

NGen Collaboration Agreement Template & Guide **for Participants**

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Required Clauses for NGen Approval:

INTRODUCTION

This Collaboration Agreement (the “**Agreement**”), dated and made effective as of [redacted] (the “**Effective Date**”), is by and between the following parties (each a “**Party**” and collectively, the “**Parties**”):

Lead Participant,

a corporation organized under the laws of [insert jurisdiction of incorporation], with offices located at Full Address (“[insert **Abbreviation of Lead**]”)

and

Participant 2,

a corporation organized under the laws of [insert jurisdiction of incorporation], with offices located at Full Address (“[insert **Abbreviation of Participant 1**]”)

and

Participant 3,

a corporation organized under the laws of [insert jurisdiction of incorporation], with offices located at Full Address (“[insert **Abbreviation of Participant 2**]”)

WHEREAS:

- A. **Abbreviation of Lead** is an [insert brief synopsis of company];
- B. **Abbreviation of Participant 2** is an [insert brief synopsis of company];
- C. **Abbreviation of Participant 3** is an [insert brief synopsis of company];
- D. The Parties wish to collaborate on a project (the “**Project**”) as outlined in an application for funding to Next Generation Manufacturing Canada (“**NGen**”) numbered [Insert NGen Project No.].
- E. As a condition to receiving such funding, NGen requires that the Parties enter into this Agreement, among other things, to govern how the Parties will manage the Project and to establish the ownership and use of, and access to, any related intellectual property.

DEFINITIONS

1.1 For purposes of this Agreement, the following terms have the following meanings:

“**Background IPR**” (or “**BIPR**”) means the Intellectual Property developed before the beginning of the Project, or otherwise developed independently of the Project, and required for the carrying out of the Project or the exploitation of the Foreground Intellectual Property.

“**Confidential Information**” means any information relating to a Party or its business that is of a

Commented [MT1]: Definition: Define terms that will be used throughout the document and keep them consistent.

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confidential or proprietary nature and includes any information that, due to the nature of its subject matter or circumstances surrounding its disclosure, would reasonably be understood to be non-public, confidential, or proprietary.

“Effective Date” has the meaning set forth on the first page of this Agreement.

“Financial Forecast” means the forecast attached as a Schedule to this Agreement.

“Foreground IPR” (or **“FIPR”**) means all Intellectual Property created to practice in carrying out the Project by the Parties or any of their respective employees, agents, contractors or assignees, and all rights therein, but does not include Background Intellectual Property as defined in this Agreement.

“Funding” means any funding from NGen in respect of the Project.

“Intellectual Property” (or **“IP”**) means all inventions, whether or not patented or patentable, all commercial and technical information, whether or not constituting trade secrets, and all copyrightable works, industrial designs, integrated circuit topographies, distinguishing marks or guises, whether or not registered or registrable, software, data, and ML models.

“Intellectual Property Right” (or **“IPR”**) means any common law principle or statutory provision which may provide a right in Intellectual Property.

“Losses” means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable legal fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Master Project Agreement” (or **“MPA”**) means the agreement between NGen and each of the Participants (or Project consortium members) which governs (amongst other things) the Project Funding, attached as a Schedule to this Agreement.

“Project Asset” means an asset which, in whole or part, has been acquired, created, developed, advanced and contributed to with Funding funds.

“Project Plan” means a detailed plan for the Project breaking down the original Proposal for delivery of the Project into individual work packages with assigned estimates of the resources and timescales needed to achieve each of them.

“Project IP Plan” means the IP plan attached as a Schedule to this Agreement.

“Participant” means any one or more of the Parties that receive Funding.

“Term” means the period between the Effective Date and the Project End Date.

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PURPOSE/REFERENCE TO MPA

2. Purpose of Project is [insert project purpose].

2.1 Reference to MPA:

- a. The Parties will carry out all Project activities per this Agreement and the MPA.
- b. If there is any conflict between the terms of this Agreement and the MPA, this Agreement will prevail concerning the arrangements as been the Parties, but it will not affect the Parties' respective obligations to NGen under the MPA.
- c. Words and phrases defined in the MPA and not defined in this Agreement have the meaning given to them in the MPA when used in this Agreement. Each of the Parties will:
 - i. if it is a party to the MPA, comply with its obligations under, and the conditions of, the MPA;
 - ii. carry out the Project per the MPA; and
 - iii. notify the other Parties immediately if it receives any notice or request from NGen.

Commented [MT2]: Purpose/Reference to MPA: state the purpose of the collaboration agreement and make reference to Master Project Agreement. *This language is mandatory and cannot be amended.*

PROJECT PLAN OVERVIEW

3.1 Project Title: [insert title]

3.2 NGen Project Reference #: [insert number]

3.3 Project Start Date: [insert date]

3.4 Project End Date: [insert date]

3.5 Lead Participant Project Manager: [insert name]

3.6 Participant 1 Project Manager: [insert name]

3.7 Participant 2 Project Manager: [insert name]

3.8 Definition of Project Success: Project success is defined by [insert requirement(s) of project success]

3.9 **Project Plan:** Each of the Parties will carry out the tasks allotted to it in the Project Plan and will provide the human and other resources, information, data, techniques, know-how, inventions, software, materials, facilities and equipment which are designated as its responsibility in the Project Plan.

3.10 **Use of Project Assets:** Any Project Assets provided by one Party for use by another Party are provided "as is" without any warranties, express or implied. All right, title and interest in and to any Project Assets contributed by a Party remain vested in the contributing Party. The Parties shall maintain possession and control of the Project Assets per the requirements of the MPA.

3.11 **Direction and Supervision:** The Project will be carried out at [insert the location] under

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the direction and supervision of the appointed Lead Participant Project Manager. The project managers for each company will provide reports to the Lead Project Manager on a [insert reporting frequency] basis. The Lead Project Manager is responsible for coordinating Project Monitoring requirements with NGen.

- 3.12 **Progress Meetings:** The Lead Participant Project Manager and the Other Project Managers shall meet on a [insert meeting frequency] basis during the Term to review the progress of the Project; [insert other meeting times if necessary].

CHANGES AND DECISION-MAKING

Commented [MT3]: A Change and decision-making process needs to be outlined. These example clauses are not exhaustive.

- 4.1 **Management Committee.** The Parties shall establish a management committee for the Project consisting of the Lead Participant Project Manager and the other Participant Project Managers (collectively, the “**Management Committee**”).
- 4.2 **Chairperson.** The Lead Participant Project Manager shall serve as the chairperson for the Management Committee and shall be responsible for calling and presiding over each meeting of the Management Committee, for preparing and circulating an agenda for each such meeting, and for training and distributing draft minutes of each such meeting for review and approval.
- 4.3 **Voting.** Each member of the Management Committee shall have one (1) vote in any matter requiring the Management Committee’s action or approval. All Management Committee decisions shall be unanimous, and no Management Committee vote may be taken unless all of the Management Committee members are present. The Management Committee shall make all decisions and take other actions in good faith and with due care, after consideration of the information that is reasonably available to it, with the intention that the resulting decision or action shall:
- a) not breach or conflict with any requirements or other provisions of this Agreement or the MPA; and
 - b) maintain or increase the likelihood that the Parties will achieve the purposes and goals of the Project.
- 4.4 **NGen Notification:** Per the MPA, the Lead Participant Project Manager shall inform NGen in writing of the following:
- a) any cessation of work on the Project and of any event or circumstance likely to significantly affect the ability of the Project to deliver the objectives of the Project;
 - b) the occurrence of any of the events referred to in Section 6 of the MPA, including any material change to the Financial Forecast or Project Plan.;
- 4.5 **Other Project Managers Notification:** Other Project Managers shall notify the Lead Participant Project Manager in advance of any such changes to the Project to ensure compliance with the

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MPA.

CONFIDENTIALITY

- 5.1 **Non-Disclosure and Non-Use.** Without prejudice to any obligations of confidentiality in the MPA and to any information disclosures required to be made to NGen or the Government of Canada, and subject to the Use and Exploitation of IP article of this Agreement, none of the Parties will [during the Term] disclose to any third party nor used for any purpose, except as expressly permitted by this Agreement, any other Party's Confidential Information.
- 5.2 **Standard of Care.** Each Party that receives (the "Receiving Party") any Confidential Information disclosed by another P
- 5.3 arty (the "Disclosing Party") shall use reasonable care, at least as protective as the care and efforts it uses for its confidential information, to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted.
- 5.4 **Exceptions.** If the Receiving Party becomes legally compelled to disclose any other Party's Confidential Information, the Receiving Party shall:
- provide prompt written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under the Use and Exploitation of IP;
 - disclose only the portion of Confidential Information that it is legally required to furnish; and,
 - If a protective order or other remedy is not obtained, or the Disclosing Party waives compliance under this section, the Receiving Party shall, at the Disclosing Party's expense, use reasonable efforts to obtain assurance that confidential treatment will be afforded the Confidential Information.

Commented [MT4]: Confidentiality clauses prevent the signing party from divulging sensitive information, personally identifiable information, and certain forms of intellectual property. These protections are for documents as well as verbal communications. Parties can negotiate the terms of the confidentiality clause according to scope and obligations as necessary.

Concerning **Non-disclosure and non-use**, this clause is here because there are requirements in the MPA to share information with NGen and the Government of Canada.

USE AND EXPLOITATION OF IP

- 6.1 **Adherence to NGen IP Strategy and MPA:** The Parties shall adhere to the NGen IP Strategy and MPA.
- 6.2 **Cross-Licenses to Background IPR:** Subject to the terms and conditions of this Agreement, each of the Parties now grants to the other Parties during the Term a royalty-free, non-exclusive, non-transferable and non-sublicensable license to access and use that Party's Background IPR solely to carry out the Project, including the performance of the other Parties' respective obligations under the Project Plan.

Commented [MT5]: Use and Exploitation of IP must adhere to the IP Plan.

This section will identify or refer to the Background IP being brought into the Project and define the access for each recipient during and after the Project.

It will also define or refer to the ownership of any Foreground IP resulting from the Project and the access of partners/recipients during and after the Project.

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Ownership of Foreground IPR: *Choose clauses that apply to the project. There are so many ways to do this; some examples are provided below, these options are not exhaustive, and each party to the agreement should seek independent legal advice:*

6.3 Sole Ownership to one party with licensing to other partners: Regardless of inventorship, and regardless of its relationship to any of the Parties' Background IPR, as between the Parties, [Sole IP Owner] shall own all right, title, and interest in and to all Foreground IPR (hereafter the "IP Owner"). As the exclusive owner of such Foreground IPR, IP Owner shall have sole and unfettered discretion on all matters concerning (i) the preparation, filing, prosecution and maintenance of all patent applications, amendments and other documents relating to the registration of any Foreground IP; and (ii) the enforcement of any Foreground IPR; and IP Owner shall be solely responsible for all costs and expenses relating to the preparation, filing and prosecution of any such patent applications, the maintenance of any resulting patents and the enforcement of any Foreground IPR.

6.3.1 Licensing Option: Upon completion of the Project, the IP Owner will maintain full ownership and commercialize the [product/system/idea] and Foreground IP. The [Participant(s)] can continue to use the [product/system/idea] and purchase additional [product/system/idea] for use through a license. Licensing and access to the Foreground IP to the [Participant(s)] will be based on fair, reasonable and non-discriminatory terms subject to relevant competitive issues for at least internal research and development purposes. Any data contributed by the [Participant(s)] is owned by the [Participant(s)] and will only be used by the IP Owner to improve [Participant(s)] own [products/system/idea].

Commented [MT6]: FRAND terms or better required by NGen.

OR

Joint Ownership of all FIPR: Regardless of inventorship and regardless of its relationship to any of the Parties' Background IPR, as between the Parties, the [Participant] and the other [Participant(s)] jointly own all right, title, and interest in and to all Foreground IPR (hereafter the "Joint Owners"). The Joint Owners shall have the collective and unfettered discretion on all matters concerning (i) the preparation, filing, prosecution and maintenance of all patent applications, amendments and other documents relating to the registration of any Foreground IP; and (ii) the enforcement of any Foreground IPR; and the Joint Owners shall be [equally] responsible for all costs and expenses relating to the preparation, filing and prosecution of any such patent applications, the maintenance of any resulting patents and the enforcement of any Foreground IPR.

MUTUAL REPRESENTATIONS AND WARRANTIES

7.1 Each Party represents and warrants to the other Parties that:

- a) it is duly organized, validly existing and in good standing as a corporation or

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other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

- b) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder, and the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the Party;
- c) when executed and delivered by the Party, this Agreement shall constitute the legal, valid and binding obligation of that Party, enforceable against that Party per its terms;
- d) it has control (by ownership, license or otherwise) of the entire right, title, and interest in and to its Background IPR;
- e) it has, and throughout the Term, will retain the unconditional and irrevocable right, power and authority to grant the rights hereunder to its Background IPR according to the terms of this Agreement;
- f) it has not granted and will not give any licenses or other contingent or non-contingent right, title or interest under or relating to the Background IPR or will not be under any obligation that does or will conflict with or otherwise affect this Agreement, including any party's representations, warranties or obligations or rights or licenses hereunder; and
- g) it is under no obligation to any third party that would interfere with its representations, warranties or obligations under this Agreement.

INDEMNIFICATION

8.1 Indemnification Obligations. Each Party shall indemnify, defend and hold harmless each of the other Parties and its officers, directors, employees, agents, successors and assigns against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each an "Action") related to or arising out of or resulting from (a) such Party's breach of any representation, warranty, covenant or obligation under this Agreement; or (b) use by another Party of such Party's Background IPR in connection with any activities performed according to the Project Plan.

8.2 Indemnification Procedure. The indemnitee shall promptly notify the indemnitor in writing of any Action and cooperate with the indemnitor at the indemnitor's sole cost and expense. Subject to the Use and Exploitation of IP Section, the indemnitor shall immediately take control of the defence and investigation of the Action and employ counsel of its choice to handle and defend it at the indemnitor's sole cost and expense. The indemnitor shall not settle any Action that adversely affects the indemnitee's rights without the indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. The indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its choosing.

8.3 Project Costs and Expenses. Except as otherwise expressly provided in the MPA or this

Commented [MT7]: Warranties and Indemnification clauses are standard in agreements to protect each party. These examples are written mutually; meaning that both parties equally warrant and indemnify one another.

The purpose of a warranty clause is to contractually assure or promise that something is true or will happen.

The purpose of indemnity clauses is to protect a party from third-party claims.

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Agreement, including the Project Plan, each Party is responsible for all its costs and expenses in performing its obligations under the Project Plan. None of the Parties is obligated to reimburse any other Party for any fees or costs such other Party incurs in performing its duties under the Project Plan.

DISPUTE RESOLUTION

- 9.1 **Good Faith Negotiation.** Should a dispute arise from or in connection with this Agreement between any of the Parties, the affected Parties shall attempt to resolve the dispute through good-faith negotiation.
- 9.2 **Binding Arbitration.** Suppose the Parties cannot resolve any dispute by good faith negotiation or informal mediation. In that case, the dispute shall be referred to arbitration under the *Arbitration Act, 1991* (Ontario) by a single arbitrator agreed upon by the affected Parties. Failing agreement on the appointment of a single arbitrator, ADR Chambers Inc., Toronto shall appoint the arbitrator. The arbitrator's decision for the purposes herein shall be final and binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.
- 9.3 **No Court Proceedings.** The dispute resolution procedures are intended as the sole remedy for resolving any dispute arising out of or in connection with this Agreement between any of the Parties unless otherwise provided in this Agreement.
- 9.4 The Parties may initiate court proceedings in a court of competent jurisdiction: (i) in respect of any dispute concerning the scope, validity, enforceability and infringement of Intellectual Property; (ii) to enforce any arbitration award between the Parties, or (iii) for claims for equitable relief.

Commented [MT8]: Dispute resolution clauses help parties avoid the hassle of going to court, which is expensive and on public record. They offer peace of mind to all parties that you intend to settle your contract disputes as amicably and quickly as possible.

TERMINATION

- 10.1 **Term:** This Agreement shall commence on the Effective Date and, unless terminated earlier under Section 10.2 or Section 10.3, shall remain in force until three (3) months after the Parties receive an indication from NGen that the Project is closed.
- 10.2 **Termination for Convenience:** Notwithstanding any other provision of this Agreement to the contrary, any Party may terminate this Agreement in its sole discretion, for any or no reason, by providing [insert time frame] prior written notice to the other Parties.
- 10.3 **Termination for Cause:**

Commented [MT9]: Termination clauses set the terms and conditions surrounding a contract cancellation that doesn't result in penalties. These rules typically address who may cancel the contract and for what reasons.

The purpose of termination clauses is to remove issues surrounding breach of contract claims and termination. Not all contract breaches are created equally, and termination clauses provide guidance.

NGen needs to be notified of any termination.

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- a) Any Party may terminate this Agreement if any of the other Parties materially has breached this Agreement and (if such breach is curable) has failed to cure such breach within fourteen (14) days of having been notified in writing to do so; provided; however, such fourteen (14) day period shall be extended by an additional fourteen (14) days if the breaching Party has begun reasonable faith efforts to remedy such breach within the initial fourteen (14) day period and provides a written explanation to the non-breaching Parties of the reasons for the breach, what it is doing to remedy the breach and why it believes it can remedy the breach within the additional fourteen (14) day period.
- b) Any Party may terminate this Agreement if any of the other Parties:
- i. becomes insolvent or admits its inability to pay its debts generally as they become due;
 - ii. becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not entirely stayed within thirty (30) days or is not dismissed or vacated within [insert time frame] after filing;
 - iii. is dissolved or liquidated or takes any corporate action for such purpose;
 - iv. makes a general assignment for the benefit of creditors; or
 - v. has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.4 **Notice to NGen:** Without limiting any obligations the Parties may have under the MPA, the Parties shall immediately notify NGen of any termination of this Agreement.

10.5 Effect of Termination:

- a) Expiration or termination of this Agreement shall not relieve the Parties of any obligations incumbent upon them before the date of expiration or termination. Any expiration or termination of this Agreement shall not preclude any Party from pursuing all rights and remedies it may have hereunder at law or in equity concerning any breach of this Agreement nor prejudice any Party's right to obtain performance of any obligation.
- b) On any expiration or termination of this Agreement, each Party shall immediately cease all activities concerning the Project, subject to any ongoing obligations it may have under the MPA.

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c) On expiration or termination of this Agreement, all licenses to Background IPR granted under this Agreement shall automatically terminate as of the effective date of such expiration or termination.

10.6 **Survival.** Any right, obligation, or required performance of the Parties in this Agreement which, by its express terms or nature and context, is intended to survive termination or expiration of this Agreement shall survive any such termination or expiration.

Commented [MT10]: The purpose of survival clauses is to ensure that critical provisions remain in place after a contract terminates. This strategy guarantees the continuation of a party's rights upon project or service completion. At NGen, we want to ensure that the obligations to the Master Project Agreement survive.

MISCELLANEOUS

11.1 **Governing Law:** This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by and construed per the province of [Ontario] laws and the federal laws of Canada applicable in such area.

11.2 **Independent Legal Advice:** Each of the Parties acknowledges having been advised to obtain independent legal advice before entering into this Agreement. By entering into this Agreement, each Party represents that it did get whatever independent legal advice it considered appropriate and sufficient. Each Party acknowledges that NGen's templates and resources are not considered legal advice.

11.3 **Entire Agreement:** Except for the MPA, this Agreement, together with all Schedules and any other documents incorporated herein by reference, constitute the sole and entire agreement of the Parties to this Agreement concerning the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, concerning the such subject matter.

11.4 **Amendments:** Subject to the prior written approval of NGen per the MPA, this Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party.

11.5 **Notices:** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given under this Section:

If to [Lead Participant]:	[Full Company Name] [Address] Attention: [name] [Email]: [Phone]:
If to [Participant 2]:	[Full Company Name] [Address] Attention: [name] [Email]: [Phone]:

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If to [Participant 3]:

[Full Company Name] [Address]

Attention: [name] [Email]:

[Phone]:

[SIGNATURE PAGE FOLLOWS]

The Parties have executed this Agreement as of the Effective Date.

Lead Participant

Name:

Title:

I have the authority to bind the corporation

Participant 2

Name:

Title:

I have the authority to bind the corporation

Participant 3

Name:

Title:

I have the authority to bind the corporation

SCHEDULES

- Attach the following documents to the Collaboration Agreement as Schedules:
 - Project Plan
 - Milestone Register
 - Risk Register
 - Financial Forecast
 - Commercialization Plan
 - IP Plan
 - Executed MPA

Not required for NGen approval, but highly advised:

PUBLICATION

Publication Approval: [Lead Participant and Participant(s)] shall determine the strategy for and coordinate the publication and presentation of any results or other data generated by the Project under this Agreement. A Party shall not publish any information concerning any aspect of the Project without the approval of the other non-publishing Parties.

Proposed Publication: A publishing Party shall provide to the non-publishing Parties copies of any manuscript intended for publication or any presentation intended for public disclosure (including any oral disclosure made with or without obligation of confidentiality) by or on behalf of the publishing Party that incorporates any Confidential Information generated under this Agreement or that includes the Confidential Information of any non-publishing Party, at least [insert time frame] before the intended submission of any manuscript for publication or the public presentation. The non-publishing Parties shall use their commercially reasonable efforts to promptly return to the publishing Party the manuscript or presentation with any proposed changes aimed at ensuring the information is fairly stated, the confidentiality of any Confidential Information is maintained, and the opportunity to obtain patent protection for any Foreground IPR is preserved. The publishing Party shall incorporate the non-publishing Parties' proposed changes to the manuscript or presentation.

Attribution: The publishing Party shall ensure that any manuscript or presentation incorporating any information concerning any aspect of the Project includes recognition of the contributions of the non-publishing Parties according to standard practice for assigning scientific credit, either through authorship or acknowledgement, as may be appropriate.

General Clauses

Force Majeure. None of the Parties shall be liable or responsible to any other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when, and to the extent, such failure or delay is caused by:

- a) acts of God;
- b) flood, fire or explosion;
- c) war, terrorism, invasion, riot or other civil unrest;
- d) embargoes or blockades in effect on or after the date of this Agreement;
- e) national or regional emergency;
- f) pandemics, epidemics, or national or regional outbreaks of disease, including any resulting quarantines, shelter-in-place orders, government and industrial stoppages, and supply chain shortages;
- g) strikes, labour stoppages or slowdowns or other industrial disturbances;

Commented [MT11]: A **force majeure** clause triggers when extraordinary circumstances exist. It's derived from French Law and translates to "major force." They come into effect when a party cannot follow through on *pacta sunt servanda*, meaning "agreements must be kept" in Latin.

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- h) any passage of a law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition.

(each of the preceding, a “**Force Majeure**”), in each case, provided that (i) such event is outside the reasonable control of the affected Party; (ii) the affected Party provides prompt notice to the other Parties, stating the period the occurrence is expected to continue; and (iii) the affected Party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure event.

Further Assurances: Each Party shall, upon the reasonable request and at the sole cost and expense of the other Parties, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

Independent Contractors: 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 another form of joint enterprise, employment or fiduciary relationship between the Parties, and none of the Parties shall have the authority to contract for or bind any of the other Parties in any manner whatsoever.

Assignment: None of the Parties shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without (i) the prior written consent of each of the other Parties, which consent shall not be unreasonably withheld or delayed; and (ii) the prior written consent of NGen. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving a Party (regardless of whether that Party is a surviving or disappearing entity) shall be deemed to be a transfer of rights, obligations or performance under this Agreement for which the other Parties’ and NGen’s prior written consent is required. No delegation or other transfer will relieve any Party of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

Commented [MT12]: Assignment clauses are helpful when you need to maintain an ongoing obligation regardless of ownership. Some agreements have limitations or prohibitions on assignments, while other parties can freely enter into them.

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 condition of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in a mutually acceptable manner so that the transactions contemplated as a result of this be consummated as initially considered to the greatest extent possible.

Commented [MT13]: The purpose of a severability clause is to preserve the remaining, valid parts of a contract. Doing so reinforces the seriousness of entering into a written agreement while ensuring that other parties are not damaged when dealing with a severability issue.

Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall be considered the same agreement. A signed copy of this Agreement

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delivered by facsimile, e-mail or other electronic transmissions (to which a PDF copy is attached) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.