



Networks of Centres
of Excellence
Réseaux de centres
d'excellence

APPENDIX C 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 & 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 utilize 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 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: _____

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: _____