

This Trademark and Copyright Licence Agreement,
made this 10 day of January, 2017

BETWEEN

Her Majesty the Queen in Right of Canada and
the Department of Foreign Affairs, Trade and Development,
as represented by
the Minister of International Trade ("**DFATD**")

AND

The Corporation of the Council of
Ministers of Education of Canada,
a corporation duly incorporated under the laws
of Ontario, whose principal office or place
of business is 95 St. Clair Avenue West, Suite 1106
Toronto ON M4V 1N6 ("**CCMEC**"),
the corporate body of the Council of
Ministers of Education, Canada ("**CMEC**")

WITNESSES THAT:

- I. WHEREAS DFATD is the owner of the copyright in the works reproduced in Schedule A attached hereto (hereinafter referred to as "**WORKS**") and is the owner of the trademark reproduced in Schedule B attached hereto (hereinafter referred to as "**MARK**");
- II. AND WHEREAS DFATD's trademark rights in the MARK relate to certain Goods and/or Services, as defined under Section 1 below;
- III. AND WHEREAS CCMEC is the corporate body of CMEC, an intergovernmental body founded in 1967 by ministers of education to provide leadership in education at the pan-Canadian and international levels and which contributes to the fulfillment of the constitutional responsibility for education conferred on provinces and territories;
- IV. AND WHEREAS CCMEC, as the corporate body of CMEC and, as such, as a representative of provincial and territorial governments in Canada, is engaged in the international promotion of education in Canada at the behest of provincial and territorial government departments and agencies;
- V. AND WHEREAS it has been DFATD's intent that CCMEC and the provincial and territorial governments represented by CCMEC be permitted to reproduce and distribute the WORKS and use the MARK reproduced in Schedules A and B in Canada and internationally.

VI. AND WHEREAS CCMEC is interested in acquiring, and DFATD is willing to grant to CCMEC, rights to the use of the MARK and the reproduction and distribution of the WORKS, in accordance with the terms and conditions contained herein,

NOW THEREFORE, in consideration of the covenants contained in this Licence Agreement, and other good and valuable consideration the adequacy and receipt of which is hereby confirmed, the Parties agree as follows:

1. DEFINITIONS

1.1 “**Goods**” means printed publications, namely brochures, informational pamphlets, maps, guides, charts; promotional items, namely pins, badges, backpacks, binders, mugs, notepads, stickers, bookmarks, presentation folders; prerecorded CDs, prerecorded DVDs, namely CDs, DVDs containing information concerning educational opportunities in Canada and concerning Canadian educational institutions; data storage devices, such as USB keys; and any further merchandising and promotional items as may be agreed between the Parties and subject to a written addendum to this Licence Agreement.

1.2 “**Licence Agreement**” means this agreement, its recitals, and all schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof. This Licence Agreement supersedes and replaces any and all previous or existing similar agreements between DFATD and CCMEC, whether written or oral.

1.3 “**MARK**” means the trademark reproduced in Schedule B attached hereto, the intellectual property rights therein vesting in DFATD.

1.4 “**Party**” means either one of the signatories to this Licence Agreement and includes their respective servants, agents, and employees acting within the scope of their employment in reference to the subject matter of this Licence Agreement. “**Parties**” means the signatories to this Licence Agreement and includes their respective servants, agents, and employees acting within the scope of their employment in reference to the subject matter of this Licence Agreement.

1.5 “**Promotional Materials**” means printed materials and interactive electronic communication services including websites, social media content, and promotional videos produced for the purposes of carrying out the Services or any further promotional materials as may be agreed between the Parties and set out in a written addendum to this Licence Agreement.

1.6 “**Services**” means the promotion of Canadian educational institutions and the pursuit of educational opportunities in Canada for foreign students and the development of linkages between Canadian and foreign educational institutions through the distribution of informational materials in print and on-line; organization of educational

fairs and informational events for journalists, educational counsellors, and students concerning Canadian educational institutions and opportunities; organization and promotion of networking events that promote linkages between Canadian and international education institutions; interactive electronic communication services, namely the operation of websites and social media messaging offering information and guidance concerning educational institutions and opportunities in Canada; and production of promotional videos concerning Canadian educational institutions and opportunities.

1.7 “**Sublicence Contract**” means a Trademark and Copyright Sublicence Contract entered into between CCMEC and a Sublicensee and all its schedules, as the same may be amended from time to time in accordance with its provisions.

1.8 “**Sublicensee**” means any educational institution or nongovernmental organization that has been granted by CCMEC a sublicence to use the MARK and/or to distribute materials that reproduce the WORKS in accordance with the terms and conditions of a Sublicence Contract.

1.9 “**Term**” means the whole of the period of time described in Section 9 of this Licence Agreement.

1.10 “**WORKS**” means the works of copyright reproduced in Schedule A attached hereto, the intellectual property rights therein vesting in DFATD.

2. GRANT OF LICENCE

2.1 DFATD hereby confirms that the use made by CMEC and/or CCMEC of the MARK, and CMEC's or CCMEC's reproduction and distribution of one or all of the WORKS, between May 2016 and the date of execution of this Licence Agreement, was authorized by DFATD and consistent with the terms and conditions agreed to by the Parties.

2.2 Subject to this Licence Agreement, DFATD hereby grants to CCMEC a royalty-free, sole licence in Canada and other countries of the world to use the MARK in association with the Goods and Services, and reproduce and distribute the WORKS on Promotional Materials, in both cases for the purpose of carrying out the Services.

2.3 Subject to this Licence Agreement, DFATD further grants to CCMEC the right to sublicense the use of the MARK in association with the Goods and Services and to reproduce and distribute the WORKS on Promotional Materials for the purpose of carrying out the Services, in Canada and in other countries in the world, to a Sublicensee subject to the terms and conditions set out in a Sublicence Contract entered into between CCMEC and said Sublicensee.

2.4 Use of the MARK by CCMEC and by any Sublicensees shall be deemed to be use by and shall ensure to the benefit of DFATD within the meaning of the *Trade-marks Act*.

2.5 DFATD and CCMEC shall refrain from directly or indirectly referring to the goods, services or activities of the other in any manner likely to suggest that they or their respective goods, services or activities, other than those covered under this Licence Agreement, are those of, or are associated with, the goods, services, or activities of the other, and shall take such active steps as are reasonably necessary to prevent such an impression from arising.

3. ROYALTIES AND FEES

3.1 CCMEC may charge an administrative fee to Sublicensees for the granting of a sublicense under a Sublicence Contract, among other things, to recoup marginal costs incurred by CCMEC in relation to the administration of this Licence Agreement.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 CCMEC acknowledges DFATD's exclusive ownership of all intellectual property rights in and to the MARK and the WORKS reproduced in Schedule A and Schedule B attached hereto and in any further marks or works which may be the subject of a written addendum to this Licence Agreement. DFATD shall, at its own expense and in its own discretion, maintain trademark protection for whatever name or feature of the MARK it deems appropriate. When requested, CCMEC will provide appropriate samples or specimens to support such applications, sign all applications and documents reasonably necessary for DFATD to maintain protection for the MARK and WORKS, and, if necessary, provide any testimony that might be necessary to maintain such protection.

5. OBLIGATIONS OF CCMEC

5.1 CCMEC shall exercise due care, skill, and diligence in distributing the Goods and producing, reproducing, and distributing Promotional Materials to which the MARK or WORKS are affixed.

5.2 CCMEC shall diligently monitor and enforce any and all Sublicence Contracts it enters into with Sublicensees. In the event a Sublicensee fails to perform or commits a breach of the terms and conditions of its Sublicence Contract with CCMEC, CCMEC shall give the Sublicensee written notice advising of the default and requiring that it be remedied within thirty (30) days of the date of the notice. In the event said default is not remedied to the satisfaction of CCMEC within the prescribed time, CCMEC shall immediately terminate the Sublicence Contract.

5.3 CCMEC shall give DFATD prompt notice of any unauthorized use of the MARK or of any confusingly similar trademarks or trade names by third parties of which it becomes aware and, where possible, provide a sample of such unauthorized use and cooperate with DFATD in all reasonable respects in enforcing its rights including, at the request of DFATD, and at DFATD's sole cost, being added as a party to any proceedings instituted by DFATD to enforce the intellectual property rights that are the subject of this Licence Agreement. DFATD shall give CCMEC prompt notice of any unauthorized use of the MARK or of any confusingly similar trademarks or trade names by third parties of which it becomes aware and, where possible, provide a sample of such unauthorized use. CCMEC shall have no right to institute proceedings in its own right for copyright infringement, trademark infringement, or passing off without DFATD's prior written consent.

5.4 CCMEC shall ensure that there are no contradictions or inconsistencies between the terms and conditions set out in this Licence Agreement and the terms and conditions to be included in Sublicence Contracts between CCMEC and its Sublicensees. CCMEC shall not violate or do anything to violate or encourage violation of the terms and conditions set out in this Licence Agreement or any Sublicence Contract, and shall diligently act upon any actual or suspected violation of such terms and conditions.

5.5 CCMEC shall, wherever practical, include one of the notices, as appropriately shown in Schedule D attached hereto, on its Goods and Promotional Materials.

5.6 When use occurs in Canada, the notice shall be in the English and French languages in accordance with the wording set out in Schedule D attached hereto. When use occurs outside Canada, the notice may also include an equivalent notice in the local language.

5.7 Nothing herein contained authorizes CCMEC to use, or to authorize the use of, the name, crest, logos, flags, or other insignia, mark, or identifier of Her Majesty the Queen in Right of Canada, or of DFATD, other than as provided in this Licence Agreement.

5.8 CCMEC shall not engage, and shall take reasonable measures to ensure that Sublicensees do not engage, in any conduct or use the MARK or WORKS in any way that, in the reasoned opinion of DFATD, may bring DFATD into public disrepute, scandal, or ridicule or so as to reflect unfavourably upon Her Majesty the Queen in right of Canada or DFATD.

5.9 CCMEC shall keep true and accurate electronic records of uses made of the MARK or WORKS by CCMEC and the Sublicensees and maintain such records during the Term and for a period of two (2) years following the expiration or termination of this Licence Agreement. Such records shall provide sufficiently detailed information relating to uses made of the MARK or WORKS by CCMEC and the Sublicensees.

5.10 Once a year, on June 1st, CCMEC shall submit to DFATD the name and institutional contact information of all then-current Sublicensees and shall, upon ten (10) business days of a notice of a request made by DFATD, provide access to DFATD, or its authorized auditors, to make periodic audits of CCMEC's records, relevant to the determination of compliance by CCMEC with the terms and conditions of this Licence Agreement.

5.11 CCMEC shall comply with all applicable laws.

6. QUALITY CONTROL AND SAMPLES

6.1 All Goods and Promotional Materials shall be of a high quality, free of defects in design, material, or workmanship, and comply with the Brand Use Guidelines accessible on-line via the website uniform resource locator (URL) referred to in Schedule C attached hereto.

6.2 At the request of DFATD, CCMEC shall submit to DFATD for approval, at no more than a reasonable cost to CCMEC, samples of Goods and Promotional Materials that it intends to distribute, or that its Sublicensees have advised CCMEC that they intend to manufacture and sell or distribute. Unless DFATD provides written notice to the contrary within twenty-one (21) days following submission of such samples by CCMEC, DFATD will be deemed to have approved of same. CCMEC agrees that once DFATD has approved CCMEC's samples of proposed Goods and Promotional Materials, CCMEC shall not depart from the approved samples. Should the cost of submitting the samples to DFATD exceed a reasonable cost to CCMEC, as determined in the sole discretion of CCMEC, DFATD shall participate equally in the cost of submitting same, failing which CCMEC shall not be required to submit samples to DFATD.

7. REPRESENTATIONS AND WARRANTIES

7.1 DFATD hereby represents that it has all rights necessary to grant CCMEC the rights granted in Subsections 2.2 and 2.3 and that the granting of such rights to use the MARK and reproduce and distribute the WORKS does not infringe on the intellectual property rights of third parties nor violate DFATD's contractual obligations to third parties.

7.2 CCMEC hereby represents and warrants that:

7.2.1 It is a duly incorporated, validly subsisting corporation, in good standing, incorporated under the laws of Ontario;

7.2.2 It has the corporate power, capacity, and resources to enter into, exercise the rights herein granted to it, fully perform, and be responsible for its obligations under this Licence Agreement; and

7.2.3 Notwithstanding provisions under Section 11 of this Licence Agreement, it will not take any action, nor assist any third party in taking any action, to interfere with or challenge DFATD's exclusive ownership of all intellectual property rights that are the subject matter of this Licence Agreement, including, but not limited to, using or making an application to register the same or confusingly similar marks, nor commence or participate in cancellation, expungement, or opposition proceedings adverse to DFATD's rights in the MARK or WORKS. This obligation shall continue to be binding even after expiration, termination, cancellation, or lapse of this Licence Agreement.

8. INDEMNIFICATION

8.1 DFATD agrees to indemnify and hold harmless CCMEC, its servants, agents, and employees from and against any and all damage, loss, and expense incurred as a result of the breach of any of DFATD's representations or warranties herein. This indemnification shall become operative only after a final judgment, order, or decree is issued that contains a finding that DFATD's use, reproduction, or distribution of, and license to CCMEC, of the MARK and/or WORKS infringed on the intellectual property or violated the contractual rights of any third party and that DFATD had knowledge thereof.

8.2 Other than any loss or expense which is the subject of Subsection 8.1 above, CCMEC agrees to indemnify, defend, and hold harmless DFATD, its servants, its agents, and employees from and against any and all loss and expense arising out of any third-party claims, demands, actions, or other proceedings, made, sustained, brought, or prosecuted by any person in any manner, based upon, or occasioned by the performance or non-performance by CCMEC of its rights and obligations hereunder, including breach of representations and warranties hereunder.

9. TERM

9.1 The Term of this Licence Agreement shall commence on the date first written above and shall continue for a period of five (5) years, renewable for successive five-year periods on the consent of both Parties, subject to Subsection 9.2 and Section 10 hereof.

9.2 Provided CCMEC is not in breach of any of the terms and conditions of this Licence Agreement at the end of the Term, this Licence Agreement shall be automatically renewed for successive five-year terms, subject to Section 10 below, unless either Party gives written notice to the other Party of the nonrenewal of this Licence Agreement at least sixty (60) days prior to the end of the then-current Term.

10. TERMINATION

10.1 Notwithstanding Section 9 above, this Licence Agreement may be terminated prior to its expiration:

10.1.1 Upon written notice of termination given by either of the Parties, at any time, and such termination shall take effect one year after the receipt of such notice by the other party;

10.1.2 If CCMEC fails to perform or commits a breach of any of the covenants and conditions herein contained, and such default is not cured to the satisfaction of DFATD within ninety (90) days of DFATD giving to CCMEC notice of the default; or

10.1.3 Automatically, and without notice:

1. If CCMEC becomes bankrupt or otherwise has a receiving or winding-up order or dissolution order made or sought against it or discontinues the conduct of its affairs for a period exceeding six (6) consecutive months; or
2. Upon written agreement of the Parties.

10.2 Any termination of this Licence Agreement under this section will be without prejudice to the rights and remedies of either Party with respect to any provisions or covenants arising out of breaches committed prior to such termination.

11. EFFECT OF EXPIRATION OR TERMINATION

11.1 Upon the expiration or termination of this Licence Agreement:

11.1.1 The obligations of DFATD hereunder shall immediately cease;

11.1.2 CCMEC's rights under Subsections 2.2 and 2.3 hereof shall immediately cease and CCMEC shall forthwith discontinue all uses, in any manner, of the MARK and of the WORKS;

11.1.3 All Sublicence Contracts granted by CCMEC shall also automatically terminate and CCMEC shall promptly advise Sublicensees of the termination in writing. Such termination notices shall specify that the Sublicensee's rights to the use of the MARK and to reproduce or distribute the WORKS have ceased, and shall require the Sublicensees to immediately destroy any Goods or Promotional Materials bearing the MARK or WORKS that remain in Sublicensees' possession at termination. CCMEC shall provide DFATD with a list of the names of all Sublicensees to which termination notices are sent.

11.2 All obligations of the Parties that expressly or by their nature survive expiration or termination of this Licence Agreement shall continue in full force and effect subsequent to and notwithstanding such expiration or termination, until they are satisfied or by their nature expire. For greater clarity, and without limiting the generality of the foregoing, the following survive expiration or termination of this Licence Agreement:

11.2.1 Subsection 2.5 (Refrain from referring to the goods and services of the other);

11.2.2 Subsection 5.9 (Records);

11.2.3 Subsection 5.10 (Audits);

11.2.4 Section 7 (Representations and warranties); and

11.2.5 Section 8 (Indemnification).

11.3 DFATD hereby undertakes and agrees that, if DFATD terminates this Licence Agreement without cause, DFATD will not grant any licence to use the MARK or to reproduce or distribute the WORKS to any other entity for a period of two (2) years following such termination.

12. NO AGENCY

12.1 This Licence Agreement does not create an agency relationship, partnership, or joint venture between the Parties, nor does either Party have authority, express or implied to bind the other or to pledge the credit of the other.

13. NOTICE AND COMMUNICATIONS

13.1 Any notice, demand, or other communications required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if:

13.1.1 Delivered in person during normal business hours on a business day and left with a receptionist or other responsible employee of the relevant Party at the applicable address set forth below, with the identity of the person receiving the document confirmed by electronic means; or

13.1.2 Sent by registered mail; or

13.1.3 Sent by any electronic means of sending messages, including telex or facsimile transmission, during normal business hours on a business day, charges prepaid, and confirmed by prepaid first class mail.

In the case of a notice to DFATD, addressed to it at:

Department of Foreign Affairs, Trade and Development
International Education and Youth Division
125 Sussex Drive
Ottawa ON K1A 0G2

In the case of a notice to CCMEC, addressed to it at:

Corporation of the Council of Ministers of Education of Canada
95 St. Clair Avenue West, Suite 1106
Toronto ON M4V 1N6

13.2 Each notice sent in accordance with this section shall be deemed to have been received:

13.2.1 On the day it was delivered; or

13.2.2 On the same day that it was sent by electronic transmission, or on the first business day thereafter if the day on which it was sent by electronic transmission was not a business day.

13.3 Either Party may change its address for notice by giving notice to the other as provided in this section.

14. GOVERNING LAW

14.1 This Licence Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario and the federal laws of Canada applicable therein. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario and the Federal Court of Canada with respect to any matter arising hereunder or related hereto.

15. GENERAL PROVISIONS

15.1 **Assignment.** This Licence Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Licence Agreement, nor any of the rights, interests, or obligations hereunder shall be assigned by CCMEC without the consent of DFATD, which consent shall not be unreasonably withheld. Any attempts by CCMEC to assign this Licence Agreement, or any of its rights, interests, or obligations hereunder without the consent of DFATD shall be void and of no effect.

15.2 **Entire agreement.** This Licence Agreement, including the recitals, all its schedules and all documents incorporated by reference, constitutes the entire agreement and understanding between the Parties with respect to its subject matter and supersedes any prior agreement or communication of any kind between the Parties, whether written or oral.

15.3 **Amendment of agreement.** Either Party or both Parties may propose to amend, modify, or add to this Licence Agreement. Each Party must inform the other of any such proposal to amend, modify, or add to this Licence Agreement within a minimum time frame, and prior to negotiations regarding the amendments proposed. Any amendments, modifications, or additions to this Licence Agreement must be made in writing and signed by both Parties.

15.4 **Amendment of the MARK and WORKS.** CCMEC may propose to amend or modify the MARK and/or WORKS. DFATD undertakes to respond to any such proposal within a reasonable time frame and will consult CCMEC prior to filing any applications with the Canadian Intellectual Property Office. DFATD retains full discretion as to whether any additional applications are filed. This Licence Agreement will continue to apply, mutatis mutandis, as between the Parties in respect of any such amendment or modification of the MARK and/or the WORKS pending an addendum to this Licence Agreement identifying any new marks or works.



15.5 **No Waiver.** The failure of either Party to enforce any or all of its rights hereunder as they accrue shall not be deemed a waiver of those rights, all of which are expressly reserved.

15.6 **Execution.** This Licence Agreement may be executed in more than one counterpart, all of which shall be deemed to be originals.

15.7 **Conflict.** If there is a conflict or ambiguity between this Licence Agreement and any of its schedules or Sublicence Contracts, this Licence Agreement shall prevail.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

EN FOI DE QUOI, les parties ont signé le présent accord de licence à la date inscrite au début du présent document.

<p>Sa Majesté la Reine du chef du Canada, représentée par la ministre du Commerce international</p> <p>Par :  (signature)</p> <p>M. Cameron MacKay Directeur général Secteurs commerciaux Ministère des Affaires étrangères, du Commerce et du Développement</p>	<p>La Corporation du Conseil des ministres de l'Éducation, Canada</p> <p>Par :  (signature)</p> <p>M^{me} Chantal C. Beaulieu Directrice générale Corporation du Conseil des ministres de l'Éducation, Canada (CCMEC)</p>
---	--

SCHEDULE A — WORKS

1. **GROW LEAF DESIGN** Copyright Reg. 1127555



2. **GROW LEAF EDUCANADA DESIGN** Copyright Reg. 1127556



SCHEDULE -B — MARK

Trademark, as appearing in the Trademark application no. 1774481



EduCanada[™]

A world of possibilities
Un monde de possibilités

SCHEDULE C— Brand Guidelines

The Brand Guidelines are accessible on-line via the following website uniform resource locator (URL) in the Download Zone:

www.extranet-educanada.ca

SCHEDULE D — Notice Guidelines

EduCanada is a brand that supports the international education offer of Canadian provinces and territories. EduCanada and the leaf design is a trademark of the Government of Canada and is subject to a Master Licence Agreement between the Council of Ministers of Education, Canada (CMEC), and Department of Foreign Affairs, Trade and Development (DFATD).

ÉduCanada est une marque qui appuie l'offre éducative des provinces et territoires au Canada sur la scène internationale. ÉduCanada et la feuille d'érable est une marque de commerce du Gouvernement du Canada dont l'utilisation est régie par un accord de licence-cadre entre le Conseil des ministres de l'Éducation (Canada) et le Ministère des Affaires étrangères, du Commerce et du Développement (MAECD).