

## TECHNICAL SERVICES AGREEMENT

THIS AGREEMENT made as of ● , 200●.

B E T W E E N:

(hereinafter referred to as the "Sponsor")

- and -

**The Fanshawe College of Applied Arts and Technology**

(hereinafter referred to as the COLLEGE")

**WHEREAS** the COLLEGE and the Sponsor wish to enter into this services agreement (the "Agreement") to have the COLLEGE perform the services described in Schedule "A" in accordance with the terms of this Agreement.

**NOW THEREFORE** in consideration of the mutual covenants of the parties set forth in this Agreement and other good and valuable consideration, the COLLEGE and the Sponsor agree as follows:

### 1. DEFINITIONS

As used in this Agreement:

- 1.1 "Background Intellectual Property" means proprietary or confidential information of the COLLEGE to facilitate the Services, and includes methods, techniques, processes or computer codes or other intellectual property utilized or created by the COLLEGE for the conduct of the Services (as described in Schedule "B"), and which may or may not be required in order to practise the Results; and where comparable intellectual property is provided by the Sponsor for the purposes of the Services, such shall be defined as "Sponsor's Background I/P", and be described in Schedule "C".
- 1.2 "Confidential Information" means any scientific and/or business information, provided by way of written descriptions, drawings, compositions, formulae, visual demonstrations, and other data, and may, where circumstances require or permit, include samples, prototypes and/or material which is disclosed ("the Disclosure") by one party (the "Disclosing Party") to the other party ("the Recipient") and includes:
  - i) information directly or indirectly disclosed in writing, orally or by inspection of tangible objects and which is marked or identified as confidential at the time of disclosure; or
  - ii) information in oral, visual or tangible form identified as confidential at the time of disclosure and subsequently designated as such with a written memorandum sent to the Recipient within thirty (30) days following the Disclosure; or

- iii) information disclosed to the Recipient by third parties on behalf of the Disclosing Party, as long as such Confidential Information has been disclosed as such; or
  - iv) any "Results" (as hereinafter defined).
- 1.3 "Intellectual Property" means any discoveries, inventions, resulting technology, know-how or techniques developed, conceived or reduced to practice in connection with the Confidential Information of the Sponsor, which arise under the terms of performance of the Services, and which are capable of being protected by law; provided that the creation, invention or development by the COLLEGE of analytical techniques, processes or algorithms independent of the Sponsor's Confidential Information for the purposes of providing the Services shall be referred to as "Foreground Intellectual Property".
- 1.4 "Project Leader" means [T/B/D] who shall direct and control the provision of Services under this Agreement.
- 1.5 "Project Term" means the period of time commencing on the ● day of ●, 200● and ending on the ● day of ●, 200● unless sooner ended in accordance with the terms of this Agreement or extended, renewed or amended by written agreement.
- 1.6 "Results" means any and all data and other quantitative findings made by the Project Leader in the course of performing the Services. Results do not include proprietary Confidential Information of either of the COLLEGE or the Sponsor which is disclosed to the COLLEGE to facilitate the Services; restatements by either the Sponsor or the COLLEGE of previously existing information, Background Intellectual Property of the COLLEGE or the Sponsor's Background Intellectual Property, used for the conduct of the Services; nor Foreground Intellectual Property.

## **2. COLLEGE TO UNDERTAKE SERVICES**

The COLLEGE as an independent contractor will carry out the Services during the Project Term in accordance with the provisions of Schedule "A" and Schedule "D". The Services will be undertaken under the direction of the Project Leader.

## **3. PAYMENT**

The Sponsor will pay to the COLLEGE the sum of \$ ● for the carrying out of the Services, as outlined in the Budget in Schedule "D".

## **4. COMMUNICATION OF RESULTS**

The COLLEGE will advise the Sponsor of all Results by means of the following reports: ● **[Describe the interim and/or final reports required and the required time of their delivery to the Sponsor]** and a final report within thirty (30) days following expiration of the Project Term.

## 5. NO REPRESENTATION OF SUCCESS

The COLLEGE will carry out the Services in accordance with appropriate scientific and professional standards but does not promise success in achieving any desired result. The COLLEGE, its trustees, officers, employees, students and agents make no representations or warranties and there are no conditions, either express or implied, as to any matter with respect to the Services including, without limitation, the existence or non-existence of competing technology, the condition, quality or freedom from error of the Results or any part thereof, the merchantability or fitness for any particular purpose thereof, or that the Results or any part or aspect thereof will be capable of receiving statutory protection. All other representations, warranties and conditions, express or implied, statutory or otherwise, are hereby disclaimed.

## 6. CONFIDENTIAL INFORMATION

6.1 **Confidentiality and Non-Disclosure.** Each of the COLLEGE and the Sponsor may disclose, from time to time, Confidential Information one to the other to facilitate the Services. Each party will exercise all reasonable efforts to treat and keep confidential, and cause its officers, employees, representatives and those for whom it is in law responsible to treat and keep confidential, any Confidential Information received by it from the other, and to not disclose Confidential Information to any other party, or use Confidential Information for any purpose other than the Services. Such reasonable efforts will be no less than the efforts used by the Recipient to protect its own confidential information. Any such information will be disclosed within the Recipient only on a "need to know" basis.

6.2 **Disclosure to Designated Representative.** Any disclosure of confidential information under this Agreement shall be made only by and to a designated representative (the "Designated Representative") appointed by each of the parties for such purpose from time to time, by notice in writing to the other. The Initial Designated Representatives of the parties are as follows:

- (a) for the Sponsor: ●
- (b) for the COLLEGE: ●

6.3 **Exclusions from Confidentiality.** The obligations regarding confidentiality shall not apply to information which:

- (a) was in the Recipient's possession before receipt from the Disclosing Party, without a confidentiality restriction, as established by documentary evidence; or
- (b) is or becomes a matter of public knowledge without breach of this Agreement by the Recipient, or is received by the Recipient from a third party which had no duty of confidentiality with respect to it; or
- (c) is independently developed by the Recipient, as established by documentary evidence; or

(d) is required to be disclosed by law or by any regulatory body having jurisdiction, in which event the Recipient will disclose only that portion of Confidential Information legally required and will notify the Disclosing Party prior to such requirement so that Disclosing Party may seek a protective order; or

(e) is permitted to be disclosed as confirmed by the Disclosing Party in writing prior to such use or disclosure.

**6.4 Duration of Confidentiality.** The obligation of confidentiality with respect to Confidential Information shall survive termination or expiration of this Agreement, and shall terminate five (5) years from the later of the date of termination or expiration of this Agreement or delivery of the final report for the Services,. Either party may deliver a notice in writing to the other to confirm the date of termination, expiration, or report delivery, as the case may be. The provisions of this section do not amend, diminish or alter the terms and conditions of the confidential non-disclosure agreement dated [T/B/D] (the "NDA").

## **7. OWNERSHIP OF RESULTS/PUBLICATION RIGHTS**

**7.1 Ownership.** Results communicated to the Sponsor shall be owned by the Sponsor. Notwithstanding the foregoing, the Sponsor hereby grants to the COLLEGE a non-exclusive, perpetual, royalty-free license to use the Results for teaching and non-commercial internal research purposes, subject to the obligations of confidentiality.

**7.2 COLLEGE's Right to Publish.** The Sponsor acknowledges that the COLLEGE may publish information or make public disclosure in connection with the Services or in connection with the methodology utilized in performing such Services, including disclosure of Foreground Intellectual Property, but no publication or disclosure shall identify the Results or the identity of the Sponsor, without the prior written consent of the Sponsor. The Sponsor will be furnished with a copy of any proposed publication, dissemination or public disclosure at least thirty (30) days in advance of the proposed publication, dissemination or public disclosure, and shall have twenty (20) days following receipt of such notification to object to the proposed publication, dissemination or public disclosure by notice in writing to the COLLEGE on the grounds that the proposed publication, dissemination or public disclosure contains an inadvertent disclosure of Confidential Information of the Sponsor or its identity, in which case such Confidential Information or identity shall be deleted by the COLLEGE from the proposed publication, dissemination or public disclosure.

If the Sponsor at any time publishes a summary of the Results or of the Services, the COLLEGE and all participants of the COLLEGE designated by it will be identified in such publication.

**7.3 Students.** In the event a student of the COLLEGE participates in performing the Services and the student completes a thesis or academic report relating to the Services, the Sponsor acknowledges that the student will own the copyright in that thesis or report, but that any publication, dissemination or public disclosure shall nonetheless be subject to the terms of Section 7.2.

## **8. LIMITATION OF LIABILITY OF COLLEGE**

8.1 The COLLEGE will not be liable to the Sponsor:

- (a) for any claims arising from or in relation to this Agreement or the matters or activities dealt with herein (whether for breaches of contract or for torts or otherwise) in excess of the aggregate amounts paid by the Sponsor to the COLLEGE pursuant hereto;
- (b) for any indirect, incidental, consequential or special damages of any kind whatsoever, even if it is advised of or knows of the possibility thereof; nor
- (c) for or regarding any claims, damages or losses arising out of the use by the Sponsor or by any third party acting on behalf of or under authorization from the Sponsor of the Results, or out of any use, sale or other disposition by the Sponsor or by any third party acting on behalf of or under authorization from the Sponsor of any product or technique which is the subject of the Services or is created or modified based on the Results.

## **9. INDEMNIFICATION**

9.1 The Sponsor will hold harmless, indemnify and defend the COLLEGE including its officers, employees, students and agents from any and all claims, demands, damages, losses, costs and expenses whatsoever (including but not limited to legal fees and disbursements on a solicitor-and-own-client basis) arising out of the use by the Sponsor or by any party acting on behalf of or under authorization from the Sponsor of the Results or out of any use, sale or other disposition by the Sponsor, or by any party acting on behalf of or under authorization from the Sponsor of any product or technique which is the subject of the Services or is created or modified based on the Results.

9.2 Subject to Section 8.1 and any statutory limitations or governance obligations, the COLLEGE will indemnify and hold harmless the Sponsor, its officers, employees and agents from any and all claims, demands, damages, losses, costs and expenses whatsoever (including but not limited to legal fees and disbursements on a solicitor-and-own-client basis) which result from the COLLEGE's negligent acts or omissions in the performance of its obligations under this Agreement or those of the COLLEGE's officers, employees, or agents or those for whom the COLLEGE is in law responsible. The Sponsor acknowledges that students of the COLLEGE are under its direction and control only during the period of their enrolment at the COLLEGE

## **10. TERMINATION**

10.1 **Events of Termination.** In the event that either party fails to remedy any breach or default on its part pursuant to this Agreement within thirty (30) days following notice from the other to that effect, the party not in default may upon written notice to the party in default terminate this Agreement. Furthermore, in the event that either party becomes insolvent or bankrupt, or makes an assignment for the benefit of its creditors, or in the event that a receiver or trustee of its property is appointed, such party shall be deemed to be in default under this Agreement and the other party may forthwith terminate this Agreement. Any termination is without prejudice to or limitation of any other

rights or remedies of the party not in default, including the right to collect sums due to it at the time of such termination.

**10.2 Pre-emptory Termination.** This Agreement may be terminated by either party giving ninety (90) days written notice to the other. In the event of termination, the COLLEGE shall take all necessary steps to wind-down the activities with respect to the Services in an orderly manner. The cancelling party will be responsible for the reasonable wind-down costs, notwithstanding that such termination may arise from the rights pursuant to Section 11. The costs for winding down the Services shall not exceed in the aggregate the amount(s) payable pursuant to this Agreement, in accordance with Schedule "D".

**10.3 Survival of Certain Provisions.** Articles 5, 6, 7, 8, 9 and 10 shall survive the termination of this Agreement.

## **11. EXCUSABLE DELAYS**

No liability shall be incurred by the COLLEGE for delay in progress of providing the Services, for damages suffered by either party or any third party, or for non-performance of its obligations hereunder as a result of any causes beyond the reasonable control of the COLLEGE so long as not caused by the financial incapacity or default. The COLLEGE agrees to give the Sponsor prompt notice and details in writing of such delay and shall use commercially, reasonable efforts to resume the Services in a timely manner. Should the delay exceed ninety (90) days, either party may terminate this Agreement in accordance with the provisions of Section 10.2, but without any additional notice as provided therein.

## **12. USE OF NAME, MARKS**

Neither the COLLEGE nor the Sponsor shall utilize the name, marks or logos of the other in conjunction with the use or exploitation of the Results or identification of the Services without the prior written consent of the owner.

## **13. NOTICES**

All notices, requests, directions or other communications ("Notices") required or permitted herein will be in writing and will be delivered to the parties hereto respectively as follows:

### **If to the Sponsor:**

- [list name and address of each Sponsor]

### **If to the COLLEGE:**

1001 Fanshawe College Boulevard

London, Ontario N5Y 5R6

Attn: \_\_\_\_\_

In order for any such Notice to be effective, it will be delivered in person; or, sent by facsimile addressed to the party for whom it is intended at the above-mentioned address and will be deemed to have been received on the date of delivery, if delivered in person, and, on the next business day following the electronic confirmation of the successful transmission of the facsimile, if sent by facsimile. The address of either party may be changed by notice in the manner set out in this provision.

#### **14. GENERAL PROVISIONS**

**14.1 No Agency, Partnership or Joint Venture.** Nothing contained herein or done hereunder shall be construed as establishing any agency, partnership or joint venture relationship between the parties for any purpose whatsoever.

**14.2 Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior agreements, negotiations, representations and proposals, written and oral, excepting only the NDA. Any Schedules attached hereto form part of this Agreement. No amendment, or variation of this Agreement shall be effective unless set forth in writing signed by a duly authorized representative of each party.

**14.3 Enurement; Assignment.** This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns, provided that none of the parties shall assign or subcontract this Agreement or any part thereof or any rights or obligations under this Agreement or with respect to the Results without the prior written approval of the other party hereto.

**14.4 Headings.** All headings in this Agreement are inserted solely for convenience, are not part of this Agreement and do not in any way limit or amplify the terms hereof. Any reference to “days” in this Agreement means calendar days, unless otherwise specified.

**14.5 Further Assurances.** Each of the parties shall sign such documentation and deliver such information as may be reasonably required by the other in order to confirm and give effect to the provisions set forth in this Agreement.

**14.6 Governing Law.** This Agreement shall be interpreted and governed by the laws of the Province of Ontario and the laws of Canada applicable in such Province. Any action taken relating to this Agreement shall be commenced in the courts of the Province of Ontario, and each of the parties hereby submits to such jurisdiction.

**14.7 Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which, when so executed shall be deemed an original, and all of which together shall constitute one and the same agreement. This Agreement may be delivered by facsimile provided that the party doing so sends the original executed copy of this Agreement promptly by courier to the other party. If the parties have each agreed that an electronic copy of this Agreement is the acceptable

format and the contract is reproducible by each party, it may be signed “electronically” and shall be binding.

**14.8 Dispute Resolution.** In the event of a dispute between the parties, the procedure set forth herein shall apply. The term “dispute” as used in this Section means any controversy, dispute or claim arising out of or relating to the Agreement or the performance, enforcement, breach, termination or validity thereof, unless such dispute were previously decided by a court of competent jurisdiction:

A dispute will be deemed to have arisen upon the delivery of a written notice by one party to the other describing the dispute (herein called the “Dispute Notice”). Upon delivery of the Dispute Notice, the parties agree to attempt to resolve the dispute in a prompt and expeditious manner. Except for the Dispute Notice, all communications between the parties will be on a “without prejudice” basis.

If the parties have not been able to resolve the dispute in a prompt and expeditious manner after delivery of the Dispute Notice, either of the parties may at any time thereafter request by written notice to the other party that the dispute be escalated to Senior Management (as hereinafter defined).

In the event such a request with written notice is made, each of the parties shall make available the senior executives specified in the following subsection, who has the authority to contractually bind the respective party (“Senior Management”), and who shall meet within fifteen (15) days after such request is made at the offices of the party which received the request to attempt to resolve the dispute.

The Senior Management appointee for each party is as follows:

COMPANY: [T/B/D]

The COLLEGE: [T/B/D]

Either of the parties may change its Senior Management appointee upon prior written notice to the other.

In the event the dispute is not settled amicably by Senior Management within thirty (30) days of escalation to Senior Management, such dispute shall be arbitrated by a single arbitrator acting in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), whose decision shall be final and binding upon the parties. The arbitrator shall be the person that the parties may agree on and in default of agreement within twenty (20) days following the expiration of the above-mentioned thirty (30) day period, then either of the parties may apply to a Judge of a court having jurisdiction to appoint the single arbitrator who shall be unconditionally accepted by the parties. The place of arbitration for disputes for which arbitration is initiated by either of the parties shall be London, Ontario. The arbitrator as selected or appointed shall be qualified by education and training to pass on the particular matter to be decided. The language of any arbitration will be English



The arbitration hearing shall commence within sixty (60) days after appointment of the arbitrator is done and shall be completed and a binding award rendered in writing within sixty (60) days after commencement of the hearing unless exceptional circumstances warrant delay. The decision of the arbitrator may be entered in any court of competent jurisdiction and execution entered thereupon forthwith. The law specified in Section 14.6 of this Agreement shall apply.

Each of the parties shall bear the cost of preparing its own case. The arbitrator shall have the right to include in the award the prevailing party's costs of arbitration and reasonable fees of attorneys, accountants, engineers, scientists and other professionals incurred by it in connection with the arbitration. Failing a specific award, the parties shall share equally the costs of the arbitrator and arbitration proceedings.

Notwithstanding the provisions of this Section, the parties recognize that either of them may desire to seek emergency, provisional, or summary relief (including temporary injunctive relief) to enforce the provisions of this Agreement relating to protection of intellectual property and/or Confidential Information. A party may seek such relief, provided, however, that immediately following the issuance of any emergency, provisional, temporary injunctive or summary relief, any further judicial proceedings shall be stayed (and each of the parties shall consent to such stay) pending resolution of any related underlying claims between the parties.

**14.9 Equipment Purchase.** Equipment purchased for use in the Services will be the property of the COLLEGE.

**IN WITNESS WHEREOF** the duly authorized officers of the parties have executed this Agreement as of the date first written.

**THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY**

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the College

[SPONSOR]

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the Company

**SCHEDULE "A"**

**DESCRIPTION OF THE SERVICES**

**SCHEDULE "B"**

**BACKGROUND INTELLECTUAL PROPERTY OF THE COLLEGE**

**SCHEDULE "C"**

**BACKGROUND INTELLECTUAL PROPERTY OF THE SPONSOR**

**SCHEDULE "D"**

**BUDGET AND PAYMENTS**

**[CHOOSE ONLY 1 OF THE FOLLOWING PROVISIONS AS A STARTING POINT FOR PAYMENT TERMS, IF APPROPRIATE]**

[The Sponsor will pay for the carrying out of the Services, upon receipt of an invoice from the COLLEGE. Invoices will be generated on a quarterly basis by the COLLEGE based on information provided by the Project Leader regarding the work conducted during the preceding quarterly period. The total amount of such invoices shall not exceed the amount shown in Section 3 of this Agreement.]

OR

[An initial payment of \$● is due upon signing of this Agreement, with the balance payable as follows:

- (a) \$●, on or before ●, 200●; and
- (b) \$●, within thirty (30) days of delivery by the COLLEGE of a final report summarizing the Results under the Services.]

OR

[The Sponsor will pay for the carrying out of the Services in full within thirty (30) days of signing of this Agreement and prior to the commencement of work by the Project Leader.]