

Innovation Agreement Template

October 2018

INNOVATION AGREEMENT

[Consider renaming this agreement to suit the activities to be undertaken by the successful proponent. For example, "Solution Development and Deployment Agreement".]

AGREEMENT # [INSERT]

BETWEEN

[INSERT NAME OF PURCHASER]

- AND -

[INSERT NAME OF SUPPLIER]

[Drafting notes and input fields are set off with square brackets, shaded and in italics and bold. After considering all drafting notes, change any text that is to remain in the draft agreement so that the formatting aligns with the surrounding text.]

[Remove all instructions and ensure references to other sections are accurate before issuing.]

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INNOVATION SERVICES AGREEMENT

[Consider renaming this agreement to suit the activities to be undertaken. For example, "Solution Development and Deployment Agreement".]

THIS AGREEMENT ("Agreement") is made as of **[Insert date]**, between **[Insert legal name of Purchaser]**, with an office at **[Insert address]** (the "Purchaser") and **[Insert legal name of supplier]** with an office at **[Insert address]** (the "Supplier").

[If several purchasers are acting in concert, it may be advisable to have one of them, or some other agent, act as the "Purchaser" under this Agreement (rather than have all of them sign it). For example, one hospital in a LHIN may take the lead, and be responsible for coordinating with the Supplier, and may be the named "Purchaser" of innovation services under this Agreement. This may assist with centralizing instructions and oversight. Additional legal and other advice may be needed, depending on the structure that is chosen (e.g., to ensure that any intellectual is appropriately owned; to avoid disadvantageous tax consequences, etc.). Note that if this Agreement includes a deployment phase, the Deployment Phase Purchase Terms Schedule contemplates that all prospective purchasers will be listed in that Schedule.]

WHEREAS the Purchaser issued a request for solutions ("RFS") dated **[Insert date]** for **[insert description of the Solution at a high level.]** (the "Solution");

AND WHEREAS the Supplier submitted a proposal dated **[Insert date]** in response to the RFS;

AND WHEREAS upon the completion of the evaluation process pursuant to the RFS, the Supplier was identified by the Purchaser as the preferred proponent pursuant to the RFS;

AND WHEREAS the Supplier and the Purchaser were able to agree on the terms and conditions of this Agreement in respect of the Solution;

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

Article 1 Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms have the meanings indicated below:

- (a) **"Business Day"** or **"Business Days"** means Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m., except when such a day is a public holiday, as defined in the *Employment Standards Act* (Ontario) or as otherwise agreed to by the parties in writing.
- (b) **"Confidential Information"** has the meaning ascribed to it in Section 6.1 (Confidentiality).

- (c) “**Days**” means calendar days.
- (d) “**Deliverables**” means any and all documentation, scripts, improvements, tools, software, structures, techniques, inventions, developments, processes, discoveries and any other work product created or developed by or on behalf of the Supplier in connection with the performance of the Services.
- (e) “**Deployment Phase Notice**” has the meaning ascribed to it in Section 2.5(a) (Initiation of Deployment Phase).
- (f) “**Disclosing Party**” has the meaning ascribed to it in Section 6.1 (Confidentiality).
- (g) “**Effective Date**” means the date that this Agreement is made, as first shown above.
- (h) “**Event of Force Majeure**” means any cause beyond the reasonable control of a party to this Agreement, including any act of God, outbreak, or epidemic of any kind, communicable and virulent disease, strike, flood, fire, embargo, boycott, act of terrorism, insurrection, war, explosion, civil disturbance, shortage of gas, fuel or electricity, interruption of transportation, governmental order, unavoidable accident, or shortage of labour or raw materials.
- (i) “**Fees**” means the fees payable in respect of the Services set out in Section 4.1 (Fees).
- (j) “**FIPPA**” means the Freedom of Information and Protection of Privacy Act (Ontario). ***[Remove FIPPA and clauses that speak to FIPPA if it does not apply to the Purchasers.]***
- (k) “**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, agents, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals, or dispute settlement panels or other law, rule, or regulation-making organizations or entities having or purporting to have jurisdiction on behalf of any nation, province, territory, state, or other geographic or political subdivision thereof; or exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory, or taxing authority or power, and includes the Ministry of Health and Long-Term Care and Health Canada.
- (l) “**Indemnitees**” means the Purchaser and its officers, directors, agents, employees, or physicians.
- (m) “**Intellectual Property Rights**” includes any proprietary rights provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip or mask work law; or (vi) any other statutory provision or common law principle applicable to this

Agreement, including trade secret law, or the expression or use of same; or any applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing;

- (n) **“Personal Information”** means personal information as defined in FIPPA.
- (o) **“PHI”** means personal health information as defined in the *Personal Health Information Protection Act, 2004* (Ontario).
- (p) **“Privacy Office”** means the privacy office of the Purchaser.
- (q) **“Purchasing Organization”** means the organization that conducted the RFS process on behalf of the Purchaser.
- (r) **“Recipient”** has the meaning ascribed to it in Section 6.1 (Confidentiality).
- (s) **“Services”** means the services described in the Agreement and the Services and Fees Schedule, together with such other services that are an inherent or necessary part of the foregoing or are required or reasonably necessary for the proper performance or provision of the foregoing.
- (t) **“Solution”** means the *[insert general description of the solution that is the intended output of the Services – this should describe what the solution should do, rather than a fixed description of exactly how it should be done]*.
- (u) **“Supplier Materials”** means the materials and information possessed by the Supplier prior to the commencement of the Supplier’s delivery of the Services, or acquired by the Supplier during the performance of the Services, except to the extent that such materials and information: (i) were developed or acquired (whether alone or jointly with others) specifically and exclusively for the Purchaser in connection with the Services; or (ii) were provided to the Supplier by the Purchaser, whether directly or indirectly.
- (v) **“Supplier’s Personnel”** means the Supplier’s employees, agents, representatives, and subcontractors who are listed in the Personnel Schedule.
- (w) **“Supplier Project Manager”** means the manager designated in accordance with Section 3.2(Supplier Project Manager).
- (x) **“Term”** means the effective period of the Agreement as set out in Section 5.1 (Term).

1.2 Schedules

The following Schedules are attached to and form an integral part of this Agreement:

- (a) Services and Fees Schedule

- (b) Project Plan Schedule
- (c) Personnel Schedule
- (d) Information Practices Schedule
- (e) Supplier's Proposal Schedule
- (f) Deployment Phase Purchase Terms Schedule

[This list may require alteration or may be augmented to reflect the RFS process.]

1.3 Order of Precedence

[OPTION 1 – Use the text below if the RFS and Supplier's Proposal are to be attached to this Agreement. The advantage of choosing Option 1 is that it is a shortcut to ensuring that the Purchaser's requirements and parameters (in the RFS), as well as the details about the Supplier's proposed solution and proposal elements, are both incorporated into the contract that results from the RFS (and are enforceable as a matter of contract). However, the disadvantage is that the RFS, the Supplier's proposal, and the terms of this Agreement may not read or integrate well; it may be cumbersome or problematic to piece together what obligations arise on a given subject. For example, the Supplier's proposal could assign the Purchaser various obligations that the Purchaser may not be entirely willing to take on; similarly, the proposal could expand on the intellectual property provisions of this Agreement in unexpected and unintended ways – neither of these are necessarily conflicts with the main agreement, and so would not be resolved by this Section of the Agreement. Also, the RFS may have distracting procedural elements that no longer apply to the relationship with the Supplier. Consider Option 2.]

In the event of any conflict or inconsistency in the Agreement, the following is the order of precedence of documents comprising this Agreement:

- (a) Article 1 to Article 12 of this Agreement;
- (b) the Information Practices Schedule;
- (c) the other Schedules annexed to this Agreement, except for the Supplier's Proposal Schedule;
- (d) the RFS; and
- (e) the Supplier's Proposal Schedule.

Notwithstanding the foregoing, the provision of any Schedule annexed to this Agreement (except for the Supplier's Proposal Schedule) shall govern if it expressly provides that it supersedes the other provisions of this Agreement.

[OPTION 2 – Use the text below if the RFS and Supplier’s Proposal will not be attached to this Agreement. This means that relevant text from the RFS and Supplier’s proposal will need to be extracted and inserted into this Agreement (generally, in the Schedules). This includes extracting the information found in:

- ***the RFS Statement of Needs Schedule;***
- ***all outcome-based specifications in the RFS;***
- ***any relevant value-based evaluation criteria (reframed as performance metrics or otherwise) in the RFS; and***
- ***important elements of the Supplier’s proposal.***

The advantage of this approach is that it ensures that only relevant and acceptable text is incorporated into the Agreement; this approach presents less risk to the Purchaser if done properly. The disadvantage of this approach is that it requires more upfront effort, and requires diligence to ensure that all important information is carried over from the RFS and the Supplier’s proposal to this Agreement. Put simply, if a requirement, metric or parameter was included in the RFS or the Supplier’s proposal, and is important to the Solution, then it should appear in the final version of the Agreement that is signed. Option 2 is highly advisable over Option 1.]

In the event of any conflict or inconsistency in the Agreement, the following is the order of precedence of documents comprising this Agreement:

- (a) Article 1 to Article 12 of this Agreement;
- (b) the Information Practices Schedule; and
- (c) the other Schedules annexed to this Agreement.

Notwithstanding the foregoing, the provision of any Schedule annexed to this Agreement shall govern if it expressly provides that it supersedes the other provisions of this Agreement.

1.4 Rules of Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender.

- (b) Words in the Agreement shall bear their natural meaning.
- (c) References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (d) In construing the Agreement, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

Article 2 Services

2.1 General

- (a) The Supplier agrees to provide the Services in accordance with the requirements of this Agreement and in a professional manner.
- (b) The Supplier shall perform the Services and deliver the Deliverables according to the Project Plan Schedule.

2.2 Value Enhancement

In performing the Services, the Supplier shall work with the Purchaser to identify potential savings and/or service improvements in the Solution and shall make recommended changes to the methods and processes used by the Purchaser in connection with the Solution.

2.3 Acceptance of Services

[Consider whether a more detailed acceptance testing regime is necessary.]

- (a) If any part of the Services provided are not acceptable to the Purchaser, acting reasonably, the Purchaser shall provide notice to the Supplier, which notice shall explain the deficiency(ies) in the Services.
- (b) Upon receiving such notice, the Supplier shall take immediate corrective action and remedy the deficiency(ies) within 10 Days.
- (c) Where the Supplier’s attempt to correct such deficiency(ies) is unsuccessful, in the Purchaser’s sole discretion, the Purchaser may:
 - (i) provide notice to the Supplier in accordance with 0 and give the Supplier the opportunity to remedy the deficiency or deficiencies pursuant to 2.3(b); or

- (ii) terminate the Agreement on written notice to the Supplier.

2.4 Ownership of Deliverables

[This section 2.4 contemplates that the Purchaser will “own” the intellectual property rights in the Deliverables. This may not reflect the intended arrangement, such as where the Supplier will develop a Solution that it will own and license or provide to the Purchaser. The form of agreement attached to the RFS should be clear as to whether the Purchaser intends to own these rights. This clarity is essential for the proponents to submit accurately priced proposals and to allow for a proper comparison of proposals.]

[If the Supplier is to own the intellectual property rights in the Deliverables, consider the following in place of 2.4.2 below:]

2.4.1 General

- (a) The Purchaser acknowledges that all Intellectual Property Rights in all Purchaser Materials and Deliverables shall be retained by the Supplier and the Purchaser shall have no Intellectual Property Rights in the Purchaser Materials and Deliverables other than as provided hereunder.
- (b) Supplier hereby grants to the Purchaser and its agents, third party service providers, successors and assignees, as applicable, a non-exclusive, world-wide, perpetual, royalty-free, fee-free license (with the right to use same for the benefit of its personnel, patients or users) to use, execute, display, perform and copy the Deliverables (and Purchaser Materials embedded in or reasonably required to use the Deliverables): (i) in connection with the Purchaser’s receipt of the Services; and (ii) for the purposes of using and maintaining the Deliverables, whether for the purposes contemplated hereby or for such other purposes as are reasonable given the nature of the Deliverables. The right to use the Deliverables includes the right to translate, enhance and create extensions and derivative works solely to the extent necessary for (i) and (ii) above.
- (c) All Intellectual Property Rights in all Supplier Materials shall be retained by the Supplier subject to a grant by the Supplier to the Purchaser of an irrevocable, non-exclusive, worldwide, royalty-free license to use any Supplier Materials as part of performing the Services.
- (d) The Supplier shall not infringe on any Intellectual Property Rights of any third party in performing the Services.

ALSO: add the following definition to the Definitions Section:

“Purchaser Materials” means the materials and information (i) possessed by the Purchaser prior to the commencement of the Supplier’s delivery of the Services, or (ii)

provided by the Purchaser to the Supplier during the performance of the Services (and were not previously provided to the Purchaser by the Supplier, whether directly or indirectly).]

2.4.2 General

- (a) Except in respect of Supplier Materials (the licensing of which is set out in Section 2.4.2(b)), all Intellectual Property Rights in all Deliverables shall be and hereby are assigned to the Purchaser and the Supplier shall have no Intellectual Property Rights in such Deliverables. At the request and expense of the Purchaser, the Supplier shall do all acts necessary and sign all documentation necessary in order to assign to the Purchaser all such Intellectual Property Rights and to enable the Purchaser to register patents, copyrights, trade-marks, mask works, industrial designs and such other protections for the Deliverables as the Purchaser deems advisable anywhere in the world.
- (b) All Intellectual Property Rights in all Supplier Materials shall be retained by the Supplier subject to a grant by the Supplier to the Purchaser of an irrevocable, non-exclusive, worldwide, royalty-free license to use any Supplier Materials that are incorporated into the Deliverables to the extent necessary for Purchaser to use or access the Deliverables, whether for the purposes contemplated hereby or for such other purposes as are reasonable given the nature of the Deliverables.
- (c) The Supplier shall not infringe on any Intellectual Property Rights of any third party in performing the Services.
- (d) The Supplier unconditionally waives any and all moral rights in the Deliverables and shall obtain an unconditional waiver of moral rights from any author or creator of any such Deliverables. Such waiver of moral rights shall be delivered to the Purchaser, if requested by the Purchaser.

2.4.3 Jointly Developed Intellectual Property

If, in connection with this Agreement, the Parties jointly develop any intellectual property for the purposes of providing savings or improved methods or techniques for the benefit of the Purchaser (or any purchaser or user of the Solution), such intellectual property shall be deemed a Deliverable and governed by this Agreement (regardless of whether it specifically relates to the Solution). ***[Confirm that any other new IP (i.e., IP that is not specifically a Deliverable) ought to have the same treatment as a Deliverable under this Agreement – likely that should be the case, but it will depend on the circumstances.]***

2.5 Initiation of Deployment Phase

- (a) If the Purchaser is satisfied that, upon completion or substantial completion of the Services, the Solution is suitable for purchase and deployment, the Purchaser (and any other purchaser listed in the Deployment Phase Purchase Terms Schedule)

shall have the option (in its sole discretion) to purchase the Solution on a commercial basis pursuant to the provisions set out in the Deployment Phase Purchase Terms Schedule. The Purchaser may exercise this option by delivering written notice to the Supplier (the “**Deployment Phase Notice**”).

- (b) To the extent that the provisions of the Deployment Phase Purchase Terms Schedule are not, by their terms, final and binding at the time that the Deployment Phase Notice is delivered to the Supplier, the parties shall negotiate in good faith to finalize the Deployment Phase Purchase Terms Schedule within 30 Days of the Supplier’s receipt of the Deployment Phase Notice. The finalized Deployment Phase Purchase Terms Schedule shall then be executed by the parties.
- (c) For greater certainty, the parties agree that the provisions set out in the Deployment Phase Purchase Terms Schedule shall have no effect (and the Purchaser shall be under no obligation to purchase the Solution) unless and until (a) the Deployment Phase Notice is delivered to the Supplier; and (b) a finalized Deployment Phase Purchase Terms Schedule is executed by the parties.

Article 3 Project Management

3.1 General

The Supplier shall be responsible to the Purchaser for the acts and omissions of the Supplier’s Personnel.

3.2 Supplier Project Manager

[Optional – if removing, remove references to the Supplier Project Manager throughout the document]

The Supplier shall promptly designate a Supplier Project Manager (subject to the prior approval of the Purchaser) who shall have the required skills and capabilities to adequately perform the role, and shall be fully authorized to make decisions and otherwise deal with the Purchaser in an effective and timely manner in respect of all matters under the Agreement. The Supplier Project Manager shall:

- (a) be responsible for co-coordinating the provision of the Services with the Purchaser;
- (b) ensure that the Supplier’s obligations are completed in an efficient and timely manner; and
- (c) be readily available to the Purchaser by telephone and electronic communication during hours mutually agreed upon in writing regarding this Agreement, including, without limitation, responding to requests, queries, and complaints from the Purchaser.

3.3 Reports

At the request of the Purchaser, the Supplier shall deliver to the Purchaser operational progress reports throughout the Term and a final report, all such reports to be in a mutually agreed upon format. Such reports, which shall be considered to form an integral part of the Services, may include, but are not limited to, the following:

[Choose one or all of the following reports, or create a list of the reports that are needed.]

- **Daily/Weekly/Monthly Progress/Status Report**
- **Daily/Weekly/Monthly Cost/Budget Report**
- **Daily/Weekly/Monthly Personnel Report]**

3.4 Personnel

The Services shall be provided by the Supplier's Personnel, who shall function under the direction and control of the Supplier's Project Manager. The Supplier shall ensure that the Supplier's Personnel:

- (a) only perform activities in relation to the Services that are specifically assigned to them in the Personnel Schedule or as otherwise agreed by the parties in writing; and
- (b) have the necessary experience, professional designations and credentials required to provide the Services.

The Supplier shall not substitute alternates for any Supplier's Personnel without the prior consent of the Purchaser, which consent shall not be unreasonably withheld.

3.5 Application of Purchaser's Rules to Supplier's Personnel

- (a) All policies and procedures applicable to the employees of the Purchaser regarding their conduct in connection with the business and affairs of the Purchaser shall, insofar as the same shall be required by the Purchaser, be applicable to the Supplier and the Supplier's Personnel while on the Purchaser's premises. It is the responsibility of the Supplier's Personnel to familiarize themselves with all such policies and procedures, which the Purchaser shall provide to the Supplier prior to, or at the time of execution of the Agreement.
- (b) In the event that any of the Supplier's Personnel fails or refuses to abide by such policies and procedures, Supplier shall ensure that such person no longer performs any Services for the Purchaser, and such person may be removed from

or not admitted to the Purchaser's premises. The Purchaser shall have no liability in connection with the foregoing.

- (c) If requested by the Purchaser, the Supplier shall adhere to, and provide such attestations as are contemplated by, the Healthcare Supply Chain Network National Standard on Vendor Credentialing (as may be amended from time to time). The Purchaser may disallow admittance to any of the Supplier's Personnel to the Purchaser's premises where such person (or the Supplier) does not meet that standard.

3.6 Purchaser Assistance

[Optional – if Services are on-site]

The Purchaser agrees to:

- (a) keep the equipment areas free of materials extraneous to said work and to remove any stock, fixtures, or partitions needed to facilitate the Services;
- (b) remove all obstructions to provide such clearances, as required, if the Services are in an area with less than the minimum clearances recommended for servicing; and
- (c) extend to the Supplier's Personnel any facilities at the Purchaser's premises that are necessary for the completion of the Services.

3.7 Workers' Compensation

The Supplier shall make all payments required under the *Workplace Safety and Insurance Act* (Ontario), and under similar legislation in other jurisdictions, and shall indemnify and hold harmless the Indemnitees from any failure to comply. The Supplier shall provide the Purchaser with a certificate that the Supplier is in good standing under the relevant workers' compensation legislation.

3.8 Workplace Safety

The Supplier shall:

- (a) maintain a safe workplace or work site in accordance with safe work practices and housekeeping;
- (b) comply with the *Occupational Health and Safety Act* (Ontario) and all of its regulations pertaining to the type of work being performed;
- (c) have actual knowledge of, and comply with the Purchaser's safety policies and appropriate safe work procedures;

- (d) provide the necessary protective equipment, devices, or related safety item(s) as required by the *Occupational Health and Safety Act* (Ontario) and all of its regulations, as well as the Purchaser's safety policies, and ensure that such equipment, devices, and items are used in the performance of the requirements of the Agreement;
- (e) if requested, provide the Purchaser with a copy of the Supplier's written health and safety policy as required by the *Occupational Health and Safety Act* (Ontario); and
- (f) where applicable, provide product performance information relating to anti-microbial effectiveness, to be documented for the review and approval of the Purchaser and the Purchaser's infection control units.

3.9 Regular Hours

All Services shall be performed during regular hours or hours mutually agreed upon in writing. Overtime hours, pre-approved in writing by the Purchaser, shall be billed as set out in the Services and Fees Schedule. ***[This section may be inapplicable to the Services and can be deleted.]***

3.10 Compliance with Accessibility Standards

[Optional] The Services provided hereunder shall comply with applicable accessibility standards under the *Accessibility for Ontarians with Disabilities Act, 2005* and its regulations. If requested by the Purchaser, acting reasonably, the Supplier shall provide evidence of the policies, procedures and training practices that it has implemented to comply with the foregoing. ***[Further optional clause: The Supplier shall comply, and shall ensure that its personnel read and comply, with all Purchaser policies in respect of that Act and its regulations as may be applicable to the Services.]***

3.11 Changes to Schedules

The Purchaser shall be entitled to make changes to the schedules at any time provided that:

- (a) any such change shall be set out in writing and delivered to the Supplier; and
- (b) where any such change results in an increase or decrease in the cost or time required for the delivery of the Services or performance of any requirement of this Agreement, an equitable adjustment shall be made to the Fees or to the delivery date, or to both, provided that such adjustment is agreed to by the parties in writing.

Article 4 Fees and Payment

4.1 Fees

Subject to any adjustment pursuant to Section 3.11 (Changes to Schedules) the Fees for the Services shall not exceed the total sum of \$**[Insert]**. The Fees shall be payable in milestone payments as set out in the Services and Fees Schedule. ***[Ensure that the milestone payments are set out in the cross-referenced schedule. Milestone payments are an effective way to mitigate risk in an innovation procurement by tying Fee payments to significant stages of the Services.]***

4.2 Invoicing

The Supplier shall submit invoices to the Purchaser for payment in accordance with Section 4.1 (Fees). No additional or contrary term or condition, which may be contained in the Supplier's invoice, shall have any application to this Agreement. Invoices shall reference this Agreement number and shall contain a brief, point form narrative relating to the amounts set out in it.

The Purchaser's payment term shall be net **[Insert]** Days, unless, within that period, the Purchaser, acting reasonably, gives notice to the Supplier that the Services are not in accordance with the terms hereof in some material respect. ***[Specify: 30 Days or 60 Days or as applicable.]***

4.3 Taxes

As the Fees are exclusive of all harmonized and local sales taxes, if any, each shall be clearly set out on the Supplier's invoice and paid by the Purchaser unless it provides evidence of exemption therefrom.

4.4 Other Costs and Expenses

The Purchaser shall not be responsible for any costs or expenses of the Supplier relating to this Agreement that are not set out at Section 4.1, including, without limitation, in respect of accommodation or travel, unless expressly agreed to by the Purchaser in writing. Notwithstanding any agreement by the Purchaser to additional costs or expenses, all expenses that are to be reimbursed or paid by the Purchaser must be in accordance with the Purchaser's rules with respect to travel, meal and hospitality expenses, as established under the Broader Public Sector Expenses Directive. For greater certainty, meals, hospitality and incidental expenses will not be reimbursed by the Purchaser.

Article 5 Term and Termination

5.1 Term

This Agreement shall become effective on the Effective Date, and shall expire on **[Insert date]** unless it is terminated early in accordance with the provisions of the Agreement (the “Term”). The Term is subject to any and all rights of either party to terminate the Agreement pursuant to the terms of the Agreement, or otherwise available to either party at law or in equity.

[Generally, the Term noted above, and subject to the extension below, would encompass the Deployment Phase, if the Purchaser wishes to proceed to the Deployment Phase. If the Term is to be subject to further extension, this should be stated.]

5.2 Extension

[Optional – If the Services were acquired in a RFS process, the following option is only to be used if the RFS document referenced such an extension.]

The Purchaser, in its sole discretion, may extend the Term for an additional period of **[Insert the extension period]** months by giving written notice to the Supplier prior to the commencement of the extension period upon the same terms and conditions.

5.3 Termination by Either Party

Either party may, without liability, cost or penalty, terminate the Agreement on written notice to the other where such other party neglects or fails to perform or observe any material term or obligation of the Agreement and such failure has not been cured within 30 Days of written notice being provided; **[provided that if such failure cannot be cured within that period, there shall be no cure period and the termination may take effect immediately.]**

5.4 Termination by Purchaser

The Purchaser shall be entitled to terminate the Agreement, without liability, cost, or penalty:

- (a) on written notice to the Supplier where the Supplier: (i) makes any general assignment for the benefit of creditors or otherwise enters into any composition or arrangement with its creditors; (ii) has a receiver and/or manager appointed over its assets or makes an application to do so; (iii) becomes bankrupt or insolvent or commits an act of bankruptcy or takes or attempts to take advantage of any law or statute for the relief of bankrupt or insolvent debtors; (iv) has a resolution or a petition filed or an order made for its winding up; or (v) ceases to carry on business. Notwithstanding the foregoing, the Purchaser shall not be

entitled to terminate this Agreement under this Section if the Supplier, or its creditors, or some other party makes suitable provisions for the performance of its obligations hereunder;

- (b) on **[Insert] [Days]** written notice to the Supplier, following the occurrence of any material change in the Purchaser's requirements which results from regulatory or funding changes or recommendations issued by any Governmental Authority;
- (c) on written notice to the Supplier if the Supplier breaches in any material respect any of its obligations or covenants hereunder with respect to confidential information or privacy;
- (d) in the event of a material breach of Section 2.1 or Section 7.1 (including no conflict of interest), or any service standard referred in the Services and Fees Schedule, if such breach is not cured within **90** Days of Purchaser giving written notice of such material breach to the Supplier; and
- (e) as per any provision of the Agreement that provides for early termination. **[The Services and Fees Schedule and/or the Project Plan Schedule should describe any specific points in time at which the Purchaser will the right to exit the arrangement and terminate the Agreement.]**

5.5 Obligations in the Event of Termination or Expiration of the Agreement

5.5.1 Supplier's Obligations

In the event that the Purchaser gives notice of termination under this Agreement or this Agreement expires, or this Agreement is otherwise terminated, the Supplier shall, at the request of the Purchaser do any or any combination of the following:

- (a) disclose to the Purchaser the current state of the Services completed to the effective date of termination (including all Deliverables that have been produced) by the Supplier as at the effective date of termination;
- (b) prepare a written report on the Services completed to the effective date of termination (including all Deliverables that have been produced) and deliver that report in a professional manner acceptable to the Purchaser within 10 Days from the effective date of termination;
- (c) provide to the Purchaser all Deliverables produced during the Term, and return to the Purchaser all information and materials provided to the Supplier by the Purchaser; and
- (d) assist with the transition/handover of the Services, whether to the Purchaser or to a third party, as applicable and upon the request of the Purchaser.

5.5.2 Purchaser's Obligations

Where the Purchaser terminates the Agreement, the Purchaser shall be responsible only for:

- (a) payment of the Services provided to the date of termination; and
- (b) all expenditures reasonably incurred in connection with preparing and providing the report prepared pursuant to Subsection 5.5.1(b);

provided that all such payments shall be no greater than the maximum Fees amount specified herein, and shall be subject to the invoicing and other requirements of 2.5.

5.6 No Limitation of Remedies

Any termination of the Agreement shall not in any respect limit any of either party's rights or remedies either in law or in equity or relieve either party of any obligation incurred prior to the effective date of such termination.

5.7 Survival

In addition to any other provision dealing with the survival of obligations hereunder, all of the obligations regarding confidentiality, privacy, Intellectual Property Rights, indemnifications, disclaimers and limitations on liability set out in this Agreement shall survive the expiry or termination of this Agreement, as shall all any other provisions which, by their nature, ought reasonably to survive expiry or termination.

Article 6 Confidentiality and Privacy

6.1 Confidentiality

Each party (a "**Recipient**") agrees that any information concerning the business or affairs of the other party (a "**Disclosing Party**") or its directors, officers, agents, employees, clients, patients and physicians, as applicable, about which the other party becomes aware of in the course of the Supplier supplying the Services ("**Confidential Information**") shall:

- (a) be treated as confidential by the Recipient;
- (b) not be disclosed by the Recipient to any third party or to its own personnel, representatives or subcontractors except as may be required in order for the Recipient to meet its obligations under this Agreement, and provided that any such third party, personnel, representatives or subcontractors are bound to restrictions substantially similar to those set out in this Article 6 (Confidentiality and Privacy); and

- (c) not be used for any purpose other than that contemplated by this Agreement and for the benefit of the other party.

The parties agree that any combination of information which includes such information shall be treated as confidential even if individual parts thereof are not confidential. The Recipient shall use all reasonable efforts to prevent the unauthorized access, use or disclosure of Confidential Information, using a standard of care no less than the degree of care that the Recipient would be reasonably expected to employ for its own confidential information.

If a Recipient is required by any applicable law to make disclosure of any Confidential Information, it shall consult with the Disclosing Party in advance to the extent reasonably practicable as to the contents and timing of such disclosure in order for the Disclosing Party to have the opportunity to prevent the disclosure of its Confidential Information or to obtain a protective order or other remedy. If such protective order or other remedy is not obtained, the Recipient shall produce only that portion of the Confidential Information that it is ordered to disclose. In the event that any Confidential Information is disclosed pursuant to the foregoing, it shall not lose its confidential status through such disclosure.

If a Recipient becomes aware of, or reasonably suspects, that any Confidential Information has been subject to loss, theft, or unauthorized use or disclosure, it shall promptly notify the Disclosing Party and provide reasonable cooperation in investigating, remedying and resolving that incident.

6.2 Exceptions

It shall not constitute a breach of the obligations hereunder for the Recipient to use or disclose Confidential Information that was:

- (a) already in the public domain or becomes known within the public domain from no breach of the Recipient;
- (b) already known to the Recipient at the time of disclosure;
- (c) independently developed by the Recipient without reference to or use of the Confidential Information;
- (d) lawfully received by the Recipient from a third party; or
- (e) made public with the prior consent in writing of the Disclosing Party.

The Supplier acknowledges that FIPPA applies to and governs all records in the custody or under the control of the Purchaser, and that it may require the disclosure of such records to third parties notwithstanding the confidentiality obligations set out in this Agreement.

6.3 Health Privacy

The Supplier shall comply with the Information Practices Schedule to the extent it handles PHI on behalf of the Purchaser.

6.4 General Privacy and FIPPA

The Supplier agrees to comply with the following to the extent it collects, uses or otherwise handles Personal Information on behalf of the Purchaser:

- (a) not to access any Personal Information unless the Purchaser determines, in its sole discretion, that access is permitted under FIPPA and is necessary in order to provide the Services;
- (b) not to directly or indirectly use, collect, disclose, or destroy any Personal Information for any purposes that are not authorized by the Purchaser;
- (c) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction, or intermingling with other records and databases and to implement, use, and maintain the most appropriate products, tools, measures, and procedures to do so;
- (d) to restrict access to Personal Information to those of its Personnel who have a need to know it for the purpose of providing the Services and who have been specifically authorized by the Purchaser to have such access for the purpose of providing the Services;
- (e) to implement other specific security measures that in the reasonable opinion of the Purchaser would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information; and
- (f) to provide records containing Personal Information to the Purchaser within 7 Days of being directed to do so by the Purchaser for any reason including an access request or privacy issue.

Article 7 Representations, Warranties, Indemnities

7.1 Supplier's Representations and Warranties

[Use and add as applicable]

The Supplier represents and warrants to the Purchaser and acknowledges that the Purchaser is relying thereon, as follows:

- (a) if applicable, the Services shall have received all required approvals of, and shall comply with all applicable standards and requirements referred to in this Agreement, or as may be required by law;
- (b) the Supplier shall provide documented evidence that the Services meet the applicable standards or that the Supplier has the applicable licenses, if any, referred to in this Section 7.1 (Supplier's Representations and Warranties) or by law;
- (c) if applicable, on completion of the Services, there shall be no liens outstanding in regard to such Services;
- (d) the Supplier has full power and legal right to enter into the Agreement and to fulfill all of its obligations hereunder;
- (e) the Supplier is not aware of any proceeding in progress or pending or threatened against, related to or affecting the Supplier and which might be expected to have a materially adverse effect on the Services or impact the Supplier's ability to meet its obligations under this Agreement;
- (f) to the best of its knowledge, neither the Purchaser, the Purchasing Organization nor any of their respective personnel or affiliated organizations has any significant influence in the Supplier or any of its associates or affiliates, or will receive any direct or indirect proceeds from the Agreement other than as expressly stated in the Agreement;
- (g) the Supplier has complied with all federal, provincial, and local laws, regulations, and orders in fulfilling its obligations under the Agreement; and
- (h) all representations, warranties, confirmations, and statements set out in the Supplier's proposal/quotation and in this Agreement shall remain accurate in their entirety during the Term.

7.2 Purchaser's Representations and Warranties

[Use and add as applicable]

The Purchaser represents and warrants to the Supplier and acknowledges that the Supplier is relying thereon, as follows:

- (a) the Purchaser has full power and legal right to enter into the Agreement and to fulfill all of its obligations hereunder; and
- (b) the Purchaser has complied with all federal, provincial, and local laws, regulations, and orders in fulfilling its obligations under the Agreement.

7.3 Nature of Warranties

Except as expressly set forth herein, there are no other warranties or conditions, express or implied, including any warranty or condition of merchantability or fitness for a particular purpose, in respect of the Services.

7.4 Indemnity

Subject to the limitation of liability set out in Section 7.5, the Supplier shall indemnify, defend (at its expense) and hold the Indemnitees harmless in respect of any action, claim, demand, cost, charge, losses, and expenses (including legal costs on a substantial indemnity basis), whether or not well-founded, (“**Losses**”) brought against or suffered by the Indemnitees arising out of or related to:

- (a) claims for bodily injury, including death, and claims asserted by third parties for bodily injury, including death;
- (b) claims for loss or damage to tangible property, and claims asserted by third parties for loss or damage to tangible property;
- (c) any breach or alleged breach by the Supplier of any of its obligations, warranties, or representations in the Agreement; or
- (d) allegations that the operation or use of any Deliverables, or any part thereof, infringes any third party’s copyright, trade secret, patent, or any other intellectual property right;

except to the extent that such Losses were not caused by the Supplier. The foregoing indemnity shall be conditional upon the Purchaser notifying the Supplier as soon as is reasonably practicable in the circumstances of any Losses in respect of which this indemnity may apply and of which the Purchaser has knowledge, and the Purchaser cooperating with the Supplier in the defence of any such claim or action. No such claim or action shall be settled or compromised by a party hereto without the other party’s prior written consent (such consent not to be unreasonably withheld or delayed).

7.5 Limitation of Liability

7.5.1 Limitation of Liability

- (a) The limitation of liabilities in this Section shall not apply in respect of (i) any indemnities with respect to intellectual property, bodily injury or death; or (ii) damages arising from a breach of confidence or privacy.
- (b) In the event Supplier is liable to Purchaser in respect of any claim against Supplier whether based in contract, tort (including negligence), or otherwise, including breach by Supplier of any of its obligations under this Agreement (whether or not

a fundamental breach), Purchaser' damages shall be limited to payment of no more than:

- (i) in relation to harm to tangible personal property and real property caused by Supplier or its agents negligence, wilful or intentional acts the greater of (1) \$**[Insert]**, and (2) the total amount of fees paid by Purchaser under this Agreement during the immediately preceding **[Insert]** year period up to the point in time when actual and direct damages were incurred by Purchaser; or
 - (ii) in relation to any other matter not otherwise excluded from this limitation on liability, the greater of (1) \$**[Insert]**, and (2) the total amount of fees paid by Purchaser under this Agreement during the immediately preceding **[Insert]** year period up to the point in time when actual and direct damages were incurred by Purchaser.
- (c) The parents, affiliates, subsidiaries, directors, officers, employees, agents, representatives, subcontractors and suppliers of a party shall be deemed to be included as part of such party for purposes of this Section 7.5.1.

7.5.2 Indirect Damages

Other than in connection with Section 7.4(a) and 7.4(d) and Article 6 (Confidentiality and Privacy), neither party shall be liable to the other for special, indirect, incidental or consequential damages arising in connection with this Agreement, even if advised of the possibility thereof, including, but not limited to, lost profits, lost business revenue, failure to realize expected savings, other commercial or economic losses of any kind, or for any claim against Purchaser. **[Consider whether the type of damages to be protected against in the particular procurement could be considered an 'indirect' damage. Since there is often some doubt in this area, it is highly advisable to describe expressly in Section 7.4 (Indemnity), above, what is intended to be covered. That way, it will be treated as 'direct' damages.]**

Article 8 Insurance

8.1 Liability Insurance

[No Services should be delivered until the Purchaser is in receipt of a satisfactory certificate, as set out below or as per the insurance broker's instructions. The following are sample provisions only and may not be appropriate in all cases. These provisions need to be customized and the limitations of liabilities/amounts set out below ascertained from the appropriate insurance advisors.]

8.1.1 Supplier's Insurance

The duration of each policy shall be from the Effective Date until termination of the Agreement. The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain including, but not limited to, the following comprehensive commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than **[Insert amount]** per occurrence, **[Insert amount]** aggregate. The policy shall include, but not be limited to, the following:

- (a) the Purchaser as an additional insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Agreement;
- (b) products and completed operations;
- (c) contractual liability coverage;
- (d) cross-liability clause;
- (e) 30 Day written notice of cancellation, termination, or material change; and
- (f) owned and non-owned automobile coverage with blanket contractual coverage for hired automobiles.

8.1.2 Proof of Insurance

On the Effective Date and upon the placement, renewal, amendment, or extension of any part of the insurance, the Supplier shall provide the Purchaser with confirmation of coverage and, if requested, a certificate of insurance certified by an authorized representative of the insurer.

8.1.3 Additional Insurance

It shall be the sole responsibility of the Supplier to determine what additional insurance coverage, if any, shall be necessary and advisable for its own protection and/or to fulfill its obligations under the Agreement. Any such additional insurance shall be provided and maintained by the Supplier at its own expense.

Article 9 Force Majeure

9.1 Force Majeure

Except as expressly provided otherwise in the Agreement, dates and times by which a party is required to render performance under this Agreement shall be postponed to the extent and for the period of time that such party is prevented from meeting such dates and times by an Event of Force Majeure.

9.2 Purchase of Services

The Purchaser shall not be obligated to purchase the Services in the event that the needs of the Purchaser change due to any Event of Force Majeure, provided that the Purchaser promptly advises the Supplier where the Purchaser's needs change.

9.3 Notice

Where an Event of Force Majeure occurs, the party who is delayed or fails to perform shall give prompt notice to the other party.

9.4 Performance

Such party must use reasonable commercial efforts to render performance in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if the same are reasonably available.

9.5 Right to Terminate

In the event such inability to perform shall continue longer than **[Insert]** Days, the party which has received or which was entitled to receive notice pursuant to Section 9.3 (Notice) may terminate the Agreement by notice to the other party without further liability, expense, or cost of any kind.

Article 10 Dispute Resolution

[These clauses permit litigation and simply articulate arbitration as an option. Consider where arbitration should preclude the possibility of litigation.]

10.1 General

Should any party default in respect of or contravene any portion of the Agreement, the parties agree to address the breach or dispute by referring it to the highest level of management within their respective organization, and allowing at least **[Insert]** Days for such highest level of management to resolve the matter prior to initiating any arbitration under this Article 10 (Dispute Resolution) or other legal proceedings.

Subject to the provisions of the Agreement, each party shall continue performing its obligations during the resolution of any dispute, including payment of undisputed amounts then due.

This Article 10 (Dispute Resolution) shall not (i) apply to claims by third parties, or (ii) prevent either party from seeking an injunction or other equitable relief from a court in order to protect its intellectual property rights or its Confidential Information (or in the case of the Purchaser, Personal Information or PHI).

10.2 Election

If elected by a party, any breach or claim arising out of or relating to this Agreement or the breach thereof, may be settled by arbitration in accordance with the applicable Ontario arbitration legislation and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

10.3 Arbitration Site

The arbitration shall be held at **[Insert city name]** or at such other site mutually determined by the parties. Where the parties are unable to agree upon an arbitrator who is willing to serve within 45 Days of receipt of a demand to arbitrate by a party, then the **[Insert]** shall appoint an arbitrator willing to serve.

10.4 Procedure

Subject to the provisions of this Article 10 (Dispute Resolution), the arbitrator shall determine the procedure for the arbitration. Such procedure shall include at least one opportunity for written submissions by or on behalf of each party and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the arbitrator deems appropriate. The arbitrator shall have no power to amend the provisions of the Agreement.

10.5 Decision

The arbitrator shall not award either party punitive damages and the parties shall be deemed to have waived any right to such damages. The decision shall be in writing and judgment upon the award by the arbitrator may be entered into any court having jurisdiction. Prompt handling and disposal of the issue shall be important. Accordingly, the arbitrator is instructed to assume adequate managerial initiative and control over discovery and other aspects of the proceeding to schedule discovery and other activities for substantially continuous work, thereby expediting the arbitration as much as is deemed reasonable to the arbitrator, but in all events, to effect a final award within 45 Days of the arbitrator's selection or appointment and within 10 Days of the close of evidence.

10.6 Confidential Information

The proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard both parties' confidential information. The arbitrator shall have the right, but not the obligation, to order that the losing party pay the fees of the arbitrator, which shall be designated by the arbitrator. If the arbitrator is unable to designate a losing party or does not order the losing party to pay all such fees, the arbitrator shall so state, and the fees shall be split equally between the parties.

Article 11 Notices

11.1 Notices

Subject to the provisions of the Information Practices Schedule, any notice, demand, request, consent, approval, or acceptance required or contemplated to be given or made hereunder (a “**notice**”), shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person and left with a receptionist or other responsible employee of the relevant party at the applicable address set forth on the first page hereof ;
- (b) sent by prepaid registered post addressed to the address set forth on the first page hereof; or
- (c) sent by any electronic means of sending messages, including facsimile transmission, which produces a paper record (in this Section an “**Electronic Transmission**”) during normal business hours on a Business Day charges prepaid **[and confirmed by prepaid registered post]**
 - (i) in the case of the Supplier, to facsimile number **[Insert facsimile number and email address];**
 - (ii) in the case of the Purchaser, to facsimile number **[Insert facsimile number and email address];**

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

- (d) on the day it was delivered or on the first Business Day thereafter if it was delivered after 5:00 p.m. or if the day on which it was delivered was not a Business Day;
- (e) on the fifth (5th) mail delivery day following the day on which it was posted; or
- (f) on the first Business Day after it was sent by Electronic Transmission.

11.2 Changes

Either party may change its address for notice by giving notice to the other party (as provided in this Section Article 11 (Notices). A party must always provide an address for notice to which notices can be personally delivered.

Article 12 General Provisions

12.1 Independent Parties

This Agreement does not create a relationship of principal and agent or employer and employee between the Purchaser and the Supplier and under no circumstance shall either

party be considered the agent of the other. The Supplier shall have no authority to assume or create any obligation whatsoever, express or implied, in the name of or on behalf of the Purchaser.

12.2 Publicity

The Supplier shall not indicate, in any of its advertising or otherwise, that it has supplied or may in the future supply Services under this Agreement without the express prior written consent of the Purchaser. No acquisition or use of the Services by the Purchaser shall be construed as an endorsement or approval of such Services.

12.3 Remedies Cumulative

The rights and remedies of the parties under this Agreement are cumulative, and are in addition to and not in substitution for any other rights or remedies provided in the Agreement, by law or in equity. Any single or partial exercise by a party of any right under this Agreement, or any failure to exercise or delay in exercising any such right, shall not be or be deemed to be a waiver of, or to prejudice any other rights or remedies to which such party may be entitled.

12.4 Time of Essence

Time shall be of the essence of this Agreement.

12.5 Currency

Unless otherwise indicated, all dollar amounts expressed in the Agreement are in Canadian currency.

12.6 Entire Agreement

This Agreement, together with the RFS, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether written or oral and whether between the Supplier and the Purchaser or between the Supplier and the Purchasing Organization. There are no conditions, covenants, agreements, representations, warranties, or other provisions, expressed or implied, collateral, statutory, or otherwise, relating to the subject matter hereof except as provided herein.

[Depending on the Purchasing Organization's relationship with the Purchaser and if the Purchasing Organization has been involved, use the following sentence, if applicable.]

The Supplier acknowledges that Purchasing Organization has no authority to assume or create any obligation whatsoever, express or implied, in the name of or on behalf of the Purchaser with respect to this Agreement.

12.7 Assignment and Enurement

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and their respective successors and permitted assigns. Neither party may assign or subcontract any of its rights or obligations hereunder without the prior written consent of the other party (not to be unreasonably withheld). Any act in derogation of the foregoing shall be null and void. For the purposes of this Agreement, the transfer or issuance of shares by the Supplier of more than fifty per cent (50%) of the voting securities of the Supplier to any entity or entities other than to an affiliate (as such term is defined in the Business Corporations Act (Ontario)) or the shareholder or shareholders of the Supplier as of the date of this Agreement, whether or not such transfer or issuance of voting securities takes place in one or more transactions, shall, for the purposes of this Agreement, be deemed to be an assignment of this Agreement requiring the consent of the Purchaser, unless such transfer or issuance of shares is made pursuant to an initial public offering of common shares under the Securities Act (Ontario).

12.8 Amendment and Waivers

This Agreement may not be amended or modified in any respect except by written instrument signed by both parties, provided that the Purchaser may make changes to the attached schedules as set forth in Section 3.11 (Changes to Schedules). No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided.

12.9 Governing Laws

This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario, except that such Province's conflict of laws rules shall not apply to this Agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province of Ontario and the courts competent to hear any appeal.

The parties hereby execute the Agreement, which is made as of the Effective Date.

[INSERT NAME OF PURCHASER]

[INSERT NAME OF SUPPLIER]

Signature: _____

Name: _____

Title: _____

Date: _____

I have the authority to bind the Purchaser.

Signature: _____

Name: _____

Title: _____

Date: _____

I have the authority to bind the Supplier.

[Innovation Agreement Template]

Services and Fees Schedule

[At a minimum, this Schedule should include:

- ***a detailed description of the innovation services and activities to be performed by the Supplier, including research, development, design, testing, etc.***
- ***a detailed description of the parameters, standards, performance metrics and other elements for the Solution;***
- ***a breakdown in the Fees, including milestone events and corresponding milestone payments, with any intended timeline for same – or cross-reference the relevant milestones in the Project Plan Schedule; and***
- ***any risk-and-rewarding sharing regime (see the discussion in the Innovation Procurement Models Guide); and***
- ***any royalties or similar regime (e.g., if one party is to receive royalties from the commercialization of the Solution by the other party).***

If including all of this information in one schedule is unwieldy, this information can be divided across separate cross-referenced schedules (e.g., Services Schedule; Fees Schedule), or can appear in exhibits under the umbrella of this schedule.]

[Innovation Agreement Template]

Project Plan Schedule

[Insert the project plan.]

[Innovation Agreement Template]

Personnel Schedule

[Insert the list of specific Supplier employees, agents, representatives, and subcontractors who are assigned to provide the Services, as well as their general role/activities. The intent of this list is to ensure a stable and qualified team.]

Information Practices Schedule

Collection, Use, and Disclosure of Personal Health Information

1. The Supplier agrees to receive PHI from the Purchaser in accordance with the requirements of s. 17 or, in the case of health information network providers, s. 10(4) of the *Personal Health Information Protection Act, 2004* (Ontario) (PHIPA) and its related regulations, as part of the Supplier's provision of services to and on behalf of the Purchaser, and not on the Supplier's behalf or for the Supplier's own purposes.
2. For greater specificity pursuant to the Supplier's obligations under Section 1 of this Information Practices Schedule, in the event that the Supplier is a health information network provider under PHIPA, the Supplier will provide the Purchaser with a Privacy Impact Assessment and a Threat Risk Assessment with respect to the services to be provided to the Purchaser pursuant to the Agreement.
3. The Supplier will only use as much PHI as is reasonably necessary to perform its obligations under the Agreement and will make PHI available only to those employees who require access in order to satisfy those obligations.
4. The Supplier will only use and disclose any PHI it receives from the Purchaser as is permitted or required under the Agreement or the laws of Canada and/or the province of Ontario.
5. The Supplier will ensure that any of its agents or subcontractors to whom the Supplier provides the Purchaser PHI has agreed in writing to the same restrictions and conditions that applies to the Supplier with respect to PHI.
6. The Supplier will not disclose PHI, or any information, to any affiliated or unaffiliated third party without the prior written consent of the Purchaser.
7. The Supplier will maintain a log of access and disclosure of PHI by the Supplier and the Supplier's Personnel and make such log available to the Purchaser as and when requested.

Practices to Protect Personal Health Information

8. The Supplier will employ appropriate safeguards to prevent theft, loss, and unauthorized access, copying, modification, use, disclosure, or disposal of PHI. ***[If information management services are part of the Agreement use the following: Without limiting the generality of the foregoing, the Supplier will take reasonable steps to ensure that all PHI from the Purchaser is securely segregated from any information owned by the Supplier or third parties, including access barriers, physical segregation, and password authorization.]***

9. The Supplier will maintain privacy policies in accordance with Canadian and Ontario laws and these policies will be made available for inspection on request.
10. The Supplier will educate its employees on privacy laws and policies and take reasonable steps to ensure employee compliance through staff training, confidentiality agreements, and employee sanctions.
11. The Supplier will ensure that all employees who have access to PHI from the Purchaser have undergone screening that includes reference checks.
12. The Supplier will ensure that its employees who are fired, resign, or no longer require access to PHI from the Purchaser return all PHI to the Purchaser and can, thereafter, no longer access applications, hardware, software, network, and facilities belonging to either the Supplier or the Purchaser.
13. The Supplier will revoke any user's access to PHI if security is breached and on the Purchaser's reasonable request.
14. At the termination of the Agreement, the Supplier will return or destroy all PHI received from, created, or received by the Supplier on behalf of the Purchaser that the Supplier maintains custody of in any form and will retain no copies of PHI thereafter. The Supplier will certify to the Purchaser that all such PHI has been returned or destroyed, as the case may be. If such return or destruction of PHI is not feasible, the Supplier will notify the Purchaser of this fact, extend the protections of the Agreement to all PHI in its custody and will cease all further uses and disclosures.

Notification of and Communication with the Purchaser

15. The Supplier will provide the Purchaser with the name of a contact person at the Supplier's organization responsible for the Supplier's privacy compliance and notify the Purchaser within 24 hours of any changes in the identity of the responsible person.
16. The Supplier will provide notice to the Purchaser's Privacy Office if the nature of the Supplier's business and the services being provided to the Purchaser require that the Purchaser PHI must be transmitted or access be provided to any of the Supplier's Personnel or to any facility situated outside of Ontario. When providing notice, please specify where outside of Ontario the PHI will be transmitted or from where it will be accessed. The Purchaser's Privacy Office can be notified as follows:

[Insert Contact Information as appropriate]

17. The Supplier will report to the Purchaser's Privacy Office at the Supplier's first reasonable opportunity, but in any event no more than 48 hours after the Supplier becomes aware of any use, disclosure (including being legally compelled), theft, or unauthorized access of PHI by the Supplier or any of the Supplier's agents or subcontractors to whom the Supplier provide the Purchaser PHI.

18. The Supplier will refer anyone trying to access, correct, or complain about their PHI to the Purchaser's Privacy Office within 48 hours of receiving the complaint or request for access or correction. The Supplier will cooperate with and assist the Purchaser in the management of any such request for access or correction or complaint.
19. The Supplier will, upon request, make PHI available to the Purchaser for amendment and incorporate any amendments into the Supplier's records of PHI. During the Term, the Supplier may never deny the Purchaser access to its patients' PHI.
20. The Purchaser reserves the right to: inspect any equipment used or records maintained by the Supplier in connection with the provision of goods or services; question the Supplier's Personnel regarding their handling of PHI; and otherwise audit and electronically verify compliance with these practices.

Additional Purchaser Rights

21. Notwithstanding anything else contained in the Agreement, the Supplier authorizes, acknowledges, and accepts termination without notice of the Agreement by the Purchaser in the event that the Purchaser determines the Supplier has violated any of these practices.
22. All of the privacy terms provisions in this Information Practices Schedule survive the termination of the Agreement.
23. The Purchaser reserves the right to go to court to obtain an order stopping or preventing the Supplier from violating the privacy terms in this Information Practices Schedule. The Supplier acknowledges that any breach of these practices will result in the Purchaser suffering irreparable harm.

Supplier's Proposal Schedule

[Include this Schedule based on the option chosen in Section 1.3 of the Agreement.]

Deployment Phase Purchase Terms Schedule

[Remember: this template is a services agreement first, and a purchase agreement second. As a result, the main body of the agreement is only concerned with the delivery of innovation services up to the point that the Solution could enter production/deployment; and this schedule will contain the agreement that governs the ongoing purchase once the Solution is ready for production/deployment.]

[This schedule will set out the purchase terms that will be apply if the Purchaser activates them pursuant to Section 2.5 (Initiation of Deployment Phase) and provided that these terms are finalized by the parties. To complete this schedule, the Purchaser should consider incorporating or inserting a customized version of the HSCN Capital/Equipment Agreement Template, Goods Agreement Template or Services Agreement Template, depending on the nature of the Solution. Those templates are useful because they encompass traditional purchasing (and the Deployment Phase is, in effect, the phase at which the Solution is available for commercial purchase).]

Including those terms may result in a lengthy agreement (effectively, an “agreement-within-an-agreement”); however, it is essential that clauses that relate to the purchase of the Solution be finalized (to the extent feasible) well in advance of the Purchaser deciding to purchase the Solution. For example, there are important representations, warranties and other provisions that the Purchaser needs to apply to the purchase of equipment and goods that are not included in the main body of this Innovation Services Agreement.]

[Because the Innovation Services Agreement is structured around a coordinating purchaser, any other organizations that are to purchase the Solution need to be listed in this schedule as “Purchasers”. Part of this is due to the “agreement-within-an-agreement” approach. For example, if the purchaser party to this Innovation Services Agreement is a shared service organization, this schedule should list those hospitals that are intended to be able to purchase the Solution on the terms set out in this schedule. Any defined term for “Purchaser” set out in the Deployment Phase Purchase Terms must be phrased broadly – such as: “Purchaser” means, for the purpose of this Deployment Phase Purchase Terms Schedule, any of the following: [*list*]]

[The following clauses may be useful to include in this Schedule, if relevant.]

Intellectual Property

In the event that the parties jointly develop any intellectual property for the purposes of providing savings or improved methods or processing techniques for the benefit of the Purchaser, such intellectual property shall be deemed a Deliverable and governed by the Innovation Services Agreement with the Supplier that is associated with this Agreement.

Value to Purchaser

[Consider including the following risk-and-rewarding sharing and value engineering clauses in this Schedule (other risk-and-reward sharing issues are discussed in the Innovation Procurement Models Guide). If used, these clauses will need to be carefully reviewed and customized to your circumstances prior to use. Also, they are likely only relevant as part of the Deployment Phase Purchase Terms Schedule, as they relate to the Purchaser's intention that the Solution be improved over the life of the Deployment Phase, or are only relevant to the Deployment Phase.]

Within [1] month of the commencement of the Deployment Phase, the Supplier shall prepare a document (subject to Purchaser consultation, input and final approval as to form and content) that describes the current state of the Purchaser's operations as they relate to matters reasonably connected with the Solution (the "Value Baseline"). The Value Baseline will be used by the Purchaser to measure how the Solution has provided value to the Purchaser over time.

Commencing [6] months after the first purchase [and installation] of the Solution hereunder, the Supplier shall deliver [quarterly] reports as to how the Solution has provided value to the Purchaser, as measured against the Value Baseline.

Audit

[The intent of this Audit clause is to backstop the cost savings, obligation to achieve savings / improvements, and benchmarking clauses below. It is intended as a check to ensure that the Supplier's information can be validated if necessary. Consider whether to replicate this clause in the main body of the Innovation Services Agreement if there is a need for closer scrutiny of Supplier's costs and expenses.]

During the Term and for [7 years] following the termination or expiry of this Agreement (the "Audit Period"), the Supplier shall retain and provide the Purchaser (or a third party designated by the Purchaser) (in any case, an "Auditor") with reasonable and timely access to, all information relating to this Agreement to assist the Purchaser in meeting all of its audit and other requirements and to enable appropriate reviews, audits, inspections, examinations and monitoring of the operations of Supplier and authorized subcontractors relating to this Agreement to verify, among other matters, compliance with this Agreement and to verify any purchase price, fees and other amounts paid or payable hereunder (including to confirm the accuracy of Supplier's invoices and any pricing adjustment computations) (collectively, an "Audit"). An Audit shall include access to the books, records and data of the Supplier and its authorized subcontractors that are relevant to the provision of Services and the relationship between Supplier and its authorized subcontractors.

The Supplier shall provide full co-operation and assistance to the Auditor in conducting each Audit (including if the audit is due to any external audit of the Purchaser or its operations).

The Supplier shall keep such proper and accurate records and financial accounts relating to this Agreement for the duration of the Audit Period.

Audits may be performed up to **[twice each calendar year]**, or as otherwise required by a Governmental Authority; provided, that **[up to two]** additional Audits may be performed if the Purchaser reasonably suspects fraud or a breach of the Agreement.

Except as provided in this Section, the Purchaser shall pay for all of its own costs and expenses incurred in connection with an Audit, and the Supplier shall pay for all of its own costs and expenses incurred in connection with the performance of its obligations as set out in this Section.

If an Audit reveals (a) 1 or more material failures to satisfy any material requirement under this Agreement, and/or (b) an aggregate variance of at least **[\$10,000]** (to the disadvantage of the Purchaser), the Supplier shall pay for all costs and expenses of such Audit incurred by both parties, including reasonable internal labour costs and expenses associated with time spent by the Purchaser personnel in connection with such Audit.

The Supplier shall ensure that any and all Audit findings concerning all failures (whether by Supplier directly or by its authorized subcontractors or agents) are promptly corrected by Supplier.

Cost Savings

The parties acknowledge and agree that:

- (a) one of the primary goals of the Solution is to reduce the Purchaser's costs (while preserving or enhancing quality);
- (b) it is the intention of the parties that Supplier should provide to the Purchaser the benefit of any future cost savings in the deployment and ongoing purchase of the Solution; and
- (c) in light of the foregoing, future savings realized by the Supplier through a reduction in the pricing for third-party goods and services, the goods and services of Supplier and its affiliates, and other reductions in Supplier's costs are to be reflected in the pricing provided by the Supplier to the Purchaser throughout the Term.

The parties will review and discuss the pricing and fees hereunder from time to time, but not less frequently than once per calendar year. If, as a result of such discussions or otherwise, either of the parties is of the opinion that industry prices have decreased or there have been other reductions in the Supplier's costs, such party shall give notice to the other of same, and either party may give notice of its desire to reduce the Purchase Price or other fees and the parties agree to meet and negotiate in good faith reductions in the Purchase Price or other fees to proportionately reflect such decrease in industry prices or other reduction in the Supplier's costs. For clarity, any cost savings achieved by Supplier as a result of implementing changes to the Solution or manner in which the Solution is provided, shall be governed by Subsection **[cross-reference to "Obligation to Achieve Savings/Improvement" below]**.

Ongoing Improvements and Savings

Upon the Purchaser's reasonable request, the Supplier shall identify to the Purchaser, in writing (and in an agreed upon format), potential savings or improved methods, techniques or functionality, and shall present to the Purchaser a proposal in respect of changes to implement same. The Supplier's proposal shall include the recommended changes, the estimated current costs of implementing such recommended changes and the projected saving and/or improvements to the Purchaser resulting from the implementation of such changes, each party's responsibilities to achieve the savings or improvements and the estimated timing to both implement such changes and achieve the savings and/or improvements.

The parties shall implement the savings and/or improvements based on the Supplier's proposal by way of an amendment to the Agreement, or by way of the process set out at Section [2.13 (New Technology)].

In the case of an improved [Solution], a mutually agreed value shall be assigned to such improved [Solution] (the "Improvement Value") and shall be used as the basis for any gain sharing.

The Purchaser shall compensate the Supplier for such savings or [Solution] improvements upon successful implementation as follows, or as the parties may otherwise agree in writing:

- (a) for any change initiated by the Supplier resulting in the savings or improved [Solution] materially benefiting the Purchaser, the Supplier shall retain [50%] of the savings or Improvement Value for a period of [12] months, after which all further savings or Improvement Value shall be realized by the Purchaser; or
- (b) for any change initiated by the Purchaser but as to which Supplier has substantially assisted, then, at the option of the Purchaser, either (1) the Purchaser shall retain 100% of such savings or Improvement Value and the Supplier will be compensated directly through additional fees (to be agreed to by the parties) for its implementation of the change, or (2) the Supplier shall retain a percentage, to be mutually agreed by the parties, of such savings or Improvement Value for a period of [12] months, after which all further savings or Improvement Value shall be realized by the Purchaser.

For clarity, any savings realized by the Supplier that do not result from implementation of changes by the Supplier for the purpose of providing savings or improvements in the [Solution], shall be governed by Subsection [cross-reference to "Cost Savings" above].

Benchmarking

[It may not be appropriate to include a benchmarking clause, depending on the Solution and the Term of the Agreement. Benchmarking of innovation may be difficult, given that there may be no competing solutions, and so benchmarking fees, functionality, etc. may not be possible or may not be reasonable (if the alternatives are few and not comparable). However, benchmarking could be useful in the mid-to-late term of a multi-year agreement, if competing

solutions become present in the market over time. Consider whether to include the following benchmarking clauses.]

[The following will need to be added to the definitions section of the Deployment Phase Purchase Terms Schedule if the benchmarking clause is included.]

“Benchmarking” and “Benchmarker” have the meanings ascribed to them respectively in the Benchmarking Schedule.

“Benchmarking Notice” has the meaning ascribed to it in the Benchmarking Schedule.

“Benchmarking Schedule” means Schedule [*].

The Purchaser may at its sole option require the Supplier to participate in a benchmarking review regarding the Purchase Price or other Solution fees, and/or the performance requirements for the Solution (or any specific component of the Solution), not to be initiated until [18 months] from the [Effective Date]. Each such benchmarking shall follow the process outlined in the Benchmarking Schedule. *[In this clause, the reference to the “Effective Date” is really the effective date of the Deployment Phase Purchase Terms – not the Effective Date of the Innovation Services Agreement.]*

[Insert the following as a new schedule to the form of agreement included under the Deployment Phase Purchase Terms Schedule.]

Benchmarking Schedule

- Benchmarking.** Where the Purchaser exercises its option to have a benchmarking performed, as a part of the Services, the Supplier shall co-operate in coordinating a benchmarking study that shall enable the Purchaser to compare the [Solution] and the related [Purchase Price or other Solution fees, performance metrics, service levels and service credits] with, and to ensure that same are among, the industry’s competitive rates and levels for such [Solution] as compared to those of a similar Peer Group (as defined below), as more particularly described below (collectively “Benchmarking”). Benchmarking shall be limited to [1] Benchmarking per [18 month period]. In requesting any Benchmarking, the Purchaser may elect to compare the [Solution] as a whole, or any component or subset of the [Solution].
- Third Party Benchmarking.** The Benchmarking will be conducted by an independent industry-recognized benchmarking service provider mutually acceptable to both parties (the “Third Party Benchmarking”), provided that such Third Party Benchmarking (i) is independent, (ii) has demonstrable competence in performing [information technology] benchmarks, and (iii) agrees to maintain the confidentiality of all data. [The parties have agreed to the pre-approved list of Third Party Benchmarking attached as Exhibit 1 to this Schedule. The Purchaser may select, in its sole discretion, a Third Party Benchmarking from such pre-approved list for the purposes of each Benchmarking.]

3. **Peer Group.** The Third Party Benchmarker shall select the number and nature of comparison **[organizations/devices]** to be considered the “**Peer Group**”. Each **[entity/device]** nominated as a peer shall be reviewed by and accepted by Supplier and the Purchaser prior to its inclusion in the Benchmarking.
4. **Data.**
 - (a) The Third Party Benchmarker will only use data that is (i) less than 18 months old, or (ii) pre-collected, compiled and published by reputable third party organizations (“**Pre-Compiled Benchmarking Data**”), in which case the Third Party Benchmarker will only use data from the most recent publication of Pre-Compiled Benchmarking Data.
 - (b) The Third Party Benchmarker will normalize all data to obtain relevant comparisons for purposes of the Benchmarking. The Third Party Benchmarker should take into relevant account factors for normalization as appropriate, including: **[(i) the services levels offered; (ii) duration and nature of the contractual commitment; (iii) volume of services being provided; (iv) contractual terms, (v) appropriate overhead;]** and (vi) provisions to ensure the unique factors in connection with this Agreement. Appropriate adjustments will be made for out-of-scope services and deliverables. ***[Revise the list of factors to reflect appropriate considerations for the Solution.]***
 - (c) The data used for purposes of the Benchmarking will not include data related to any outsourcings performed by the Supplier for other customers of the Supplier.
 - (d) Neither party shall be entitled to obtain or review the data used by the Third Party Benchmarker. **[This section is intended to promote fairness and impartiality, in second-guessing the Third Party Benchmarker. Consider whether this secrecy is appropriate in the circumstances.]**
5. **Costs.** The parties will jointly and equally bear the costs of the Benchmarker. All other costs and expenses in connection with the Benchmarking shall be borne by the party that incurs such costs and expenses.
6. **Benchmarking Procedure.**
 - (a) If the Purchaser wishes to exercise its right to require that a Benchmarking be conducted, the Purchaser will send written notice to the Supplier of its intention to exercise such right, which notice shall identify when the Benchmarking will occur (the “**Benchmarking Notice**”).
 - (b) The parties shall meet with the Third Party Benchmarker within 15 days after the Benchmarking Notice for the purpose of initiating the Benchmarking and obtaining the Benchmarker’s plan.

- (c) The Supplier agrees that it shall provide data and otherwise comply with any request of the Third Party Benchmarker promptly, and in any event within 5 days of such request. The plan shall require delivery by the Third Party Benchmarker of its initial report to the parties within **[90]** days or as soon as practicable thereafter.
- (d) Within reasonable timeframe after delivery of the initial report (not to exceed **[30]** days) the parties shall jointly review the report and submit comments and identify areas of concern (challenges) to the Third Party Benchmarker. The Third Party Benchmarker shall promptly consider any comments and address all challenges in a manner acceptable to each party, acting reasonably, and deliver to the parties a revised final report. After the Third Party Benchmarker provides its final report to the parties, the Purchaser and Supplier will promptly meet to jointly review the Benchmarking results. If the Third Party Benchmarker's final report states that:
- (i) the difference between the Peer Group average purchase price and/or other fees and the Purchase Price and/or other Solution fees is lower than **[5%]**, then the parties shall in good faith discuss an appropriate decrease in the Purchase Price or other Solution fees, if any; or
 - (ii) the difference between the Peer Group average purchase price and/or other fees and the and the Purchase Price and/or other Solution fees is greater than **[5%]**, then the and the Purchase Price and/or other Solution fees shall be automatically decreased by the amount required to reduce the difference between the Peer Group average purchase price or fees and the and the Purchase Price or Solution fees to **[5%]** and the parties shall in good faith discuss an appropriate additional decrease in the Purchase Price and/or other Solution fees.
[The foregoing only speaks to Fees. If there are other areas of concern that can be quantified, such as timeliness or responsiveness, then a similar approach to the above could be taken with such variables.]
- (e) If the parties fail to reach agreement on the adjustments to be made pursuant to paragraph (d)(ii) above or if a final report has not been issued within **[120]** days of the initial report, the Purchaser shall have the right to terminate the Agreement provided that the Purchaser will not be obligated to pay any Termination Fees.
- (f) The parties agree that they shall accept the report issued by the Third Party Benchmarker as final and binding, without challenge. ***[The extreme nature of this provision and its consequences may not be appropriate in the circumstances.]***

7. **General Agreement of Cooperation.** The parties shall co-operate with the utmost good faith to reach reasonable and timely agreements on any further definition and clarification to the Benchmarking process that may be required.

[Insert Exhibit to Schedule as applicable: "Approved Third Party Benchmarkers"]

