

RESEARCH AGREEMENT

THIS AGREEMENT MADE THE [day] DAY OF [month], 201X

BETWEEN:

(the "Sponsor")

- and -

Carleton University
1125 Colonel By Drive
Ottawa, Ontario K1S 5B6
(the "University")

WHEREAS the Sponsor and the University (individually a "Party", collectively the "Parties") desire to enter into an Agreement pertaining to a University research program described in Schedule "A" (the "Project");

WHEREAS the University intends to undertake the Project using industry funding; and

WHEREAS the Project will be funded by the Sponsor and will be carried out by the University under the direction and supervision of **[Name]** (the "Principal Investigator") and the University will make its premises, facilities and services available for the Project, all to the extent set forth herein;

NOW THEREFORE this Agreement witnesses that for good and valuable consideration, the Sponsor and the University agree as follows:

1. SCOPE OF WORK

1.1 The Parties acknowledge and agree that the Project shall be funded in part by payment of funds by **the Sponsor** to the University in accordance with Article 8 and Schedule "B" hereof.

1.2 The University shall furnish the personnel, materials, services, facilities and equipment to carry out the Project as more particularly described in Schedule "A".

2. PRINCIPAL INVESTIGATOR

2.1 The Project shall be carried out under the direction and supervision of the Principal Investigator who shall have responsibility for the scientific and technical conduct of the Project. If for any reason the Principal Investigator is unable to complete the Project as Principal Investigator, the Parties will use reasonable commercial efforts to promptly identify and agree upon an available successor. If no such successor acceptable to each Party is agreed upon and is available to commence work on the Project within a period of 90 days from the date of resignation or termination of the Principal Investigator and the Sponsor shall have the right to withdraw from this Agreement pursuant to Section 17.2.

3. TERM AND AMENDMENT

3.1 This Agreement shall be effective for period **starting [date] and ending [DATE]**, with the Sponsor having an option to renew this Agreement on the same terms and conditions as set out herein (the "Project Term").

4. SHARING OF RESULTS

4.1 Subject to Article 7, the University shall deliver to the Sponsor, for its own use absolutely, reports, no later than ninety (90) days following the expiry of the Project Term or earlier termination of this Agreement a draft final report and the final report as more particularly described in Schedule "A" and disclosing Research Results for the Project (the "Research Reports").

5. CONFIDENTIALITY

5.1 (a) Subject to Article 7, Publication Rights, the University shall use reasonable efforts (that are no less stringent than those used to protect their own Confidential Information) to protect from disclosure such information that is the Confidential Information of the Sponsor. The University shall maintain Confidential Information of the Sponsor strictly confidential and shall only use the same for purposes of carrying out the Project.

(b) The University may disclose Confidential Information of the Sponsor:

- (i) to the University's employees and students and its subcontractors and their respective employees and students, on a "need to know" basis for the purpose of carrying out the Project and who are themselves bound by confidentiality covenants that protect that Confidential Information at least to the same extent as those herein, and
- (ii) as required by law, to any government, regulatory or other authority compelling production and, to the extent so compelled, provided that the University complies with the provisions of Section 5.5.

5.2 (a) The Sponsor shall use reasonable efforts (and, in any event, efforts that are no less than those used to protect its own Confidential Information) to protect from disclosure such information that is the Confidential Information of the University. The Sponsor shall maintain Confidential Information of the University strictly confidential and shall only use the same for purposes of carrying out the Project.

(b) The Sponsor may disclose Confidential Information of the University:

- (i) to its employees, professional advisors, Affiliates and contractors and the respective employees of those Affiliates and contractors for the purpose of carrying out the Project and for the purpose of using the Research Results as set out in Section 6.3, and who are themselves bound by confidentiality covenants that protect that Confidential Information at least to the same extent as those herein, and
- (ii) as required by law, to any government, regulatory or other authority compelling production and, to the extent so compelled, provided that the Sponsor complies with the provisions of Section 5.5.

5.3 For the purposes of this Agreement, the expression "Confidential Information" means information, samples, materials, documents, specifications, plans, processes and data which are clearly marked and identified as being Confidential Information of a Party ("Disclosing Party"); provided however, that the expression "Confidential Information" shall not include any information which:

- (a) is or becomes publicly available through no fault of the other Party or Parties;
- (b) is already in the rightful possession of the other Party or Parties prior to its receipt from the Disclosing Party and such other Party or Parties are under no pre-existing obligation to keep the information confidential;
- (c) is independently developed by the other Party or Parties;
- (d) is rightfully obtained by the other Party or Parties from a third party which has no obligation to keep the information confidential; or
- (e) is disclosed with the written consent of the Disclosing Party.

5.4 Each Party shall also keep confidential and shall ensure its subcontractors, agents and their respective employees and students keep confidential any and all personal information disclosed directly or indirectly by the other Parties under this Agreement. Notwithstanding anything to the contrary, the Parties shall not do anything with such personal information which may cause another Party to be in violation of privacy legislation in force in Ontario or legislation that is substantially similar thereto.

5.5 If any Party, or person to whom a Disclosing Party discloses Confidential Information pursuant to this Agreement, becomes legally compelled to disclose that Confidential Information, that Party shall provide all other Parties with prompt written notice of that legal obligation and use reasonable efforts to either obtain the written consent of the Disclosing Party prior to making the disclosure or permit the Disclosing Party to take reasonable steps to obtain a protective order or other reliable assurances that confidential treatment will be afforded the Confidential Information, such steps being deemed unreasonable if they would cause the compelled Party to be in violation of the instrument or statute compelling the disclosure.

6. RESEARCH RESULTS

6.1 "Research Results" means all data and information created in the performance of the Project and includes, but is not limited to, substances, processes, formulations, technical information, data, reports, photographs, drawings, plans, specifications, models, prototypes, inventions, patterns, samples, software designs, computer programs, databases or know-how, whether or not protected by patent, copyright, or industrial design. "Research Results" shall not include: (i) Confidential Information of the Sponsor which is disclosed to the University to facilitate the Project; (ii) restatements of previously existing information by the Sponsor or the University; (iii) Confidential Information of the University, including but not limited to nonpublic methods, techniques, processes or computer codes utilized by the University for the conduct of the Project, and (iv) the copyright in publications produced by the University in accordance with Sections 7.2 and 7.3 hereof.

6.2 Subject to Section 7.2 hereof, the University will be entitled to release the Research Results into the public domain and upon such release, the Research Results will cease to be Confidential Information of any Party, or any employees, contractors or students of any Party.

6.3 The University hereby grants to the Sponsor a non-exclusive, royalty-free, fully paid-up, irrevocable, world-wide right and license to use, copy, produce, reproduce, modify, adapt, implement, advance and otherwise exploit the Research Results and any intellectual property rights arising from or related to the Research Results (other than in respect of copyright in publications referred to in Sections 7.2 and 7.3) for any purpose whatsoever in their operations and the operations of their Affiliates, including through the use of contractors and other third parties (collectively, the "License"). The University shall take reasonable steps to ensure that it

has the rights in and to the Research Results that it requires in order to grant to the Sponsor the aforementioned License.

6.4 In this Agreement, "Affiliate" means, with respect to the Sponsor, any company or business entity, including partnerships and joint-ventures, which directly or indirectly controls, is controlled by, or is under common control with that Sponsor; with "control" meaning possession, directly or indirectly, of the power to direct or cause the direction of management and policies through ownership of voting securities, a general partnership interest, contract, voting trust or otherwise.

7. PUBLICATION RIGHTS

7.1 **Acknowledgement:** The Parties acknowledge that it is part of University's function to disseminate information and to make it available for the purpose of scholarship, education, and research, and that the University does not allow research to be carried out in secret. They also recognize that, although eventual publication of results of research may not be prevented, publication of certain information may jeopardize its commercial value.

7.2 The Sponsor acknowledges that the policies of the University require that all Research Results be capable of publication and disclosure and therefore acknowledge that in keeping with such policies, the University, including but not limited to the employees and students of the University, are entitled to publish the Research Results or any portion of the same, during or after the Project Term, in accordance with the procedure set forth in this Article 7. The University shall furnish the Sponsor with copies of any proposed publication or presentation relating to the Project at least sixty (60) days in advance of presentation or submission for publication. If the proposed publication or presentation contains any Confidential Information of the Sponsor, the affected Party may, within forty-five (45) days of its receipt of the same, notify the University in writing and require the removal of such Confidential Information. In such case the University will take immediate steps to cause the removal of such Confidential Information. If the Sponsor does not identify and require the removal of Confidential Information within such time period the same may be included in the publication or disclosure.

7.3 Notwithstanding anything otherwise contained in this Agreement, in the event a graduate student of the University works on the Project and that student completes a thesis or education report relating to the Project, the student will own the copyright in that thesis or report provided that the University shall have sufficient rights therein to comply with Section 6.3 and ensure compliance with Section 7.2. Although the University shall cause such graduate student to comply with the provisions of Section 7.2 with respect to that thesis or education report, notwithstanding anything contained in this Agreement, publication of a thesis or education report may only be delayed in accordance with applicable policies of the University. There will be no delay for the defence of a student's thesis.

8. PAYMENT

The Sponsor, will pay to the University for the Project, the funding as shown on Schedule "B" as the funding from that Sponsor, which will be paid or made available to the University in accordance with the provisions of Schedule "B". Such payments shall be due within forty five (45) days of receipt of an invoice by the Sponsor.

9. USE OF THE PARTY'S NAME

9.1 No Party shall use or permit others to use the name of the other Parties hereto or the Principal Investigator, or refer to their participation in the Project:

- (i) for any sales or promotional purposes;
- (ii) in conjunction with the use or exploitation of the Research Results;
- (iii) in conjunction with the development, production or marketing of products developed through the use of the Research Results, or
- (iv) in connection with any presentation or publication (whether academic or otherwise);

without the prior written consent of all the applicable Parties.

10. WARRANTIES

10.1 The University agrees to carry out the Project in accordance with acceptable scientific and professional standards but makes no representations or warranties, express or implied, as to ability of achieving any desired result. The University gives no warranty of any fitness for any particular purpose, as to the existence or non-existence of competing technology, the condition, quality or freedom of error of the Research Results or any part thereof, any merchantability, or any other warranty, express or implied, on the Research Results or intellectual property produced in the course of the Project. The University does not warrant that the Research Results or any part thereof or any aspect of the same will be capable of receiving statutory protection. For further clarity, all warranties and conditions expressed or implied, statutory or otherwise are hereby disclaimed.

11. INDEMNITIES

11.1 The Sponsor will defend, indemnify and hold harmless the other Parties, their officers, directors, employees, students and agents from, and as a separate covenant will be liable for, any and all claims, demands, actions, expenses (including legal fees on a solicitor and that solicitor's own client basis) and losses whatsoever that arise, directly or indirectly, out of:

- (a) the negligence or willful misconduct in the performance of the Project by the Sponsor or the Sponsor's officers, directors, employees or agents; or
- (b) the use by the Sponsor or by any party acting on behalf of or under authorization from that Sponsor, of the Research Results or out of any use, sale or the disposition by that Sponsor, or by any party acting on behalf of or under authorization from that Sponsor, of products made by use of the Research Results.

11.2 To the extent permitted by applicable law, the University shall indemnify and hold harmless the other Parties, their officers, directors, employees and agents from, and as a separate covenant will be liable for, any and all claims, demands, actions, expenses (including reasonable attorney's fees) and losses whatsoever that arise, directly or indirectly, out of:

- (a) subject to Sections 12.1 and 12.2, the negligence or willful misconduct in the performance (or non-performance) of the Project by the University, its officers, directors, students, employees and agents; or
- (b) the use by the University, its officers, directors, students, employees and agents, or by any party acting on behalf of or under authorization from the University, of Research Results or out of any use, sale or the disposition by the University its officers, directors, students, employees and agents, or by any party acting on behalf of or under authorization from either the University, of products made by use of the Research Results.

12. LIABILITY

12.1 The University's liability, either in contract or tort, to the Sponsor, for damages suffered by the Sponsor arising out of or relating to this Agreement, or any prior agreements respecting the Project entered into between the University and the Sponsor, shall not exceed the amount of the funding which the Sponsor pays to the University during the Project Term of this Agreement.

12.2 The University shall not be liable for any direct, consequential, or other damage suffered by the Sponsor or others acting on behalf of or under the authorization of the Sponsor resulting from the use by the Sponsor or others acting on behalf of or under the authorization of the Sponsor of the Research Results or intellectual property or any invention, technology, or product produced in the course of the Project or using the Research Results or intellectual property, with the exception of any loss or damage directly or indirectly caused by the gross negligence or willful misconduct of the University, its employees and/or agents.

12.3 Except as provided for in 11.1 and subject to 12.4 below, the liability of the Sponsor, either in contract or tort, to the University for damages arising out of or relating to this Agreement, or any prior Agreements respecting this Project entered into between the University and such Sponsor, shall not exceed the amount of the funding which the Sponsor is required to pay to the University during the Project Term of this Agreement.

12.4 Notwithstanding any other provision of this Agreement, in no event shall any Party be liable to the other Parties in connection with this agreement for any indirect, incidental, special, exemplary, punitive or consequential damages (including but not limited to loss of revenue, loss of profit, loss of business reputation or loss of opportunity) suffered by another Party whether arising out of contract, tort (including negligence), strict liability, or other legal theory and whether at law, in equity or otherwise. For certainty, and subject to Section 12.2, this Section 12.4 does not apply to damages and losses suffered by third parties or to damages or losses (including those relating to the breach of any confidentiality provisions in this Agreement) caused by the gross negligence or willful misconduct of such Party, its employees and/or agents.

12.5 The University acknowledges that the liability of the Sponsor is several and distinct and not joint and several.

13. ASSIGNMENT AND SUBCONTRACTING

13.1 Except as expressly set forth in this Article, no part of this Agreement may be assigned or subcontracted by any Party without the written consent of the other Parties hereto.

13.2 Sponsor shall have the right to assign this Agreement to (a) another Sponsor; (b) an Affiliate of the Sponsor; or (c) as part of a sale or transfer of a substantial portion of their interests to a financially qualified third party.

14. AMENDMENT

14.1 No amendment or variation to this Agreement shall operate to change or vary the terms, obligations, or conditions hereof except upon mutual agreement by all Parties signed by authorized representatives of each party.

15. GOVERNING LAW

15.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and each Party hereby expressly attorns to the jurisdiction of the courts of Ontario for enforcement thereof.

16. AGENCY

16.1 For the purposes of this Agreement, the University is an independent contractor and not the agent of the Sponsor. All persons employed by the University shall be its employees and not employees of the Sponsor. Nothing in this Agreement shall be construed as creating a partnership between the Parties.

17. TERMINATION

17.1 If the Sponsor is in material breach of this Agreement, the University shall give such Party written notice of such breach. If the material breach of this Agreement by such Party described in the notice is not remedied within thirty (30) days from the date of receipt by such Party of the notice from the University, the University may, upon written notice to such Party, terminate such Party's rights under this Agreement, including but not limited to, such Party's License in respect of Research Results developed after the date of termination. If the University gives written notice of termination to the Sponsor pursuant to this Section 17.1, this Agreement shall terminate.

17.2 If the University is in material breach of this Agreement, the Sponsor may give the University and all other Parties written notice of such breach. If the material breach of this Agreement by the University described in the notice is not remedied within thirty (30) days from the date of receipt by the University of the notice, or if the Sponsor has a right to withdraw pursuant to Section 2.1, each Party that is notified of the breach may, upon written notice to the University terminate its financial support (if any further installments are pending) of the Project and withdraw from this Agreement, without prejudice to each Party's rights under this Agreement (including those in respect of Research Results provided up to the date of withdrawal). For certainty, in the event of such withdrawal from this Agreement, the right of the withdrawing Party to a License to receive Research Results after the effective date of withdrawal shall cease. If the Sponsor gives notice of withdrawal, this Agreement shall terminate, otherwise, the withdrawal of the Sponsor shall not affect the continuance of this Agreement for the remaining Parties.

17.3 A notice given by the Sponsor withdrawing from this Agreement is effective only thirty (30) days from the date on which that notice is received and shall not release, discharge or otherwise affect the obligations of the Parties with respect to any service or good that was required prior to the time when that notice takes effect.

17.4 Upon withdrawal from this Agreement by the Sponsor pursuant to Section 17.2 or termination of the Sponsor pursuant to Section 17.1, the withdrawing or terminated Party (subject to Sections 5.2(b)(i) and 6.3 in respect of the License up to the date of termination or withdrawal) shall return to each other Party all material and property of the other Party held by it.

17.5 Upon termination of this Agreement for any reason, any surplus of funds paid by the Sponsor to the University pursuant to Article 8 that is in excess of the total of:

- (a) costs of the Project that have been paid by the University; and
- (b) costs of the Project that have been necessarily and irrevocably incurred but not paid by the University at the date of termination of the Agreement;

in accordance with this Agreement, shall be refunded by the University, and each Party shall return to the other Parties, respectively, all material and property of the other Parties, respectively, held by it.

For certainty, a Party's right to termination or withdrawal pursuant to this Article 17 is without prejudice to any other rights or remedies available to it for a breach of this Agreement by another Party.

18. NOTICE

18.1 Any notice, demand or other communication which may be or is required to be given or made pursuant to this Agreement shall, unless otherwise expressly provided herein, be in writing and shall be personally delivered or sent by facsimile to each Party at its address set forth below:

(a) if to [SPONSOR].:
[NAME]
[TITLE]
[ADDRESS]
Tel: 3683
E-mail:

(b) if to the University:

For Contract and Financial Matters:

Anne Coughlan
Carleton University Research Office
1322 Dunton Tower
1125 Colonel By Drive
Ottawa, On K1S 5B6
Tel: 613.520.2600 x8034
E-mail: anne.coughlan@carleton.ca

19. EXPORT CONTROLS AND CONTROLLED GOODS

19.1 In the event that goods or information falling under Canadian or United States export control rules, controlled goods or arms regulations are required to be provided by the Sponsor to Carleton, Sponsor will so inform Carleton in writing, in accordance with section 18.1, "Notices", prior to any such disclosure. Sponsor shall not forward or provide any such information to Carleton without the express written permission of Carleton. The burden shall be on Sponsor to make it available only to eligible individuals as designated by Carleton, or to obtain the appropriate license or approval from the relevant agency, or to invoke an available exception, exemption or exclusion.

19.2 In the event the Project research results or any data developed in the course of the Project constitute controlled goods under Canadian law, the parties will cooperate so that the requirements of the law are met prior to disclosure of such results or data to Sponsor.

19.3 Carleton shall have the right to terminate this Agreement under Article 17 "Termination", if the disclosure of such information, under license or otherwise, would destroy Carleton's ability to invoke the fundamental research exclusion with regard to the conduct or reporting of its research or Carleton is unable to comply with the requirements of the Sponsor.

20. SURVIVAL

20.1 The provisions of Articles 5, 6, 7, 9, 10, 11, 12, 17.5 and 19 shall survive the expiry or early termination of this Agreement for any reason.

21. COUNTERPART EXECUTION

21.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

22. SITE ACCESS

22.1 The requirements for access to the Sponsor's site by the University, its subcontractors, and their respective employees, students and agents shall be as agreed from time to time between that respective Sponsor and, as applicable, the University, its subcontractors, and their respective employees, students and agents.

23. FORCE MAJEURE

23.1 A delay in or failure of performance of any of the Parties hereto shall not constitute default under this Agreement nor give rise to any claim for damages, if and to the extent such delay or failure is caused by force majeure which shall mean an event which is unforeseen and outside the reasonable control of the Party which invokes it and which renders such Party unable to comply totally or partially with its obligations under the Agreement and including but not limited to, if the forgoing criteria are satisfied, fire, flood, earthquake, tornado, hurricane, strike, including labour trouble or other disturbance with a duration of more than seven (7) calendar days, war (declared or undeclared), acts of terrorism, embargoes, blockades, acts of any governmental authority (whether or not legally valid), riots, and insurrections. Any Party claiming force majeure under this Article shall use its commercially reasonable efforts to remove or terminate the event subject of such claim, provided that nothing herein shall obligate a Party to settle any strikes or labour disturbances. Such Party claiming force majeure shall, as soon as is reasonably possible, notify the other Parties in writing of the occurrence of the force majeure event and of the resolution of the force majeure event.

24. ENTIRE AGREEMENT

24.1 This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and shall supersede and replace any and all prior agreements between the Parties with respect to the subject matter hereof. This Agreement may not be modified without the mutual written consent of the Parties.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the date first written above.

[SPONSOR]

Per: _____
[NAME]
[TITLE]

CARLETON UNIVERSITY

Per: _____
Florence Dzierszinski
Director, Carleton University Research Office

SCHEDULE "A"
The Project

DRAFT - CONTACT CURO

SCHEDULE "B"

B.1 **Financial Support** Sponsor will pay to the University, the amount identified below as the Sponsor's financial support, that amount having been calculated by reference to the Research Study in Schedule A. The Sponsor will not be liable for any amounts or payments in excess of the support specified in this section B.1:

SPONSORS	AMOUNT
Sponsor	TOTAL
Cash	\$
In-kind	\$

B.2 **Invoicing** Sponsor will pay to the University, the payment for the Sponsor as identified in the funding table below. The initial payment shall be invoiced November 1st 2015. The University shall invoice the Sponsor for the balance of the grant quarterly or close to, in accordance with the funding table below. All invoices shall include the project name [NAME] and the **Ref Number #** from the table below.

Sponsor	Ref #	2015	2016	2017	Total
Cash		\$	\$	\$	\$
In-kind		\$	\$	\$	\$

B.3 **Payment** Invoiced amounts are due and payable by the Sponsor forty-five (45) days of receipt of invoice.

B.4 **Invoices** Invoices are to be sent to the Sponsor at the address cited on page 2 of this Agreement:

CHEQUES SHOULD BE MADE PAYABLE TO: **Carleton University**

PLEASE REFERENCE RESEARCHER'S NAME AND FORWARD TO THE FOLLOWING ADDRESS:

Nada Haralovich
 Manager, Accounting Services
 Robertson Hall
 Carleton University
 Phone: 613-520-2600, ext. 3233
 Email: nada.haralovich@carleton.ca