

MASTER PROJECT AGREEMENT TEMPLATE

VERSION 4.0 (December 2020)

TEMPLATE GUIDANCE *(remove from final agreement)*

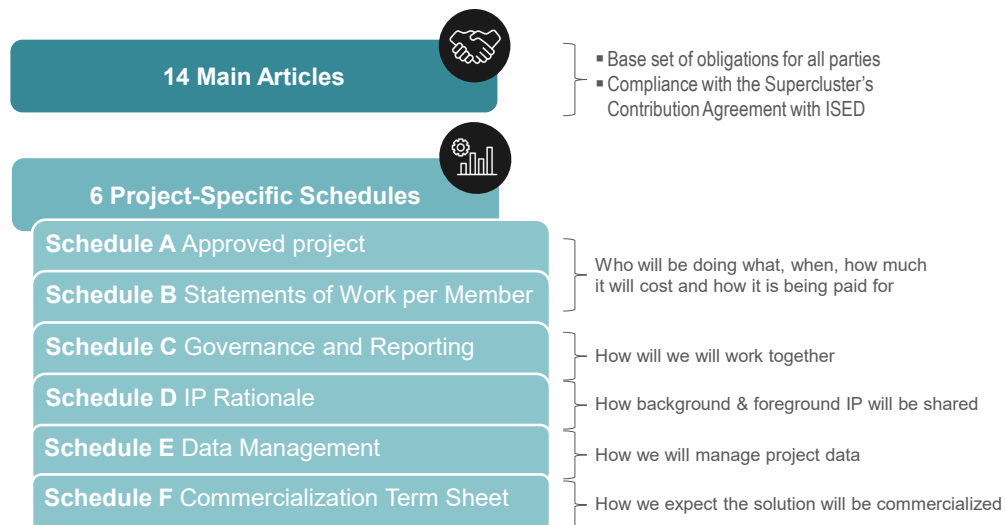
The purpose of the Master Project Agreement (MPA) template is to:

- (1) Establish a common framework for Master Project Agreements;
- (2) Establish a set of base obligations in the Main Body of the agreement to support common performance standards and to reflect obligations that the Supercluster has under its Contribution Agreement with ISED; and
- (3) Provide sufficient flexibility for Consortium Projects to add Project specific terms & conditions through the use of customizable Schedules.

Consortium Project teams will be able to modify Schedule templates to include required information for their approved projects while changes to the Main Body of the template should be limited to those provisions which are necessary solely to accommodate unique Project requirements.

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

Below is a high-level overview of how the MPA is structured:



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**”);

- and -

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

[- and -

●, a corporation under the laws of ●.]

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

Article 1 Interpretation

1.01 Definitions

In this Agreement:

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

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

“**Applicable Law**” means any domestic or foreign law, rule, statute, subordinate legislation, regulation, by-law, order, ordinance, protocol, code, guideline, treaty, policy, notice, direction or judicial, arbitral, administrative, ministerial or departmental judgment, award, decree, treaty, directive, or other requirement or guideline published or in force at any time during the Term which applies to or is otherwise intended to govern or regulate any person (including any Consortium Member), property, transaction, activity, event or other matter, including any rule, order, judgment, directive or other requirement or guideline issued by: (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local

(whether administrative, legislative, executive or otherwise); (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government; (c) any court, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, *quasi-judicial*, administrative or similar functions; and (d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

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

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

“Change” means an amendment to a SOW made in accordance with Section 4.01 (Change Orders) and **“Change Order”** means a written document describing a Change.

“Change of Control” means coming under the Control of a person that was not previously Controlling, Controlled by or under common Control with such person, whether by way of a single transaction or series of related transactions.

“Claims” means any actual, threatened or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation or proceeding, or any other claim or demand.

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

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

“Contribution Agreement” means the agreement between the Supercluster and ISED dated November 26, 2018.

“Crown” means Her Majesty the Queen in Right of Canada and **“ISED”** means the Crown’s representative, the Minister of Innovation, Science and Economic Development (or any successor to the Minister of Innovation, Science and Economic Development).

“Deliverable” means a tangible or intangible measurable output of the Project provided by a Consortium Member (or its 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 any Consortium Member that discloses its Confidential Information to a Receiving Party or otherwise has its Confidential Information accessed or possessed by a Receiving Party.

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

“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 a Consortium Member or any of its Personnel, and all rights therein, but does not include Background Intellectual Property (or improvements thereto) as defined in this Agreement.

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

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

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

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

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

“Milestone” means a specific point in time that acts as checkpoint to evaluate progress of the Project against its Work Plan and Deliverables (generally every three months) over the Project duration as set out in Schedule A (Project Approval).

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

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

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

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

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

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

“Project Schedule” means any plan and time line for the delivery of Deliverables or the performance of certain services, including a list of the tasks, activities, resources, and any interdependencies that establishes the deadline that one or more Consortium Members needs to meet as set out in Schedule A (Project Approval), a SOW or Change Order.

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

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

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

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

“Steering Committee” means the body of Consortium Member representatives responsible for the oversight and monitoring of the Project, as further described in Section 3.01(1) (Membership).

“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 Consortium Member’s data (excluding public domain or third-party data).

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

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

1.02 Interpretation

- (1) Ambiguities (No Contra Proferentem). Each Consortium Member has had the opportunity to have its legal counsel review and participate in settling the provisions of this Agreement, and any rule of construction to the effect that any ambiguity in this Agreement will be resolved against the drafting Consortium Member is not applicable to the interpretation of this Agreement.
- (2) Document References. All references to any agreement (including this Agreement and any SOWs), document (including the Supercluster Policies) or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time, unless otherwise specified in this Agreement.
- (3) Headings. The division of this Agreement into Articles and Sections and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (4) Plural and Singular. In this Agreement, unless the context requires otherwise, words in the singular include the plural and *vice versa*.
- (5) Section and Schedule References. Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections or Schedules of this Agreement.
- (6) Statute References. Unless otherwise indicated, all references in this Agreement to any statute include the applicable regulations, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference to a particular provision will be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.
- (7) Words of Inclusion. Wherever the words “include”, “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation” and

the words following “include”, “includes” or “including” will not be considered an exhaustive list.

- (8) Currency. Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement refer to Canadian Dollars.
- (9) Financial Responsibility. Unless otherwise expressly stated in this Agreement, each Consortium Member will be responsible for performing its obligations under this Agreement at its expense (including taxes applicable to any payment obligations incurred in connection with such performance) without additional charge or additional cost to the other Consortium Members.

1.03 References to Consortium Member

- (1) Where a Consortium Member’s subcontractor, agent or independent contract personnel is performing any of its obligations under this Agreement, a reference to that Consortium Member includes that Consortium Member’s subcontractor to the extent that such provision applies to that subcontractor’s, agent’s or independent contract personnel’s performance of its obligations.
- (2) Where there is a reference to a sale, assignment or grant by a Consortium Member, that Consortium Member will perform the sale, assignment or grant for itself or, where applicable, cause its Personnel to perform the act.
- (3) Where the context implies that a reference to a Consortium Member also includes one or more of that Consortium Member’s subcontractors and Personnel, the reference includes all of that Consortium Member’s applicable subcontractors and Personnel.
- (4) References to the Consortium Members or the Consortium in Sections 1.05(6), 5.02 (Reporting Requirements), 5.03 (Records Management and ISED and Supercluster Audit Rights), 5.04 (Auditor General Audit Rights), 9.02(1)(g), 9.04 (Termination or Suspension by the Supercluster) and 14.10 (Assignment), Article 13 (Insurance), Schedule D (Intellectual Property and Data as an Asset), Schedule E (Project Data Management) and Schedule F (Commercialization Term Sheet) do not include the Supercluster.

1.04 Priority of Documents

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

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

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

1.05 Project Execution

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

- (1) Schedule A (Project Approval) confirms the Project and Work Plan, including scope, schedule and budget, that the Supercluster has approved to proceed;
- (2) Schedule B (Statements of Work) confirms the service commitments, funding commitments and payment terms for each individual Consortium Member;
- (3) Schedule C (Governance and Reporting) outlines additional governance terms for managing the Project and the specific reporting requirements for the Project;
- (4) Schedule D (Intellectual Property and Data as an Asset) outlines how Foreground IP will be owned, managed and used;
- (5) Schedule E (Project Data Management) covers how data arising from Project activities will be managed; and
- (6) Schedule F (Commercialization Term Sheet) outlines the general principles of the expected commercial relationship between the Consortium Members with respect to the commercialization of the Foreground IP, including the general parameters related to commercialization of the Project outcomes, including licensing of relevant IP.

Article 2 Collaboration

2.01 Purpose of the Consortium

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

2.02 Project Term

This Agreement will begin on the Effective Date and continue until all Projects have been completed or terminated in accordance with the terms of this Agreement (the “**Term**”) unless terminated earlier in accordance with Article 9 (Termination and Suspension). The Consortium Members may renew or extend the Term by written agreement.

2.03 Nature of the Collaboration

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

Member will not be liable for a breach of any provision of this Agreement by another Consortium Member.

2.04 Subcontracting and Personnel

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

Article 3 Governance

3.01 Steering Committee

- (1) Membership. The Steering Committee will consist of one representative of each Consortium Member. The Steering Committee must be constituted within 30 days of the Effective Date. The Project Manager will be appointed by the Steering Committee at their first meeting which will take place no later 45 days from the Effective Date. The decision-making process of the Steering Committee, as well as other operating terms, will be established in accordance with Schedule C (Governance and Reporting). Such decisions will be binding on the Consortium for the purposes of this Agreement. For clarity, where the Steering Committee votes on a decision under Section 4.03 (Managing Performance Deficiencies), 9.01 (Right to Suspend Performance by Steering Committee) or 9.02 (Termination of a Consortium Member), the Steering Committee member appointed by the Consortium Member to which the vote pertains will not be entitled to vote.
- (2) Responsibilities. The Steering Committee will be responsible for:
 - (a) reviewing, revising, and approving or rejecting any changes to (in accordance with this Agreement) the Work Plan, any changes to the SOW and any Change Order;
 - (b) ensuring the Project follows the Work Plan, and the applicable SOWs;
 - (c) approving or rejecting the achievement of Deliverables in accordance with the applicable SOW;
 - (d) terminating Consortium Members in accordance with Section 9.02 (Termination of a Consortium Member);
 - (e) participating in the resolution of Disputes; and

- (f) meeting all other obligations assigned to the Steering Committee under this Agreement and Schedule C (Governance and Reporting).

3.02 Project Manager

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

3.03 Project Team

- (1) Membership. Each Consortium Member (excluding the Supercluster) will appoint a Lead Representative to serve on the Project Team.
- (2) Responsibilities. The Project Team will:
 - (a) report to the Project Manager;
 - (b) attend Project Team meetings to assist in the planning, execution and monitoring of the applicable SOW(s); and
 - (c) comply with all other obligations assigned to the Project Team under this Agreement, including the applicable SOW(s).

Article 4

Change Management, Performance Deficiencies and Material Adverse Events

4.01 Change Orders

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

4.02 Notification of Performance Deficiencies

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

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

4.03 Managing Performance Deficiencies

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

4.04 Material Adverse Events

Without limiting Section 14.03 (Force Majeure), each Consortium Member (excluding the Supercluster) will promptly notify the other Consortium Members where it becomes aware of

any fact, circumstance or other event that adversely affects, or is likely to adversely affect the Consortium Member's ability to perform its obligations under this Agreement or the success or reputation of the Project or another Consortium Member, including: (a) any occurrence that may lead to an event described in Section 9.02(1)(a); (b) any Claim adverse to the Consortium Member; (c) a labor dispute; (d) a non-trivial cybersecurity event, such as a data breach or a ransomware attack; and (e) breach of Consortium Member's material obligations under this Agreement not otherwise addressed in this Section. The notice must include measures the Consortium Member has taken or proposes to take to remedy the adverse effects of the event. Except where the fact, circumstance or other event becomes public through no fault of the Consortium Member, where a Consortium Member is required to notify the other Consortium Members under this Section 4.04, the Consortium Member will do so before announcing or otherwise making public the occurrence of such fact, circumstance or other event.

Article 5 Records and Reporting Requirements

5.01 Project Records

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

5.02 Reporting Requirements

- (1) Each Consortium Member will comply with the reporting requirements set out in this Article 5 (Records and Reporting Requirements) and Schedule C (Governance and Reporting) and upon the Supercluster's request, each Consortium Member will provide

such information as reasonably required by the Supercluster to enable the Supercluster to:

- (a) assess the Consortium Member's performance of its obligations under this Agreement, including Project data, key performance indicators (such as achievement of Deliverables by the applicable deadlines) and results;
 - (b) meet the Supercluster's obligations to ISED (which information may include financial information, including financial statements, invoices, receipts, timesheets, payroll records) regarding all Supercluster Funds which the Consortium Member has or may receive; and
 - (c) provide a brief up-to-date account of the progress of the Project including an update on Foreground IP creation, ownership and licensing.
- (2) Within two months of March 31 of each year during the Term or upon the Supercluster's request, the Project Lead will provide the Supercluster with a report detailing all of the Disputes involving Intellectual Property Rights or ownership or licencing of Intellectual Property.

5.03 Records Management and ISED and Supercluster Audit Rights

- (1) ISED and the Supercluster will each have the right to, when either determines it is necessary, on reasonable notice and at their own cost, but subject to Sections 8.08(1)(b) and (c):
- (a) audit the books, records and financial statements of any Consortium Member which relate to the Project for the purpose of validating the use of any Supercluster Funds and ensuring the Consortium Member's compliance with the terms of this Agreement. If it is determined that the amounts paid to a Consortium Member 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 any Consortium Member in relation to the Supercluster Funds. ISED may discuss the results of said audits with the Supercluster, and may publish the results and report them to Parliament; or
 - (c) audit, or cause to have audited, the accounts and records of each Consortium Member 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 thereafter.
- (2) If the report of an audit conducted pursuant to this Section 5.03(1) identifies any deficiencies, or provides recommendations for improvements or redress, the Consortium will, within 90 days of receiving such report, implement timely corrective actions in respect of such findings or recommendations, and the Supercluster will report back to ISED.

- (3) Each Consortium Member will, at its own expense:
- (a) provide ISED and the Supercluster with reasonable access to any Project site (if any) of the particular Consortium Member for the purpose of ensuring that the terms and conditions of any environmental approval are met, and that any mitigation, monitoring or follow-up measure required has been carried out, to the satisfaction of ISED, provided the Supercluster complies, and ensures ISED complies, with any and all applicable site obligations and that the Supercluster, upon request, indemnify and save harmless the Consortium Members from any and all Losses (as defined below) to the extent caused by any gross negligence or criminal, fraudulent or wilful misconduct arising from ISED's and the Supercluster's access to such Project site; and
 - (b) supply promptly, on reasonable request by ISED or the Supercluster, such other Project related data in respect of its activities under this Agreement, the Project and its results, as ISED or the Supercluster may require for statistical or evaluation purposes.
- (4) Upon request by ISED, the Supercluster may provide ISED with a copy of the report of any audit, evaluation or review carried out by the Supercluster, related to the use of Supercluster Funds or the Consortium Member's performance under this Agreement.
- (5) Any audits performed under this Agreement will be carried out by auditors selected by ISED or the Supercluster and such persons will comply with the confidentiality obligations set forth in Article 8 (Confidentiality) of this Agreement. Each audit will occur during the Consortium Member's normal business hours and will not unreasonably interfere with the Consortium Member's normal business. ISED or the Supercluster (as the case may be) will provide the Consortium Member with a description of the scope and criteria of the audit and the expected time frames for completion of the audit and, in the case of ISED, public release of the related reports. Where a Consortium Member has a concern that an auditor selected by the Supercluster has a conflict of interest with that Consortium Member, the Consortium Member may notify the Supercluster of its concern. The Supercluster will consider the Consortium Member'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 Consortium Member with written reasons as to why the Supercluster will not take the steps outlined in (a) or (b). If the Consortium Member is not satisfied with how the Supercluster addresses its concern, the Consortium Member may raise the concern as a Dispute under Section 10.02 (Dispute Resolution Process).
- (6) Where the Consortium carries out the Project on the premises of a Consortium Member, that Consortium Member will provide ISED with reasonable access to such premises for the purpose of reviewing records related to the Project, assessing the progress and performance of the Project, and assessing compliance with this Agreement, provided the Supercluster ensures ISED complies with any and all applicable site obligations of the applicable Consortium Member (including, except where inconsistent with ISED's rights under this Agreement, confidentiality, security and health and safety policies of the Consortium Member) and that the Supercluster, upon request, indemnify and save harmless the Consortium Members from any and all Losses (as defined below) to the extent caused by any gross negligence or criminal, fraudulent or wilful misconduct arising from ISED's access to such Project site.

- (7) The Supercluster will provide to the applicable Consortium Member the results and any report of any audit, evaluation or review carried out by or for the Supercluster or ISED under this Section 5.03 (Records Management and ISED and Supercluster Audit Rights).
- (8) ISED is a third-party beneficiary to this Agreement for the purposes of this Section 5.03 (Records Management and ISED and Supercluster Audit Rights).

5.04 Auditor General Audit Rights

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

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

5.05 Data Management

Each Consortium Member will set out measures for data management and will comply with its obligations under Schedule E (Project Data Management) of this Agreement including at a minimum:

- (1) ensuring that data is collected for specified, explicit and legitimate purposes with any required permissions, consent and usage rights confirmed with the data owner;
- (2) taking steps to ensure that data is secure through the application of industry standard cybersecurity measures;
- (3) implementing reasonable measures for data security, which may include encryption, anonymization of data and proper user authentication;

- (4) implementing incident management protocols to deal with data breaches including containment, stakeholder notification and corrective actions based on the results of incident investigations;
- (5) implementing data quality protocols that ensure data remains relevant, accurate and up to date;
- (6) 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
- (7) 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 6 Financial Management

6.01 Contributions

Each Consortium Member will pay such amounts, at such times and to such other Consortium Member(s) as specified to be paid by the applicable Consortium Member under each Consortium Member's SOW in Schedule B (Statements of Work) and will adhere to the Project's budget as approved.

6.02 Other Contributions

Each Consortium Member will provide the Consortium with the resources the Consortium Member is required to provide under the applicable Consortium Member's SOW, which may include software, hardware, facilities, equipment, Personnel, Intellectual Property or other resources as specified therein or in the case of Intellectual Property as specified in Schedule D.

6.03 Expenses

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

6.04 Project Assets

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

Article 7 Intellectual Property

7.01 Intellectual Property Schedule

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

7.02 Intellectual Property Registry

The Supercluster will establish and maintain an Intellectual Property Registry, which will be accessible to the other Consortium Members and other members of the Supercluster. Each Consortium Member 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 a Consortium Member's request, the Supercluster may omit certain Foreground Intellectual Property, or related details, from the Intellectual Property Registry where the Supercluster determines it is reasonable to do.

7.03 No Rights to Background Intellectual Property

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

7.04 No Restrictions on Other Research

Each Consortium Member acknowledges that the other Consortium Members may currently or in the future be undertaking research alone or with other persons in areas that may be similar to the Project. Nothing in this Agreement prohibits a Consortium Member from undertaking research alone or with other persons in areas that may be similar to the Project, including developing Intellectual Property, receiving information, or developing products that compete with the other Consortium Member's products, provided that in doing so, the Consortium Member does not violate any Consortium Member's Intellectual Property Rights or Article 8 (Confidentiality).

Article 8 Confidentiality

8.01 Confidential Information

- (1) The Confidential Information of a Consortium Member means any and all information of a Disclosing Party which:
 - (a) is marked confidential or orally identified as confidential and subsequently confirmed in writing by the Disclosing Party to the Receiving Party as confidential within 30 days after such oral disclosure;

- (b) is treated by the Disclosing Party as its confidential or proprietary information and made recognisable by the Disclosing Party by designating in advance or at the time of disclosure the circumstances under which it is disclosed as a confidential discussion or meeting;
 - (c) is readily recognisable or would otherwise be understood by a reasonable, prudent person as confidential due to the nature of the information or the circumstances of disclosure such as but not limited to the Disclosing Party's financial information, business plans or strategies, price information, quoting procedures or customer lists and including information concerning the Disclosing Party's past, present or future customers, suppliers, Technology or business; or
 - (d) has or will come into the possession or knowledge of the Receiving Party in connection with or as a result of entering into this Agreement.
- (2) Notwithstanding Section 8.01(1), except for Personal Information, "Confidential Information" does not include information which:
- (a) at the time of disclosure is in the public domain or which, after disclosure, enters the public domain, except as a result of a breach of this Agreement by a Receiving Party and any person for which a Receiving Party is responsible;
 - (b) is provided to a Receiving Party by another person who is not a Disclosing Party, as evidenced by the written records of the Receiving Party, except where the other person is known, or ought reasonably to be known, to be subject to an obligation to a Disclosing Party to maintain such information and materials in confidence;
 - (c) is independently created, developed or acquired by or for a Receiving Party through persons to whom the Confidential Information of the Disclosing Party had not been disclosed;
 - (d) was lawfully in the possession of a Receiving Party as confirmed by the written records of the Receiving Party before its receipt of such Confidential Information under this Agreement; or
 - (e) is released from the confidentiality provisions of this Agreement by the written authorization of the Disclosing Party.
- (3) Information required to be maintained in confidence under this Agreement that is specific in nature will not be deemed to be in the public domain or in the prior possession of a Receiving Party merely because general principles concerning the specific information are in the public domain or in the prior possession of such Receiving Party.
- (4) Personal Information that pertains to the Personnel of a Consortium Member, and the Personal Information disclosed by a Consortium Member that pertains to customers or clients of a Consortium Member, is deemed to be the Confidential Information of such Consortium Member.

8.02 Primary Obligations

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

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

8.03 Public Disclosure

Unless required by Applicable Law but without limiting Section 8.08 (Disclosure to ISED; Publication by ISED) or Section 8.09 (Publicity), no Consortium Member, except the Supercluster, will make any public announcements respecting the subject matter of this Agreement without first receiving: (a) approval by the Supercluster or through the use of agreed upon communication protocols; and (b) approval of the Steering Committee. No Consortium Member may characterize the position or suggest the concurrence of the other Consortium Members on any issue under discussion unless specifically agreed to by all Consortium Members. This Agreement does not grant any Consortium Member the right to use the name, trademarks or other indicia of origin of any other Consortium Member.

8.04 Permitted Disclosures

A Receiving Party may disclose Confidential Information:

- (1) to its Affiliates, directors, officers, employees, and legal and financial advisors, who have a need to know, in connection with the permitted purposes described in Section 8.02(4) provided that such recipients are advised of the confidential nature of the Confidential Information and are bound by obligations of confidentiality no less restrictive than those imposed on the Receiving Party pursuant to this Agreement; and
- (2) to the extent such disclosure is required pursuant to Applicable Laws, provided that prior to such disclosure the Receiving Party will to the extent it is legally permitted to do so: (a) give the Disclosing Party notice of the potential disclosure and, where legally permissible, allow the Disclosing Party the opportunity to seek a protective order, at the Disclosing Party's cost, in connection with such potential disclosure; and (b) limit any such disclosure to only that Confidential Information which is necessary, and further provided that any ultimate disclosure of Confidential Information will be in writing (or promptly reduced to writing in the case of any oral disclosure) and be marked "Confidential" to the maximum extent permitted by Applicable Laws; and

- (3) to any subcontractor, agent and independent contract personnel or student approved under Section 2.04 (Subcontracting and Personnel) providing goods or services to a Receiving Party in connection with the permitted purposes described in Section 8.02(4) who have a need to know, provided that any such person is advised of the confidential nature of the information and is bound by confidentiality obligations substantially no less restrictive than those imposed on the Receiving Party pursuant to this Agreement and further provided that any such person may only use any such Confidential Information for the purposes set out in Section 8.02(4).

8.05 Disclaimer of Warranties and Liability

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

8.06 Notification of Unauthorized Disclosure

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

8.07 Return of Confidential Information

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

- (1) the Receiving Party will not be obliged to return or destroy any decision-making documents submitted to its or its Affiliate's management nor any analyses or other derivative materials which may incorporate any Confidential Information; provided however that such documents and materials will nonetheless remain subject to the confidentiality obligations in this Agreement for the duration of their retention;

- (2) the Receiving Party's computer systems may automatically back up Confidential Information disclosed under this Agreement, and that to the extent such computer back up procedures create copies of the Confidential Information, the Receiving Party may retain such copies for the period it normally archives backed up computer records, which copies will be subject to the provision of this Agreement until the same are destroyed; and
- (3) the Receiving Party may retain one copy of the Confidential Information in the files of its legal counsel strictly for archival purposes, which copy will be subject to the provisions of this Agreement until it is destroyed.

8.08 Disclosure to ISED; Publication by ISED

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

8.09 Publicity

- (1) Notwithstanding anything in this Article 8 (Confidentiality), the Supercluster may publicly disclose an overview of the Project including its purpose, objectives and goals, the identity of each Consortium Member, the total Project cost and the estimated amount of Supercluster Funds that may be provided to the Project and each Consortium Member. For clarity, this does not include the financial commitment by any individual Consortium Member other than the Supercluster.

- (2) Each Consortium Member consents to being contacted by ISED in relation to success stories, announcements, ceremonies or other communications activities related to the Project. Each Consortium Member, subject to any legal restrictions that such Consortium Member may be subject to (including securities disclosure limitations):
- (a) agrees to acknowledge ISED's role in the funding provided through this Agreement;
 - (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).

The Supercluster will notify each named Consortium Member in advance of a draft news release or other public announcement related to ISED, except where the Supercluster is not notified in advance by ISED.

8.10 Ownership of Confidential Information

- (1) Confidential Information is proprietary and confidential to the Disclosing Party and will be so treated by the Receiving Party.
- (2) Without limiting Section 7.03 (No Rights to Background Intellectual Property), neither the execution of this Agreement, nor the furnishing of any Confidential Information by the Disclosing Party, will be construed as granting to the Receiving Party, either by implication or otherwise, any interest, license or right respecting the Confidential Information, including any Intellectual Property Right in the Confidential Information, other than as expressly provided for in this Agreement.

8.11 Publication

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

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

Article 9 Termination and Suspension

9.01 Right to Suspend Performance by Steering Committee

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

9.02 Termination of a Consortium Member

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

- (f) the Terminated Consortium Member is in material breach of a provision of this Agreement and such breach is incurable or the Terminated Consortium Member fails to cure such breach within 60 days of being given notice of such breach by the Project Manager;
 - (g) the Terminated Consortium Member is in breach of a material provision of the Membership Agreement or in breach of the Supercluster Policies; or
 - (h) the Terminated Consortium Member is in breach of Section 11.02 (Consortium Member Representations, Warranties and Covenants) and when such breach is curable, the Terminated Consortium Member fails to cure such breach within 60 days of being given notice of such breach by the Project Manager.
- (2) Subject to Section 9.06 (Survival), upon the Terminated Consortium Member's receipt of such notice, this Agreement will be deemed to be terminated as it applies to such Terminated Consortium Member unless such termination is disputed under Section 10.02 (Dispute Resolution Process). This Agreement will otherwise remain in force.

9.03 Resignation of Consortium Member

Any Consortium Member may resign from the Consortium by providing 60 days' written notice to the other Consortium Members. This Agreement will be deemed to be terminated as it applies to such resigning Consortium Member upon the expiry of the 60-day period referred to above. This Agreement will otherwise remain in force.

9.04 Termination or Suspension by the Supercluster

- (1) The Supercluster may terminate this Agreement or any SOW, in whole or in part (including as it applies to one or more Consortium Members) or suspend the Project, at any time by providing written notice to the Project Lead:
- (a) 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;
 - (b) if at any time the Consortium does not include at least three Consortium Members including at least one SME and one post-secondary institution and the Consortium fails to remedy this situation within 60 days of being given notice by the Supercluster;
 - (c) where the Steering Committee has the right to terminate a Consortium Member under Section 9.02(1) but does not do so;
 - (d) where a Consortium Member's Membership Agreement is terminated or expires (provided the Supercluster may provide notice of any breach on behalf of the Project Lead);
 - (e) where any Consortium Member: (i) fails to meet its commitments as outlined in a SOW (including delivering a Deliverable by the applicable deadline); and (ii) fails to remedy such failure within a timeline stipulated by the Supercluster, which

timeline will be at least 30 days from the original deadline for meeting such commitment; or

- (f) where any Consortium Member chronically or repeatedly breaches one or more sections of this Agreement, including where the Consortium Member chronically or repeatedly fails to comply with its reporting and governance obligations under this Agreement including those set forth in Schedule C (Governance and Reporting), or fails to comply with any of Sections 2.04 (Subcontracting and Personnel), 4.04 (Material Adverse Events) and 8.09 (Publicity), Article 3 (Governance), and Article 5 (Records and Reporting Requirements), and each other Schedule, including within the applicable timelines. The Supercluster's termination right in this Section 9.04(1)(f) is not conditional on the Supercluster providing notice of any breach to a Consortium Member, provided that a reasonably prudent Consortium Member would be aware of the breach or the Consortium Member has actual notice of the breach.
- (2) Without limiting Section 9.05 (Effect of Termination), where the Supercluster terminates this Agreement or any SOW:
 - (a) other than work or services previously performed in furtherance of the Project, which are of a committed or non-cancelable nature, the Supercluster will not be subject to any fees, charges or penalties and no other amounts will be payable by the Supercluster in connection with any termination of the Agreement or any SOWs; and
 - (b) the remaining Consortium Members, by their mutual agreement, may continue the Project without any participation by or contribution from the Supercluster.
 - (3) Where, as a result of changes to the Project or otherwise, an assessment is required in accordance with the *Canadian Environmental Assessment Act, 2012* ("CEAA") for the Project, the Supercluster may suspend the Project. Such suspension will continue until a decision statement has been issued to the Supercluster (or other Consortium Members) or, if applicable, ISED has decided that the Project is not likely to cause significant adverse environmental effects.

9.05 Effect of Termination

Upon termination of this Agreement as it applies to a Consortium Member for any reason before the completion of the Project, such Consortium Member will at its own expense:

- (1) comply with its obligations set out in Schedule D (Intellectual Property and Data as an Asset);
- (2) return any pre-paid but unused Supercluster Funds to the Supercluster;
- (3) refund the Supercluster all Supercluster Funds used to develop or acquire Project Assets or, if so directed by the Supercluster, transfer the Project Assets to one or more other Consortium Members;
- (4) at the election of such Consortium Member, either: (a) grant a perpetual, royalty free, world-wide, sublicensable, unlimited license to each other Consortium Member of all

Intellectual Property Rights in and to its Foreground IP; or (b) refund to the Supercluster all Supercluster Funds paid to it and to all other Consortium Members prior to the effective date of termination;

- (5) take all reasonable steps requested by the Supercluster to transition the Consortium Member's SOW(s) (as applicable) to one or more existing Consortium Members (as selected by the remaining Consortium Members) or a new Consortium Member, including transferring any information or materials that have been developed or acquired as part of the Project including any work-in-progress; and
- (6) perform any wind-down obligations, if any, specified in the related SOW or Change Order and, if none are specified, then the Consortium Member will make all commercially reasonable efforts to transition the Project, including performing any remaining obligations, and to minimize the disruption to the remaining Consortium Members, on a reasonable and cost-efficient basis.

9.06 Survival

- (1) Neither the expiration nor the early termination of this Agreement will release a Consortium Member from any obligation or liability that accrued prior to such expiration or termination.
- (2) The provisions of this Agreement requiring performance or fulfillment after the expiration or termination of this Agreement will survive the expiration or termination of this Agreement, including Article 1 (Interpretation), Article 5 (Records and Reporting Requirements), Article 7 (Intellectual Property), Article 8 (Confidentiality), Sections 9.05 (Effect of Termination) and 9.06 (Survival), Article 10 (Dispute Resolution), Article 11 (Representations, Warranties and Covenants and Indemnities), Article 12 (Limitations of Liability) and Article 14 (General).

Article 10 Dispute Resolution

10.01 Goal

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

10.02 Dispute Resolution Process

- (1) In the event of a Dispute, a Dispute Party may provide a Dispute Notice to the other Dispute Parties, the Supercluster and the Project Lead. The Dispute Parties' respective members of the Steering Committee will: (a) seek to work together to develop a written and dated summary of the nature, extent, and magnitude of the Dispute and, where appropriate, how each Dispute Party sees resolution of the Dispute; and (b) seek to amicably resolve or settle the Dispute in good faith by mutual agreement.
- (2) If the Dispute Parties do not resolve the Dispute by negotiation under Section 10.02(1), any of the Dispute Parties may refer the Dispute to a mediator acceptable to all Dispute Parties for non-binding mediation, and the Dispute Parties will share the costs of such

mediation equally. The Dispute Parties will notify the Steering Committee in writing that the Dispute Notice will be moving to mediation and then the Dispute Parties have ten days from the date of notification to the Steering Committee to select a mutually acceptable mediator.

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

10.03 Confidentiality

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

10.04 Injunctive Relief

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

Article 11 Representations, Warranties and Covenants, and Indemnities

11.01 Mutual Representations, Warranties and Covenants

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

- (1) such Consortium Member has good and sufficient power, authority and right to enter into and deliver this Agreement and to perform its obligations hereunder, and the entry into, delivery and performance of this Agreement by such Consortium Member have been duly authorized by all necessary corporate action on the part of such Consortium Member;
- (2) this Agreement has been duly entered into and delivered by such Consortium Member and constitutes a valid and legally binding obligation of such Consortium Member, enforceable against such Consortium Member in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court; and

- (3) neither the entering into nor the delivery nor the performance of this Agreement by such Consortium Member will result in a violation of any of the provisions of the constating documents or by-laws of such Consortium Member.

11.02 Consortium Member Representations, Warranties and Covenants

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

- (1) such Consortium Member and its subcontractors and Personnel involved in the Project will comply with the Consortium Member's obligations under this Agreement with respect to the Project, and in relation to their performance of the Project, the Supercluster Policies;
- (2) such Consortium Member and its subcontractors and 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;
- (3) such Consortium Member is not, and such Consortium Member's subcontractors involved in the Project are not, Controlled by representatives or agents of the Crown;
- (4) except as set out in writing in the applicable SOW, to Consortium Member's knowledge no Third Party IP is or will be used in, incorporated into, integrated or bundled with any of the Deliverables by such Consortium Member or its subcontractors involved in the Project;
- (5) such Consortium Member has all necessary rights to grant the rights and permissions it has granted pursuant to this Agreement;
- (6) such Consortium Member and its subcontractors involved in the Project have entered into agreements with all of their Personnel for the assignment and waiver of Intellectual Property Rights (including inalienable rights, such as moral rights) in Foreground Intellectual Property and the treatment of Confidential Information consistent with the terms of this Agreement;
- (7) to the best of their knowledge, such Consortium Member owns, or has a license to use in performing its obligations under this Agreement, the Intellectual Property Rights necessary for the performance of its obligations under this Agreement;
- (8) the Project is not a "designated project" as defined in the CEAA and is not being carried out on "federal lands" as defined in the CEAA;
- (9) such Consortium Member has not given and will not give commissions, payments, kickbacks, gifts, lavish or extensive entertainment, or other inducements of more than minimal value to any employee or agent of the Supercluster, the Crown or ISED in connection with this Agreement and, to the best of its knowledge, no officer, director,

employee, agent or representative of such Consortium Member has given any such commissions, payments, kickbacks, gifts, entertainment or other inducements to any employee or agent of the Supercluster, the Crown or ISED;

- (10) such Consortium Member has not and will not provide funding of any amount to a “department” as defined in section 2 of the *Financial Administration Act*, subject to any payment of fees to acquire services from any such department; and
- (11) all information provided by such Consortium Member in the course of responding to the project selection process prior to entering into this Agreement, is not misleading in any material respect, and such Consortium Member has not failed to disclose any further information that would make the information disclosed misleading or would deter any of the other Consortium Members from entering into this Agreement or any SOW.

11.03 Supercluster’s Representations, Warranties and Covenants

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

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

11.04 Disclaimer

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

11.05 Indemnities

Each Consortium Member (the “**Indemnitor**”) will severally (and not jointly and severally) indemnify, defend and hold harmless the Supercluster Indemnitees and each other Consortium Member (including their respective employees, officers, directors, subcontractors, students, agents, successors and assigns) (each an “**Indemnitee**”) from and against any and all Losses suffered or incurred by the 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, its Personnel or subcontractors;
- (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, (but excluding the Supercluster or an other Consortium Member), acting alone or in collusion with others; and
- (c) unless otherwise agreed in writing (by the applicable 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 (“**Indemnitor IP**”) infringes, violates or misappropriates any Intellectual Property Rights of any person due to the Indemnitor’s breach of Section 11.02(7).

11.06 IP Claims

- (1) A Consortium Member will have no indemnity obligation or liability for any Losses or Claims related to Indemnitor IP (“**IP Claims**”) based on or arising from:
 - (a) any use of such Indemnitor’s Indemnitor IP not in accordance with this Agreement or any written agreements executed by the applicable Indemnitor regarding the Indemnitee’s use of that Indemnitor IP;
 - (b) use or combination of such Indemnitor’s Indemnitor IP with other Intellectual Property, products, equipment, software, data, Technology or materials not supplied by the Indemnitor which but for such combination would not have given rise to the Losses or IP Claim; or
 - (c) any modification of such Indemnitor’s Indemnitor IP by any person or entity other than the Indemnitor or its agents or subcontractors authorized to make such modifications.
- (2) In addition to the Indemnitor’s obligations under Section 11.05(c), if there is an IP Claim then the Indemnitor may at its sole option:
 - (a) procure for the right to continue the activity that gave rise to the IP Claim; or
 - (b) modify or replace the Indemnitor IP that gave rise to the IP Claim, so that it becomes non-infringing.

- (3) Any indemnification under Section 11.05 will be the Supercluster Indemnitees' or other Consortium Members' sole and exclusive remedy against the Indemnitor for IP Claims, and the parties acknowledge and agree that Section 11.05 and 11.06(2) state the Indemnitor's entire liability for IP Claims.

11.07 Other indemnity

- (1) The Indemnitor will indemnify, defend and hold harmless the Supercluster Indemnitees from and against any and all Losses suffered or incurred by the Supercluster Indemnitees arising from 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 12 Limitations of Liability

12.01 Limitations of Liability

- (1) Except for any infringement by a Consortium Member of another Consortium Member's Intellectual Property Rights or unauthorized use or disclosure of Confidential Information, gross negligence or willful misconduct, each Consortium Member'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 such Consortium Member under this Agreement; and (b) two million dollars.
- (2) Except for any infringement by a Consortium Member of another Consortium Member's Intellectual Property Rights or unauthorized use or disclosure of Confidential Information, gross negligence or willful misconduct, in no event will a Consortium Member be liable to any other Consortium Member for any special, consequential, punitive or other indirect damages (including lost revenues or profits), whether or not notified of such damages.
- (3) This Article 12 (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 any Consortium Member against the other for contribution (on a comparative fault basis) toward third party injury, damage, or loss are not limited, waived, released or disclaimed.

Article 13 Insurance

13.01 Insurance

- (1) Each Consortium Member will procure and maintain throughout the Term, the following insurance:

- (a) Comprehensive general liability insurance with insured risks including personal injury, death and property damage (including loss of use thereof). The general liability insurance policy will provide the minimum coverage of \$2,000,000.00 inclusive limits for bodily injury or property damage or both combined each occurrence.
- (b) Professional Errors and Omissions Liability in an amount no less than \$2,000,000.00 per occurrence, and in the aggregate resulting from errors or omissions in the performance of the Consortium Member's obligations.
- (c) Network Security and Privacy Breach Liability by way of one or more policies, including for cyber liability, breach of confidential or personal information and the loss, damage, destruction, distortion, erasure, corruption or alteration of electronic data from any cause whatsoever (including computer virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss, for a limit of not less than \$5,000,000.00 per occurrence.

All insurance policies required by this Agreement will name the Supercluster as an additional insured and will contain a waiver of subrogation against the Supercluster, its agents and employees. Each Consortium Member will provide, upon request a copy of an endorsement providing this coverage.

- (2) The Supercluster may waive the requirement under Section 13.01(1) for any Consortium Member that satisfies the Supercluster, acting reasonably, that it is capable of satisfying any liabilities that may arise from or in connection with this Agreement without such insurance.
- (3) A Consortium Member's failure to comply with this Article 13 (Insurance) will be a material breach of this Agreement.

Article 14 General

14.01 Notices

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

To the Supercluster:

[●]
Attention: [●]
Email: [●]

with a copy to:

[●]
Attention: [●]
Email: [●]

To Project Lead:

[●]
Attention: [●]
Email: [●]

with a copy to:

[●]
Attention: [●]
Email: [●]

To [other Consortium Member]

[●]
Attention: [●]
Email: [●]

with a copy to:

[●]
Attention: [●]
Email: [●]

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

14.02 Relationship of the Parties

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

grant to such Consortium Member exclusive rights or in any way to an exclusive relationship with the Supercluster.

14.03 Force Majeure

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

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

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

14.04 Entire Agreement

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

14.05 Amendment

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

14.06 Waiver

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

14.07 Severability

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

14.08 Governing Law

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

14.09 Further Assurances

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

14.10 Assignment

- (1) Prior to undergoing a Change of Control or assigning this Agreement (in whole or in part) or any of its Foreground IP, each Consortium Member will obtain the prior written consent of the Supercluster (which may be subject to reasonable conditions but not unreasonably withheld). The failure of a Consortium Member to comply with this Section 14.10(1) is deemed to be a material breach of this Agreement by such Consortium Member. Without limiting the Supercluster's remedies, under this Agreement or otherwise, where a Consortium Member fails to comply with this Section, the Supercluster may terminate this Agreement for cause as it applies to such Consortium Member, in which case such Consortium Member will refund to the Supercluster all

Supercluster Funds paid to it and to all other Consortium Members prior to the effective date of termination.

- (2) Where contractually required by ISED, the Supercluster may assign this Agreement to the Crown or to a third party deemed satisfactory to ISED and other Consortium Members. The Supercluster will not otherwise assign this Agreement without the prior written consent of each of the other Consortium Members (which may not unreasonably withheld).

14.11 Remedies Cumulative

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

14.12 Counterparts

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

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

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

[●]

[●]

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

[●]

[●]

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

[●]

[●]

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

[●]

[●]

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

SCHEDULE A PROJECT APPROVAL

TEMPLATE GUIDANCE (remove from the final agreement)

Schedule A covers the Project approval including the scope, schedule and budget for the approved Project. It also confirms the Supercluster funding commitments and articulates funding requirements and sources. Most of this information should come from the submitted proposal updated for any change or conditions reflected as part of the Supercluster's approval of the project.

Note: The Funding Approval, Financial Summary and Payment Terms for Supercluster Funds will be completed by the Supercluster after the Project Budget has been reviewed and internally approved during the Project contracting phase.

FUNDING APPROVAL

Proposal [20xx_# Title] (the "Proposal") was approved by the Supercluster to receive up to [\$X] in Supercluster Funds. This amount represents a Supercluster co-investment of 43% of the total estimated eligible Project costs. Supercluster Funds will be paid subject to the Supercluster's Payment Terms outlined below for achieving the Project commitments described in this Agreement and the supporting Schedules.

The full Proposal and supporting Project Budget worksheets related to this approval are stored for future reference with the Supercluster.

PROJECT SCOPE

Project Problem Statement

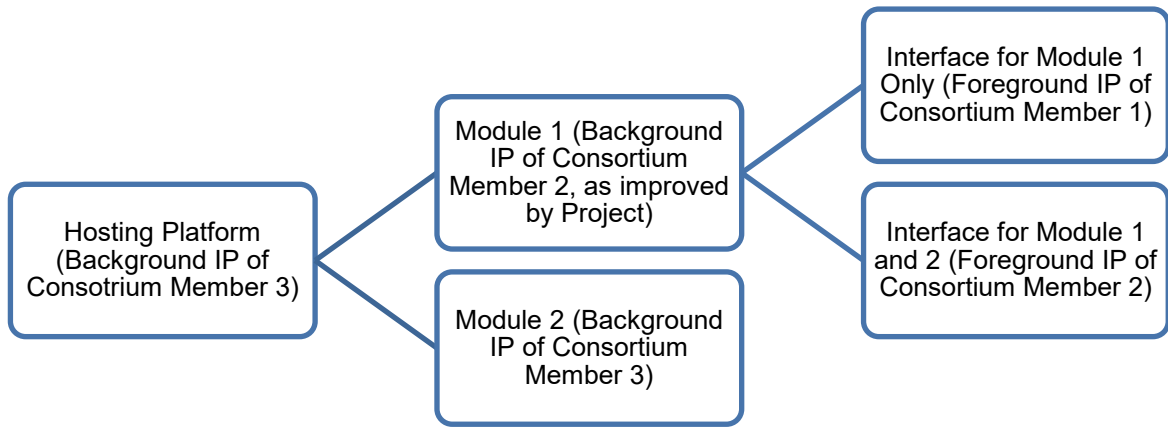
[State the problem(s) the Project is looking to solve. This sub-section should not exceed 5 sentences.]

Project Summary

[Provide a concise description of the scope of the approved Project. The Project Summary should be limited to 10 sentences.]

High-Level Solution Architecture

[Provide an overview of the proposed Project solution. This can be an Architecture Diagram and/or Data Flow diagram or any other representation of the overall proposed Project solution/application. Include a visual representation of the Foreground IP that will be created and how it builds on any existing Background IP. Ensure that the words and phrases used to identify the Background IP and Foreground IP are the same words and phrases used in Schedule D. The visual representation should include all Background IP and Foreground IP that is relevant to the Project. An example is below.]



Solution Roadmap

[Outline the solution roadmap. The roadmap provided here should be limited to the proposed Project scope (i.e. not related to future work that might be done after completion of the proposed Project)]

STRATEGIC PROJECT OUTCOMES

[Project outcomes aim to address core problem (defined above) and/or provide meaningful improvements and benefits. Project outcomes are anticipated Project results during and after the Project. For each specific Project outcome, quantify the targets whenever possible and include all measures that will be used to determine success in the table below]

Table A-1. **Project Outcome Measures**

Project Outcome	Success Measure	Baseline	Benchmark/Target	Measurement Approach
<i>[Add rows as required]</i>				

PROJECT DELIVERABLES

TEMPLATE GUIDANCE (remove from the final agreement)

Following each Milestone period (Project Quarter) a Milestone Report is to be submitted to the Supercluster along with any associated forms and supporting evidence to support the determination and payment of Supercluster Funds (refer to Schedule C (Governance and Reporting)). Most of this information should come from the submitted project budget updated for any change or conditions reflected as part of the Supercluster’s approval of the project.

The Project will begin on [insert date that the Project work is expected to start] (“Project Work Start”) and all work related to the Project will end by [insert date], unless terminated earlier in accordance with this Agreement. However, notwithstanding the termination or expiration of the term of the Project, reporting obligations will continue including those outlined in Schedule C.

The following table defines each of the Project Milestone periods (as defined in Article 1).

Table A-2. **Project Milestones**

Milestone #	Milestone Title	Milestone Completion Date	Milestone Duration
Milestone 1		[Project Work Start + 3months]	3months
Milestone 2		[Milestone 1 + 3 months]	3 months
[Add rows as required]			
Total Project Duration			[XX months]

The following are the major Project Deliverables (as defined in Article 1) and the best estimate for the start and end Milestone period for each. The conditions and acceptance criteria which must be met for each Deliverable will be confirmed by the Project Team and approved by the Steering Committee at the beginning of the starting Milestone period.

Table A-3. **Project Major Deliverables**

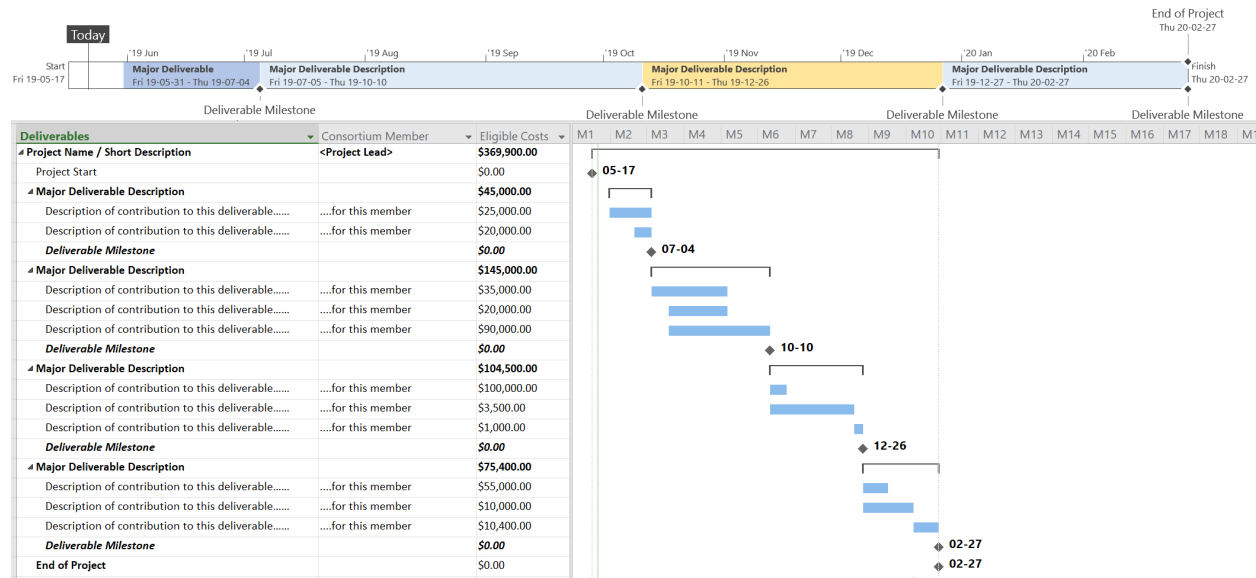
Major Deliverable Name	Description	Lead Consortium Member	Estimated Starting Milestone Period	Estimated Completion Milestone Period
[Add rows as required]				

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PROJECT SCHEDULE

[At a minimum, the Project schedule (e.g. a Gantt chart) must show Deliverable names, the estimate start and completion month (which should match the Milestone and Major Deliverables tables above). An example Gantt schedule is shown here for illustration purposes.]

Overall Project Duration: [xx] months



FINANCIAL SUMMARY

The following table provides a financial summary for the Project:

[Please insert estimated Total Project Costs of Own Commitments by Consortium Member by Milestone]

Table A-4. **Estimated Total Project Costs for own Commitments (excluding intra-Consortium and Third-Party funding arrangements) by Consortium Member by Milestone**

Milestone	Project Lead	Consortium Member A	Consortium Member B	[Add Columns as needed]	Total
Milestone 1	\$	\$	\$	\$	\$
Milestone 2	\$	\$	\$	\$	\$
[add rows as needed]	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
Total	\$	\$	\$	\$	\$

Table A-5. **Estimated Total Project Costs for all Commitments (including intra-Consortium and Third-Party funding arrangements) by Consortium Member by Milestone**

Milestone	Project Lead	Consortium Member A	Consortium Member B	[Add Columns as needed]	Total
Milestone 1	\$	\$	\$	\$	\$
Milestone 2	\$	\$	\$	\$	\$
[add rows as needed]	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
Total	\$	\$	\$	\$	\$

Table A-6. **Project Funding Flows by Organization**

<To be inserted from Budget Template>

PAYMENT TERMS OF SUPERCLUSTER FUNDS

Payment Terms

- (a) Payment of Supercluster Funds will be made:
 - a) on a cost reimbursement basis following completion of each Milestone (as defined above) based on actual eligible costs incurred and paid by the eligible Consortium Members;
 - b) after the Supercluster receives and accepts the related Project Milestone Report (refer to Schedule C (Governance and Reporting)); and
 - c) the related claims forms and supporting evidence (which may include timesheets, payroll records, invoices, receipts) with eligible costs for co-investment have been verified and approved by the Supercluster.
- (b) The Supercluster reserves the right to reject reimbursement of eligible costs where the claim for costs is not made within 45 calendar days from the date the Project Milestone Report is approved.
- (c) Supercluster will pay each eligible Consortium Member within 45 calendar days of Supercluster approval of their claim.
- (d) Supercluster may adjust a Consortium Member’s payment amount for such things as advances, membership fees (including project based fees), or errors in the determination of eligible costs.
- (e) The following table summarizes the estimated amount of Supercluster Funds that will be paid to the Consortium Members for each Milestone. The actual value of each payment will be determined based on the actual eligible costs incurred and paid by each of the eligible Consortium Members.
- (f) Total Supercluster Funds paid to all Consortium Members will not exceed **[\$X]** for the Project.

Table A-7. **Estimated Supercluster Funds by Consortium Member by Milestone**

Milestone	Project Lead	Consortium Member A	[Add Columns as needed]	Total
Milestone 1	\$	\$	\$	\$
Milestone 2	\$	\$	\$	\$
[add rows as needed]	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Total	\$	\$	\$	\$

**SCHEDULE B
STATEMENTS OF WORK (SOW)**

TEMPLATE GUIDANCE (remove from the final agreement)

- Schedule B consists of an individual Statement of Work (SOW) for each Consortium Member that confirms their role and commitments for the approved Project.
- It also outlines financial commitments which specify the costs of the Consortium Member's own work as well as any funding the Consortium Member may be providing to other Consortium Member(s). The financial information should separate out eligible costs as the basis for Supercluster funding as well as total SOW costs.
- If funding is being provided to another Consortium Member, it is advised that clear payment terms be laid out in Schedule B (i.e. how much, for what, when and under what conditions) under Miscellaneous.
- All Project funding sources for the Consortium Member also need to be identified; this includes the financial commitment from the Consortium Member, other Consortium Members(s), the Supercluster, plus any funding sources outside the Consortium (such as Mitacs).
- Note: All the tables provided in Schedule B are to be completed for each of the Consortium Members once the project budget has been approved by all Consortium Members including the Supercluster.

SOW #1 – [Consortium Member] (Project Lead)

DELIVERABLES AND SERVICE COMMITMENTS

[In the table below, provide a brief description of the role this Consortium Member (including its subcontractors) is playing in the completion of each Deliverable and/or their other service commitments to the Project.]

Table B-1. Deliverables and Service Commitments

#	Deliverable / Service Commitment	Estimated Cost for the Member
1	<i>[List Deliverable / Service Commitment as per Schedule A Deliverables table including the specific contribution being made by this Consortium Member]</i>	\$
		\$
		\$
		\$
...	<i>[Add rows as required]</i>	\$
Total		\$

FINANCIAL COMMITMENTS

Provided that this Consortium Member complies with its obligations and all conditions for cost eligibility are met, the Supercluster will provide an estimated total of [**\$X**] in Supercluster Funds as the Supercluster's co-investment for this SOW as indicated in the Table below:

Table B-2. Estimated Costs for Project Commitments

#	Organization	Description & Payment Terms	Estimated Eligible Costs	Estimated Total Costs
Costs for own work (Deliverable & service commitments)				
1	This Consortium Member	Cash costs for own work commitments	\$	\$
2	This Consortium Member	Existing Background IP commitments to the Project	\$	\$
Subtotal: Estimated cost of own work			\$	\$
Costs for work performed by other Consortium Members				
3	Other Consortium Members	Payment to [other Consortium Member] for [Deliverable or Service Commitment] to be paid according to Payment Terms outlined in Miscellaneous below	\$	\$
4	<i>Repeat as required</i>		\$	\$
Subtotal: Estimated costs for work performed by other Consortium Members			\$	\$
Total Estimated Project Costs			\$	\$

Table B-3. Funding Sources for Project Commitments

Organization	Description and Funding Terms	Estimated Funding Amounts
This Consortium Member	Internally funded as work is performed, and costs are incurred	\$
From Other Consortium Member(s) <i>[insert rows as necessary]</i>	Internally funded [as per Payment Terms]	\$
Supercluster	As per Supercluster Payment Terms outlined in Schedule A	\$
Third-Party Funding Sources (e.g. Mitacs, NRC)	<i>[Describe any funding parameters or conditions here]</i>	\$
Total Funding Sources		\$

RESOURCE COMMITMENTS

Table B-4. Resource Commitments

Item	Description
Lead Representative	<i>[Identify the lead representative and list any other employees who will perform work on the Project]</i>
Personnel	<i>[List key personnel that are confirmed to work on the Project]</i>
Subcontractors and Contract Personnel	<i>[Identify any subcontractors and contract personnel that will be used and whether it is a specific subcontractor or qualified through tender.]</i>

Item	Description
Existing Background IP contributions	<i>[Describe the existing Background IP that will contributed towards the Project – specifically, the nature of the contribution, the duration of use during the Project]</i>

MISCELLANEOUS

[Any other additions or references for the Statement of Work including payment terms for any funding provided to other Consortium Members]

APPROVAL

This SOW is approved upon the execution of the Agreement or as an amendment to the Agreement. Any modifications to this SOW will be done through a Change Order approved by the Steering Committee.

SOW #2 – [Consortium Member]

[Repeat SOW Section above as necessary for each Consortium Member (except the Supercluster)]

SCHEDULE C GOVERNANCE AND REPORTING

TEMPLATE GUIDANCE (remove from the final agreement)

- Schedule C should be considered in conjunction with Articles 3, 4, and 5. The MPA outlines terms of reference for the (1) steering committee and (2) other structures in the governance model, and outlines (3) Project reporting requirements.
- Schedule C consists of additional terms that define how the Project will be run as well as confirming reporting requirements.
- The Consortium is expected to supplement the governance requirements with their own governance terms of reference. The Supercluster can provide sample terms of reference which the Consortium can adapt for their project. In developing the Governance Terms of Reference, the following principles must be adhered to:
 - the governance and reporting structure must be fair to all of the Consortium Members.
 - the Mandatory Terms of Reference and Reporting Requirements must remain intact and cannot be amended.

1) TERMS OF REFERENCE

(a) Governance Terms of Reference. The Governance Terms of Reference must address the following:

- i) The appointment of the Chair and their role
- ii) Representation on the Steering Committee
- iii) Frequency of meetings and special meetings
- iv) Quorum and Voting Requirements (the voting requirements must make it clear that each Consortium Member gets one vote)
- v) Voting Process and breaking ties
- vi) Conflicts of Interest
- vii) Communication between Consortium Members

(b) Timeline for Developing Terms of Reference. The Governance Terms of Reference must be agreed upon within thirty (30) days from the date of execution of the MPA and must accommodate the Mandatory Terms of Reference set out in (c) below.

(c) Mandatory Terms of Reference. The following requirements in (i) and (ii) must be accommodated in the Governance Terms of Reference and in the event of a conflict between the following terms and the Governance Terms of Reference, the following terms will prevail:

- i) Major Proposals (as defined below) may only be decided by the Steering Committee by meeting or exceeding a 2/3rds majority vote of the Steering Committee representatives who are present and must be approved by the Supercluster, Such approval must be in writing when the Supercluster does not attend the Steering Committee meeting where the Major Proposal is considered.

Votes related to the following Steering Committee matters are considered Major Proposals:

- Change Orders that have an estimated monetary value in excess of \$ [note value to be determined by the Consortium];
- Change Orders that modify the scope or a deliverable in a way that significantly affects more than a single Consortium Member's work product;
- Termination of any Consortium Member in accordance with Article 9.02 (Termination of a Consortium Member);
- Resolution of Disputes in accordance with Article 10.02 (Dispute Resolution Process); and
- Requiring replacement of the Steering Committee representative or Project Manager.

ii) The Steering Committee may not compel any Consortium Member, including the Supercluster, to undertake a financial expenditure or incur a liability to which the Consortium Member objects and has not previously agreed to in either their Statement of Work or another legal instrument.

2) PROJECT REPORTING

In addition to the reporting requirements outlined in Section 5.02 (Reporting Requirements), and the reports as described below, the Project Lead may be required to provide other information as the Supercluster may reasonably request. The Project Lead will ensure the timely and accurate completion of the following reports. The Supercluster will provide reporting templates as appropriate.

- (a) Monthly Project Status Reports: Provides high-level updates on the current state of the Project. This report is to be submitted to the Supercluster within 15 days after the end of each Project month. No report is expected for the last month of the Milestone period. The Monthly Project Status Report will include at least:
- i) a summary of the Project's performance and achievements during the last month, including any missed Deliverables or service commitments;
 - ii) a summary of the Project planned work against Project Deliverables and service commitments for the upcoming month.
 - iii) a forecast on whether planned Deliverables, service commitments and financial targets will be achieved as planned for the current and/or future Milestone period; a summary of any material issues, risks or changes that may impact the ability of the Consortium Members to meet their Project commitments and achieve the Project outcomes as well as a brief description of the corresponding corrective action to be taken and by when;
 - iv) highlight any key opportunities or unexpected learnings/findings and their impact on the Project; and
 - v) an overall assessment of the Project health.
- (b) Milestone Report: Confirms the completion of work and activities for Deliverables and service commitments during the agreed Milestone period of the Project and provides a plan and financial forecast for the balance of the Project. This report is to be submitted to the Supercluster within 30 days after the end of each Milestone period. The Milestone Report will include at least:

- i) a summary of progress of work and activities for each of the Project Deliverables and other service commitments within the Milestone period;
 - ii) the actual costs incurred by the Consortium Members for the work and activities for their Deliverables and service commitments during the Milestone period (actuals vs budget/forecast);
 - iii) a summary of approved and pending Changes to the Project or to the service, financial or resource commitments by any of the Consortium Members;
 - iv) any changes to the timing for Deliverables, the Project schedule and a financial forecast for the balance of the Project; and
 - v) completion of a Project KPI (key performance indicator) scorecard
- (c) IP Disclosure Form: Outlines what Foreground IP has been generated and is to be submitted to the Supercluster 30 days after the generation of the IP or within five (5) days from the date of a request for such IP Disclosure Form by the Supercluster. This report will include at least:
- i) name of the Foreground IP;
 - ii) a short description of the actual Foreground IP that is generated;
 - iii) the owner of the Foreground IP;
 - iv) the type of protection that will be sought for the Foreground IP and that exists by operation of law;
 - v) the licensing condition under which the owner is prepared to issue licenses for this Foreground IP;
 - vi) details of any licenses granted in respect of the Foreground IP;
 - vii) a contact person that potential licensees can approach for any inquiries;
 - viii) an accurate summary of the information required by Section 7.02 of the MPA which can be considered by the Supercluster for inclusion in the IP Registry;
 - ix) all other information regarding the Foreground IP reasonably requested by the Supercluster or which the Supercluster is otherwise entitled to receive under this Agreement.
- (d) Project Lead's obligations related to IP: On the Supercluster's request, the Project Lead will provide the Supercluster with a list of all Foreground IP and all information required by the preceding section.
- (e) Final Project Report: Confirms the completion of the Project and provides an overview of the Project accomplishments. The Final Report is to be submitted to the Supercluster within 30 days of the completion of all Project Deliverables during the

last Milestone period, and in advance of the last payment of Supercluster Funds. The Final Report must include at least:

- i) a summary of performance against the Project's planned goals and objectives including Project Scope, Project Outcomes and Deliverables in Schedule A;
 - ii) a financial summary comparing actual Project costs and funding sources to the originally approved Project budget;
 - iii) a summary of approved Changes to the Project plan or to the composition of the Project consortium;
 - iv) a summary of Foreground IP created;
 - v) a summary of realized and expected Project benefits and impacts including capacity building, ecosystem benefits, and/or commercialization activities; and
 - vi) completion of a Final Milestone Report.
- (f) Project Impact Monitoring Report: an annual update to the Project KPI scorecard will be requested for up to 4 years to monitor Project outcomes and impacts and support program performance reporting for the Supercluster and other stakeholders. This report is to be submitted to the Supercluster by February 28 each year following the Project completion unless the Supercluster specifies another date for its submission. The Project Impact Monitoring Report will include at least a summary of continued effort on the Consortium Members including the achievement of medium- and long-term goals and Project outcomes;
- (g) an update on commercialization of Project Deliverables, Foreground IP (products and solutions) and commercialization activities;
- (h) completion of a Project KPI (key performance indicator) scorecard (including job creation and additional IP generation)

**SCHEDULE D
INTELLECTUAL PROPERTY AND DATA AS AN ASSET**

TEMPLATE GUIDANCE (remove from the final agreement)

- Schedule D outlines the Project IP rationale. It provides a framework outlining IP management for the Project and the terms of use of any background Data required for use by a Consortium Member to create a Deliverable or Data that is generated as part of the Deliverables and can be used to achieve commercialization benefits.
- When completing Schedule D, it is important for each of the Consortium Members to:
 - Consider **Foreground IP** (please see definition in Article 1). In particular:
 - succinctly and accurately describe what IP each of the Consortium Members will be developing during the Project. It is expected that such description would be between three to seven sentences.
 - who will own the Foreground IP (will the Consortium Member developing it own it, will it be jointly owned, will the rights in the Foreground IP be assigned to another Consortium Member)?
 - what form of license will be made available for the other Consortium Members during the Project?
 - it is important for the Consortium Members to start considering how the Foreground IP will be licensed and commercialized in Schedule F (Commercialization Term Sheet)
 - Consider when it would make sense to have a commercial license agreement executed for the purposes of Section 2(a) below (this will need to be agreed upon with the Supercluster as well)
 - Consider **Background IP** (please see definition in Article 1) that each of the Consortium Members will require access to in order to achieve the Project objectives. It is expected that such description would be between two to five sentences. Typically, there is a license to such Background IP at least for the purposes of the Project and potentially thereafter for the commercialization of the Foreground IP (if required).
 - **Ecosystem Leverage** requires the Consortium Members to identify opportunities for other Supercluster Members to build upon the Project outcomes and Foreground IP.
 - Consider whether **open source** will be used for any part of the Project and if so, understand what the open source is and what implications, if any, that it might have for each Consortium Members IP.

(1) DESCRIPTION, OWNERSHIP AND PROTECTION OF EXPECTED FOREGROUND IP

- (a) **Summary of Expected Foreground IP.** The Scope, including the solution architecture and specific Deliverables are outlined in Schedule A (Project Approval) of this Agreement. The Consortium Members contributing to each of the Deliverables is outlined in their respective SOWs. This table summarizes where the creation of Foreground IP is expected along with ownership assignment obligations and protection. Foreground IP that does not have a specified assignment obligation outlined in the table below remains owned by the creator of the Foreground IP in question. When appropriate, Consortium Members will explore copyright, trademark, trade secret and patent protection for Foreground IP on a case by case basis.

Expected Foreground IP	Expected Protection
List by [Deliverable]OR [Consortium Member]	
<ul style="list-style-type: none"> No new Foreground IP expected 	<ul style="list-style-type: none"> N/A
List by [Deliverable] OR [Consortium Member]	
<ul style="list-style-type: none"> New Foreground IP expected in the area of • New foreground IP will be owned by / assigned to • 	<ul style="list-style-type: none"> (specify copyright, potential patents, trade secrets)

- (b) **Title and Rights.** The creator of Foreground IP owns the Foreground IP, subject to assignment obligations governed in the table found in Schedule D, Section 1(a). In the case of Foreground IP that has been assigned to another Consortium Member, all title and rights to that Foreground IP shall belong solely to that Consortium Member. Therefore, that Consortium Member shall have the exclusive rights to use and exploit, including the right to grant licenses for any application, as well as the right to make, have made, reproduce, use, have used, sell, have sold, offer to sell and import products related to its Foreground IP.
- (c) **Disclosure.** The Consortium Members agree to promptly, on an on-going basis and in no event later than 90 days from the generation of Foreground IP, to disclose to the others any Foreground IP made or conceived in connection with the Project by or on behalf of them or jointly. This includes Foreground IP not contemplated in the chart above.
- (d) **Patent Protection.** Where a Consortium Member (“the Patenting Consortium Member”) intends to file for patent protection for an invention, the other Consortium Members as needed shall provide assistance and support as reasonably required by the Patenting Consortium Member and execute or have executed and deliver to the Patenting Consortium Member any assignment or documents the Patenting Consortium Member may deem necessary or desirable to obtain or maintain the patent. The Patenting Consortium Member shall reimburse the other Consortium Members for any costs they incur in connection with such assistance and support.

(2) LICENSING OF IP AFTER THE END OF THE PROJECT

After the end of the Project, each Consortium Member, excluding the Supercluster, each will grant to each other Consortium Member:

- (a) a license to its Foreground IP on fair, reasonable and non-discriminatory terms, subject to relevant competitive issues, at least for training, teaching and research purposes. Each Consortium Member who is a licensee or licensor of Foreground IP under this Section will ensure that a license agreement is executed within [x] months from the Effective Date and effective on or before the date the Project ends, and includes all terms and conditions relevant to the license grant included in Schedule F. Such license agreement will be deemed to be the Confidential Information of the Consortium Members which are parties to such license agreement. Each Consortium

Member that is a party to such license agreement will ensure an executed copy is provided to the Supercluster promptly after it is executed; and

- (b) a license to its Background IP that is reasonably necessary for each other Consortium Member to exercise its rights under the license granted in accordance with Section (a) (above) and such license will, subject to relevant competitive issues, also be granted on fair, reasonable and non-discriminatory terms.

(3) ACCESS TO BACKGROUND IP

- (a) **Background IP for the Purposes of the Project.** Where there is Background IP that a Consortium Member requires for the purposes of the Project then such Background IP and associated terms of use will be recorded in the table below and will reflect what is necessary for each other Consortium Member to perform its obligations under this Agreement. If this changes as the Project progresses this table will be updated.

Background IP	Terms of Use
[Consortium Member]	
<ul style="list-style-type: none"> • <i>[A precise definition of the Background IP in question include patent numbers if applicable]</i> 	<ul style="list-style-type: none"> • <i>[Outline terms of use within the project and any license requirements for use in activities after the Project is complete]</i>
[Add rows as required]	

- (b) **Sub-Licensing.** Except as explicitly provided herein, no Consortium Member may grant sublicenses under any license granted under this Agreement.
- (c) **Licensing of Background IP after the Project.** Each Consortium Member shall grant access to all other Consortium Members, on fair, reasonable and non-discriminatory (FRAND) terms and subject to relevant competitive issues, to all of the Consortium Member’s Background IP to the extent a license to such Background IP is required to support commercialization of the Foreground IP and as otherwise necessary for other Consortium Members to exercise their rights to Foreground IP.

(4) ACCESS TO PROVIDED DATA, DESCRIPTION OF COLLECTED DATA, OWNERSHIP AND TERMS OF USE

TEMPLATE GUIDANCE (remove from the final agreement)

- Consider what data (Provided Data) each of the Consortium Members will require access to in order to achieve the Project commercialization objectives. Typically, there is a license to such Provided Data at least for the purposes of the Project and potentially thereafter for the commercialization of Foreground IP and Collected Data (as hereinafter defined).
- It is important for the Consortium Members to start considering how Data will be licensed and commercialized in Schedule F (Commercialization Term Sheet).
- With respect to Data consider whether:
 - there are any obligations around protecting or using the Data;
 - there are any warranties associated with the Data.

- (a) **Provided Data.** The following is a description of the pre-existing data belonging to one Consortium Member (“Provided Data”) that other Project Consortium Members will require access to in order to produce their Project deliverables or sustain their technology development and commercialization objectives. If this changes as the Project progresses, then the description of Provided Data and terms of use will be amended in the table below.

Provided Data	Terms of Use
[Consortium Member]	
<ul style="list-style-type: none"> • <i>[A precise definition of the Provided Data in question]</i> 	<ul style="list-style-type: none"> • <i>[Outline terms of use within the Project and any license requirements for use in activities after the Project is complete]</i>
<i>[Add rows as required]</i>	

- (b) **Collected Data.** The following is a description of the data that is expected to be collected or generated by a Consortium Member as a result of participation in the Project (“Collected Data”). The following is a description of expected Collected Data and who it will be owned by. If this changes as the Project progresses, then the description of Collected Data and/or the ownership of such Collected Data will be amended in the table below.

Collected Data	Ownership
[Consortium Member]	
<ul style="list-style-type: none"> • <i>[A precise definition of the Collected Data expected to be generated]</i> 	<ul style="list-style-type: none"> • <i>[Define which Consortium Member will own it]</i>
<i>[Add rows as required]</i>	

- (c) **General Licensing.** After the end of the Project, Consortium Members shall grant access to all Collected Data to other Consortium Members, on fair, reasonable and non-discriminatory (FRAND) terms and subject to relevant competitive issues, at least for internal R&D purposes.
- (d) **Research Rights.** After the end of the Project, Consortium Members shall grant to each Consortium Member an irrevocable, non-exclusive, royalty-free license and right to use the Collected Data only for non-commercial training, teaching and research purposes, subject to relevant competitive issues, confidentiality obligations and the restrictions on publications in Section 8.11 (Publication).
- (e) **Sub-Licensing.** Except as explicitly provided herein, no Consortium Member may grant sublicenses under any license granted under this Agreement.
- (f) **Consents.** Each Consortium Member providing access to and rights of use in relation to data to other Consortium Members shall be responsible for ensuring that they have the rights to use the data, including all necessary consents or other lawful grounds for processing, for the purposes of the Project and for granting access and use rights to other Consortium Members as contemplated.

(5) ECOSYSTEM LEVERAGE

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

#	Member	Potential Interest
Customers		
	<i>[Member name]</i>	<i>[describe potential interest]</i>
	<i>[Add rows as required]</i>	
Delivery Partners (Application Developers or Suppliers)		

#	Member	Potential Interest
	[Member name]	[describe potential interest]
	[Add rows as required]	
Research Organizations		
	[Member name]	[describe potential interest]
	[Add rows as required]	

SCHEDULE E PROJECT DATA MANAGEMENT

TEMPLATE GUIDANCE (remove from the final agreement)

- In Schedule E, the Consortium is expected to describe their approach to the data management elements outlined below.
- Descriptions should provide an assurance that additional innovation potential can be secured through data exchanges.
- Consortium Members may wish to consider what data they might be bringing to the table for the purposes of the Project and whether local residency is required for the data.
- Consortium Members should consider what legal requirements are relevant for their data management (ex. Privacy Laws, Disclosure requirements for cyber events.)

(1) DATA PRIVACY COMPLIANCE

(a) Guiding Principles

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

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

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

(b) Data Privacy Compliance

Consortium members will adopt policies and practices which ensure that they comply with legal requirements that are relevant to their business and that they otherwise adhere to the Guiding Principles above.

(2) DATA SECURITY

(a) Guiding Principles

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

- i) encryption, de-identification of data, user authentication, access controls and relevant auditing processes with a higher degree of diligence when dealing with sensitive data such as personal data (including health and medical data) and financial data;
- ii) the implementation of backup systems and business continuity measures;
- iii) up-to-date protection against any anticipated threats or hazards to the security or integrity of the Project;
- iv) protection against any unauthorized access, use, disclosure, accidental or unlawful alteration, loss or destruction of certain data; and
- v) incident management protocols to deal with data breaches including containment, stakeholder notification and corrective actions based on the results of incident investigations.

(b) Data Security

Consortium members will adopt policies and practices which ensure that they adhere to the Guiding Principles above.

(3) DATA STEWARDSHIP

(a) Guiding Principles

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

- i) requirements that data is collected for specified, explicit and legally authorized purposes with any required permissions, consent and usage rights confirmed with the data owner;
- ii) data quality protocols that ensure data remains relevant, accurate and up to date;
- iii) a tool validation process that ensures the software tools are adequately configured;
- iv) requirements related to data ownership, traceability, and lifecycle management including the proper and secure disposal of certain data; and
- v) requiring that all permitted subcontractors of the Consortium Members or third-party tools employed by the Consortium Members are bound by the same

standard of care as the Project Participants and have been subjected to appropriate due diligence with respect to their privacy and security measures for data.

(b) **Data Stewardship**

Consortium members will adopt policies and practices which ensure that they adhere to the Guiding Principles above.

(4) **DATA EXCHANGE**

(a) **Guiding Principles**

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

- i) globally unique and persistent identifiers;
- ii) data retrieval of data by their identifiers using standardized communication protocols;
- iii) determination of rights, with controls to ensure access is limited appropriately;
- iv) a metadata framework that permits data assets to be classified and filtering out competitively sensitive or confidential information; and
- v) clear and accessible data usage licenses.

(b) **Data Exchange**

Consortium members will adopt policies and practices which ensure that they adhere to the Guiding Principles above.

**SCHEDULE F
COMMERCIALIZATION TERM SHEET**

TEMPLATE GUIDANCE (remove from the final agreement)

- In Schedule F, the Consortium is expected to describe their current expectations around how they might commercialize the Project Outcomes.
- The descriptions below are non-binding and reflect the Consortium Members' current understanding of how the Project Outcomes including the IP can be commercialized. However, the Consortium Members should give serious consideration to the points below as they may help to frame how the Project may be carried out.

The following is an outline of the Consortium Members' current expectations and understanding of commercialization activities related to the Project outcomes and is subject to change at any time.

This Term Sheet does not create or otherwise create any obligation to consummate the arrangements contemplated herein. Any binding obligations shall only arise when a definitive agreement is executed.

(1) DESCRIPTION AND ORGANIZATIONAL ROLE IN EXPECTED COMMERCIAL MODEL

Describe which organizations will be commercializing the solution(s) being developed in this Project. Please also describe the role of each of these organizations in the expected commercial model.

(2) DESCRIPTION OF DERIVED COMMERCIALIZATION REVENUE

Describe which of the Consortium Members will derive revenue from commercializing the solution and how will this revenue be generated.

(3) DESCRIPTION, OWNERSHIP AND LICENSING OF IP

If there will be any IP which is expected to be licensed to other Consortium Members after the end of the Project, please describe the expected licensing arrangements including (a) what specific IP will be licensed and to whom; (b) what are the expected license terms including the license fee structure (for example flat fee/ per use royalty)

(4) DESCRIPTION, OWNERSHIP AND FEE STRUCTURE OF DATA

If any data generated during the project will be made available for use by other Consortium Members after the end of the Project please describe the sharing arrangements below including: (a) who will be making data available and to whom (b) describe the data that will be made available (c) describe the fee structure that will be charged for use of this data (e.g. flat fee/per use royalty).

(5) DESCRIPTION OF CONSORTIUM MEMBER EXCLUSIVE ARRANGEMENTS

If there are any exclusive arrangements being contemplated by the Consortium Members, please describe them below: