

INTELLECTUAL PROPERTY AGREEMENT

This Agreement is made and entered into as of the [date] of [Month], 2009, by and between Collège d'Arts Appliqués et de Technologie La Cité Collégiale, having its principle office and place of business at 801 Promenade de l'aviation, Ottawa, Ontario K1K 4R3 (« La Cité ») and [Client] having its principle office and place of business at [address] (the « Client »);

WHEREAS the Parties have executed [Please provide the title of the document submitted] on [Date];

WHEREAS by the nature of the Project, Arising Intellectual Property is difficult to predict;

WHEREAS the Parties consider it desirable to set out the Parties' rights and ownership of Arising Intellectual Property and any other Intellectual Property;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

IP-2 DEFINITIONS OF FIXED TERMS:

2.1 "**Arising Intellectual Property**" or "**Arising IP**" is Intellectual Property that is conceived or reduced to practice during the Project Period, either by La Cité or by the Client or jointly by La Cité and by the Client, and that is disclosed in the Deliverables.

2.2 "**Background Intellectual Property**" shall mean Intellectual Property of a Party that is proprietary to that Party and that was conceived, created or developed prior to, or independent of, the Project and that is necessary for the performance of the Project;

2.3 "**Confidential Information**" shall mean the contents of this Agreement and all information disclosed or provided by the disclosing Party (including the Intellectual Property of the disclosing Party) to the receiving Party relating to the Project, and designated or otherwise indicated by the disclosing Party as confidential at the time of disclosure. If such disclosure was made in writing or in other tangible form, it will be marked "confidential" and if made orally, it was or will be reduced to writing or other tangible form and marked "confidential" within twenty (20) days of the oral disclosure. However, "Confidential Information" of the disclosing party does not include:

2.3.1 information that is in the public domain at the time it is received by the receiving Party;

2.3.2 information that, after receipt thereof by the receiving Party, enters the public domain other than through a breach of this Agreement by the receiving Party;

2.3.3 information that the receiving Party can show was, prior to receipt thereof from the disclosing Party, lawfully in the possession of the receiving Party and not then subject to any obligation on the part of the receiving Party to maintain the confidentiality thereof;

2.3.4 information that the receiving Party can show was independently developed by employees, agents, students or consultants of the receiving Party without any knowledge or use of the information disclosed by the disclosing Party; or

2.3.5 information that is approved in writing by the disclosing Party for disclosure provided that such disclosure by receiving Party is made in accordance with the terms of such approval.

2.4 "**Intellectual Property**" or "**IP**" shall mean all discoveries, inventions, processes, methods, techniques, know-how, and intellectual property and proprietary rights, expressed in whatever form and may include technical information, procedures, cell lines, formulae, protocols, software, specifications, flowcharts, instructions, data, bacterial, viral, plant, human or animal material that has new genetic or other characteristics and other documents and materials;

2.5 "**Deliverables**" are the tangible outcomes of the Project, such as reports, physical models,

samples, research results, data records, drawings, and machine-readable software that are specifically mentioned in the attached Schedule 1;

2.6 “**Party**” or “**Parties**” shall mean either La Cité or the Client or La Cité and the Client as the case may be;

2.7 “**Project**” shall have the same meaning as defined in the Proposal or parts thereof, attached hereto as Schedule 2;

2.8 “**Project Period**” shall mean the period commencing on the date of this Agreement and ending continuously with the Project, unless terminated earlier in accordance with the terms of this Agreement or extended by mutual written agreement by the Parties.

IP-3 BACKGROUND INTELLECTUAL PROPERTY

3.1 If Background Intellectual Property is utilized in the Project, then the owner (or rights holder) of such Background Intellectual Property will promptly provide the other Party with sufficient details of the Background Intellectual Property in a document entitled “Notice of Background Intellectual Property”. The owner (or rights holder) hereby grants to the other Party, a royalty-free, non-exclusive, non-transferable license to use the Background Intellectual Property during the term of this Agreement, solely in connection with the Project. No other rights or licenses in Background Intellectual Property are granted by the owner (or rights holder) to the other except as expressly set out in this Agreement or as otherwise agreed by the Parties. Background Intellectual Property will remain the exclusive property of the owner (or rights holder) unless otherwise agreed by the Parties in writing.

IP-4 LICENCE OF CLIENT’S ARISING IP AND INFORMATION RELATING THERETO

4.1 The Client hereby grants to La Cité a fully prepaid and royalty-free right and license to use all Arising Intellectual Property solely for research purposes, provided such use is made in accordance with the terms of this Agreement.

4.2 The Client hereby grants to La Cité a perpetual, fully prepaid, royalty-free right and license to use any information relating to or that is the subject of the Arising Intellectual Property and any Intellectual Property that is conceived or reduced to practice by the Client during the Project Period and arising out of or resulting from the Project, but not disclosed in the Deliverables, for teaching and research purposes, provided such use is made in accordance with the terms of this Agreement.

4.3 The Client hereby grants to La Cité a perpetual, fully prepaid and royalty-free right and license with right to sublicense only to La Cité’s students who have participated in or contributed to the Project, the right to make reference to the Project’s title and to a brief description of the Project in *curriculum vitae* documents, and the right to publish or present the results of research conducted by the Parties in connection with the Project, provided such references, publications and/or presentations are made in accordance with the terms of this Agreement.

IP-5 ASSIGNMENT OF ARISING INTELLECTUAL PROPERTY

5.1 La Cité hereby agrees to assign any and all rights it may have in Arising Intellectual Property that was either conceived or reduced to practice by La Cité, or jointly by La Cité and the Client, to the Client in accordance with the terms of an agreement negotiated in good faith by and to the satisfaction of the Parties.

IP-6 IP NOT DISCLOSED IN THE DELIVERABLES

6.1 The Client acknowledges that Intellectual Property arising out of or resulting from the Project may be conceived or reduced to practice by La Cité and/or La Cité students, or jointly by La Cité, La Cité’s students and the Client, during the Project, which Intellectual Property was not disclosed in the Deliverables (the “Undisclosed Intellectual Property”). This Undisclosed Intellectual Property shall remain the sole and exclusive property of La Cité, and the Client shall assign to La Cité any and all rights it may have to such Undisclosed Intellectual Property immediately upon its conception. La Cité may, but shall not be obligated to, assign or transfer the rights it may have in and to such Undisclosed

Intellectual Property to the Client in accordance with the terms of an agreement negotiated in good faith by and to the satisfaction of the Parties. It is understood by the Parties that the negotiation of monetary compensation to La Cité for the transfer and/or assignment of such rights in and to the Undisclosed Intellectual Property from La Cité to the Client shall be an integral part of that agreement.

IP-7 CONFIDENTIAL INFORMATION

7.1 Use of Confidential Information. The Parties may disclose Confidential Information one to the other to facilitate work under this Agreement. Except as otherwise agreed by the Parties, such Confidential Information will be safeguarded and will be disclosed only to those individuals of the receiving Party who need to know the Confidential Information in order to perform the activities directly related to this Agreement and who are aware of and are bound by this obligation of confidentiality. All copies of Confidential Information will, upon reproduction by the receiving Party, contain the same proprietary and confidentiality notices and legends that appear on the original Confidential Information. During the Contract Period and for five (5) years thereafter, the receiving Party will use reasonable efforts to keep the disclosing Party's Confidential Information confidential and will not, directly or indirectly, deal with, use, exploit or disclose such Confidential Information to any person or entity for any purpose except as expressly set out in this Agreement or unless and until expressly authorized in writing to do so by the disclosing Party.

7.2 Disclosure Required By Law. If a Party is required by a judicial, administrative or other process to disclose the other Party's Confidential Information, that Party will promptly notify the other Party and will allow the other Party reasonable time to oppose the process before disclosing the Confidential Information.

7.3 Publication. Both Parties shall have the right to publish or present the results of research conducted by the Parties in connection with the Project. Both Parties will acknowledge the support of the other in any publications and presentations. The Party wishing to publish (the « Publishing Party ») shall provide the other (the « Non-publishing Party ») with a copy of any proposed presentation or publication arising from the Project at least sixty (60) days prior to its presentation or submission for publication. Upon the Non-publishing Party's request received within thirty (30) days, the Publishing Party will: (i) ensure any of the Non-publishing Party's Confidential Information identified by the Non-publishing Party is removed from the proposed presentation or publication; and/or (ii) delay publication up to ninety (90) additional days in order that a patent application may be filed or other appropriate steps taken to protect the commercial value of the Non-publishing Party's Background Intellectual Property and/or the Non-publishing Party's Intellectual Property that would otherwise be disclosed by said presentation or publication, as determined by the Non-publishing Party in consultation with the Publishing Party. Failure of the Non-publishing Party to respond to the Publishing Party within the thirty (30) day period will be deemed acceptance by the Non-publishing Party of the proposed presentation or publication, and the Publishing Party may proceed with such presentation or publication without further notice to the Non-publishing Party.

7.4 Publicity. Except as required by law, no Party may use the name, logo or trademark of the other Party without the prior written consent of an authorized representative of the other Party. However, both Parties may make the following information a matter of public record: La Cité's name; the Client's name; the Project's general description (but not title, unless title is of a general nature); and the Project's duration. Except as expressly permitted in this Agreement, neither Party may use the name of the other, any member of the other Party's staff, or the name of any La Cité students, in any publicity, advertising, or news release without the prior written approval of an authorized representative of the other.

IP-8 NO IMPLIED OR EXPRESS WARRANTIES

8.1 EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ANY CONFIDENTIAL INFORMATION, INFORMATION OR INTELLECTUAL PROPERTY, INCLUDING BUT NOT LIMITED TO, LA CITE'S INTELLECTUAL PROPERTY (INCLUDING ANY UNDISCLOSED INTELLECTUAL PROPERTY), LA CITE'S BACKGROUND INTELLECTUAL PROPERTY, ARISING INTELLECTUAL PROPERTY, DATA OR OTHER RESULTS ARISING FROM OR PRODUCED AS A RESULT OF LA CITE'S PARTICIPATION IN THE PROJECT OR FROM THIS AGREEMENT IS DISCLOSED, LICENSED OR PROVIDED BY LA CITÉ TO THE CLIENT "AS IS".

8.2 EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, LA CITÉ MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO LA CITE'S INTELLECTUAL PROPERTY (INCLUDING ANY UNDISCLOSED INTELLECTUAL PROPERTY), BACKGROUND INTELLECTUAL PROPERTY, ARISING INTELLECTUAL PROPERTY, DATA OR OTHER RESULTS ARISING FROM LA CITE'S PARTICIPATION IN THE PROJECT OR FROM THIS AGREEMENT. LA CITÉ SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MARKET READINESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OPERATIONAL STATE, CHARACTER, QUALITY OR FREEDOM FROM DEFECTS, AND WILL IN NO EVENT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR AGGRAVATED OR OTHER SIMILAR OR LIKE DAMAGES OR LOSSES, INCLUDING ANY LOSS OF PROFITS, ARISING FROM ANY DEFECT, ERROR OR FAILURE TO PERFORM, EVEN IF LA CITÉ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. THE CLIENT HEREBY ACKNOWLEDGES THAT THE PROJECT IS OF AN EXPERIMENTAL NATURE, THAT NO PARTICULAR RESULTS CAN BE GUARANTEED, THAT IT HAS BEEN ADVISED BY LA CITÉ TO UNDERTAKE ITS OWN DUE DILIGENCE WITH RESPECT TO ALL MATTERS ARISING FROM THIS AGREEMENT, AND THAT THE ENTIRE RISK AS TO ANY USE BY THE CLIENT OF LA CITE'S INTELLECTUAL PROPERTY (INCLUDING ANY UNDISCLOSED INTELLECTUAL PROPERTY), BACKGROUND INTELLECTUAL PROPERTY, ARISING INTELLECTUAL PROPERTY, DATA OR OTHER RESULTS ARISING FROM OR PRODUCED BY LA CITE'S PARTICIPATION IN THE PROJECT OR FROM THIS AGREEMENT, IS BORNE SOLELY BY THE CLIENT.

8.3 LA CITÉ MAKES NO REPRESENTATIONS AS TO THE POTENTIAL FOR ANY CLAIM OF PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT BASED ON THE USE OF LA CITE'S INTELLECTUAL PROPERTY, THE ARISING INTELLECTUAL PROPERTY OR UNDISCLOSED INTELLECTUAL PROPERTY, NOR WILL LA CITÉ BE RESPONSIBLE FOR PROCURING THE USE OF SUCH INTELLECTUAL PROPERTY FOR THE CLIENT IN THE EVENT THAT SUCH INTELLECTUAL PROPERTY OR ANY PART THEREOF BECOME THE SUBJECT OF A CLAIM OF INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.

IP-9 INDEMNITY

9.1 Indemnification by the Client. The Client agrees to indemnify, hold harmless and defend La Cité, its Board of Governors, officers, employees, faculty, students, invitees, and agents, (the "**Indemnified Parties**") against any and all third party demands, claims, suits, proceedings, actions of any nature or kind whatsoever ("**Claims**"), liabilities, damages, judgments, costs, expenses and fees (including reasonable legal expenses) ("**Losses**") arising out of or in any way associated with the use by the Client or a third party acting on behalf of the Client or under the authorization of the Client, of La Cité's Intellectual Property (including Undisclosed Intellectual Property), Arising Intellectual Property, Background Intellectual Property, data and/or other results arising from the participation of La Cité and of La Cité's students in the Project, the manufacturing, distribution, shipment, offering for sale, sale or use of products and/or services derived from such Intellectual Property, product liability and infringement of Intellectual Property rights, to the extent that such Claims or Losses do not result from the gross negligence or wilful misconduct of the Indemnified Parties.

IP-10 NOTICES

10.1 Except as otherwise agreed by the Parties, all reports and notices or other documents that a Party is required or may want to deliver to the other Party will be in writing and delivered by (i) personal delivery or nationally recognized courier service and deemed to have been received at the time of delivery, (ii) registered or certified mail (with all postage and other charges prepaid) and deemed to have been received at the end of the fifth day after it is posted, except that in the event of a postal strike, such notice will be deemed to have been received upon actual receipt, to the address set out above or to such other address that the other party may subsequently direct in writing; or (iii) by email and/or by facsimile and deemed to have been received at the time of delivery.

IP-11 TERMINATION

11.1 Termination Without Cause. Either Party may terminate this Agreement, for whatever reason, upon giving to the other Party at least forty-five (45) days' written notice.

11.2 Termination for Cause. Either Party may, at its option, terminate this Agreement with immediate effect by giving written notice to the other if one or more of the following occurs:

- (a) the filing by a Party of any petition or any application seeking reorganization, readjustment or rearrangement of the business of the Party under any federal or provincial law relating to bankruptcy or insolvency;
- (b) the making by a Party of any assignment or attempted assignment for the benefit of creditors;
- (c) a Party becoming insolvent, as evidenced, for example (without limitation) by (i) the appointment of a receiver or a receiver manager for all or substantially all of the property of a Party, (ii) the inability of a Party to pay its liabilities generally as they become due, (iii) the termination of a majority of a Party's employees, or (iv) a Party ceasing or imminently ceasing by way of a third party petition remaining in place for thirty (30) days, to carry on business; or
- (d) any resolution passed, order made, or other steps taken by a Party for the winding up, liquidation or other termination of the existence of the Party.

11.3 Inability to Complete Project. If, for any reason, La Cité is unable to complete the Project or its portion of the Project, and a successor proposed by La Cité is not acceptable to the Client, either party may terminate this Agreement upon giving the other party at least thirty (30) days' written notice thereof. In such event, La Cité will, at a reasonable cost to the Client, cooperate with the Client fully in transferring the remaining work for completion by the Client or its third party designate, and if La Cité's Intellectual Property, Undisclosed Intellectual Property and/or Background Intellectual Property is required to enable the Client or its designate to complete the remaining work, La Cité will not charge the Client or its designate a mark-up or any additional cost for such use.

IP-12 GOVERNING LAW AND DISPUTE RESOLUTION

12.1 Governing Law. This Agreement is governed by, and will be construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

12.2 Dispute Resolution. The Parties agree that any and all disputes and controversies arising from, connected with, or relating to this Agreement, including disputes and controversies relating to the construction, meaning, performance or effect of this Agreement or any breach thereof (collectively "**Disputes**") will be resolved in accordance with the terms of this section 12.2 as follows:

- (a) **Informal Dispute Resolution.** Prior to initiating formal dispute resolution procedures, the Parties will first attempt to resolve any Dispute directly through good faith negotiations. Either Party may deliver to the other a written notice requiring negotiation of the Dispute ("**Notice to Negotiate**"). The Parties will seek to resolve Disputes through negotiations, but may escalate the resolution of any Dispute internally as necessary or appropriate at the executive level. If the Dispute has not been resolved within fifteen (15) days after the delivery of a Notice to Negotiate, either Party may by written notice ("**Notice to Mediate**") require the other to mediate the Dispute in accordance with section 12.2(b). To the fullest extent permitted by law, the parties will conduct the negotiations in confidence.
- (b) **Mediation.** The Parties agree to retain the services of a mutually acceptable third party mediator to mediate the resolution of the Dispute. Unless the parties otherwise agree in writing, the mediator will be resident in the city of Ottawa, and all meetings regarding the mediation will be held in-person in Ottawa. No party will unreasonably withhold acceptance of a mediator, and the selection of a mediator will be made within fifteen (15) days following the conclusion of direct negotiations regarding a Dispute pursuant to paragraph 12.2(a) above. If a mediator is not appointed, or if, following the appointment of a mediator, the Dispute is not

resolved within thirty (30) days, or such extended period that the Parties may agree to in writing, after the delivery of the Notice to Mediate, then any Party may elect to commence litigation pursuant to section 12.3 below. To the fullest extent permitted by law, the Parties agree to maintain the mediation proceedings in confidence; and share the costs of the mediator and the mediation facilities equally. All communications during the mediation referred to in section 12.2(b), including any documents or information prepared and exchanged solely for the purposes of that mediation, will be considered to be “without prejudice” and will not be admissible in any subsequent litigation.

(c) Litigation. Any party may seek (i) interim measure of protection, including injunctive relief, prior to or during the negotiation or mediation of Disputes, and (ii) final resolution, from the courts located in the Province of Ontario regarding any Dispute, and each Party irrevocably and unconditionally attorns to the non-exclusive jurisdiction of such courts, and all courts competent to hear appeals therefrom, for that purpose.

IP-13 General

13.1 Headings. The headings and subheadings in this Agreement are inserted for convenience of reference only and will not be used in interpreting or construing the provisions of this Agreement.

13.2 Independent Contractor. The relationship between the Client and La Cité is that of independent contractors and nothing in this Agreement will be construed as establishing an agency, partnership, joint venture, or employment relationship between the Parties. No Party has the authority to act on behalf of the other Party, or to commit the other Party in any manner at all or cause any other Party's name to be used in any way not specifically authorized by this Agreement.

13.3 Assignment. Neither Party shall assign any of its rights, or delegate any of its obligations under this Agreement without the prior consent of the other Party.

13.4 Entire Agreement. The Parties hereto acknowledge that this Agreement sets forth the entire agreement and understanding of the Parties hereto as to the subject matter hereof, and replaces and supersedes all prior discussions, agreements and writings in respect hereto.

13.5 Amendment. No amendment or variation to this Agreement will operate to change or vary the terms, obligations or conditions hereof except upon mutual agreement by both Parties signed by an authorized representative of each Party.

13.6 Severability. In the event that any provisions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement will remain in full force and effect without said provision and such determination will not affect the validity or enforceability of such provision or the Agreement. The Parties will in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which will most nearly approximate the intent of the Parties in entering this Agreement.

13.7 Waiver. No condoning, excusing or overlooking by any Party of any default, breach or non-observance by any other Party at any time(s) regarding any terms of this Agreement operates as a waiver of that Party's rights under this Agreement. A waiver of any term, or right under, this Agreement will be in writing signed by the Party entitled to the benefit of that term or right, and is effective only to the extent set out in the written waiver.

13.8 Survival. Section IP-13.8 and Articles IP-3, IP-4, IP-7, IP-8, IP-9, IP-10, and IP-12 will survive the expiry or earlier termination of this Agreement.

13.9 Further Assurances. The Parties will promptly do such acts and execute and deliver to each other such further instruments as may be required to give effect to the intent expressed in this Agreement.

13.10 Enurement. This Agreement will enure to the benefit of and be binding upon the Parties hereto, and their respective administrators, successors, and permitted assigns.

13.11 Language. This Agreement may be translated into the French language, provided however, that in the event of any discrepancies or questions concerning the meaning of the Agreement or any of its terms between the English version and the French version, the English version shall be the original and shall govern.

IN WITNESS WHEREOF, the duly authorized officers of the parties have executed this Agreement to be effective as of the Effective Date noted below.

Signed in good faith, in Ottawa on _____, _____, 2011

For “La Cité”

For “The Client”

Name
Title

Name
Title

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SCHEDULE 1

SCHEDULE 2