



Government of Canada

**Networks of Centres  
of Excellence**

Gouvernement du Canada

**Réseaux de centres  
d'excellence**

# **ANNEX A TO THE NCE FUNDING AGREEMENT**

## **NETWORKS OF CENTRES OF EXCELLENCE NETWORK AGREEMENT**

**AMONG**

**GRAPHICS, ANIMATION AND NEW MEDIA NCE INC.  
(the “Network”)**

**AND**

**THE UNIVERSITY OF BRITISH COLUMBIA  
(the “Network Host”)**

**AND**

**Network Members as listed in Appendix D  
(the “Network Members”)**

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

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

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

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

## **1. DEFINITIONS**

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

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

- viii. **“Intellectual Property”** means all materials, concepts, know-how, formulae, inventions, improvements, industrial designs, processes, patterns, machines, manufactures, compositions of matter, compilations of information, patents and patent applications, copyrights, trade secrets, technology, technical information, software, prototypes and specifications, including any rights to apply for protections under statutory proceedings available for those purposes, provided they are capable of protection at law.
- ix. **“Memorandum Of Understanding”** means the Memorandum of Understanding on the Roles and Responsibilities in the Management of Federal Grants and Awards signed between the Network Members and the Granting Agencies, outlining the basic requirements for obtaining and maintaining institutional eligibility to administer grant funds.
- x. **“NCE Funds”** or **“Grant”** means funds provided to the Network by the Granting Agencies particulars of which are set out in the NCE Funding Agreement.
- xi. **“NCE Funding Agreement”** means the agreement entered into between the Granting Agencies, the Network and the Network Host.
- xii. **“NCE Program”** is a program of the Government of Canada jointly administered by the Granting Agencies with the goal of mobilizing Canada’s research talent in the academic, private and public sectors and apply it to the task of developing the Canadian economy and improving the quality of life of Canadians; the Network has been selected as a recipient of the program in order that it may carry out research that will further these goals.
- xiii. **“NCE-Network Program Guide”** means the guide published in connection with the NCE Program detailing the processes, procedures and Eligible Expenses of the NCE Program in existence at the time of the NCE Funding Agreement, as may be amended from time to time.
- xiv. **“Network”** means Graphics, Animation and New Media NCE Inc., a not-for-profit corporation incorporated under Part II of the Canada Corporations Act.
- xv. **“Network Affiliate”** means a company, government agency or other organization that is involved in a specific aspect of Network research or other Network activity or provides support to the Network and that has been accepted as an Affiliate of the Network by the Board of Directors and that has entered into a Network Affiliate agreement with the Network.
- xvi. **“Network Funds”** means all funds managed by the Network, including the Grant and Non-NCE funds provided by Network Members and by other sources in support of the activities of the Network.
- xvii. **“Network Host”** means The University of British Columbia, a British Columbia university with a mandate for research and their affiliated institutions (including

hospitals, research institutes and/or other not-for-profit organizations) that houses the Administrative Centre and has signed this Agreement.

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

## **2. OBLIGATIONS OF NETWORK MEMBERS**

### **2.1 FINANCIAL MANAGEMENT AND REPORTING REQUIREMENTS**

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

2.1.1 Each Network Member 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.

2.1.2 Each Network Member receiving Network Funds shall:

- a. Ensure that adequate financial controls consistent with the rules and guidelines of the NCE Program and the Natural Sciences and Engineering Research Council of Canada rules and regulations are maintained with respect to Network Funds;
- b. Keep proper accounts and records of all expenditures;
- c. Provide the Administrative Centre with the name and address of the person at the Network Member responsible for the administration and accounting of Network Funds and the name and address of the responsible person at the Technology Transfer Office;
- d. Work in concert with the owners and inventors of the NSIP and the Network in the Commercialization of NSIP;
- e. Provide their Network Investigators with sufficient space, time and institutional support to allow them to contribute to Network Research;
- f. Promptly notify the Administrative Centre in the event that a Network Investigator ceases to be employed by a Network Member or otherwise ceases to maintain academic status at that Institution; and
- g. Repay to the Network any amounts claimed or spent on expenses other than Eligible Expenses as outlined in the NCE Funding Agreement.

### **2.2 CONFIDENTIAL INFORMATION AND MATERIAL TRANSFER**

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

## **2.3 AUDITOR GENERAL MAY AUDIT**

- 2.3.1 The Network Member agrees that the Auditor General of Canada may, at Canada's cost, after consultation with the Network, conduct an inquiry under the authority of subsection 7.1(1) of the Auditor General Act in relation to the use of Grant funds. For the purposes of any such inquiry undertaken by the Auditor General, the Network Member shall provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General,
- a. All records held by the Network Members or by its agents or contractors relating to this Agreement, the NCE Funding Agreement and the use of Grant funds; and,
  - b. Such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to any of this Agreement, the NCE Funding Agreement or the use of the Grant funds.

## **2.4 OTHER REQUIREMENTS**

- 2.4.1 Each Network Member shall obtain in writing an acknowledgment, in the form set out as Appendix A from each of their respective Network Investigators that he or she understands and agrees to be bound by the provisions entitled "Obligations of Network Investigators" set out in section 3 of this Agreement;
- 2.4.2 Each Network Member will ensure that the Network Investigator has complied with the requirement that all HQP have entered into agreements containing substantially similar terms to those governing the Network Investigator set out in this Agreement;
- 2.4.3 Each Network Member shall ensure that accurate accounts and records, including but not limited to, contracts, invoices, statements, receipts and vouchers, in respect of the Grant are kept in accordance with the Memorandum of Understanding and shall, upon reasonable notice, make them available to a representative of the Granting Agencies for inspection and audit.
- 2.4.4 Each Network Member shall ensure that Network Investigators obtain appropriate certification and/or approval regarding use of humans, animals and/or biohazards in the conduct of Network Research in accordance with the requirements of the NCE Program and the Granting Agencies;
- 2.4.5 Each Network Member will ensure that Network Investigators obtain appropriate certification and/or approval for research detailed in Paragraph 2.4.6 to Paragraph 2.4.15;
- 2.4.6 Research involving human subjects will meet the requirements of the Tri Council Policy Statement: Ethical Conduct for Research Involving Humans (see <http://www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm> for details);

- 2.4.7 Research involving human pluripotent stem cells is required to adhere to the Updated Guidelines for Human Pluripotent Stem Cells Research posted on the CIHR website (see <http://www.cihr-irsc.gc.ca/e/34460.html> for details);
- 2.4.8 Research requiring the use of animals will be conducted in accordance with the policies and guidelines of the Canadian Council on Animal Care: Guide to the Care and Use of Experimental Animals (Volume 1 & 2) and hold a valid Certificate of Good Animal Practice (GAP) (see [http://www.ccac.ca/en/CCAC\\_Programs/Guidelines\\_Policies/GUIDES/ENGLISH/toc\\_v1.htm](http://www.ccac.ca/en/CCAC_Programs/Guidelines_Policies/GUIDES/ENGLISH/toc_v1.htm) and [http://www.ccac.ca/en/CCAC\\_Programs/Guidelines\\_Policies/GUIDES/ENGLISH/TOC\\_V2.HTM](http://www.ccac.ca/en/CCAC_Programs/Guidelines_Policies/GUIDES/ENGLISH/TOC_V2.HTM) for electronic versions of Volume 1 and 2 respectively);
- 2.4.9 Research involving biohazards must adhere to the standards outlined in the latest edition of Laboratory Biosafety Guidelines of the Public Health Agency of Canada (see <http://www.phac-aspc.gc.ca/publicat/lbg-lmbi-04/index-eng.php> for details);
- 2.4.10 Research involving infectious agents must adhere to the latest edition of the Laboratory Biosafety Guidelines prepared by the Public Health Agency of Canada (see <http://www.phac-aspc.gc.ca/publicat/lbg-lmbi-04/index-eng.php> for details);
- 2.4.11 Research involving radioactive materials must comply with all Canadian Nuclear Safety Commission (CNSC) regulations, recommended procedures, and safety precautions governing the use of such materials in Canada (see <http://www.nuclearsafety.gc.ca/eng/lawsregs/index.cfm> for details);
- 2.4.12 Research activities having potential effects on the environment must adhere to the Environmental Review Policy for Networks Receiving NCE Funds (see Appendix D of the NCE-Networks Program Guide for details);
- 2.4.13 Research involving controlled information must comply with all laws and regulations regarding Controlled Information, including but not limited to the Defence Production Act, Export Control Regulations, the Controlled Goods Regulations before, during or after the tenure of a grant from the NCE. The Network Member will ensure subsequent documentation required by the Network, including all reports and strategic plans, will not include information subject to restrictions or controls under the Export and Import Permits Act or its regulations, the Export Control Regulations or the Controlled Goods Regulations (see [http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Policies-Politiques/certain-types-certaines\\_eng.asp](http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Policies-Politiques/certain-types-certaines_eng.asp) for details);
- 2.4.14 Research involving Aboriginal People must adhere to the CIHR Guidelines for Health Research Involving Aboriginal People (see <http://www.cihr-irsc.gc.ca/e/29134.html> for details); and

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

### **3. OBLIGATIONS OF NETWORK INVESTIGATORS**

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

#### **3.1 PUBLICATIONS**

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

#### **3.2 DISCLOSURE AND COMMERCIALIZATION OF NSIP**

- a. The Network Investigator shall promptly disclose in writing to the Network and to the Technology Transfer Office, any results of Network Research that the Network Investigator believes have the potential to be Commercialized;
- 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 Network Member, any such material pending evaluation by the Network and the Technology Transfer Office of his/her Network Member to determine whether contents contain patentable, commercializable or confidential information. For greater clarity Network Investigators shall not be restricted from presenting at symposia, national, or regional professional meetings, or from publishing in abstracts, journals, theses, or dissertations, or otherwise, whether in printed or in electronic media, methods and results of research carried out pursuant to this Network Agreement, except where such publication or presentation would result in the public disclosure of NSIP or Confidential Information.
- c. Furthermore, upon request by the Network or the Network Member, the Network Investigator shall further delay publication of NSIP for up to 6 months to provide time for the Network or the Network Member to seek patent protection for the NSIP. The Network Investigator will work with the Technology Transfer Office and the Dean of Graduate Studies to ensure that any such delays do not interfere with a student's thesis defence or the graduation of the student.
- d. The Network Investigator shall promptly disclose in writing to his/her Network Member, and to the Administrative Centre any conflict of interest that may arise pursuant to the terms of section 3.4.



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

### **3.3 CONFIDENTIAL INFORMATION AND TRANSFER OF MATERIAL**

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

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

### **3.4 CONFLICT OF INTEREST AND RESEARCH ETHICS**

- a. The Network Investigator shall abide by the Tri-Council Policy Statement on Integrity in Research and Scholarship (see: [http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Politiques-Politiques/tpsintegrity-picintegritie\\_eng.asp](http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Politiques-Politiques/tpsintegrity-picintegritie_eng.asp) for details) governing the use of grant funds and the conduct of research.
- b. Each Network Investigator shall abide by the provisions of his/her Network Member's policies and guidelines with respect to conflict of interest and conflict of commitment and by the provisions of the NCE Conflict of Interest Policy Framework, as outlined in the NCE Program Guide.
- c. The Network Investigator shall be responsible for ensuring appropriate certification and/or institutional approval is obtained for their Network Research that involves any types of research described in Paragraph 2.4 of this Agreement.

### **3.5 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 all HQP 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 all HQP maintain effective record keeping for experiments carried out as part of Network Research.

### **3.6 OTHER OBLIGATIONS**

- a. The Network Investigator shall use reasonable efforts to attract complementary research funding;
- b. The Network Investigator shall work in concert with the Network, the Network Members, Network Affiliates and other inventors in the Commercialization of NSIP including, but not limited to, the prosecution of patents, all in accordance with sections 6 (Ownership of Intellectual Property) and 7 (Principles of

- Commercialization of Intellectual Property).
- c. The Network Investigator shall participate in Network committees and in other Network activities as required.
  - d. The Network Investigator(s) who is (are) the primary user(s) of equipment purchased with NCE funds, and the Network Member owning this equipment, agree(s) to provide other Network Investigators with reasonable access to the equipment for the pursuit of other Network Research projects, and other non-Network Research projects, with Network Research having priority access.
  - e. The Network Investigator(s) shall promptly provide to the Network a description of all capital expenditures prior to purchase with NCE Funds.

### **3.7 TERMINATION OF PROJECT FUNDING**

Where the Network determines that a Network Investigator has failed to comply with the duties and responsibilities set out in this Agreement, it shall promptly notify the Network Member and the Network Investigator of the particulars. The Network Investigator shall have thirty (30) days within which to remedy the failure, failing which the Network may terminate funding of the Network Research carried out by the Network Investigator. Notwithstanding the termination of funding, the Network Investigator will co-operate with the Network to ensure an orderly transfer of responsibilities and phase-out of activities and shall continue to be bound by the provisions of this Agreement governing Intellectual Property, publication, confidentiality and any other provisions which are necessary for the Network to fulfill its obligations to the NCE Program.

## **4. DISCLAIMERS OF WARRANTY AND LIABILITY**

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

## **5. EQUIPMENT**

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

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

## **6. OWNERSHIP OF INTELLECTUAL PROPERTY**

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

## **7. PRINCIPLES OF COMMERCIALIZATION OF INTELLECTUAL PROPERTY**

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

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

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

## **8. SHARING OF NET REVENUES**

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

8.2 The parties shall negotiate the terms in good faith.

## **9. DISPUTE RESOLUTION**

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

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

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

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

shall be stayed (and each Party shall consent to such stay) pending resolution of any related underlying claims between the Parties.

## **10. WITHDRAWAL FROM AGREEMENT**

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

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

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

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

## **11. EFFECTIVE DATE AND TERM**

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

## **12. AMENDMENTS**

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

### 13. GENERAL

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

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

a) if to the Network:

Graphics, Animation and New Media NCE Inc.  
Director, Operations  
c/o Centre for Digital Media  
577 Great Northern Way  
Vancouver, British Columbia  
V5T 1E1  
Fax: (778) 370-1020

b) If to the Network Host:

The University of British Columbia  
Managing Director  
University-Industry Liaison Office  
103-6190 Agronomy Road  
Vancouver, British Columbia  
V6T 1Z3  
Fax: (604) 822-8589

c) if to the Network Member:  
as set out in the attached Appendix D

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

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

13.5 The dates and times by which any Party is required to perform any obligation in this Agreement shall be postponed automatically to the extent and for the period of time that the party is prevented from so performing by

circumstances beyond its reasonable control and which is not caused by any default or act of commission or omission of such Party and is not avoidable by the exercise of reasonable effort or foresight by such Party.

- 13.6 No failure to enforce any provision of this Agreement shall be construed as a waiver of such provision or a waiver of the right to enforce each and every provision of this Agreement. Waiver of any breach shall not be deemed to be a waiver of any future breach, even if similar in nature.
- 13.7 This Agreement can be signed in counterpart by the Parties, either through original copies or by facsimile. An executed copy of this Agreement delivered by facsimile will constitute valid execution and delivery of this Agreement.
- 13.8 This Agreement is valid between the Parties whether its version is signed in English or French by the Parties.
- 13.9 New Network Members (as approved by the Board) can be added to this Agreement after the original Network Members have signed, by agreeing to all the same terms and conditions.

***[signature page follows]***