

Effective September 10, 2018

As amended on September 22, 2020 following the passing of
a Supermajority Resolution of Members and Board approval

**AMENDED AND RESTATED MEMBERSHIP AGREEMENT FOR
CANADA'S DIGITAL TECHNOLOGY SUPERCLUSTER
(Incorporated as 10793574 Canada Association)**

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**AMENDED AND RESTATED
MEMBERSHIP AGREEMENT**

This amended and restated membership agreement (the “**Agreement**”), dated effective September 10, 2018 (the “**Effective Date**”), as amended on September 22, 2020 (the “**Amendment Date**”), is made

AMONGST:

10793574 CANADA ASSOCIATION, a not-for-profit corporation existing under the laws of Canada, doing business as **CANADA’s DIGITAL TECHNOLOGY SUPERCLUSTER** (the “**Corporation**”)

– and –

the Parties hereto who are Founding Members as of the Effective Date

– and –

the Persons who, following the Effective Date, become party to this Agreement in the manner provided for herein

RECITALS

- A. The Corporation was incorporated on May 22, 2018 to develop and manage collaborative innovation programs that bring together industry, government and academia in areas of strategic interest.
- B. Following its incorporation, the Corporation was one of the successful applicants to the Government of Canada’s Innovation Superclusters Initiative. The Corporation entered into a contribution agreement with the Government of Canada and used and uses funds contributed by the Government of Canada, along with the contributions of all Entity Members, to fund innovation programs that are part of Canada’s Digital Technology Supercluster.
- C. The Corporation does and will facilitate and manage collaborative technology development programs among the Entity Members and manage the Supercluster Funds and the relationship with the Government of Canada.
- D. The Parties wish to enter into this Agreement to provide for the conduct of the business and affairs of the Corporation.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1
Interpretation**

1.1 Definitions

In this Agreement:

- (a) “**Act**” means the *Canada Not-for-profit Corporations Act*, or any statute that may be substituted therefor, and the regulations to the Act, as from time to time amended

- (b) “**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 an Affiliate. A Person shall 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 term “**Controlled**” shall have a similar meaning.
- (c) “**Agreement**” has the meaning set forth in the preamble.
- (d) “**Amendment Date**” has the meaning set forth in the preamble.
- (e) “**Annual Meeting**” means the annual meeting of Entity Members contemplated in the By-Laws.
- (f) “**Approved Corporate Plan and Budget**” has the meaning set forth in Article 3.2(a).
- (g) “**Articles**” means the articles of the Corporation, as they may be amended from time to time.
- (h) “**Associate Member**” has the meaning set forth in Article 5.1(c).
- (i) “**Board**” means the board of directors of the Corporation.
- (j) “**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.
- (k) “**By-Laws**” means the by-laws of the Corporation, as they may be amended from time to time.
- (l) “**CEO**” means the Chief Executive Officer of the Corporation.
- (m) “**Competitively Sensitive Information**” means any Confidential Information that has not been made publicly available that concerns an important aspect of a Member’s products or services and may either give a Member a competitive advantage or allow Members to coordinate or alter their behavior in an anticompetitive manner. Competitively Sensitive Information may include an individual Member’s strategic plans, production levels and capabilities, volume of sales, output, supply, costs, price or any element of price, customers, customer terms or conditions of sale, suppliers, markets, existing or new products, operational technologies and such similar information that could provide a competitive advantage, or influence expansion or reduction plans, pricing, discounting and credit terms.
- (n) “**Confidential Information**” means any and all (as the context requires) confidential information disclosed by a Party hereto, including but not limited to (and regardless of whether the information is specifically identified or marked as “Confidential”) (i) in the case of the Corporation, confidential information of one Member that is disclosed orally or in writing to another Member by the Corporation pursuant to this Agreement, (ii) confidential information that a Party hereto may have or acquired (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs, plans, intentions or market opportunities and the operations, processes, product information, know-how, designs, trade secrets or software of another Member or its Affiliates as a consequence of negotiations relating to this Agreement; (iii) any other agreement or document referred to in this Agreement or relating to the performance of any obligations associated with this Agreement or any other agreement or document referred to in this Agreement or that relates to the contents of this Agreement; provided that “Confidential Information” shall not include information that: (v) at the time of disclosure by a Member is in the

public domain or which, after disclosure, enters the public domain, except as a result of a breach of this Agreement; (w) is provided to a Member by another Person who is not a Member, as evidenced by the written records of the receiving Member, except where the other Person is known to have, or ought reasonably to be suspected of being subject to, an obligation to the Member to whom the information and materials belong to maintain such information and materials in confidence; (x) is independently created, developed or acquired by or for a Member by Persons to whom the Confidential Information had not been disclosed; (y) was lawfully in the possession of a Member as confirmed by the written records of the Member before its receipt of such Confidential Information under this Agreement; or (z) is released from the confidentiality provisions of this Agreement by the written authorization of the Member to whom the information and materials belong; provided further that information required to be maintained in confidence under this Agreement that is specific in nature shall not be deemed to be in the public domain or in the prior possession of a Member merely because general principles concerning the specific information are in the public domain or in the prior possession of such Member.

- (o) “**Corporation**” has the meaning set forth in the preamble.
- (p) “**Director**” means a duly elected or appointed individual acting as a director of the Corporation in accordance with the provisions of the By-Laws.
- (q) “**Disclosing Party**” means any Party or its Affiliate that discloses Confidential Information to a Receiving Party.
- (r) “**Dispute Resolution Process**” has the meaning set forth in Article 9.3.
- (s) “**Entity Members**” has the meaning set forth in Article 5.1(c).
- (t) “**Fiscal Year**” means, unless changed by the Board, the period commencing on the first day of April and ending on the last day of the following March.
- (u) “**Founder**” means a Party hereto that is designated as a “Founder” in its Schedule A hereto.
- (v) “**Founding Members**” means, collectively, Platinum Founders and Founders.
- (w) “**Gold Member**” means a Party hereto that is designated as a “Gold Member” in its Schedule A hereto.
- (x) “**Governmental Authority**” means:
 - (i) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
 - (ii) 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;
 - (iii) any court, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and

- (iv) 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.
- (y) **“Joinder Agreement”** means an agreement substantially in the form of Exhibit A.
- (z) **“Master Project Agreement”** or **“MPA”** means agreements that, among other things, govern the relationships between project participants including the division of the scope of work, each participant’s responsibilities, each participant’s share of financial contributions and intellectual property rights.
- (aa) **“Member”** means each Party hereto, other than the Corporation.
- (bb) **“Membership Fee”** means the fees payable by a Member to the Corporation pursuant to the terms of such Member’s Schedule A.
- (cc) **“Ordinary Resolution”** means a resolution passed by a majority of not less than 50% plus 1 of the votes cast by Members or the members of the Board, as the case may be on that resolution.
- (dd) **“Participation Agreement”** has the meaning given to it in By-Law No. 001 of the Corporation, as amended from time-to-time.
- (ee) **“Party”** means a Party to this Agreement and any reference to a Party includes its successors and permitted assigns, and **“Parties”** means all of them.
- (ff) **“Person”** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, a Member, and the executors, administrators or other legal representatives of an individual in such capacity.
- (gg) **“Platinum Founder”** means a Party hereto that is designated as a “Platinum Founder” in its Schedule A hereto.
- (hh) **“Program”** means a strategic opportunity where Entity Members align resources around shared technology development and commercialization objectives in a portfolio of one or more complementary projects.
- (ii) **“Program Advisory Committee”** has the meaning set forth in Article 5.4.
- (jj) **“Receiving Party”** means a Party or its Affiliate that receives Confidential Information from a Disclosing Party.
- (kk) **“Regular Member”** means a Party hereto that is designated as a “Regular Member” in its Schedule A hereto.
- (ll) **“Representatives”** means with respect to a Person, such Person’s employees, directors, officers, professional advisers, contractors, consultants and agents and any other Person who acts under the authority of such Person in connection with the activities carried out under this Agreement.
- (mm) **“Schedule A”** means (i), in the case of a Party that is a Member as of the Amendment Date, the “Schedule A – Membership Summary” agreed to by the Corporation and such Member and in effect as of the date hereof, as it may be amended from time to time, and (ii) in the case of a Party that

becomes a Member upon the execution of a Joinder Agreement, Schedule A to such Joinder Agreement, as it may be amended from time to time.

- (nn) “**Special Meeting**” means a special meeting of Entity Members.
- (oo) “**Supercluster Funds**” refers to funds managed by the Corporation in accordance with the Contribution Agreement with the Government of Canada and the Corporation. Additional funds may be added through contribution agreements with other Governmental Authorities, agencies or enterprises.
- (pp) “**Supermajority Resolution**” means a resolution passed by both a majority of not less than two-thirds of the votes cast by Founding Members and a majority of not less than two-thirds of the votes cast by all Members as the case may be on that resolution.
- (qq) “**Taxes**” means all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers’ compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, in all cases imposed by any Governmental Authority in respect thereof and whether disputed or not.
- (rr) “**Term**” has the meaning set forth in Article 8.2.

1.2 Accounting Principles

Whenever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor entity thereto, applicable as at the date on which such principles are to be applied or on which any calculation or determination is required to be made in accordance with generally accepted accounting principles.

1.3 Actions on Non-Business Days

If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.4 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement:

- (a) all dollar amounts referred to in this Agreement and its Schedules are stated in Canadian Dollars;
- (b) any payment contemplated by this Agreement shall be made by wire transfer of immediately available funds to an account specified by the payee, by cash, by certified cheque or by any other method that provides immediately available funds; and

- (c) any payment due on a particular day must be received by and be available to the payee not later than 2:00 p.m. on the due date at the payee's address for notice under Article 11.1 or such other place as the payee may have specified in writing to the payor in respect of a particular payment and any payment made after that time shall be deemed to have been made and received on the next Business Day.

1.5 Calculation of Time

In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. Pacific time on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. Pacific time on the next succeeding Business Day.

1.6 Paramountcy

The body of the Agreement and the terms of any exhibit hereto (including Schedule A) shall be interpreted harmoniously as between themselves and with the Articles and the By-Laws, provided that if the terms of the Articles or the By-Laws conflict with the terms of this Agreement, the terms of the Articles or the By-Laws shall prevail, and provided that if the terms of the body of this Agreement and any exhibit hereto (including Schedule A) conflict, the terms of the body of this Agreement, shall prevail.

1.7 No Contra Proferentum

The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against any of the parties to this Agreement.

1.8 Additional Rules of Interpretation

- (a) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all Exhibits attached hereto.
- (b) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.
- (c) *Number.* In this Agreement, unless the context requires otherwise, words in the singular include the plural and vice versa.
- (d) *References to this Agreement.* The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Article or portion of it.
- (e) *Article References.* Unless the context requires otherwise, references in this Agreement to Articles or Schedules are to Articles or Schedules of this Agreement.
- (f) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, 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 herein to a particular provision shall be read as referring to such amended,

re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

- (g) *Words of Inclusion.* Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

1.9 Exhibits

Exhibit A hereto is incorporated into this Agreement by reference and deemed to be a part hereof and any reference to the “body of this Agreement” means this Agreement, excluding Exhibit A.

ARTICLE 2 Purpose and Values of the Corporation

2.1 The Corporation’s Purpose

The purpose of the corporation is to develop and manage collaborative innovation programs that bring together industry, government and academia in areas of strategic interest.

2.2 The Corporation’s Charter of Values

The Corporation is guided by the following set of core values that are the cornerstone of how Members and participants interact and work:

- (a) *Diversity.* We embrace diversity and inclusion in everything we do;
- (b) *Transparency.* We are transparent and open, candid, respectful in our respective communications and actions, and promote a trustful environment;
- (c) *Collaborative.* We proactively collaborate, respecting and leveraging the value of different experiences and perspectives to drive agreement;
- (d) *Results Focused.* We are outcome and results focused, knowing that through collaboration we shall deliver meaningful, strong and positive results;
- (e) *Greater-Good.* We embrace the greater good and seek system-wide benefits;
- (f) *Bold.* We are dynamic and innovative, pushing technology for maximum business and societal impact; and
- (g) *Respect.* We keep our respective promises and if there are conflicts we declare them to maintain transparency and professional integrity.

ARTICLE 3 Business and Affairs of the Corporation

3.1 Corporate Information

- (a) *Financial Statements.* Subject to compliance with the Act, the Corporation shall arrange for the Corporation’s financial statements to be prepared and made available to Members in electronic or

other form (at the Corporation's discretion) as soon as reasonably practicable, and in no event, later than 120 days after the end of each Fiscal Year. Financial statements for such Fiscal Year shall consist of at least a balance sheet, income statement, statement of changes in financial position and statements of cash flow, together with all supporting schedules and notes, prepared in accordance with generally accepted accounting principles on a consistent basis.

- (b) *Other Information.* The Corporation shall make available to Members in electronic or other form (at the Corporation's discretion):
- (i) upon becoming aware of the same, relevant information concerning any legislation, regulation, policy or act that is introduced or applied by any Governmental Authority or any other information which in the view of the Corporation shall or could have a material adverse effect on the business, assets, liabilities, financial condition, results of operations of the Corporation;
 - (ii) a copy of any notice or statement given by the Corporation to its creditors, or received by the Corporation from its creditors, in connection with a breach of, or failure to perform, any covenant in relation to debt of the Corporation, which copy shall be given within one Business Day of the giving or receipt of such notice or statement to or from the creditors as the case may be;
 - (iii) upon becoming aware that the same may be threatened or pending, and in any case promptly after the commencement thereof, a notice of any dispute, litigation or arbitration or other proceedings (including any regulatory investigations) before or of any Governmental Authority which might have a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the Corporation; and
 - (iv) as promptly as possible, such other information, accounts, data and projections regarding the Corporation as any Member may reasonably request from time to time.

3.2 Corporate Plan and Budget

- (a) *Corporate Plan and Budget.* The CEO shall prepare and submit to the Board for approval not later than 30 days prior to the commencement of each Fiscal Year of the Corporation or as otherwise required by the Board, the annual corporate plan and budget, in reasonable detail, together with such other information as may be requested by the Board, in each case, acting reasonably. The annual corporate plan and budget shall include details in respect of planned program spending and operating expenses and funding required of the Members. Once the Board has approved the corporate plan and budget by Ordinary Resolution, the annual corporate plan and budget is herein called the "**Approved Corporate Plan and Budget**".
- (b) *Comparative Reports.* Subject to compliance with the Act, the CEO shall make available to the Members, within 45 days after the end of each fiscal quarter of the Corporation, a report setting forth in comparative terms the actual results from operations for the Fiscal Year and such fiscal quarter and the budgeted results based on the Approved Corporate Plan and Budget for the Fiscal Year and such fiscal quarter, together with such explanations, notes and information as is required to account for material discrepancies in the actual results from operations and the forecasted results based on the Approved Corporate Plan and Budget.
- (c) *Approval of Changes.* Changes to the Approved Corporate Plan and Budget shall require Board approval by way of an Ordinary Resolution.

3.3 Expenses and Funding

Expenditures for program spending, operating expenses and any other expenses of the Corporation shall only be made in accordance with an Approved Corporate Plan and Budget or as otherwise approved by the Board.

3.4 Copies of Member Proceedings

The Corporation shall send the Members copies of minutes of all meetings of such Members and of all resolutions passed by such Members within 20 Business Days of such meeting being held or resolution being passed, as the case may be.

3.5 Books and Records

The Corporation shall maintain books and records which shall disclose all financial transactions of the Corporation in accordance with generally accepted accounting principles, consistently applied.

ARTICLE 4 Competition Matters

4.1 Competition Matters

- (a) *Competition Law Compliance.* The Parties shall comply with the provisions of the *Competition Act* (Canada) and other applicable competition and anti-trust laws at all times and shall take all steps required or advisable to ensure compliance therewith.
- (b) *Competition Guidelines and Training.* The Corporation shall prepare and adopt competition law compliance guidelines and a corresponding training program, approved by the Board by way of Ordinary Resolution, as soon as practicable after the date hereof. All officers, consultants and employees of the Corporation who shall have contact with Members for the purposes of effecting the operation and management of the Corporation shall undergo competition law compliance training, and the Corporation shall provide such training for each new officer, consultant and employee of the Corporation, as required.
- (c) *Disclosure of Competitively Sensitive Information.* The Parties agree not to disclose to each other any Competitively Sensitive Information, and any materials that may be disclosed to each other that may contain any Competitively Sensitive Information shall have such information removed or redacted prior to its disclosure. Disclosure of Competitively Sensitive Information would harm significantly the competitive position of the applicable Member, provide an unfair competitive advantage to its competitors and cause financial loss to the applicable Member.

ARTICLE 5 Membership

5.1 Membership Classes

- (a) *Membership Classes.* As authorized and contemplated by the Articles and the By-Laws, the Corporation shall have the following membership classes:
 - (i) a class of members consisting of Platinum Founders;

- (ii) a class of members consisting of Founders;
 - (iii) a class of members consisting of Gold Members; and
 - (iv) a class of members known as Regular Members.
- (b) *Rights and Obligations.* The rights and obligations of each membership class set forth in Article 5.1(a) are and shall be as provided for in this Agreement, the By-Laws and the Articles.
- (c) *Associate Members.* In addition to the classes of members set forth in Article 5.1(a), as authorized and contemplated by the Articles and the By-Laws, the Corporation shall have a class of members consisting of Persons who have executed a Participation Agreement with the Corporation (each such Person an “**Associate Member**” and together with the other Members, the “**Entity Members**”). For certainty, Associate Members are not party to this Agreement and have no rights or obligations hereunder.

5.2 Admission of Members

- (a) *Board Approval.* No Person may become a Member until and unless the Board has approved such Person’s entry as a Member.
- (b) *Execution of Joinder Agreement.* Following the approval required by Article 5.2(a) relating to a Person, upon execution of a Joinder Agreement by the Corporation and such Person and delivery of the duly and validly executed Joinder Agreement to the Corporation, such Person shall become a Member of the Corporation in the membership class designated in Schedule A.
- (c) *Affiliates of Members.* Affiliates of a Member may exercise all or a portion of the rights and obligations of the Member once the Member has been admitted as per Section 7.3 of By-Law No. 001 and the Member has executed this Agreement.
- (d) *Founding Members.* In no event shall new Founding Members be accepted.

5.3 Membership Fees and Payment

- (a) *Setting of Fees and Payment Terms.* The Corporation shall, at the direction and sole discretion of the Board, set the Membership Fees and payment terms of each class of Members from time to time. Membership fees and payment terms shall be set forth in Schedule A.
- (b) *Amendments to Schedule A.* At any time and from time to time the Corporation, at the direction of the Board in the Board’s sole discretion, may amend the terms of Schedule A, provided that such amendments are consented to by the affected Member by due and valid by such Member of an instrument in writing and provided that such amendments are consistent with the terms of this Agreement.
- (c) *Obligation of Each Member to pay Fees.* Each Member shall pay its Membership Fees, in the amount and on the terms set forth in Schedule A.

5.4 Projects, Programs and Program Committees

The Board will establish Programs to pursue strategic opportunities where Entity Members align resources around shared technology development and commercialization objectives in a portfolio of one or more

complementary projects. For each Program it establishes, the Board shall create or cause to be created Program guides for the Corporation that set out, as and on such terms as the Board considers appropriate, a Program management cycle, a project development process and a project approval process. For each Program the Board may establish a committee of Members to provide advice to the Corporation regarding the management and operation of the Program (each such committee, a “**Program Advisory Committee**”).

5.5 Membership Class Rights

(a) *Director Appointment and Nomination Rights.* As contemplated by and subject to the By-Laws, each class of Members has the right to appoint or nominate, as the case may be, Directors as follows:

- (i) *Platinum Founders.* Each Platinum Founder is and shall be entitled to appoint two Directors and, for certainty, to appoint such number of replacement Directors as is required to fill any vacancy resulting from the departure of a Director previously appointed by such Platinum Founder.
- (ii) *Founders.* Each Founder is and shall be entitled to appoint one Director and, for certainty, to appoint such number of replacement Directors as is required to fill any vacancy resulting from the departure of a Director previously appointed by such Founder.
- (iii) *Gold Members.* Gold Members are and shall be entitled as a class to nominate one Director for every 10 Gold Members, rounded up or down to the closest 10th Member in the class, with a minimum of one and a maximum of four nominees, as follows:

<i>Number of Members in Class</i>	<i>Number of Directors to be Nominated</i>
1-14	1
15-24	2
25-34	3
35 or more	4

and in respect of any such nominee, to nominate and have appointed to the Board a replacement to fill a vacancy that results from the departure of such nominee as an incumbent Director before the expiry of such Director’s term; and

- (iv) *Regular Members.* Regular Members are and shall be entitled as a class to nominate one Director for every 20 Regular Members, rounded up or down to the closest 20th Member in the class, with a minimum of one and a maximum of four nominees, as follows:

<i>Number of Members in Class</i>	<i>Number of Directors to be Nominated</i>
1-29	1
30-49	2
50-69	3
70 or more	4

and in respect of any such nominee, to nominate and have appointed to the Board a replacement to fill a vacancy that results from the departure of such nominee as an incumbent Director before the expiry of such Director’s term.

- (b) *Program Advisory Committee Representation.* Subject to the By-Laws, Members shall have the right to appoint representatives to Program Advisory Committees, as follows:
- (i) *Platinum Founders.* Each Platinum Founder is and shall be entitled to appoint one representative to each Program Advisory Committee then in place and thereafter to have one appointee on each such committee at any given time;
 - (ii) *Founders.* Each Founder is and shall be entitled to appoint one representative to each Program Advisory Committee then in place and thereafter to have one appointee on the committee at any given time;
 - (iii) *Gold Members.* Each Gold Member is and shall be entitled to appoint one representative to up to two Program Advisory Committees in place at any given time and thereafter to have one appointee on each such committee for such time as the committee remains in place; and
 - (iv) *Regular Members.* Each Regular Member is and shall be entitled to appoint one representative to one Program Advisory Committee in place at any given time and thereafter to have one appointee on such committee for such time as the committee remains in place.

ARTICLE 6

Changes in Membership

6.1 General Prohibition on Transfer

None of the Members shall transfer their membership in the Corporation, other than in accordance with Article 11.9.

6.2 Merging of Membership

In the event that two Members amalgamate, merge or are otherwise combined pursuant to some other kind of corporate reorganization, such amalgamated, merged or combined entity shall thereafter be considered one Member for all purposes under this Agreement. If, prior to the corporate reorganization of the two Members, the two Members are in two different classes of Members, following the corporate reorganization, the merged Members shall continue as the class of Members that is listed first (as between the two Members) in Article 5.1(a).

6.3 Allowable Changes in Membership Classes

- (a) *Founding Members.* A Platinum Founder or Founder may change its membership class to a lower class of Member but it may not return, as the case may be, to being a Platinum Founder or Founder.
- (b) *Other Members.* A Gold Member, Regular Member or Associate Member may change its membership class to any one of the following classes: Gold Member, Regular Member and Associate Member.
- (c) *No Change to Founding Members.* In no event shall Associate Members, Regular Members, or Gold Members become a Founder or a Platinum Founder.

- (d) *Adjustments to Rights.* Upon any change to membership, the rights and obligations conferred upon the applicable Member shall be adjusted promptly in accordance with the new membership class, including Director resignations if applicable.

ARTICLE 7

Representations and Warranties

7.1 Representations and Warranties by Members

Each Member represents and warrants with regard to itself to each of the other Parties as follows: such Member has the corporate authority and capacity to enter into and give full effect to this Agreement; the execution, delivery and performance of this Agreement has been duly authorized by such Member and duly executed and delivered by or on behalf of such Member; and this Agreement constitutes the valid and binding obligation of such Member enforceable against such Member in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors and others to the extent that equitable remedies are only available in the discretion of the court from which they are sought.

7.2 Representations and Warranties by the Corporation

The Corporation represents and warrants to each of the other Parties as follows:

- (a) it is incorporated, organized and subsisting under the laws of Canada and has the corporate power, authority and capacity to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement by the Corporation has been duly authorized by all necessary corporate action and constitutes the valid and binding obligation of the Corporation enforceable against the Corporation in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors and others to the extent that equitable remedies are only available in the discretion of the court from which they are sought; and
- (c) the execution, delivery and performance of this Agreement by the Corporation does not and shall not contravene the provisions of its Articles, By-Laws, constating documents or other organizational documents or the provisions of any indenture, agreement or other instrument to which it is a Party or by which it may be bound.

ARTICLE 8

Term and Termination

8.1 Termination of Individual Membership

A Member shall remain party to this Agreement until such time as the Person's membership terminates, as provided for in the By-Laws, and upon termination of a Member's membership in accordance with the By-Laws (and notwithstanding any other term herein), such Member shall cease to be a party to this Agreement.

8.2 Term of Agreement and Survival

- (a) Subject to Article 8.2(a), this Agreement shall continue in force until the earlier of:
 - (i) the date on which there is only one Member; and

- (ii) the winding up, liquidation, dissolution or like event involving the Corporation; (collectively, the “**Term**”).
- (b) For greater certainty, the provisions of Article 10 and Article 11 shall not terminate upon either of the termination of a Member’s membership in the Corporation or the termination of this Agreement, but shall survive both the termination of a Member’s membership and the termination of this Agreement.

8.3 Termination Not to Effect Accrued Rights or Obligations

A termination of this Agreement shall not effect or prejudice any rights or obligations which have accrued or arisen under this Agreement prior to the time of termination and such rights and obligations shall survive the termination of this Agreement.

ARTICLE 9 Dispute Resolution

9.1 Goal

The Parties recognize that disputes may arise as they pertain to a Party’s rights and obligations under this Agreement during the term. To facilitate resolution of such disputes in an expedient manner by mutual cooperation (and without resorting to litigation), the Members shall follow the procedures set forth in this Article 9 if and when such disputes arise.

9.2 Dispute Resolution Process

- (a) In the event of any dispute between the Members to this Agreement relating to this Agreement or its subject matter, the Parties to such dispute shall (i) 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 affected Parties sees resolution of the dispute, (the “**Dispute Notice**”); and (ii) seek to amicably resolve or settle the dispute in good faith by mutual agreement.
- (b) If the Parties have not reached a resolution or settlement by mutual agreement process as set out in Article 9.2a) within 10 days of the date of the Dispute Notice, then the Parties shall submit the Dispute Notice to the CEO. The CEO shall lead an effort between the Parties to support a negotiated resolution of the Dispute Notice by mutual agreement within 10 days of receiving the Dispute Notice.
- (c) If the Parties have not reached a resolution or settlement by mutual agreement as set out in Articles 9.2a) and 9.2(c), then the Parties to the dispute shall submit the Dispute Notice to the Board or a Board committee designated by the board. The Board or designated committee shall convene a formal resolution meeting between the Parties to support a negotiated resolution of the Dispute Notice by mutual agreement within 10 days of receiving the Dispute Notice.
- (d) If the dispute is not resolved by negotiation as set out above in Articles 9.2a), 9.2(c) and 9.2(c) the Parties shall refer the dispute to a mediator acceptable to both Parties for non-binding mediation, and the costs of such mediation shall be shared equally by the Parties. The Parties to the Dispute Notice will notify the Board or designated committee in writing that the Dispute Notice will be moving to mediation and then have 10 days from the date of notification to the Board or designated committee, to select a mutually acceptable mediator.

- (e) If the dispute is not settled by mediation as set out in Article 9.2(d) within 20 days of the mediator receiving the Dispute Notice of the Parties, the dispute shall be settled by binding arbitration as follows: The Parties to the Dispute Notice will notify the Board or designated committee in writing that the Dispute Notice will be moving to binding arbitration and then have 10 days from the date of notification to the Board or designated committee, whereby each Party shall designate one arbitrator and these arbitrators so designated shall appoint a final arbitrator mutually acceptable to the arbitrators, who shall alone hear and determine the dispute within 20 days of receiving the Dispute Notice. If the designated arbitrators are unable to agree upon a final arbitrator, the final arbitrator shall be appointed by a Judge of the British Columbia Supreme Court as soon as practicable. The arbitration shall be conducted in the English language with all hearings to take place in Vancouver, British Columbia unless otherwise agreed by both Parties. Any judgment, decision or award rendered by such arbitrator shall be final and binding on the Parties and shall not be the subject of any further court proceeding except in connection with the enforcement of such award by a court of competent jurisdiction. The costs of arbitration, including legal fees and disbursements of the Parties, shall be allocated by the arbitrator in the manner that the arbitrator, in his or her discretion, considers appropriate. This Article 9.2 does not affect the rights of the Parties to seek injunctive relief when appropriate to enforce their respective rights hereunder.

9.3 Confidentiality

Dispute Notices and their related materials and all negotiation, mediation and arbitration processes related to the Dispute Notice as set out in Article 9.2 shall be treated as Confidential Information within the dispute resolution process provided for in Article 9.2 (the “**Dispute Resolution Process**”). For added clarification, information that was not Confidential Information outside the Dispute Resolution Process will not be deemed Confidential Information as a result of being used in a Dispute Resolution Process.

9.4 Reliance on Representative

Each Member which is a party to a Dispute Notice may retain their respective Representatives to support and advocate on its behalf.

ARTICLE 10 Confidentiality

10.1 Primary Obligations

Each Receiving Party shall:

- (a) hold Confidential Information in strict confidence, under and in accordance with this Agreement;
- (b) 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 against public disclosure, but in no case with less than reasonable care;
- (c) not disclose Confidential Information to any Person, except as provided in this Article 10, without the prior written approval of the relevant Disclosing Party in each instance; and
- (d) not use Confidential Information for any purpose whatsoever other than for the purpose of administering or implementing this Agreement or otherwise as set out or contemplated herein.

10.2 Public Disclosure

Unless required by law or a requirement of any stock exchange, no Member shall make any public announcements respecting the subject matter of this Agreement without first receiving approval by the Board by way of Ordinary Resolution. No Party may characterize the position or suggest the concurrence of the other Parties on any issue under discussion unless specifically agreed to by all Parties. No Party shall use the name, trade-marks or other indicia of origin of any other Party in any public disclosure or public forum except with the prior written approval of such Party. Notwithstanding anything contained herein, a Member may identify the Corporation, its membership in the Corporation and its participation in Corporation supported projects, unless otherwise restricted in a Master Project Agreement, in any promotional literature or other materials.

10.3 Permitted Disclosures

A Receiving Party may disclose Confidential Information pursuant to this Agreement as follows:

- (a) to its Affiliates and to its directors, officers and employees and those of its Affiliates in connection with the permitted purposes described in Article 10.1(d), provided that such recipients are advised of the confidential nature of the Confidential Information, and to its Representatives not otherwise included under Article 10.3(a) in connection with the permitted purposes described in Article 10.1(d) provided that such recipients are advised of the confidential nature of the information and are bound by confidentiality obligations substantially no less restrictive than those imposed on the Receiving Party pursuant to this Agreement;
- (b) to the extent such disclosure is required pursuant to applicable laws, provided that prior to such disclosure the Receiving Party shall to the extent it is legally permitted to do so: (i) give the Disclosing Party a formal notice of the potential disclosure and, where legally permissible, allow the Disclosing Party the opportunity to seek a protective order in connection with such potential disclosure; and (ii) limit any such disclosure to that which is necessary to satisfy the requirements imposed upon the Receiving Party compelling the disclosure, and further provided that any ultimate disclosure of Confidential Information shall 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
- (c) to any Person who is providing goods or services to a Receiving Party in connection with the permitted purposes described in Article 10.1(d), 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 Article 10.1(d).

10.4 Disclaimer of Warranties and Liability

- (a) Each Disclosing Party represents and warrants that it is entitled to disclose the Confidential Information it discloses to the Receiving Party; and
- (b) Except as expressly provided for in Article 10.4(a), all such Confidential Information is provided “as is”, without further representation and warranty, express or implied, and the Disclosing Party shall not be liable to any Receiving Party for any claims, losses, liabilities, costs, damages, charges or expenses arising from the use of, or reliance on, the Confidential Information by the Receiving Party.

10.5 Notification of Unauthorized Disclosure

A Receiving Party shall promptly provide formal notice to a Disclosing Party in the event that such Receiving Party becomes aware of any unauthorized disclosure of Confidential Information by such Receiving Party or any Person to which such Receiving Party has disclosed any Confidential Information.

10.6 Return of Confidential Information

Each Receiving Party shall, 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 shall 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, it is understood and agreed that:

- (a) the Receiving Party shall 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 shall nonetheless remain subject to the confidentiality obligations set forth in this agreement;
- (b) 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 shall be subject to the provision of this Agreement until the same are destroyed; and
- (c) the Receiving Party may retain one copy of the Confidential Information in the files of its legal counsel strictly for archival purposes.

10.7 Liability and Indemnity

In addition to any rights a Disclosing Party may have against the Receiving Party arising out of any breach of this Agreement, the Receiving Party shall:

- (a) be liable to the Disclosing Party, its Affiliates and their respective employees, directors and officers for any and all losses, liabilities, damages, costs, charges and expenses whatsoever, including reasonable legal fees on a solicitor and own client basis, which they may suffer, sustain, pay or incur; and
- (b) indemnify the Disclosing Party, its Affiliates and their respective employees, directors and officers against all claims, losses, liabilities, damages, costs, charges and expenses whatsoever, including reasonable legal fees on a solicitor and own client basis, which may be brought against or suffered by them or which they may sustain, pay or incur, as a result of (i) a breach by such Receiving Party of the provisions of this Article 10 or (ii) any use or disclosure of all or any part or parts of the Confidential Information by (A) such Receiving Party to the extent that such use or disclosure is not permitted by this Agreement or (B) any Person, other than a Person to whom such disclosure is made pursuant to Article 10.3, to which such Receiving Party has disclosed any Confidential Information to the extent that such use or disclosure would not be permitted by this Agreement if such use or disclosure had been performed by such Receiving Party.

10.8 Ownership of Confidential Information

- (a) Each Receiving Party understands and agrees that any Confidential Information provided pursuant to this Agreement is proprietary and confidential to the Disclosing Party and shall be so treated by the Receiving Party; and
- (b) Neither the execution of this Agreement, nor the furnishing of any Confidential Information by the Disclosing Party, shall 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 therein, other than as expressly provided for in this Agreement.

10.9 Term of Confidentiality Obligations

Unless otherwise agreed to in writing, the confidentiality obligations in respect of any particular Confidential Information shall survive the expiry of the Term or any earlier termination of this Agreement in accordance with its terms.

ARTICLE 11 General Provisions

11.1 Notices

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

- (a) if to a Member, to the address set out in the instrument executed by the Member to become party to this Agreement, or as otherwise provided to the Corporation in writing; and
- (b) if to the Corporation, to:

Digital Technology Supercluster
UBC Robson Square
#2000 – 800 Robson Street
Vancouver, B.C. V6Z 2E7

E-mail: info@digitalsupercluster.ca

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, e-mailed or sent before 4:30 p.m. (Pacific Time Zone) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt. Any Party may from time to time change its address under this Article 11.1 by notice to the other Party given in the manner provided by this Article 11.1.

11.2 Entire Agreement

- (a) Subject to Article 11.2(b), this Agreement, 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. 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 to be delivered pursuant to the terms of this Agreement.
- (b) The rights and obligations of a Member set forth in Schedule A shall be rights and obligations of that Member only in relation to this Agreement and all other Parties hereto.

11.3 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. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-compliance or by anything done or omitted to be done by that Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party'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.

11.4 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall 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.

11.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in such Province and this Agreement shall be treated, in all respects, as a British Columbia contract. The Parties irrevocably attorn to the courts of the Province of British Columbia in connection with this Agreement.

11.6 Amendments

This Agreement may be amended from time to time by the Corporation, provided that any such amendment shall take effect only upon the passage by Members of a Supermajority Resolution at a Special Meeting or Annual Meeting approving such amendment. Notwithstanding anything to the contrary in this Agreement, the terms of Schedule A shall be amended only by the Corporation and the Member to which such Schedule A relates, as contemplated by Article 5.3(b).

11.7 Further Assurances

The Parties hereto and their respective directors, officers and employees, to the extent applicable, agree to execute and deliver such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence, and perform and cause to be performed such further

and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof, provided however, nothing in this clause requires a Member to pay to the Corporation any amount in excess of its Membership Fee.

11.8 Counterparts

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Counterparts may be executed either in original or electronic form.

11.9 Assignment

With the exception of an assignment to an Affiliate as part of a corporate reorganization, no Member may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations without prior written consent of the Corporation, such consent not to be unreasonably withheld.

11.10 Remedies Cumulative

The rights, remedies, powers and privileges herein provided to a Party 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.

11.11 Independent Legal Advice

Each Member acknowledges that it had the opportunity to seek and was not prevented nor discouraged by any Party hereto from seeking independent legal advice prior to the execution and delivery of this Agreement and that, in the event that it did not avail itself with that opportunity prior to signing this Agreement, it did so voluntarily without any undue pressure and agrees that its failure to obtain independent legal advice should not be used by it as a defense to the enforcement of its obligations under this Agreement.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

10793574 CANADA ASSOCIATION



By: _____

Name: Bill Tam

Title: Co-Founder and Chief Operating Officer

MEMBER NAME:

By: _____

Name:

Title:

MEMBERSHIP JOINDER AGREEMENT

This joinder agreement (the “**Joinder Agreement**”), dated _____ is made

AMONG:

10793574 CANADA ASSOCIATION, a not-for-profit corporation existing under the laws of Canada, doing business as **CANADA’s DIGITAL TECHNOLOGY SUPERCLUSTER** (the “**Corporation**”)

– and –

_____ (the “**New Member**” and together with the Corporation, the “**Joinder Parties**”)

RECITALS

- A. The Corporation is party to an amended and restated membership agreement dated effective September 10, 2018, as amended, a copy of which has been provided to the New Member (the “**Membership Agreement**”).
- B. Article 5.2(b) of the Membership Agreement permits a Person to become a party to the Membership Agreement upon the execution of an agreement substantially in the form of Exhibit A to the Membership Agreement and this Joinder Agreement is substantially in that form.
- C. The New Member wishes to become a Member of the Corporation on the terms set forth in the Membership Agreement and the Member-Specific Class, Fee and Payment Terms set forth in Schedule A to this agreement (the “**Schedule A Rights**”), which Schedule A Rights have been approved by the Board.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Joinder Parties agree as follows:

- 1. Interpretation.** Capitalized terms used in this Joinder Agreement and not defined here shall have the respective meanings given to them in the Membership Agreement.
- 2. Accession to Membership and Joinder.** Upon execution of this Joinder Agreement, the New Member shall become and be deemed to have become, as of and from the date of this Joinder Agreement, a party to the Membership Agreement for all purposes, including the giving and making of representations, warranties and covenants and the entering into of all obligations, and shall have all of the rights and obligations set forth therein. The New Member hereby ratifies and confirms the Membership Agreement as of the date hereof and acknowledges that it has reviewed (including Article 11.11 – “Independent Legal Advice”) and is bound by all of the terms, provisions and conditions thereof as of and from the date hereof.
- 3. Notice.** For the purposes of Article 11.11(a) of the Membership Agreement, the New Member’s notice address is as follows:

Address:
Attention:
E-mail:

4. **Counterparts.** This Joinder Agreement may be signed in counterparts and each such counterpart shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Counterparts may be executed either in original or electronic form.
5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in such Province and this Agreement shall be treated, in all respects, as a British Columbia contract. The Parties irrevocably attorn to the courts of the Province of British Columbia in connection with this Agreement.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

10793574 CANADA ASSOCIATION

By: 

Name: Bill Tam

Title: Co-Founder and Chief Operating Officer

[NEW MEMBER]

By: _____

Name:

Title:

SCHEDULE A – MEMBERSHIP SUMMARY

MEMBERSHIP CLASS: REGULAR MEMBER

MEMBER NAME:

Any capitalized term used but not defined in this Schedule has the meaning given to it in the membership agreement to which this Schedule A is attached.

Fees Payable

Annual Member Fee: \$5,000 per year.

Project Fees: 10% of the total “Eligible Project Cost”, as such term is defined in any Master Project Agreement to which the Member is party, or if such term is not defined in the relevant Master Project Agreement, the applicable term in such agreement that has a similar meaning to “eligible project cost”. Project Fees are applicable to projects approved and entered into by the Member through the execution of a Master Project Agreement or relevant funding agreement.

Payment Management for Fees Payable

Annual Member Fee: The Annual Member Fee is due and payable within 30 days of the date of the invoice from the Corporation to the Member for such fee, provided that the Corporation may, in its sole discretion, relax the invoice payment period beyond 30 days.

Project Fees: To effect payment of the Project Fees, the Corporation will deduct the Project Fees from co-investment payments made by the Corporation under the terms and conditions of each individual Master Project Agreement or relevant funding agreement before disbursing the balance of the co-investment payment to the Member in satisfaction of the co-investment claim it has made under the applicable Master Project Agreement or relevant funding agreement.
