

Sponsored Research Agreement

[THERE MAY BE CHANGES TO THIS TEMPLATE FOR ELIGIBLE APPLICANTS THAT ARE NOT UNIVERSITIES]

Contract #

Province of British Columbia
Ministry of Energy and Mines

Transfer Under Agreement for Research at a B.C. Public University

THIS AGREEMENT dated for reference the ___ day of _____, 201__

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Energy and Mines

(the “Province”)

OF THE FIRST PART

AND:

<NAME OF UNIVERSITY HERE>

(the “University”)

OF THE SECOND PART

The parties to this Agreement agree as follows:

SECTION 1—DEFINITIONS

1.01 Where used in this Agreement:

- (a) “Commercial” means being able to yield or make a profit, prepared, done, or acting with sole or chief emphasis on saleability, profit, or success;
- (b) “Financial Contribution” means the total aggregate funding value stipulated in Schedule B;
- (c) “Intellectual Property” means intangible (non-physical) property which includes scientific or scholarly discoveries, copyright, computer software, moral rights related to copyrighted materials, trademarks, official marks, domain names, patents, industrial designs, literary, artistic, musical or visual works and know-how;
- (d) “Material” means all findings, data, reports, documents, records and material, (both printed and electronic, including but not limited to, on hard disk or diskettes), whether complete or otherwise, that have been produced, received, compiled or acquired by the University, or provided by or on behalf of the Province to, the University as a direct result of this Agreement, but does not include property owned by the University;
- (e) “Non-Commercial” means not being able to profit financially at any time from the Material under this Agreement between the Province and University, in the use of the Material by the following non-commercial users and their employees: government ministries, agencies, boards and commissions; educational institutions (such as public school boards, public post-secondary institutions, community and technical institutes); and non-profit organizations (such as public libraries, charities, and other organizations created for the promotion of educational, health or social services purposes);

- (f) “Personal Information” means recorded information, not including business contact information, about an identifiable individual;
- (g) “Principal Investigator” means the individual identified by the University as the person primarily responsible for the Research Project;
- (h) “Rebate” means a rebate on Goods and Services Tax applicable to the University;
- (i) “Research Project” means the research project described in Schedule A; and
- (j) “Term” means the period commencing on the start date and expiring on the end date of the Agreement stipulated in the Schedule A.

SECTION 2—APPOINTMENT

2.01 The Province retains the University to conduct the Research Project during the Term, both described in Schedule “A”.

SECTION 3—PAYMENT OF A FINANCIAL CONTRIBUTION

3.01 Subject to the provisions of this Agreement, the Province will pay the University, in the amount and manner, and at the times set out in Schedule “B” attached to this Agreement.

3.02 Notwithstanding any other provision of this Agreement the payment of the Financial Contribution by the Province to the University pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (“FAA”), to enable the Province, in any fiscal year when any payment of money by the Province to the University falls due pursuant to this Agreement, to make that payment; and
- (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (a) of this paragraph;

3.03 The University is entitled to a Rebate from the Federal Government and may, therefore, charge to the Province only the non-refundable portion of Goods and Services Tax, as applicable to the Research Project, and as provided for within the Financial Contribution.

SECTION 4—REPRESENTATIONS AND WARRANTIES

4.01 Subject to paragraph 4.04 (Disclaimer), the University represents and warrants to the Province with the intent that the Province will rely thereon in entering into this Agreement that:

- (a) all information, statements, documents and reports furnished or submitted by it to the Province in connection with this Agreement are true and correct;
- (b) it has no knowledge of any fact that materially adversely affects, or so far as it can foresee, might materially adversely affect, its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement; and
- (c) it is not in breach of, or in default under, any law, statute or regulation of Canada or of the Province of British Columbia applicable to or binding on it or its operations.

4.02 All statements contained in any certificate, application, proposal or other document delivered by or on behalf of the University to the Province under this Agreement or in connection with any of the transactions contemplated hereby will be deemed to be representations and warranties by the University under this Agreement.

4.03 All representations, warranties, covenants and agreements made herein and all certificates, applications or other documents delivered by or on behalf of the University are material and will have been relied upon by the Province and will continue in full force and effect during the continuation of this Agreement.

- 4.04 **Disclaimer.** The University makes no representations or warranties, either express or implied, regarding data or other results arising from the Research Project. The University specifically disclaims any implied warranty of non-infringement or merchantability or fitness for a particular purpose and the University will, in no event, be liable for any loss of profits, be they direct, consequential, incidental, or special or other similar damages arising from any defect, error or failure to perform, even if the University has been advised of the possibility of such damages. The Province acknowledges that the Research Project is of an experimental and exploratory nature, that no particular results can be guaranteed, and that the Province has been advised by the University to undertake its own due diligence with respect to all matters arising from this Agreement.

SECTION 5—RELATIONSHIP

- 5.01 No partnership, joint venture, agency or other legal entity will be created by or will be deemed to be created by this Agreement or any actions of the parties pursuant to this Agreement.
- 5.02 Each party will be an independent contractor and not the servant, employee or agent of the other party.
- 5.03 The University will not in any manner whatsoever commit or purport to commit the Province to the payment of money to any person, firm or corporation.
- 5.04 The Province may, from time to time, give reasonable instructions to the University in relation to the carrying out of the Research Project, and the University will comply with those instructions but will not be subject to the control of the Province regarding the manner in which those instructions are carried out except as specified in this Agreement. Notwithstanding the foregoing, all changes to the scope and direction of the Agreement will be made with mutual agreement between the parties.

SECTION 6—UNIVERSITY’S OBLIGATIONS

- 6.01 The University will:
- (a) carry out the Research Project in accordance with the terms of this Agreement during the Term stated in Schedule “A” of this Agreement;
 - (b) comply with the payment requirements set out in Schedule “B”, including all requirements concerning the use, application and expenditure of the payments provided under this Agreement;
 - (c) comply with all applicable laws;
 - (d) hire and retain only qualified staff;
 - (e) unless agreed otherwise supply, at its own cost, all labour, materials and approvals necessary to carry out the Research Project;
 - (f) co-operate with the Province in making such public announcements regarding the Research Project and the details of this Agreement as the Province requests; and
 - (g) acknowledge the Financial Contribution made by the Province to the University for the Research Project in any Materials, by printing on each of the Materials the following statement: “We gratefully acknowledge the financial support of the Province of British Columbia through the Ministry of Energy and Mine’s Innovative Clean Energy (ICE) Fund.”

SECTION 7—RECORDS

- 7.01 The University will:
- (a) establish and maintain accounting and administrative records to be used as the basis for the calculation of the Financial Contribution;
 - (b) establish and maintain books of account, invoices, receipts and vouchers for all expenses incurred; and
 - (c) permit the Province, for contract monitoring and audit purposes, at all reasonable times, upon reasonable notice, to enter

any premises used by the University to conduct the Research Project or keep any documents or records pertaining to the Research Project, in order for the Province to inspect, audit, examine, review and copy any findings, data, specifications, drawings, working papers, reports, surveys, spread sheets, evaluations, documents, databases and other Material, (both printed and electronic, including, but not limited to, on hard disk or diskettes), whether complete or not, that are produced, received or otherwise acquired by the University as a result of this Agreement.

7.02 The parties agree that the Province does not have control, for the purpose of the *Freedom of Information and Protection of Privacy Act*, of the records held by the University.

SECTION 8—STATEMENTS AND ACCOUNTING

8.01 Within 3 months of being requested to do so by the Province in writing, the University will provide to the Province a financial statement documenting the expenditure of the Financial Contribution under this Agreement.

8.02 At the sole option of the Province, any portion of the Financial Contribution provided to the University under this Agreement and not expended at the end of the Agreement shall be retained by the University for supplemental research activities related to the Research Project.

SECTION 9—CONFLICT OF INTEREST

9.01 The University must not knowingly allow its research personnel involved in performing the Research Project, to provide any services to any person in circumstances that could give rise to a conflict of interest between their duties to that person and their duties to the Province under this Agreement.

SECTION 10—CONFIDENTIALITY

10.01 The University will treat as confidential all information or material which are clearly marked as confidential or proprietary when first disclosed (“Confidential Information”) by the Province and supplied to or obtained by the University, or any subcontractor, under this Agreement and will not, without the prior written consent of the Province, except as required by applicable law, permit its disclosure except to the extent that such disclosure is necessary to enable the University to fulfill its obligations under this Agreement. Confidential Information may also include information furnished during discussions or oral presentations if it is conspicuously identified as proprietary at the time and then transcribed or confirmed in writing within thirty (30) days, specifically describing what portions of such information is considered to be proprietary or confidential. However, the University is under no obligation to maintain the confidentiality of Confidential Information which the University can show:

- (a) is or subsequently becomes generally available to the public through no act or fault of the University;
- (b) was in the possession of the University prior to its disclosure by the Province to the University;
- (c) was lawfully acquired by the University from a third party who was not under an obligation of confidentiality to the Province; or
- (d) is required by an order of a legal process to disclose, provided that the University gives the Province prompt and reasonable notification of such requirement prior to disclosure; or
- (e) was independently developed by employees, agents or consultants of the University who had no knowledge of or access to the Province’s information as evidenced by the University’s records.

10.02 The University will ensure that the Principal Investigator of the Research Project acknowledges the confidentiality provisions in this Agreement and it is the responsibility of the Principal Investigators to ensure that all other employees engaged in the Research Project are aware of the confidentiality provisions in this Agreement.

SECTION 11—DEFAULT

11.01 Any of the following events will constitute an Event of Default, namely:

- (a) the University fails to comply with any material provision of this Agreement;
- (b) subject to paragraph 4.04, any representation or warranty made by the University in accepting this Agreement is untrue

or incorrect; or

- (c) any information, statement, certificate, report or other document furnished or submitted by or on behalf of the University pursuant to or as a result of this Agreement is untrue or incorrect;

SECTION 12—TERMINATION

- 12.01 Either party may terminate this Agreement for any reason by giving at least thirty (30) days prior written notice to the other.
- 12.02 Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of this Agreement, at its option, elect to do any one or more of the following:
 - (a) terminate this Agreement, in which case the payment of the amount required under paragraph 12.04 of this Agreement will discharge the Province of all liability to the University under this Agreement;
 - (b) require the Event of Default be remedied within a time period specified by the Province;
 - (c) suspend any instalment of the Financial Contribution or any amount that is due to the University while the Event of Default continues;
 - (d) waive the Event of Default; and
 - (e) pursue any other remedy available at law or in equity.
- 12.03 The Province may also, at its option, terminate this Agreement immediately if the Province determines that the University's failure to comply places the health or safety of any person conducting the Research Project at immediate risk, and the payment of the amount required under paragraph 12.04 of this Agreement will discharge the Province of all liability to the University under this Agreement.
- 12.04 Where this Agreement is terminated before 100% completion of the Research Project, the Province will pay to the University all costs and liabilities, including uncancellable commitments, relating to the Research Project up to but no more than the Financial Contribution which have been incurred by the University as of the date of receipt of notice of termination or the date of termination, whichever is later.

SECTION 13—DISPUTE RESOLUTION

- 13.01 In the event of a controversy or dispute between the parties arising out of or in connection with this Agreement, or regarding its interpretation or operation, the parties will use reasonable efforts to resolve the dispute amicably but if the parties, acting reasonably, are unable to resolve their dispute within thirty (30) days after the beginning of the consultation process, then:
 - (a) either party may serve written notice on the other party requiring that they submit the dispute to non-binding mediation;
 - (b) the parties will select a single mediator to mediate the dispute in accordance with the *Arbitration Act* of British Columbia;
 - (c) the language of the mediation proceeding will be English and the place of mediation will be Vancouver, British Columbia;
 - (d) the parties will use reasonable efforts to participate in the mediation process and to resolve their dispute;
 - (e) each party will pay its own costs and an equal share of all other costs of the mediation; and
 - (f) should no amicable settlement be reached by the parties within sixty (60) days from the commencement of the mediation, either party may initiate judicial proceedings to resolve the dispute.

SECTION 14—INDEMNITY

- 14.01 The Province will indemnify and save harmless the University, its Board of Governors, directors, officers, employees, faculty, students and agents from and against any and all losses, claims, damages, actions, causes of action, costs and

expenses that the University, its Board of Governors, directors, officers, employees, students and agents may sustain, incur, suffer or put to at any time either before or after the expiration or termination of this Agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Province, or of any agent, employee, officer or director of the Province pursuant to this Agreement.

- 14.02 The University will indemnify and save harmless the Province, its officers, directors, employees and agents from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Province may sustain, incur, suffer, or be put to at any time, either before or after the expiration or termination of this Agreement, where the same are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the University or its Board of Governors, directors, officers, employees, faculty, contractors, students or agents pursuant to this Agreement.

SECTION 15—ASSIGNMENT AND SUBCONTRACTING

- 15.01 The University will not, without the prior, written consent of the Province:
- (a) assign, either directly or indirectly, this Agreement or any right of the University under this Agreement; or
 - (b) subcontract any obligation of the University under this Agreement.
- 15.02 No subcontract entered into by the University will relieve the University from any of its obligations under this Agreement or impose upon the Province any obligation or liability arising from any such subcontract.
- 15.03 This Agreement will be binding upon the Province and its assigns and the University, the University's successors and permitted assigns.

SECTION 16—OWNERSHIP AND PUBLICATION OF RESULTS AND INTELLECTUAL PROPERTY

- 16.01 Any equipment, machinery, data or other property, provided by the Province to the University for the conduct of the Research Project under this Agreement will:
- (a) be the exclusive property of the Province; and
 - (b) forthwith be delivered by the University to the Province on written notice to the University requesting delivery of the same at the Province's costs, whether such a notice is given before, upon, or after the expiration or sooner termination of this Agreement.
- 16.02 The University will retain title to any equipment purchased with funds provided by the Province under this Agreement and the Province acknowledges that the University's insurance is applicable only to such equipment owned by the University.
- 16.03 The Province acknowledges and agrees that the University owns all right, title and interest in the Material produced under this Agreement and Intellectual Property arising from the Research Project under this Agreement.
- 16.04 The University hereby grants the Province a perpetual non-exclusive, irrevocable, world-wide, fully paid up and royalty-free license to use, make, copy, distribute, translate, practice, and reproduce the Material produced under this Agreement and Intellectual Property arising under this Agreement for scientific, educational, public good and other Non-Commercial uses. In addition, the University grants the Province the additional rights to incorporate all or portions of the Material produced under this Agreement in any reports created by the Province and to further develop the Research Project reports provided that the content of the Research Project reports is not materially modified without the written approval of the University. Upon the Province's request, the University will deliver documents satisfactory to the Province that waive in the Province's favour any moral rights to Research Project reports, as defined in "Schedule A", which the University's employees or contractors may have in said Research Project reports.
- 16.05 The University and its employees will not be restricted from presenting publications at symposia, national or regional professional meetings, or from publishing in journals or other publications, accounts of the work pertaining to this Agreement. Publications, conference presentations, symposia and all other dissemination of material pertaining to the work of this Agreement will recognize the Ministry of Energy and Mine's Innovative Clean Energy (ICE) Fund.

SECTION 17—OTHER FUNDING

17.01 The University will ensure that if the University’s research personnel, involved in performing the Research Project, receive funding for or in respect of the Research Project from any person, firm, corporation or other government or government body, then the University will immediately provide the Province with details thereof.

SECTION 18—NOTICES

18.01 Any written communication from the University to the Province must be mailed, personally delivered, faxed, or electronically transmitted to the following address:

Attention: Will Yeh

E-mail: Will.Yeh@gov.bc.ca

Facsimile: 250-952-0258

Mailing Address:	Physical Address:
Ministry of Energy and Mines Innovative Clean Energy (ICE) Fund PO Box 9314 Stn Prov Govt Victoria, BC V8W 9N1	Ministry of Energy and Mines Innovative Clean Energy (ICE) Fund 4 th Fl., 1810 Blanshard Street Victoria, BC V8T 4J1

18.02 Any written communication from the Province to the University must be mailed, personally delivered, faxed or electronically transmitted to the following address:

TBD

18.03 Any written communication from either party will be deemed to have been received by the other party on the fifth business day after mailing in British Columbia; on the date of personal delivery if personally delivered or on the date of transmission if faxed or emailed.

18.04 Either party may, from time to time, notify the other party in writing of a change of address and, following the receipt of such notice, the new address will, for the purposes of paragraph 18.01 or 18.02 of this Agreement, be deemed to be the mailing address of the party giving notice.

SECTION 19—NON-WAIVER

19.01 No term or condition of this Agreement and no breach by the University of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the Province and the University.

19.02 The written waiver by the Province or any breach by the University of any term or condition of this Agreement will not be deemed to be a waiver of any other provision of any subsequent breach of the same or any other provision of this Agreement.

SECTION 20—ENTIRE AGREEMENT

20.01 This Agreement including the Schedules constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

SECTION 21—SURVIVAL OF PROVISIONS

21.01 All of the provisions of this Agreement in favour of the Province including, without limitation, paragraphs 3.02, 4.04, 7.01, 7.02, 8.02, 10.01, 12.04, 13.01, 14.01, 14.02, 16.01, 16.02, 16.03, 16.04, and all of the rights and remedies of the parties, either at law or in equity, will survive any expiration or sooner termination of this Agreement.

SECTION 22—MISCELLANEOUS

22.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

22.02 The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.

- 22.03 No amendment or modification to this Agreement will be effective unless it is in writing and duly executed by the parties.
- 22.04 If any provision of this Agreement or the application to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.
- 22.05 Nothing in this Agreement operates as a consent, permit, approval or authorization by the Government of the Province of British Columbia or any Ministry or Branch thereof to or for anything related to the Research Project that by statute, the University is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.
- 22.06 This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered shall be an original, and all such counterparts may be delivered by facsimile transmission and such transmission shall be considered an original.
- 22.07 Time is of the essence of this Agreement.
- 22.08 For the purpose of paragraphs 22.09 and 22.10, an “Event of Force Majeure” includes, but is not limited to, acts of God, changes in the laws of Canada, governmental restrictions or control on imports, exports or foreign exchange, wars (declared or undeclared), fires, floods, storms, strikes (including illegal work stoppages or slowdowns), lockouts, labour shortages, freight embargoes and power failures or other cause beyond the reasonable control of a party, provided always that lack of money, financing or credit will not be and will not be deemed to be an “Event of Force Majeure”.
- 22.09 Neither party will be liable to the other for any delay, interruption or failure in the performance of their respective obligations if caused by an Event of Force Majeure, in which case the time period for the performance or completion of any such obligation will be automatically extended for the duration of the Event of Force Majeure.
- 22.10 If an Event of Force Majeure occurs or is likely to occur, then the party directly affected will notify the other party forthwith, and will use its reasonable efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay compliance with its obligations under this Agreement.

The parties hereto have executed this Agreement the day and year as set out above.

SIGNED AND DELIVERED by the University or
an Authorized Representative of the University)
)
)
)
)
_____)
Print Name of University Authorized Representative)
)
)
)
)
_____)
(Signature))

SIGNED AND DELIVERED on behalf of the Province
by an Authorized Representative of the Province
_____)
Print Name of Authorized Representative)
_____)
(Signature)

SCHEDULE A—RESEARCH PROJECT AND TERM

1. Notwithstanding the date of execution of this Agreement, the term of this Agreement will start on _____ and end on _____.
2. The Research Project is the project described in the University's letter of intent and application provided to the Province that resulted in, and as is finally described in, the University's agreement with the Natural Science and Engineering Research Council of Canada ("NSERC"), Agreement # _____ (the "NSERC Agreement").
3. The University must carry out the Research Project in accordance with the terms of the NSERC Agreement.
4. In carrying out the Research Project, the University must obtain all permits, assessments and project funding (other than the funding provided by this Agreement) that are required to complete the Research Project, and complete all necessary consultations for the Research Project to proceed.
5. The University is solely responsible for all aspects of the Research Project, including without limitation, the planning, design, construction, operation, maintenance, worker and public safety, completion and ownership of the infrastructure, and nothing in this Agreement shall be deemed to give the Province any interest in or responsibility for the Research Project, unless otherwise provided in this Agreement.
6. The University must ensure that the Financial Contribution is used:
 - a. solely for the purpose of defraying costs by the University in carrying out and completing the Research Project; and,
 - b. in accordance to NSERC approved expenditures as set out in the NSERC Agreement.
7. The University must not make any material alteration to the Research Project without prior written consent of the Province.
8. The University must submit to the Province within 30 days of completion of the Research Project, a copy of the NSERC approved Final Report.

SAMPLE SCHEDULE B—FINANCIAL CONTRIBUTION

1. The Province agrees to provide to the University the amount of \$ _____ during the Term of the Agreement
2. Payments will be made as follows:
 - (a) an initial payment of \$ _____ within 30 days of the start date of this Agreement subject to:
 - i. the University having secured, by evidence satisfactory to the Province, sponsorship from NSERC and the company identified in its application resulting in this Agreement, for financial contributions each equal to the Province's Financial Contribution. The company's financial contribution must include no more than 50% from in-kind and internal expenses.
 - (b) upon receipt by the Province of the final NSERC approved Final Report pursuant to section 8 of Schedule A herein, a final payment not to exceed \$10,000 or 10% of the amount of this Agreement, whichever is less, subject to receipt of the items in section 3 below.
3. The University will submit to the Province, upon completion of the Research Project, a written statement of account showing:

- (a) the University's legal name and address;
- (b) the date of the statement and a statement number for identification;
- (c) the calculation of the Financial Contribution being claimed with copies of the signed "Statement of Account" (NSERC Form No. 300) due annually to NSERC for the grant account pertaining to the NSERC Agreement; and
- (d) any other billing information reasonably requested by the Province.