

## EXHIBIT B.1 OPEN COLLABORATION AND PUBLICATION AGREEMENT

Agreement No. \_\_\_\_\_

This Open Collaboration-Open Publication Agreement ("Agreement") is between \_\_\_\_\_ ("University") and ABC Corporation ("ABC"). This Agreement is effective from the date it is signed by the last Party ("Effective Date") and remains in effect until terminated in writing by UNIVERSITY or ABC on thirty days written notice.

### 1.0 DEFINITIONS

- 1.1 **"Copyrightable Material"** means any document, report, publication or other original work of authorship, other than Software, created by either Party under this Agreement.
- 1.2 **"Developing Party"** means the Party which develops an item of Copyrightable Material.
- 1.3 **"Excluded Materials"** means materials (i) that the Party reasonably believes would infringe the intellectual property rights of a third party, or (ii) to which the Party can't grant a license to third parties.
- 1.4 **"Invention"** means any idea, design, concept, technique, invention, discovery or improvement, whether or not patentable, conceived or first reduced to practice solely by one or more employees or representatives (**"Sole Invention"**) of a party (**"Inventing Party"**), or jointly by one or more employees or representatives of one party with one or more employees or representatives of the other party (**"Joint Invention"**) pursuant to this Agreement.
- 1.5 **"Non-Assertion Covenant"** means the covenant between the Parties that the Inventing Party will not assert against the other Party, and that it will cause its Subsidiaries not to assert, any claim of infringement of its or their respective rights (including any applicable patent, other statutory rights, or common law rights) in Inventions for making, having made, using, having used, leasing, selling, offering for sale, disclosing, importing and/or otherwise transferring any product or practicing or having practiced any method.
- 1.6 **"Software"** means computer programs, computer program changes, computer program enhancements, and/or any documentation related to computer programs, which are furnished or developed by either party in the performance of this Agreement. The parties agree that there will be no development of Software under this Agreement.
- 1.7 **"SOW"** means a statement describing work to be carried out under this Agreement and terms additional to those in the body of this Agreement. The SOW will be in Appendix A.
- 1.8 **"Subsidiary"** means a corporation, company, or other entity which: (i) has more than fifty percent (50%) of its outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) now or later owned or controlled, directly or indirectly, by a Party, provided that such corporation, company, or other entity will be deemed to be a Subsidiary only so long as such ownership or control exists; or, (ii) does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but does have more than fifty percent (50%) of its ownership interest representing the right to make the decisions for such corporation, company or other entity now or later owned or controlled, directly or

indirectly, by a Party, provided that such corporation, company or other entity will be deemed to be a Subsidiary only so long as such ownership or control exists.

- 1.9 **“Technical Coordinators”** means the representative identified by each Party as the primary point of contact for communications under a SOW. Either Party may change its Technical Coordinator by giving written notice to the other Party.

## **2.0 GENERAL COLLABORATION TERMS**

- 2.1 The Parties will describe any work to be done under this Agreement in a SOW.
- 2.2 Each Party will bear its own expenses under this Agreement unless they agree otherwise in a SOW.
- 2.3 Each Party agrees not to disclose to the other Party any information which it considers to be confidential. Each Party will be free to use and disclose any information provided by the other Party for any purpose, subject to valid patent and copyright rights.
- 2.4 Any representative visiting any ABC facility must observe the terms of Appendix B, “Activity on ABC Premises” and sign the agreement in Appendix C.

## **3.0 COPYRIGHTABLE MATERIALS**

- 3.1 Except as provided in Section \_\_, the Parties agree that all Copyrightable Materials will be made publicly available by the Developing Party(ies) by:
- 1) publishing it in a scholarly journal in general circulation or other publication on which the Parties agree in writing; or
  - 2) i) delivering Copyrightable Materials to a non-party to be published on terms that are mutually agreeable to ABC, UNIVERSITY and the non-party. These terms may include an assignment of rights in the Copyrightable Materials to the extent required for publication; or
  - ii) licensing Copyrightable Materials to the other Party under a royalty-free license which allows the licensee to internally and externally reproduce, distribute, display, and perform them.
- 3.2 The Parties agree not to knowingly incorporate Excluded Materials into any Copyrightable Materials. Despite anything in this Agreement to the contrary, neither Party is required by this Agreement to publish or to grant licenses to any Excluded Materials.

## **4.0 INVENTIONS**

- 4.1 In the event that either party conceives or reduces to practice any Invention under this Agreement, the Inventing Party will provide the other with a written, non-confidential description of the Invention within sixty days.

- 4.2 Any Sole Invention will be the property of the Inventing Party. Any Joint Invention will be the property of both Parties and each owner will be free to exercise all rights, including to license or assign its ownership rights without accounting to or consent of the other Party.
- 4.3 Both Parties agree to the Non-Assertion Covenant, which is binding on the Inventing Party, its successors and permitted assigns. This Covenant will survive any exclusive licensing, sale, transfer, or assignment of an Invention, except if the United States government has elected to take title. The benefit of this Non-Assertion Covenant extends without exception or limitation to all activities, products or services that embody or practice the Invention, in total or in part, which products or services are made or offered by the non-Inventing Party, to such Party's customers, partners, resellers, and licensees of such products or services; and to such Party's Subsidiaries and their licensees.
- 4.4 If the Non-Assertion Covenant is held to be invalid or illegal by a court of competent jurisdiction, the Inventing Party will be deemed to have granted the other Party a license to each of the Inventing Party's Sole Inventions (including any applicable patent, other statutory rights, or common law rights) on the date such Sole Invention was conceived or first reduced to practice. All licenses for Sole Inventions granted under this Agreement will be worldwide, irrevocable, nonexclusive, nontransferable, and fully paid-up, and will include the right to make, have made, use, have used, lease, sell, offer to sell, disclose, import and/or otherwise transfer any product, and to practice and have practiced any method. These licenses will include the right of the grantee to grant revocable or irrevocable sublicenses to its Subsidiaries, such licenses to include the right of the sublicensed Subsidiaries correspondingly to sublicense other Subsidiaries.
- 4.5 Each Party will identify in the SOW all government or third party funding which it receives for work it performs under this Agreement. If an Invention is partly or wholly supported by government or third party funding, the Inventing Party will advise the other Party whether such funding will impair the Inventing Party's ability to meet its obligations under this Agreement.

## **5.0 DISCLAIMERS AND LIMITATION OF LIABILITIES**

- 5.1 NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE COPYRIGHTABLE MATERIALS OR ANY OTHER DELIVERABLES SUPPLIED UNDER THIS AGREEMENT, OR THE COMPLETION OF THIS COLLABORATION. THE WARRANTIES THAT EACH PARTY EXPLICITLY DISCLAIMS INCLUDE THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NON-INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- 5.2 Neither party will be liable for any consequential damages, lost profits, lost savings, loss of anticipated revenue, or any exemplary, punitive, special or indirect damages, even if advised of their possibility.

## **6.0 GENERAL PROVISIONS**

- 6.1 **Party Rights.** a) Except as explicitly provided here, neither Party grants the other any license, directly or indirectly, by implication, estoppel or otherwise, under any of its patent, copyright or other intellectual property rights.

- b) Neither Party grants the other any right to use in advertising, publications or promotional activities any name, trade name, trademark or other designation (including any contraction, abbreviation or simulation of any of the foregoing). The Parties agree not to use or refer to this Agreement or its terms in any such activities without the express written approval of the other, provided that either Party may: (i) release non-confidential information about the project, the general nature of the research, and the other's identity, if required by U.S. Government or applicable state law, or by its own policies with respect to reporting requirements; and (ii) identify the other Party, in publications of research results in scientific journals and periodicals or conference proceedings, as a collaborator and provider of software, materials or tools.
- 6.2 Neither Party may assign or otherwise transfer its rights or delegate its duties or obligations under this Agreement without prior written consent of the other Party. As an exception either Party may, without consent and with written notice, assign its rights and obligations under the Agreement to an entity: (a) which controls, is controlled by, or is under common control with that Party, or (b) to which the Party sells or transfers all of its business or parts of its business relating to this Agreement.
- 6.3 Except for claims arising out of section 3 or 4, neither Party may bring an action, regardless of form, arising out of the performance of this Agreement more than one year after the cause of action has accrued. Each Party represents that it has agreements with its employees or others whose services the Party may require to allow it to comply with this Agreement. The Parties agree not to dispose of rights in a way that is inconsistent with this Agreement.
- 6.4 Each Party agrees to comply and to reasonably assist the other in complying with applicable U.S. federal, state and local laws, regulations and ordinances as they apply to this Agreement. Software, Copyrightable Materials, or other deliverables supplied under this Agreement may be subject to United States export/re-export control laws and regulations. The Parties intend and expect that all work performed, and all results achieved, in the course of the Agreement will constitute fundamental research within the meaning of the Export Control Regulations. The Parties agree that development of cryptographic software or hardware will not be performed under this Agreement. Each Party also agrees that unless authorized by applicable government license or regulation, or to the extent that exemptions or exclusions under the Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR), including exemptions or exclusions for fundamental research, do not apply, it will not export, directly or indirectly, any technology, software, technical data or commodities to nationals, wherever they may be located, of any prohibited country as specified in applicable export, embargo, and sanctions regulations and as published in related ITAR and/or EAR documents in effect at the time of disclosure. These obligations survive the termination of this Agreement.
- 6.5 This Agreement does not create a joint venture, partnership, employment relationship or agency relationship between the Parties. If any term of this Agreement is held to be invalid or illegal, the remaining terms will be enforced as long as the intent of the Parties can be preserved. This Agreement is governed by the laws of the State of \_\_\_\_\_, without regard to its conflict of laws provisions. Any proceedings to resolve disputes will be brought in a U.S. federal court in \_\_\_\_\_ if there is jurisdiction. The Parties waive the right to trial by jury in any matter which arises under this Agreement.
- 6.6 Any rights and obligations which by their nature survive the end of this Agreement will survive and bind the Parties and their successors and assigns until such obligations are fulfilled. Any amendment of this Agreement must be in writing and signed by authorized

representatives of the Parties. This Agreement, including its Appendices, is the complete and exclusive agreement between the Parties regarding its subject matter and supersedes any prior oral or written communications or understandings between the Parties related to its subject.

By signing below, the parties agree to the terms of this Agreement.

**ABC Corporation**

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**UNIVERSITY**

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

## **APPENDIX A: STATEMENT OF WORK #1**

This Statement of Work #1 ("SOW") incorporates the terms of Open Collaboration – Open Source Agreement Number \_\_\_\_\_ ("Agreement") executed between \_\_\_\_\_ ("University") and ABC Corporation, through its XXXX Research Center located at Address, City, State Zip ("ABC"). The terms of this SOW only apply to the scope of collaboration defined in this SOW.

### **1.0 TECHNICAL COORDINATORS**

1.1 ABC Technical Coordinator for this SOW is: \_\_\_\_\_.

1.2 University Technical Coordinator for this SOW is: \_\_\_\_\_.

### **2.0 SCOPE OF COLLABORATION**

### **3.0 OPEN SOURCE LICENSE**

### **4.0 FUNDING**

## APPENDIX B: ACTIVITY ON ABC PREMISES

These terms supplement the Agreement and apply to UNIVERSITY Representatives ("Representative(s)") when they are on ABC premises ("Premises").

ABC may require any Representative to promptly leave the Premises if he or she violates any ABC policy. UNIVERSITY agrees, at ABC's request, to instruct its Representatives to leave the Premises and not to reassign the Representatives to work at ABC. ABC is not required to provide a reason for the request.

1. UNIVERSITY will give ABC the names of Representatives who need access to Premises. The Representatives agree to visibly display their ABC-issued identification badge at all times while on Premises. Badges are only active for one month and must be renewed by the Representative by applying to ABC Security.

*Note: If the Representatives will be working on Premises for three months or more, add:*

*"Representatives agree to adhere to the ABC Technical Ethics Guidelines, which are attached as Appendix\_\_."*

2. Representatives working on Premises may only perform work covered by the underlying Agreement and will have access to Premises only during ABC's normal working hours.
3. Representatives will comply with local policies regarding sign-in, parking, emergency procedures, smoking and safety. On the first visit to ABC, Representatives will give the ABC Technical Coordinator an emergency contact. Representatives must promptly report to ABC any accident or injury in which they are involved on the Premises. They will provide ABC with a copy of the accident report they create or is created on their behalf.
4. Representatives are not eligible to participate in ABC activities which are not directly related to the Agreement. With prior written approval from the ABC Technical Coordinator, Representatives may use ABC's e-mail system in connection with the Agreement.
5. ABC's equipment and assets remain the property of ABC. Representatives will: a) use them only for the purpose of the Agreement; b) not alter them without ABC's prior written permission; and c) use them only on Premises unless otherwise provided in the Agreement. UNIVERSITY will compensate ABC for any damage resulting from Representatives' use, excluding normal wear and tear. UNIVERSITY will not permit any liens or attachments to be filed against the ABC equipment.
6. Representatives agree not to sell, advertise, or market any products or services or physically or electronically distribute printed, written or graphic materials on Premises.
7. Weapons of any kind are prohibited on Premises. ABC prohibits the on-Premises manufacture, sale, distribution, use, or possession of alcoholic beverages or controlled substances for non-medical purposes.
8. Representatives may not bring hazardous materials to or use them on Premises, unless authorized by ABC. All use must meet ABC's chemical security and other safety guidelines. These guidelines may require a criminal background check. ABC will not be responsible for the training of UNIVERSITY Representatives in the proper use and handling of chemicals, equipment or other materials. On request ABC will make available guidelines for the handling of nanomaterials to Representatives who will be handling or in the presence of nanomaterials.
9. ABC is committed to providing an environment free from harassment. Harassment is unwelcome words or conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or that creates an offensive or hostile work environment. Visitors are expected to refrain from harassment and may expect to be free of harassment. All incidents of harassment should be reported to ABC by calling ABC Research Security at (XXX) XXX-XXXX. All complaints will be investigated promptly and dealt with appropriately.

## APPENDIX C: AGREEMENT WITH UNIVERSITY REPRESENTATIVE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Responsible ABC Manager: \_\_\_\_\_

Dear \_\_\_\_\_:

Please read the Agreement to which this Appendix is attached. By signing below, you agree to the terms of the Agreement, including amendments, regarding intellectual property rights.

While the work to be performed under the Agreement is non-confidential, you may be exposed to ABC Confidential Information during your visit to the ABC \_\_\_\_\_ facility. You agree to hold any information identified by any means as ABC Confidential in trust and confidence for ABC. Though you are not an employee of ABC, you also agree to follow the Computer Security Guidelines for ABC Employees, Document XXXXXX. If you have questions about your responsibilities under these Guidelines, ask your ABC host manager. You also agree to comply with all safety rules in the area in which you perform research work.

At ABC you may have access to data controlled by the U.S. Export Administration Act of 1979 and its implementing regulations, as amended ("the Act"). The Act prohibits the export of certain technical data to specified countries and their nationals (including, but not limited to, Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Iran, Iraq, Kazakhstan, Kyrgyzstan, Laos, Latvia, Libya, Lithuania, Macao, Moldova, Mongolia, Myanmar (Burma), North Korea, Peoples' Republic of China, Romania, Russia, Sudan, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam). You agree to comply with the Act and that you will not export or re-export any such data or give access to such data to nationals of the above listed countries except as permitted by the Act.

You agree not to disclose any information confidential to you or any third party to ABC.

\_\_\_\_\_

\_\_\_\_\_  
ABC Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date