

INOVAIT ULTIMATE RECIPIENT AGREEMENT ("Agreement")

Made as of November 21, 2022 ("Effective Date")

AMONG:

SUNNYBROOK RESEARCH INSTITUTE
2075 Bayview Avenue
Toronto, Ontario, Canada
M4N 3M5
("Sunnybrook or Project Participant")

AND:

CONAVI MEDICAL INC.
293 Lesmill Road
Toronto, Ontario, Canada
M3B 2V1
("Project Lead")

AND:

DR. BRIAN COURTNEY
Sunnybrook Health Sciences Centre
2075 Bayview Ave, Room A2-53
Toronto, Ontario, Canada
M4N 3M5
("SRI Principal Investigator")

Project Lead, Project Participant, and SRI Principal Investigator are collectively referred to as "Ultimate Recipient(s)".

Sunnybrook, the Ultimate Recipients, and SRI Principal Investigator are referred to individually as a "Party" and collectively as the "Parties".)

WHEREAS, Sunnybrook has received a contribution of up to forty-nine million (\$49,000,000 CAD) from the Strategic Innovation Fund ("SIF"), a program administered by Innovation, Science and Economic Development Canada, to establish and operate a pan-Canadian Network that will harness the strength and diversity in Image-Guided Therapy ("IGT") and Artificial Intelligence ("AI") across Canada to foster development of new knowledge or products through collaborative research;

AND WHEREAS as a condition of receiving the grant, Sunnybrook entered into a Contribution Agreement with the Minister of Industry ("Minister") dated August 26, 2020 as amended from time to time ("Contribution Agreement");

AND WHEREAS, Sunnybrook published a call for applications and conducted a competitive process to select projects to receive Funds and participate in the Network;

AND WHEREAS, the Ultimate Recipients' Project was selected to receive Funds;

AND WHEREAS Sunnybrook desires to disburse funds for the Project in accordance with the Contribution Agreement and have the Ultimate Recipients participate in the Network and the Ultimate Recipients desires to conduct the Project and participate in the Network;

AND WHEREAS the Ultimate Recipients have the necessary expertise and skill to perform part of the Project;

AND WHEREAS, pursuant to the Contribution Agreement, as a condition of receiving Funds, Sunnybrook and the Ultimate Recipients must enter into a written agreement containing specific terms and conditions as set out in the Contribution Agreement;

NOW THEREFORE, the Parties agree as follows:

1. **INTERPRETATION**

1.1. **Definitions.**

- a. **"Academic Affiliated Institution"** means any research institution wholly owned or controlled by a Canadian university or college, or any not-for-profit research institution that has a working business relationship with a Canadian university or college for the purpose of furthering education, research or training efforts.
- b. **"Academic Collaborator"** means Ultimate Recipients that are universities and colleges located in Canada which grant degrees or diplomas, and their Academic Affiliated Institution(s).
- c. **"Administration Fee"** means a fee of 5% of the Funds provided under this Agreement paid pursuant to section 4.5 to support the activities of the Network.
- d. **"Affiliated Person(s)"** means an affiliated person as defined in the *Income Tax Act*, as amended from time to time.
- e. **"Agreement"** means this INOVAIT Ultimate Recipient Agreement.
- f. **"Applicable Regulations"** means all federal, provincial, territorial, municipal and other applicable laws, regulations, regulatory requirements and authorisations, decisions and guidance of regulatory authorities, professional association codes or other requirements applicable in the context of this Agreement.
- g. **"Background Intellectual Property"** means Intellectual Property that is not Project Intellectual Property and that is required for the carrying out of the Project or the exploitation of the Project Intellectual Property as outlined under Schedule C.
- h. **"Change of Control"** means:
 - i. For a for-profit corporation:

- A. if a public corporation, 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;
 - B. if a private corporation, 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
 - C. if the corporation enters into a binding obligation to sell, sells or otherwise disposes of all or substantially all of its assets.
- ii. For a not-for-profit corporation:
- 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.
- i. **“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.
 - j. **“Completion Date”** has the meaning set out under Schedule A.
 - k. **“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. 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.
 - l. **“Contribution”** means the funding made available by the Minister to Sunnybrook in support of the Network Activities.
 - m. **“Control Period”** has the meaning set out in Section 3.2(a).
 - n. **“Dispose”** means, as regards to any Network Asset, the transferring 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.

- o. **“Eligible Supported Costs”** means those Eligible Costs that are supported by the Funds in respect of the Project and in accordance with Schedule F – *Project Cost Principles*.
- p. **“Funds”** means the funding, in Canadian dollars, provided by Sunnybrook to each Ultimate Recipient under this Agreement.
- q. **“Government Fiscal Year”** means the period from April 1 of one year to March 31 of the following year.
- r. **“Her Majesty”** means Her Majesty the Queen in Right of Canada.
- s. **“Holdback Amount”** shall have the meaning set out in Section 4.7.
- t. **“Holdback Notice”** shall have the meaning set out in Section 4.7.
- u. **“Holdback Period”** shall mean one hundred and eighty (180) days from the issuance of the Holdback Period Notice.
- v. **“Holdback Period Notice”** shall have the meaning set out in Section 4.7.
- w. **“Industry Collaborator”** means Ultimate Recipients that are corporations, including not-for-profit organizations, incorporated in Canada or any province or territory of Canada that are not Academic Collaborators.
- x. **“Intellectual Property”** means all inventions, whether or not patented or patentable, all technical information, whether or not constituting trade secrets, and all copyrightable works, industrial designs, integrated circuit topographies, and distinguishing marks or guises, whether or not registered or registrable.
- y. **“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.
- z. **“Midterm Review”** shall have the meaning set out in Section 4.4(c).
- aa. **“Network”** means the pan-Canadian network known as “INOVAIT” created and operated using the funding provided by the Minister pursuant to the Contribution Agreement.

- bb. **“Network Activities”** means the activities undertaken in Canada (except as otherwise permitted) in support of the Network objectives and includes the Project.
 - cc. **“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.
 - dd. **“Network Policies”** means the policies developed to govern the activities and conduct of members of the Network from time to time.
 - ee. **“Progress Report”** has the meaning set out in Schedule E – *Reporting Requirements*.
 - ff. **“Project”** means “AI Solutions for Minimally Invasive Imaging Systems” as described in the Project Schedule A – *Project Description*.
 - gg. **“Project Event(s) of Default”** has the meaning set out in Section 9.2.
 - hh. **“Project Intellectual Property”** means all Intellectual Property conceived, produced, developed or reduced to practice in carrying out the Project by the Project Lead and/or any Affiliated Person(s) of the Project Lead or any of their employees, agents, contractors or assigns.
 - ii. **“Project Intellectual Property Rights”** means the Intellectual Property Rights in the Project Intellectual Property.
 - jj. **“Project Schedule”** means the document attached and incorporated to this Agreement as Schedule A – *Project Description*.
 - kk. **“Resulting Product(s)”** means all products, services or processes produced using the Project(s) Intellectual Property or that incorporate any of the Project(s) Intellectual Property.
 - ll. **“Technology Readiness Level”** or **“TRL”** means technology readiness according to the Technology Readiness Level scale described in Schedule G – *Technology Readiness Levels*.
 - mm. **“Term”** has the meaning set out in Section 9.1.
- 1.2. The following Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

Schedule A – *Project Description*

Schedule B – *Midterm Review(s)*

Schedule C – *Background Intellectual Property*

Schedule D – *Exclusive Right, License or Transfer of Intellectual Property Process*

Schedule E – *Reporting Requirements*

Schedule F – *Project Cost Principles*

Schedule G – *Technology Readiness Levels*

- 1.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2. **Project**

- 2.1. **Sunnybrook's Obligations.** The Ultimate Recipients each acknowledges and agrees that Sunnybrook's obligations under this Agreement are limited to disbursing Funds as provided by Her Majesty for Project Eligible Supported Costs.

- 2.2. **Project Lead's Obligations.** In respect of the Project, in addition to any other obligations set out in this Agreement, the Project Lead shall:

- a. perform the Project in a diligent, skilled and professional manner using qualified personnel and in accordance with all Applicable Regulations and complete the Project by such dates as set out in the Project Schedule A – *Project Description*;
- b. at its own cost, including all cost overruns, (except where expressly provided otherwise in this Agreement), apply such time, attention, resources, trained personnel and skill as may be reasonably necessary for the due and proper performance of the Project; and
- c. hold and maintain all necessary licences, permits, approvals and/or consents necessary for it to perform the Project.

- 2.3 **Project Participants' Obligations.** In respect of the Project, in addition to any other obligations set out in this Agreement, the Project Participant and SRI Principal Investigator shall:

- a. perform the work set in a diligent, skilled, and professional manner using qualified personnel and in accordance with all Applicable Regulations, and complete the work by such dates as set out in the Project Schedule A;
- b. at its own cost, including all cost overruns (except where expressly provided otherwise in this Agreement), apply such time, attention, resources, trained personnel and skill as may be reasonably necessary for the due and proper performance of Project;
- c. hold and maintain all necessary licences, permits, approvals and/or consents necessary for it to perform the Project;

- d. notify the Project Lead if any Industry Collaborator contributing to the Project undergoes a Change of Control during the Term of this Agreement; and
- e. provide the Project Lead with a Progress Report within the timeframe provided by the Project Lead in accordance with the minimum reporting requirements set out in this Agreement.

3. **Audit, Evaluation, Monitoring & Reporting.**

3.1. **Reports.** The Project Lead shall provide Sunnybrook and the Minister, as applicable, with the reports as described in Schedule E – *Reporting Requirements*. Upon request of Sunnybrook and at no cost to Sunnybrook, the Project Lead shall promptly elaborate upon any report submitted or provide such additional information as may be reasonably requested.

3.2. **Minister's Right to Audit Accounts and Records.**

- a. The Ultimate Recipients shall each, at their own expense, maintain and preserve in Canada all books, accounts, invoices, receipts and records and all other documentation directly related to this Agreement and the Project until the end of the applicable Ultimate Recipient's Fiscal Year, as applicable, that ends seven (7) years after the Ultimate Recipient has completed the obligations under section 4.4(e) ("Control Period").
- b. The Ultimate Recipients shall each make available for audit and examination by Sunnybrook and the Minister or the Minister's representatives all books, accounts, records and other information directly relating to this Agreement or the Project held by applicable Ultimate Recipient and their Affiliated Person(s), agents and contractors.
- c. The Ultimate Recipients shall each grant Sunnybrook and the Minister the right to conduct such audits at Sunnybrook's or the Minister's expense, and on reasonable notice, as may be considered necessary.

3.3. **Auditor General Rights.** The Ultimate Recipients each acknowledge and agree that the Auditor General of Canada may, at the Auditor General's cost, conduct an inquiry with respect to the use of the Funds received by the Ultimate Recipients. Upon request by Sunnybrook, the Ultimate Recipients provide in a timely manner to Sunnybrook, for the purposes of releasing to the Auditor General:

- a. all records held by it, its Affiliated Person(s), and agents relating to this Agreement and the use of the Funds; and
- b. such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request.

3.4. **Access to Premises.** During the Term of this Agreement, the Ultimate Recipients and their respective Affiliated Person(s), shall provide the representatives of the Minister, upon reasonable notice by the Minister, reasonable access to its premises to inspect and assess the progress of the Network Activities or the Project and promptly supply

such data as the Minister may reasonably require for statistical or evaluation purposes.

4. FINANCIAL CONTRIBUTIONS

- 4.1. **Purpose of the Funding.** The Ultimate Recipients shall each use the Funds solely for the purpose of the Project. The Ultimate Recipients shall each not use any Funds for activities conducted outside of Canada without the prior written consent of the Minister. If the Minister provides such consent, the Ultimate Recipients shall, collectively, not incur more than ten (10%) percent of Eligible Supported Costs outside of Canada.
- 4.2. **Source of Funding.** The Ultimate Recipients each acknowledge and agree that Her Majesty is the source of the Contribution and the Funds. The Ultimate Recipients each further acknowledge and agree that Sunnybrook is not acting as an agent of Her Majesty in providing Funds. The Ultimate Recipients each further acknowledge and agree that Funds provided to the Ultimate Recipients, are contingent upon the availability of the Contribution and approval of from the Minister and the continued compliance by the Ultimate Recipients with the terms of this Agreement. For clarity, if for any reason the Minister is prevented from, no longer obligated to or for any reason fails to, disburse any of the Contribution to Sunnybrook, the Ultimate Recipients each agrees that Sunnybrook is not obligated to pay Funds to the applicable Ultimate Recipient.
- 4.3. **Funding Amounts**
- a. **Sunnybrook's Financial Commitment.** Sunnybrook shall not pay more than one-third (1/3) of the Eligible Supported Costs incurred within the Project. The Ultimate Recipients each acknowledge and agree that only those incurred Eligible Supported Costs that the applicable Ultimate Recipient can justify via receipt or other appropriate documentation and which meet the conditions set out in Section 4.3, shall be eligible for reimbursement. The Ultimate Recipients each acknowledge and agree that whether a submitted Eligible Supported Cost is reimbursed is at the sole discretion of Her Majesty.
- b. **Funding Limitations.** Subject to the limitations in 4.3(a) above:
- i. Sunnybrook shall not pay more than fifty percent (50%) of the Eligible Supported Costs incurred by an Industry Collaborator as part of a Project.
 - ii. Sunnybrook shall not pay more than one hundred percent (100%) of the Eligible Supported Costs incurred by an Academic Collaborator as part of a Project.
 - iii. The Ultimate Recipients each represent and warrant that that as a condition to be eligible to receive Funds for their Project, the total contributions from government sources (inclusive of the Funds and any other federal, provincial, territorial and municipal sources) must not exceed seventy-five percent (75%) of Eligible Supported Costs for any

Industry Collaborator and 100% of Eligible Supported Costs for any Academic Collaborator.

4.4. Financial Claims and Payment.

- a. **Separate Records.** The Ultimate Recipients each shall maintain accounting records that account for the Funds paid to the applicable Ultimate Recipient for Eligible Supported Costs, separate and distinct from any other sources of funding.
- b. **Project Cost Principles.** The Ultimate Recipients shall only submit claims for reimbursement that are consistent with the costing principles set out in Schedule F – *Project Cost Principles*.
- c. **Midterm Review(s).** The Project Lead shall meet with Sunnybrook on the scheduled date(s) under Schedule B to review the progress towards meeting the milestones (“Midterm Review(s)”). Within five (5) days of each Midterm Review, Sunnybrook shall provide the Project Lead with written confirmation that the Project may continue. Should, upon completion of a Midterm Review, Sunnybrook determines the Project has not made sufficient progress towards the milestones outlined in Schedule A, the Project Lead will have sixty (60) days to rectify the situation (“Midterm Rectification Period”). If upon completion of the Midterm Rectification Period, Sunnybrook determines the Project shall not complete on schedule, Sunnybrook may terminate the Agreement.
- d. **Claims Procedures.** Sunnybrook shall reimburse the Project Lead and Project Participant, as applicable, directly for claims for Eligible Supported Costs provided that the Funds are approved and released by Her Majesty, there is no Project Event of Default or Contribution Agreement Event of Default, and the claims are:
 - i. 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 Project Start Date outlined in Schedule A – *Project Description*;
 - ii. accompanied with details of all direct costs being claimed according to Schedule F – *Project Cost Principles*, which have been incurred by the Ultimate Recipient and which will be substantiated by such documents as may be required by Sunnybrook;
 - iii. 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 the Project Lead or Project Participant;
 - iv. accompanied by a report containing:
 - A. an identification of any planned or completed transfer to commercial production, transfer outside of Canada, sale, lease or other disposal of a Network Asset;

- B. an itemized list of foreign costs, if any;
 - C. the foreign exchange rates used in the claim accompanied with the source of the foreign exchange rates which was used as the basis to calculate any currency exchange;
 - D. Progress Report as specified in Schedule E – *Reporting Requirements*; and
 - E. such other information as Sunnybrook may request from time to time.
- v. accompanied by a statement from the Ultimate Recipients repeating and confirming the representations and warranties set out in Section 5.1 of this Agreement and a certification that there are no Project Events of Default (and no state of facts exist which, with the giving of notice or the passing of time, or both, would constitute a Project Event of Default); and
 - vi. substantially ($\pm$ ten percent (10%)) consistent with the cost estimates of the Project Schedule A for the previously estimated Eligible Supported Costs, in the estimated cost breakdown by Government Fiscal Year.
- e. **Final Claim Procedures.** The Project Lead shall collect and collate the final claim from the Ultimate Recipients to provide to Sunnybrook. The Project Lead shall submit, within thirty (30) days after the end of the Completion Date, the final claim along with:
 - i. a statement of the total Funds received under this Agreement; and
 - ii. a final Progress Report as specified in Schedule E – *Reporting Requirements*.

The Ultimate Recipients each acknowledge that late submission of any financial claims and Progress Reports shall delay the disbursement of Funds.

4.5. **Administration Fee Procedures.**

- a. The Ultimate Recipients hereby agree to pay to Sunnybrook the Administration Fee as follows:
 - i. Sunnybrook shall invoice the applicable Ultimate Recipient for the Administration Fee set out in Schedule A every Claim Period; and
 - ii. The applicable Ultimate Recipients shall pay Sunnybrook the Administration Fee within thirty (30) days of its receipt of the invoice.
- b. The Ultimate Recipients each hereby agree that the Administration Fee is non-refundable.

4.6. **Overpayment.** Where Sunnybrook determines that the amount of the Funds disbursed exceeds the amount to which the Ultimate Recipients are entitled, the Ultimate Recipients shall promptly, but no later than thirty (30) days from receipt of

notice from Sunnybrook, repay the amount of the overpayment together with interest from the date of the notice to the day of payment to Sunnybrook in full.

4.7. Holdback.

- a. Sunnybrook shall issue a written notice (“Holdback Notice”) to the Ultimate Recipients informing them that Sunnybrook shall withhold up to ten percent (10%) of the Funds (“Holdback Amount”) to secure the Ultimate Recipient’s obligations described in this Agreement.
- b. Sunnybrook shall issue a written notice to the Ultimate Recipients (“Holdback Period Notice”) that they must meet the following conditions:
 - i. the Project is completed to the satisfaction of Sunnybrook;
 - ii. The Ultimate Recipients have paid the Administration Fee in full; and
 - iii. the final Progress Report has been submitted to the satisfaction of Sunnybrook.

The Parties agree that Sunnybrook shall only release the Holdback Amount upon the expiration of the Holdback Period where the above conditions under this Section 4.7 have been met.

- 4.8. Aboriginal Consultation.** The Ultimate Recipients each acknowledge that the Minister’s obligation to pay Sunnybrook is conditional upon Her Majesty satisfying any obligation that Her Majesty may have to consult with or to accommodate any Aboriginal groups.

5. ULTIMATE RECIPIENTS REPRESENTATIONS, WARRANTIES AND COVENANT

- 5.1. Representations and Warranties.** The Project Lead, Project Participant, and where applicable the SRI Principal Investigator, each represent and warrant to Sunnybrook as follows:

- a. it has the financial capacity to conduct the Project
- b. it is duly incorporated under the laws of Canada or a Canadian province 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;
- 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 has obtained or will obtain all necessary licences, approvals and permits in relation to the Project, which satisfy the requirements of all regulating bodies of appropriate jurisdiction;

- e. it own(s) or hold(s) sufficient rights in any Background Intellectual Property required to carry out the Project as further outlined under section 6.1;
- f. shall conduct research and development activities at TRL levels 1–7 inclusive;
- g. shall integrate technologies developed at TRL levels 1–7 into products that are already at stage TRL 8 or 9;
- h. it is and shall at all times be in compliance with the Applicable Regulations, including the *Lobbying Act*;
- i. the Project is not a “designated project” or “project” as those terms are defined under the federal environmental and impact assessment legislation;
- j. 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;
- k. no person who is a member of the Senate will, directly or indirectly, be a party to or be concerned in this Agreement; and
- l. 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 Applicable Regulations;

5.2 Covenants. The Ultimate Recipients as applicable to each, covenant and agree that:

- a. they are solely responsible for providing or obtaining all funding, in addition to the Funds, required to carry out its activities and the fulfilment of its obligations under this Agreement;
- b. if any Industry Collaborator contributing to the Project undergoes a Change of Control during the Term of this Agreement the Project Lead shall promptly notify Sunnybrook but in no case later than five (5) days after the Project Lead becomes aware of the Change of Control;
- c. it shall retain ownership, possession, and control of its Network Assets the cost of which has been contributed to by the Minister, within Canada, other than in the ordinary course of business where the aggregate book value of such Network Asset for each occurrence is no greater than one hundred thousand dollars (\$100,000), for a minimum of five (5) years following the expiration of the Term, unless otherwise approved in writing by the Minister as per Schedule D – *Exclusive Right, License or Transfer of Intellectual Property Process*;
 - i. In the event a Project Event of Default as a result of a breach of this Section 5.2(c) is declared, the Ultimate Recipient shall reimburse Sunnybrook one

hundred percent (100%) of the Funds paid towards the Network Asset up to the time of Disposal;

- d. it shall inform the Minister in writing prior to selling, assigning or disposing of any Network Assets within Canada;
- e. it shall ensure that relevant shareholders, directors, officers, employees, representatives, and contractors carry out their responsibilities under this Agreement free of fraud or other willful misconduct, and in accordance with the Network's Relationship Attestation and Disclosure Policy;
- f. it shall ensure relevant shareholders, directors, officers, employees, representatives, and contractors are aware of, agree to, and abide by the requirements of the Network; and
- g. it shall comply with all Applicable Regulations governing it and the Project, including as such relate to environmental protection and the successful implementation of and adherence to any mitigation measures, monitoring of follow-up program that may be prescribed by federal, provincial, territorial or municipal tribunals or bodies, and shall provide the Minister with reasonable access to the Project site for the purposes of ensuring that the terms and conditions of any environmental approval are met and that any mitigation, monitoring or follow-up measure required has been carried out.

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

6. INTELLECTUAL PROPERTY RIGHTS.

6.1 **Background Intellectual Property.** The Ultimate Recipients must own any Background Intellectual Property or hold sufficient Background Intellectual Property Rights to permit the Project to be carried out and the Project Intellectual Property to be exploited by the Ultimate Recipients, as well as to make, construct, use and sell the Resulting Products. For clarity, this Section 6.1 does not imply the transfer of any rights in the Background Intellectual Property between the Ultimate Recipients unless otherwise agreed upon.

6.2 **Ownership of Project Intellectual Property.** The Project Lead, Project Participant shall determine amongst themselves the way in which ownership of Project Intellectual Property in accordance with this Agreement, without limitation, Section 6.3 and Section 6.4 hereof, and the INOVAIT Intellectual Property Policy.

6.3 Project Intellectual Property Obligations.

With respect to any Project Intellectual Property owned by the Ultimate Recipients, the Ultimate Recipients each, as applicable with regards to their ownership, covenant and agree to:

- a. except as otherwise permitted herein, ensure ownership of Project Intellectual Property and ownership of Project Intellectual Property Rights shall not be sold, assigned or transferred outside of Canada or contrary to the terms of this Agreement, other than in the ordinary course of business where the aggregate book value of such Project Intellectual Property for each occurrence is no greater than one hundred thousand dollars (\$100,000), for a minimum of five (5) years following the expiration of the Term, unless otherwise approved in writing by the Minister as per Schedule D – *Exclusive Right, License or Transfer of Intellectual Property Process*;
 - i. In the event a Project Event of Default as a result of a breach of this Section 6.3(a) is declared, the applicable Ultimate Recipients shall reimburse Sunnybrook, one hundred percent (100%) of the Funds paid to the Ultimate Recipients up to the time of Disposal;
- b. inform the Minister in writing prior to selling, assigning or transferring any Project Intellectual Property within Canada;
- c. ensure that appropriate steps are taken to protect and enforce the Project Intellectual Property and provide information to Sunnybrook as to the steps taken on request;
- d. ensure ownership and exploitation of the Intellectual Property created by it as part of their participation in the Network accrues value to the Network, as defined under the Network's Intellectual Property Policy, regardless of mode or mechanism of commercialization;
- e. ensure its commercialization of Intellectual Property does not impede continued research by the Ultimate Recipients as part of the Network;
- f. ensure that it may license or grant the use of the Intellectual Property to an Affiliated Person(s) in the context of Intellectual Property commercialization;
- g. ensure that it has appropriate agreements with employees, associates, students or other partners to ensure they can fulfill their obligations regarding revenue sharing or royalty provisions as part of any potential commercialization; and
- h. comply at all times with the Network's Intellectual Property Policy.

6.4 License of Project Intellectual Property.

- a. **No Exclusive Licenses.** The Ultimate Recipients shall not grant any exclusive right or license to any Project Intellectual Property without the prior written consent of the Minister as per Schedule D – *Exclusive Right, License or Transfer of Intellectual Property Process*.
 - i. Notwithstanding anything to the contrary contained in this Agreement, the existence of an exclusive license agreement between the Project Lead,

Conavi Medical Inc., and East Ocean Medical (Hong Kong) Company Limited (“EOM”) for the commercialization of the Project Lead’s licensed products and their improvements solely within China, Hong Kong, Macau, and Taiwan (“the Territory”) and limited in the fields of use to intracoronary and peripheral vascular imaging (“Exclusive License Agreement”) has been disclosed by the Project Lead to the Minister. For clarity, the Exclusive License Agreement does not extend any transfer of ownership nor assignment rights between the Project Lead and EOM.

- ii. The Exclusive Licensing Agreement includes the license of future improvements and modifications of the Project Lead’s licensed products, which may include Project Intellectual Property.
 - iii. The Minister as per Schedule D – *Exclusive Right, License or Transfer of Intellectual Property Process* has provided written consent for the Project Lead to grant an exclusive license within the Territory to EOM for any Project Intellectual Property.
 - iv. For clarity, EOM is not an Ultimate Recipient and shall not receive any portion of either the Contribution or Funds.
- b. Notwithstanding the foregoing, exclusive licences of Project Intellectual Property may be granted, without the need for prior written consent of the Minister:
- i. to Academic Collaborators and Industry Collaborators that are members of the Network so long as they remain within the Network; and
 - ii. in respect of an end-user license in conjunction with the sale of Resulting Products.
- c. **No Implied Licenses.** Except as otherwise expressly provided in this Agreement, under no circumstances shall any Party, as a result of this Agreement, obtain any Intellectual Property Rights or ownership interest or other right, title, or interest in, to, or under any Intellectual Property Rights of the other Party, whether by implication, estoppel or otherwise, including any items controlled or developed by the other Party, or delivered by the other Party, at any time pursuant to this Agreement.

7. CONFIDENTIALITY

- 7.1 **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 **Exclusions.** Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records:
- a. 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 Confidential Information from the Disclosing Party;

- b. was or becomes generally known by the public other than by the Receiving Party's or any of its representatives' noncompliance with this Agreement;
- c. must reasonably be disclosed to regulatory authorities, or to any research ethics board of record;
- d. was or is received by the Receiving Party on a non-confidential basis from a third-party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or
- e. was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

7.3 Protection of Confidential Information. As a condition of being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for the Term of this Agreement and seven (7) years following expiration or earlier termination of this Agreement:

- a. not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- b. except as may be permitted by and subject to its compliance with Section 7.4, 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 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 7.3; and
 - iii. are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 7.3.
- c. 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; and
- d. ensure its representatives', medical and professional staff's and students' compliance with and be responsible and liable for any of its representatives' noncompliance with, the terms of this Section 7.3.

7.4 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 7.4. 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.

- 7.5 **Waiver of Confidentiality in an International Dispute.** Notwithstanding this Section 7, the Ultimate Recipients each hereby waive any confidentiality rights to the extent such rights would impede Her Majesty from fulfilling her notification obligations to a world trade panel for the purposes of the conduct of a dispute, in which Her Majesty is a party or a third party intervener. The Ultimate Recipients each agree that the Minister is authorized to disclose the contents of this Agreement and any documents pertaining to this Agreement, whether predating or subsequent to this Agreement, or of the transactions contemplated in this Agreement, where in the sole opinion of the Minister, such disclosure is necessary to the defence of Her 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. INDEMNIFICATION, INSURANCE AND LIMITATION OF LIABILITY

- 8.1 **Ultimate Recipients' Indemnification of Sunnybrook and the Minister.** Except for any Indemnification Claims arising from the gross negligence of, or willful misconduct by, either Sunnybrook or the Minister's employees, officers, agents or servants the Project Lead and Project Participant, shall each indemnify and save harmless, Sunnybrook 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:

- a. The Network Activities of which the Ultimate Recipient was involved, their operation, conduct, or any other aspect thereof;
- b. the performance or non-performance of the Project or this Agreement, or the breach or failure to comply with any term, condition, representation or warranty of this Agreement by the Ultimate Recipient, its Affiliated Person(s), its officers, employees and agents or a third party or their respective officers, employees, or agents;
- c. the design, construction, operation, maintenance and repair of any part of its obligations in the Network Activities; or,

- d. 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.

8.2 Limitation of Liability.

Notwithstanding anything to the contrary contained in this Agreement, neither Sunnybrook nor the Minister shall be liable for any direct, indirect, special or consequential damages of an Ultimate Recipients 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.

8.3 Insurance.

For the Term of this Agreement, and for five (5) years after expiration or earlier termination, the Ultimate Recipients shall each maintain, at its own expense, appropriate policies of general liability insurance against any and all foreseeable risks of loss arising out of the Agreement or the 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. The Ultimate Recipient shall provide evidence of such insurance to Sunnybrook upon written request, and will provide Sunnybrook thirty (30) days' prior written notice of cancellation or non-renewal of any policies. The SRI Principal Investigator shall maintain membership in the Canadian Medical Protective Association ("CMPA"). Upon request, the SRI Principal Investigator shall provide to the other Parties proof of CMPA membership.

9. TERM, EVENTS OF DEFAULT AND REMEDIES

- 9.1 Term.** This Agreement commences on the Effective Date and remains in force until one (1) year from the Completion Date of the Project under Schedule A ("Term").

- 9.2 Project Event of Default.** The following shall constitute specific events of default ("Project Events of Default") hereunder:

- a. an Ultimate Recipient has made a material misrepresentation hereunder;
- b. an Ultimate Recipient fails to comply with a material term or condition of this Agreement, including its representations, warranties and covenants and either the breach cannot be cured or, if the breach can be cured, it is not cured by the applicable Ultimate Recipient, within thirty (30) days after receipt of written notice of the material breach from Sunnybrook;
- c. an Ultimate Recipient (i) becomes insolvent; (ii) is generally unable to pay, or fails to pay, its debts as they become due; (iii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee or receiver for a substantial part of its property or business; or

- d. a Force Majeure event that lasts longer than one hundred eighty (180) days.

9.3 Exercise of Cure Rights. If any Project Event of Default is curable, it may be cured (and no Project Event of Default will be deemed to have occurred) if the Ultimate Recipient, after receiving written notice from Sunnybrook demanding cure of such default: (a) cures the default within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days, immediately initiates steps that Sunnybrook deems in Sunnybrook's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance under Section 9.4 as soon as reasonably practical. Sunnybrook at its sole discretion may elect to give the Ultimate Recipient additional cure opportunities.

9.4 Remedies for Project Event of Default. If Sunnybrook declares that a Project Event of Default has occurred, Sunnybrook may immediately exercise one or more of the following remedies, in addition to any remedy available at law:

- a. suspend or terminate any obligation of Sunnybrook to contribute or continue to contribute to the Eligible Supported Costs including any obligation to pay any amount owing prior to the date of such suspension or termination;
- b. in the event of a breach of Section 5.2(c), require Ultimate Recipients to reimburse Sunnybrook as outlined under Section 5.2(c)(i);
- c. in the event of a breach of Section 6.3(a), require Ultimate Recipient to reimburse Sunnybrook as outlined under Section 6.3(a)(i); and
- d. terminate this Agreement on written notice to the Ultimate Recipient.

9.5 Contribution Agreement Event of Default. Pursuant to the Contribution Agreement, the Minister may declare an event of default ("Contribution Agreement Event of Default") including if the Network Activities are not substantially completed to the Minister's satisfaction or the Network is abandoned in whole or in part. If the Minister declares a Contribution Agreement Event of Default, the Minister shall have the right to immediately exercise any one or more of the remedies described in the Contribution Agreement including:

- a. suspend or terminate any obligation by the Minister to contribute or continue to contribute to the Eligible Supported Costs including any obligation to pay any amount owing prior to the date of such suspension;
- b. require Sunnybrook to repay to the Minister all or part of the Contribution paid by the Minister, together with interest from the day of demand;
- c. require Sunnybrook to assign any agreement with an Ultimate Recipient to a third party designated by the Minister that is willing and able to accept the assignment; and
- d. terminate the Contribution Agreement.

- 9.6 Termination for Contribution Agreement Event of Default.** The Ultimate Recipients each agree that in the event that the Minister declares a Contribution Agreement Event of Default which has been contributed to, in whole or in part, by a Project Event of Default by an Ultimate Recipient, Sunnybrook shall be entitled to terminate this Agreement immediately (if not already terminated) and Sunnybrook shall have no liability or further obligation to the Ultimate Recipients with respect to the Project. The Ultimate Recipients each further agree that in the event that the Minister requires the repayment of any or all of the Funds allocated to the Project as a remedy for a Contribution Agreement Event of Default which is the result of a Project Event of Default by the Project Lead, Sunnybrook shall be entitled to receive from the Ultimate Recipients (as applicable) that portion of the Contribution that was allocated to the Project and that must be repaid by Sunnybrook to the Minister.
- 9.7 Termination for Change of Control.** If an Industry Collaborator participating in the Project undergoes a Change in Control during the Term of this Agreement, Sunnybrook may terminate this Agreement immediately.
- 9.8 Termination by Ultimate Recipients.** The Ultimate Recipients agrees that in the event that an Ultimate Recipient wishes to terminate this Agreement, they shall:
- a. promptly provide written notice to Sunnybrook and the other Ultimate Recipient;
 - b. upon request by Sunnybrook, repay to Sunnybrook an amount, as determined solely by Sunnybrook, up to one hundred percent (100%) of the Funds paid to the Ultimate Recipients towards the Project up until the time of termination;
 - c. ensure they will continue to meet the requirements under Article 3 (Audit, Evaluation, Monitoring & Reporting) of this Agreement.

Should the Ultimate Recipient have provided the notice in 9.8(a) up to and including the 46th day of a Claim Period, then under this section 9.8, the termination of this Agreement shall be effective on the final day of that Claim Period.

Should the Ultimate Recipient have provided the notice in 9.8(a) between 47th day of a Claim Period and the final day of that Claim Period, then under this section, the termination of this Agreement shall be effective on the final day of the subsequent Claim Period.

9.9 Effect of Termination or Expiry.

- a. **No Release.** The expiration or termination of this Agreement, for any reason, shall not release any Party from any obligation or liability to the other Parties that:
 - i. accrued prior to termination or expiry;
 - ii. comes into effect due to the expiration or termination of the Agreement;or

iii. otherwise survives the expiration or termination of this Agreement.

- b. **No Damages.** Subject to Section 9.4, Sunnybrook shall not be liable to the Ultimate Recipients for any damage of any kind (whether direct or indirect) incurred by the Ultimate Recipients by reason of the expiration or termination of this Agreement.
- c. **Ultimate Recipient Claims.** Except for termination by Sunnybrook under Section 9.7 following the termination of this Agreement the Ultimate Recipients each shall promptly submit claims to Sunnybrook for any outstanding amounts and expenses due and owing under this Agreement, and Sunnybrook shall pay all such undisputed amounts to the Ultimate Recipients in accordance with Section 4.

9.10 Survival. Termination or expiry of this Agreement shall not affect the survival and continuing validity of Sections 4.5 (Overpayment), 5.1(e)s, 11.3 (Governing Law & Jurisdiction) and Articles 3 (Audit, Evaluation, Monitoring & Reporting), 8 (Indemnification, Insurance & Limitation of Liability) and Section 9.7 of this Agreement survive until three years from the termination or expiration of this Agreement, and Sections 6.1(b), 9.5 and Articles 7 (Confidentiality), 10 (Publication & Publicity) for the periods of time set out in those sections, nor of any other provision which is expressly or by implication intended to continue in force after such termination or expiration.

10. PUBLICATION & PUBLICITY.

10.1 Publication & Presentations. The Ultimate Recipients shall use reasonable efforts to publish in reputable scientific journals or present at conferences the results of the Project. In any publication or presentation the Ultimate Recipients shall acknowledge the Minister's support in both English and French.

10.2 Publicity. The Ultimate Recipients each agree that Sunnybrook or the Minister may contact the Ultimate Recipients in relation to success stories, announcements, ceremonies and other communications activities. The Project hereby consents to:

- a. acknowledge the Minister's role in the funding provided under this Agreement;
- b. a public announcement of the federal contribution for the Project by the Minister, on behalf of the Minister, or by Sunnybrook in the form of a news release or event; and
- c. agrees to display promotional material and/or signage provided by the Minister at the event.

10.3 Use of Names. No Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use another 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. Notwithstanding the foregoing, the Ultimate Recipients each hereby consent to Sunnybrook's use of its own name, trademarks, and copyrights for the

purpose of identifying Ultimate Recipients as a members of the Network, and Network promotional materials.

- 10.4 Disclosure 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, including but not limited to acknowledgement in a Party's customary internal publications and annual report and its reports to its funding bodies including without limitation the applicable Party's Academic Affiliated Institutions or in any publication or presentation relating to the results of the Project.

11 GENERAL PROVISIONS.

- 11.1 Relationship of the Parties.** The relationship of the Parties is that of independent contractors. 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 any other Party or to bind another Party in any manner under this Agreement.
- 11.2 Amendment and Waiver.** This Agreement may be amended only by the further written agreement among authorized representatives of the Parties. 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.
- 11.3 Governing Law & Jurisdiction.** This Agreement, including all the exhibits attached to this document, and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the law 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.
- 11.4 Assignment & Delegation.** No Party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without the other Parties' prior written consents, which consents shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Ultimate Recipients agrees that the Minister, in its sole discretion, may require that Sunnybrook assign this Agreement to a third-party approved by the Minister. Any purported assignment, delegation, or transfer in violation of this Section 11.4 is null and void. This Agreement is binding upon and enures to the benefit of the Parties and their respective permitted successors and assigns.
- 11.5 Notices.** Any notice or communication required or permitted to be given by a Party hereunder shall be in writing and shall be delivered to the addressee only by personal delivery or by a nationally recognized overnight courier service or by registered or certified mail, all postage and other charges prepaid, electronic mail or by facsimile transmission at the following addresses or at such other address as may be indicated by each Party to the others by notice as aforesaid:

If to Sunnybrook or Project Participant:

Sunnybrook Research Institute
2075 Bayview Avenue
Toronto, Ontario, Canada
M4N 3M5
Attention: Office of the President & CEO, Room C1-04
Fax: 416-480-6033
Email: PresidentCEO@sunnybrook.ca

With a copy to: inovait@sunnybrook.ca

If to Project Lead:

Conavi Medical Inc.
293 Lesmill Road
Toronto, Ontario, Canada
M3B 2V1
Attention: Amandeep Thind
Email: aman@conavi.com

If to SRI Principal Investigator

Dr. Brian Courtney
Sunnybrook Research Institute
2075 Bayview Avenue Room A2-53
Toronto, Ontario, Canada
M4N 3M5
Fax: 416-480-5558
Email: brian.courtney@sunnybrook.ca

Any notice personally delivered or delivered by courier or sent by facsimile transmission or electronic mail shall be deemed to have been given or received at the time of delivery or faxing. Any notice mailed as aforesaid shall be deemed to have been received on the expiration of five (5) business days after it is posted, provided that if there shall be at the time of mailing or between the time of mailing and the actual receipt of the notice a mail strike, slow down or labour dispute which might affect the delivery of the notice by the mail, then the notice shall only be effective if actually received.

- 11.6 Entire Agreement.** This Agreement including the exhibits attached to this document represents the entire understanding among the Parties with respect to the subject matter of this Agreement. This Agreement shall supersede all previously or contemporaneously executed documents or agreements, whether written or verbal, in respect of the subject matter of this Agreement.
- 11.7 Force Majeure.** The Parties agree that no Party is responsible to another for any delay in the performance of, or failure to perform, this Agreement where such delay or failure is caused by circumstances beyond the reasonable control of the affected Party including, without limitation, causes including war, riot, insurrection, strikes,

epidemic, pandemic, or any act of God or other similar circumstance and which could not have been reasonably circumvented by a Party without incurring unreasonable costs. In the event of any such delay or failure in performance, the affected Party shall be granted an extension of time for performance that is equitable in light of the cause of the delay.

- 11.8 Prevailing Language.** The English language version of this Agreement shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.
- 11.9 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.
- 11.10 Independent Legal Advice.** Each Party acknowledges that it has had the opportunity to seek independent legal advice with respect to this Agreement and that it has not relied upon the other Parties for any advice, whether legal or otherwise, with respect to this Agreement.
- 11.11 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.
- 11.12 Consent of the Minister.** Whenever this Agreement provides for the Minister to render a decision or for the Ultimate Recipients 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.
- 11.13 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall together be deemed to constitute one and the same agreement. The Parties agree that execution of this Agreement by industry standard electronic signature software or by exchanging PDF signatures shall have the same legal force and effect as the exchange of manual signatures, and that in any proceeding arising under or relating to this Agreement, each Party waives any right to raise any defence or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed Agreement electronically.

[Signature page follows]

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the Effective Date.

SUNNYBROOK RESEARCH INSTITUTE

Kullervo Hynynen

Kullervo Hynynen (May 31, 2023 15:47 EDT)

(Signature)

Name: Dr. Kullervo Hynynen

Title: Vice President, Research & Innovation

Date: May 31, 2023

Rod Engeland

Rod Engeland (May 31, 2023 13:25 EDT)

(Signature)

Name: Rod Engeland

Title: Executive Director,
Research Operations & Finance

Date: May 31, 2023

CONAVI MEDICAL INC.

Thomas L Looby

Thomas L Looby (May 25, 2023 15:18 EDT)

(Signature)

Name: Thomas Looby

Title: Chief Executive Officer

Date: May 25, 2023

SRI PRINCIPAL INVESTIGATOR

Brian Courtney

Brian Courtney (May 31, 2023 13:12 EDT)

(Signature)

Name: Brian Courtney

Date: May 31, 2023

SCHEDULE A – PROJECT DESCRIPTION

[redacted - competitively sensitive information
concerning project plan and budget]

SCHEDULE B – MIDTERM REVIEW(S)

[redacted - sensitive confidential information regarding
review and funding timelines]

SCHEDULE C – BACKGROUND INTELLECTUAL PROPERTY

[redacted - competitively sensitive information concerning
intellectual property rights]

*SCHEDULE D – EXCLUSIVE RIGHT, LICENSE OR TRANSFER OF INTELLECTUAL
PROPERTY PROCESS*

[redacted - competitively sensitive information concerning
intellectual property rights]

SCHEDULE E – REPORTING REQUIREMENTS

Within thirty (30) days of the end of each Claim Period, the Project Lead shall provide a report on the progress of the Project (a “Progress Report”), as part of the report required by Section 3.1 of this Agreement. The Progress Report will include information in support of the Ultimate Recipient’s claim submission.

The Progress Report will include at a minimum:

- (a) A discussion of any significant variations ($\pm$ ten percent (10%)) for the previously estimated Recipient Eligible Costs, in the estimated cost breakdown by Government Fiscal Year (Form C2);
- (b) An update on the major risks, issues and mitigation measures on the Project(s); and
- (c) Any other information that the Project Lead or Sunnybrook (as applicable) reasonably requests.

No claim request will be processed unless and until such Progress Report is provided to Sunnybrook, and to Sunnybrook’s satisfaction. Sunnybrook may request periodic updates and status reports relating to any aspect of the Project Schedule and the Project Lead shall provide such a report within fifteen (15) days from the date of the request.

The Project Lead shall submit to Sunnybrook on or before February 15 of each calendar year, a forecast on the expenditures that will be claimed in the report for the quarter ending March 31 of the same calendar year.

On an annual basis until 2037, with the schedule to be determined by the Minister, the Project Lead shall provide information to the Minister identifying their achievement relative to the planned outcomes and benefits of the SIF program. Forms for collecting this information will be provided by Sunnybrook via the Minister.

SCHEDULE F – PROJECT COST PRINCIPLES

1. Eligible Costs

Eligible Costs incurred and paid by an Ultimate Recipient are those, which are necessary to carry out the 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 Project included in the Project Schedule. These costs must be determined in accordance with the Ultimate Recipient's cost accounting practices as accepted by the Minister and applied consistently over time. The cost accounting system should clearly establish an audit trail that supports all costs claimed.

2. Affiliated Person(s) Clause

Affiliated Person(s) 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(s), the amount of the costs incurred and paid must:

- a. not exceed their Fair Market Value;
- b. 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
- c. 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 5% profit.

**Note: It is important for Ultimate Recipient's, from the outset, to self-identify any related parties or Affiliated Person(s) who will be contracted to provide goods or perform services for completion of the Project. For wholly owned subsidiaries of an Ultimate Recipient completing conducting work on the 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.*

3. Reporting Responsibility

It is the SRI Principal Investigator's responsibility to provide financial records, costing methods, management estimates and legitimate business cases to support the claimed costs to the satisfaction of the Project Lead. It is the Project Lead's responsibility to provide financial records, costing methods, management estimates and legitimate business cases to support the claimed costs to the satisfaction of Sunnybrook.

4. Eligible Cost Activities

Eligible Costs will generally include expenditures related to the following activities:

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 TRLs; and

Large-scale technology demonstration, including the advancement and development of new technologies into product-specific applications at mid-to-late stage TRLs.

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

5. **Eligible Cost Categories**

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

5.1. **Direct Labour**

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 Project and which is so identified and measured consistently by the Ultimate Recipient's cost accounting system. The cost accounting system should clearly indicate the allocation of an employee's hours worked on the Project.

5.2. **Subcontractors and Consultants**

The costs of subcontracts or consultants incurred and paid for the Project are the costs for work or services performed by an external third party or affiliate (except a wholly-owned subsidiary), which can be specifically identified and measured as having been incurred and paid to conduct the Project. The Project Lead cannot be an Ultimate Recipient and a Subcontractor on the same Project.

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

In the case of Ultimate Recipient(s) with high Subcontractors and Consultants costs or low Direct Labour costs: Indirect Costs (Overhead) thresholds calculated to a maximum of 5% on eligible Subcontractors and Consultants costs, but no more than 15% of total Eligible Costs may apply. Such thresholds would be calculated for each Ultimate Recipient(s) and each individual project if the Ultimate Recipient(s) are selected to participate in more than one project as part of the Network.

5.3. **Direct Materials**

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 the Network Activities, which are measured consistently by the Ultimate Recipient's cost accounting system.

- a. Materials purchased solely for Project activities 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.
- b. 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.
- c. 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 Project activities.

5.4. Equipment

The capital cost of Equipment, which are incurred and paid and can be specifically identified as having been purchased for the Project and measured consistently by the Ultimate Recipient's costing system. Significant Equipment required to complete the Project should be detailed in the Project Schedule. See below scenarios for clarification of costs related to equipment:

- a. If an Ultimate Recipient has built the equipment themselves, the costs would be allocated to the appropriate cost categories (Direct Material, Direct Labour, etc.);
- b. 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 category; and
- c. If an Ultimate Recipient outright purchases a piece of equipment, the costs would be allocated to the Equipment category.

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

5.5. Land, Building and Building Improvement

The capital cost of land, buildings or building improvement that are incurred and paid, and are necessary to carry out the 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 Term of this Agreement), and permanent building improvement. See below scenarios for clarification of costs related to buildings:

- a. If an Ultimate Recipient has built the facility themselves, the costs would be allocated to the appropriate cost categories (Direct Material, Direct Labour, etc.);

- b. If an Ultimate Recipient has a facility built by a third party, the costs would be allocated to the Subcontractors category; and
- c. If an Ultimate Recipient outright purchases an already existing building, the costs would be allocated to the building category

5.6. Other Direct Costs

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 the Ultimate Recipient for the Project and which are so identified and measured consistently by the Ultimate Recipient's costing system.

5.7. Indirect Costs (Overhead)

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

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

- a. 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 the Network, to account for their costs in the manner prescribed for Direct Costs. 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;
- b. Indirect labour, Network 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 is considered an indirect cost:

- i. review and approval of documents,
- ii. oversight,
- iii. quality review,
- iv. strategic guidance,

- v. participation in all-staff meetings,
- vi. professional development,
- vii. performance reviews and any costs associated with interactions with government including application,
- viii. claims,
- ix. amendment, and
- x. audit and reporting communications.

Notwithstanding the above, Indirect Costs (Overhead) will not include those Direct Labour costs described in Paragraph 5.1 of this Schedule F –*Project Cost Principles*;

- c. 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;
- d. Expenses such as property taxes, rentals of equipment and building (not covered as part of direct costs) and depreciation costs;
- e. Indirect equipment costs including, but not limited to, maintenance cost of assets, office equipment, office furniture, etc.; and
- f. 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 55% on eligible direct labour but no more than 15% of total Eligible Costs will apply for each Ultimate Recipient (and for each individual project) an Ultimate Recipient is selected to participate in more than one project as part of the Network.

**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 5% on eligible Subcontractors and Consultants costs, but no more than 15% of total Eligible Costs may apply. Such thresholds would be calculated for each Recipient and each individual project if the Ultimate Recipient are selected to participate in more than one project as part of the Network.*

6. **Ineligible Costs.**

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

Ineligible Costs include:

- 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 Sunnybrook or any other Ultimate Recipient and prosecution of claims against the Minister. Such legal costs associated with developing the agreement template and in connection with obtaining patents or other statutory protection for Network intellectual property are considered eligible;
- 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 an 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 the Network;
- 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, non-travel expenses);
- p. donations;
- q. dues and other memberships, including Network membership fees, 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 the products or services or both being developed under the Agreement;

- t. in-kind costs; and
- u. recruiting fees.

SCHEDULE G – TECHNOLOGY READINESS LEVELS

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.