

**MASTER PROJECT AGREEMENT TEMPLATE  
VERSION 1.1 (April 2019)**

**TEMPLATE GUIDANCE** *(remove from final agreement)*

The purpose of the Master Project Agreement (MPA) template is to:

- (1) Establish a common framework for Master Project Agreements;
- (2) Establish a set of base obligations in the Main Body of the agreement to support common performance standards;
- (3) Provide sufficient flexibility for Consortium Projects to add Project specific terms & conditions through the use of customizable schedules; and
- (4) Be compliant with the ISED Contribution Agreement so that a final MPA qualifies as an Eligible Project Agreement.

Consortium Project teams will be able to modify Schedule templates as appropriate for their approved projects. Should the need arise to modify the Main Body of the template, proposed changes will be considered as long as the proposed change is a material change relevant to the nature of the Project and that the proposed change is compliant with the terms of the ISED contribution agreement.

Program staff are available to talk through any element of the template and provide assistance as required to help Consortium Project teams finalize their MPA.

This Agreement dated the [●] day of [●], [2019] (“Effective Date”), is made between:

**10793574 Canada Association doing business as Canada’s Digital Technology Supercluster**, a not-for-profit corporation under the laws of Canada (the “Supercluster”);

- and -

[●], a corporation incorporated under the laws of [●] (the “Project Lead”);

- and -

[●], a corporation incorporated under the laws of [●];

**[- and -**

**●, a corporation under the laws of ●.]**

For good and valuable consideration, the receipt of which the Consortium Members hereby acknowledge, the Consortium Members agree as follows:

## Article 1 Interpretation

### 1.01 Definitions

In this Agreement:

**"Affiliate"** means, with respect to any person, any other person who directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, such person, and includes any person in like relation to such person. A person will be deemed to **"Control"** another person if such person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise; and the terms **"Controlled"** and **"Controlling"** will have similar meanings.

**"Agreement"** means this agreement, including all attachments incorporated by reference (including Schedules), and all duly executed SOWs entered into pursuant to this agreement.

**"Applicable Law"** means any domestic or foreign law, rule, statute, subordinate legislation, regulation, by-law, order, ordinance, protocol, code, guideline, treaty, policy, notice, direction or judicial, arbitral, administrative, ministerial or departmental judgment, award, decree, treaty, directive, or other requirement or guideline published or in force at any time during the Term which applies to or is otherwise intended to govern or regulate any person (including any Consortium Member), property, transaction, activity, event or other matter, including any rule, order, judgment, directive or other requirement or guideline issued by: (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise); (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government; (c) any court, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and (d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

**"Background Intellectual Property"** or **"Background IP"** means in relation to the Project, the Technology and Intellectual Property Rights owned, controlled, developed, conceived of, or reduced to practice by a Consortium Member prior to the commencement of or otherwise developed or acquired independent of the Project by a Consortium Member, required for the carrying out of the Project or for the exploitation of the Foreground Intellectual Property and any modifications or improvements to, and any derivative works developed from such Intellectual Property Rights.

**"Business Day"** means any day except Saturday, Sunday or any day on which banks are generally not open for business in the Province of British Columbia.

**"Change"** means an amendment to a SOW made in accordance with Section 3.01 and **"Change Order"** means a written document describing a Change.

**"Claims"** means any actual, threatened or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation or proceeding, or any other

claim or demand.

**“Confidential Information”** is information as specified in Section 8.01.

**“Consortium”** means all of the parties to this Agreement and **“Consortium Member”** means any of them.

**“Contribution Agreement”** means the agreement between the Supercluster and ISED dated [●], 2018.

**“Crown”** means Her Majesty the Queen in Right of Canada and **“ISED”** means the Crown’s representative, the Minister of Innovation, Science and Economic Development (or any representative that succeeds the Minister of Innovation, Science and Economic Development for the purposes of the Contribution Agreement).

**“Deliverable”** means a tangible or intangible measurable output of the Project provided by a Consortium Member (or its Personnel), including any software, content, documentation and materials that are designed, developed or produced as part of, or as a result of, the Project.

**“Disclosing Party”** means any Consortium Member that discloses its Confidential Information to a Receiving Party or otherwise has its Confidential Information accessed or possessed by a Receiving Party.

**“Dispute”** means a dispute between two or more Consortium Members relating to this Agreement or its subject matter, **“Dispute Parties”** means two or more Consortium Members involved in a Dispute and **“Dispute Notice”** means a notice of a Dispute that a Dispute Party provides to initiate the Dispute resolution process under Section 10.02(1).

**“Fair and Reasonable Conditions”** means appropriate fair, reasonable and non-discriminatory conditions and subject to relevant competitive issues, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access (for example the actual or potential value of the Foreground IP to which access is requested) and/or the scope, duration or other characteristics of the exploitation envisaged.

**“Force Majeure Event”** means an event beyond the reasonable control of any party including fire, flood, earthquake, explosion or other casualty or accident or act of God, or war or other violence, strike, lock-out, labour dispute, acts of any governmental body, war, insurrection, sabotage, embargo, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or inability to obtain raw materials, supplies or power.

**“Foreground Intellectual Property”** or **“Foreground IP”** means all Deliverables and Intellectual Property specific to the Project conceived, produced, developed or reduced to practice in carrying out the Project by a Consortium Member or any of their Personnel, and all rights therein, but does not include Background Intellectual Property (or improvements thereto) as defined in this Agreement.

**“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, and distinguishing marks or guises, whether or not registered or registrable.

**“Intellectual Property Registry”** means a registry of Foreground Intellectual Property developed in Projects supported by Supercluster Funds.

**“Intellectual Property Rights”** means any and all proprietary rights anywhere in the world provided under: (a) patent law; (b) copyright law; (c) design patent or industrial design law; (d) trademark law; (e) semi-conductor chip or mask work law; or (f) any other applicable statutory provision, common law principle or other legal regime, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, works, or know-how, or the expression or use of the foregoing.

**“Membership Agreement”** means, for each Consortium Member (excluding the Supercluster), such Consortium Member’s agreement with the Supercluster for membership in the Supercluster.

**“Milestone”** means a specific progress point or event in the Project. Milestones act as checkpoints to help evaluate progress of Deliverables.

**“Performance Deficiency”** means, with respect to a Consortium Member, such Consortium Member’s failure to meet one or more of its obligations under this Agreement (including under a SOW).

**“Personal Information”** means information about an identifiable individual made available by one Consortium Member, its Personnel or any other individual to the other Consortium Member under this Agreement.

**“Personnel”** means, with respect to a Consortium Member, the employees of such Consortium Member and of any permitted subcontractor, agents and independent contract personnel who performs any of the obligations or provides any of the Deliverables for or on behalf of such Consortium Member.

**“Project”** means the project set out in Schedule A (Project Approval).

**“Project Lead”** means the Consortium Member(s) that are leading the Consortium with respect to the Project (as set out in the preamble).

**“Project Manager”** means the individual person appointed by the Steering Committee to manage the Project.

**“Project Schedule”** means any plan and time line for the delivery of certain Deliverables or the performance of certain services, including a list of the activities, resources, interdependencies between activities, services to be performed, the Milestones that each Consortium Member will be required to meet and the related deadline, set out in a SOW or Change Order.

**“Project Team”** means, for the applicable SOW (or group of SOWs), the Project Manager, each Work Package Lead, and any other person appointed by the Project Manager.

**“Receiving Party”** means a Consortium Member that receives, or otherwise has access to or comes into possession of, Confidential Information of a Disclosing Party.

**“SME”** means a Consortium Member that employs fewer than 500 individuals,

**“Statement of Work”** or **“SOW”** means the written description of the obligations of each Consortium Member, including applicable work packages, and any other relevant information, entered into by the applicable Consortium Members, substantially in the form of the initial Statement(s) of Work set out at Schedule B (Statements of Work).

**“Steering Committee”** means the body of Consortium Member representatives responsible for the oversight and monitoring of the Project, as further described in Section 4.01(1).

**“Supercluster Funds”** means any financial contribution the Supercluster provides to the Project.

**“Supercluster Indemnitees”** means the Supercluster and its employees, officers, directors, successors and assigns.

**“Supercluster Policies”** means the policies and procedures of the Supercluster, including the Supercluster’s charter of values, intellectual property strategy and data strategy and policies governing the Project expenditures (including expenditures which are not eligible for Supercluster Funds and for expenditures related to travel, accommodations and hospitality), as approved by the board of directors of the Supercluster, and the bylaws of the Superclusters.

**“Technology”** means any methodologies, tools, models, software, hardware, discoveries, designs, prototypes, engineering and test data, test parameters, manufacturing methodology, documentation, ideas, know-how, works of authorship, databases, algorithms (including machine learning or artificial intelligence algorithms, models), Modules protocols, APIs, molds, practices, schematics, diagrams, specifications, formulae, measurements, data, and data maps. “Modules” mean machine learning or artificial intelligence algorithm and model trained on Consortium Member’s data (excluding public domain or third party data).

**“Third Party IP”** means any and all Intellectual Property, including any and all related Intellectual Property Rights, owned by or licensed from a person who is not a Consortium Member.

**“Work Package Lead”** means, for each Consortium Member, a person appointed by each such Consortium Member to represent such Consortium Member under a SOW or set of SOWs.

**“Work Plan”** means the work plan set out in Schedule A (Project Approval), which consists of a scope, schedule and budget.

## **1.02 Interpretation**

- (1) Ambiguities (No Contra Proferentem). Each Consortium Member has had the opportunity to have its legal counsel review and participate in settling the provisions of this Agreement, and any rule of construction to the effect that any ambiguity in this Agreement will be resolved against the drafting Consortium Member is not applicable to the interpretation of this Agreement.
- (2) Document References. All references to any agreement (including this Agreement and any SOWs), document (including the Supercluster Policies) or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time, unless otherwise specified in this Agreement.

- (3) Headings. The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (4) Plural and Singular. In this Agreement, unless the context requires otherwise, words in the singular include the plural and vice versa.
- (5) Section and Schedule References. Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections or Schedules of this Agreement.
- (6) Statute References. Unless otherwise indicated, all references in this Agreement to any statute include the applicable regulations, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference to a particular provision will be read as referring to such amended, reenacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.
- (7) Words of Inclusion. Wherever the words “include”, “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” will not be considered an exhaustive list.
- (8) Currency. Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement refer to Canadian Dollars.
- (9) Financial Responsibility. Unless otherwise expressly stated in this Agreement, each Consortium Member will be responsible for performing its obligations under this Agreement at its expense (including taxes applicable to any payment obligations incurred in connection with such performance) without additional charge or additional cost to the other Consortium Members.

### **1.03 References to Consortium Member**

- (1) Where a Consortium Member’s subcontractor, agent or independent contract personnel is performing any of its obligations under this Agreement, a reference to that Consortium Member includes that Consortium Member’s subcontractor to the extent that such provision applies to that subcontractor’s, agent’s or independent contract personnel’s performance of its obligations.
- (2) Where there is a reference to a sale, assignment or grant by a Consortium Member, that Consortium Member will perform the sale, assignment or grant for itself or, where applicable, cause its Personnel to perform the act.
- (3) Where the context implies that a reference to a Consortium Member also includes one or more of that Consortium Member’s subcontractors and Personnel, the reference includes all of that Consortium Member’s applicable subcontractors and Personnel.
- (4) References to the Consortium Members or the Consortium in Sections 5.02, 5.03, 5.04, 9.02(1)(g), 9.03 and Article 13 do not include the Supercluster.

#### **1.04 Priority of Documents**

If there is an inconsistency between any one or more of the documents comprising this Agreement, the document listed higher in the following list will prevail to the extent of the inconsistency:

- (1) Article 1 to Article 14;
- (2) the Schedules (excluding SOWs);
- (3) the applicable Change Orders, in reverse chronological order; and
- (4) each SOW.

Notwithstanding the foregoing, a SOW or Change Order will override this Agreement to the extent explicitly stated in such SOW or Change Order.

### **Article 2 Collaboration**

#### **2.01 Purpose of the Consortium**

The purpose of the Consortium is to execute the Project approved in Schedule A (Project Approval), consistent with the purpose and objectives of the Supercluster.

#### **2.02 Project Term**

This Agreement will begin on the Effective Date and continue until **[Insert End Date]** (the “Term”) unless terminated earlier in accordance with Article 9. The Consortium Members may renew or extend the Term by written agreement.

#### **2.03 Nature of the Collaboration**

Each Consortium Member will perform its respective obligations and provide its respective Deliverables in accordance with this Agreement (including each applicable SOW). Each Consortium Member will perform its obligations under this Agreement in a manner that is consistent with all applicable Supercluster Policies. Consortium Members will be severally (and not jointly and severally) liable for their own obligations under this Agreement. A Consortium Member will not be liable for a breach of any provision of this Agreement by another Consortium Member.

#### **2.04 Project Execution**

The main body of this Agreement provides basic obligations for the execution of a Supercluster-funded project supported by Schedules that cover Project-specific details as follows:

- (1) Schedule A (Project Approval) confirms the Project and Work Plan, including scope, schedule and budget, that the Supercluster has approved to proceed;
- (2) Schedule B (Statements of Work) confirms the service commitments, funding commitments and payment terms for each individual Consortium Member;

- (3) Schedule C (Governance and Reporting) outlines additional governance terms for managing the Project and the specific reporting requirements for the Project;
- (4) Schedule D (Intellectual Property) outlines how Foreground IP will be owned, managed and used; and
- (5) Schedule E (Project Data Management) covers how data arising from Project activities will be managed.

## **2.05 Subcontracting and Personnel**

A Consortium Member may use subcontractors, agents or independent contractors specified in their SOW in the performance of its obligations under a SOW. The choice of subcontractors, agents, or independent contractors must be acceptable to all Consortium Members. A change in subcontractors, agents and independent contract personnel must be confirmed through an approved Change Order. The use of subcontractors, agents and independent contract personnel will not relieve the Consortium Member from any obligation or liability under this Agreement. Each Consortium Member will remain responsible for the performance of its obligations performed by any subcontractors, agents and independent contract personnel to the same extent as if the Consortium Member performed such obligations. A Consortium Member will be deemed to be in breach of this Agreement where its subcontractor, agent or independent contract personnel acts or fails to act in a way that would be a breach of this Agreement if the Consortium Member took such action or inaction directly.

## **Article 3 Change Management**

### **3.01 Change Orders**

From time to time, the Steering Committee or the Project Team may want to modify one or more SOWs to accommodate adjustments to the Work Plan through a Change. Any member of the Steering Committee or the Project Team may propose a Change, in which case the Project Manager will review the proposed Change and, if necessary, prepare a Change Order. The Steering Committee will review the proposed Change Order and will revise, as needed, and approve or reject that Change Order, provided that approval of a Change Order may not be unreasonably withheld or delayed. A Change will not be effective or binding unless and until it is set out in a Change Order, labeled "Change Order" and signed by each member of the Steering Committee. Each Change Order amends and forms a part of the relevant SOW, and all references in this Agreement to a SOW mean the SOW as amended by each applicable Change Order.

### **3.02 New Statements of Work**

The Consortium Members may enter into additional Statements of Work using the same process for Change Orders as set out in Section 3.01, provided such proposed Statement of Work is within the scope of the information set out in the Work Plan.

### **3.03 Notification of Performance Deficiencies**

A Consortium Member will notify the Project Manager and the Supercluster in writing promptly if



it becomes aware that it will or that it is likely to experience a Performance Deficiency that puts any Consortium Member at risk of being unable to provide its Deliverables within the approved Project Schedule and Work Plan. That notice must include:

- (1) the Milestone (if applicable);
- (2) the Performance Deficiency (or likely Performance Deficiency);
- (3) the reasons for the failure (or likely failure);
- (4) the potential effect of the failure (or likely failure) on the ability of the Consortium Member to perform its obligations in accordance with a SOW or this Agreement and each other Consortium Member to perform its obligations in accordance any SOW or this Agreement;
- (5) the steps that the Consortium Member proposes to take in order to remedy the failure (or likely failure) and mitigate the effect of the failure (or likely failure); and
- (6) the anticipated date by which it will complete the applicable Milestone and any other affected Milestones (if applicable).

### **3.04 Managing Performance Deficiencies**

- (1) Upon receiving notice of a Performance Deficiency (or likely Performance Deficiency), the Project Manager will:
  - (a) assess the Performance Deficiency (or likely Performance Deficiency); and
  - (b) report the results of its assessment to the Steering Committee, which report will include a proposed corrective action plan and associated Change Order developed in consultation with the applicable Consortium Member.
- (2) After reviewing the Change Order, the Steering Committee may revise the Change Order and either accept or reject the Change Order. Where the Steering Committee rejects the Change Order, the Steering Committee may:
  - (a) suspend all or a portion of the Project under Section 9.01;
  - (b) remove the Consortium Member from the Project under Section 9.02; and
  - (c) exercise any other rights or remedies set out in the applicable SOW.

## **Article 4 Governance**

### **4.01 Steering Committee**

- (1) Membership. The Steering Committee will consist of one representative of each Consortium Member, which each Consortium Member will appoint within ten Business Days of the Effective Date, and the Project Manager, which the other members of the Steering Committee will appoint after their appointment. The decision making process of

the Steering Committee, as well as other operating terms, will be specified in Schedule C. Such decisions will be binding on the Consortium for the purposes of this Agreement. For clarity, where the Steering Committee votes on a decision under Section 3.04 or Section 9.01 or Section 9.02 the Steering Committee member appointed by the Consortium Member to which the vote pertains will not be entitled to vote.

- (2) Responsibilities. The Steering Committee will be responsible for:
  - (a) reviewing, revising, and approving or rejecting the Work Plan, each proposed SOW and Change Order;
  - (b) ensuring the Project follows the Work Plan, and the applicable SOWs;
  - (c) approve or reject the achievement of Milestones in accordance with the applicable SOW;
  - (d) termination of Consortium Members in accordance with Section 9.02;
  - (e) participating in the resolution of Disputes; and
  - (f) all other obligations assigned to the Steering Committee under this Agreement, including each SOW and the Work Plan.
- (3) Meetings. The Steering Committee will meet in person or via teleconference at least monthly to review the Project.

#### **4.02 Project Manager**

- (1) The Steering Committee will appoint the Project Manager to lead the Project.
- (2) The Project Manager will attend all Steering Committee and Project Team meetings.
- (3) The Project Manager may appoint additional members to the Project Team. The Project Manager may remove members that the Project Manager appoints; and
- (4) The Project Manager will, from time to time and upon request, report to the Steering Committee on the progress of the Project Team and Work Plan and make recommendations to the Steering Committee with respect to the achievement of each Milestone in the applicable SOW.

#### **4.03 Project Team**

- (1) Membership. Each Consortium Member (excluding the Supercluster) will appoint a representative to serve on the Project Team.
- (2) Responsibilities. The Project Team will:
  - (a) report to the Project Manager;
  - (b) attend Project Team meetings to assist in the planning, execution and monitoring of the applicable SOW(s); and

- (c) comply with all other obligations assigned to the Project Team under this Agreement, including the applicable SOW(s).
- (3) Meetings. The Project Team will meet at least bi-weekly.

## **Article 5 Records and Reporting Requirements**

### **5.01 Project Records**

- (1) The Project Lead will maintain documents and records relevant to the Project, and make such documents and records available to the Consortium, including:
  - (a) Minutes from meetings of the Steering Committee and Project Team;
  - (b) Change Orders, including all approved and rejected Change Orders;
  - (c) Dispute Notices;
  - (d) Project information, including Project data, key performance indicators (including Milestones) and results; and
  - (e) any other records as set out in Schedule C.
- (2) Each Consortium Member will:
  - (a) provide the Project Lead with such reasonable assistance and information as may be requested by the Project Lead from time to time to enable the Project Lead to comply with Section 5.01(1).
  - (b) maintain financial information specifically related to Supercluster Funds and an accounting for funds received from the Supercluster separately from other sources of funds; and
  - (c) maintain other records as set out in the Consortium Member's SOW in Schedule B.

### **5.02 Reporting Requirements**

- (1) Each Consortium Member will comply with the reporting requirements set out in this Article and Schedule C (Governance and Reporting) and upon the Supercluster's request, each Consortium Member will provide such information as reasonably required by the Supercluster to enable the Supercluster to:
  - (a) assess the Consortium Member's performance of its obligations under this Agreement, including Project data, key performance indicators (such as achievement of Milestones by the applicable deadlines) and results;
  - (b) meet the Supercluster's obligations to (which information may include financial information, including financial statements) regarding all Supercluster Funds which the Consortium Member has or may receive; and

- (c) provide a brief up-to-date account of the progress of the Project.
- (2) Within the period of two months following March 31 of each calendar year during the Term, the Project Lead will provide the Supercluster with a report detailing all of the Disputes involving Intellectual Property Rights or ownership or licencing of Intellectual Property.

### **5.03 Records Management and ISED and Supercluster Audit Rights**

- (1) ISED and the Supercluster will each have the right to when either determines necessary, on reasonable notice and at their own cost:
  - (a) audit the books, records and financial statements of any Consortium Member for the purpose of validating the use of any Supercluster Funds and, ensuring the Supercluster's compliance with the terms of the Contribution Agreement. If it is determined that the amounts paid to a Consortium Member exceed the amounts payable under the Contribution Agreement, the difference will be considered a debt due to the Crown, and will be recovered as an overpayment ISED may discuss the results of said audits with the Supercluster, and may publish the results and report them to Parliament;
  - (b) conduct a performance (value-for-money) audit of any Consortium Member in relation to the Supercluster Funds. ISED may discuss the results of said audits with the Supercluster, and may publish the results and report them to Parliament; or
  - (c) audit, or cause to have audited, the accounts and records of each Consortium Member, including financial records, relating to the use of Supercluster Funds in the Project during the Term and for a period of two years thereafter.
- (2) If the report of an audit conducted pursuant to this Section 5.03(1) identifies any deficiencies, or provides recommendations for improvements or redress, the Consortium will, within 90 days of receiving such report, implement timely corrective actions in respect of such findings or recommendations, and the Supercluster will report back to ISED.
- (3) Each Consortium Member will, at its own expense:
  - (a) provide ISED and the Supercluster with reasonable access to any Project site for the purpose of ensuring that the terms and conditions of any environmental approval are met, and that any mitigation, monitoring or follow-up measure required has been carried out, to the satisfaction of ISED, provided the Supercluster complies, and ensures ISED complies, with any and all applicable site obligations and that the Supercluster, upon request, indemnify and save harmless the Consortium Members from any and all Losses (as defined below) to the extent caused by any gross negligence or criminal, fraudulent or wilful misconduct arising from ISED's and the Supercluster's access to such Project site; and
  - (b) supply promptly, on reasonable request by ISED or the Supercluster, such other data in respect of its activities under this agreement, the Project and its results,

as ISED or the Supercluster may require for purposes of the Consortium Agreement and for statistical or evaluation purposes.

- (4) Upon request by ISED, the Supercluster may provide ISED with a copy of the report of any audit, evaluation or review carried out by the Supercluster, related to the use of Supercluster Funds or the Consortium Member's performance under this Agreement.
- (5) Any audits performed under this Agreement will be carried out by auditors selected by ISED or the Supercluster and such persons will comply with the confidentiality obligations set forth in Article 8 of this Agreement. Each audit will occur during the Consortium Member's normal business hours and will not unreasonably interfere with the Consortium Member's normal business. ISED or the Supercluster (as the case may be) will provide the Consortium Member with a description of the scope and criteria of the audit and the expected time frames for completion of the audit and, in the case of ISED, public release of the related reports.
- (6) Where the Consortium carries out the Project on the premises of a Consortium Member, that Consortium Member will provide ISED with reasonable access to such premises for the purpose of reviewing records related to the Project, assessing the progress of the Project, and assessing the Supercluster's compliance with the Contribution Agreement, provided the Supercluster ensures ISED complies with any and all applicable site obligations and that the Supercluster, upon request, indemnify and save harmless the Consortium Members from any and all Losses (as defined below) the extent caused by any gross negligence or criminal, fraudulent or wilful misconduct arising from ISED's access to such Project site.
- (7) The Supercluster will provide to the applicable Consortium Member the results and any report of any audit, evaluation or review carried out by or for the Supercluster or ISED under this Section 5.03.
- (8) ISED is a third party beneficiary to this Agreement for the purposes of this Section 5.03.

#### **5.04 Auditor General Audit Rights**

The Consortium Members acknowledge that the Auditor General of Canada (the "**Auditor General**") may, at the Auditor General's cost, after consultation with the Supercluster, conduct an inquiry pursuant to subsection 7.1(1) of the *Auditor General Act* in relation to any funding agreement (as defined in subsection 42(4) of the *Financial Administration Act*) with respect to the use of Supercluster Funds received. For the purposes of such inquiry:

- (1) The Consortium Member will release to the Auditor General, upon request and in a timely manner, all records held by the Consortium Member, or by agents or contractors of the Consortium Member, relating to the Project and the use of any Supercluster Funds, and such further information and explanations as the Auditor General or anyone acting on behalf of the Auditor General may request relating to any part of this Agreement or the use of Supercluster Funds;
- (2) Each Consortium Member will provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General:

- (a) all records held by the Consortium Member or by agents or contractors of the Consortium Member, relating to this Agreement or the use of any Supercluster Funds; and
- (b) such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to this Agreement or Supercluster Funds.

#### **5.05 Data Management**

The Consortium is responsible to confirm measures for data management in Schedule E (Project Data Management) of this Agreement including as a minimum:

- (1) data is collected for specified, explicit and legitimate purposes with any required permissions, consent and usage rights confirmed with the data owner;
- (2) steps to ensure that data is secure through the application of industry standard cybersecurity measures;
- (3) application of reasonable measures of data security, which may include encryption, anonymization of data and proper user authentication;
- (4) incident management protocols to deal with data breaches including containment, stakeholder notification and corrective actions based on the results of incident investigations;
- (5) data quality protocols that ensure data remains relevant, accurate and up to date;
- (6) data migration protocols that aid in the export, import, bridging, integration, and interoperability of data across platforms and applications while maintaining privacy and security; and
- (7) compliance with all applicable laws related to the export, re-export, transfer or release of information and/or technical data imposed by the Government of Canada, the United States and, if applicable, other countries.

### **Article 6 Financial Management**

#### **6.01 Contributions**

Each Consortium Member will pay such amounts, at such times and to such other Consortium Member(s) as set out in the Project's budget ("**Project Budget**") and each Consortium Member's SOW in Schedule B (Statements of Work).

#### **6.02 Other Contributions**

Each Consortium Member will provide the Consortium with the resources the Consortium Member is required to provide under the applicable SOW, which may include software, hardware, facilities, equipment, Personnel, Intellectual Property or other resources.

### **6.03 Expenses**

Except as expressly set out in the Project Budget, each Consortium Member will be responsible for all costs and expenses it incurs in performing its obligations under this Agreement, including all costs and expenses for Personnel (including wages and benefits).

### **6.04 Project Assets**

No Consortium Member will transfer any asset which, in whole or in part, has been acquired, created, developed, advanced or contributed to by Supercluster Funds, excluding Foreground Intellectual Property, ("**Project Assets**") to any third party unless such Consortium Member retains any rights or licenses related to such Project Asset that are necessary for the completion of the Project. This Section 6.04 does not restrict Consortium Members from transferring Project Assets amongst themselves.

## **Article 7 Intellectual Property**

### **7.01 Intellectual Property Schedule**

Consortium Members will confirm rights and obligations associated with Foreground Intellectual Property and Background Intellectual Property in Schedule D (Intellectual Property).

### **7.02 Intellectual Property Registry**

The Supercluster will establish and maintain an Intellectual Property Registry, which will be accessible to the other Consortium Members and other members of the Supercluster. Each other Consortium Member will provide the Supercluster, from time to time, a written abstract or summary of Foreground Intellectual Property subject to confidentiality and trade secret considerations, including the number of licenses granted in or to the Foreground Intellectual Property and whether patent applications have been filed or granted for the Foreground Intellectual Property, subject to confidentiality. Upon a Consortium Member's request, the Supercluster may omit certain Foreground Intellectual Property, or related details, from the Intellectual Property Registry where the Supercluster determines it is reasonable to do.

### **7.03 No Rights to Background Intellectual Property**

Neither the execution of this Agreement, nor the identification or disclosure of any Background Intellectual Property by a Consortium Member, will be construed as granting to any other Consortium Member, either by implication or otherwise, any interest, license or right respecting such Background Intellectual Property, other than as expressly provided for in this Agreement.

### **7.04 No Restrictions on Other Research**

Each Consortium Member acknowledges that the other Consortium Members may currently or in the future be undertaking research alone or with other persons in areas that may be similar to the Project. Nothing in this Agreement prohibits a Consortium Member from undertaking research alone or with other persons in areas that may be similar to the Project, including developing Intellectual Property, receiving information, or developing products that compete with the other Consortium Member's products, provided that in doing so, the person doing so does

not violate any Consortium Member's Intellectual Property rights or Article 8 of this Agreement. 8 of this Agreement.

## **Article 8 Confidentiality**

### **8.01 Confidential Information**

- (1) The Confidential Information of a Consortium Member means any and all information of a Disclosing Party which:
  - (a) is marked confidential or orally identified as confidential and subsequently confirmed confidential in writing;
  - (b) is treated by the Disclosing Party as its confidential or proprietary information and made recognisable by the Disclosing Party by designating the circumstances under which it is disclosed as a confidential discussion or meeting; or
  - (c) is readily recognisable or would otherwise be understood by a reasonable, prudent person as confidential due to the nature of the information or the circumstances of disclosure such as but not limited to the Disclosing Party's financial information, business plans or strategies, price information, quoting procedures or customer lists; and
  - (d) has or will come into the possession or knowledge of the Receiving Party in connection with or as a result of entering into this Agreement, including information concerning the Disclosing Party's past, present or future customers, suppliers, Technology, or business.
  
- (2) Except for Personal Information, "Confidential Information" does not include information which:
  - (a) at the time of disclosure is in the public domain or which, after disclosure, enters the public domain, except as a result of a breach of this Agreement by a Receiving Party and any person for which a Receiving Party is responsible;
  - (b) is provided to a Receiving Party by another person who is not a Disclosing Party, as evidenced by the written records of the Receiving Party, except where the other person is known or ought reasonably to be suspected of being subject to an obligation to a Disclosing Party to maintain such information and materials in confidence;
  - (c) is independently created, developed or acquired by or for a Receiving Party through persons to whom the Confidential Information had not been disclosed;
  - (d) was lawfully in the possession of a Receiving Party as confirmed by the written records of the Receiving Party before its receipt of such Confidential Information under this Agreement; or



- (e) is released from the confidentiality provisions of this Agreement by the written authorization of the Disclosing Party.
- (3) Information required to be maintained in confidence under this Agreement that is specific in nature will not be deemed to be in the public domain or in the prior possession of a Receiving Party merely because general principles concerning the specific information are in the public domain or in the prior possession of such Receiving Party.
- (4) Personal Information that pertains to the customers, clients or Personnel of a Consortium Member is deemed to be the Confidential Information of such Consortium Member.

## **8.02 Primary Obligations**

Each Disclosing Party will make reasonable efforts to ensure that it limits its disclosure of Confidential Information to what is required to complete the Project. Each Receiving Party will:

- (1) hold Confidential Information in strict confidence, in accordance with this Agreement;
- (2) protect Confidential Information, whether in storage or in use, with no less than the same degree of care as such Receiving Party uses to protect its own confidential information, but in no case with less than reasonable care;
- (3) not disclose Confidential Information to any person, except as provided in this Article 8, without the prior written approval of the Disclosing Party in each instance; and
- (4) not use Confidential Information for any purpose other than for the purpose of administration of or implementing this Agreement, or otherwise as set out in this Agreement.

## **8.03 Public Disclosure**

Unless required by Applicable Law, no Consortium Member, except the Supercluster, will make any public announcements respecting the subject matter of this Agreement without first receiving approval by the Supercluster or through the use of specified communication protocols outlined in Schedule C (Governance and Reporting). No Consortium Member may characterize the position or suggest the concurrence of the other Consortium Members on any issue under discussion unless specifically agreed to by all Consortium Members. This Agreement does not grant any Consortium Member the right to use the name, trademarks or other indicia of origin of any other Consortium Member.

## **8.04 Permitted Disclosures**

A Receiving Party may disclose Confidential Information:

- (1) to its Affiliates, directors, officers, employees, and legal and financial advisors, who have a need to know, in connection with the permitted purposes described in Section 8.02(4) provided that such recipients are advised of the confidential nature of the Confidential Information and are bound by obligations of confidentiality no less restrictive than those imposed on the Receiving Party pursuant to this Agreement; and

- (2) to the extent such disclosure is required pursuant to Applicable Laws, provided that prior to such disclosure the Receiving Party will to the extent it is legally permitted to do so: (a) give the Disclosing Party notice of the potential disclosure and, where legally permissible, allow the Disclosing Party the opportunity to seek a protective order, at the Disclosing Party's cost, in connection with such potential disclosure; and (b) limit any such disclosure to only that Confidential Information which is necessary, and further provided that any ultimate disclosure of Confidential Information will be in writing (or promptly reduced to writing in the case of any oral disclosure) and be marked "Confidential" to the maximum extent permitted by Applicable Laws; and
- (3) to any subcontractor, agent and independent contract personnel approved under Section 2.05 providing goods or services to a Receiving Party in connection with the permitted purposes described in Section 8.02(4), provided that any such person is advised of the confidential nature of the information and is bound by confidentiality obligations substantially no less restrictive than those imposed on the Receiving Party pursuant to this Agreement and further provided that any such person may only use any such Confidential Information for the purposes set out in Section 8.02(4).

#### **8.05 Disclaimer of Warranties and Liability**

- (1) Each Disclosing Party represents and warrants that it is entitled to disclose the Confidential Information it discloses to the Receiving Party.
- (2) Except as expressly provided for in Section 8.05(1), all such Confidential Information is provided "as is", without further representation and warranty, express or implied, and the Disclosing Party will not be liable to any Receiving Party for any and all damages, Claims, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), costs and expenses (including interest, court costs, reasonable fees and expenses of lawyers, experts and accountants or other reasonable fees and expenses of litigation or other proceedings or of any Claim, default or assessment) (collectively "**Losses**") arising from the use of, or reliance on, the Confidential Information by the Receiving Party.

#### **8.06 Notification of Unauthorized Disclosure**

A Receiving Party will promptly provide formal written notice to a Disclosing Party in the event that such Receiving Party becomes aware of any loss, destruction, unauthorized or unlawful access or modification to or use of, or unauthorized or unlawful disclosure of any of Confidential Information of such Disclosing Party in the possession or control of that Receiving Party.

#### **8.07 Return of Confidential Information**

Each Receiving Party will, at any time upon written request of the Disclosing Party, promptly return, or cause to be returned, or destroy, or cause to be destroyed wherever technically possible, any tangible records (whether electronic or hard copy) to the extent containing any Confidential Information disclosed by the Disclosing Party to the Receiving Party. Upon such request, the Receiving Party will provide the Disclosing Party with a certificate of an officer of the Receiving Party certifying such return or destruction, such certificate to be in a form acceptable to the Disclosing Party, acting reasonably. Notwithstanding the foregoing, the Consortium Members acknowledge and agree that:

- (1) the Receiving Party will not be obliged to return or destroy any decision-making documents submitted to its or its Affiliate's management nor any analyses or other derivative materials which may incorporate any Confidential Information; provided however that such documents and materials will nonetheless remain subject to the confidentiality obligations in this Agreement for the duration of their retention;
- (2) the Receiving Party's computer systems may automatically back up Confidential Information disclosed under this Agreement, and that to the extent such computer back up procedures create copies of the Confidential Information, the Receiving Party may retain such copies for the period it normally archives backed up computer records, which copies will be subject to the provision of this Agreement until the same are destroyed; and
- (3) the Receiving Party may retain one copy of the Confidential Information in the files of its legal counsel strictly for archival purposes, which copy will be subject to the provisions of this Agreement until it is destroyed.

#### **8.08 Disclosure to ISED; Publication by ISED**

- (1) Nothing in this Agreement will operate to prohibit the Supercluster from providing to ISED any information the Supercluster is required to provide under the Contribution Agreement or as required by Applicable Law, provided that prior to such disclosure of Disclosing Party's Confidential Information the Supercluster will:
  - (a) give the Disclosing Party notice of the potential disclosure and, where legally permissible, allow the Disclosing Party, at its cost, the opportunity to seek a protective order in connection with such potential disclosure;
  - (b) take reasonable steps to negotiate with ISED to prevent or limit such disclosure, including where such disclosure may affect the Disclosing Party's Intellectual Property Rights; and
  - (c) limit any such disclosure to only that Confidential Information which is necessary, and further provided that any ultimate disclosure of Confidential Information will be in writing (or promptly reduced to writing in the case of any oral disclosure) and be marked "Confidential" to the maximum extent permitted by Applicable Laws, including providing ISED with an executed copy of this Agreement. Each Consortium Member acknowledges that ISED's obligations with respect to Confidential Information may be subject to the *Access to Information Act* (Canada), the *Privacy Act* (Canada) and the *Library and Archives of Canada Act* (Canada) and other Applicable Laws.
- (2) ISED has the right to release to the public, table before Parliament and publish by any means, any reports and other information ISED has the right to receive or to produce in accordance with this Agreement, subject to any disclosure limitations negotiated in Section 8.08(1)(b), as well as such excerpts or summaries of the foregoing as ISED may, from time to time, decide to make.

#### **8.09 Publicity**

Notwithstanding anything in this Article 8:

- (1) the Supercluster may publicly disclose the identity of each Consortium Member, the purpose or objectives of the Project, an overview of the Project and the goals of the Project (but, for clarity, not the Project Budget or the amount of any Supercluster Funds) provided that any such disclosure must first be confidentially disclosed to each Consortium Member at least 10 Business Days before public disclosure and, upon written request by any Consortium Member within 10 Business Days of such confidential disclosure, the Supercluster will delay its public disclosure by 60 days (or such lesser time as may be authorized in writing by the requesting Consortium Member); and
- (2) each Consortium Member consents to being contacted by ISED in relation to success stories, announcements, ceremonies or other communications activities related to the Project. Each Consortium Member, subject to any legal restrictions that such Consortium Member may be subject to (including securities disclosure limitations):
  - (a) agrees to acknowledge ISED's role in the funding provided through this Agreement and the Contribution Agreement;
  - (b) consents to a public announcement of the federal contribution for the Project by ISED or on behalf of ISED in the form of a news release or event; and
  - (c) agrees to display promotional material, branding and signage provided by ISED at such event.

#### **8.10 Ownership of Confidential Information**

- (1) Confidential Information is proprietary and confidential to the Disclosing Party and will be so treated by the Receiving Party.
- (2) Neither the execution of this Agreement, nor the furnishing of any Confidential Information by the Disclosing Party, will be construed as granting to the Receiving Party, either by implication or otherwise, any interest, license or right respecting the Confidential Information, including any Intellectual Property Right in the Confidential Information, other than as expressly provided for in this Agreement.

#### **8.11 Publication**

- (1) The Consortium Members are not restricted from presenting at symposia, national or regional professional meetings, or from publishing in journals or other publications, results from the Project, provided that the Steering Committee is provided with copies of the proposed disclosure at least sixty (60) days before the presentation or publication date and does not, within thirty (30) days after delivery of the proposed disclosure, give notice to the Consortium Member proposing publication indicating that it objects to the proposed disclosure.
- (2) The Steering Committee may object to the proposed disclosure on the grounds that (i) it contains Confidential Information of another Consortium Member(s); or (ii) that it discloses patentable subject matter. If the Steering Committee objects on the grounds of the inclusion of a Consortium Member's Confidential Information, the Consortium Member proposing publication will remove such Confidential Information immediately from the proposed disclosure, after which that Consortium Member is free to present and

publish the proposed disclosure. If the Steering Committee objects on the grounds of protection of patentable subject matter:

- (a) it will be deemed to be a direction to file a patent application as set out in Schedule C; and
- (b) The Consortium Member proposing publication will delay the proposed disclosure until one or more patent applications have been filed with one or more patent offices directed to such patentable subject matter (the “**Delay**”), to the satisfaction of the Steering Committee. A provisional patent application will be considered to be a patent application in the United States of America for the purposes of this Agreement. The Delay will be no longer than six months from the date the Consortium Member proposing publication delivered the proposed disclosure to the Steering Committee, after which that Consortium Member is free to present and publish the proposed disclosure.

## **Article 9 Termination and Suspension**

### **9.01 Right to Suspend Performance by Steering Committee**

Upon ten Business Days’ written notice, the Steering Committee may require a Consortium Member to suspend its performance of all or any portion of its obligations due to a material Performance Deficiency or a major change to the Work Plan outlined in Schedule A. A Consortium Member may dispute a suspension under Article 10.

### **9.02 Termination of a Consortium Member**

- (1) Subject to the prior written approval of the Steering Committee, the Project Lead may terminate this Agreement, in whole or in part, as it applies to a Consortium Member (the “**Terminated Consortium Member**”), or any SOW, in whole or in part, as it applies the Terminated Consortium Member, at any time by providing written notice to the Terminated Consortium Member:
  - (a) where the Terminated Consortium Member becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute in force relating to bankrupt or insolvent debtors;
  - (b) an order is made or resolution passed for the winding up of the Terminated Consortium Member or the Terminated Consortium Member is dissolved;
  - (c) the Terminated Consortium Member has ceased to carry on business or has sold all or substantially all of its assets as part of the winding up of its affairs;
  - (d) the Terminated Consortium Member has submitted fraudulent, materially false or materially misleading information or has made misrepresentations of a fraudulent or material nature to the other Consortium Members or the Supercluster;

- (e) the Terminated Consortium Member makes a materially false or misleading statement concerning support by the ISED or the Government of Canada in any internal or public communication;
  - (f) the Terminated Consortium Member is in material breach of a provision of this Agreement and such breach is incurable or the Terminated Consortium Member fails to cure such breach within 60 days of being given notice of such breach by the Project Manager; or
  - (g) the Terminated Consortium Member is in breach of Section 11.02 and when such breach is curable, the Terminated Consortium Member fails to cure such breach within 60 days of being given notice of such breach by the Project Manager.
- (2) Subject to Section 10.04, upon the Terminated Consortium Member's receipt of such notice, this Agreement will be deemed to be terminated as it applies to such Terminated Consortium Member unless such termination is disputed under Section 10.03. This Agreement will otherwise remain in force.

### **9.03 Resignation of Consortium Member**

A Consortium Member may resign from the Consortium by providing 60 days' written notice to the Supercluster and the Project Lead (if the resigning Consortium Member is not the Project Lead). Specific obligations associated with a resignation will be specified in the Consortium Member's SOW or Schedule C. This Agreement will be deemed to be terminated as it applies to such resigning Consortium Member upon the expiry of the 60-day period referred to above. This Agreement will otherwise remain in force.

### **9.04 Termination or Suspension by the Supercluster**

- (1) The Supercluster may terminate this Agreement or any SOW, in whole or in part at any time by providing written notice to the Project Lead:
- (a) where ISED terminates the Contribution Agreement or the funding to be provided under the Contribution Agreement otherwise ceases to be available or is withheld;
  - (b) if at any time the Consortium does not include at least three Consortium Members including at least one SME and one post-secondary institution and the Consortium Members fail to cure such breach within 60 days of being given notice of such breach by the Supercluster; and
  - (c) as it applies to any other Consortium Member, where the Steering Committee has the right to terminate a Consortium Member under Section 9.02(1) but does not do so without reasonable grounds or the Consortium Member's Membership Agreement is terminated or expires (provided the Supercluster may provide notice of any breach on behalf of the Project Lead).
- (2) Without limiting Section 9.05, where the Supercluster terminates this Agreement or any SOW:

- (a) other than work or services previously performed in furtherance of the Project, which are of a committed or non-cancelable nature, the Supercluster will not be subject to any fees, charges or penalties and no other amounts will be payable by the Supercluster in connection with any termination of the Agreement or any SOWs; and
  - (b) the remaining Consortium Members, by their mutual agreement, may continue the Project without any participation by or contribution from the Supercluster.
- (3) Where, as a result of changes to the Project or otherwise, an assessment is required in accordance with the *Canadian Environmental Assessment Act, 2012* (“**CEAA**”) for the Project, the Supercluster may suspend the Project. Such suspension will continue until a decision statement has been issued to the Supercluster (or other Consortium Members) or, if applicable, ISED has decided that the Project is not likely to cause significant adverse environmental effects.

#### **9.05 Effect of Termination**

Upon termination of this Agreement as it applies to a Consortium Member, such Consortium Member will:

- (1) comply with its obligations set out in Schedule D (Intellectual Property); and
- (2) return any pre-paid but unused Supercluster Funds to the Supercluster.

#### **9.06 Survival**

- (1) Neither the expiration nor the early termination of this Agreement will release a Consortium Member from any obligation or liability that accrued prior to such expiration or termination.
- (2) The provisions of this Agreement requiring performance or fulfilment after the expiration or termination of this Agreement will survive the expiration or termination of this Agreement, including Article 1, Article 5, Article 7, Article 8, Sections 9.05 and 9.06, Article 10, Article 11, Article 12 and Article 14.

### **Article 10 Dispute Resolution**

#### **10.01 Goal**

To facilitate resolution of Disputes in an expedient manner by cooperation (and without resorting to litigation), the Dispute Parties will follow the procedures in this Article 10 where Disputes arise.

#### **10.02 Dispute Resolution Process**

- (1) In the event of a Dispute, a Dispute Party may provide a Dispute Notice to the other Dispute Parties, the Supercluster and the Project Lead. The Dispute Parties’ respective members of the Steering Committee will: (a) seek to work together to develop a written

and dated summary of the nature, extent, and magnitude of the Dispute and, where appropriate, how each Dispute Party sees resolution of the Dispute; and (b) seek to amicably resolve or settle the Dispute in good faith by mutual agreement.

- (2) If the Dispute Parties do not resolve the Dispute by negotiation under Section 10.02(1), any of the Dispute Parties may refer the Dispute to a mediator acceptable to all Dispute Parties for non-binding mediation, and the Dispute Parties will share the costs of such mediation equally. The Dispute Parties will notify the Steering Committee in writing that the Dispute Notice will be moving to mediation and then have ten days from the date of notification to the Steering Committee, to select a mutually acceptable mediator.
- (3) If the Dispute Parties do not resolve the Dispute by mediation under Section 10.02(2) within 20 days of the mediator receiving the Dispute Notice, the Dispute Parties will settle the Dispute by binding arbitration under the *Domestic Commercial Arbitration Rules of the British Columbia International Commercial Arbitration Centre* as follows: the Dispute Parties will notify the Steering Committee in writing that the Dispute Notice will be moving to binding arbitration. The Dispute Parties will then have ten days from the date of notification to appoint an arbitrator mutually acceptable to the Dispute Parties, who will alone hear and determine the Dispute within 20 days of receiving the Dispute Notice. If the Dispute Parties are unable to agree on an arbitrator, three arbitrators will hear and determine the Dispute (one appointed by the Supercluster and one by the Project Lead, and one by those appointed arbitrators together). The arbitration will be in English, and in Vancouver, British Columbia.

### **10.03 Confidentiality**

Dispute Notices and their related materials and all negotiation, mediation and arbitration processes related to the Dispute Notice will be deemed to be the Confidential Information of each Dispute Party and of the Supercluster.

### **10.04 Injunctive Relief**

This Article 10 does not affect the rights of the Consortium Members to seek injunctive relief when appropriate to enforce their respective rights.

## **Article 11 Representations, Warranties and Covenants, and Indemnities**

### **11.01 Mutual Representations, Warranties and Covenants**

Each Consortium Member represents and warrants to and covenants with the other Consortium Members that (in addition to its other representations, warranties and covenants throughout this Agreement):

- (1) such Consortium Member has good and sufficient power, authority and right to enter into and deliver this Agreement and to perform its obligations hereunder, and the entry into, delivery and performance of this Agreement by such Consortium Member have been duly authorized by all necessary corporate action on the part of such Consortium Member;



- (2) this Agreement has been duly entered into and delivered by such Consortium Member and constitutes a valid and legally binding obligation of such Consortium Member, enforceable against such Consortium Member in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and
- (3) neither the entering into nor the delivery nor the performance of this Agreement by such Consortium Member will result in a violation of any of the provisions of the constating documents or by-laws of such Consortium Member.

#### **11.02 Consortium Member Representations, Warranties and Covenants**

Each Consortium Member, excluding the Supercluster, represents and warrants to and covenants with each of the other Consortium Members (in addition to its other representations, warranties and covenants throughout this Agreement):

- (1) such Consortium Member and its subcontractors and Personnel will comply with the Consortium Member's obligations under this Agreement with respect to the Project, and the Supercluster Policies;
- (2) such Consortium Member and its subcontractors and Personnel will comply with all Applicable Laws, including requirements and regulations relating to environmental protection and the successful implementation of and adherence to any mitigation measures, monitoring or follow-up program that may be prescribed by ISED or by other federal, provincial, territorial, municipal bodies, and, where required, certify to ISED that it has done so;
- (3) such Consortium Member is not, and such Consortium Member's subcontractors are not, Controlled by representatives or agents of the Crown;
- (4) except as set out in writing in the applicable SOW, to Consortium Member's knowledge no Third Party IP is or will be used in, incorporated into, integrated or bundled with any of the Deliverables by such Consortium Member or its subcontractors;
- (5) such Consortium Member has all necessary rights to grant to the rights and permissions it has granted pursuant to this Agreement;
- (6) such Consortium Member and its subcontractors have entered into agreements with all of their Personnel for the assignment and waiver of Intellectual Property Rights (including inalienable rights, such as moral rights) in Foreground Intellectual Property and the treatment of Confidential Information in accordance with this Agreement;
- (7) to the best of their knowledge, such Consortium Member owns, or has a license to use in performing its obligations under this Agreement, the Intellectual Property Rights necessary for the performance of its obligations under this Agreement;
- (8) the Project is not a "designated project" as defined in the CEAA and is not being carried out on "federal lands" as defined in the CEAA;

- (9) such Consortium Member has not given and will not give commissions, payments, kickbacks, gifts, lavish or extensive entertainment, or other inducements of more than minimal value to any employee or agent of the Supercluster, the Crown or ISED in connection with this Agreement and, to the best of its knowledge, no officer, director, employee, agent or representative of such Consortium Member has given any such commissions, payments, kickbacks, gifts, entertainment or other inducements to any employee or agent of the Supercluster, the Crown or ISED;
- (10) such Consortium Member has not and will not provide funding of any amount to a department as defined in section 2 of the *Financial Administration Act*, subject to any payment of fees to acquire services from any such department; and
- (11) all information provided by such Consortium Member in the course of responding to the project selection process prior to entering into this Agreement, is not misleading in any material respect, and such Consortium Member has not failed to disclose any further information that would make the information disclosed misleading or would deter any of the other Consortium Members from entering into this Agreement or any SOW.

### **11.03 Supercluster's Representations, Warranties and Covenants**

The Supercluster represents and warrants to and covenants with each of the other Consortium Members that (in addition to its other representations, warranties and covenants throughout this Agreement):

- (1) the Supercluster and its subcontractors and Personnel will comply with the Supercluster Policies;
- (2) the Supercluster and its subcontractors and Personnel will comply with all Applicable Laws, including legal requirements and regulations relating to environmental protection and the successful implementation of and adherence to any mitigation measures, monitoring or follow-up program that may be prescribed by ISED or by other federal, provincial, territorial, municipal bodies, and, where required, certify to ISED that it has done so;
- (3) the Supercluster has all necessary rights to grant to the rights and permissions it has granted pursuant to this Agreement;
- (4) the Supercluster and its subcontractors have entered into agreements with all of their Personnel for the assignment and waiver of Intellectual Property Rights and the treatment of Confidential Information in accordance with this Agreement; and
- (5) the Supercluster owns, or has a license to use in performing its obligations under this Agreement, the Intellectual Property Rights necessary for the performance of its obligations under this Agreement.

### **11.04 Disclaimer**

EXCEPT AS SPECIFICALLY SET OUT OR REFERENCED IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF A CONSORTIUM MEMBER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY

QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY PERSON.

#### **11.05 Indemnities**

Each Consortium Member (the “**Indemnitor**”) will indemnify, defend and hold harmless the Supercluster Indemnitees and each other Consortium Member (including their respective employees, officers, directors, subcontractors, agents, successors and assigns) from and against any and all Losses suffered or incurred by the Supercluster Indemnitees or other Consortium Member arising from or in connection with or relating to the following:

- (a) any death, bodily injury, sickness, disease or injury of any kind, of any person or and damage, loss or destruction of any tangible, real or, personal property (including data) to the extent caused by any gross negligence or criminal, fraudulent or wilful misconduct of the Indemnitor, its Personnel or subcontractor; and
- (b) any gross negligence or criminal, fraudulent or wilful misconduct on the part of the Indemnitor, whether as a result of an act or an omission of the Indemnitor or of any person for whom the Indemnitor is responsible hereunder, acting alone or in collusion with others; and
- (c) any Claim by a third party alleging that any Intellectual Property provided by or on behalf of the Indemnitor (“**Indemnitor IP**”) infringes, violates or misappropriates any Intellectual Property Rights of any person due to the Indemnitor’s breach of Section 11.02(6).

#### **11.06 IP Claims**

- (1) A Consortium Member will have no indemnity obligation or liability for any Losses or Claims related to Indemnitor IP (“**IP Claims**”) based on or arising from:
  - (a) any use of Indemnitor IP not in accordance with this Agreement or any written agreements regarding the use of that Indemnitor IP;
  - (b) use or combination of the Indemnitor IP with other Intellectual Property, products, equipment, software, data, Technology or materials not supplied by the Indemnitor which but for such combination would not have given rise to the Claim; or
  - (c) any modification of the Indemnitor IP by any person or entity other than the Indemnitor or its agents or subcontractors authorized to make such modifications.
- (2) In addition to the Indemnitor’s obligations under Section 11.06(1), if there is an IP Claim then the Indemnitor may at its sole option:
  - (i) procure for the right to continue the activity that gave rise to the IP Claim; or
  - (ii) modify or replace the Indemnitor IP that gave rise to the IP Claim, so that it becomes non-infringing.

- (3) Any indemnification under Section 11.06(1) will be the Supercluster Indemnitees' or other Consortium Members' sole and exclusive remedy against the Indemnitor for IP Claims, and the parties acknowledge and agree that Section 11.06(1) and 11.06(2) state the Indemnitor's entire liability for IP Claims.

#### **11.07 Contribution Agreement Indemnity**

- (1) The Indemnitor will indemnify, defend and hold harmless the Supercluster Indemnitees from and against any and all Losses suffered or incurred by the Supercluster Indemnitees arising from or in connection with or relating to any Claim brought by or on behalf of the Crown or its agents, officers, employees and servants to the extent arising from the Indemnitor's breach of this Agreement.
- (2) Each Indemnitor will indemnify, defend and hold harmless the Crown from and against any and all Losses suffered or incurred by the Crown to the extent arising from or in connection with or relating to the negligent action or inaction of the Indemnitor under this Agreement or otherwise related to Consortium Member's participation in the Project.

#### **Article 12 Limitations of Liability**

- (1) Except for each Consortium Member's indemnity obligations under this Agreement, breach by the Consortium Member of its obligations under Article 8 or any infringement by a Consortium Member of another Consortium Member's Intellectual Property Rights, each Consortium Member's liability to the other Consortium Members arising out of, or relating to, this Agreement (whether in contract, tort or other legal theory), in the aggregate with respect to the other Consortium Members, will not exceed the greater of (i) the total Supercluster Funds provided to such Consortium Member under this Agreement; and (ii) two million dollars.
- (2) Except for a breach by the Consortium Member of its obligations under Article 8 or any infringement by a Consortium Member of another Consortium Member's Intellectual Property Rights, in no event will a Consortium Member be liable to any other Consortium Member for any special, consequential, punitive or other indirect damages (including lost revenues or profits), whether or not notified of such damages.
- (3) This Article 12 will apply irrespective of the nature of the cause of action, demand or Claim, including but not limited to, breach of contract (including fundamental breach), negligence, tort or any other legal theory.
- (4) Notwithstanding the above, claims by any Consortium Member against the other for contribution (on a comparative fault basis) toward third party injury, damage, or loss are not limited, waived, released or disclaimed.

### **Article 13 Insurance**

- (1) Each Consortium Member will procure and maintain throughout the Term the following insurance:
  - (a) Comprehensive general liability insurance with insured risks including personal injury, death and property damage (including loss of use thereof). The general liability insurance policy will provide the minimum coverage of \$2,000,000.00 inclusive limits for bodily injury or property damage or both combined each occurrence.
- (2) The Supercluster may waive the requirement under Section 13(1) for any Consortium Member that satisfies the Supercluster, acting reasonably, that it is capable of satisfying any liabilities that may arise from or in connection with this Agreement without such insurance.
- (3) A Consortium Member's failure to comply with this Article 13 will be a material breach of this Agreement.

### **Article 14 General**

#### **14.01 Notices**

Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement will be in writing and will be effectively given and made if (a) delivered personally, (b) sent by prepaid courier service or mail, or (c) sent by confirmed email or other similar means of electronic communication, in each case to the applicable address set out below:

To the Supercluster:

- Attention: ●  
Email: ●

with a copy to:

- Attention: ●  
Email: ●

To Project Lead:

- Attention: ●  
Email: ●

with a copy to:

- 
- Attention: •
- Email: •

To **[other Consortium Member]**

- 
- Attention: •
- Email: •

with a copy to:

- 
- Attention: •
- Email: •

or to such other address, individual, or email address as may be designated by notice given by any Consortium Member to the other Consortium Members in the same manner. Any demand, notice, consent, authorization or other communication given by personal delivery will be deemed to have been given on the day of actual delivery or, if given by registered mail, on the tenth Business Day following the deposit such notice in the mail or if given by email, on the day acknowledgement of receipt is received. If the Consortium Member giving the demand, notice, consent, authorization or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail or email, any such demand, notice, consent, authorization or other communication may not be mailed or emailed, as the case may be, but must be given by alternate means of delivery.

#### **14.02 Relationship of the Parties**

Nothing contained in this Agreement will be deemed or construed by the Consortium Members, or by any third party, to create a relationship of partnership or joint venture or a relationship of principal and agent, employer-employee, or franchisor-franchisee between any or all of the Consortium Members and no provision contained herein will be deemed to create any relationship between the Consortium Members other than the relationship of independent parties. No officer, director, employee, agent, contractor or subcontractor retained by a Consortium Member to perform work hereunder will be deemed to be an officer, director, employee, agent, contractor or subcontractor of any other Consortium Member. Each Consortium Member acknowledges and agrees that this Agreement will not be interpreted to grant to such Consortium Member exclusive rights or in any way to an exclusive relationship with the Supercluster.

#### **14.03 Force Majeure**

A Consortium Member will not be liable to the other Consortium Members for any delay in performing or failure to perform any of such Consortium Member's obligations under this Agreement to the extent its performance is delayed or prevented solely and directly due to Force Majeure Event for which the Consortium Member could not have reasonably prepared to avoid and any delay or failure of that kind will not be a breach of this Agreement and the time for performance of the affected obligations will be extended by a period that is reasonable in the circumstances, provided that the Consortium Member claiming the benefit of this Section 14.03:

- (1) promptly gives notice to each other Consortium Member specifying the Force Majeure Event and providing a good faith estimate of the duration of the Force Majeure Event;
- (2) uses commercially reasonable efforts to overcome the effect of the Force Majeure Event and resume performance of such Consortium Member's obligations under this Agreement as soon as reasonably possible; and
- (3) promptly notifies the other Consortium Members when the Force Majeure Event has ceased or been overcome.

Notwithstanding the occurrence of a Force Majeure Event, each Consortium Member will each continue to perform the Consortium Member's obligations under this Agreement to the extent that the Force Majeure Event does not prevent the Consortium Member from doing so. For greater certainty, in no event will an act or omission of a Consortium Member or any person for whom a Consortium Member is responsible under this Agreement or at law constitute a Force Majeure Event.

#### **14.04 Entire Agreement**

This Agreement, and any agreements and documents to be delivered pursuant to the terms of this Agreement, together constitute the entire agreement among the Consortium Members pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, representations, warranties or other agreements in connection with the subject matter of this Agreement, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Agreement and any agreements and documents that a Consortium Member is required to deliver pursuant to the terms of this Agreement. For clarity, unless expressly incorporated into the Agreement by reference, this Agreement replaces any non-disclosure agreement, or similar agreement, (excluding any Membership Agreement) entered into by any of the Consortium Members in contemplation of the Project and Article 8 applies to any Confidential Information exchanged under such agreement. For further clarity, nothing in this Agreement amends or modifies any Membership Agreement.

#### **14.05 Amendment**

Except in the case of a SOW or a Change Order signed by each Steering Committee member, the Consortium may only modify this Agreement by a written instrument that expressly states that it is an amendment to this Agreement and is signed by each Consortium Member's authorized representative.

#### **14.06 Waiver**

A waiver of any default, breach or non-compliance under this Agreement is not effective unless it is in writing and signed by the Consortium Member to be bound by the waiver. No waiver will be inferred from or implied by any failure to act or delay in acting by a Consortium Member in respect of any default, breach or non-compliance or by anything done or omitted to be done by that Consortium Member. The waiver by a Consortium Member of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Consortium Member's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance, whether of the same or any other nature.

#### **14.07 Severability**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

#### **14.08 Governing Law**

The laws of the Province of British Columbia and the laws of Canada applicable in British Columbia govern this Agreement. Subject to Article 10, the Consortium Members irrevocably attorn to the exclusive jurisdiction of the courts of the Province of British Columbia in connection with this Agreement.

#### **14.09 Further Assurances**

The Consortium Members agree to execute and deliver such other documents and perform and cause to be performed such further act as may be necessary or desirable in order to give full effect to this Agreement.

#### **14.10 Assignment**

- (1) Subject to Sections 14.10(2) and 14.10(3), no Consortium Member may assign this Agreement or delegate any of its duties or obligations without the prior written consent of each of the other Consortium Members, such consent not to be unreasonably withheld.
- (2) Notwithstanding Section 14.10(1), a Consortium Member may assign this Agreement to an Affiliate as part of a corporate reorganization which includes the assignment of such Consortium Member's Membership Agreement (which will not be effective until the assigning Consortium Member provides written notice of such assignment to each other Consortium Member).
- (3) Notwithstanding Section 14.10(1), where ISED declares that an Event of Default (as that term is defined under the Contribution Agreement) has occurred under the Contribution Agreement, the Supercluster may assign this Agreement to the Crown or to a third party deemed satisfactory to ISED and other Consortium Members.

#### **14.11 Remedies Cumulative**

The rights, remedies, powers and privileges provided to a Consortium Member in this Agreement are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Consortium Member.

#### **14.12 Counterparts**

The Consortium Members may sign this Agreement in counterparts, each of such counterparts will constitute an original document, and such counterparts, taken together, will constitute the same instrument. Counterparts may be executed either in original or electronic form.

***[Remainder of this page is intentionally blank. Signature page follows.]***



The Consortium Members have executed this Agreement as of the Effective Date.

**[•]**

**[•]**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**[•]**

**[•]**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**SCHEDULE A  
PROJECT APPROVAL  
(GENERAL TEMPLATE)**

**TEMPLATE GUIDANCE** *(remove from final agreement)*

Schedule A covers the project approval including the scope, schedule and budget for the current stage of project work.

The Consortium has the option of using / adjusting this template for Schedule A or substituting it with an alternative template. The alternative template needs to have the required information identified below as a minimum.

**FUNDING APPROVAL**

Proposal 2018\_# Title has been approved for the following funding commitment:

**[Project Selection Committee Decision Specified Here – Supercluster will invest up to \$X (board approved \$)]**

The full proposal related to this approval is stored for future reference with the Supercluster.

**WORKPLAN**

**Scope**

**[Use the project description in Section 4.1 of the Proposal and edit to reflect the scope of work that has been approved.]**

The project scope is divided into the following Work Packages:

| No. | Title                                |
|-----|--------------------------------------|
| 1   | [Add title of the statement of work] |
| 2   |                                      |
| 3   |                                      |
| 4   |                                      |

Details for each work package are included in the tables details below:

**[The default assumption is that each Milestone table in Section 4.2 of the Proposal equals a Work Package. Add the Milestone Tables under Project Work Plan in Section 4.2 of the Proposal Document to this section. In addition, confirm the Work Package Lead, Supporting Consortium Members with Service Commitments and the locations where the work will be performed. Only include the Work Packages that are relevant for this stage of work.]**

[Add supplement content that provides additional clarification when appropriate.]

**Schedule**

[Use the Gantt Chart and Project Schedule information in Section 4.2 of the Proposal and edit to reflect any schedule adjustments.]

[Add supplemental content that provides additional clarification when appropriate.]

**Budget**

[Use the Table Funding Summary in Section 4.3.1 of the Proposal]

[Add supplement content that provides additional clarification when appropriate.]

**PAYMENT OF SUPERCLUSTER FUNDS**

**Payment Terms**

- 1) Payment of Supercluster Funds will be made:
  - a) on a cost reimbursement basis following completion of the related project Milestone (as outlined in these Schedules) based on actual eligible costs incurred and paid by the consortium members;
  - b) after the Supercluster receives and accepts the related Milestone Report (refer to Schedule C); and
  - c) the related claims have been submitted and supporting evidence has been reviewed with eligible costs for co-investment verified and approved by the Supercluster.
- 2) Supercluster will pay each eligible member within 45 days of Supercluster approval of the claim.
- 3) Supercluster may make adjustments to a Member’s payment amount to deal with any arrears in the payment of program management fees or errors in the determination of eligible costs.
- 4) The following table summarizes the estimated amount of Supercluster Funds that will be paid at each Milestone. The actual value of each payment will be determined based on the actual eligible costs incurred and paid by each of the Consortium Members. Total Supercluster Funds will not exceed \$X for the project.

| <b>Consortium Member</b> | <b>Milestone 1</b> | <b>Milestone 2</b> | <b>Milestone 3</b> | <b>Milestone 4</b> | <b>Total</b> |
|--------------------------|--------------------|--------------------|--------------------|--------------------|--------------|
|                          | \$                 | \$                 | \$                 | \$                 | \$           |
|                          | \$                 | \$                 | \$                 | \$                 | \$           |
|                          | \$                 | \$                 | \$                 | \$                 | \$           |
|                          | \$                 | \$                 | \$                 | \$                 | \$           |

| <b>Consortium Member</b> | <b>Milestone 1</b> | <b>Milestone 2</b> | <b>Milestone 3</b> | <b>Milestone 4</b> | <b>Total</b> |
|--------------------------|--------------------|--------------------|--------------------|--------------------|--------------|
| <b>Total</b>             | \$                 | \$                 | \$                 | \$                 | \$           |

**SCHEDULE B  
STATEMENTS OF WORK  
(CONFIRMATION OF EACH CONSORTIUM MEMBERS' ROLE AND COMMITMENTS)**

**TEMPLATE GUIDANCE** *(remove from final agreement)*

Schedule B consists of an individual Statement of Work for each Consortium Member that confirms their role and commitments for the current stage of work. It also confirms the funding agreement.

The Consortium has the option of using / adjusting this template for Schedule B or substituting it with an alternative template. The alternative template needs to have the required information identified below as a minimum.

**SOW # 1 – [CONSORTIUM MEMBER]**

**FUNDING COMMITMENTS**

The [Consortium Member] is a member of the Consortium conducting the Project covered by this Agreement. The Supercluster is providing [\$X] in funding as part of the co-investment for this SOW as indicated in the Table below:

*Table: Funding Commitments for the SOW*

| No. | Funder                   | Amount     | Description & Payment Terms   |
|-----|--------------------------|------------|---|
| 1   | This Consortium Member   | \$x        | Cash and salaries contributions to the Project.   |
| 2   | This Consortium Member   | \$x        | In-kind contributions to the Project.   |
| 2   | Other Consortium Members | \$x        | Funding commitments from other Consortium Members that are applied to this statement of work. |
| 3   | Etc...                   | \$x        | Etc...  |
| 4   | CDTS                     | \$x        | Supercluster funding commitment.  |
|     | <b>Total</b>             | <b>\$x</b> |   |

Describe the terms & conditions for payment to the Consortium Member.

**SERVICE COMMITMENTS**

A brief description of the role the Member is playing in the project followed by an itemized list of service commitments, relevant to the approved work.

*Table: Deliverables and Service Items [List all work package deliverables that the Member is responsible for. Include any key milestones.]*

| WP # | Deliverable / Service Item  | Budget     |
|------|---|------------|
| Ref# | <b>Deliverable.</b> Define the deliverable or service item milestone along with expected delivery date.<br><br><b>Acceptance.</b> Confirm the method, metric or specification to be used for acceptance of the deliverable. | \$x        |
| ...  | ...   | \$x        |
|      | <b>Total</b>  | <b>\$x</b> |

*Table: Funding Commitments to Other Consortium Members*

| WP#   | Funding Commitments to Other Consortium Members   | Budget     |
|-------|---|------------|
| Ref # | List the Consortium Member and Funding Commitment | \$x        |
|       | <b>Total</b>                                      | <b>\$X</b> |

Note: The total cost of the service commitments and funding commitments to other Consortium Members should equal the total Funding Commitments associated with this SOW.

*Table: Dedicated Personnel, Facility and Other Resources*

| No. | Item  | Description   |
|-----|---|---|
|     | Personnel   | List key personnel that are guaranteed to work on the project. Does not have to include all FTEs.                   |
|     | Subcontractors, Agents and Independent Contract Personnel | Identify if any subcontractors will be used and whether it is a specific subcontractor or qualified through tender. |
|     | Facilities  | Identify where the work is to be done.  |
|     | Other   | List any other dedicated resources the Consortium Member is providing.  |

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**APPROVAL**

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This SOW is approved upon the execution of the Agreement. Any modifications to this SOW will require a Change Order approved by the Steering Committee.

---

**MISCELLANEOUS**

---

Any other additions or references for the Statement of Work.

---

**SOW # 2 – [CONSORTIUM MEMBER]**

---

**[Repeat Format for Statement of Work until all Statements of Work relevant to the approved workplan are included. Etc...]**

## SCHEDULE C GOVERNANCE AND REPORTING (GENERAL TEMPLATE)

### **TEMPLATE GUIDANCE** *(remove from final agreement)*

Schedule C consists of additional Governance terms that define how the Consortium Project will be run as well as confirming reporting requirements.

The Consortium has the option of using / adjusting this template for Schedule C or substituting it with an alternative template. The alternative template needs to have the required information identified below as a minimum.

### **ADDITIONAL GOVERNANCE TERMS**

1. List additional governance terms around the model such as decision-making authority, voting process, communication protocols etc. in this section.

### **PROJECT REPORTING**

1. **Requirement.** In addition to the reporting requirements outlined in Section 5.02, the Steering Committee will ensure the completion of the reports specified in this section. The Supercluster will provide reporting templates as appropriate.
2. **Monthly Project Status Reports.** These are high-level updates on the current state of the project. The status report must include at least:
  - a. a synopsis of the project's actual performance versus the project plan (scope, schedule and budget);
  - b. a forecast on whether planned deliverables, milestones and budget targets will be achieved as planned; and
  - c. a summary of any material issues, risks or changes that may impact the ability of the project team to meet project plan commitments as well as a brief description of the corresponding corrective action to be taken.
3. **Milestone Reports.** A Milestone report is used to confirm the completion of Deliverables throughout the life of the project and to provide a detailed plan and financial forecast for the balance of the project. Milestone reports are to be submitted to the Supercluster within 30 days of each Milestone completion date and be accompanied with associated forms and supporting evidence to support the payment of Supercluster Funds. Milestone reports will include at least:
  - a. a summary of project Deliverables completed within the Milestone period;
  - b. the actual cost and any financial variances associated with completing the Deliverables within the Milestone period (actuals vs budget);
  - c. a summary of approved and pending Changes to the project plan or to the composition of the project consortium;



- d. confirmation of the project's Work Plan including a financial forecast for the balance of the project; and
  - e. completion of a project KPI (key performance indicator) scorecard that supports program performance reporting for the Supercluster and other stakeholders.
4. **Final Project Report.** Within 30 days of the completion of all project Deliverables at the last Milestone, and in advance of the last payment of Supercluster Funds, the project team is required to complete a Final Project Report. This report must include at least:
- a. a summary of performance against the project's goals, objectives and Deliverables;
  - b. a financial summary comparing actual project expenditures to the original project budget;
  - c. a summary of approved Changes to the project plan or to the composition of the project consortium;
  - d. a summary of Foreground IP created;
  - e. a summary of expected project impacts including future technology development and commercialization activities; and
  - f. completion of a project KPI scorecard that supports program performance reporting for the Supercluster and other stakeholders.
5. **Project Impact Monitoring.** Once the project is complete, an annual update to the project KPI scorecard will be requested to help monitor project impacts and support program performance reporting for the Supercluster and other stakeholders.

**SCHEDULE D  
INTELLECTUAL PROPERTY  
(GENERAL TEMPLATE)**

**TEMPLATE GUIDANCE** *(remove from final agreement)*

The Consortium has the option of using one of the standard templates provided by the Supercluster for Intellectual Property or substituting it with another template. A substitute template needs to have the required information identified below as a minimum and be consistent with the Supercluster's Board approved Intellectual Property Strategy.

If the Consortium Project team is unsure of how to begin describing expected Foreground Intellectual Property, Program Staff is available to sit down with the team to talk through different approaches that can lead to a good description.

**SECTION 1 – BACKGROUND**

**(a) Overview.** This Schedule D (Intellectual Property) outlines the project's IP rationale. This provides a framework outlining IP management inside the project consortium including the description, ownership and protection of expected foreground IP, licensing of foreground IP, access to background IP and ecosystem leverage.

**SECTION 2 – DESCRIPTION, OWNERSHIP AND PROTECTION OF EXPECTED FOREGROUND IP**

**(a) Summary of Expected Foreground IP.** The solution architecture and specific deliverables are outlined in Schedule A of this Agreement. This table summarizes where the creation of foreground IP is expected along with ownership assignment obligations and protection. Foreground IP that does not have a specified assignment obligation outlined in the table below remains owned by the creator of the Foreground IP in question. When appropriate, consortium members will explore copyright, trademark, and patent protection for Foreground IP on a case by case basis.

| <b>Expected Foreground IP</b>  | <b>Expected Protection</b>                 |
|--|--|
| <b>List by Work package OR Consortium Member</b>   |  |
| ▪ No new foreground IP expected  | ▪ n/a                                      |
| <b>List by Work Package OR Consortium Member</b>   |  |
| ▪ New foreground IP expected in the area of ...<br>▪ New foreground IP will be assigned to ... | ▪ Software copyright and potential patents |

- (b) **Title and Rights.** The creator of Foreground IP owns the Foreground IP, subject to assignment obligations governed in the table found in Schedule D 2(a). In the case of Foreground IP that has been assigned to a Consortium Member, all title and rights to that Foreground Intellectual Property shall belong solely to that Consortium Member. Therefore, that Consortium Member shall have the exclusive rights to use and exploit, including the right to grant licenses for any application, as well as the right to make, have made, reproduce, use, have used, sell, have sold, offer to sell and import products related to its Foreground Intellectual Property.
- (c) **Disclosure.** The Parties agree to promptly, on an on-going basis and in no event later than 90 days from the generation of Foreground IP, to disclose to the others any Foreground IP made or conceived in connection with the Project by or on behalf of them or jointly.
- (d) **Patent Protection.** Where a Consortium Member intends to file for patent protection for an invention, the other Party (Parties) as needed shall execute or have executed, all formal documents required to establish all right, title and interest in and to the invention in all countries as provided by this Agreement.

### SECTION 3 – LICENSING OF FOREGROUND IP

- (a) **General Licensing.** Consortium Members shall grant access to all other Consortium Members, on fair, reasonable and non-discriminatory terms and subject to relevant competitive issues, all foreground IP arising from the project, at least for internal R&D purposes.
- (b) **Research Rights.** Consortium Members grants to each University Party an irrevocable, non-exclusive, royalty-free license and right to use the Foreground Intellectual Property only for non-commercial training, teaching and research purposes, subject to relevant competitive issues, confidentiality obligations and the restrictions on publications in Section 8.11.
- (c) **Sub-Licensing.** Except as explicitly provided herein, no Party may grant sublicenses under any license granted under this Agreement.

### SECTION 4 – ACCESS TO BACKGROUND IP

- (a) **Background IP.** There is no Background IP belonging to one Consortium Member that other project participants will require access to in order to produce their project deliverables or sustain their technology development and commercialization objectives. If this changes as the Project progresses, then the background IP and terms of use will be recorded in the table below.

| Background IP   | Terms of Use  |
|---|---|
| <b>Company</b>  |   |
| <ul style="list-style-type: none"><li>A precise definition of the background IP in question</li></ul> | <ul style="list-style-type: none"><li>Outline terms of use within the project and any license requirements for use in activities after the project is complete.</li></ul> |

**SECTION 5 – ECOSYSTEM LEVERAGE**

- (a) **Overview.** Ecosystem leverage creates access opportunities to the digital innovation’s technology and foreground IP. This strategy enables members with a business or technology development interest to identify an opportunity to use, develop or be a supplier to the digital innovation. These are intended to be complementary opportunities that strengthen the market leadership position of the digital innovation while building momentum in the Supercluster’s ecosystem.
  
- (b) **Strategy.** There are three categories of opportunities associated with the Technology and Foreground IP in this project where the ecosystem will be engaged. There are customers who will **{describe the use of the digital innovation}** delivery partners who will **{describe areas where other organizations can become an application developer or supplier to the digital innovation}** and research organizations **{describe ongoing research and technology advancement opportunities}** related to the Foreground IP.
  
- (c) **List of Supercluster Members.** Based on the ecosystem leverage strategy outlined in (b) here is a list of Supercluster Members as of the time of contract signing that could have a potential market and technology development interest in the digital innovation, including access to foreground IP, along with confirmation that, if requested by the applicable member, the project consortium would be willing to enter into negotiations.

| #  | Member | Potential Interest |
|--|--------|--------------------|
| <b>Customers</b>   |        |                    |
|  |        |                    |
| <b>Delivery Partners (Application Developers or Suppliers)</b> |        |                    |
|  |        |                    |
| <b>Research Organizations</b>                                  |        |                    |
|  |        |                    |

**SCHEDULE E**  
**PROJECT DATA MANAGEMENT**

**TEMPLATE GUIDANCE** *(remove from final agreement)*

In Schedule E, the Consortium is expected to describe their approach in the data management elements outlined below. Descriptions should provide an assurance that data management practices result in data that is compliant and secure with good stewardship practices and structured so that additional innovation potential can be secured through data exchanges.

**(1) DATA PRIVACY COMPLIANCE**

**(a) Guiding Principles**

Data privacy compliance is concerned with policies, procedures and standards used to comply with applicable data regulations in the jurisdictions in which a Project is operating, such as:

- a. The Federal Personal Information Protection and Electronic Documents Act, S.C. 2000, ch. 5 (“PIPEDA”);
- b. British Columbia’s Personal Information Protection Act, S.B.C. 2003, ch. 63 (“PIPA BC”);
- c. British Columbia’s Freedom of Information and Protection of Privacy Act (“FIPPA BC”);  
and
- d. Europe’s General Data Protection Regulation (GDPR).

Projects dealing with more sensitive data, such as health, will ensure they are responding to the appropriate regulatory requirements for their Project Activities. For example, most of the provinces in Canada have enacted health privacy legislation that applies to health information custodians in the context of providing healthcare services. Health care providers also have professional obligations which must be accounted for in data privacy compliance measures.

**(b) Data Privacy Compliance**

Describe the Consortium’s approach to data privacy compliance.

**(2) DATA SECURITY**

**(a) Guiding Principles**

Data security is concerned with policies, procedures and standards focused on protecting restricted, confidential or sensitive data from unauthorized access or loss. Measures include:

- i. encryption, de-identification of data, user authentication, access controls and relevant auditing processes with a higher degree of diligence when dealing with sensitive data such as personal data (including health and medical data) and financial data;
- ii. the implementation of backup systems and business continuity measures;
- iii. up-to-date protection against any anticipated threats or hazards to the security or integrity of Project;

- iv. protection against any unauthorized access, use, disclosure, accidental or unlawful alteration, loss or destruction of certain data; and
- v. incident management protocols to deal with data breaches including containment, stakeholder notification and corrective actions based on the results of incident investigations.

**(b) Data Security**

Describe the Consortium's approach to data security.

**(3) DATA STEWARDSHIP**

**(a) Guiding Principles**

Data stewardship is concerned with policies, procedures and standards around data extraction, standardization, storage and access including but limited to:

- i. requirements that data is collected for specified, explicit and legally authorized purposes with any required permissions, consent and usage rights confirmed with the data owner;
- ii. data quality protocols that ensure data remains relevant, accurate and up to date;
- iii. a tool validation process that ensures the software tools are adequately configured;
- iv. requirements related to data ownership, traceability, and lifecycle management including the proper and secure disposal of certain data; and
- v. requiring that all permitted subcontractors of the Project Participants or or third-party tools employed by the Project Participants are bound by the same standard of care as the Project Participants and have been subjected to appropriate due diligence with respect to their privacy and security measures.

**(b) Data Stewardship and Storage**

Describe the Consortium's approach to data stewardship.

**(4) DATA EXCHANGE**

**(a) Guiding Principles**

Data exchange is concerned with policies, procedures and standards that help data be managed as a resource for the Supercluster and its members. This includes protocols for data findability, accessibility, interoperability and reusability including but not limited to:

- i. globally unique and persistent identifiers;
- ii. data retrieval of data by their identifiers using standardized communication protocols;

- iii. determination of rights, with controls to ensure access is limited appropriately;
- iv. a metadata framework that permits data assets to be classified and filtering out competitively sensitive or confidential information; and
- v. clear and accessible data usage licenses.

**(b) Data Exchange**

Describe the Consortium's approach to Data Exchange.