

**FUNDING AGREEMENT
(BILATERAL)**

This Agreement is made between _____ ("Host Organization") and Baycrest Centre for Geriatric Care, operating as the Canadian Centre for Aging and Brain Health Innovation ("CC-ABHI"), each herein individually referred to as a "Party" and collectively the "Parties".

WHEREAS the parties wish to engage in the project entitled: [Insert Project Title] as set out in the Application;

NOW THEREFORE, in consideration of the mutual promises set forth in this agreement, the Parties agree as follows:

1. **Definitions.** Capitalized terms used and not otherwise defined herein shall have the meanings attributed thereto in Schedule "A".
2. **General Terms.** The general terms that apply to and form part of this Agreement are attached as Schedule "B".
3. **Schedules.** The following schedules are attached to and form a part of this Agreement:

Schedule "A" - Definitions.

Schedule "B" - General Terms

Schedule "C" - Application (including budget)

Schedule "D"- Intellectual Property Agreement/Term Sheet

4. **Project.** The Project shall be performed in accordance with this Agreement, including the Schedules attached hereto.
5. **Term.** The term of this Agreement (the "Term") shall commence on the Start Date and continue until the end of the Project Duration Period (the "End Date").
6. **CC-ABHI Right to Terminate.** All obligations of CC-ABHI hereunder may be immediately suspended, terminated or revoked, in whole or in part, at any time by CC-ABHI giving written notice to the Host Organization, where CC-ABHI determines, in its sole and unfettered discretion, that:
 - a) the Project will likely not be completed on schedule or on budget;
 - b) interim results are unsatisfactory and demonstrate low likelihood of achieving anticipated outcomes, or one or more Milestones cannot be met or has not been met

within the timeframe set out in the Application;

- c) the conclusion reached by CC-ABHI through a Project review process organized by CC-ABHI is that the overall goals of the Project will likely not be met;
- d) the Host Organization has defaulted on its obligation to make any Contribution at the time and in the manner required under this Agreement; or
- e) the Host Organization has defaulted on its obligations under this Agreement, including failing to provide the reporting and cooperation required under Section 8.

In the event of a breach by the Host Organization of its obligations under this Agreement CC-ABHI shall, without limiting any other right or remedy it may have, have the right to withhold, delay or cease all or any part of further payments in respect of the Project, recover any payments previously made by it, and/or set-off and credit any amounts due by CC-ABHI to the Host Organization in breach against any amounts previously contributed by CC-ABHI in respect of the Project.

7. **Contributions and Eligible Expenses.** CC-ABHI and the Host Organization shall make the Contributions toward the cost of the Project as set out in the Application and Budget (Schedule "C"). Notwithstanding anything else in this Agreement, the Parties acknowledge and agree that all Contributions to be made by CC-ABHI, and CC-ABHI's obligations to pay such Contributions, are entirely conditional on CC-ABHI receiving sufficient allocated government funding to enable it to make payment thereof, and that CC-ABHI may terminate, suspend or revoke such obligations, in whole or in part, at any time by giving written notice to the Host Organization should it not receive or possess funds sufficient for such purposes. Further, CC-ABHI shall have the right to retain or withhold any portion of Contributions otherwise payable pending receipt of interim or final deliverables and/or reports due in respect of the Project.

The Host Organization shall use the Contributions only in accordance with the Application and Budget.

8. **Reviews, Reporting and Right to Publish.**

- a) The Host Organization shall provide to CC-ABHI such reports with respect to the Project, its status, progress and projections, as required by CC-ABHI, in such form and content and at such times as specified by CC-ABHI in writing from time to time including, without limitation, a final report after Project completion, annual surveys for a period of **[five 5]** years following the term of this Agreement, and any other follow-up reporting reasonably required by CC-ABHI following the Term of this Agreement.
- b) The Host Organization agrees to cooperate with CC-ABHI in the collection of performance metrics relevant to the Project, which shall be used by CC-ABHI to evaluate the success of its programs and shall be reported to the Government of Ontario and the Government of Canada in aggregate, omitting any Confidential

Information.

- c) CC-ABHI shall have the right to make the results of the Project public, and to disseminate such results in a manner it determines appropriate. The Host Organization agrees to cooperate with CC-ABHI and provide CC-ABHI with reasonably necessary documents and participate in CC-ABHI's publicizing the results of the Project.

- 9. **Indemnity.** Subject to Section 10, each Party will indemnify and save harmless the other Party including their respective officers, directors, employees, contractors, agents and students from and against any and all suits, claims, demands, costs, damages, expenses, losses or injuries (including death) to persons or property, caused by: (A) any default or breach by the indemnifying Party of any of its obligations under this Agreement; and (B) the willful or negligent act or omission of the indemnifying Party or its officers, directors, employees, contractors and agents during the performance or arising out of this Agreement or the Project.
- 10. **Limitation of Liability.** No Party shall be liable to the other Party for loss of business or profit or for any special, indirect, punitive or consequential loss or damage, regardless of whether such loss or damage arises under contract, tort, or based upon strict liability or other theory of law or equity, where such loss or damage arose in connection with the Project. In no event shall CC-ABHI's liability for damages arising out of the Project or under this Agreement exceed the dollar value of the Contribution which CC-ABHI is required hereunder to make to the Project. Except as expressly provided herein, CC-ABHI, including its directors, trustees, officers, employees and agents, makes no representations, warranties, undertakings, promises, inducements or agreements of any kind, whether direct, indirect, express or implied, including, without limitation, the merchantability or fitness for a particular purpose of any research results or intellectual property; and except as expressly provided herein, CC-ABHI assumes no responsibility whatsoever with respect to design, development, manufacture, use, sale or other disposition of research results or intellectual property by any Host Organization. Provided the foregoing limitations on liability in this Section 10 shall not apply to breach of the confidentiality obligations provided for in Schedule "B".
- 11. **Intellectual Property (IP).** The Host Organization represents and warrants that: (i) it has the right to use the "background" IP required for the Project, and to commercialize any "foreground" IP; and (ii) any agreements governing intellectual property matters relating to or arising from the Project are identified and described in Schedule "D" - Intellectual Property Term Sheet.

IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the _____ day of _____, 20_____.

BAYCREST CENTRE FOR GERIATRIC CARE, operating as CANADIAN CENTRE FOR AGING AND BRAIN HEALTH INNOVATION

Name:

Title:

I have the authority to bind the Corporation.

Name:

Title:

I have the authority to bind the Corporation.

[Insert Legal Name of Host Organization]

Name:

Title:

I have the authority to bind the Corporation.

SCHEDULE "A"

DEFINITIONS

"**Agreement**" means the agreement to which this Schedule is attached and includes all schedules attached thereto, which Schedules form an integral part of this Agreement.

"**Application**" means the application submitted in connection with the SPARK PROGRAM CALL FOR INNOVATIONS and attached hereto as Schedule "C".

"**Cash Contribution**" refers to a direct payment of Contribution in Canadian currency.

"**Host Organization**" has the meaning given to this term on the first page of the main body of this Agreement.

"**Confidential Information**" means the confidential business or technical information of a Party that is identified in writing by that Party at the time of its disclosure or identified orally as such by that Party at the time of its disclosure and minuted and confirmed in writing within two weeks of the oral identification.

"**Contribution**" means Cash Contribution and/or In-Kind Contribution.

"**End Date**" has the meaning given to this term in Section 5 of the main body of this Agreement.

"**Fair Market Value**" means the fair market value that an unrelated arm's-length party would have paid in Canadian currency for an In-Kind Contribution as of the date such Contribution is made to the Project.

"**GAAP**" means generally accepted accounting principles for financial reporting in Canada as most recently recommended and approved by the Canadian Institute of Chartered Accountants, or its successor, in its handbook.

"**In-Kind Contribution**" means an indirect Cash Contribution or a non-monetary contribution that reduces the cash requirement of the Project. The value of each In-Kind Contribution to the Project is assessed at Fair Market Value.

"**Milestones**" means the objectives to be achieved during the course of, and upon completion of, the Project which are set out in the Application.

"**CC-ABHI**" has the meaning given to this term on page 1 of the main body of this Agreement.

"**Project**" means the project or initiative described in the Application.

"**Project Duration Period**" means the period of time approved by CC-ABHI for the completion of the Project following the Start Date.

"**Schedules**" means the schedules identified in Section 3 of the main body of this Agreement attached to and/or delivered with this Agreement.

"**Start Date**" means the project activation date set by CC-ABHI.

"**Term**" has the meaning given to this term in Section 5 of the main body of this Agreement.

**SCHEDULE “B”
GENERAL TERMS**

1. **Obligations upon Termination.** Notwithstanding the termination or expiry of this Agreement, Sections 8, 9, 10 and 11 of the main body of this Agreement and these General Terms shall survive.
2. **Non Waiver.** Except as otherwise expressly provided herein, the failure of a Party to exercise its rights herein upon the occurrence of any breach by the other Party of its obligations will not in any event constitute a waiver of such rights.
3. **Assignment and Enurement.** This Agreement and all its rights and privileges hereunder may not be assigned by any Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided, however, that CC-ABHI may assign this Agreement to a subsidiary upon written notice to the other Party. This Agreement and everything herein contained will inure to the benefit of and be binding upon each of the Parties hereto and upon their respective heirs, estate trustees, personal representatives, successors and permitted assigns.
4. **Choice of Law.** This Agreement will be governed by and construed in accordance with the laws in force in the Province of Ontario and the laws of Canada applicable therein, without recourse to their rules on conflicts of laws.
5. **Relationship.** The Parties' relationship under this Agreement is one of independent contractors and the Parties are not, will not be considered to be, and will not represent themselves to be, joint venturers, partners or agents of each other.
6. **Time of the Essence.** Time is of the essence of this Agreement and of each and every term and condition hereof.
7. **Entire Agreement.** This Agreement and the documents referenced herein constitutes the entire agreement between the Parties pertaining to the Project and the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions with respect to the subject matter hereof whether oral or written.
8. **Notice.** All notices hereunder shall be in writing and shall be duly given if delivered personally or sent by registered mail, return receipt requested, or e-mailed or faxed to the respective addresses of the Parties as follows:

to Canadian Centre for Brain Health and Innovation
3560 Bathurst Street
Toronto, ON M6A 2E1
Attention:
Fax:
E-mail:

to [Insert Legal Name of Host Organization]
[Address]
Attention:
Fax:
E-mail:

Any notice given by registered mail shall be deemed to have been received by the parties to whom the same is addressed on the fifth (5th) business day following the day upon which such notice has been deposited in a post office with postage and cost of registration prepaid. Any notice delivered personally or given by e-mail or by fax shall be deemed to have been received by the Party to whom such notice is so delivered on the following business day.

9. **Confidentiality.** A Party may disclose Confidential Information to other Party to facilitate work under this Agreement. Each Party agrees that such information will be safeguarded and only disclosed to persons with a need to know it within the receiving Party. All Parties will take such steps as a reasonably prudent commercial enterprise would take to protect such information from disclosure to third parties not bound by relevant nondisclosure agreements. The obligation to keep Confidential Information confidential will not apply to information which:

- a) is already known at the time of disclosure to the Party to whom it is disclosed and that Party can prove by written records that it is already known;
- b) is or becomes part of public domain without material breach of this Agreement by the Party seeking to rely on this exclusion;
- c) is obtained from third parties which impose no related confidentiality obligations on the disclosing Party;
- d) is authorized for release by the disclosing Party;
- e) is required to be disclosed by law or order of a court, governmental tribunal or governmental agency or in the case of CC-ABHI, by written agreement of CC-ABHI with the Government of Ontario or Government of Canada (or any of its Ministries or representatives), but the Party subject to such requirement will promptly notify the disclosing Party and give the disclosing Party a reasonable opportunity to seek a confidentiality order or the like; or
- f) is disclosed into the public domain through CC-ABHI's dissemination rights.

These obligations of confidentiality and non-disclosure shall apply upon execution of this Agreement and continue for a period of seven (7) years following the end of the Project Duration Period except with respect to trade secrets and personal information which shall survive indefinitely unless and until the same fall under b. or e. above;

10. **Communications.** Host Organization covenants and agrees to include the following

acknowledgement and credit with respect to CC-ABHI's financial support of the Project in all publications, communications and products it offers or displays to the public that refer to the Project: "Funding provided by CC-ABHI".

11. **Force Majeure.** In the event that any Party is prevented or delayed from fulfilling any of its obligations herein by Acts of God, war, terrorism, strikes, riots, storms, fires, floods, epidemics, governmental orders or governmental restrictions, then that Party will be excused from such performance to the extent that it is necessarily prevented or delayed during the continuance of such happening or event, but financial payment obligations which have accrued prior to, or after, such cause will not be so excused.
12. **Dispute Resolution.** The Parties shall attempt to settle every dispute arising out of or in connection with this Agreement ("Dispute"), by following the dispute resolution process set forth below in this Section 12, to the extent permitted by Law.
 - a) **Mutual Communications.** If any Dispute arises between the Parties in connection with, or arising out of, this Agreement, the Parties, shall within 15 Business Days attempt to settle such Dispute in the first instance by mutual communications between the Parties.
 - b) **Arbitration.** Subject as hereinafter provided, any Dispute arising out of or in connection with, this Agreement and not settled by Subsection 12(a) of this Agreement shall, at the option of either Party exercisable by notice to the other Party within ten (10) Business Days after a Party gives notice that the mutual discussions have failed to settle the Dispute, be submitted and resolved by binding arbitration pursuant to the provisions of the Arbitration Act, 1991, S.O. 1991, c. 17 (the "Arbitration Act"), as amended or any successor legislation thereto, and in accordance with the following provisions: (i) the reference to arbitration shall be to one (1) arbitrator if the Parties are able to agree to the appointment of same, failing which the reference to arbitration shall be to three (3) arbitrators, one of whom shall be chosen by each of the Parties and the third to be chosen by the two appointed arbitrators; (ii) the arbitrator or arbitrators, as the case may be, shall resolve the dispute by majority vote which shall be binding upon the Parties; (iii) there shall be no appeal from any award or decision of the arbitrator(s) and the costs of any such arbitration shall be shared equally between the Parties hereto. If the Host Organization is a U.S. entity, arbitration shall be pursuant to the *International Commercial Arbitration Act* (Ontario).

The foregoing shall not preclude any Party from seeking injunctive relief.

13. **Record Keeping and Audits.** Host Organization shall account for the Contributions and their use and shall keep good and valid records of such accounts in accordance with GAAP at all times. Host Organization shall make such records, including receipts for expenditure of the Contributions and all related books, payrolls, accounts, invoices, receipts and other vouchers, available, at all times upon reasonable notice, to CC-ABHI, the governments of Ontario and Canada and their agents (including Auditor) for inspection, auditing and the making of copies thereof. Such records shall be maintained by Host Organization for a period of time no less than seven years beyond the expiration of the Term.

14. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. For all purposes of this Agreement and all other documents contemplated hereby, the signature of any Party, evidenced by a telecopy showing such signature or other electronically transmitted version of such signature (including by way of PDF), shall constitute conclusive proof for all purposes of the signature of such Party to such document, to the same extent and in all respects as a copy of such document showing the original signature of such Party.

Schedule "C"
APPLICATION (including Budget)

Schedule "D"
INTELLECTUAL PROPERTY TERM SHEET