**Collaboration agreement (GITHUB SPECIFIC)**

This collaboration agreement (the “Agreement”) is an agreement between Party A and Party B entered into as of the date set out in the chart below (the “Effective Date”). This Agreement is comprised of these signature pages and the terms and conditions attached as Schedule “A”. Each Party will notify the other in writing if any of the address or contact information in the following chart changes.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Party A (“Party A”) | | | | | |
| Full Legal Name: |  | | | | |
| Street Address: |  | | | | |
| City: |  |  | | |  |
| Country: |  | Postal Code: | | |  |
| Notice Contact |  | | | | |
| Name: |  | Title: | | |  |
| Phone: |  | Email Address: | | |  |
| Party B (“Party B”) | | | | | |
| Full Legal Name: |  | | | | |
| Street Address: |  | | | | |
| City: |  | Province: | | |  |
| Country: |  | Postal Code: | | |  |
| Notice Contact |  | | | | |
| Name: |  | Title: | | |  |
| Phone: |  | Email Address: | | |  |
| Collaboration and GitHUB Details | | | | | |
| Open Source Collaboration | | | | [Yes/No] | |
| Github Repository | | | | [X] (the “Github Repository”) | |
| Party A – Background IP  (i.e. IP that it is Bringing to the table) | | | | GitHubRepository/Party\_A\_IP | |
| Party B – Background IP  (i.e. IP it is bringing to the table) | | | | GitHubRepository/Party\_B\_IP | |
| Agreement Details | | | | | |
| Effective Date of Agreement: [X] | | | End Date: [X] | | |

By signing below, each Party acknowledges that it has read and understood the terms of this Agreement as set out in the chart above and in Schedule “A” hereto and, for good and valuable consideration, agrees to be bound by these terms:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| [Insert Full Legal Name of Party A] | |  | [Insert Full Legal Name of Party B] | |
| By: |  | By: |  |
|  |  |  |  |
| Name: |  | Name: |  |
|  |  |  |  |
|  |  |  |  |  |
| Title: |  |  | Title: |  |
|  |  |  |  |  |
|  |  | |  |  |

Schedule “A” – General Terms

1. Definitions
   1. “**Agreement**” means this agreement, including its recitals and exhibits annexed hereto or otherwise incorporated herein, and all Change Orders entered pursuant hereto, as amended from time to time.
   2. “**Background IP**” means any and all Information or Intellectual Property Rights:
      1. in respect of Party A, at the **GitHub location** set out on the cover page; or
      2. in respect of Party B, at the **GitHub location** set out on the cover page.
   3. “**Claim**” means any actual, threated or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation or proceeding or any other claim or demand.
   4. “**Encumbrances**” means pledges, liens, charges, security interests, leases, title retention agreements, mortgages, restrictions, options or adverse Claims or encumbrances of any kind or character whatsoever.
   5. “**Foreground IP**” means any and all Information or Intellectual Property Rights made, conceived, developed, created, acquired or reduced to practice by a Party or its Personnel during the course of or in connection with the Joint Development Program, but excluding any Background IP.
   6. “**Information**” means material, information or data in any form or notation and however stored, fixed, expressed or embodied (whether embodied in a material, tangible or electronic form) whether originals or copies, including: all processes, business rules, business processes, business process flows, know-how, procedures, standards, specifications, designs and formulas; databases; ideas; opinions; software; content; documentation; information relating to hardware; all information and data of a business nature including information and data related to past, present and prospective businesses, products and services, internal management and finances, marketing plans and techniques, records, reports, price lists, financial results, customers, employees, agents and other representatives, operations, facilities, assets and programs. Information will be considered as such whether or not it is protected by or embodies any Intellectual Property Right and whether or not it is in human or machine readable form.
   7. “**Intellectual Property Rights**” means all intellectual property rights, throughout the world, whether registered or not, including patents (including patent applications and issued patents therefor and equivalent rights (including utility models, originals, provisionals, divisionals, reissues, renewals, re-examinations, continuations, continuations-in-part, continuing prosecution applications, requests for continuing examinations, and extensions and applications for the foregoing) and national and multinational counterparts of such patent applications and issued patents applied for or registered in any and all countries of the world), utility certificates, utility models, industrial design rights, copyrights, database rights, trade secrets, any protection offered by applicable law to Information, semiconductor IC topography rights, mask works and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of any of the foregoing.
   8. “**Modifications**”means modifications, improvements, customizations, updates, enhancements, aggregations, compilations, derivative works, translations and adaptations, and **“Modify”** has a corresponding meaning.
   9. “**Person**” means any individual, sole proprietorship, partnership, firm, entity, association, syndicate, organization, trust, body corporate or governmental authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.
   10. “**Personnel**” means, in respect of a Party, its employees, agents and any contractors who perform any services for or on behalf of the Party.
   11. “**Project Plan**” means the project plan to be established for the development of deliverables agreed to by the parties and as may be amended from time to time pursuant to Section 2(b).
   12. “**Term**” means the Initial Term and any Renewal Term.
2. Joint Development Project and Management
   1. Performance of the Project Plan. Each Party will, and will cooperate with each other to, perform their respective obligations under the Project Plan in accordance with the terms set out therein.
   2. Changes to the Project Plan. Upon mutual agreement, the Parties may change the Project Plan by executing a written document describing the change. Notwithstanding the foregoing, if the Parties desire to change to any provision of this Agreement other than the Project Plan, the Parties must execute a formal amendment to this Agreement in accordance with Section 9(l).
   3. Costs and Expenses. Unless otherwise expressly set out in the Project Plan, each Party will be responsible for its own costs and expenses in connection with this Agreement and the Project Plan.
3. Intellectual Property Ownership and License
   1. Background IP.
      1. Each Party owns all rights, title and interest in and to its Background IP.
      2. Each Party assigns (and will cause its Personnel to assign) to the other Party all of its Intellectual Property Rights in and to any Modifications of the other Party’s Background IP and waives (and cause its Personnel to waive) any applicable moral rights thereto.
      3. Each Party grants to such other Party a world-wide, royalty-free, fully paid-up, revocable, non-exclusive, non-transferrable, non-sublicensable licence during the Term to use any Background IP that the Party provides the other Party to use solely in connection with and for the purpose of performing the obligations of the other Party under the Project Plan, but only to the extent that such use is technically indispensable for the performance of such obligations. For clarity and notwithstanding the foregoing, no licenses are granted pursuant to this Section 3(a)(iii) by either Party under Background IP that is not licensable, or, if licensable, would require payment of royalty or other consideration by the licensing Party to a third party.
   2. Foreground IP**.**
      1. PartyA owns all right, title and interest in the Foreground IP.
      2. PartyB assigns (and will cause its Personnel to assign) to PartyA all of its Intellectual Property Rights in and to any Foreground IP and waives (and will cause its Personnel to waive) any applicable moral rights to the foregoing.
      3. PartyA grants to PartyB a perpetual, world-wide, royalty-free, fully paid-up, non-exclusive, transferrable, assignable and sublicensable license and right to use the Foreground IP.
4. Confidential Information
   1. Definitions. For the purposes of this Agreement, a Party receiving Confidential Information (as defined below) will be the “**Recipient**”, the Party disclosing such information will be the “**Discloser**” and “**Confidential Information**” means information marked or otherwise identified in writing by a Party as proprietary or confidential, or information that, under the circumstances surrounding the disclosure, the Recipient should recognize as being confidential; provided that Discloser’s Confidential Information does not include: (i) information already known or independently developed by Recipient without access to Discloser’s Confidential Information; (ii) information that is publicly available through no wrongful act of Recipient; or (iii) information received by Recipient from a third party who was free to disclose it without confidentiality obligations.
   2. Confidentiality Covenants. Recipient hereby agrees that during the Term and at all times thereafter it will not: (i) disclose Confidential Information of the Discloser to any person, except to its own personnel or affiliates having a “need to know” and that have entered into written agreements no less protective of such Confidential Information than this Agreement, and to such other recipients as the Discloser may approve in writing; (ii) use Confidential Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or (iii) alter or remove from any Confidential Information of the Discloser any proprietary legend. Each Party will take reasonable precautions to safeguard the other Party’s Confidential Information. Those precautions will be at least as great as the precautions that the Recipient takes to protect its own Confidential Information of a similar type.
   3. Exceptions to Confidentiality. Notwithstanding Section 5(b), Recipient may disclose Discloser’s Confidential Information: (i) to the extent that such disclosure is required by applicable law or by the order of a court or similar judicial or administrative body, provided that, except to the extent prohibited by law, the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order; (ii) to its legal counsel and other professional advisors if and to the extent such persons need to know such Confidential Information in order to provide applicable professional advisory services in connection with the Party’s business; or (iii) upon the written consent of the Discloser.
5. Representations; Warranties
   1. Mutual Representations. Each Party represents and warrants to, and covenants with the other Party that:
      1. the Party has full power, rights and authority to enter into and perform its obligations pursuant to this Agreement and to consummate the transactions contemplated herein;
      2. the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action and constitute a legal, valid and binding obligation; and
      3. the Party is fully competent and has the required expertise, resources and Personnel to duly perform and complete its obligations under this Agreement; and
      4. in performing its obligations under this Agreement, it will comply with all applicable laws.
   2. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 6(c) ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM A COURSE OF CONDUCT, PERFORMANCE, DEALING OR OTHERWISE, OR INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABLE QUALITY, MERCHANTABILITY, DURABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EACH PARTY HEREBY DISCLAIMS ANY REPRESENTATION, OR WARRANTY THAT THE DEVELOPMENT, MANUFACTURE OR COMMERCIALIZATION OF ANY PRODUCT PURSUANT TO THIS AGREEMENT WILL BE SUCCESSFUL.
6. Limitation of Liabilities

EXCEPT FOR BREACHES OF SECTION 5 (CONFIDENTIALITY), TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY: (I) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (II) LOST SAVINGS, PROFIT, DATA, USE, OR GOODWILL; (III) BUSINESS INTERRUPTION; (IV) COSTS FOR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (V) PERSONAL INJURY OR DEATH; OR (VI) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, REGARDLESS OF CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, AND EVEN IF NOTIFIED IN ADVANCE OF THE POSSIBILITIES OF SUCH DAMAGES.

1. Term and Termination
   1. Term. This Agreement will commence on the Effective Date and continue to be in effect for a period set out on the cover page(the “**Initial Term**”). This Agreement may be renewed for successive periods in time (each a “**Renewal Term**”) by mutual agreement of the Parties prior to the end of the then current Term.
   2. Termination for Convenience. Either Party may terminate this Agreement at any time by providing advance written notice of not less than **[45]** days to the other Party.
   3. Termination for Cause. Either Party may, in addition to other relief, suspend or terminate this Agreement if the other Party commits a material breach of any provision of this Agreement and fails within 10 calendar days after receipt of notice of such breach to correct such material breach.
   4. Termination Obligations. Within 30 calendar days following termination, each Party will:
      1. return the other Party’s materials, systems, and Information in the Party’s possession or control; and
      2. return or destroy the other Party’s Confidential Information.
   5. Survival. The following Sections, together with any other provision of this Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of this Agreement, will survive expiration or termination of this Agreement for any reason: Section 3(a)(i) (Background IP Ownership), Section 3(a)(ii) (Assignment of Modifications to Background IP), Section 3(b) (Foreground IP), Section 5 (Confidential Information), Section 6 (Warranty; Disclaimer), Section 7 (Limitation of Liabilities), Section 8(e) (Survival), and Section 9 (General Provisions).
2. General Provisions
   1. Notices. Notices sent to either Party will be effective when delivered in person or by email, one day after being sent by overnight courier, or five days after being sent by first class mail postage prepaid to the official contact designated by the Party to whom a notice is being given. Notices must be in writing and sent to the contact information set out on the cover page.
   2. Assignment. Neither Party will assign this Agreement to any third party without the other Party’s prior written consent. Any assignment in violation of this Section will be void. This Agreement will inure to the benefit of and be binding upon the Parties, their permitted successors and permitted assignees.
   3. Choice of Law. This Agreement and any action related thereto will be governed by and construed in accordance with the substantive laws of the **[Province of Ontario and the federal laws of Canada applicable therein]**, without regard to conflicts of law principles. The Parties will initiate any lawsuits in connection with this Agreement in Toronto, ON, Canada, and irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting therein. This choice of jurisdiction does not prevent PartyA from seeking injunctive relief with respect to a violation of Intellectual Property Rights or confidentiality obligations in any appropriate jurisdiction.
   4. Construction. Except as otherwise provided in this Agreement, the Parties’ rights and remedies under this Agreement are cumulative. The terms “include” and “including” mean, respectively, “include without limitation” and “including without limitation.” The headings of sections of this Agreement are for reference purposes only and have no substantive effect. The terms “consent” or “discretion” means the right of the applicable Party to withhold such consent or exercise such discretion, as applicable, arbitrarily and without any implied obligation to act reasonably or explain its decision to the other Party.
   5. Force Majeure. Neither Party will be liable for delays caused by any event or circumstances beyond the Party’s reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems, Internet service failures or delays.
   6. Severability. Any provision of this Agreement found by a tribunal or court of competent jurisdiction to be illegal or unenforceable will be severed from this Agreement and all other provisions of this Agreement will remain in full force and effect.
   7. Waiver. A waiver of any provision of this Agreement must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.
   8. Independent Contractors. PartyA’s relationship to PartyB is that of an independent contractor, and neither Party is an agent or partner of the other. Neither Party will have, and will not represent to any third party that it has, any authority to act on behalf of the other Party.
   9. Export Control. Each Party will comply with all export laws and regulations that may apply to goods and Information, including any Intellectual Property, that is assigned, licensed or made available to such Party.
   10. Non-Solicitation. Except with the other Party’s prior written consent, neither Party will directly or indirectly solicit the other Party’s employees during the Term and for a period of 1 year after the termination or expiration of this Agreement; provided, however, that this Section 9(j) will not limit either Party from soliciting or hiring any Person who responds to a general advertisement or solicitation, including to advertisements or solicitations through newspapers, trade publications, or efforts by any recruiting or employment agencies, not specifically directed at the employees of the other Party.
   11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations or other communications, whether written or oral.
   12. Amendments. No amendment, supplement, modification, waiver, or termination of this Agreement and, unless otherwise expressly specified in this Agreement, no consent or approval by any Party, will be binding unless executed in writing by the Party or Parties to be bound thereby.