

## RESEARCH AGREEMENT

This agreement (hereinafter the "Agreement") is entered into as of [month] [day], [year] (the "Effective Date").

### BETWEEN

"The Royal Institution for the Advancement of Learning/McGill University", a corporation under the law having a place of business at 845 Sherbrooke Street West, Montréal, QC, H3A 2T5 ("McGill")

And

[ SPONSOR NAME ] a company incorporated under the laws of [ COUNTRY/STATE ] having its principal place of business at [ SPONSOR ADDRESS (Street Address, City, Province/State, Country, Postal Code) ], (the "Sponsor"). (McGill and Sponsor are hereinafter referred to individually each as a "Party", and collectively as the "Parties").

**WHEREAS** the Sponsor wishes to retain McGill to carry out the Project, the whole in accordance with the terms and conditions of this Agreement;

**WHEREAS** McGill and Sponsor have in common the desire to encourage and facilitate the discovery, dissemination and application of new knowledge, and Sponsor desires to support said research;

### THE PARTIES AGREE AS FOLLOWS:

#### 1 DEFINITIONS

For the purpose of this Agreement, the following terms, words, phrases and expressions, when used in the singular or plural, are defined as follows:

- 1.1 "Background Intellectual Property" means any and all Intellectual Property conceived, developed, reduced to practice or otherwise made or acquired by McGill University, the Principal Investigator or members of the research team prior to the Effective Date.
- 1.2 "Confidential Information" means any written information clearly marked "Confidential" or any information provided verbally by one Party to the other and identified as confidential at the time of disclosure.
- 1.3 "Disclosure" means the publication of theses, articles, and scholarly writings or oral or written presentations at lectures, conferences or seminars.
- 1.4 "Forward Intellectual Property" means any and all Intellectual Property patentable or otherwise protectable by statute, conceived, developed, or reduced to practice or otherwise made by McGill University, the Principal Investigator or members of the research team as a result of their duties under this Agreement and included in the Reports

- described at section 4.1 of this Agreement.
- 1.5 “Intellectual Property” means scientific formulae, data, discoveries, inventions, ideas, software, models, prototypes, specifications, patterns, drawings, algorithms, concepts, products, compositions, processes and protocols, methods, tests and improvements, know-how, machines, devices, and computer programs and includes any and all patents, patent rights and patent applications which embody, emulate or employ any part of the foregoing.
- 1.6 “Principal Investigator” means the McGill employee identified in section 2.2.
- 1.7 “Product(s)” means any product, apparatus, method or service, the production, manufacture, sale, lease, use or practice of which incorporates or makes use of any or part of the Forward Intellectual Property.
- 1.8 “Project” means the research project described in Schedule “A” (Description of Research Project) which McGill agrees to perform under the terms and conditions of this Agreement.

## 2 RESEARCH PROJECT

- 2.1 **Description of the Project.** McGill shall use reasonable efforts to carry out the Project. The Project may from time to time be modified by mutual consent of the Parties. Any proposed changes to the Project as described herein will be discussed with the Principal Investigator and this Agreement will be modified in accordance with Article 14.9.
- 2.2 **Principal Investigator.** The research team carrying out the Project will be lead by **Dr.** \_\_\_\_\_ . The Principal Investigator shall be responsible for the technical and scientific content of the Project, respect of the budget and time schedule of the Project, and shall supervise members of the research team carrying out the Project.
- 2.3 **Research Team.** McGill will retain the services of research professionals, research assistants and technicians required for the execution of the Project. Students may also be part of the research team. All members of the research team will perform their functions to the best of their ability and devote the time and attention required to carry out the Project.
- 2.4 **No unfunded research.** McGill shall not be obligated to perform any work beyond the research work described in Schedule “A” which is not specifically funded by Sponsor.

*[Optional]*

- 2.5 **Guidelines.** McGill shall comply with all applicable regulations and guidelines in carrying out the Project, including without limitation any regulations governing the use of experimental animals.
- 2.6 **Subcontract.** University shall not subcontract any work to be performed unless specified in Schedule “A”.

*or*

**Subcontract.** University represents that a portion of the Project will be subcontracted and that all relevant conditions of the present Agreement will be described to, and accepted by, the subcontractor.

### 3 CONTRIBUTION AND PAYMENT

- 3.1 **Contribution.** In consideration of McGill carrying out the Project, Sponsor will pay McGill a fixed sum of [\_\_\_\_\_] dollars, (the “Funds”), as more fully described in the budget contained in Schedule “B”. McGill undertakes to use the Funds for the realization of the Project, in accordance with the budget.
- 3.2 **Limitation.** The total financial obligation of Sponsor is limited to the amount set forth in section 3.1. This amount shall not be exceeded without the written authorization of Sponsor as provided in section 14.9.
- 3.3 **Method of payment.** Sponsor will pay the Funds by cheque made payable to McGill University, in accordance with the terms of Schedule “B”. Interest may be charged at the rate of 1.5 percent per month on amounts not paid within 30 days of submission of invoice or retain delivery of any deliverables.
- 3.4 **Equipment.** Any equipment or materials purchased by McGill as part of the Project shall remain the property of McGill unless otherwise specified. *[Optional] During the term of this agreement, the equipment or materials purchased will be used on a priority basis for the execution of the Project.*

### 4 DELIVERABLES

- 4.1 **Reports.** In accordance with the terms of Schedule “C”, and subject to section 10.2, McGill will submit to Sponsor reports indicating progress of the Project, and results obtained, however, McGill makes no warranties regarding the achievement of any particular results. McGill will submit a final report to Sponsor no later than three (3) months following completion of the Project.
- 4.2 **Statements.** Upon request from Sponsor McGill will submit to Sponsor statements of expenses in respect of the Funds.
- 4.3 **Acceptance.** Reports and statements will be deemed to have been accepted by Sponsor and to have been made and submitted in accordance with the terms and conditions of this Agreement, unless Sponsor notifies McGill to the contrary within thirty (30) days of receipt of such report or statement.
- 4.4 **Use of Project research results.** Sponsor shall have the unrestricted right to use Project research results for its purposes (but not in a commercial product or in connection with a commercial service); provided, however, that such use does not infringe any Forward Intellectual Property for which Sponsor has failed to obtain a license as provided in Section 8.4 below.

*[Optional]*

- 4.5 **Review.** *Upon request, but no more than once a year, McGill will make available for review by Sponsor, all documents supporting the expense statements submitted under section 4.2. All expenses generated by such review will be borne by Sponsor.*

### 5 TERM AND TERMINATION

- 5.1 **Term.** This Agreement shall come into force on \_\_\_\_\_ the Effective Date \_\_\_\_\_ and

shall terminate on \_\_\_\_\_ DATE \_\_\_\_\_ unless terminated earlier in accordance with the provisions of sections 5.2 or 5.3, below.

5.2 **Termination for default.** Either Party may terminate this Agreement immediately upon notice to the other Party, in the event of:

5.2.1 material breach or non-compliance by the other Party of some obligation, undertaking, representation, warranty or payment contained in this Agreement, if such default is not remedied within thirty (30) days of receipt of written notice to that effect;

5.2.2 the other Party becoming bankrupt or insolvent, going into receivership, making an assignment of its assets to the benefit of its creditors, taking advantage of any statute which may be in force in relation to bankruptcy or insolvent debtors, or ceasing to conduct business in the normal course.

5.2.3 default on the part of the other Party caused by a force majeure, where such default lasts for more than six (6) months.

5.3 **Termination by McGill.** McGill shall also be able to terminate this Agreement, in its own discretion and without penalty or compensation to Sponsor, in the event that the Principal Investigator leaves the employment of McGill, becomes permanently disabled or passes away. In such a case, the Parties will attempt in good faith to identify another Principal Investigator at McGill. Should they be unable to find a mutually acceptable replacement, McGill shall be able to terminate this Agreement under this section. McGill shall also be able to terminate this Agreement pursuant to section 10.3.

5.4 **Effect of Termination.** Upon receipt by either Party of a notice of termination under this section 5 or expiry of the delay within which default may be cured under section 5.2.1, McGill will make all reasonable efforts to stop work on the Project and limit further expense of the Funds, provided that McGill shall have the right to disburse any sum of money committed at the time of termination. Sponsor shall pay to McGill all expenses reasonably incurred, committed to, or made in relation to the Project up to the date of receipt of a notice of termination or expiry of the delay within which default could be cured under section 5.2.1, and shall pay for all costs and fees related to the termination of the Agreement.

## 6 CONFIDENTIALITY

6.1 **Protection.** Each Party shall protect Confidential Information received from the other Party from disclosure to third parties with the same degree of care it uses in the protection of its own confidential information and shall not use such Confidential Information for any purposes outside the scope of this Agreement. The obligation to safeguard Confidential Information shall continue for a period of two (2) years from the date of termination or expiration of this Agreement and shall not apply to information which;

6.1.1 is already known to the receiving Party to which it is disclosed without breach of the provisions of this Agreement;

6.1.2 is or becomes part of the public domain without breach of the provisions of this Agreement;

6.1.3 is lawfully obtained from a third party;

6.1.4 is required by law to be disclosed;

6.1.5 is independently developed by one Party without reference to Confidential Information provided by the other Party.

## 7 DISCLOSURE AND PUBLICATION

- 7.1 **Acknowledgement.** The Parties acknowledge that it is part of McGill's function to disseminate information and to make it available for the purpose of scholarship, education and research, and that McGill 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 **Publication.** Until the end of the second year following the expiration or termination of this Agreement, McGill shall provide to Sponsor a copy of any proposed Disclosure (the "Notice") relating to the research carried out under the Project either when said proposed Disclosure is submitted for publication or thirty (30) days in advance of the date of Disclosure (the "Notice Period"). If Sponsor determines that the Disclosure contains Sponsor's Confidential Information or unprotected Forward Intellectual Property and so notifies McGill within twenty (20) days of receipt of the Notice, the Parties shall use the remainder of the Notice Period to negotiate in good faith the protection of Sponsor's Confidential Information or to allow patent applications to be filed, if required. In the event the twenty (20) day period elapses without any notification from Sponsor McGill shall be free to make the Disclosure.

## 8 INTELLECTUAL PROPERTY

- 8.1 **Rights to Intellectual Property.** Without divesting either Party of Intellectual Property rights that have come to being prior to this Agreement all Forward Intellectual Property shall vest in McGill.
- 8.2 **Forward Intellectual Property Disclosure.** McGill shall promptly, and no later than three (3) months after the expiry date of this Agreement, report and fully disclose in writing to Sponsor any and all Forward Intellectual Property.
- 8.3 **Background Intellectual Property.** Sponsor has no right in respect of Background Intellectual Property, except as described in license agreements that may be agreed to by the Parties.
- 8.4 **Option to license Forward Intellectual Property.** McGill hereby grants Sponsor a time-limited option to negotiate an exclusive (or non exclusive) royalty-bearing license to use the Forward Intellectual Property under commercially reasonable terms and conditions to be negotiated in good faith by the Parties ("the Option"). Sponsor acknowledges that McGill shall offer no warranty concerning patentability of Forward Intellectual Property, or non-infringement, merchantability or fitness for particular purposes of any ensuing products.
- 8.4.1 **Term.** The Option may be exercised by written notice to McGill within six (6) months of the disclosure of Forward Intellectual Property to the Sponsor (the "Option Period"). If the Agreement is terminated as a result of a default of Sponsor or if Sponsor fails to, or elects not to, exercise the Option during the Option Period, McGill shall be free to pursue the commercialisation of the Forward Intellectual Property including but not limited to the granting of

exclusive rights to a third party.

- 8.4.2 **Limit.** Should the Parties fail to conclude a license agreement within six (6) months following the exercise of the Option or such longer period as mutually agreed to in writing, the Option shall become null and void, and McGill will be free to pursue the commercialisation of the Forward Intellectual Property including but not limited to the granting of exclusive rights to a third party.
- 8.5 **Rights reserved.** Sponsor acknowledges that notwithstanding the provisions of section 8.4, McGill, and if applicable, the Principal Investigator and members of the research team shall forever retain the right to use the Forward Intellectual Property for academic purposes, including teaching and research.

## 9 REPRESENTATIONS AND WARRANTIES

- 9.1 **Representations.** The Parties represent and warrant to each other that:
- 9.1.1 they each have full authority to enter into this Agreement;
- 9.1.2 their undersigned representatives have full authority to execute this Agreement on their behalf;
- 9.1.3 the performance of their respective obligations under this Agreement will not violate the terms of any other agreement or contract to which they are a party.
- 9.2 **Warranty Disclaimer.** McGill makes no express warranties and disclaims any implied warranties as to any matter relating to this Agreement, including without limitation the performance or results of the Project; the availability of legal protection for any research results, inventions, copyrightable works, or any other work product pursuant to this Agreement. **There are no express or implied warranties of merchantability or fitness for a particular purpose for any of the research results, or that the use of research results will not infringe any patent rights or other proprietary rights of a third party, or that the work undertaken during the course of the Project will be eligible for tax credits.**

## 10 EXPORT CONTROLS AND CONTROLLED GOODS

- 10.1 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 McGill, Sponsor will so inform McGill in writing, in accordance with section 14.2, "Notices", prior to any such disclosure, Sponsor shall not forward or provide any such information to McGill without the express written permission of McGill. The burden shall be on Sponsor to make it available only to eligible individuals as designated by McGill, or to obtain the appropriate license or approval from the relevant agency, or to invoke an available exception, exemption or exclusion.
- 10.2 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.
- 10.3 McGill shall have the right to terminate this Agreement under Section 5, "Term and Termination," if the disclosure of such information, under license or otherwise, would destroy McGill's ability to invoke the fundamental research exclusion with regard to the

conduct or reporting of its research or McGill is unable to comply with the requirements of the Sponsor.

## 11 INDEMNIFICATION AND LIABILITY

- 11.1 **Indemnification by McGill.** During the term of this Agreement, and except where they have been caused or contributed to by Sponsor's negligence or wilful misconduct, McGill shall indemnify and hold Sponsor harmless of any and all cost, suits, claims or damages on account of injuries (including death) to the Principal Investigator, members of the research team and any other person, caused by its negligence or that of its employees, agents and representatives. McGill shall also hold Sponsor harmless of any or all damages to McGill property, except where such damages have been caused or contributed to by Sponsor's own negligence.
- 11.2 **Indemnification by Sponsor.** During the term of this Agreement, and except where they have been caused or contributed to by McGill's negligence or wilful misconduct, Sponsor shall indemnify and hold McGill, Principal Investigator and members of the research team, harmless of any and all cost, suits, claims or damages caused by its negligence or that of its employees, agents and representatives.
- 11.3 **Liability.** Neither Party shall be liable to the other for indirect or consequential damages.

## 12 PUBLICITY AND USE OF NAMES

- 12.1 **Use of name.** Neither Party shall use the other Party's name or trademark or any adaptation thereof without the prior written consent of its duly authorized representative. Sponsor shall specifically not have the right to use the name of the Principal Investigator or members of the research team, without the specific written permission of an authorized representative of McGill.
- 12.2 **Publicity.** Neither Party will issue any press release or publicity concerning this Agreement or the Project and its subject matter except with prior written consent from the authorized representative of the other Party, which consent shall not be unreasonably withheld. Consent given by either Party in respect of a particular publicity or press release shall not be deemed to be consent to any other publicity or press release. Notwithstanding the foregoing, Sponsor shall have the right to disclose the existence of this Agreement (title, Funds, Principal Investigator and Sponsor) in any prospectus, offering memorandum or other document or filing required by law or securities regulations.
- 12.3 **Acknowledgment.** The Parties agree that any Disclosure, press release or publicity will fairly represent the contribution of each Party to the Project as well as that of the Principal Investigator and other members of the research team, as appropriate.

## 13 DISPUTE RESOLUTION

- 13.1 **Cooperation.** Each Party to this Agreement agrees to cooperate with the other to ensure that each may enjoy all rights conferred under such Agreement.
- 13.2 **Mediation.** The parties shall attempt to resolve any dispute, controversies, and claims with respect to this Agreement amicably through good faith negotiations. In the event that

the Parties fail to resolve their differences, the matter shall be first submitted to a mutually acceptable mediator, qualified by education and experience to review the matter. The Parties shall be responsible for their own costs and shall share the fees and expenses of the mediator.

- 13.3 **Arbitration.** Should the mediation process fail to resolve the dispute to the satisfaction of both Parties within thirty (30) days of the appointment of the mediator, the Parties shall submit their dispute to arbitration in front of a single arbitrator and in accordance with the provisions of articles 940 and following of the Code de procédure civile du Québec. The award and determination of the arbitrator shall be final and binding upon the Parties. Each Party to the arbitration shall pay its own costs, including the expenses and fees generated by the legal representation at arbitration.

#### 14 GENERAL PROVISIONS

- 14.1 **Force majeure.** Neither Party shall be held responsible to the other Party for any default or delay in the execution of its obligations caused by circumstances beyond its control. Without limiting the generality of the foregoing, natural disasters, strikes, fires, war and insurrections and actions of government or regulatory bodies, which prevent a party from performing under the Agreement shall be deemed to constitute force majeure, provided however that the Party that is excused from performance takes all measures necessary to prevent, control or limit the effect of the force majeure so that performance may resume as soon as possible.

- 14.2 **Notices.** All notices, reports, requests, consents and other communications between the Parties pertaining to matters related to this Agreement (with the exception of payments as per section 3) shall be in writing, shall specifically refer to this Agreement and deemed duly received when actually received by mail or personal delivery, mailed by registered or certified mail to the receiving Party or when transmitted by facsimile, at the address and facsimile number mentioned below or to such other address or facsimile number which may later be designated by written notice from either Party.

**The Royal Institution for the Advancement of Learning/McGill University Sponsor**

Office of the Vice-Principal (Research and International Relations) [SPONSOR NAME]

1555 Peel Street, 11<sup>th</sup> Floor [SPONSOR ADDRESS]  
Montréal, Québec, H3A 3L8

Attention:  
[OFFICER]  
Tel:  
Fax:

Attention:  
[SPONSOR CONTACT]  
Tel:  
Fax:

- 14.3 **Waiver of rights.** No waiver or failure by the Parties to enforce their right or insist on



- strict performance of this Agreement shall be deemed to prevent the Parties from subsequently enforcing their rights or insist on strict performance under the Agreement. No waiver or failure to strictly enforce rights shall affect the validity of this Agreement.
- 14.4 **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the Agreement itself or any of its provisions.
- 14.5 **Survival.** The provisions of sections 6 (Confidentiality), 7.2, 8.4, 8.5 (Rights reserved) and 12 (Publicity) shall survive the termination of this Agreement
- 14.6 **Independent Contractor.** For the purpose of this agreement and all services to be provided hereunder, each Party shall be, and shall be deemed to be, an independent contractor and not an agent or employee of the other Party.
- 14.7 **Assignment.** Neither Party shall have the right to assign this Agreement without the written consent of the other Party. Such consent shall not be unreasonably withheld.
- 14.8 **Headings.** The headings contained in this Agreement are for convenience and reference only and shall not define or limit the scope, or affect the interpretation of, its provisions.
- 14.9 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between McGill and the Sponsor with respect to the Project. There are no understandings, representations or warranties between McGill and the Sponsor in respect of the Project, except as expressly set forth in this Agreement. Any modification to this Agreement shall be agreed to in writing and approved by an authorized representative of the Sponsor and by McGill's Office of Technology Transfer.
- 14.10 **Currency.** All monies referred to in this agreement are expressed in Canadian dollars, unless otherwise stated.
- 14.11 **Language.** Les Parties ont requis que cette entente soit rédigée en anglais. The Parties have requested that this Agreement be drafted in English.
- 14.12 **Governing law.** This Agreement shall be governed by the laws of Québec, and Canadian laws applicable therein without regard to their provisions on conflict of Law.

**This agreement has been executed by the Parties and on the dates hereto:**

**MCGILL UNIVERSITY**

**COMPANY NAME**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print (name and title of signatory)

\_\_\_\_\_  
Print (name and title of signatory)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Acknowledgement**

I, Dr. [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 McGill participants are informed of their obligations under such terms and conditions.

\_\_\_\_\_

Dr. [PRINCIPAL INVESTIGATOR]

**Example Only  
Please contact a Research Contracts  
& Agreements Officer**

## **Schedule “A” Description of the Project**

Note: this Schedule must have the following minimal information, which is referred to in the contract:

- Scope of Work, (the technical and scientific description of the Project);
- Responsibilities and duties of Principal Investigator;
- Time schedule, including milestones;
- Deliverables; (the content and dates at which the interim reports and final report are to be issued are detailed at Schedule “C”);)

Example Only  
Please contact a Research Contracts  
& Agreements Officer

**Schedule "B"**  
**Budget and Method of Payment**

**TWO OPTIONS:**

- 1- UP FRONT PAYMENT AND PAYMENTS UPON COMPLETION OF MILESTONES/REPORTS;**
- 2- UP FRONT PAYMENT AND PAYMENTS ACCORDING TO A FIXED SCHEDULE]**

**Method of Payment**

The sum stipulated in Article 3 hereof shall be paid by Sponsor by cheque made payable to McGill University, within 30 days of the due date in accordance with the following schedule:

Payment due dates:

- i. \$\_\_\_\_\_.00 upon signing
- ii. \$\_\_\_\_\_.00 upon receiving each interim report [and/or DATE ].
- iii. \$\_\_\_\_\_.00 upon receiving the final report [and/or DATE ].

Invoices will be sent to:

Sponsor's contact name (financial),  
Title,  
Company,  
Address,  
Telephone and  
Fax number,  
E-mail address

Cheques will be sent to:

*Ms. E. Coletta  
Senior Manager  
Financial Services  
Research & Restricted Funds  
3465 Durocher Street, Room 308  
Montreal, QC H2X 2C6*

Interest may be charged at the rate of 1.5 percent per month on amounts not paid within 30 days of the due date.

Schedule "C"

**Deliverables**

Reports shall be submitted to Sponsor by the following dates:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. A final report will be submitted to Sponsor no later than three (3) months following completion of the Project.

Unless University is notified to the contrary by Sponsor in writing within thirty (30) days following receipt of the deliverables, these will be deemed to have been accepted by Sponsor according to the terms and conditions of this Agreement.

**Example Only Contracts**  
**Please contact a Research Officer & Agreements Officer**