

OCE/Innovation ENCQOR Demonstration Project Funding Agreement



MIS#: _____

This Agreement is made between _____ (“Client”) Ontario Centres of Excellence Inc. (“OCE”) and Innovation ENCQOR (“IE”), each herein individually referred to as a “Party” and collectively the “Parties”. OCE and IE are herein individually referred to as an “Administrator” and collectively as the “Administrators”.

WHEREAS the Client wishes to engage in the project entitled: **[Insert Project Title]** as set out in the Application and represent and warrant that it has 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” Intellectual Property Agreement/Term Sheet
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. **Right to Terminate.** Any or all obligations of an Administrator hereunder may be immediately suspended, terminated or revoked, in whole or in part, at any time by the Administrator giving written notice to the other Parties, where the Administrator 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 an Administrator through a Project review process organized by an Administrator 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 an Administrator 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 or in respect of any one or more of the Funding Programs, recover any payments previously made by it, and/or set-off and credit any amounts due by an Administrator to the Party in breach against any amounts previously contributed by an Administrator in respect of the Project

7. **Contributions and Eligible Expenses.** The Parties shall make the Contributions toward the cost of the Project as set out in the Application and Budget (Schedule “C”). Notwithstanding anything else in this Agreement, the Parties acknowledge and agree that all Contributions to be made by OCE, and OCE’s obligations to pay such Contributions, are entirely conditional on OCE receiving sufficient allocated government funding to enable it to make payment thereof, and that OCE 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, OCE 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 to a maximum of fifty percent (50%) of eligible Project expenses in accordance with OCE’s then current published program expense guidelines.

8. The Client acknowledges that where the Project is approved for funding under the 5G (ENCQOR) Program, Contributions through such Program are made directly by IE however IE may terminate, suspend or revoke its obligation to make Contributions, in whole or in part, at any time by giving written notice to the Client should IE not receive or possess funds sufficient for such purposes. Further, IE 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. OCE shall have no liability to Client in respect of Contributions made or not made by IE.
9. **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.

10. **Reviews and Reporting.**
- The Client shall provide to each Administrator such reports with respect to the Project, its status, progress and projections, as required by each Administrator, in such form and content and at such times as specified by each Administrator 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 each Administrator following the Term of this Agreement.
 - The Client agrees to cooperate with each Administrator in the collection of performance metrics relevant to the Project, which shall be used by each Administrator to evaluate the success of its programs and shall be reported to the Government of Ontario and the Government of Canada in aggregate, omitting any Confidential Information.
 - Clients who employ less than 100 employees agree to provide timely notice to OCE 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 OCE to understand and assess the impact of such financings on the Client’s obligations hereunder.
11. **Indemnity.** Subject to Section 11, the Client will indemnify and save harmless each Administrator, each Funder and their respective 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 wilful 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.
12. **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 an Administrator’s liability for damages arising out of the Project or under this Agreement

exceed the dollar value of the Contribution which such Administrator is required hereunder to make to the Project. Except as expressly provided herein, each Administrator, 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, each Administrator assumes no responsibility whatsoever with respect to design, development, manufacture, use, sale or other disposition of research results or intellectual property by any Client.

13. **Intellectual Property (IP).**

a. The Client represents and warrants that: (i) it has the right to use the “background” IP required for the Project, and to commercialize Project Intellectual Property; and (ii) any agreements governing intellectual property matters relating to or arising from the Project are identified and described in Schedule “D” – Intellectual Property Agreement/Term Sheet.

b. Ownership and exploitation of the Project Intellectual Property and the ownership of Project Intellectual Property Rights therefor, will remain in Canada until the fifth (5th) anniversary of the end of the Term unless otherwise agreed to by the Administrators. Notwithstanding the foregoing, the Client may grant any right or license to any of the Project Intellectual Property without the prior written consent of the Administrators, (i) to an affiliated entity, (ii) in the context of commercialization of the Project Intellectual Property or (iii) in respect of an end-user licensee in conjunction with the sale of products that incorporate the Project Intellectual Property.

c. The Client shall take appropriate steps to protect and enforce the Project Intellectual Property, provided that, for greater certainty, the Client shall in its sole discretion decide if, when, how and where to apply for patent or other statutory protections for any Project Intellectual Property owned by it. The Client shall provide information to the Administrators in that regard, upon request.

d. The Client agrees that no Project asset purchased or developed with Funding provided hereunder, including, Project Intellectual Property, may be sold or disposed of contrary to the requirements imposed by the Administrators and/or the Funders.

14. **Compliance with Laws.**

a. The Client 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, the Client 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 Client and should be considered and, where appropriate, included in any budget with respect to the Project.

15. **Comply with Agreements.** The Client shall remain in compliance with all material contracts relating to the Project and shall inform the Administrators as soon as possible in the event of a breach or termination of any material contract relating to the Project, whether by the Client or by the other party(s) thereto.

16. **Conflict of Interest.** The Client and its officers, employees, contractors, agents and volunteers shall carry out their responsibilities under this Agreement free of conflict of interest, fraud or other willful misconduct. Where the Client realizes a conflict of interest exists with respect to any activity or responsibility it has assumed under this Agreement, the Client shall immediately inform the Administrators of this fact. In the event of such a conflict, the Client shall require the individual in conflict to withdraw immediately from further decision making related to such conflict of interest. The Client shall take reasonable steps to ensure its officers, employees, agents, contractor’s agents and volunteers are aware of, agree to, and abide by the requirements of this Section.

17. **Project Location.** The Client agrees to carry out the Project in the Province of Ontario.

18. **Several Obligations.** The obligations of the Administrators under this Agreement are independent and several and not joint and several. Client shall not seek to hold one Administrator responsible or accountable for the obligations of the other Administrator.

[SIGNATURE PAGE FOLLOWS]

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

ONTARIO CENTRES OF EXCELLENCE INC.

Name:

Title:

I have authority to bind the Corporation.

Innovation ENCQOR

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 *<Option 1 - attached hereto as Schedule "C"; or Option 2 – submitted in conjunction with this Agreement>*.

"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.

"5G (ENCQOR) Program" means an Ontario Ministry of Economic Development Job Creation and Trade, a Government of Canada and a Province of Quebec funded program managed and run by OCE in the province of Ontario to assist Ontario companies in their economic growth through access to 5G technologies and support.

"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.

"Funders" means Her Majesty The Queen in Right of the Province Ontario as represented by the Minister of Economic Development Job Creation and Trade and by the Minister of Research, Innovation and Science and Her Majesty The Queen in Right of Canada as represented by the Minister of Industry.

"Funding Programs" means the 5G (ENCQOR) Program, the IBM Innovation Incubator Program and the NGNP Program.

"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.

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

"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.

"IBM Innovation Incubator Program" means an Ontario Ministry of Economic Development and Growth funded program managed and run by OCE to assist Ontario companies in their economic growth through access to smart computing technologies and support.

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

“**NGNP Program**” means an Ontario Ministry of Economic Development Job Creation and Trade funded program managed and run by OCE to assist Ontario companies in their economic growth through access to next generation network technologies and support.

“**OCE**” 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 OCE for the completion of the Project following the Start Date.

“**Project Intellectual Property**” means all inventions, whether patented or patentable, all commercial and technical information, whether or not constituting trade secrets, and all copyrightable works, industrial designs, integrated circuit topographs, and distinguishing marks or guises, whether or not registered or registerable (collectively “**IP**”) where such IP was first conceived, produced, developed or reduced to practice in carrying out the Project.

“**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 OCE.

“**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 9, 10, 11 and 12 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. A change in control or majority ownership of the Client shall be deemed to be an assignment of this Agreement and shall require the Administrators' consent.
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 OCE:
Ontario Centres of Excellence Inc.
325 Front St. W., Suite 300
Toronto, ON M5V 2Y1
Attention:
Fax:
E-mail:

to IE:
Innovation ENCQOR.
[Address]
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 an Administrator, by written agreement of such Administrator with the Government of Ontario or Canada (or any of their respective 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;

Permitted Disclosures.

- a. Notwithstanding the above, the Client acknowledges and agrees that this Agreement and its Schedules will be disclosed by the Administrators and the Funders.
- b. The Client irrevocably consents to the Administrators and the Funders making all or a portion of this Agreement, including Schedules hereto, available to the public in a form the Administrators and the Funders deem appropriate in their respective sole discretion.
- c. The Client agrees that the Administrators and the Funders may also publicly release the following information, in a form they deem appropriate in their respective sole discretion: Client name, Client contact information, Client address or general location, amount of the Conditional Grant, Project description, Project objectives and goals, Project location, Project results reported by the Client and the budgets for the Project.

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 OCE's discretion:
 - i. acknowledgement that OCE 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 OCE from time to time;
 - iii. acknowledgement and credit with respect to the Funder's financial support of the Project as follows: "Funding provided by the Government of **[Ontario/Canada]**", and by using the official visual identifier of the Funder(s) and/or the Administrators in respect of the acknowledgement of funding only, provided the Administrators 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 OCE 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 the Administrators of any major, planned announcements (press releases, awards, advertisements, etc.) with respect to the Project, and agrees that the Administrators may provide this information to the Funders;
 - ii. obtain the Administrators' prior approval before making any such announcements and permit the Administrators and the Funders to participate in the announcement or event at its option; and
 - iii. respond to requests by the Administrators or a Funder for related information as soon as possible.
 - c. At the Administrators' or a Funder's request, Client will cooperate with the Administrators and the Funder, provide the Administrators and the Funder with reasonably necessary documentary assurances, and take reasonable steps to participate in, the Administrators' and/or Funder'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 the Administrators, the Funders and their agents (including Ontario's Provincial Auditor and the Auditor General of Canada) 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"
INTELLECTUAL PROPERTY AGREEMENT/TERM SHEET

Project Intellectual Property is to be managed by the Client, and OCE does not claim rights in the Project Intellectual Property.

Except as otherwise set forth in the iPaaS Access Agreement, the Client must be free to use, develop and exploit for commercial purposes without any third-party encumbrances, any intellectual property required to execute the Project to be carried out and the Project Intellectual Property to be exploited.