

This Unanimous Members' Agreement made effective as of the 7<sup>th</sup> July 2023 and as amended on 19<sup>th</sup> October 2023.

**AMONG:** **CANADA'S OCEAN SUPERCLUSTER**, a corporation under the *Canada Not-for-Profit Corporations Act*, (hereinafter called the "**Corporation**")

**Of the first part**

**AND:** Those Persons whose names appear in Schedules "A" and "B" appended hereto (the "**Current Members**" and each, a "**Current Member**")

**Of the second part**

**AND:** Any other person, who after the date of this Agreement becomes a member of the Corporation in accordance with and pursuant to this Agreement (including without limitation the requirements of Article 3).

**Of the third part**

**WHEREAS** the mission of the Corporation is to build Canada's ocean economy into one of the most innovative, sustainable and profitable segments of the national economy. It will foster co-investment in high value ocean innovations that are based on industry defined shared requirements. It will work with collaborators to build capability and capacity throughout the ocean economy. It will promote an integrated oceans community by connecting ocean-related firms and organizations from across different value chains and by building stronger links between ocean industries and those firms and organizations developing, providing and enabling innovations;

**AND WHEREAS** the Corporation will participate in the Innovation Superclusters Initiative, administered by Innovation, Science and Economic Development Canada;

**AND WHEREAS** the Members of the Corporation have agreed, by affixing their signature to this Agreement or pursuant to Article 3.6 below, to enter into this Agreement to define their rights as Members of the Corporation and to regulate the organization and operation of the Corporation;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that for and in consideration of the mutual covenants and agreements hereinafter contained, the Parties hereby covenant and agree with each other as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

For the purposes of this Agreement, the following terms shall have the meanings as set forth below:

- (a) "**Act**" means the *Canada Not-for-Profit Corporations Act*, S.C. 2009, c. 23, as from time to time amended and every statute that may be substituted therefore and in the case of such substitution any reference in this Agreement to provisions of the Act shall be read as references to the substituted provisions thereof in the new statute;

- (b) **“Administration Activities”** means activities relating to and supporting the day-to-day business operations of the Corporation which are not directly attributed to a TL Project or TL Program;
- (c) **“Administration and Innovation Ecosystem Activities Budget”** shall have the meaning attributed to it in Section 5.1(a) hereof;
- (d) **“Affiliate”** means an affiliated body corporate as determined pursuant to the Act;
- (e) **“Aggregate Cash Contribution”** means the aggregate amount of the Cash Contributions of all Members;
- (f) **“Agreement”** means this Members Agreement;
- (g) **“Annual Plan”** is a plan and associated budget for operations and research and technology development activities of the Corporation, including Administration Activities, TL Programs, TL Projects and Innovation Ecosystem Activities, which plan and budget shall consider the amount of payments anticipated to be received during the period covered by the Annual Plan, and, for greater certainty, shall include all commitments for such period relating to TL Programs and TL Projects approved in prior years;
- (h) **“Annual Report”** shall have the meaning attributed to it in Section 5.1(h) hereof;
- (i) **“Arbitration Act”** means the *Arbitration Act*, R.S.N.L. 1990, c. A-14, as from time to time amended and every statute that may be substituted therefore;
- (j) **“Arbitration Notice”** shall have the meaning attributed to it in Section 10.1(c) hereof;
- (k) **“Articles”** means the Articles of Incorporation of the Corporation;
- (l) **“Associate Member”** or **“Associate Members”** means parties who are from time to time Associate Members of the Corporation as defined in the By-Laws;
- (m) **“Background Intellectual Property”** means the Intellectual Property rights developed prior to the beginning of a TL Project and required for the carrying out of a TL Project or for the exploitation of the Foreground Intellectual Property;
- (n) **“Board of Directors”** means the Board of Directors of the Corporation elected or appointed in accordance with the provisions hereof;
- (o) **“By-Law”** or **“By-Laws”** means the by-laws of the Corporation in force from time to time;
- (p) **“Cash Contribution”** shall have the meaning attributed to it in Section 3.4 hereof;
- (q) **“Change of Control”** means:
  - (i) For profit corporations:
    - (A) if a public company, the acquisition by an individual or company (or two or more of them acting in concert) that results in its or their direct

- or indirect beneficial ownership of 20% or more of outstanding shares of voting stock of the company;
- (B) if a private company, the acquisition by an individual or company (or two or more of them acting in concert) that results in its or their direct or indirect beneficial ownership of 50% or more of the voting shares in the company; or
  - (C) if a company enters into a binding obligation to sell, sells or otherwise disposes of all or substantially all of its assets; and
- (ii) For not-for-profit corporations, the acquisition, directly or indirectly, by a Person (or two or more Persons acting in concert) that results in their controlling 50% or more of the voting membership units in the not-for-profit corporations.
- (r) **“Class” or “Classes”** means the class(es) of Members, as established by the By-Laws;
  - (s) **“Confidential Information”** means information which derives value from not being generally known to or readily ascertainable by other parties who can obtain value from its disclosure or use and is known or used by a party in connection with its business, including but not limited to any formula, design, prototype, compilation of information, data, program, code, method, technique or process, information relating to any product, device, equipment or machine, present and future, information about or relating to the party’s potential business ventures, financial information of all kinds relating to the party and its activities, all inventions, ideas, and related material, but does not include any of the foregoing which is or becomes a matter of public knowledge, has been received in good faith from a third party having legitimate possession of the information disclosed and the right to make such disclosure, was in the legitimate possession of a party prior to disclosure, has been approved for disclosure by express written approval of the applicable party, or has been disclosed pursuant to a legal requirement;
  - (t) **“Contributed Funding”** means, with respect to each Member, the aggregate amount of such Member’s Cash Contribution;
  - (u) **“Contribution Agreement”** means the agreement to be entered into between the Corporation and Innovation, Science and Economic Development Canada setting out the terms, conditions, obligations or understandings of both with respect to GIC Funding;
  - (v) **“Corporation Group”** shall have the meaning attributed to it in Section 7.1(d)(xxiii)(C) hereof;
  - (w) **“Default”** shall have the meaning attributed to it in Section 9.1 hereof;
  - (x) **“Defaulting Member”** shall have the meaning attributed to it in Section 9.1 hereof;
  - (y) **“Deficiency”** shall mean the amount, if any, by which, in respect of any Fiscal Year, the actual expenditures incurred by the Corporation in respect of Administration Activities and Innovation Ecosystem Activities exceed the Administration and

Innovation Ecosystem Activities Budget of the Corporation, as shown in the Annual Report;

- (z) **“Deficit”** shall have the meaning attributed to it in Section 9.2(d) hereof;
- (aa) **“Director”** or **“Directors”** means the Director or Directors, as the case may be, of the Corporation as appointed or elected pursuant to the provisions hereof;
- (bb) **“Documents”** shall have the meaning attributed to it in Section 5.2(b) hereof;
- (cc) **“Eligible Industry Member”** or **“Eligible Industry Members”** means parties who are from time to time Eligible Industry Members of the Corporation as defined in the By-Laws;
- (dd) **“Fiscal Year”** means the financial year of the Corporation as set out in the By-Laws, being March 31<sup>st</sup> unless changed by an Ordinary Resolution of the Directors;
- (ee) **“Foreground Intellectual Property”** means all Intellectual Property conceived, produced, developed, or reduced to practice and carrying out a TL Project by the Corporation, Participants or any of their employees, agents, contractors or assigns and all rights thereto, but does not include Background Intellectual Property, as defined in this Agreement;
- (ff) **“GIC”** means the Global Innovation Clusters administered by Innovation, Science and Economic Development Canada to help accelerate growth in highly innovative industries in Canada;
- (gg) **“GIC Funding”** means funding received through the GIC;
- (hh) **“GIC Funding Cap”** means the aggregate maximum amount of GIC Funding available to the Corporation pursuant to the GIC;
- (ii) **“Indemnifying Participant”** shall have the meaning attributed to it in Section 7.1(d)(xxiii)(B) hereof;
- (jj) **“Industry Members”** means the Investing Industry Members and the Eligible Industry Members, and **“Industry Member”** means any one of them;
- (kk) **“Industry Member Audit”** shall have the meaning attributed to it in Section 5.3(a) hereof;
- (ll) **“Innovation Ecosystem Activities”** means research and technology development activities and other activities as approved in the Annual Plan from time to time, such as, but not limited to, calls for proposals, joint industry project scoping and initiation activities, workshops, mentoring and feasibility studies;
- (mm) **“Intellectual Property”** means all inventions, whether or not patented or patentable, all commercial and technical information, whether or not constituting trade secrets, and all copyrightable works, industrial designs, integrated circuit topographies and distinguishing marks or guises, whether or not registered or registerable;

- (nn) **“Intellectual Property Manager”** means an employee of the Corporation responsible for assisting the Corporation and Members in identifying and maximizing the opportunities for all Members to develop, protect, commercialize and share Intellectual Property and fulfill the obligations set out in Section 8.2;
- (oo) **“Intellectual Property Strategy”** means the strategy described in Section 8.2(a) of this Agreement;
- (pp) **“Interim Budget”** means a budget of the Corporation for a fiscal year which is limited to and only includes the funding required, on an interim basis, to perform the Administrative Activities of the Corporation, the Innovation Ecosystem Activities to which the Corporation is, at the time of implementation of the Interim Budget, committed and all commitments for such period relating to TL Programs and TL Projects approved in prior years and in respect of which sufficient funding has been received and is being held by the Corporation;
- (qq) **“Investing Industry Member”** or **“Investing Industry Members”** means parties who are from time to time Investing Industry Members of the Corporation as defined in the By-Laws;
- (rr) **“Joinder Agreement”** means the agreement of a Member to ratify, intervene and agree to be bound by the terms and conditions of the Members’ Agreement, such agreement to be executed in a form as may be determined by the Corporation;
- (ss) **“Joint Committee”** shall have the meaning attributed to it in Section 10.1(a) hereof;
- (tt) **“Late Member”** shall have the meaning attributed to it in Section 3.3 hereof;
- (uu) **“Member Group”** shall have the meaning attributed to it in Section 7.1(d)(xxiii)(D) hereof;
- (vv) **“Members”** means the the Industry Members and the Associate Members, and for greater certainty includes any Late Member, and **“Member”** means any one of them;
- (ww) **“Minister”** means His Majesty the King in the Right of Canada as represented by the Minister of Industry;
- (xx) **“Nomination Committee”** shall have the meaning attributed to it in Section 4.1(c).
- (yy) **“Ordinary Resolution”** has the meaning set out in the By-Laws;
- (zz) **“Participant Group”** shall have the meaning attributed to it in Section 7.1(d)(xxiii)(A) hereof;
- (aaa) **“Participants”** means those entities which participate in and/or contribute funding to a particular TL Project and which are parties to a TLP Agreement with the Corporation in respect of a TL Project and which must be Investing Industry Members;

- (bbb) **“Parties”** means the various parties to this Agreement (including any Late Member) and their successors and assigns as permitted under this Agreement and **“Party”** means any one of them;
- (ccc) **“Person”** means an individual, a partnership, a corporation, a company, a trust, an unincorporated organization, a union, a government or any department or agency thereof and heirs, executors, administrators or other legal representatives of any individual and other words importing persons having a similar meaning;
- (ddd) **“Program and Project Selection Guidance Document”** has the meaning attributed thereto in the By-laws;
- (eee) **“Proportionate Share”** means the Cash Contribution of an Investing Industry Member divided by the Aggregate Cash Contributions of all Investing Industry Members;
- (fff) **“Required Terms”** shall have the meaning attributed to it in Section 7.1(e) hereof;
- (ggg) **“Rules”** shall have the meaning attributed to it in Section 10.1(e) hereof;
- (hhh) **“Special Resolution”** has the meaning set out in the By-Laws;
- (iii) **“TL Programs”** means technology leadership programs that are thematic areas of interest Members have identified as priorities for investment to address shared requirements, challenges or capabilities currently limiting the growth, sustainability, competitiveness, and productivity of Canada’s ocean economy. TL Programs may receive a budget allocation based on an identified amount of co-investment by Investing Industry Members and an identified amount of matching funds from the Corporation;
- (jjj) **“TL Projects”** means collaborative technology leadership projects that enhance the productivity, performance and competitiveness of Members, such as collaborative research and development, demonstration or prototype development, development of production methods and processes, or private sector led commercialization projects to which the Corporation provides facilitation and project management services and to which the Corporation may provide funding;
- (kkk) **“TLP Agreement”** shall have the meaning attributed to it in Section 7.1(d) hereof;
- (lll) **“UNCITRAL”** shall have the meaning attributed to it in Section 10.1(e) hereof; and
- (mmm) **“Windup Costs”** shall have the meaning attributed to it in Section 5.1(i) hereof.
- (nnn) **“2023 Amendment Certificate”** means the confirmation provided to the Corporation by Corporations Canada pursuant to the *Canada Not-for-profit Corporations Act* that the Corporation’s application to amend its articles has been approved.

**1.2. Interpretation**

- (a) The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
- (b) Unless the context otherwise requires, words importing the singular number only shall include the plural and vice versa; words importing the masculine gender shall include all genders.
- (c) Any accounting terms not defined in this Agreement shall have the meanings generally ascribed to them in accordance with Canadian generally accepted accounting principles, applied consistently.

**1.3. Conflict**

- (a) If any conflict shall appear between the Articles or the By-Laws and the provisions of this Agreement, then this Agreement, so long as not contrary to the applicable legislation, shall prevail and govern rather than the provisions of such Articles or the By-Laws. The Members acknowledge having reviewed the By-Laws as of the date hereof.
- (b) A resolution of the Directors or the Members, as applicable, shall not be valid unless it complies with the provisions of this Agreement.

**ARTICLE 2  
IMPLEMENTATION OF AGREEMENT**

**2.1. Member to Vote**

Each of the Members covenants and agrees that it will vote or cause to be voted its membership in the Corporation to the extent applicable, and each Party covenants and agrees that it shall otherwise exercise its power, to accomplish and give effect to the terms and conditions of this Agreement. The Corporation covenants and agrees that to the full extent that it has the capacity and power to do so, it will carry on its business and operations in accordance with the provisions of this Agreement and take no action which would constitute a contravention of any of the terms or provisions hereof.

**2.2 Termination of Previous Agreement**

This Agreement replaces the previous Unanimous Members' Agreement made effective as of the 29<sup>th</sup> day of January 2019, which was terminated by special resolution. This Agreement shall become effective as of the date of the 2023 Amendment Certificate.

**ARTICLE 3  
MEMBERS**

**3.1. Industry Membership**

- (a) The Parties hereby agree that the current Industry Members of the Corporation as of the date hereof are those Persons listed in Schedule "A" attached hereto.

### 3.2. **Associate Membership**

- (a) The Parties hereby agree that the current Associate Members of the Corporation as of the date hereof are those Persons listed in Schedule "B" attached hereto.

### 3.3. **Late Members**

- (a) Any Person wishing to participate as a Member after the date of this Agreement (a "**Late Member**") shall make an application to the Corporation in writing, in a form to be determined by the Corporation. A Late Member shall be accepted provided that:
  - (i) the Person meets all of the requirements of being a Member as set out in the Articles and By-Laws and this Agreement; and
  - (ii) the Person confirms its acceptance to become a party and be bound by this Agreement in the form of the Joinder Agreement.
- (b) Each Late Member shall enjoy and be subject to the same rights and obligations as the other Members, effective from the date of the Late Member becoming a Member with the Corporation, and by virtue, a party to this Agreement.

### 3.4. **Investing Industry Membership Funding Requirements**

- (a) In addition to meeting the eligibility requirements set out in the By-laws for Investing Industry Members, the Parties agree, as a condition of Investing Industry membership, that each Investing Industry Member shall contribute to the Corporation, a mandatory cash contribution in an amount equal to 12.75%, or such other amount as approved by Special Resolution of the Board of Directors, subject to Section 3.4(b), of any funds advanced by the Corporation to such Investing Industry Member, pursuant to the terms and conditions of any TLP Agreement to which such Investing Industry Member is a Participant (the "**Cash Contribution**").
- (b) For greater certainty, any change to the Cash Contribution made by Special Resolution of the Board of Directors in accordance with Section 3.4(a) will only be applied to TLP Agreements entered into after the date of the Special Resolution of the Board of Directors authorizing the change. Notwithstanding the foregoing, the Cash Contribution shall not exceed an amount equal to 15% of any funds advanced by the Corporation to an Investing Industry Member, pursuant to the terms and conditions of any TLP Agreement to which such Investing Industry Member is a Participant.
- (c) Such Cash Contribution shall be payable by each Investing Industry Member as follows:
  - (i) provided the Investing Industry Member is a Participant to one or more TLP Agreements dated on or after April 1, 2023, the Cash Contribution shall be withheld and set off by the Corporation from funds contributed to such Investing Industry Member in accordance with the applicable TLP Agreement; and
  - (ii) provided the Investing Industry Member is a Participant to one or more TLP Agreements dated prior to April 1, 2023, the Mandatory Contribution



(as such term is defined in the Members' Agreement dated January 29, 2019, prior to this Amended Members' Agreement coming into effect (the "**Prior UMA**")) shall be payable in accordance with the terms and conditions set out in the Prior UMA.

- (d) For greater certainty nothing contained in this Article 3 shall prohibit the Corporation, when authorized pursuant to an Ordinary Resolution of Directors, from agreeing to terms with an Investing Industry Member, pursuant to which the timing of such Investing Industry Member's payments for its Cash Contribution may differ from the terms set out in this Article 3, provided that such Investing Industry Member's Cash Contribution is paid on or before March 31, 2028.
- (e) Prior to March 31, 2024, if an Investing Industry Member, is a Participant to one or more TLP Agreements dated prior to April 1, 2023, and has not made a Full Commitment (as such term is defined in the Prior UMA), such Investing Industry Member may request a refund of a portion of the Mandatory Commitment (as such term is defined in the Prior UMA). The Board of Directors shall consider the request and determine the amount of the refund, if any, considering, among other things, whether after giving the refund the Corporation will have sufficient operating funds. Any refund must be approved by a Special Resolution of the Board of Directors.

### **3.5. Confidentiality of Contributed Funding**

The Corporation shall maintain a ledger of Members Contributed Funding. A Member's Contributed Funding shall constitute Confidential Information and shall be treated as such, pursuant to the provisions hereof.

### **3.6 Deemed Party to this Agreement.**

In the event that this Unanimous Members' Agreement is not formally signed and executed by any party who otherwise meets the conditions of membership of a Member, as such membership is contemplated by this Unanimous Members' Agreement and the By-Laws, then this Unanimous Members' Agreement shall be deemed to have been accepted by that Member as if it had been signed and executed by them.

## **ARTICLE 4 DIRECTORS**

### **4.1. Appointment of Directors**

At each Annual General Meeting of Members, Directors shall be appointed or elected to the Board of Directors in accordance with the following provisions:

- (a) Directors shall serve a term of up to three (3) years, to be determined at the discretion of the Nominations Committee, and subject to renewal, if determined appropriate, unless such term is vacated earlier in accordance with the provisions of the By-laws or this Members Agreement.
- (b) In the event that there is a vacancy on the Board of Directors, and such vacancy has not been filled in accordance with Section 4.2(c), a replacement Director shall be elected or appointed for a term extending until the expiry of the term of the Director being replaced.

- (c) The Board of Directors shall appoint a nomination committee (the “**Nomination Committee**”) consisting of three (3) Directors. At least sixty (60) days prior to each Annual General Meeting, the Nomination Committee shall present the following information to the Board of Directors for review:
  - (i) A list of Directors whose terms are up for election;
  - (ii) The number of positions that are currently or will become available for election at the Annual General Meeting;
  - (iii) The term of each position to be filled; and
  - (iv) A summary of the skill set required for each position to be filled.
- (d) On the date nominations are open, as determined by the Nomination Committee, the Nomination Committee will circulate to all Directors and Members a request for nominations including the following information:
  - (i) The number of Director positions to be filled;
  - (ii) The term of each position to be filled;
  - (iii) A summary of the skill set required;
  - (iv) Instructions on how to nominate a candidate and where to send the nomination; and
  - (v) The date of close of nominations.
- (e) The Nomination Committee may contact candidates to solicit their interest in running for election as a Director and to request further information as necessary.
- (f) The Members acknowledge and agree that the Board of Directors must consist of no more than fifty percent (50%) of individuals identifying as men and must reflect the diversity of Canada. As such, the slate of nominees put forward by the Nominations Committee shall consist of no more than fifty percent (50%) of individuals identifying as men, and must reflect the diversity of Canada. The Members agree to work with each other and the Nomination Committee in good faith with a view towards achieving diversity in the membership of the Board of Directors.
- (g) The Nomination Committee will review all information available for all candidates, and following such review, the Nomination Committee select a slate of candidates for election based on the candidate’s skills and experience generally, their alignment with the required skill set and their ability to generally contribute to the effective governance of the Corporation.
- (h) No later than fourteen (14) days before the Annual General Meeting, the Nomination Committee shall distribute the slate of nominees to the Members, including confirmation of the following information:
  - (i) The number of Director positions to be filled;

- (ii) The number of nominations received and reviewed by the Nomination Committee; and
  - (iii) A list of the eligible candidates along with a brief profile outlining their relevant skills and experience, noting any candidates that are endorsed by the Nomination Committee as preferred candidates for election based on needs and skill sets.
- (i) At the Annual General Meeting, the Members shall accept or reject the slate of nominees put forward by the Nomination Committee by a majority of votes of the Members.
  - (j) Each Member covenants and agrees that it will vote or cause to be voted its membership in the Corporation, to appoint the Chief Executive Officer that has been appointed by the Directors as an ex-officio non-voting member of the Board of Directors.

#### **4.2. Vacancies**

- (a) The Members may remove a Director from the Board of Directors by ordinary resolution at a special meeting.
- (b) The office of a Director shall be automatically vacated:
  - (i) if the Director, by notice in writing to the Corporation resigns his office which resignation shall be effective at the time it is received by the Chair of the Board of Directors or at the time specified in the notice, whichever is later;
  - (ii) if the Director is found to be a mentally incompetent person or becomes of unsound mind;
  - (iii) if the Director becomes bankrupt or suspends payment of debts generally or makes an assignment for the benefit of his or her creditors, or is declared insolvent;
  - (iv) if the Director is removed pursuant to Section 4.2(a); or
  - (v) if the Director dies.
- (c) Any vacancy occurring in the Board of Directors as a result of:
  - (i) removal of a Director;
  - (ii) departure of a Director;
  - (iii) resignation of a Director; or
  - (iv) a failure to elect the maximum number of Directors at the Annual General Meeting,

may be filled by a majority vote of the remaining members of the Board of Directors.

#### 4.3. Voting of Directors

- (a) Except in respect of those matters specified in the Agreement to require a unanimous resolution or Special Resolution of the Directors, all other matters shall be determined by an Ordinary Resolution of Directors at a properly constituted meeting or the signing by all Directors of a written resolution.
- (b) When directors wish to appoint a non-voting member of the Board of Directors in addition to those Persons whose appointment is otherwise provided for in either the By-laws or this Agreement, they may do so only by Special Resolution of Directors.
- (c) It is acknowledged that each Director is and continues to be obligated to carry out his or her role as a director of the Corporation (and not as a Member representative), to act in the best interest of the Corporation, and owes a fiduciary duty to the Corporation.
- (d) For greater certainty, any provision of this Agreement which requires the consent, approval, decision or resolution of the Board of Directors shall require an Ordinary Resolution of the Directors at a properly constituted meeting or the signing by all Directors of a written resolution, unless such provision indicates that either unanimous or Special Resolution of the Board of Directors is required.

#### 4.4. Insurance for Directors and Officers

- (a) The Corporation shall purchase and maintain directors' and officers' liability insurance. The terms upon which such insurance has been obtained or renewed shall be presented annually to the Board of Directors.
- (b) If the Corporation receives notice from its insurers that any policy of directors' and officers' liability insurance which it holds will not be renewed or will be cancelled, the Corporation shall forthwith notify the Directors.
- (c) The costs of maintaining directors' and officers' liability insurance shall be included in the Administration and Innovation Ecosystem Activities Budget for each year and in any Interim Budget.

### ARTICLE 5 ANNUAL PLAN AND CONTRIBUTIONS OF MEMBERS

#### 5.1. Annual Plan

- (a) On or before December 31<sup>st</sup> of each Fiscal Year of the Corporation, the Chief Executive Officer shall present the Board of Directors of the Corporation with the Annual Plan for the upcoming Fiscal Year, along with a proposed Directors' Resolution in writing approving the Annual Plan as so presented. The Annual Plan shall separately identify that portion of the Annual Plan which comprises the Administration Activities and Innovation Ecosystem Activities budget (the "**Administration and Innovation Ecosystem Activities Budget**").
- (b) On or before January 31<sup>st</sup>, each Director shall approve or disapprove the Annual Plan by providing the Chief Executive Officer with an executed copy of the

Directors' Resolution signifying his or her approval, or advise the Chief Executive Officer of the reasons why he or she has not approved the Annual Plan.

- (c) Should the Chief Executive Officer receive approvals of the Annual Plan from all Directors, he or she shall notify the Directors that the Annual Plan has been approved. If a majority but not all Directors indicate their agreement to resolve to approve the Annual Plan, then the Chair shall immediately call a meeting of Directors at which the resolution shall be presented and voted on. If the Directors do not approve the Annual Plan by Special Resolution, the Chief Executive Officer shall, within thirty (30) days, submit a revised Annual Plan to the Directors, at which point the process of approval shall recommence in accordance with Sections 5.1(b) and 5.1(c).
- (d) If the Directors have not passed a Special Resolution to approve the Annual Plan for the succeeding Fiscal Year by January 31<sup>st</sup> in any year, then the Corporation shall conduct its business in accordance with an Interim Budget approved by an Ordinary Resolution of the Directors until the Annual Plan is approved as required herein, which Interim Budget shall be deemed to be a budget contained within an approved Annual Plan.
- (e) The Members acknowledge that subject to Section 5.1(g), collectively the aggregate amount of each Cash Contribution, is intended to be sufficient for the Corporation to meet the Administration and Innovation Ecosystem Activities Budget in each Fiscal Year.
- (f) The Board of Directors shall approve the total cost of Administrative Activities annually as part of its approval of the Annual Plan as required hereunder.
- (g) Within thirty (30) days of the end of each quarter of each Fiscal Year, the Chief Financial Officer shall provide a report to the Board of Directors summarizing the expenditures of the Corporation during the quarter, and the cumulative annual expenditures of the Corporation to the end of the quarter.
- (h) Within one hundred twenty (120) days of the end of each Fiscal Year, the Chief Financial Officer shall provide a report to the Board of Directors comparing the annual budget to the actual expenditures incurred by the Corporation during the preceding Fiscal Year (the "**Annual Report**").

If the expenditures incurred are less than the budget, the Chief Financial Officer shall make a recommendation to the Board of Directors, which shall consider and pass an Ordinary Resolution in respect of the treatment of such funds which is in the best interests of the Corporation.

If the expenditures in respect of Administration Activities and Innovation Ecosystem Activities exceed the Administration and Innovation Ecosystem Activities Budget of the Corporation, as shown in the Annual Report, the following procedures shall apply:

- (i) The Chief Executive Officer shall, within thirty (30) days of receipt by the Board of the Annual Report from the Chief Financial Officer, present the Board of Directors of the Corporation with a revised Administration and Innovation Ecosystem Activities Budget for the current Fiscal Year, which revised Administration and Innovation Ecosystem Activities Budget shall

be reduced by an amount equal to or greater than the Deficiency, along with a proposed Directors' Resolution in writing approving the revised Administration and Innovation Ecosystem Activities Budget as so presented.

- (ii) Within fourteen (14) days of receipt of the revised Administration and Innovation Ecosystem Activities Budget, each Director shall approve or disapprove the revised Administration and Innovation Ecosystem Activities Budget by providing the Chief Executive Officer with an executed copy of the Directors' Resolution signifying his or her approval, or advise the Chief Executive Officer of the reasons why he or she has not approved the revised Administration and Innovation Ecosystem Activities Budget.
  - (iii) Should the Chief Executive Officer receive approvals of the revised Administration and Innovation Ecosystem Activities Budget from all Directors, he or she shall notify the Directors that the revised Administration and Innovation Ecosystem Activities Budget has been approved. If a majority but not all Directors indicate their agreement to resolve to approve the revised Administration and Innovation Ecosystem Activities Budget, then the Chair shall immediately call a meeting of Directors at which the resolution shall be presented and voted on. If the Directors do not approve the revised Administration and Innovation Ecosystem Activities Budget by Special Resolution, the Chief Executive Officer shall, within fourteen (14) days, submit a further revised Administration and Innovation Ecosystem Activities Budget to the Directors, at which point the process of approval shall recommence in accordance with Sections 5.1(h)(ii) and 5.1(h)(iii).
  - (iv) If the Directors have not passed a Special Resolution to approve the revised Administration and Innovation Ecosystem Activities Budget for the current Fiscal Year within ninety (90) days of receipt of the Annual Report, then the Corporation shall conduct its business in accordance with an Interim Budget approved by an Ordinary Resolution of the Directors until a revised Administration and Innovation Ecosystem Activities Budget is approved as required herein, which Interim Budget shall be deemed to be a budget contained within an approved Annual Plan.
- (i) The Members acknowledge that the Corporation will maintain a reserve of funds to provide for an estimate of its outstanding liabilities upon windup, including, without limitation, sufficient funds to operate for three (3) months and to pay the required outstanding and the minimum notice or severance payments to all employees as required by legislation and statutorily required remittances, including but not limited to directors' and officers' liability insurance premiums, payroll tax, remittances to Canada Customs and Revenue Agency for outstanding Harmonized Sales Tax or source deductions, worker's compensation remittances, and any other amounts for which the directors or shareholders of a corporation may become personally liable from time to time by law ("**Windup Costs**"); provided however, that amounts which the Corporation has contracted to provide to a TL Project will not be included in the estimate of outstanding liabilities for purposes of determining the reserve of funds to be held as Windup Costs.

The Corporation will estimate the required Windup Costs annually (taking into account the amounts already held in reserve for Windup Costs), and shall include

such amounts as required to maintain current Windup Costs in the Administration and Innovation Ecosystems Activities Budget for each Annual Plan.

## **5.2. External Audit and Documents**

- (a) The Corporation shall place before the Members at every annual meeting comparative audited financial statements for the preceding Fiscal Year, along with the report of the public accountant thereon.
- (b) The Corporation shall keep, in accordance with such generally accepted accounting principles as are applicable to the Corporation, books, records and accounts pertaining to this Agreement, including supporting and backup documentation required to substantiate costs and invoices, personnel records, correspondence, instructions, receipts, vouchers, memoranda, and any other documentation and related systems and controls reasonably necessary for an accurate audit and verification of costs incurred under this Agreement (collectively, the "**Documents**").
- (c) The Corporation shall preserve the Documents for such period or periods of time as are prescribed by the laws applicable to the Corporation, provided that such period shall be a minimum of six years following the end of the Fiscal Year to which the Documents pertain.

## **5.3. Industry Member Audit**

- (a) Subject to Section 5.3(b), the Corporation shall permit, at reasonable times, and upon at least thirty (30) days' advance notice in writing to the Corporation, for a period of two calendar years following the close of the Fiscal Year in which the Documents originate, an Industry Member to review the Corporations accounting, operations, policies and procedures and to inspect the Documents and to make copies thereof, including extracts from computer files, as necessary to complete an audit, for the purpose of ensuring the Corporation's compliance with all terms of this Agreement which pertain to the Industry Member ("**Industry Member Audit**").
- (b) Each Industry Member agrees:
  - (i) not to conduct an Industry Member Audit at the same time as an audit by the Corporation's public accountant is being performed;
  - (ii) to use its best efforts to reach agreement with the Corporation to conduct the Industry Member Audit at a time that is least disruptive to the business and operations of the Corporation;
  - (iii) in order to minimize the disruption to the Corporation, that all Industry Members participating in an Industry Member Audit will collectively coordinate any questions or information requests that the auditing Industry Members may have of the Corporation;
  - (iv) not to conduct an Industry Member Audit without having first provided (i) at least thirty (30) days' advance notice in writing to the Corporation, to all other Industry Members, and (ii) an opportunity for all Industry Members to participate in the Industry Member Audit;

- (v) that there shall not be more than one Industry Member Audit conducted pursuant to this Agreement in each calendar year, regardless of whether such audit is conducted by only one, or by more than one;
  - (vi) that it shall provide to the Corporation, the public accountant of the Corporation and those Industry Members participating in paying for the costs of the Industry Member Audit, within two months of the completion of the field audit work, copies of the results of any Industry Member Audit conducted hereunder; and
  - (vii) that the costs of any Industry Member Audit conducted pursuant to this Agreement shall be borne equally by the Industry Member(s) conducting such audit or on such other basis as the parties may agree among themselves, and shall be at no cost to the Corporation.
- (c) If an Industry Member Audit discloses material departures by the Corporation from the requirements of this Agreement, the Corporation shall proceed with reasonable due diligence to correct, remedy, or otherwise address such departures.

## **ARTICLE 6**

### **INNOVATION ECOSYSTEM ACTIVITIES AND ADMINISTRATION ACTIVITIES**

#### **6.1. Innovation Ecosystem Activities**

- (a) The Corporation will implement Innovation Ecosystem Activities in accordance with the approved Annual Plan and the Contribution Agreement.
- (b) The Corporation may consult with the advisory committees, if any, appointed by the Board of Directors from time to time, in respect of the Innovation Ecosystem Activities.

#### **6.2. Administration Activities**

- (a) The Corporation will implement the Administration Activities in accordance with the approved Annual Plan.
- (b) The Corporation shall maintain and carry in full force and effect the types and coverages of insurance that would regularly be carried by a similarly situated corporation acting prudently, and which shall include as a minimum sufficient commercial general liability insurance to cover contractual liability of the Corporation under this Agreement, all TLP Agreements and the Contribution Agreement.

## **ARTICLE 7**

### **TECHNOLOGY LEADERSHIP PROGRAMS AND TECHNOLOGY LEADERSHIP PROJECTS**

#### **7.1. TL Programs and TL Projects**

- (a) The Corporation shall act as a facilitator and coordinator and may fund TL Programs and TL Projects in accordance with the Annual Plan and the Program and Project Selection Guidance Document.



- (b) The Corporation may, but is not required to, fund a TL Project.
- (c) Subject to the terms of this Agreement, participation in a particular TL Program or TL Project, including financial contribution thereto, shall be at the discretion of each Member.
- (d) After a TL Program or TL Project has been selected and approved in accordance with the Program and Project Selection Guidance Document, the Corporation shall enter into written funding agreements (the “**TLP Agreements**”) with each Participant of a TL Project and shall ensure that all such TLP Agreements set out the relevant terms of the TL Project and the relationship among the Participants, including, but not limited to:
  - (i) roles and responsibilities of the Corporation and the Participant;
  - (ii) activities to be undertaken or supported by the Participant with the funding provided by the Corporation;
  - (iii) a commitment that the Participants shall not provide funding of any amount to a department as defined in Section 2 of the *Financial Administration Act*, but this does not include fees paid to acquire services from any such department;
  - (iv) a requirement that Participant account for and report on funds received from the Corporation separately from other sources of funds;
  - (v) a requirement that the board of directors of the Participant is not controlled by representatives or agents of the Crown;
  - (vi) monitoring and regularly reporting requirements that will enable the Corporation to fulfill its reporting requirements under the Contribution Agreement;
  - (vii) compliance by the Participant with all federal, provincial, territorial, municipal and other applicable laws governing the Participant, including without limitation, statutes, regulations, by-laws, rules, ordinances and decrees;
  - (viii) compliance by the Participant with economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government of Canada as set out in the Contribution Agreement;
  - (ix) the right of the Corporation to request financial information, including financial statements from the Participant;
  - (x) the right of the Corporation to request project information, including project data, key performance indicators and results from the Participant;
  - (xi) the right of the Minister to audit or cause to have audited the accounts and records of the Participant, including financial records relating to the use of distributed payments of GIC funding and Contributed Funding and to have a right of access to the books and accounts of the Participant for a minimum of two years from the termination of the TL Project;

- (xii) provisions addressing commitments set out in the Intellectual Property Strategy that are relevant to the TL Project;
- (xiii) a requirement that no Change of Control of a Participant shall occur without the written consent of the Corporation;
- (xiv) a requirement that Participants shall notify the Corporation of the Change of Control in writing within thirty (30) days from the date on which a Change of Control has occurred;
- (xv) a requirement that the Corporation shall have the right, in its sole discretion, to amend or terminate the TLP Agreement in the event of a Change of Control of a Participant, and that upon termination of the TLP Agreement, the Corporation shall have the right to recover a portion of funds or all of the funds paid or advanced to the Participant;
- (xvi) a requirement that the Participant's licensing, protection, ownership and exploitation of Foreground Intellectual Property be consistent with the requirements set out in the Contribution Agreement;
- (xvii) the release by the Participant to the Corporation upon request and in a timely manner for the purpose of releasing to the Auditor General of Canada all records held by the Participant or by agents or contractors of the Participant relating to the TL Project and the use of distributed payments of the GIC funding 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 the Contribution Agreement or the use of funds;
- (xviii) consent by the Participants and third parties to share Participant information and data (including contact information, funding amount, and project description) with the Minister;
- (xix) consent that Participant and third party information and data can be used for the purposes of administering the Global Innovation Clusters Program, including performance and evaluation reports, communications materials, briefings, research and policy;
- (xx) consent that Participant and third party information and data may be stored on secure external cloud-based platforms that align with the cloud adoption strategy established by the Government of Canada;
- (xxi) a representation that the TL Project is not a "designated project" or "project" under the *Impact Assessment Act* (2019, c. 28, s.1) and a covenant that the Participant shall grant reasonable access to any TL Project site for the purposes 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;
- (xxii) the consent by the Participant to being contacted by the Minister in relation to success stories, announcements, ceremonies or other communication activities which specify that:

- (A) the Participant agrees to acknowledge the Minister's role in the funding provided through this Agreement;
  - (B) the Participant consents to a public announcement of the federal contribution for the TL Project by the Minister or on behalf of the Minister in the form of a news release and/or event; and
  - (C) the Participant agrees to display promotional material, branding and signage provided by the Minister at the event;
- (xxiii) In respect of liabilities and indemnification, at a minimum:
- (A) that the Corporation will defend, indemnify and hold each Participant, its directors, officers, employees and its Affiliates and their respective directors, officers and employees (each a "**Participant Group**"), harmless against all third party claims resulting from any breach of the Corporation's covenants and warranties in the TLP Agreement, and that the Corporation will defend, indemnify and hold each Participant Group harmless against all claims for personal injury, intellectual property infringement, death or property damage arising out of the Corporation's performance or non-performance of the TLP Agreement, except to the extent caused by or resulting from the gross negligence or willful misconduct of such Participant Group;
  - (B) that each Participant ("**Indemnifying Participant**") shall defend, indemnify and hold each other Participant Group, harmless against all third party claims resulting from any breach of the Indemnifying Participant's covenants and warranties in the TLP Agreement, and that each Indemnifying Participant will defend, indemnify and hold each other Participant Group harmless against all claims for personal injury, intellectual property infringement, death or property damage arising out of the Indemnifying Participant's performance or non-performance of the TLP Agreement, except to the extent caused by or resulting from the gross negligence or willful misconduct of such Participant Group;
  - (C) that each Participant shall defend, indemnify and hold the Corporation, its directors, officers, employees and its Affiliates and their respective directors, officers and employees (collectively, the "**Corporation Group**") harmless against all third party claims resulting from any breach of the Participant's covenants and warranties in the TLP Agreement, and that each Participant will defend, indemnify and hold the Corporation Group harmless against all claims for personal injury, intellectual property infringement, death or property damage arising out of the Participant's performance or non-performance of the TLP Agreement, except to the extent caused by or resulting from the gross negligence or willful misconduct of the Corporation Group.
  - (D) The Corporation will defend, indemnify and hold each Member which is not a Participant, its directors, officers, employees and its Affiliates and their respective directors, officers and employees

(each a “**Member Group**”), harmless against all third party claims resulting from any breach of the Corporation’s covenants and warranties in a TLP Agreement, and the Corporation will defend, indemnify and hold each Member Group harmless against all claims for personal injury, intellectual property infringement, death or property damage arising out of the Corporation’s performance or non-performance of any TLP Agreement, except to the extent caused by or resulting from the gross negligence or willful misconduct of such Member Group.

- (E) In addition, each Participant will defend, indemnify and hold each Member Group, harmless against all third party claims resulting from any breach of the Participant’s covenants and warranties in a TLP Agreement, and the Participant will defend, indemnify and hold each Member Group harmless against all claims for personal injury, intellectual property infringement, death or property damage arising out of the Participant’s performance or non-performance of any TLP Agreement, except to the extent caused by or resulting from the gross negligence or willful misconduct of such Member Group.
- (e) A standard form TLP Agreement will be developed by the Corporation and approved by an Ordinary Resolution of the Board of Directors. The standard form developed shall designate those terms and conditions thereof which cannot be revised in a TLP Agreement without a Special Resolution of the Board of Directors (the “**Required Terms**”). Notwithstanding the adoption of a standard form, the final form of each TLP Agreement entered into by the Corporation shall be at the discretion of the Chief Executive Officer of the Corporation, or such other officer or officers of the Corporation as designated by the Board of Directors from time to time, subject at all times to the inclusion of the Required Terms. Each of the matters described in Section 7.1(d) above shall be Required Terms.

## **ARTICLE 8 CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

### **8.1. Confidential Information**

- (a) Unless otherwise provided herein, the Parties agree that Confidential Information disclosed to the Corporation, whether by a Member, an Affiliate or in confidence by a third party, shall continue to constitute Confidential Information and be treated as such by the Corporation and the Members to whom it has been disclosed pursuant to this Agreement and used only for the identified and intended purpose(s).
- (b) Any Director of the Corporation who is made aware of Confidential Information disclosed to the Corporation shall not disclose that information to the Member or any other party and each Member agrees not to request a Director to so disclose such Confidential Information.
- (c) Members shall not be required to disclose Confidential Information of a commercially sensitive nature to other Parties pursuant to this Agreement or as a consequence of membership in the Corporation.

- (d) The Parties agree that Confidential Information disclosed to the Corporation during the course of a TL Program or TL Project or Innovation Ecosystem Activity shall:
  - (i) be disclosed only to those Members and other parties which are Participants in the TL Program or TL Project for which the Confidential Information was disclosed and used only for the identified and intended purpose(s), or, in the case of Innovation Ecosystem Activities, be disclosed only to the Members who were members of the Corporation at the time of disclosure of the Confidential Information to the Corporation, and used only for the identified and intended purpose(s); and
  - (ii) continue to constitute Confidential Information and be treated as such by the Corporation and the Members to whom it has been disclosed pursuant to this Agreement.
- (e) Any Director of the Corporation who is made aware of Confidential Information disclosed to the Corporation during the course of a TL Program or TL Project or Innovation Ecosystem Activities shall not disclose that information to the Members and each Member agrees not to request a Director to so disclose such Confidential Information. For greater certainty, nothing is intended to prohibit a Director from disclosing Confidential Information to a Member which is: (a) a Participant, and (b) entitled to the Confidential Information pursuant to the terms of the governing TLP Agreement.

## 8.2. **Intellectual Property**

- (a) The Corporation shall adopt an Intellectual Property Strategy (the “**Intellectual Property Strategy**”), which Intellectual Property Strategy and any amendments thereto from time to time must be approved in advance by a Special Resolution of the Board of Directors and shall provide for the commercialization, use, protection and sharing of Intellectual Property to foster innovation in a manner that maximizes return on investment both for Members and Canada as a whole, which strategy shall contain, at a minimum, the following:
  - (i) the objectives of the Intellectual Property Strategy;
  - (ii) the roles and responsibilities of the Intellectual Property Manager;
  - (iii) clear, transparent and predictable Intellectual Property ownership policies and licensing structures for Foreground Intellectual Property, including processes for Members to request and negotiate licenses to use Foreground Intellectual Property
  - (iv) a Member-accessible registry of Foreground Intellectual Property and any conditions, restrictions or exceptions to the inclusion of Foreground Intellectual Property in the registry or access by Members to the registry;
  - (v) a dispute resolution mechanism to address and resolve Member disputes in respect of the ownership of and access to Foreground Intellectual Property; and
  - (vi) a description of how the Corporation shall support Members’ development and use of Intellectual Property including:

- (I) mechanisms through which Eligible Industry Members that intend to apply for funding in respect of a TL Project may access independent expertise and advice on Intellectual Property; and
  - (II) delivery of direct programming to Members to increase their understanding of Intellectual Property and its uses;
- (b) The Corporation shall review its Intellectual Property Strategy no less than annually to ensure that it aligns with its Annual Plan and shall ensure that any changes are made in compliance with the requirements of the Contribution Agreement.
- (c) Title to any Foreground Intellectual Property resulting from a TL Project shall be determined by a TL Agreement or an agreement in respect of the project and by applicable Canadian Law.
- (d) The Corporation shall include in each TL Agreement:
  - (i) provisions which address commitments set out in the Intellectual Property Strategy that are relevant to the TL Project;
  - (ii) a right for each Participant participating in a TL Project to access on fair, reasonable and non-discriminatory terms and subject to relevant competitive issues all Foreground Intellectual Property arising from a TL Project, at least for internal research and development purposes; and
  - (iii) a commitment from each Participant participating in a TL Project to, upon request, enter into negotiations regarding access to their Foreground Intellectual Property, with Members listed in the project proposal who would benefit from opportunities to access expected Foreground Intellectual Property arising from the project, subject to any limitations to such access.

### **8.3. Prohibition**

- (a) Members shall not undertake or pursue their own research using Confidential Information of which they became aware due to their membership in the Corporation, including, but not limited to, on account of the participation in the Corporation of their nominee for election to the Board of Directors. Members shall not use Confidential Information for any purpose other than the identified and intended purpose(s).
- (b) The prohibition contained in Section 8.3(a) shall not apply to Confidential Information which:
  - (i) is known by the Member independently from its membership in the Corporation, as evidenced by the Member's records;
  - (ii) is or becomes a part of the public domain without breach of this Agreement;
  - (iii) is lawfully obtained from a third party who has the right to disclose it to others; or

- (iv) is independently developed by an Member without any use of Confidential Information obtained, directly or indirectly, in whole or in part, from its membership in the Corporation.

## **ARTICLE 9 DEFAULT**

### **9.1. Events of Default**

A Member ("**Defaulting Member**") shall be deemed to have committed an act of default ("**Default**") upon the occurrence of any of the following events:

- (a) if such Defaulting Member shall institute or commence proceedings to be adjudicated a voluntary bankrupt or insolvent, or enter liquidation, or consent to the filing of a bankruptcy or insolvency proceeding against it, or file, institute or commence proceedings seeking reorganization, adjustment, composition, compromise, stay of proceedings or similar relief under any Canadian federal or provincial law regarding bankruptcy, insolvency or relief of debtors;
- (b) if such Defaulting Member shall be ordered to be wound up or dissolved by a court of competent jurisdiction;
- (c) if such Defaulting Member shall make a general assignment for the benefit of creditors;
- (d) if a liquidator, receiver, receiver and manager or a trustee in bankruptcy is appointed for such Defaulting Member;
- (e) if such Defaulting Member shall default in making any payment required to be made in accordance with the provisions of this Agreement and such act of Default shall continue for thirty (30) days or more from the date of notice from the Corporation or any of the other Members demanding that such payment be made;
- (f) if such Defaulting Member shall be in breach of or in default under any material covenant, term or provision of this Agreement (other than a payment default) and such act of Default shall continue for thirty (30) days or more from the date of notice from the Corporation demanding that such default be remedied;
- (g) if such Defaulting Member shall be in breach of or in default under any material covenant, term, or provision of any other agreement with the Corporation, including without limitation a TLP Agreement or the By-Laws, and such act of Default shall continue for thirty (30) days or more from the date of notice from the Corporation demanding that such default be remedied.

### **9.2. Consequences of Default**

- (a) A Defaulting Member shall not be entitled to vote on any resolution of the Members.
- (b) Should an act of Default occur, the membership of the Defaulting Member in the Corporation may be terminated by the passing of an Ordinary Resolution of the Board of Directors.

- (c) A termination of membership pursuant to Section 9.2(b) shall not abrogate any obligations, financial or otherwise, which the Defaulting Member has to the Corporation or the Members thereof as of the date of termination, whether pursuant to an agreement of Members or any other agreement or arrangement whatsoever. The Corporation may initiate legal action against a Defaulting Member in respect of damages arising out of the Default, including but not limited to legal action in respect of the funding covenants delivered to the Corporation pursuant to Article 3, or funding covenants pursuant to a TLP Agreement or any other agreement with the Corporation.
- (d) Should there be a termination of membership pursuant to Section 9.2(b), the Corporation shall provide each Member of the Corporation and each member of the Board of Directors with a report outlining the amount, if any, by which the Aggregate Cash Contribution to the Corporation in the Fiscal Year will be insufficient to satisfy the Administration and Innovation Ecosystem Activities Budget (the "**Deficit**").
- (e) The Directors will vote, within fourteen (14) days of receiving the report confirming the Deficit and related payments, on whether each of the current Investing Industry Members, as of the date on which the Directors complete the vote contemplated by this Section 9.2(e), will be required to make a further contribution to the Corporation in an amount equal to that Investing Industry Member's Proportionate Share of the Deficit, which decision shall require a unanimous resolution of the Directors.
- (f) If the Directors do not pass a unanimous resolution approving a further contribution to the Corporation by the Investing Industry Members as set out in Section 9.2(e), one or more Members may, at their own discretion, and within twenty one (21) days of the termination of membership pursuant to Section 9.2(b), elect to make a voluntary cash contribution to the Corporation, in an aggregate amount equal to the Deficit, such that the Annual Plan is satisfied.
- (g) If one or more Members does not elect to make a contribution to the Corporation that is greater than its Proportionate Share of the Deficit, such that the Annual Plan is satisfied, in accordance with Section 9.2(f), the Chief Executive Officer shall, within twenty eight (28) days of the termination of membership pursuant to Section 9.2(b), present the Board of Directors of the Corporation with a modified Annual Plan which accounts for the Deficit, along with a proposed Directors' Resolution in writing approving the Annual Plan as so presented.
- (h) Should the Chief Executive Officer receive approvals of the modified Annual Plan from all Directors, he or she shall notify the Directors that the modified Annual Plan has been approved. If a majority but not all Directors indicate their agreement to resolve to approve the modified Annual Plan, then the Chair shall immediately call a meeting of Directors at which the resolution shall be presented and voted on. If all of the Directors do not approve the modified Annual Plan, the Chief Executive Officer shall, within fourteen (14) days, submit a revised Annual Plan to the Directors, at which point the process of approval shall recommence in accordance with Sections 9.2(g) and 9.2(h).
- (i) Notwithstanding the foregoing, the Corporation shall take reasonable steps to collect the Deficit from the Defaulting Member, and, if any recovery is achieved,



the Corporation shall refund the amounts which it collects from the Defaulting Member, less its reasonable costs of collection, to the Members proportionate to their contribution to the payment of the Deficit.

## **ARTICLE 10 DISPUTE RESOLUTION**

### **10.1. Disputes**

- (a) Except as provided for in Section 8.2(a)(v), if any dispute or controversy shall occur among the Members relating to the interpretation or implementation of any of the provisions of this Agreement, such dispute shall be first referred to, on a non-binding basis in writing, a committee (the “**Joint Committee**”) comprising one senior level individual appointed by each of the Members affected by the dispute or controversy. Each of the Members agrees to notify the Corporation of the identity of their appointee to the Joint Committee within fourteen (14) days of receipt of a notice from the Corporation or any other Member advising that it requires that the Joint Committee be constituted.
- (b) Upon becoming aware of the constitution of the Joint Committee the Corporation shall give notice to all Members of the dispute or controversy and the constitution of the Joint Committee. A Member shall have two (2) days after receipt of such notice to notify the Corporation that it is a party affected by the dispute or controversy and the identity of its appointee to the Joint Committee.
- (c) References to the Joint Committee may be initiated at any time by one Member or by all Members acting separately or together, on not less than five (5) days’ prior notice. Each Member shall be afforded an opportunity to present all relevant information regarding its position on the dispute to the Joint Committee. If the Joint Committee has not resolved the dispute to the satisfaction of the Members involved in the dispute within fourteen (14) days of the date the dispute has been referred to it for review, the Joint Committee shall then be referred by the Joint Committee to arbitration, which shall give written notice thereof to each Member to the dispute (the “**Arbitration Notice**”).
- (d) The arbitration will be carried out by a single arbitrator who is acceptable to all Members involved in the dispute. If, within ten (10) days of the receipt of the Arbitration Notice by all Members involved in the dispute, a single arbitrator who is acceptable to all Members involved in the dispute has not been found, any Member involved in the dispute may request that a single arbitrator of suitable qualification and experience in respect of the subject matter of the dispute be appointed by the executive director, or other individual fulfilling that role, for the ADR Institute of Canada Inc. The executive director shall be requested to make this determination within ten (10) days of receipt of the request.
- (e) Except as set out in this Section, the arbitration will be carried out in accordance with the United Nations Commission on International Trade Law (“**UNCITRAL**”) Arbitration Rules (the “**Rules**”) which are presently in force. The arbitrator shall decide all questions of procedure not provided for under the Rules and shall provide a written decision on the issue in dispute. The Members agree that the decision of the arbitrator shall be binding. The expense of the arbitration shall be paid as specified by the arbitrator. Without limiting the generality of Section 10.1(e), the Members agree that the standard of review applicable to any decision of the

arbitrator shall be decided pursuant to UNCITRAL, and not section 14 of the Arbitration Act.

## **ARTICLE 11 CONFLICTS AND ANTI-CORRUPTION**

- 11.1.** No officer, employee or agent of a Party shall pay or provide any commission, fee or rebate or provide any gift or entertainment of significant cost or value to any officer, employee or agent of another Party in relation to this Agreement, nor shall a Party enter into any business arrangement with any officer, employee or agent of another Party other than as a representative of such other Party, without prior written notification thereof to the other Party.
- 11.2.** No Party, nor their respective employees, agents or subcontractors, or the employees or agents of the subcontractors, shall make any payment or give anything of value to any official of any government or public international organization (including any officer or employee of any government department, or agency) to influence his or her decision, or to gain any other advantage in connection with the subject matter of this Agreement.

**11.3. Audit**

Any Party may, on reasonable notice to another Party and during regular business hours, have an audit conducted of any and all records and accounts of the other Party relating to this Agreement, which are reasonably necessary for the sole purpose of determining whether there has been compliance with Section 11.1 and 11.2. Each Party shall establish and maintain all records relevant to Section 11.1 and 11.2 for a period of twenty-four months following termination of this Agreement. All records and accounts disclosed by a Party in respect of such audit shall be held and treated by the receiving Party in confidence, solely for the purposes contemplated hereby and not utilized in any other manner whatsoever. The Party in contravention of Section 11.1 or 11.2 shall indemnify and immediately notify each other Party of any violation of these sections and hold each other Party harmless for all losses and expenses arising out of such violation.

**11.4. Business Standards**

- (a) The Corporation, in performing its obligations under this Agreement, shall maintain appropriate business standards, procedures, and controls.
- (b) The Corporation shall formally adopt policies in respect of conflicts and anti-corruption.

## **ARTICLE 12 SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT**

- 12.1.** The Corporation will use reasonable commercial efforts to assist Members in supporting the eligibility of TL Projects for Scientific Research and Experimental Development tax incentive claims, and upon reasonable request by a Member shall provide the necessary data, including project descriptions and accounting information required for Scientific Research and Experimental Development tax claims.

### **ARTICLE 13 AUXILLIARY SERVICES**

- 13.1.** The Corporation may, but is under no obligation to, enter into agreements (“**Service Agreements**”) from time to time with any Member, wherein the Corporation may agree to provide auxiliary services to any such Member, subject to the terms and conditions set out in such Service Agreements, including but not limited to the requirement for payment of a fee by any such Member as consideration for the provision of auxiliary services by the Corporation.
- 13.2.** Fees collected by the Corporation pursuant to the terms and conditions of any Service Agreements entered into by the Corporation shall be used for the general purposes of the Corporation, in its sole discretion, including but not limited to covering operating and administration costs of the Corporation.

### **ARTICLE 14 GENERAL PROVISIONS**

**14.1. Notices**

Any notice, demand, payment or other communication to be given pursuant to this Agreement shall be in writing addressed to the Party for which it is indicated and will be sufficiently served if sent by registered mail, electronically or delivered by hand and/or by facsimile (confirmed by the records of the originating Party to have been sent) to the address or facsimile maintained by the Corporation for such Party and any Party may by notice given in accordance with this Section change its address for the purposes hereof and any such notice shall be deemed to have been received on the date of delivery if delivered by hand, facsimile or e-mail and on the 3rd day after mailing if delivered by registered mail.

**14.2. Binding**

The present Agreement shall be binding upon and for the benefit of the Parties hereto and their respective heirs, administrators, successors and assigns as permitted herein.

**14.3. Waiver/Consent**

- (a) A waiver of any breach of any term or condition of this Agreement shall not be deemed to be a waiver of any continuing or subsequent breach or in any way affect any other term of the present Agreement and no such waiver shall be binding unless stipulated in writing by the Parties hereto.
- (b) The Parties may unanimously agree, in writing, to proceed in a different manner than as outlined in this Agreement.

**14.4. Amendments**

This Agreement may be amended by a majority vote of the Industry Members, provided the Corporation has obtained consent from the Minister, in accordance with the terms and conditions of the Contribution Agreement.

**14.5. Public Statements**

- (a) The Members agree that the CEO of the Corporation shall be the spokesperson for the Corporation and shall be permitted to make public statements or press releases relating to the ordinary course of the Corporation's business. Any public statement or press release out of the ordinary course of the Corporation's business shall require the approval of the Board of Directors, which shall be considered on an expedited basis.
- (b) Except as otherwise required by law or as permitted pursuant to a TLP Agreement, Members shall be permitted to make public statements or press releases in respect of, or pertaining to, the Corporation, only after having received prior approval thereof by an Ordinary Resolution of the Directors. A copy of any proposed public statement or press release shall be provided by the Member to the Corporation, which shall provide a copy to the Directors, which shall have seven (7) days to approve or disapprove same. Should a Director not approve or disapprove the proposed public statement or press release within the seven (7) day period, he or she shall be deemed to have provided his or her approval. Only if the Corporation has received approval by an Ordinary Resolution of the Directors shall the Member be permitted to make public statements or press releases. Provided however, that nothing herein contained shall preclude a Member from making public statements or press releases in respect of its participation in the Corporation.
- (c) The Directors may adopt a communications policy which shall govern public statements or press releases relating to the Corporation by Directors, officers and Members.

**14.6. Governing Law**

This Agreement shall be governed by the laws of Newfoundland and Labrador.

**14.7. Counterpart Execution**

- (a) This Agreement may be executed in one or more counterparts, each of which, once executed, shall constitute an original and all of which together shall constitute one and the same agreement.
- (b) A facsimile or email copy with confirmed receipt by all other Parties of a counterpart will be evidence of the execution by that Party of that counterpart and will be binding upon that Party for all purposes as if it were an original signature.

**14.8. Severability**

If any covenant or provision of this Agreement is determined to be void or unenforceable, in whole or in part, it shall not affect or impair and shall not be deemed to affect or impair the validity of any other covenant or provision and each such covenant or provision is hereby declared to be separate, distinct and severable for the purposes hereof.

**14.9. Entire Agreement**

This Agreement constitutes the entire understanding, contract and agreement among the Parties hereto pertaining to the subject matter hereof, and supersedes all prior oral or

written understandings, agreements or contracts, formal or informal, among the Parties hereto or their representatives with respect thereto.

**14.10. Time**

- (a) Unless otherwise specifically provided herein, time shall be of the essence of this Agreement and each and all of its provisions.
- (b) Unless otherwise specifically provided herein, in calculating the period of time from a reference day within, prior to, or following which any act is to be done or step is to be taken pursuant to this Agreement, the period of time shall not include such reference day.
- (c) If anything is required to be done or any action is required to be taken hereunder on or by a day which is not a business day in St. John's, Newfoundland and Labrador or on a Saturday or a Sunday or other statutory holiday, then such thing may be validly done and such action may be validly taken on or by the next succeeding day that is a business day.

**14.11. No Joint Liability**

The rights, duties, obligations and liabilities of the Parties under this Agreement are separate and are neither joint nor joint and several.

**14.12. Assignment**

- (a) A Party may, without the consent of the other Parties, assign its membership to an Affiliate, provided that:
  - (i) the Affiliate confirms in writing its acceptance to become a party and be bound by this Agreement by execution of the Joinder Agreement, and
  - (ii) the Party remains jointly and severally liable with the Affiliate for any and all obligations assumed by the Affiliate under this Agreement.
- (b) Except as set out in this Section 14.12, no Party may assign its membership or this Agreement unless it has first obtained the consent of the Board of Directors evidenced by Special Resolution. In considering whether or not to grant such consent, the Board of Directors may, among other things, consider the financial capability of the proposed assignee to perform its obligations under this Agreement or any other agreement between the Party and the Corporation.