

**NSERC
INDUSTRIAL POSTGRADUATE SCHOLARSHIP AGREEMENT**

[Adapted with permission, by the School of Graduate Studies, from a template developed by
the Faculty of Graduate Studies and Research, the Office of Technology Transfer
and the Legal Services Office, McGill University]

BETWEEN Wilson Engineering (called the COMPANY) whose address is
324 Watson Crescent
P.O. Box 755, Station A
St. John's, NF
A1D 4Y1

AND MEMORIAL UNIVERSITY OF NEWFOUNDLAND (called the UNIVERSITY)
represented by
Department of Engineering
St. John's, NF
A1B 3X5

AND LUKE LEARNING (called the STUDENT) whose address is
Department of Engineering
Memorial University of Newfoundland
St. John's, NF
A1B 3X5

WHEREAS the UNIVERSITY is a participating university in the Natural Sciences and Engineering Research Council of Canada (called NSERC) Industrial Postgraduate Scholarships Program (IPS Program);

WHEREAS it is the UNIVERSITY'S function to disseminate information and make it available for the purpose of higher education;

WHEREAS the STUDENT is registered as a full time graduate student in the Department of Engineering of the UNIVERSITY, with all the rights and privileges which that entails, and is eligible for an award under the IPS Program;

WHEREAS the STUDENT will be undertaking training and research in a field of interest to the COMPANY, as described in the attached Outline of Proposed Research, and as a means to acquire a higher academic degree;

WHEREAS the COMPANY agrees to sponsor the STUDENT under the IPS Program.

The Parties agree as follows:

1 DESCRIPTION AND TERM OF RESEARCH PROJECT

- 1.1 The Research Project will be conducted by the STUDENT, in the field of mechanical engineering, in accordance with the Outline of Proposed Research attached to this Agreement as **Appendix A**, (the Research Project)
- 1.2 The Research Project is expected to be conducted and financially supported by the COMPANY as described below, over a period of approximately two (2) years.
- 1.3 The Research Project will be conducted under the academic supervision of Dr. John Renolds and Dr. Charles Kavanaugh.

2 UNIVERSITY'S OBLIGATIONS

- 2.1 The UNIVERSITY shall administer the NSERC award as well as the matching component funds received from the COMPANY. An amount of \$5,500 of the \$9,000 referred to in subsection 3.2 shall be granted to the STUDENT as a Graduate Fellowship. The balance of the funds shall be used by the UNIVERSITY for the support of the research of the STUDENT.
- 2.2 The UNIVERSITY will provide to the STUDENT a research environment which will facilitate the intellectual development of the STUDENT, as well as promote the acquisition of new knowledge and skills.
- 2.3 The UNIVERSITY will use reasonable efforts to ensure that Dr. Reynolds and Dr. Kavanaugh are available and accessible to the STUDENT as required for the fulfillment of the Research Project.
- 2.4 Except where they are conducted under instructions or specific guidance and supervision of the COMPANY, the UNIVERSITY shall be responsible for all activities conducted by the STUDENT while on UNIVERSITY premises.
- 2.5 The STUDENT will be covered under the UNIVERSITY'S Liability Insurance policy while registered as a full-time graduate student at the UNIVERSITY and is working on the COMPANY'S premises, according to the preliminary timetable presented in Appendix B.
- 2.6 The UNIVERSITY shall indemnify and hold the COMPANY harmless of all claims, damages, action or cause of action suffered by the COMPANY as a direct result of UNIVERSITY'S gross negligence in fulfilling its obligations under this Agreement.

3 COMPANY'S OBLIGATIONS

- 3.1 The COMPANY will provide the STUDENT with supervision, access to premises, facilities, equipment, supplies and resources as required for the fulfillment of the Research Project. It is understood that the STUDENT will spend at least 20% of the time devoted to the Research Project working on COMPANY premises, according to the preliminary timetable presented in Appendix B.

- 3.2 The COMPANY shall pay to the UNIVERSITY an amount of \$9,000 per year, for a period of two (2) years, providing that the student is making progress in the performance of his degree work, as determined by the UNIVERSITY. Payment for the first year shall be made in one installment upon signing this agreement. Payment for the second year shall be made in one installment on the anniversary date of the agreement. Each installment will be made by cheque to the order of the UNIVERSITY. □ □
- 3.3 The COMPANY will inform the STUDENT of all workplace rules, regulations, policies and procedures including health and safety practices, applicable whenever the STUDENT is working on COMPANY premises.
- 3.4 Except where they are conducted under instructions or specific guidance and supervision of the UNIVERSITY, the COMPANY shall be responsible for all activities conducted by the STUDENT while on company premises.
- 3.5 The COMPANY shall indemnify and hold the UNIVERSITY harmless of all claims, damages, action or cause of action suffered by the UNIVERSITY as a direct result of COMPANY'S gross negligence in fulfilling its obligations under this Agreement.

4 **STUDENT'S OBLIGATIONS**

- 4.1 The STUDENT shall abide by all of the COMPANY'S workplace and employment rules, regulations, policies and procedures as they may exist from time to time.
- 4.2 The STUDENT will at all times be careful and professional in the conduct of the Research Project and will fulfil all requirements of the IPS Program.
- 4.3 The STUDENT undertakes to make a positive commitment and contribution to the attainment of the objectives of the Research Project and to follow reasonable instructions and guidance received from time to time from the Academic Supervisor or the COMPANY.
- 4.4 The STUDENT shall be available and accessible within reasonable time limits to both the UNIVERSITY and the COMPANY.
- 4.5 The STUDENT shall abide by applicable UNIVERSITY policies covering the conduct of research involving human subjects, use of animals, or use of biohazardous or radioactive materials.
- 4.6 The STUDENT will keep a log of time actually spent on company premises, on interactions with company representatives, including training, seminars, presentations and on using company equipment and facilities.

5 **CONFIDENTIALITY AND DISCLOSURE**

- 5.1 It is the intention of the Parties that the STUDENT publish the results of the Research Project for the purpose of thesis, research papers or, more generally, in scientific literature.
- 5.2 For the purpose of this Agreement, confidential information shall mean information obtained or developed by the STUDENT while working on COMPANY premises. Documents or information in written form shall be deemed not to be confidential, unless clearly marked as such at the time of disclosure. Information verbally transmitted to STUDENT shall be deemed not to be confidential unless accompanied by a clear indication of confidentiality.
- 5.3 The following information shall not be confidential under this Agreement:
- 5.3.1 Information which is part of the public domain at the time of signing of this Agreement, or becomes part of the public domain through persons other than the UNIVERSITY or the STUDENT during the term of the Agreement;
- 5.3.2 Information which is obtained by the STUDENT from sources other than the COMPANY or which does not make use of information proprietary to the COMPANY; and
- 5.3.3 Information of the same nature as what is developed under the Research Project, developed independently from the COMPANY.
- 5.4 The STUDENT may use or disclose confidential information in a thesis presented to fulfill a requirement for a degree, provided COMPANY has been informed of such use or disclosure thirty (30) days before the intended disclosure and reasonable efforts have been made by all Parties to arrive at a mutually acceptable arrangement in that respect.
- 5.5 In the event confidential information is disclosed for the purpose of a thesis, the UNIVERSITY will use reasonable precaution to ensure the protection of confidential information in the examination and defence of the thesis. In such circumstances, the COMPANY may request that the thesis not be published or placed in a library for a period not exceeding two (2) years of the notice of intended disclosure mentioned at 5.4 above.
- 5.6 The STUDENT shall also give the COMPANY notice of intention to publish or disclose confidential information for purposes other than a thesis, no later than thirty (30) days prior to the proposed disclosure.
- 5.7 Should the COMPANY object to the disclosure, the Parties will attempt to come to a mutually acceptable arrangement taking into account their respective interests. Should the Parties fail to arrive at such an arrangement, the STUDENT shall be prevented from publishing or disclosing confidential information at the COMPANY'S discretion, for a period not to exceed two (2) years.
- 5.8 Consent to disclosure, use or publication shall be deemed to have been obtained from the COMPANY, unless it notifies the STUDENT in writing of its objections, within fifteen (15) days of the notice of intent to disclose mentioned at subsections 5.4 and 5.6, above.
- 5.9 Should the COMPANY decide to disclose information derived from the Research Project, the COMPANY shall give notice of the information to be disclosed at least thirty (30) days before the disclosure to the UNIVERSITY and the STUDENT who shall be given an opportunity to comment

on the disclosure. The COMPANY will agree not to disclose for a period of one (1) year from the date of notice of intent to disclose, where it is satisfied that such disclosure may affect the commercial or scientific value of the intellectual property developed by the STUDENT. In exceptional cases, the COMPANY will agree to an additional one (1) year delay for disclosure.

- 5.10 The provisions of Section 6 shall survive the termination of the Agreement for a period of one (1) year, except in the event the Agreement is terminated under the provisions of subsection 8.3.
- 5.11 It is understood by all participants in the proposed research work that the granting of the applicant's degree will not be delayed by confidentiality of the research results.

6 INTELLECTUAL PROPERTY

- 6.1 Copyright of the thesis developed by the STUDENT on the basis of the Research Project shall remain the property of the STUDENT.
- 6.2 The STUDENT shall divulge any invention having a commercial potential to the Office of Research of the UNIVERSITY. It shall also inform the COMPANY of such invention.
- 6.3 In the circumstances described at subsection 6.3, the COMPANY and the UNIVERSITY will negotiate in good faith the terms of an agreement to cover their respective shares in ownership of the intellectual property, their responsibilities with respect to the development, protection and commercialization of the intellectual property, as well as royalties and other terms of licenses to use such intellectual property, with a view to arrive at an arrangement consistent with industry norms.
- 6.4 The COMPANY agrees that the UNIVERSITY shall, in all circumstances, have the right to a non-exclusive, royalty-free license to use for research and teaching purposes any intellectual property created by the STUDENT during the course of participation in the Research Project.

7 DISPUTE RESOLUTION

- 7.1 The Parties will use their best efforts to resolve any dispute concerning the interpretation or application of this Agreement in the spirit of cooperation and achievement of academic success for the STUDENT.
- 7.2 Any dispute arising out of this Agreement shall be submitted to a mutually acceptable mediator, knowledgeable in the field which is the object of the dispute, for a non binding opinion on resolution of such dispute. In the case where the mediation process does not lead to a final resolution of the dispute, the matter shall be submitted to a single arbitrator, in accordance with the provisions of the Arbitration Act (Newfoundland). The decision of the arbitrator shall be final and binding on the Parties. There shall be no right to appeal the decision of the arbitrator.

8 TERM AND TERMINATION

- 8.1 This Agreement shall take effect on June 1, 2000 and shall come to an end on May 31, 2002.
- 8.2 This Agreement shall be terminated by the COMPANY or the UNIVERSITY in the event the STUDENT fails to complete or adequately participate in the IPS Program, as jointly determined by the UNIVERSITY and the COMPANY.

- 8.3 This Agreement shall be terminated by the UNIVERSITY if the COMPANY is in default of section 3.2.
- 8.4 This Agreement may be terminated by either the UNIVERSITY or the COMPANY or the STUDENT at the end of the first year by written notification to all parties thirty (30) days prior to the first anniversary date.

9 **GENERAL CONDITIONS**

- 9.1 In recognition of the COMPANY payment referred to in subsection 3.2, the COMPANY shall be deemed a member in good standing of the Memorial University Mechanical Engineering Consortium (MUMEC) and be eligible for all publications arising there from. The UNIVERSITY will advertise the COMPANY'S participation in MUMEC.
- 9.2 Each of the Parties is an independent contractor and no party shall be considered to be employee, agent, partner, joint venturer or representative of the other for any purposes under this Agreement.
- 9.3 Any notice required or authorized by this Agreement must be sent to the addresses stated at the beginning of this Agreement by registered mail, by courier or facsimile.
- 9.4 This Agreement is governed by the laws of the Province of Newfoundland and Labrador.

Signed at St. John's, Province of Newfoundland and Labrador, Canada.

COMPANY

SIGNATURE: _____
NAME: _____
TITLE: _____
DATE: _____

UNIVERSITY

SIGNATURE: _____
NAME: _____
TITLE: _____
DATE: _____

STUDENT

SIGNATURE: _____
NAME: _____
TITLE: _____
DATE: _____

ACKNOWLEDGEMENT

The undersigned Supervisors of the Research Program, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein.

ACADEMIC SUPERVISOR

SIGNATURE: _____
NAME: _____
TITLE: _____
DATE: _____

COMPANY SUPERVISOR

SIGNATURE: _____
NAME: _____
TITLE: _____
DATE: _____

May 2000

Appendix 1

The UNIVERSITY, the COMPANY and the STUDENT agree that any intellectual property, whether or not patentable, created solely by the STUDENT in the course of participation in the Research Project shall be treated in accordance with UNIVERSITY policy on patents. The COMPANY shall have a time limited right to an exclusive, royalty bearing, world-wide license to the said intellectual property on terms consistent with industry norms, as negotiated in good faith between the UNIVERSITY and the COMPANY.

The Parties agree that any intellectual property, whether or not patentable, created jointly by the STUDENT and a COMPANY employee, during the course of the STUDENT'S participation in the Research Project shall be jointly owned by the COMPANY and the UNIVERSITY. The STUDENT shall be entitled to a share of the proceeds derived from the commercialization of such intellectual property in accordance with the UNIVERSITY Policy on Patents and Inventions.