

Innovation Partnership: Procurement by Co-Design Toolkit

Sample Collaboration Agreement

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**PROVIDER Technology Testing and Evaluation Agreement
(No Access to Personal Information)
Schedule “A” – General Terms and Conditions**

1. **The Project**

1.1 **Key Definitions**: In this Agreement, the following capitalized terms have the following meanings, and all other capitalized terms have the meanings set out elsewhere in this Agreement:  “**Documentation**” means end user documentation relating to the Technology provided by VENDOR to PROVIDER in connection with the Project;  “**Project**” means the installation, access and use by PROVIDER and PROVIDER Users of the Technology for the sole purpose of testing and evaluating the Technology as set out in this Agreement;  “**Pilot Plan**” means a written plan for the Project that is signed by both Parties and is expressly identified in the Cover Page, as revised by the express, written agreement of the Parties in their discretion from time to time;  “**Technology**” means the software, computer hardware, equipment and technology-based services identified and described in the Cover Page or the Project Plan;  “**PROVIDER Data**” means any and all data provided by or on behalf of PROVIDER or a PROVIDER User to VENDOR or any of VENDOR’s personnel in connection with this Agreement or the Project, or created, processed or stored by or on behalf of PROVIDER or a PROVIDER User using the Technology, or used by or on behalf of PROVIDER or a PROVIDER User in connection with the Project or the Technology, and all data and information derived from any of that data;  “**PROVIDER Equipment**” means computer hardware (including personal computers and mobile devices) and other equipment owned or used by or on behalf of PROVIDER or a PROVIDER User;  “**PROVIDER User**” means any of PROVIDER’s personnel, PROVIDER’s service providers, PROVIDER’s patients or health care professionals or any other person who accesses or uses PROVIDER’s facilities or services.

1.2 **Details**: The purpose and scope of the Project are described generally in the Cover Page and detailed in the Pilot Plan (if any). The Project will start on the date specified in the Cover Page and will continue for the duration specified in the Cover Page, unless terminated earlier in accordance with this Agreement or unless the Parties expressly agree in writing to change the start date or duration of the Project.

1.3 **License for Technology**: Subject to the provisions of this Agreement, VENDOR hereby grants to PROVIDER a non-exclusive, royalty-free, right and license during the term of this Agreement to:  install, access and use, and to authorize PROVIDER Users to install, access and use, the Technology for the purposes of the Project; and  use, reproduce and distribute to PROVIDER Users, and to authorize PROVIDER Users to use and reproduce, the Documentation for the purposes of the Project.

1.4 **Installation/Access/Use of Technology:**

1. **General**: Subject to the provisions of this Agreement, VENDOR will make the Technology available for installation, access and use by PROVIDER and PROVIDER Users for the Project.
2. **Local Installation**: If the Technology is be installed on PROVIDER Equipment or otherwise physically located at any of PROVIDER’s facilities, then VENDOR will provide the required copies of the Technology to PROVIDER and:  unless the Cover Page or the Project Plan expressly states otherwise, PROVIDER in its discretion will determine the PROVIDER Equipment on which the Technology is installed or to which the Technology is connected, and there is no restriction on the number of installations, or locations or kinds of PROVIDER Equipment on which the Technology will be installed or used or to which the Technology may be connected; and  VENDOR will not install the Technology on any PROVIDER Equipment without PROVIDER’s express, prior written consent in each instance.
3. **Remote Access**: If the Technology is to be installed on VENDOR’s equipment and remotely accessed and used by PROVIDER Users, then VENDOR will facilitate PROVIDER Users’ remote access to and use of the Technology, including by providing or provisioning required access codes and credentials for PROVIDER Users.
4. **PROVIDER Users**: Unless the Cover Page or the Project Plan expressly states otherwise:  PROVIDER in its discretion will determine the PROVIDER Users who may be authorized by PROVIDER to access and use the Technology; and  there is no restriction on the number, kinds or locations of PROVIDER Users that PROVIDER may authorize to install, access and use the Technology.
5. **VENDOR Assistance**: Upon request by PROVIDER, VENDOR will provide PROVIDER and PROVIDER Users with information and assistance reasonably required to facilitate the installation, access, use and removal by PROVIDER and PROVIDER Users of the Technology pursuant to this Agreement.

1.5 **Suspension/Removal of Technology**: If PROVIDER reasonably believes that the installation or use of the Technology may present any risk (including risk of harm, damage, loss or liability) to PROVIDER or any of PROVIDER’s facilities, systems or equipment (including PROVIDER Equipment) or to any other person (including any PROVIDER User), then PROVIDER in its discretion may immediately suspend any and all access to or use of the Technology and remove the Technology from any and all PROVIDER Equipment and terminate any and all connections between the Technology and any of PROVIDER’s systems and equipment (including PROVIDER Equipment).

1.6 **Risk of Damage and Loss**: Notwithstanding any other provision of this Agreement, VENDOR accepts any and all risks of damage and loss to the Technology arising from, connected with or relating to the installation, access, use and removal of the Technology by or on behalf of PROVIDER and PROVIDER Users.

1.7 **PROVIDER Users**:

1. **Non-Employees**: Notwithstanding any other provision of this Agreement (including the Cover Page or the Project Plan), under no circumstances will VENDOR initiate contact or communication with any PROVIDER User who is not a PROVIDER employee (e.g. PROVIDER’s patients or other persons who access or use PROVIDER’s facilities or services) without PROVIDER’s express prior written consent in each instance.
2. **PROVIDER Employees**: Unless the Cover Page or the Project Plan expressly specifies otherwise, VENDOR will not initiate contact or communication with a PROVIDER employee (except PROVIDER’s Project Manager) without PROVIDER’s express prior written consent in each instance.

1.8 **Feedback**:

1. **General**: During the Project, PROVIDER will provide (orally or in writing, as determined by PROVIDER in its discretion) to VENDOR comments and suggestions regarding the Technology based on the use of the Technology by PROVIDER Users during the Project (collectively “**Feedback**”).
2. **Use of Feedback**: Subject to sections  and , VENDOR in its discretion may use Feedback to enhance or improve the Technology, all without any compensation (except as expressly set out in this Agreement) to PROVIDER or any other person.
3. **Exception/Restriction**: Notwithstanding section or any other provision of this Agreement:  VENDOR may not use any PROVIDER Data or other Confidential Information (defined in section ) that is included or referenced in any Feedback; and  VENDOR will not attribute any Feedback to PROVIDER or any PROVIDER User (whether or not identified by name or otherwise) or disclose in any manner to any person that PROVIDER or any PROVIDER User has provided or will provide Feedback regarding the Technology.
4. **Disclaimer**: Feedback is provided to VENDOR without any representations, warranties, conditions or guarantees of any nature or kind whatsoever, whether express, implied or statutory, or arising from custom or trade usage or by any course of dealing or course of performance, including any representations, warranties, conditions or guarantees of or relating to accuracy or completeness. VENDOR uses Feedback at VENDOR’s own risk. Neither PROVIDER nor any PROVIDER User will have any liability to VENDOR or any other person arising from, connected with or relating to any Feedback.

1.9 **Additional Support by PROVIDER**: Subject to the provisions of this Agreement, during the Project PROVIDER will provide to VENDOR the additional support expressly set out in the Cover Page or the Project Plan, which additional support VENDOR will use for the sole purpose of the Project.

1.10 **Project Managers**: Each Party will appoint an individual to be the Party’s primary contact in connection with the Project (each a “**Project Manager**”). A Party’s Project Manager will have the Party’s authority to make decisions and give instructions on behalf of the Party regarding the Project, excluding decisions or instructions that would constitute an amendment to this Agreement or a waiver of any rights under this Agreement.

1. **Other Obligations**

2.1 **No Harmful Code, Etc**.: VENDOR will ensure that the Technology and Documentation, as and when provided or made available to PROVIDER or a PROVIDER User, does not contain any of the following:  any virus, worm, “Trojan Horse” or other code or routine that manifests contaminating or destructive properties that might damage, harm, detrimentally interfere with, or otherwise adversely affect, the Technology or Documentation or any computer system, hardware, software, equipment (including PROVIDER Equipment) or services in connection with which the Technology or Documentation is installed, operated or used or any related data;  any “time bomb”, “logic bomb”, “back door”, “drop-dead device” or other disabling or limiting code, design or routine that might be used to interrupt, lock, disable, erase, limit the functionality or use of, or otherwise adversely affect, or facilitate unauthorized access to, the Technology or Documentation or any computer system, hardware, software, equipment (including PROVIDER Equipment) or services in connection with which the Technology or Documentation is installed, operated or used or any related data; and (c) any functionality (including the capability to automatically communicate with or transmit data to any person or computer system) that is not expressly specified in the Documentation or otherwise disclosed in writing to PROVIDER.

2.2 **PROVIDER Facilities/Assets**:

1. **Definition**: In this Agreement, “PROVIDER Facilities/Assets” means PROVIDER’s premises and facilities, PROVIDER’s computer systems, hardware, software and equipment (including PROVIDER Equipment) and all related services used by or on behalf of PROVIDER or a PROVIDER User.
2. **General**: Notwithstanding any other provision of this Agreement, VENDOR will ensure that VENDOR’s personnel do not access or use any PROVIDER Facilities/Assets without PROVIDER’s express, prior written consent in each instance.
3. **PROVIDER Policies**: If and to the extent that PROVIDER consents to any of VENDOR’s personnel accessing or using any PROVIDER Facilities/Assets, then VENDOR will ensure as follows:  each of VENDOR’s personnel comply with PROVIDER’s specified restrictions and requirements regarding access to and use of PROVIDER Facilities/Assets and all of PROVIDER’s policies and procedures (including those relating to confidentiality, safety, security, privacy and conduct) regarding access to or use of PROVIDER Facilities/Assets as established and revised by PROVIDER from time to time;  when the VENDOR personnel no longer require access to or use of the PROVIDER Facilities/Assets in connection with the Project, the VENDOR personnel will promptly cease the access and use and return the PROVIDER Facilities/Assets to PROVIDER in substantially the same condition as when the PROVIDER Facilities/Assets were first made available to the VENDOR personnel; and  the VENDOR personnel will not interfere with PROVIDER’s use of PROVIDER Facilities/Assets or with PROVIDER’s normal business operations.

2.3 **Standard of Conduct/Legal Compliance**: VENDOR will perform VENDOR’s obligations under this Agreement and otherwise conduct itself in an ethical, fair, competent, professional and business-like manner and in accordance with applicable industry standards and best practices. VENDOR will not engage in any conduct that might adversely affect PROVIDER’s relationship with any PROVIDER User or PROVIDER’s business, reputation and goodwill generally. VENDOR will at all times comply with all applicable laws (including laws regarding personal information protection, data privacy, work permits and business licenses) relating to VENDOR, VENDOR’s business and VENDOR’s performance of VENDOR’s obligations under this Agreement.

2.4 **Regulatory Investigation**: If PROVIDER is subject to an investigation, audit, inquiry or request for information pursuant to applicable law that relates to the Project or the use of the Technology in connection with the Project (a “**Regulatory Investigation**”), then VENDOR will provide documents, information and other assistance reasonably requested by PROVIDER in connection with the Regulatory Investigation.

2.5 **Representations/Warranties by VENDOR**: VENDOR represents and warrants as follows:

1. **Rights/Capacity**: VENDOR has, and will have at all material times, all requisite corporate power, capacity, authority and approvals to enter into, execute and deliver this Agreement and perform fully VENDOR’s obligations under this Agreement, and all rights and licenses regarding the Technology and Documentation necessary for VENDOR to grant to PROVIDER the rights and licenses set out in this Agreement.
2. **No Conflict**: VENDOR’s execution and performance of this Agreement will not conflict with, or result in the breach of, any express or implied obligation or duty (contractual or otherwise) that VENDOR now or in the future owes to any other person.
3. **No Infringement of Third Party Rights**: The Technology and Documentation, and the installation, reproduction, access to and use of the Technology and Documentation by VENDOR, PROVIDER and PROVIDER Users in connection with the Project, will not infringe, violate or misappropriate the rights (including intellectual property rights) of any person.
4. **No Known Defects**: To the best of VENDOR’s knowledge, the use of the Technology by PROVIDER and PROVIDER Users does not present any risk of harm (including harm to safety, security or health), damage, loss or liability to PROVIDER or any PROVIDER Facilities/Assets or to any other person (including a PROVIDER User).

2.6 **Disclaimer**: The representations and warranties expressly set out in this Agreement are in lieu of all other representations and warranties (express, implied or statutory), including representations and warranties of merchantable quality or fitness for a particular purpose.

1. **Financial Arrangement**

3.1 **Consideration to PROVIDER**

1. **General**: In consideration of PROVIDER’s participation in the Project, VENDOR will pay or provide to PROVIDER the financial and other consideration set out in the Cover Page or the Project Plan in accordance with the payment schedule set out in the Cover Page or the Project Plan.
2. **Taxes**: The financial and other consideration set out in the Cover Page and the Project Plan are exclusive of all applicable federal, state, provincial and municipal sales, use, value-added, property, excise, import, foreign, withholding and other governmental taxes, duties, charges, levies, fees, excises, tariffs and assessments of any nature whatsoever now or hereafter imposed (collectively “**Taxes**”). VENDOR is solely responsible and liable for, and will promptly pay and remit to applicable governmental authorities, all Taxes that either Party is required by applicable law to collect, pay or remit with respect to any of the financial or other consideration that VENDOR pays or provides to PROVIDER under this Agreement.

3.2 **No Fees/Remuneration/Financing to VENDOR**: For greater certainty: VENDOR is not entitled to any fees, royalties or other remuneration or consideration arising from, connected with or relating to this Agreement, the Project or any of the access to or use of the Technology or Documentation by or on behalf of PROVIDER or any PROVIDER User pursuant to this Agreement; and under no circumstances will PROVIDER be obligated to provide financial support to, or make a financial investment in, VENDOR in respect of the Project or otherwise.

3.3 **Costs/Expenses**: Except as expressly set out in this Agreement, each Party is solely responsible and liable for all costs and expenses incurred by the Party or the Party’s personnel arising from, connected with or relating to the Project and this Agreement and the Party’s performance of the Party’s obligations under this Agreement.

1. **Proprietary Rights**

4.1 **Technology**: As between the Parties, VENDOR solely owns and will retain all rights, title and interests in, to and associated with the Technology, including any and all improvements or enhancements to the Technology made by VENDOR as a result of the Feedback. PROVIDER will not use, or authorize any other person to use, the Technology except as reasonably required for PROVIDER and PROVIDER Users to install and use the Technology for the Project.

4.2 **PROVIDER Facilities/Assets and PROVIDER Data**: As between the Parties, PROVIDER solely owns and will retain all rights, title and interests in, to and associated with PROVIDER Facilities/Assets and PROVIDER Data. VENDOR will not access, use or disclose, or authorize any other person to access, use or disclose, any PROVIDER Facilities/Assets or PROVIDER Data for any purpose whatsoever except as expressly permitted by PROVIDER and in all cases only if and to the extent reasonably required for VENDOR to facilitate the use by PROVIDER and PROVIDER Users of the Technology for the Project.

4.3 **Reservation of Rights**: Each Party reserves all rights that are not expressly granted by the Party as expressly set out in this Agreement.

1. **Confidentiality, Personal Information and Security**

5.1 **Confidentiality**:

1. **Confidential Information**: VENDOR acknowledges and agrees that, subject to section , all non-public information that VENDOR or any of VENDOR’s personnel may obtain regarding the business and business plans, products, technologies, services, personnel and patients of PROVIDER or any PROVIDER User (collectively “**Confidential Information**”), regardless of manner in which the information is obtained or whether the information was obtained before or after the Effective Date, is the confidential and proprietary information of PROVIDER and is owned solely by PROVIDER and PROVIDER’s licensors. For greater certainty, all Personal Information (defined in section ) in the custody or control of PROVIDER and all PROVIDER Data are deemed Confidential Information.
2. **Exceptions**: Except for Personal Information in the custody or control of PROVIDER and PROVIDER Data (all of which is and will always remain Confidential Information), information will not be considered to be Confidential Information to the extent, but only to the extent, that the information is:  already known to VENDOR free of any confidentiality obligation at the time the information is obtained by VENDOR or VENDOR personnel from PROVIDER or a PROVIDER User;  subsequently learned by VENDOR from an independent third party free of any restriction and without breach of this Agreement, an agreement with the third party or any other confidentiality obligation;  or becomes generally available to the public at large through no wrongful act or omission by or on behalf of VENDOR or any person for whom VENDOR is responsible under this Agreement or at law; or  independently developed by or on behalf of VENDOR without reference to any Confidential Information.
3. **Ownership**: As between the Parties, Confidential Information and all rights, title and interests (including intellectual property rights) in, to and associated with Confidential Information will remain the exclusive property of PROVIDER. This Agreement does not grant, by implication or otherwise, to VENDOR any right, title, or interest in, to or associated with Confidential Information, other than the limited license to use Confidential Information as expressly set out in section .
4. **Permissible Use and Restrictions/Requirements**: VENDOR will: use Confidential Information only during the term of this Agreement and only as necessary to perform VENDOR’s obligations under this Agreement; disclose Confidential Information only to VENDOR’s personnel, and only to the extent that the disclosure is necessary to perform VENDOR’s obligations under this Agreement; both during and indefinitely after the term of this Agreement maintain the strict confidentiality of Confidential Information using the same degree of care that VENDOR affords to its own confidential information of a similar nature that VENDOR desires not to be published or disseminated, and in no event less than reasonable care, to prevent unauthorized access to, or use or disclosure of, Confidential Information; and ensure each of the persons to whom VENDOR discloses Confidential Information strictly comply with the requirements and restrictions set forth in items (i), (ii) and (iii) set out in this section .
5. **Return/Destruction of Confidential Information**: Upon termination of this Agreement or at any time upon request by PROVIDER, VENDOR will: promptly deliver to PROVIDER all originals and copies, in whatever form or medium, of all Confidential Information and all documents, records, data and materials, in whatever form or medium, containing Confidential Information in VENDOR’s possession, power or control, and VENDOR will permanently remove and delete all Confidential Information from all of VENDOR’s computer systems, retrieval systems and databases; and ensure that each person to whom VENDOR has provided any Confidential Information complies with this section ; and upon request by PROVIDER VENDOR will deliver to PROVIDER a certificate signed by a senior officer of VENDOR certifying that VENDOR and its personnel have complied with this section .
6. **Duration of Confidentiality Obligation**: For greater certainty, the restrictions and requirements set out in this section  will apply to each item of Confidential Information unless and until the item no longer qualifies as Confidential Information by virtue of the application of one or more of the exceptions set out in section .

5.2 **Privacy/Personal Information**:

1. **Definition**: In this Agreement, “**Personal Information**” means information about an identifiable individual or information that might be used, alone or in combination with other information, to identify an individual, or information that constitutes “personal health information” as defined in the *Personal Health Information Protection Act* (Ontario).
2. **General**: It is the Parties’ mutual intention that the Project will not require that VENDOR or any of VENDOR’s personnel access, obtain possession of or use any Personal Information in PROVIDER’s custody or control. VENDOR will not access, obtain possession of or use, and will ensure that VENDOR’s personnel do not access, obtain possession of or use, any Personal Information in PROVIDER’s custody or control without PROVIDER’s express prior written consent in each instance.

5.3 **Compliance Inspection**: Without limiting the generality of any other provision of this Agreement, both during and after the term of this Agreement VENDOR will permit PROVIDER, at PROVIDER’s own expense, to conduct an inspection of VENDOR’s premises and facilities in order to verify compliance with this section , provided that the inspection will be conducted: on not less than seven (7) days prior notice to VENDOR;  during normal business hours;  subject to reasonable security and confidentiality restrictions and requirements requested by VENDOR; and  in a manner that does not interfere unreasonably with VENDOR’s normal business operations.

5.4 **Notice of Breach**: VENDOR will immediately give notice to PROVIDER if VENDOR discovers or otherwise learns of any breach of this section  and will use VENDOR’s best efforts to immediately remedy the breach and prevent any recurrence of the breach and to assist VENDOR to mitigate the effects of the breach.

5.5 **Enforcement**: This section  is of fundamental importance to PROVIDER. If VENDOR breaches or threatens to breach this section  and fails or refuses to comply with a request by PROVIDER to promptly remedy the breach and agree in writing to comply with this section , then PROVIDER will, in addition to all other remedies under this Agreement or at law, be entitled as a matter of right to judicial relief (including a restraining order, injunction or order for specific performance) to prevent or stop the breach, and VENDOR will not oppose the granting of the judicial relief.

5.6 **Publicity**: Except as expressly agreed in writing in advance by PROVIDER in its discretion in each instance, VENDOR will not, and will ensure that VENDOR’s personnel do not:  publicize or otherwise disclose (including through public announcement, news release or media interview) the existence or terms of this Agreement, the business relationship between the Parties or any related matter;  use PROVIDER’s name or trademarks in any advertising or publicity or any other manner; or  state, suggest, imply or indicate to any person or to the general public that any of VENDOR’s products and services (including the Technology) is or has been selected, used, approved, preferred or endorsed by PROVIDER or any PROVIDER User. For greater certainty, PROVIDER in its discretion may publicize that PROVIDER acted as a testing and evaluation site for the Technology.

1. **Liability Exclusion, Indemnity and Insurance**

6.1 **Liability Exclusion**: Notwithstanding any other provision of this Agreement, in no event and under no circumstances will PROVIDER or any PROVIDER User or any of PROVIDER’s directors, officers, employees, agents, independent contractors and other representatives be liable to VENDOR or any other person for any damage, loss or liability whatsoever arising from, connected with or relating to this Agreement, the Project or any related matter. The foregoing liability exclusion is a comprehensive exclusion that applies to any and all damages, losses and liabilities of any nature and kind whatsoever and howsoever arising (including compensatory, direct and indirect loss and damages and liabilities), under any theory (including contract, tort, strict liability or statutory liability), regardless of any negligence or other fault or wrongdoing (including fundamental breach or gross negligence) by or on behalf of PROVIDER or any person for whom PROVIDER is responsible, even if other remedies are not available or do not compensate adequately or at all for the damage, loss or liability, and even if PROVIDER has been advised of the possibility of the damage, loss or liability being incurred.

6.2 **Indemnity**: VENDOR will defend, indemnify and hold harmless PROVIDER and each PROVIDER User and each of PROVIDER’s directors, officers, employees, agents, independent contractors and other representatives from and against any and all losses, damages, costs, expenses (including legal fees and administrative penalties), claims, complaints, demands, actions, suits, proceedings, obligations and liabilities (including legal fees and expenses, settlement payments, penalties and other financial sanctions) arising from, connected with or relating to any of the following: the Project (including the use of the Technology and Documentation in connection with the Project); any breach of this Agreement by VENDOR; or any act or omission by or on behalf of VENDOR or any of VENDOR’s personnel or any other person for whom VENDOR is responsible under this Agreement or applicable law. VENDOR will not settle any claim, complaint, demand, action, suit or proceeding by a third party that is subject to this section without PROVIDER’s express prior written consent, which consent will not be unreasonably withheld. Notwithstanding the foregoing, PROVIDER and each PROVIDER User and each of PROVIDER’s directors, officers, employees, agents, independent contractors and other representatives retains the right to participate (with legal counsel of their own selection at their sole cost and expense) in the defense of and settlement negotiations relating to any claim, complaint, demand, action, suit or proceeding by a third party.

6.3 **Insurance**: Throughout the term of this Agreement and for a period of not less than two (2) years after the term of this Agreement, VENDOR will procure and maintain, at VENDOR’s sole cost and expense, the insurance specified in the Cover Page or the Project Plan. Upon request by PROVIDER, VENDOR will provide PROVIDER with a certificate issued by the applicable insurer providing details of the insurance and certified copies of the insurance policies.

6.4 **Risk Allocation**: The allocation of risk and liability set out in this Agreement is an essential part of the bargain between the Parties and an inducement to the Parties to enter into this Agreement.

1. **Term and Termination**

7.1 **Term**: This Agreement will have effect as of the Effective Date and remain in full force and effect unless and until terminated in accordance with this Agreement.

7.2 **Automatic Termination**: Unless the Parties expressly agree in writing otherwise, this Agreement will terminate immediately and automatically, without notice by either Party, upon completion of the Project.

7.3 **Termination for Convenience**: Notwithstanding any other provision of this Agreement, either Party may at any time and for the Party’s sole convenience terminate the Project and this Agreement effective upon seven (7) days’ notice of termination to the other Party.

7.4 **Termination for Cause**:

1. **General**: Either Party may terminate the Project and this Agreement for cause effective immediately upon delivery of notice of termination to the other Party if the other Party breaches this Agreement and fails to cure the breach within ten (10) days following receipt of a default notice from the terminating Party identifying the breach and stating the terminating Party’s intention to terminate this Agreement if the other Party fails to cure the breach within a ten (10) day cure period.
2. **By PROVIDER**: PROVIDER may terminate the Project and this Agreement for cause effective immediately upon delivery of notice of termination to VENDOR if VENDOR breaches section 5 or if any person makes, or threatens to make, against VENDOR, PROVIDER or any PROVIDER User any claim, demand, action, suit or proceeding based on an allegation that the creation or use of the Technology infringes, misappropriates or violates the rights (including intellectual property rights) of any person.

7.5 **Consequences of Termination**:

1. **General**: Upon termination of this Agreement:  each Party will remain fully responsible and liable for all of the Party’s liabilities and obligations accrued before the termination;  unless the Parties expressly agree in writing otherwise, PROVIDER and PROVIDER Users will cease using the Technology and the Documentation and will use commercially reasonable efforts to either permanently delete and destroy, or return to VENDOR, all copies of the Technology and the Documentation in the possession or control of PROVIDER or any PROVIDER User, except that PROVIDER may retain one copy of each of the Technology and the Documentation for legal compliance purposes; and except as expressly set out in section , VENDOR will promptly pay or provide to PROVIDER all of the financial and other consideration set out in the Cover Page or the Project Plan.
2. **Exceptions**: Notwithstanding section , if this Agreement is terminated by PROVIDER for convenience pursuant to section or by VENDOR for cause pursuant to section then VENDOR will not be required to pay or provide to PROVIDER any financial or other consideration after the date this Agreement is terminated.
3. **Survival**: Notwithstanding any other provision of this Agreement, each of sections , , , , , , , , , , , , and , and all other provisions necessary to their interpretation or enforcement, will survive indefinitely after the termination of this Agreement and will remain in full force and effect and be binding upon the Parties.
4. **General Matters**

8.1 **Relationship**: The Parties are non-exclusive, independent contracting parties, and nothing in this Agreement or done pursuant to this Agreement will create or be construed to create a partnership, joint venture, agency, employment or other similar relationship between the Parties. VENDOR will at all times conduct VENDOR’s business and affairs in a manner consistent with maintaining VENDOR’s independent contractor status. Nothing in this Agreement or done under this Agreement in any way limits, prohibits or restricts either Party from engaging in discussions or entering into agreements with any other person at any time regarding arrangements that are similar to the Project or that relate to products or services that are similar to or competitive with the Technology.

8.2 **Assignment**: Neither Party will transfer or assign this Agreement to any person without the express prior written consent of the other Party.

8.3 **Subcontractors**: VENDOR will not engage or authorize any subcontractor to perform any of VENDOR’s obligations under this Agreement without PROVIDER’s express prior written consent in each instance. VENDOR is fully responsible and liable for all acts, omissions and liabilities by or on behalf of any of VENDOR’s subcontractors or any subcontractor’s personnel.

8.4 **Notices**: Unless a specific form of notice or notice delivery method is expressly authorized in this Agreement, all notices (including default notices and termination notices) required or permitted to be given under this Agreement to a Party will be in writing and will be delivered by courier or email to the Party’s addresses specified in the Cover Page or at other addresses for notice specified by the Party in a notice delivered pursuant to this section . A notice delivered by courier will be deemed delivered when it is received. A notice delivered by email will be deemed delivered on the next business day (at the place of delivery) following the date of transmittal and acknowledgement of receipt by the recipient (not an automated acknowledgement).

8.5 **Governing Law**: This Agreement, the relationship between the Parties and all related matters will be governed, construed and interpreted solely in accordance with the laws of Ontario and the laws of Canada applicable in Ontario, excluding any laws that implement or are based on the United Nations Convention on Contracts for the International Sale of Goods and excluding any rules of private international law or the conflict of laws that would lead to the application of the laws of any other jurisdiction.

8.6 **Disputes**:

1. **Negotiation**: Subject to section , if there is a dispute, controversy or claim between the Parties arising under, out of, in connection with, or in relation to this Agreement or the Project or any related matter (a “**Dispute**”), then either Party may give a notice (a “**Dispute Notice**”) to the other Party requiring that the Parties attempt to resolve the Dispute through direct negotiation. Upon delivery of a Dispute Notice regarding a Dispute, the Parties will cause their respective senior representatives (VENDOR’s Chief Executive Officer and PROVIDER’s vice president or higher) to meet in person at PROVIDER’s offices in Newmarket, Ontario to discuss and attempt to resolve the Dispute. If a Dispute is not fully and finally resolved through negotiation pursuant to this section within twenty (20) days (or a longer period expressly agreed in writing by the Parties) after the date on which the Dispute Notice is delivered, then either Party may refer the Dispute to arbitration as set out in section . Any communication (other than a Dispute Notice) made in the course of negotiations regarding a Dispute pursuant to this section will be deemed “without prejudice” and will not be admissible into evidence in arbitration or any other legal proceeding unless the communication is in writing and expressly states that it is made “with prejudice”.
2. **Arbitration**: Subject to section , a Dispute that is not fully and finally resolved by the Parties through negotiation pursuant to section will be referred to and finally resolved by arbitration pursuant to the *ADRIC Arbitration Rules* of the ADR Institute of Canada, Inc. (the “**Institute**”) by one arbitrator appointed in accordance with those rules. The arbitration will be private and confidential, and will be administered by the Institute. If the Institute is not operative, then the arbitration will proceed ad hoc and be governed by the *Arbitration Act, 1991* (Ontario). The place of arbitration will be Newmarket, Ontario, and the language used in the arbitration will be the English language.
3. **Litigation/Judicial Remedies**: Notwithstanding sections and , either Party may seek preliminary or temporary injunctive and ancillary relief (including judicial relief pursuant to section ) from the courts of Ontario sitting in Newmarket, Ontario to avoid irreparable harm or to preserve the status quo, and each Party hereby irrevocably submits and attorns to the exclusive jurisdiction of those courts in respect of those matters, all matters that are not properly subject to arbitration pursuant to section , and all permitted appeals arising from an arbitration pursuant to section . Each Party irrevocably waives all rights to trial by jury.

8.7 **Miscellaneous**: If a provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, then the provision will be deemed severed from this Agreement and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way, unless as a result of the severance this Agreement would fail in its essential purpose. If a Party’s consent or approval is required under this Agreement, then the Party in its discretion and for its sole convenience may withhold or refuse the consent or approval unless this Agreement expressly states otherwise. No consent or waiver by a Party to or of a breach of this Agreement by the other Party will be effective unless in writing and signed by both Parties, or deemed or construed to be a consent to or waiver of a continuing breach of this Agreement or any other breach of this Agreement by the other Party. Except as expressly set out in this Agreement, each Party’s rights and remedies under this Agreement are cumulative and not exclusive of any other rights or remedies to which the Party may be lawfully entitled under this Agreement or at law, and each Party is entitled to pursue all of the Party’s rights and remedies concurrently, consecutively and alternatively. This Agreement will enure to the benefit of and will be binding upon the Parties and their respective successors and permitted assigns. Each Party will execute any further documents and do any further acts or things that may be necessary to implement and carry out the intent of this Agreement. Time is of the essence of this Agreement. A document that forms part of this Agreement may be signed and delivered (including by facsimile transmission or by email in PDF or similar secure format) in counterparts, and each signed and delivered counterpart will be deemed an original and both counterparts will together constitute one and the same document.

8.8 **Interpretation**: In this Agreement:  reference to “**this** **Agreement**” and other similar terms refers to this Agreement as a whole (including the Cover Page, these General Terms and Conditions and the Project Plan, if any), and not just to the particular provision in which those words appear;  headings are for convenience only and do not define, limit or enlarge the scope or meaning of this Agreement or any provision of this Agreement;  a reference in a document that forms part of this Agreement to a section by number is a reference to the appropriate section in the document in which the reference is made;  words importing the singular number only include the plural, and vice versa;  words importing a gender include all genders;  a reference to a day, week, month or year, means a calendar day, calendar week, calendar month or calendar year, unless expressly stated otherwise;  “**person**” includes an individual (natural person), corporation, partnership, joint venture, association, trust, unincorporated organization, society and any other legal entity;  “**including**” or “**includes**” means including or includes (as applicable) without limitation or restriction;  “**discretion**” means a person’s sole, absolute and unfettered discretion; and  “**law**” includes common law, equity, statutes and regulations, and reference to a specific law includes all regulations made under the law and all amendments to, or replacements of, the law or any regulation made under the law in force from time to time.

8.9 **Conflicting Documents**: If there is any inconsistency or conflict between the documents that comprise this Agreement, then those documents will take priority and govern in the following order: the Cover Page; these General Terms and Conditions; the Project Plan (if any); and any ancillary documents, unless an ancillary document expressly states that it takes priority over specific provisions of these General Terms and Conditions in which case the ancillary document will take priority over the specified provisions but only to the extent of the inconsistency or conflict.

8.10 **Entire Agreement**: This Agreement sets forth the entire agreement between the Parties regarding the subject matter of this Agreement, and supersedes all previous communications, representations, negotiations, discussions, agreements or understandings, whether oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by a document that expressly states that it is an amendment to this Agreement and is signed by both Parties or their successors or permitted assigns.

8.11 **Other Forms/Agreements**: Purchase orders, ordering documents, forms of acceptance, invoices, acknowledgements, confirmations and other documents issued by a Party in connection with this Agreement are for administrative convenience only, and the terms and conditions (if any) contained in those documents are of no force or effect and do not in any way amend this Agreement even if signed and returned by the other Party. License agreements, end user agreements and other agreements, terms and conditions and documents that are included in or with an item of Technology or Documentation provided to PROVIDER or a PROVIDER User under this Agreement are of no force or effect and do not in any way amend this Agreement, even if they are accepted or agreed to (whether by signing or by other form of acceptance, including clicking an “I Agree” button) by or on behalf of PROVIDER or a PROVIDER User.

|  |
| --- |
| Acknowledged and Agreed by the Parties. |
| **[insert name of PROVIDER]** |  | **[insert name of VENDOR]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| I am authorized to sign this Agreement on behalf of PROVIDER. |  | I am authorized to sign this Agreement on behalf of**[insert name of VENDOR]** |

**Solution Discovery, Design, Prototyping and Evaluation Collaboration Agreement
(No Access to Personal Information)
- Cover Page –**

Provider Name (PROVIDER)

Provider Address

Project Manager

Phone

Email

And

Vendor Name (VENDOR)

Vendor Address

Project Manager

Phone

Email

**Background**

PROVIDER is participating in the “Innovation Partnership: Procurement by Co-Design” program utilizing a novel approach to discover, design, prototype, and evaluate innovative solutions to a specific challenge, which may result in procurement. PROVIDER and VENDOR (collectively the “**Parties**” and each a “**Party**”) wish to enter into this agreement so that PROVIDER may collaborate with selected vendor(s) to conduct design, prototyping, testing, and evaluation of innovative solutions.

**Agreement**

For valuable consideration, the Parties hereby agree as set forth in this Agreement, which consists of: (1) this Cover Page (including the attached Part 2); and (2) the attached Schedule “A” – General Terms and Conditions. The collaboration between PROVIDER and VENDOR may result in the creation of a Pilot Plan – a detailed plan of how a solution may be tested and evaluated. If a Pilot Plan is created, it will be appended to this agreement. Furthermore, the Pilot may result in a procurement, the value of which is not to exceed $99,999.99. If PROVIDER does agree to procure the innovative solution from VENDOR, then the terms of said procurement will be detailed in a separate agreement.

In witness whereof, the Parties, by their duly authorized representatives, have executed this Agreement on the dates set out below.

|  |  |  |
| --- | --- | --- |
| **[insert PROVIDER’s full legal name]** |  | **[insert VENDOR’s full legal name]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| I am authorized to sign this Agreement on behalf of PROVIDER. |  | I am authorized to sign this Agreement on behalf of**[insert name of VENDOR]** |

**Solution Discovery, Design, Prototyping and Evaluation Collaboration Agreement
(No Access to Personal Information)
Cover Page – Part 2**

1. **Effective Date**

The Effective Date of this Agreement is [insert date].

1. **Project Duration**

The Project will start on [insert date]. The Project will have a duration of up to 32 weeks. An initial 8 week period will be dedicated to discovery and design activities, followed by up to 24 weeks of prototyping, testing, and evaluation.

1. **Project Description and challenge**

The Project is [Insert high level summary description of purpose and scope of the Project, and include the challenge proposed].

1. **The Proposed Solution**

The proposed solution is [insert description of proposed solution].

1. **Use of Proposed Solution by PROVIDER and PROVIDER Users**

Insert any applicable restrictions/requirements/limitations regarding installation, access and use of the Proposed Solution by PROVIDER or PROVIDER Users, or reference the relevant sections of the Project Plan.

1. **Consideration**

PROVIDER and VENDOR agree to collaborate for a period of 8 weeks to conduct a number of activities, including discovery and design. Discovery and design activities will result in the creation of the following deliverables:

* Stakeholder map
* Journey Map
* Process Map
* Design Brief
* Research and insight summaries
* Prototyping Plan
* Delivery on Prototyping Plan

The deliverables described above will be conducted with in-kind resources. There shall be no cost associated with any of the activities described above by either Party.

Following this initial 8 week period, PROVIDER and VENDOR may choose to continue the collaboration and enter into a pilot, testing, and evaluation phase, for up to 24 weeks. Any costs associated with this second phase will be negotiated between the Parties. The Parties may wish to apply for grants to offset any costs associated with this phase of the collaboration, including seeking grants from the MaRS Innovation Partnership: Procurement by Co-Design program. If no grant is awarded to the Parties, the Parties may choose to end the collaboration with no consideration provided by either Party.

Insert description and details of any other financial and other kinds of consideration that PROVIDER and VENDOR must pay/provide to the collaboration, including payment/delivery dates if applicable.

1. **Insurance**

VENDOR will procure and maintain the following insurance:

[Insert details]

1. **Additional Support by PROVIDER**

Insert details of support that PROVIDER will provide to VENDOR in connection with the Collaboration.

|  |  |  |
| --- | --- | --- |
| **[insert name of PROVIDER]** |  | **[insert name of VENDOR]** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |