

SERVICE CONTRACT

BETWEEN: **NAME OF COMPANY** a corporation incorporated under the laws of Province/State having its offices at Street Address, Name of City, Province/State, Name of Province/State, Country, Postal/Zip Code..

(the “**Company**”)

AND: **KWANTLEN POLYTECHNIC UNIVERSITY** a corporation continued under the *University Act* of British Columbia and having its administrative offices at 12666-72nd Ave, Surrey, British Columbia, V3W 2M8.

(“**Kwantlen**”)

WHEREAS Kwantlen and the Company wish to enter into this agreement (the “**Contract**”) to have Kwantlen under the research services outlined in Schedule A (the “**Services**”) in accordance with the terms of this Contract.

THE PARTIES AGREE AS FOLLOWS:

Services, Budget and Contract Period

1.1 The Parties acknowledge and agree that the attached Schedule “A” will determine the services which Kwantlen will provide (the “**Services**”), the amount(s) which the Company will pay for the Services (the “**Budget**”) and the duration of the Services (the “**Contract Period**”).

Confidentiality

2.1 “**Confidential Information**” means any information provided by the Company to Kwantlen relating to the Services, whether written or otherwise. In order to constitute Confidential Information for the purposes of this Contract, the Company must clearly identify such information in writing as being confidential, or if the disclosure takes place orally or in some other non-tangible form, the Company must summarize it in writing and identify it as being confidential within ten (10) days of the disclosure. Furthermore, such information will not be considered Confidential Information for the purposes of this Contract if and when it:

(i) is made subject to an order by judicial or administrative process requiring it to be disclosed;

(ii) is published or becomes available to the general public other than through a breach of this Contract;

(iii) is obtained by Kwantlen from a third party with a valid right to disclose it, provided that said third party is not under a confidentiality obligation to the Company;

(iv) is independently developed by employees, agents or consultants of Kwantlen who had no knowledge of or access to the Confidential Information; or

(v) was possessed by Kwantlen prior to its receipt from the Company.

- 2.2 Kwantlen will keep and use all Confidential Information in confidence solely for the purpose set forth in this Contract and will not disclose any part of Confidential Information to any person, firm, corporation, or other entity. Without limiting the generality of the foregoing, Kwantlen will not use, manufacture, or sell Confidential Information or any device or means incorporating any Confidential Information, and will not use any Confidential Information as the basis for the design or creation of any device or means.
- 2.3 The Company contemplating the disclosure of Confidential Information acknowledges that Kwantlen by its very nature is 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, Kwantlen 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.
- 2.4 Notwithstanding any termination or expiration of this Contract, the obligations of confidentiality in this Article 2 will survive and continue to be binding upon Kwantlen, its successors, and assigns until three (3) years after such termination or expiration.

Publicity

- 3.1 Notwithstanding anything to the contrary in this Contract, either Party may disclose the identity of the other, the title of the Services, the name of the Investigator, the Contract Period and the amount being paid by the Company for the Services. Except as provided by the foregoing, neither Party may use the name of the other, nor 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 the other.

Publications

- 4.1 The Company recognizes that it is part of the function of Kwantlen to publish information. Accordingly, the researchers will not be restricted from presenting at symposia, national, or regional professional meetings, or from publishing in abstracts, journals, theses, or dissertations, or otherwise, whether in printed or in electronic media, methods and results of the Services, under the following terms and conditions:
 - (i) Kwantlen provides the Company with copies of any proposed publication or presentation at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party; and
 - (ii) the Company has not, within thirty (30) days after receipt of said copies, objected in writing to such proposed presentation or proposed publication in accordance with Article 4.2 of this Contract.
- 4.2 The Company may object to a proposed presentation or proposed publication on the grounds that it contains Confidential Information that was disclosed to Kwantlen by the Company. If the Company makes such objection, Kwantlen will ensure that its

researchers remove such Confidential Information immediately from the proposed presentation or publication, after which Kwantlen and its researchers may proceed with said presentation or publication.

Intellectual Property and Grant of Rights

- 5.1 The Parties acknowledge and agree that in the course of providing the Services, Kwantlen may utilize techniques, processes, and/or tools which are proprietary to Kwantlen. Notwithstanding anything else in this Contract, Kwantlen retains all right in and title to same and any improvements and/or modifications thereto ("**Kwantlen Intellectual Property**").
- 5.2 The Parties hereto acknowledge and agree that during the Contract Period, the Company may provide Kwantlen with access to intellectual property which is proprietary to the Company (the "**Company Intellectual Property**"). During the Contract Period in the performance of the Services, Kwantlen may, either solely, or jointly with the Company, conceive and/or make inventions, improvements, and/or discoveries related to the Company Intellectual Property (the "**New Intellectual Property**"). All rights and title to Company Intellectual Property and New Intellectual Property will belong to the Company.
- 5.3 The Company hereby grants Kwantlen a non-exclusive, perpetual, royalty-free license to use New Intellectual Property for academic and research purposes only.

Disclaimer of Warranty

- 6.1 KWANTLEN MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY DATA OR RESULTS ARISING FROM THE SERVICES. KWANTLEN SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND WILL IN NO EVENT BE LIABLE FOR ANY LOSS OF PROFITS, BE THEY DIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL OR OTHER SIMILAR OR LIKE DAMAGES ARISING FROM ANY DEFECT, ERROR OR FAILURE TO PERFORM, EVEN IF KWANTLEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE COMPANY HEREBY ACKNOWLEDGES THAT THE SERVICES ARE OF AN EXPERIMENTAL AND EXPLORATORY NATURE, THAT NO PARTICULAR RESULTS CAN BE GUARANTEED, AND THAT IT HAS BEEN ADVISED BY KWANTLEN TO UNDERTAKE ITS OWN DUE DILIGENCE WITH RESPECT TO ALL MATTERS ARISING FROM THIS CONTRACT. THIS ARTICLE 6.1 WILL SURVIVE TERMINATION OR EXPIRATION OF THIS CONTRACT.

Indemnity

- 7.1 The Company hereby indemnifies, holds harmless and defends Kwantlen, its Board of Governors, directors, officers, employees, faculty, students, invitees, and agents against any and all claims (including all reasonable legal fees and disbursements incurred) arising out of the receipt or use by the Company of any data or results arising from the Services including, without limitation, any damages or losses, consequential or otherwise, arising from or out of the Services, however they may arise.

Insurance

8.1 The Company shall, without limiting its obligations or liabilities herein and at its own expense, provide proof of general liability insurance with a limit of not less than two million dollars (\$2,000,000.00) (or such other amount as the institution may choose), inclusive per occurrence for bodily injury and property damage including loss of use thereof. Such insurance shall extend to cover the Company, its employees, servants, agents, contractors, and volunteers and as additional Insured's with respect to liability arising out of the use or occupation by the Company of the property belonging to Kwantlen.

Termination

9.1 This Contract will be effective for the full duration of the Contract Period unless sooner terminated in accordance with the provisions of this Article 9.

9.2 Either Party may terminate this Contract upon ninety (90) days prior written notice to the other.

9.3 No termination of this Contract however effectuated, will release the Parties from their rights and obligations under Articles 2 (Confidentiality), 3 (Publicity), 5 (Intellectual Property and Grant of Rights), 7 (Indemnity) and 9.4.

9.4 In the event of early termination of this Contract by the Company or due to a breach of this Contract by the Company, the Company will pay Kwantlen for all work done on the Services to date, including any work in progress as at the receipt of notice of such termination.

9.5 Kwantlen reserves the right to suspend work on the Services or to terminate this Contract by delivering written notice of same to the Company if the Company fails to pay any invoiced amount within thirty (30) days from the due date.

9.6 The Parties may extend this Contract in writing for additional periods under mutually agreeable terms and conditions. Said extension will be effective upon signature by both Parties.

Notices

10.1 All notices or other documents that either Party is required or wishes to deliver to the other Party may be delivered only by personal delivery or by registered or certified mail, all postage and other charges prepaid, at the address below or at such other address as that Party may designate in writing to the other. Any notice personally delivered or sent by facsimile will be deemed to have been given or received at the time of delivery or upon confirmation of transmission of the facsimile

Company

Name
Title
Company
Address

Institution

Re: File <Kwantlen-ORS #>
Office of Research and Scholarship
Kwantlen Polytechnic University
12666- 72nd Ave

City, Province (State)	Surrey, BC
Country	Canada
Postal (Zip) Code	V3W 2M8
Telephone:	Telephone: 604-599-3163
Fax:	Fax: 604-599-1656

The Company may direct questions of a scientific nature or regarding financial matters to Kwantlen through the following contacts:

Scientific Matters

Department of <>
Kwantlen Polytechnic University
12666- 72nd Ave
Surrey, BC
Canada
V3W 2M8
Telephone:
Fax:

Financial Matters

Executive Director, Finance

General

- 11.1 Nothing contained in this Contract is to be deemed or construed to create between the Parties a partnership or joint venture. No Party has the authority to act on behalf of any other Party, or to commit any other Party in any manner at all or cause any other Party's name to be used in any way not specifically authorized by this Contract.
- 11.2 The Schedules and the terms and conditions contained in this Contract constitute the entire understanding between the Parties. The Parties will be bound by the Schedules except to the extent that they may conflict with the terms and conditions contained in this Contract, in which case the terms and conditions of this Contract will govern. No modifications will be binding unless executed in writing by the Parties.
- 11.3 If any provision of this Contract will be held to be invalid, illegal or unenforceable under any applicable statute or rule of law, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby.
- 11.4 No condoning, excusing or overlooking by either Party of any default or breach of any terms of this Contract by the other Party will operate as a waiver of the Party's rights under this Contract of any continuing or subsequent default or breach. No waiver will be inferred from or implied by anything done or omitted by a Party except an expressed waiver in writing.
- 11.5 Neither Party who exercises a specific right or remedy will be precluded from or prejudiced 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.
- 11.6 This Contract will be governed by and construed in accordance with the laws in force in the Province of British Columbia and Canada without regard to its conflict of law rules

and by signing this Contract the Parties agree to the exclusive jurisdiction of the Courts of British Columbia.

11.7 This Contract may be executed in counterpart by the Parties, either through original copies or by facsimile. An executed copy of this Contract delivered by facsimile will constitute valid execution and delivery of this Contract.

SIGNED BY THE PARTIES AS A CONTRACT on _____, 20__ but effective as of the beginning of the Contract Period regardless of the date of execution.

Signed for and on behalf of
KWANTLEN POLYTEHNIC UNIVERSITY
by its duly authorized officer(s)

Signed for and on behalf of
<COMPANY>
by its duly authorized officer(s):

Name:
Title:
Date:

Name:
Title:
Date:

Name:
Title:
Date:

Name:
Title:
Date:

Name:
Title:
Date:

Name:
Title:
Date:

I have read and understood the foregoing **Contract** and understand my responsibilities as the :

Name:
Department of
Date:

SCHEDULE "A"

Sample Statement of Services and Budget

Kwantlen will provide the Services under the supervision of Dr. <> , Department of <>, Faculty of <> , at the University (the "**Investigator**") during the Contract Period from: to:

(INSERT STATEMENT OF WORK & BUDGET)

The Company will pay Kwantlen the total amount of \$ payable in funds and in accordance with the Budget. The Company will pay to Kwantlen the amounts on the following due dates:

- 1) Upon execution of this AgreementAmount
- 2) mth/dd/yr.....Amount
- 3) mth/dd/yr.....Amount

Payment by cheque will be made payable to Kwantlen Polytechnic University and forwarded to the following address:

Attention: Office of Research and Scholarship
 Kwantlen Polytechnic University
 12666-72nd Ave
 Surrey, British Columbia
 V3W 2M8

Any funds that may remain after completion of the Services will be retained by Kwantlen Polytechnic University.