

RESEARCH AND COLLABORATION AGREEMENT

This Research and Collaboration Agreement (“**Agreement**”) is made effective < *date* > (the “**Effective Date**”).

BETWEEN:

[**INSERT EDUCATIONAL INSTITUTION NAME**], having its administrative offices at [**insert address**] (“**Institution**”)

AND

[*«AgreementPartyName_I»*], a corporation incorporated under the laws of [**Canada**][**Ontario**] having its administrative offices at [**insert address**] (“**Company**”)

(each, a “**Party**”, and collectively, the “**Parties**”)

WHEREAS the Ontario Collaborative Innovation Platform (“**OCIP**”) is an innovative marketplace provided by Ontario Online Learning Consortium, also known as eCampusOntario supporting Ontario universities and colleges, and qualified public and private sector entities for Ontario-made innovation projects (the “**Platform**”).

AND WHEREAS the Parties share the desire to encourage and facilitate the discovery, dissemination and application of new knowledge, and to support research.

AND WHEREAS through the Platform, Institution and Company have agreed to participate in a research and development project entitled “*«AgreementTitle»*” as described in Schedule “A” that was developed by Institution and Company (the “**Project**”).

AND WHEREAS Company and/or OOLC wishes to support the Project through financial or in-kind support for the Project as set out herein.

AND WHEREAS Institution and Company agree to perform the Project in accordance with the terms and conditions set out in this Agreement.

NOW THEREFORE the Parties hereby agree as follows:

1.0 THE PROJECT

1.1 **Project.** Institution [*and Company (if applicable)*], will perform the Project as described in the attached Schedule “A” in accordance with Institution policies and procedures. The Project will be designed to carry out Institution’s primary mission, which is education and advancement of knowledge. The manner of performance of the Project shall be determined solely by the Principal Investigator, after consultation with Company and subject to substantial compliance in all respects with Schedule “A” and all other provisions of this Agreement, as may be amended from time to time. Neither Party makes any warranties or representations regarding its ability to achieve, nor shall it be bound to accomplish, any particular research objective or results.

1.2 **Principal Investigator.** The Project will be performed under the supervision and direction of *«InvestigatorFirstName» «InvestigatorLastName»* of *«InvestigatorDepartment»* (the “**Principal Investigator**”), together with such additional personnel as the Parties may assign.

- 1.3 **Budget.** In consideration of Institution carrying out the Project, Company and/or OOLC will contribute to Institution the sums set out in Schedule “B” in compensation for the direct and indirect costs of the work, as well as providing in-kind support as may be set out in Schedule “B”, all generally in accordance with the budget contained in Schedule “B”. Any consideration from OOLC will be in accordance with the grant approval agreement between OOLC and the Parties (“**Grant Agreement**”).
- 1.4 **Payment.** Subject to Section 5.2, Institution shall issue invoices and Company and/or OOLC shall pay the sum set out in Section 1.3 to Institution in accordance with the payment schedule in the attached Schedule “B”.
- 1.5 **Equipment.** Unless otherwise set out in Schedule “A”, Institution will own any equipment or material purchased by Institution under the Project.
- 1.6 **Report.** Institution will submit a final report describing the results of the Project to Company upon completion of the Project.

2.0 INTELLECTUAL PROPERTY

Schedule “C” sets out the obligations and rights of the Parties with regard to Intellectual Property issues under the Project and this Agreement.

3.0 CONFIDENTIAL INFORMATION

- 3.1 **Confidential Information.** The Parties may disclose confidential information one to another to facilitate performance of this Agreement. Such information will be identified as “confidential” in writing at the time of its transmittal, or so reduced to writing within ten (10) days thereafter (“**Confidential Information**”), and will be safeguarded and not disclosed to third parties by the receiving Party. Confidential Information will not include information that:
 - a. is already known to the Party to which it is disclosed;
 - b. is or becomes part of the public domain without breach of this Agreement;
 - c. is obtained from third parties which have no obligations to keep confidential to the Parties to this Agreement;
 - d. was independently developed by the receiving Party without the use of any of the Confidential Information of the disclosing Party.
- 3.2 Notwithstanding anything contained herein, each Party may disclose Confidential Information to its officers, employees, consultants, agents, and students on a need-to-know basis to facilitate performance of the Project, provided that such persons agree to be bound by terms at least as restrictive as those contained herein.
- 3.3 All obligations of confidence and non-use created under this Agreement shall terminate five (5) years from the completion or termination of this Agreement. Upon written request of the disclosing party, the receiving party agrees to return all copies of Confidential Information to the disclosing party; provided, however, that the receiving party shall be entitled to retain one (1) archival copy of all Confidential Information solely to ensure compliance with their rights and obligations hereunder.

4.0 RESEARCH AND PUBLICATION OF RESEARCH RESULTS

- 4.1 Research and Teaching.** Notwithstanding anything in this Agreement or any resulting license, Institution will retain the right to use Institution's interests in all Foreground Intellectual Property for research, educational and administrative purposes, without cost and in perpetuity.
- 4.2 Similar Research.** Nothing in this Agreement will be construed to limit the freedom of Institution or of its researchers from engaging in similar research made under other agreements with parties other than Company.
- 4.3 Review.** Institution will provide a copy of any proposed publication of Project research results (a "**Publication**") to Company for its review at least sixty (60) days before submission for publication or disclosure. Upon Company's written request received within sixty (60) days of Company's receipt of the Publication, Institution will, at Company's option:
- a. delete identifiable references to any Confidential Information provided by Company from the proposed Publication;
 - b. if Company has exercised the Option, delay publication of the Publication up to thirty (30) additional days to enable Company to file, in the name of the IP owner or its assignees, patent applications for any Intellectual Property that would be publicly disclosed in the Publication.
- 4.4 Disclosure of Research Results.** Company acknowledges and agrees that under Institution policy (but subject to Section 4.1), Institution reserves on behalf of itself, the Principal Investigator and all other Project participants the right to disseminate information or otherwise publish the research results arising in performance of the Project. Company's support of the Project will be acknowledged in all such publications.
- 4.5 Thesis and Academic Progression.** Notwithstanding Section 4.1(b), Institution retains the right to have any thesis reviewed and defended without delay for the sole purpose of academic evaluation in accordance with Institution's established procedures.

5.0 TERM AND TERMINATION

- 5.1 Term.** This Agreement will enter into force as of the Effective Date and will terminate on *< end date >*, unless sooner terminated in accordance with Section 5.2, or upon the written agreement of the Parties.
- 5.2 Termination.** Either Party may terminate this Agreement upon sixty (60) days written notice to the other Party. In the event of termination, Institution will be entitled to credit for work performed hereunder before termination including Institution's termination and severance costs and Company will be entitled to a return of the balance of any advance payment.
- 5.3 Effect of Termination.** The provisions of Sections 1.4, 1.5, 2.0, 3.0, 4.0, 5.0, 6.0 and 7.0, and Schedule "C" will survive termination or expiration of this Agreement in accordance with their terms.

6.0 LIABILITY AND INDEMNITY

- 6.1 Limitation of Liability.** Neither Party will be liable for any delays in the performance of its obligations under this Agreement resulting from circumstances or causes beyond its reasonable control, and in no case will the Parties be liable for loss of business or profit or other indirect or consequential damages.

6.2 **Indemnity.** Institution will indemnify and save harmless Company against all costs, suits or claims on account of injuries (including death) to persons participating in the Project or to damage to Institution property caused by the wilful or negligent act or omission of personnel of Institution during the performance of this Agreement. Company will indemnify and save harmless Institution and its employees, students and agents against all costs, suits or claims on account of injuries (including death) to persons participating in the Project or to damage to property caused by agents or personnel of Company during the performance of this Agreement or resulting from the use by Company or its affiliates, its customers or licensees of any deliverable or intellectual property developed under this Agreement.

7.0 MISCELLANEOUS

7.1 **Use of Names.** Neither Party will use the name of the other Party, or of any member of the other Party’s personnel, in any advertising or publicity without the prior written approval of the other Party’s authorized representative. However, both Parties may make the following information a matter of public record: name of Principal Investigator; Principal Investigator’s department; Institution’s name; Company’s name; Project title; Project duration; and, contract value.

7.2 **Notices.** Notices under this Agreement will be sent to the Parties as follows or to such other person as a Party may designate in writing:

For Technical and Scientific Matters:

	To Institution:	To Company:
Name:	< PI Name >	
Department:	< PI Department >	
Address:	< PI Address >	
City, Province/State:		
Postal/Zip Code, Country:		
Tel:	< PI tel >	
Email:	< PI email >	

For Legal and Administrative Matters:

	To Institution:	To Company:
Name:	< Contracts Officer >	
Department:		
Address:		
City, Province/State:		
Postal/Zip Code, Country:		
Tel:		
Email:		

For Financial Matters:

	To Institution:	To Company:
Name:	< Accountant >	
Department:		
Address:		
City, Province/State:		
Postal/Zip Code, Country:		
Tel:	< Account tel >	
Email:	< Accountant email >	

- 7.3 **No Assignment.** Except as provided for in Section 2.0, neither Party may sell, assign, encumber, licence or otherwise transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld.
- 7.4 **Independent Parties.** The Parties are independent parties and nothing in this Agreement will constitute either Party as the employer, principal or partner of or joint venturer with 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.
- 7.5 **Successors.** This Agreement binds and enures to the benefit of the Parties hereto and their respective heirs, successors and permitted assigns.
- 7.6 **Interpretation.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario in Canada. In the event that a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding will have no effect on the remaining provisions of this Agreement, which will continue in full force and effect. Headings are used for convenience only and will not be used to interpret the provisions of this Agreement.
- 7.7 **Entire Agreement.** This Agreement is the entire agreement of the parties with respect to its subject matter and no change or modification will be valid unless it is in writing and signed by both parties.
- 7.8 **Counterparts.** This Agreement may be executed by signatures delivered by facsimile transmission or delivered electronically in optically scanned form; and/or it may be simultaneously executed by the parties in multiple counterparts, each of which will be considered to be an original instrument, and all of which taken together, where each Party has executed at least one counterpart, will constitute one and the same instrument.

IN WITNESS WHEREOF by signature of their respective authorized officers, the parties agree to be bound by the terms of this Agreement.

[Institution]

«*AgreementPartyName_1*»

NAME: < *Insert* >

NAME: < *Insert* >

TITLE: Director, Partnerships

TITLE: < *Insert* >

DATE: < *Insert* >

DATE: < *Insert* >

Acknowledgement:

I, the Principal Investigator, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein and applicable Institution policies, and further agree to ensure that all Institution participants are informed of their obligations under such terms and conditions.

NAME: «InvestigatorFirstName»
«InvestigatorLastName»

DATE: < Insert >

SCHEDULE "A"

Description of the Project

[Describe the Project, including milestones, in an appropriate level of detail – for example, the Project Description section from the corresponding application such as an NSERC Form101 may suffice]

SCHEDULE "B"

Budget [and Payment Schedule]

Budget Schedule should clearly identify the following factors:

Budget:

In a form substantially similar to the table below, and including a contribution to Institutional Indirect Costs, which are calculated as 40% of Company's cash contribution to Direct Costs of the Project. Therefore:

(Total Cash Contribution from Company) = (Direct Costs) + (Indirect Costs: Direct Costs x 40%)

Project Budget:

Item	Budget (CAD) TOTAL	Use for multi-year Projects only:		
		Yr 1	Yr 2	Yr 3
a. Compensation				
b. Travel				
c. Supplies/Services				
d. Equipment				
e. Open				
f. Subtotal - Direct Costs				
g. Indirect Costs (40% of F)				
h. TOTAL CASH (F + G)				
i. In-kind Contribution (if applicable)				

Payment schedule:

Include payment of at least 50% of Yr 1 budget due on Effective Date of Agreement, with subsequent payments due quarterly and in advance, substantially similar to the following schedule:

Payment Due Date	Payment Amount
Effective Date	>= 50% of Year 1 Amount
<i>Effective Date + 6 months</i>	<i>25% of Year 1 Amount</i>
<i>Effective Date + 9 months</i>	<i>25% of Year 1 Amount</i>
...	

Payment method:

Indicate payment via cheque, electronic payment, etc.

Payment Terms:

Net thirty (30) days

SCHEDULE "C"

Intellectual Property

Definitions

For the purposes of this Agreement:

"Assignee" means the Party who will be the assignee or licensee of the Foreground Intellectual Property from Assignor under this Agreement. The Assignee will be _____. **[insert name of Party, or OOLC, new company of recent graduates of Institution, or other entity, for example.]**

"Assignor" means the Party or third person who will assign or license Foreground Intellectual Property under this Agreement. The Assignor will be _____. **[insert name of Party, or OOLC, or other entity.]**

"Background Intellectual Property" means Intellectual Property of a Party that is: (i) proprietary to that Party and was conceived, created, or developed prior to, or independent of, any research performed pursuant to or related to this Agreement or a Project hereunder; and (ii) necessary or otherwise used for the performance of a Project.

"Foreground Intellectual Property" means Intellectual Property that is discovered, created or reduced to practice in the performance of the Project by either of the Parties.

"Intellectual Property" means all intellectual property, including all discoveries, inventions, processes, methods, techniques, know-how, and intellectual property and proprietary rights, expressed in whatever form and may include technical information, procedures, cell lines, formulae, protocols, software, specifications, flowcharts, instructions, data, and other documents and materials.

"Intellectual Property Rights" means trade-marks and trade-mark applications, trade names, certification marks, patents, and patent applications, copyrights, know how, formulae, processes, inventions, technical expertise, research data, business methods, trade secrets, industrial designs and other intellectual property, whether registrable or not, and all registrations and applications for registration thereof.

Background Intellectual Property

*Provide details of any Background Intellectual Property required for use on the Project, as required in Section **Error! Reference source not found.**, or to be licensed to Assignee as set out below). This must include indication of whether the Background IP is available for Company use or license, and any encumbrances which would consequently impact commercial viability of the Project's Foreground IP.*

Except as otherwise expressly assigned or licensed under this Schedule "C", this Agreement does not restrict or deprive Assignor of any of its rights or proprietary interests in any Background Intellectual Property of the Party.

Each Party grants to the other Party, for the duration of the Project, a royalty-free, non-exclusive, non-commercial, non-transferable right to use the Background Intellectual Property, solely in connection with the work on the applicable Project, and as otherwise licensed under this Schedule "C" below. No other rights or licenses are granted by a Party to the other Party in Background Intellectual Property.

Option 1: Assignment of Foreground Intellectual Property to Assignee *[Draft note: For ownership of Foreground Intellectual Property by Assignee, such as from Institution to Company, or Institution to third parties, such as OOLC, or another entity.]*

Assignee shall have exclusive title and ownership rights, including all Intellectual Property Rights, throughout the world in all Foreground Intellectual Property. To the extent that exclusive title or ownership rights may not originally vest in Assignee as contemplated herein, Assignor hereby assigns and transfers and agrees to assign and transfer and to cause its relevant employees, faculty, staff, students or contractors (“**Representatives**”) to assign and transfer to Assignee, all Intellectual Property Rights, world-wide, in and to the Foreground Intellectual Property.

Assignor hereby waives and will waive in favour of Assignee and its Affiliates all moral rights which Assignor may have in the Foreground Intellectual Property. Assignor will procure from each author of any part of the Foreground Intellectual Property a waiver in favour of Assignee and its Affiliates of any and all moral rights which such author may have in any Foreground Intellectual Property.

If Background Intellectual Property is delivered in connection with or as part of the Foreground Intellectual Property, Assignor grants Assignee and its Affiliates an irrevocable, unrestricted, non-exclusive, paid-up, royalty-free, perpetual, worldwide license to use, duplicate, modify, sublicense, distribute, display and otherwise exploit such Background Intellectual Property to enable the full use and/or benefit of the Foreground Intellectual Property. *[Draft note: Optional clause, only if a license to underlying Background IP is required to exploit the Foreground Intellectual Property.]*

Option 2: Assignment of Background Intellectual Property to Assignee *[Draft note: For assignment of unexploited or under-exploited pre-existing IP owned by Institution to Company, or third parties such as OOLC, or another entity.]*

Assignor hereby assigns and transfers and agrees to assign and transfer and to cause its relevant employees, faculty, staff, students or contractors (“**Representatives**”) to assign and transfer to Assignee, all Intellectual Property Rights, world-wide, in and to the Background Intellectual Property identified in this Schedule “C”.

Assignor hereby waives and will waive in favour of Assignee and its Affiliates all moral rights which Assignor may have in such Background Intellectual Property. Assignor will procure from each author of any part of the Background Intellectual Property a waiver in favour of Assignee and its Affiliates of any and all moral rights which such author may have in any Foreground Intellectual Property.

Option 3: License to Background Intellectual Property *[Draft note: For licensing of Background Intellectual Property by Assignee, such as for unexploited IP of Institution or Company:]*

Assignor grants to Assignee [and its affiliates] an [irrevocable], [non-]exclusive, [royalty-free], [perpetual], [worldwide] license to use, duplicate, modify, sublicense, distribute, display and otherwise exploit such Pre-Existing Materials to enable the full use or benefit of the Foreground Intellectual Property. Assignor will identify such licensed Pre-Existing Materials in the Project description.

Option 4: Joint Ownership *[Draft note: For joint ownership of Foreground Intellectual Property.]*

Company shall own all Foreground Intellectual Property created solely by Company’s personnel. Institution shall own all Foreground Intellectual Property created solely by Institution’s personnel.

The Parties shall jointly own all Foreground Intellectual Property created jointly by the Parties' personnel. Creative contribution shall be determined according to the rules of inventorship under patent law, whether IP is patentable or not.

Subject to all of the terms and conditions of this Agreement and the agreement of any assignee to be bound hereby, Institution may assign its interest in Foreground Intellectual Property according to Institution's applicable policies and procedures.

Additional Business Terms

[Draft note: Consider any other related terms for assigned or licensed terms:]

- ***territorial, market sector or other restrictions to the scope of the license***
- ***potential royalties***
- ***whether license is revocable/terminable or other remedies (such as loss of exclusivity) due to breach, non-exploitation or failure to meet minimum volume commitments, purported assignment or sale of the IP or Assignee***
- ***whether Assignor obtains a license to any improvements to licensed or assigned Background Intellectual Property***
- ***where Assignee is a third party entity such as OOLC, revenues from licensing, commercialization, etc. would be reinvested in supporting applied research projects with companies, funding applied research internships for students, or other ecosystem building initiatives designed to get more companies and people into the innovation game***
- ***whether a separate license agreement will be drafted as an option for exploitation, or if this Agreement will be complete.***

Further Assurances

Assignor will, and will cause its Representatives to, give Assignee or Assignee's designee all reasonable assistance and execute all documents necessary to confirm the assignments and licenses granted under this Schedule "C", such as to obtain registrations of Intellectual Property Rights and to enable Assignee to prosecute, perfect, register or record its rights in any Foreground Intellectual Property.

Representations and Warranties

Assignee acknowledges and agrees that ***[except to the extent otherwise set out in this Schedule "C"]***: (i) the Intellectual Property licensed or assigned under this Agreement will be supplied and licensed to Company on an "as is" basis; (ii) the Intellectual Property will exclude representations and warranties as to the patentability, validity, scope or enforceability of the Intellectual Property; and (iii) the Intellectual Property will exclude representations and warranties that any use of the Intellectual Property will be free from infringement of intellectual property rights of any third party.

Disclosure of Inventions *[Draft note: Optional.]*

The Principal Investigator will disclose any Institution Foreground Intellectual Property to Institution in accordance with Institution's Inventions Policy, and such disclosure will be communicated to Company promptly.

Benefit to Canada

The Parties support the premise that every effort should be made to exploit the results of the research for the benefit of Canadians. In general, commercialization of Foreground Intellectual Property should occur within

Canada for the maximum benefit to Canada, which is defined as improved economic activity and quality of life in Canada. Where there are no, or limited, opportunities for commercialization within Canada then the Foreground Intellectual Property should be exploited in such a way that substantial benefits will still accrue to Canada.