

## Innovation Exchange

The move toward open innovation is beginning to transform entire industries.

- The Economist, October 2007

Where do new ideas come from? For the past century, the answer for most companies has been: from our employees. Pharmaceutical companies develop new drugs in their R&D departments. Consumer products companies look to their product development teams for new products. Automobile manufacturers rely on their engineering design teams to come up with new models. Owners, managers and administrators of all stripes are responsible for designing and adapting the financial, technological and managerial systems that make their organizations function—this includes not only businesses but also organizations like universities, hospitals and non-profit foundations.

“Open innovation” is the process of sourcing ideas from the outside. It’s a process that the new technology of web-enabled collaboration promises to make possible on unimaginable scale. And given the rapid rates of change and hence the explosive demand for new ideas—innovation—in the competitive globalizing economy, it’s a process that business leaders everywhere are trying to understand.

Innovation Exchange (IX), launched in May 2008, is one of the newest entrants into the infant industry of web-based open innovation systems. Started by three partners in Toronto—Stephen Benson and Brynly Hawkins, innovation consultants who worked with companies for several years trying to improve their ability to generate creativity in-house, and Mark Hadfield, a law school dropout who got into the new technology markets early and has spent the past several years helping small and large companies make better use of online technology to expand their markets—IX is facing its own innovation challenge: how to design a system that has essentially no precedent.

Here’s how IX works: Suppose a consumer products company is looking for a new product to sell through grocery stores that will appeal to health-conscious consumers concerned about clean air. Instead of or in addition to putting its in-house product design teams, scientists, market researchers, etc. to work to come up with something, the company approaches IX to become a client. IX works with the client to sharpen the company’s innovation need into a specific challenge, the details of which are set out (without identifying the company) in an “innovation brief.” The challenge and its innovation brief are then posted on the IX website ([www.innovationexchange.com](http://www.innovationexchange.com)) where they are visible to the IX community of innovators. Innovators are individuals (students, entrepreneurs, engineers, retirees, etc.) or companies who register with IX in order to solve challenges. Innovators can work alone to come up with a proposed solution to a challenge, or they can work in teams. In fact, helping members of the community find team mates for a specific challenge with social networking features (profiles, matching algorithms to suggest potential team mates, a reputation mechanism, etc.) is one of the things that IX believes distinguishes it from the few other fledgling providers in this sector.

The other principal way in which IX believes it can distinguish itself in this incipient market—apart from assembling a large and diverse global network of innovators—is by finding a way to ensure that innovators are rewarded for the full value of their ideas. The structure that their competitors use is a prize system: a challenge is posted to the community with a fixed payment available to people or entities that come up with the winning solution. The companies that post challenges buy the solution—and the right to do what they want with it—from the winner at a price equal to the amount of the prize money. This means that the winner gets the same amount whether the idea is big or little, whether it’s worth a \$100,000 or \$10 million to the company. Benson, Hawkins and Hadfield have developed instead a system in which innovators retain the rights to the solutions they come up with and thus the right to negotiate a payment that reflects the value of the idea to the company that posed the challenge. This, they believe, will generate community participation from more, and more highly qualified, innovators. In the system they have developed, a client (“sponsor”) (who pays IX an upfront fee) posts a challenge on the system with a posted dollar figure (a “reward”) and innovators, working independently or on teams, propose solutions to the challenge. Neither sponsors nor innovators are identified to each other at this time. Working with IX, the sponsor selects proposed solutions from those submitted that it’s interested in purchasing. By paying the reward, the sponsor obtains an introduction to the innovator or team that proposed an attractive solution and the exclusive right for 60 days to negotiate a “solution transfer agreement” that gives the sponsor full rights to the solution. If that negotiation fails, the innovators who came up with the solution are free to commercialize it themselves or sell it to another interested buyer.

IX has approached you and asked you for advice. IX has two principal contracts that structure the business. One is the “User Agreement” that governs use of the IX website and the relationship with innovators. The other is the “Sponsor Company Agreement” that governs the relationship with sponsors. These documents were created originally at the time of IX’s launch in May 2008 but they have also been amended in piecemeal fashion over the past year as IX has continued to refine their business model and faced issues with soliciting clients. Here’s how CEO Benson summarizes how he sees what IX needs to address:

*We think these two contracts are working reasonably well for us in this early stage. But we want to do better. We’re particularly concerned about the Sponsor Company Agreement. Over the past year, especially with the recession, we’ve been working really hard to overcome issues that our prospective clients raise about this agreement.*

*Here’s what’s happening: We get into negotiations with a company and usually we’re speaking with a chief innovation officer. We get them all excited about IX and what it can do for them and they want to sell it within the company. They are the person who has to promote it, make it their baby. So they ask to see the contract. And then they have lots of questions: Do they have to negotiate directly with innovators or does IX manage the IP transfer? How can they be sure*

*that before they even select one of the IP transfer options outlined in the contract, that innovators have good title to the solution? Does IX have a standard solution transfer contract that they can use with the innovators for transference of the solution? Do they have to develop multiple transfer contracts if the winning teams come from different countries OR people on the team(s) come from different countries? How do you manage crossing international IP laws? What if someone on a team wants to join another team to work on the same challenge? Can the contract be written so the innovator reward is flexible to reflect how well we think the solution answers the challenge?*

*Now, we think the answers to these questions are all covered off in the contract. In fact, we know they are because we just had the very pleasant experience with one refreshingly sane client of getting the thing in and out of legal in a single day without a single change. “It’s all covered off in the contract”—that’s what they told us. But that’s not the usual experience. We get the same questions over and over again. We answer the questions, of course, but we have to tell them that the answers are in the contract. But that’s where the problem comes in. The person we’re trying to sell to knows they have to read it to know what they have to turn around and sell to their colleagues. But let’s face it; it’s a pretty dry read. IX is sexy, it’s what gets the innovation czar at the company excited about doing business with us. The contract is not sexy. It’s tiring and time consuming to figure out. And sending it over to legal to ask them what it says is not a smart move until the CIO knows what he or she wants to do—legal can be a sink hole, sitting on things for months. But the CIO can’t shepherd it faster through legal and the other internal approvals until he figures out how it works. So it sinks like a great huge weight to the bottom of the project pile. We need it to stay on top, with all the excitement still intact that got us through the door with the prospect in the first place.*

*We’d love to get this thing down to 1 or 2 nice easy to read pages, pages that will still keep legal happy. We think we’ve done that with the Team Rules in the User Agreement—even though they too are embedded in too much legalese. But that’s not such a big problem we think, because as long as innovators understand the Team Rules they don’t care what’s in the rest of the agreement; they treat that agreement like all the other online user agreements they sign daily. We desperately need to get the turnaround with clients streamlined.*

Benson also explains how IX thinks it solved a related problem with recent changes to the contract and business model:

*We learned another big lesson over the past year about how slowly organizations move. In our original set of contracts, the sponsor had a 90 day exclusivity period and could extend that to 180 days whenever they wanted. We found that even when the company had identified attractive potential solutions from the proposals, the process would grind to a halt while the solution made the rounds inside the company. Everyone was taking well over 90 days to reach a decision*

*internally. This creates a big problem for us because we have a network of innovators who want to know if they won. We have to spend tons of time and energy on the care and feeding of the folks who submitted proposals, keeping them happy and excited about the process. So we decided to shorten the exclusivity period to 60 days and to give the sponsor the option, for a fee, of extending that period an additional 30 days. That helps to pay for our time spent soothing the anxieties of submitters. And it focuses attention in the company: they can't just sit on it internally for free. We've just implemented this but we're feeling pretty good about this solution*

### Assignment

Prepare a memo of no more than 2000 words outlining the advice you would give IX about its contracts at this point. [If you choose to draft any legal language or documents you want to suggest IX consider, these do not count towards the 2000 word limit.]

### Attachments

IX User Agreement February 2010  
IX Sponsor Company Agreement February 2010  
McKinsey Quarterly June 2008 article



## - INNOVATION EXCHANGE™ AGREEMENT -

**BETWEEN :**

**Innovation Exchange Inc.**

a corporation under the laws of Ontario

whose head office address is:

**215 Spadina Avenue, Suite 421**

**Toronto, Ontario M5T 2C7**

**("IX")**

**AND :**

**[Fill in Company Name and address]**

**("Company")**

**WHEREAS**

- (a) IX allows clients to access its global network of innovative thinkers ("the IX Network") for the purpose of sourcing innovative and commercial business ideas.
- (b) Company wishes to have access to the IX network for the purpose of solving business innovation challenges.

**IN CONSIDERATION** of the following terms, conditions, promises, and payments, the Parties agree as follows:

### **1.0 DEFINITIONS IN THIS AGREEMENT**

For all purposes of this Agreement the following terms are defined as follows:

- 1.1** "Affiliate" is a corporation of which more than 20% of the voting shares are owned by the Company, or which owns more than 20% of the voting shares of the Company, or of which more than 50% of the voting shares are owned by another Affiliate or if it owns more than 50% of another Affiliate.
- 1.2** "Agreement" means this document and any schedules or appendices attached hereto.
- 1.3** "Business Day" means any day of the week except Saturday, Sunday or any statutory or civic holiday observed in Ontario.
- 1.4** "Business Innovation Challenge" means an opportunity, problem or other issue sponsored by the Company for input from one or more of Innovators through the IX Network in the areas of either product innovation, service innovation, business model innovation, marketing innovation (including package design), process innovation, supply chain innovation, or organizational innovation.
- 1.5** "Innovator" means any Person or team of Persons that has signed up to participate as an Innovator in the IX Network.
- 1.6** "Company Property" means Intellectual Property or other information developed, owned or licensed by Company, whether or not embodied in a Business Innovation Challenge or Innovation Brief.
- 1.7** "Confidential Information" means all financial, technical and other information regarding IX or Company, or either party's products or services, which is proprietary or confidential in nature or which is marked or

otherwise deemed to be confidential, including, but not limited to technical or non-technical data, compositions, devices, methods, techniques, drawings, inventions, processes, and financial data. The terms and conditions of this Agreement (but not its existence) are Confidential Information. Confidential Information shall not include information which, as proven by the receiving party's records, and through no act or failure to act on the part of the receiving party: (a) is, at the time of disclosure by the disclosing party hereunder, or thereafter becomes, a part of the public domain or publicly known or available through no fault or negligence of the receiving party or any of its Affiliates; or (b) is otherwise in the receiving party's lawful possession prior to disclosure by the disclosing party as demonstrated by the receiving party's written records; or (c) is lawfully disclosed to the receiving party or any of its Affiliates on a non-confidential basis by a third party who is not in violation of an obligation of confidentiality to the disclosing party relative to such information; or (d) is required by law, regulation or legal process to be disclosed, provided, however, that the receiving party shall take all reasonable steps to restrict and maintain the confidentiality of such disclosure and shall (subject to the requirements of such law, regulation or legal process) provide reasonable prior written notice to the disclosing party of the requirement to disclose such information and the specific disclosure(s) proposed to be made to satisfy such law, regulation or legal process; or (e) is independently developed by the receiving party or an Affiliate of such party without the use of any of the disclosing party's Confidential Information. For the avoidance of doubt, every Business Innovation Challenge, Innovation Brief, Innovation Intellectual Property and information gathered by either party in connection with services provided under this Agreement, including the identities of Innovators that Company considers, shall be considered Confidential Information of the Company.

- 1.8** "Effective Date" means the last date set forth on the signature page.
- 1.9** "Intellectual Property" means, throughout the Territory, all known types of intellectual property including, without limitation:
- 1.9.1** patents, trademarks, copyrights, industrial designs, or any other type of intellectual property right that is capable of registration before any government body within the Territory, or any applications for any of the foregoing;
  - 1.9.2** inventions (whether patentable or unpatentable), methods, processes, designs, software, products, know-how, trade secrets, business processes, branding strategies, marketing plans, trade secrets, ideas, suggestions, discoveries, design models, design model applications, utility models, utility model applications, developments, improvements data, methodologies, techniques.
- 1.10** "Innovation" means any potential solutions that are developed by the Innovators based on a Business Innovation Challenge sponsored by Company.
- 1.11** "Innovation Brief" means a document prepared by IX with Company input that summarizes a Business Innovation Challenge that the Company wishes to sponsor.
- 1.12** "Innovation Program" means the process as defined in section 3.1
- 1.13** "Innovation Program Intellectual Property" means all Intellectual Property that is generated as a result of, or related to the performance of, an Innovation Program, including but not limited to, Innovation Briefs and Innovations. Innovation Program Intellectual Property shall also include, but not be limited to, all documents, discussions, emails and interactions between the Parties related to the development of an Innovation Brief or an Innovation Program.
- 1.14** "Parties" means, as the context requires, IX and Company, collectively. The term "Party" means either IX or Company, as the context shall require.



- 1.15 “Person” means an individual or entity such as a body corporate, a partnership, a limited liability company, a proprietorship, a joint venture, a trust, an unincorporated association, a government agency or instrumentality, or any other entity recognized by law.
- 1.16 “Innovator Success Fee” means the aggregate amount determined by Company, in its sole discretion, to be paid to the Innovator(s) that provide an Innovation that the Company selects.
- 1.17 “IX Property” means the IX Intellectual Property, the IX online application, business processes, Innovator reputation mechanism, or other information developed or owned solely by IX and provided to Company as part of IX’s services under this Agreement. Without limiting the generality of the foregoing, IX Intellectual Property does not include Innovation Program Intellectual Property.
- 1.18 “Term” means the period commencing on the Effective Date until termination in accordance with the provisions of Section 6.
- 1.19 “Territory” means *North America*.

## 2.0 FEES

- 2.1 **Fees:** Company shall pay IX the fees set forth on Exhibit A.
- 2.2 **Disbursements:** Disbursements, including travel costs and other out-of-pocket expenses, shall be paid by Company.
- 2.3 **Invoices:** Company shall pay all invoices within fifteen (15) days of receipt. Interest on late payment is 2% per month or 24% per annum.
- 2.4 **Tax:** All taxes other than IX and Innovator income taxes are the responsibility of the Company.

## 3.0 SERVICES

- 3.1 **Innovation Exchange:** From time to time during the term of this Agreement, IX will facilitate and participate in, at the Company’s request, the development of an Innovation Program that addresses a Company Business Innovation Challenge. Each Innovation Program shall be conducted according to the following process:
- 3.1.1 **Initiation:** Company shall notify IX in writing that it wishes to initiate an Innovation Program.
- 3.1.2 **Steering Committee:** A Steering Committee comprised of representatives of the Company and IX shall be formed to oversee the Innovation Program. Each Steering Committee shall be composed as follows:
- 3.1.2.1 **Company Project Leader:** Company shall designate a project leader (“Company Project Leader”) who shall be responsible for and have authority to speak on behalf of the Company for all matters relating to the Innovation Program.
- 3.1.2.2 **IX Project Leader:** IX shall designate a project leader (“IX Project Leader”) who shall be responsible for and have authority to speak on behalf of IX for all matters relating to the Innovation Program.
- 3.1.2.3 **Company Participants:** The Company Project Leader shall have the right, but not the obligation, to designate up to three individuals who are engaged by the Company to

- participate in the Innovation Program.
- 3.1.2.4 **IX Participants:** The IX Project Leader shall have the right, but not the obligation, to designate up to three individuals who are engaged by IX to participate in the Innovation Program.
- 3.1.2.5 **Chair:** The IX Project Leader shall be the Chair of the Steering Committee.
- 3.1.2.6 **Evaluation Committee:** IX shall choose an Evaluation Committee that will be composed of three members of the IX community that are not involved in the Business Innovation Challenge.
- 3.1.3 **Challenge Submission:** Once formed, the Steering Committee shall meet to articulate and provide clear definition of i) the Business Innovation Challenge; ii) the criteria upon which a Business Innovation Challenge will be evaluated, iii) the process by which such success criteria will be measured and (iv) the Success Fee to be paid should a successful solution be forthcoming. The Steering Committee will work to understand any factors that might be a barrier to the development and commercialization of any Innovations. Based on the foregoing, the IX Project Leader will prepare an Innovation Brief for approval by the Steering Committee that summarizes the Business Innovation Challenge that the Company wishes to sponsor. Notwithstanding anything contained herein to the contrary, Company in its sole discretion, must approve the final Innovation Brief before it is submitted to the IX Network.
- 3.1.4 **Innovation Brief Distribution:** IX will make the Innovation Brief available on the IX website. IX will notify the Innovators through a system-generated email that the Innovation Brief is posted on the IX website. Unless otherwise stated in a particular Innovation Brief, each Innovation Brief shall be made available to Innovators on a non-exclusive basis. Company's identity will not be revealed as the sponsor of any Innovation Program without approval by the Company.
- 3.1.5 **Innovation Receipt and Review:** IX will receive the Innovations prepared by the Innovators. All Innovations be forwarded to the IX Evaluation Committee. The IX Evaluation Committee, if applicable, will rank each Innovation based on a rubric that describes the evaluation criteria and the measurements against each criteria.
- 3.1.6 Company may choose whether the IX Evaluation Committee forward the ten (10) highest ranking Innovations either to the Company or to the Steering Committee. The number of Innovations to be presented to the Steering Committee will be determined by the Company, in its sole discretion.
- 3.1.7 The Steering Committee shall then review the Innovations with the Company.
- 3.1.8. The Company may select any number, including none, of the Innovations that it reviews. The Company has a period of sixty (60) days from the submission deadline set forth in the Innovation Brief to select an Innovation (the "Exclusivity Period"). In the event that the Company has not yet selected an Innovation during the Exclusivity Period, the Company may request that the Exclusivity Period be extended for an additional thirty (30) days to complete the review ("Extended Exclusivity Period").

### **3.2 Commercialization and Transfer of Intellectual Property:**

- 3.2.1 Upon Company's selection of an Innovation, IX will disclose the names of those who



submitted the innovation. The final vetting of authority of innovators to transfer their innovation to the Company remains the responsibility of the Company.

3.2.2 Upon Company's selection of an Innovation, Company may choose one of the two elections set forth below.

3.2.3 Election One: Company may elect that IX manage an automatic Intellectual Property transfer from the Innovators to the Company provided that the Innovation Brief clearly states that transfer of the Intellectual Property is required upon Company's selection. Under this election, the Success Fee is paid upon completion of the automatic transfer of Intellectual Property.

3.2.3.1 In the event that Company chooses this election, IX shall conduct commercially reasonable verification services. Such verification services shall include:

3.2.3.1.1 Verification of Innovator identity and contact information provided during registration;

3.2.3.1.2 Obtain notarized signature from Innovator on affidavit reaffirming terms and conditions of electronically accepted Terms of Use and all other agreements and terms that were integrated into the innovation Program.

3.2.3.1.3 Coordinate and complete payment of Success Fee to Innovator;

3.2.3.1.4 Provide Company with verification report and associated documents.

3.2.4 Election Two: Company may elect to negotiate directly with the Innovator(s) who submit the selected Innovation. Under this election, the Company may, in its sole discretion, modify the amount of the Success Fee as the terms of the Intellectual Property transfer are negotiated by and between the Company and the Innovator(s), but the Success Fee paid will be equal to or higher than the Success Fee stated on the IX website.

3.2.5 IX does not take title to Intellectual Property or the Success Fee pursuant to this Agreement. Any Intellectual Property to be transferred by Innovator(s) to the Company shall be transferred to IX as escrow agent for Company. Any Success Fees to be transferred by the Company to any Innovator(s) shall be transferred to IX as escrow agent for such Innovator(s). IX will release the Intellectual Property from escrow and transfer it to Company upon the occurrence of (a) the completion of IX's verification services as set forth in this Agreement, if applicable, and (b) payment of the Success Fee to IX as escrow agent. The Success Fee will be released from the escrow to Innovator(s) and transferred to Innovator(s) when payment becomes due after the completion of the verification services.

## **4.0 OWNERSHIP AND CONFIDENTIALITY**

### **4.1 Ownership**

4.1.1 Company has and shall retain sole and exclusive title and ownership of all Company Intellectual Property and all Company Confidential Information. IX has and shall retain sole and exclusive title and ownership of all IX Intellectual Property and all IX Confidential Information. Subject to the terms and conditions of this Agreement, IX grants to Company a non-exclusive, worldwide, royalty-free license to use the IX Property to the extent necessary to use or receive the services contemplated by this Agreement.

#### **4.2 Obligations of Confidentiality:**

- 4.2.1 A Party in possession of Confidential Information belonging to the other Party shall neither make available to any other Person (including by disclosing, displaying, transferring, or providing) such Confidential Information, nor use such Confidential Information for any purpose other than that contemplated in this Agreement, without prior written consent of the other Party.
- 4.2.2 A Party may disclose Confidential Information belonging to the other Party, on a need-to-know basis, to its employees or agents, provided its employees or agents are bound by provisions no less stringent than the terms imposed herein. For greater clarity, IX may disclose Confidential Information contained in the Innovation Brief to Innovators, provided the Innovators are bound by provisions no less stringent than the terms imposed herein.
- 4.2.3 Except to the extent expressly authorized in this Agreement, each Party shall protect the Confidential Information of the other Party with the same degree of care as it uses to protect its own Confidential Information, but not less than a reasonable degree of care.
- 4.2.4 Any Confidential Information belonging to only one Party shall be returned upon termination of this Agreement.
- 4.2.5 Each party acknowledges that any breach of its obligations hereunder with respect to the Confidential Information of the other party may cause the other party immediate and irreparable injury for which there are inadequate remedies at law and, notwithstanding anything in this Agreement to the contrary, that the other party shall be entitled to equitable relief, to recovery of its reasonable attorneys' fees and other reasonable costs associated with any such proceeding, and to all other remedies available to it.

### **5.0 REPRESENTATIONS, WARRANTIES, DISCLAIMERS AND INDEMNITIES**

#### **5.1 Representations of IX:** IX represents and warrants and acknowledges Company's reliance thereon that:

- 5.1.1 it has the right, power and authority to enter into this Agreement and to carry out its obligations hereunder;
- 5.1.2 this Agreement has been duly executed and delivered by IX and is a legal, valid and binding obligation of IX enforceable against IX in accordance with its terms;
- 5.1.3 there are no liens, conveyances, mortgages, assignments, encumbrances, or other agreements that would prevent or impair the exercise of IX's rights pursuant to the terms and conditions of this Agreement;
- 5.1.4 it has not and will not enter into, during the Term, any agreements that would interfere with the rights and privileges granted to Company by this Agreement;
- 5.1.5 the execution, delivery and performance of this Agreement shall not result in the breach of, constitute a default under or interfere with any contract or other instrument or obligation, whether written or oral, to which IX is currently bound, or violate any writ, order, injunction, decree, or any law, statute, rule or regulation applicable to IX;
- 5.1.6 all Persons, (including, without limitation, all Innovators), who perform work for IX under this Agreement are bound by written agreements of confidentiality;
- 5.1.7 it will ensure that Innovators accept a Terms of Use agreement that provides that Innovators will not submit information that (a) is inaccurate, (b) infringes any third party's copyright,

trademark, or other proprietary rights or rights of publicity or privacy; (c) violates any applicable law or regulation, or was obtained through the violation of any applicable law or regulation (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising); or (d) is defamatory, libelous, unlawfully threatening or unlawfully harassing.

5.1.8 it will ensure that all Innovators and are bound by written agreements providing for the assignment to Company of all Intellectual Property rights developed in the course of the creating an Innovation if the applicable Innovation Brief provides that the transfer of Intellectual Property is a requirement for the Innovation Program.

5.1.9 (a) it is not aware of any potential or threatened claim and is not aware of any facts which could give rise to a claim of infringement of any third party's intellectual property relating to Company's use of IX's services in the manner contemplated hereunder, (b) it has industry-standard technological and procedural measures in place to protect data collected from visitors, users and data subjects against loss, theft, unauthorized access or disclosure, (c) it does not knowingly collect personally identifiable information from or target children under the age of thirteen, (d) it does not sell, rent or otherwise make available to third parties any personally identifiable data submitted by visitors of the IX website or users of IX's products and services, and (e) it complies in all material respects with the terms of its privacy policy;

5.1.10 Except as expressly set out in this Agreement, IX makes no representations, warranties, guarantees or conditions of any kind, either express or implied by law or custom, statutory or otherwise, and expressly disclaims any warranties, including without limitation any with respect to: market readiness, merchantability, or fitness for any use or purpose of any Innovation; operational state, character, quality, or freedom from defects of any Innovation; that any Innovation developed under this Agreement will not infringe the Intellectual Property rights which are independently developed by a Person other than IX or an Innovator.

**5.2 Representations of Company:** Company represents and warrants, and acknowledges IX's reliance thereon, that:

5.2.1 it has the right, power and authority to enter into this Agreement and to carry out its obligations hereunder;

5.2.2 this Agreement has been duly executed and delivered by Company and is a legal, valid and binding obligation of Company enforceable in accordance with its terms;

5.2.3 there are no liens, conveyances, mortgages, assignments, encumbrances, or other agreements that would prevent or impair the exercise of Company's rights pursuant to the terms and conditions of this Agreement;

5.2.4 the execution, delivery and performance of this Agreement shall not result in the breach of, constitute a default under or interfere with any contract or other instrument or obligation, whether written or oral, to which Company is currently bound, or violate any writ, order, injunction, decree, or any law, statute, rule or regulation applicable to Company;

**5.3 Limited Damages:** Except for indemnification obligations and in connection with a breach of confidentiality obligations, neither Party shall not be liable to the other Party for any loss of profits, loss of business, loss of use or loss of data, interruption of business, nor for any indirect, special, incidental, consequential, punitive, or exemplary damages, losses, injury, costs or expenses of any nature including, without restriction, whether under this Agreement or otherwise, even if the Other Party has been advised of the possibility of such a loss.

**5.4 Indemnity:**

- 5.4.1 IX agrees to indemnify and hold Company and its employees, agents, contractors, officers, and directors, harmless from, any and all third party claims, costs, damages, expenses and liabilities (including reasonable attorneys' fees and costs of litigation or defense incurred by any of them) (collectively "Claims"), arising out of or relating to: (a) any violation or breach of this Agreement by IX; (b) any Claim that the IX services or its website violate applicable law; or (c) the gross negligence or willful misconduct of IX. Company agrees to indemnify and hold IX and its employees, agents, contractors, officers, and directors, harmless from, any and all third party Claims arising out of or relating to: (a) any violation or breach of the Company's representations and warranties; or (b) the gross negligence or willful misconduct of Company.
- 5.4.2 Notice, Control and Participation. Promptly after receipt by the indemnified party of notice of the assertion or the commencement of any Claim in respect of which the indemnified party will seek indemnification pursuant to any such section, the indemnified party shall promptly notify the indemnifying party of such Claim in writing. No failure to so notify an indemnifying party shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. The indemnified party shall give the indemnifying party sole control of the defense and/or settlement of the Claim, and provide the indemnifying party with all reasonable information and assistance (at the indemnifying party expense). The indemnified party may participate in any action with its own counsel, at its own expense. Any settlement that purports to bind the indemnified party, or adversely affect its rights or obligations, shall require the written consent of the indemnified party.

## 6.0 TERM AND TERMINATION

- 6.1 Effective:** This Agreement shall become effective as of the Effective Date.
- 6.2 Term:** Unless terminated earlier by operation of law or pursuant to the terms and conditions of this Agreement, this Agreement shall terminate six (6) months from the Effective Date. Company may renew this Agreement by providing IX with written notice thirty (30) days before the end of the Term.
- 6.3 Termination by Either Party for Default or Breach:** In the event that one party defaults or breaches any of the provisions of this agreement, the other party shall have the right to terminate this Agreement by giving written notice to the defaulting party. However, if the defaulting party cures the breach within thirty (30) days after the notice is given, this Agreement shall continue in full force and effect.
- 6.4 Termination by Either Party for Insolvency:** This Agreement, at the option of either party, may be terminated forthwith by the other party if the non-terminating Party becomes bankrupt, or insolvent, or has a receiver appointed to continue its operations, or passes a resolution for winding up, or takes the benefit of any statute relating to bankrupt or insolvent debtors or the orderly payment of debts.
- 6.5 Termination by Company:** The Company may terminate this Agreement by giving IX written notice at any time in any year, in which case this Agreement shall terminate thirty (30) days after the date of receipt by IX of such notice. If Company terminates this Agreement for convenience, Company shall not be entitled to a refund of any fees from IX.
- 6.6 Effect of Termination:** Termination does not release a party from any obligations which accrued while this Agreement was in force or upon its termination. Sections 4, 5.3, 5.4, 6, 7 shall survive termination or expiry of this Agreement. Company, in its sole discretion may elect to maintain the active status of all Innovation Programs for the period of time defined in the Innovation Brief. Upon such an election, IX shall continue to provide services with respect to any such active IX Challenges, pursuant to the terms and conditions of this Agreement

## **7.0 LAW AND DISPUTES**

- 7.1 Choice of Law:** This Agreement shall be interpreted according to the substantive laws of Canada and the Province of Ontario, without reference to its conflicts of law principles.
- 7.2 Courts:** Any litigation concerning this Agreement, including litigation arising from arbitration, shall be brought only in the courts of Ontario.

## **8.0 GENERAL TERMS AND CONDITIONS**

- 8.1 Entire Agreement:** This Agreement contains the entire understanding between the Parties as of the effective date hereof.
- 8.2 Limits of Agreement:** For greater certainty, the Parties agree that this is not an assignment of ownership of copyright or of patent rights. This Agreement shall not be construed as creating the relationship of principal and agent, employer and employee, partnership, or joint venture.
- 8.3 Amendments:** This Agreement may only be amended by an agreement in writing, signed by the Parties, expressly referring to this Agreement.
- 8.4 Severance:** If any provision in this Agreement is found, by a court or arbitration, to be wholly or partly invalid, illegal or unenforceable in any respect, the remainder of this Agreement shall remain enforceable and this Agreement shall be construed as if that provision had never existed. The request to initial each page is not a condition of this Agreement.
- 8.5 Waiver:** Failure by either party to assert rights arising from any breach or default of this Agreement, or acceptance of payments, shall not be regarded as a waiver of rights. No failure to assert rights, no waiver, and no toleration implies any continuing or future waiver of rights.
- 8.6 Assignment:** This Agreement is personal to the Parties, so that neither its assignment, nor its assumption by a corporation formed by amalgamation with a party is valid without the other party's written consent, provided, however, that either party may assign this Agreement to (a) any corporation to which such party transfers substantially all its assets or with which such corporation is consolidated or merged, or (b) any Affiliate; but in each instance only if the assignee expressly assumes all obligations imposed on such party by this Agreement in writing and the other party is notified.
- 8.7 Force Majeure:** Neither party shall be responsible or liable to the other for failure or delay in the performance of this Agreement due to war, terrorism, fire, accident or other casualty, labour disturbance, act of the public enemy, act of God, or any other contingency beyond that party's reasonable control. In the event of applicability of this paragraph, the party affected by such force majeure shall use reasonable commercial efforts to eliminate, cure and overcome any such causes and resume performance of its obligations as soon as possible.
- 8.8 Counterparts:** This Agreement may be executed by any party by facsimile (or other electronic image) signature and in any number of counterparts, which counterparts, when taken together, shall constitute one and the same instrument.
- 8.9 Headings:** The uses of headings in this Agreement are for convenience only and are not intended to vary the intended scope of the Agreement.

STATEMENT BY WITNESS

Signed in the presence of:

SIGNATURE ON BEHALF  
OF Innovation Exchange.



\_\_\_\_\_  
Having a Full Postal Address of:

\_\_\_\_\_  
I hereby declare that I was personally present and did see the signor duly sign and execute this Agreement.

Witness Signature \_\_\_\_\_

\_\_\_\_\_  
**Signature  
(I have authority to bind IX)**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Execution

STATEMENT BY WITNESS

Signed in the presence of:

\_\_\_\_\_  
Having a Full Postal Address of:

\_\_\_\_\_  
I hereby declare that I was personally present and did see the signor duly sign and execute this Agreement.

Witness Signature \_\_\_\_\_

SIGNATURE ON BEHALF  
OF Company

\_\_\_\_\_  
**Signature  
(I have authority to bind Company)**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Execution

## Exhibit A

### Pricing and Related Service Terms

#### Initial Fees

Company agrees it shall pay IX \$<XX> CDN for the following six (6) month license of services:

1. Unlimited access to the IX network
2. Three (3) Innovation Programs as defined in section 3.0

Initial Fees will be invoiced upon approval and signature of this Agreement by the Company.

#### IX Success Fees

In addition to the Initial Fees, upon the selection of an Innovation(s) by the Company, Company agrees it shall pay IX a matching fee of 75% of the Innovator Success Fee for each Innovation selected. Upon successful transfer of Intellectual Property under Section 3 of the Agreement, Company will also pay to IX the Success Fee for each Innovation selected, as escrow agent or pay the Success Fee directly to the Innovator for such Innovation Program.

#### Extended Exclusivity Period Fees

Company agrees it shall pay IX an additional fee equal to 10% of the Innovation Success Fee for each Innovation under this Agreement for which it invokes the Extended Exclusivity Period.



## Innovation Exchange User Agreement

Welcome to the Innovation Exchange web site at [www.innovationexchange.com](http://www.innovationexchange.com) ("Site"). The Site is owned and operated by Innovation Exchange Inc. ("IX"), and the materials on the Site are owned by Innovation Exchange. The Site may also include materials owned by third parties and posted on the Site by virtue of a license, grant or some other form of agreement between the third party and IX.

**PLEASE READ THIS USER AGREEMENT CAREFULLY.** Access to, and use of, this Site are subject to the terms and conditions of this User Agreement ("Agreement"), as well as the Privacy Policy, Copyright Notice, and all applicable laws and regulations, including laws and regulations governing copyright and trademark. If you have registered as an Innovator (defined below), your use of this Site forms a legally binding contract with IX on the terms and conditions in this User Agreement, and any Challenge-Specific terms, which are incorporated into this Agreement by reference. If you are a Sponsor Company (defined below), your use of the Site forms a legally binding contract with IX based on the terms and conditions in this User Agreement, any Challenge-Specific terms and the Sponsor Company Agreement. You are only authorized to access this Site or to use the materials and services contained in the Site (regardless of whether your access or use is intended) if you agree to abide by all applicable laws and to this Agreement. Please read this Agreement carefully and save it. If you do not agree with it, you should leave this Site immediately.

If you are representing a company, a partnership, a single person, a collaboration of individuals, an organization, a government body or an academic institution then "you", "your" and "Innovator" refers to you individually, as well as all others gaining access to the Website through you, and also refers to your company, partnership, collaboration, organization, government body or academic institution as a whole.

IX reserves the right to modify or amend this Agreement without notice at any time, and such modification will be effective upon posting by IX on the Site. You agree to be bound by any changes to this Agreement when you use the Site after any such modification is posted. It is therefore important that you read this page regularly to ensure you are updated as to any changes.

**1. The Site.** This Site provides a service ("Service(s)") whereby IX enables sponsor companies ("Sponsor Companies") to access IX's global network of innovative thinkers ("Innovators") to assist Sponsor Companies in solving problems, developing opportunities, or otherwise enhancing Sponsor Company's business. Sponsor Companies may post a Challenge into the Site's database, which means an opportunity, problem or other issue to be addressed by one or more Innovators in the areas of innovation in products, services, business models, marketing, processes, supply chain issues, or organizational issues. By using this Site, you acknowledge that IX does not control in any manner the nature, quality, legality or timing of Challenges. You agree that IX is a neutral forum for Challenges and Innovator Proposals. You agree that your continued access to and use of the Site constitutes valid consideration received under this User Agreement and any new versions thereof.



**2. Eligibility.** Site is not available for use by minors (those under 18 years of age, or otherwise under applicable law), or individuals or organizations who cannot form legally binding contracts under applicable law. If you do not qualify, please do not use the Site. If you reside in a country that is prohibited by law, regulation, treaty or administrative act from entering into trade relations with Canada, the United States or either country's citizens, you may not use this Site. Failure to abide by the terms and conditions of this Agreement, any Challenge-Specific terms, or any other rules or agreements governing this Site and the Service, may result in IX refusing your registration, or deactivating your registration.

**3. Registration.** You may cancel your registration at any time by contacting support@innovationexchange.com. As part of the registration process, you will be asked to select a password and a login name. You agree that your registration information at all times correctly represents your professional affiliation, experience, qualifications and ability to transact business. You may not use a login name of another Innovator. You may not disclose or share your password with any third parties or use your password for any unauthorized purposes. You agree to notify IX at security@innovationexchange.com of any unauthorized use of your account or breach of security, including loss, theft, or unauthorized disclosure of your password or login information. Remember, you are responsible for maintaining the confidentiality of your password(s).

**4. Others' Information.** IX does not guarantee the accuracy of the Site or ownership of any information in an Innovation Brief unless otherwise stated in an Innovation Brief. While IX believes such information to be posted in good faith, IX does not control the information provided by others that is made available through the Site. Other users' information may be inaccurate. If you have a dispute with another user of the Site or the Services, you hereby release IX from all claims of any kind arising out of such dispute, notwithstanding any statutory rights you may have in your jurisdiction of residence regarding enforceability of said waiver.

**5. Your Information.** You may have the opportunity to communicate with other users. Any information you provide to IX or other users during your registration or use of the Services, in any public message area, through any mail feature, or otherwise generated out of your use of the Services, is subject to the following:

**a. Your Content.** You are solely responsible for the content of your information, postings, or Proposals. IX acts merely as a conduit for the distribution and/or publication of that information. IX reserves the right to take any action with respect to such information that it deems necessary or appropriate in its sole discretion if IX believes such information is inappropriate for the Site or the Services, may create liability for IX, or may cause IX to lose (in whole or in part) the services of its Internet service provider, advertisers, or other suppliers. You agree that your information will be accurate and will not, to the best of your knowledge: (a) infringe any third party's copyright, trademark, patent or other proprietary rights or rights of publicity or privacy, (b) violate any law (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising), or (c) be libelous, unlawfully threatening, or unlawfully harassing. You may be asked to make legally binding warranties and representations to IX and the Sponsor Company in relation to a Proposal that you submit.

**b. Privacy.** IX will only use your information in accordance with its [Privacy Policy](#) as posted on the Site.

**6. Compliance with Rules.** You agree not to use any device, software or routine to interfere with the proper working of the Site or which is intended to damage, interfere with, surreptitiously intercept or expropriate any system, data or personal information. You agree not to take any action (including without limitation, spamming) that imposes an unreasonable load on our infrastructure. You agree not to take any actions which may undermine the integrity of our system or the Services, such as: using the Site in violation of local, state, national or international law; uploading of files or content that contain material that violates the intellectual property rights of any third party. You are solely responsible for compliance with all applicable laws and regulations regarding your use of the Services and the transfer of the technologies or information with which you are involved, including without limitation, import/export requirements, and IX expressly disclaims any liability or responsibility thereto.

## **7. Sponsors and Background Intellectual Property.**

7.1 Sponsors are companies that have entered into an agreement with IX in order to participate in the Website. Sponsors may present a Challenge, which is an opportunity, problem or other issue to be addressed by IX's Innovators in the areas of innovation in products, services, business models, marketing, processes, supply chain issues, or organizational issues. Each Challenge will release an "Innovation Brief" to the Innovators, which will contain a description of the Challenge, and any additional rules or requirements governing the Challenge.

7.2 "Background Intellectual Property" means, with respect to a Sponsor, Innovator, or IX, such intellectual property, and all or part of the intellectual property rights therein, which are developed by, owned by or licensed to such party or person, either prior to, or independent of, any services being provided pursuant to this Agreement, including, but not limited to, the entire right, title and interest in all copyrights therein, whether in the United States or elsewhere, including the right to reproduce the work, distribute copies of the work, to perform the work publicly, display the work publicly; and all rights in derivative works based upon the subject work, if any; trade mark registrations and applications and all trade mark rights represented thereby; patents and patent applications, together with all reissues, divisions, continuations, extensions and renewals thereof and the inventions claimed therein. Each party, as well as each Sponsor, shall retain all rights in its own Background Intellectual Property. Innovation Briefs may contain said Sponsor's Background Intellectual Property. Sponsor grants you a limited license to use its Background Intellectual Property solely for the purposes of developing your proposed solution to a Challenge.

## **8. Proposal Stage.**

8.1 As an Innovator you may submit to IX a Proposal in response to any Challenge sponsored by a Sponsor. You may submit a Proposal either on your own or as part of a team of registered Innovators ("Team"). If you submit a Proposal as part of a Team, this submission shall constitute your acceptance of the IX Team Rules, (see Schedule 1 below). To the extent that your Proposal includes the Background Intellectual Property of the Sponsor, you will have a non-exclusive, royalty-free, worldwide, irrevocable license to use, copy, modify, exploit, transfer and sublicense such Sponsor Background Intellectual Property only in connection with the

development of your Proposal and subject to the terms and conditions of this Agreement and any Challenge-Specific terms.

8.2 By submitting your Proposal you grant IX and the Sponsor a non-exclusive, worldwide license to use, copy, and distribute and create derivative works of the Proposal for purposes of review, analysis and testing the Proposal.

8.3 By submitting your Proposal, you grant to the Sponsor an exclusive right to acquire rights to the Proposal for a period of 60 days from the submission deadline set forth in the Innovation Brief (the "Exclusivity Period").

8.4 Nothing herein shall be construed as requiring IX to transmit to the Sponsor every Proposal submitted in response to a Challenge or to interpret, edit, filter, or review submissions. Sponsors are not obligated to select any Proposal submitted in response to a Challenge.

8.5 During the Exclusivity Period, you are prohibited from (a) using the Proposal or (b) disclosing to or granting or assigning or transferring any rights to a third party to use the Proposal for any purpose.

8.6 In the event that the Sponsor and the Innovator or Team do not enter into a Solution Transfer Agreement during the Exclusivity Period, but negotiations are continuing in good faith, the Sponsor and the Innovator may agree in writing to extend the Exclusivity Period for additional periods of 30 days in order to continue their negotiations of a Solution Transfer Agreement ("Extended Exclusivity Period").

8.7 In the event that the Sponsor and the Innovator or Team do not enter into a Solution Transfer Agreement by the end of the Exclusivity Period, or the Extended Exclusivity Period if applicable, then the Sponsor shall grant ownership rights and/or a license in the Proposal and its contents as set out in section 8.8 below.

8.8 You or your Team, as applicable, will own all intellectual property rights contained in your Proposal in response to a Challenge, whether copyrightable or patentable or not. The Sponsor shall assign, and shall to the extent necessary in the future assign, to you or your Team all ownership rights, including, without limitation, intellectual property rights, in your Proposal, and the Sponsor shall expressly and irrevocably waive and shall to the extent necessary in the future waive any moral rights the Sponsor may have in the Proposal, and covenant that the Sponsor shall obtain from any of its employees, agents or contractors involved in the preparation, creation or conception of the Challenge or any contents of the Proposal an express and irrevocable waiver of any such moral rights. The Sponsor will also agree to give you or your team such assistance as may be necessary to perfect such rights. To the extent that any Background Intellectual Property of the Sponsor is contained in the Proposal, the Sponsor will retain ownership of such Background Intellectual Property and will grant, and shall to the extent necessary in the future grant, to you or your team an irrevocable, worldwide, royalty-free license to use, execute, reproduce, display, perform, and distribute copies of such Background Intellectual Property as required by you or your team to use and exploit your rights in the Proposal. Except for use of such Background Intellectual Property within the embodiment of the Proposal, the Innovator or Team has no rights to publish, reproduce, prepare derivative works based upon, distribute, perform, or display the Background Intellectual Property of Sponsor. For greater clarity, and notwithstanding

the foregoing, nothing in this Agreement is intended to create any form of exclusivity in favour of the Sponsor with respect to the Proposal after the Exclusivity Period or any Extended Exclusivity Period has expired and no Solution Transfer Agreement has been executed between the Innovator or Team and the Sponsor. Unless specifically provided in an additional agreement made between you or your Team and the Sponsor and/or IX, nothing will prevent you or your Team from independently developing or providing the same or similar work product as the Proposal in response to another challenge, sponsored by another Sponsor, or indirectly or directly to other entities. In addition, nothing contained in this Agreement will be construed to limit you or your Team's general knowledge and expertise that were gained in the course of participating in the IX program.

## **9. Solution Transfer Stage.**

9.1 If a Proposal submitted by you or your Team is accepted by the Sponsor you agree to sign, and deliver a signed copy to IX, a hard copy of this Innovator Agreement and any Non-Disclosure Agreement or other documents related to the transfer to the Sponsor of the Proposal and your Background Intellectual Property.

9.2 If a Proposal submitted by you or your Team is selected by the Sponsor that sponsored the Challenge, IX will disclose the identity and contact information of (i) the Sponsor to you and (ii) you to the Sponsor.

9.3 If a Sponsor selects a Proposal, the Sponsor may request that IX, on behalf of the Sponsor, manage the Intellectual Property transfer, with the Innovator or Team.

9.4 If a Sponsor accepts your or your Team's Proposal in response to a Challenge that required the automatic transfer of Intellectual Property, you shall sell, assign, transfer and convey to IX, as escrow agent for such Sponsor, all rights, title and interest in and to the Proposal, you or your Team's Background Intellectual Property and any work product related to the Sponsor's Challenge, and you or your Team retain no rights to the Proposal, you or your Team's Background Intellectual Property, or any work product. In the event that you or your Team's proposal, your or your Team's Background Intellectual Property or any work product cannot be assigned under statutory law, you grant to IX, as escrow agent for the Sponsor, a worldwide, unlimited, perpetual, irrevocable, and exclusive license to use, make, have made, market, copy, modify, lease, sell distribute and create derivative works of such materials, including the right to assign the foregoing license to the Sponsor. By submitting your or your Team's Proposal you agree to provide, without additional compensation, reasonable assistance and additional information concerning your or your Team's Proposal to IX and the Sponsor during the Exclusivity Period, including, but not limited to, the execution of all papers and the actions deemed necessary by IX or a Sponsor to ensure that the Sponsor acquires all rights, title and interest in and to the Proposal and any work product that are related to the Sponsor's Challenge, including all rights to all Intellectual Property embodied therein, and that ensures that all such rights are transferred to the Sponsor.

9.5 IX shall pay you the Reward on the later of: i) two weeks after the completion of the transfer; or ii) two weeks after IX actually receives the Reward.

9.6 Notwithstanding anything contained in this Agreement and any Challenge-Specific terms, you will not be entitled to receive any payment under this Agreement if you cannot transfer the Proposal and any Intellectual Property contained therein to the Sponsor.

## **10. Representations and Warranties.**

10.1 You represent and warrant that:

(a) All information provided by you regarding yourself and, if applicable, your business ("Innovator Information") is true, accurate, current, and complete information and you will maintain and update the Innovator Information to keep it true, accurate, current and complete.

(b) If you are an individual representing a business or other entity, you are authorized to enter into this Agreement on behalf of that business or entity.

(c) Unless otherwise disclosed in the Proposal, you and/or your Team are the owner(s) or authorized users of the intellectual property contained in a Proposal; and

i. you are not obligated under any contract, employment agreement, employment relationship or any other relationship or commitment to assign any of your rights in the Proposal to an employer, university or academic institution, governmental entity or body, or any other third party;

ii. the Proposal does not infringe or violate any applicable law or regulation, patent, copyright, trade secret, trademark, or other third party intellectual property right(s); and you are not aware of any threatened claim or challenge to your rights in the Proposal; and,

iii. you have the right to transfer all rights in the Proposal as may arise in Section 8, subject to the rights and restrictions applicable to any Background Intellectual Property owned by the Sponsor which is contained in the Proposal and forms an integral part of your Proposal.

## **11. Confidentiality.**

11.1 "Confidential Information" includes: (a) all information set forth in the password protected areas of the Site, including, but not limited to, the Website, (b) the identity of Sponsors, any information contained in a Challenge and any Sponsor Background Intellectual Property; (c) all discussions between Innovators regarding participation in the Challenge including but not limited to preparation of the Proposal, submission of the Proposal, and results of the Challenge; and (d) during the Exclusivity Period, any Proposal. Confidential Information does not include: (a) information that is publicly known or available on the date you originally accepted this Agreement ("Effective Date"); (b) information that after the Effective Date becomes available to the public in a manner not involving a breach of any duty under this Agreement; and (c) information that must be disclosed by operation of law or court order, as long as, if you are compelled to disclose said information,

you give IX notice of the requirement to disclose and allow IX time to contest the order or other form of compulsion to disclose.

11.2 During the term of this Agreement and at all times thereafter, you shall not disclose to any third party nor use for any purpose other than for the performance of this Agreement, any Confidential Information without the express written consent of the owner of the Confidential Information.

## **12. Termination.**

12.1 IX may terminate the Website or deny you or any other Innovator access to all or part of the Website without prior notice in its sole discretion and without penalty to IX.

12.2 IX shall have no responsibility to notify any third parties of the termination of the Website or IX's denial of your access to the Website, and neither shall IX have any responsibility for any consequences resulting from such lack of notification or access.

12.3 Termination by either party will be effective the day notice is received or such later date specified in the notice.

12.4 Termination of this Agreement for any reason automatically terminates your license to use the Website, including, but not limited to any Background Intellectual Property owned by either Sponsors or IX.

12.5 If being utilized at the time of termination of this Agreement, then Sections 8 and 9, shall survive termination of this Agreement until the obligations thereunder have been fulfilled for any relevant Proposals.

13. Limitation of Liability and Warranty Disclaimers. IX has no control over, and is not responsible for the acts or omissions of Sponsors, or the quality or legality of the solutions sought by virtue of the publication of a Challenge. IX does not warrant or guarantee the accuracy or completeness of any Challenge, nor endorse any Sponsor.

IX does not guarantee or warrant that your use of the Website will be uninterrupted or error free, or that the Website will meet your requirements. In addition, no warranty is made as to the results that may be obtained from use of the Website, or as to the accuracy, reliability, or content of any product, service, or information provided through or in connection with the Website. YOU EXPRESSLY AGREE AND UNDERSTAND THAT USE OF THE WEBSITE IS AT YOUR SOLE RISK. THE WEBSITE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY FOR INFORMATION, DATA, SERVICES, OR UNINTERRUPTED ACCESS. SPECIFICALLY, IX DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO: (1) ANY WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, USEFULNESS, OR CONTENT OF INFORMATION, PROPOSALS, OR THE WEBSITE; AND, (2) ANY WARRANTIES OF TITLE, OF NON-INFRINGEMENT, OF MERCHANTABILITY, OR OF FITNESS FOR A PARTICULAR PURPOSE.

NEITHER IX NOR ANY SPONSOR NOR ANY OF THEIR DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, OR LICENSORS (COLLECTIVELY, "IX ASSOCIATES") SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY COMPENSATORY, DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR OUT OF ANY BREACH OF ANY WARRANTY. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, IN SUCH JURISDICTIONS LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. IN NO EVENT SHALL IX'S OR THE SPONSOR'S LIABILITY TO YOU UNDER THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY OWING OR ACTUALLY PAID TO YOU UNDER SECTION 9.5. TERMINATION OF THIS AGREEMENT WITH IX IS YOUR SOLE RIGHT AND REMEDY WITH RESPECT TO ANY DISPUTE WITH IX.

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement must be filed within one (1) year after such claim or cause of action accrues, or be forever barred.

**14. Indemnification.** You will indemnify IX, its agents and employees, IX Associates, and the Sponsors against and hold IX, its agents and employees, IX Associates and the Sponsors harmless from any and all claims, costs, damages, expenses and liabilities (including reasonable attorneys' fees and costs of litigation or defence incurred by IX or a Sponsor), arising out of or relating to: (i) any violation or breach of any term of this Agreement by you or by anyone using your username and password, or (ii) any claim for payment of any part of a financial award, or any other compensation or salary asserted by any of your employers, employees, agents, partners, associates or subcontractors.

**15. Dispute Resolution.** As an innovator joining the IX system, you agree that all ownership and share of reward disputes are governed by the IX rules and not outside law. For all other issues, this Agreement is governed by the laws of the Province of Ontario, without reference to principles of conflict of laws. The parties hereby irrevocably submit to the jurisdiction of the courts of the Province of Ontario to settle any dispute or disagreement arising between and among any Innovator, any Sponsor and IX in connection with this Agreement.

## **16. General Provisions.**

16.1 You and IX acknowledge and agree that any Sponsor shall be a third-party beneficiary of this Agreement.

16.2 Nothing in this Agreement shall be construed to establish a joint venture, agency, employment, or other business relationship between you and the IX or any Sponsor.

16.3 The failure of IX or a Sponsor to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement shall remain in full force and effect. Any ambiguities in this Agreement shall not be strictly construed against the drafter of the language concerned, but instead shall be resolved by applying the most reasonable

interpretation under the circumstances, giving full consideration to the intent of the parties at the time of contracting.

16.4 IX shall have the right to assign this Agreement, or any rights hereunder, to any third party including a Sponsor, and to sublicense any and all of its rights under this Agreement.

16.5 Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity.

16.6 Sections 10,11,12,13,14,15 and 16 shall survive termination of this Agreement.

16.7 This Agreement, as it may be amended from time to time, in conjunction with IX Policies and any writing that IX may request prior to award of a payment, is the total agreement with respect to the subject matter hereof and supersedes all other agreements and understandings between the Parties with respect to same. You may submit notices to IX by registered mail at:

Innovation Exchange, 2 Berkeley Street, Suite 300, Toronto, Ontario, M5A 2W3 - attn CEO.

16.8 You hereby acknowledge that you have read this Agreement and fully understand the nature and effect of it and the terms contained herein and that the said terms are fair and reasonable and correctly set out your understanding of the conditions applicable to your participation in a Challenge. **IF YOU DO NOT UNDERSTAND THIS AGREEMENT, SAVE IT, PRINT IT, AND SEEK LEGAL ADVICE REGARDING IT. UNTIL YOU DO UNDERSTAND ALL OF ITS TERMS AND CONDITIONS, YOU MAY NOT PARTICIPATE IN A CHALLENGE. IX RESERVES THE RIGHT TO DISQUALIFY YOU FROM PARTICIPATING IN A CHALLENGE AT ANY STAGE.**

16.9 The governing and official language of this Agreement, the Website, and IX Policies is English.

## **Schedule 1 - IX Team Rules**

**1. Active registration.** In order to participate in the IX System, including the right to submit proposals and to share in the proceeds from any proposals submitted, an Innovator must maintain an active registration with the IX System. An Innovator's registration is deactivated if IX is unable to contact the Innovator using the contact information provided by the Innovator or if the Innovator has violated any of the IX System Rules or User Agreement.

**2. Team formation.** If Innovators choose to work together on a challenge they form a "Team" which must be registered with Innovation Exchange. By joining a Team, its members all agree to share any reward for a winning proposal equally amongst all team members. All team members also agree that the Team Leader has the exclusive right to determine when a Proposal is submitted and the content of a submitted Proposal. A Team is formed for a single Challenge and must be formed prior to the Team's submission of a Proposal.



**3. No ownership claims in other Innovators' proposals without a Team designation.** An Innovator who chooses to work with other Innovators on a Challenge collaboratively, has no rights in any Proposals generated by these other Innovators unless and until the Innovator is registered on the IX System as a member of a Team with these other Innovators.

**4. Team invitations** A Team Leader has the exclusive right to add additional members to the Team and can do so only by issuing an invitation on the IX System. An invitation tells the prospective Team member who the Team members are, what challenge they will be collaborating on and the reward associated with that challenge.

**5. No team changes** A person who is designated as a Team member for a particular challenge cannot switch to another Team for that challenge or be dropped from the Team.

**6. Team agents** The Team Leader acts as the Team agent. The Team agent is authorized by the other members of the Team to negotiate a binding Solution Transfer Agreement with a Sponsor if the Team's Proposal is chosen as a Solution by the Sponsor. Any Solution Transfer Agreement negotiated by the Team Leader is fully binding on all Team Members provided it is approved by IX

**7. IX approval** A Solution Transfer Agreement negotiated between a Team agent and a Sponsor must be approved by IX before it becomes legally binding. IX reviews the Solution Transfer Agreement to ensure that the Proposal submitted specifies that the proceeds from the Solution Transfer Agreement are to be shared equally amongst all members of the Team as registered on the IX System.

**8. Team notification** When a Team agent submits a Solution Transfer Agreement to IX for approval, IX notifies all Team members and provides them with copies of the proposed agreement. Team members may object to IX approval of the Solution Transfer Agreement on the grounds that it does not share the reward equally among team members.