

THIS AGREEMENT DATED EFFECTIVE THE ____ DAY OF _____, 201_

BETWEEN:

-and-

THE NORTHERN ALBERTA INSTITUTE OF TECHNOLOGY

WHEREAS the parties wish to explore various business and/or applied research opportunities under which both may enjoy potential benefits from a joint arrangement that utilizes their complementary capabilities (the “contemplated purposes”);

AND WHEREAS each may disclose certain confidential information (as hereinafter defined) to the other which the parties desire to protect from unauthorized use or disclosure as herein provided;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

1. In this Agreement, the following terms shall have the meanings ascribed to them as follows:
 - (a) “Confidential Information” means any and all information, material and data furnished or disclosed, by one party (the “disclosing party”) to the other (the “receiving party”), directly or indirectly, orally, in any written form, or in any magnetically or electronically recorded form, or by drawings or inspection of parts or equipment, and including but not limited to information, knowledge or data of an intellectual, technical, scientific, educational, commercial or industrial nature, or of a financial, cost, pricing, or marketing nature relating to the business operations of the disclosing party including the terms and conditions of this Agreement, and including any curriculum or learning materials of the disclosing party, but Confidential Information shall not include Non-Proprietary Information;
 - (b) “Non-Proprietary Information” means:
 - (i) information which is within the public domain at the date of its disclosure to the receiving party or which thereafter enters the public domain otherwise than through the acts or omissions of the receiving party, its subcontractors, employees or any other person under an obligation to hold the same confidential;

- (ii) information which is already known to the receiving party at the time of its disclosure to the receiving party by the disclosing party and is not subject to confidential restrictions, or
- (iii) information which, following its disclosure, was received by the receiving party without obligation of confidence from a third party who the receiving party had no reason to believe was not lawfully in possession of such information free of any obligation of confidence.
- (iv) information received in the form of the non-confidential description in relation to the Hatch Business Plan Competition submission, as outlined in the Official Competition Rules

2. Any Confidential Information in a tangible form shall be marked with the appropriate legend and owner corporation's name, e.g. "NAIT Confidential". Information that is disclosed orally shall be designated confidential at the time of disclosure and the disclosing party shall deliver to the receiving party within thirty (30) days after such oral disclosure a notice containing a brief description of the nature of the Confidential Information, and the place, date and person(s) to whom the oral disclosure was made. Notwithstanding the absence of the markings, designations or formalities as stated above, the information is still deemed confidential if it is evidently confidential in nature, or disclosed in circumstances which make it evident that it is Confidential Information. The receiving party shall:

- (a) not disclose, make use of, transfer, use, copy, or allow access to any Confidential Information to any employees or to any third parties, excepting those who have a need to know such Confidential Information consistent with the requirements of this Agreement and the stated purpose of this Agreement, but only after each employee has properly assumed obligations identical in principle with those which the receiving party has assumed in this Agreement, and the receiving party shall ensure that all such employees at all times comply with such obligations; and
- (b) employ diligent efforts and exercise reasonable care to hold all Confidential Information in the strictest confidence after receipt of same.

The obligations in regard to Confidential Information shall not restrict the receiving party from any disclosure pursuant to any applicable law or by order of any Court or government agency provided that the receiving party shall give such notice to the disclosing party as may be reasonable in the circumstances so that the disclosing party can take appropriate action to

protect its proprietary interests in the Confidential Information and to prevent improper disclosure of same.

3. Any combination of the information which comprises part of the Confidential Information shall not be deemed to be Non-Proprietary Information merely because individual parts of that information were within the public domain, within the prior possession of the receiving party, or were so received by the receiving party unless the combination itself was in the public domain, in the prior possession of the receiving party, or were so received by the receiving party.
4. Confidential Information delivered by the disclosing party to the receiving party shall be used solely for evaluating the merits of any business opportunity being explored jointly by the parties.
5. The parties each agree as follows:
 - (a) Not to use the Confidential Information disclosed to it by the other party for its own use or for any purpose other than that set forth in paragraph 4 herein.
 - (b) Neither will disclose the Confidential Information of the other party to third parties or to its employees, except employees and consultants who are required to have information in order to carry out the contemplated purpose.
 - (c) Each party will use existing mechanisms to ensure that its employees and consultants shall maintain the standards of confidentiality required by this Agreement. Where no such arrangement exists at the time of this Agreement, the parties undertake to have said employees and consultants, to whom Confidential Information of the other is disclosed, sign a Non-Disclosure Agreement in content substantially similar to this Agreement.
 - (d) Each party agrees that it will take the same degree of care (and no less than a reasonable degree of care) as is taken with respect to its own confidential information to protect the secrecy of and avoid disclosure of the Confidential Information and to avoid actions which allow the Confidential Information to become part of the public domain or come into the possession of unauthorized persons.
 - (e) Each party agrees to notify the other in writing of any misuse or misappropriation of such Confidential Information of the other which may come to its attention.
 - (f) In the absence of negligence, tortious conduct or other wrongful acts, neither party shall be liable for the inadvertent or accidental disclosure of Confidential Information obtained hereunder if such disclosure occurs despite the exercise of the same degree of care as it normally takes to preserve and safeguard its own confidential information and in all events, reasonable care was employed. Notwithstanding any other

provision of this Non-Disclosure Agreement, neither party shall be liable for indirect or consequential damages or loss of revenue or profit arising out of, connection with, or resulting from this Agreement.

6. Each party shall designate in writing one or more individuals within its organization as the only contact(s) for receiving the Confidential Information exchanged between the parties pursuant to this Agreement.
7. Any Confidential Information which has been furnished by one party to the other will be promptly returned, accompanied by all copies, digests, extracts, summaries, and derivatives thereof upon termination of the contemplated purpose or in accordance with the terms of any contract into which the parties may enter in furtherance of a business relationship.
8. This Agreement does not offer or grant to the recipient any rights in or license under any past, present or future information, including data, drawings, plans, ideas, methods patent, trademark, copyright or industrial design of the disclosing party. The disclosing party warrants to the receiving party that it is authorized to make such disclosure and agrees to indemnify and hold harmless the receiving party from and against any and all claims relating to the furnishing of such Confidential Information or the use thereof, in accordance with this Agreement.
9. This Non-Disclosure Agreement shall not be construed as a teaming, joint venture, agency, partnership or other such arrangement. Nothing in this Non-Disclosure Agreement shall grant to either party the right to make commitments of any kind for or on behalf of the other party without the prior written consent of the other party.
10. Both parties acknowledge the value of the Confidential Information is such that loss may not be compensated by damages, and in the event of a breach of this Agreement, a party shall be entitled as of right to apply or relief by way of restraining order, injunction or otherwise, to prevent disclosure or further disclosure and ensure compliance.
11. The foregoing commitments in this Agreement with respect to Confidential Information disclosed prior to termination, shall survive termination of this Agreement or, if the parties enter into a contract subsequent to this Agreement, said commitments shall be renegotiated at that time.
12. Except for the obligations of the parties with respect to Confidential Information received prior to termination, this Agreement shall terminate three years from the effective date of this Agreement or one month after written notice of termination given by either party to the other; whichever shall occur first.

13. This Non-Disclosure Agreement contains the entire agreement between the parties relating to the subject hereof and supersedes any prior agreement relating to the subject matter. Changes to this Non-Disclosure Agreement may be made only in writing signed by both parties. This Non-Disclosure Agreement shall apply in lieu of and notwithstanding any specific legend or statement associated with any particular information or data exchanged.

14. This Agreement shall bind and be for the benefit of the undersigned parties, their successors and assigns, provided that the Confidential Information may not be assigned without the prior written agreement of both parties. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. This Agreement shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable thereto.

15. Nothing herein shall obligate the parties to disclose Confidential Information.

IN WITNESS WHEREOF the parties have executed this Agreement effective the day first above written, and will be in effect for a period of 3 years.

Date

Per: _____
Stuart Cullum

NORTHERN ALBERTA
INSTITUTE OF TECHNOLOGY

Date

Per: _____

Print Name: _____

Date

Per: _____

Print Name: _____