DATA ACCESS AGREEMENT - EGA

This Data Access Agreement (the "Agreement") is made as of the date of last signature (the "Effective Date").

BETWEEN: **Ontario Institute for Cancer Research,** a not-for-profit corporation, funded by the Government of Ontario**,** having an address at MaRS Centre, 661 University Ave, Suite 510, Toronto, Ontario, M5G 0A3 ("OICR")

AND

Name of Institution (the "Recipient")	
Address	
City	
Province/State	
Country	
Postal Code/ZIP	

OICR and Recipient are each individually a "Party", and together the "Parties".

WHEREAS OICR is the custodian of Data (as defined below), and

WHEREAS OICR wishes to provide such Data directly to Recipient and Investigator, or by way of the European Genome-phenome Archive ("EGA") which maintains a copy of portions of such Data, and

WHEREAS Recipient wishes to receive such Data for the purposes of the Study as further described in Appendix B.

NOW THEREFORE, the Parties agree as follows:

1. DEFINITIONS

1.1 "Data" means coded Genomic Sequence Data and/or clinical data that cannot, alone, reasonably be used to identify an individual.

1.2 "Genomic Sequence Data" means whole genome, exome sequencing or targeted panel sequencing of DNA, and/or transcriptome sequencing of RNA.

1.3 "Confidential Information" means, subject to Clause 7, any and all information provided to Recipient by OICR and/or EGA relating to the Data.

1.4 "Investigator" means the Recipient investigator who will receive the Data and oversee the research.

Name (Investigator 1)		Institutional Email	
Name (Investigator 2)		Institutional Email	

Name (Investigator 3)		Institutional Email	
Name (Investigator 4)		Institutional Email	

1.5 "Licensed Use" means use of the Data only by Recipient, and solely for the Study.

1.6 "Study" means

Name of Study:

as further described in Appendix B and updated from time to time (the "Study"). Where there is disagreement between the details of the Study described in Appendix B and this Agreement, this Agreement dominates.

2. GRANT

2.1 OICR hereby grants, and Recipient accepts, a nonexclusive, non-transferable, limited right and license to use the Data described in Appendix A only for the Licensed Use. Except as otherwise permitted herein, in no event shall Recipient transfer Data to any third parties or allow any third parties to view or use the Data.

2.2 OICR retains title to all Data.

2.3 Recipient acknowledges and agrees that the Data is comprised of whole genome sequence data and may include data such as risk factors, gene-sample identifier links and germline DNA information associated with a unique, but not directly identified, person, and as such, for the purposes of this Agreement, the Data contained therein must be treated as personally identifiable information.

2.4 Recipient agrees that it shall not attempt, by any means, to establish the identity of, or make contact with, either directly or indirectly, any donor of Data and agrees only to publish or to disclose data that has been categorized or otherwise grouped into a format that precludes determination of individual records, such as data in an aggregate form.

2.5 Recipient represents, warrants and covenants that it has in place reasonable and effective administrative, technological and physical safeguards to stop theft, loss and unauthorized access, copying, modification, use, disclosure or disposal of personally identifiable information and that these safeguards are consistent with industry practice.

2.6 Investigator and Recipient shall treat the Data as though it were personally identifiable information and shall maintain the Data in a secure manner and take all reasonable steps to ensure that the Data is protected against theft, loss, modification and unauthorized copying, use, or disclosure and that safeguards employed are consistent with industry best practice.

2.7 Recipient and Investigator shall:

(a) immediately notify OICR in writing if either becomes aware of any breach or suspected breach of this Agreement or if Data has been (or is believed to have been) stolen, lost or accessed by unauthorized persons;

(b) take reasonable steps to contain the breach, theft, loss or unauthorized access; and

(c) co-operate with OICR in a commercially reasonable manner to deal with such unauthorized access.

2.8 Recipient will maintain the confidentiality of the Data and ensure that only persons with a need to know and who are aware of and have agreed to comply with the terms and conditions of this Agreement will have access to the Data.

2.9 Recipient shall ensure that its use of the Data, complies with all applicable laws and regulations, including approval from a qualified research ethics board (or equivalent) where applicable.

2.10 Upon request of OICR, Recipient shall permit all privacy and data security and management documents to be inspected to verify that it is complying with the terms of this Agreement.

3. FINANCIAL ARRANGEMENTS

Recipient shall bear its own cost of implementing this Agreement.

4. NO WARRANTIES

OICR MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, OR TRADEMARK, OR OTHER RIGHTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES. OICR DOES NOT WARRANT THAT THE DATA WILL MEET THE RECIPIENT'S REQUIREMENTS OR EXPECTATIONS. ALL DATA IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. RECIPIENT'S USE OF THE DATA IS AT ITS OWN RISK.

5. INDEMNIFICATION

Except where prohibited by law, Recipient agrees to indemnify, hold harmless and defend OICR, its members, officers, employees, contractors, subcontractors, students and agents against any and all third party claims, suits, proceedings, costs, or expenses resulting from any negligence or from any injury (including death), damage, or loss or the alleged infringement of any copyright, patent, trademark, trade secret or other intellectual property or proprietary right arising out of Recipient's use of the Data or any products or services derived from the Data. Without limiting the foregoing, but for clarity, Recipient agrees that it shall take responsibility for all claims, suits, proceedings, cost or damages arising out of Recipient's use of the Data.

6. LIMIT OF LIABILITY

The Recipient acknowledges and agrees that OICR and its officers, employees, contractors, subcontractors students and agents, shall not be liable for any direct, indirect, consequential, exemplary, special, or punitive damages arising from breach of this Agreement or from any cause of action relating to its provision of the Data to Recipient or Recipient's use or inability to use the Data. OICR shall not be liable for any lost profits or other economic loss of Recipient.

7. CONFIDENTIALITY

Subject to Section 8 hereof Recipient will treat OICR's Confidential Information with at least the same degree of care that Recipient uses for its own confidential information and will not reveal OICR's Confidential Information to third parties without the written consent of OICR and will not use such Confidential Information except for the purpose of this Agreement. These restrictions will not apply to information which:

(a) Was demonstrably in the possession of Recipient prior to the date of disclosure of the Confidential Information by OICR to Recipient; or

(b) Is publicly known at the time of the disclosure; or

(c) Is required to be disclosed under applicable laws, regulations or orders of any governmental authority; or

(d) Is furnished by OICR to others without restrictions on its use or disclosure.

8. NAMES AND PUBLICATION

Investigator and Recipient agree to acknowledge the contributions of the OICR in all publications and presentations of studies utilizing Data received from OICR and to provide a copy of all publications and/or abstracts of presentations to OICR thirty (30) days in advance of publication or presentation. Recipient will ensure that the following wording accompanies any publication and/or abstracts of presentations. *This study was conducted using data provided by the Ontario Institute for Cancer Research which is funded by the Government of Ontario. The views expressed in the publication are those of the author and do not necessarily reflect those of the Ontario Institute for Cancer Research or the Government of Ontario.*

9. TERMINATION

9.1 Recipient may terminate this Agreement by giving OICR ninety (90) days notice in writing.

9.2 OICR may terminate this Agreement if Recipient is in breach of any provision hereof; and Recipient fails to remedy such breach within thirty (30) days written notice from OICR.

9.3 OICR may terminate this Agreement upon the bankruptcy, or insolvency of Recipient or if Recipient becomes party to any bankruptcy proceeding.

9.4 This Agreement terminates upon the completion or termination of the Study.

9.5 Upon termination of this Agreement, Recipient shall:

(a) cease all use of the Data;

(b) promptly destroy any remaining Data in a secure manner.

9.6 Notwithstanding any such termination, any provisions of these terms that by their nature are intended to survive, will survive termination.

10. ASSIGNMENT. This agreement may not be assigned.

11. NOTICES

11.1 All general notices to Recipient shall be sent to:

Attention (Name)	
Institution	
Address	
Email	

11.2 All general notices to OICR shall be sent to:

OICR Data Access Committee
Ontario Institute for Cancer Research
MaRS Centre
661 University Avenue, Suite 510
Toronto, ON M5G 0A3
Email: OICR-DAC@oicr.on.ca
Fax: 416-977-7446

12. MISCELLANEOUS

12.1 **Entire Agreement.** This document is the entire agreement between the parties in relation to its subject matter, and supersedes all prior and collateral representations, warranties, covenants, negotiations or discussions. This Agreement may only be modified by a written document, signed by authorized representatives of the Parties.

12.2 **Choice of Law**. This Agreement shall be governed and interpreted according to the laws of the Province of Ontario and the parties attorn to the jurisdiction of Ontario courts.

12.3 **Counterparts**. This Agreement may be executed electronically or by facsimile in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

12.4 **Relationship.** Recipient and OICR are independent contractors. Nothing in this Agreement constitutes Recipient and OICR as partners or joint venturers. Recipient does not have the authority to bind OICR.

12.5 **Severability**. Each of the provisions contained in this Agreement is distinct and severable. Any declaration by a court of competent jurisdiction of the invalidity or unenforceability of any provision or part of a provision will not affect the validity or enforceability of any other provision of this Agreement.

12.6 **Waiver**. The failure of either party to insist upon strict performance of any terms and conditions or to exercise any of its rights set out in this Agreement shall not constitute a waiver of these rights, and these rights shall continue in full force and effect.

IN WITNESS WHEREOF the undersigned Parties hereto agree to all the terms and conditions herein.

ONTARIO INSTITUTE FOR CANCER RESEARCH		RECIPIENT
Name:	Christine Williams, PhD	Name:
Title:	Executive Vice President and Head, Implementation Science	Title:
Signature:		Signature:
Date:		Date:
	(I have authority to bind the Corporation)	(I have authority to bind the Corporation)

ACKNOWLEDGEMENT OF INVESTIGATOR(S):
In signing below I, as an Investigator in this research project, hereby agree to act in accordance with all the terms and conditions of this agreement and further agree to ensure that all research project participants are informed of their obligations under such terms and conditions.

Name		Signature		Date	
Name		Signature		Date	
Name		Signature		Date	
Name		Signature		Date	

APPENDIX A

THE DATA

Insert a description/list of data. Include EGA Study ID, where applicable.

THE STUDY

Insert a study description