



EXECUTIVE EMPLOYMENT AGREEMENT

THIS AGREEMENT is effective as of 18 day of December, 2018 (the "**Effective Date**")

Between:

THE GOVERNORS OF THE UNIVERSITY OF CALGARY, a corporation created pursuant to the *Post-secondary Learning Act* of the Province of Alberta, being Chapter P-19.5 S.A. 2003 (hereinafter called the "**Board**" or the "**University**")

- and -

DR. F. EDWARD R. McCAULEY, of the City of Calgary, in the Province of Alberta (hereinafter called the "**Executive**")

WHEREAS the Board, in accordance with the powers vested in it pursuant to the *Post-secondary Learning Act*, wishes to appoint the Executive as President and Vice-Chancellor of the University of Calgary and the Executive wishes to accept the appointment pursuant to the terms of this Agreement;

AND WHEREAS the Board is bound by certain obligations and restrictions pursuant to the provisions of the *Reform of Agencies, Boards and Commissions Compensation Act* (Alberta), the *Reform of Agencies, Boards and Commissions (Post-secondary Institutions) Compensation Regulation* (Alberta) and the Guidelines thereunder;

AND WHEREAS the Executive and the Board now wish to enter into this Agreement to set forth the rights and obligations of each of them with respect to the Executive's appointment with the Board;

NOW THEREFORE in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the Executive and the Board hereby agree as follows:

ARTICLE 1 DEFINITIONS

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

- (a) "**Administrative Leave**" means an entitlement to a period of temporary paid leave from a job assignment with pay and benefits intact, which the University offers to its tenured academic staff members;
- (b) "**Agreement**" means this executive employment agreement and any schedules attached hereto;
- (c) "**Base Salary**" means the annual base salary set out in Section 3.1;
- (d) "**Confidential Information**" means any information of a confidential nature which relates to the University, including but not limited to, trade secrets, technical information, patents, marketing strategies, sales and pricing policies, financial information, business, marketing or technical plans, programs, methods, techniques, concepts, formulas, documentation, intellectual property, software, industrial designs, products, technical studies and data, strategic studies, client and supplier lists, shareholder data and personnel information.

Notwithstanding the foregoing, Confidential Information shall not include any information which:

- (i) was in the possession of or known to the Executive, without any obligation to keep it confidential, before it was disclosed to the Executive by the University;
 - (ii) is or becomes public knowledge through no action of the Executive;
 - (iii) was independently developed by the Executive outside the scope of the Executive's employment duties to the University;
 - (iv) was disclosed by the University to another person or entity without any restriction on its use or disclosure, or
 - (v) is or becomes lawfully available to the Executive from a source other than the University;
- (e) "**Continuous Service**" means employment without any interruption in service of more than thirty (30) days, which is inclusive of the Executive's previous service with the University and other Public Agency (if applicable), provided that the Executive was not provided with any severance, termination or separation pay in respect of that previous employment;
- (f) "**Department**" means a department of the Government or of the public service of Alberta established under the *Government Organization Act*, a part of the public service of Alberta that is designated as a department by the Lieutenant Governor in Council for the purposes of the *Public Service Act*, and any part of the public service of Alberta, but does not include an Office of the Legislature;
- (g) "**Ethics Commissioner**" means Alberta's Ethics Commissioner, appointed by the Lieutenant Governor in Council;
- (h) "**Health Benefits**" means group insurance coverage, which includes Extended Health Care, Dental Care, Group Life Insurance, Accidental Death and Dismemberment Insurance, Long Term Disability, Optional Life Insurance, Voluntary Accidental Death and Dismemberment Insurance, Voluntary Critical Illness Insurance, Flexible Spending Account, and Employee and Family Assistance Plan;
- (i) "**Just Cause**" means any matter that would constitute just cause for termination from employment at common law;
- (j) "**Public Agency**" means a public agency to which the *Alberta Public Agencies Governance Act* applies;
- (k) "**Severance Payment**" has the meaning set out in Section 5.2;
- (l) "**Severance Period**" means the period starting the day after the Termination Date and ending after the number of weeks for which the Severance Payment is payable as set out in Section 5.2;
- (m) "**Term**" has the meaning set out in Section 2.4;
- (n) "**Termination Date**" means the last day actively worked by the Executive under this Agreement as President and Vice-Chancellor and does not include any period of statutory, contractual or reasonable notice of termination of employment or any period of salary continuance or deemed employment, whether pursuant to this Agreement or at law.

ARTICLE 2 GENERAL

Employment

- 2.1 Subject to the terms and conditions hereof, the Board appoints the Executive as President and Vice-Chancellor of the University and the Executive agrees to render services to the University in this capacity.

Reporting

- 2.2 The Executive will report to the Board or such other Committees as may be designated by the Board acting on delegated authority of the Board, so long as such duties, powers and lines of reporting are as customarily done by a President and Vice-Chancellor in an autonomous educational institution of similar size and stature to the University.

Faculty Position

- 2.3 Subject to the terms and conditions hereof, the Executive will also hold an appointment as Professor with tenure in the Faculty of Science of the University, provided however that so long as the Executive continues to hold the office of President and Vice-Chancellor, the Executive will not be entitled to receive any compensation, nor be expected to perform any duties, with respect to the appointment as Professor.

Term of Agreement

- 2.4 This Agreement will be for a fixed five (5) year term commencing on January 1st, 2019 and ending on December 31st 2023 (the "**Expiration Date**"), unless terminated earlier in accordance with the terms of this Agreement. The Term is subject to any subsequent changes in law which may impact the Board's ability to provide such a Term of employment to the Executive. The Term shall automatically expire on the Expiration Date, at which time the University will have no further obligations to the Executive other than for unpaid Base Salary and accrued vacation pay properly owing to the Executive up to and including the Termination Date, and other than as provided by this Agreement.

Notice for Negotiations

- 2.5 The Board will advise the Executive at least twelve (12) months in advance of the Expiration Date of whether the Board intends to negotiate a new agreement with the Executive, governing the appointment of the Executive as President and Vice-Chancellor of the University subsequent to the expiry of the Term. In the event the parties successfully negotiate and execute a mutually agreed-upon agreement which complies with all applicable laws, the Executive's appointment as President and Vice-Chancellor shall be governed by the terms and conditions of the new agreement upon the expiry of the Term. For clarity, regardless of whether the parties successfully negotiate and execute a new agreement, this Agreement shall automatically expire on the Expiration Date.

ARTICLE 3 REMUNERATION

Base Salary

- 3.1 The University shall pay the Executive a gross annual salary in the amount of \$447,000.00 Canadian Dollars, less any withholdings required by applicable law, payable in accordance with the University's payroll practices and procedures. The Base Salary shall be reviewed by the Human Resources and Governance Committee or such Committee as may be designated by the Board acting on delegated authority of the Board not less frequently than annually.

Health Benefits

- 3.2 The Executive shall be entitled to participate in Health Benefits commensurate with the Executive's position, provided that the total annual cost to the University of all Health Benefits shall not exceed 5% of the Executive's Base Salary. All Health Benefits provided by the University to the Executive shall be done in accordance with the formal plan documents or policies, and any issues with respect to entitlement or payment of Health Benefits shall be governed by the terms of such documents or policies establishing the benefit in issue. The University reserves the right to change, substitute and delete benefits from time to time, so long as such change, substitution or deletion does not materially or detrimentally affect any right, protection or benefit to which the Executive is entitled, and that any resulting benefit shall be substantially similar to the benefits to which the Executive is entitled hereunder.

Administrative Leave

- 3.3 The Executive shall accrue 10.4 weeks of Administrative Leave per completed year of service under this Agreement, to a maximum of 52 weeks' accrued Administrative Leave.
- 3.4 In the event the Executive elects to return to his faculty position following the expiration of the Term, the accrued Administrative Leave in each year will be aggregated and offered to the Executive on a consecutive basis upon the Expiration Date. For each 10.4 weeks of Administrative Leave earned, the Executive shall be provided with 20% of his Base Salary in the year which the Administrative Leave was earned. The Executive's entitlement to benefits during Administrative Leave shall be based upon his Base Salary during his final year as President and Vice-Chancellor.
- 3.5 The Executive shall forfeit any and all Administrative Leave accrued under this Agreement if any one of the following events occur:
- (a) the Executive elects not to return to his faculty position following the expiration of the Term;
 - (b) the Executive's appointment as President and Vice-Chancellor under this Agreement is terminated during the Term by the University for Just Cause;
 - (c) the Executive resigns from his appointment as President and Vice-Chancellor under this Agreement during the Term; or
 - (d) the Executive's appointment as President and Vice-Chancellor under this Agreement is terminated as a direct or indirect result of changes in legislation or regulation.

In the event the Executive's appointment as President and Vice-Chancellor under this Agreement is terminated during the Term without Just Cause, the Executive shall be provided with payment in lieu of Administrative Leave accrued up to and including the Termination Date, in accordance with Article 5 of this Agreement.

Pensions

- 3.6 The Executive shall be entitled to participate in the Universities Academic Pension Plan and the Supplemental Pension Plan, pursuant to the terms and conditions defined in such plans, provided that the total cost to the University shall be no greater than if the Executive were a participant in the Management Employees Pension Plan established by the *Public Sector Pension Plans Act* and the Supplementary Retirement Plan for Public Service Managers.

Vacation

- 3.7 The Executive shall be entitled to a maximum of forty (40) days' paid vacation each year. The Executive will take his vacation at times having regard for the best interests of the University. The Executive may not carry forward unused vacation time, except with the prior written approval of the Board and, except as may be required by applicable employment standards legislation, will lose the entitlement to unused vacation.

Automobile and Parking

- 3.8 The University shall pay to the Executive a monthly car allowance in the gross amount of five hundred dollars (\$500), subject to applicable taxes.
- 3.9 The University shall provide the Executive with designated parking at the Executive's primary work location.

Reimbursement of Expenses

- 3.10 The University shall reimburse the Executive for reasonable travel and other expenses actually and reasonably incurred in the performance of his duties on behalf of the University, in accordance with the University's expense policies and procedures, which in all circumstances shall reimburse expenses to the Executive upon terms that are no greater than the *Travel, Meal and Hospitality Expense Directive* (Treasury Board Directive #1/2015), as amended from time to time.

Indemnity

- 3.11 Subject to Section 3.13, the University shall defend, indemnify and save harmless the Executive from and against all losses, damages, liabilities, fines, penalties, costs and expenses arising from any demand, claim, action, proceeding or order whatsoever (hereinafter called a "**Claim**") made or brought against the Executive directly or indirectly, to the extent that such Claim relates to or arises as a result of or in connection with the Executive's performance of his obligations under this Agreement, except to the extent that such Claims result from the Executive's gross negligence and/or willful misconduct.
- 3.12 The University will indemnify and save the Executive harmless from and against all demands, Claims, costs, charges and expenses, including any amount paid to settle an action or satisfy a judgement, reasonably incurred by the Executive in respect of any civil, criminal or administrative action or proceeding to which the Executive is made a party by reason of being or having been the President and Vice-Chancellor of the University if:
- (a) The Executive acted honestly and in good faith with a view to the best interest of the University; and
 - (b) In the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Executive had reasonable grounds for believing that his conduct was lawful.

Taxes and Withholdings

- 3.13 Taxes or other amounts required by law to be deducted from any amount paid pursuant to this Agreement shall be withheld by the University and remitted on behalf of the Executive to the Canada Revenue Agency or the appropriate governmental entity.

ARTICLE 4 COVENANTS OF THE EXECUTIVE

Time of Service

- 4.1 During the Term, the Executive shall devote the whole of his working time, attention and ability to the affairs of the University and shall faithfully serve and use his best efforts to promote the interests of the University. During his appointment as President and Vice-Chancellor under this Agreement, the Executive shall not be involved in any other appointment, business, undertaking or employment (including self-employment), unless prior written approval is received from the Board and the Ethics Commissioner and provided that the Executive complies with any conditions imposed by the Ethics Commissioner in such written approval. Except as disclosed in the attached **Appendix "A"**, the Executive is not involved in any appointment, business, undertaking or employment.

Duties and Responsibilities

- 4.2 The Executive shall perform such duties and exercise such powers related to the office of President and Vice-Chancellor in accordance with the *Post-secondary Learning Act* and as may be prescribed or specified from time to time by the Board, so long as such duties and powers are as customarily done by a President and Vice-Chancellor in an educational institution of similar size and stature to the University.
- 4.3 The Executive shall truly and faithfully account for and deliver to the University all money, securities and things of value belonging to the University which the Executive may from time to time receive for, from, or on account of the University.

Regulations and Policies

- 4.4 The Executive shall be bound by and shall faithfully observe and abide by all applicable laws and regulations (including but not limited to the *Conflicts of Interest Act*) and the rules, regulations and policies of the University as they may be amended or created from time to time.

Conflicts of Interest

- 4.5 The Executive must conduct himself impartially at all times and avoid real and apparent conflicts of interest, and make all necessary and applicable disclosures mandated by the *Conflicts of Interest Act* and as contained in the University's Conflict of Interest Policy as promulgated, and as amended from time to time; including disclosure of real and apparent conflicts of interest, and financial disclosure relating to assets, liabilities, investments, holdings and other interests of the Executive, his spouse or adult interdependent partner, minor children or any corporation controlled by the Executive, his spouse or adult interdependent partner.

Confidentiality

- 4.6 At all times during the Term of this Agreement and after the Termination Date the Executive will keep strictly confidential all Confidential Information and shall not use for his own purposes (or for any purposes other than those of the University) or disclose the Confidential Information to any unauthorized persons, except with the express consent of the Board, or otherwise as required by law. The provisions of this Section 4.6 shall survive the termination or expiration of this Agreement.

Return of Property

- 4.7 Upon the expiry of the Term of this Agreement or on termination otherwise of this Agreement, the Executive shall forthwith deliver or cause to be delivered to the University all books, documents, effects, money, securities or other property belonging to the University or for which the University is liable to others, which are in the possession, charge, control or custody of the Executive.

ARTICLE 5 TERMINATION

Termination for Just Cause

- 5.1 The University may immediately terminate this Agreement and the Executive's employment under this Agreement for Just Cause, without notice, pay, or any further obligation to the Executive except where otherwise stated in this Agreement and except for any accrued Base Salary, accrued benefits and accrued vacation. The University will provide the Executive with written notice of immediate termination, which notice shall set out the particulars of the Just Cause.

Termination without Just Cause

- 5.2 The University may terminate the Executive's employment under this Agreement at any time during the Term without Just Cause. In the case of termination without Just Cause, the Executive will be entitled to the following Severance Payment:
- (a) Four (4) weeks' Base Salary per year of Continuous Service, to a maximum of fifty-two (52) weeks' Base Salary;
 - (b) Payment in an amount equal to the cost to the University for four (4) weeks of benefits per year of Continuous Service, to a maximum of 16% of the amount in Section 5.2(a); and
 - (c) Payment in lieu of the Executive's Administrative Leave that has accrued to the Executive up to and including the Termination Date, to a maximum of fifty-two (52) weeks.

The Executive hereby acknowledges and agrees that should he become employed with either the Alberta Crown or a Public Agency during the Severance Period, the Executive shall repay the University a portion of the Severance Payment equal to the amount of salary, before mandatory statutory deductions and benefits, earned in respect of his new employment during the Severance Period, to the maximum of the full Severance Payment, before mandatory statutory deductions.

Resignation by the Executive

- 5.3 The Executive may terminate his service under this Agreement at any time during the Term upon giving at least three (3) months' written notice of resignation, while endeavouring to give six (6) months' written notice thereof to the Board. The Executive will receive his Base Salary, benefits and other entitlements provided for in this Agreement during the resignation notice period, but shall not be entitled to any of the payments provided by Section 5.2.

ARTICLE 6 PROVISIONS AT CONCLUSION OF APPOINTMENT

Commencement of Duties as Professor

- 6.1 At the expiration of the Term or upon termination with or without Just Cause, the Executive may forthwith commence duties on a full-time basis as a tenured Professor in the Faculty of Science at a rate of remuneration commensurate with his qualifications and experience, to be negotiated between the Executive and the Board (subject to the provisions of any applicable Collective Agreement), except that if not otherwise agreed the Executive's remuneration shall be the Executive's academic rank salary as of the effective date of this Agreement plus the value of each annual adjustment and deemed increment awarded during the Term of this Agreement. For the purposes of this Section, the terms "academic rank salary", "annual adjustment" and "increment

awarded" have the same meaning as those terms as defined in the Collective Agreement with the University of Calgary Faculty Association except that the deemed increment will be calculated as the average of the most recent five (5) years that the Executive was assessed under the Collective Agreement.

Post-Appointment Restrictions

- 6.2 Unless the Executive receives a waiver or reduction of the applicable restricted period from the Ethics Commissioner, the Executive shall not:
- (a) for a period of 12 months from the Termination Date, lobby any public office holder as defined in the *Lobbyists Act*;
 - (b) for a period of 12 months from the Termination Date, act on a commercial basis or make representations on his own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the Executive, while in the position of President and Vice-Chancellor, directly acted for or advised a Department or Public Agency involved in the matter;
 - (c) for a period of 12 months from the last day the Executive had a direct and significant official dealing with a Department or Public Agency during the Term, make representations with respect to a contract or benefit from that Department or Public Agency;
 - (d) for a period of 12 months from the last day the Executive had a direct and significant official dealing with a Department or Public Agency during the Term, solicit or accept on his own behalf a contract or benefit from that Department or Public Agency; and
 - (e) for a period of 12 months from the last day the Executive had a direct and significant official dealing with an individual, organization, board of directors or equivalent body of an organization during the Term, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

ARTICLE 7 PRIVACY

- 7.1 The Executive acknowledges and agrees that the Executive will take all necessary steps to protect and maintain personal information of the employees, consultants or students of the University obtained in the course of the Executive's employment with the University. The Executive shall at all times comply, and shall assist the University to comply, with all applicable privacy laws.

The Executive acknowledges and agrees that the disclosure of the Executive's personal information may be required as part of: (i) the ongoing operation of the University, (ii) as required by law or regulatory agencies, (iii) for the purpose of requesting for approval of a policy; (iv) as part of the University's audit process, (v) as part of a potential business or commercial transaction, or (vi) as part of the University's management of the employment relationship (together, the "**Personal Information Disclosure**"), and the Executive hereby grants consent as may be required by applicable privacy laws to the Personal Information Disclosure.

ARTICLE 8 INTERPRETATION AND ENFORCEMENT

Fair and Reasonable

- 8.1 The Parties confirm that the notice and pay in lieu of notice provisions contained in this Agreement are fair and reasonable and the Parties agree that upon any termination by the Board pursuant to Sections 5.2 and 5.3, or upon any termination effected by the Executive pursuant to Section 5.4, the Executive, except in respect of amounts payable in respect of termination as herein set forth, shall have no action, cause of action, Claim or demand against the University based upon the termination and severance provisions herein.

Sections and Headings

- 8.2 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The term "this Agreement" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections in this Agreement.
- 8.3 In this Agreement, words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

Benefit of Agreement

- 8.4 This Agreement shall ensure to the benefit of and be binding upon the heirs, executors, administrators and legal personal representatives of the Executive and the successors and assigns of the University respectively. The obligation of the Board to make any payment to the Executive pursuant to this Agreement shall not be affected by, and the amount of such payment shall not be reduced by virtue of the death of the Executive in which event the amounts payable shall be paid to the beneficiary designated by the Executive pursuant to the University's Death Benefit Policy. In the event of the death of the Executive, the University owes to the Executive's estate or beneficiary everything earned up to the time of death. The event of death terminates this Agreement.

Entire Agreement

- 8.5 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral agreements, express, implied or statutory between the Parties other than as expressly set forth in this Agreement.

Amendment and Waivers

- 8.6 No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both of the Parties hereto. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.

Assignment

- 8.7 Neither this Agreement nor the rights or obligations hereunder may be assigned by either Party.

Severability

- 8.8 If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

Notices

- 8.9 Any demand, notice or other communication (in this Section referred to as a "**Communication**") to be made or given in connection with this Agreement shall be made or given in writing and may be made or given by personal delivery or by registered mail addressed to the recipient as follows:

To the Executive:

Dr. E. Edward R. McCauley



To the University:

Chair, Board of Governors
The University of Calgary
2500 University Drive N.W.
Calgary, Alberta T2N 1N4

or such other address as may be designated by either Party to the other. Any Communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if made or given by registered mail, on the third day, other than a Saturday, Sunday or statutory holiday in Alberta, following the deposit thereof in the mail. If the Party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of the mail, any such Communication shall not be mailed but shall be made or given by personal delivery.

Governing Law

- 8.10 This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta.

Attornment

- 8.11 For the purpose of all legal proceedings, this Agreement shall be deemed to have been performed in the Province of Alberta and the courts of the Province of Alberta shall have exclusive jurisdiction to entertain any action arising under this Agreement. The University and the Executive each hereby attorn to the jurisdiction of the courts of the Province of Alberta provided that nothing herein contained shall prevent the University from proceeding at its election against the Executive in the courts of any other province or country.

Provisions Which Operate Following Termination

- 8.12 Notwithstanding the termination of the appointment of the Executive for any reason whatsoever and with or without Just Cause, or as at the expiration date of the Term, the provisions of Sections 3.12, 3.13, 4.6, 4.7 and 6.2 shall continue in full force and effect.

Execution in Counterpart

8.13 This Agreement may be executed in counterpart, each of which shall be deemed to be an original and all counterparts shall together constitute one agreement. Delivery to a Party may be effected by the delivery of a facsimile copy of a signed execution page to that Party.

Copy of the Agreement

8.14 The Executive hereby acknowledges receipt of a copy of this Agreement duly signed by the University.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the Effective Date.

**THE GOVERNORS OF THE UNIVERSITY OF
CALGARY**

Per: _____

Name _____

Chair, Board of Governors

WITNESS

Dr. F. Edward R. McCauley

APPENDIX “A” – CURRENT INVOLVEMENTS

1. West Campus Development Corporation Board of Directors;
2. Compute Canada Board of Directors; and
3. President’s Research Council for the Canadian Institute of Advanced Research.