



Attachment to Agreement for IBM Watson Academic Initiative: IBM Watson Prototype Development Agreement

This Agreement is between IBM Canada Limited ("IBM") and the Governing Council of University of Toronto ("the University of Toronto") regarding development of a prototype application by the University of Toronto and University of Toronto Users as part of the IBM Watson Academic Initiative. IBM will provide the University of Toronto and University of Toronto Users with an API and web-based access to the IBM Watson Developer Cloud during the Term to develop a prototype application. The prototype application is intended to leverage the cognitive capabilities of the IBM Watson system to demonstrate a unique application or experience ("the Application Prototype").

Definitions

IBM Design Materials -- user experience (UX) and user interface (UI) design elements and documentation, including but not limited to, IBM Icons, wireframes, models, schematics, and other UX and UI elements or designs which IBM provides or makes available to the University of Toronto pursuant to this Agreement.

IBM Development Materials -- development tools, software development kits, API(s) and associated documentation which IBM provides or makes available to the University of Toronto pursuant to this Agreement (including, but not limited to, Watson Experience Manager Tool, Corpus Management Tool, Training, Test and Configuration Tool, and IBM's User Configurable Interface).

IBM Icons -- "Made with IBM" logo and "Ask Watson" icons and any other logos or icons which IBM provides or makes available to the University of Toronto and University of Toronto Users pursuant to this Agreement.

Protected Health Information -- "individually identifiable health information" as defined under applicable Ontario privacy legislation.

Sensitive Personal Information -- 1) personal data, the loss of which would trigger a data breach notification requirement, and includes, but is not limited to financial information, country identification number (e.g. Social Insurance Number, Social Security Number or other governmentally-issued identification number such as driver's license or passport number, bank account number, credit card or debit card number; and 2) data relating to racial or ethnic origin, sexual orientation, or political opinions or religious, ideological or philosophical beliefs or activities or trade union membership.

Term -- the term of this Agreement as described in the "Term and Termination" section below.

Watson Ecosystem Services -- an instance of IBM Watson, hosted by IBM in a cloud environment, that utilizes a corpus against which cognitive abilities are applied and the associated API(s) can be used. The Watson Ecosystem Services instance is hosted on the IBM Watson Developer Cloud.

Watson Developer Cloud - The Watson Developer Cloud is a cloud hosted marketplace that includes access to application programming interface (API), software developer kit(s), tooling and methodologies focused on facilitating the use and adoption of cognitive capabilities.

University of Toronto Content -- information, software, and data, including, without limitation, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by the University of Toronto and University of Toronto Users pursuant to this Agreement.

Project Activities

In connection with the development of the Application Prototype, the parties will perform the following activities.

Activity 1: Data Discovery and Corpus Creation

The purpose of this activity is to collect data to build the initial corpus for the Application Prototype. IBM will provide the University of Toronto and University of Toronto Users with an API and web-based access the Watson Developer Cloud. Additionally IBM will also provide the University of Toronto and University of Toronto Users with access to IBM Development Materials to enable the University of Toronto and University of Toronto Users to upload University of Toronto Content. IBM will furnish API(s) and the documentation associated with it to enable the University of Toronto and University of Toronto Users to access the IBM Watson Ecosystem Services in University of Toronto's application.

The data collected in this phase will be used in the configuration activity described below to build the initial Application Prototype instance.

IBM Tasks:

- a. Provide enablement materials to support corpus creation; and
- b. Make available to the University of Toronto and University of Toronto Users IBM Development Materials with designated access.

University of Toronto Tasks:

- a. Define the type, quantity, and source of content to be utilized for the use case;
- b. Provide the Content that the University of Toronto owns or has licensed rights to that supports the use case to support the objectives of this Agreement; and
- c. Establish safeguards and mask data to ensure that IBM will not be exposed to any Protected Health Information, Sensitive Personal Information, or other sensitive or proprietary business information.

Activity 2: Watson Ecosystem Services Configuration and development

The purpose of this activity is to configure Watson on an IBM-hosted and configured development environment for the Application Prototype to begin testing.

IBM Tasks:

- a. Make available an initial development instance of the Watson Ecosystem Service which contains the corpus of information identified in the preceding Activity;
- b. Provide the University of Toronto and University of Toronto Users access to IBM Development Materials, , that can be configured and integrated in the Application Prototype;
- c. Provide access to the Watson Ecosystem Services, which includes access to the Watson Experience Manager and Watson API(s); and
- d. Provide enablement materials to support the University of Toronto and University of Toronto's Users efforts around Watson Ecosystem Services Configuration.

University of Toronto Tasks:

- a. Provide and apply the technical expertise needed to identify, acquire and cleanse the content, and to use the APIs to access the Watson Ecosystem Services in the Application Prototype and do one or more rounds of training, depending on available time.

Activity 3: User Interface and User Experience Configuration

The purpose of this activity is to configure the Application user interface and user experience features so the Application Prototype is ready for testing and demonstration.

IBM Tasks:

- a. Provide the University of Toronto and University of Toronto Users access to IBM Development Materials to assist in the ingestion of information, standardized testing of the Application Prototype, user interface, and API(s); and
- b. Provide IBM Development Materials to enable the University of Toronto and University of Toronto Users to access the Watson API(s) in the University of Toronto and University of Toronto Users Application Prototype.

University of Toronto Tasks:

- a. Access the Watson Ecosystem Services using the API(s) or the chat box design provided by IBM in the Application Prototype UI, with the design elements defined by IBM.

Materials Ownership

IBM or its suppliers own all right, title and interest in the IBM Watson Ecosystem Services (including associated machine learning algorithms), IBM Development Materials and IBM Design Materials furnished or made available under this Agreement, including any modifications, improvements or derivative works thereof which may result through the interaction of the Application Prototype and the Watson Ecosystem Services (collectively “IBM Materials”).

The University of Toronto owns all right, title and interest in the University of Toronto’s and University of Toronto Users’ application which forms the basis of the use case for the Application Prototype that was in existence prior to the commencement of the activities contemplated by this Agreement, as well as University of Toronto Content owned by the University of Toronto or furnished or made available by the University of Toronto under this Agreement.

The University of Toronto owns the Application Prototype, subject to IBM’s ownership and rights in any IBM Materials incorporated therein or which are utilized in connection with the Application Prototype. IBM and its subcontractors shall be permitted to use, display, test, evaluate and publicly demonstrate the Application until otherwise notified in writing by the University of Toronto.

Access to the Watson Ecosystem Services

In connection with the activities described above, IBM will provide the University of Toronto and University of Toronto Users with access to the Watson Ecosystem Services remotely through the Internet. During the Term, the University of Toronto and University of Toronto Users shall be permitted to use the Watson Ecosystem Services and IBM Development Materials provided by IBM to upload, ingest and process the University of Toronto **Content** for the sole purpose of internal evaluation and the development, testing, and demonstration of the Application Prototype. The Watson Ecosystem Services in the Watson Developer Cloud may not be used for production purposes.

The University of Toronto and University of Toronto Users may use the Watson Ecosystem Services as authorized by IBM during the Term on condition that:

- a. The University of Toronto and University of Toronto Users comply with the terms of this Agreement; and
- b. The University of Toronto ensures that only University of Toronto authorized users have access and that those University of Toronto users use the Watson Ecosystem Services only on the University of Toronto’s behalf; and
- c. The University of Toronto does not:
 - (1) use, copy, modify, or make the Watson Ecosystem Services available, in whole or part, to third parties, except as expressly permitted in this Agreement;
 - (2) reverse assemble, reverse compile, and otherwise translate, or reverse engineer the Watson Ecosystem Services, unless expressly permitted by applicable law without the possibility of contractual waiver;
 - (3) use any of the Watson Ecosystem Services’ components, files, modules, audio-visual content, or related offering materials separately from that of the Watson Ecosystem Services;
 - (4) rent, sublicense, or lease the Watson Ecosystem Services;
 - (5) create Internet “links” to or from the Watson Ecosystem Services;
 - (6) “frame” or “mirror” any content forming part of an Watson Ecosystem Services, other than on the University of Toronto’s own intranets in connection with the University of Toronto’s authorized use of the Watson Ecosystem Services; or
 - (7) use the Watson Ecosystem Services for any unlawful or inappropriate purpose.

The University of Toronto agrees that IBM is not providing the University of Toronto or University of Toronto Users with access to the Internet in order to use the Watson Ecosystem Services and that the University of Toronto remains responsible for Internet access, and that IBM and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment IBM cannot commit to particular confidentiality obligations with respect to data transferred over the Internet.

University of Toronto Content

With regard to the University of Toronto Content, the University of Toronto will be responsible for the following:

- a. all University of Toronto Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, suitability, maintenance, testing, backup and support;
- b. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display University of Toronto Content, and the University of Toronto represents that the University of Toronto has and will keep in effect during its use of Watson Ecosystem Services all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM;
- c. establishing safeguards and appropriate data masking measures to ensure that IBM will not be exposed to any Protected Health Information, Sensitive Personal Information or other types of sensitive, regulated, or proprietary business information; and
- d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of University of Toronto Content.

The University of Toronto grants to IBM and its subcontractors a nonexclusive, worldwide, royalty-free, fully-paid, non-transferable license to use, host, cache, record, copy, and display University of Toronto Content, for the purpose of developing, demonstrating and making the Application Prototype available for the purposes of this Agreement during the Term.

IBM Development Materials

With respect to the IBM Development Materials which IBM makes available to the University of Toronto and University of Toronto Users pursuant to this Agreement, IBM grants the University of Toronto a non-exclusive, royalty-free, fully-paid, non-transferable, revocable right and license to internally use, execute, copy, display and perform the Development Materials for the purpose of developing and displaying the Application Prototype in accordance with the Agreement during the Term. The University of Toronto is solely responsible for the University of Toronto's and University of Toronto Users' use of the IBM Development Materials.

The University of Toronto must preserve all copyright notices and intellectual property right notices of IBM contained in the IBM Development Materials.

IBM Design Materials

With respect to the IBM Design Materials, including the IBM Icons, which IBM makes available to the University of Toronto and University of Toronto Users pursuant to this Agreement, IBM grants the University of Toronto a non-exclusive, non-transferable, revocable right and license to internally use, copy, incorporate and display the IBM Design Materials within the Application Prototype during the Term of this Agreement only. Usage of IBM Icons must conform to any branding guidance or usage requirements furnished by IBM.

The University of Toronto must preserve all copyright notices and intellectual property right notices of IBM contained in the IBM Design Materials.

Feedback

IBM shall be free to use and disclose without restriction any suggestions, improvements or feedback provided by the University of Toronto and University of Toronto Users with respect to the IBM Watson Ecosystem Services, IBM Development Materials and IBM Design Materials.

Term and Termination

The offering has an end date of January 15, 2015.

If IBM determines that the University of Toronto no longer qualifies for this offering, IBM will so notify the University of Toronto in writing and give the University of Toronto three months in which to requalify. If at the end of the three month period, the University of Toronto still does not qualify, IBM will terminate this Agreement and the University of Toronto's access to the Watson Offerings.

If the University of Toronto fails to comply with the terms of this Agreement, IBM may terminate this Agreement, the University of Toronto's access to the Watson Offerings and all of the University of Toronto licenses to use Educational Materials that the University of Toronto has acquired under this Agreement.

The University of Toronto may terminate this Agreement on written notice to IBM following the expiration or termination of the University of Toronto's obligations.

IBM may terminate this Agreement on three month's written notice to the University of Toronto.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

This Agreement may be extended by mutual written agreement.

Warranties

Each party warrants that it has the authority to enter into this Agreement.

Neither party warrants that it will accomplish or complete any or all activities contemplated under this Agreement.

THE IBM WATSON ECOSYSTEM SERVICES, MACHINE LEARNING ALGORITHMS, IBM DEVELOPMENT MATERIALS, IBM DESIGN MATERIALS AND ALL OTHER MATERIALS PROVIDED OR MADE AVAILABLE BY IBM TO THE UNIVERSITY OF TORONTO IN FURTHERANCE OF THE OBJECTIVES OF THIS AGREEMENT ARE PROVIDED OR MADE AVAILABLE BY IBM ON AN "AS IS" BASIS, WITHOUT WARRANTY OR INDEMNITY OF ANY KIND. IBM DOES NOT WARRANT THAT USE OR OPERATION OF ANY OF THE FOREGOING WILL BE UNINTERRUPTED OR ERROR-FREE.

THESE WARRANTIES ARE THE PARTIES' EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES INDEMNITIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY INDEMNITY OR CONDITION OF NON-INFRINGEMENT.

Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, the University of Toronto is entitled to recover damages from IBM. In each such instance, regardless of the basis on which the University of Toronto is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than:

- (1) damages for bodily injury (including death) and damage to real property and tangible personal property; and
- (2) the amount of any other actual direct damages up to the charges the University of Toronto paid for the Watson Offering that is the subject of the claim. If the University of Toronto receives the Watson Offering that is the subject of the claim at no charge, then IBM is not liable for any actual direct damages other than those specified in item 1 above in this section.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Under no circumstances is IBM, its subcontractors, suppliers or Program developers liable for any of the following even if informed of their possibility:

- (3) loss of, or damage to, data;
- (4) special, incidental, or indirect damages or for any economic consequential damages; or
- (5) lost profits, business, revenue, goodwill, or anticipated savings.

Publicity

The University of Toronto agrees not to initiate or distribute any press releases or other publicity or marketing materials regarding the Application Prototype or the subject matter of this Agreement without prior review and written consent of IBM. Neither party is required to seek consent to re-issue or republish statements which are substantially similar to those which have been previously reviewed and approved by the other party.

Except as provided herein, neither party grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent.

General

- a. Both parties agree that the Application Prototype may not be successfully completed; the results achieved may not be as anticipated at the outset of the project and that this project may not lead to an announced product or generally available solution. Any changes to the University of Toronto's operations in expectation of a successfully completed Application Prototype or an eventual product or solution will be based solely on the University of Toronto's business judgment.
- b. Each party will bear its own expenses associated with this project.
- c. Each party will be responsible for the supervision, direction and control of its own personnel while engaged in project activities.
- d. The parties may modify this Agreement as jointly agreed to in writing.
- e. Each party grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
- f. If any term of this Agreement is found to be unenforceable in any respect, the validity of the remainder of this Agreement will be unaffected.
- g. Neither party may assign its rights or delegate or subcontract its duties under this Agreement to third parties without the prior written consent of the other party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, either party may upon written notice assign this Agreement in conjunction with the sale of all or a substantial part of a party's business that utilizes this Agreement. Any unauthorized assignment of this Agreement is void.
- h. Any terms of this Agreement, which by their nature extend beyond the date this Agreement ends, remain in effect until fulfilled and apply to respective successors and assignees.
- i. This Agreement is nonexclusive. Neither party is a legal representative nor legal agent of the other. Neither party is legally a partner of the other, and neither party is an employee or franchise of the other, nor does this Agreement create a joint venture between the parties. Notwithstanding any provision of this Agreement, either party may offer (either by itself or together with third parties) to provide any products and/or services to a customer without any obligation to the other party. Either party may independently develop, acquire and market materials, products and services that may be competitive with the other party's products or services. Each party is free to enter into similar agreements with others.
- j. Neither of us will assume nor create any obligations on behalf of the other or make any representations or warranties about the other, other than those authorized in writing by the other party.
- k. Neither party is responsible for failure to fulfill obligations due to causes beyond the control of such party.
- l. No right or cause of action for any third party is created by this Agreement, nor is either party responsible for any third party claims against the other party except as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which a party is legally liable to that third party.
- m. Each party will comply with applicable laws, rules and regulations applicable to their activities under this Agreement, including applicable export and import laws.
- n. The laws of the Province of Ontario govern the rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to its conflict of law principles.

This Agreement and the Agreement for IBM Watson Academic Initiative and its addendums are the complete agreement regarding the Application Prototype and the activities described herein. Neither party is relying on any representation that is not specified therein.

Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, any reproduction of this Agreement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original.

ACCEPTED AND AGREED TO:

IBM Canada Limited

By:

IBM Signature Date

Printed Name

Title & Organization

3600 Steeles Avenue East
Markham, Ontario, L3R9Z7

IBM Address

ACCEPTED AND AGREED TO:

**The Governing Council of the University of
Toronto**

By:

The Governing Council of the University of Toronto
Official Signature Date

Printed Name

Title & Organization

Institution Address

I have read the Prototype Development Agreement and understand my obligations hereunder. I agree to abide by the terms and conditions of the Agreement as if I were a party hereto.

Registered University User

By:

Registered University User Signature Date

Printed Name

Title & Organization

Institution Address