

RESEARCH AGREEMENT

Between

[OTHER PARTY'S LEGAL NAME], a corporation incorporated under the laws of [PROVINCE/COUNTRY], having its registered office at [OTHER PARTY'S COMPLETE ADDRESS] (the "Company"), herein represented by _____ duly authorized to sign the present Agreement on behalf of the Company, as s/he so declares.

And

CONCORDIA UNIVERSITY, a corporation duly incorporated by the *Concordia University Act*, S.Q. 1948, c. 91 as amended by S.Q. 1959-60, c. 191 and S.Q. 2006, c. 69 having its head office at 1455 de Maisonneuve Blvd. West, City of Montreal, Province of Quebec H3G 1M8, (the "University") herein acting and represented by _____ duly authorized to sign the present Agreement on behalf of University, as he so declares.

(PREAMBLE OPTIONAL)

Whereas:

Company's business is to ...

Company desires to develop (?) with the help of University's ...

University's expertise in the area of ;

WHEREAS Company understands clearly the uncertainties and other risks commonly related to scientific research and experimental development, and therefore also understands that University can perform specifically agreed tasks but does not guarantee that any foreseeable or specific product or technology will result from the project; and

WHEREAS whatever the outcome of the present project, Company and University (the "Parties") intend in good faith to comply with all the obligations outlined in the present Agreement.

COMPANY AND UNIVERSITY HEREBY AGREE AS FOLLOWS:

1 OBJECTIVE

University shall perform the work described in Article 2 entitled (TITLE), hereinafter referred to as "Project", per the terms and conditions set forth herein.

2. SCOPE OF WORK

The scope of work is (DESCRIPTION or "outlined in Appendix A").

3. DELIVERABLE(S)

Deliverable(s) are defined as follows and shall be delivered to Company according to the following schedule:

<u>Deliverable</u>	<u>Due Date</u>
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Unless University is notified to the contrary by Company, in writing, within twenty five (25) business days following receipt of the deliverable(s), the deliverable(s) will be deemed to have been accepted by Company according to the terms and conditions of this Agreement.

4. PRINCIPAL INVESTIGATOR

The principal investigator of the Project shall be _____ of the University's Department of _____ ("Principal Investigator") who is responsible for the scientific direction of the Project.

5. BASIS OF PAYMENT

In consideration of University carrying out the Project, Company shall pay University (Choose A or B)

- A) the firm sum of _____ Canadian dollars (\$_____) plus any applicable GST or QST.
- B) the cost of the work to a maximum amount of _____ Canadian dollars (\$_____) plus any applicable GST or QST in accordance with the budget appearing in Appendix B.

6. METHOD OF PAYMENT

6.1 The sum stipulated in Article 5 above shall be paid by Company within thirty (30) days of receipt of invoice(s) according to the following schedule:

(Date of invoice & milestone if applicable)	(Amount)
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6.2 University will send invoice(s) to:

6.3 Company will make payments payable to Concordia University and remit same to the following address:

Restricted Funds & Finance
Concordia University
1455 de Maisonneuve West, GM-700
Montreal, Quebec H3G 1M8

6.4 Interest may be charged at the rate of one and a half per cent (1.5%) per month on amounts not paid within thirty (30) days of the date of the invoice.

7. FINANCIAL LIMITATION

The total financial obligation of Company is limited to (print amount) Canadian dollars (\$_____).

Said amount shall not be exceeded without prior written authorization of a duly authorized representative of Company. University shall not be obliged to perform any work beyond the Scope of Work defined in Article 2 above.

8. TERM

The present Agreement shall have an effective date of _____, 20____ and shall terminate on _____, 20____ ("Term").

9. AMENDMENTS

This Agreement may only be amended by written agreement duly executed by authorized representatives of the Parties.

10. SUBCONTRACT(S)

Neither Party shall subcontract any work to be performed except as specifically set forth in this Agreement.

11. EQUIPMENT

All equipment and/or materials purchased by University as part of the Project shall remain the property of University.

12. CONFIDENTIALITY

Company and University may disclose Confidential Information, as defined below, one to the other, to facilitate work under this Agreement. Such Confidential Information

shall be safeguarded and will only be disclosed to individuals who have a "need to know" within the Company or the University. Each Party shall also strictly protect such Confidential Information from disclosure to third parties.

"Confidential Information" means any information which is confidential in nature or that is treated as confidential by a Party and that is furnished or transferred by or on behalf of such Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), whether such information is or has been conveyed verbally or in written or tangible form, and whether such information is acquired directly or indirectly such as in the course of discussions or other investigations by the Receiving Party, including but not limited to, scientific, technical, financial or business information, data, ideas, concepts or know-how, formula, analysis, process, design, sketch, photograph, plan, drawing, specification, sample, report, study, finding, prototype, invention, patent application, and in particular shall also include, any register, lab book, pre-development result and/or other research data and result arising from the Project that is considered and treated as being confidential by the Disclosing Party. Confidential Information disclosed in tangible or electronic form may be identified by Disclosing Party as confidential with conspicuous markings, or otherwise identified with a legend as being confidential, but in no event shall the absence of such a mark or legend preclude disclosed information which would be considered as confidential by a party exercising reasonable judgment from being treated as Confidential Information by the Receiving Party. Where the information is disclosed verbally or visually and the Disclosing Party requires that the Receiving Party maintain the confidential nature of the information, the Disclosing Party shall express a verbal statement of confidentiality at the time of disclosure together with confirmation in writing within thirty (30) days of such disclosure.

Notwithstanding anything to the contrary herein, the following will not constitute Confidential Information for the purposes of this Agreement:

- 12.1 information that Receiving Party can show, by documentary evidence, was known by it prior to receiving such Confidential Information from the Disclosing Party;
- 12.2 information that is or becomes generally available to the public other than as a result of disclosure directly or indirectly by Receiving Party in breach of this Agreement;
- 12.3 information that is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party, provided that such source is not in breach of its obligations of non-disclosure towards Disclosing Party;

- 12.4 information that Receiving Party can show, by documentary and competent evidence, to have been developed independently by Receiving Party without using the Confidential Information; or
- 12.5 information of which Disclosing Party has authorized the unrestricted disclosure.

In the event that Receiving Party is compelled by law, regulation or order of court or administrative body to disclose any of Disclosing Party's Confidential Information, Receiving Party shall be entitled to disclose such Confidential Information subject to the requirements of this Article 12. Receiving Party shall promptly provide Disclosing Party with written notice of such requirements so that Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement, which waiver may not be unreasonably withheld. In the event that such protective order or other remedy is not obtained, or that Disclosing Party waives compliance with the provisions hereof, Receiving Party agrees to furnish only that portion of Disclosing Party's Confidential Information which is legally required and to exercise best efforts to obtain assurances that the information disclosed will be treated in confidence.

Receiving Party agrees that Disclosing Party may be irreparably injured by a breach of this Article 12 and that Disclosing Party may be entitled to seek equitable relief, including injunctive relief, specific performance and any other relief that may be available from any court to prevent breaches of this Article 12 and to enforce specifically the terms and provisions hereof in any action instituted in any court having subject matter jurisdiction, in addition to any other remedy to which Disclosing Party may be entitled at law or in equity in the event of any breach of the provisions hereof. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

13. PUBLICATION

- 13.1 The Parties recognize that it is part of the University's mandate to disseminate information and to make it available for the purpose of scholarship. They further recognize that the disclosure of certain technical information may destroy its commercial value. Disclosures include: theses, articles, seminars and other oral or written presentations ("**Disclosures**").
- 13.2 A Party wishing to disclose information relating to or derived from the Project ("Publishing Party") will provide notice of such intention and will furnish the other Party ("Notified Party") with copies of any proposed Disclosure ("Proposed Disclosure") at least forty-five (45) days in advance of its intended dissemination. Such notice shall include the intended date

of dissemination. The Notified Party shall have thirty (30) days after receipt of such Proposed Disclosure, to object to such Proposed Disclosure on the basis that it contains the Notified Party's Confidential Information or discloses Intellectual Property for which, pursuant to Sections 14.10-14.12, the Notified Party intends to seek registration and/or protection under applicable intellectual property laws.

13.2.1 Where the Notified Party does not object in writing within thirty (30) days of receipt of the Proposed Disclosure, the Publishing Party may proceed with the dissemination of the Disclosure.

13.2.2. Where a Notified Party makes a timely objection to a Proposed Disclosure on the grounds that it contains the Notified Party's Confidential Information, the Publishing Party shall remove any such Confidential Information from the Proposed Disclosure as requested by the Notified Party. The Parties will negotiate in good faith to arrive at an acceptable version of the Proposed Disclosure within the forty-five (45) day period foreseen in Section 13.2 above.

13.2.3. Where a Notified Party makes a timely objection to a Proposed Disclosure on the grounds that it discloses Intellectual Property for which, pursuant to Sections 14.10-14.12, the Notified Party intends to seek registration and/or protection under applicable intellectual property laws the Publishing Party shall delay the Proposed Disclosure for a period not to exceed five (5) months from the date written objection was received from the Notified Party.

13.3 The Parties agree there shall be no delay in the defense of a student's thesis or in a student's graduation. Where the Notified Party has requested a delay pursuant to Section 13.2.3 above, the University shall:

13.3.1 arrange for any thesis that includes or discusses Intellectual Property for which the Notified Party intends to seek protection be submitted and examined in confidence; and

13.3.2. ensure that any examiner not already covered by a suitable obligation of confidentiality sign a confidentiality and non-use agreement for that purpose; and

13.3.3 not make the student's thesis public for a period not to exceed five (5) months from the date written objection was received from the Notified Party.

14. INTELLECTUAL PROPERTY

For the purposes of this Agreement:

- 14.1 **"Background Intellectual Property"** means all Intellectual Property conceived, developed, or reduced to practice by the University or by the Company prior to, or independent of, their participation in the Project which a Party, acting at its sole discretion, makes available to the other Party in relation to the Project. Company and University will remain the owners of their respective Background Intellectual Property. For greater clarity, except as provided for herein, nothing in this Agreement will be interpreted as implicitly or explicitly transferring any right, interest or title in a Party's Background Intellectual Property to the other Party.
- 14.2 The Company and University hereby grant to each other a non-exclusive right of use to their respective Background Intellectual Property for the sole purpose of realizing work under the Project, which grant terminates upon expiration or earlier termination of this Agreement.
- 14.3 **"Company Project Intellectual Property"** means Project Intellectual Property which is first conceived or reduced to practice solely by Company during the course of the Project in the performance of the Work detailed in Appendix A without the substantive creative, inventive or intellectual contribution of the University.
- 14.4 **"Computer Software"** means any computer programs in source or object code, computer program documentation recorded in any form or medium, including any modification to such programs and documentation; excluding third party Computer software which includes but is not limited to, commercially available consumer off the shelf Computer Software and Computer Software subject to open source licenses.
- 14.5 **"Joint Project Intellectual Property"** means Project Intellectual Property which is first conceived or reduced to practice jointly by Company and University during the course of the Project in the performance of the Work detailed in Appendix A. The Parties shall jointly own such Joint Project Intellectual Property commensurate with their respective inventive contribution to its development.

- 14.6 **"Intellectual Property"** includes any idea, improvement, Invention or discovery, whether or not patented or patentable, any technical data, know-how or trade secret, any design, any Computer Software or any work subject to copyright, excluding copyright in any academic work, including without limitation, theses, presentations, publications, and conference papers, whether or not such design or copyright is registered or registrable.
- 14.7 **"Invention"** means any new and useful art, process, methodology, technique, machine, manufacture or composition of matter, or any new and useful improvement of any art, process, methodology, technique, machine, manufacture or composition of matter.
- 14.8 **"Project Intellectual Property"** means Intellectual Property which is first conceived or reduced to practice during the course of the Project in the performance of the Work detailed in Appendix A.
- 14.9 **"University Project Intellectual Property"** means Project Intellectual Property which is first conceived or reduced to practice solely by the University during the course of the Project in the performance of the Work detailed in Appendix A without the substantive creative, inventive or intellectual contribution of the Company.

PROTECTION OF PROJECT INTELLECTUAL PROPERTY

- 14.10 The Parties shall promptly notify each other of any Project Intellectual Property. Where a Party is the sole owner of Project Intellectual Property, that Party shall be responsible for its protection, at its sole discretion.
- 14.11 Should University not wish to seek patent protection for University Project Intellectual Property, Company may request University to apply for and to maintain such patent protection. University shall agree to Company's request and diligently take all steps available to obtain patent protection, provided that Company agrees to cover reasonable out-of-pocket expenses associated with the filing, prosecution and maintenance of any such patent applications to the extent that Company remains interested in pursuing or maintaining same. University shall provide an estimate of such costs in advance of incurring same so that Company may decide whether it is interested in continuing with the prosecution or maintenance of such patent applications.

In all such cases the patent will be filed in the name of the University and the University shall keep Company advised as to all developments with respect to patent applications and shall promptly supply Company with

copies of all papers received and filed in connection with the prosecution thereof in sufficient time for Company to provide its instructions in connection therewith.

- 14.12 The Parties shall jointly decide whether the Joint Project Intellectual Property in question should be protected and how it shall be protected. Unless otherwise agreed to by the Parties at the time of protection, all expenses related to the filing, prosecution and maintenance of any protection measures shall be shared in proportion to the respective inventive contribution of the Parties to such Joint Project Intellectual Property.

COMMERCIAL EXPLOITATION OF PROJECT INTELLECTUAL PROPERTY

- 14.13 University hereby grants to Company for a period of three (3) months following disclosure of University Project Intellectual Property (the “**Option Period**”) an option (“**Option 1**”) to negotiate a royalty-bearing license to such University Project Intellectual Property.

- 14.14 The terms and conditions of such a license shall be negotiated in good faith and shall take into consideration criteria such as:

14.14.1 the nature and the value of any Background Intellectual Property necessary to give effect to the University Project Intellectual Property;

14.14.2 the extent of the rights conferred in the license including, without limitation, elements such as territory, duration, level of exclusivity and jurisdiction.

- 14.15 Should the Parties fail to conclude a license agreement within three (3) months following the exercise of Option 1, or such longer period as mutually agreed to in writing, Option 1 shall become null and void, and the University will be free to pursue the commercialization of University Project Intellectual Property including but not limited to the granting of exclusive rights to a third party.

- 14.16 If this Agreement is terminated as a result of a default of Company or Company fails to, or elects not to, exercise Option 1 during the Option Period, University shall be free to pursue the commercialization of University Project Intellectual Property including but not limited to the granting of exclusive rights to a third party.

- 14.17 The University hereby grants to the Company for a period of six (6) months after the termination of the present Agreement an option to negotiate, in accordance with the conditions identified in Sections 14.14, a royalty-bearing license to University's share of Joint Project Intellectual Property ("**Option 2**").
- 14.18 Where Option 2 is not exercised by the Company, the Parties shall keep each other informed of any potential commercial exploitation of the Joint Project Intellectual Property. In the event that a Party identifies a way to generate revenue from the Joint Project Intellectual Property, the Parties shall negotiate, in good faith and in a timely manner, a commercially reasonable agreement with respect to the sharing of such revenue.
- 14.19 Subject to the terms of Article 12 above, and notwithstanding any licenses granted in accordance with this Article 14, University shall retain a worldwide, perpetual, irrevocable, non-exclusive license and right to use all Project Intellectual Property, for teaching and research purposes.
- 14.20 Company shall have a worldwide, royalty-free non-exclusive license and right to use all Project Intellectual Property, solely for non-commercial internal research purposes.

15. PUBLICITY

Neither Party shall, without prior written authorization from the other, use any trade or service mark(s) owned or controlled by the other Party. Additionally, neither Party shall use the name of the other Party, nor of any employee of the other Party, in any advertising or publicity without the prior written approval of an authorized representative of the other Party. Notwithstanding the foregoing, the Parties agree that they shall be free to disclose the following without prior authorization of the other Party: a) the names of the Parties and the nature of the relationship established herein, without disclosing the contents of the Agreement, b) the names of the University participants, c) the title of the Project, d) the duration of the Project, and e) sum to be paid or paid for the Project.

16. WARRANTY

- 16.1. All Background Intellectual Property, if provided, is provided on an "as is" basis with no representations, warranties or conditions, express or implied, with respect therein. However, the Parties represent that, to the best of their knowledge, without having conducted any searches, their respective Background Intellectual Property does not infringe upon the rights of third

parties. All implied warranties of merchantability and fitness for a particular purpose are expressly disclaimed and excluded.

- 16.2. University makes no warranties, express or implied or statutory, with respect to the Project deliverables, including without limitation, University Project Intellectual Property or Joint Project Intellectual Property. University does not warrant that the deliverables will be error free or that they will meet Company's requirements. All implied warranties of merchantability and fitness for a particular purpose are expressly disclaimed and excluded.
- 16.3. The Parties specifically make no warranties or representations, express or implied, concerning whether or not the exercise of the rights granted under or pursuant to this Agreement will result in an infringement of any rights or patents or copyrights held by third parties.
- 16.4. The Parties will promptly inform one another if the exercise of any right under this Agreement is discovered to infringe the rights of any third party. Each Party will provide reasonable assistance to the other Party, at such other Party's expense, in connection with any claim arising from the Party's performance under this Agreement or from the license rights granted under this Agreement.

17. LIABILITY AND INDEMNITY

- 17.1. Each Party hereby agrees to indemnify, defend and hold harmless the other Party, its officers, agents, governors, and employees, against all costs, suits, claims on account of injuries (including death) to persons participating in the Project, or damage to the other Party's property during the performance of the Project.
- 17.2. The Company hereby indemnifies the University against all costs, suits, or claims resulting from the use by the Company its customers and/or licensees of any project results and/or Project Intellectual Property developed under the Agreement.

18. TERMINATION

- 18.1. In addition to any other rights and remedies available to a Party, either Party may immediately terminate this Agreement in the event of a default of the other Party of its obligations hereunder, provided that the default has not been remedied within thirty (30) days of receipt of written notification of such default. Default on the part of the University may include the death or departure of the PI.

- 18.2 Company's participation in the Project shall be automatically terminated and University released of its obligations to Company under the terms of the Agreement should Company become bankrupt or insolvent, make an assignment for the benefit of creditors, take the benefit of any statute relating to bankrupt or insolvent debtors, or should an order be made or a resolution passed for the winding up of Company.
- 18.3 Company shall pay for all expenses up to termination and for reasonable commitments made by University, prior to date of notice of default, related to the Project for which University is financially responsible.
- 18.4 In the event University terminates the Agreement pursuant to Section 18.1 or 18.2 above, any rights that may have accrued for the benefit of Company prior to such termination, including but not limited any rights to Project Intellectual Property granted under Article 14 of this Agreement, shall be deemed null and void.
- 18.5 Notwithstanding the foregoing, the rights granted to University in Sections 14.5 and 14.19 above shall not be affected by the termination of the Company's participation in the Project.

19. NOTICES

All notices under the terms of this Agreement shall be given in writing and sent by registered mail, e-mail or shall be delivered by hand to the following addresses:

Company:

University:

Concordia University
1455 de Maisonneuve West, GM-910
Montreal, Quebec
H3G 1M8
Attn: Director, Research Partnerships and Innovation

All notices shall be presumed to have been received when they are hand delivered or receipt acknowledged when they are emailed, or five (5) business days after their mailing.

20. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Quebec for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.

21. ASSIGNMENT

No right or obligation related to this Agreement shall be assigned by either Party without the prior written permission of the other, such permission not to be unreasonably withheld. Notwithstanding the foregoing, the Company may assign this Agreement to a wholly-owned subsidiary or to a successor of all or substantially all of Company's business without such permission and the Concordia may assign its rights in Intellectual Property to a third party agent for purposes of evaluation, protection and commercialization of such Intellectual Property.

22. FORCE MAJEURE

No Party to this Agreement shall be liable to the other Party for any failure or delay in fulfilling an obligation hereunder, if said failure or delay is attributable to circumstances beyond its control, including but not limited to, any fire, power failure, labour dispute or government measure ("**Force Majeure**"). The Parties agree that the deadline for fulfilling the obligation in question shall be extended for a period of time equal to that of the continuance of the Force Majeure.

23. SURVIVAL OF ARTICLES

In addition to any other Articles of this Agreement which by its nature or law are intended to survive the expiration or earlier termination of this Agreement, the following Articles shall survive the expiration or termination of this Agreement: Article 5 (Basis of Payment), Article 6 (Method of Payment), Article 12 (Confidentiality), Article 13 (Publication), Article 14 (Intellectual Property), Article 15 (Publicity), Article 16 (Warranty), Article 17 (Liability and Indemnity), Article 20 (Governing Law), Article 21 (Assignment) and this Article 23 (Survival of Articles).

24. SEVERABILITY

If any provision, or portion thereof, of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Agreement, and each provision, or portion thereof, is hereby declared to be separate, severable and distinct.

25. WAIVER

A waiver of any provision of this Agreement shall only be valid if provided in writing and shall only be applicable to the specific incident and occurrence so waived. The failure by either Party to insist upon the strict performance of this Agreement, or to exercise any term hereof, shall not act as a waiver of any right, promise or term, which shall continue in full force and effect.

26. CONFLICTS

In the event of any conflict or inconsistency between the terms of the main body of this Agreement and any appendix to this Agreement, the terms of the main body of this Agreement shall prevail, unless otherwise expressly indicated.

27. ENTIRE AGREEMENT

The preamble and all appendices hereto shall form an integral part of this Agreement. This Agreement, and any amendments thereto signed by the duly authorized representatives of the Parties, constitute the complete and exclusive statement of terms and conditions between the Parties with respect to the subject matter hereof and supersedes all prior and/or contemporaneous agreements, oral or written statements which are inconsistent herewith, whether or not such other agreements have been signed by the employees, students or other agents of the Parties.

28. LANGUAGE (For the Province of Quebec only)

The Parties hereto have requested that this Agreement, all correspondence and documentation relating to this Agreement, be written in the English language. Les parties aux présentes ont exigé que la présente entente, de même que toutes correspondances et documentation relative à cette entente, soient rédigées en langue anglaise.

29. SIGNATURES

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and signatures transmitted in electronic form, including without limitation a PDF file, shall be acceptable to bind each Party and shall not affect the validity of the Agreement in any way.

30. REPRESENTATIONS

The Parties herein represent that they have the authority to enter into this Agreement and that their respective performance of their obligations under this Agreement will not conflict with any other contracts, agreements, or understandings to which they are a party.

AND THE PARTIES HAVE SIGNED, on this _____ day of _____ 20 _____.

FOR UNIVERSITY

FOR COMPANY

(Name and Title)

Associate Vice-President,
Strategy and Operations

Acknowledgement

I, _____, the Principal Investigator, having read and understood this Research Agreement, hereby agree to act in accordance with all the terms and conditions herein.

I hereby assign to Concordia University all Intellectual Property generated by me in connection with this Agreement and waive in favor of Concordia University, my moral rights in any Computer Software and copyrightable Intellectual Property created by me in connection with this Agreement. Furthermore, upon request from the University, I shall do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts and documents as may be required by the Office of Vice-President, Research and Graduate Studies to confirm such assignment of intellectual property rights and/or waiver of moral rights.

I further agree to ensure that all University participants engaged in the performance of the Project, are informed of their obligations under the Research Agreement and to procure from them, prior to their initial participation in the Project, an executed intervention of a participant in the Project in the form of that provided in Appendix C attached hereto.

Date: _____