



**MEMBERSHIP AGREEMENT**

2019-05-14

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## MEMBERSHIP AGREEMENT

This Agreement dated the ● day of ● is made

**BETWEEN:** **SCALE AI**, a corporation incorporated under the *Canada Not-for-profit Corporations Act* S.C. 2009, c. 23 (the **Corporation**)

**AND:** ● (the **Member**)

### RECITALS

**WHEREAS** the Corporation was incorporated to develop and manage collaborative innovation programs that bring together the private, public and academic sector in order to build the next-generation supply chain and boost industry performance by leveraging Artificial intelligence (AI) technologies;

**WHEREAS** the Corporation was one of the successful applicants to the Government of Canada's Innovation Superclusters Initiative. The Corporation entered into a Contribution Agreement with the Government of Canada and use funds contributed by the Government of Canada, along with the contributions of all Members, to co-fund innovation programs;

**WHEREAS** the Corporation shall facilitate and manage collaborative and innovative technology development programs among the Members and manage the Supercluster Funds and the relationship with the Government of Canada;

**WHEREAS** the Member wishes to become a member of the Corporation and the execution of this Agreement is a condition of admission;

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

### Article 1 Definitions

Capitalized terms used in this Agreement shall have the meaning ascribed thereto in Schedule A.

### Article 2 Purpose

#### 2.1 Purpose

The purpose of the Corporation is to develop and manage collaborative innovation programs that bring together the private, public and academic sector in order to build the next-generation supply chain and boost industry performance by leveraging AI technologies (the **Purpose**).

#### 2.2 Objectives

The Corporation shall transact its business and affairs as a not-for-profit corporation in accordance with the Act and the Purpose, and in so doing the Corporation shall work towards the following objectives (collectively, the **Objectives**):

- (a) develop a world-leading innovation ecosystem, strengthening connections and collaborations between private, public and academic leaders pursuing private-sector led innovation and commercial opportunities;
- (b) increase the adoption of AI in supply chain operations;
- (c) advance a range of business-led innovation and technology leadership activities that will boost productivity, performance and Canada's competitiveness in supply chain management;
- (d) generate new companies, products, processes and services and positioning firms to scale and integrate into global value chains, transition to high-value activities and become global market leaders;
- (e) foster a critical mass of growth-oriented firms;
- (f) support the scaling up of small and medium-sized enterprises;
- (g) develop the skills and diversity of the talent pool; and
- (h) any other objective approved by the Board from time to time.

### **2.3 Expected Results**

The Corporation shall pursue the achievement of the following results:

- (a) enhance productivity, competitiveness and economic growth by accelerating business-led innovation that helps firms grow and creates new jobs;
- (b) address gaps and enhance the attributes of regional innovation ecosystems to align and strengthen the assets and key elements that contribute to developing a world-leading Supercluster;
- (c) increase business enterprise R&D and applied research to strengthen Canada's technological capabilities and commercialize products, processes and services that address important industrial challenges for Canada's sectors of economic strength; and
- (d) achieve meaningful collaboration between private, academic and public sector organizations to strengthen collective capabilities and knowledge.

## **Article 3 Membership**

### **3.1 Membership Classes**

Subject to the articles, there shall be seven (7) classes of members in the Corporation, namely: Industrial Founder Members, Industrial Members, Ivado Lab Member, Founding University Members, Other University Members, Research Institution Members and Other Enabler Members.

The members of the Corporation shall be those persons interested in furthering the purposes of the Corporation and who meet the conditions for membership as hereinafter set forth as may from time to time be admitted into membership in the Corporation by resolution of the board of directors. Members of the

Corporation may also be admitted in such other manner as may be approved from time to time by the board of directors. The following conditions and rights of membership shall apply :

(a) **Industrial Founder Members.** Is entitled to become an Industrial Founder Member any Industrial Member which is an important contributor to the Corporation, as determined by the board. The Industrial Founder Member shall be entitled to receive notice of and to attend and vote at all meetings of the members of the Corporation (other than meetings of the members of another class) and each Industrial Founder Member shall have ten (10) votes at each such meeting.

(b) **Industrial Members.** Is entitled to become an Industrial Member any industrial partner of the Corporation which is a contributor to the Corporation, as determined by the board. The Industrial Member shall be entitled to receive notice of and to attend and vote at all meetings of the members of the Corporation (other than meetings of the members of another class) and each Industrial Member shall have five (5) votes at each such meeting.

(c) **Ivado Labs Member.** Is entitled to become the Ivado Labs Member: Ivado Labs. The Ivado Labs Member, as a founding member, shall be entitled to receive notice of and to attend and vote at all meetings of the members of the Corporation (other than meetings of the members of another class) and the Ivado Labs Member shall have thirty (30) votes at each such meeting.

(d) **Founding University Members.** Is entitled to become a Founding University Member:

- the University of Waterloo or the University of Waterloo as represented by the Faculty of Engineering, as determined by the board;
- Corporation de l'École des Hautes Études Commerciales de Montréal (HEC Montréal);
- Corporation de l'École Polytechnique de Montréal;
- L'Université de Montréal; and
- McGill University.

The Founding University Member, as a founding member, shall be entitled to receive notice of and to attend and vote at all meetings of the members of the Corporation (other than meetings of the members of another class) and each Founding University Member shall have thirty (30) votes at each such meeting.

(e) **Other University Members.** Is entitled to become an Other University Member: University of Toronto, University of Alberta, Université Laval, University Concordia and University of Sherbrooke. The Other University Member shall be entitled to receive notice of and to attend and vote at all meetings of the members of the Corporation (other than meetings of the members of another class) and each Other University Member shall have fifteen (15) votes at each such meeting.

(f) **Research Institution Members.** Is entitled to become a Research Institution Member:

- IVADO,
- MILA – Institut québécois d'intelligence artificielle,
- Vector Institute for Artificial Intelligence

- Alberta Machine Intelligence Institute (AMII).

The Research Institution Member shall be entitled to receive notice of and to attend and vote at all meetings of the members of the Corporation (other than meetings of the members of another class) and each Research Institution Member shall have five (5) votes at each such meeting.

(g) **Other Enabler Members.** Is entitled to become an Other Enabler Member any academia, research institute, university, professional service firm, professional association, incubator, venture capital fund, investment fund, financial institution or any other organization or individual which partners with the Corporation in its programs, as determined by the board. The Other Enabler Member shall be entitled to receive notice of and to attend and vote at all meetings of the members of the Corporation (other than meetings of the members of another class) and each Other Enabler Member shall have three (3) votes at each such meeting.

### 3.2 Membership Structure

Except for matters relating to cyber security, the Corporation shall ensure:

- (a) open access to membership in the Corporation, including access by all sizes of entities from all sectors of the economy;
- (b) equal access to funding for Eligible Projects irrespective of membership class; and
- (c) that all Members may propose and participate in Eligible Projects.

### 3.3 Membership Fees

- (a) The Member shall pay an annual membership fee to the Corporation, the amount of which will be determined by the Board, or a committee to which the Board has delegated this power, and will depend on the type and size of the Member (the **Membership Fee**). The amount of the Membership Fee shall be reviewed annually by the Board. Tariffs for 2018-2019 are in Schedule C.
- (b) The Corporation shall invoice and the aspiring Member shall pay its initial Membership Fee prior to the execution of this Agreement, the addition of a new Member being conditional to its payment of such fee.
- (c) For each following years, the Corporation shall invoice the Member 30 days prior to the date that is the anniversary of the Member's membership (the **Due Date**), and the Membership Fee shall be paid no later than on this Due Date.
- (d) If the Member does not pay the Membership Fee on or before the Due Date, it will cease to be a member in good standing. In such circumstances, as provided for in Section 10.1(a) and following a fifteen (15) days written notice, the Corporation may exercise its rights to terminate the Agreement or suspend the Member.
- (e) Members will be reinstated as members in good standing upon payment of any such fees or dues, plus interest calculated at five percent (5%) above the then-current Bank of Canada prime lending rate.

- (f) The amounts payable by the Member pursuant to this Agreement are exclusive of applicable taxes. The Member shall pay any and all taxes owing in respect of the fees charged pursuant to this Agreement imposed at any time by any Governmental Authority. All applicable taxes shall be added to the invoiced amount shown as a separate line item.
- (g) Membership Fees shall be non-refundable.

### **3.4 Membership Obligations**

- (a) The Member undertakes to follow and comply with: (a) the Agreement; (b) the policies and guidelines of the Corporation, including the Project Selection Guidance Document; (c) the Code of Ethics; and (d) its confidentiality obligations, including under the Member Collaboration NDA substantially similar to Schedule B attached herein.
- (b) The Member involved in an Eligible Project also undertakes to follow and comply with: (a) its obligations with respect to an Eligible Project Agreement; (b) the IP strategy and the Data strategy developed by the Board; and (c) its confidentiality obligations under a Non-Disclosure Agreement specific to an Eligible Project Agreement.
- (c) The Member involved in an Eligible Project shall, at its own expense:
  - (i) preserve and make available for audit and examination by the Minister, proper books, accounts and records for the purpose of validating the use of the Supercluster Funds, wherever such books and records may be located, and permit the Minister to, upon reasonable notice, conduct such independent audits and evaluations as the Minister in his discretion may require;
  - (ii) permit the Minister to conduct a performance (value-for-money) audit of the Member in relation to the Supercluster Funds;
  - (iii) upon reasonable notice, permit the Minister, reasonable access to the Member premises and documents that are related to an Eligible Project, in order to inspect and assess the use of the Supercluster Funds; and
  - (iv) supply promptly, on reasonable request by the Minister, such other data in respect of its activities, projects and their results, as the Minister may require for purposes of the Contribution Agreement and for statistical and/or evaluation purposes.
- (d) The Member involved in an Eligible Project shall comply with all federal, provincial, territorial, municipal and other applicable laws governing Eligible Projects, including but not limited to, statutes, regulations, by-laws, rules, ordinances and decrees.

### **3.5 Non-Exclusivity**

The Member acknowledges that its arrangements with the Corporation pursuant to this Agreement are not exclusive and that the Corporation shall have the power and authority to engage other parties in providing membership that is similar to the membership provided to the Member under this Agreement.

### **3.6 Members and Projects**

The Corporation may inform the Minister or interested provincial or territorial governments, on a regular basis or upon request, of past or current Members or Eligible Projects.



## Article 4 Investment Management

The Corporation shall, pending the use of the Supercluster Funds in eligible projects:

- (a) invest and manage the Supercluster Funds in accordance with the terms of the Contribution Agreement; and
- (b) invest and manage the Supercluster Funds in accordance with investment policies, standards and procedures that a prudent person would follow in making investment decisions.

## Article 5 Project Selection

### 5.1 Project Selection Programs

The Corporation shall have five (5) programs, established by the Board, to govern the projects selection process. These programs shall pursue strategic opportunities where Members align resources around shared technology development and commercialization objectives in a portfolio of one or more complementary projects. Supercluster Funds are allocated to each program by the Board, and these allocations are used to invest Supercluster Funds in projects that advance the program's technology development and commercialization objectives.

The five (5) programs shall be as follow:

- **Adoption of AI-powered supply chain**, to drive productivity and competitiveness of Canadian firms by fostering deeper and better use of AI technologies in supply chain operations;
- **Commercialization of AI-powered supply chain solutions**, to enhance offering and go-to-market of solution providers by developing, industrializing and expanding AI-powered products and services applied to supply chain management;
- **SME AI scale-up support**, to drive small and medium enterprises (**SME**) scale-up and grow the world's best AI services and products providers by supporting a range of initiatives including incubation, mentorship, business connection-building;
- **Current and future workforce development in AI**, to boost the skills and diversity of our talent pool by augmenting the pipeline of future talents, reinforcing the links between academia and the industry, and upskilling the industrial workforce; and
- **Collaboration development**, to facilitate collaborations and maximize synergies in the ecosystem.

In accordance with the direction set by Board approved policies and procedures, the Corporation shall be responsible for ensuring qualified staff, program guides and support resources are in place to support the development and approval of programs.

### 5.2 Project Selection Process

The Corporation shall assess and select projects that qualify as Eligible Projects as proposed by Members in a fair, open and impartial manner and shall:

- Follow the Project Selection Guidance Document;
- Enter into Eligible Project Agreements with Members;
- Approve the distribution of funds to Members; and
- Monitor the compliance of Members with the Eligible Project Agreements.

### **5.3 Financial Leverage**

The Corporation provides for financial leverage on Eligible Projects through the following mechanisms: (i) Supercluster Funds, that can go up to matching the funds contributed by Members, provided through a reimbursement mechanism managed by the Corporation, and (ii) collaboration leverage in the case of a joint proposals with other Members, where each Member may achieve technical, market and business development outcomes at a fraction of the total cost if the total costs of the effort were borne solely by the Member itself.

### **5.4 Project Development and Approval**

Members may submit project for consideration as part of the Corporation's projects review cycles. The project development process shall initially consist of the following:

- Initial project definition: Directors of Collaboration shall work with Members to develop project expressions of interest for potential projects they are interested in supporting; and
- Eligibility assessment: Directors of Collaboration will categorize, sort and evaluate project expressions of interest, in accordance with Board approved policies and procedures, and identify a list of projects that shall receive an invitation to progress to the next step of submitting an Eligible Project proposal;

Members may participate in the Eligible Project selection process with the support of the Project Manager and IP Manager. The Eligible Project approval process shall initially consist of the following:

- (a) Detailed project submission: Directors of Collaboration shall work with Members and other stakeholders, including external experts to prepare detailed submission documents;
- (b) Selection: the Corporation Project Selection and Prioritization Committee shall decide on the approval of each project independently. Members may be invited to present to the Corporation Project Selection and Prioritization Committee;
- (c) Board Approval: the Board Project Selection Committee shall review and approve the recommendations presented by the Corporation Project Selection and Prioritization Committee;
- (d) Prioritization: the Corporation Project Selection and Prioritization Committee shall confirm launch date, milestones and funding timeline of the Eligible Project;
- (e) Launch & Execution: project proposals shall form the basis of the applicable Eligible Project Agreements, which shall govern the relationships among project participants including the division of the scope of work, each participant's responsibilities, each participant's share of financial contributions, intellectual property rights and any other terms that the participants choose to include in the Eligible Project Agreement.

Project review cycles shall be a minimum of each fiscal year quarter and, or such alternative timing as approved by the Corporation Project Selection and Prioritization Committee.

## **Article 6 Business and Affairs**

### **6.1 Information to be Distributed**

The Corporation shall arrange for its financial statements to be prepared and delivered or made available to the Member as soon as reasonably practicable, and in no event, later than one hundred and twenty (120) days after the end of each Fiscal Year.

### **6.2 Corporate Plan and Annual Report**

During each Fiscal Year, the Corporation shall deliver or make available to the Member an Annual Corporate Plan and an Annual Report.

### **6.3 Books and Records**

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

## **Article 7 Intellectual Property and Data**

### **7.1 Intellectual Property Strategy and Data Strategy**

The Corporation shall prepare an Intellectual Property Strategy and a Data Strategy and shall review these at least on an annual basis.

### **7.2 Intellectual Property Provisions**

The Members acknowledge and agree that the Intellectual Property Strategy or related policies for implementation of the Intellectual Property strategy shall include:

- a) context for the Intellectual Property Strategy, its purpose and objectives;
- b) provisions for a Member-accessible registry of Foreground Intellectual Property, and any conditions, restrictions or exceptions to the inclusion of Foreground Intellectual Property on the registry or access by Members to the registry;
- c) a dispute resolution mechanism to address and resolve Member disputes in respect of ownership of and access to Foreground Intellectual Property;
- d) access to independent expertise and advice on Intellectual Property for Members applying for funding in respect of an Eligible Project;
- e) the delivery of direct programming to SME Members;
- f) guidelines or best practices designed to promote collaboration between Members and sharing of Intellectual Property and data, and to provide benefits from such collaboration to Members and Canadian at large; and

- g) comprehensive descriptions of the roles and responsibilities of the Intellectual Property Manager, and of other important actors with regards to the Intellectual Property Strategy such as the Board and the executives of the Corporation.

### **7.3 Eligible Project Intellectual Property**

In addition to the provisions of this Agreement, the Data Strategy and the Intellectual Property Strategy, Members involved in Eligible Project Agreements shall also comply with the Intellectual Property provisions governing such specific agreement. The Eligible Project Agreements will include, amongst other things, provisions regarding the determination of ownership rights on Foreground Intellectual Property and guidelines for the licensing of Foreground Intellectual Property.

## **Article 8 Board Composition and Observer**

### **8.1 Composition of the Board**

The Corporation shall:

- (a) use best efforts to ensure that the Board includes representatives of its Supercluster Ecosystem and significant representation of Canada's multicultural diversity, including visible minorities and Indigenous peoples; and
- (b) ensure, to the extent required by the Contribution Agreement, that the members of the Board are comprised of no less than fifty (50) percent women and no less than one-third Independent Members.

### **8.2 Observer**

As provided by the Contribution Agreement or any other agreement entered into between the Corporation and any provincial or territorial government, representative of the Minister of Industry and representatives of interested provincial or territorial governments may attend meetings of the Board, and its Executive Committees, as observers.

## **Article 9 Representations and Warranties**

### **9.1 Representations and Warranties by the Member**

The Member represents and warrants as follows:

- (a) it is incorporated, organized and subsisting under the laws of Canada or of one of its and has the corporate power, authority and capacity to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement by the Member has been duly authorized by all necessary corporate action and constitutes the valid and binding obligation of the Member enforceable against the Member in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors and others to the extent that equitable remedies are only available in the discretion of the court from which they are sought; and

- (c) the execution, delivery and performance of this Agreement by the Member does not and shall not contravene the provisions of its articles, by-laws, constating documents or other organizational documents or the provisions of any indenture, agreement or other instrument to which it is a Party or by which it may be bound.

## **9.2 Representations and Warranties by the Corporation**

The Corporation represents and warrants as follows:

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

## **Article 10 Termination of Membership**

### **10.1 Termination**

- (a) The Corporation may terminate this Agreement or suspend the Member with fifteen (15) days' written notice if the Member fails to be a member in good standing as provided in Section 3.3(c);
- (b) The Corporation, upon the occurrence of any of the following events, may terminate this Agreement or suspend the Member with thirty (30) days' written notice:
  - (i) the Member fails to satisfy any of the membership obligations set out in Section 3.4 of this Agreement or has not met or satisfied any other term or condition of this Agreement;
  - (ii) the Member becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Member's existence or the liquidation of its assets;
  - (iii) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the Member; or
  - (iv) for any other reason that the Board in its sole and absolute discretion considers to be reasonable, having regard to the Corporation's Purpose and Objectives.

- (c) The Member may terminate this Agreement upon delivering ninety (90) days' written notice to the Corporation, providing that such termination is not prohibited under an Eligible Project Agreement to which the Member is a party.

## 10.2 Post-Termination Obligations

- (a) Upon notice of termination of this Agreement by either Party, the Parties will cooperate to wind down the relationship.
- (b) Any Eligible Project Agreement entered into by the Parties shall not terminate upon the termination of this Agreement.
- (c) Upon the termination of this Agreement for any reason, and unless otherwise agreed to by the Parties in writing or required by an Eligible Project Agreement between the Parties, the Member shall, within three (3) months of receipt of a notice of termination:
  - (i) cease any use of the Corporation's name and/or logo; and
  - (ii) pay all outstanding Membership Fees.

## Article 11 Confidentiality

### 11.1 Non-Disclosure Agreement

Both Parties are conscious that the relation between them under the Agreement, as well as their relations with other Members, is privileged and may lead to the exchange of Confidential Information. They undertake to treat such information in conformity with the Member Collaboration NDA attached herein as Schedule B, as well any Non-Disclosure Agreement specific to an Eligible Project Agreement to which they are a party.

### 11.2 Policy Relating to Confidentiality

The Member undertake to comply with the policy relating to confidentiality, as approved by the Board of the Corporation, which defines what constitutes confidential information, the treatment to be given to such information and the circumstances under which such information may be disclosed by the Corporation or the Minister.

## Article 12 Competition Law Compliance

The Member shall comply with the provisions of the *Competition Act* (Canada) and other applicable competition and anti-trust laws at all times and shall take all steps required or advisable to ensure compliance therewith.

## Article 13 Indemnification

The Member shall indemnify and hold harmless the Corporation and its directors, officers, employees and legal representatives (collectively, the **Indemnified Party**) against all matters, including all claims, costs, charges and expenses, as well as any other fees of any kind, either incurred or to be incurred by the Indemnified Party as a result or in relation with this Agreement. The above obligation is not restrictive nor

intended to be exhaustive, and the Corporation reserve all of its rights and remedies under the law or any other agreement entered into with the Member, including under the terms of an Eligible Project Agreement.

## Article 14 Dispute Resolution

### 14.1 Goal

The Parties recognize that disputes may arise as they pertain to a Party's rights and obligations under this Agreement during the term. To facilitate resolution of such disputes in an expedient manner by mutual cooperation (and without resorting to litigation), the Parties shall follow the procedures set forth in this Article 14 if and when such disputes arise.

### 14.2 Dispute Resolution Process

- (a) In the event of any dispute between the Parties relating to this Agreement or its subject matter, they shall (i) seek to work together to develop a written and dated summary of the nature, extent, and magnitude of the dispute and, where appropriate, how each affected Party sees resolution of the dispute, (the **Dispute Notice**); and (ii) seek to amicably resolve or settle the dispute in good faith by mutual agreement.
- (b) If the Parties have not reached a resolution or settlement by mutual agreement as set out in Section 14.2(a), the Parties shall refer the dispute to a mediator acceptable to both Parties for non-binding mediation, and the costs of such mediation shall be shared equally by the Parties.
- (c) If the dispute is not settled by mediation as set out in Section 14.2(b) within sixty (60) days of the mediator receiving the Dispute Notice of the Parties, the dispute shall be settled by binding arbitration as follows: The Parties to the Dispute Notice shall have twenty (20) days to designate one arbitrator and these arbitrators so designated shall appoint a final arbitrator mutually acceptable to them, who shall alone hear and determine the dispute within sixty (60) days of receiving the Dispute Notice. If the designated arbitrators are unable to agree upon a final arbitrator, the final arbitrator shall be appointed by a Judge of the Superior Court of Quebec as soon as practicable. The arbitration shall take place in Montreal, Quebec unless otherwise agreed by both Parties. Any judgment, decision or award rendered by such arbitrator shall be final and binding on the Parties and shall not be the subject of any further court proceeding except in connection with the enforcement of such award by a court of competent jurisdiction. The costs of arbitration, including legal fees and disbursements of the Parties, shall be allocated by the arbitrator in the manner that the arbitrator, in his or her discretion, considers appropriate. This Section 14.2 does not affect the rights of the Parties to seek injunctive relief when appropriate to enforce their respective rights hereunder.

### 14.3 Eligible Project Agreement

If a dispute arise out of a Party's rights and obligations under an Eligible Project Agreement, the Parties shall refer to the dispute resolution mechanism included in such Eligible Project Agreement.

### 14.4 Confidentiality

Dispute Notices and their related materials and the arbitration process related to a Dispute Notice as set out in Sections 14.2 and 14.3 shall be treated as Confidential Information within the dispute resolution process. For added clarification, information that was not Confidential Information outside the dispute

resolution process will not be deemed Confidential Information as a result of being used in a dispute resolution process.

## Article 15 General Provisions

### 15.1 Term

The term of this Agreement shall begin at the date hereof and shall remain in force until:

- (a) it is terminated pursuant to Article 10; or
- (b) the winding up, liquidation, dissolution or like event involving the Corporation.

### 15.2 Termination Not to Affect Rights or Obligations

A termination of this Agreement shall not terminate any Eligible Project Agreement entered into by the Parties, nor affect or prejudice any rights or obligations which have accrued or arisen under this Agreement prior to the time of termination or which shall by their nature survive termination of the Agreement, and any such rights and obligations shall survive such termination and remain in full force and effect.

It is understood by the Member that access to the Intellectual Property Registry is restricted to current Members, and that such right will not survive termination of the Agreement.

### 15.3 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement:

- (a) all dollar amounts referred to in this Agreement and its Schedules are stated in Canadian Dollars; and
- (b) any payment contemplated by this Agreement shall be made by wire transfer or by any other method that provides immediately available funds.

### 15.4 Notices

Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if it is sent by courier or registered mail and by e-mail or other similar means of electronic communication, to the applicable addresses set out below:

- (a) If to the Member, to:

- 

Attention: ●  
E-mail: ●

with a copy to:

-



Attention: ●  
E-mail: ●

(b) if to the Corporation, to:

SCALE AI  
6650 St-Urbain, suite 350 A  
Montréal, Québec H2S 3G9

Attention: Chief Executive Officer  
E-mail: ●

with a copy to:

Attention: ●  
E-mail: ●

The Member shall designate a contact person responsible for all matters relating to this Agreement or its subject matter.

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day on which the latest of the courier or registered mail was delivered and the e-mail or other means of recorded electronic communication was sent, provided that such day is a Business Day and the communication is so delivered, e-mailed or sent before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the following Business Day. Any Party may from time to time change its address under this Section 15.4 by notice to the other Party given in the manner provided by this Section 15.4.

### **15.5 Severability**

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

### **15.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

### **15.7 Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement of the Parties. Following an amendment, a copy of the amended Agreement must promptly be sent by the Corporation to the Minister.

### **15.8 Further Assurances**

The Parties hereto and their respective directors, officers and employees, to the extent applicable, agree to execute and deliver such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence, and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part hereof.

**15.9 Counterparts**

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

**15.10 Assignment**

No Member may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations without prior written consent of the Corporation, such consent not to be unreasonably withheld.

**15.11 Remedies Cumulative**

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

**15.12 Independent Legal Advice**

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

**15.13 Schedules**

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule A – Definitions

Schedule B – Member Collaboration NDA

Schedule C - Membership fees 2019-2020

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

**SCALE AI**

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

**[MEMBER]**

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

## Schedule A Definitions

In this Agreement:

**Act** means the *Canada Not-for-profit Corporations Act* S.C. 2009, c. 23, or any statute that may be substituted therefor, and the regulations to the Act, as amended from time to time.

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

**Agreement** means this Membership Agreement and all Schedules attached hereto, in each case as it or they may be supplemented or amended from time to time in accordance with such Agreement.

**Annual Report** means the Corporation's report including its audited financial statements; a statement of its objectives for the Fiscal Year as stated in the Corporate Plan; a statement on the extent to which the Corporation met those objectives and those that remain a challenge; a summary of any updates to the Corporation's investment policies, standards and procedures, if any; a statement of remuneration; executive confirmation that the Intellectual Property Strategy operates as intended; a summary of any updates made to the Corporation's Intellectual Property Strategy or Data Strategy; and other relevant information.

**Background Intellectual Property** means the Intellectual Property rights developed prior to the beginning of the Eligible Projects and required for the carrying out of the Eligible Projects or for the exploitation of the Foreground Intellectual Property.

**Board** means the board of directors of the Corporation.

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

**Competitively Sensitive Information** means any Confidential Information that has not been made publicly available that concerns an important aspect of the Member's products or services and may either give the Member a competitive advantage or allow Members to coordinate or alter their behavior in an anticompetitive manner. Competitively Sensitive Information may include an individual Member's strategic plans, production levels and capabilities, volume of sales, output, supply, costs, price or any element of price, customers, customer terms or conditions of sale, suppliers, markets, existing or new products, operational technologies and such similar information that could provide a competitive advantage, or influence expansion or reduction plans, pricing, discounting and credit terms.

**Confidential Information** means any and all (as the context requires) confidential information of a Disclosing Party which shall include, in the case of the Corporation, confidential information of the Member, that is disclosed orally or in writing to a Receiving Party by such Disclosing Party pursuant to this Agreement, regardless of whether the information is specifically identified or marked as "Confidential"; and includes but is not limited to: confidential information that the Member may have or acquired (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs, plans, intentions or market opportunities and the operations, processes, product information, know-how, designs, trade secrets or software of a Disclosing Party, of the other party or any member of the Disclosing Party's group, as a consequence of the negotiations relating to this Agreement; any other agreement or document referred to in this Agreement or the performance of this Agreement or any other agreement or document referred to in this Agreement; or relates to the contents of this Agreement, but shall not include information

which: at the time of disclosure is in the public domain or which, after disclosure, enters the public domain, except as a result of a breach of this Agreement by a Receiving Party and any Person for which a Receiving Party is responsible under Article 12; is provided to a Receiving Party by another Person who is not a Disclosing Party, as evidenced by the written records of the Receiving Party, except where the other Person is known or ought reasonably to be suspected of being subject to an obligation to a Disclosing Party to maintain such information and materials in confidence; is independently created, developed or acquired by or for a Receiving Party through Persons to whom the Confidential Information had not been disclosed; was lawfully in the possession of a Receiving Party as confirmed by the written records of the Receiving Party before its receipt of such Confidential Information under this Agreement; or is released from the confidentiality provisions of this Agreement by the written authorization of the Disclosing Party. Information required to be maintained in confidence under this Agreement that is specific in nature shall not be deemed to be in the public domain or in the prior possession of a Receiving Party merely because general principles concerning the specific information are in the public domain or in the prior possession of such Receiving Party.

**Corporate Plan** means a report on the Corporation's corporate plans including a statement of the planned expenditures for the upcoming Fiscal Year; a summary of planned projects and their implementation schedule for the upcoming Fiscal Year; a summary of risk assessments and mitigation strategies and other relevant information.

**Contribution Agreement** means the Innovation Superclusters Initiative Contribution Agreement dated ● between her Majesty the Queen in right of Canada, as represented by the Minister of Industry and the Corporation.

**Disclosing Party** means any Party or its Affiliate that discloses Confidential Information to a Receiving Party.

**Dispute Notice** has the meaning set forth in Section 14.2(a).

**Eligible Project** means a project undertaken by a Member or another participant in the Corporation and that is approved for funding by the Corporation.

**Eligible Project Agreement** means a written funding agreement between the Corporation and certain Members and other participants in respect of an Eligible Project.

**Executive Committee** means an executive committee within the Board of the Corporation.

**Fiscal Year** means the fiscal year of the Corporation commencing the first day of April and ending the last day of March of each year.

**Foreground Intellectual Property** means all Intellectual Property conceived, produced, developed or reduced to practice in carrying out Eligible Projects by the Corporation, Members, other participants, or any of their employees, agents, contractors or assigns, and all rights therein, but does not include Background Intellectual Property as defined in this Agreement.

**Governmental Authority** means:

- (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;

- (c) any court, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

**Independent Member** means a member of the Board that does not directly benefit from the Corporation's activities and has no material relationship with Members that could, either directly or indirectly, in practice or appearance, impair that individual's ability to act in the Corporation's best interests. For the purposes of this definition, "material relationship" means any of the following relationships: (a) a director, officer or employee of an organization funded by the Innovation Superclusters Initiative or occupying any such position within the last three years that is receiving or that has received at any time payments from the Corporation for services; (b) a director, officer, employee, partner of an organization doing business with the Corporation; (c) a current or former director, officer, employee, or partner of, or having been, a partner, executive, officer or employee of an organization that has performed audit services for the Corporation within the last three years; or (d) an immediate family member of a person in (a) through (c).

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

**Intellectual Property Strategy** means a strategy providing 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.

**Member Collaboration NDA** means a Non-Disclosure Agreement entered into by a Member in relation with the present Agreement, attached herein as Schedule B, as may be amended from time to time.

**Members** refers to all the members of the Corporation.

**Membership Fee** has the meaning set forth in Section 3.3.

**Minister** means the Minister of Innovation, Science and Economic Development.

**Objectives** has the meaning set forth in Section 2.2.

**Party** means a Party to this Agreement and any reference to a Party includes its successors and permitted assigns, and **Parties** means all of them.

**Person** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, one of the Members, and the executors, administrators or other legal representatives of an individual in such capacity.

**Project Selection Guidance Document** means the guidance document of the Corporation setting out the selection criteria for Eligible Projects to be undertaken by Members or other participants, as may be amended from time to time.

**Purpose** has the meaning set forth in Section 2.1.

**Receiving Party** means a Party or its Affiliate that receives Confidential Information from a Disclosing Party.

**Representatives** means with respect to a Person, such Person's employees, directors, officers, professional advisers, contractors, consultants and agents and any other Person who acts under the authority of such Person in connection with the activities carried out under this Agreement.

**SMEs** means Small and Medium Companies in accordance with the definition provided by Statistics Canada.

**Statement of Investment Policy** means the Corporation's policy relating to investment return objectives and expectations, diversification of investment portfolio, permitted and prohibited investment instruments and trading activities, the Corporation's liquidity needs, risk management principles and procedures and performance measurements and monitoring procedures, as may be amended from time to time.

**Supercluster** means a network of innovation ecosystem participants that are linked through their shared reliance on specialized inputs, including technologies, talent and infrastructure.

**Supercluster Ecosystem** means the community of interacting and interconnected persons, industries, sectors and infrastructure within a tangible or intangible area.

**Supercluster Funds** refers to funds managed by the Corporation in accordance with the Contribution Agreement. Additional funds may be added through contribution agreements with other Governmental Authorities, agencies or enterprises and Membership Fees.

## SCHEDULE B

### MEMBER COLLABORATION NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the **Agreement**) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between Scale.AI (the **Corporation**) and **[Name of the Member]** (the **Member**, and, together with the Corporation, the **Parties**)

**WHEREAS** the Parties have entered into a Membership Agreement where the Member became a member of the Corporation.

**WHEREAS** in the context of this relation the Corporation or the Member (each a **Recipient**) may from time to time receive from each other or from other members of the Corporation (each a **Discloser**) certain Confidential Information (as defined below).

**WHEREAS** the Parties are conscious that the relation between them under the Membership Agreement as well as with other members of the Corporation is privileged, and that their successful collaboration requires that all the parties involved respect the private nature of the Confidential Information exchanged.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, this Agreement sets out the respective obligations of the parties with respect to Confidential Information.

#### **A. Description of Confidential Information**

**"Confidential Information"** is any information in whatever form or medium (and includes any copies of such information that the Recipient is authorized to make hereunder) that is: (a) proprietary or confidential to the Discloser or its affiliated companies or to their respective customers, suppliers or other business partners including, without limitation, information, designs, know-how, trade secrets, configurations, business plans, technology plans, strategies, project information, equipment, data, data models, data structures, databases, systems, system architectures, software, technology, technical documentation, product or service specifications or strategies, marketing plans, pricing information, financial information, information relating to existing, previous and potential suppliers, talent or R&D resources, customers, members and contracts, inventions, applications, methodologies and other know-how in whatever form or media; (b) is either specifically identified as confidential prior to or at the time of its disclosure or would generally be considered confidential in the industry of the Discloser; and (c) directly or indirectly disclosed or to which the Recipient is otherwise provided access by the Discloser or on the Discloser's behalf. For the purposes of clarification, in relation to any discussions relating to patent rights, any lists of prior art identified by the Discloser as a result of the Discloser expending time and/or money shall constitute Confidential Information and may be used, reproduced or disclosed only as specifically provided herein.

#### **B. Description of the Purpose**

**"Purpose"** means the collaboration and promotion of exchanges between the Parties and with other members of the Corporation in accordance with the Membership Agreement.

#### **C. Use, Disclosure and Reproduction**

Except as specifically provided herein, the Recipient shall hold Confidential Information in strict confidence. The Recipient shall use and reproduce the Confidential Information only to the extent reasonably required to fulfill the Purpose. It shall not be a breach of the obligations of the Recipient if the Recipient provides access to Confidential Information to, and authorizes the use and reproduction of the Confidential Information as is reasonably required to fulfill the Purpose by: (a)



wholly owned subsidiaries of the Recipient (**Subsidiaries**) and/or (b) the Recipient's employees (**Employees**), provided that the Recipient is vicariously liable for the failure of any Subsidiary and/or Employee to whom Confidential Information is disclosed to comply with the Recipient's obligations hereunder and further provided that the Subsidiary and/or Employee: (i) has a need to know the Confidential Information to fulfill the Purpose; and (ii) has entered into a confidentiality agreement with the Recipient with terms that afford no less protection to the Confidential Information than the terms of this Agreement. The Recipient may also disclose Confidential Information if and only to the extent: (i) it is required to do so by law provided that the Recipient gives the Discloser sufficient notice to enable it to seek an order limiting or precluding such disclosure; or (ii) the Discloser gives its prior written authorization to do so which is signed by an officer of the Discloser. The Recipient agrees that except to the extent that the Discloser is expressly precluded by law from prohibiting the Recipient from doing so, the Recipient shall not alter, modify, adapt, create derivative works, translate, deface, decompile, disassemble, convert into human readable form, or reverse engineer all, or any part, of any materials to which it is provided access by the Discloser.

**D. Term**

The term of this Agreement shall be an indefinite period of time.

**E. Feedback**

Each Party may from time to time provide to the other Party feedback or suggestions regarding the technology or Confidential Information of the other Party, which may include suggestions for, or feedback concerning, improvements, modifications, corrections, enhancements, derivatives or extensions, as well as branding ideas (**Feedback**). It is agreed that each Party receiving such Feedback shall have a perpetual, royalty free, exclusive, and transferable license to use such Feedback, without any obligation to compensate the Party providing the Feedback or their personnel. The Party receiving Feedback may develop data, technology, modifications, correction, enhancements, derivatives or extensions ("**Improvements**"), and further may also develop branding elements, based on such Feedback, and such Improvements and branding elements, and any intellectual property rights therein, as well as any related intellectual property registrations, shall be owned exclusively by the Party receiving the Feedback. The Party providing Feedback agrees to sign such further documents as may be required reasonably to confirm such ownership by the Party receiving Feedback.

**F. Standard of Care**

The Recipient shall use a reasonable degree of care to prevent the unauthorized use, reproduction or disclosure of the Confidential Information, which care shall not be less than the degree of care that the Recipient uses to protect its own Confidential Information of a similar nature. For clarification, this does not permit the Recipient to allow third parties to whom it generally permits access to the Recipient's Confidential Information, access to the Discloser's Confidential Information.

**G. Exclusions**

Information that the Recipient can establish: (a) was lawfully in the Recipient's possession before receipt from the Discloser, from the Corporation or from any member of the Corporation (other than the Discloser); or (b) is or becomes a matter of public knowledge through no fault of the Recipient; or (c) was independently developed or discovered by the Recipient, shall not be considered Confidential Information under this Agreement.

**H. Warranty**

This Agreement shall not obligate either Party to disclose any Confidential Information to the other Party. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS". The Discloser makes no representation, warranty or guarantee whatsoever about the Confidential Information.

**I. Rights**

The Recipient hereby acknowledges and agrees that it shall not acquire any rights in or to the Confidential Information under this Agreement other than the rights expressly granted in Paragraph 3. In particular, the Recipient shall not acquire any ownership right, interest or title in or to the Confidential Information or any intellectual property rights therein or the right to obtain or apply for such rights under this Agreement. The Recipient further acknowledges that the Confidential Information has been developed at significant cost and has significant commercial value to the Discloser and that knowledge of all or any part of the Confidential Information may constitute insider information under securities laws or yield a competitive advantage over others not having such knowledge. The Recipient agrees that disclosure or inappropriate use of the Confidential Information could cause the Discloser irreparable harm. The Recipient further agrees therefore that the Discloser will have the right to seek, in addition to any of the Parties other rights and remedies, injunctive relief for any violation of this Agreement without posting bond, or by posting bond at the lowest amount required by law.

**J. No Agency**

Nothing in this Agreement is to be construed as obligating any party to continue any discussions or create or continue any business relationship. This Agreement does not create any agency or partnership relationship between the parties and neither party may bind or is responsible for the acts of the other party or the other party's directors, officers, employees, contractors or agents.

**K. Entire Agreement**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and cancels and supersedes any prior discussions, correspondence, understandings, agreements, or communication of any nature relating to the subject matter of this Agreement. All additions or modifications to this Agreement must be made in writing and must be signed by both Parties.

**L. Assignment**

This Agreement may not be assigned by a Party without the other Party's express prior written authorization. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns.

**M. Counterparts**

This Agreement may be signed in two or more counterparts each of which together will be deemed to be an original and all of which together will constitute one and the same instrument. Signing of this Agreement and transmission by facsimile document transfer will be acceptable and binding upon the Parties hereto.

**N. Return of Confidential Information**

Upon expiration or termination of this Agreement, at other Party's request, the Recipient shall promptly return all Confidential Information received from the Discloser (including, without

limitation, any summaries of orally disclosed information and all copies thereof in its possession or control and/or in the possession or control of its Employees and Subsidiaries) or will certify through an officer of the Recipient that all Confidential Information received from the Discloser (including, without limitation, any summaries of orally disclosed information and all copies thereof in its possession or control) have been destroyed. For greater certainty, failure to make such request to the Recipient shall not entitle the Recipient to make any further use of the Confidential Information or otherwise extend the Recipient's rights set forth herein after expiration or termination of this Agreement and the Recipient specifically agrees to cease any further use of the Discloser's Confidential Information.

**O. Severability**

If a court of competent jurisdiction declares any provision in this Agreement invalid or unenforceable, such invalidity or unenforceability shall have no effect on the remainder of the Agreement which shall remain in full force.

**P. Language**

You have read these terms and conditions in their entirety and accept that they are written in english. Vous avez pris connaissance de tous ces termes et conditions et acceptez qu'ils soient rédigés en anglais.

**Q. Governing Law**

These terms and conditions are governed by the laws of Québec and the federal laws of Canada applicable in Québec. Each Party hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts of the Province of Québec as applicable. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

**SCALE.AI**

**[Name of the Member]**

By: \_\_\_\_\_

Name: ●

Title: ●

By: \_\_\_\_\_

Name: ●

Title: ●

## SCHEDULE C

### Membership Fees 2019-2020

**Members from Industry and Private Sector Enablers can choose one of the two formulas for 2019-2020**

Category	Definition	Members Annual fee	Members Annual fee + 5% on projects	
<b>Industry &amp; Private sector enablers</b>	<b>Super large firms</b>	> 20,000 employees	\$75,000	\$40,000
	<b>Very large</b>	3,001-20,000 employees	\$50,000	\$25,000
	<b>Large firms</b>	501-3,000 employees	\$25,000	\$12,000
	<b>Medium-size firms</b>	201-500 employees	\$12,500	\$6,000
	<b>Small firms</b>	50-200 employees	\$5,000	\$2,000
	<b>Start-ups</b>	< 49 employees	\$-	\$-
	<b>Academic institutions</b>	All academia	\$10,000	Not Applicable
<b>Non- private Enablers</b>	Non-private sector orgs	\$5,000	Not Applicable	