DONATION AGREEMENT

THIS AGREEMENT dated the [xx] DAY OF [xxxxx], 20[xx]

BETWEEN:

OF THE FIRST PART

(hereinafter called the “Donor”)

– and –

SIMON FRASER UNIVERSITY
as represented by the University Archivist,
Simon Fraser University Archives

(hereinafter called the “Archives”)

OF THE SECOND PART

WHEREAS the Donor is the owner of a certain Fonds/Collection and desires to give the said Fonds/Collection to the Archives subject to the restrictions on the use of the material as is stipulated herein.

AND WHEREAS the Archives is authorized by the Archives, Recorded Information Management, and Freedom of Information and Protection of Privacy Policy, I10.01, to acquire by gift or in any other manner material belonging to or having a bearing on the teaching and research endeavours of the University and may by agreement with the Donor of the Fonds/Collection place such restrictions on the use of the Fonds/Collection as may be stipulated in the Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration the receipt and sufficiency of which is acknowledged by each of the parties hereto, the parties covenant and agree each with the other as follows:
ARTICLE ONE

INTERPRETATION

1.01 Specific Definitions — Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings ascribed to them as follows:

a) Agreement — “Agreement” means this agreement entitled “Donation Agreement” and all instruments supplemental hereto or in amendment or confirmation thereof;

b) Archivist — “Archivist” means the University Archivist, Simon Fraser University Archives and includes his/her staff;

c) Board — “Board” means the National Archives Appraisal Board;

d) Descriptive Finding Aid — “Descriptive Finding Aid” means a typed inventory prepared in accordance with the established practice of the Archives;

e) Culling — “Culling” means the process of removing documents lacking enduring value from Fonds/Collection during the processing of the material;

f) Fonds/Collection — “Fonds/Collection” means the Donor Fonds/Collection, as described in Schedule A;

g) Research Agreement — “Research Agreement” means a legal document that allows researchers to gain complete access to personal information banks and general records, subject to certain terms and conditions of security and confidentiality.

[Use only for agreements with corporate bodies]

1.02 Gender and Number — In this Agreement, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.03 Article and Section Headings — The insertion of headings and the division of this Agreement into Articles and Sections are for convenience of reference only and shall not affect the interpretation hereof.

1.04 Entire Agreement — The Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions with respect to the subject matter hereof, whether oral or written. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the parties.

1.05 Applicable Law — This Agreement shall be construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as a British Columbia contract. The parties hereto agree to attorn to the jurisdiction of the British Columbia courts.

[Use only for agreements with corporate bodies]

1.06 Time of Essence — Time is of essence hereof.
1.07 **Severability of Provisions** — The invalidity or unenforceability of any provision of this Agreement or any covenant herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid provision or covenant shall be deemed to be severable.

ARTICLE TWO

DONATION

[Use when the material is being deeded to the Archives, i.e. a tax receipt is not requested]

2.01 **Donation** — The Donor shall give, transfer and assign all right, title and interest in and to the Fonds/Collection described in Schedule A to the Archives by way of gift to the Archives, to become the sole and exclusive property of the Archives subject only to the reservations set out hereinafter. The Donor represents and warrants that the Donor is the sole owner of the gift, and that the gift is free from all liens, charges or encumbrances.

It is understood by the Donor that this gift is made absolutely and unconditionally to the Archives.

[Use when the fonds is open and the Donor would like to make regular accruals]

2.02 **Frequency** — The Donor shall transfer the Fonds/Collection to the Archives every five years, beginning [yyyy] (i.e. [yyyy, yyyy, yyyy, etc]). The material in the Fonds/Collection shall be a minimum of five years old calculated from the date of creation.

2.03 **Physical Transfer** — The Donor shall, at the Donor’s expense, make all arrangements for the physical transfer of the Fonds/Collection including packaging and transport.

ARTICLE THREE

OBLIGATIONS OF THE ARCHIVES

3.01 **Review and Return of Material** — The Archivist shall review the Fonds/Collection and shall arrange and describe those materials, which the Archivist in his/her sole discretion considers to be of permanent archival value. The Archivist shall use reasonable efforts to notify the Donor of any material not considered to be of permanent archival value and shall, at the request of the Donor, return such material to the Donor. The Archives agrees further that if at any time, subsequent to the review of the Fonds/Collection, the Archivist decides that any material no longer has archival value, the Archivist shall use reasonable efforts to notify the Donor that such material will no longer be maintained by the Archives and, at the request of the Donor, shall return such material to the Donor. Return of material to the Donor means that ownership of the material is transferred back to the Donor including all rights, titles and interest. If the Donor does not request the return of the material within thirty (30) days of the date of any such notice, the Archives may dispose of such material.

[or]

**Review and Disposal of Material** — The Archivist shall review the Fonds/Collection and shall arrange and describe those materials, which the Archivist in his/her sole discretion considers to be of permanent archival value. The Archivist shall confidentially destroy at his/her discretion material deemed not to be of permanent archival value.
3.02 **Descriptive Finding Aid** — The Archivist shall prepare a Descriptive Finding Aid and forthwith upon completion, the Archivist shall provide to the Donor a link to the online Descriptive Finding Aid.

3.03 **Preservation and Maintenance** — The Archives shall preserve and maintain the Fonds/Collection in accordance with archival practice.

**ARTICLE FOUR**

**APPRAISALS AND OFFICIAL RECEIPTS**

[Use only if a condition of donation is the issuance of a tax receipt]

[Re-number articles if this section is omitted]

4.01 **Appraisal and Tax Receipts** — The Archives, at its sole expense, will arrange to have the fair market value of the donated materials appraised by an independent appraiser or the Board. An official receipt in the name of Simon Fraser University shall be issued to the Donor in an amount equal to the appraised value of the donate materials.

**ARTICLE FIVE**

**RESTRICTIONS ON ACCESS AND USE**

[Use only one of the following clauses as appropriate:]

5.01 **Identification of Restricted Material** — Some material in this donation may contain personal or confidential information. The Archivist may restrict access to this material as required by law.

    [or]

Some material in this donation may contain personal or confidential information. Access to this material may be restricted at the discretion of the Archivist.

    [or]

Access to the [describe the specific material] shall be restricted according to Section 5.03.

    [or]

The material in this Fonds/Collection shall be available for public research and examination with no restrictions.

5.02 **Access of Archivist and Appraisers** — The Archivist shall have access to the Restricted Material for the purposes of arranging, describing, and storing such material in accordance with archival procedure, and the Board and independent appraisers, if applicable, shall have access for the purposes of appraising the Fonds/Collection.

[Use only one of the following clauses as appropriate:]

5.03 **Administration of Access** — Requests for access to Restricted Material shall be referred to the Donor. Only the Donor, or persons authorized in writing by the Donor, shall be permitted to have access to the Restricted Material, and such access shall be on the conditions set out in the Donor's
authorization (see appendix). The Donor authorizes the Archives to release the Donor’s name, and contact information to persons who wish to request access to restricted material. After \[mmd/dd/yyyy\] the Restricted Material shall be open for public research and examination with no restrictions. In the event that the Donor is unable to act in this matter, either for reasons of incapacity or death, the Archivist shall make a decision regarding access to the papers.

[or]

Requests for Access to Restricted Material — Requests shall be referred to the Archivist. Only persons authorized in writing by the Archivist shall be permitted to have access to the Restricted Material, and such access shall be on the conditions set out in the Archives’ standard research agreement (the “Research Agreement”). The materials shall be made accessible through the Research Agreement until \[mmd/dd/yyyy\], or until stipulated restrictions expire after which time they shall be open for public research and examination with no restrictions.

ARTICLE SIX

MATERIAL THAT IS NOT RESTRICTED

[Re-number articles if this section is omitted]

6.01 Access for Research — Material that has not been identified by the [Donor/Archivist] as Restricted Material shall be available for public research and examination and may be copied without the consent of the Donor. The Archives shall have the right to display and exhibit such material.

[Merge this section with the one above if no restrictions apply. Suggested wording:

“The material in this Fonds/Collection shall be available for public research and examination with no restrictions. The material may be copied without the consent of the Donor. The Archives shall have the right to display and exhibit such material.”]

ARTICLE SEVEN

DONOR’S NAME AND COPYRIGHT

[Use only one of the following clauses as appropriate]

7.01 Copyright — The Donor hereby assigns to the Archives any and all right, title and interest the Donor has in the copyright in the material. The Donor waives all of the Donor’s moral rights in the material in favour of the Archives.

[or]

The Donor retains copyright in the material of which the Donor is the sole owner. The Donor acknowledges being hereby notified that the material in the donation may be copied under Section 30.21 of the Copyright Act. The Donor authorizes the Archives to release the Donor’s name and contact information to persons who wish to discuss the use of copyrighted material.

[Use of this article is optional depending on the wishes of the Donor]
The Donor agrees that upon the Donor’s death his or her copyright is automatically, irrevocably and immediately assigned to the Archives.

[Use of this article is optional depending on the wishes of the Donor]

If the Donor wishes royalties assigned to the Archives, provide the following wording for them to include in their will:

“I give, devise and bequeath the copyright and all of the royalties or any other rights pertaining thereto to Simon Fraser University, to be used by the University Archives in accordance with the Donation Agreement [X] signed by me and the University on [date].”

[or]

7.01 Copyright — The Donor retains copyright in the material of which the Donor is the sole owner. The Donor hereby agrees to license the donated material under a Creative Commons’ Attribution-Non-Commercial license (CC BY-NC) so that it can be remixed, tweaked, and built upon for non-commercial purposes only. The Donor must be acknowledged in the creation of any derivative works, but these derivative works need not be licensed under the same terms. See the full legal code for this Creative Commons license appended to this Agreement.

7.02 Release of Name — The Donor authorizes the release of the Donor’s name as the donor of this property.

[or]

7.02 Release of Name and Contact Information — The Donor authorizes the release of the Donor’s name as the donor of this property as well as their contact information to anyone wishing to discuss licensing terms and uses not allowed for under the CC BY-NC license.

ARTICLE EIGHT

CONFIDENTIALITY

[Use of this article is optional depending on the circumstances. When dealing with donations of corporate papers, it may be necessary. Wording of the section in this article could be as below:]

8.01 Confidentiality of Fonds/Collection — The Archives acknowledges that certain information relating to the activities of the Donor is confidential. The Archives shall use reasonable efforts to maintain the confidentiality of all restricted materials until such time as the Donor, by written instructions, removes restrictions, or until the time period designated for restrictions, found in Article Five to this Agreement, have expired.

ARTICLE NINE
GENERAL

9.01 **Counterparts** — This Agreement may be executed in counterparts, and each counterpart when so executed and delivered shall be deemed original.

9.02 **Notice** — All written notices, consents and approvals (hereinafter in this section called a “Notice”) permitted or required to be given hereunder shall be deemed to be sufficiently and duly given in the case of the Donor, and in the case of the Archives to the University Archivist, when sent in a letter deposited in a post office in Canada or transmitted by recorded communication tested prior to transmission, if the Donor is addressed as follows:

[Donor
Donor's Address and Contact Information]

and if the Archives is addressed as follows:

University Archivist
Archives and Records Management Department
Simon Fraser University
8888 University Drive
Burnaby, BC V5A 1S6

Any notice so given or made shall be deemed to have been given or made and received on the date of delivery or on the third business day following the date of mailing of the same or on the next business day after transmission by recorded communication service of the same, as the case may be. Either party from time to time by notice in writing given pursuant to the terms hereof may change its address for the purpose of this Agreement. In the event of actual or threatened disruption of postal service, notice shall be delivered or sent by a form of recorded communication.

9.03 **Further Assurances** — The parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this agreement to its full extent.

ARTICLE TEN

LIABILITY

10.01 **No Liability** — The University assumes no financial obligations or legal liability to the Donor under this agreement arising from the donation of these materials.

IN WITNESS WHEREOF the parties have duly executed and delivered this agreement as of the date first written above.

__________________________________________  __________
Donor                                      Date
Witness

________________________________

Date

_________________________

For the SFU Archives


Date

_________________________

Witness


Date