

MASTER COLLABORATION AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made effective as of the **day** of **month**, **year** (the “**Effective Date**”)

BETWEEN:

THE LAMBTON COLLEGE OF APPLIED ARTS AND TECHNOLOGY

(the “**College**”)

- and -

(the “**Company**”)

BACKGROUND TO THIS AGREEMENT:

1. The College is a corporation without share capital having its registered office at 1457 London Road, Sarnia, Ontario N7S 6K4, Telephone: (519) 542-7751; Facsimile: (519) 541-2446. The College was established pursuant to the *Ontario Colleges of Applied Arts and Technology Act*, S.O. 2002, c. 8, the statutory mandate of which is to offer a comprehensive program of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment and to support the economic and social development of their local and diverse communities (the “**Mandate**”).
2. The Company, incorporated under the laws of the Province of Ontario, having its registered office at _____ (**legal address of the company**) _____ with the majority of its employees, operations and revenue located and earned in the Province of Ontario, is a corporation under the *Canada Business Corporations Act*.
3. The College wishes to involve researchers and students in such practical development elements of the Project in areas of applied research, innovation and commercialization;
4. The Company is a corporation that can benefit from College-based applied research, innovation and commercialization support;
5. The College and the Company share certain common research interests and have complementary expertise, capabilities, and facilities, and seek to enter into a collaborative arrangement;
6. The general objective of this Agreement is to promote and facilitate collaborative research on a series of projects (each a Project) between the College and the Company in mutually beneficial research activities where the College will make available researchers, students and facilities to assist collaborative research between Company researchers and College researchers and students to the extent permitted by the Parties’ applicable policies and interests.

7. The College and the Company wish to enter into this Agreement to govern collaborative applied research on one or more projects (each a “**Project**” or “**Research Project**”) in which the College will make available students and facilities under the direction of a faculty member (the “**Principal Researcher**”) designated to conduct research all as set out in one or more Statements of Work attached as Schedule 2 to, and forming part of, this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the terms and conditions contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties agree with each other as follows:

1. PROJECTS

- 1.1 Objectives. The College and the Company will work cooperatively and collaboratively within the Statement of Work and to achieve the objectives and deliverables stated for each of the Projects described in Schedule 2.

- 1.2 Nature Of Collaboration. In consideration for the work to be performed under this Agreement, the College and the Company have, in accordance with the provisions of the Statement of Work attached hereto, mutually developed cost proposals, goals, objectives, deliverables, timelines, funding contributions, the participation by each of the Parties and the anticipated contribution to the research results, and identified the remuneration specific to each element of the Project. For all subsequent collaborative proposals, all of the foregoing elements shall also be incorporated as a Statement of Work applicable to such Project, and finalized by mutual agreement within thirty (30) days following consensus to undertake a new Project.

Each separate Project shall be referenced by inclusion within Schedule 2, as amended from time to time. Nothing herein shall preclude the College from contracting with any other person or entity for projects that are similar to the Projects, provided that the College will not enter into any contract with a competitor that has been identified to the College by the Company. All obligations regarding Confidential Information will be respected.

- 1.3 First Project. The first Project will begin on the Effective Date and will continue for the duration of the Term specified in the applicable Statement of Work or until any other date agreed in writing between the Parties, or until this Agreement is terminated in accordance with Section 8. If this Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.
- 1.4 Project Leaders. Each Party will appoint a Project leader to coordinate the research activities as contemplated in this Agreement and/or as described herein as the Project. Either Party may re-appoint its Project leader at any time, upon providing notice to the other and may elect a specific leader for each Project consistent with the Statement of Work.
- 1.5 Facilities And Services: The Parties undertake within 30 days following execution of this Agreement to identify specialized research equipment and facilities which will initially be available for use by the other Party, on an agreed upon basis. Equipment and facilities which are used by one Party as part of this specific collaboration will, in so far as possible, be made available to the other Party on the same basis as for the host Party’s internal users. Where there is a conflict as to use, the internal Party’s use will take priority over the other Party. It is recognized that the nature of the facilities to be made available may vary according to the Statement of Work for a particular Project. Each Party shall respect the policies and procedures of the other, and shall

maintain comprehensive general liability coverage of at least **TWO (2) million dollars** on a per occurrence basis.

- 1.6 Collaborative Conduct. Each Party's researchers operating under this Agreement and those persons under the researchers' direction will comply with the applicable policies of their respective organizations and will further comply with the applicable policies of their Party's organization while working on the Party's premises, so long as such policies are not inconsistent with the specific terms of this Agreement. Applicable policies (subject to the subsequent articles of this Agreement) may include, but are not limited to: health and safety; worker's compensation; intellectual property; publication; the conduct of research; scholarly integrity; conflict of interest; ethics; environmental protection; and operations integrity.
- 1.7 Standard of Performance. Each Party will carry out the tasks allotted to it in the applicable Statement of Work, and will provide the human resources, materials, facilities and equipment that are designated as its responsibility in that Statement of Work. The Project will be carried out under the direction and supervision of the Principal Researcher and any other College personnel as per the Statement of Work. The Project will be carried out at the Location. Each Party will use reasonable efforts to carry out the Project in accordance with the applicable Statement of Work, but neither Party undertakes that any research will lead to any particular result, nor does it guarantee a successful outcome to the Project
- 1.8 Human or Animal Research. Research involving the use of humans or animals may not be undertaken without the prior written approval of the College Research Ethics Board and, in addition to compliance with this Agreement including any applicable Statement of Work, in all cases must be conducted in strict accordance with prevailing ethical standards.

2. REPORTING & DISCLOSURE OF RESULTS

- 2.1 Reporting. The College will provide the Company with reports summarizing the progress of the Project and a copy of all of the Results. The reports shall be delivered quarterly or on a frequency to be stated in the applicable Statement of Work. The reports shall be deemed to be Confidential Information.
- 2.2 Notification of Results. Each of the Parties will notify the other Party promptly after identifying any Result that it believes is patentable, and will supply the other Party with copies of that Result.
- 2.3 Disclosure. The Parties acknowledge that the disclosure of information may be required for purposes of fulfilling the Mandate of the College. Accordingly, the College and Company will be entitled to publish or disclose publicly the Results or any portion of the same, during or after the Term of the Project without restriction, but in accordance with this Section and all provisions respecting confidential information. They agree that the premature disclosure of certain Results may put at risk their potential commercial value. Disclosure includes memorandums, scientific articles, seminars and other written and oral presentations. Any disclosure of Results must nonetheless be authorized beforehand in writing by the Principal Researcher as well as the Company's Authorized Representative, according to the following provisions:
 - (a) The College submits to the Company any projected information disclosure regarding the Project, at least forty-five (45) days before its presentation or publication.
 - (b) If the Company does not contest this disclosure in writing within fifteen (15) days of the reception of the proposed disclosure, it shall be deemed to have given its approval and the College may then disclose the information.

- (c) If the Company contests the proposed disclosure, in writing and within the fifteen (15) day period, the Parties must then negotiate an acceptable version of the proposed disclosure, including the date of disclosure in that case, within the above-mentioned forty-five (45) day time period of subsection 2.3(a).
- (d) The Company may not refuse to give its approval unless the proposed disclosure puts at risk the protection and potential commercial value of the Project's Results. In the event that such proposed disclosure involves the disclosure of any invention that the Company or the College may wish to evaluate for patenting, the Company or the College agree to defer any such disclosure or publication for an adequate period of time but no longer than six (6) months from the date the material was first submitted to allow for the preparation and filing of any desired patent applications. The disclosure shall be authorized as soon as the patent application is filed with a patent office in any jurisdiction in the Territory.
- (e) Subject to the provisions of Section 5 (Confidentiality), any postponed disclosure cannot exceed six (6) months following the end of the Agreement.
- (f) Neither Party may make public statements, issue publicity or media releases or make other disclosures revealing the existence of this Agreement and the general relationship of the Parties hereunder without the prior approval of the other Party but notwithstanding the foregoing, any disclosures shall be limited to the name of the Parties, the title of the proposal, the project leaders, and as may be required or otherwise authorized, the level of funding.

3. FINANCIAL TERMS AND CONDITIONS

- 3.1 Financial Terms. The financial terms and conditions applicable to each Project shall be specified in the Statement of Work.
- 3.2 Payment & Interest on Overdue Payments. Any amounts payable by the Company to the College shall be payable within thirty (30) days following receipt of the College's invoice. Any amount in arrears shall bear interest at an annual interest rate equal to the prime rate of the Royal Bank of Canada, plus 1% calculated bi-annually in arrears or the maximum interest rate permissible by law, whichever is less.
- 3.3 Equipment. Any equipment or materials purchased by the College for a Project shall remain the property of the College.

4. OWNERSHIP & USE OF INTELLECTUAL PROPERTY

- 4.1 Ownership of Background Technology Unaffected. This Agreement does not affect the ownership of any Intellectual Property in any Background Technology or in any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Results. The rights to Intellectual Property in Background Technology will remain the property of the Party that contributes them to the Project (or its licensors). No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement.
- 4.2 License to Use Background Technology. Each Party grants to the other a royalty-free, non-exclusive license to use its Background Technology for the purpose of carrying out the Project, but for no other purpose. Neither Party may grant any sub-license to use the Background Technology of the other Party except that the Company may allow its Affiliates and any person

working for or on behalf of the Company or any of its Affiliates to use the College Background Technology for the purpose of carrying out a Project.

4.3 Ownership of Intellectual Property in Results. Unless otherwise stated under the heading “intellectual property ownership” within Schedule 2: Statement of Work for each of the Projects therein, the following shall apply,

- (a) Protection. Unless otherwise stated in an applicable Statement of Work, the Company will own the Intellectual Property in the Results and may take such steps as it may decide from time to time in its discretion, to register and maintain protection for that Intellectual Property, including filing and prosecuting patent applications for any of the Results anywhere in the Territory.
- (b) Incidental College Technology. Unless otherwise stated in an applicable Statement of Work, the College will own the Intellectual Property in Incidental College Technology and may take such steps as it may decide from time to time in its discretion, to register and maintain protection for that Intellectual Property, including filing and prosecuting patent applications for any of the Results anywhere in the Territory.
- (c) Prosecution Costs. The Company shall be responsible for all costs of patent prosecution or other protection of the Intellectual Property in the Results.
- (d) Cooperation of Inventors. Each Party will be responsible for securing the cooperation of their inventors employed or retained by them in the filing, prosecution, maintenance and defense of patent rights in the Results. Each Party acknowledges that any patents protecting the Results must name all inventors, including students of the College and the Principal Researcher as applicable and determined in accordance with the law of inventorship, including in the jurisdiction where the application is filed.
- (e) Assignment by Third Persons. Where any person engaged in the Project is identified in the Statement of Work and is working under the direction and control of the College, the College or the Party engaging that contractor (as the case may be) will use its best efforts to ensure that person assigns any Intellectual Property they may have in the Results in order to be able to give effect to the provisions of this Section 4.3.
- (f) Assignment. To the extent that any Intellectual Property in the Results is capable of prospective assignment, the College now assigns those Intellectual Property rights to the Company. The College will assign any Intellectual Property rights that cannot be prospectively assigned to the Company as and when they are created, at the request of the Company and at the Company’s expense.
- (g) Assignment of Intellectual Property in Unused Results. The Company will provide the College with such information as the College may reasonably request from time to time to demonstrate that the Company is exploiting or is taking reasonable steps towards exploiting the Results. If the Company does not demonstrate that it is exploiting any of the Results or is taking reasonable steps towards exploiting them, the Company will, if requested to do so by the College at any time after one year following delivery of the Results, reassign the Intellectual Property in those Results to the College. The Company will notify the College if the Company decides not to proceed with the exploitation of any of the Results and will, if requested to do so by the College, reassign the Intellectual Property in those Results to the College.

- (h) Abandoning Patent Applications or Maintenance Fees on Issued Patents. In the event that the Company wishes to abandon application(s) for patent protection on inventions arising out of Results of Projects, it will notify the College in writing at least sixty (60) days in

advance of the next applicable due date in relation to the application or obligation to pay maintenance fees. The College may elect within forty five (45) days of receiving the notice to take over the prosecution or maintenance costs and on receipt of such notice, the Company shall execute, deliver to the College and file with the relevant patent office an assignment of all rights in the patent or patent application in favour of the College.

- 4.4 Use of Results in Fulfillment of the College Mandate. Despite the assignment or agreement to assign under Section 4.3, the College and each employee and student of the College will have the irrevocable, royalty-free right to use the Results for the purposes of fulfilling the Mandate. Such use shall include projects that are sponsored by any third Party, unless otherwise stated in the applicable Statement of Work.

5. CONFIDENTIALITY

- 5.1 Representatives. Each Party designates the following representative for coordinating the receipt, release and delivery of Confidential Information:

College: Name of Representative, Title

Company:

or other individuals designated in the applicable Statement of Work.

- 5.2 Non-Use. The Recipient may only use the Confidential Information for the purpose (the “**Permitted Purpose**”) of fulfilling its obligations under this Agreement in relation to a Project. The Recipient must not use the Confidential Information for any other purpose without the prior written approval of Discloser.
- 5.3 Non-Disclosure. The Recipient agrees to keep the Confidential Information in confidence. The Recipient may only disclose the Confidential Information to its employees, directors, officers, agents, students (in College’s case) and consultants who need to know the Confidential Information for the Permitted Purpose, provided that they are advised of the confidential nature of the Confidential Information and are under an obligation to maintain its confidentiality. Recipient must not otherwise disclose Confidential Information to any person or third Party without the prior written approval of Discloser.
- 5.4 Standard of Care. The Recipient must use at least the same standard of care in protecting the confidentiality of the Confidential Information of the Discloser as it uses in protecting its own information of a similar nature and, in any event, no less than a reasonable standard of care. The Recipient must notify the Discloser promptly upon discovery that any Confidential Information has been accessed or otherwise acquired by or disclosed to an unauthorized person.
- 5.5 Return or Destruction of Confidential Information. If requested in writing by the Discloser, the Recipient must cease using, return to the Discloser and/or destroy all Confidential Information and any copies of Confidential Information in its possession or control. The Recipient may retain one archival copy of such Confidential Information for the sole purpose of establishing the extent of the disclosure of such Confidential Information, provided that such information is not used by

Recipient for any other purpose and is subject to the confidentiality requirements set out in this Agreement.

5.6 Property in Confidential Information. All Confidential Information remains the property of the Discloser and no license or any other rights to the Confidential Information is granted to the

Recipient pursuant to this Agreement. This Agreement does not obligate the Discloser to make any disclosure of Confidential Information to the Recipient or require the Parties to enter into any business relationship or further agreement.

5.7 Limited Warranty & Liability. The Discloser warrants that it has the right to disclose the Confidential Information to the Recipient. The Discloser makes no other warranties in respect of the Confidential Information and provides all information “as is” without any express or implied warranty of any kind, including any warranty as to merchantability, fitness for a particular purpose, accuracy, completeness or violation of third Party intellectual property rights. Neither Party shall be liable for any special, incidental nor consequential damages of any kind whatsoever resulting from the disclosure, use or receipt of the Confidential Information.

5.8 FIPPA. Notwithstanding this Section 5, the Parties acknowledge that the College is an “institution” as defined in the *Freedom of Information and Protection of Privacy Act* R.S.O. 1990, c. F 31 (“**FIPPA**”) and all records prepared by the College in the performance of this Agreement are subject to the access and privacy provisions of which creates a right of access to records under the custody and control of public bodies subject to exceptions and in particular to the exceptions set out in Section 17 of the FIPPA, which include an exception to disclosure for trade secrets or scientific or technical information of competitive and commercial importance to a third Party.

5.9 Use of Names. The College and the Company agree not to use the name, or any trade-mark, trade name or logo of the other Party, nor the name of one of the other Party’s members, employees, officers, directors or shareholders, for publicity means without the prior written consent of the other Party. Such consent is not to be reasonably withheld. However, they agree that they may mention, without prior authorization of the other Party, the collaboration existing between the Parties, without disclosing the terms and conditions of the Agreement.

5.10 Equitable Relief. The Parties acknowledge that if a Party breaches the provisions of Sections 5.2, 5.3, 5.4 or 5.5 there may not be an adequate remedy at law in damages. Accordingly, the Parties agree that Party asserting a breach shall have the right to seek temporary and permanent injunctive or other equitable relief to restrain a breach. The Parties acknowledge that the provisions of this Section 5.10 are reasonable and are necessary to protect the legitimate interests of the Parties.

6. GENERAL REPRESENTATIONS AND WARRANTIES

6.1 Each Party represents and warrants to the other Party that:

- (a) it has the power, authority and right to enter into and deliver this Agreement and to perform its obligations under this Agreement;
- (b) this Agreement constitutes a valid and legally binding obligation enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other creditors’ rights laws of general application; and

- (c) neither the entering into nor the delivery of this Agreement nor the performance of its obligations by either Party will result in the violation of any of the provisions of its constating documents or by-laws, any agreement or other instrument to which it is a Party or by which it is bound, or any Applicable Law.

7. RISK MANAGEMENT

7.1 Exclusion of Implied Warranties. Except for representations, warranties or conditions expressly made in this Agreement, the College Background Technology, the equipment, materials, premises and facilities, and any services provided by the College in, or incidental to, the performance of this Agreement are supplied and licensed on an “as is” basis, and there are no representations, warranties or conditions, express or implied by statute, including without limitation any with respect to:

- (a) market readiness, merchantability, or fitness for any use or purpose;
- (b) operational state, character, quality, or freedom from defects; or
- (c) non-infringement of rights of third Parties under present or future patents.

7.2 Limitation of Liability. The College shall not be liable, in any event, for punitive, exemplary or aggravated damages or for consequential, indirect or incidental damages, or loss of income, arising from the possession or use of anything provided, licensed or conveyed or services provided pursuant to this Agreement. The College rejects all liability and responsibility relating to the consequences of using the Results or providing services.

7.3 Company Indemnity. The Company shall indemnify and save harmless the College, its trustees, officers, employees, students and agents, from and against, and be responsible for :

- (a) all claims, demands, losses, damages, costs (including but not limited to legal fees and disbursements), actions, suits or proceedings suffered or incurred by the College that are in any manner based upon, arising out of, related to, occasioned by, or attributable to:
 - (i) the manufacturing, distribution, shipment, offering for sale, sale, or use of products or services developed based on Results or otherwise as a consequence of a Project, including the College Background Technology;
 - (ii) product liability and infringement of intellectual property rights; and
 - (iii) other costs incurred by the College in relation to any such claim, demand, loss, damage, costs, actions, suits or proceedings.

7.4 Hazardous Materials. The Company agrees that it shall not contribute any materials to a Project or deliver materials to a Location that are hazardous to human health or to the equipment and facilities of the College and agrees to indemnify the College for all claims, demands, losses, damages, costs including substantial indemnity costs, actions, suits or proceedings incurred or suffered by the College as a result of the breach of this Section 7.4.

7.5 Insurance. The Company shall procure and maintain, at its own expense, one or more policies of adequate liability insurance including, without limitation, general liability coverage and product liability coverage, for the above indemnification. The insurance coverage required under this paragraph shall not be construed to create a limit of the Company’s liability under the above

indemnity. The Company shall produce, on demand from the College, satisfactory written evidence of such insurance, in the form of a certificate of insurance.

8. TERM & TERMINATION

8.1 Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and, unless extended by written agreement of the Parties or terminated earlier pursuant to Section 8.2, shall terminate at midnight (Toronto time) on the **fifth** anniversary of the Effective Date.

8.2 Termination on Notice. Either Party may terminate this Agreement without cause upon thirty (30) days written notice to the other Party at any time during the Term.

8.3 Termination for Cause. Either Party (the “**Terminating Party**”) shall be entitled to terminate this Agreement immediately on written notice to the other Party at any time during the Term in the following circumstance:

- (a) if the other Party defaults for a period of thirty (30) days or more in the payment of any amount owed by it to the Terminating Party, which amount is not the subject of a *bona fide* dispute, and fails to remedy such default within thirty (30) days following written notice thereof from the Terminating Party;
- (b) if the other Party defaults in the performance of a material obligation under this Agreement (other than in the payment of any amount owed) and fails to correct such default within thirty (30) days following written notice to do so from the Terminating Party;
- (c) if any formal or informal proceeding for the dissolution, liquidation or winding up of the affairs of the one or more of the other Parties is instituted by or against one or more of the other Parties and is not diligently defended or a resolution is passed or any other voluntary act undertaken for the winding up or dissolution of one or more of the other Parties; or
- (d) if one or more of the other Parties is adjudged bankrupt or insolvent, or a petition in bankruptcy is filed against one or more of the other Parties and is not diligently defended, or if one or more of the other Parties makes an assignment for the general benefit of creditors or applies for relief under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors Arrangements Act* (Canada), or where proceedings of any type are instituted in any jurisdiction in respect of the alleged insolvency or bankruptcy of one or more of the other Parties and are not diligently defended.

8.4 Any termination pursuant to Section 8.2 or 8.3 is without prejudice to or limitation of any other right or remedies of either Party including the right to collect sums due to it at the time of such termination. If Party fails to remedy any breach or default on its part pursuant to this Agreement within thirty (30) days following notice from the other Party, the Party not in default may, upon written notice to the Party in default, immediately terminate the Project(s) and terminate any further rights of the Party in default under this Agreement in regard to any uncompleted Project or the Results of such Project.

8.5 Sections 3, 4.1, 4.3, 4.4, 5, 7 and 9 shall survive termination of this Agreement.

9. INTERPRETATION

- 9.1 Definitions. Whenever used in this Agreement, including in the Background to this Agreement, the following words and terms shall have the respective meanings attributed to them in Schedule 1.
- 9.2 Statement of Work. Where the terms or conditions of a Statement of Work are inconsistent with or otherwise conflict with this Agreement, the Statement of Work shall govern.
- 9.3 Accuracy of Recitals. The Parties confirm the accuracy of the Recitals to this Agreement.
- 9.4 Gender and Number. In this Agreement, words importing the singular include the plural and vice versa and words importing any gender include all genders.
- 9.5 Entire Agreement. This Agreement, including the schedules to this Agreement, together with the agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement. No supplement, modification or amendment to this Agreement and no waiver of any provision of this Agreement shall be binding on any Party unless executed by such Party in writing.
- 9.6 Section Headings. Section headings contained in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the content of the applicable section or sections, and shall not be considered part of this Agreement.
- 9.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario and shall be treated, in all respects, as an Ontario contract.
- 9.8 Currency. Unless otherwise indicated, all dollar amounts referred to in this Agreement are in Canadian funds.
- 9.9 Schedules The following s are incorporated by reference and form part of this Agreement:
- (a) Schedule 1 - Definition
 - (b) Schedule 2 - Statement of Work
 - (c) Schedule 3 - Funding Agency Documentation if applicable
- 9.10 Relationship of the Parties. Nothing in this Agreement is intended to constitute or appoint either Party as the partner, agent, legal representative or joint venturer of the other Party. Neither Party has any authority to assume or create any obligation or liability, either express or implied, on behalf of the other Party or to represent that it is the agent, partner, joint venturer or representative of the other Party.

- 9.11 Compliance with Laws. Each Party shall comply with all applicable federal, provincial and municipal laws and regulations in the performance of their obligations under this Agreement, including any Statement of Work.
- 9.12 Waiver. The waiver by the Company or the College of any breach or default of any term of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach or default of the same or any other term or condition of this Agreement.
- 9.13 Dispute Resolution. Any claim, dispute or controversy arising out of, or in connection with, or relating to, this Agreement or the validity, interpretation, performance or non-performance, termination or non-termination of this Agreement or any other matter arising in relation to this Agreement that cannot be resolved shall be submitted to arbitration pursuant to the ADR Chambers Arbitration Rules and *Arbitration Act, 1991 (Ontario)* (as may be amended from time to time) before a single arbitrator agreed upon by the Parties, or if the Parties cannot agree upon an arbitrator within thirty (30) days of the delivery by any Party invoking this Section 9.13 of the notice requiring the arbitration, ADR Chambers shall provide the Parties with a list of three potential arbitrators in accordance with the ADR Chambers Arbitration Rules. If the Parties are unable to agree on an arbitrator within 7 days of receipt of the list, each side to the arbitration may within a further two business days delete one name from the list and the Appointing Committee of ADR Chambers shall choose the arbitrator from the remaining names. The site of the arbitration shall be the City of Toronto. The arbitrator and the Parties shall agree to keep confidential and not disclose the existence of the arbitration, any documentary or other evidence given by a Party or witness in the arbitration, except as necessary to comply with Applicable Law. The arbitrator may award legal fees and costs in accordance with this Agreement. Unless an award of costs is made, each Party shall bear their own expenses and shall share equally in the administrative expenses of the hearing including, without limitation, arbitration fees and the expenses of a court reporter. Judgment on the award shall be documented in a detailed written opinion containing findings of fact and law. Any award may be entered in a court of competent jurisdiction for a judicial recognition of the decision and applicable orders of enforcement. Notwithstanding the foregoing, a Party may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction or other interim or conservatory relief.
- 9.14 Force Majeure. If either Party is bona fide delayed, hindered in, or prevented from the performance of any term of this Agreement by reason of strikes, lockouts, labour troubles, inability to procure materials, equipment or services, equipment failure, power failure, applicable governmental laws, regulations, or the discretion of any governmental authority, riots, insurrection, sabotage, rebellion, war or acts of military authority, fire or explosion, flood, earthquake, act of god or other impediment which is beyond the control, and is not the fault of, is not avoidable by the exercise of reasonable effort or foresight by, and is not due to the economic inability of, the Party delayed in performance, then such performance shall be excused for the period during which the impediment exists. The Party delayed shall be entitled to perform that provision within the appropriate time period after the cessation of the impediment and the other Party shall not be entitled to any compensation for such delay.
- 9.15 Assignment. This Agreement may not be assigned by the Company, in whole or in part, to any person, other than an entity acquiring control of substantially the complete assets of the Company, without the prior written consent of the College. Such consent shall not be unreasonably withheld, provided the proposed assignee corporation agrees and is able to assume all the obligations of the Company pursuant to this Agreement.
- 9.16 Time. Time shall be of the essence in this Agreement.

- 9.17 Notices and Transmission of Documents. Any notice or other communication required or permitted to be given under this Agreement or for the purposes to any Party shall be in writing and shall be sufficiently given if delivered personally to such Party, or if sent by prepaid registered mail or if transmitted by facsimile or other form of recorded communication capable of being reproduced on paper to such Party or if sent by email to the address below, provided that in the case of email the receiving Party or Parties confirm receipt to the addresses set out in paragraphs 1 and 1 of the Background to this Agreement.
- 9.18 Further Assurances. The Parties agree to execute, acknowledge and deliver all such further documents and to do all such acts as may be necessary to carry out the intent and purpose of this Agreement.
- 9.19 Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement, and the remaining provisions will remain in full force and effect.
- 9.20 Enurement. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 9.21 Counterparts. This Agreement may be executed in any number of counterparts. Each executed shall be deemed to be an original. Such counterparts, taken together, shall constitute one counterpart agreement. Delivery by facsimile shall be effective delivery and each Party shall promptly deliver an original signed version by mail.

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

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

Per: _____
Name:
Title:

Per: _____
Name:
Title:

COMPANY

Per: _____
Name:
Title:

SCHEDULE 1

DEFINITIONS

- (a) “**Affiliate**” shall have the meaning attributed to it by the *Business Corporations Act* (Ontario) on the date of this Agreement;
- (b) “**Agreement**” means this collaboration agreement and all schedules and instruments supplemental to this Agreement or in amendment or confirmation of this Agreement, including any Statement of Work; “**Section**” means and refers to the specified section of this Agreement;
- (c) “**Applicable Law**” means:
 - (i) any applicable Canadian federal, provincial or municipal law including any statute, regulation, subordinate legislation or treaty; and
 - (ii) any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority whether or not having the force of law;
- (d) “**ARC**” means the Applied Research and Commercialization Initiative;
- (e) “**Background Technology**” means information, techniques, Know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) that are provided by one Party to the other for use in the Project (whether before or after the date of this Agreement), except any Result;
- (f) “**Business Day**” means a day (other than Saturday or Sunday) on which chartered banks are open for business in the City of Toronto;
- (g) “**Collaboration Project**” means the applied research or pre-commercialization project carried out by the College in collaboration with the Company;
- (h) “**Company’s Authorized Representative**” means any person as may be identified in a Statement of Work or otherwise in writing to the College during the Term;
- (i) “**Completion Date**” means the Project completion date;
- (j) “**Day**” means a calendar day;
- (k) “**Confidential Information**” means any information disclosed by one Party (the “**Discloser**”) to the other (the “**Recipient**”) relating directly or indirectly to a Project which is identified by the Discloser, either orally or in writing, as confidential, either at the time of disclosure or, if disclosed orally, confirmed in writing within thirty (30) days following the original disclosure. Confidential Information does not include information that:
 - (i) was available to the public at the time of disclosure, or subsequently became available to the public without fault of Recipient;

- (ii) was known to Recipient at the time of disclosure or was independently developed by Recipient, provided there is adequate documentation to confirm such prior knowledge or independent development;
 - (iii) was received by Recipient from a third Party and Recipient was not aware that the third Party had a duty of confidentiality to Discloser in respect of the information; is used or disclosed by Recipient with Discloser's prior written approval; or
 - (iv) is required to be disclosed by law, provided that Recipient gives Discloser sufficient prior written notice of any such disclosure to allow Discloser to contest the disclosure. Any action taken by Discloser to contest the disclosure must not compromise the obligations of Recipient under the order to disclose or cause Recipient to be subject to any fine, penalty or prosecution;
- (l) **“Contribution”** means the contribution to eligible expenses made by the ARC program, and by the Company. Contributions from the Company may be either cash and/or in kind that must be at least thirty three point thirty three percent (33.33%) of the total Collaboration Project costs;
- (m) **“Effective Date”** means the date set out at the top of the first page of this Agreement;
- (n) **“Eligible Activities”** means product and process applied research, engineering design, technology development, product testing, certification, proof of concept, piloting and demonstration and problem solving.
- (o) **“Governmental Authority”** means any domestic legislative, executive, judicial or administrative body or person having or purporting to have jurisdiction in the relevant circumstances, including without restricting the general nature of the foregoing, any administrative or regulatory body purporting to have jurisdiction over the marketing, sale or distribution of the Products or Upgrade Products in the Territory or any Province of the Territory;
- (p) **“Grant Recipient”** means the College and the Company for the purpose of carrying out the Collaboration Project, in accordance with the requirements stipulated in Schedule 2 (the Statement of Work)
- (q) **“Incidental College Technology”** means information, techniques, Know-How and inventions (whether patentable or unpatentable) that:
- (i) are developed exclusively by the Principal Researcher or other personnel employed or retained by the College during the conduct of a Project;
 - (ii) are outside of the Scope and Objectives of the Project as defined in the applicable Statement of Work; and
 - (iii) are made or conceived without use of any Confidential Information of the Company;
- (r) **“Intellectual Property Rights”** means inventions, patents (including any and any continuation, continuation-in-part, divisional, or re-issue applications), trade-marks, registered industrial designs, copyrights, confidential information, applications for

registration of any of the above, and any similar right recognized from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

- (s) “**Know-how**” means unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
- (t) “**Location**” means the College premises at 1457 London Road, Sarnia, Ontario N7S 6K4 unless another location is specified in the applicable Statement of Work;
- (u) “**Parties**” means the College and the Company collectively, and “**Party**” means the College or the Company;
- (v) “**Permitted Purpose**” shall have the meaning attributed to it in Section 5.2;
- (w) “**Person**” includes a natural person, partnership, corporation, limited liability company, trust, unincorporated association, joint venture or other entity or Governmental Authority, and pronouns have a similarly extended meaning;
- (x) “**Principal Researcher**” shall have the meaning attributed to it in paragraph 7 of the Background to this Agreement;
- (y) “**Project**” or “**Research Project**” shall have the meaning attributed to it in paragraph 7 of the Background to this Agreement;
- (z) “**Publication**” means the publication of an abstract, article or paper in a journal, or its presentation at a conference or seminar;
- (aa) “**Results**” means all information, Know-how, results, inventions, software and other Intellectual Property identified or first reduced to practice or writing in the course of the Project, but excluding any inventions, improvements, discoveries, methods, developments and software which (i) do not arise in the course of a Project, and (ii) are made and conceived by the College without use of any of the Company’s Confidential Information or of any tools, devices, or equipment provided by the Company;
- (bb) “**Services**” collectively means the project work to be carried out by the College described in Schedule 2;
- (cc) “**Statement of Work**” means the description of scope and other terms and conditions applicable to each Project attached to and forming part of this Agreement as part of Schedule 2;
- (dd) “**Territory**” means worldwide, unless otherwise defined in a Statement of Work; and
- (ee) “**Term**” shall have the meaning ascribed to it in Section 8.1.