

FUNDING AGREEMENT DRAC#

THIS FUNDING AGREEMENT (this "**Agreement**") made effective as of _____ (the "**Effective Date**")

BETWEEN:

DIGITAL RESEARCH ALLIANCE OF CANADA/ALLIANCE DE RECHERCHE NUMERIQUE DU CANADA

(the "**Alliance**")

AND

{{RECIPIENT NAME}}

(the "**Recipient**")

BACKGROUND:

- A. The Alliance is a not-for-profit corporation dedicated to fostering research in Canada through a secure and predictable digital research infrastructure, a mandate that includes managing and coordinating the **[Insert program name]** program (the "**Program**") described in Schedule A to this Agreement; and
- B. Recipient wishes to participate in activities in furtherance of the Program and has applied to the Alliance for funding to undertake its respective Program activities, as further described in Schedule B to this Agreement (the "**Project**").

NOW THEREFORE in consideration of the mutual covenants herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties hereto covenant and agree as follows:

1. THE PROJECT

- 1.1 Recipient agrees to carry out the Project as described in Schedule B to this Agreement, on and in accordance with the terms and conditions contained in this Agreement.

2. PAYMENT

- 2.1 To support Recipient in carrying out the Project, the Alliance shall pay Recipient the contribution amount(s) in accordance with Schedule B and the other terms and provisions of this Agreement.

3. TERM AND TERMINATION

- 3.1 The term of this Agreement shall commence on the Effective Date and shall continue until the later of (a) the Project Completion Date specified in Schedule B and (b) the completion and delivery by Recipient of all deliverables and reports required to be delivered to the Alliance under Schedule B, unless earlier terminated in accordance with the provisions of this Agreement.

4. SCHEDULES

4.1 The following is a list of the schedules which are attached to, and form an integral part of, this Agreement:

- A. Program Description
- B. Recipient Deliverables, Payment and Reporting Provisions
- C. General Terms and Conditions

5. SIGNATURES

5.1 Each party confirms that the individual(s) signing this Agreement on its behalf have authority to enter into this Agreement on behalf of that party.

5.2 This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document.

[Remainder of page intentionally left blank – signature page follows]

SIGNED effective as of the Effective Date.

FOR THE ALLIANCE:

**DIGITAL RESEARCH ALLIANCE OF CANADA
/ ALLIANCE DE RECHERCHE NUMERIQUE
DU CANADA**

Signature:

Name: George Ross

Title: Chief Executive Officer

Signature:

Name: Julien St-Pierre

Title: Chief Financial Officer

FOR THE RECIPIENT:

{{RECIPIENT NAME}}

Signature:

Name: _____

Title: _____

SCHEDULE A

PROGRAM DESCRIPTION

[Insert or attach overall program description]

[End of Schedule A – remainder of page intentionally left blank]

SCHEDULE B

RECIPIENT DELIVERABLES, PAYMENT AND REPORTING PROVISIONS

1. RECIPIENT AUTHORIZED REPRESENTATIVE AND CONTACT INFORMATION

Authorized Representative Name:	[]
Address:	[]
Email:	[]

2. ALLIANCE AUTHORIZED REPRESENTATIVE AND CONTACT INFORMATION

Authorized Representative Name:	George Ross, CEO
Address:	Digital Research Alliance of Canada P.O. Box 48008 Davisville Post Office Toronto, Ontario M4S 3C6
Email:	george.ross@alliancecan.ca

3. RECIPIENT ACTIVITIES/DELIVERABLES

[Insert description of individual recipient's activities and deliverables or attach as an appendix. Table below is included as a sample format.]

Deliverable Description	Deliverable Milestone	Start Date (yyyy-mm-dd)	End Date (yyyy-mm-dd)
[]	[]	[]	[]

4. PROJECT COMPLETION DATE

[Insert date]

5. CONTRIBUTION AMOUNT

5.1 The maximum amount to be contributed by the Alliance to Recipient (“**Maximum Contribution Amount**”) will be [Amount/as set out in the budget attached in Schedule B.2 (the “**Budget**)]. The Recipient shall not be entitled to receive any amount in excess of the Maximum Contribution Amount from the Alliance without the Alliance’s prior written authorization.

5.2 Notwithstanding Section 5.1, Recipient acknowledges and agrees that the Alliance’s obligation to advance any amount to Recipient under this Agreement is conditional on the Alliance receiving all necessary funding for the Program from the federal government. If, at any time, the Alliance determines that it has not received sufficient funding for the Program in order to contribute amounts to Recipient under this Agreement, the Alliance may terminate this Agreement by written notice to Recipient.

6. PAYMENT TERMS AND ELIGIBLE COSTS

6.1 In consideration of Recipient carrying out the Project, the Alliance shall make payments to the Recipient from the Maximum Contribution Amount in the amounts and at the times set forth in the table below: [Insert description of individual recipient’s entitlement to payment or attach as an appendix. Table below is included as a sample format. Final payment would be 10% holdback payable upon receipt of acceptable final report.]

Payment #	Payment and %	Amount	Timeframe	Triggering Event
[●]	[●]		[●]	[●]
[●]	[●]		[●]	[●]
[●]	[●]		[●]	[●]
[●]	[●]		[●]	[●]
[●]	[●] (10%)		Within 60 days	Receipt of the final Project Report (defined below) and all supporting documentation, in each case in form satisfactory to the Alliance, acting reasonably

6.2 The amounts received by Recipient under this Agreement may only be used for payment of eligible Project costs, and shall not be used for payment of non-eligible costs, (each as defined in program and/or financial administration guides provided to recipients) in furtherance of achieving the Project objectives, deliverables and key performance indicators described in this Agreement and otherwise in accordance with the provisions of this Agreement. Eligible costs relating to travel and hospitality must be incurred in compliance with the Alliance’s travel and hospitality policy.

6.3 The Recipient acknowledges and agrees should the amounts contributed by the Alliance pursuant to this Agreement not be fully expended in accordance with this Agreement, the remainder shall be returned to the Alliance by the Recipient promptly following the Project Completion Date.

7. RECIPIENT REPORTING REQUIREMENTS

7.1 Recipient will provide financial, operational, and performance reports to the Alliance with respect to the Project for each quarter of the term of this Agreement (on both a quarterly and year-to-date basis) within thirty (30) days of the end of each quarter (collectively, “Project Reports”).

- 7.2 Project Reports shall substantially follow the form attached as Schedule B.1 and otherwise in form and substance acceptable to the Alliance and shall describe: (a) Project activities; (b) eligible costs paid with amounts contributed under this Agreement; (c) adherence to the Project schedule; (d) achievement of the Project objectives, deliverables and key performance indicators described in this Agreement, and (e) if applicable, confirmation of receipt of third-party funding secured by Recipient for the Project in accordance with this Agreement.
- 7.3 Project Reports shall be submitted through an online portal provided by the Alliance. Any inquiries can be addressed and sent electronically to the following address: funding-subventions@alliancecan.ca
- 7.4 The Alliance shall have the right, in its sole discretion and at its own expense, to conduct an audit of amounts contributed to Recipient and payments made by Recipient from such amounts as reported in a Project Report at any time during the term of this Agreement or within five years thereafter and Recipient agrees to cooperate with the Alliance in the conduct of any such audit. The Alliance shall use commercially reasonable efforts to notify Recipient within thirty (30) business days following receipt of any Project Report if it will be conducting an audit of amounts reported in such Project Report.
- 7.5 If any Project Report states, or an audit pursuant to Section 7.4 determines, that any amount paid by the Alliance under this Agreement was expended on ineligible costs, such amount will be deducted from amounts remaining payable by the Alliance to Recipient under this Agreement and any excess amount remaining after such deduction shall be promptly paid by Recipient to the Alliance.
- 7.6 This Section 7 will remain in full force and effect notwithstanding expiration or termination of this Agreement.

8. PROJECT REQUIREMENTS

- 8.1 [Add any supplemental terms that apply to the particular project. For example, this may include project monitoring/oversight requirements, requirements for meetings between the Recipient and the Alliance, or changes to the default insurance requirements.]
- 8.2 Recipient Obligations. In performing its obligations under this Agreement, Recipient agrees that it will:
- (a) use best efforts to carry out the Project and to deliver its respective contributions to the Program, to work collaboratively with the Alliance and any third party delivery partners, and to meaningfully contribute to and participate in the design, development, launch, reporting and evaluation of the Project, as applicable;
 - (b) deliver its respective contributions to the Project and the Program in good faith, in a manner that is fair and reasonable, and in a manner that demonstrates a standard of care, diligence and skill that an analogous organization would display in comparable circumstances;
 - (c) reserve sufficient organizational resources to carry out the Project within the anticipated Project timeline, including appropriately qualified staff, technology resources and other organizational resources;
 - (d) use best efforts to carry out the Project within the Project schedule described in this Agreement;

- (e) use reasonable efforts to ensure the security, integrity and protection of any physical and digital infrastructure acquired, operated and maintained by Recipient in connection with the Project in accordance with the *Cybersecurity Framework* published by the Alliance;
 - (f) ensure that all goods and services procured by Recipient in connection with the Project will be purchased or acquired at competitive prices that are no greater than fair market value;
 - (g) if awarding contracts or hiring personnel for the completion of the Project, use a fair and competitive or otherwise justifiable and generally accepted sound business process that results in competent and qualified contractors and/or personnel working on the Project;
 - (h) provide regular, timely, proactive correspondence to the Alliance regarding the Project, completion of the Project deliverables or milestones, access to Project records, and performance of any additional rights and obligations under this Agreement;
 - (i) collaborate with the Alliance, any delivery partners and any third party funding partners in completing any Project evaluations, evidence generation and related analyses required under any third party project funding agreement; and
 - (j) collaborate with the Alliance and any delivery partners to publish any written or recorded content generated as part of the Project in both official languages of Canada.
- 8.3 Matching Support. Recipient shall secure, and confirm not less than annually to the Alliance, commitments of support (in the form of in-kind contributions and/or financial contributions) towards Recipient's Project activities as set out in the Budget (Schedule B.2).
- 8.4 Project Assets. Recipient shall retain title to, and ownership of, any equipment the cost of which has been contributed to by the Alliance from funds provided under this Agreement, *provided that* Recipient covenants to actively operate, maintain and use such equipment to: (a) further the purpose(s) underlying the Project, the Program and this Agreement, (b) to benefit Canadian researchers, and (c) to strengthen the Canadian digital research ecosystem. Recipient shall not sell, assign, transfer, encumber, pledge, grant a security interest in, or otherwise dispose of such equipment, unless: (a) the Alliance has obtained the prior written consent of the Minister, on such conditions as the Minister may determine, (b) the equipment was acquired at a cost less than \$25,000, (c) the equipment is being replaced pursuant to a manufacturers' warranty, insurance policy, or other equivalent legal mechanism, or (d) the equipment is worn, obsolete, or outdated and is sold, transferred, disposed of or otherwise converted in order to be replaced and the proceeds of sale, transfer, disposal, or conversion of the equipment are used for the acquisition of replacement equipment.
- 8.5 Insurance. Without limiting Recipient's obligations under Schedule C, Recipient will maintain during the term of this Agreement adequate comprehensive public liability insurance against injury, death or other loss or damage resulting from actions of Recipient in connection with the activities funded under this Agreement that is consistent with the level of risk exposure associated with the Agreement and the Project. If Recipient is in possession or control of any equipment or hardware used for purposes of the Project, Recipient will maintain property insurance covering such equipment or hardware in the possession or control of Recipient. Upon request by the Alliance, Recipient shall provide to the Alliance certificates of insurance evidencing the insurance policies required by this Section 8.5. **[NOTE TO USER: ensure that this number matches the number of this section]** Recipient shall promptly notify the Alliance in the event of any cancellation or material change in any such policies.
- 8.6 Termination.

This Agreement can be terminated by the Alliance or the Recipient upon 60 days written notice. In the event of termination of this Agreement for any reason, the parties hereto agree to cooperate with one another to accomplish an orderly transition of the Project. In the event the Agreement is terminated:

- (a) From and after delivery of notice of termination, the Recipient shall make no further commitments for expenditures to be funded from the Maximum Contribution Amount and shall cancel or otherwise reduce, to the extent possible, the amount of any outstanding commitments in relation thereto; and
- (b) The Recipient's expenses and non-cancellable obligations incurred up to and including the termination date, to the extent that it is established to the satisfaction of the Alliance that the costs mentioned are eligible expenditures, will be paid by the Alliance, subject to and in accordance with this Agreement.

Sections 8.4 and 8.6 of this Schedule B (USER: if not using 8.1 in template, a reminder to renumber this to 8.3 (Project Assets) and 8.5 (Termination) and delete this text in red font) will remain in full force and effect notwithstanding expiration or termination of this Agreement for a period of 3 years.

[End of Schedule B – remainder of page intentionally left blank]

Schedule B.1

Form of Project Reports

[insert form of project reports]

[Schedule B.2

Budget]

[Remove if not applicable]

[Schedule B.3

Project Description]

[Remove if not applicable]

SCHEDULE C

GENERAL TERMS AND CONDITIONS

1. RECIPIENT OBLIGATIONS, PROJECT RECORDS AND COMMUNICATIONS

- 1.1 Recipient acknowledges that the total governmental assistance for the Project shall not exceed one hundred percent (100%) of the eligible Project costs. Recipient shall inform the Alliance promptly and in writing of any further government or other financial assistance to be received by it for the Project no later than fifteen (15) business days after the Recipient enters into an agreement to receive such assistance. The Alliance shall have the right to reduce the amount of the funding provided under this Agreement by an amount equal to any such assistance or by the fair market value (as determined by the Alliance or its auditors) of any non-cash assistance. Recipient covenants that it shall not pay any portion of the amount paid by the Alliance hereunder as a contribution to a federal government institution.
- 1.2 Recipient shall keep accurate books, statements, accounts, and records pertaining to this Agreement and the Project and will preserve all such records for a period of seven (7) years following the expiration or termination of this Agreement.
- 1.3 The Alliance, the Minister of Innovation, Science and Economic Development Canada (the "**Minister**"), the Auditor General of Canada, and their respective auditors or nominees shall have the right to perform audits and other inquiries on the Project and this Agreement. Recipient undertakes to provide all necessary access and reasonable assistance, in a timely manner, during any such audit or inquiry, including, without limitation, full and complete access to all the accounts, financial statements, records, data, and supporting documentation relating to the Project, this Agreement or the use of funds provided under this Agreement and all financial or other information deemed necessary to complete the audit, and reasonable access to Recipient's premises, and to release to the Alliance, for the purpose of releasing to the Auditor General of Canada, all records held by Recipient or its agents or contractors relating to the Project and the use of funds provided under this Agreement.
- 1.4 Subject to securing any necessary governmental or third-party consents or authorizations disclosed by Recipient to the Alliance prior to the date of this Agreement, Recipient consents to participating, cooperating and collaborating in any program evaluation, report, consultation or other review which the Alliance, the Minister or their respective nominees may initiate and conduct in relation to this Agreement or the Project. Recipient shall use its best efforts to obtain all such necessary governmental or third-party consents or authorizations. Recipient further consents to being contacted by the Minister in relation to success stories in connection with this Agreement or the Project.
- 1.5 Recipient agrees that the Alliance has the right to release to the public any reports and other information the Alliance has the right to receive or to produce in accordance with this Agreement as well as such excerpts or summaries of said information as the Alliance may, from time to time, decide.
- 1.6 Recipient acknowledges and agrees that the Alliance may make one or more announcements or publish information on its website or in promotional materials concerning this Agreement and the Project stating the name of Recipient, a description of the Project and the Maximum Contribution Amount without the consent of Recipient.
- 1.7 At the request of the Alliance, Recipient will in all public communications (including but not limited to websites, publications, news releases, presentations, annual reports, on-site signage and other print materials, media interviews, videos, social media posts and public remarks) concerning the Project or this Agreement acknowledge the financial support of the Alliance and/or the Government

of Canada (“**Acknowledgements**”) in a form that is in accordance with, respectively, the Alliance’s Funding Acknowledgment Requirements made available from time to time and the Federal Identity Program (set forth at <https://www.canada.ca/en/treasury-board-secretariat/services/government-communications/federal-identity-program/manual.html>). Recipient will terminate any Acknowledgements as soon as reasonably practicable upon request of the Alliance. Recipient shall give reasonable prior notice to the Alliance of all proposed public announcements or ceremonies relating to the Project (“**Announcements**”) and facilitate the participation of a representative of the Alliance in Announcements. The Alliance will extend an invitation to the Minister to participate in Announcements. Where the Minister or a representative of the Minister wishes to participate in Announcements, Recipient will cooperate with the representative and the Alliance in respect of such Announcements.

- 1.8 Recipient shall ensure that each individual designated by Recipient to work on the Project shall give consent for the collection, use, and disclosure of their personal information in connection with the Project or this Agreement prior to any such collection, use, or disclosure. Such personal information may include the names, positions and contact information (business addresses, phone numbers and email addresses) for such individuals and such other information as a party determines is necessary for carrying out the Project or this Agreement.

2. RECIPIENT REPRESENTATIONS AND COVENANTS

- 2.1 Recipient, to the best of its knowledge, represents and warrants to and covenants with the Alliance and acknowledges and confirms that the Alliance is relying on such representations, warranties and covenants in connection with the entry into this Agreement:

- (a) Recipient has the requisite power and authority, and has met all legal requirements, necessary to enter into, deliver and perform this Agreement;
- (b) the entering into, delivery and performance of this Agreement, and its execution by the undersigned signatory, have been duly and validly authorized and when executed and delivered, this Agreement will constitute a legal, valid, and binding obligation of Recipient enforceable in accordance with its terms;
- (c) to the best of Recipient’s knowledge, the execution and delivery of this Agreement, and the performance by Recipient of its obligations hereunder will not, with or without the giving of notice or the passage of time or both: (i) violate any provisions of any constating or governance document of Recipient; (ii) violate any judgment, decree, order or award of any court, government agency, regulatory authority or arbitrator; or (iii) conflict with or result in the breach or termination of any material term or provision of, or constitute a default under, or cause any acceleration under, any license, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, permit, deed of trust or any other instrument or agreement by which it is bound;
- (d) to the best of Recipient’s knowledge, Recipient is under no obligation or prohibition, nor is it subject to or threatened by any actions, suits or proceedings which could or would prevent compliance with this Agreement;
- (e) the Project is technically and financially sound and Recipient has sufficient capacity to successfully carry out the Project;
- (f) in fulfilling its obligations under this Agreement, Recipient shall operate in accordance with the values of diversity, equity and inclusion;
- (g) no more than half of the membership and Board of Directors or any similar body of Recipient is composed of representatives or agents of the federal government;

- (h) where lobbyists are utilized, they shall be registered in accordance with the *Lobbying Act* (Canada) and that no actual or potential conflict of interest exists nor any contingency fee arrangement;
 - (i) any former public servant or public office holder that derives benefit from this Agreement shall be in compliance with the "Values and Ethics Code for the Public Sector", the "Policy on Conflict of Interest and Post-Employment" and the *Conflict of Interest Act* (Canada);
 - (j) the Project is not a "designated project" or "project" as such terms are defined under the *Impact Assessment Act, 2019*; and
 - (k) Recipient shall comply with all federal, provincial, territorial, municipal and other applicable laws governing the Recipient or the Project, or both, including but not limited to, statutes, regulations, by-laws, rules, orders, ordinances and decrees, including applicable laws 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 the Minister or other federal, provincial, territorial, municipal tribunals or bodies.
- 2.2 Recipient shall provide the Minister and/or Alliance with reasonable access to any Project site for the purpose of ensuring that the terms and conditions of any environmental approval are met, and that any mitigation, monitoring or follow-up measure required has been carried out.
- 2.3 If as a result of changes to the Project, an assessment is required in accordance with the *Impact Assessment Act, 2019* for the Project, the Alliance's obligations under this Agreement will be suspended from the moment that the Alliance notifies the Recipient until:
- (a) a decision statement has been issued to the Alliance or the Recipient; or
 - (b) if applicable, the Minister has decided that the Project is not likely to cause significant adverse environmental effects or the Governor in Council has decided that the significant adverse environmental effects are justified in the circumstances; and
 - (c) the Alliance has confirmed that all other requirements to which the Alliance is subject under any agreement between the Alliance and the Minister in respect of the assessment (including, without limitation, any requirement to amend such agreement or this Agreement) have been fully satisfied.

3. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 3.1 The parties acknowledge and agree that intellectual property ("**IP**") developed by either party or arising from the activities undertaken by either party may be subject to terms and conditions derived from funding regulations or contracts applicable to research projects or activities. The parties, therefore, agree that the following provisions shall be subject to the terms and conditions resulting from said contracts or regulations that may be applicable to each specific activity. In addition:
- (a) The parties acknowledge and agree that IP developed by Recipient or Recipient's employees, agents, contractors, etc. will be owned and treated in accordance with Recipient's internal policies.
 - (b) The parties acknowledge and agree that IP developed by the Alliance will be owned by the Alliance and treated in accordance with the Alliance's internal policies.
 - (c) Unless otherwise agreed between the parties, IP generated jointly by both parties shall be jointly owned and, in such circumstances, the parties shall agree in writing on the allocation

and terms of exercise of their joint ownership as well as on possible protection measures of such IP.

- (d) No right or license is granted hereunder to a party in respect of the IP of the other party.
 - (e) Any IP that is proprietary to that party and that is conceived, created or developed prior to, or independent of, the Project shall remain the exclusive property of such party.
- 3.2 Each party (the "**Receiving Party**") agrees that it is responsible for maintaining confidentiality of any information provided by the other party ("**Disclosing Party**") that is designated in writing as confidential or that the Receiving Party reasonably should have known under the circumstances was confidential ("**Confidential Information**"), provided that Confidential Information will not include (a) information which is publicly available at the time of disclosure or subsequently becomes publicly available through no act of the Receiving Party; (b) information which is disclosed to the Receiving Party by a third party which did not disclose it in violation of a duty of confidentiality; (c) information which was known to the Receiving Party before such information was provided to them or their representatives by or on behalf of Disclosing Party; (d) information which was developed by an employee, agent or contractor of the Receiving Party independent of (and without any knowledge of) any information disclosed to the Receiving Party or any of its representatives by or on behalf of the Disclosing Party; (e) disclosures which are required to be made by the Receiving Party under legal process by subpoena or other court order or other applicable laws or regulations (provided that the Receiving Party makes reasonable efforts to provide copies of such information to or informs the Disclosing Party before or at the time of disclosure or as soon as possible thereafter); (f) information disclosed to the Minister in accordance with, and subject to, one or more agreements between the Minister and the Alliance; or (g) information permitted to be disclosed under Section 1.5 of this Schedule C.
- 3.3 Notwithstanding anything contained herein, each party may disclose Confidential Information to its officers, employees, consultants, agents, and students on a need-to-know basis to facilitate performance of the Project, provided that such persons agree to be bound by terms at least as restrictive as those contained herein.
- 3.4 All obligations of confidence and non-use created under this Agreement shall terminate three (3) years from the completion or termination of this Agreement. Upon written request of the Disclosing Party, the Receiving Party agrees to return all copies of Confidential Information to the Disclosing Party; provided, however, that the Receiving Party shall be entitled to retain one (1) archival copy of all Confidential Information solely to ensure compliance with their rights and obligations hereunder.
- 3.5 In the event that either of the parties desires to publish or present the results of the Project, the parties shall co-operate in determining the scope of the proposed publication, including data to be included and the interpretation of the data, and shall acknowledge the contribution of the each of the parties and its researchers all in accordance with the customary standard of practice for academic research.
- 4. INSURANCE AND LIABILITY**
- 4.1 Insurance. Unless otherwise stated in Schedule B, Recipient will maintain during the term of this Agreement commercially reasonable insurance with respect to its activities relating to the Project.
- 4.2 Indemnification of the Alliance. Recipient will indemnify and hold harmless the Alliance, the Minister, the Federal Government of Canada and their respective employees, officers, directors and representatives (collectively, the "**Indemnified Parties**") against any and all loss, cost (including legal fees on a solicitor-client basis and court costs), damage, injury, liability, claim, penalty, fine, interest or cause of action to the extent arising from the acts or omissions of Recipient

or its employees, officers, directors or representatives in the course of the performance of this Agreement or the Project.

4.3 Limitation of Liability.

- (a) To the greatest extent permitted by applicable law, the Indemnified Parties shall not be responsible or liable to Recipient, or to anyone claiming by, through or under Recipient, or to any third party, for any loss, cost (including legal fees or court costs), damage, injury, liability, claim, penalty, fine, interest or cause of action arising out of this Agreement or the Project, and, in any event, the Indemnified Parties' liability under or in relation to this Agreement or the Project will not exceed the Maximum Contribution Amount to be advanced by the Alliance to Recipient under this Agreement.
- (b) In no event will a party be liable to the other party for any indirect or consequential loss or damage, loss of actual or anticipated profit, interest or revenue, or anticipated savings or business, or damage to goodwill or brand equity, even if the first party is advised in advance of the possibility of any such losses or damages.

5. TERMINATION

- 5.1 The Alliance may terminate this Agreement (without prejudice to its other rights and remedies) with immediate effect by written notice to Recipient if Recipient commits a material breach of any of its obligations under this Agreement and, in the case of a remediable breach, fails to remedy it within thirty (30) days of receipt of notice from the Alliance specifying the breach and requiring it to be remedied. Without limiting the generality of the foregoing, the Alliance may declare that a material breach has occurred if the Project is not completed to the Alliance's satisfaction by the Project Completion Date specified in Schedule B or if the Project is abandoned in whole or in part.
- 5.2 A party may, upon written notice to each other party other than the Affected Party, terminate this Agreement if another party ("Affected Party") becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, dissolution, or assignment for the benefit of creditors.
- 5.3 Sections 1.1 to 1.7, 2.1(a) to 2.1(d), 3, 4, 5, and 6.3 to 6.13 of this Schedule C and all other provisions of this Agreement which are either expressed to survive its termination or, from their nature or context, it is contemplated that they are to survive termination, will remain in full force and effect notwithstanding expiration or termination of this Agreement.
- 5.4 Notwithstanding the termination of this Agreement, Recipient shall remain responsible for the completion and delivery to the Alliance of all deliverables and reports which were completed or were due, or relate to a period ending, prior to such termination. If the Alliance terminates this Agreement for cause under Section 5.1 of this Schedule C, Recipient will indemnify the Alliance from and against any and all losses, costs, damages, claims or other liabilities of the Alliance resulting from Recipient's breach of the terms of this Agreement.

6. GENERAL PROVISIONS

- 6.1 Force Majeure. Neither party shall be held responsible to the other party for any default or delay in the execution of its obligations caused by circumstances beyond its control. Without limiting the generality of the foregoing, natural disasters, epidemics, pandemics (including the 2020 novel coronavirus (COVID-19) pandemic and any reoccurrence or resurgence thereof), strikes, fires, war and insurrections and actions of government or regulatory bodies, which prevent a party from performing under the Agreement shall be deemed to constitute force majeure, provided however that the party that is excused from performance takes all commercially reasonable measures necessary to prevent, control or limit the effect of the force majeure so that performance may

resume as soon as possible. Where performance is delayed due to legal or public health constraints arising from COVID-19, dates or times of performance shall be extended to the extent of delays excused by this clause, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay shall, so far as practicable, use commercially reasonable efforts to minimize and mitigate the extent, effect and period of any such delay or non-performance.

- 6.2 Notices. All notices, reports, requests, consents and other communications between the parties pertaining to matters related to this Agreement shall be in writing, shall specifically refer to this Agreement and shall be deemed duly received when actually received by mail or personal delivery, mailed by registered or certified mail to the receiving party or when transmitted by email, at the address set out in Schedule B or to such other address which may later be designated by written notice from either party.
- 6.3 No Waiver. No waiver or failure by either party to enforce their right or insist on strict performance of this Agreement shall be deemed to prevent the parties from subsequently enforcing their rights or insist on strict performance under the Agreement. No waiver or failure to strictly enforce rights shall affect the validity of this Agreement.
- 6.4 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 6.5 Independent Contractor. For the purpose of this Agreement, each party shall be, and shall be deemed to be, an independent contractor and not an agent or employee of the other party.
- 6.6 Not an Agent. In no event will the Alliance be acting as an agent of the Crown (including, without limitation, the Minister or the Federal Government of Canada) for the purpose of this Agreement or in making any decisions.
- 6.7 Assignment. Recipient may not assign this Agreement without the prior written consent of the Alliance, such consent shall not be unreasonably withheld.
- 6.8 Headings. The headings contained in this Agreement are for convenience and reference only and shall not define or limit the scope, or affect the interpretation, of its provisions.
- 6.9 Entire Agreement. This Agreement, together with the Schedules, constitutes the entire agreement and understanding between the Alliance and Recipient with respect to the Project, and supersedes all prior and contemporaneous understandings and agreements with respect to the subject matter. Any modification to this Agreement must be agreed to in writing signed by authorized representatives of the Alliance and Recipient.
- 6.10 Internal Conflict. If the provisions of this Agreement conflict with the provisions of any Schedule or Appendix, the conflict will be resolved in the following order of precedence: this Agreement, Schedule B, Schedule C, and Schedule A.
- 6.11 Currency. All monies referred to in this Agreement are expressed in Canadian dollars, unless otherwise stated.
- 6.12 Language. Les parties ont requis que cette entente soit rédigée en anglais. The parties have requested that this Agreement be drafted in English.

- 6.13 Governing Law. This Agreement shall be governed by the laws of the Province of Ontario, and the federal laws of Canada applicable therein. The parties irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to any disputes concerning this Agreement.
- 6.14 Electronic Signatures and Counterparts. This Agreement may be signed in counterparts and by facsimile or electronic means, each of such counterparts when executed shall constitute an original document, and such counterparts when taken together shall constitute one and the same document. Each party agrees that an electronic signature of a party included in this Agreement is intended to have the same force and effect as a manual signature. Delivery of an executed copy of this Agreement by facsimile or electronic transmission constitutes valid and effective delivery.
- 6.15 Extended Meanings. For the purposes of this Agreement, unless there is something in the subject matter or context inconsistent therewith: words denoting the singular include the plural, and vice versa; words denoting any gender include all genders; and where such changes apply, the rest of the sentence is to be construed as if the necessary grammatical and terminological changes had been made.

[End of Schedule C – remainder of page intentionally left blank]