

## Master Project Agreement

This Agreement dated the [●] day of [●], [2020] (“**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**”).

The Supercluster and the Project Lead 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 SOWs).

“**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 the Project Lead or any Subcontractor), 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 the Project Lead or a Subcontractor prior to the commencement of or otherwise developed or acquired independent of the Project by the Project Lead or a Subcontractor (as the case may be) required for the carrying out of the Project or for the exploitation of the Foreground Intellectual Property.

**“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 6.01(1) (Confidential Information).

**“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 successor to the Minister of Innovation, Science and Economic Development).

**“Deliverable”** means a tangible or intangible measurable output of the Project provided by the Project Lead or its Subcontractors (or their Personnel), including any Technology and materials that are designed, developed or produced as part of, or as a result of, the Project.

**“Disclosing Party”** means the Supercluster, the Project Lead or a Subcontractor (as the case may be) when such entity discloses its Confidential Information to a Receiving Party or otherwise has its Confidential Information accessed or possessed by a Receiving Party.

**“Force Majeure Event”** means an event beyond the reasonable control of any party including an outbreak of a serious disease or epidemic, or quarantine or other public health emergencies, 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 the Project Lead, a Subcontractor or any of their Personnel, and all rights therein, but does not include Background Intellectual Property as defined in this Agreement.

**“Intellectual Property”** 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 the Project Lead’s agreement with the Supercluster for membership in the Supercluster.

**“Performance Deficiency”** means the Project Lead’s failure to meet one or more of its obligations under this Agreement (including any obligation delegated to a Subcontractor).

**“Personal Information”** means information about an identifiable individual.

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

**“Project”** means a project set out in a SOW.

**“Receiving Party”** means the Supercluster, the Project Lead or a Subcontractor (as the case may be) when such entity receives, or otherwise has access to or comes into possession of, Confidential Information of a Disclosing Party.

**“Statement of Work”** or **“SOW”** means the written description of the obligations of the Project Lead (and its Subcontractors, as applicable), including applicable Deliverables and/or service commitments, and any other relevant information, attached to this Agreement or entered into by the Supercluster and Project Lead from time to time.

**“Subcontractor Agreement”** means an agreement in the form of the agreement appended as Exhibit 1 executed by a Subcontractor of the Project Lead.

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

**“Supercluster Indemnitees”** means the Supercluster and its employees, contractors, 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 Supercluster.

**“Technology”** means any methodologies, tools, models, software, hardware, discoveries, designs, prototypes, engineering and test data, test parameters, manufacturing methodology, content, documentation, ideas, know-how, works of authorship, databases, algorithms (including machine learning or artificial intelligence algorithms, models), Modules, protocols, application programming interfaces, molds, practices, schematics, diagrams, specifications, formulae, measurements, data, and data maps. **“Modules”** mean machine learning or artificial intelligence algorithms and models trained on 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 the Project Lead.

## **Article 2 Project**

### **2.01 Project Term**

This Agreement will begin on the Effective Date and continue until all Projects have been completed or terminated in accordance with the terms of this Agreement (the “**Term**”) unless terminated earlier in accordance with Article 7 (Termination and Suspension).

### **2.02 Subcontractors**

The Project Lead may use Subcontractors, provided each Subcontractor executes a Subcontractor Agreement in the form attached to this Agreement as Exhibit 1. The Project Lead will cause each Subcontractor to comply with the Project Lead’s obligations under this Agreement and the Subcontractor Agreement, including with respect to record retention, reporting and audit, intellectual property, confidentiality, privacy, security, insurance and compliance with laws, regulations and Supercluster Policies.

### **2.03 Liability for Subcontractors and Personnel**

The use of subcontractors, agents, students and independent contract personnel (including Subcontractors) will not relieve the Project Lead from any obligation or liability under this Agreement. The Project Lead will remain responsible for the performance of its obligations performed by any subcontractors, agents, students, and independent contract personnel to the same extent as if the Project Lead performed such obligations. The Project Lead will be deemed to be in breach of this Agreement where its Personnel acts or fails to act in a way that would be a breach of this Agreement if the Project Lead took such action or inaction directly.

## **Article 3 Records and Reporting Requirements**

### **3.01 Project Records**

The Project Lead will maintain documents and records relevant to the Project and make such documents and records available to the Supercluster, including the documents and records required to comply with this Article 3.

### **3.02 Reporting Requirements**

On the Supercluster’s request, the Project Lead will provide such information as reasonably requested by the Supercluster and relating to the Project or the Supercluster Funds (such as what has been achieved, what Foreground IP had been created, information about the use of Supercluster Funds, and information required by ISED).

### **3.03 ISED and Supercluster Audit Rights**

- (1) ISED and the Supercluster will each have the right to, when either determines it is necessary, on reasonable notice and at their own cost:
  - (a) audit the books, records and financial statements of the Project Lead and any Subcontractor which relate to the Project for the purpose of validating the use of

any Supercluster Funds and ensuring compliance with the terms of this Agreement. If it is determined that the amounts paid to the Project Lead exceed the amounts payable under this 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 the Project Lead 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 the Project Lead related to the Project, including financial records, relating to the use of Supercluster Funds in the Project during the Term and for a period of two years after the termination or expiration of this Agreement.
- (2) Any audits performed under this Agreement will be carried out by auditors selected by ISED or the Supercluster and such persons conducting the audit will comply with the confidentiality obligations set forth in Article 6 (Confidentiality) of this Agreement. Each audit will occur during the auditee's normal business hours and will not unreasonably interfere with the auditee's normal business. ISED or the Supercluster (as the case may be) will provide the auditee 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. Where an auditee has a concern that an auditor selected by the Supercluster has a conflict of interest with that auditee, the auditee may notify the Supercluster of its concern. The Supercluster will consider the auditee's concern and: (a) select a different auditor; (b) modify the scope of the audit to be conducted by the original auditor to address the concern; or (c) provide the auditee with written reasons as to why the Supercluster will not take the steps outlined in (a) or (b).
- (3) If the report of an audit conducted pursuant to this Section 3.03 identifies any deficiencies, or provides recommendations for improvements or redress, the Project Lead 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.
- (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 Project Lead's performance under this Agreement.
- (5) The Supercluster will provide to the Project Lead the results and any report of any audit, evaluation or review carried out by or for the Supercluster or ISED under this Section 3.03 (Records Management and ISED and Supercluster Audit Rights).
- (6) ISED is a third-party beneficiary to this Agreement for the purposes of this Section 3.03 (Records Management and ISED and Supercluster Audit Rights).

### **3.04 Auditor General Audit Rights**

- (1) The Project Lead and Subcontractors 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. Project Lead and Subcontractors will cooperate with any such audit.

### **3.05 Data Management**

The Project Lead and each Subcontractor will set out measures for data management and will comply with the obligations under this Agreement including at a minimum:

- (1) implementing and maintaining policies and practices which ensure that they comply with legal requirements that are relevant to their business (such as the Federal *Personal Information Protection and Electronic Documents Act*, British Columbia's *Personal Information Protection Act*; and the European Union's General Data Protection Regulation (GDPR)), including policies and practices with respect to data security.
- (2) ensuring that data is collected for specified, explicit and legitimate purposes with any required permissions, consent and usage rights confirmed with the data owner;
- (3) taking steps to ensure that data is secure through the application of industry standard cybersecurity measures;
- (4) implementing reasonable measures for data security, which may include encryption, anonymization of data and proper user authentication;
- (5) implementing incident management protocols to deal with data breaches including containment, stakeholder notification and corrective actions based on the results of incident investigations;
- (6) implementing data quality protocols that ensure data remains relevant, accurate and up to date;
- (7) implementing 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
- (8) ensuring 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 Province of British Columbia, the United States and, if applicable, other jurisdictions.

## **Article 4 Financial Management**

### **4.01 Contributions**

The Supercluster will pay the Project Lead such amounts, at such times as set out in each SOW.

#### **4.02 Other Contributions**

The Project Lead and each Subcontractor will provide the resources it is required to provide under each SOW, which may include software, hardware, facilities, equipment, Personnel, Intellectual Property or other resources as specified therein.

#### **4.03 Payments**

Except as expressly set out in the Project Budget, the Project Lead 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).

### **Article 5 Intellectual Property**

#### **5.01 Intellectual Property Ownership and Disclosure**

- (1) Except to the extent a SOW states that a Subcontractor will own Foreground IP, the Project Lead will own all right, interest and title in and to the Foreground IP. The Project Lead and each Subcontractor will comply with the ownership and licensing provisions in the Subcontractor Agreement.
- (2) The Project Lead and Subcontractors will promptly, on an on-going basis and in no event later than 90 days from the generation of Foreground IP, disclose to the Project Lead (if not the Project Lead) and the Supercluster any Foreground IP made or conceived in connection with the Project by or on behalf of them or jointly. This includes Foreground IP not contemplated in the applicable SOW.

#### **5.02 Intellectual Property Registry**

The Supercluster will establish and maintain an Intellectual Property Registry, which will be accessible to the other members of the Supercluster. The Project Lead will provide the Supercluster, from time to time or upon request, a written abstract or summary of Foreground Intellectual Property subject to reasonable 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. Upon the Project Lead'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.

#### **5.03 Third Party Intellectual Property**

The Project Lead will obtain any license to third party Intellectual Property Rights as is reasonably necessary for the Project Lead to meet its obligations under this Agreement.

#### **5.04 Licensing**

- (1) The Project Lead recognizes that the Supercluster Funds are public funds and are being provided for the objective of creating Foreground IP that can and will be commercialized on fair and commercially reasonable terms. Therefore, the Project Lead agrees to commercialize the Foreground IP and make the resulting products available to third

parties on fair, reasonable and non-discriminatory grounds, including for internal research and development purposes and including with respect to price, subject to relevant competitive issues. Without limiting the foregoing, the Project Lead will not:

- (a) charge excessive or extortive fees for the licensing or use of the Foreground IP or charge fees for licensing or use that would make licensing or using the Foreground IP commercially unreasonable;
- (b) require potential licensees or users of the Foreground IP to agree to licensing terms that are commercially unreasonable in the context of the industry, the nature of the Foreground IP and potential licensee or user; or
- (c) use the Foreground IP to engage in anti-competitive or monopolistic practices that are contrary to Applicable Law.

## **Article 6**

### **Confidentiality**

#### **6.01 Confidential Information**

- (1) The Confidential Information of a Disclosing Party means any and all information of a Disclosing Party which is identified as being confidential or is readily recognisable or would otherwise be understood by a reasonable person as being confidential. "Confidential Information" does not include information which:
  - (a) is in the public domain, except as a result of a breach of this Agreement;
  - (b) is provided to a Receiving Party by another person who is not a Disclosing Party and is not bound by obligations of confidentiality;
  - (c) is independently created, developed or acquired by or for a Receiving Party through persons to whom the Confidential Information of the Disclosing Party had not been disclosed; or
  - (d) was lawfully in the possession of a Receiving Party before its receipt of such Confidential Information under this Agreement.
- (2) Personal Information relating to a party's Personnel or customers is deemed to be its Confidential Information.

#### **6.02 Primary Obligations**

Each Receiving Party will:

- (1) protect Confidential Information using the same degree of care as it uses to protect its own confidential information, but in no case with less than reasonable care; and
- (2) not disclose or use Confidential Information except as required for the performance of its obligation in this Agreement or otherwise permitted by this Agreement.

### **6.03 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 6.02(2) 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.

### **6.04 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.

### **6.05 Return of Confidential Information**

Each Receiving Party will, at any time upon written request of the Disclosing Party, promptly return or destroy to Confidential Information, excluding Confidential Information it is required to retain by law and one copy 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.

### **6.06 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 to ISED or as required by Applicable Law. The Project Lead and each Subcontractor 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 as well as such excerpts or summaries of the foregoing as ISED may, from time to time, decide to make.

## **6.07            Publicity**

- (1)    The Supercluster and ISED may publicize the Project, including its purpose, objectives and goals, the identity of the Project Lead and each Subcontractor, the total Project cost and the estimated amount of Supercluster Funds that may be provided to the Project and the Project Lead.
- (2)    Neither the Project Lead nor the Subcontractors may publicize the Project or its role in the Project without the Supercluster's prior written approval.
- (3)    The Project Lead and each Subcontractor consents to being contacted by ISED in relation to success stories, announcements, ceremonies or other communications activities related to the Project. The Project Lead and each Subcontractor, subject to any applicable legal restrictions (including securities disclosure limitations):
  - (a)    agrees to acknowledge ISED's role in the funding provided through this 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 referred to in (b).

## **6.08            Ownership of Confidential Information**

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.

## **Article 7 Termination and Suspension**

### **7.01            Termination**

- (1)    The Project Lead may terminate this Agreement where the Supercluster is in material breach of a provision of this Agreement and fails to cure such breach within 30 days of being given notice of such breach by the Project Lead.
- (2)    The Supercluster may terminate this Agreement:
  - (a)    where the Project Lead is in material breach of a provision of this Agreement and fails to cure such breach within 30 days of being given notice of such breach by the Supercluster;
  - (b)    where the Project Lead is or is likely to become bankrupt or insolvent or ceases to carry on business;

- (c) where ISED terminates its agreement with the Supercluster or the funding to be provided to the Supercluster otherwise ceases to be available or is withheld;
- (d) the Project Lead is in breach of a material provision of the Membership Agreement or in breach of the Supercluster Policies; and
- (e) for any reason or no reason on 90 days' notice to the Project Lead.

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

- (1) The Project Lead will notify the Supercluster in writing promptly if it becomes aware that it will or that it is likely to experience a Performance Deficiency. The Project Lead will provide the Supercluster with all information reasonably requested by the Supercluster regarding the Performance Deficiency and a plan to remedy or minimize the effect of the Performance Deficiency. Where the Supercluster is not satisfied that the Project Lead will remedy the Performance Deficiency, the Supercluster may suspend all or a portion of the Project until the Supercluster is satisfied that the Project Lead will remedy the Performance Deficiency. After 30 days of suspension, the Supercluster may terminate this Agreement.
- (2) Without limiting Section 7.03 (Effect of Termination), where the Supercluster terminates this Agreement 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.
- (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 the Project Lead) or, if applicable, ISED has decided that the Project is not likely to cause significant adverse environmental effects.

## **7.03 Effect of Termination**

Upon termination of this Agreement, the Project Lead will return any pre-paid but unused Supercluster Funds to the Supercluster.

## **7.04 Survival**

- (1) Neither the expiration nor the early termination of this Agreement will release a party 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 (Interpretation), Article 3 (Records and Reporting Requirements), Article 5 (Intellectual Property), Article 6 (Confidentiality), Sections 7.03 (Effect of Termination) and 7.04 (Survival), Article 8 (Representations, Warranties and Covenants and Indemnities), Article 9 (Limitations of Liability) and Article 11 (General).

**Article 8**  
**Representations, Warranties and Covenants, and Indemnities**

**8.01 Representations, Warranties and Covenants**

The Project Lead and each Subcontractor represents and warrants to and covenants with the Supercluster (in addition to its other representations, warranties and covenants throughout this Agreement):

- (1) that it has good and sufficient power, authority and right to enter into and deliver this Agreement and to perform its obligations hereunder and that this Agreement creates a legally binding obligation of such Project Lead or Subcontractor;
- (2) it and its Personnel involved in the Project will comply with its obligations under this Agreement with respect to the Project, and in relation to their performance of the Project, the Supercluster Policies;
- (3) it and its Personnel involved in the Project will comply with all Applicable Laws that apply to them in the course of their respective business and operations, including, to the extent applicable, the 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;
- (4) it is not Controlled by representatives or agents of the Crown;
- (5) to its knowledge no Third Party IP is or will be used in, incorporated into, integrated or bundled with any of the Deliverables by it or its Subcontractors involved in the Project (excluding Third Party IP to which it has all necessary rights);
- (6) it has all necessary rights to grant the rights and permissions it has granted pursuant to this Agreement or its Subcontractor Agreement (as applicable);
- (7) it has entered into agreements with all of its 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 consistent with the terms of this Agreement;
- (8) to the best of its knowledge, it 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;
- (9) 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;
- (10) it 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, none of its officer, director, employee, agent or representative has given any such commissions, payments, kickbacks, gifts,

entertainment or other inducements to any employee or agent of the Supercluster, the Crown or ISED;

- (11) it 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
- (12) all information provided by it in the course of responding to the project selection process prior to entering into this Agreement is not misleading in any material respect and it has not failed to disclose any further information that would make the information disclosed misleading or would deter any of the Supercluster or the Project Lead from entering into this Agreement or a Subcontractor Agreement (as the case may be).

## **8.02 Disclaimer**

EXCEPT AS SPECIFICALLY SET OUT OR REFERENCED IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY PERSON.

## **8.03 Indemnities**

- (1) The Project Lead and each Subcontractor, (the “**Indemnitor**”) will severally (and not jointly and severally) indemnify, defend and hold harmless the Supercluster Indemnitees from and against 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**”)) suffered or incurred by the Supercluster Indemnitees 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 or its Personnel;
  - (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 such Indemnitor or of any person for whom such Indemnitor is responsible hereunder, acting alone or in collusion with others;
  - (c) unless otherwise agreed in writing (by the applicable Supercluster Indemnitee) with respect to the provision of such Intellectual Property, any Claim by a third party alleging that any Intellectual Property provided by or on behalf of the Indemnitor infringes, violates or misappropriates any Intellectual Property Rights of any person; and

- (d) any Claim brought by or on behalf of the Crown or its agents, officers, employees and servants to the extent such Claim arises 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 such Losses arise from any third party Claim that arises from the Indemnitor's breach of this Agreement.

## **Article 9**

### **Limitations of Liability**

#### **9.01 Limitations of Liability**

- (1) Except for a party's unauthorized use or disclosure of Confidential Information, gross negligence or willful misconduct, each party's total and cumulative liability arising out of, or relating to, this Agreement (whether in contract, tort or other legal theory) will not exceed the greater of: (a) the total Supercluster Funds provided to the Project Lead under this Agreement; and (b) two million dollars.
- (2) Except for unauthorized use or disclosure of Confidential Information, gross negligence or willful misconduct, in no event will a party be liable to the other party for any special, consequential, punitive or other indirect damages (including lost revenues or profits), whether or not notified of such damages.
- (3) This Article 9 (Limitations of Liability) 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 a party 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 10**

### **Insurance**

#### **10.01 Insurance**

The Project Lead and each Subcontractor will procure and maintain throughout the Term 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. The Project Lead's or a Subcontractor's failure to comply with this Article 10 (Insurance) will be a material breach of this Agreement by the Project Lead.

## **Article 11 General**

### **11.01 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 given 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: [•]

or to such other address, individual, or email address as may be designated by notice given by a party to the other party.

### **11.02 Relationship of the Parties**

The parties to this Agreement are independent contractors and nothing in this Agreement creates any other legal relationship. The parties are not appointing one another as agents and will not hold themselves out as such.

### **11.03 Force Majeure**

A party will not be liable to the other party for any delay in performing or failure to perform any of such party'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 party 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 party claiming the benefit of this Section 11.03 (Force Majeure):

- (1) promptly gives notice to each other party 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 party's obligations under this Agreement as soon as reasonably possible; and
- (3) promptly notifies the other party when the Force Majeure Event has ceased or been overcome.

Notwithstanding the occurrence of a Force Majeure Event, each party will each continue to perform the party's obligations under this Agreement to the extent that the Force Majeure Event does not prevent the party from doing so.

#### **11.04 Entire Agreement**

This Agreement, the SOW(s), and any agreements and documents to be delivered pursuant to the terms of this Agreement, together constitute the entire agreement among the parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. Nothing in this Agreement amends or modifies any Membership Agreement.

#### **11.05 Amendment**

The parties 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 party's authorized representative.

#### **11.06 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 party to be bound by the waiver.

#### **11.07 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.

#### **11.08 Disputes; Governing Law**

Where a dispute arises from or in relation to this Agreement, the parties will settle the dispute by binding arbitration under the Domestic Commercial Arbitration Rules of the British Columbia International Commercial Arbitration Centre. There will be one arbitrator selected by the parties, unless the parties are unable to agree on an arbitrator, in which case there will be three arbitrators: one selected by each party and a third selected by the first two. The costs of arbitration will be shared equally, excluding a party's own costs of counsel, evidence and expert witnesses. Arbitration will be in English, take place in Vancouver, British Columbia, and be subject to the confidentiality obligations of this Agreement. The laws of the Province of British Columbia and the laws of Canada applicable in British Columbia govern this Agreement.

#### **11.09 Further Assurances**

The parties 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.

#### **11.10 Assignment**

- (1) Subject to Section 2.03, neither party may assign this Agreement or any rights under this Agreement or delegate any of its duties or obligations under this Agreement without the prior written consent of each of the other party, such consent not to be unreasonably withheld. The Project Lead will not transfer any asset which, in whole or in part, has been acquired, created, developed, advanced or contributed to by Supercluster Funds, including Foreground IP (including license rights therein), without the prior written consent of the Supercluster.
- (2) Notwithstanding Section 11.10(1), where contractually required by ISED, the Supercluster may assign this Agreement to the Crown or to a third party deemed satisfactory to ISED.

#### **11.11 Remedies Cumulative**

The rights, remedies, powers and privileges provided to a party 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 party.

#### **11.12 Interpretation**

- (1) In this Agreement (unless otherwise specified): (1) each reference to a statute, agreement, document or instrument refers to it as amended, supplemented, modified, varied, restated or replaced from time to time; (2) headings are for reference and do not affect the interpretation of this Agreement; (3) plurals refer to the singular and vice versa; (4) words of inclusion, such as “including” or “such as”, are not intended to be exhaustive; and (5) dollar amounts are in Canadian dollars.
- (2) If there is an inconsistency between any one or more of the documents comprising this Agreement, the Articles take priority.

#### **11.13 Counterparts**

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

**10793574 Canada Association doing  
business as Canada's Digital  
Technology Supercluster**



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

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

## STATEMENT OF WORK

### A. Description of the Project

**[Instructions]:** Provide a high-level description of the Project (including the problem the Project is looking to solve, a concise description of the scope of the approved Project, an overview of the proposed Project solution and the solution roadmap as well as the expected impact of the Project). This description should not exceed 250 words.]

### B. Deliverables and Timelines

The Project will begin on [insert date that the Project work is expected to start] (“**Project Work Start**”) and continue until [insert date that the Project work is expected to end], unless terminated earlier in accordance with this Agreement.

The following are the major Project Deliverables and the Project Lead’s best estimate for the timing for such Deliverables. The conditions which must be met for a Deliverable will be as mutually agreed to between the parties.

#### Major Project Deliverables

Major Deliverable Name	Description	Lead (Subcontractor or Project Lead)	Estimated duration to complete the Project Deliverable	Conditions to be met for Project Approval
[Add rows as required]				

### C. Payments

Payment of Supercluster Funds will be made on a cost reimbursement basis following completion of each Deliverable (as defined above) based on actual eligible costs incurred and paid by the Project Lead and Subcontractors after the Supercluster receives and accepts the related Deliverable. The Supercluster reserves the right to reject reimbursement of eligible expenses where the claim for expenses is not made within 45 calendar days from the date the Project Deliverable is approved.

The Supercluster will pay the Project Lead within 45 calendar days of Supercluster approval of the claim. The Project Lead will pay each Subcontractor in accordance with the applicable agreement between the Project Lead and the Subcontractor, which agreement the Project Lead will provide to the Supercluster on request. The Supercluster may pay Subcontractors directly, in which case the Supercluster may offset amounts it pays to a Subcontractor against Supercluster Funds payable to the Project Lead under this Agreement.

The Supercluster may adjust the Project Lead’s payment amount to deal with such things as advances or errors in the determination of eligible costs.

The following table summarizes the estimated amount of Supercluster Funds that will be paid for each Deliverable. The actual value of each payment will be determined based on the actual eligible costs incurred and paid by the Project Lead.

Total Supercluster Funds will not exceed [\$X] for the Project.

**Estimated Supercluster Funds to be received directly or indirectly by Project participants**

Deliverable	Project Lead	Subcontractor A	[Add Columns as needed]	Total
Deliverable 1	\$	\$	\$	\$
Deliverable 2	\$	\$	\$	\$
[add rows as needed]	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
<b>Total</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

## D. Reporting Obligations

In addition to the reporting requirements outlined in Section 3.02 (Reporting Requirements), the Project Lead will ensure the completion of the reports in the form provided by the Supercluster.

## E. Foreground IP

**[Instructions]:** In the table below, summarize where the creation of Foreground IP is expected along with ownership rights and protection and a description of the Project Product following the description provided. The Project Lead and, if applicable, the Subcontractors will explore copyright, trademark, trade secret and patent protection for Foreground IP.]

Expected Foreground IP and Owner	Expected Protection
<b>Deliverable 1</b>	
New Foreground IP expected in the area of [insert] New Foreground IP will be owned by [insert]	(specify copyright, potential patents, trade secrets)
<b>Deliverable 2</b>	
New Foreground IP expected in the area of [insert] New Foreground IP will be owned by [insert]	(specify copyright, potential patents, trade secrets)

## EXHIBIT 1 SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement dated the [●] day of [●], [2020] (“**Effective Date**”), is made between [●], a corporation incorporated under the laws of [●] (the “**Project Lead**”) and [●], a corporation incorporated under the laws of [●] (the “**Subcontractor**”).

The Subcontractor wants to participate in the Project as a Subcontractor of the Project Lead. As a condition of acting as a Subcontractor of the Project Lead for the purposes of the Master Project Agreement (“**MPA**”) between the Supercluster, the Project Lead and [●] dated [●], 2020 attached to this Subcontractor Agreement as Appendix A, the Supercluster requires that the Subcontractor enter into this Subcontractor Agreement. Therefore, the parties agree as follows:

1. **Interpretation.** Capitalized terms used in this Subcontractor Agreement but not defined have the meanings given to them in the MPA. The principles of interpretation set out in the MPA apply to the interpretation of this Subcontractor Agreement with necessary changes made. Nothing in this Subcontractor Agreement modifies any other agreement to which the Project Lead and Subcontractor are parties or the MPA. If the Project Lead and the Subcontractor have entered into any other agreement with respect to the Project, this Subcontractor Agreement will take priority in the event of a conflict between this Subcontractor Agreement and any such agreement.

In this Subcontractor Agreement:

“**IP Licensor**” means the party or parties to this Subcontractor Agreement that are not the IP Owner;

“**IP Owner**” means the entity that is set out in a SOW as owning the Foreground IP (whether the Project Lead, the Subcontractor or an Other Subcontractor); and

“**Other Subcontractor**” means an entity that is a “Subcontractor” under the MPA, excluding the Subcontractor.

2. **MPA.** The Subcontractor agrees to comply with the MPA as a “Subcontractor”, to the extent that such provisions apply to the Subcontractor and comply with the obligations of the Project Lead to the extent applicable. Those provisions are incorporated into this Subcontractor Agreement by reference.

The Supercluster is a third party beneficiary of this Subcontractor Agreement for the purpose of enforcing its rights and the Subcontractor’s obligations under this Subcontractor Agreement, including the Subcontractor’s obligations under the MPA as incorporated herein. The parties agree the Supercluster may enforce the rights and entitlements of the Supercluster and the Project Lead pursuant to this Subcontractor Agreement against the Subcontractor.

3. **Foreground IP.** The IP Licensor:
  - a. hereby assigns its Intellectual Property Rights (if any) in and to the Foreground IP to the IP Owner; and
  - b. will ensure any individuals for whom it is responsible: (i) assign their Intellectual Property Rights (if any) in and to the Foreground IP to the IP Owner; and (ii) waive their inalienable rights (such as moral rights) in and to the Foreground IP, and any Background IP embedded therein, in favor

of the Project Lead, the Subcontractor and the Other Subcontractors, and their successors and assigns.

The IP Owner hereby grants the IP Licensor and each Other Subcontractor a perpetual, fully-paid, royalty-free, world-wide, sublicensable and assignable license to the Foreground IP to: (a) meet its obligations under the MPA; (b) use the Foreground IP for research and development; and (c) create, offer, support and otherwise commercialize products and services using the Foreground IP.

The Subcontractor will enter into a license and assignment agreement with each Other Subcontractor confirming the assignment and license set out in this Subcontractor Agreement.

The IP Owner may not assign its rights in or to the Foreground IP without the prior written consent of the Supercluster.

4. **Background IP.** Without limiting any of the licenses granted in Section 3 above: (a) the Project Lead hereby grants the Subcontractor a non-exclusive, non-transferable, royalty-free license to use the Project Lead's Background IP as is reasonably necessary for the Subcontractor to: (i) meet its obligations under this Subcontractor Agreement and the terms of the MPA incorporated herein; and (ii) exercise its rights in and to the Foreground IP; and (b) the Subcontractor hereby grants the Project Lead a non-exclusive, non-transferable, royalty-free license to use the Subcontractor's Background IP as is reasonably necessary for the Project Lead to: (i) meet its obligations under this Subcontractor Agreement and the terms of the MPA incorporated herein and to sublicense the foregoing rights to each Other Subcontractor as is reasonably necessary for each Other Subcontractor to meet their obligations under the MPA; and (ii) to exercise its rights in and to the Foreground IP, and to sublicense the foregoing rights to each Other Subcontractor as is reasonably necessary for each Other Subcontractor to exercise its rights in and to the Foreground IP.
5. **Further Assurances.** The parties 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 Subcontractor Agreement.
6. **Assignment / Subcontractor.** The Subcontractor will not assign, subcontract or delegate its rights or obligations under this Subcontractor Agreement to any third party.
7. **General.** The laws of the Province of British Columbia and the laws of Canada applicable in British Columbia govern this Agreement. The parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of British Columbia in connection with this Agreement. Any purported amendment to or waiver under this Agreement is void unless in writing and signed by each party.

The parties have executed this Subcontractor Agreement as of the Effective Date.

**[PROJECT LEAD]**

**[SUBCONTRACTOR]**

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

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

**APPENDIX A**  
**MASTER PROJECT AGREEMENT**

See attached.