



**Networks of Centres
of Excellence**
**Réseaux de centres
d'excellence**

ANNEX A to the NCE FUNDING AGREEMENT

STANDARD NCE NETWORK AGREEMENT

AMONG

**The Mathematics of Information Technology and Complex
Systems Inc.
(MITACS Inc.)**

And

Participating Institution

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

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

WHEREAS the Funding Agreement obliges the Network to enter into an agreement with Participating Institutions, 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;

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:

Administrative Centre means the central administrative offices of the Network located at the Network Host.

Agreement means this NCE Network Agreement including all attachments and appendices as may be amended from time to time.

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.

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).

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.

NCE Funds means funds provided to the Network by the Granting Agencies particulars of which are set out in the NCE Funding Agreement.

NCE Funding Agreement means the agreement entered into between the NSERC, the CIHR, the Mathematics of Information Technology and Complex Systems Inc. Network of Centres of Excellence (MITACS Inc.) and Simon Fraser University.

Network means the Mathematics of Information Technology and Complex Systems Inc. Network of Centres of Excellence (MITACS Inc.), a not-for-profit corporation incorporated under Part II of the Canada Corporations Act

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.

Network Funds means all funds managed by the Network, including NCE Funds and non-NCE funds provided by Network Affiliates and Network Members and funds provided by other sources in support of the activities of the Network. Network funds result from agreements between the Network and any of the following: Network Affiliates, Network Members and third parties.

Network Host means the Participating Institution or other organization that houses the Administrative Centre and that has signed the Funding Agreement.

Network Investigator means:

- a) a person employed or otherwise given academic status by a Participating Institution who is responsible for a specific aspect of Network Research;
- b) who has been accepted as an Investigator in the Network by the Board of Directors; and,
- c) who has signed the Acknowledgment attached as **Appendix A** to the Network Agreement.

Network Manager means the individual responsible for the general management of the Network's day-to-day operations.

Network Member means a Participating Institution, the Network Host and any other organization accepted for membership by the Board of Directors.

Network Research means research projects substantially supported by Network Funds and carried out under the supervision of Network Investigators.

Network Strategic Plan means a description of the proposed activities of the Network comprised of two primary elements: the research plan, including its objectives and milestones, its anticipated achievements and the value added of a network approach to the research and research management; and the business management plan outlining the strategic importance of the research to Canada and its potential economic and social benefits, the intellectual property management and technology transfer mechanisms, and the details of the proposed management structure.

Network-Supported Intellectual Property (NSIP) means Intellectual Property created or invented during a Network Research project.

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.

Non-NCE funds means funds provided by Network Affiliates, Network Members and by other sources in support of the activities of the Network.

Participating Institution means any university, post-secondary educational institution, hospital, institute or other organization eligible to receive research funds from any Granting Agency and that employs or otherwise gives academic status to one or more Network Investigators.

Parties means the signatories to this Agreement.

Scientific Director means the individual appointed by the Board of Directors to be responsible for directing the scientific development of the Network and overseeing Network Research and the Network Strategic Plan.

Technology Transfer Office means the office at the Participating Institution or Network Member where a Network Investigator is employed or holds academic status that has responsibility for commercializing Intellectual Property.

2. OBLIGATIONS OF PARTICIPATING INSTITUTIONS

A. FINANCIAL MANAGEMENT AND REPORTING REQUIREMENTS

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

- a) Each Participating Institution shall provide to the Administrative Centre, by June 30 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.
- b) Each Participating Institution receiving Network Funds shall:
 - i) ensure that adequate financial controls consistent with the rules and guidelines of the NCE Program and the NSERC rules and regulations are maintained with respect to Network Funds;
 - ii) keep proper accounts and records of all eligible expenditures;
 - iii) provide the Administrative Centre with the name and address of the person at the Participating Institution 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, the inventor's employer 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 Participating Institution or otherwise ceases to hold academic status at that Institution;

B. CONFIDENTIAL INFORMATION AND MATERIAL TRANSFER

In carrying out the activities contemplated by this Agreement, it is anticipated that the Participating Institutions 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 B** to the Network Agreement or the Material Transfer Agreement attached as **Appendix C** to the Network Agreement, as the case may be.

C. OTHER REQUIREMENTS

- a) Each Participating Institution 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 Article 3 of this Agreement;
- b) Each Participating Institution shall use its best efforts to ensure that the Network Investigator has complied with the requirement that students and all others members of the Network Investigator's research team have entered into agreements containing substantially similar terms to those governing the Network Investigator set out in this Agreement;
- c) Each Participating Institution 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 three Funding Agencies;
- d) Research involving human subjects shall meet the requirements of the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans;
- e) Research requiring the use of animals shall 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;

- f) Research involving biohazards shall be conducted in accordance with the requirements of the Health Canada Population and Public Health Branch: Laboratory Biosafety Guidelines.

3. OBLIGATIONS OF NETWORK INVESTIGATORS

In signing the Acknowledgement attached as **Appendix A**, a Network Investigator agrees as follows:

A. 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 (subject to written permission to do so where appropriate).

B. DISCLOSURE AND COMMERCIALIZATION OF NSIP

- a) The Network Investigator shall promptly disclose in writing to the Network Manager and to the Technology Transfer Office, any results of Network Research that the Network Investigator believes have the potential to be commercialized;
- b) The Network Investigator shall withhold publication for the longer of 90 days or for such period as is provided by the policies of his/her Participating Institution, any such material pending evaluation by the Network Manager and/or his/her delegate and the Technology Transfer Office of his/her Participating Institution 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.
- c) Furthermore, upon request by the Network or the Participating Institution, the Network Investigator shall further delay publication of NSIP for up to 6 months to provide time for the Network or the Participating Institution 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.
- d) The Network Investigator shall promptly disclose in writing to his/her Participating Institution, and to the Administrative Centre any conflict of interest that may arise pursuant to the terms of Section D of this Article 3.
- e) The Network Investigator shall promptly disclose in writing to the Network Manager 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.

C. 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 B** or the Material Transfer Agreement attached as **Appendix C**.

D. CONFLICT OF INTEREST AND RESEARCH ETHICS

- a) The Network Investigator shall abide by the Tri-Council Policy Statement on Integrity in Research and Scholarship governing the use of grant funds and the conduct of research.
- b) Each Network Investigator shall abide by the provisions of his/her Participating Institution'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. To the extent that there may be a conflict between these policies, the more stringent requirements shall prevail.
- c) The Network Investigator shall be responsible for ensuring appropriate certification and/or institutional approval is obtained for their Network Research that involves human subjects, or requires the use of animals or biohazards.

E. RECORDS AND REPORTS

- a) The Network Investigator shall submit research progress reports to the Administrative Centre as required by the Network;
- b) The Network Investigator shall ensure that students and all other members of his or her research team have entered into agreements containing substantially similar terms to those governing the Network Investigator set out in this Agreement;
- c) The Network Investigator shall ensure that students and all other members of his or her research team maintain effective record keeping for experiments carried out as part of Network Research.

F. 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 Participating Institutions, Network Affiliates and other inventors in the

commercialization of Network-Supported Intellectual Property including, but not limited to, the prosecution of patents, all in accordance with Articles 6 (Ownership of Intellectual Property) and 7 (Principles of Commercialization of Intellectual Property).

- c) Participate on 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 Participating Institution 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 Manager a description of all equipment costing more than \$25,000 which was purchased with NCE Funds.

G. 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 Participating Institution 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 Article survives the provisions of Article 10 of this Agreement (Withdrawal).

5. EQUIPMENT

- a) Title to equipment purchased with NCE Funds shall vest with the Participating Institution that purchased the equipment.
- b) The Board of Directors shall have the right to direct the relocation of equipment purchased with NCE Funds costing more than \$25,000 from one Participating Institution to another. In such event, ownership will be transferred to the receiving Participating Institution 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.
- c) To avoid unnecessary inconvenience, the Board of Directors shall, in directing the relocation of equipment from a Participating Institution, take into account the existing commitments of the Participating Institution for the use of the equipment.

6. OWNERSHIP OF INTELLECTUAL PROPERTY

Ownership of Network-Supported Intellectual Property (NSIP) shall be determined by applicable Canadian law and the policies of the relevant Participating Institution(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 other than the NSIP owners shall have any rights in the NSIP, other than the right to a non-exclusive license provided for in clause (b) of Article 7 of this Agreement.

7. PRINCIPLES OF COMMERCIALIZATION OF INTELLECTUAL PROPERTY

- a) 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.
- b) 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.
- c) Within 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

- a) The owner, the inventor, the inventor's employer, the Network and the relevant Network Affiliate or Network Member, shall be entitled to a share of the Net Revenues commensurate with their contributions related to the NSIP, in accordance with the applicable Participating Institution's official policies, those of other Network Members as appropriate, as well as the terms of any relevant Network Affiliate agreement.
- b) The parties shall negotiate the terms in good faith.

9. DISPUTE RESOLUTION

- a) **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.
- b) **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.
- c) **Arbitration.** If the mediation fails to resolve the dispute within 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:
 - i) 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, they shall each appoint a single arbitrator and those arbitrators shall have a further fifteen (15) days to select a third person who will serve as chair of the arbitral panel.
 - ii) 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.

- iii) The arbitration shall be carried out no later than sixty (60) days from appointment of the single arbitrator or chair of the arbitral panel, as the case may be.
- iv) Unless the Parties to the dispute otherwise agree, the arbitration shall be held in the City where the Network Host is located.
- v) Each party shall pay its own costs and an equal share of all other costs of the arbitration.
- vi) 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.

This Article survives the provisions of Article 10 of this Agreement (Withdrawal).

10. WITHDRAWAL FROM AGREEMENT

- a) **Voluntary Withdrawal:** A Participating Institution shall be entitled to withdraw from this Agreement upon ninety (90) days written notice to the Chair of the Network Board of Directors and to the Scientific Director.
- b) **Involuntary Withdrawal:** Where the Network determines on the basis of at least a two-thirds majority vote of the Board of Directors that a Participating Institution has failed to comply with the duties and responsibilities set out in this Agreement, it shall promptly notify the Participating Institution(s) of the particulars. The Participating Institution shall have thirty (30) days within which to remedy the failure, failing which the Participating Institution may be deemed to have withdrawn from this Agreement.
- c) **Consequences of Withdrawal:** Upon the effective date of withdrawal of a Participating Institution, the withdrawing Participating Institution shall submit to the Network a full accounting and all unused and uncommitted funds advanced by the Network. The withdrawing Participating Institution and Network Investigator(s) will co-operate with the Network to ensure an orderly transfer of responsibilities and phase-out of activities.

Upon the withdrawal of a Participating Institution, that Institution's Network Investigators will no longer be able to receive Network Funds through that Participating Institution.

Notwithstanding withdrawal from this Agreement, the Participating Institution and the Network Investigator 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.

SIGNATURES (*)

Signed for and on behalf of MITACS Inc. by its duly authorized officer:

Name and Title
Date: _____

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

Name and Title
Date: _____



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Appendix A to NCE Network Agreement

Acknowledgement

I, {name of Network Investigator, name of Participating Institution»} acknowledge that I have read, understood and agree to be bound by the Obligations of Network Investigators set out in this Network Agreement.

Name of Network Investigator

Name and Title

Date: _____

[IN THE CASE OF A STUDENT OR OTHER MEMBER OF THE NETWORK INVESTIGATOR'S TEAM]

Acknowledgement

I, {name of Student or Member} participating in Network Research conducted by {name of Network Investigator} of {name of Participating Institution»} acknowledge that I have read, understood and agree to be bound by the Obligations of Network Investigators set out in this Network Agreement.

Name of Member of Network Investigator's Team

Name and Title

Date: _____



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Appendix B to the NCE Network Agreement

Confidentiality Agreement (Reciprocal Non-Disclosure)

This Agreement made as of the _____ day of _____, 200_.

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 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:

NA (Standard NCE Network Agreement), [MITACS, 2005 to 2009]

- 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

NA (Standard NCE Network Agreement), [MITACS, 2005 to 2009]

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 Participating Institution » 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 x 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.

Miscellaneous Provisions

12.

NA (Standard NCE Network Agreement), [MITACS, 2005 to 2009]

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.

13.

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:

Signed: _____

Name: _____

Title: _____

Date: _____

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

Signed: _____

Name: _____

Title: _____

Date: _____

I, « **Network Investigator** », «of the University » hereby acknowledge that I have read and understood the provisions of this agreement.

Signed: _____

Name: _____

Title: _____

Date: _____



APPENDIX C to the NCE Network Agreement

Confidential Information and Material Transfer Agreement

BETWEEN:

UNIVERSITY of _____, 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 & 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 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 & 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

NA (Standard NCE Network Agreement), [MITACS, 2005 to 2009]

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 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:

Signed: _____

NA (Standard NCE Network Agreement), [MITACS, 2005 to 2009]

Name: _____

Title: _____

Date: _____

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

Signed: _____

Name: _____

Title: _____

Date: _____

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

Signed: _____

Name: _____

Title: _____

Date: _____

Read & Approved by « **Network Investigator** », « University »

Signed: _____

Name: _____

Title: _____

Date: _____