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FABrIC Intellectual Property Strategy

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Acknowledgement

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The word "Canada" in a large, black, serif font, with a small red and white Canadian flag icon positioned above the letter "a".

FABrIC Intellectual Property Strategy

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FABrIC Intellectual Property Strategy

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FABrIC Intellectual Property Strategy

FABrIC

FABrIC is a five-year, \$223M project to secure Canada's future in semiconductors. FABrIC, managed by CMC Microsystems (CMC), accelerates the development of made-in-Canada IoT products and semiconductor manufacturing processes, trains Canadian talent, strengthens supply chains, and builds connections across the Canadian semiconductor ecosystem. For more information visit:

fabricinnovation.ca

Purpose

The FABrIC Intellectual Property Strategy (IP Strategy) is structured to deliver maximum possible benefits to Canada.

Objective

The objective of this IP Strategy is to maximize the commercial value and ecosystem impact in Canada of IP generated as an outcome of FABrIC investments. This strategy will also enhance economic, environmental, and social benefits by fostering the development of innovative products and manufacturing solutions which address pressing challenges and opportunities for Canada such as climate change, healthcare, electrified transportation, digitization of businesses, and the secure supply of semiconductors critical to the economy. These solutions will leverage advanced manufacturing in MEMS, photonics, semiconductors, quantum, IoT and, AI technologies. Further, the IP will expand Canadian research and innovation potential to be used and manufactured in Canadian products, owned by Canadian enterprises, and wherever possible, added to the ecosystem for subsequent reuse.

Definitions

For the purposes of FABrIC's IP Strategy, **"intellectual property" ("IP")** refers to intangible intellectual assets contributed to ("Background IP") and arising from ("Foreground IP") projects in which FABrIC invests. Relevant IP developed during a project's tenure, but outside of the project ("Sideground IP") may occasionally be considered. IP thus includes, but is not limited to, patents, trademarks, copyrights, industrial designs, software, algorithms, data, machine learning models, trade secrets, confidential information, and know-how.

FABrIC invests in activities with the goal of meeting the Objective above. In this document, these activities will be referred to as **"projects"**.

CMC Microsystems (CMC) is defined as the **"Lead Recipient"** in this document.

- **"Ultimate Recipient" (UR)** means one or more Project Lead(s) or Co-Lead(s) who are receiving direct FABrIC funding and are carrying out FABrIC eligible projects as part of the FABrIC network. URs are the owners of the resulting Foreground IP developed in a FABrIC Challenge Project.
- **"Ultimate Recipient Agreement" (UR Agreement)** means the Agreement(s) between CMC (Lead Recipient) and each Ultimate Recipient relating to the use of eligible project FABrIC funding.
- **"Academic Participants"** include professors, students, research assistants, and post-doctoral fellows in Canadian post-secondary institutions. Academic Participants are users of the Innovation Platform tools and resources and benefit from FABrIC subsidies but do not sign any UR Agreement to access FABrIC Innovation Platform resources.
- **"Members"**: Any company, organization, or individual contributing to the advancement of the semiconductor ecosystem in Canada can be a FABrIC Member. In this document, they shall be referred to as "Members".
- **"Ecosystem Participants"**: Ultimate Recipients, Academic Participants, and FABrIC Members are collectively referred to as "Ecosystem Participants" in this document.
- **"Leave-behind-IP"** is defined as ecosystem developments created for or by CMC within the FABrIC project (e.g., reference designs, IP blocks etc.), or IP made available by an Ecosystem Participant that can be subsequently reused in the ecosystem. This IP must not be encumbered for use by the ecosystem. Leave-behind-IP will be added to FABrIC's IP Registry and made preferentially available to the Canadian ecosystem.

FABrIC Projects

FABrIC projects are divided into two major categories:

1. **Challenge Projects** directly benefit one or more URs while also indirectly benefiting the overall Canadian semiconductor ecosystem. Challenge projects may have either a single UR or multiple URs participating.
2. **Innovation Platform** projects benefit the overall Canadian semiconductor ecosystem, not just specific URs.

There are two collaboration types within the FABrIC projects:

1. **Collaborative Challenge Projects**
 - Challenge projects with multiple URs on the same project.
2. **Innovation Platform collaborations** between industry and Academic Participants
 - Collaborations are bound by individual industrial organization's legal and academic Industry Liaison Offices (ILOs). Any Foreground IP arising from industry-academic collaborations are between the collaborating participants and not FABrIC; hence, are not bound by this IP Strategy.

Context

FABrIC works to leverage Canada's semiconductor research, technologies, product development and manufacturing strengths, and the skills of Canada's workforce to develop and commercialize innovative semiconductor manufacturing technologies and products in MEMS, photonics, semiconductors, Quantum, IoT, and AI, to strengthen Canada's semiconductor ecosystem. FABrIC project activities generate Foreground IP that will be added to the ecosystem for the benefit of Canada. FABrIC will not impede Academic Participants using the services of the Innovation Platform from publishing research results.

The goal of FABrIC investment is not just the creation of IP, but wherever possible, to enable the commercialization of that IP to create value for Canadian businesses and for Canadians.

Strategy

- 1) **Raise the awareness of Ecosystem Participants about the nature and value of IP, methods for protecting it, strategies for its protection and its commercialization, and IP risk management.**
 - FABrIC will present IP workshops to provide education to Ecosystem Participants on IP issues such as protecting IP when publishing research results, techniques on excluding third-party (e.g., supplier) IP in publications, patent-applications/processes, trade secrets, and enforcement.
 - If required, FABrIC will provide access to an IP expert to meet with Challenge project applicants during proposal preparation and project execution to advise them in identifying Background and Foreground IP, methods for protecting such IP, and opportunities for commercializing Foreground IP arising in their project. URs will be encouraged to identify any relevant Sideground IP arising from outside the project that might mutually benefit both the URs and the FABrIC ecosystem.
 - Academic Participants involved in Innovation Platform projects will be expected to work within the IP management framework of their respective institutions. FABrIC will retain IP lawyers, patent agents, and/or other IP professionals and specialists to provide expert advice to Ecosystem Participants as required.
 - CMC will develop partnerships with other national ecosystem networks and non-governmental organizations to facilitate access to resources that may benefit FABrIC Ecosystem Participants.

- 2) **Assist in enhancing both the research and commercial value of Background and Sideground IP contributed to projects by URs.**
 - Background and Sideground IP created by researchers and academics in Innovation Platform projects is governed by the individual researcher's institution.
 - FABrIC will not impede Academic Participants of Innovation Platform projects from publishing research arising from Innovation Platform projects.
 - Knowledge derived from the application of Background and Sideground IP can help refine, augment, and enrich the ecosystem know-how, increasing that IP's potential value in future applications. FABrIC will assist Ecosystem Participants in this regard.

- 3) **Assist in enhancing the research and commercial value of Foreground IP arising in projects.**
 - FABrIC will assist Challenge Project URs in developing Challenge Project specific IP plans for the creation, protection, management, and commercialization of Foreground IP.
 - Foreground IP can potentially be commercialized individually or jointly by Challenge Project URs. FABrIC will require collaborating URs (Leads and Co-Leads) to have an agreement on this prior to the funding of the project.
 - FABrIC will provide access to an IP expert to work with Challenge Project URs to ensure their active participation in the development of collaboration agreements, if required.

- 4) **Support the commercialization and enhance ecosystem benefits of Foreground IP.**
 - As part of project specific IP plans, CMC will require Challenge Project URs to define terms and conditions by which Foreground IP may be shared with other FABrIC Ecosystem Participants.
 - FABrIC will encourage Challenge Project URs to contribute to its IP Registry and to make Foreground IP available for potential licensing to other members.

- Foreground IP created by Academic Participants in Innovation Platform projects is governed by the individual researcher's institution and not by FABrIC. However, these participants are encouraged to contribute Foreground IP to FABrIC's IP Registry and make preferentially available to the Canadian ecosystem.
- FABrIC will not impede Academic Participants of Innovation Platform projects from publishing research arising from these projects.
- IP generated by CMC in Innovation Platform projects which is not encumbered by other owners will be added to the IP Registry and made freely and preferentially available to the Canadian ecosystem.
- CMC will not grant any exclusive right or license to any of the IP generated by CMC in FABrIC Innovation Platform projects.

5) Capture and maximize the value of IP retained and commercialized in Canada.

- FABrIC will require that, to the extent possible, Challenge Project activities take place in Canada so that, amongst other things, Challenge Project UR's Background and Sideground IP will be exploited in Canada.
- FABrIC Challenge Project URs must plan to commercialize Foreground IP generated from their project. Challenge Project selection will be based, amongst other things, on how the value of the Foreground IP and technological solutions arising from projects will be retained, developed, scaled, and commercialized in/from Canada.
- CMC will require that ownership of Foreground IP generated from a FABrIC Challenge Project, and the benefits of its commercialization, remain in Canada for a minimum of five (5) years after the completion of the Challenge Project.
- All Ecosystem Participants who generate Foreground IP through FABrIC funded activities will be encouraged to contribute that Foreground IP to the IP Registry and made preferentially available to the Canadian ecosystem.
- Leave-behind-IP generated by CMC from an Innovation Platform project must go into the IP Registry and made freely and preferentially available to the Canadian ecosystem.

Commitments

- CMC will maintain clear, transparent, and predictable IP ownership policies for the management of Background and Sideground IP applied in FABrIC Challenge Projects, treatment of Foreground IP arising from projects, and processes by which FABrIC Ecosystem Participants can request and negotiate licenses to use Foreground IP.
- FABrIC Challenge Project selection will consider the extent to which the IP is shared and its potential benefit to the Canadian economy. Challenge Project proposals that provide greater Foreground and Background IP accessibility will rank higher for selection. Accessibility will be negotiated in the UR Agreement. Accessibility to relevant Sideground IP arising within and outside of the project would improve subsequent ranking of future project proposals.
- Any change of control of a Challenge Project UR will require CMC's written consent and will be based on benefits continuing to accrue to the Canadian economy. If consent is withheld, CMC retains the right to terminate funding for the project and to recover a portion or all the funds paid or advanced for the project.
- FABrIC will work with Challenge Project URs to advise them in the development of an IP plan that identifies and addresses: (i) Background/Sideground IP and Foreground IP in their project, (ii) the ownership and/or licensing thereof, (iii) the potential value of that IP, (iv) good methods and strategies to protect it, (v) potential pathways to its commercialization, and (vi) project IP risks and potential mitigation strategies. If necessary, FABrIC will also assist Challenge Project URs in accessing independent expertise and legal advice related to IP.
- In Collaborative Challenge Projects with multiple participants, CMC will ensure that project collaboration agreements are in place between the participants, containing certain reasonable provisions respecting IP, covering at a minimum: (i) the protection of each UR's confidential information, (ii) the licensing of all project participant's Background IP to any other project UR(s) requiring access to such Background IP to carry out its project and subsequent commercialization activities, (iii) ownership of project Foreground IP, (iv) the licensing of Foreground IP to any project participant(s) requiring access to such Foreground IP to carry out its project and subsequent commercialization activities, and (v) IP infringement, misappropriation risk management, and procedures for dispute resolution among the URs.
- FABrIC will maintain a FABrIC Member-accessible Registry of Foreground IP (the IP Registry) arising from projects (Challenges and Innovation Platform), recording any conditions, restrictions, or exceptions to the inclusion of Foreground IP on the Registry or access by FABrIC Members to the Registry.
- FABrIC will deliver programming to enhance the capacity of SME Members to manage IP in support of business growth.

Challenge Project IP Management Framework

There are two types of Challenge projects: Collaborative (i.e., multiple URs); and non-collaborative (i.e., single UR). This Challenge Project IP Management Framework is applicable to both project types. However, the Collaborative Challenge Projects will have additional requirements (see **Collaborative Challenge Project IP Management Framework**, below). To be eligible for FABrIC funding, all Challenge Project URs will need to adhere to the required framework.

This general framework addresses the following key elements of FABrIC's IP Strategy: Sharing; Confidentiality; Ownership and Licenses; Broad Membership Access; Filing and Maintenance Costs; Dispute Resolution; and Mentorship in Collaborative Challenge Projects.

The FABrIC team will vet the terms for IP ownership and licensing in project applications and Collaboration Agreements (if applicable) to ensure they comply with the following principles and requirements:

- 1) **Confidential Information.** All Challenge Project URs will be bound to protect proprietary information disclosed for and arising from FABrIC projects. The confidentiality period will cover the duration of the Challenge Project UR agreement and extend five (5) years after its expiration, except for trade secrets, which shall be subject to confidentiality while they remain secret.
- 2) **Ownership and Licenses.** Ownership and licensing agreements will cover the treatment of the following classes of IP. In all cases, unless otherwise agreed to by the Innovation, Science and Economic Development Canada (ISED) Minister, URs must own or have sufficient Intellectual Property Rights to exploit the Foreground IP and to make, construct, use and sell the resulting products, processes or services.
 - a) **Background IP.** To facilitate the successful commercialization of IP arising from a given Challenge Project, any UR bringing Background IP into a project will identify the existence of that IP to the extent that it is required to carry out the project. The UR must have full rights of ownership or licensing so the Background IP can be freely used in the project. Challenge Project URs are encouraged to subsequently license rights to this Background IP to other Members for future R&D purposes.
 - b) **Foreground IP.** Ownership of any IP arising in Challenge Projects will vest with the URs' organization(s) whose employees, agents, contractors, etc. have conceived the IP. URs will need to ensure that their employees, agents, and contractors, have an obligation to assign any IP generated within a FABrIC-supported project to the Member-organization they are working for (or have been contracted to work for). The URs must exclusively own and retain ownership of the resultant Foreground IP in Canada for a minimum of five (5) years after the end of the project. Shorter duration requires approval by ISED's Minister. In the event the Ultimate Recipient(s) sells, assigns, or transfers any Eligible Project(s) Intellectual Property within Canada, the Ultimate Recipient(s) will be required to inform the Lead Recipient (CMC) in writing prior to such an event. CMC will be required to inform the Minister in writing prior to such an event.

Challenge projects involving the development of technical or testing services generally will not create new IP except for copyright in the provision of test results and data. In instances where IP relating to new tools, processes or methods is developed in this context, the Member(s) providing the services

will be encouraged to share the rights in the associated IP or provide other members with a right to use the IP in their field of use.

- 3) Broad Membership Access.** Membership in FABrIC is open to any company, organization, or individual contributing to research, advanced design, and manufacturing in Canada.

If a FABrIC Member external to a project wishes to access the Foreground IP arising in a project, the external member may request that the owner(s) of the Foreground IP negotiate a non-exclusive license for the IP, on Fair, Reasonable and Non-Discriminatory (“FRAND”) commercial terms. Members external to the project will be required to commercialize the Foreground IP thus obtained within a three-year time-period to encourage active exploitation of the IP. Licenses granted to external members shall require the written consent of the owner(s) of the Foreground IP. Owners of the IP retain the right to refuse providing a license to the external member requesting access.

- 4) Filing and Maintenance Costs.** FABrIC will work with Members to help ensure that investments in innovation are protected. Recognizing that some members, especially SMEs, may face challenges in obtaining protection for IP generated in projects, a FABrIC IP expert will actively work with project participants to look for opportunities to commercialize and protect Foreground IP. Owners of IP will be responsible for any litigation or proceedings relating to the enforcement or defense of their own IP.

- 5) Dispute Resolution.** Should disputes arise, FABrIC will, as an initial step, offer its support to resolve these disputes amicably by means of informal mediation. Where such mediation is not successful, the parties to the dispute will have recourse to the judicial system.

- 6) Mentorship.** FABrIC will support SMEs that are Members by offering mentorship and advice about how best to commercialize the value of their IP, both directly through support provided by a FABrIC IP expert and indirectly through partnering organizations which provide such services as business mentorship, business case definition, pitch development, marketing development, investor connections, advice on IP development and protection, workshops on IP commercialization, and other networking events. FABrIC will also organize workshops to help small-stage (start-up) Members develop strategies and access the expert advice and support they need to effectively commercialize their own IP as well as IP arising from FABrIC-funded projects.

Collaborative Challenge Project IP Management Framework

To be eligible for FABrIC funding, Collaborative Challenge Project applications will need to adhere to these additional requirements:

- 1) **Sharing.** Each Collaborative Challenge Project must demonstrate a commitment to sharing intellectual property arising in the project among URs. Challenge Project URs will be expected to describe the Foreground IP likely to arise in their project and how it would be protected, agree on the ownership and licensing terms that would apply within their project, and identify FABrIC Members that might have an interest in arising IP and to whom they would be prepared to negotiate access.
- 2) **Ownership and Licenses.** Collaborative Challenge Projects will have the following additional requirements in the ownership and licensing agreements:

- a) **Background IP.** FABrIC will require Collaborative Challenge Project URs to reach agreement and to have reasonable access to Background IP required for the project work plan and R&D, while also accepting that where the owner of Background IP establishes that access to Background IP could be detrimental to the competitiveness of the owner of the Background IP.

Collaborative Challenge Project URs may impose restrictions on the use of their background IP, including but not limited to restrictions on sublicensing, reverse engineering, decompiling, and disassembly. Challenge Project URs may take measures to protect or obscure certain aspects of their background IP (e.g., products that include “black box” components or that use masking).

- b) **Foreground IP.** FABrIC Members leading/co-leading in a Collaborative Challenge Project will have an obligation to disclose to FABrIC all IP arising from their respective project activities, subject to confidentiality conditions that might apply, for instance in the case of trade secrets. In the case of projects involving pre-competitive IP, each of the Challenge Project URs will have the right to access on fair, reasonable, and non-discriminatory terms, and subject to relevant competitiveness issues, all Foreground IP arising from the Challenge Project, at least for the purposes of carrying out the project. The authoring UR may take measures to implement Foreground IP in a way that protects or obscures certain aspects of their Foreground IP (e.g., products that include “black box” components or that use masking).
- c) **Sideground IP.** IP that is relevant (but not essential) to a Collaborative Challenge Project and is produced outside the project by any of the URs during the project’s tenure seeking either differentiation or a competitive advantage. Because this IP is developed outside the Challenge Project, the UR is not under any obligation to provide FRAND terms for subsequent re-use of the Sideground IP.

Sideground IP is not the same as pre-competitive IP mentioned above. As described above, pre-competitive IP is required to realize the product/service; Sideground IP is usually a post-project enhancement to the product. This is an example of co-opetition, i.e., collaborating to create a base technology and subsequently competing later with improvements to this base technology. FABrIC will encourage Sideground IP to be reused in a “Black Box” manner by other non-competitive members thus offer benefits to both the developer and the ecosystem by listing it in the FABrIC IP Registry. This allows subsequent licensing opportunities to be explored by the UR and the ecosystem to be further enriched.

IP Registry and IP Repository

FABrIC will maintain an IP Registry from which general information about IP generated through FABrIC investments may be disseminated more broadly to members, subject to conditions articulated in any existing collaboration agreements. FABrIC will support URs in determining what Foreground IP should remain confidential and what could and should be incorporated into FABrIC's IP Registry as well as any conditions for further dissemination.

FABrIC's IP Registry contains descriptions of the IP generated through FABrIC-supported Challenge Projects, as well as 'Leave-behind' IP. The IP Registry contains sufficient information to enable members to understand the commercial application of the IP and allows members to share and search for potential licensing, partnership, and collaboration opportunities. This includes granted patents, trademarks, copyrights and industrial designs and patent, trademark, copyright, and industrial design applications which are open to public inspection.

Members shall provide to the IP Registry, at the time periods referenced below, a written abstract or summary, and where applicable, an application or registration number, of Foreground IP generated as part of the project, subject to confidentiality and trade secret considerations:

- a) Foreground IP for which an application for a patent or an industrial design has been filed shall be registered no later than the date the patent or industrial design application is published by an Intellectual Property Office.
- b) A summary of Foreground IP protected by copyright or trademark will be published on the IP Registry via a call to members at a minimum of semi-annually to coincide with ongoing Intellectual Property Reporting requirements.
- c) Foreground IP other than that listed in (a) and (b) is expected to be submitted for listing on the IP Registry when the R&D work on that IP is completed and/or otherwise publicly disclosed; for example but not limited to: disclosure in a journal or magazine article, commercialized, or published on the owner's website.
- d) FABrIC Members registering Foreground IP may indicate in the IP Registry specific opportunities for licensing or otherwise commercializing their IP in non-competitive areas – e.g. new geographies, adjacent markets, different industry sectors.
- e) FABrIC Member(s) holding rights in such Foreground IP shall establish a version of such written abstract or summary, that excludes confidential information and/or trade secrets, for publication through the IP Registry.
- f) The IP Registry shall reflect any conditions, restrictions, or exceptions to the inclusion of Foreground IP or their use or access by FABrIC Members to the IP Registry.
- g) The IP Registry will track the number of new entries as well as new licenses executed in respect of Foreground IP in each project.

In terms of ensuring that the Registry does not disclose competitively sensitive information, an IP advisor will be available to advise the holders of Foreground IP in a way that is consistent with best legal practices associated with properly protecting the form of Foreground IP in question (i.e., patent law for patents; copyright law for copyright etc.). An IP advisor will also support SMEs' use of the IP Registry, by identifying potential opportunities for future collaboration or commercialization. Through this support and sensitivity to confidentiality, holders of IP will be encouraged to and should be comfortable adding IP to the register in a timely fashion.

Through its IP Registry, FABrIC will create a competitive advantage for all Members by providing a categorized selection of highly relevant IP that is available for licensing and can be easily searched and identified by members. FABrIC will facilitate licensing discussions and act as a facilitator connecting members wishing to obtain new IP to other Members wishing to share IP. At the discretion of FABrIC Members, IP created outside of FABrIC-funded projects, but potentially relevant to other Members and available to be shared, will also be eligible for submission to the FABrIC's IP Registry, further extending the diffusion of IP beyond FABrIC projects.

Access to the IP Registry will be restricted to FABrIC Members; it will only be made available to Members in good standing. Once a FABrIC Member identifies IP of interest through the Registry, the Member may contact the owner(s) directly about entering into a licensing agreement with the owners of the intellectual property. In some cases, FABrIC may support FABrIC Members, particularly SMEs, by brokering and connecting parties for licensing purposes.

FABrIC's IP Repository contains Leave-behind-IP and resources that are available for use by FABrIC Members only, in downloadable format. Access to IP may have separate terms of use.

The purpose of the IP Repository is to provide tools to accelerate product development and the adoption of new technologies by the ecosystem. The IP is to be used by FABrIC Members, within Canada, for the benefit of Canada. Members are encouraged to contribute to the IP Repository.

IP Royalties

FABrIC Members may pay royalties under the terms of the licensing agreements they enter with the owner(s) of Foreground IP.

IP Advisory Services

FABrIC support includes access to resources to assist in Intellectual Property management. Resources will be available to assist in: (i) implementing, reviewing, and recommending improvements to this IP Strategy, (ii) reviewing Ultimate Recipient Agreements to ensure they comply with the principles and requirements of FABrIC's IP Strategy, (iii) advising URs, and SMEs in particular, in the development of their respective IP plans, (iv) SME UR(s) accessing independent expertise and advice as required, (v) designing and delivering programming to enhance the capacity of SME Members to manage IP in support of business growth.

FABrIC Resources

- Program information: <https://fabricinnovation.ca/innovation>
- Funding: and Challenges: <https://fabricinnovation.ca/funding>
- Resources and Guides: <https://fabricinnovation.ca/resources>
- FABrIC Membership – Join FABrIC: <https://fabricinnovation.ca/member-portal>

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