

## NSERC COLLABORATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN:

**COMPANY INC.**

**ADDRESS**

(Hereinafter referred to as "**COMPANYNAME**")

AND THE

**UNIVERSITY OF OTTAWA,**

Incorporated under the University of Ottawa Act 1965, S.O. 1965, c. 137,

Located at 3042-800 King Edward Ave., Ottawa, ON, K1N 6N5

(Hereinafter referred to as "uOttawa")

WHEREAS, uOttawa is the largest bilingual (English-French) university in the world; and

WHEREAS, uOttawa ranks among the top 10 research universities in Canada; and

WHEREAS, uOttawa participates in many collaborative research projects with industry sponsors; and

WHEREAS, COMPANYNAME is a (Canadian-based) firm in the [insert description] industry; and

WHEREAS, COMPANYNAME has elected to provide financial and other support to further collaborative research at uOttawa and to be an industrial partner in an NSERC Collaborative Research and Development (CRD) Project; and

WHEREAS, <<Dr. Principal Investigator, Dept, Faculty, uOttawa>> will be the lead on the research project for uOttawa (hereinafter referred to as "Principal Investigator")

WHEREAS, COMPANYNAME is deemed eligible to participate as a partner in the Natural Sciences and Engineering Research Council of Canada (NSERC) Research Partnerships programs according to the NSERC guidelines ([http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Policies-Politiques/orgpartners-orgpartenaires\\_eng.asp](http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Policies-Politiques/orgpartners-orgpartenaires_eng.asp)); and

WHEREAS, uOttawa and COMPANYNAME agree to the following elements of the NSERC Intellectual Property Policy ([http://www.nserc-crsng.gc.ca/NSERC-CRSNG/policies-politiques/ip-pi\\_eng.asp](http://www.nserc-crsng.gc.ca/NSERC-CRSNG/policies-politiques/ip-pi_eng.asp)): Timeliness of exploitation; Confidential Information; Publishable Research Results; No delays for thesis defence and Retained Rights for future research and teaching;

**NOW THEREFORE**, in consideration of the mutual promises and covenants hereinafter set forth, both parties agree as follows:

- 1. Company Contribution:** COMPANYNAME will provide to uOttawa the cash and in-kind resources listed in Appendix A for the conduct of the Project according on the Payment Schedule listed therein (hereinafter referred to as the Company Contribution).

Should COMPANYNAME desire that uOttawa conduct work that will exceed the deliverables and the Company Contribution set out herein, COMPANYNAME may make said request to uOttawa in writing.

2. **Statement of Work:** uOttawa shall perform the work described in Appendix B: NSERC CRD Proposal attached hereto (referred to as "Project") on the terms and conditions hereinafter set forth. The Project shall only commence if successfully awarded by NSERC.
3. **Term of Agreement:** This Agreement shall have an effective date of Day-Month-Year.

The Project shall begin on the award date of the NSERC CRD Grant, and shall terminate three (3) months after the end of final year of the Project as outlined in the NSERC award letter, or as earlier agreed to in writing by the parties. Either party may terminate for any reason by providing ninety (90) days notice to the other party in writing.

4. **Intellectual Property:** Each party retains ownership of any background Intellectual Property (inventions, designs, drawings, information, and know-how, whether or not such Intellectual Property may be protected) brought to this Agreement.

Any Intellectual Property arising from work performed by COMPANYNAME staff shall belong to COMPANYNAME.

Any Intellectual Property arising from work performed solely by research staff and students at uOttawa shall belong to uOttawa shall be disclosed to uOttawa and reviewed in accordance with uOttawa Policy 29 (Invention and Technology Transfer).

Any Intellectual Property arising from work performed jointly by COMPANYNAME staff and uOttawa research staff and students shall be disclosed to both parties and shall be reviewed at uOttawa in accordance with uOttawa Policy 29 (Invention and Technology Transfer) and ownership shall be determined according to inventor contributions.

Notwithstanding any of the foregoing, in the event that a uOttawa graduate student works on the Project, and completes a thesis or report relating to the Project, the student will retain ownership of the copyright in that thesis or report.

5. **Option Rights:** uOttawa hereby grants to COMPANYNAME an exclusive option to license (with right to sublicense) any uOttawa owned Intellectual Property developed under the Project. Option period shall begin on the date of disclosure by uOttawa to COMPANYNAME and run for a period of six (6) months. Should COMPANYNAME choose to exercise its option, the parties shall negotiate, in good faith an agreement, including a reasonable royalty or other compensation for uOttawa, apart and separate from this Agreement. Should COMPANYNAME choose to not exercise its option, uOttawa shall be free to commercialize Intellectual Property.
6. **Retained Rights:** Notwithstanding any licenses granted under this Agreement, uOttawa shall retain the non-exclusive right to use the arising Intellectual Property for

research and educational purposes subject only to any confidentiality provisions which remain in effect.

7. **Publication Rights:** COMPANY NAME recognizes that uOttawa has a mandate to disseminate knowledge and to make new knowledge available for research and teaching purposes. Both parties acknowledge that the publication of certain technical information may destroy its commercial value.

COMPANY NAME shall receive copies of any proposed Publication relating to the Project thirty (30) days prior to submission for papers and fifteen (15) days prior to submission for abstracts. If COMPANY NAME does not object in writing to such publication within ten (10) days of receipt for papers or within five (5) days of receipt for abstracts, uOttawa shall be free to publish. In the event written objection is made, the parties shall negotiate an acceptable version of the proposed Publication, including the release date which both should not exceed six (6) months within the original notice period.

For the purposes of this agreement, Publication shall not include disclosure or defence of academic theses for which uOttawa shall retain the right to have academic theses reviewed and defended in accordance with its established procedures. Under no circumstances shall the defence of a student thesis be delayed. At the request of COMPANY NAME, uOttawa may require the delay of publication of a thesis or report to a maximum of six (6) months. uOttawa shall be free to publish such thesis or report six (6) months after termination of this Agreement subject to any confidentiality requirements.

8. **Confidential Information:** COMPANYNAME and uOttawa may each have certain information that is non-public, confidential or proprietary in nature. Such information, in whole or in part, is hereinafter referred to as the "Information". Either COMPANYNAME or uOttawa may disclose the Information to the other to facilitate work under this Agreement. Should either party require that the other maintain the confidential nature of the Information they shall, prior to disclosure to the other party, ensure that any and all copies of the Information disclosed are clearly marked as "Confidential" or "Not for Publication". In the absence of such a marking the delivering party shall be deemed to have placed the Information into the public domain and shall thereafter surrender any expectation of confidentiality under this Agreement. Where, at the time of disclosure, the Information is clearly so marked, the receiving party shall safeguard the Information and not disclose the Information to anyone without a "need to know" within the COMPANYNAME or uOttawa.

Where the Information is disclosed verbally and the disclosing party requires that the other maintain the confidential nature of the Information, there shall be an express statement of confidentiality at the time of disclosure together with confirmation in writing within 30 days after the disclosure. Should the party making the verbal disclosure of the Information not provide an express reservation of confidentiality and provide the required written confirmation in a timely manner the Information shall be deemed to have been placed in the public domain and the disclosing party shall surrender any expectation of confidentiality under this Agreement.

The obligation of confidentiality and non-disclosure shall not apply to information which:

- a. Is Information which the receiving party can demonstrate was in its possession at the time of disclosure and was obtained without any obligation of confidentiality;
- b. Is, at the time of disclosure, in the public domain;
- c. After the time of disclosure, through no breach of this Agreement, becomes part of the public domain;
- d. Is obtained from third parties without any breach of confidence on the part of the third party;
- e. The disclosure is made in order to comply with the requirements of applicable law or governmental regulation, provided the receiving party gives prior written notice of such disclosure and takes reasonable actions to avoid such disclosure or minimize its extent; and,
- f. is independently developed by the receiving party, provided that the person or persons developing same have not had access to, either directly or indirectly, the Information received and provided such independent development is documented;

This obligation of confidentiality shall expire five (5) years after termination of this Agreement.

9. **Publicity:** Neither Party will use the name, logos, symbols or trademarks of uOttawa, or of any member of the other Party's staff, in any publicity without the prior written approval of an authorized representative of that Party. Notwithstanding the foregoing, COMPANYNAME agrees that uOttawa may publish the title of the Project, the name of the COMPANYNAME and the value of the Agreement in reports of research funding provided by external sponsors and in its internal records.
10. **No Warranty and Limitation of Liability:** uOttawa does not warrant that the results of Project or any part thereof. uOttawa makes no representations as to the potential for any particular result or claim of copyright or trade secret infringement based on the use of the results of Project or the Intellectual Property licensed and/or optioned to CompanyName hereunder. uOttawa shall not be responsible for procuring the use of the results of the Project or the Intellectual Property for COMPANYNAME in the event that the Project, or any part thereof including the results there from, become the subject of a claim of infringement of copyright or trade secret. uOttawa will carry out the Project in accordance with appropriate scientific and professional standards but does not promise success in achieving any desired result. uOttawa makes no representations or warranties, either express or implied, as to any matter including, without limitation, the existence or non-existence of competing technology, the condition, quality or freedom from error of the results of the Project or any part thereof, any merchantability or its fitness for any particular purpose and all warranties and conditions expressed or implied, statutory or otherwise are hereby disclaimed. uOttawa will not be liable for any direct, consequential or other

damages suffered by COMPANYNAME or others resulting from the development or use of the results of the Project or any invention, technology or product produced in the course of or using the results of the Project

11. **Assignment:** No right or obligation granted or undertaken in accordance with this Agreement may be assigned by either party without the prior written consent of the other. uOttawa shall not subcontract any work to be performed except as specifically set forth in this Agreement. Specifically, and without limiting the generality of the foregoing, no licences granted under the terms of this Agreement are assignable, in part or in whole, without the prior written consent of uOttawa which consent may be reasonably withheld.
12. **Indemnity:** COMPANYNAME will indemnify, defend and hold harmless Principal Investigator and uOttawa, its Directors, employees and students from and against all claims, losses, suits, damages or liability of any kind made, sustained or brought against uOttawa and/or Principal Investigator for all matters arising out of the COMPANYNAME's participation in the Project, including, without limitation, any injury, loss or damage arising from the use or omission to use by COMPANYNAME, its servants, agents, employees, customers, licensees, or independent contractors of such advice, technology, materials or similar recommendations or research results issued by uOttawa as a result of the work described herein. The provisions of this paragraph shall survive termination of this agreement.

uOttawa shall indemnify COMPANYNAME against all costs, suits or claims made against COMPANYNAME for only those damages arising out of physical injuries (including death) by uOttawa employees, students or their representatives who have participated, or who are participating, in the Project or damage to uOttawa property during the performance of this Agreement.

13. **Governing Law:** This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the parties hereby irrevocably recognize the exclusive jurisdiction of the Courts of Ontario located in Ottawa, Ontario.
14. **Notices:** All notices under this Agreement shall be sent to the addresses listed below.

To uOttawa:

University of Ottawa  
Innovation Support Services  
800 King Edward Ave (3042)  
Ottawa, Ont. K1N 6N5  
Attn: Director [iss@uottawa.ca](mailto:iss@uottawa.ca)  
Cc: Principal Investigator [email@uottawa.ca](mailto:email@uottawa.ca)

To COMPANY NAME

COMPANY NAME

Address

City, Prov. Postal Code

Attn: Legal contact [email1@Companyname.com](mailto:email1@Companyname.com)

Cc: Technical Liaison [email2@Companyname.com](mailto:email2@Companyname.com)

15. **Dispute Resolution:** Both parties agree to that dispute resolution shall be through arbitration as described in Appendix C.

**In witness whereof**, the Parties hereto have signed as of the effective date shown above.

For University of Ottawa (uOttawa)

For Company, Inc. (COMPANYNAME )

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Title

**Acknowledgement** I, the uOttawa Principal Investigator, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein and further agree to ensure that all uOttawa participants are informed of their obligations under such terms and conditions.

\_\_\_\_\_  
[INSERT NAME] Principal Investigator

[Add One or More Co-Investigators Acknowledgements if necessary]

I, a Co- Investigator, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein and further agree to ensure that all uOttawa participants are informed of their obligations under such terms and conditions.

\_\_\_\_\_  
INSERT NAME Co-Investigator

**Appendix A: CompanyName Contribution**  
(include Cash, In-Kind and Schedule of Contributions)

<i>Example only</i>	<b>Company Contribution (\$)</b>			
	Year 1	Year 2	Year 3	Total
<b>Cash Contribution</b>	<b>50,000</b>	<b>50,000</b>	<b>50,000</b>	<b>150,000</b>
Overhead	<u>14,286</u>	<u>14,286</u>	<u>14,286</u>	<u>42,857</u>
Net Contribution	35,714	35,714	35,714	107,143
In-Kind Contribution (max)	<u>35,714</u>	<u>35,714</u>	<u>35,714</u>	<u>107,143</u>
<b>NSERC Eligible Company Contribution</b>	<b>71,429</b>	<b>71,429</b>	<b>71,429</b>	<b>214,286</b>
<b>NSERC Budget Request</b>	<b>71,429</b>	<b>71,429</b>	<b>71,429</b>	<b>214,286</b>

	<b>Project Budget (Cashflow)</b>			
	Year 1	Year 2	Year 3	Total
<b>Total Project Revenues</b>	107,143	107,143	107,143	321,429
<b>Expenses (from proposal)</b>	<u>107,000</u>	<u>107,000</u>	<u>107,429</u>	<u>321,429</u>
Revenues-Expenses	143	143	-286	0

<b>Payment Schedule</b>		
<b>Company Cash Contribution</b>	Invoice Date	
Month 1	25,000	1-Feb-16
Month 7	25,000	1-Sep-16
Month 13	25,000	1-Feb-17
Month 19	25,000	1-Sep-17
Month 25	25,000	1-Feb-18
Month 31	<u>25,000</u>	1-Sep-18
<b>Total Payments</b>	<b>150,000</b>	

**Appendix B: NSERC CRD Proposal**  
(Submitted to NSERC on **INSERT DATE**)

*[Final version of Proposal to be attached here]*



## Appendix C Arbitration Procedures

- C.1. Amicable Resolution. The parties shall attempt to settle any controversy between them amicably. To this end, a senior executive from each party shall consult and negotiate to reach a solution. The parties agree that the period of amicable resolution shall be independent of any statutory or legal limitations. However, nothing in this clause shall preclude any party from commencing mediation if said negotiations do not result in a signed written settlement agreement within thirty (30) days after written notice that these amicable resolution negotiations have commenced.
- C.2. Mediation. If a controversy arises out of or relates to this agreement, or the breach thereof, and if the controversy cannot be settled through amicable resolution, the parties agree to try in good faith to settle the controversy by mediation before resorting to final and binding arbitration. The party seeking mediation shall propose five mediators, each of whom shall be a lawyer licensed to practice by the Province of Ontario, having practiced actively in the field of commercial law, to the other party who shall select the mediator from the list. The parties shall divide the cost of the mediator equally. The parties agree that the period of mediation shall be independent of any statutory or legal limitations. However, nothing in this clause shall preclude any party from commencing arbitration if said negotiations do not result in a signed written settlement agreement within sixty (60) days after written notice that amicable resolution negotiations have commenced.
- C.3. Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, including claims for tortious interference or other tortious or statutory claims arising before, during or after termination, providing only that such claim touches upon matters covered by this Agreement shall be finally settled by arbitration administered by the ADR Institute of Canada pursuant to the Commercial Arbitration Rules in force at the time of the commencement of the arbitration, except as modified by the specific provisions of this Agreement. It is the specific intent of the Parties that this arbitration provision is intended to be the broadest form allowed by law.
- C.4. Parties to Arbitration. This agreement to arbitrate is intended to be binding upon the signatories hereto, their principals, successors, assigns, subsidiaries and affiliates. This agreement to arbitrate is also intended to include any disputes, controversy or claims against any party's employees, agents, representatives, or outside legal counsel arising out of or relating to matters covered by this Agreement or any agreement in which this Agreement is incorporated.
- C.5. Consolidation Permitted. The parties expressly agree that any court with jurisdiction may order the consolidation of any arbitral controversy under this Agreement with any related arbitral controversy not arising under this Agreement, as the court may deem necessary in the interests of justice or efficiency or on such other grounds as the court may deem appropriate.
- C.6. Entry of Judgment. The parties agree that a final judgment on the arbitration award may be entered by any court having jurisdiction thereof.
- C.7. Appointing Arbitrators. If the parties agree to the appointment of a specific arbitrator, that person shall be engaged for the purposes of the arbitration. In the event that the parties cannot, within ten (10) days agree upon such a person the parties shall request from The ADR Institute of Canada a list of ten qualified arbitrators for the purposes of selection. In the event that the parties cannot then agree, within ten (10) days of receiving such list, the parties shall request of the ADR Institute of Canada to appoint one of the persons from the list at its sole discretion and upon the ADR Institute of Canada appointing the arbitrator, that decision shall be final and without recourse by either of the parties.

- C.8. Governing Substantive Law. The arbitrator shall determine the rights and obligations of the parties according to the substantive laws of the Province of Ontario (excluding conflicts of law principles) as though acting as a court of the Province of Ontario.
- C.9. Governing Arbitration Law. The law applicable to the validity of the arbitration clause, the conduct of the arbitration, including any resort to a court for provisional remedies, the enforcement of any award and any other question of arbitration law or procedure shall be the Arbitration Act, 1991 (Ontario), SO 1991, c.17.
- C.10. Confidentiality. The parties and the arbitrator shall treat all aspects of the arbitration proceedings, including without limitation discovery, testimony and other evidence, briefs and the award, as strictly confidential. Further, except as may be required by law, neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- C.11. Place of Arbitration. The seat of arbitration shall be Ottawa, Ontario, Canada.
- C.12. Language. The Parties agree that the arbitration shall be conducted in the English. All submissions shall be made in English. Witnesses may provide testimony in a language other than English, provided that a simultaneous English translation is provided. Each party shall bear its own translation costs.
- C.13. Punitive Damages Prohibited. The parties hereby waive any claim to any damages in the nature of punitive, exemplary, or statutory damages in excess of compensatory damages, or any form of damages in excess of compensatory damages, and the arbitrator(s) is/are specially divested of any power to award any damages in the nature of punitive, exemplary, or statutory damages in excess of compensatory damages, or any form of damages in excess of compensatory damages.
- C.14. Costs. The party prevailing on substantially all of its claims shall be entitled to recover its costs, including solicitor's fees, for the arbitration proceedings, as well as for any ancillary proceeding, including a proceeding to compel or enjoin arbitration, to request interim measures or to confirm or set aside an award.