

**Memorandum Of Agreement
For the Alternative Education Resources for Ontario (AERO)
(the Ontario Digital Repository for Alternative Format)**

Preamble

The Parties to this Agreement will work together to facilitate the provision and distribution of copies of Educational and Training Resources and Materials in formats for use by students with perceptual disabilities.

Nothing in this Agreement restricts any Party's rights under the Copyright Act. Further, although this Agreement may assist Parties in meeting their obligations under Ontario's Human Rights Code and the Accessibility for Ontarians with Disabilities Act, 2005, the Parties remain individually responsible for their compliance.

1. Definitions

In this Agreement:

"Accessible Format" includes, for example, large print, recorded audio and electronic formats, Braille, Daisy digital audio, and other formats usable by a Student. An Accessible Format is created from a Conversion Ready File. Accessible refers to the student being able to use the file.

"AERO" means the Ministry of Education for the Province of Ontario, Provincial Schools Branch, Alternative Education Resources for Ontario.

"AERO Services" means centralized electronic requisitioning and storage of Conversion Ready and Accessible versions of Materials in formats for use by Students.

"Business Days" means any day except Saturday, Sunday, or any other day on which Ontario government offices are closed.

"Conversion Ready File" is a file in electronic or digital format that facilitates conversion into an accessible format for Students. Conversion Ready refers to the ability of a Producer to manipulate the file and ensure that it is converted into an accessible format that the Student can use. The following formats are examples of Conversion Ready Files:

- (i) ACCESSIBLE Portable Document Format (PDF)
- (ii) Structured extensible mark-up language (XML)
- (iii) Microsoft Word (WORD)

“Copyright Act” means the Copyright Act (Canada), Revised Statutes of Canada 1985, chapter C.42, as amended.

“Days” means calendar days.

“Institution” means a non-profit provincially assisted College of Applied Arts and Technology or a University located in the Province of Ontario and that has become a signatory to this Agreement, and Institutions has a corresponding meaning.

“Educational and Training Resources and Materials” includes any print based material that is required reading for a Student - for example, textbooks, novels, e-books, or other print resources.

“Materials” means Educational and Training Resources and Materials requested by AERO from a Publisher or stored in the AERO repository.

“Parties” means AERO, Institutions, and Publishers.

“Perceptual Disability” means a perceptual disability within the meaning of Section 32 of the Copyright Act. For greater certainty, this has been found to mean:

- a Student whose visual acuity is not sufficient for the Student to participate in everyday educational activities without the accommodation of instructional and related materials in multiple formats;
- an inability to hold or manipulate printed materials; or
- any other impairment (for example, dyslexia, brain injury or other impairment) such that Student cannot use print publications other than in formats not available from the Publisher

“Producer” means the Ministry of Education of Ontario and/or an Institution that makes copies of Materials for Students in an Accessible Format under this Agreement.

“Publisher” means a corporation that commercially distributes Educational and Training Resources and Materials and that has become a signatory to this Agreement, and Publishers has a corresponding meaning.

“Related Company” is a parent, subsidiary or sister of a Publisher, or an international agency which is distributed in Canada by a Publisher and which has no other corporate presence in Canada.

“Student” means a student who is registered at an Institution and who has a Perceptual Disability and Students has a corresponding meaning.

2. Purpose of the Agreement

This Agreement is intended to permit the Parties to use the AERO Services.

Accessible Format versions of the works that have already been produced, or are produced under this Agreement, by the Institutions, will be shared with AERO and stored securely by AERO.

All Accessible Format versions, both the Conversion Ready file received from the Publishers and Accessible format versions produced using the Conversion Ready file provided by the Publishers, will be secured by AERO. The Accessible Formats produced by AERO will be made available to the Institutions for use exclusively by Students.

All Parties to the Agreement and the associations representing those Publishers that are Parties to the Agreement will be invited to participate in periodic reviews of the AERO Services.

3. AERO's Functions and Obligations

- 3.1. AERO will establish a central repository for files supplied by Publishers and produced by Institutions and AERO. AERO will direct and manage the operations of the repository.
- 3.2. AERO will operate a secure website to house the repository.
- 3.3. AERO will provide an interface on the secure website that Institutions will use to submit requests for the provision of Accessible Format versions.
- 3.4. AERO will institute and ensure acceptance of appropriate terms of use for the website.
- 3.5. AERO will maintain a list of current Parties to this Agreement on the secure website.
- 3.6. AERO will verify and be accountable for authenticating the Institutions accessing the website, assigning them user identifications and requiring password access to verify eligibility to obtain electronic files from the repository.

AERO will:

- (i) Receive the bibliographic submissions and the Accessible Format files from the Institutions;
 - (ii) Validate bibliographic information accompanying the files and ensure that bibliographical information is compatible with other cataloguing systems;
 - (iii) Upload the Accessible Format versions received to the repository;
 - (iv) Where more than one Institution forwards copies of the same Accessible Format in the same format, AERO will review the quality of each and use the better version to populate the repository. The versions that are not to standard will be destroyed;
 - (v) Work with the Institutions and consult with Publishers to establish quality standards for the production of Accessible Format versions;
 - (vi) Return or destroy the Conversion Ready File provided by the Publishers when: it is no longer required to produce other Accessible Formats for Students; Publisher provides written notice to AERO pursuant to clause 6.1 (iv); Publisher withdraws from this Agreement; or this Agreement is terminated; and
 - (vii) Conduct an annual review to purge versions that are no longer required by Students.
- 3.7. If the version requested by the Institution is not available in the repository and cannot be located elsewhere in the format requested
AERO will:
- (i) Submit a request to the Publisher of the Material for an Conversion Ready version that can be used to produce the Accessible Format version requested for the Student within two (2) Business Days of receipt of the request from an Institution.
 - (ii) Receive the Conversion Ready version requested from the Publisher and secure it in the repository;
 - (iii) Use the Conversion Ready File from the Publisher to produce the Material in the format requested by the Student;
 - (iv) Store and secure the newly produced format in the repository; and
 - (v) Inform the Institution that the requested work is now available.
- 3.8. AERO will establish and maintain operational guidelines for implementing this Agreement.
- 3.9. AERO will maintain records of files requested by Institutions and copies made from those files by the Institutions for each Publisher. AERO will send statistical reports to each Publisher based on these records annually.
- 3.10. AERO will lead reviews and evaluation process of its systems with Institutions and Publishers and implement any necessary corrective action arising from that process.

4. Institutional Obligations

4.1. General

- (i) Each Institution will forward any Conversion Ready or Accessible Format Files of the Publishers' Materials already in its possession when it becomes a Party to this Agreement to AERO to populate the repository. These files will be accompanied by the bibliographic data related to each version.
- (ii) The Institutions will create an AERO account for each Student accessing Materials through this Agreement.
- (iii) The Institutions will participate in the reviews and evaluation process of AERO and Publishers and support the implementation of corrective action arising from that process.

4.2. Specific to Student Requests

- (i) The Institution must satisfy itself that the person for whom it is making the request is a Student.
- (ii) The Institution must ensure that each Student has purchased an appropriate edition of the print version of the Educational and Training Resources and Materials which is commercially available at retail by requiring the Student to show his or her copy of the text and receipt or proof of payment for the text. A record of this process will be kept in the Institution's files. A sample template which may be used is attached as Schedule A.
- (iii) The Institution has a student code of conduct with which all students of the Institution are expected to comply.
- (iv) When a Student requires Material, the Institution will submit the request to AERO by completing the request form on the AERO website.
- (v) When the Material in the version required is available for download, the Institution will download it and provide it to the Student.

4.3. In instances where an Institution downloads a Conversion Ready File from the repository in order to produce an Accessible Format that is not available on the repository, the Institution or its sub-contractor will send the Accessible Format file it produces to AERO to deposit and secure in the repository. The Institution or its subcontractor will destroy the Conversion Ready File provided to produce the new version.

5. Producers' Obligations

5.1. The Producer undertakes to make versions using files supplied by the Publisher only for Students.

- 5.2. No file or Material produced from a file supplied under this Agreement shall be supplied by Producer to any person or entity outside Canada without the prior written permission of the Publisher that supplied the file.
- 5.3. Specific to Student Requests
- (i) The Producer undertakes not to make any textual changes to materials manufactured using files supplied by the Publisher without the prior written consent of Publisher. However, this prohibition does not apply to changes in format, pagination, layout, structure or to the inclusion or exclusion of non-textual Material that may be needed for reasons of technology or to meet the specific perceptual or instructional needs of the Student.
 - (ii) The Producer must ensure that any third party contracted to manufacture or assist in the manufacturing of materials under this Agreement is under the same obligations as the Producer, and that any agreement between the Producer and the third party states specifically that the third party acquires no intellectual property rights in any materials manufactured using files supplied by the Publisher; can make no use of any materials supplied by the Publisher except as requested by the Producer for the purposes set out in this Agreement; and must return all materials supplied by the producer to AERO or the Institution.

6. Publishers' Obligations

6.1. General

- (i) The Publisher will supply AERO with the name or names and contact information including e-mail addresses of all employees authorized to process requests received under this Agreement, and will ensure that this information is kept current.
- (ii) The Publisher grants the Producers a non-exclusive and non-assignable licence to make copies of the Materials under this Agreement.
- (iii) The Publisher warrants that it has the right, title or other legal authority to provide the materials to AERO and Producers for the purposes of this Agreement.
- (iv) The Publisher will notify AERO in writing if it requires deletion of specific Conversion Ready Files.
- (v) The Publisher may request deletion of the AERO Conversion Ready File pursuant to clause (iv) where it: becomes aware of an error in its Materials; becomes aware of a breach relating to those Materials; or loses rights to any Materials. In the last instance, where possible, the Publisher will provide the name of the entity that holds the rights.
- (vi) The Publisher will participate in the reviews and evaluation process of the AERO system with AERO and Institutions and implement any necessary corrective action that may arise from that process.

6.2. Specific to Student Requests

- (i) On receiving a request in the prescribed format, the Publisher will deliver or cause to be delivered to AERO a Conversion Ready File of the requested Materials within five (5) Business Days. Delivery will be by any appropriate mechanism, including but not limited to:
 - ◆ upload to AERO website;
 - ◆ file transfer protocol (ftp); or
 - ◆ email.
- (ii) If a Conversion Ready File is not available, then send hard copy via mail or courier.
- (iii) If delivery will exceed five (5) Business Days, the Publisher will notify AERO so that AERO can notify the Institution making the request that the Materials may not be available when the Student requires it and other alternatives may need to be found to address the Student's need.
- (iv) If the Publisher is not authorized to supply materials requested by AERO, the Publisher will use reasonable efforts to secure such authorization if the materials are published by a Related Company, and/or advise AERO of the organization that may be able to provide the material.

7. Term of Agreement

- 7.1. This Agreement comes into effect on July 31st, 2012 for those Parties that have signed on or before that date.
- 7.2. Other Institutions or Publishers may become Parties to the Agreement by becoming signatories to the Agreement at any time. The Agreement will come into effect with regard to such a Party on the date of its signature.
- 7.3. This Agreement has no end date.

8. Becoming a Party to the Agreement

- 8.1. A Party may become a signatory to this Agreement by sending a written notice to AERO setting out its intention to do so. The notice must be sent by a person with authority to bind the Party. The notice must include reference to this Agreement, the Party's desire to participate and intention to comply with its obligations, and the name and title of the person sending the notice and contact info for notices. A template is attached as Schedule B.

9. Changing the Agreement

- 9.1. The Agreement will be reviewed on an annual basis in consultation with all Parties.
- 9.2. Where changes are needed, 60 Days' notice of the changes will be provided to all Parties in writing by the Ministry.

10. Breach of the Agreement

- 10.1. If a Publisher becomes aware of a breach of this Agreement by an Institution, the Publisher shall provide the Institution with written notice of the breach and an opportunity to remedy the breach as soon as possible, and in any event within 15 Days of receipt of the written notice. The Publisher shall copy AERO on the written notice.
- 10.2. An Institution that receives the notice set out in 10.1 shall take appropriate steps in order to remedy the breach.
- 10.3. If the breach is not remedied to the satisfaction of the Publisher, acting reasonably, the Publisher may request that the Ministry remove the Institution as a Party to this Agreement.
- 10.4. The Ministry will consider and, where appropriate, act upon such requests.

11. Withdrawal from Agreement

- 11.1. A Publisher or an Institution may withdraw from the Agreement on 30 Days' written notice to AERO.
- 11.2. A Publisher may withdraw from this Agreement immediately on written notice if AERO or an Institution is in material breach of this Agreement and has failed to remedy such breach within fifteen (15) Days of written notice requiring it do so.
- 11.3. A material breach of this Agreement is any breach of clauses; 3.6, 3.7, 4.2 (ii), 5.1, 5.3(ii), 13.1.
- 11.4. When a Publisher withdraws from this Agreement, AERO will ensure that all Conversion Ready Files it received from that Publisher are destroyed, deleted or otherwise made permanently unusable.
- 11.5. When an Institution withdraws from this Agreement, the Institution will notify AERO and will from the date of withdrawal ensure that no copies are made from files supplied under this Agreement by any Publisher and that

all such files supplied by that Publisher are destroyed, deleted or otherwise made permanently unusable.

- 11.6. Withdrawal from this Agreement by any Party will not affect any rights or obligations that have accrued up to the date of withdrawal provided that the withdrawn Party is not in material breach of this Agreement.

12. Termination of the Agreement

- 12.1. The Ministry may terminate the Agreement, without cause, on 30 Days' written notice to the other parties.
- 12.2. The Ministry may terminate the Agreement, for cause, immediately on written notice to an Institution.

13. Other Provisions

- 13.1. No Party to this Agreement may assign this Agreement, without the prior written consent of the Ministry. No assignment will relieve the Party assigning from the obligations under this Agreement to the date of assignment.
- 13.2. This Agreement will be governed by the laws of the Province of Ontario and the laws of Canada.
- 13.3. All notices required under this Agreement must be sent by registered mail or by fax, or by e-mail to AERO, a Publisher or to an Institution at the address(es) listed on the AERO website.
- 13.4. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.
- 13.5. Nothing in this Agreement affects any legal or moral rights in and to the Materials, which rights exist or may exist in the future by virtue of the Copyright Act, any other legislation or at common law; or
- 13.6. Nothing in this Agreement creates a legal or commercial relationship between Publishers and Producers beyond the provisions of this Agreement.

Schedule A: The following document is a sample template to be used by an Institution.

The following template is a sample student agreement, as per section 4.2 (ii) of this Agreement

INSTITUTIONAL LOGO INSERTED HERE

Permission Agreement:
Students Receiving Accessible Materials
For Use with Assistive Technology

Permission for the use of the Accessible Format version of this material is expressly granted under the following terms and conditions:

- (i) I have paid for a retail, commercially available copy of an edition of the text and kept my receipt.
- (ii) I have shown my copy of the text and my receipt to the transcription service provider on campus.
- (iii) I will use the Accessible Format version only for my own educational purposes.
- (iv) I will not copy or share the Accessible Format version with others.

Violation of this Agreement may be in contravention of the Copyright Act of Canada (R.S.C., 1985, c. C-42, as amended). By receiving this Accessible Format version of the material, you indicate you have read, understood, and accepted the terms of this Agreement.

(Additional Institution-specific information required will be inserted here: eg. violation of this Agreement may also result in academic discipline)

Student Name (Print)

Student Number

Date (dd/mm/yyyy)

Student Signature

Schedule B: Template for Becoming a Signatory to the Agreement

The following template is a signatory memo as mentioned in section 8.1 of this Agreement. The below template must be completed and emailed to Kirsty.Dixon@ontario.ca. Confirmation of receipt will be emailed to the sender.

<Organization Letterhead>

<Signatory name>

<signatory title>

<signatory email and phone number>

Nancy Sanders
Director of Provincial Schools Branch
Ministry of Education
Alternative Education Resources for Ontario
255 Ontario Street South
Milton, ON L9T 2M5

Regarding: Postsecondary Signing Authority to join AERO

Please accept this letter as written confirmation that (Name of Organization) will become a signatory to the Memorandum of Agreement (MOA) for Alternative Education Resources for Ontario (AERO) the Ontario Digital Repository for Alternative Format.

As a signatory, I confirm that I have authority to bind (Name of Organization), and that this organization intends to/will comply with the obligations set out in the aforementioned MOA. The key contact for the purposes of any future notices of amendment or changes to the MOA would be (name, email, fax and phone number).

Sincerely,

I (Name Inserted) have authority to bind the organization.

Signature

Date

Witness Name (Please Print)

Witness Signature

Date

**All Ontario Publicly Assisted Postsecondary Institutions as of June 11,
2012**

Algoma University	Cambrian College
Brock University	Canadore College
Carleton University	Centennial College
University of Guelph	La Cité Collégiale
Lakehead University	Conestoga College
Laurentian University	Confederation College
McMaster University	Durham College
Northern Ontario School of Medicine	Fanshawe College
Nipissing University	George Brown College
Ontario College of Art & Design University	Georgian College
University of Ottawa	Humber College
Queen's University	Lambton College
Ryerson University	Loyalist College
University of Toronto	Mohawk College
Trent University	Niagara College
University of Ontario Institute of Technology	Northern College
University of Waterloo	St. Clair College
The University of Western Ontario	St Lawrence College
Wilfrid Laurier University	Sault College
University of Windsor	Seneca College
York University	Sheridan College
Algonquin College	Sir Sandford Fleming College
Collège Boreal	