



Government of Canada Gouvernement du Canada

Networks of Centres
of Excellence of Canada Réseaux de centres
d'excellence du Canada

FUNDING AGREEMENT

Between:

**The Canadian Institutes of Health Research (“CIHR”)
and
The Natural Sciences and Engineering Research Council (“NSERC”)
and
The Social Sciences and Humanities Research Council (“SSHRC”)
and
<<Insert Network Name>> (the “Network”)
and
<<Insert Host Name>> (the “Network Host”)**

WHEREAS:

A. This agreement is made and effective as of the date of last signing (herein the "Effective Date") by all Parties. The "Term" of this agreement will be set out in Article 1.1 xxx.

B. The goal of the Networks of Centres of Excellence ("NCE") Program is to mobilize Canada's research talent in the academic, private and public sectors and apply it to the task of developing the Canadian economy and improving the quality of life of Canadians;

C. The NCE Program is a program of the Government of Canada administered jointly by the *Natural Sciences and Engineering Research Council*, the *Social Sciences and Humanities Research Council* and the *Canadian Institutes of Health Research* in partnership with *Industry Canada* and *Health Canada*;

D. The Network has been established to achieve the following objectives:

1. <<Insert Network Objectives>>

which are congruent with the objectives of the NCE Program; and

E. The Network has been selected, on the basis of its Application to receive funding under the NCE Program in order that it may carry out research that will yield new scientific knowledge and innovative applications.

NOW THEREFORE IN CONSIDERATION of the premises and of the mutual covenants herein, the Parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement, the following terms are defined as follows:

- i. "**Administrative Centre**" means the central administrative offices of the Network that are housed by the Network Host.
- ii. "**Agreement**" means this Agreement and all its Annexes, as may be amended from time to time.
- iii. "**Annual Progress Report**" means the report referred to in section 11.3 of this Agreement.
- iv. "**Annual Report**" means the report referred to in section 11.2 of this Agreement.
- v. "**Application**" means the full application submitted on behalf of the Network to the NCE Program as reviewed and approved by the Granting Agencies.
- vi. "**Award Letter**" means the letter sent by the NCE Secretariat to the Network Applicant, Network Host and Granting Agencies confirming the Fiscal Year allocation of the Grant.
- vii. "**Board**" means the Board of Directors of the Network.

- viii. “**Commercialization**” means the series of activities to transform knowledge and/or technology into new goods, processes or services to satisfy market demands.
- ix. “**Consent to Disclosure form**” means the form in Annex A of this Agreement.
- x. “**Eligible Expenses**” has the meaning set forth in section 4 of this Agreement.
- xi. “**Event of Default**” has the meaning set forth in section 8 of this Agreement.
- xii. “**Fiscal Year**” means a twelve (12) month period commencing April 1 and ending March 31 of the following year.
- xiii. “**Grant**” means the funds to be provided by the Granting Agencies to the Network pursuant to this Agreement.
- xiv. “**Granting Agencies**” means the Canadian Institutes of Health Research (CIHR), the Natural Sciences and Engineering Research Council (NSERC) and the Social Sciences and Humanities Research Council (SSHRC). “**Granting Agency**” means any one of them.
- xv. “**HQP**” means the highly qualified personnel of the Network and Network Members and includes: trainees and research staff such as graduate students; postdoctoral fellows; research associates; technicians; and summer students.
- xvi. “**Independent Member**” means an individual:
 - (a) who has no material relationship with the Network or a Network Member such that the individual’s ability to think and act in an independent manner that is in the best interests of the Network, both in practice and in appearance, would be impaired; or
 - (b) who will not benefit directly from the activities of the Network.

The Board determines which individuals are Independent Members and details of such determinations must be provided in a written decision by the Board.
- xvii. “**Institutional Agreement**” or “**IA**” means the agreement between the Network Host and the Granting Agencies, outlining the basic requirements for obtaining and maintaining institutional eligibility to administer Grant funds.
- xviii. “**Intellectual Property**” means all materials, concepts, know-how, formulae, inventions, improvements, industrial designs, processes, patterns, machines, manufactures, compositions of matter, compilations of information, patents and patent applications, copyrights, trade secrets, technology, technical information, software, prototypes and specifications, including any rights to apply for protections under

- statutory proceedings available for those purposes, provided they are capable of protection at law.
- xix. **“Maximum Salary Level”** means the maximum remuneration payable from the Grant and applicable to full time staff or contracted positions as defined in the NCE Network Program Guide.
- xx. **“Monitoring Committee”** means a sub-group of the NCE Standing Selection Committee.
- xxi. **“NCE – Network Program Guide”** means the guide published in connection with the NCE Program detailing the processes, procedures and Eligible Expenses of the NCE Program in existence at the time of this Agreement, as may be amended from time to time.
- xxii. **“NCE Program”** has the meaning set forth in the Recitals.
- xxiii. **“NCE Standing Selection Committee”** means the committee assembled by the Granting Agencies to evaluate applications to the NCE Program and make funding recommendations based on a peer review process.
- xxiv. **“Network”** means <<Insert Name of Network>> Centres of Excellence, a not-for-profit corporation incorporated under *Canada Not-for-profit Corporations Act* and signatory to this Agreement.
- xxv. **“Network Agreement”** has the meaning set forth in paragraph 3.4 of this Agreement and attached as Annex B. The parties acknowledge that the template is intended as a guide only and may be revised in the course of negotiations between the Network and Network Members. Any revisions made to the Network Agreement shall continue to be consistent with this Agreement.
- xxvi. **“Network Host”** means <<Insert Network Host>>, a Canadian university or post-secondary institution with a mandate for research and its affiliated institutions (including hospitals, research institutes and/or other not-for-profit organizations) that houses the Administrative Centre and has signed this Agreement.
- xxvii. **“Network Investigators”** are researchers who are considered eligible to receive funds from the Granting Agencies and who are affiliated with a Network Member.
- xxviii. **“Network Member”** means Canadian universities or post-secondary institutions with a mandate for research and their affiliated institutions (including hospitals, research institutes and/or other not-for-profit organizations) or other organizations eligible to receive research funds from any of the Granting Agencies and that employ or otherwise give academic status to one or more Network Investigators and that has signed the Network Agreement attached as Annex B but excludes any “department” or “departmental corporation” as defined in section 2 of the *Financial Administration Act*, any “agent corporation” or “Crown

corporation” as defined in subsection 83(1) of the *Financial Administration Act*, any province or municipality.

- xxix. “**Parties**” mean the signatories to this Agreement.
- xxx. “**Term**” means a period of five (5) years from the date of execution of this Agreement by all Parties, (the “Effective Date”) as such Term may be extended pursuant to subsection 6.1.
- xxxi. “**Tri-Agency Financial Administration Guide**” means the guide published by the Granting Agencies detailing the Granting Agency policies on the uses, responsibilities, accountabilities, and administration of Grant funds, in existence at the Effective Date, as may be amended from time to time.

2. PURPOSE

In this Agreement the Parties wish to set out the terms and conditions under which the Granting Agencies shall disburse the Grant to the Network.

3. DESCRIPTION AND USE OF THE GRANT

3.1 The Granting Agencies grant \$<<Insert Total Grant Amount>> to the Network based on the Application, such Grant to be administered by the Network Host in accordance with the terms and conditions of this Agreement, Institutional Agreement, the NCE Program Guide, the Tri-Agency Financial Administration Guide and the Network Agreement. The Grant will be provided as follows:

| | |
|---------------------------------------|---------------|
| CIHR Grant # <<Insert Grant Number>> | \$ <<\$\$\$>> |
| NSERC Grant # <<Insert Grant Number>> | \$ <<\$\$\$>> |
| SSHRC Grant # <<Insert Grant Number>> | \$ <<\$\$\$>> |

3.2 Subject to the terms and conditions of this Agreement, the Granting Agencies shall make payments of the Grant to the Network Host, in accordance with the Fiscal Year allocation set out in the Award Letter, who will:

- i. Subject to subsection 3.8, transfer a portion of the Grant to the Network Member(s) upon direction by the Network and in accordance with the Network’s decision to fund projects of Network Investigators; and
- ii. Subject to subsection 3.8, make payments to the Network to cover the costs of day-to-day administration at the request of the Network.

3.3 The Network will ensure that the use and distribution of the Grant is only for Eligible Expenses directly related to, and necessary for, carrying out the strategic plan described in the Application and only to the extent that they are also directly in furtherance of the following objectives:

- i. Increase networking and collaboration among researchers from Canada and abroad;

- ii. Generate leading-edge research findings that are relevant to the needs of the user sector (e.g., private and public sectors, non-governmental organizations, and others) and Canada's socio-economic development;
- iii. Establish nation-wide, multidisciplinary and multisectoral research partnerships between universities and the user sector (e.g., private and public sectors, non-governmental organizations, and others);
- iv. Provide training that promotes multidisciplinary and multisectoral research approaches and encourages trainees to consider the economic, social, environmental and ethical implications of their work;
- v. Accelerate the exchange of research results within the Network and the use of this knowledge within Canada by organizations that can harness it for Canadian economic and social development;
- vi. Attract and retain world-class researchers and HQP in areas essential to Canadian economic and social development;
- vii. Create functional multi-regional interdisciplinary research teams;
- viii. Develop a pool of HQP in areas essential to Canadian economic and social development; and
- ix. Increase Canada's international visibility and reputation.

3.4 The Network shall not direct that funds be provided to a Network Member under subsection 3.2 until such time as the Network Member is approved by the Board and has entered into a Network Agreement with the Network. The Network Agreement shall be consistent with this Agreement. For greater certainty, the Network may only direct that Grant funds be provided to a Network Member under the same terms as are set out in subsection 3.3 and this shall be reflected in the Network Agreement.

3.5 The Network shall not direct that Grant funds be provided to a Network Member under subsection 3.2 until such a time as the Network Member has provided the Network with the Consent to Disclosure forms (Annex A) duly executed by the Network Investigators receiving funds.

3.6 The Parties acknowledge that the majority of the Network's research falls within the domain of the <<Insert Granting Agency>> and that the Network and Network Host shall adhere to the rules and policies of <<Insert Granting Agency>> contained in the Tri-Agency Financial Administration Guide and the NCE Network Program Guide.

3.7 The Granting Agencies will review the Annual Reports and Annual Progress Reports, as outlined in subsection 17.1 of this agreement, to satisfy themselves that the activities of the Network are progressing satisfactorily and that they comply with the policies, terms and conditions of the NCE Program. In the event that the Granting Agencies are not so satisfied, they may not approve future instalments of the Grant and they shall have the right to terminate this Agreement by delivering written notice of such termination to the Network Host and the Network. Upon delivery of such notice of termination the Granting Agencies shall have no further obligations towards the Network Host and the Network.

3.8 The parties acknowledge that the Network Host has the right and responsibility to withhold and withdraw approval of expenditures proposed by the Network that contravene the Eligible Expenses guidelines and/or the policies of the Network Host. The Network Host and the Network will enter into a separate agreement upon which the Network Host will administer funds for the Network (the "Network Host Agreement"). The Network Host Agreement shall include, among other things, provisions enabling the Network Host to implement and oversee controls designed to ensure that transactions charged to the Grant are Eligible Expenses and compliant with Granting Agency guidelines.

3.9 The Granting Agencies may change the Fiscal Year allocation of the Grant as set out in the Award Letter by prior written notice to the Network.

4. ELIGIBLE EXPENSES

4.1 The Grant shall only be used for the direct costs of research and facility access, stipends for research trainees, the direct costs of research dissemination and science promotion, and other specific expenses associated with the management of a Network as more particularly described in the NCE Network Program Guide and in "Use of Grant Funds" section of the Tri-Agency Financial Administration Guide as interpreted by the rules and policies of the <<Insert Granting Agency>> in whose domain the majority of the Network's research falls; ("Eligible Expenses").

4.2 The Granting Agencies shall be entitled to recover from the Network any amounts claimed that are spent on expenses other than Eligible Expenses, or to set them off against future payments.

5. ADDITIONAL GOVERNMENT ASSISTANCE

5.1 The Network agrees, within three (3) months of the end of each Fiscal Year, to provide a statement to the Granting Agencies of all other sources of funding, received or applied for, from other government entities, whether federal, provincial or municipal, during the Fiscal Year.

5.2 The maximum level (stacking limit) of total government assistance (federal, provincial and municipal) for this Grant will not exceed 100% of Eligible Expenses.

5.3 If the total government assistance from all sources, received or due, in respect of Eligible Expenses exceeds 100% thereof, the Granting Agencies may recover the excess from the Network or reduce any subsequent payments by an amount equal to the excess.

5.4 Notwithstanding section 5.3, additional funding attracted by the Network or Network Members from governmental or non-governmental sources will not reduce the amount of the Grant provided that these additional funds are used to extend or accelerate the achievement of the Network's overall objectives by expanding its research program increasing its HQP development activities, enhancing its activities to exchange and exploit knowledge and technology or other activities to support the mobilization of research excellence for the benefit of Canada.

6. EXTENSION OF TERM

6.1 In the event that the entire Grant will not be expended by the end of the Term, the Network may apply to extend the Term of the Grant. A one year extension for the use of funds detailed in the “Use of Grant Funds” section of the Tri-Agency Financial Administration Guide as interpreted by the rules and policies of the <<Insert Granting Agency>> is automatically given following the expiry date of the Term and in accordance with the Tri-Agency Financial Administration Guide. Any portion of the Grant not expended with services rendered by the end of the Term, will be returned to the Receiver General of Canada within three (3) months of the expiration of the Term.

7. NOTICE REQUIREMENT

The Network shall inform the Granting Agencies in writing as soon as it incurs any of the Events of Default identified in section 8.1.

8. EVENTS OF DEFAULT AND REMEDIES

8.1 The Network will be in default upon the occurrence of any one or more of the following events (“Events of Default”):

- i. the Network ceases to carry out a significant level of activities in furtherance of the objectives set out in this Agreement;
- ii. the Network, Network Host or a Network Member has misrepresented or submitted false or misleading information, or does so at any time during this Agreement, to the Granting Agencies;
- iii. the Network or Network Host fails to comply with any condition, undertaking or material term contained in this Agreement;
- iv. the officers, directors, committee members or employees of the Network, Network Host or a Network Member fraudulently use Grant funds or use Grant funds in a manner not consistent with the Tri-Agency Financial Administration Guide or the NCE-Network Program Guide;
- v. the Network or Network Host is wound up, liquidated or ceases to exist or becomes insolvent or is adjudged or declared bankrupt or if it goes into receivership or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
- vi. the Network changes its jurisdiction of formation or corporate structure without the prior written consent of the Granting Agencies;
- vii. the agreement with the Network Host is terminated or replaced without the prior written approval of the Granting Agencies; or
- viii. the Network Host ceases to be eligible to receive funds from the Granting Agencies.

8.2 If a Granting Agency declares that an Event of Default has occurred, any or all of the Granting Agencies may immediately exercise one or more of the following remedies, in addition to any remedy at law:

- i. Suspend its obligation to provide Grant funding; or
- ii. Terminate any obligation to provide Grant funding; or
- iii. Require, upon demand, that the Network repay the Granting Agencies, as appropriate, all or part of the Grant.

9. INTELLECTUAL PROPERTY

9.1 The Granting Agencies make no claim to ownership of Intellectual Property from the research funded under this Agreement.

9.2 The Network shall manage Intellectual Property in accordance with the Network Agreement.

10. REQUIREMENTS FOR CERTAIN TYPES OF RESEARCH

The Network agrees to ensure that all necessary certification, permits, licences and other approvals (“approvals”) have been obtained before any research funded, in whole or in part, under this Agreement is carried out. Without limiting the generality of the foregoing, the following is a list of some of the activities for which approvals may be required: research involving human subjects, human pluripotent stem cells, animals, biohazards, infectious agents, radioactive materials, controlled information, aboriginal people, research in the Canadian Territories, and research with effects on the environment.

11. REPORTING REQUIREMENTS

11.1 Annual Reporting

The Network shall provide to the Granting Agencies, an Annual Report and Annual Progress Report approved by the Board in respect of each Fiscal Year of the Term. The information included in the Annual Report and Annual Progress Report may be made public through the various publications and communications of the Granting Agencies. The Granting Agencies shall provide annually to the Network updated Annual Reporting templates and guidelines developed in accordance with the criteria of the NCE Program and which specify the submission deadlines for each element of the Annual Report.

11.2 The Annual Report shall include:

- i. Bilingual Corporate-style reports developed annually by the Network;
- ii. Statistical tables;
- iii. Summary reports from the Network and Network Members including individual and consolidated statements of accounts, and statements of other sources of funding to the Network, the Network Members, and the Network Investigators;

- iv. A report on conflict of interest matters and any environmental review carried out, if applicable;
- v. A signed statement from the Board updating the representations and warranties of the Network contained in this Agreement.

11.3 The Annual Progress Report shall include:

- i. The major achievements of the Network over the previous year;
- ii. A statement of strategies used to achieve the identified goals;
- iii. A statement of the Network's objectives for the current Fiscal Year and for the foreseeable future including any course corrections or deviations from the objectives of the strategic plan described in the Application.

11.4 **Final Report**

The Network shall provide to the Granting Agencies, no later than three (3) months after the Network ceasing to carry out activities in furtherance of the objectives contained in the strategic plan or the expiration of the Term, whichever shall first occur, a Network Final Report approved by its Board for distribution to the Granting Agencies. The Final Report will detail the impact of the work of the Network upon the objectives set out in 3.3, as well as on the following areas:

- i. The most significant research discoveries and the researchers involved;
- ii. The Network's key achievements, together with an explanation of their significance and socioeconomic impact on Canada and on the world;
- iii. The commercialized technologies, the knowledge transferred, and social and/or public policy innovations, naming the industry, government or not-for-profit sector organizations involved in its utilization or application;
- iv. The Network's achievements in developing and retaining outstanding researchers and training HQP.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 The Network and Network Host hereby represent and warrant and covenant to the Granting Agencies as follows:

- i. The execution and delivery of this Agreement by the Network and Network Host, and the carrying out by it of all of the activities as contemplated hereby by the Network and/or Network Host, have been duly authorized by all requisite corporate action;
- ii. The Network and Network Host each have full power to execute and deliver this Agreement and to perform their obligations hereunder;
- iii. This Agreement constitutes a legally binding obligation of the Network and Network Host, enforceable against each of them in accordance with its terms, subject to a court's discretionary authority with respect to the

granting of a decree ordering specific performance or other equitable remedies; and

- iv. The Network and Network Host will inform the Granting Agencies of any evidence of possible criminal misconduct involving funding under this Agreement and shall report such matters to the appropriate authorities.

12.2 The Network Host hereby further represents and warrants to the Granting Agencies as follows:

- i. The Administrative Centre has and shall have throughout the Term of this Agreement, suitable accommodations, as well as access to appropriate computer, communications and financial administration systems needed to serve effectively as the administrative secretariat of the Network;
- ii. It will not seek or accept compensation from the Grant to cover any costs incurred by it in connection with its obligations under this Agreement; and
- iii. It will oversee and guarantee that necessary controls (i.e. satisfactory processes and procedures) are in place and implemented to ensure that transactions charged to the Grant are Eligible Expenses and compliant with the Granting Agency guidelines.

12.3 The Network hereby further represents, warrants and covenants to the Granting Agencies as follows:

- i. The Network is a validly existing corporation duly incorporated under the *Canada Not-for-profit Corporations Act*;
- ii. The Network shall comply with all federal, provincial, territorial, local and foreign laws applicable to it;
- iii. The Board shall, within six (6) months following the execution of this Agreement, be composed of at least twelve (12) directors, the majority of which shall be individuals with extensive business experience and/or represent the Network's end-user community;
- iv. The Board shall also within six (6) months following the execution of this Agreement ensure that at least one third (1/3) of the Board members are Independent Members;
- v. The Board will approve the Annual Report, the Annual Progress Report and Final Report prior to the submission to the Granting Agencies;
- vi. The Network will respect the Maximum Salary Level outlined in the NCE Program Guide for all administrative positions paid by any part of the Grant; and
- vii. The Network has appointed an executive to manage the day to day administration of the Network;

13. NETWORK GOVERNANCE

13.1 The Network will ensure that its articles of incorporations, by-laws or other corporate documents and its operating procedures are, and remain, consistent with this Agreement and all requirements of the NCE Program.

13.2 The Network will provide the Granting Agencies with copies of the documents identified in section 13.1 upon completion and/or approval by the Board.

14. POST-AWARD SUPPORT

The Granting Agencies will designate a staff member to participate, as an observer, in meetings of the Board and its committees. The staff member designated by the Granting Agencies will provide the Board and its committees with clarification on relevant program information related to this Agreement, the NCE Program and other programs of the Granting Agencies and provide insight on the Annual Report and Annual Progress Report prior to Board approval. The Network shall give the Granting Agencies the same notice as provided to the members of the Board and its committees in advance of each meeting and provide the relevant documentation at least seven (7) business days before the scheduled meeting date.

15. AUDITOR GENERAL MAY AUDIT

The Network agrees that the Auditor General of Canada may, at Canada's cost, after consultation with the Network, conduct an inquiry under the authority of subsection 7.1(1) of the *Auditor General Act* in relation to the use of Grant funds. For the purposes of any such inquiry undertaken by the Auditor General, the Network shall provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General,

- i. all records held by the Network Members, the Network Host and the Network, or by its agents or contractors relating to this Agreement and the use of Grant funds; and,
- ii. such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to any of this Agreement or the use of the Grant funds.

16. FINANCIAL MONITORING

The Granting Agencies shall be entitled to visit periodically the Network Host, the Network and its Network Members to:

- i. assess whether they have the necessary financial and administrative systems and tools to manage research funds in accordance with this Agreement; and
- ii. review Grant expenditures to ensure that these were made in accordance with this Agreement.

17. NETWORK REVIEW PROCESS

17.1 Annual Review

- i. The progress of the Network will be assessed annually against the criteria of the NCE Program by the Monitoring Committee.
- ii. Based on the assessment identified in 17.1 (i) the Monitoring Committee may recommend continued funding, phasing out of the Network, or the completion of an in-depth review of the Network by a panel of experts assembled by the Granting Agencies who will assess the performance of the Network against the NCE Program criteria.

17.2 Cycle II Funding

In year five (5) of the Network's operation, and by written invitation by the NCE Secretariat, the Grant may be renewed for an additional five-year funding cycle based on the recommendation of the NCE Selection Committee following an evaluation of the renewal application submitted by the Network.

17.3 Cycle III Funding

In year (10) of the Network's operation, and at the written request of the NCE Secretariat, the grant may be renewed for a third (and final) five-year funding cycle based on the recommendation of the NCE Selection Committee following an evaluation of the renewal application submitted by the Network.

18. CONFLICT OF INTEREST

The Network shall adopt and implement a code of conduct in its bylaws for directors, officers, employees and committee members designed to adequately prevent real or perceived conflicts of interest with respect to use of the Grant provided under this Agreement. The conflict of interest policy shall be no less stringent than the policy outlined in "Appendix A" of the NCE-Network Program Guide.

19. SURVIVAL

The rights and obligations of the Parties under Sections 5 (Additional Government Assistance), 9 (Intellectual Property), 11 (Reporting Requirements), 15 (Auditor General May Audit), 16 (Financial Monitoring), 21 (Record Keeping), 22 (Access to Information Act and Privacy Act), 24 (Indemnification), 25 (Loans, Capital Lease or Other Long-Term Obligation), 26 (Recognition & Public Disclosure), 27 (Official Marks), 28 (Members of Parliament), 29 (Compliance with Post-Employment Provisions), 30 (Gifts, Inducements and Contingency Fees), 31 (Lobbying Act), 32 (Amounts Owing to the Federal Government), 33 (Acknowledgement) and 34 (General) and any other Section which is required to give effect to the termination or to its consequences will survive the expiry or early termination of this Agreement for a period of three (3) years.

20. APPROPRIATIONS

Any payment due by the Granting Agencies under this Agreement is conditional on:

- i. Parliament appropriating sufficient funds to each Granting Agency for the Fiscal Year in which the payment is due; and

- ii. The Treasury Board providing all required approvals.

21. RECORD KEEPING

21.1 The Network Host shall ensure that accurate accounts and records, including but not limited to, contracts, invoices, statements, receipts and vouchers, in respect of the Grant are kept in accordance with the Institutional Agreement and shall, upon reasonable notice, make them available to a representative of the Granting Agencies for inspection and audit.

21.2 The Network shall ensure proper retention and storage of all the Consent to Disclosure forms and shall, upon reasonable notice, provide copies or make them available to a representative of the Granting Agencies for inspection and audit.

22. ACCESS TO INFORMATION ACT AND THE PRIVACY ACT

The Network acknowledges that the *Access to Information Act* and the *Privacy Act* apply to the NCE Program. Information as to the use and disclosure of personal information provided to the Granting Agencies can be viewed in the NCE Program Guide.

23. AMENDMENTS

This Agreement, together with the Annexes, form the complete agreement among the Parties and no amendment or modification shall be binding upon the Parties unless agreed to in writing by the Parties.

24. INDEMNIFICATION

Except for any claims arising from the negligence of the Granting Agencies' employees or servants, the Network and Network Host shall indemnify and hold harmless the Granting Agencies and Her Majesty the Queen in Right of Canada, their agents, employees and servants from all claims, demands, losses, damages, costs, actions, suits or proceedings brought by any third party, that are in any manner based upon, arise out of, or relate to the Grant or to this Agreement.

25. LOANS, CAPITAL LEASE OR OTHER LONG-TERM OBLIGATION

The Granting Agencies and Her Majesty the Queen in Right of Canada, their agents, employees and servants will not be held liable in the event the Network or Network Host enters into a loan, a capital lease or other long-term obligation in relation to the Network for which the Grant is provided.

26. RECOGNITION & PUBLIC DISCLOSURE

The Network shall, unless otherwise directed by the Granting Agencies, acknowledge the Grant received under this Agreement and the Granting Agencies in any published paper, report, promotional activity, public presentation and electronic material.

27. OFFICIAL MARKS

The terms "Networks of Centres of Excellence, Réseaux de centres d'excellence," are official marks of the Federal Government of Canada as represented by NSERC. The Network shall identify itself as a Networks of Centres of Excellence and is permitted to

use the name “Networks of Centres of Excellence,” the name “Réseaux de centres d’excellence,” and the acronyms “NCE” and “RCE”. The Network must immediately cease using all official marks upon termination of this Agreement or dissolution of the Network.

28. MEMBERS OF PARLIAMENT

28.1 No member of the House of Commons will be admitted to any share or part of this Agreement or to any benefit to arise therefrom. No person who is a member of the Senate will, directly or indirectly, be a party to or be concerned in this Agreement.

28.2 Members of Parliament have no role in the delivery or administration of the Program. Members of Parliament may be invited to announce funding decisions.

29. COMPLIANCE WITH POST- EMPLOYMENT PROVISIONS

The Network and Network Host confirm that no current or former public servant or public office holder to whom the *Conflict of Interest Act*, the *Policy on Conflict of Interest and Post-Employment*, the *Values and Ethics Code for the Public Sector* or the *Values and Ethics Code for the Public Service* applies shall derive a direct benefit from this Agreement unless the provision or receipt of such benefits is in compliance with such legislation and codes; and that no member of the Senate or the House of Commons shall be admitted to any share or part of the Agreement, or to any benefit arising from it, that is not otherwise available to the general public.

30. GIFTS, INDUCEMENTS AND CONTINGENCY FEES

The Network and Network Host represent and warrant that:

- i. It has not, nor has any person on its behalf offered or promised to any official or employee of Her Majesty the Queen in Right of Canada, for or with a view to obtaining the Grant, any bribe, gift or other inducement, and
- ii. It has not nor has any person on its behalf employed any person to solicit the Agreement for a commission, contingency fee or any other consideration dependent upon the execution of the Agreement.

31. LOBBYING ACT

The Network and Network Host declare that any person lobbying on its behalf to obtain funding is registered, and in all other respects is in compliance with the *Lobbying Act*.

32. AMOUNTS OWING TO THE FEDERAL GOVERNMENT

The Network must declare any amounts owing to the federal government under legislation or this Agreement. Any amounts payable to the Network may be set off against amounts owing by the Network to the government.

33. ACKNOWLEDGEMENT

The Network and the Network Host acknowledge having received and taken cognizance of the NCE - Network Program Guide and the Tri-Agency Financial Administration Guide

and agree to be bound by them as they may, from time to time, be amended by the Granting Agencies, provided that no amendment will unreasonably expand the obligations of the Network and Network Host or impose upon them any obligation which is not already set out in this Agreement. Notice of any such permitted amendments will be provided in writing to the Network and Network Host.

34. GENERAL

34.1 Nothing in this Agreement shall be construed so as to create a legal relationship of partnership, agency or employment among any of the Parties. Each Party is an independent contractor and is not authorized or empowered to act as agent for any other Party for any purpose.

34.2 The Parties acknowledge that the Granting Agencies' role in any research is limited to making a financial contribution to the Network's research program. The Granting Agencies are neither decision makers nor advisors to the Network. Further, the Agencies have not had, nor will they have, any role in the carrying out of the research.

34.3 Notices under this Agreement shall be given by prepaid post, facsimile, email or courier. Notices sent by prepaid post shall be deemed received on the fifth business day following dispatch. Notices sent by facsimile or courier shall be deemed received on the business day following dispatch. Notices sent by email shall be deemed received upon sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement). Notices shall be addressed as follows:

- i. If to the Granting Agencies:

Networks of Centres of Excellence
16th Floor Mailroom
350 ALBERT ST
OTTAWA ON, K1A 1H5

- ii. If to the Network:

<<Insert physical address of Network>>

and,

- iii. If to the Network Host:

<<Insert physical address of the Network Host>>

Or any such other address as any party may specify in writing to the other parties.

34.4 No Party hereto may assign, directly or indirectly, any right or obligation arising from this Agreement without the prior written consent of all of the other Parties. This Agreement shall ensure to the benefit of and be binding upon the Parties and their respective, heirs, executors, administrators, successors and permitted assigns.

34.5 This Agreement will be interpreted in accordance with the laws of the province where the Administrative Centre resides and the applicable laws of Canada.

34.6 No failure to enforce any provision of this Agreement shall be construed as a waiver of such provision or a waiver of the right to enforce each and every provision of this Agreement. Waiver of any breach shall not be deemed to be a waiver of any future breach, even if similar in nature.

[signature page follows]

SIGNATURES

NSERC

Signed for and on behalf of NSERC by its duly authorized officer:

B. Mario Pinto, President, NSERC

Date

CIHR

Signed for and on behalf of CIHR by its duly authorized officer:

Alain Beaudet, President, CIHR

Date

SSHRC

Signed for and on behalf of SSHRC by its duly authorized officer:

Ted Hewitt, Executive Vice President & COO
SSHRC

Date

Signed for and on behalf of <<Insert Full Network Name>> by its duly authorized officer:

<<Insert Name>>, <<Insert Position>>
<<Insert Network Name>>

Date

Signed for and on behalf of <<Insert Host Institution Name>> by its duly authorized officer:

Date

ANNEX A - CONSENT TO DISCLOSURE FORM

Name:
Institution:
Position:
Research Project:

By accepting funding from CIHR, NSERC and/or SSHRC (agencies) through the ,<insert name of network>. (the Network), I understand that maintaining public trust in the integrity of researchers is fundamental to building a knowledge-based society and I affirm that I have read and I agree to respect all the policies of these agencies that are relevant to my research, including the Tri-Agency Framework: Responsible Conduct of Research (<http://www.rcr.ethics.gc.ca/eng/policy-politique/framework-cadre/>). In cases of a serious breach of agency policy, CIHR, NSERC and/or SSHRC may publicly disclose any information relevant to the breach that is in the public interest, including my name, the nature of the breach, the institution where I was employed at the time of the breach, the institution where I am currently employed, and the recourse imposed against me. I accept this as a condition of applying for, or receiving, agency funding and I consent to such disclosure.

Signature

Date

ANNEX B TO THE NCE FUNDING AGREEMENT

NETWORKS OF CENTRES OF EXCELLENCE
NETWORK AGREEMENT

BETWEEN

<NAME OF NETWORK>

AND

<NETWORK MEMBERS>

WHEREAS the Network has been selected to be funded under the Networks of Centres of Excellence Program;

WHEREAS in discharging its obligations under its NCE Funding Agreement with the Granting Agencies, the Network will fund certain research activities carried out at Network Members through Network Investigators;

WHEREAS the NCE Funding Agreement obliges the Network to enter into an agreement with Network Members, setting out the obligations of the parties and providing for such matters as reporting requirements, use of research funds, and ownership and exploitation of intellectual property. All signatories of this agreement will abide by the relevant terms set out in the NCE Funding Agreement;

NOW THEREFORE IN CONSIDERATION of the premises and of the mutual covenants contained herein, the Parties agree as follows.

1. DEFINITIONS

In this Agreement, the following terms are defined as follows:

- i. **“Administrative Centre”** means the central administrative offices of the Network located at the Network Host.
- ii. **“Agreement”** means this NCE Network Agreement including all attachments and appendices as may be amended from time to time.
- iii. **“Board”** means the Board of Directors of the Network.
- iv. **“Commercialization”** means the series of activities to transform knowledge and/or technology into new goods, processes or services to satisfy market demands.
- v. **“Confidential Information”** means knowledge, materials, know-how or any proprietary information, whether in electronic, written, graphic or other tangible form, and any such oral information that has been reduced to writing within two weeks of its disclosure.
- vi. **“Granting Agencies”** means the Canadian Institutes of Health Research (CIHR), the Natural Sciences and Engineering Research Council (NSERC) and/or the Social Sciences and Humanities Research Council (SSHRC). “Granting Agency” means any one of them.
- vii. **“HQP”** means the highly qualified personnel of the Network and Network Members and includes: trainees and research staff such as graduate students; postdoctoral fellows; research associates; technicians; and summer students working under the supervision of Network Investigators.
- viii. **“Intellectual Property”** means all materials, concepts, know-how, formulae, inventions, improvements, industrial designs, processes, patterns, machines, manufactures, compositions of matter, compilations of information, patents and

patent applications, copyrights, trade secrets, technology, technical information, software, prototypes and specifications, including any rights to apply for protections under statutory proceedings available for those purposes, provided they are capable of protection at law.

- ix. **“Institutional Agreement”** or **“IA”** means the agreement between the Network Host and the Granting Agencies, outlining the basic requirements for obtaining and maintaining institutional eligibility to administer Grant funds.
- x. **“NCE Funds”** or **“Grant”** means funds provided to the Network by the Granting Agencies, particulars of which are set out in the NCE Funding Agreement.
- xi. **“NCE Funding Agreement”** means the agreement entered into between the Granting Agencies, the <insert name> Network and the Network Host dated <<date>>.
- xii. **“NCE Program”** is a program of the Government of Canada jointly administered by the Granting Agencies with the goal of mobilizing Canada’s research talent in the academic, private and public sectors, and applying it to the task of developing the Canadian economy and improving the quality of life of Canadians; the Network has been selected as a recipient of the program in order that it may carry out research that will further these goals.
- xiii. **“NCE-Network Program Guide”** means the guide published in connection with the NCE Program detailing the processes, procedures and Eligible Expenses of the NCE Program in existence at the time of the NCE Funding Agreement, as may be amended from time to time.
- xiv. **“Network”** means <enter name of Network>, a not-for-profit corporation incorporated under the *Canada Not-For-Profit Corporations Act*.
- xv. **“Network Affiliate”** means a company, government agency or other organization that is involved in a specific aspect of Network research or other Network activity, or provides support to the Network, and that has been accepted as an Affiliate of the Network by the Board of Directors and that has entered into a Network Affiliate agreement with the Network.
- xvi. **“Network Funds”** means all funds managed by the Network, including the Grant and Non-NCE funds provided by Network Members and by other sources in support of the activities of the Network.
- xvii. **“Network Host”** means <enter name of Network Host> a Canadian university or post-secondary institution with a mandate for research and their affiliated institutions (including hospitals, research institutes and/or other not-for-profit organizations) that houses the Administrative Centre and has signed this Agreement.

- xviii. **“Network Investigator”** means a researcher:
- a. who is considered eligible to receive funds from the Granting Agencies and who is affiliated with a Network Member;
 - b. who has been accepted as an investigator in the Network by the Board;
 - c. who has signed the Acknowledgment attached as **Appendix A** to this Agreement; and
 - d. who has signed the Consent to Disclosure form attached as **Appendix B** to this Agreement.
- xix. **“Network Member”** means Canadian universities or post-secondary institutions with a mandate for research and their affiliated institutions including hospitals, research institutes and/or other not-for-profit organizations or other organizations eligible to receive research funds from any of the Granting Agencies and that employ or otherwise give academic status to one or more Network Investigators and that has signed this Agreement, but excludes any “department” or “departmental corporation” as defined in section 2 of the *Financial Administration Act*, any “agent corporation” or “Crown corporation” as defined in subsection 83(1) of the *Financial Administration Act*, any province or municipality.
- xx. **“Network Research”** means research projects supported by Network Funds and carried out by Network Investigators and their respective HQP.
- xxi. **“Network-Supported Intellectual Property (NSIP)”** means Intellectual Property created or invented during a Network Research project.
- xxii. **“Net Revenues”** means proceeds received from commercialization of Network-Supported Intellectual Property (NSIP) minus reimbursement of out-of-pocket expenses incurred in obtaining legal protection for and/or commercialization of the NSIP.
- xxiii. **“Non-NCE funds”** means funds provided by Network Affiliates, Network Members and by other sources in support of the activities of the Network.
- xxiv. **“Parties”** means the signatories to this Agreement.
- xxv. **“Technology Transfer Office”** means the office at the Network Member where a Network Investigator is employed or holds academic status that has responsibility for commercializing Intellectual Property.
- xxvi. **“Tri-Council”** refers to the “Granting Agencies.”

2. OBLIGATIONS OF NETWORK MEMBERS

2.1 FINANCIAL MANAGEMENT AND REPORTING REQUIREMENTS

Network Members shall hold Network Funds in trust for use by the Network and the Network Investigators in accordance with the NCE Funding Agreement, the terms established by the Network, the policies of the Network Members and the requirements of the NCE Program.

Each Network Member shall provide to the Administrative Centre, by May 15 of each year of this Agreement, financial reports for all Network Funds they receive in accordance with the requirements of the Network and the NCE Program.

2.1.1 Each Network Member receiving Network Funds shall:

- i) Ensure that adequate financial controls consistent with the rules and guidelines of the NCE Program and the <insert name of Granting Agency whose rules are being followed> rules and regulations are maintained with respect to Network Funds;
- ii) Keep proper accounts and records of all expenditures;
- iii) Provide the Administrative Centre with the name and address of the person at the Network Member responsible for the administration and accounting of Network Funds and the name and address of the responsible person at the Technology Transfer Office;
- iv) Work in concert with the owners and inventors of the NSIP and the Network, in the Commercialization of NSIP;
- v) Provide their Network Investigators with sufficient space, time and institutional support to allow them to contribute to Network Research;
- vi) Promptly notify the Administrative Centre in the event that a Network Investigator ceases to be employed by a Network Member or otherwise ceases to maintain academic status at that Institution; and
- vii) Repay to the Network any amounts claimed or spent on expenses other than Eligible Expenses as outlined in the NCE Funding Agreement.

2.2 CONFIDENTIAL INFORMATION AND MATERIAL TRANSFER

In carrying out the activities contemplated by this Agreement, it is anticipated that the Network Members may disclose certain information or material which is considered by the disclosing party to be confidential. Where such information is disclosed or material is transferred, it shall be substantially in accordance with the form of the Confidentiality Agreement attached as **Appendix C** or the Material Transfer Agreement attached as **Appendix D**, as the case may be.

2.3 AUDITOR GENERAL MAY AUDIT

- i) The Network Member agrees that the Auditor General of Canada may, at Canada's cost, after consultation with the Network, conduct an inquiry under the authority of subsection 7.1(1) of the *Auditor General Act* in relation to the use of Grant funds. For the purposes of any such inquiry undertaken by the Auditor General, the Network Member shall provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General: All records held by the Network

- Members or by its agents or contractors relating to this Agreement, the NCE Funding Agreement and the use of Grant funds; and,
- ii) Such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to any of this Agreement, the NCE Funding Agreement or the use of the Grant funds.

2.4 OTHER REQUIREMENTS

2.4.1 Each Network Member shall obtain in writing an acknowledgment, in the form set out as **Appendix A**, from each of their respective Network Investigators that he or she understands and agrees to be bound by the provisions entitled “Obligations of Network Investigators” set out in section 3 of this Agreement;

2.4.2 Each Network Member shall provide to the Network a Consent to Disclosure duly executed by each Network Investigator, in the form set out in **Appendix B**. The Network shall not grant NCE Funds for a Network Research prior to receiving such forms.

2.4.3 Each Network Member will ensure that the Network Investigator has complied with the requirement that all HQP have entered into agreements containing substantially similar terms to those governing the Network Investigator set out in this Agreement;

2.4.4 Each Network Member shall ensure that accurate accounts and records, including, but not limited to, contracts, invoices, statements, receipts and vouchers, in respect of the Grant are kept in accordance with the Institutional Agreement and shall, upon reasonable notice, make them available to a representative of the Granting Agencies for inspection and audit;

2.4.5 Each Network Member shall ensure that Network Investigators obtain appropriate certification and/or approval regarding use of humans, animals and/or biohazards in the conduct of Network Research in accordance with the requirements of the NCE Program and the Granting Agencies;

2.4.5 Each Network Member will ensure that Network Investigators obtain appropriate certification and/or approval for research detailed in Paragraph 2.4.6 to Paragraph 2.4.15;

2.4.6 Research involving humans will meet the requirements of the Tri Council Policy Statement: Ethical Conduct for Research Involving Humans (see <http://www.pre.ethics.gc.ca/eng/policy-politique/tcps-eptc/> for details);

2.4.7 Research involving human pluripotent stem cells is required to adhere to the Updated Guidelines for Human Pluripotent Stem Cells Research posted on the CIHR Web site (see <http://www.cihr-irsc.gc.ca/e/34460.html> for details);

2.4.8 Research requiring the use of animals will be conducted in accordance with the policies and guidelines of the Canadian Council on Animal Care: Guide to the Care and Use of Experimental Animals (Volume 1 and 2) and hold a valid Certificate of Good Animal Practice (GAP) (see http://www.ccac.ca/Documents/Standards/Guidelines/Experimental_Animals_Vol

[1.pdf](#) and http://www.ccac.ca/en/_standards/guidelines for electronic versions of Volume 1 and 2 respectively)

2.4.9 Research involving biohazards must adhere to the standards outlined in the latest edition of Laboratory Biosafety Guidelines of the Public Health Agency of Canada (see <http://www.phac-aspc.gc.ca/publicat/lbg-ldmbl-04/index-eng.php> for details);

2.4.10 Research involving infectious agents must adhere to the latest edition of the Laboratory Biosafety Guidelines prepared by the Public Health Agency of Canada (see <http://www.phac-aspc.gc.ca/publicat/lbg-ldmbl-04/index-eng.php> for details);

2.4.11 Research involving radioactive materials must comply with all Canadian Nuclear Safety Commission (CNSC) regulations, recommended procedures, and safety precautions governing the use of such materials in Canada (see <http://www.nuclearsafety.gc.ca/eng/lawsregs/index.cfm> for details);

2.4.12 Research activities having potential effects on the environment must adhere to the Environmental Review Policy for Networks Receiving NCE Funds (see Appendix D of the NCE-Networks Program Guide for details);

2.4.13 Research involving controlled information must comply with all laws and regulations regarding *Controlled Information*, including, but not limited to, the *Defence Production Act*, Export Control Regulations, and the Controlled Goods Regulations before, during or after the tenure of a grant from the NCE. The Network Member will ensure subsequent documentation required by the Network, including all reports and strategic plans, will not include information subject to restrictions or controls under the *Export and Import Permits Act* or its regulations, the Export Control Regulations or the Controlled Goods Regulations (see http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Policies-Politiques/certaintypes-typescertaines_eng.asp for details);

2.4.14 Research performed in the Yukon, the Northwest Territories, and Nunavut must be accompanied by the appropriate licenses for all researchers. Research in the North should be governed by a set of ethical principles as described in the publication by the Association of Canadian Universities for Northern Studies titled *Ethical Principles for the Conduct of Research in the North* (see <http://www.acuns.ca/ethical.htm> for details).

3. OBLIGATIONS OF NETWORK INVESTIGATORS

In signing (see http://www.nserc-crsng.gc.ca/Professors-Professeurs/FAQ-FAQ_eng.asp#a9 for details) the Acknowledgement attached as **Appendix A**, a Network Investigator agrees as follows:

3.1 PUBLICATIONS

In all presentations and publications of results of Network Research, the Network Investigator shall acknowledge the author's participation in the Network and the support of the NCE Program and Granting Agencies, and shall also refer to industrial support where appropriate.

3.2 DISCLOSURE AND COMMERCIALIZATION OF NSIP

3.2.1 The Network Investigator shall promptly disclose in writing to the Network and to the Technology Transfer Office, any results of Network Research that the Network Investigator believes have the potential to be commercialized;

3.2.2 The Network Investigator shall withhold publication for the longer of ninety (90) days or for such period as is provided by the policies of his/her Network Member, any such material pending evaluation by the Network and the Technology Transfer Office of his/her Network Member to determine whether contents contain patentable, commercializable or confidential information. For greater clarity, Network Investigators shall not be restricted from presenting at symposia, national, or regional professional meetings, or from publishing in abstracts, journals, theses, or dissertations, or otherwise, whether in printed or in electronic media, methods and results of research carried out pursuant to this Network Agreement, except where such publication or presentation would result in the public disclosure of NSIP or Confidential Information.

3.2.3 Furthermore, upon request by the Network or the Network Member, the Network Investigator shall further delay publication of NSIP for up to six (6) months to provide time for the Network or the Network Member to seek patent protection for the NSIP. The Network Investigator will work with the Technology Transfer Office and the Dean of Graduate Studies to ensure that any such delays do not interfere with a student's thesis defence or the graduation of the student.

3.2.4 The Network Investigator shall promptly disclose in writing to his/her Network Member and to the Administrative Centre any conflict of interest that may arise pursuant to the terms of section 3.4.

3.2.5 The Network Investigator shall promptly disclose in writing to the Network and to the Technology Transfer Office existing Intellectual Property and any prior art which could limit the extent to which proposed and/or ongoing Network Research could be commercialized.

3.3 CONFIDENTIAL INFORMATION AND TRANSFER OF MATERIAL

The Network Investigator shall ensure that the appropriate agreements concerning the disclosure of Confidential Information and the transfer of biological and other materials are entered into prior to any disclosure of Confidential Information or transfer of material by the Network Investigator.

Where such information is disclosed or material is transferred, it shall be substantially in accordance with the form of the Confidentiality Agreement attached as **Appendix C** or the Material Transfer Agreement attached as **Appendix D**.

3.4 CONFLICT OF INTEREST AND RESEARCH ETHICS

3.4.1 The Network Investigator shall abide by the [Tri-Agency Framework: Responsible Conduct of Research :The Interagency Advisory Panel on Responsible Conduct of Research \(PRCR\)](http://www.rcr.ethics.gc.ca/eng/policy-politique/framework-cadre/) (<http://www.rcr.ethics.gc.ca/eng/policy-politique/framework-cadre/>) governing the use of grant funds and the conduct of research.

3.4.2 Each Network Investigator shall abide by the provisions of his/her Network Member's policies and guidelines with respect to conflict of interest and conflict of commitment, and by the provisions of the NCE Conflict of Interest Policy Framework, as outlined in the NCE Program Guide.

3.4.3 The Network Investigator shall be responsible for ensuring appropriate certification and/or institutional approval is obtained for their Network Research that involves any types of research described in Paragraph 2.3 of this Agreement.

3.5 RECORDS AND REPORTS

3.5.1 The Network Investigator shall submit research progress reports to the Administrative Centre as required by the Network;

3.5.2 The Network Investigator shall ensure that all HQP have entered into agreements containing substantially similar terms to those governing the Network Investigator set out in this Agreement;

3.5.3 The Network Investigator shall ensure that all HQP maintain effective record keeping for experiments carried out as part of Network Research.

3.6 OTHER OBLIGATIONS

- a. The Network Investigator shall use reasonable efforts to attract complementary research funding;
- b. The Network Investigator shall work in concert with the Network, the Network Members, Network Affiliates and other inventors in the commercialization of NSIP including, but not limited to, the prosecution of patents, all in accordance with sections 6 (Ownership of Intellectual Property) and 7 (Principles of Commercialization of Intellectual Property).
- c. The Network Investigator shall participate in Network committees and in other Network activities as required.
- d. The Network Investigator(s) who is (are) the primary user(s) of equipment purchased with NCE funds, and the Network Member owning this equipment, agree(s) to provide other Network Investigators with reasonable access to the equipment for the pursuit of other Network Research projects, and other non-Network Research projects, with Network Research having priority access.
- e. The Network Investigator(s) shall promptly provide to the Network a description of all capital expenditures prior to purchase with NCE Funds.

3.7 TERMINATION OF PROJECT FUNDING

Where the Network determines that a Network Investigator has failed to comply with the duties and responsibilities set out in this Agreement, it shall promptly notify the Network Member and the Network Investigator of the particulars. The Network Investigator shall have thirty (30) days within which to remedy the failure, failing which the Network may terminate funding of the Network Research carried out by the Network Investigator.

Notwithstanding the termination of funding, the Network Investigator will co-operate with the Network to ensure an orderly transfer of responsibilities and phase-out of activities, and shall continue to be bound by the provisions of this Agreement governing intellectual

property, publication, confidentiality and any other provisions which are necessary for the Network to fulfill its obligations to the NCE Program.

4. DISCLAIMERS OF WARRANTY AND LIABILITY

Each Party to this Agreement acknowledges that any and all research results, including information, Intellectual Property and other tangible and intangible materials that it may receive pursuant to this Agreement are to be used with caution and prudence, since all of their characteristics are not known. Each party disclaims all liability for any damages however arising from the use of such research results. Each Party further acknowledges that such research results, information, Intellectual Property and other tangible or intangible materials are provided without warranty of merchantability or fitness for a particular purpose or any other warranty of any sort, express or implied, and that the provider makes no representations that the use of the same will not infringe any patent or other proprietary right. This section survives the provisions of section 10 of this Agreement (Withdrawal).

5. EQUIPMENT

5.1 Title to equipment purchased with NCE Funds shall vest with the Network Member that purchased the equipment.

5.2 The Network's Board shall have the right to direct the relocation of equipment purchased with NCE Funds from one Network Member to another. In such event, ownership will be transferred to the receiving Network Member and the relevant Parties agree to execute any documents that may be reasonably necessary to effect this transfer. The cost of any such relocation shall be borne by the Network.

5.3 To avoid unnecessary inconvenience, the Board shall, in directing the relocation of equipment from a Network Member, take into account the existing commitments of the Network Member for the use of the equipment.

6. OWNERSHIP OF INTELLECTUAL PROPERTY

Ownership and treatment of NSIP shall be determined by applicable Canadian law and the policies of the Network and relevant Network Member(s). The Parties agree that the authority and responsibility for making decisions with regard to legal protection and commercialization of NSIP shall rest with the owners of the NSIP. Where there are two or more owners of the NSIP, they shall designate an agent to act on their behalf. For greater certainty and without limitation, unless otherwise agreed to in writing on a case-by-case basis by the owners of NSIP, no one shall have any rights in the NSIP, other than the right to a non-exclusive license provided for in section 7.2 of this Agreement.

7. PRINCIPLES OF COMMERCIALIZATION OF INTELLECTUAL PROPERTY

7.1 Pursuant to the mandate of the NCE Program, every reasonable effort must be made to have the results of Network Research exploited in Canada for the benefit of Canadians. Accordingly, the Parties shall act in accordance with the Benefit to Canada Working Guidelines, as outlined in the NCE Program Guide.

7.2 Upon written request to the owner(s) of the NSIP, the Network Members shall be offered a non-transferable, non-exclusive, royalty-free, perpetual licence to use and modify all NSIP solely for research and educational purposes provided that the terms and conditions of such licence will not interfere with efforts to commercialize the NSIP.

7.3 Within thirty (30) days after the receipt of a written disclosure, the NSIP owner(s), the inventor's employer or the Network shall call a meeting of all interested parties to discuss the history of support, the potential for commercialization, a plan for management, share of returns and commercialization of the intellectual property.

8. SHARING OF NET REVENUES

8.1 The owner, the inventor, the inventor's employer, the Network and any relevant Network Affiliates or Network Members, shall be entitled to a share of the Net Revenues commensurate with their contributions related to the NSIP, in accordance with the applicable Network and/or Network Member's official policies, as well as the terms of any relevant Network Affiliate agreement.

8.2 The parties shall negotiate the terms in good faith.

9. DISPUTE RESOLUTION

9.1 **Consultation/Negotiation.** In the event of a controversy or dispute between or among any Parties arising out of, or in connection with, this Agreement or regarding its interpretation or operation, the disputing Parties agree to use their best efforts to resolve the dispute amicably.

9.2 **Mediation.** If the Parties are unable to resolve their dispute within sixty (60) days after beginning the consultation/negotiation process, any Party to the dispute may serve written notice on the other Party(s) requiring that they submit the dispute to non-binding mediation. The Parties shall mutually agree on a single mediator to mediate the dispute in accordance with mediation procedures suggested by the mediator and agreed to by the Parties. The Parties agree to use best efforts to participate in the mediation process and attempt to resolve their dispute. Each Party shall pay its own costs and an equal share of all other costs of the mediation.

9.3 **Arbitration.** If the mediation fails to resolve the dispute within sixty (60) days following the day the mediator is appointed, or if one Party refuses to cooperate or participate in good faith in the mediation process, any Party to the dispute may serve written notice on the other Parties that the dispute be submitted to binding arbitration in the following manner:

- a. The Parties shall mutually agree on a single arbitrator to adjudicate the dispute. If the Parties cannot agree on a single arbitrator within fifteen (15) days of receipt of the written notice requiring arbitration, then either Party may apply to a Judge of a court having jurisdiction to appoint the single arbitrator who shall be unconditionally accepted by both Parties.
- b. Unless otherwise agreed to by the Parties, the arbitration shall be conducted in English and according to the governing law of this Agreement and in accordance with arbitral procedures in place in that jurisdiction.
- c. The arbitration shall be carried out no later sixty (60) days from appointment of the single arbitrator or chair of the arbitral panel, as the case may be.
- d. Unless the Parties to the dispute otherwise agree, the arbitration shall be held in the city where the Network Host is located.
- e. Each Party shall bear the cost of preparing its own case. The arbitrator shall have the right to include in the award the prevailing party's cost of arbitration and reasonable fees of attorneys, accountants, engineers and other professionals incurred by it in connection with the arbitration. Failing a specific award, the Parties shall share equally the cost of the arbitrator and arbitration proceedings.
- f. The award rendered by the arbitration shall be final and binding on all Parties and may be entered as an order in any court having jurisdiction.
- g. This section survives the provisions of section 10 of this Agreement (Withdrawal from Agreement).
- h. Notwithstanding the provisions of this section, the Parties recognize that a Party may desire to seek emergency, provisional, or summary relief (including temporary injunctive relief) to enforce the provisions of this Agreement relating to protection of intellectual property and/or Confidential Information. A Party may seek such relief provided, however, that immediately following the issuance of any emergency, provisional, temporary injunctive or summary relief, any such judicial proceedings shall be stayed (and each Party shall consent to such stay) pending resolution of any related underlying claims between the Parties.

10. WITHDRAWAL FROM AGREEMENT

10.1 Upon the withdrawal of a Network Member, the Network Investigator(s) affiliated with that Network Member will no longer be eligible to receive Network Funds. Notwithstanding withdrawal from this Agreement, the Network Member and the Network Investigator(s) shall continue to be bound by the provisions of this Agreement governing intellectual property, publication, confidentiality and any other provisions which are necessary for the Network to fulfil its obligations to the NCE Program for a period of <insert timeframe>.

10.2 **Voluntary Withdrawal:** A Network Member shall be entitled to withdraw from this Agreement upon ninety (90) days written notice to the Board and the Network.

10.3 **Involuntary Withdrawal:** Where the Network determines on the basis of at least a two-thirds majority vote of the Board that a Network Member has failed to comply with the duties and responsibilities set out in this Agreement, it shall promptly notify the Network Member(s) of the particulars. The Network Member shall have thirty (30) days within which to remedy the failure, otherwise the Network Member may be deemed to have withdrawn from this Agreement.

10.4 **Consequences of Withdrawal:** Upon the effective date of withdrawal of a Network Member, the withdrawing Network Member shall submit to the Network a full account of all unused and uncommitted funds advanced by the Network. The withdrawing Network Member and Network Investigator(s) will co-operate with the Network to ensure an orderly transfer of responsibilities and phase-out of activities.

11. EFFECTIVE DATE AND TERM

This Agreement shall come into force on the last date signed and shall remain in force for the same duration as either the NCE Funding Agreement or any NSIP related agreements whichever is longer.

12. AMENDMENTS

The terms and conditions set forth in this Agreement, together with the Appendices, form the complete Agreement among the Parties, and no amendment or modification shall be binding upon the Parties unless agreed to in writing by the Parties. In the event the NCE Program policies or policies of the Government of Canada are amended during the term of this Agreement, the Granting Agencies will provide ninety (90) days written notice to the Network and specify what amendments to this Agreement are required. Following receipt of such notice, the Parties agree to make all necessary amendments to this Agreement, as required by the Granting Agencies .

13. GENERAL

13.1 Nothing in this Agreement shall be construed so as to create a legal relationship of partnership, agency or employment among any of the Parties. Each Party is an independent contractor and is not authorized or empowered to act as agent for any other Party for any purpose.

13.2 Notices under this Agreement shall be given by prepaid post, facsimile or courier. Notices sent by prepaid post shall be deemed received on the fifth business day following dispatch. Notices sent by facsimile or courier shall be deemed received on the business day following dispatch. Notices shall be addressed as follows:

- a) if to the Network:
<insert particulars>
- b) if to the Network Member:
<insert particulars>

13.3 No Party hereto may assign, directly or indirectly, any right or obligation arising from this Agreement without the prior written consent of all of the other Parties. This Agreement shall ensure to the benefit of, and be binding upon, the Parties and their respective, heirs, executors, administrators, successors and permitted assigns.

13.4 This Agreement will be interpreted in accordance with the applicable laws of Canada and the laws of the province where the Administrative Centre resides.

13.5 The dates and times by which any Party is required to perform any obligation in this Agreement shall be postponed automatically to the extent and for the period of time that the party is prevented from so performing by circumstances beyond its reasonable control and which is not caused by any default or act of commission or omission of such Party and is not avoidable by the exercise of reasonable effort or foresight by such Party.

13.6 No failure to enforce any provision of this Agreement shall be construed as a waiver of such provision or a waiver of the right to enforce each and every provision of this Agreement. Waiver of any breach shall not be deemed to be a waiver of any future breach, even if similar in nature.

13.7 This Agreement can be signed in multiple parts.

13.8 This Agreement is valid between the Parties whether its version is signed in English or French by the Parties.

13.9 New Network Members (as approved by the Board) can be added to this agreement after the original Network Members have signed, by agreeing to all the same terms and conditions.

[signature page follows]

SIGNATURES (*)

Signed for and on behalf of «Network» by its duly authorized officer:

Name and Title

Date

Signed for and on behalf of the Host Institution <insert name of the Host Institution that is party to this agreement> by its duly authorized officer:

Name and Title

Date

Signed for and on behalf of the <insert name of the first Network Member that is party to this agreement> by its duly authorized officer:

Name and Title

Date

Signed for and on behalf of the <insert name of the second Network Member that is party to this agreement> by its duly authorized officer:

Name and Title

Date

Signed for and on behalf of the <insert name of the third Network Member that is party to this agreement> by its duly authorized officer:

Name and Title

Date

Signed for and on behalf of the <insert name of the fourth Network Member that is party to this agreement> by its duly authorized officer:

Name and Title

Date

(*Use additional pages for signatures, if required.)

Appendix A to NCE Network Agreement

Acknowledgement

I, <name of Network Investigator, name of Network Member> acknowledge that I have read, understood and agree to be bound by the obligations of Network Investigators set out in the Network Agreement.

Name of Network Investigator

Name and Title

Date

[IN THE CASE OF HQP]

Acknowledgement

I, <name of HQP> participating in Network Research conducted by <name of Network Investigator> of <name of Network Member> acknowledge that I have read, understood and agree to be bound by the obligations of Network Investigators set out in the Network Agreement.

Name of HQP of Network Investigator's team

Name and Title

Date

Appendix B to NCE Network Agreement

CONSENT TO DISCLOSURE FORM

Name:
Institution:
Position:
Research Project:

By accepting funding from CIHR, NSERC and/or SSHRC (agencies) through the <<Insert Name of Network>> (the Network), I understand that maintaining public trust in the integrity of researchers is fundamental to building a knowledge-based society and I affirm that I have read and I agree to respect all the policies of these agencies that are relevant to my research, including the Tri-Agency Framework: Responsible Conduct of Research (<http://www.rcr.ethics.gc.ca/eng/policy-politique/framework-cadre/>). In cases of a serious breach of agency policy, CIHR, NSERC and/or SSHRC may publicly disclose any information relevant to the breach that is in the public interest, including my name, the nature of the breach, the institution where I was employed at the time of the breach, the institution where I am currently employed, and the recourse imposed against me. I accept this as a condition of applying for, or receiving, agency funding and I consent to such disclosure.

Signature

Date

Appendix C to the NCE Network Agreement

Confidentiality Agreement (Reciprocal Non-Disclosure)

This Agreement made as of the _____ day of _____, 20__.

BETWEEN:

_____ ("Disclosing Party")

AND:

_____ ("Receiving Party")

WHEREAS:

A. Each party (hereinafter referred to in its role as a provider of information as the "Disclosing Party") to this Agreement has information concerning a certain subject which is its confidential and proprietary property; and

B. Each party (hereinafter referred to in its role as recipient of information from the Disclosing Party as the "Receiving Party") to this Agreement wishes the Disclosing Party to disclose its information to it and the Disclosing Party is willing to disclose its information to the Receiving Party provided that the confidentiality of all such information so disclosed is maintained as hereinafter provided.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants herein set forth, the parties hereto have covenanted and agreed as follows:

1. Information covered by this Agreement must be identified as Confidential

In this Agreement, "Information" shall mean any and all knowledge, know-how, information, and/or techniques disclosed by the Disclosing Party to the Receiving Party relating to financial and/or commercial information, and/or relating to research projects or technologies developed by members of NCE Program or _____ University or _____ Company or any combination of NCE Program, _____ University or _____ Company inclusive of:

- a) _____,
- b) _____,
- c) _____,
- d) _____, and
- e) _____,

all of the above which include, without limiting the generality of the foregoing, all research, data, specifications, plans, drawings, prototypes, models, documents, records, instructions, manuals, papers, or other materials of any nature whatsoever, whether written or otherwise, relating to same, as well as the existence of this Agreement and its terms and conditions. In order to constitute "Information" for the purposes of this Agreement, the Disclosing Party must clearly identify it in writing as being confidential, or if the disclosure takes place orally or in some other non-tangible form, the Disclosing Party must summarize it in writing within fifteen (15) days of making the disclosure.

2. Specified use of Confidential Information

The Receiving Party shall not, without the Disclosing Party's prior written consent, use the Disclosing Party's Information, directly or indirectly, for any purpose other than:

Without limiting the generality of the foregoing, the Receiving Party shall not use, manufacture, or sell the Disclosing Party's Information or any device or means incorporating any of the Disclosing Party's Information, and shall not use any of the Disclosing Party's Information as the basis for the design or creation of any device or means.

3. Permitted exceptions to the obligation to keep information confidential

The Receiving Party shall keep and use all of the Disclosing Party's Information in confidence and shall not, without the Disclosing Party's prior written consent, disclose any part of the Disclosing Party's Information to any person, firm, corporation, or other entity unless and until that part of the Disclosing Party's Information:

- a) Is made subject to an order by judicial or administrative process requiring the Receiving Party to disclose any or all of the Disclosing Party's Information, provided however that the Receiving Party shall promptly notify the Disclosing Party and allow the Disclosing Party reasonable time to oppose such process before disclosing any of the Disclosing Party's Information;
- b) Is published or becomes available to the general public other than through a breach of this Agreement;
- c) Is obtained by the Receiving Party from a third party with a valid right to disclose it, provided that said third party is not under a confidentiality obligation to the Disclosing Party;
- d) Is independently developed by employees, agents or consultants of the Receiving Party who had no knowledge of, or access to, the Disclosing Party's Information as evidenced by the Receiving Party's business records; or
- e) Was possessed by the Receiving Party prior to receipt from the Disclosing Party, other than through prior disclosure by the Disclosing Party, as evidenced by the Receiving Party's business records.

4. Agreement does not create a license or contract

The Receiving Party acknowledges and agrees that any and all disclosures of the Disclosing Party's Information pursuant to this Agreement are on a non-exclusive basis and that the Disclosing Party is free to make similar or other disclosures to third parties. Nothing in this Agreement shall create, or be construed to create, any license to the Receiving Party or any obligation on either party to enter into a license or other agreement with respect to the Information. Furthermore, nothing contained herein shall be deemed or construed to create between the parties hereto an agency relationship, partnership or joint venture. Neither party shall be liable for any act, omission, representation, obligation, or debt of the other party, even if informed of such act, omission, representation, obligation or debt.

5. No warranty given by Disclosing Party

The Disclosing Party makes no representations or warranties, either express or implied, with respect to the merchantability or fitness for a particular purpose of its Information. The Disclosing Party shall in no event be liable for any loss of profits, be they direct, consequential, incidental or special, or other similar or like damages arising from any defect, error or failure to perform with respect to its Information, even if the Disclosing Party has been advised of the possibility of such damages.

6. Receiving Party's indemnifies Disclosing Party

The Receiving Party hereby indemnifies, holds harmless and defends the Disclosing Party, its Board of Governors, directors, officers, employees, faculty, students, invitees, and agents against any and all claims (including all legal fees and disbursements incurred in association therewith) arising from or out of the receipt or use of the Disclosing Party's Information by the Receiving Party including, without limiting the generality of the foregoing, any damages or losses, consequential or otherwise, arising from or out of the receipt or use of the Disclosing Party's Information by the Receiving Party, howsoever the same may arise. In the event that the Receiving Party is prohibited by law from granting the indemnity contemplated herein, the Receiving Party shall carry insurance in an amount of no less than \$1,000,000 and which shall provide coverage to the Disclosing Party, its Board of Governors, directors, officers, employees,

faculty, students, invitees, and agents against any and all claims (including all legal fees and disbursements incurred in association therewith) arising from or out of the receipt or use of the Disclosing Party's Information by the Receiving Party including, without limiting the generality of the foregoing, any damages or losses, consequential or otherwise, arising from or out of the receipt or use of the Disclosing Party's Information by the Receiving Party, howsoever the same may arise.

7. No transfer of rights and duties under this Agreement

Neither party shall assign, transfer, mortgage, charge or otherwise dispose of any or all of its rights, duties or obligations granted to it under this Agreement without the prior written consent of the other.

8. Term of this Agreement and return of all copies of information

This Agreement will be deemed to have come into force on the earlier date of the first date above written or the date when Information was transferred under this Agreement regardless of the date of execution, and shall be read and construed accordingly. This Agreement shall terminate on the expiration of a term of five (5) years after this Agreement comes into force unless earlier terminated by the mutual agreement in writing executed by duly authorized signatories of the parties. Forthwith upon the termination of this Agreement, the Receiving Party shall cease to use the Disclosing Party's Information in any manner whatsoever and upon the written request of the Disclosing Party shall forthwith deliver up to the Disclosing Party all of the Disclosing Party's Information, together with all full or partial copies thereof as shall then be in the Receiving Party's possession or control, except that the Receiving Party may retain one complete record copy of said Information for archival purposes to assure compliance with this Agreement. Notwithstanding any termination or expiration of this Agreement, the obligations created in this Agreement shall survive and continue to be binding upon the Receiving Party, its successors and assigns for the full term set forth above.

9. Applicable laws

This Agreement shall be governed by and construed in accordance with the laws of the <Province of the Network Member> and the laws of Canada in force therein without regard to its conflict of law rules.

10. Arbitration

In the event of any dispute arising between the parties concerning this Agreement, its enforceability or the interpretation thereof, the same shall be finally resolved by the provisions of *Article 9* of the <network> Network Agreement.

11. Notices

All notices or other documents that either of the parties hereto are required or may desire to deliver to the other party hereto may be delivered only by personal delivery, by courier, by telecopy, or by registered or certified mail, all postage and other charges prepaid, at the address for such party set forth above or at such other address as that party may hereinafter designate in writing to the other.

12. Miscellaneous Provisions

No condoning, excusing or overlooking by either party of any default, breach or non-observance by the other party at any time or times in respect of any covenants, provisos, or conditions of this Agreement shall operate as a waiver of such party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance so as to defeat in any way the rights of such party in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by such party, save only an express waiver in writing.

This Agreement may be executed in counterpart, each such counterpart when taken as a whole with the other executed counterparts, constituting an original Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Agreement on the dates set forth below but effective as of the date first above written.

Signed for and on behalf of < _____ > by its duly authorized officer:

Name and Title

Date

Signed for and on behalf of < _____ > by its duly authorized officer:

Name and Title

Date

I, <Network Investigator>, <of the University> hereby acknowledge that I have read and understood the provisions of this agreement.

Name and Title

Date

APPENDIX D to the NCE Network Agreement

Confidential Information and Material Transfer Agreement

BETWEEN:

<University Name>, a corporation continued under the _____ Act of _____, and having offices at _____, Attention: Industry Liaison Office, Telephone: (____) _____, Fax: (____) _____ ("_____")

AND:

<COMPANY>, a corporation having its head office at _____, Attention: Name and Title, Telephone: (____) _____, Fax: (____) _____ ("_____")

AND:

« **Network** », Attention: Name, Telephone: (____) _____, Fax: (____) _____

AND:

« **Network Investigator** », Attention: Telephone: (____) _____, Fax: (____) _____

WHEREAS:

- A. Each party (hereinafter referred to in its role as a provider of information as the "Disclosing Party") to this Agreement has information concerning a certain subject which is its confidential and proprietary property; and
- B. Each party (hereinafter referred to in its role as recipient of information from the Disclosing Party as the "Receiving Party") to this Agreement wishes the Disclosing Party to disclose its information to it and the Disclosing Party is willing to disclose its information to the Receiving Party provided that the Receiving Party maintains the confidentiality of all such materials and information and uses same only for the purposes as hereinafter provided.

NOW THEREFORE IN CONSIDERATION of the premises and of the mutual covenants herein set forth, the parties hereto have covenanted and agreed as follows:

1. Confidential Information and permitted exceptions

In this Agreement, "Information" shall mean any and all knowledge, know-how, information, and/or techniques disclosed by the Provider to the Recipient relating to the Materials hereinafter defined or related to the project entitled

“

”

including, without limiting the generality of the foregoing, all research, data, specifications, plans, drawings, prototypes, models, documents, recordings, instructions, manuals, papers or other materials of any nature whatsoever, whether written or otherwise, relating to same, as well as the existence of this Agreement and its terms and conditions. In order to constitute "Information" for the purposes of this Agreement, the Disclosing Party must clearly identify it in writing as being confidential, or if the disclosure takes place orally or in some other non-tangible form, the Disclosing party must summarize it in writing within fifteen (15) days of making the disclosure.

This Agreement does not apply to Information that:

- (a) is made subject to an order by judicial or administrative process requiring the Recipient to disclose any or all of the Information provided, however, that the Recipient shall promptly notify the Provider and allow the Provider reasonable time to oppose such process before disclosing any of the Information;
- (b) is published or becomes available to the general public other than through a breach of this Agreement;
- (c) is obtained by the Recipient from a third party with a valid right to disclose it, provided that said third party is not under a confidentiality obligation to the Provider;
- (d) is independently developed by employees, agents or consultants of the Recipient who had no knowledge of, or access to, the Provider's Information as evidenced by the Recipient's business records; or
- (e) was possessed by the Recipient prior to receipt from the Provider, other than through prior disclosure by the Provider, as evidenced by the Recipient's business records.

2. Definition of Materials

In this Agreement, "Materials" shall mean any and all cell lines, vectors, plasmids, clones, micro-organisms, antibodies, antigens, biologies, test plates, reagents, chemicals, compounds, physical samples, models, and specimens delivered by the Provider to the Recipient, as well as any and all progeny and derivatives thereof. Without limiting the generality of the foregoing, Materials shall include the following:

- (a) _____ (description, quantity and concentration)
- (b) _____

3. Provider retains ownership of Information and Materials

This agreement and the resulting transfer of Information and Material constitutes a bailment and grants the Recipient a license to use the Material owned by Provider as provided herein. The parties hereby acknowledge and agree that the Provider owns any and all rights, title and interest in and to the Information and Materials.

4. Permitted use by Recipient of Information and Materials

The Recipient shall not, without the Provider's prior written consent, use the Information or the Materials, directly or indirectly, for any purpose other than for the following experiments:

- (a) _____; and
- (b) _____

Without limiting the generality of the foregoing, the Recipient shall not commercially use, manufacture, or sell the Information or the Materials or any device or means incorporating any of the Information or the Materials, and shall not use any of the Information or the Materials as the basis for the design or creation of any device or means.

5. Restrictions on use of Information and Materials

Notwithstanding anything else in this Agreement, the Recipient shall not apply, directly or indirectly, any of the Information or the Materials to any human use **without appropriate Institutional Approvals**. Without limiting the generality of the foregoing, the Recipient shall not utilise any of the Information or the Materials for any human research, treatment, or diagnosis, but the Recipient may conduct pre-clinical evaluation of the Information and the Materials.

6. Disclosure requires prior written consent

The Recipient shall keep and use all of the Information and the Materials in strictest confidence and shall not, without the Provider's prior written consent, disclose any part of the Information or provide any part of the Materials to any person, firm, corporation, or other entity regardless of any affiliation or relationship with the Recipient.

7. Any disclosure to be under equivalent or greater obligation of confidentiality

The Recipient agrees that it has and shall maintain an appropriate internal program limiting the Internal distribution of the Information and the Materials to those of its officers, servants, or agents who require said Information and Materials so that the Recipient may use them for the purpose set forth in *Article 4*. Notwithstanding *Article 6*, the Recipient may disclose the Information but may not provide the Materials to third-party consultants, but such disclosure of Information shall only be permitted to the extent that said third-party consultants require access

to the Information in order to enable the Recipient to carry out the purpose set forth in *Article 4*. The Recipient covenants and agrees that before making any Materials or Information available to said officers, servants, agents, or third-party consultants, it shall ensure they are under written obligations of confidentiality which are equivalent to or greater than those set forth in this Agreement.

8. No license or other agreement created by this Agreement

The Recipient acknowledges and agrees that any and all disclosures of Information and provisions of Materials pursuant to this Agreement are on a non-exclusive basis and that the Provider is free to make similar or other disclosures to third parties. Nothing in this Agreement shall create, or be construed to create; a license to the Recipient except as set forth in *Article 4*, or any obligation on either party to enter into a license or other agreement with respect to the Information or the Materials. Furthermore, nothing contained herein shall be deemed or construed to create between the parties an agency relationship, partnership or joint venture. Neither party shall be liable for any act, omission, representation, obligation or debt of the other party, even if informed of such act, omission, representation, obligation or debt.

9. No warranty given by Disclosing Party

The Disclosing Party makes no representations or warranties, either express or implied, with respect to the merchantability or fitness for a particular purpose of its Information. The Disclosing Party shall in no event be liable for any loss of profits, be they direct, consequential, incidental, or special or other similar or like damages arising from any defect, error or failure to perform with respect to its Information, even if the Disclosing Party has been advised of the possibility of such damages.

10. Recipient holds harmless and will defend Provider against claims from its use

The Recipient hereby indemnifies, holds harmless and defends the Provider, its Board of Governors, directors, officers, employees, faculty, students, and agents against any and all claims (including all legal fees and disbursements incurred in association therewith) arising from or out of the receipt or use of the Information or the Materials by the Recipient including, without limiting the generality of the foregoing, any damages or losses, consequential or otherwise, arising from or out of the receipt or use of the Information or the Materials by the Recipient, howsoever the same may arise. The Recipient shall procure and maintain public liability insurance in reasonable amounts with a reputable and secure insurance carrier. In the event that the Recipient is prohibited by law from granting the indemnity contemplated herein, in addition to the public liability insurance contemplated hereunder, the Recipient shall also carry insurance in an amount of no less than \$1,000,000 which shall provide coverage to the Provider, its Board of Governors, directors, officers, employees, faculty, students, and agents against any and all claims (including all legal fees and disbursements incurred in association therewith) arising from or out of the receipt or use of the Information or the Materials by the Recipient including, without limiting the generality of the foregoing, any damages or losses, consequential or otherwise, arising from or out of the receipt or use of the Information or the Materials by the Recipient, howsoever the same may arise.

11. No assignment of rights

The Recipient shall not assign, transfer, mortgage, charge or otherwise dispose of any or all of the rights, duties or obligations granted to it under this Agreement without the prior written consent of the Provider.

12. Term of this Agreement

This Agreement shall take effect on the earlier date of or the date first written above or the date that Information or Materials is transferred under this Agreement regardless of the date of execution, and shall remain in full force and effect for a period of three (3) years after this Agreement comes into force unless earlier terminated by any party with sixty (60) days written notice, or unless earlier terminated by mutual written agreement executed by all parties. Notwithstanding any early termination of this Agreement, the obligations created in this Agreement shall survive and continue to be binding upon the Recipient, its successors and assigns for _____ () years from the date first above written. Forthwith upon the termination of this Agreement, the Recipient shall cease to use the Information or the Materials in any manner whatsoever and, upon written request by the Provider, the Recipient shall deliver up to the Provider all of the Information and Materials in its possession or control, together with a certificate certifying that no copies or progeny or derivatives, as the case may be, have been made or retained, or that one copy of the Information and one set of the Materials have been retained for the sole purpose of ensuring compliance with the ongoing obligations created in this Agreement.

13. Applicable law

This Agreement shall be governed by and construed in accordance with the laws of the <Province of the Participating Institution> and the laws of Canada in force therein without regard to its conflict of law rules.

14. Arbitration in case of disagreement

In the event of any dispute arising between the parties concerning this Agreement, its enforceability or the interpretation thereof, the same shall be finally resolved by the provisions of *Article 9* of the <network> Network Agreement.

15. Notices

All notices or other documents that either of the parties hereto are required or may desire to deliver to the other party hereto may be delivered only by personal delivery, by courier, by telecopy, or by registered or certified mail, all postage and other charges prepaid, at the address for such party set forth above or at such other address as that party may hereinafter designate in writing to the other.

16. This Agreement comprises entire understanding between parties

This Agreement sets forth the entire understanding between the parties and no modifications hereof shall be binding unless executed in writing by the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Agreement on the dates set forth below but effective as of the date first above written.

Signed for and on behalf of **<UNIVERSITY>** by its duly authorized officer:

Name and Title

Date

Signed for and on behalf of **<COMPANY>** by its duly authorized officer:

Name and Title

Date

Signed for and on behalf of **<Network>** by its duly authorized officer:

Name and Title

Date

Read and Approved by **<Network Investigator>**, **<University>**

Name and Title

Date