TECHNOLOGY EVALUATION AGREEMENT

This Technology Evaluation Agreement (this “**Agreement**”) is made effective as of \_\_\_\_\_ (the “**Effective Date**”) between [Customer] with its principal place of business at [Customer’s Address] (“**Customer**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_ (“**Vendor**” or “**Contractor**”). Customer and Vendor may each be referred to herein as a “Party” and collectively as the “Parties.”

The Parties wish to permit Customer to evaluate the Vendor Technology (as defined in **Exhibit *1***). The Parties agree as follows:

# **Provision of Vendor Technology**. Vendor shall make available to Customer the Vendor Technology during the Term (as defined in **Exhibit 1**) by mutually agreed means. Vendor shall provide technical support, hosting, if applicable, and such other services as may be reasonably necessary for Customer to evaluate the Vendor Technology. Upon the expiration of the Term, Customer shall discontinue use of the Vendor Technology and return to Vendor or destroy the Vendor Technology as mutually agreed by the Parties.

1. **License to Vendor Technology**. During the Term, Vendor hereby grants to Customer, Customer affiliates and Customer’s designated agents, consultants and contractors (the “**Permitted Parties**”) a worldwide, nonexclusive, royalty-free, fully paid-up right and license to access and use the Vendor Technology solely for Customer’s evaluation purposes (the “**Permitted Purpose**”).
2. **Restrictions**. Except for the Permitted Purpose, the Permitted Parties may not use the Vendor Technology for any other purpose. The Permitted Parties will not, without Vendor's consent, disassemble, reverse engineer, or create derivative works based upon, the Vendor Technology.
3. **Termination**. Either Party may terminate this Agreement with or without cause, without penalty for early termination, upon ten (10) business days’ notice.
4. **No Fees**. In consideration for Customer’s execution of this Agreement, Vendor shall provide the Vendor Technology, related services and all license grants under this Agreement at no cost to Customer. Vendor shall be responsible for all fees, costs and expenses associated with the Vendor Technology under this Agreement.
5. **No License or Grant of Intellectual Property Rights**. Except for the license grant set forth in Section 2, neither Party licenses or grants to the other Party any intellectual property rights under this Agreement. Each Party maintains all right, title and interest, including under all intellectual property rights, to their respective proprietary technologies, confidential information and intellectual property.

# **No Publicity**. Neither Party will (a) identify the other Party in any manner on a customer list or website or (b) otherwise use the name, assumed business name, trade name, logo, trademark, or service mark, whether or not registered, of the other Party or of any affiliate of the other Party in connection with publicity, advertisements, promotion or in any other manner.

# **No Representations or Warranties; Disclaimer**. Neither Party makes any, and each Party disclaims all, representations or warranties (express or implied) concerning the Vendor Technology.

# **No Further Obligations**. Nothing in this Agreement creates a legal obligation for either Party to purchase or license or sell any products, services or technology to or from the other or to enter into any further agreement with the other Party. Customer and the Permitted Parties may develop their own products, services or technology similar to the Vendor Technology, provided they do not violate the restrictions of Section 3. Customer and the Permitted Parties may procure products, services or technology similar to the Vendor Technology from third parties, including competitors of Vendor, without restriction.

# **Confidentiality, Information Security, and Data Protection**. The Parties’ confidentiality obligations shall be governed by the Applicable NDA (as defined in ***Exhibit 1***). In the event of a conflict between the Applicable NDA and this Agreement, this Agreement shall control. In addition, Vendor shall comply with the additional terms and conditions set forth in **Exhibit 2 (Data Protection)** and **Exhibit 4 (Information Security)**.

1. **Artificial Intelligence**. If Vendor is providing an AI Solution (as defined in ***Exhibit 3),*** then Vendor shall comply with the terms of ***Exhibit 3***.

# **Amendments**. The Parties may amend this Agreement only by a written instrument signed by an authorized representative of each Party.

# **Waiver**. A Party's delay or failure to enforce or insist on strict compliance with any provision of this Agreement will not constitute a waiver or otherwise modify this Agreement.

# **Entire Agreement**. This Agreement, together with the Applicable NDA, is the entire agreement between the Parties concerning its subject matter and supersedes all prior and contemporaneous oral and written agreements, commitments and understandings concerning that subject matter.

# **Assignment**. Neither Party may assign any right or delegate any duty under this Agreement, whether by transfer, merger, operation of law or otherwise, without the prior written consent of an authorized representative of the other Party. This Agreement will bind and inure to the benefit of each of the Parties and their respective permitted successors, assigns and delegates.

# **Disputes**. This Agreement will be interpreted under, and any disputes arising out of this Agreement will be governed by the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, USA, without regard to its conflict of laws principles. Each Party irrevocably consents to the jurisdiction of the courts located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, USA, in connection with all actions arising out of or in connection with this Agreement, and waives any objections that venue is an inconvenient forum. A final judgment in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

1. **Severability**. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

# **Counterparts**. This Agreement may be executed in counterparts (including via electronic signatures), each of which will be considered an original, and all of them, taken together, will constitute a single agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the Effective Date.

|  |  |
| --- | --- |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Customer]** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Contractor]** |
| By:  Signature | By:  Signature |
| Name:  (Print or Type) | Name:  (Print or Type) |
| Title:  (Print or Type) | Title:  (Print or Type) |
| Date: | Date: |

**EXHIBIT 1**

|  |  |
| --- | --- |
| **Vendor Technology** | [*At a minimum, answer each of the following questions:*  *In one or two sentences, what are the key features/functions of the Vendor Technology.*  *Is the technology physical or electronic?*  *If software related, is the software locally installed or provided on a Software as a Service basis?*  *If cloud or SaaS related, where is the technology hosted (e.g., AWS, vendor infrastructure, etc.)*?  *What integrations with Customer or third-party systems and networks are necessary for the operation of solution?*] |
| **Term** | This Agreement shall commence on the Effective Date and continue in effect for ninety (90) days from the date of delivery by Vendor of the Vendor Technology to Customer, unless extended by written mutual agreement (email acceptable) of the Parties. |
| **Applicable NDA** | [*Specify the Non-Disclosure Agreement that applies to the evaluation. If no NDA exists, an NDA will be needed or additional confidentiality provisions will need to be added to this Agreement.*]  Mutual Non-Disclosure Agreement, by and between Customer and Vendor, dated [DATE]. |

**EXHIBIT 2**

**DATA PROTECTION**

**[Customer to insert appropriate Data Protection Exhibit]**

**EXHIBIT 3**

**ARTIFICIAL INTELLIGENCE**

**1. Definitions and Scope.** Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. Capitalized terms which are not otherwise defined in the Agreement shall have the following meanings:

* 1. **Definitions**:

1. **"AI Solutions"** means any products, goods, services (including SaaS), work product, or deliverables created, developed, licensed, sold, or otherwise provided (or to be provided) under the Agreement that include or use AI Technology, including, without limitation any feature, functionality, customization, or component of any product, good, service or deliverable procured or provided under the Agreement that incorporates, uses, depends on, is supported by, or employs any AI Technology.
2. **“AI Technology”** means any and all machine learning, deep learning, and other artificial intelligence technologies, including statistical learning algorithms, models (including large language models), neural networks, and other artificial intelligence tools or methodologies, all software implementations of any of the foregoing, and related hardware or equipment.
3. **“Applicable Rules”** means all present or future laws, regulations, standards, and regulatory guidance related to AI Technology in any jurisdiction, and includes, without limitation, (i) the EU AI Act, (ii) the UK AI Strategy and Guidelines, (iii) OECD Principles on AI, (iv) United States federal, state, or local laws, regulations, rules, and agency guidance, (v) other analogous international, federal, state, or local laws, regulations, rules and agency guidance, and (vi) industry standards and standards implemented, promulgated, published, adopted, or recommended by any governmental authority, recognized standards organization, or recognized industry group, whether binding or non-binding.
4. **“Training Data”** means all content and other information, other than Restricted Data, used to train any AI Technology that is used for or included in any AI Solution.

**1.2** **Scope.** These terms apply to all AI Solutions provided, or to be provided, by the Contractor under the Agreement. Contractor represents and warrants that the Agreement includes a complete and accurate list of all AI Technology and AI Solutions used or incorporated in the products, goods, services, work product or deliverables provided thereunder.

**2. Compliance with Applicable Rules.** The Contractor shall comply with Applicable Rules and be responsible for ensuring that all AI Solutions provided under the Agreement comply with the requirements of all Applicable Rules.

**3. Restriction.** Contractor shall not process or otherwise in any way use (a) the Confidential Information of Customer or its Affiliates, or (b) any other information, materials, works, or other content input, provided or otherwise made available to Contractor, its Affiliates, or any of their subcontractors or representatives by or on behalf of Customer, its Affiliates or any of their users (collectively, “**Restricted Data**”), for purposes of training, creating, or otherwise modifying any AI Solution or AI Technology without Customer’s prior written authorization in each instance. If Contractor becomes aware of any use of Restricted Data in violation of the foregoing restriction, Contractor shall promptly notify Customer and take steps in cooperation with Customer to remediate and/or mitigate such unauthorized use.

**4. Representations and Warranties.** Contractor represents, warrants, and covenants to Customer that:

1. neither Contractor’s grant of the rights or licenses under the Agreement nor its provision of any AI Solutions or performance of other obligations under the Agreement, nor Customer's use of any AI Solution or exercise of its rights in accordance with the Agreement, does or at any time will: (i) conflict with or violate any Applicable Rules, including any Applicable Rules relating to the development, creation, training, fine-tuning, use, implementation, or provision of AI Technology; (ii) require the consent, approval, or authorization of any governmental authority or other third party; or (iii) require the provision of any payment or other consideration by Customer or any user to any third party;
2. it has obtained and will maintain all licenses, consents, and permissions, and otherwise has all rights, including in each case as required under Applicable Rules, to collect and use all Training Data, including to train AI Technology, and for Provider to grant the rights and licenses granted to Customer under the Agreement;
3. it has complied, and will remain in compliance, with all applicable laws and regulations and other third-party contractual or other rights or requirements (including any use restrictions and other requirements of any license, consent, permission, or other contract and any website terms of use, terms of service, or other terms) applicable to: (x) collection and use of such Training Data; (y) the development, creation, training, fine-tuning, use, implementation, and provision of AI Technology; and (z) Customer's use of the AI Solutions and AI Technology as contemplated under the Agreement; and
4. it regularly monitors, measures, and assesses the AI Solutions for accuracy and reliability, considering computational-centric measures (for example, false positive and false negative rates), human-artificial intelligence teaming, and external validity (generalizable beyond the training conditions), in accordance with Applicable Rules.

**5. Documentation, Transparency, and Data Quality**

**5.1** **Documentation**. Contractor shall provide comprehensive documentation for all AI Solutions, including details of the AI’s functionality, risk assessments, and compliance with Applicable Rules. Such documentation shall be updated regularly and made available to Customer upon its request.

**5.2** **Transparency**. Contractor shall maintain transparency in the functioning of AI Solutions, including the algorithms used, data sources, and any potential biases or limitations of the AI Solutions. Contractor will also provide clear information about how the AI Solution makes decisions, including details on the logic and criteria used in its decision-making processes. Contractor shall retain information in human-readable form that explains or could be used to explain the decisions made or facilitated by the AI Solutions.

**5.3** **Data Quality**. Contractor shall ensure that all data used in the development, training, and operation of the AI Solution is of high quality, accurate, and representative. Contractor shall implement robust data management practices, including data validation, regular updates, and documentation of data sources.

**6. Risk Management and Mitigation**

1. Contractor shall conduct regular risk assessments of the AI Solution to identify and mitigate potential risks associated with its deployment and use. Contractor agrees to implement appropriate risk management measures, including but not limited to, safety features, error handling mechanisms, and contingency plans.
2. Contractor must not use or supply any AI Solution that includes or makes use of Prohibited AI. As used herein, “**Prohibited AI**” means any AI Technology that: (i) deploys subliminal, manipulative or deceptive techniques which materially distort a person's behavior by impairing informed decision-making or autonomy in a way that is reasonably likely to cause significant harm; (ii) exploits vulnerable groups (such as children or religious minorities) to materially distort their behavior in a way that is reasonably likely to cause significant harm; (iii) evaluates or classifies people based on their social behavior or personality characteristics to create a 'social score' which leads to defined detrimental or unfavorable treatment of those people; (iv) assesses or predicts the risk of an individual committing a criminal offence based solely on profiling or assessing personality traits and characteristics; (v) creates facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage; (vi) enables emotional recognition in the workplace or educational institutions (other than for medical or safety purposes expressly permitted under Applicable Rules); (vii) categorizes people based on biometric data to infer race, political opinions, trade union membership, religious or philosophical beliefs or sex life or orientation; or (viii) uses "real-time" biometric identification in publicly accessible spaces for law enforcement purposes.

**7. Ethical and Responsible AI Use**

**7.1** **Ethical Standards**. The Contractor shall adhere to ethical AI guidelines, standards and best practices, ensuring that AI Solutions do not perpetuate discrimination, bias, or any other unethical practices.

**7.2** **Human Oversight**. The Contractor shall ensure that appropriate human oversight mechanisms are in place for all AI Solutions, allowing for intervention and review in cases where AI decisions have significant impacts. Customer will have the ability to override or correct decisions made by the AI Solution. Contractor will provide the necessary tools and interfaces to facilitate effective human oversite.

**7.3** **Bias and Fairness**. The Contractor shall actively work to identify and mitigate biases in AI Solutions, ensuring fairness in outcomes and compliance with ethical guidelines.

**8. Audit and Monitoring**

8.1 **Regular Audits**. The Contractor shall cooperate in Company’s vendor AI assessment program, and permit regular audits and inspections by the Company or an appointed third party to verify compliance with Applicable Rules and this Exhibit. Contractor agrees to cooperate with such audits, respond to questionnaires from Company, provide necessary documentation, and address any identified issues promptly.

8.2 **Reporting Obligations**. The Contractor shall promptly report any issues, failures, or breaches related to the AI Solutions, including non-compliance with Applicable Rules or the Exhibit.

**9. Termination**

**9.1** **Termination for Non-Compliance**. Without limiting any other right or remedy of Company, Company may terminate the Agreement on written notice to Contractor if the Contractor fails to comply with the terms and conditions of this Exhibit in any material respect.

**9.2** **Termination for Changes**. Contractor shall not implement any changes to the AI Solution that impact its functionality or performance in any material respect. Without limiting any other right or remedy of Company, Company may terminate the Agreement on written notice to Contractor if the Contractor implements any changes to the AI Solution that impact its functionality, performance, or compliance with Applicable Rules.

**10. Notification of Incidents and Updates.** Contractor agrees to promptly notify Customer of any incidents, failures, or breaches related to the AI Solution that could affect its compliance with Applicable Rules. Contractor will also provide advance written notice of any planned changes to the AI Solution that may impact its functionality or compliance with Applicable Rules or this Exhibit.

**11. Training and Support.** At no additional cost to Customer, Contractor shall provide Customer with training on the use and management of the AI Solution, including all training necessary to ensure compliance with Applicable Rules. This includes training on interpreting AI outputs, managing system updates, and handling any issues related to the AI Solution’s performance.

**12. Indemnification.** Contractor agrees to indemnify, defend, and hold Customer, its Affiliates and their respective employees, directors, agents, successors and permitted assigns (“Customer Parties”) harmless from and against any and all liabilities, damages, losses, expenses, fines, penalties, and/or judgments, including reasonable attorneys' fees, costs, and expenses incidental thereto, awarded against any Customer Parties or agreed in settlement by Contractor, by reason of any demand, proceeding, action, regulatory action, lawsuit, and/or claim, in each case asserted against a Customer Party by a third party, to the extent arising out of or relating to any breach by Contractor of this Exhibit or any breach of Applicable Rules by Contractor.

**13. Liability.** Notwithstanding anything to the contrary in the Agreement, any limitation of liability and/or waiver of damages set forth in the Agreement will not apply to Contractor’s obligations as they relate to this Exhibit.

**14. General.** Contractor certifies that it understands the requirements and limitations of the Agreement, this Exhibit, and Applicable Rules. In the event of conflict between or among the provision(s) in the Agreement, or this Exhibit, the parties will endeavor to interpret any such conflicting provision(s) in a consistent manner. In the event of an irreconcilable conflict, the provision(s) of the aforementioned documents (to the extent applicable) will govern in the following order of precedence: (i) this Exhibit, and (ii) the Agreement.

**EXHIBIT 4**

**INFORMATION SECURITY**

**[Customer to insert appropriate Information Security Exhibit]**