

MIS#: _____

This Agreement is made between (“Client”) and Ontario Centre of Innovation Inc. (“OCI”), each herein individually referred to as a “Party” and collectively the “Parties”.

WHEREAS the parties wish to engage in the project entitled: Insert Project Title as set out in the Application and represent and warrant that they have the rights to use the “background” Intellectual Property (IP) required for use in the Project, and commercialize any “foreground” IP or have entered into separate agreement(s) with respect to the intellectual property rights relating to the Project;

THEREFORE, recognizing the foregoing recitals and in consideration of the mutual promises set forth in this agreement, the Parties agree as follows:

1. **Definitions.** Capitalized terms used and not otherwise defined herein shall have the meanings attributed thereto in Schedule “A”.
2. **General Terms.** The general terms that apply to and form part of this Agreement are attached as Schedule “B”.
3. **Schedules.** The following schedules are attached to and form a part of this Agreement:
 - Schedule “A” Definitions
 - Schedule “B” General Terms
 - Schedule “C” Application (including budget)
 - Schedule “D” Data and Information Sharing Protocol
4. **Project.** The Project shall be performed in accordance with this Agreement, including the Schedules attached hereto.
5. **Term.** The term of this Agreement (the “Term”) shall commence on the Start Date and continue until the end of the Project Duration Period (the “End Date”).
6. **OCI Right to Terminate.** All obligations of OCI hereunder may be immediately suspended, terminated or revoked, in whole or in part, at any time by OCI giving written notice to the other Parties, where OCI determines, in its sole and unfettered discretion, that:
 - a. the Project will likely not be completed on schedule or on budget;
 - b. interim results are unsatisfactory and demonstrate low likelihood of achieving anticipated outcomes, or one or more Milestones cannot be met or has not been met within the timeframe set out in the Application;
 - c. the conclusion reached by OCI through a Project review organized by OCI is that the overall goals of the Project will likely not be met;
 - d. the Client has defaulted on its obligation to make any Contribution at the time and in the manner required under this Agreement; or
 - e. the Client has defaulted on its obligations under this Agreement, including failing to provide the reporting and cooperation required under Section 9.

In the event of a breach by Client of its obligations under this Agreement OCI shall, without limiting any other right or remedy it may have, have the right to withhold, delay or cease all or any part of further payments in respect of the Project, recover any payments previously made by it, and/or set-off and credit any amounts due by the OCI to the Party in breach against any amounts previously contributed by OCI in respect of the Project.

7. **Contributions and Eligible Expenses.** OCI and the Client shall make the Contributions toward the cost of the Project as set out in Schedule “C”. Notwithstanding anything else in this Agreement, the Parties acknowledge and agree that all Contributions to be made by OCI, and OCI’s obligations to pay such Contributions, are entirely conditional on OCI receiving sufficient allocated government funding to enable it to make payment thereof, and that OCI may terminate, suspend or revoke such obligations, in whole or in part, at any time by giving written notice to the other Parties should it not receive or possess funds sufficient for such purposes. Further, OCI shall have the right to retain or withhold any portion of Contributions otherwise payable pending receipt of interim or final deliverables and/or reports due in respect of the Project.

The Client shall use Contributions only in accordance with the Application and Budget for reimbursement of eligible Project expenses in accordance with OCI’s then current published program expense guidelines.

8. **Ethical Investments.** The Client shall not, directly or indirectly, through a subsidiary or otherwise, engage in:
- the sale, marketing or provision of gambling, gambling services or pornography;
 - the production, sale or marketing of tobacco smoking products; or
 - the manufacture, sale, distribution or promotion of goods or services that are not legal in the Province of Ontario.

For greater certainty, the Client shall not be considered to be directly or indirectly engaged in the foregoing merely as a result of selling products to persons engaged in such activities, provided (i) that such products are not principally related to gambling, gambling services, pornography, tobacco smoking products or goods or services that are not legal in the Province of Ontario and (ii) the Client does not have a material interest in such persons.

9. **Reviews and Reporting.**

- The Client shall provide to OCI such reports with respect to the Project, its status, progress and projections, as required by OCI, in such form and content and at such times as specified by OCI in writing from time to time including, without limitation, a final report after Project completion, annual surveys for a period of 5 years following the term of this Agreement, and any other follow-up reporting reasonably required by OCI following the Term of this Agreement.
 - The Client agrees to cooperate with OCI in the collection of performance metrics relevant to the Project, which shall be used by OCI to evaluate the success of its programs and shall be reported to the Government of Ontario in aggregate, omitting any Confidential Information.
 - Clients who employ less than 100 employees agree to provide timely notice to OCI of any financings outside of its ordinary course of business during the Term which a reasonably prudent person would view as likely to have an adverse impact on the Project. Such notice shall include accurate and reasonable detail as will enable OCI to understand and assess the impact of such financings on the Client’s obligations hereunder.
10. **Indemnity.** Subject to Section 11, each Participant will indemnify and save harmless OCI and its officers, directors, employees, agents and students from and against any and all suits, claims, demands, costs, damages, expenses, losses or injuries (including death) to persons or property, caused by: (A) any default or breach by the indemnifying Party of any of its obligations under this Agreement; and (B) the willful or negligent act or omission of the indemnifying Party or its officers, directors, employees and agents during the performance or arising out of this Agreement or the Project.

11. **Limitation of Liability.** No Party shall be liable to the other Party for loss of business or profit or for any special, indirect, punitive or consequential loss or damage, regardless of whether such loss or damage arises under contract, tort, or based upon strict liability or other theory of law or equity, where such loss or damage arose in connection with the Project. In no event shall OCI's liability for damages arising out of the Project or under this Agreement exceed the dollar value of the Contribution which OCI is required hereunder to make to the Project. Except as expressly provided herein, OCI, including its directors, trustees, officers, employees and agents, makes no representations, warranties, undertakings, promises, inducements or agreements of any kind, whether direct, indirect, express or implied, including, without limitation, the merchantability or fitness for a particular purpose of any research results or intellectual property; and except as expressly provided herein, OCI assumes no responsibility whatsoever with respect to design, development, manufacture, use, sale or other disposition of research results or intellectual property by any Client. Provided the foregoing limitations on liability in this Section 11 shall not apply to breach of the confidentiality obligations provided for in Schedule "B".

12. **Intellectual Property (IP).** The Client represents and warrants that it has the right to use the "background" IP required for the Project, and to commercialize any "foreground" IP. Intellectual property derived from the Project is to be managed by the Client, and OCI does not claim intellectual rights in the Project outcomes. The funding recipient must be free to use, develop and exploit for commercial purposes without any third-party encumbrances, any intellectual property required to execute the Project.

13. **Compliance with Laws**

- a. Each Participant agrees to conduct its business and activities and to perform the Project and its obligations under this Agreement in compliance with all Applicable Laws. For the purposes hereof, "Applicable Laws" means any law, statute, by-law, ordinance, decree, requirement, directive, order, judgment, license, permit, code or regulation having the force of law, and any applicable determination, interpretation, ruling, order or decree, of any governmental authority or arbitrator, which is legally binding at such time.
- b. In addition to the general requirement above to comply with Applicable Laws, each Participant agrees that it will observe and meet the accessibility and non-discrimination provisions of the *Canada Anti-Spam Legislation*, *Personal Information Protection and Electronics Documents Act*, and, where applicable, *Personal Health Information Protection Act* and *Freedom of Information and Protection of Privacy Act*. *Accessibility For Ontarians with Disabilities Act* and the *Ontario Human Rights Code (whether or not the Participant is required under the terms of such legislation to comply)* in the treatment of its personnel and the public in the conduct of its operations, the provision of any services and the performance of the Project. Costs and expenses incurred as a result of such obligations are solely those of the Participant and should be considered and, where appropriate, included in any budget with respect to the Project.

14. **Data and Information Sharing Protocol**

Client acknowledges that the Parties are subject to data and information sharing requirements with respect to the Project. Attached as Schedule "D" is the current approved *Data and Information Sharing Protocol (DISP)* describing such requirements which is subject to review and amendment by OCI. Client agrees to observe and perform the obligations of a Program Partner/Program Participant under the DISP, as amended from time to time, in relation to the Project.

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the _____ day of _____, 20_____

ONTARIO CENTRE OF INNOVATION INC.

Name:

Title:

I have authority to bind the Corporation.

[Insert Legal Name of Client]

Name:

Title:

I have authority to bind the Corporation.

SCHEDULE "A" DEFINITIONS

"Agreement" means the agreement to which this Schedule is attached and includes all schedules attached thereto, which Schedules form an integral part of this Agreement.

"Application" means the application (including Budget) that was reviewed and approved for funding by OCI as specified in Schedule "C" (Application (including budget)).

"Cash Contribution" refers to a direct payment of Contribution in Canadian currency.

"Client" has the meaning given to this term on the first page of the main body of this Agreement.

"Confidential Information" means the confidential business or technical information of a Party that is identified in writing by that Party at the time of its disclosure or identified orally as such by that Party at the time of its disclosure and minuted and confirmed in writing within two weeks of the oral identification.

"Contribution" means Cash Contribution and In-Kind Contribution.

"End Date" has the meaning given to this term in Section 5 of the main body of this Agreement.

"Fair Market Value" means the fair market value that an unrelated arm's-length party would have paid in Canadian currency for an In-Kind Contribution as of the date such Contribution is made to the Project.

"GAAP" means generally accepted accounting principles for financial reporting in Canada as most recently recommended and approved by the Canadian Institute of Chartered Accountants, or its successor, in its handbook.

"In-Kind Contribution" means an indirect cash contribution or a non-monetary contribution that reduces the cash requirement of the Project. The value of each In-Kind Contribution to the Project is assessed at Fair Market Value.

"Milestones" means the objectives to be achieved during the course of, and upon completion of, the Project, which are set out in the Application.

"OCI" has the meaning given to this term on page 1 of the main body of this Agreement.

"Project" means the project or initiative described in the Application.

"Project Duration Period" means the period of time approved by OCI for the completion of the Project following the Start Date.

"Schedules" means the schedules identified in Section 3 of the main body of this Agreement attached to and/or delivered with this Agreement.

"Start Date" means the project activation date set by OCI.

"Term" has the meaning given to this term in Section 5 of the main body of this Agreement.

**SCHEDULE “B”
GENERAL TERMS**

1. **Obligations upon Termination**. Notwithstanding the termination or expiry of this Agreement, Sections 8, 9, 10 and 11 of the main body of this Agreement and these General Terms shall survive.
2. **Non Waiver**. Except as otherwise expressly provided herein, the failure of any Party to exercise its rights herein upon the occurrence of any breach by any other Party of its obligations will not in any event constitute a waiver of such rights.
3. **Assignment and Enurement**. This Agreement and all its rights and privileges hereunder may not be assigned by any Party without the prior written consent of all other Parties, which consent shall not be unreasonably withheld. This Agreement and everything herein contained will inure to the benefit of and be binding upon each of the Parties hereto and upon their respective heirs, estate trustees, personal representatives, successors and permitted assigns.
4. **Choice of Law**. This Agreement will be governed by and construed in accordance with the laws in force in the Province of Ontario and the laws of Canada applicable therein, without recourse to their rules on conflicts of laws.
5. **Relationship**. The Parties’ relationship under this Agreement is one of independent contractors and the Parties are not, will not be considered to be, and will not represent themselves to be, joint venturers, partners or agents of each other.
6. **Time of the Essence**. Time is of the essence of this Agreement and of each and every term and condition hereof.
7. **Entire Agreement**. This Agreement and the documents referenced herein constitutes the entire agreement between the Parties pertaining to the Project and the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions with respect to the subject matter hereof whether oral or written.
8. **Notice**. All notices hereunder shall be in writing and shall be duly given if delivered personally or sent by registered mail, return receipt requested, or e-mailed or faxed to the respective addresses of the Parties as follows:

to OCI:
Ontario Centres of Excellence Inc.
325 Front St. W., Suite 300
Toronto, ON M5V 2Y1
Attention:
Fax:
E-mail:

to [Insert Legal Name of Client]
[Address]
Attention:
Fax: ()
E-mail:

Any notice given by registered mail shall be deemed to have been received by the parties to whom the same is addressed on the fifth (5th) business day following the day upon which such notice has been deposited in a post office with postage and cost of registration prepaid. Any notice delivered personally or given by e-mail or by fax shall be deemed to have been received by the Party to whom such notice is so delivered on the following business day.

9. **Confidentiality.** A Party may disclose Confidential Information to other Party to facilitate work under this Agreement. Each Party agrees that such information will be safeguarded and only disclosed to persons with a need to know it within the receiving Party. All Parties will take such steps as a reasonably prudent commercial enterprise would take to protect such information from disclosure to third parties not bound by relevant nondisclosure agreements.

The obligation to keep Confidential Information confidential will not apply to information which:

- a. is already known at the time of disclosure to the Party to whom it is disclosed and that Party can prove by written records that it is already known;
- b. is or becomes part of public domain without material breach of this Agreement by the Party seeking to rely on this exclusion;
- c. is obtained from third parties which impose no related confidentiality obligations on the disclosing Party;
- d. is authorized for release by the disclosing Party; or
- e. is required to be disclosed by law or order of a court, governmental tribunal or governmental agency or in the case of OCI, by written agreement of OCI with the Government of Ontario (or any of its Ministries or representatives), but the Party subject to such requirement will promptly notify the disclosing Party and give the disclosing Party a reasonable opportunity to seek a confidentiality order or the like.

These obligations of confidentiality and non-disclosure shall apply upon execution of this Agreement and continue for a period of seven (7) years following the end of the Project Duration Period except with respect to trade secrets and personal information which shall survive indefinitely unless and until the same fall under b. or e. above;

10. **Communications.**

- a. Client covenants and agrees to include the following in all publications, communications and products they offer or display to the public that refer to the Project, at OCI's discretion:
 - i. acknowledgement that OCI is a member of the Ontario Network of Entrepreneurs ("ONE");
 - ii. the ONE visual identity, in accordance with standards for the visual identity provided by OCI from time to time;
 - iii. acknowledgement and credit with respect to Ontario's financial support of the Project as follows: "Funding provided by the Government of Ontario", and by using the official visual identifier of the Province of Ontario and/or ONE in respect of the acknowledgement of funding only, provided OCI has approved the standard format for the acknowledgement of support; and
 - iv. the Ontario logo as prescribed by the OPS Visual Identity Directive, as indicated by OCI from time to time.
- b. To the best of its ability and prior to all public announcements generated by them, Client agrees to:
 - i. provide at least twenty-one (21) working days notice to OCI of any major, planned announcements (press releases, awards, advertisements, etc.) with respect to the Project, and agrees that OCI may provide this information to the Government of Ontario;
 - ii. obtain OCI's prior approval before making any such announcements and permit OCI and the Government of Ontario to participate in the announcement or event at its option; and
 - iii. respond to requests by OCI or the Government of Ontario for related information as soon as possible.
- c. At OCI's request, Client will cooperate with OCI, provide OCI with reasonably necessary documentary assurances, and take reasonable steps to participate in, OCI's publicizing the results and successes of the Project. The immediately preceding sentence will not require the Client to take any actions that would reasonably be expected to negatively and materially impact that Party's competitive advantage as currently utilized by that Party in the Ontario marketplace.

11. **Force Majeure.** In the event that any Party is prevented or delayed from fulfilling any of its obligations herein by Acts of God, war, terrorism, strikes, riots, storms, fires, floods, epidemics, governmental orders or governmental restrictions, then that Party will be excused from such performance to the extent that it is necessarily prevented or delayed during the continuance of such happening or event, but financial payment obligations which have accrued prior to, or after, such cause will not be so excused.
12. **Record Keeping and Audits.** Client shall account for the Contributions and their use and shall keep good and valid records of such accounts in accordance with GAAP at all times. Client shall make such records, including receipts for expenditure of the Contributions and all related books, payrolls, accounts, invoices, receipts and other vouchers, available, at all times upon reasonable notice, to OCI, the government of Ontario and their agents (including Ontario's Provincial Auditor) for inspection, auditing and the making of copies thereof. Such records shall be maintained by Client for a period of time no less than four years beyond the expiration of the Term.
13. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. For all purposes of this Agreement and all other documents contemplated hereby, the signature of any Party, evidenced by a telecopy showing such signature or other electronically transmitted version of such signature (including by way of PDF), shall constitute conclusive proof for all purposes of the signature of such Party to such document, to the same extent and in all respects as a copy of such document showing the original signature of such Party.

SCHEDULE "C"
APPLICATION (including Budget)

**SCHEDULE “D”
DATA AND INFORMATION SHARING PROTOCOL**