

## MEMORANDUM OF UNDERSTANDING

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**Parties** Brock University (“Brock”)  
1812 Sir Isaac Brock Way  
St. Catharines, ON L2S 3A1

And

Town of Pelham  
100 Meridian Way  
Fonthill, ON L0S 1E6

**Effective Date** January 6, 2020 (“Effective Date”)

### BACKGROUND

1. The Town of Pelham through the Meridian Community Centre are looking to run a fitness program for senior community members 3 days a week for a 24-week period.
2. Brock, through its Brock-Niagara Centre for Health and Well-Being, offers exercise wellness programs that bridge academic and community health innovations (“Brock Programs”).
3. The Town of Pelham would like Brock to provide the fitness class programming and personnel for the program at the Meridian Community Centre, and Brock has agreed to provide the program in accordance with the terms and conditions set out in this Agreement (“Agreement”).

### AGREEMENT

In consideration of the mutual covenants set out in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

#### 1. Brock responsibilities

Subject to payment of the Service Fee and compliance by Town of Pelham with the terms and conditions of this Agreement, Brock shall:

- a. Programming: offer the fitness program at the Meridian Community Centre. The design, content and scheduling of the programming shall be at Brock’s absolute discretion, though Brock shall consult with Town of Pelham regarding the program schedules.
- b. Eligibility screening: screen all Fitness Program participants who wish to participate in the program. The decision to allow or deny a community member to participate in the Fitness Program shall be at Brock’s absolute discretion. Only community members who have signed a waiver shall be eligible to participate in the Fitness Program.
- c. Program personnel: Recruit, train and supervise Brock students and any other personnel involved in delivering the Fitness Program. All recruitment, hiring, supervision and employment decisions regarding students and personnel involved in delivering the Fitness Program shall be at Brock’s absolute discretion.

- d. Program administration: Manage all aspects of the program administration, including budgeting, scheduling and record keeping.

## 2. **Town of Pelham responsibilities**

Subject to compliance by Brock with the terms and conditions of this Agreement, Town of Pelham shall:

- a. Space: Provide appropriate space and facilities within the Meridian Community Centre for the Fitness Program (“Program Space”).
- b. Equipment: Provide and maintain the exercise equipment necessary for the Program (“Program Equipment”), in consultation with Brock;
- c. Maintenance and repairs: arrange all cleaning, general daily maintenance and repairs of the Program Space and Program Equipment;
- d. Marketing and promotion: be responsible for all marketing and promotion for the Fitness Program, provided Brock shall have the opportunity to review any promotional materials with respect to the Brock Program in advance of distribution; and
- e. Fees: pay the Program Fee, as set out in Section 6 below.

## 3. **Research collaborations**

The Parties shall explore potential research collaborations and Brock shall facilitate contact with Brock researchers to consider opportunities for health-related, quality-of-life and other potential research programs at the Meridian Community Centre.

## 4. **Communication and reporting**

- a. Key contacts: Each party shall each appoint a key contact, which for Brock shall be Dr. Deb O’Leary and for Town of Pelham shall be Vickie vanRavenswaay. Each party will notify the other party if the Key Contact is changed.
- b. Reporting: Brock shall provide annual reports to Town of Pelham including the number of community members using the Fitness Program and a summary of the programming provided by Brock.

## 5. **Term**

This Agreement shall commence as of January 6, 2019 and expire on June 19, 2020, unless extended by the mutual written Agreement of the Parties or terminated earlier in accordance with this Agreement.

## 6. **Fees**

- a. Amount: Town of Pelham shall pay Brock an annual fee (“Program Fee”), within twenty-one (21) days of receipt of a satisfactory invoice from Brock. The Program Fee to cover the expenses of the Fitness Program which in the first year of operation (2020) shall be

an amount to be agreed upon by the Parties no later than December 4, 2019 and in advance of the agreed upon start date of the program. The Program Fee payable of any subsequent term or extension, shall be agreed upon by the Parties at least thirty (30) days in advance of the anniversary date, based on the scope of the programs offered and any changes in costs going forward.

- b. Due date for payment: Town of Pelham shall pay Brock the Program Fee January 1, 2020 before the anticipated start date for the Fitness Program. Town of Pelham and Brock shall agree on the start date for the Fitness Program which date shall allow Brock sufficient time to recruit and train personnel for the programs.
- c. Additional expenses: Brock shall not be responsible for any additional expenses related to the Fitness Program incurred by Town of Pelham and Town of Pelham shall be responsible for all such expenses.

## **7. Insurance**

- a. Minimum insurance coverage

Town of Pelham represents and warrants that it has, and will maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of A- or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out an initiative similar to this initiative would maintain, including:

  - i. commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$5,000,000 per occurrence.
  - ii. property insurance on an 'all risks' of direct physical loss or damage of property on a repair/replacement cost basis.

The policies shall include Brock as an additional insured with respect to liability arising in the course of performance of Brock's obligations under, or otherwise in connection with, the Agreement, a cross-liability clause, contractual liability coverage and a 30-day written notice of cancellation.

- b. Proof of insurance

Town of Pelham shall provide Brock with certificates of insurance, or other proof as may be requested by Brock, that confirms the insurance coverage provided for in section 7a.

## **8. Intellectual Property and Publicity**

- a. No licence

This Agreement does not constitute a licence or assignment of intellectual property rights or any other proprietary rights, including any materials related to the Brock Programs. Any arrangements regarding intellectual property shall be made under a separate Agreement.

b. Publicity

The Parties shall not include any reference to the other Party in any advertisement or promotional material or in any way reproduce any official mark or trade-mark of the other Party without the prior written consent of the other Party.

**9. Confidentiality**

a. Definition

For the purposes of this section, Confidential Information means any information provided by a Party to the other Party which is identified either in writing or orally as confidential.

b. Confidentiality obligations

Unless the disclosing Party has consented to do otherwise, any Party receiving Confidential Information from the other Party agrees to:

- i. only use the Confidential Information strictly for the purpose of carrying out its obligations pursuant to this Agreement;
- ii. hold and maintain all Confidential Information in strict confidence and put reasonable measures in place to protect the Confidential Information from any unauthorized use, access, modification, or disclosure;
- iii. not disclose the Confidential Information to any unauthorized third party during or after the term of this Agreement;
- iv. to only disclose the Confidential Information to employees, volunteers and/or students on a need to know basis and to instruct and notify all employees, volunteers and students who may receive such Confidential Information regarding these confidentiality obligations; and
- v. immediately inform the disclosing Party if the Party believes that any Confidential Information has been accessed, used or disclosed in breach of these confidentiality obligations or if it receives a complaint or learns of an allegation to that effect.

This obligations of confidentiality shall not apply to information that the receiving Party can demonstrate:

- a. was independently developed or created by the receiving Party without use of or reference to the Confidential Information; or
- b. was known to the general public prior to its receipt from the disclosing Party or subsequently becomes known to the public through no fault of the receiving Party; or
- c. is obtained by the receiving Party from a third party who, to the best of the knowledge of the receiving Party, is not under an obligation of confidentiality and has a lawful right to make such disclosure; or
- d. is required to be disclosed by law, provided the receiving Party shall promptly notify the disclosing Party prior to such disclosure to provide the disclosing Party a reasonable opportunity to take any legal actions it may consider necessary to prevent or limit the requested disclosure.

c. Freedom of Information

The parties acknowledged to each other that each is bound by a provincial privacy regime and that any information provided to each other in connection with the Fitness Program or otherwise in connection with this Agreement may be subject to disclosure in accordance with legislation.

## 10. Liability

- a. Indemnity: Each Party agrees to indemnify and hold harmless the other party, its directors, officers, employees and agents from all from and against any and all liability, actions, claims, demands, legal proceedings, losses, costs, damages and expenses (including reasonable legal fees) (“Losses”) insofar as such Losses arise out of or are based on the negligence or wrongful act or omission, or alleged negligence or wrongful act or omission, of the Party. The Parties agree that they shall co-operate with each other in the defence of any such action, including providing each other with prompt notice of any such action and the provision of all material documentation. The Parties further agree that they have a right to retain their own counsel to conduct a full defence of any such action.
- b. Limitation of liability: As between the Parties, neither Party shall be liable to the other in connection with any claim for any special, incidental, indirect, exemplary, punitive, or consequential loss or damages, even if a Party has advised of the possibility of such loss or damage in advance.

## 11. Representation and Warranties

Each Party represents and warrants that:

- a. it is, and will continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement; and
- b. it is in compliance with all federal and provincial laws and regulations, all municipal by-laws and any other orders, rules and by-laws related to any aspect of this collaboration.

## 12. Termination

- a. Termination: This Agreement may be terminated as follows:
- i. by either party immediately where the other party becomes insolvent, is adjudged bankrupt or takes the benefit of any legislation relating to bankrupt or insolvent debtors, is voluntarily or by court order wound-up, dissolved or liquidated;
  - ii. by either party where the other party breaches a material provision of this Agreement and fails to remedy the breach within 15 days of receiving notice;
  - iii. by either party, without cause, on 90 days’ prior written notice;
  - iv. by either party, on 30 days’ prior written notice, where the number of participants in the Fitness Program falls below 5;
  - v. by either party, where the Program Space is not available, accessible or fit for the Fitness Program by January 1, 2020; or
  - vi. by the mutual agreement of the Parties, in writing and signed by both Parties.

- b. Consequences of termination: If this Agreement is terminated under paragraph a. above, Brock shall return to Town of Pelham any portion of the Annual Fee not spent or committed prior to the date of termination.

### 13. **Dispute resolution**

The Parties shall endeavor to resolve any dispute which arises between the Parties under the terms of this Agreement by negotiating in good faith. If the Key Contacts are unable to resolve a dispute within a reasonable period of time to either Party's satisfaction, either Party may refer the dispute to the Dean, Applied Health Sciences, for Brock, and Vickie vanRavenswaay for Town of Pelham. If a dispute is referred to the Parties' senior representatives, each party shall make its representative available to meet within fifteen (15) business days after the dispute is referred to them. If the dispute is not resolved to either Party's satisfaction within 30 days from the date of referral to the Parties' senior representatives, then the Parties agree to attempt in good faith to resolve the dispute through mediation before resorting to any other procedure.

### 14. **General Provisions:**

- a. Independent parties: The parties are independent contractors. This Agreement does not create, and should not be interpreted or construed as creating, any agency, partnership, joint venture, franchise, or employment relationship between the parties. Neither party has the authority to make any statements, representations or commitments of any kind or to take any action binding on the other party, except as set out in this Agreement.
- b. Severability: The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of the Agreement.
- c. Waiver: If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.
- d. Entire Agreement: This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.
- e. Modification: Any modification of this Agreement will be in writing and signed by both Parties.
- f. Force majeure: Delay in or failure of a Party to carry out its responsibilities under this Agreement shall not be deemed to be a breach under this Agreement if such delay or failure results from an event of Force Majeure. Force Majeure means circumstances and conditions beyond the control of the Party affected which render it impossible for that Party to fulfil its obligations under this Agreement or which will substantially delay such fulfilment. Force Majeure shall include, but not be limited to, war, earthquake, flood, fire or other natural disaster, change in government policy or legislation, strike or labour disruption.

- g. Governing law: This Agreement will be governed by and construed in accordance with the laws of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.
- h. Survival: The following sections will continue in full force and effect following termination or expiry of the Agreement:
- i. Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

**AGREED** by the Parties through their authorized signatories:

**Town of Pelham**

By: \_\_\_\_\_

Position: \_\_\_\_\_

This        day of        in the presence of

Print name of witness: \_\_\_\_\_

Witness signature here: **X**

.....

**X**

.....

By: \_\_\_\_\_

Position: \_\_\_\_\_

This        day of        in the presence of

Print name of witness: \_\_\_\_\_

Witness signature here: **X**

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**X**

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**Brock University**

By: Greg Finn, PhD

Position: Provost and Vice-President, Academic

This          day of          in the presence of

Print name of witness:

Witness signature here: **X**

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**X**

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By: Peter Tiidus, PhD

Position: Dean, Faculty of Applied Health Sciences

This          day of          in the presence of

Print name of witness:

Witness signature here: **X**

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**X**

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