

APPLICATION AGREEMENT

This Application Agreement is dated the ____ day of _____, 20____ (the “**Agreement**”)

B E T W E E N :

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|--|---|
| NEXT GENERATION MANUFACTURING CANADA (“ NGen ”) | |
| Notice Information: | Address: 175 Longwood Road South, Suite 301 Hamilton, Ontario L8P 0A1 Attention: John Laughlin Tel. No.: 289-919-1384 E-mail: project@ngen.ca |

- AND -

| | |
|--|--|
| _____ (the “ Lead Applicant ”, together with each partner of the Lead Applicant, if any (the “ Partners ”), collectively, the “ Applicant ”) | |
| Notice Information: | Address: Attention: Tel. No.: Facsimile No.: E-mail: |

CONTEXT:

- A.** As part of the Government of Canada’s Innovation Superclusters Initiative, NGen is dedicated to building up next-generation manufacturing capabilities and promoting collaboration in advanced manufacturing and innovation by strengthening linkages across industry, academia and research institutes in Canada and abroad, and providing financial support for the scaling and adoption of 4.0 technologies (the “**Initiative**”).
- B.** The Applicant desires to obtain financial support from NGen for a certain project as more particularly set out in the NGen Advanced Manufacturing Supercluster Initiative application (Expression of Interest or Full Application) submitted by the Applicant on the ____ day of

_____, 20__ (together with any ancillary or other documents submitted to NGen in connection therewith, collectively, the “**Application**”).

- C. NGen desires to assess the Application in connection with fulfilling its objectives under the Initiative.
- D. NGen and the Applicant (the “**Parties**”) wish to set out in this Agreement certain terms relating to the Application and their relationship to which they have mutually agreed.

THEREFORE, the Parties agree as follows:

1. The Applicant submits the Application to NGen, and NGen accepts the Application, subject to the terms of this Agreement.
2. The submission of the Application by the Applicant and the acceptance of the Application for assessment by NGen, is subject to terms and conditions attached hereto as Schedule “A”, which constitute an integral part of this Agreement.
3. This Agreement shall be deemed to form a part of the Application and each Party agrees to perform its respective obligations under this Agreement.
4. This Agreement is governed by and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.
5. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.
6. This Agreement sets forth the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions by or between the Parties pertaining to the subject matter of this Agreement. There are no warranties, representations or other agreements, whether oral or written, express or implied, collateral or otherwise, by or between the Parties pertaining to the subject matter of this Agreement except as set forth in this Agreement.

[SIGNATURE PAGE FOLLOWS]

Each of the Parties has executed and delivered this Agreement, as of the date first written above.

NEXT GENERATION MANUFACTURING CANADA

Per:

Name:

Title:

I have the authority to bind the Corporation

Signed for and on behalf of the Lead Applicant and each Partner:

LEAD APPLICANT

COMPANY NAME: _____

Per:

Name:

Title:

I have the authority to bind the Corporation

PARTNER

COMPANY NAME: _____

Per:

Name:

Title:

I have the authority to bind the Corporation

**PARTNER
COMPANY NAME:** _____

Per:

Name:
Title:

I have the authority to bind the Corporation

**PARTNER
COMPANY NAME:** _____

Per:

Name:
Title:

I have the authority to bind the Corporation

**PARTNER
COMPANY NAME:** _____

Per:

Name:
Title:

I have the authority to bind the Corporation

SCHEDULE “A” TERMS AND CONDITIONS

As part of the Government of Canada’s Innovation Superclusters Initiative, Next Generation Manufacturing Canada (“**NGen**”) is dedicated to building up next-generation manufacturing capabilities and promoting collaboration in advanced manufacturing and innovation by strengthening linkages across industry, academia and research institutes in Canada and abroad, and providing financial support for the scaling and adoption of 4.0 technologies (the “**Initiative**”).

These terms and conditions (the “**Terms and Conditions**”) set forth the terms and conditions under which you, the “**Applicant**” (the Applicant and NGen are collectively referred to as the “**Parties**”) may submit an application requesting financial support from NGen for a project (the “**Application**”).

1. Interpretation

In these Terms and Conditions, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively. The division of these Terms and Conditions into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of these Terms and Conditions. References in these Terms and Conditions to a Section are to be construed as references to a Section of or to these Terms and Conditions unless otherwise specified. Unless otherwise specified, any reference in these Terms and Conditions to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

2. Representations and Warranties of Applicant

The Applicant represents and warrants in favour of NGen as follows:

- (a) if the Applicant is a corporation, it is duly incorporated, amalgamated or continued, and existing, under the laws of the jurisdiction of its incorporation, amalgamation or continuance, and has all necessary corporate power and capacity to enter into and perform its obligations in respect of the project or initiative contemplated under the Application;
- (b) the Applicant has taken all necessary action to authorize the execution and delivery by it of its obligations under the Application, and the project or initiative contemplated under the Application; and
- (c) the performance of the obligations of the Applicant with respect to the project or initiative contemplated under the Application, do and will not breach or result in a default under (i) any of its constating documents; (ii) any applicable law to which it is subject; or (iii) any contract or covenant by which it is bound.

3. Confidential Information

- (a) “**Confidential Information**” means any information relating to the Applicant or its business that is of a confidential or proprietary nature and that is marked as “confidential”, including:
- i. information relating to the assets, business plans, customers, employees, equipment, financial statements and financial performance, intellectual property, inventory, market strategies, operations, pricing, products, suppliers, and trade secrets of the Applicant; and
 - ii. all analyses, compilations, records, data, reports, correspondence, memoranda, specifications, materials, applications, technical data, studies, derivative works, reproductions, copies, extracts, summaries or other documents containing or based upon, in whole or in part, any of the foregoing.
- (b) NGen acknowledges and agrees that:
- i. the Applicant is the exclusive owner of all right, title and interest in and to the Confidential Information; and
 - ii. NGen has no right, title, licence, or interest in or to the Confidential Information, except for the right to view the Confidential Information for the purpose of reviewing, processing, making enquiries about, assessing, referring or otherwise dealing with the Application including sharing the Application with, and/or make enquiries of, such persons as NGen deems necessary, in its sole discretion (the “**Purpose**”).
- (c) Accordingly, NGen agrees to hold in strict confidence and not disclose or use any Confidential Information, for any reason, except the Purpose defined above.
- (d) The Applicant will disclose Confidential Information to NGen upon the following conditions:
- i. NGen will hold all Confidential Information in trust for the Applicant and will not use any of the Confidential Information, at any time or in any manner, except as is required for the Purpose; and
 - ii. NGen will limit the disclosure of the Confidential Information to those of its representatives who have a need to know the Confidential Information to assist NGen in reviewing, processing or otherwise dealing with the Application and who are informed by NGen of the confidential nature of the Confidential Information.

4. Freedom of Information Legislation

The Applicant explicitly acknowledges and agrees as follows:

- (a) In accordance with the contribution agreement between NGen and Her Majesty the Queen in Right of Canada (the “**Crown**”), NGen may be required to disclose to the Crown or other governmental authorities certain information which may constitute Confidential Information. Such information may include: (i) information relating to the type of project proposed in the Application, its location and the discipline to which it relates, (ii) copies of any agreements entered into between the Parties, and (iii) any information requested by such governmental

authorities in order for it to assess the performance of the Applicant and the use of any monies advanced by NGen to the Applicant (collectively, the “**Requested Information**”).

- (b) Any governmental authorities to which NGen may disclose the Requested Information in accordance with this Article 4 may be subject to the *Freedom of Information and Protection of Privacy Act* (Ontario), the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), the *Access to Information Act* (Canada) or comparative federal, provincial or municipal legislation, with respect to, and protection of, information under their respective custody and control (collectively, “**Access to Information Legislation**”).
- (c) All Requested Information may be made available to the public unless such Requested Information is exempt from access by and disclosure to any other persons pursuant to a provision of the applicable Access to Information Legislation.
- (d) NGen shall not be liable or responsible for any loss or damage of any kind or nature suffered or incurred by the Applicant as a result of any Requested Information being accessed by or disclosed to any person by NGen or any governmental authority pursuant to any Access to Information Legislation.
- (e) In particular, but without limiting in any way the generality of the foregoing, the Applicant acknowledges and agrees that NGen is not responsible for (i) determining whether any Requested Information is exempt from disclosure under the Access to Information Legislation, (ii) ensuring NGen or any governmental authority complies with any Access to Information Legislation, (iii) ensuring notice of any kind is provided to the Applicant of any request or requirement to disclose any Requested Information pursuant to any Access to Information Legislation, or (iv) contesting any request or requirement to disclose any Requested Information pursuant to any Access to Information Legislation.

5. No Reliance

In connection with the Initiative, or NGen otherwise dealing with the Application, NGen may consult with the Applicant regarding, among other things, the Application and the Applicant’s business or otherwise and NGen may provide information or recommendations to the Applicant pursuant thereto (collectively, “**Consultations**”). With respect to the Consultations, the Applicant acknowledges and agrees as follows:

- (a) the Consultations do not constitute advice, legal, financial or otherwise;
- (b) the Applicant is not relying, and is not entitled to rely, on the Consultations for any purpose whatsoever;
- (c) any recommendation or information provided by NGen to the Applicant pursuant to the Consultations is provided on an “as is” basis and, if implemented or acted upon by the Applicant, does not constitute a guarantee of any kind or nature that the Applicant will receive financial support from NGen, that the Application will be successful or that the Applicant will receive any benefit whatsoever from the Consultations, and the Applicant acknowledges and agrees that it has no such expectations in respect of the Consultations. Should the Applicant choose to rely or act upon the Consultations, the Applicant acknowledges and agrees that it has done so or will do so entirely at the Applicant’s own risk; and

- (d) NGen makes no representations or warranties with respect to the Consultations or any information, advice or recommendations provided by NGen in connection therewith or the accuracy thereof. NGen accepts no duty, liability, obligation or responsibility to the Applicant in respect of the Consultations, whether in contract, tort (including negligence) or otherwise, and will not be liable in respect of any loss, damage, cost, expense or penalty of any nature which is caused by any use the Applicant may choose to make of the Consultations, or which is otherwise consequent upon the Consultations.

6. Indemnification

The Applicant shall indemnify and hold harmless NGen and its its employees, officers, directors, agents, representatives and project assessors (the “**Representatives**”) from and against any and all claims and demands, losses, damages, costs, expenses, actions and other proceedings by whomever made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, based upon, occasioned by attributable to, or arising from the Application, including the Consultations, or any action taken or things done or maintained by virtue thereof.

7. Limitation of Liability

Notwithstanding any other provision of the Terms and Conditions or the Application, in no event and under no circumstances will NGen or its Representatives be liable to the Applicant or any other person for any damage, loss or liability whatsoever arising from, connected with or relating to the Application, the Consultations or any related matter, including the failure of the Applicant to receive financial support from NGen.

8. Release

The Applicant hereby irrevocably releases NGen, and its Representatives, from all claims of any kind which the Applicant or its heirs, executors, administrators, legal representatives, successors and assigns, as applicable, ever had, now have, or may in the future have against NGen, or its Representatives, by reason of any cause, whether known or unknown, arising from, connected with, or in any way related to the Application or the Consultations or any related matter.

The Applicant further covenants and agrees not to make any claim or demand or commence any action against any third party who might claim contribution, indemnity or other relief against NGen or its Representatives in relation to the matters hereinbefore remised, released and/or discharged, and shall indemnify NGen or its Representatives for all losses and costs sustained by NGen or its Representatives in the event that such a claim is made.

9. Third Party Beneficiaries

To ensure that the indemnities and releases provided by the Applicant to NGen’s Representatives are enforceable, it is agreed by the Parties that NGen is acting as agent for its Representatives with respect to the indemnities and releases intended to be given to those Representatives under Section 6 and 8, respectively. NGen agrees that it will hold any right to indemnification and/or release that any Representative of it is intended to have under Section 6 and 8, respectively, in trust for that Representative, and that funds received by NGen in respect of any claims by any Representative of it will be held in trust for that Representative.

10. Notices

Any notices required by or made pursuant to the Application must be in writing and either (i) delivered personally or by courier; (ii) sent by prepaid registered mail; or (iii) transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid. Any notice must be sent to the intended recipient at the applicable address noted on the Application or at any other address as any Party may at any time advise the other by notice given or made in accordance with this Section 10. Any notice delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a business day then the notice will be deemed to have been given or made and received on the next business day. Any notice transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the notice is transmitted on a day which is not a business day or after 5:00 p.m. (local time of the recipient), the notice will be deemed to have been given or made and received on the next business day.

11. Amendments

No amendment, discharge, modification, restatement, supplement, termination or waiver of these Terms and Conditions, or any rights under these Terms and Conditions is binding unless it is in writing and executed by each Party. No waiver of, failure to exercise, or delay in exercising, any right in these Terms and Conditions constitutes a waiver of any other rights (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

12. Assignment

Neither the Application, nor any right or obligation under the Application may be assigned by the Applicant without the prior written consent of NGen.