

## Area X.O Premium Program Client Agreement

Web Version V1 March 10, 2023

Client and Invest Ottawa (the “**Parties**”) shall execute an Application for Access to The Area X.O Premium Program powered by Ansys (the “**Application**”) incorporating by reference this Area X.O Premium Program Client Agreement (the “**Agreement**”) in each instance in which Client receives access to The Area X.O Premium Program powered by Ansys as documented in the Technical Charter (the “**Services**”). If the Application is accepted by Invest Ottawa, such acceptance will constitute a duly enforceable legal agreement between Invest Ottawa and the Client.

### 1. **Definitions**

- a. “**Client**” means the company identified in the Application.
- b. “**Client Information**” means the information provided in the Application.
- c. “**Representatives**” means all of Client’s employees, officers, directors, consultants, agents, independent contractors, service providers, volunteers, members, and all other third parties who accompany same.
- d. “**Technical Charter**” means the completed and submitted Technical Project Charter form that outlines the project scope, an outline of which is appended to this Agreement (Appendix A).

### 2. **Term**

- a. The term of this Agreement begins on the date Invest Ottawa notifies Client of approval of Application, and, unless terminated earlier pursuant to this Agreement’s express provisions, and unless terminated in accordance with the terms and conditions here, will continue in effect until all Services have been completed in accordance with the applicable Technical Charter (the “**Term**”) or until March 31, 2024, whichever occurs earlier.

### 3. **Client Obligations**

Client agrees that during the Term it shall:

- a. Abide by the Ansys Software License Agreement as posted on their website: <https://www.ansys.com/legal/terms-and-conditions>;
- b. Provide information about its business (the “**Business Data**”) including but not limited to business number and data on employment, funding, sales, and commercialization to support Invest Ottawa reporting to its government funders. Client agrees to provide the Business Data by survey or other collection means as prompted by Invest Ottawa and agrees to Invest Ottawa sharing the Business Data with its government funders. Invest Ottawa agrees to treat the Client’s Business Data in strict confidence, in accordance with the Confidentiality and Privacy guidelines outlined in this Agreement. Invest Ottawa may use aggregated Business Data, which is not identifiable to any one Client, for reasons such as but not limited to public reports or to improve its services;
- c. As relevant, consent to Invest Ottawa filling out the Ontario Vehicle Innovation Network (OVIN) Registration form ([https://oce.formstack.com/forms/ovin\\_registration](https://oce.formstack.com/forms/ovin_registration)) on Client’s behalf, which includes the Client’s consent to OVIN’s Data and Information Sharing Protocol (<https://www.oc-innovation.ca/wp-content/uploads/2021/04/avin-data-and-information->

- sharing-protocol-master-final.pdf) and the Client's consent to receiving invitation emails from Ontario Centre of Innovation to participate in OVIN surveys;
- d. Agree to Invest Ottawa sharing Client Information, Technical Charter, and Business Data with Invest WindsorEssex for the purposes of Invest WindsorEssex providing the Client with associated services and reporting to their government funders;
  - e. Accept that the Technical Charter may be modified or refined in scope at Invest Ottawa's sole discretion based on factors such as but not limited to technical feasibility or resource limitations and that any additional Services requested outside of the Technical Charter are not guaranteed and may be subject to fees, to be agreed upon between Parties;
  - f. Accept that the Services are dependant on the information provided by Client at Client's sole responsibility;
  - g. Accept that all work, including but not limited to the materials, data, and specifications provided to Invest Ottawa shall be at all times responsibility of the Client to protect from loss, damage or destruction. The replacement of any such work lost, damaged or destroyed after delivery to Invest Ottawa shall be at the sole expense of the Client. Client understands that it is solely responsible for insuring against any such loss and Invest Ottawa will not insure Client for any such loss.
  - h. Cause and ensure that it and its Representatives use and access of the Area X.O Facility, the Services and deliverables and Client Equipment and any other activities under this Agreement will comply with all applicable laws, statutes, regulations, bylaws, ordinances, codes or orders, enacted, adopted or promulgated by any applicable Governmental Authority and binding on a Party, including any judgment, writ, injunction, award or decree of any court, administrative body, judge, justice or magistrate, and any order of or by any Governmental Authority ("Applicable Law") and obtain and maintain any required certificates, licenses or permits required under same. "Governmental Authority" means any federal, provincial, territorial, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

#### **4. Insurance**

- a. During the Term Client shall at their own expense prior to commencement of operation and the Services obtain and maintain until the termination of the contract or otherwise stated Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$3,000,000.00 per occurrence / \$3,000,000.00 annual aggregate for any negligent acts or omissions by the Client relating to their obligations under this Agreement.

#### **5. Confidential Information**

- a. Subject to Section 3b. (where applicable), all non-public, confidential or proprietary information, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party"), whether disclosed orally or disclosed or

accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by the Receiving Party without the prior written consent of the Disclosing Party. Confidential Information does not include information that is:

- i. in the public domain;
  - ii. known to Client at the time of disclosure; or
  - iii. rightfully obtained by Client on a non-confidential basis from a third party.
- b. The Disclosing Party shall be entitled to injunctive relief for any violation of this Section.
  - c. Upon request by the Disclosing Party the Receiving Party shall return all of the Disclosing Party’s Confidential Information.
  - d. Notwithstanding the above confidentiality language in this Section 5, if a pre-existing non-disclosure agreement has been fully executed between the Parties, the Parties agree that Subject to Section 3b. of this Agreement such confidentiality terms and conditions in the existing non-disclosure will apply to this Agreement to the extent they are more protective.

## **6. Privacy**

- a. For the purposes of this Agreement, “Personal Information” shall have the meaning ascribed to it in the Personal Information Protection and Electronic Documents Act (Canada). Both Parties shall comply with any applicable privacy legislation or regulation, including, without limitation, the Personal Information Protection and Electronic Documents Act (Canada) in the collection, use or disclosure of Personal Information, as well as the Canadian Anti-Spam Legislation. Each Party shall obtain the necessary consents in order to provide the other Party any Personal Information necessary to perform its obligations hereunder. Any personal information collected by Invest Ottawa under this Agreement is subject to Invest Ottawa’s [Privacy Policy](#).

## **7. Client Equipment**

- a. Client is solely responsible for acquiring, servicing, maintaining, and updating all of its equipment, computers, software, communications devices, vehicles, drones, or other equipment and listed in the Technical Charter (“Client Equipment”) and its materials that it wishes to access and use with the Services and for all expenses relating thereto.
- b. As between Invest Ottawa and Client, Client solely assumes all responsibilities and risks for Client Equipment and independently assessing their viability, safety and appropriateness for all proposed uses and intended uses and in conjunction with using the Services.

## **8. Derivative Data**

- a. Client acknowledges and agrees that the Service compiles, stores, and uses aggregated data and usage, analytics, and diagnostic information to monitor and improve the Service. Client hereby grants to Invest Ottawa a non-exclusive, transferable, assignable, irrevocable, worldwide, perpetual license to collect, process, and aggregate such Client data and other such information and data and create anonymized, aggregated data records and use such anonymized and aggregated data, and all modifications thereto and derivatives thereof (“**Derivative Data**”) to improve the Service and to develop new products and services, to understand usage, and for any other purpose. This Derivative Data is no longer associated

with Client or their Representatives and as such is not personal or Confidential Information of Client or its Representatives. For clarity, Derivative Data is not Client's Confidential Information.

#### **9. Intellectual Property and License**

- a. All rights, including all intellectual property rights, in and to any materials or any technology, data or other information and documentation related thereto, which have been provided by Client to Invest Ottawa in connection with the performance of any of the Services are owned and shall continue to be owned by Client or its suppliers or licensors. Invest Ottawa shall deliver any or all such materials and information to Client upon the request of Client.
- b. Client agrees that Invest Ottawa and its suppliers and licensors shall retain all intellectual property rights it possessed prior to the Effective Date or which it develops after such date where such development is not related to Client's Confidential Information (as defined in Section 5).
- c. The Client hereby grants Invest Ottawa a non-exclusive license during the Term of this Agreement to use the Client's intellectual property rights and Confidential Information as necessary to perform Invest Ottawa's obligations under this Agreement.
- d. The Client acknowledges that Invest Ottawa will develop expertise across multiple industries with various clientele and nothing herein shall create an exclusive relationship as between the Parties and the Client consents to Invest Ottawa using and developing its own expertise and processes across multiple industries and with multiple clients. Invest Ottawa will not require consent from the Client to engage in contracts with other clients for any matter.

#### **10. No Warranty; Disclaimer**

- a. THE SERVICES ARE PROVIDED TO CLIENT "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OR LAW OR OTHERWISE, REGARDING THEM OR ANY OTHER DELIVERABLES OR SERVICES PROVIDED HEREUNDER OR IN CONNECTION HERewith. INVEST OTTAWA, ITS LICENSORS AND SUPPLIERS, DISCLAIM ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT WITH RESPECT TO ANY SERVICES OR DELIVERABLES USED OR SUPPLIED IN THE COURSE OF PERFORMING THE SERVICES. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING PERFORMANCE OF THE SERVICES THAT IS NOT CONTAINED IN THIS SECTION, WILL BE DEEMED TO BE A WARRANTY. CLIENT ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION, CONDITION OR WARRANTY MADE BY INVEST OTTAWA, OR ANY OTHER PERSON ON INVEST OTTAWA'S BEHALF.

THE CLIENT SOLELY ASSUMES ALL RESPONSIBILITIES AND ANY REQUIRED OBLIGATIONS TO CERTIFY AND TEST SUCH DELIVERABLES AND INDEPENDENTLY ASSESS THEIR VIABILITY, SAFETY AND APPROPRIATENESS FOR ALL PROPOSED USES AND INTENDED USES.

#### **11. Assumption of Risks and Release**

- a. CLIENT IS AWARE AND UNDERSTANDS THAT THE USE OF THE SERVICES INVOLVES MANY RISKS, DANGERS AND HAZARDS, INCLUDING BUT NOT LIMITED TO THE RISK OF SERIOUS INJURY, DEATH OR PROPERTY DAMAGE. CLIENT ACKNOWLEDGES THAT THEY ARE

VOLUNTARILY PARTICIPATING AND SOLELY RESPONSIBLE FOR THE USE OF THE SERVICES AND FREELY ACCEPT AND FULLY ASSUME ANY AND ALL OF THE RISKS, DANGERS AND HAZARDS INVOLVED AND THE POSSIBILITY OF INJURY, DEATH OR PROPERTY DAMAGE, WHETHER CAUSED BY NEGLIGENCE OR OTHERWISE.

- b. Client hereby expressly waives and releases any and all claims which Client has or may in the future have against Invest Ottawa and its affiliates, and their respective directors, officers, employees, agents, representatives, shareholders, successors and assigns (collectively, “**Releasees**”) on account of injury, death or property damage arising out of or attributable to the use of the Services, due to any cause whatsoever, including without limitation negligence of Invest Ottawa or any other Release, breach of contract, or breach of any statutory or other duty of care owing under legislation or otherwise. Client covenants not to make or bring any such claim against Invest Ottawa or any other Releasee, and forever release and discharge Invest Ottawa and all other Releasees from liability under such claims.

## **12. Indemnification**

- a. The Client shall defend, indemnify and save harmless Invest Ottawa and the Federal Economic Development Agency for Southern Ontario and Ontario Centre of Innovation and their respective employees, agents, volunteers, representatives, officers or directors, suppliers or licensors (“**Indemnified Parties**”), from any claims, demands, losses, damages, fines, interest, costs, charges, expenses (including reasonable legal fees) of every nature and kind whatsoever, including but not limited to bodily injury or to damage to or destruction of tangible property including loss of revenue, actions and other proceedings, made or brought against, suffered by, imposed, incurred by or assessed against any Indemnified Parties, directly or indirectly arising out of, resulting from or sustained by or allegedly attributable to:
  - i. the acts, errors, omissions, fault or negligence of Client (whether willful or otherwise), any related Parties or Client’s Representatives; or
  - ii. the use or reliance by Invest Ottawa of any information or material supplied by Client while providing the Services; or
  - iii. the compliance by Invest Ottawa with any instructions or specifications provided by Client with respect to any Services; or
  - iv. Client’s breach of this Agreement; or
  - v. any failure of any deliverables to comply with any safety standards and/or environmental regulations or Applicable Law; or
  - vi. any actual or threatened injury or damage or death to any person or property caused, or alleged to be caused, by the Client; or
  - vii. any infringement of the intellectual property rights of any third party by any Client Equipment or materials provided or used by Client.
- b. The indemnities herein shall be in addition to and not in lieu of any insurance to be maintained by Client in accordance with this Agreement and survive the termination of this Agreement and the completion of the Services contained herein.

## **13. Limitation of Liability**

- a. TO THE EXTENT PERMITTED BY APPLICABLE LAW, INVEST OTTAWA ACCEPTS NO LIABILITY FOR USE OF OR RELIANCE BY CLIENT OR THIRD PARTIES OR BOTH ON THE SERVICES OR

DELIVERABLES, INCLUDING WITHOUT LIMITATION, LIABILITY RESULTING FROM ANY CLAIMS, HOWSOEVER CAUSED, EVEN IF INVEST OTTAWA IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE. THE CLIENT ACCEPTS SOLE RESPONSIBILITY AND LIABILITY FOR ITS OR ANY THIRD PARTY'S USE AND RELIANCE OF THE SERVICES OR DELIVERABLES.

- b. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INVEST OTTAWA BE LIABLE UNDER THIS AGREEMENT TO CLIENT OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, COST OF CAPITAL, LOSS OF BUSINESS OPPORTUNITY, LOSS OF GOODWILL, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), ANY OTHER THEORY OF LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INVEST OTTAWA'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE MAXIMUM SUM OF THE FEES ACUALLY RECEIVED BY INVEST OTTAWA FROM THE CLIENT UNDER THIS AGREEMENT.

#### **14. Third Party Services**

- a. For Client's convenience, the Services may include third party products, services, content, information, resources or licenses and licensors ("Third Party Content"). Invest Ottawa makes no representations about any Third Party Content that may be accessed while using the Services. If Client uses or accesses such Third Party Content Client does so at Client's own risk. Invest Ottawa has no control over the Third Party Content and accepts no responsibility for Third Party Content or for any loss or damage that may arise from Client's use of them. Client will be subject to any terms and conditions of such Third Party Content that may apply. All statements and/or opinions expressed in any such Third Party Content are solely the opinions and the responsibility of the person or entity providing such Third Party Content.

#### **15. Termination and Suspension of Services**

- a. In addition to any remedies that may be provided under this Agreement, Invest Ottawa may suspend or terminate this Agreement (or part thereof) with immediate effect upon written Notice to Client.
- b. Either Party may terminate this Agreement, effective on written Notice to the other Party, if the other Party materially breaches this Agreement, and such breach:
  - i. is incapable of cure; or
  - ii. being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written Notice of such breach.

#### **16. General**

- a. **Assignment.** Client shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Invest Ottawa.

- b. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- c. **Choice of Law.** This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the province of Ontario and the federal laws of Canada applicable therein, without giving effect to any choice or conflict of law provision or rule (whether of the province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the province of Ontario.
- d. **Forum Selection.** Each Party irrevocably submits to the exclusive jurisdiction of the courts of Ottawa, Ontario. The Parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
- e. **Dispute Resolution.** It is the Parties' intention that any dispute between them in relation to this Agreement should be settled amicably, by consultation, negotiation, and mutual agreement. The Parties shall use reasonable efforts to resolve any dispute arising out of this Agreement prior to invoking any right to formal legal proceedings on a "without prejudice" basis.
- f. **Notices.** All notices required in this Agreement will be given in writing to all Parties and shall be deemed effectively given (a) when sent, if by email, with confirmation of transmission if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; or (b) on the fifth (5th) day after the date mailed. Except as otherwise agreed, all notices will be given using the contact information indicated on the Application.
- g. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- h. **Survival.** Provisions of these Terms, which by their nature and context should apply beyond the termination of this Agreement, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions 3b, 3c, 5, 6, 8, 9, 10, 11, 12, 13, and 16.
- i. **Amendments and Modifications.** Invest Ottawa reserves the right to modify these Terms and will announce such modifications on its website <https://areaxo.com/simulation/terms-conditions>. It shall be the Client's responsibility to check the website from time-to-time and to adhere to the latest version of the Agreement. Invest Ottawa shall be under no obligation to inform Client of such modifications beyond publication on the website.

**Appendix A. Technical Project Charter**

**Company & Solution Overview\***

**Project Overview\***

**Project Goals\***

**Success Criteria\***

**Project Requirements\***



**Expected Scenarios in the Project**

**Testing Duration**

- Less than 1 month
- 1-3 months
- 3-6 months

**Select Module**

- AVxcelerate with Co-Simulator (Sensor verification and validation for autonomous vehicles research. Co-simulator can be Carla or IPG Carmaker)
- SPEOS (Optical System Simulator)
- HFSS (Finite Element Analysis Electromagnetics simulator for components such as antennas and electronics components)
- STK (Real-time Digital Mission Engineering simulator)

**AVxcelerate with Co-Simulator**

**Sensor types**

Customer needs to provide their number & type; Area X.O team can fill in missing sensor performance parameters

- RGB Camera
- Fish Lens RGB Camera
- Radar
- Rotation Lidar
- Flashing Lidar
- Thermal Camera

**Vehicle dynamics**

What kind of vehicle are you testing on? Please specify make and model number

**Testing environment and vehicle trajectory**

Area X.O provided support for testing at our facility, customer provided support for any external locations

**SPEOS (Optical System Simulator)**

**Lens & filter geometry**

Customer provided and Area X.O team can fill in missing sensor performance parameters

**Material properties**

Customer provided and Area X.O team can fill in missing sensor performance parameters

**Optical sensor specifications**

Customer provided and Area X.O team can fill in missing sensor performance parameters

**Simulated environment conditions**

Customer needs to provide operating conditions (e.g. ambient lighting, temperature, etc.)

**HFSS (Finite Element Analysis Electromagnetics simulator for components such as antennas and electronics components)**

**Hardware geometry & material properties**

Customer provided and Area X.O team can fill in missing parameters

**Input signal/excitation definition**

Customer needs to provide operating conditions

**Simulated environment conditions**

Customer needs to provide operating conditions (e.g. ambient medium, boundary conditions, etc.)

**Thermal simulation (available if needed)**

**STK (Real-time Digital Mission Engineering simulator)**

**Flight performance specifications (for aerial drones and satellites)**

Customer provided and Area X.O team can fill in missing parameters

**Testing environment and vehicle trajectory**

Area X.O provided support for testing at our facility, customer provided support for any external locations

**Sensor specifications**

Customer provided and Area X.O team can fill in missing parameters

- Electro-optical/Infrared
- Hyperspectral
- Lidar
- Radar
- SAR
- Thermal
- Other (please specify)

**Please specify sensor specifications**

**Communication specifications**

Customer provided and Area X.O team can fill in missing parameters

SUBMIT