

COLLABORATIVE RESEARCH AGREEMENT

between

McMaster University
1280 Main Street West
Hamilton, Ontario
L8S 4L8

and

[Name and Address of Company]



COLLABORATIVE RESEARCH AGREEMENT

- A *Date of Agreement* [Date]
- B
McMaster University
1280 Main Street West
Hamilton, Ontario L8S 4L8
(the 'University')
- C *Name of Academic* [Name]
(the 'Principal Investigator' or his or her successor)
- D *Insert full legal Name and Address of Company* [Insert Details]
(the 'Sponsor')
- E *Name and Contact Information of Company Project Representative* [Insert Details]
(the 'Sponsor's Supervisor' or his or her successor)
- F *The Project* The work described in Schedule 1
(the 'Project')
- G *Funding Payments* The payments described in Schedule 1
(the 'Financial Contribution')
- H *Date Agreement is to take Effect* [Date]
(the 'Effective Date')
- I *The Project Period* [Insert Start and End Dates or Duration]
(the 'Project Period')

1. DEFINITIONS

In this Agreement the following expressions have the meaning set opposite:

Academic Publication:	the publication of an abstract, article or paper in a journal, or its presentation at a conference or seminar, or the presentation of a student thesis for academic credit; and in clauses 5 and 6 "to Publish" and "Publication" are to be construed accordingly;
this Agreement:	this document, including its Schedules, as amended from time to time in accordance with clause 10.10;
Background :	information, techniques, Know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) that are provided by one party to the other for use in the Project (whether before or after the date of this Agreement, except any Result). The University's background is defined in Schedule 3 of this Agreement ;
a Business Day:	Monday to Friday (inclusive) except bank or public holidays in the Province of Ontario;
Confidential Information:	each party's confidential information is: any Background disclosed by that party to the other for use in the Project and identified as confidential before or at the time of disclosure;
External Funding:	any funding or assistance provided for the Project, or to any party for use in the Project by any third party, including without limitation, any government or public body;
the Financial Contribution:	the financial contribution to be provided by the Sponsor set out in Schedule 1;
a Group Company:	any 'holding body corporate' or 'affiliated body corporate' as those terms are defined by sections 1(3) and 1(4), respectively in the Ontario <i>Business Corporations Act</i> , R.S.O. 1990, c. B.16 ;
Intellectual Property:	patents, trade marks, service marks, registered

designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, that has been disclosed by the Principal Investigator to the McMaster Industry Liaison Office, together with all rights of action in relation to the infringement of any of the above;

the Key Personnel: the Principal Investigator and any other key personnel identified in Schedule 1;

Know-how unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;

the Location: the location(s) at which the Project will be carried out as set out in Schedule 1;

the Project: the programme of work, activities and services described in Schedule 1, as amended from time to time in accordance with clause 10.10;

the Results: all information, Know-how, results, inventions, software and other Intellectual Property identified or first reduced to practice or writing in the course of the Project.

2. **CONDUCT OF THE PROJECT**

2.1 The Project will begin on the Effective Date and will continue for the term of the Project Period or until any later date agreed in writing between the parties, or until this Agreement is terminated in accordance with clause 8 or 9. If this Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.

2.2 The University will carry out the tasks allotted to it in Schedule 1, and will provide the human resources, materials, facilities and equipment that are designated as its responsibility in

Schedule 1. The Project will be carried on under the direction and supervision of the Principal Investigator. The Project will be carried out at the Location.

- 2.3 The University will provide the Sponsor with e-mail copies of the data as generated and a report at the conclusion of the Project together with a copy of all of the Results.
- 2.4 The University makes no warranties, express or implied, as to any matter whatsoever including, without limitation, the condition of the work or any invention(s), result(s), or product(s), whether tangible or intangible, conceived, discovered, or developed under this Agreement; or the ownership, merchantability, or fitness for a particular purpose of the work described herein or any such invention or product; nor does the University guarantee a successful outcome.
- 2.5 The University warrants to the Sponsor that the University has full power and authority under its constitution, and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement and to carry out the Project.
- 2.6 The University delegates management of this Agreement to the Vice-President (Research) or his/her designate; any amendment to its terms must be authorized by the Vice-President (Research) or his/her designate in writing. The Principal Investigator will have supervision of the work and will have authority to approve expenditures under this Agreement.

3. FINANCIAL CONTRIBUTION AND EXTERNAL FUNDING

- 3.1 The University will keep complete and accurate accounts of its expenditure on the Project. The Sponsor will pay the Financial Contribution to the University in accordance with Schedule 1 within 30 days after receipt by the Sponsor of any invoice.
- 3.2 Unless specified in Schedule 1, all amounts payable to the University under this Agreement are exclusive of Goods and Services Tax, Provincial Sales Tax or any similar tax which the Sponsor will pay at the rate from time to time prescribed by law.
- 3.3 If the Sponsor fails to make any payment due to the University under this Agreement, without prejudice to any other right or remedy available to the University, the University may charge interest (both before and after any judgment) on the amount outstanding, on a daily basis at the rate of three per cent per annum above the University's Bank's (currently Canadian Imperial Bank of Commerce) current lending rate from time to time in force. That interest will be calculated from the date for payment specified in this Agreement or related invoice to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Sponsor will pay that interest to the University on demand.

- 3.4 The University will own all equipment purchased or constructed by it, or for it, using the Financial Contribution or any External Funding.
- 3.5 If the Project receives any External Funding each of the parties will comply with the terms of that External Funding.

4. USE AND EXPLOITATION OF INTELLECTUAL PROPERTY

- 4.1 This Agreement does not affect the ownership of any Intellectual Property in any Background or in any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Results. The Intellectual Property in them will remain the property of the party that contributes them to the Project (or its licensors) and any use of such Background may be subject to a separate license agreement. No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement. For the avoidance of doubt, the Intellectual Property and Know-How relating to the Principal Investigator's or University's implementation of testing models currently the property of the University shall remain the sole property of the University and no licence to use such Intellectual Property or Know-How is granted or implied by this Agreement.
- 4.2 Each Party grants the other a royalty-free, non-exclusive licence to use its Background for the purpose of carrying out the Project, but for no other purpose. Neither party may grant any sub-licence to use the other's Background except that the Sponsor may allow its Group Companies and any person working for or on behalf of the Sponsor or any Group Company to use the University's Background for the purpose of carrying out the Project.
- 4.3 Ownership and exploitation of Results shall be in accordance with the terms of Schedule 2 of this Agreement.
- 4.4 Notwithstanding the terms provided in Schedule 2, the Sponsor grants to the University or the University retains the right (as applicable) to use the Results for the University's own internal, non-commercial teaching and research purposes.

5. ACADEMIC PUBLICATION

- 5.1 University shall not be restricted from making any publications, including without limitation, presenting at conferences, symposia or professional meetings, or from publishing in abstracts, journals, theses, or dissertations, or otherwise, whether in printed or in electronic media, the methods and the results of the Research Project, except where such publication or presentation would result in the premature public disclosure of commercializeable intellectual property or breach the confidentiality terms of clause 6 of this Agreement.
- 5.2 The University shall submit to the Sponsor, an outline and associated abstract of any research results, which it intends to publish or present, for review at least thirty (30) days in advance of

such proposed publication or presentation (Review Period). The Sponsor shall complete the review within the Review Period. If the Sponsor does not object in writing to such publication or presentation within the Review Period, it shall be deemed to have agreed to the disclosure and the University shall be free to proceed.

- 5.3 During the review period, the Sponsor may object to such proposed publication or presentation either because there is an inadvertent disclosure of the Sponsor's confidential information contained in the proposed publication or presentation, or because there is commercializable subject matter which requires appropriate legal protection. If the Sponsor objects because there would be an inadvertent disclosure of the Sponsor's confidential information, the University agrees to remove such confidential information. If the Company objects because of the potential for protectable subject matter, the University agrees to delay publication for up to a maximum of six (6) months for the purposes of obtaining patent or other intellectual property protection. If a graduate student's thesis contains subject matter that requires protection, the University retains the right to have graduate student theses reviewed and defended for the sole purpose of academic evaluation in accordance with the University's established procedures. This Agreement shall not impose any delays on the defence of a student's thesis.

6. **CONFIDENTIALITY**

- 6.1 Subject to clause 5, neither party will, either during the Project Period or for 3 years after the end of the Project Period, disclose to any third party, nor use for any purpose except carrying out the Project, any of the other party's Confidential Information.
- 6.2 Neither party will be in breach of any obligation to keep any Background, Results or other information confidential or not to disclose it to any other party to the extent that it:
- 6.2.1 is known to the party making the disclosure before its receipt from the other party, and not already subject to any obligation of confidentiality to the other party;
 - 6.2.2 is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
 - 6.2.3 has been obtained by the party making the disclosure from a third party in circumstances where the party making the disclosure has no reason to believe that there has been a breach of an obligation of confidentiality owed to the other party;
 - 6.2.4 has been independently developed by the party making the disclosure;

- 6.2.5 is disclosed pursuant to the requirement of any law or regulation (provided, in the case of a disclosure under the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31 (the "Act") none of the exceptions to that Act applies to the information disclosed) or the order of any Court of competent jurisdiction, and the party required to make that disclosure has informed the other of the requirement and the information required to be disclosed; or
- 6.2.6 is approved for release in writing by an authorised representative of the other party.
- 6.3 The University will not be in breach of any obligation to keep any of the Sponsor's Background that is not Confidential Information, or any Results, or other information, confidential or not to disclose them to any third party, by Publishing any of the same if the University has followed the procedure in clause 5.2 and has received no Confidentiality Notice within the period stated in that clause.
- 6.4 The Sponsor will not be in breach of any obligation to keep any of the University's Background, or other information, confidential or not to disclose them to any third party, by making them available to any Group Company, or any person working for or on behalf of the Sponsor or a Group Company, who needs to know the same in order to exercise the rights granted in this Agreement, provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep that Background or information confidential.
- 6.5 If the University receives a request under the Act to disclose any information that, under this Agreement, is the Sponsor's Confidential Information, it will notify the Sponsor and will consult with the Sponsor. The Sponsor will respond to the University within 10 days after receiving the University's notice if that notice requests the Sponsor to provide information to assist the University to determine whether or not an exemption to the Act applies to the information requested under that Act.
- 6.6 Neither the University nor the Sponsor will use the other's name or logo in any press release or product advertising, or for any other promotional purpose, without first obtaining the other's written consent; except that the University may identify the sums received from the Sponsor in the University's Annual Report and similar publications.

7. **LIMITATION OF LIABILITY**

- 7.1 Neither of the parties makes any representation or gives any warranty to the other that any advice or information given by it or any of its employees or students who work on the Project, or the content or use of any Results, Background or materials, works or information provided in connection with the Project, will not constitute or result in any infringement of third-party rights.

7.2 Except under the indemnity in clause 7.3, and subject to clause 7.6, neither party accepts any responsibility for any use which may be made by the other party of any Results, nor for any reliance which may be placed by that other party on any Results, nor for advice or information given in connection with any Results.

7.3 The Sponsor will indemnify the University, the Principal Investigator and every other employee and student of the University (the "Indemnified Parties"), and keep them fully and effectively indemnified, against each and every claim made against any of the Indemnified Parties as a result of the Sponsor's use of any of the Results or any materials, works or information received from them pursuant to the terms of this Agreement, provided that the Indemnified Party must:

7.3.1 promptly notify the Sponsor of details of the claim;

7.3.2 not make any admission in relation to the claim;

7.3.3 allow the Sponsor to have the conduct of the defence or settlement of the claim; and

7.3.4 give the Sponsor all reasonable assistance, at the Sponsor's expense, in dealing with the claim.

The indemnity in this clause will not apply to the extent that the claim arises as a result of the Indemnified Party's negligence, breach of clause 6 or the deliberate breach of this Agreement.

7.4 Subject to clause 7.6, and except under the indemnity in clause 7.3, the liability of either party to the other for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project and the Results, will not extend to any indirect damages or losses, or any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect, even if the party bringing the claim has advised the other of the possibility of those losses, or if they were within the other party's contemplation.

7.5 Subject to clause 7.6, and except under the indemnity in clause 7.3, the aggregate liability of each party to the other for all and any breaches of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project and the Results, will not exceed the total of the Financial Contribution.

7.6 Nothing in this Agreement limits or excludes either party's liability for:

7.6.1 death or personal injury;

7.6.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded; or

7.6.3 any loss or damage caused by a deliberate breach of clause 6.

- 7.7 The express undertakings and warranties given by the parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

8. **FORCE MAJEURE**

If the performance by either party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control, that party will not be in breach of this Agreement because of that delay in performance. However, if the delay in performance is more than 6 months, the other party may terminate this Agreement with immediate effect by giving written notice to the other party.

9. **TERMINATION**

- 9.1 Either party may terminate this Agreement with immediate effect by giving notice to the other party if:

9.1.1 the other party is in breach of any provision of this Agreement and (if it is capable of remedy) the breach has not been remedied within 90 days after receipt of written notice specifying the breach and requiring its remedy; or

9.1.2 the other party becomes insolvent, or if an order is made or a resolution is passed for its winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed over the whole or any part of the other party's assets, or if the other party makes any arrangement with its creditors.

- 9.2 This Agreement may be terminated by the University upon sixty (60) days written notice to the Client if circumstances beyond the University's control preclude continuation of the Project.

- 9.3 Clauses 1, 3, 4, 5, 7, 8, 9.4 and 10 will survive the expiry of the Project Period or the termination of this Agreement for any reason and will continue indefinitely. Clause 6 will survive the expiry of the Project Period or the termination of this Agreement for its prescribed period.

- 9.4 On the termination of this Agreement, the Sponsor will pay the University for all work done prior to termination including any non-cancellable commitments. If this Agreement is terminated for any reason, the Sponsor will pay to the University the reasonable cost of performing any of the

work that has been performed up to the date of termination and any other costs directly resulting from such termination including obligations under the Ontario Employment Standards Act.

10. GENERAL

10.1 **Notices:** Any notice to be given under this Agreement must be in writing, may be delivered to the other party or parties by any of the methods set out in the left hand column below, and will be deemed to be received on the corresponding day set out in the right hand column:

Method of service	Deemed day of receipt
By hand or courier	the day of delivery
By registered delivery mail	the next Business Day after mailing
By fax (provided the sender's fax machine confirms complete and error-free transmission of that notice to the correct fax number)	the next Business Day after sending or, if sent before 4:00pm (sender's local time) on the Business Day it was sent
By email to the recipient's last known email address	the day the email was sent

The parties' respective representatives for the receipt of project related or legal notices are, until changed by notice given in accordance with this clause, as follows:

For the University:

Executive Director
McMaster Industry Liaison Office
McMaster University
McMaster Innovation Park, Suite 305
175 Longwood Road South
Hamilton, Ontario
L8P 0A1

t: [#]

e: dirmilo@mcmaster.ca

For the Sponsor:

[Insert]

- 10.2 **Headings:** The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 10.3 **Assignment:** Neither party may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other party. That consent may not be unreasonably withheld or delayed.
- 10.4 **Illegal/unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.
- 10.5 **Waiver of rights:** If a party fails to enforce, or delays in enforcing, an obligation of the other party, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 10.6 **No agency:** Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the parties, or the relationship between them of principal and agent. Neither party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.
- 10.7 **Entire agreement:** This Agreement and all schedules thereto constitutes the entire agreement between the parties relating to its subject matter. Each party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of, any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.
- 10.8 **Formalities:** Each party will take any action and execute any document reasonably required by the other party to give effect to any of its rights under this Agreement, or to enable their registration in any relevant territory provided the requesting party pays the other party's reasonable expenses.
- 10.9 **Counterparts:** This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile or electronically by PDF and all such counterparts,

facsimiles and PDF copies shall together constitute one agreement. The parties agree that facsimile or PDF copies of signatures have the same effect as original signatures.

10.10 **Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each party's representative.

10.11 **Third parties:** No one except a party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a party to this Agreement may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise.

10.12 **Governing law:** This Agreement is governed by, and is to be construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. The courts of the Province of Ontario will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement, except that either party may bring proceedings for an injunction in any jurisdiction.

10.13 **Escalation:** If the parties are unable to reach agreement on any issue concerning this Agreement or the Project within 14 days after one party has notified the other of that issue, they will refer the matter to Executive Director, McMaster Industry Liaison Office in the case of the University, and to the President or Chief Executive Officer or Director, as applicable, in the case of the Sponsor in an attempt to resolve the issue within 14 days after the referral. Either party may bring proceedings in accordance with clause 10.12 if the matter has not been resolved within that 14 day period, and either party may apply to the court for an injunction, whether or not any issue has been escalated under this clause.

SIGNED for and on behalf of
McMaster University:

SIGNED for and on behalf of **[the Sponsor]:**

Name: Gay Yuyitung

Name:.....

Position: Executive Director, MILO

Position:

Signature:.....

Signature:.....

Acknowledgement by the Principal Investigator

I, as the Principal Investigator, having read this Agreement, hereby agree to act in accordance with all its terms and conditions, and to ensure that all Project's participants are informed of their obligations under such terms and conditions.

.....
Signature

.....
Date

SCHEDULE 1 – RESEARCH/WORK PLAN

Attach Work Plan

The total Financial Contribution from the Sponsor due under this Agreement is [X]. The University will invoice the Sponsor for 50% of the total upon signing of this Agreement and for the remainder in two separate, equal quarterly invoices commencing upon the execution of this Agreement. Invoices shall be sent to the following contact at the Sponsor:

[Insert]

Sponsor agrees to pay the University promptly upon receipt of said invoices.

Payments can be made by cheque, payable to “McMaster University” and forwarded to:

Assistant Director, Research Finance
McMaster University – Research Finance
1280 Main Street West
Gilmour Hall Room 305
Hamilton, ON L8S 4L8
905.525.9140, ext. 26144

SCHEDULE 2

USE AND EXPLOITATION OF INTELLECTUAL PROPERTY

McMaster negotiates IP terms on a project by project basis to ensure that we are flexible in our approach and that the IP terms are beneficial to both parties.

Our terms range from full ownership by our partners to ownership by McMaster, with a wide range of license options in between. Depending on the project, licensing options can vary from a non-exclusive right to use the results to an option for a royalty-bearing exclusive license to the results. We work with our researchers and our partners to find terms that are suitable for each project.

SCHEDULE 3
Background