



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

FUNDING AGREEMENT

Among

[Insert names of Granting Agencies providing NCE funding]

And

Name of Network

And

Network Host

WHEREAS the Networks of Centres of Excellence (NCE) Program is a program of the Government of Canada jointly administered 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 WHEREAS the goal of the 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;

AND WHEREAS [insert name of Network] has been selected to receive funding under the NCE Program;

AND WHEREAS the [insert name of NCE] (hereafter "the Network") has been established to achieve the following objectives:

[insert objectives]

AND WHEREAS the Parties wish to set out the terms and conditions under which the Network shall administer and disburse the funds received by it;

NOW THEREFORE IN CONSIDERATION of the premises and of the mutual covenants 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 Funding 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 Directorate means the directorate responsible for administering the NCE Program.

NCE Funds means funds provided to the Network by the Granting Agencies particulars of which are set out under Article 2.

NCE Steering Committee means the committee having the overall responsibility for the NCE Program and currently comprised of the Presidents of NSERC, SSHRC and CIHR, and the Deputy Minister for Industry Canada (as modified from time to time by the Government of Canada).

Network means [enter name of Network], a not-for-profit corporation incorporated under Part II of *the Canada Corporations Act* (the “Act”) {or as the case may be}.

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, as described in Article 7 of this Agreement.

Network Member means a Participating Institution, the Network Host and any other organization accepted for membership by majority vote of 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 that has signed the Network Agreement attached as **Annex A**.

Parties means the signatories to this Agreement.

Research Theme means one of the primary research foci that guide the Network Strategic Plan.

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.

Theme Leader means a Network Investigator to whom responsibility has been delegated for a Research Theme within the Network Strategic Plan and who accepts such responsibility. A Theme Leader is accountable to the Scientific Director.

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. NCE Funds

2.1 The Agency(s) grants \$[total award] to «Network», to be administered by the Network Host in accordance with the terms and conditions of this Agreement and the Network Agreement attached as **Annex A**. The grant award is as follows:

(# Indicate grant number(s), five-year total)

NSERC Grant # _____ \$ _____
CIHR Grant # _____ \$ _____
SSHRC Grant # _____ \$ _____

- 2.2 The release of the instalments of the grant award will be approved annually by the Agency(s).
- 2.3 Annual instalments of the grant award to the Network will be at the following levels and be payable to the Network Host:

Fiscal Year	NSERC	SSHRC	CIHR	Total
Year 0	[Grant amount]	[Grant amount]	[Grant amount]	[Total Y0]
Year 1	[Grant amount]	[Grant amount]	[Grant amount]	[Total Y1]
Year 2	[Grant amount]	[Grant amount]	[Grant amount]	[Total Y2]
Year 3	[Grant amount]	[Grant amount]	[Grant amount]	[Total Y3]
Year 4	[Grant amount]	[Grant amount]	[Grant amount]	[Total Y4]
Total	[Total Y0-Y4]	[Total Y0-Y4]	[Total Y0-Y4]	[Total Y0-Y4]

- 2.4 Instalments of the grant award will be released subject to:
- a) there being an appropriation by Parliament for the fiscal year in which payment is to be made;
 - b) satisfactory progress toward achieving milestones of the Network Strategic Plan, as determined by the NCE Directorate.
 - c) continued eligibility of the Network Host and the Network;
 - d) terms and conditions of this Funding Agreement.
- 2.5 Funding for years 2008-2009, 2009-2010 and 2010-2011 will be based on the result of a mid-term review of [insert name of Network].
- 2.6 The Agency(s) may with notice of ninety (90) days, alter the terms and conditions of the award, including the amount and/or duration.
- 2.7 The Network Host will release funds in accordance with the terms and conditions of the Memorandum of Understanding among the Parties entitled “Funds in Trust” dated [insert date], attached as **Annex B**.
- 2.8 The Network Host will release funds to Participating Institutions and the Administrative Centre in accordance with decisions of the Network’s Board of Directors.

Non-compliance with any of the aforementioned may result in the suspension or termination of the grant award.

3. BENEFIT TO CANADA

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 attached as **Annex D**.

4. NETWORK GOVERNANCE

The Network will ensure that its operating procedures and bylaws, where appropriate, are consistent with this Funding Agreement. Where the Network is unincorporated, both the Network and the Network Host shall adopt policies and procedures which are consistent with the governance structure set out in this agreement.

5. BOARD OF DIRECTORS

5.1 The Board of Directors shall be responsible for the governance and management of the Network and shall act in accordance with the NCE Program Guidelines and this Funding Agreement. Without limiting the generality of the foregoing, the Board of Directors shall:

- a) appoint the Chair of the Board;
- b) oversee an annual performance review of the Scientific Director;
- c) approve and update the Network Strategic Plan;
- d) approve new Network Members;
- e) approve applications for new Network Affiliates;
- f) approve applications for new Network Investigators;
- g) approve annual budgets of the Network;
- h) approve for submission to the NCE Directorate the financial and other reports in accordance with the requirements of this agreement;
- i) develop and approve Network policies and procedures consistent with the Network's objectives, including the policies and procedures of the Research Management Committee (see Article 8);
- j) establish a process for environmental assessment which is comparable to the process established by NSERC in fulfillment of its obligations pursuant to the *Canadian Environmental Assessment Act*.

- 5.2 The applicants for incorporation shall become the provisional Directors of the Network whose terms of office on the Board of Directors shall continue until the first meeting of the Network Members. Articles of incorporation shall be consistent with this Funding Agreement, and must be provided to the NCE Directorate.
- 5.3 Prior to each annual meeting of the Network Members, the nominating committee, in consultation with the Scientific Director shall compile a list of nominations for elected positions available on the Board of Directors.
- 5.4 Within six (6) months of the effective date of this Agreement a meeting of Network Members shall be held to elect the Board of Directors in accordance with this Funding Agreement and establish the quorum for meetings of the Board of Directors.
- 5.5 Annually a meeting of Network Members shall be held to receive the annual financial statements and annual report of the Network and, subject to the conditions set out in 5.6 and 5.7 below to elect the Board of Directors. For each Board of Directors position, each Network Member shall have the right to cast one ballot, and the decision will be made by majority vote.
- 5.6 The Board of Directors should consist of no fewer than seven (7) and no more than fifteen (15) voting members (not including ex-officio members):
- 5.7 The Board of Directors shall be composed as follows:
 - a) a majority of the Board shall be employees of organizations other than Participating Institutions, and a majority of those shall be from the industrial sector and/or the Network's user community;
 - b) the Network Host may designate a representative to be a Director;
 - c) at least two Directors shall be representatives of Participating Institutions;
 - d) a Network Investigator shall be elected to the Board of Directors by the Network Investigators within three (3) months of the release of funds by the Network Host to Participating Institutions as set out in clause 2.7, and annually thereafter;
 - e) the Scientific Director shall be a voting member of the Board;
 - f) the Network Manager shall be a non-voting member of the Board;
 - g) the NCE Directorate may designate a staff member to attend, as an observer, meetings of the Board of Directors, all committees of the Board of Directors and any Executive Committee of the Board of Directors;
 - h) the NCE Steering Committee may designate a representative to be a Director.

- 5.8 The Board of Directors shall meet at least three times a year.
- 5.9 The Board of Directors must establish a Research Management Committee in accordance with Article 8 below. From time to time the Board may establish other committees to provide advice to the Board or assist in the management of the Network. The Board shall determine the mandate, membership, authority and termination of such committees. Information about these committees and their activities shall be included in the Network's annual report.

6. SCIENTIFIC DIRECTOR

- 6.1 The Board of Directors shall appoint a Scientific Director to hold office for a term as the Board may determine. The appointment of the Scientific Director will be subject to annual performance review by the Board of Directors. The Scientific Director may be removed by a simple majority vote of the Board.
- 6.2 The Scientific Director shall be responsible for the scientific and strategic direction of the Network, including but not limited to:
 - a) act as or appoint the Chair of the Research Management Committee;
 - b) providing overall scientific direction, coordination and management of the Network Strategic Plan;
 - c) providing policy advice to the Board of Directors and any committees established by it;
 - d) proposing and administering scientific programs and budgets for the Network;
 - e) recommending to the Board new Network Members ;
 - f) recommending to the Board new Network Affiliates;
 - g) recommending to the Board the appointment of Theme Leaders;
 - h) recommending to the Board new Network Investigators;
 - i) recruiting the Network Manager;
 - j) liaising with the NCE Directorate and Granting Agencies;
 - k) communicating and promoting the Network's objectives and activities to the research community, the NCE Program Directorate, and private and public sector organizations;
 - l) performing other tasks as may be required.

7. NETWORK MANAGER

- 7.1 The Board of Directors shall appoint a Network Manager with advice of the Scientific Director, for a term not to exceed the duration of this Agreement, subject to an annual performance review by the Board of Directors. The Board may delegate this responsibility to the Scientific Director.
- 7.2 The Network Manager shall be responsible for the general management of the Network's operation. The terms and conditions of employment of the Network Manager shall be established by the Board of Directors.
- 7.3 The Network Manager shall serve on the Research Management Committee and the Board of Directors as a non-voting member.
- 7.4 The Network Manager will be responsible for all management issues associated with the overall administration of the Network's activities in support of the Network Strategic Plan including:
 - a) supervision of Administrative Centre personnel (e.g., Business Development Officers, Technology Transfer Officers, Communication Officers, Financial Officer, Administrative Assistant to the Network Manager);
 - b) overseeing the preparation of financial and other reports in accordance with this Agreement;
 - c) communications;
 - d) public affairs;
 - e) technology transfer in co-ordination with the owner(s) of the Intellectual Property and relevant Technology Transfer Office(s);
 - f) Intellectual Property and commercialization issues;
 - g) liaison with government, industry, government and other non-governmental organizations;
 - h) overseeing organization of general meetings;
 - i) overseeing preparation of annual reports;
 - j) overseeing preparation of supporting documents, meeting agendas and minutes of all meetings for the Research Management Committee and Board of Directors;
 - k) performing other tasks as may be required.

8. RESEARCH MANAGEMENT COMMITTEE

- 8.1 The Research Management Committee is responsible for:
- a) reviewing research proposals;
 - b) monitoring the progress of Network research;
 - c) monitoring the performance of, and providing feedback to, the Network Investigators;
 - d) making recommendations to the Board of Directors through the Scientific Director for adjustments to Network Research including adding projects, terminating projects, adding new Network Investigators, allocating and adjusting funds and budgets;
 - e) assisting the Network Manager in identifying Network Research that contains commercializable Network-supported IP;
 - f) following policies, procedures and selection criteria established by the Board of Directors.
- 8.2 The Scientific Director will be Chair of the Research Management Committee or shall appoint the Chair.
- 8.3 Members of the Research Management Committee will include at least the following:
- a) the Scientific Director;
 - b) a maximum of one leader from each Research Theme;
 - c) additional members from the public and private sector as chosen to reflect the multisectorial, multidisciplinary and project orientation of the Network Strategic Plan;
 - d) the Network Manager, who will be a non-voting member and may act as recording secretary to the Research Management Committee;
 - e) one staff member of the NCE Directorate, where designated by the NCE Directorate, who shall be a non-voting observer.
- 8.4 Members of the Research Management Committee will be appointed for such terms as will ensure a balanced succession of membership.

9. NETWORK HOST

- 9.1 The Network Host shall house the Administrative Centre. It shall ensure that the Administrative Centre has suitable accommodation, as well as access to appropriate computer, communications and financial administration systems needed to serve as the administrative secretariat of the Network. Particulars of

same shall be set out in a separate agreement between the Network Host and the Network.

- 9.2 On the basis of an at least two-thirds majority vote of the Board of Directors and agreement by the NCE Directorate, the Network may change Network Host. The costs of such change shall be borne by the Network.

10. ADMINISTRATIVE CENTRE

The Administrative Centre shall act under the direction of the Network Manager. Its duties shall include but not be limited to:

- a) internal and external communications;
- b) drafting budgets and program guidelines;
- c) arranging for the disbursement of Network Funds to the Participating Institutions;
- d) preparing financial and other reports in accordance with this Agreement;
- e) providing administrative support to the Board of Directors, its committees and the Scientific Director;
- f) facilitating the transfer of Network-Supported Intellectual Property;
- g) assisting in the preparation of publications, meetings and events;
- h) maintaining books, files and accounts.
- i) regularly provide the NCE Program Directorate with up-to-date data concerning:
 - i) the names and full contact information of the Board of Directors of the Network;
 - ii) the names and departments of the Network Investigators arranged according to Participating Institution;
 - iii) the names and full contact information of the officials of the Network and Participating Institutions responsible for Network Agreement Administration, Financial Management and Reporting, and Technology Transfer.

11. MISCELLANEOUS

- 11.1 The Network undertakes that no Network Research project will be considered or approved for funding by the Network unless the project proposal and budget have been counter-signed by the appropriate official of the relevant Participating Institution(s).

11.2 The Network shall organize, at least once per year, an Annual General and Scientific Meeting among Network Investigators, Network Members, Network Affiliates, the Network Host and others, as appropriate, in order to share and to discuss the results of Network Research and the exploitation or commercialization of those results.

12. NETWORK AGREEMENT

In achieving the purposes of this Agreement, the Network shall enter into a Network Agreement with Participating Institutions in the form set out as **Annex A**.

13. AGREEMENTS WITH NETWORK AFFILIATES

It is understood that in achieving the purposes of this Agreement, the Network may enter into Network Affiliate agreements with a Network Affiliate and, where relevant, with the appropriate Participating Institution(s). The Network shall ensure that any such Network Affiliate agreement shall be consistent with this Agreement and the Network Agreement.

14. INTERNATIONAL COLLABORATORS

The NCE Directorate endorses collaboration with leading researchers and organizations outside Canada.

15. INSURANCE

The Network shall procure and maintain throughout the term of this Agreement, Directors' and Officers' Liability Insurance for the Network Board of Directors. It shall also procure and maintain throughout the term of this Agreement Professional Liability Insurance for Network staff working at the Administrative Centre who are paid with Network Funds.

16. CONFLICT OF INTEREST

The Board of Directors shall adopt a code of conduct in its bylaws for directors, officers, employees and committee members designed to prevent real or perceived conflicts of interest. The code shall be no less stringent than the NCE Conflict of Interest Policy Framework attached as **Annex C**.

17. INDEMNIFICATION

Except for any claims arising from the negligence of the Granting Agency's employees or servants, the Network shall indemnify and hold harmless the Granting Agency, its 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 this Funding Agreement.

18. OFFICIAL MARKS

The terms “Networks of Centres of Excellence, Réseaux de centres d’excellence,” and the logo of the Networks of Centres of Excellence are official marks of the Federal Government of Canada as represented by NSERC. The Network may identify itself as a Network of Centres of Excellence and may use the name “Networks of Centres of Excellence,” the name “Réseaux de centres d’excellence,” the acronym “NCE,” the acronym “RCE” and the logo of the Networks of Centres of Excellence until the expiry of this Agreement. The Network must immediately cease using all official marks upon termination of this Agreement or dissolution of the Network.

19. EFFECTIVE DATE AND TERM

This Agreement shall come into force on [insert date]. It shall continue in force until March 31, 200X.

20. 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 NCE Directorate will provide ninety (90) days written notice to the Network and the Network Host.

21. GENERAL

21.1 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.

21.2 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 NCE Directorate:

Networks of Centres of Excellence
16th Floor

350 ALBERT ST
OTTAWA ON K1A 1H5

b) if to the Network:

{insert particulars}

c) if to the Network Host:

{insert particulars}

21.3 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.

21.4 This Agreement will be interpreted in accordance with the laws of the province where the Network Host resides and the applicable laws of Canada.

The dates and times by which either party is required to perform any obligation in this Agreement shall be postponed automatically to the extent, 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.

21.5 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.

SIGNATURES

NSERC

Signed for and on behalf of the [insert name of the 1st Agency party to this agreement] by its duly authorized officer:

President, [insert name of the 1st Agency]
Date: _____

SSHRC

Signed for and on behalf of the [insert name of the 2nd Agency party to this agreement] by its duly authorized officer:

President, [insert name of the 2nd Agency]
Date: _____

CIHR

Signed for and on behalf of the [insert name of the 3rd Agency party to this agreement] by its duly authorized officer:

President, [insert name of the 3rd Agency]
Date: _____

Signed for and on behalf of the [insert name of the Network Host] by its duly authorized officer:

[President or designate]
Date: _____

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

Name and Title of Scientific Director
Date: _____