**NGen Collaboration Agreement Template & Guide**

 **for Recipients**

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This Collaboration Agreement (the “**Agreement**”), dated and made effective as of

[Insert Date] (the “**Effective Date**”), is by and between the following parties (each a “**Party**” and collectively, the “**Parties**”):

**Lead Recipient,**

a corporation organized under the laws of [jurisdiction of incorporation], with offices located at [full address] (“[Abbreviation of Lead Recipient]”)

and

**Recipient 2,**

a corporation organized under the laws of [jurisdiction of incorporation], with offices located at [full address] (“[Abbreviation of Recipient 2]”)

and

**Recipient 3,**

a corporation organized under the laws of [jurisdiction of incorporation], with offices located at [full address] (“[Abbreviation of Recipient 3]”)

and

[ADD OTHER RECIPIENT, IF ANY]

**WHEREAS:**

1. [Abbreviation of Lead Recipient]is an [insert brief synopsis of company];
2. [Abbreviation of Recipient 2]is an [insert brief synopsis of company];
3. [Abbreviation of Recipient 3]is an [insert brief synopsis of company];
4. The Parties wish to collaborate on a project (the “**Project**”) as outlined in an application for funding to Next Generation Manufacturing Canada (“**NGen**”);
5. NGen requires that the Parties enter into this Agreement, among other things, to govern how the Parties will manage the Project and to establish the ownership and use of, and access to, any related intellectual property.

# **SECTION 1: DEFINITIONS**

* 1. For purposes of this Agreement, the following terms have the following meanings:

**“Background Intellectual Property**” or “**Background IP**” means Intellectual Property created, conceived, produced, developed, or reduced to practice by, or licensed to, a Recipient and/or its Personnel:

(a) prior to the Project Start Date, or

(b) after the Project Start date but outside of the scope of the Project and through no use of the Funding;

and that is required for:

1. the carrying any of Project Activity and/or
2. the use and exploitation of Foreground IP by a Recipient or its Personnel

and every IP Right therein.

**“Commercialization Plan”** means the expected project outcomes, market analysis, and measures to protect and exploit commercialized project results, including foreground IP generated, estimated jobs and revenue growth, pricing strategy, and potential barriers to entry.

**“Confidential Information”** means (i) any information of any nature (scientific, technical, financial, commercial or otherwise) that is not generally accessible to the public and is disclosed or otherwise made available by or on behalf of a Party (the “**Disclosing Party**”) to another Party (the “**Receiving Party**”) under this Agreement. Without restricting the generality of the preceding, the Parties acknowledge and agree that the following are Confidential Information: Project IP, as well as any information relating to any Disclosing Party’s investments, finances, projects, Personnel, collaborators, and other matters related to its business. [ADD MORE DETAILS IF NECESSARY].

“**Effective Date**” has the meaning set forth on the first page of this Agreement.

**“Foreground Intellectual Property”** or **“Foreground IP”** means Intellectual Property created, conceived, produced, developed, or reduced to practice by a Recipient and/or its Personnel after the Project Start Date, (a) within the scope of the Project and/or (b) using any of the Funding and every IP Right therein.

“**Funding**” means collectively all financial contributions provided (including those provided or to be provided) by NGen to support the Project.

“**Intellectual Property**” (or “**IP**”) means all intangible assets such as: (a) inventions, ideas, know-how, data, plans, materials, prototypes, methods, software, algorithms, hardware, specifications and other proprietary and/or confidential technical information, and all rights therein, whether or not patented or patentable, constituting trade secrets or not, and (b) all copyrighted works, industrial designs, integrated circuit topographies, and distinguishing marks or guises, whether or not registered or registrable.

**“Losses”** means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable legal fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Recipient**” means any one or more of the Parties that receive Funding.

**“Personnel”** means, concerning a Party, the Representatives of such Party, as well as any permitted subcontractor, student, and independent contract personnel who performs any activities or obligations of such Party under the Project.

**“Project Activity**” means any activity whose purpose, function, or effect is to directly or indirectly progress the achievement of any project result.

“**Project Asset**” means any asset which, in whole or in part, has been acquired, created, developed, advanced and/or contributed to by the Funding, other than Project IP.

**“Project IP”** means Background IP and Foreground IP.

“**Project Plan**” details the various Project Activities undertaken during the Project.

**“IP Plan”** sets out how the Recipients intend to manage Intellectual Property matters related to the Project.

“**Term**” means the period between the Effective and Project End dates.

# **SECTION 2: PURPOSE**

* 1. **Purpose of Project** is [Insert project purpose]

# **SECTION 3: PROJECT PLAN OVERVIEW**

* 1. **Lead Recipient Project Manager:** [Insert name]
	2. **Recipient 1 Project Manager:** [Insert name]
	3. **Recipient 2 Project Manager**: [Insert name]
	4. **Definition of Project Success:** Project success is defined by [Insert requirement(s) of project success].
	5. **Direction and Supervision:** The Project will be carried out at [Insert the location] under the direction and supervision of the appointed Lead Recipient Project Manager. The project managers for each company will provide reports to the Lead Project Manager on a [Insert reporting frequency] basis.
	6. **Progress Meetings:** The Lead Recipient Project Manager and the Other Project Managers shall meet on a [Insert meeting frequency] basis during the Term to review the progress of the Project.
	7. [Insert other meeting times if necessay].
	8. [Describe what the reoccurring agenda will cover]

# **SECTION 4: CHANGES AND DECISION-MAKING**

* 1. **Management Committee**. The Parties shall establish a management committee for the Project consisting of the Lead Recipient Project Manager and the other Recipient Project Managers (collectively, the “**Management Committee**”).
	2. **Chairperson.** The Lead Recipient Project Manager shall serve as the chairperson for the Management Committee and shall be responsible for calling and presiding over each meeting of the Management Committee, for preparing and circulating an agenda for each such meeting, and for training and distributing draft minutes of each such meeting for review and approval.
	3. **Voting.** Each member of the Management Committee shall have one (1) vote in any matter requiring the Management Committee’s action or approval. All Management Committee decisions shall be unanimous, and no Management Committee vote may be taken unless all of the Management Committee members are present. The Management Committee shall make all decisions and take other actions in good faith and with due care, after consideration of the information that is reasonably available to it, with the intention that the resulting decision or measure shall:
1. not breach or conflict with any requirements or other provisions of this Agreement; and
2. maintain or increase the likelihood that the Parties will achieve the purposes and goals of the Project.

* 1. **Other Project Managers Notification**: Other Project Managers shall notify the Lead Recipient Project Manager before any such changes to the Project.

# **SECTION 5: CONFIDENTIALITY**

* 1. **Standard of Care.** Each Party that receives or discloses any Confidential Information disclosed by another Party shall use reasonable care, at least as protective as the care and efforts it uses for its confidential information, to safeguard the Disclosing Party’s Confidential Information from use or disclosure other than as permitted.
	2. **Exceptions.** If the Receiving Party becomes legally compelled to disclose any other Party’s Confidential Information, the Receiving Party shall:
1. provide prompt written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under the Use and Exploitation of IP;
2. disclose only the portion of Confidential Information that it is legally required to furnish; and,
3. If a protective order or other remedy is not obtained, or the Disclosing Party waives compliance under this section, the Receiving Party shall, at the Disclosing Party’s expense, use reasonable efforts to obtain assurance that confidential treatment will be afforded the Confidential Information.

# **SECTION 6: USE AND EXPLOITATION OF IP**

* 1. The Parties agree that the IP Tables faithfully set out the Project IP which they expect, as of the effective date of this Agreement, to create and/or leverage during the Project.
	2. **Cross-Licenses to Background IP:** Subject to the terms and conditions of this Agreement, each of the Parties now grants to the other Parties during the Term a royalty-free, non-exclusive, non-transferable and non-sublicensable license to access and use that Party’s Background IP solely to carry out the Project, including the performance of the other Parties’ respective obligations under the Project Plan or the IP Plan. For after the Term, the Parties agree that upon request by another Party, licensing and access to their respective Background IP, at least to the extent necessary for the requesting Party to carry out their activities set out in the IP Plan and/or Commercialization Plan, will be granted based on fair, reasonable and non-discriminatory terms subject to relevant competitive issues.
	3. **Ownership determined based on subject matter:** Ownership of Foreground IP shall be determined as set out in the appended IP Plan and IP Tables regardless of inventorship and relationship to Background IP unless specified otherwise:

**OR**

6.3 **Ownership determined based on inventorship:** Ownership of Foreground IP shall be determined based on inventorship, in that a Party employing an individual having inventively contributed to a technology subject to a given Foreground IP (hereafter the “Inventor”) shall solely (or jointly, as the case may be) own the given Foreground IP, provided that the Inventor has assigned its rights in the technology to the Party.

**OR**

6.3 **Sole Ownership to one party with licensing to other partners:** Regardless of inventorship and regardless of its relationship to any of the Parties’ Background IP, as between the Parties, [Insert sole IP Owner] shall own all right, title, and interest in and to all Foreground IP (hereafter the “IP Owner”). As the exclusive owner of such Foreground IP, IP Owner shall have sole and unfettered discretion on all matters concerning (i) the preparation, filing, prosecution and maintenance of all patent applications, amendments and other documents relating to the registration of any Foreground IP; and (ii) the enforcement of any Foreground IP; and IP Owner shall be solely responsible for all costs and expenses relating to the preparation, filing and prosecution of any such patent applications, the maintenance of any resulting patents and the enforcement of any Foreground IP.

**OR**

6.3 **Joint Ownership of all Foreground IP:** Regardless of inventorship and regardless of its relationship to any of the Parties’ Background IP, as between the Parties, [Lead Recipient abbreviation], [Recipient 2 abbreviation] and [Recipient 3 abbreviation] jointly own all right, title, and interest in and to all Foreground IP (hereafter the “Joint Owners”). The Joint Owners shall have the collective and unfettered discretion on all matters concerning (i) the preparation, filing, prosecution and maintenance of all patent applications, amendments and other documents relating to the registration of any Foreground IP and (ii) the enforcement of any Foreground IP; and the Joint Owners shall be equally responsible for all costs and expenses relating to the preparation, filing and prosecution of any such patent applications, the maintenance of any resulting patents and the enforcement of any Foreground IP.

* 1. **Cross-Licenses to Foreground IP:** The Parties agree that upon request by another Party, licensing and access to their respective Foreground IP will be granted based on fair, reasonable and non-discriminatory terms subject to relevant competitive issues, at least to the extent necessary for the requesting Party to carry out their respective activities set out in the IP Plan and/or Commercialization Plan.

# **SECTION 7: MUTUAL REPRESENTATIONS AND WARRANTIES**

* 1. Each Party represents and warrants to the other Parties that:
	2. it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;
	3. it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder, and the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the Party;
	4. when executed and delivered by the Party, this Agreement shall constitute the legal, valid and binding obligation of that Party, enforceable against that Party per its terms;
	5. it has control (by ownership, license or otherwise) of the entire right, title, and interest in and to its Background IP;
	6. it has, and throughout the Term, will retain the unconditional and irrevocable right, power and authority to grant the rights hereunder to its Background IP according to the terms of this Agreement;
	7. it has not granted and will not give any licenses or other contingent or non-contingent right, title or interest under or relating to the Background IP or will not be under any obligation that does or will conflict with or otherwise affect this Agreement, including any party’s representations, warranties or obligations or rights or licenses hereunder; and
	8. it is under no obligation to any third party that would interfere with its representations, warranties or obligations under this Agreement.

# **SECTION 8: INDEMNIFICATION**

* 1. **Indemnification Obligations.** Each Party shall indemnify, defend and hold harmless each of the other Parties and its officers, directors, employees, agents, successors and assigns against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each an “**Action**”) related to or arising out of or resulting from (a) such Party’s breach of any representation, warranty, covenant or obligation under this Agreement; or (b) use by another Party of such Party’s Background IP in connection with any activities performed according to the Project Plan.
	2. **Indemnification Procedure.** The indemnitee shall promptly notify the indemnitor in writing of any action and cooperate with the indemnitor at the indemnitor’s sole cost and expense. Subject to the Use and Exploitation of IP Section, the indemnitor shall immediately take control of the defense and investigation of the action and employ counsel of its choice to handle and defend it at the indemnitor’s sole cost and expense. The indemnitor shall not settle any action that adversely affects the indemnitee’s rights without the indemnitee’s prior written consent, which shall not be unreasonably withheld or delayed. The indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its choosing**.**

# **SECTION 9: DISPUTE RESOLUTION**

* 1. **Good Faith Negotiation.** Should a dispute arise from or in connection with this Agreement between any of the Parties, the affected Parties shall attempt to resolve the dispute through good-faith negotiation.
	2. **Binding Arbitration.** Suppose the Parties cannot resolve any dispute by good faith negotiation or informal mediation. In that case, the conflict shall be referred to arbitration under the *Arbitration Act, 1991* (Ontario) by a single arbitrator agreed upon by the affected Parties. Failing agreement on the appointment of a single arbitrator, ADR Chambers Inc., Toronto, shall appoint the arbitrator. The arbitrator’s decision for the purposes herein shall be final and binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.
	3. **No Court Proceedings.** The dispute resolution procedures are intended as the sole remedy for resolving any dispute arising out of or in connection with this Agreement between any of the Parties unless otherwise provided.
	4. The Parties may initiate court proceedings in a court of competent jurisdiction: (i) in respect of any dispute concerning the scope, validity, enforceability and infringement of Intellectual Property; (ii) to enforce any arbitration award between the Parties, or (iii) for claims for equitable relief.

# **SECTION 10: TERMINATION**

* 1. **Term:** This Agreement shall commence on the Effective Date and, unless terminated earlier under Section 10.2 or Section 10.3, shall remain in force until [10 years] after the Parties receive an indication from NGen that the Project is closed.
	2. **Termination for Convenience**: Notwithstanding any other provision of this Agreement to the contrary, any Party may terminate this Agreement in its sole discretion, for any or no reason, by providing [Insert time frame] prior written notice to the other Parties.
	3. **Termination for Cause:**
1. Any Party may terminate this Agreement if any of the other Parties materially has breached this Agreement and (if such breach is curable) has failed to cure such breach within fifteen (15) days of having been notified in writing to do so; provided; however, such fifteen (15) day period shall be extended by an additional fifteen (15) days if the breaching Party has begun reasonable faith efforts to remedy such breach within the initial fifteen (15) day period and provides a written explanation to the non-breaching Parties of the reasons for the breach, what it is doing to remedy the breach and why it believes it can remedy the breach within the additional fifteen (15) day period.
2. Any Party may terminate this Agreement if any of the other Parties:
	1. becomes insolvent or admits its inability to pay its debts generally as they become due;
	2. becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not entirely stayed within thirty (30) days or is not dismissed or vacated within [Insert time frame] after filing;
	3. is dissolved or liquidated or takes any corporate action for such purpose;
	4. makes a general assignment for the benefit of creditors or
	5. has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
	6. **Effect of Termination:**
3. Expiration or termination of this Agreement shall not relieve the Parties of any obligations incumbent upon them before the date of expiration or termination. Any expiration or termination of this Agreement shall not preclude any Party from pursuing all rights and remedies it may have hereunder at law or in equity concerning any breach of this Agreement nor prejudice any Party’s right to obtain performance of any obligation.
4. On any expiration or termination of this Agreement, each Party shall immediately cease all activities concerning the Project.
5. On expiration or termination of this Agreement, all licenses to Background IP granted under this Agreement shall automatically terminate as of the effective date of such expiration or termination.
	1. **Survival.** Any right, obligation, or required performance of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination or expiration shall survive any such termination or expiration.

# **SECTION 11: MISCELLANEOUS**

* 1. **Governing Law:** This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by and construed per the province of [Insert province] laws and the federal laws of Canada applicable in such area.
	2. **Independent Legal Advice:** Each of the Parties acknowledges having been advised to obtain independent legal advice before entering into this Agreement. By entering into this Agreement, each Party represents that it did get whatever independent legal advice it considered appropriate and sufficient. Each Party acknowledges that NGen’s templates and resources are not regarded as legal advice.
	3. **Entire Agreement:** this Agreement constitutes the sole and entire agreement of the Parties to this Agreement concerning the subject matter contained herein and supersede all prior and contemporaneous understandings and agreements, both written and oral, concerning such subject matter.
	4. **Amendments:** this Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party.
	5. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all shall be considered the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other electronic transmissions (to which a PDF copy is attached) shall have the same legal effect as delivery of an original signed copy of this Agreement.
	6. **Language.** The Parties declare that they have expressly required that this Agreement and all writings relating thereto be drawn up in [English]. Les Parties déclarent avoir expressément exigé que la present Contrat et tous les écrits s’y rapportant soient rédigés en anglais.
	7. **Force Majeure.** None of the Parties shall be liable or responsible to any other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when, and to the extent, such failure or delay is caused by:
1. acts of God;
2. flood, fire or explosion;
3. war, terrorism, invasion, riot or other civil unrest;
4. embargoes or blockades in effect on or after the date of this Agreement;
5. national or regional emergency;
6. pandemics, epidemics, or national or regional outbreaks of disease, including any resulting quarantines, shelter-in-place orders, government and industrial stoppages, and supply chain shortages;
7. strikes, labour stoppages, slowdowns or other industrial disturbances;
8. any passage of a law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition.

(each of the preceding, a “**Force Majeure**”), in each case, provided that (i) such event is outside the reasonable control of the affected Party; (ii) the affected Party provides prompt notice to the other Parties, stating the period the occurrence is expected to continue; and (iii) the affected Party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure event.

* 1. **Notices:** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given under this Section:

|  |  |
| --- | --- |
| If to [Lead Recipient abbreviation]: | [Insert full company name] [Insert address]Attention: [Insert name] [Insert email address]Phone: [Insert phone number] |
| If to [Recipient 2 abbreviation]: | [Insert full company name][Insert address]Attention: [Insert name][Insert email address]Phone: [Insert phone number] |
| If to [Recipient 3 abbreviation]: | [Insert full company name][Insert address]Attention: [Insert name][Insert email address]Phone: [Insert phone number] |

* 1. **Further Assurances:** Each Party shall, upon the reasonable request and at the sole cost and expense of the other Parties, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.
	2. **Independent Contractors:** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or another form of joint enterprise, employment or fiduciary relationship between the Parties, and none of the Parties shall have the authority to contract for or bind any of the other Partiers in any manner whatsoever.
	3. **Assignment:** Neither this Agreement nor any right or obligation under this Agreement or in respect of the project may be assigned, transferred or in any other way extended to any Third Party by a Recipient without the prior written consent of all Parties. This Agreement will inure to the benefit of and be binding upon the Parties, their administrators, trustees, successors, legal representatives and permitted assigns.
	4. **Severability:** If, for any reason, a provision of this Agreement is not a fundamental term of this Agreement or is found to be or becomes invalid or unenforceable, whether in whole or in part, such provision or portion thereof declared invalid or unenforceable is deemed to be severable and is deemed to be deleted from this Agreement and all remaining terms and conditions of this Agreement continue to be valid and enforceable.

[SIGNATURE PAGE FOLLOWS]

# **SIGNATURE PAGE**

The Parties have executed this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| [Lead recipient abbreviation] | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title:Date:*I have the authority to bind the corporation.* |
| [Recipient 2 Abbreviation] | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title:Date:*I have the authority to bind the corporation.* |
| [Recipient 3 abbreviation] | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title:Date:*I have the authority to bind the corporation.* |