**CANADIAN MEDICAL ISOTOPE ECOSYSTEM**

**ULTIMATE RECIPIENT AGREEMENT**

**(“Agreement”)**

**This Agreement** is made effective as of the date of last signature (“**Effective Date**”)

**Between:**

**CENTRE FOR PROBE DEVELOPMENT AND COMMERCIALIZATION**, a not-for-profit corporation duly incorporated under the laws of Ontario, Canada, having its head office located at 1280 Main Street West, Hamilton, ON L8S 4K1

**(“CPDC”**)

**TRIUMF INNOVATIONS INC.**, a not-for-profit corporation continued under the *Not-for-Profit Corporations Act,* having its head office located at 4004 Westbrook Mall, Vancouver, BC V6T 2A3 (“**TI**”)

(CPDC and TI collectively referred to as the “**Lead Recipients**”)

**And:**

**XXXXX** (“**Ultimate Recipient**” or “**UR**”)

(Each referred to individually as a “**Party**” and together as the “**Parties**”.)

**RECITALS**

**WHEREAS**

1. Lead Recipients have been awarded a contribution from Stream 5 of the Strategic Innovation Fund (“**SIF**”), administered by Innovation, Science and Economic Development Canada (“**ISED**”), to establish and operate a Canadian Medical Isotope Ecosystem (the “**Network**”), which will foster development of new knowledge and products through collaborative research.
2. As a condition of receiving the contribution, Lead Recipients entered into a Contribution Agreement (“**Contribution Agreement**”) with the Minister of Industry (“**Minister**”), dated June 14, 2023 (the “**Contribution Agreement Date**”), as may be amended from time to time.
3. Ultimate Recipient has been selected to participate in the Network and to receive Funds to carry out an Eligible Project, which is further described in Schedule A (Eligible Project Description).
4. Lead Recipients desire to disburse Funds to Ultimate Recipient for the Eligible Project in accordance with the Contribution Agreement, and Ultimate Recipient desires to perform the Eligible Project in accordance with Schedule A.
5. Ultimate Recipient has the requisite skill and expertise to perform its part of the Eligible Project.
6. Pursuant to the Contribution Agreement, as a condition of disbursing Funds to Ultimate Recipient, Lead Recipients and Ultimate Recipient must enter into a written agreement containing specific terms and conditions as set out in the Contribution Agreement.

**NOW, THEREFORE** in accordance with the mutual covenants and agreements herein, the Parties agree as follows:

**1. Interpretation**

1.1 **Definitions**.

In this Agreement, a capitalized term has the meaning given to it in this section, unless otherwise specified:

**“Academic Collaborator”** means universities and colleges located in Canada which grant degrees or diplomas, and any research institution wholly owned or controlled by them.

“**Affiliated Person(s)**” means an affiliated person(s) as defined in the *Income Tax Act*, as amended.

“**Agreement**” means this Ultimate Recipient Agreement, including all the Schedules attached hereto, as such may be amended, restated or supplemented, from time to time.

“**Applicable Regulations**” means all federal, provincial, territorial, municipal and other applicable laws, statutes, by-laws, rules, orders, ordinances, decrees, regulations, regulatory requirements and authorizations, decisions and guidance of regulatory authorities, professional association codes or other requirements applicable in this context of this Agreement.

“**Background Intellectual Property**” means Intellectual Property that is not Eligible Project Intellectual Property and that is required for the carrying out of the Eligible Project or the exploitation of the Eligible Project Intellectual Property, including without limitation the Intellectual Property as outlined in Schedule B if any.

“**Background Intellectual Property Rights**”means the Intellectual Property Rights in Background Intellectual Property.

“**Change of Control**”*(for profit corporations)*means:

1. if a public company, the acquisition by an individual or company (or two or more of them acting in concert) that results in its or their direct or indirect beneficial ownership of 20% or more of outstanding shares of voting stock of the corporation;

1. if a private company, the acquisition by an individual or company (or two or more of them acting in concert) that results in its or their direct or indirect beneficial ownership of 50% or more of the voting stock in the corporation; or
2. if the corporation enters into a binding obligation to sell, sells or otherwise disposes of all or substantially all of its assets.

“**Change of Control**”*( for not-for-profit corporations)* means, the acquisition by an individual or company (or two or more of them acting in concert) that results in its or their direct or indirect beneficial ownership of 50% or more of the voting membership in the corporation; or if the corporation enters into a binding obligation to sell, sells or otherwise disposes of all or substantially all of its assets.

“**Claim Period**” means the following quarters of a calendar year: January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31.

“**Completion Date**” means the Eligible Project End Date specified in Schedule A (Eligible Project Description), but in no event later than March 31, 2027.

“**Confidential Information**” means information that is treated as confidential by a Party, whether in oral, written, electronic, or other form or media, whether or not marked, designated, or otherwise identified as “confidential”, and includes any information that due to the nature of its subject matter or circumstances surrounding its disclosure, would reasonably be understood to be non-public, confidential, or proprietary, including, but not limited to, prototype designs, business documents, source code, know-how, trade secrets, and all information, knowledge or data of an intellectual, technical, scientific, commercial, financial or industrial nature, including methods and techniques, and the terms and conditions of this Agreement. Unless the Disclosing Party disclosing information indicates otherwise to the Receiving Party in writing at the time of disclosure or later, all information that the Parties provide to one another during the Term of this Agreement shall be considered Confidential Information of the Disclosing Party. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (i) was already known by or in the possession of the Receiving Party or its representatives without restriction on use or disclosure before the receipt of such information from the Disclosing Party; (ii) was or becomes generally known by the public other than by the Receiving Party’s or any of its representatives’ noncompliance with this Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third-party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iv) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information of the Disclosing Party.

“**Contribution**”means the funding, in Canadian dollars, made available by the Minister to the Lead Recipients in support of the Network Activities.

“**Designated Person**” means a person that is:

1. Designated under the *Special Economic Measures Act (Canada);*
2. Listed on any other Sanctions-related list maintained by the Government of Canada, according to the most current version published by the Government of Canada via Global Affairs Canada, at its official website or any replacement website or other replacement official publication of such list or lists; or
3. Listed on any other Sanctions-related list or is a “designated person” under any applicable Canadian law.

“**Dispose**”means, as regards to any Network Asset, thetransferring outside Canada, use for a purpose other than Network Activities, selling, leasing or otherwise disposing including, in the case of a prototype or pilot plant, the transfer to commercial production, but in any event, shall not include abandoning the Network Asset for legitimate business reasons, such as the disposal of obsolete or disused equipment or materials.

“**Eligibility Date**” means the Eligible Project Start Date specified in Schedule A (Eligible Project Description), but in no event earlier than November 4, 2020.

“**Eligible Costs**” means the costs associated with work performed in Canada, or outside of Canada to the extent explicitly permitted in this Agreement, that are incurred and paid by the Ultimate Recipient in respect of the Project and in accordance with Schedule E (Project Cost Principles), excluding any costs prohibited or deemed ineligible elsewhere in this Agreement.

“**Eligible Not-Supported Costs**” means any costs that are specifically identified in Schedule A (Eligible Project Description)as not being supported by the Funds, including those Eligible Costs that are in excess of limits imposed on indirect (overhead) costs under Schedule E (Project Cost Principles)of this Agreement.

“**Eligible Supported Costs**” means any Eligible Costs, excluding Eligible Not-Supported Costs*.*

**“Eligible Project”** means the project undertaken by the Ultimate Recipient in support of the Network as described in Schedule A (Eligible Project Description).

“**Eligible** **Project Intellectual Property**”means allIntellectual Property conceived, produced, developed or reduced to practice in carrying out the Eligible Project by Ultimate Recipient and/or any Affiliated Person(s) of the Ultimate Recipient, or any of their employees, agents, contractors or assigns.

“**Eligible** **Project Intellectual Property Rights**” means the Intellectual Property Rights in the Eligible Project Intellectual Property.

“**Fair Market Value**” means the price that would be agreed to in an open and unrestricted market between knowledgeable and willing parties dealing at arm’s length, who are fully informed and not under any compulsion to transact.

“**Force Majeure**” means any cause which is unavoidable or beyond the reasonable control of Ultimate Recipient, including war, riot, insurrection, strikes, pandemics or epidemics, or any act of God or other similar circumstance and which could not have been reasonably circumvented by Ultimate Recipient without incurring unreasonable cost.

“**Funds**” means the funding, in Canadian dollars, provided by Lead Recipients to Ultimate Recipient under this Agreement.

“**Government Fiscal Year**” means the period from April 1 of one year to March 31 of the following year.

“**His Majesty**” means His Majesty the King in Right of Canada.

“**Industry Collaborator**”means corporations, including not-for-profit organizations, incorporated in Canada, or in any province or territory of Canada, that are not Academic Collaborators.

“**Ineligible Costs”** means costs not eligible for reimbursement in accordance with Schedule E (Project Cost Principles).

“**Intellectual Property**”means all inventions, whether or not patented or patentable, all proprietary technical information, whether or not constituting trade secrets, and all copyrightable works, industrial designs, integrated circuit topographies, and trademarks, whether or not registered or registrable.

“**Intellectual Property Rights**”means all rights recognized by law in or to Intellectual Property, including but not limited to Intellectual Property rights protected through legislation. These shall include patents, copyrights, industrial design rights, integrated circuit topography rights, rights in trademarks and trade names, all rights in applications and registrations for any of the foregoing, and all rights in trade secrets and confidential information.

“**Interest Rate**” means the Bank Rate, as defined in the *Interest and Administrative Charges Regulations,* in effect on the due date, plus 300 basis points, compounded monthly. The Interest Rate for a given month can be found at:

<http://www.tpsgc-pwgsc.gc.ca/recgen/txt/taux-rates-eng.html>

“**Ultimate Recipient Fiscal Year**” means the period for which Ultimate Recipient’s accounts, in respect of its business or property, are prepared for purposes of assessment under the *Income Tax Act*, as amended.

“**Material Change**” means a significant change in the scope, objectives, outcomes or benefits of the Eligible Project.

“**MNE(s)**” means any national or multinational enterprise(s) with 500 or more employees.

**“Network”** means the pan-Canadian network known as Canadian Medical Isotope Ecosystem created and operated using the Contribution.

“**Network Activities**” means the activities undertaken in Canada, except as otherwise permitted in this Agreement, in support of the Network objectives, and includes the Eligible Project*.*

“**Network Asset**” means an asset which, in whole or in part, has been acquired, created, developed, advanced and/or contributed to by the Funds, but for greater clarity does not include Intellectual Property or Intellectual Property Rights.

“**Network Policies**” means the policies, strategies, and other governance documents developed to govern the activities and conduct of members of the Network from time to time.

“**Progress Report**” has the meaning set out in Schedule D (Reporting Requirements).

“**Public Office Holder**” means a public office holder as defined in the *Lobbying Act*, as amended.

“**Resulting Products**” means all products, services or processes produced using the Eligible Project Intellectual Property or that incorporate any of the Eligible Project Intellectual Property.

**“R&D”** means research and development, as defined by the Certified Public Accountant (CPA) handbook.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government of Canada.

“**Schedule**” means a schedule to this Agreement, including any amendments or supplements.

**“Similar Goods”** means goods or services that closely resemble the goods or services being transferred, in respect of their component materials, form, function and characteristics, and are capable of performing an equivalent function as, and of being commercially interchangeable with, the goods being transferred.

“**SME(s)**” means small- and medium-sized enterprise(s) with fewer than 499 full-time employees.

“**Technology Readiness Level**” or “**TRL**” means technology readiness according to the Technology Readiness Level scale described below.

| **Technology Readiness Level** |  | **Description** |
| --- | --- | --- |
| **TRL 1—Basic principles observed and reported** |  | Lowest level of technology readiness. Scientific research begins to be translated into applied R&D. Examples might include paper studies of a technology's basic properties. |
| **TRL 2—Technology concept and/or application formulated** |  | Invention begins. Once basic principles are observed, practical applications can be invented. Applications are speculative, and there may be no proof or detailed analysis to support the assumptions. |
| **TRL 3—Analytical and experimental critical function and/or characteristic proof of concept** |  | Active R&D is initiated. This includes analytical studies and laboratory studies to physically validate the analytical predictions of separate elements of the technology. |
| **TRL 4—Product and/or  process validation in  laboratory environment** |  | Basic technological products and/or processes are tested to establish that they will work. |
| **TRL 5—Product and/or process validation in relevant environment** |  | Reliability of product and/or process innovation increases significantly. The basic products and/or processes are integrated so they can be tested in a simulated environment. |
| **TRL 6—Product and/or process prototype demonstration in a relevant environment** |  | Prototypes are tested in a relevant environment. Represents a major step up in a technology's demonstrated readiness. Examples include testing a prototype in a simulated operational environment. |
| **TRL 7—Product and/or process prototype demonstration in an operational environment** |  | Prototype near or at planned operational system and requires demonstration of an actual prototype in an operational environment (e.g. in a vehicle). |
| **TRL 8—Actual product and/or process completed and qualified through test and demonstration** |  | Innovation has been proven to work in its final form and under expected conditions. In almost all cases, this TRL represents the end of true system development. |
| **TRL 9—Actual product and/or process proven successful** |  | Actual application of the product and/or process innovation in its final form or function. |

1.2 **Singular/Plural**. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural.

1.3 **Schedules**. This Agreement contains the following schedules as described below, which form an integral part of this Agreement:

Schedule A – Project Description

Schedule B – Background Intellectual Property

Schedule C – License or Transfer of Intellectual Property or Network Assets

Schedule D – Reporting Requirements

Schedule E – Project Cost Principles

**2. The Eligible Project and Project Funding**

2.1 **Lead Recipients’ Obligations.** Ultimate Recipient acknowledges and agrees that Lead Recipients’ obligations under this Agreement are limited to disbursing Funds to Ultimate Recipient as provided by His Majesty for Ultimate Recipient’s Eligible Supported Costs.

2.2 **Ultimate Recipient’s Obligations.** In respect of the Eligible Project, in addition to any other obligations set out in this Agreement, Ultimate Recipient shall:

1. perform the Eligible Project set out in Schedule A (Eligible Project Description) in a diligent, skilled and professional manner using qualified personnel and in accordance with all Applicable Regulations;
2. hold and maintain all necessary licenses, permits, approvals and/or consents necessary for it to perform the Eligible Project;
3. provide Lead Recipients with Progress Reports within the timeframes set out Schedule D (Reporting Requirements);
4. be responsible for all costs of the Eligible Project, including cost overruns, if any;
5. use the Funds solely and exclusively for reimbursement of Eligible Supported Costs for the Eligible Project; and
6. unless otherwise expressly set out in Schedule A (Eligible Project Description) or otherwise agreed by Lead Recipients in writing, carry out the Eligible Project exclusively in Canada. In no event may Ultimate Recipient incur more than ten percent (10%) of Eligible Supported Costs outside of Canada.

2.3 **Funding Period**. Lead Recipients will not disburse Funds to Ultimate Recipient for, and Ultimate Recipient will not use Funds to reimburse, any Eligible Supported Costs incurred prior to the Eligibility Date or after the Completion Date. The amount of Funds that may be used to reimburse Eligible Supported Costs incurred between the Eligibility Date and the Contribution Agreement Date is limited to a maximum of twenty percent (20%) of total Eligible Supported Costs for the Eligible Project as set out in the budget portion of Schedule A (Eligible Project Description).

2.4 **Source of Funding.** Ultimate Recipient acknowledges and agrees that His Majesty is the source of the Contribution, including the Funds, and that Lead Recipients are not acting as agents of His Majesty in disbursing Funds under this Agreement. Ultimate Recipient further acknowledges and agrees that Lead Recipients’ ability to disburse funds is contingent upon the availability of the Contribution, approval of the Minister, and the continued compliance by the Ultimate Recipient with the terms of this Agreement. If for any reason the Minister is prevented from, no longer obligated to, or for any reason fails to, disburse a portion of the Contribution required for Lead Recipients to make a payment to Ultimate Recipient for Eligible Supported Costs, Ultimate Recipient agrees that Lead Recipients are not obligated to pay such Funds from other sources.

2.5 **Aboriginal Consultation**. Ultimate Recipient acknowledges that the Minister’s obligation to pay Lead Recipients is conditional upon His Majesty satisfying any obligation that His Majesty may have to consult with or to accommodate any Aboriginal groups.

2.6 **Funding Ratio and Amount.** Lead Recipients will pay up to 50% of Ultimate Recipient’s Eligible Supported Costs for the Eligible Project (the “**Funding Ratio**”), up to a maximum of $354,762 (the “**Maximum Funding Amount**”). Notwithstanding anything to the contrary in the preceding sentence, in no event shall the Funding Ratio exceed fifty percent (50%) for an Industry Collaborator or one hundred percent (100%) for an Academic Collaborator. Ultimate Recipient acknowledges and agrees that only those incurred Eligible Supported Costs that it can justify via receipts or other appropriate documentation, and which satisfy all other applicable conditions of this Agreement, shall be eligible for reimbursement. Ultimate Recipient further acknowledges and agrees that Eligible Supported Cost reimbursement is ultimately at the discretion of the Minister.

2.7 **Funding from Other Government Sources**. Ultimate Recipient represents and warrants that: (a) if it is an Industry Collaborator, the total contributions from government sources (inclusive of the Funds and any other federal, provincial, territorial, or municipal sources) will not exceed seventy five percent (75%) of its Eligible Supported Costs for the Eligible Project, and (b) if it is an Academic Collaborator, the total contributions from government sources (inclusive of the Funds and any other federal, provincial, territorial, or municipal sources) will not exceed one hundred percent (100%) of its Eligible Supported Costs for the Eligible Project.

**3. Claims and Payments**

3.1 **Separate Records**. Ultimate Recipient shall maintain accounting records that account for the Funds paid to the Ultimate Recipient for Eligible Supported Costs and the uses thereof, separate and distinct from any other sources of funding.

3.2 **Project Cost Principles**. Ultimate Recipient shall only submit claims for reimbursement, and Lead Recipients shall only reimburse claims, that are consistent with the costing principles set out in Schedule E (Project Cost Principles) and any travel and/or hospitality policies as may be provided by Lead Recipients, as such may be amended from time to time.

3.3 **Claims Procedures**. Subject to the Minister’s approval and release of funds by His Majesty, Lead Recipients will reimburse claims for Eligible Supported Costs submitted by Ultimate Recipient for a Claim Period, provided there is no Event of Default and the claims are:

(a) submitted for each Claim Period within thirty (30) days of the end of the Claim Period, except for the first claim which will start on the Eligibility Date;

(c) accompanied with details of all costs being claimed according to Schedule E (Project Cost Principles), which have been incurred by Ultimate Recipient and which will be substantiated by such documents as may be required by the Lead Recipients;

(d) certified, if requested by Lead Recipients, by Ultimate Recipient’s chief financial officer or such other person considered satisfactory to Lead Recipients;

(e) adjusted, if necessary, by including a deduction for expenses included in a previous claim which were not Eligible Supported Costs or which were not paid by Ultimate Recipient;

(f) accompanied by a report containing:

(ii) an identification of any planned or completed transfer to commercial production, transfer outside of Canada, sale, lease or other Disposal of any Network Asset;

(iii) an itemized list of foreign sub-contracting costs, if any;

(iv) the foreign exchange rates used in the claim accompanied with the source of the foreign exchange rates;

(v) the requisite Progress Report as specified in Schedule D (Reporting Requirements); and

(vi) such other information as Lead Recipients may request from time to time.

(g) substantially (± ten percent (10%)) consistent with the cost estimates of the budget in Schedule A (Eligible Project Description) for the previously estimated Ultimate Recipient Eligible Supported Costs.

3.4 **Final Claim Procedures**. Ultimate Recipient shall submit, within thirty (30) days after the Completion Date, the final claim along with:

(a) an itemized statement certified, if requested by Lead Recipients, by Ultimate Recipient’s chief financial officer or such other person considered satisfactory to Lead Recipients, attesting to the total Funds received and total Eligible Supported Costs incurred and paid by Ultimate Recipient under this Agreement;

(b) a statement of the total government funding as specified in Subsection 2.7 of this Agreement received or requested to cover the Eligible Supported Costs of Ultimate Recipient; and

(c) a final Progress Report, as specified in Schedule D (Reporting Requirements).

3.5 **Payment Procedures**.

(a) Lead Recipients shall review and approve the documentation submitted by Ultimate Recipient following the receipt of Ultimate Recipient’s claim and in the event of any deficiency in the documentation, Lead Recipients will notify Ultimate Recipient and Ultimate Recipient shall immediately take action to address and rectify the deficiency.

(b) Subject to the Maximum Funding Amount set forth in Subsection 2.6, to receipt by Lead Recipients of the requisite funds from His Majesty, and to all other conditions contained in this Agreement, Lead Recipients will pay to Ultimate Recipient a percentage of the Eligible Supported Costs set forth in Ultimate Recipient's claim at the Funding Ratio set forth in Subsection 2.6.

(c) Lead Recipients may request at any time that Ultimate Recipient provide satisfactory evidence to demonstrate that all Eligible Supported Costs claimed have been paid.

3.6 **Overpayment**. Where Lead Recipients or the Minister determines that the amount of the Funds disbursed exceeds the amount to which Ultimate Recipient is entitled, Ultimate Recipient shall repay to Lead Recipients, promptly and no later than thirty (30) days from the date of notice from Lead Recipients, the amount of the overpayment together with interest at the Interest Rate from the date of the notice to the day of payment in full. Any such amount is a debt due to His Majesty and is recoverable as such.

3.7 **Holdback**. Notwithstanding any other provisions of this Agreement, Lead Recipients may, at their sole discretion and if specified in the budget in Schedule A (Eligible Project Description) or later specified in a written notice from Lead Recipients to Ultimate Recipient, withhold ten percent (10%) of the Funds until all of the following conditions have been met:

1. the Eligible Project has been completed to the reasonable satisfaction of Lead Recipients; and
2. the final Progress Report has been submitted by Ultimate Recipient and approved by Lead Recipients, acting reasonably.

**4. Reporting, Monitoring, Audit and Evaluation**

4.1 **Reports**. Ultimate Recipient agrees to provide Lead Recipients and the Minister, as applicable, with the Progress Reports as described in Schedule D (Reporting Requirements).

4.2 **Additional Information**. Upon request of Lead Recipients or the Minister and at no cost to Lead Recipients or the Minister, Ultimate Recipient shall promptly elaborate upon any report submitted or provide such additional information as may be requested.

4.3 **Right to Audit Accounts and Records**.Ultimate Recipient shall, at its own expense, maintain and preserve in Canada all books, accounts, invoices, receipts, and records of Ultimate Recipient, its Affiliated Person(s), agents and contractors that relate to this Agreement, the use of Funds provided under this Agreement, and the Eligible Project (together, the “**Project Records**”) until the end of Ultimate Recipient’s fiscal year that ends seven (7) years after the fiscal year of the Completion Date. Ultimate Recipient shall make available the Project Records for audit and examination by Lead Recipients, the Minister, or the Minister’s representatives. Lead Recipients and the Minister will each have the right to conduct such audits at Lead Recipients’ or the Minister’s expense, as applicable, as may be considered necessary.

4.4 **Auditor General Rights**. Ultimate Recipient acknowledges and agrees that the Auditor General of Canada may, at the Auditor General’s cost, conduct an inquiry with respect to the use of Funds received by Ultimate Recipient. For the purposes of any such inquiry undertaken by the Auditor General, Ultimate Recipient shall provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General, including Lead Recipients as applicable, all Project Records and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to this Agreement or the use of the Funds.

4.5 **Access to Records**. Ultimate Recipient shall, at all times, ensure that its Affiliated Person(s), agents, contractors, employees and assigns are obligated to provide to Lead Recipients, the Minister, the Auditor General, or their authorized representatives, such Project Records as may be in the possession of those Affiliated Person(s), agents, contractors, employees and assigns. Ultimate Recipient will make reasonable efforts to separate, and not disclose, all documents containing personal information or personal health information that are not required to be disclosed. To the extent that Lead Recipient or its designee may access Project Records containing personal health information, Lead Recipient will adhere to Applicable Regulations regarding the protection of personal information.

4.6 **Access to Premises**. Ultimate Recipient and its Affiliated Person(s) shall provide the representatives of the Minister or Lead Recipients reasonable access to premises to inspect and assess the progress of the Eligible Project or any element thereof and supply promptly on request such data as the Minister or Lead Recipients may reasonably require for statistical or evaluation purposes.

**5. Representations, Warranties and Covenants**

5.1 **Representations and Warranties.** Ultimate Recipient represents and warrants that:

(a) it is duly incorporated under Canadian law and validly existing and in good standing and has the power and authority to carry on its business, to hold property and to enter into this Agreement and undertakes to take all necessary action to maintain itself in good standing, to preserve its legal capacity and to remain incorporated in a Canadian jurisdiction;

(b) its signatories to the Agreement have been duly authorized to execute and deliver this Agreement;

(c) the execution, delivery and performance of this Agreement have been duly and validly authorized and that when executed and delivered, the Agreement will constitute a legal, valid and binding obligation enforceable in accordance with its terms;

(d) it is under no obligation or prohibition, nor is it subject to or threatened by any actions, suits or proceedings that could or would prevent compliance with the Agreement. Ultimate Recipient shall inform Lead Recipients forthwith of any such occurrence;

(e) the execution and delivery of this Agreement and the performance by Ultimate Recipient of its obligations hereunder will not, with or without the giving of notice or the passage of time or both:

(i) violate the provisions of Ultimate Recipient’s by-laws, any other corporate governance document or resolution of Ultimate Recipient;

(ii) violate any judgment, decree, order or award of any court, government agency, regulatory authority or arbitrator; or

(iii) conflict with or result in the breach or termination of any material term or provision of, or constitute a default under, or cause any acceleration under, any license, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, permit, deed of trust or any other instrument or agreement by which it is bound;

(f) it has the financial capacity to conduct the Eligible Project;

(g) it has obtained or will obtain all necessary licences and permits in relation to the Eligible Project, which satisfy the requirements of all regulating bodies of appropriate jurisdiction;

(h) the description of the Eligible Project in Schedule A is complete and accurate and the Eligible Project will conduct R&D research within TRL levels 1 to 9;

1. it is and shall at all times during the Term be in compliance with Applicable Regulations, including the *Lobbying Act*. Specifically but without limitation, where lobbyists are utilized, they will be registered in accordance with the *Lobbying Act* and no actual or potential conflict of interest or contingency fee arrangement exists or will exist during the Term with respect to such lobbyists;

(j) the Eligible Project is not a “designated project” or a “project” under the applicable federal environmental and impact assessment legislation.

(k) it is in compliance with Sanctions and no part of the Funds will be used, directly or indirectly, by Ultimate Recipient in violation of Sanctions;

(l) it is not, nor are any of its respective officers or directors, a Designated Person;

(m) no member of the House of Commons will be admitted to any share or part of this Agreement or to any benefit arising from this Agreement;

(n) no person who is a member of the Senate will, directly or indirectly, be a party to or be concerned in this Agreement; and

(o) no current or former public servant or Public Office Holder to whom the *Values and Ethics Code for the Public Service*, the *Values and Ethics Code for the Public Sector*, the *Policy on Conflict of Interest and Post-Employment* or the *Conflict of Interest Act* apply, will derive a direct benefit from this Agreement unless the provision or receipt of such benefits is in compliance with such legislation and codes.

5.2 **Covenants**.Ultimate Recipient covenants and agrees that:

1. it is solely responsible for providing or obtaining the funding, in addition to the Funds, required to carry out its activities on the Eligible Project and the fulfilment of Ultimate Recipient’s obligations under this Agreement;
2. no Material Change within the control of Ultimate Recipient will be made without the prior written consent of Lead Recipients;
3. other than in the ordinary course of business where Ultimate Recipient Disposes of Network Assets with an aggregate book value for each occurrence of no greater than one hundred thousand dollars ($100,000), Ultimate Recipient shall retain ownership, possession, and control of its Network Assets the cost of which has been contributed to by the Minister under this Agreement for a minimum of five (5) years after the Term, unless otherwise agreed to by the Minister in accordance with Schedule C (License or Transfer of Intellectual Property or Network Assets);

(d) it shall comply with all Applicable Regulations governing it and the Eligible Project, including those relating to environmental protection and the successful implementation of and adherence to any mitigation measures, monitoring or follow-up program that may be prescribed by the Minister or other federal, provincial, territorial, municipal tribunals or bodies, and certifies that it has done so to date.

(e) it will maintain in effect policies and procedures reasonably designed to ensure compliance by itself and its respective directors and officers with Sanctions;

(f) it will conduct its business in compliance with Sanctions;

(g) it will not use, directly or indirectly, the Funds in violation of Sanctions;

(h) it will not act in any other manner that would result in the violation of Sanctions;

(i) it will cause its controlled Affiliated Persons to comply with Subsections 5.2(e) to 5.2(h); and

(j) it will provide Lead Recipients with written notice of a Change of Control of Ultimate Recipient.

5.3 **Renewal of Representations**. It is a condition precedent to any disbursement of Funds under this Agreement that the representations, warranties and covenants contained in this Agreement are true at the time of payment and that Ultimate Recipient is not in default of compliance with any terms of this Agreement.

**6.** **Intellectual Property**

6.1 **Background Intellectual Property**. Ultimate Recipient’s Background Intellectual Property remains the exclusive property of Ultimate Recipient. Ultimate Recipient represents and warrants that it owns the requisite Background Intellectual Property or holds sufficient Background Intellectual Property Rights to permit the Eligible Project to be carried out and the Eligible Project Intellectual Property to be exploited by the Ultimate Recipient.

6.2 **Eligible Project Intellectual Property.**  Ultimate Recipient must exclusively own and retain ownership of the Eligible Project Intellectual Property in Canada for a minimum of five (5) years after the end of this Agreement, unless otherwise agreed to by the Minister in accordance with Schedule C (License or Transfer of Intellectual Property and Network Assets) and notice thereof is provided to Lead Recipients prior to such event. In the event Ultimate Recipient sells, assigns or transfers any Eligible Project Intellectual Property within Canada, Ultimate Recipient must inform Lead Recipients and the Minister in writing prior to such event. Ultimate Recipient shall take appropriate steps to protect the Eligible Project Intellectual Property and shall notify the Lead Recipients of any such steps taken.

6.3 **Exploitation of Eligible Project Intellectual Property.** Unless otherwise agreed to by the Minister, Ultimate Recipient must own or have sufficient Intellectual Property Rights to exploit the Eligible Project Intellectual Property and to make, construct, use and sell any Resulting Products.

6.4 **No Exclusive Licenses**. Ultimate Recipient agrees not to grant any exclusive right or license to any of the Eligible Project Intellectual Property in any territory without the prior written consent of the Minister in accordance with Schedule C (License or Transfer of Intellectual Property and Network Assets) and without prior notice to the Lead Recipients. Ultimate Recipient is permitted to grant non-exclusive licences to the Eligible Project Intellectual Property, without prior written consent of the Minister, (i) in conjunction with the commercialization or sale of Resulting Products; and (ii) as long as the licence grant does not prevent Ultimate Recipient from fulfilling its obligations under this Agreement and from otherwise exploiting the Eligible Project Intellectual Property in any territory.

6.5 **Intellectual Property of Others.** To the best of Ultimate Recipient’s knowledge, no person or entity has alleged that the Background Intellectual Property, or the use thereof by Ultimate Recipient, infringes or misappropriates the Intellectual Property Rights that are owned or controlled by that person or entity. To the best of the Ultimate Recipient’s knowledge, Ultimate Recipient would not infringe any Intellectual Property Rights of others by performing the Eligible Project.

6.6 **Intellectual Property Enforcement.** To the extent applicable, Ultimate Recipient shall promptly notify Lead Recipients if it becomes aware of any alleged infringement of Eligible Project Intellectual Property during the Term, along with Ultimate Recipient’s plan for enforcement of any Eligible Project Intellectual Property.

**7. Confidentiality**

7.1 **Disclosure of Confidential Information**. In connection with this Agreement, each Party (as a “**Disclosing Party**”) may disclose Confidential Information to the other Party (as a “**Receiving Party**”).

7.2 **Protection of Confidential Information**. As a condition of being provided with any disclosure of or access to Confidential Information, unless otherwise consented to by the Disclosing Party in writing, the Receiving Party shall for the Term of this Agreement and seven (7) years following expiration or earlier termination of this Agreement:

1. not access or use the Confidential Information other than as reasonably necessary to carry out the Eligible Project and to exercise its rights or perform its obligations under this Agreement;
2. not disclose or permit access to Confidential Information other than to its representatives who (i) need to know such Confidential Information for purposes of the Receiving Party’s carrying out of the Eligible Project and exercise of its rights or performance of its obligations in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this Section 7; and (iii) are bound by obligations at least as protective of the Confidential Information as the terms set forth in this Section 7; and
3. safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care.
4. return all Confidential Information to the Disclosing Party upon termination of this Agreement. Notwithstanding the foregoing, the Parties shall be entitled to retain: (i) one copy of Confidential Information to comply with legal obligations and ensure compliance with the provisions set forth herein, as well as (ii) automatically generated computer back-up or archival copies generated in the ordinary course of their business, provided that any such retained copy will continue to be subject to the confidentiality obligations and restrictions set forth herein.

7.3 **Required Disclosure**. Any disclosure by a Receiving Party of any Confidential Information under applicable federal, provincial, or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction shall be subject to the terms of this Section 7.3. Before making any such disclosure, a Receiving Party shall provide Disclosing Party with prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other remedy, and reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Receiving Party is still required to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information which, on the advice of the Receiving Party’s legal counsel, it is legally required to disclose and, on Disclosing Party’s request, the Receiving Party shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment. For clarity, nothing in this Section 7 shall prevent the disclosure of any information to the Minister upon request or as otherwise required under the Contribution Agreement, including without limitation the terms of this Agreement and any reports or information provided under this Agreement.

7. **International Dispute**. Notwithstanding the remainder of this Section 7, Ultimate Recipient waives any confidentiality rights to the extent such rights would impede His Majesty from fulfilling his notification obligations to a world trade panel for the purposes of the conduct of a dispute, in which His Majesty is a party or a third party intervener. The Minister is authorized to disclose the contents of this Agreement and any documents pertaining thereto, whether predating or subsequent to this Agreement, or of the transactions contemplated herein, where in the opinion of the Minister, such disclosure is necessary to the defence of His Majesty’s interests in the course of a trade remedy investigation conducted by a foreign investigative authority, and is protected from public dissemination by the foreign investigative authority.

**8. Publicity**

8.1 **Public Acknowledgements**. In any publication or presentation, the Ultimate Recipient shall acknowledge the Network and the Minister’s support in both English and French. Any other public acknowledgement of the Network and the Minister’s support shall likewise be in both official languages.

8.2 **Publicity**. Ultimate Recipient agrees that Lead Recipients or the Minister may contact Ultimate Recipient in relation to success stories, announcements, ceremonies and other communications activities. In connection therewith, Ultimate Recipient hereby agrees and consents to:

1. acknowledge the Minister’s role in the funding provided to Ultimate Recipient under this Agreement in both official languages;
2. a public announcement of the Eligible Project by the Minister, on behalf of the Minister, or by Lead Recipients in the form of a news release and/or event;
3. the of display promotional material and/or signage provided by the Minister at any such event; and
4. subsequent public announcements, including without limitation the posting from time to time on a Government of Canada website, by or on behalf of the Minister of Ultimate Recipient’s name, the amount and type of funding provided under this Agreement, a description of the Eligible Project and its location(s), and identification of anticipated Eligible Project results.

8.3 **Use of Marks**. No Party shall use the other Party’s trade-marks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of the owning Party, except that Ultimate Recipient hereby consents to Lead Recipients’ and the Minister’s use of its name and logo for the purpose of identifying the Ultimate Recipient as a member of the Network and as the entity carrying out the Eligible Project, including without limitation on its website and in Network promotional materials.

8.4 **Disclosure of Existence of Agreement**. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that each Party may disclose the existence of this Agreement, and identify the Parties to this Agreement, and disclose the receipt of financial support from the Lead Recipients and the total amount, including but not limited to acknowledgement in a Party’s customary internal publications and annual report and its reports to its funding bodies or in any publication or presentation relating to the results of the Eligible Project, and in filings with regulatory authorities and disclosures for government reporting and in order to comply with Applicable Regulations.

**9. Indemnification and Limitation of Liability**

9.1 **Ultimate Recipient’s Indemnification of Lead Recipients and the Minister**. Except for any Indemnification Claims (defined below) arising from the gross negligence of, or willful misconduct by, either Lead Recipients’ or the Minister’s employees, officers, agents or servants, Ultimate Recipient shall indemnify and save harmless Lead Recipients and the Minister and any of their respective officers, servants, employees or agents from and against all claims and demands, actions, suits or other proceedings (and all losses, costs and damages relating thereto) by whomsoever made, brought or prosecuted (all of the foregoing collectively, the “**Indemnification Claims**”), to the extent such Claims result from: (i) the performance or non-performance of the Eligible Project, or the breach or failure to comply with any term, condition, representation or warranty of this Agreement by Ultimate Recipient, its Affiliated Person(s), its officers, employees and agents, or by a third party or its officers, employees, or agents; or (ii) any omission or other willful or negligent act or delay of the Ultimate Recipient, its Affiliated Person(s) or a third party and their respective employees, officers, or agents.

9.2 **Limitation of Liability**. Notwithstanding anything to the contrary contained in this Agreement, neither Lead Recipients nor the Minister shall be liable for any direct, indirect, special or consequential damages of Ultimate Recipient nor for the loss of revenues or profits arising from, based upon, occasioned by or attributable to the execution of this Agreement, regardless of whether such a liability arises in tort (including negligence), contract, fundamental breach or breach of a fundamental term, misrepresentation, breach of warranty, breach of fiduciary duty, indemnification or otherwise. Lead Recipients, His Majesty, and their agents, employees and servants will not be held liable in the event Ultimate Recipient enters into a loan, a capital or operating lease or other long-term obligation in relation to the Eligible Project for which the Funds are provided.

9.3 **Insurance**. For the Term of this Agreement, and for five (5) years after expiration or earlier termination, Ultimate Recipient shall maintain, at its own expense, appropriate policies of general liability insurance against any and all foreseeable risks of loss arising out of this Agreement or the Eligible Project, with limits of no less than two million Canadian dollars ($2,000,000) per occurrence and five million Canadian dollars ($5,000,000) in annual aggregate. Ultimate Recipient shall provide evidence of such insurance to Lead Recipients upon written request, and will provide Lead Recipients thirty (30) days’ prior written notice of cancellation or non-renewal of any such insurance policies.

**10. Default and Remedies**

10.1 **Events of Default**. Lead Recipients may declare an event of default (“**Event of Default**”) has occurred under this Agreement if:

1. Ultimate Recipient fails to make material progress on the Eligible Project as set out in Schedule A (Eligible Project Description), including with respect to applicable milestones therein, to Lead Recipients’ reasonable satisfaction;
2. Ultimate Recipient fails to comply with a material term or condition of this Agreement, including Ultimate Recipient’s representations, warranties, and covenants herein;
3. Ultimate Recipient becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute, from time to time in force, relating to bankrupt or insolvent debtors;
4. an order is made, or Ultimate Recipient has passed a resolution, for the winding up or dissolution of Ultimate Recipient, or Ultimate Recipient is dissolved or wound up;
5. Ultimate Recipient has, in the reasonable opinion of Lead Recipients or the Minister, ceased to carry on business or has sold all or substantially all of its assets or enters into a letter of intent or binding obligation to sell all or substantially all of its assets;
6. a representation, covenant, warranty or statement contained herein or in any document, report or certificate delivered to Lead Recipients or the Minister hereunder or in connection therewith is false or misleading at the time it was made;
7. Ultimate Recipient undergoes a Change of Control; or
8. A Force Majeure event lasts longer than one hundred eighty (180) days.

10.2 **Notice and Rectification Period**. Except in the case of an Event of Default under paragraphs (c), (d), (e), or (g) of Subsection 10.1 above, Lead Recipients will not declare that an Event of Default has occurred until first giving Ultimate Recipient written notice of the issue or event and an opportunity to cure it within thirty (30) days. If Ultimate Recipient is unable or unwilling to cure an issue or event arising under Subsections 10.1 (a), (b), (f), or (h) within thirty (30) days of such written notice, or if an issue or event arises under Subsections 10.1(c), (d), (e), or (g) above, Lead Recipients may immediately declare that an Event of Default has occurred by written notice to Ultimate Recipient.

10.3 **Remedies on Default**. If Lead Recipients declare an Event of Default has occurred, Lead Recipients may exercise one or more of the following remedies with immediate effect, in addition to any other remedy available at law:

1. suspend or terminate any obligation of Lead Recipients to contribute or continue to contribute to the Eligible Supported Costs of the Eligible Project, including any obligation to pay any amount owing prior to the date of such suspension or termination;
2. require Ultimate Recipient to repay to Lead Recipients all or part of the Funds paid to the Ultimate Recipient, together with interest from the day of demand at the Interest Rate;
3. require Ultimate Recipient to assign this Agreement to a third party designated by Lead Recipients that is willing and able to accept the assignment;
4. terminate this Agreement; and
5. permit the Minister to post a notice on a Government of Canada website disclosing that the Ultimate Recipient has committed an Event of Default under the provisions of this Agreement and describing generally the remedies, if any, that the Lead Recipients have accordingly exercised.

10.5 **Force Majeure**. Subject to Subsection 10.1(a) above, neither the Lead Recipients nor the Ultimate Recipient will not be in default by reason only of any failure in the performance of the Eligible Project if such failure arises without the fault or negligence of the Parties and is caused by any event of Force Majeure.

**11. Term, Termination, and Survival**

11.1 **Term**. The Term of this Agreement will commence on the Effective Date and will expire, subject to Subsection 11.5, five (5) years following the Completion Date unless terminated earlier in accordance with the terms of this Agreement.

11.2 **Termination by Lead Recipients**. Lead Recipients may terminate this Agreement with immediate effect by written notice to Ultimate Recipient if (i) an Event of Default has been declared in accordance with Section 10 above or (ii) the Minister terminates the Contribution Agreement or requires Lead Recipients to terminate this Agreement for any reason.

11.3 **Termination by Ultimate Recipient**. Ultimate Recipient may terminate this Agreement upon ninety (90) days’ written notice to Lead Recipients so long as: (i) it pays to Lead Recipients any amounts due under this Agreement within the notice period, and (ii) undertakes to continue to meet the requirements of Section 4 (Reporting, Monitoring, Audit and Evaluation) and all other surviving obligations under this Agreement.

11.4 **Effect of Termination or Expiry**. The expiry or termination of this Agreement for any reason, unless explicitly stated herein, shall not release any Party from any obligation or liability to the other Party that (i) accrued prior to termination or expiry, (ii) comes into effect due to the expiry of termination of the Agreement, or (iii) otherwise survives expiry or termination. Following termination of this Agreement, unless any payment obligation has been suspended or terminated in accordance with this Agreement or the Minister does not make requisite Contribution funds available to Lead Recipients, Ultimate Recipient may promptly submit any outstanding claims to Lead Recipients for processing, and Lead Recipients will pay such undisputed amounts in accordance with Section 3 (Claims and Payments).

11.5 **Survival Period**. Notwithstanding the provisions of this Section 11, the rights and obligations described in the following Sections or Subsections, or in any other provisions which are expressly or by implication intended to continue in force beyond the Term, will survive for the period specified in that Section or Subsection or, if not specified, for a period of three (3) years beyond the Term or early termination of the Agreement:

Subsection 3.6 - Overpayment

Section 4 - Reporting, Monitoring, Audit and Evaluation

Subsection 5.2(c) - Disposal of Network Assets

Sections 6 - Intellectual Property

Section 7 - Confidentiality

Section 8 - Publicity

Section 9 - Indemnification and Limitation of Liability

Section 10 - Default and Remedies

Section 12 - Notices

Section 13 – General Provisions

**12. Notices**

12.1 **Form and Timing of Notice**. Any notice or other communication under this Agreement shall be made in writing. Either Party may send any written notice by any pre-paid method, including regular or registered mail, courier or email. Notice will be considered as received upon delivery by the courier, upon the Party confirming receipt of the email or one (1) day after the email is sent, whichever the sooner, or five (5) calendar days after being mailed.

12.2Any notices to Lead Recipients will be addressed to:

Centre for Probe Development and Commercialization

Attn:

Email:

TRIUMF Innovation, Inc.

Attn:

Email:

12.3 Any notices to Ultimate Recipient will be addressed to:

Company/Institute: XXXXX

Attn: XXXXX

Email address: XXXXX

12.4 **Change of Contact Information**. Each of the Parties may change the address, which they have stipulated in this Agreement by notifying in writing the other Party of the new address, and such change shall be deemed to take effect five (5) calendar days after receipt of such notice.

**13. General Provisions**

13.1 **Relationship of the Parties**. The relationship of the Parties is that of independent parties to a contract. Nothing contained in this Agreement shall be deemed or construed to create between or among the Parties hereto a partnership or employment or principal-agent relationship or joint venture. No Party has the authority to act on behalf of the other Party or to bind the other Party in any manner.

13.2 **Amendment**. This Agreement may be amended only by the further written agreement among authorized representatives of the Parties, except for any changes to Network Policies, amendment of which may be made by Lead Recipients through Network governance processes and through written notice to Ultimate Recipient.

13.3 **Governing Law & Jurisdiction**. This Agreement, including all Schedules hereto, and any dispute or claim arising out of or in connection with it, shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to any choice or conflict of laws provision. Each party irrevocably agrees that the courts of the Province of Ontario shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement.

13.4 **Assignment**. No Party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without the other Party’s prior written consent, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Ultimate Recipient agrees that the Minister, in its sole discretion, may require that Lead Recipients assign this Agreement to a third-party approved by the Minister. Any purported assignment, delegation, or transfer in violation of this Subsection is null and void. This Agreement is binding upon and enures to the benefit of the Parties and their respective permitted successors and assigns.

13.5 **Entire Agreement**. Unless amended by the Parties, this Agreement and the Schedules hereto comprise the entire agreement between the Parties in relation to the Eligible Project. No prior document, negotiation, provision, undertaking or agreement in relation to the subject matter of this Agreement has legal effect. No representation or warranty, whether express, implied or otherwise, has been made by Lead Recipients to Ultimate Recipient, except as expressly set out in this Agreement.

13.6 **Inconsistency**. In case of inconsistency or conflict between a provision contained in the part of the Agreement preceding the signatures and a provision contained in any of the Schedules to this Agreement, the provision contained in the part of the Agreement preceding the signatures will prevail unless explicitly stated otherwise in the provision or the applicable Schedule.

13.7 **Severability**. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.

13.8 **Third-Party Beneficiaries**. The Parties agree that the Minister and the Auditor General are third-party beneficiaries of this Agreement. Except for the Minister and the Auditor General, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

13.9 **Consent of the Minister**. Whenever this Agreement provides for the Minister to render a decision or for Ultimate Recipient to obtain the consent or agreement of the Minister, such decision shall be reasonable on the facts and circumstance and such consent or agreement will not be unreasonably withheld but the Minister may make the issuance of such consent or agreement subject to reasonable conditions.

13.10 **No Waiver**. Waiver of any provision of this Agreement shall not constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver unless otherwise provided in writing. The rights and remedies under this Agreement shall be cumulative and not exclusive of any other right or remedy. The fact that a Party refrains from exercising a remedy it is entitled to exercise under this Agreement will not constitute a waiver of such right and any partial exercise of a right will not prevent the Party in any way from later exercising any other right or remedy under this Agreement or other applicable law.

13.11 **No Conflict of Interest**. Ultimate Recipient and its Affiliated Person(s), consultants and any of their respective advisors, partners, directors, officers, shareholders, employees, agents and volunteers shall not engage in any activity that would create a real, apparent or potential conflict of interest in the reasonable opinion of Lead Recipients or the Minister, with the carrying out of the Eligible Project. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with Ultimate Recipient owns or has an interest in another organization that is carrying out work related to the Eligible Project. Ultimate Recipient shall disclose to Lead Recipients without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.

13.12 **Currency**. Unless otherwise indicated, all dollar amounts referred to in this Agreement are to the currency of Canada.

13.13 **Counterparts**. This Agreement may be signed in counterparts and such counterparts may be delivered by acceptable electronic transmission, including portable document format (PDF), each of which when executed and delivered is deemed to be an original, and when taken together, will constitute one and the same Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement through duly authorized representatives.

**Centre for Probe Development and Commercialization**

Per:  \_\_\_\_\_\_\_\_\_\_\_

Owen G. Roberts, CEO Date

**TRIUMF Innovations, Inc.**

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Kathryn Hayashi, CEO Date

**XXXXXXX**

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

XXXXXXXX Date

Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

SCHEDULE A – ELIGIBLE PROJECT DESCRIPTION

**Ultimate Recipient Primary Contact:**

**Eligible Project Title:**

**Eligible Project ID: 818-815699-XXXX**

**Eligible Project Period**

Eligible Project Start Date:

Eligible Project End Date:

**Eligible Project Overview, Activities, and Milestones**

**ELIGIBLE PROJECT BUDGET**

Notes

Indirect Costs (Overhead) shall be calculated at a fixed rate of Direct Labour costs and will not exceed fifty-five percent (55%) of Direct Labour costs and fifteen percent (15%) of the total Eligible Costs. These limits will apply to each Ultimate Recipient and to each individual Eligible Project if more than one project is selected for an Ultimate Recipient. Any Indirect Costs (overhead) exceeding such limits will be treated as an Eligible Not-Supported Costs.

Funds paid is based on the overall Funding Ratio of 50 percent (50%) of Ultimate Recipient’s total Eligible Supported Costs for this Eligible Project.

All claims and costs are to be in accordance with Schedule D (Reporting Requirements) and Schedule E (Project Cost Principles).

**SCHEDULE B – BACKGROUND INTELLECTUAL PROPERTY**

The following results, methods and concepts constitute Background Intellectual Property required for the Eligible Project described in Schedule A and will be included in whole or in part in upcoming provisional patent applications:

**SCHEDULE C – LICENSE OR TRANSFER OF INTELLECTUAL PROPERTY OR NETWORK ASSETS**

On a case-by-case basis and in accordance with Section 5.2(c) and Section 6 of this Agreement, the Parties will use the following process when considering to grant a proposed exclusive right or license to Eligible Project Intellectual Property, for a proposed sale, assignment or transfer of Eligible Project Intellectual Property, or for the sale, assignment, or disposal of Network Assets (the “**Proposal**”):

* 1. At its earliest opportunity, Ultimate Recipient will submit the written Proposal that is being considered to the Minister. The Proposal will include sufficient detail of the implementation of the Proposal, scope of the Eligible Project Intellectual Property or Network Asset involved, impact on the Eligible Project, other Eligible Projects, and Network, impact on other Ultimate Recipient(s), timelines, and anticipated benefits to Canada;
  2. Within thirty (30) days of receiving the Proposal and in accordance with Subsection 13.9 of this Agreement, the Minister will review and communicate its response to the Ultimate Recipient;
  3. If the Proposal is denied by the Minister, Ultimate Recipient, in consultation with the Minister, will take reasonable steps within a further thirty (30) days of receiving the Minister's response, to make sufficient revisions that satisfy the Minister's requirements with respect thereto and will submit the revised Proposal to the Minister;
  4. Within thirty (30) days of receiving the revised Proposal, the Minister will review and communicate its response to Ultimate Recipient;
  5. Should Ultimate Recipient proceed with the Proposal without the Minister’s consent, Ultimate Recipient will proceed in accordance with Subsection 5.2(c) for Network Assets and Section 6 for Intellectual Property and may be subject to remedies in accordance with Section 10.

If the Proposal or revised Proposal is satisfactory to the Minister, Ultimate Recipient is authorized to proceed and the obligations of the Parties will continue accordingly, subject to all conditions and other provisions elsewhere in this Agreement.

**SCHEDULE D – REPORTING REQUIREMENTS**

Within thirty (30) days of the end of each Claim Period, Ultimate Recipient shall provide a report on the financial and programmatic progress of the Project (a “**Progress Report**”) on such template as may be supplied by Lead Recipients. The Progress Report will include information in support of Ultimate Recipient’s claim submission.

Each Progress Report will include at a minimum:

1. A description of progress made on the Eligible Project, including with respect to milestones and deliverables outlined in Schedule A (Eligible Project Description)
2. A description of planned next steps on the Eligible Project, any requested changes to the Eligible Project, and any requested redistribution of costs in the Schedule A budget;
3. A discussion of any significant variations (± ten percent (10%)) for the previously estimated Ultimate Recipient Eligible Costs in each cost category by Government Fiscal Year in the budget in Schedule A;
4. An update on major risks, issues and mitigation measures on the Eligible Project;
5. An update on any other funding from federal, provincial, territorial or municipal governments in Canada received for the Eligible Project; and
6. Any other information that Lead Recipients or the Minister reasonably requests.

No claim request will be processed unless and until such Progress Report is provided to Lead Recipients, to Lead Recipients’ satisfaction. Lead Recipients may request periodic updates and status reports relating to any aspect of the Eligible Project and Ultimate Recipient shall provide such reports within twenty (20) days from the date of the request.

The final Progress Report after the last Claim Period, in addition to the items specified in Subsection 3.4 of this Agreement and other information requested on the template provided by Lead Recipients, will summarize the entire Eligible Project addressing the following areas:

1. Eligible Project completion – Ultimate Recipient will demonstrate that the Eligible Project has been completed and the milestones reached in accordance with Schedule A (Eligible Project Description), along with a summary of how the Eligible Project contributed to the Network’s goals and objectives.
2. Benefits – Ultimate Recipient will summarize the benefits achieved during the Eligible Project and expected thereafter, including innovation, public, and economic benefits.
3. Commercialization – Ultimate Recipient will describe any efforts being undertaken to commercialize any products or processes developed during the Eligible Project, or to continue their development.

**SCHEDULE E – PROJECT COST PRINCIPLES**

1. **Eligible Costs**

Eligible Costs incurred and paid by an Ultimate Recipient are those, which are necessary to carry out the Eligible Project. These costs are generally non-recurring and incremental to the ordinary business activities of the Ultimate Recipient. Eligible Costs shall be reasonable, such that the nature and the amounts do not exceed what an ordinary prudent person would conduct in a similar business context, and can be directly attributable to the completion of the Eligible Project. These costs must be determined in accordance with the Ultimate Recipient’s cost accounting practices as accepted by Lead Recipients and the Minister and applied consistently over time. The cost accounting system should clearly establish an audit trail that supports all costs claimed.

1. **Affiliated Persons Clause**

Affiliated Persons are to be understood and treated as defined in the *Income Tax Act,* which includes but is not limited to; two or more entities that have similar ownership personnel; or entities that have a working business relationship*.*

In the case of Eligible Costs for goods or services incurred and paid with an Affiliated Person, the amount of the costs incurred and paid must:

1. not exceed their Fair Market Value;
2. in the case of a good or service for which there is no Fair Market Value, the amount must not exceed the Fair Market Value of Similar Goods; or
3. in the case of a good or service for which there is neither a Fair Market Value nor Similar Goods, the amount must not exceed the sum of the applicable Direct Costs with Indirect Costs (Overhead) at the rate stipulated by this Agreement**,** plus five percent (5%) profit.

*\*Note: It is important for an Ultimate Recipient, from the outset, to self-identify any related parties or Affiliated Persons who will be contracted to provide goods or perform services for completion of an Eligible Project. For wholly owned subsidiaries of an Ultimate Recipient completing work on the Eligible Project, its Eligible Costs incurred and paid will be claimed by the Ultimate Recipient on their behalf and costs are to be treated as if the wholly owned subsidiary is the Ultimate Recipient.*

1. **Reporting Responsibility**

It is an Ultimate Recipient’s responsibility to provide financial records, costing methods, management estimates and legitimate business causes to support the claimed costs to the satisfaction of Lead Recipients and the Minister.

1. **Eligible Cost Activities**

For an Ultimate Recipient, Eligible Costs will generally include expenditures related to the following activities:

1. Industrial research, including activities related to the discovery of new knowledge that aim to support the development of new technology-driven products, processes or services at early-stage technology readiness levels; and
2. Large-scale technology demonstration, including the advancement and development of new technologies into product-specific applications at mid-to-late stage technology readiness levels.

Eligible Projects should cover a broad range of TRLs to support the development and growth of innovation ecosystems through activities from research to commercialization.

1. **Eligible Cost Categories**

In performing the Eligible Project, Eligible Cost categories may include the following:

1. **Direct Labour:** meaning the portion of gross wages or salaries incurred and paid by an Ultimate Recipient for eligible activities which can be specifically identified and measured as having been performed for the Eligible Project and which is so identified and measured consistently by an Ultimate Recipient’s cost accounting system. The cost accounting system should sufficiently prove the hours worked by employees are directly related to an Eligible Project.
2. **Subcontractors and Consultants:** meaning the costs of subcontracts or consultants incurred and paid for an Eligible Project, for work or services performed by an external third party, which can be specifically identified and measured as having been incurred and paid for the Eligible Project. An Ultimate Recipient can also be a Subcontractor in the same Network but not on the same Eligible Project.

The Indirect Cost (Overhead) rate calculation for an Ultimate Recipient does not apply to bona fide Subcontractors and Consultants.

*\* Option: In the case of an Ultimate Recipient with high Subcontractors and Consultants costs or low Direct Labour costs, Indirect Costs (Overhead) thresholds calculated to a maximum of five percent (5%) on eligible Subcontractors and Consultants costs, but no more than fifteen percent (15%) of total Eligible Supported Costs may apply. Such thresholds would be calculated for each Ultimate Recipient and each individual Eligible Project if more than one Eligible Project is selected for an Ultimate Recipient.*

1. **Direct Materials:** meaning the cost of materials which are incurred and paid and can be specifically identified and measured as having been processed, manufactured and used in the performance of an Eligible Project, which are measured consistently by an Ultimate Recipient’s cost accounting system.
   1. Materials purchased solely for the activities of an Eligible Project shall be at the net laid down cost to the Ultimate Recipient, net of any sale taxes and after any discounts offered by the suppliers.
   2. Materials issued from an Ultimate Recipient’s general stocks shall be measured in accordance with the material pricing method consistently used by the Ultimate Recipient.

Direct Materials include, but are not limited to, items such as circuit boards, cables and metals, essentially any raw material that is “used up” by completing an Eligible Project.

1. **Equipment:** meaning the capital cost of Equipment, which are incurred and paid and can be specifically identified as having been purchased for an Eligible Project and measured consistently by an Ultimate Recipient’s costing system. Significant Equipment required to complete an Eligible Project should be detailed in the Eligible Project’s Schedule A (Eligible Project Description). See below scenarios for clarification of costs related to equipment:
2. If an Ultimate Recipient has built the equipment themselves, the costs would be allocated to the appropriate cost categories (Direct Material, Direct Labour, etc.);
3. If an Ultimate Recipient has equipment built by a third party, the costs would be allocated to the Equipment category if readily identifiable, otherwise the equipment could be reported in Subcontractors & Consultants category; and
4. If an Ultimate Recipient outright purchases a piece of equipment, the costs would be allocated to the Equipment category.

Capital equipment acquired under an Eligible Project Agreement may be subject to the Minister’s approval for disposal in accordance with the Covenants Article in the Agreement.

Equipment costs include but are not limited to, the purchase of equipment necessary for an Eligible Project, costs to alter or modernize the equipment, costs to get the equipment into working order, and shipping costs.

1. **Land, Building and Building Improvement:** meaning the capital cost of land, buildings or building improvement that are incurred and paid, and are necessary to carry out an Eligible Project and have been approved by the Minister. Eligible building costs may include the acquisition costs, construction of new or the expansion of existing facilities, the development of testing facilities, investments in modern buildings, building and land leases (the incremental cost of leasing land during the Eligible Project period), and permanent building improvement. See below scenarios for clarification of costs related to buildings:
2. If an Ultimate Recipient has built the facility themselves, the costs would be allocated to the appropriate cost categories (Direct Material, Direct Labour, etc.);
3. If an Ultimate Recipient has a facility built by a third party, the costs would be allocated to the Subcontractors category; and
4. If an Ultimate Recipient outright purchases an already existing building, the costs would be allocated to the building category.
5. **Other Direct Costs:** meaning those eligible direct costs, not falling within the categories of direct cost mentioned above, but which are incurred and paid, and can be specifically identified and measured as having been incurred and paid by an Ultimate Recipient for the activities of an Eligible Project and which are so identified and measured consistently by the Ultimate Recipient’s costing system.
6. **Travel and Outreach Costs:** meaning those eligible direct costs incurred and paid by an Ultimate Recipient that are directly related to an Eligible Project. Travel expenses shall be appropriate, economical, reasonable and available to most of the employees of an Ultimate Recipient. Travel costs can be claimed, to the maximum allowance, as per the conditions in the national joint council directive or treasury board policies.

A copy of an Ultimate Recipient’s travel policy may be required for review by the SIF program during the claim process.

1. **Indirect Costs (Overhead)**

Indirect Costs (Overhead) are those costs which, though necessarily having been incurred and paid by an Ultimate Recipient for the conduct of its business in general, cannot be identified and measured as directly applicable to the carrying out of an Eligible Project.

Indirect Costs (Overhead) include, but are not limited to:

1. Indirect materials and supplies including but not limited to, supplies of low-value, high-usage and consumable items, such as paintbrushes and safety supplies, which meet the definition of Direct Material costs but for which it is commercially unreasonable, in the context of the activities of an Eligible Project, to account for their costs in the manner prescribed for Direct Costs (e.g., costs such as stationery, office supplies, postage and other necessary administration and management expenses, small tools, such as ladders, drills, paint sprayer, and general inventory build-up);
2. Indirect labour, management, and administrative support, including but not limited to the remuneration of executive and corporate officers, general office wages and salaries, clerical expenses, HR, Accounting/Finance staff, overtime premiums, bonuses, all types of benefits paid by employer, for example, CPP, EI, fringe benefits, medical benefits, dental benefits, pension benefits and other taxable benefits.

Administration costs spent on the following activities are considered indirect costs:

1. review and approval of documents,
2. oversight,
3. quality review,
4. strategic guidance,
5. participation in all-staff meetings,
6. professional development,
7. performance reviews and any costs associated with interactions with government including application,
8. claims,
9. amendment, and
10. audit and reporting communications.

Notwithstanding the above, Indirect Costs (Overhead) will not include those Direct Labour costs described in Section 5.Aabove (Direct Labour).

1. Indirect building costs including, but not limited to, snowplowing costs, public utilities expenses of a general nature including but not limited to, power, HVAC, lighting, and the operation and maintenance of general assets and facilities;
2. Expenses such as property taxes, rentals of equipment and building (not covered as part of direct costs) and depreciation costs;

1. Indirect equipment costs including, but not limited to, maintenance cost of assets, office equipment, office furniture, etc.; and
2. Other indirect costs including, but not limited to, daily commutes, unreasonable modes of transportation, general software and licenses, and travel insurance.

Indirect Costs (Overhead) thresholds of fifty-five percent (55%) on eligible Direct Labour but no more than fifteen percent (15%) of total Eligible Supported Costs will apply for each Ultimate Recipient (and for each individual Eligible Project if more than one Eligible Project is selected for an Ultimate Recipient).

*\* In the case of an Ultimate Recipient with high Subcontractors and Consultants costs or low Direct Labour costs: Indirect Costs (Overhead) thresholds calculated to a maximum of five percent (5%) on eligible Subcontractors and Consultants costs, but no more than fifteen percent (15%) of total Eligible Costs may apply. Such thresholds would be calculated for each Ultimate Recipient and each individual Eligible Project if more than one Eligible Project is selected for an Ultimate Recipient.*

1. **Ineligible Costs**

Ineligible Costs incurred and paid by an Ultimate Recipient are not eligible for SIF reimbursement, regardless of whether they are reasonably and properly incurred and paid in the carrying out of an Eligible Project.

Ineligible Costs includes:

(a) any form of interest paid or payable on invested capital, bonds, debentures, bank or other loans together with related bond discounts and finance charges; the interest portion of the lease cost that is attributable to cost of borrowing regardless of types of lease;

(b) legal, accounting and consulting fees in connection with financial reorganization (including the set-up of new not-for-profit organizations), security issues, capital stock issues, obtaining of licenses, establishment and management of agreements with Lead Recipients or other Ultimate Recipients and prosecution of claims against the Minister. Such legal costs associated with obtaining patents or other statutory protection for intellectual property may be considered eligible, but only if consistent with the Network’s Intellectual Property Strategy and the Intellectual Property terms of an Eligible Project Agreement, and approved in advance by Lead Recipients;

(c) losses on investments, bad debts and expenses for the collection charges;

(d) losses on other projects or contracts;

(e) federal and provincial income taxes, goods and services taxes, value added taxes, excess profit taxes or surtaxes and/or special expenses in connection with those taxes, except duty taxes paid for importing is Eligible Cost.

(f) provisions for contingencies;

(g) premiums for life insurance on the lives of officers and/or directors where proceeds accrue to the Ultimate Recipient;

(h) amortization of unrealized appreciation of assets;

(i) depreciation of assets paid for by the Minister;

(j) fines and penalties;

(k) expenses and depreciation of excess facilities;

(l) unreasonable compensation for officers and employees;

(m) product development or improvement expenses not associated with the work being performed under an Eligible Project;

(n) advertising, except reasonable advertising of an industrial or institutional character placed in trade, technical or professional journals for the dissemination of information for the industry or institution;

(o) entertainment expenses (including but not limited to, catering, alcohol, and non-travel expenses);

(p) donations;

(q) dues and other memberships other than regular trade and professional associations;

(r) extraordinary or abnormal fees for professional advice in regard to technical, administrative or accounting matters, unless approval from the Minister is obtained;

(s) selling and marketing expenses associated with any products or services or both being developed under the Agreement;

(t) in-kind costs; and

(u) recruiting fees, unless approval from the Minister is obtained.