate the Agreement upon providing 30 days written termination notice to the other.

22.3 SFU shall have the right to terminate the project immediately should the NSERC and/or MITACS terminate its support of the Project.

22.4 In the event Sponsor is delinquent in making a Sponsor Cash Contribution payment due under the Agreement, in addition to any other remedies available to SFU, at is sole option, SFU may elect to (i) continue the Project or Deliverables or both without notice to Sponsor, or (ii) suspend the Project or Deliverables or both until such time as the Sponsor has made all Sponsor Cash Contribution payments due without notice to Sponsor, or (ii) terminate the Agreement immediately upon written notice to Sponsor.

22.5 If the Project is discontinued for any reason, including Agreement termination, Sponsor will be liable for and shall pay for or reimburse SFU (up to the amount of the Sponsor Cash Contribution) any Project costs incurred up to the date of discontinuation as well as any Project costs which may be incurred by SFU following discontinuation where the same were previously committed or are unrecoverable by SFU. SFU shall refund to Sponsor any portion of the Sponsor Cash Contribution not expended or expendable in accordance with this provision.

1. **Law of Contract and Dispute Resolution**: The Agreement, and all matters arising in respect of it, is governed by and must be interpreted in accordance with British Columbia law and Canadian law applicable in British Columbia, and the parties expressly attorn to the jurisdiction of British Columbia courts for enforcement of the Agreement. The parties shall refer all disputes arising out of or in connection with the Agreement or in respect of any legal relationship associated with or derived from the Agreement to arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules and any arbitration decision will be final. The place of arbitration will be Vancouver, British Columbia, Canada.

**SCHEDULE A**

**Research Applications**

**SCHEDULE B**

**Award Decisions**