

COLLABORATIVE RESEARCH AGREEMENT

Between:

University of Guelph
50 Stone Rd. E.
Guelph, Ontario, N1G 2W1
(the "University")

AND

(Sponsor Name)
Address
(the "Sponsor")

WHEREAS the research contemplated by this Agreement is of mutual interest and benefit to the University and Sponsor, and will further the instructional, scholarship and research objectives of the University in a manner consistent with its status as a non-profit, tax-exempt educational institution.

NOW THEREFORE, the Parties agree as follows:

1. **Definitions.** In this Agreement the following terms shall have the following meanings:

"Agreement" means this Research Agreement including Appendix "A", "B" and "C" attached hereto.

"Arising Intellectual Property" has the meaning ascribed thereto in Appendix "C".

"Background Intellectual Property" has the meaning ascribed thereto in Appendix "C".

"Confidential Information" means confidential or proprietary information disclosed by one Party to the other Party to facilitate the Work, provided that tangible materials are clearly marked as "confidential" and any such information provided orally or visually is identified as confidential at the time of disclosure, and confirmed as confidential in writing within fifteen (15) days of such disclosure. Confidential Information shall not include information that:

- i. as of the date of disclosure to the receiving Party was in the public domain or subsequently enters the public domain without fault on the part of the receiving Party;
- ii. was received by the receiving Party from any third party having a lawful right to make such a disclosure;
- iii. the Parties agree in writing to release from the terms of this Agreement;
- iv. as of the date of disclosure to the receiving Party can be demonstrated by written record to be previously known to the receiving Party; or,
- v. is required by law or regulation to be disclosed (in the event information is required to be disclosed by law or regulation, the Party required to make the disclosure shall notify the other Party to allow that Party to assert whatever exclusions or exemptions may be available to it under such law or regulation).

"Cost" has the meaning ascribed thereto in Section 4.

"Effective Date" means [insert date].

“Intellectual Property” has the meaning ascribed in Appendix “C”.

“Party” means University or Sponsor, and **“Parties”** means University and Sponsor.

“Principal Investigator” has the meaning ascribed thereto in Section 3.

“Research Data” means recorded information, regardless of form or the media in which it may be recorded, which constitute the original observations and methods of the Research Project and the analyses of this information that are necessary for reconstruction and evaluation of the findings of the Research Project.

“Researchers” means any of University’s faculty, staff, visiting scientists, adjunct faculty, professor emeriti, postdoctoral fellows and/or students (whether paid or unpaid) involved in carrying out the Research Project including the Principal Investigator.

“Research Project” means the research project entitled [insert title of research project] described in Appendix “A”.

“Research Reports” means the reports on the progress and findings of the Research Project which the Principal Investigator shall provide to Sponsor in accordance with Appendix “A”.

“Term” has the meaning ascribed thereto in Subsection 5(a).

“University Creators” means one or more Researchers who create Arising Intellectual Property, Research Data or Research Reports, in whole or in part.

“Work” means the activities related to the Research Project described in Appendix “A” which are to be performed by University.

2. **Performance.** University will commence the Work within a reasonable period of time after the Effective Date and will use reasonable efforts to perform the Work substantially in accordance with the terms and conditions of this Agreement. Sponsor and University agree that until such time as all regulatory requirements have been obtained, including necessary permits or approvals of any regulatory agency or animal use or research ethics board or committee concerned, no work requiring such regulatory agency or animal use or ethics permits or approvals shall commence or continue during the Term (excepting any preliminary preparations which are not restricted by such requirements). For greater certainty, any delay or failure in obtaining such permits or approvals shall not be considered a default or breach by either University or Sponsor.
3. **Delegation and Principal Investigator.** University delegates management of this Agreement to its Vice President, Research. The Principal Investigator for the Research Project is [insert Name, Department] who will supervise, direct and document the Work on behalf of University and have authority to approve expenditures related thereto. If for any reason the Principal Investigator becomes unavailable or unable to conduct or complete the Research Project, University has the right to replace the Principal Investigator with a qualified researcher, subject to the approval of Sponsor which shall not be unreasonably withheld. If a suitable replacement for the Principal Investigator cannot be found it shall not be considered a breach of or default under this Agreement on the part of University, and the Parties will take all reasonable steps to wind down the Research Project with a minimum of costs. In such circumstances, Sponsor will pay for that part of

the Research Project completed and University's committed and non-cancellable costs of the Research Project, the total of which shall not exceed the Cost set out in Section 4.

4. Cost and Payment.

- a. **Cost.** Sponsor shall pay University the amount (the "Cost") specified in the budget attached to this Agreement as Appendix "B" (the "Budget") upon the terms set forth in the Budget. The Budget in Appendix "B" is designated as "Fixed Price".
- b. University has the authority to adjust the Budget at the discretion of the Principal Investigator, so long as the Cost is not exceeded, and the adjustments are consistent with the goals of the Research Project. If Sponsor requests a change in the Research Project plan of Work, University may submit to Sponsor a revised Budget requesting additional funds.
- c. **In-Kind Contributions.** In addition to paying the Cost to University under Subsection 4(a), Sponsor shall make the in-kind contributions to the Research Project totaling [insert in-kind value] that are described in Appendix "B". Sponsor shall keep records of such in-kind contributions and make them available for audit and inspection upon request.

5. Term and Termination.

- a. **Term.** The term of this Agreement will be from the Effective Date and continue until [insert term end date], unless terminated earlier pursuant to Subsection 5(b) or (c).
- b. **Termination for Convenience.** A Party may terminate this Agreement by delivering a written notice of termination to the other Party, such termination to be effective thirty (30) days after such written notice of termination is delivered.
- c. **Termination for Default.** A Party may terminate this Agreement immediately upon written notice to the other Party, in the event of:
 - i. a material breach or non-compliance by the other Party of some obligation, undertaking, representation, warranty or payment contained in this Agreement, if such default is not remedied within thirty (30) days of receipt of written notice;
 - ii. the other Party becoming bankrupt or insolvent, going into receivership, making an assignment of its assets to the benefit of its creditors, taking advantage of any statute which may be in force in relation to bankruptcy or insolvent debtors, or ceasing to conduct business in the normal course; or,
 - iii. default on the part of the other Party caused by a force majeure, as described in Section 18, where such default lasts more than six (6) months.
- d. **Result of Termination.** Where either Party terminates this Agreement for any reason:
 - i. Sponsor shall pay to University: (A) the reasonable cost of performing any of the Work that has been performed up to the effective date of termination and any other costs directly resulting from termination, including committed and non-cancellable costs made by University prior to termination; (B) the reasonable cost of performing any of the Work necessary to complete the Research Project to the next milestone as provided for under Paragraph 5(d)(ii); and, (C) any amounts payable by Sponsor pursuant to Paragraph 3(c)(ii) of Appendix "C"; and,

- ii. if approval of University's Research Ethics Board, Animal Care Committee, or any other committee was obtained in accordance with University's policies, Principal Investigator will notify such committee(s) and Sponsor will cooperate with University and Principal Investigator in providing a plan for the orderly transition or closure of the Research Project which may involve completing the Research Project to the next milestone in order to protect the interests of human participants or welfare of animals.
 - e. Where Sponsor terminates this Agreement for convenience under Subsection 5(b) or University terminates this Agreement for default under Subsection 5(c), Sponsor's rights to University Arising Intellectual Property under Subsection 3(c) of Appendix 'C' shall also terminate.
6. **Research Data and Research Reports.**
- a. All rights, title and interest to Research Data and Research Reports shall be owned by University or University Creators. As between University and University Creators, ownership shall be determined in accordance with University's policies, employment agreements and collective agreements.
 - b. Sponsor may copy, reproduce and distribute Research Reports provided to Sponsor under this Agreement. Sponsor may not charge any fees for Research Reports, or alter or modify Research Reports.
7. **Intellectual Property.** The rights and obligations relating to Background Intellectual Property and Arising Intellectual Property are set out in Appendix "C" attached hereto and forming part of this Agreement.
8. **Confidentiality.** A Party shall disclose its Confidential Information to the other Party only as necessary to facilitate the Work. A Party receiving Confidential Information shall hold such Confidential Information in trust and confidence for the disclosing Party, using the same care and discretion that the receiving Party uses with its own Confidential Information of a similar nature but no less than a reasonable standard of care. The Party receiving Confidential Information shall use such Confidential Information only for the purpose of the Research Project and shall not, either during the Term or for five (5) years thereafter, disclose to any third party such Confidential Information without the prior written consent of disclosing Party, unless such information is no longer confidential by definition in Section 1.
9. **Publication.** The Parties agree it is part of University's function and policies to disseminate information and to make it available for the purpose of scholarship. The Parties further recognize that the publication of certain technical information may compromise the commercial value of Arising Intellectual Property. University shall not be restricted from making any publications, including without limitation, presenting at conferences, symposia or professional meetings, or from publishing in abstracts, journals, theses, or dissertations, or otherwise, whether in printed or in electronic media, the methods and the results of the Research Project, subject to the following:
- a. At least fifteen (15) days in advance of a proposed presentation at a conference, symposia or professional meeting or thirty (30) days in advance of a proposed publication in an abstract, journal, thesis or dissertation, University (via Principal Investigator) shall provide Sponsor for its review, an outline and associated abstract of any research results which it intends to present or publish or, at the request of the Sponsor, a full electronic copy of the presentation or manuscript. Sponsor shall complete its review within fifteen (15) days from its receipt of the proposed presentation or publication. During the review period, Sponsor may object in writing (including via confirmed receipt email) to such proposed publication or presentation because:
 - i. there would be an inadvertent disclosure of Sponsor's Confidential Information;

- ii. the proposed publication or presentation contains information enabling Arising Intellectual Property which requires legal protection before any public disclosure occurs; or,
 - iii. there would be a violation of privacy rights of individuals.
 - b. If Sponsor does not object in writing (including via confirmed receipt email) to such presentation or publication within the review period, Sponsor shall be deemed to have agreed to the disclosure and University shall be free to present the proposed presentation or publish the proposed publication. If Sponsor objects because there would be an inadvertent disclosure of Sponsor's Confidential Information, at Sponsor's written request, University will remove such Confidential Information from the proposed presentation or publication. If Sponsor objects because the proposed presentation or publication contains Arising Intellectual Property (or information that will enable a third party to recreate Arising Intellectual Property), University agrees to delay presentation or publication for up to a maximum of ninety (90) days to allow for the filing of a patent application or obtaining other intellectual property protection. If Sponsor objects because there would be a violation of privacy rights of individuals, University agrees to make appropriate modifications to ensure the privacy rights of individuals are adequately protected.
 - c. In the event a graduate student of University works on the Research Project and the student completes a thesis or academic report relating to the Research Project, that student will own the copyright in the thesis or academic report. University retains the right to have graduate student theses reviewed and defended for the sole purpose of academic evaluation in accordance with the University's established policies and procedures. University and Sponsor will work together to ensure that there will be no delay in a thesis examination or publication of a thesis or academic report that might jeopardize the progress of a student's career.
- 10. **Export Control Regulations.** Except as expressly agreed to in writing by a duly authorized University representative and for which University has made specific arrangements, University shall not take receipt of export-controlled information or materials. Sponsor agrees that it will not provide or make accessible to University any export controlled materials (including, without limitation, equipment, information and/or data) without first informing University of the export controlled nature of the materials and obtaining from University its prior written consent, through a duly authorized University representative, to accept such materials as well as any specific instructions regarding the mechanism pursuant to which such materials should be passed to University. University may, at its sole discretion, accept or reject delivery of any export controlled materials. In the event University accepts delivery of export controlled materials, the burden shall be on Sponsor to make the export controlled materials available only to eligible persons as designated by University, or to obtain license or approval from the relevant agency, or to invoke an available exception, exemption or exclusion. In the event University rejects the delivery of export controlled materials, such rejection by University shall not constitute a breach of this Agreement.
- 11. **Publicity.** Neither Party will use the name, trademark, or logo of the other Party, or the name of any faculty, staff, employee or student of the other Party (including Researchers in the case of University), in connection with any products, publicity, promotion, or advertising relating to the Research Project or its results without the prior written consent of the other Party. Notwithstanding anything contained in this Agreement, either Party may, as a statement of fact, make the following a matter of public record: the title of the Research Project; the name of Sponsor; the name of University; the name and department of the Principal Investigator; the Cost; and, the Term.

12. **Freedom of Information and Protection of Privacy.** Sponsor acknowledges that University is an educational institution to which the Freedom of Information and Protection of Privacy Act (Ontario) applies.
13. **Equipment.** All materials, supplies and equipment purchased by or donated to University for the Research Project and used by or installed at University with funds provided under this Agreement or otherwise shall, as between the Parties hereto, remain the property of University during and after completion of the Research Project and this Agreement. University shall not own equipment provided by Sponsor to University under lease or loan or temporary in-kind support.
14. **Indemnification.**
- a. **Sponsor's Indemnification.** Sponsor hereby indemnifies University, including its governors, directors, trustees, officers, Researchers, employees, students, volunteers and agents against all claims, losses, damages or expenses of any kind arising from the negligence or wilful neglect of Sponsor (or of those for whom in law Sponsor is responsible) in the performance of its obligations under this Agreement. In addition, Sponsor hereby indemnifies University, including its governors, directors, trustees, officers, Researchers, employees, students, volunteers and agents against all claims, losses, damages or expenses of any kind arising from the use by or through Sponsor of the Research Reports and any Arising Intellectual Property, and the design, production, manufacture, sale, use, lease, or promotion of any product, process, service or data developed by Sponsor, directly or indirectly, as a result of the Research Project.
 - b. **University's Indemnification.** University hereby indemnifies Sponsor, including its directors, officers, employees or agents, against all claims, losses, damages or expenses of any kind caused by the negligence or wilful neglect of University (or of those for whom in law University is responsible) in the performance of its obligations under this Agreement.
15. **Insurance.**
- a. Sponsor shall obtain and maintain comprehensive general liability insurance, written on an occurrence basis, of not less than Five Million Dollars (\$5,000,000.00) per occurrence and annual aggregate, and any other insurance as the circumstances warrant that a prudent person would deem necessary to cover any liabilities that may arise under this Agreement. Each such insurance policy or policies shall be written by responsible and recognized insurers qualified to do business in the jurisdiction or jurisdictions in which Sponsor is located and shall name University as an additional insured, and the Sponsor shall provide a certificate of insurance as evidence of such coverage if requested by the University.
 - b. Upon request from one Party, the other Party shall provide valid, current proof of workers' compensation coverage or equivalent protection for its employees.
16. **Warranty and Limitation of Liability.** University will conduct the Research Project in conformance to generally accepted practices for university based scientific research. Sponsor hereby acknowledges that Research Project is of an experimental and exploratory nature and that no particular results can be guaranteed. University makes no representations or warranties, express or implied, as to any matter whatsoever including, without limitation, the condition of the Work, Research Data, Research Reports, Arising Intellectual Property, or any invention(s), result(s), product(s), whether tangible or intangible, conceived, discovered, or developed under or as a result of the Research Project; or the ownership, merchantability, or fitness for a particular purpose of any product, process, service or data developed by Sponsor, directly or indirectly, as a result of the Research Project. University will, in no event, be liable for any loss of profits, loss of revenues, loss of business or loss of business opportunity be they direct, indirect,

consequential, incidental, or special or other similar damages arising from any defect, error, omission or failure to perform, even if University has been advised of the possibility of such damages.

17. **Compliance with Laws and Regulations.** All Work and research done in connection with the Research Project will be done in compliance with all applicable Federal, Provincial and local laws, regulations and guidelines of Canada, including those related to the COVID-19 pandemic.
18. **Force Majeure.** Neither Party shall lose any rights hereunder or be liable to the other Party for damages or losses or be deemed to be in breach of this Agreement for any failure or delay in rendering performance (except for payment obligations with respect to work performed) arising out of any cause or causes beyond its reasonable control, whether or not foreseeable. Such causes may include, but are not limited to, governmental regulation or control, an act of nature, an act of a public enemy, an act of terrorism, war, a mass-casualty event, fire, an act of God, earthquake, flood, local, regional or global outbreak of disease, or another local, regional or global public health situation involving governmental or public health restriction or limitation (including, for example, the COVID-19 epidemic or pandemic), strike, lockout or labour or civil unrest, freight embargo, unusually severe weather, failure of public utility or common carrier, or an attack or other malicious act, including but not limited to an attack on or through the internet, or any internet service, telecommunications provider or hosting facility (provided that any plural shall include the singular and any singular shall include the plural).
19. **Right to Disclose Risk.** University has the right and the obligation to publicly disclose information about immediate or near-term risks to Researchers, human subjects or the general public or threats to the public interest that become known in the course of the Research Project. This information will be disclosed to the Sponsor and/or any pertinent regulator prior to the public disclosure.
20. **Survival.** Unless stated otherwise in this Agreement, this Section 20 and the following provisions of this Agreement shall survive its expiry or termination for any reason: Sections 4 (Cost and Payment), 5(d) (Result of Termination), 6 (Research Data and Research Reports), 7 (Intellectual Property), 8 (Confidentiality), 9 (Publication), 11 (Publicity), 12 (Freedom of Information and Protection of Privacy), 14 (Indemnification), 15 (Insurance), 16 (Warranty and Limitation of Liability), and 21 to 29 inclusive (Independent Parties, Notices, Further Assurances, Assignment and Subcontracting, Waiver, Entire Agreement, Applicable Law and Forum, Disputes, Partial Invalidity).
21. **Independent Parties.** Sponsor is and will at all times remain an independent contractor and is not and shall not represent itself to be an agent, joint venturer or partner of University. No representation will be made or acts taken by either Sponsor or University that could indicate any relationship of agency, joint venture, partnership or employment.
22. **Notices.** For a notice or other communication under this Agreement to be valid, it must be: (a) in writing and signed by an authorized representative of the sending Party; (b) delivered by personal delivery, registered or certified mail (in each case return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid) or as an attachment to an e-mail message (in each case confirmation of receipt by the receiving Party required); and (c) addressed to the receiving Party at the address listed below for the receiving Party:

University of Guelph

For contractual and administrative matters:
Attn: Managing Director, Research Operations

For financial matters:
Attn: Director, Research Financial Services

University of Guelph
Research Services Office, University Centre
Guelph, Ontario, N1G 2W1
research.services@uoguelph.ca

University of Guelph
Research Financial Services, University Centre
Guelph, Ontario, N1G 2W1
rfsacctsetup@uoguelph.ca

For scientific or technical matters:

Name and Title
Address
Telephone
Email

(Sponsor NAME)

For contractual matters:

Name and Title
Address
Telephone
Email

For scientific or technical matters:

Name and Title
Address
Telephone
Email

If a notice or other communication is received after 5:00 p.m. on a University business day (i.e. any of the days of Monday to Friday, both inclusive, unless such day is a statutory or civic holiday in Guelph, Ontario or a University designated holiday) at the location specified at the address of the receiving Party, or on a day that is not a University business day, then the notice will be deemed received at 9:00 a.m. on the next University business day. Either Party may from time to time change its address set forth herein by timely notice to the other Party in accordance with this section

23. **Further Assurances.** The Parties hereto agree to do all such things and to execute such instruments and documents as may be necessary or desirable to carry out the provisions and intent of this Agreement.
24. **Assignment and Subcontracting.** This Agreement shall be to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. A Party may not assign this Agreement or any part thereof, or subcontract portions of the Research Project except with the express prior written approval of the other Party.
25. **Waiver.** No waiver by either Party of any breach or default or series of breaches or defaults by the other Party and no failure, refusal or neglect of either Party to exercise any rights under this Agreement or to insist upon strict compliance with or performance of the other Party's obligations under this Agreement shall constitute (a) a waiver of the provisions of this Agreement with respect to any subsequent breach or default thereof, or (b) a waiver by either Party of its right any time thereafter to require strict compliance with the provisions of this Agreement.
26. **Entire Agreement.** This Agreement, including Appendix "A", "B" and "C", constitutes the entire agreement between University and Sponsor pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions with respect to the subject matter hereof whether oral or written. Except as provided herein, there are no conditions, representations, warranties, undertakings, promises, inducements or agreements, whether direct or indirect, collateral, express or implied made between the Parties concerning this Agreement, the subject matter hereof or any other

matter embodied herein. No supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by the Parties.

27. **Applicable Law and Forum.** This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Subject to Section 28, the Parties attorn to the exclusive jurisdiction of the provincial and federal courts of the Province of Ontario.
28. **Disputes.** If any dispute concerning this Agreement or the Research Project cannot be resolved by the Parties within ten (10) days after one Party has notified the other Party in writing of the issue in dispute, they will refer the matter to the Vice-President, Research in the case of the University, and to [insert name, title] in case of the Sponsor, who shall attempt to resolve the dispute within ten (10) days after the referral. In the event the Parties fail to resolve the dispute within ten (10) days after the referral, the matter shall be submitted to mediation by a mutually acceptable mediator, qualified by education and experience to conduct the mediation. The Parties shall be responsible for their own costs and shall share the cost and expenses of the mediator.
29. **Partial Invalidity.** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law and be independent of every other provision of this Agreement.
30. **Counterparts.** This Agreement may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Party. The exchange of copies of this Agreement and of signature pages by electronic transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by electronic transmission shall be deemed to be their original signatures for all purposes.

[Remainder of page left intentionally blank]

Acknowledged by: _____
(University of Guelph **Principal Investigator Signature**)
(Date)

I, the Principal Investigator, have read, understand, and agree to the terms and conditions of this Agreement and will use all reasonable efforts to achieve the objectives and deliverables identified herein, including but not limited to, signing all documents and doing all things necessary and proper to fulfill University obligations and give effect to any rights granted to the Sponsor under this Agreement.

Further, following informing all personnel and students involved in the Project of the terms of this Agreement, I will make best efforts to ensure that all personnel and students involved in the Project also sign an acknowledgment and agreement similar to this Acknowledgment and Agreement and maintain them in my file.

SIGNED AS AN AGREEMENT by the Parties' respective authorized representatives in a manner and form sufficient to bind them.

University of Guelph

Per: _____
Jill Rogers, Managing Director, Research Operations
(Date)

(Sponsor Name)

Per: _____
(Name, Title)
(Date)

Appendix "A"
Research Project

TEMPLATE ONLY

Appendix "B"
Budget and Invoicing Schedule

Budget

Item/Description	Cost	

Designation. This Budget is designated as "Fixed Price". Sponsor shall pay University the full amount specified herein (the "Cost") upon the terms set forth herein. Sponsor will not be liable for any payment in excess of the Cost except with Sponsor's written agreement. Sponsor is not entitled to any refund of funds not spent provided the Research Project is completed and all commitments under this Agreement have been met.

Sponsor's In-Kind Contribution

Invoicing and Payment Schedule

a. University will invoice Sponsor according to the following invoicing schedule:

Invoice Number	Invoice Date	Amount

- b. Sponsor shall pay the invoices rendered by University in accordance with the terms of such invoices, provided that:
- i. all payments shall be made by electronic funds transfer in accordance with University's written instructions set out in each invoice (or, upon Sponsor's request, by cheque) within thirty (30) days after the date of receipt of each invoice;
 - ii. if payment is made by cheque, each cheque shall be made payable to the "University of Guelph", reference the name of the Principal Investigator, invoice number and be delivered to Research Financial Services, Level 4 - University Centre, 50 Stone Road East, University of Guelph, Guelph, Ontario N1G 2W1; and
 - iii. if using third party payment services, any fees incurred in the transaction(s) shall be covered by Sponsor.

Appendix "C"

Intellectual Property

1. Definitions.

"Arising Intellectual Property" means individually and collectively all Intellectual Property created during the Term and directly resulting from the Research Project carried out under this Agreement. Arising Intellectual Property includes University Arising Intellectual Property, Sponsor Arising Intellectual Property and Joint Arising Intellectual Property. Arising Intellectual Property does not include Research Data and Research Reports.

"Background Intellectual Property" means individually and collectively all Intellectual Property developed, produced, obtained, licensed or owned by a Party or Researchers prior to the Effective Date or outside the scope of the Research Project.

"Intellectual Property" means any new and useful art, invention, discovery, innovation, concept, methodology, model, procedure, process, technique and specification, product, formulae, software, manufacture or composition of matter, and any industrial and/or intellectual property rights and all other such rights whether or not statutorily protected or capable of being protected under statute.

"Joint Arising Intellectual Property" means Arising Intellectual Property created jointly by University Creators and Sponsor's employees.

"Sponsor Arising Intellectual Property" means Arising Intellectual Property created solely by Sponsor's employees

"University Arising Intellectual Property" means Arising Intellectual Property created solely by University Creators.

"University Owner" means University or University Creators as determined in accordance with University's policies, employment agreements and collective agreements.

2. Background Intellectual Property. All rights, title and interest in and to Background Intellectual Property of either Party or Researchers shall remain with that Party or Researchers. During the Term, a Party may use Background Intellectual Property of the other Party or Researchers, and which is disclosed in writing as part of the Research Project, solely for the purposes of the Research Project. Except as explicitly provided in this Agreement, neither Party shall receive any right or license to Background Intellectual Property of the other Party or Researchers.

3. Arising Intellectual Property.

- a. **Ownership.** University Arising Intellectual Property shall be owned by University Owner. Sponsor Arising Intellectual Property shall be owned by Sponsor. Joint Arising Intellectual Property shall be owned jointly by University Owner and Sponsor. Unless otherwise specified in writing, the division of rights, title and interest in Joint Arising Intellectual Property shall be equal as between the joint owners. Notwithstanding the applicable patent or other intellectual property laws in any jurisdiction, neither University Owner nor Sponsor shall have the right to commercially exploit such Joint Arising Intellectual Property without the written agreement of the other. University Owner and Sponsor shall manage and commercially exploit Joint Arising

Intellectual Property in accordance with the terms of an invention management agreement negotiated on commercially reasonable terms between University Owner and Sponsor acting in good faith

- b. **Disclosure.** University will disclose to Sponsor in writing on a confidential basis (i.e. in accordance with the terms of Section 8 of this Agreement) details of any University Arising Intellectual Property and Joint Arising Intellectual Property promptly upon disclosure of same by the University Creators to University's Research Innovation Office (a "University Report of Invention"). Sponsor will disclose to University in writing on a confidential basis (i.e. in accordance with the terms of Section 8 of this Agreement) details of Sponsor Arising Intellectual Property and Joint Arising Intellectual Property promptly upon disclosure of same by Sponsor's employee(s) to Sponsor (a "Sponsor Report of Invention").
- c. **Option to License.**
 - i. Provided Sponsor is in compliance with the terms of this Agreement, University Owner hereby grants to Sponsor the first option to negotiate a license to use and exploit University Arising Intellectual Property (the "First Option"). The First Option must be exercised in writing, delivered to: Catalyst Centre, University of Guelph, 50 Stone Road East, Guelph, ON N1G 2W1, Attention: Director, within three (3) months of the relevant University Report of Invention or Sponsor Report of Invention (the "Option Period"). If a First Option is exercised within the Option Period, University Owner and Sponsor will, within six (6) months of Sponsor's exercise of the First Option (the "Negotiation Period"), negotiate in good faith a license within Sponsor's demonstrated field of commercial interest ("License") in accordance with generally accepted industry standards.
 - ii. University Owner may, at its expense, elect to protect University Arising Intellectual Property at any time prior to Sponsor's exercise of the First Option. Upon exercise of the First Option by Sponsor, University Owner shall prosecute patent applications or applications for other intellectual property protection with respect to University Arising Intellectual Property in the name of University Owner. Any delay in protecting University Arising Intellectual Property shall be determined by mutual written agreement of University Owner and the Sponsor. University Owner shall use counsel of its choice and Sponsor shall cooperate with University Owner to ensure that such patent applications or applications for other intellectual property protection cover, to the best of Sponsor's knowledge, all items of commercial interest and importance. Sponsor shall bear all costs and fees, including without limitation, all legal fees, disbursements and taxes (including those accrued prior to Sponsor's exercise of the First Option), in connection with the preparation, filing, prosecution and maintenance of such patent applications or applications for other intellectual property protection. Within thirty (30) days of University Owner's written request, Sponsor will pay a reasonable payment as an advance against such costs and fees. While University Owner shall be responsible for making final decisions regarding the scope and content of applications to be filed and their prosecution, Sponsor shall be given an opportunity to review and provide input thereto. University Owner shall keep Sponsor advised of any major developments with respect to application(s) and shall supply copies of all papers to be filed in connection thereto in sufficient time for Sponsor to review and provide comments thereon.
 - iii. If Sponsor fails to exercise the First Option during the Option Period, or exercises the First Option during the Option Period but University Owner and Sponsor are unable to negotiate a License during the Negotiation Period, or Sponsor fails to pay or pre-pay the costs and fees set out in Paragraph 3(c)(ii) of this Appendix "C", University Owner shall

be free, but not obligated, to file, continue prosecution or maintain any such application(s) at its sole expense in which case all of Sponsor's rights in the relevant University Arising Intellectual Property shall terminate, and University Owner may license the relevant University Arising Intellectual Property to a third party or third parties without any restriction whatsoever.

iv. **Teaching and Research.** For greater certainty and without derogating from any other provision in this Agreement and subject to the confidentiality obligations under this Agreement, Sponsor grants to University the right to utilize all Sponsor Arising Intellectual Property and Joint Arising Intellectual Property for academic and research purposes without charge and in perpetuity.

4. No license or other rights are implied or given under this Agreement or otherwise, with respect to: (a) Intellectual Property that is not Arising Intellectual Property; or, (b) rights to Intellectual Property or Background Intellectual Property brought into the Research Project or incorporated into Arising Intellectual Property by University, Researchers, Sponsor any collaborator, or any third party. The Parties acknowledge that rights to third party Intellectual Property lie outside the scope of any license referenced in this Appendix "C".

Commented [CO1]: *In consideration of the Ontario Ministry of Agriculture, Food, and Rural Affairs' ("OMAFRA") funding of this work, and as required pursuant to the Ontario Agri-Food Innovation Alliance agreement between OMAFRA and the University, the Parties agree as follows: To grant OMAFRA a royalty-free, perpetual, non-exclusive license and right to use any Intellectual Property developed pursuant to this Agreement, limited to internal use by the Province of Ontario, including its agencies, boards, and commissions, only and for internal, non-commercial education, research and distribution purposes, with the right to grant or authorize sub-licenses, without the University's or Sponsor's, as the case may be, written consent; and OMAFRA's license under the foregoing paragraph will not be limited or encumbered by the ownership or moral rights or any claim to such rights by any University employee(s) or student(s) or any third party or encumbered by any transfer of ownership rights.*

Commented [CO2R1]: See additional OMAFRA references in: [G:\Research Support Services\Project Files\C\Corteva Agriscience\Nasielski, Josh\2020 - Ind Ptnr GFO, OMAF Alliance \(Developing Best\)](G:\Research Support Services\Project Files\C\Corteva Agriscience\Nasielski, Josh\2020 - Ind Ptnr GFO, OMAF Alliance (Developing Best))