



## JOINT RESEARCH AND DEVELOPMENT CONSORTIUM AGREEMENT

THIS JOINT RESEARCH AND DEVELOPMENT CONSORTIUM AGREEMENT ("Agreement") is entered into and made effective as of \_\_\_\_\_, 201\_ ("Effective Date"), by and among The Board of Trustees of Western Michigan University ("WMU") and the signatories hereto (each an "Industrial Full Member" and collectively, "Industrial Full Members"). WMU and Industrial Full Members shall be collectively referred to as "GMIC Members".

### Article I Organization

1.1 Name: This consortium shall be conducted under the name Green Manufacturing Industrial Consortium ("GMIC"), which is housed by the Manufacturing Research Center administered within the College of Engineering and Applied Science at WMU in conjunction with the Green Manufacturing Initiative.

1.2 Term: The GMIC shall commence upon the Effective Date and shall continue for a period of five (5) years, unless sooner terminated pursuant to Section 2.3 or as follows:

- (a) By the completion of the Project(s) as hereinafter described;
- (b) By operation of law;
- (c) By unanimous agreement of the GMIC Members; or,
- (d) Upon the withdrawal or expulsion of all GMIC Members.

1.3 Purpose: The objective of the GMIC is to link WMU grants and resources, to the extent allowed by their terms and conditions, with industry needs for research in areas related to green manufacturing, including designs, materials, processes, environment, energy, facilities and end of use ("Purpose").

1.4 Relationship: The GMIC is a cost-sharing arrangement only. The parties do not intend to form any other relationship, including association, partnership, venture, or agency. No party shall have the right to bind any other party hereto, except as provided herein.

### Article II Industrial Full Membership

2.1 Industrial Full Membership: Each Industrial Full Member shall, as provided herein, have one seat on the Advisory Committee as hereinafter described, access to and support from GMIC selected undergraduates and graduates of WMU, participation in proposal development, share intellectual property rights, co-own all project documentation and data, and receive GMIC annual reports. As used herein, the term "Industrial Full Member" shall also include any person, corporation, or other entity Controlled by such Industrial Full Member. "Controlled" shall mean the ownership of more than 50% of the equity and each class of voting securities or interests of such person, corporation or other entity.

2.2 Representatives: Each Industrial Full Member shall designate a “Representative” and an “Alternate” by notice to all other Industrial Full Members. An Industrial Full Member may change its designated Representative and/or Alternate by similar notice at any time and from time to time. The Representative shall exercise all rights and responsibilities of an Industrial Full Member and shall vote for the Industrial Full Member at any meeting or on any matter requiring a vote, with such votes being in person or via email. The GMIC may rely upon the Representative, who shall be deemed to act with the full authority of the Industrial Full Member unless prior notice to the contrary shall be given to the other Industrial Full Members. The Alternate shall exercise all rights and responsibilities of an Industrial Full Member and shall vote for the Industrial Full Member at any meeting where the Representative is unable to attend.

2.3 Withdrawal or Expulsion of an Industrial Full Member: A Industrial Full Member may withdraw at any time upon notice to the other Industrial Full Members. An Industrial Full Member shall be expelled from the GMIC by the Advisory Committee upon the occurrence of:

- (a) A material breach or default of any of the terms of this Agreement, which is not waived in writing by the non-defaulting party, and which is not cured within fifteen (15) days of the delivery to the defaulting party of written notice of the default; or
- (b) Commencement by or against the Industrial Full Member of any bankruptcy, reorganization, receivership or insolvency proceeding, which is not discharged within thirty (30) days, or making any assignment for the benefit of its creditors.

In the event of the withdrawal or expulsion of an Industrial Full Member, the withdrawing or expelled Industrial Full Member shall remain liable to the GMIC for any unpaid cost sharing (Section 5.1) due and payable on or before the date of such withdrawal or expulsion, and shall remain subject to the provisions of Article VI hereof.

2.4 Transfer of Industrial Full Membership: No Industrial Full Member may transfer or assign its Industrial Full Membership in the GMIC or any other right associated with the GMIC, except as a part of the transfer of substantially all of the Industrial Full Member's assets related to the Projects or shares in a company owning such assets, without the written consent of the Advisory Committee, such consent not to be unreasonably withheld. Any assignee approved by the Advisory Committee shall immediately execute and deliver its written agreement to be bound by all the terms of this Agreement and shall agree to assume, jointly and severally with the assigning Industrial Full Member, the obligations and responsibilities of the assigning Industrial Full Member for unpaid financial contributions pursuant to Section 5.1.

### **Article III Advisory Committee**

3.1 Advisory Committee: The advisory committee of the GMIC ("Advisory Committee") shall be comprised of one Representative from each Industrial Full Member, the Director and Associate Director of the GMIC from WMU, the Dean or the Associate Dean for Research of the College of Engineering and Applied Sciences at WMU, and/or a designee from the Office of the Vice President of Research (OVPR) of WMU. The Advisory Committee shall meet semi-annually to review the progress of the Projects as hereinafter defined, to determine additional Projects to be pursued, to amend the Agreement, and to discuss other matters within the scope of the Purpose. In addition, the Advisory Committee shall be responsible for the collection, management and disbursement of all funds of the GMIC. Unless otherwise specifically provided herein, action by the GMIC shall be by a majority vote of the Advisory Committee.

### **Article IV Projects**

4.1 Definition: "Projects" means those projects identified in Schedule A, as amended or modified from time to time, which have been agreed to by the Advisory Committee which relate to the Purpose and may include,

but are not limited to, (i) the development or testing of basic engineering techniques, (ii) the collection, exchange and analysis of research or production information, or (iii) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes.

4.2 Project Selection: Schedule A identifies the Projects initially agreed upon by the Advisory Committee. As GMIC Members suggest, submit or contribute other proposed Projects, the Advisory Committee shall determine whether or not to add such Projects to Schedule A. Schedule A shall contain the initial budget, the time schedule for completion, the primary responsibilities, milestones, and methodology for completing each Project. The budget or the time schedule may be amended from time to time by the Advisory Committee.

4.3 Rejected Proposals and Abandoned Projects: If a proposed Project is not accepted by the Advisory Committee ("Rejected Proposal"), the proposing GMIC Member may proceed with the research and development of the Rejected Proposal at its own expense and for its sole benefit. If a Project is abandoned by a majority vote of the Advisory Committee (an Abandoned Project), any GMIC Member may continue the research and development of the Abandoned Project at its own expense and for its sole benefit.

4.4 Project Completion: The GMIC Members shall identify in writing those Projects which have been completed. At such time as one or more Projects are completed, the GMIC Members may continue research and development of other Projects on Schedule A or designate such remaining Projects as Abandoned Projects. All Abandoned Projects shall remain subject to Section 4.3 and Article VI.

## **Article V Cost Sharing**

5.1 Cost Sharing: Each Industrial Full Member shall provide financial support to the GMIC in the amount of \$25,000 per year during the term of this Agreement. The first payment, based upon a mutually agreeable payment schedule, shall be due within 90 days of signing of the Agreement. Industrial Full Members shall equally share any additional funding, including the costs of the Projects as reflected by the budgets established in Schedule A, and any other general or administrative costs or expenses incurred by the GMIC related to the Projects. Such additional funding shall require a unanimous vote by the Advisory Committee. The Advisory Committee shall notify Industrial Full Members of the funding requirements and shall establish the timing of payments, which shall be timely made upon receipt of notice from the Advisory Committee. Any Industrial Full Member failing to promptly make any payment of funding or personnel shall be subject to expulsion.

5.2 Contribution of Personnel: At its discretion, an Industrial Full Member may designate and make available from its staff, personnel with the education, training and experience required to meaningfully contribute to the Projects. The Industrial Full Member shall be responsible for all compensation and benefits of its employee and for all travel and other expenses incurred by such employee in performing services for the GMIC.

5.3 Contribution of Concepts and Ideas: At its discretion, a GMIC Member may contribute to the GMIC any information, concept, idea, or design whether now existing or hereafter developed or discovered prior to the termination of this Agreement, which the GMIC Member reasonably believes may relate to the Project(s) ("Information"); subject, however, to the provisions of Sections 4.3 and 4.4 and Article VI. To the extent any Information consists of patented or patentable material or other potential intellectual property, including information subject to copyright, the contributing GMIC Member may agree, in a separate document, to permit the perpetual, royalty free, nonexclusive use of such material, waiving any infringement or misappropriation thereof, for purposes that the GMIC Member designates with regard to the Projects, including Abandoned Projects. GMIC Members shall not exchange information relating to costs, sales, profitability, prices, marketing, or distribution of any product, process or service that is not reasonably required to conduct research and development relating to the Project(s).

## Article VI Intellectual Property

6.1 GMIC Members' Rights: Any invention created, conceived or developed as a result of work done in connection with a Project shall be owned jointly by those GMIC Members in the GMIC at the time such invention was created, conceived or developed, each of whom shall own an undivided interest in such invention(s). Each such GMIC Member shall have a perpetual, non-exclusive, non-assignable, royalty free right to use the invention under any intellectual property rights granted on the invention, unless the GMIC Advisory Committee decides to revoke such rights on a case-by-case basis when deemed by the Committee to be in the best interests of the GMIC. Each GMIC Member covenants that it will obtain from its applicable employee(s) an assignment of any rights in any patent application(s) filed hereunder.. Any GMIC Member that withdraws from the GMIC under Section 2.3 will have no ownership interest in the intellectual property rights in any inventions that are created, conceived, or developed by the GMIC after that GMIC Member has withdrawn from the GMIC. Any GMIC Member that is expelled from the GMIC agrees to forfeit its ownership rights and its license to use any intellectual property rights that the expelled member jointly owned under this Agreement. The expelled member will transfer or assign any such rights to the then remaining GMIC Members as directed by the Advisory Committee.

(a) The Inventing GMIC Members shall jointly prosecute any patent or other intellectual property rights appertaining to designs or inventions created as part of a Project. The expenses for such prosecution shall be paid out of the funding referred to in Section 5.1. GMIC Members shall have the right to use the invention or design on a non-exclusive, royalty free basis; provided, however, that no GMIC Member shall have the right to license the use of the invention or design to any non GMIC member without the unanimous consent of the GMIC Advisory Committee, and any actions contrary to this will be deemed a breach of this Agreement and will result in termination under Article 2.3.

(b) The GMIC, acting by majority vote of the Advisory Committee shall possess the right to prosecute actions to protect the intellectual property of the GMIC. Any GMIC Member having knowledge of an infringement of the rights of the GMIC shall immediately give notice to each of the other GMIC Members. If the Advisory Committee shall vote to pursue an infringement action, the GMIC Members shall fund such action pursuant to Section 5.1. Any recovery by the GMIC, after payment of expenses, shall be distributed to the GMIC Members in proportion to their previous aggregate funding of the GMIC.

(c) Upon termination of this Agreement, the GMIC Members shall continue to be responsible for the costs associated with the prosecution, protection, defense, and maintenance of any patents or other intellectual property rights jointly owned by the GMIC Members under this Agreement. Any GMIC Member electing not to contribute its share of these costs shall immediately forfeit its right to use the applicable patent or intellectual property and shall, at its own expense, execute any such documents necessary to document said forfeiture.

6.2 Confidentiality: During the term of this Agreement and for five (5) years thereafter, the GMIC Members shall use reasonable efforts to prevent disclosure to others of Confidential Information, except as follows:

(a) With the unanimous written consent of the GMIC Members;

(b) To the extent the Confidential Information has become or hereafter becomes generally available to the public, other than as a result of a disclosure in violation of this Agreement or was known to the disclosing GMIC Member prior to the Effective Date or prior to its disclosure by a GMIC Member;

(c) To the extent the Confidential Information was or becomes public information not due to any fault by the disclosing GMIC Member;

(d) To the extent the Confidential Information must be disclosed due to governmental laws, regulations or requirements; or,

(e) In compliance with law, a lawful subpoena or court order; provided, however, if a GMIC Member is

requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any Confidential Information, it shall seek such protective orders as may be reasonably available and provide the other GMIC Members with prompt written notice of any such request or requirement so that the GMIC or GMIC Member may also seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

For purposes of this Agreement, "Confidential Information" means all written information (i) provided by a GMIC Member, (ii) generated, created or discussed among GMIC Members related to any Project, or (iii) Information developed or discovered in the pursuit of the Purpose.

6.3 Scholarly Publication: Notwithstanding the foregoing, WMU shall have the right to publish Project results with proper masking of specific data. Any proposed publication must be submitted to the Advisory Committee for approval at the next scheduled meeting prior to submission or other disclosure of any portion thereof to any third party for presentation and/or publication. The Advisory Committee shall have thirty (30) days from such meeting date to object to such proposed publication and/or presentation because it discloses Confidential Information. If any of the Industrial Full Members make such objection, WMU shall refrain from making such publication or presentation (or other such disclosures) until WMU and the objecting party negotiate a mutually agreed upon version (i) within thirty (30) days from receipt of objection if the Confidential Information to be disclosed does not contain patentable subject matter, or (ii) within six (6) months from receipt of objection if patentable subject matter is proposed to be disclosed, so that a patent application can be prepared and filed; provided, however, that said six (6) month period shall be extended for such time as is necessary to complete said preparation and filing.

6.4 Forfeiture of Rights: In the event a GMIC Member shall materially breach or violate its obligations pursuant to Article VI, in addition to any other available remedies, the GMIC Member shall immediately forfeit all rights under Sections 4.3, 5.3 and Article VI and all rights to use the Confidential Information and its license to use technology subject to this Agreement.

## **Article VII Indemnification**

7.1 Indemnity: Each GMIC Member acknowledges and agrees that the use, implementation, or application of any idea, design, product or invention resulting from the activities of the GMIC or the Projects is the voluntary act of the GMIC Member. Therefore, except as expressly provided in Section 6.1(c), each GMIC Member shall be solely responsible for such GMIC Member's use of any idea, design, product or invention created by the GMIC. Each GMIC Member (the "Indemnitor") agrees to indemnify, defend and hold entirely harmless the GMIC and each of its other GMIC Members (individually the "Indemnitee" and collectively the "Indemnitees") from and against any claim, demand, cause of action, judgment, loss, liability, cost or other expense whatsoever, including without limitation, attorneys' fees (each such claim, demand, cause of action, judgment, loss, liability, cost or other expense is referred to herein, individually as a "Loss" and collectively as "Losses"), which an Indemnitee may suffer, sustain, incur or otherwise become subject to as a result of the use, implementation or application by the Indemnitor in its business of any idea, design, invention or product developed, created or invented by the GMIC.

7.2 Claims: Whenever an Indemnitee shall have notice of any claim or demand which, if true, would or could constitute a basis for indemnification hereunder, the Indemnitee shall immediately notify the Indemnitor of such claim or demand and of the facts within the Indemnitee's knowledge which relate to such claim or demand. The Indemnitor shall have the right to contest, negotiate, compromise or settle any such claim or demand through counsel of its own selection at its own cost, risk and expense; provided, however, that the Indemnitor shall not, without the prior written consent of the Indemnitee, settle, compromise or offer to settle or compromise any such claim or demand on a basis which would or could result in the imposition of a consent order, injunction or decree which would or could restrict the future activity or conduct of the Indemnitee. In the event that (i) the Indemnitor shall fail to give written notice to the Indemnitee of the Indemnitor's intention to contest or settle any such claim or demand

within ten (10) business days after the Indemnitee shall have notified the Indemnitor that any such claim or demand has been asserted or threatened, or (ii) such notice is timely given but the Indemnitor does not promptly and diligently contest or settle such claim or demand, the Indemnitee shall have the right to defend, settle or compromise such claim or demand and the Indemnitor shall indemnify the Indemnitee from any Loss as a result of the Indemnitee's decision to defend such claim or demand.

7.3 Cooperation: An Indemnitee shall permit the Indemnitor reasonable access to the records of the Indemnitee related to the claim or demand, make available to the Indemnitor, as reasonably requested personnel responsible for preparing and maintaining information, records and documents of the Indemnitee related to the claim or demand, and otherwise cooperate with all reasonable requests of the Indemnitor in connection with any claim for indemnification under this Agreement.

## **Article VIII Miscellaneous Provisions**

8.1 Notice: Any notice permitted or required by this Agreement shall be in writing and shall be sufficient if sent by registered or certified mail, return receipt requested, and postage prepaid to the addresses provided on Schedule B. In addition, simultaneously with the mailing of notice, notice shall also be sent by facsimile transmission to the number provided on Schedule B.

8.2 Amendment: This Agreement constitutes the entire understanding of the parties and may not be amended except by written agreement signed by all of the GMIC Members.

8.3 Severability: Should any provision be held invalid or unenforceable, the remaining provisions shall not be affected or impaired thereby.

8.4 No Third-Party Rights: This Agreement is among and for the benefit of the GMIC Members only and no other person shall have any rights hereunder.

8.5 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one instrument.

8.6 Arbitration: The parties desire to avoid and settle without litigation future disputes which may arise among them relative to this Agreement. Accordingly, the parties agree to engage in good faith negotiations to resolve any such dispute. In the event they are unable to resolve any such dispute by negotiation, then such dispute concerning any matter whose arbitration is not prohibited by law at the time such dispute arises shall be submitted to arbitration in Kalamazoo County, Michigan in accordance with the Commercial Arbitration Rules of The American Arbitration Association then in effect. The decision of the arbitrators shall be final and binding as between the parties and judgment on such decision may be entered in any court having jurisdiction thereof. Three neutral arbitrators shall be appointed by the American Arbitration Association and at least one of such arbitrators shall be an attorney-at-law, and all decisions and awards shall be made by a majority of them except for decisions relating to discovery and disclosure as set forth herein.

Notice of demand for arbitration of any dispute subject to arbitration by one party shall be filed in writing with the other party or parties and with the American Arbitration Association. The parties agree that after any such notice has been filed, they shall, before the hearing thereof, make discovery and disclosure of all matters relevant to such dispute, to the extent and the manner provided by the Federal Rules of Civil Procedure. All questions that may arise with respect to the obligation of discovery and disclosure and the protection of the disclosed and discovered material shall be referred to a single arbitrator who shall be an attorney at law and one of the three neutral arbitrators appointed for determination, and his determination shall be final and conclusive. Discovery and disclosure shall be completed no later than ninety (90) days after filing of such notice of arbitration unless extended by such single arbitrator upon a showing of good cause by any party to the arbitration. The arbitrators may consider any material which is relevant to the subject matter of such dispute even if such material might also be relevant to

arm issue or issues not subject to arbitration hereunder. A stenographic record shall be made of any arbitration hearing. The parties to the arbitration shall share equally the cost of arbitration.

Nothing herein shall prevent a GMIC Member from initiating an action in the courts for equitable relief.

8.7 Survival of Obligations: All obligations of the parties shall survive the termination of the GMIC and of this Agreement and may be enforced by any GMIC Member.

IN WITNESS WHEREOF, the parties executed this Agreement as of the Effective Date.

INDUSTRIAL FULL MEMBER

BOARD OF TRUSTEES OF

WESTERN MICHIGAN UNIVERSITY

Company: \_\_\_\_\_

Green Manufacturing Industrial Consortium

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

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

Name: \_\_\_\_\_

Name: Lowell Rinker

Title: \_\_\_\_\_

Title: Assistant Treasurer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SCHEDULE A PROJECT NO. \_\_

SCHEDULE B CONTACT ADDRESS

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