



**FUNDING PROGRAM APPLICATION AGREEMENT**

This Application Agreement is entered into as of the Effective Date by and between the following parties (each a “Party” and collectively, the “Parties”):

**Next Generation Manufacturing Canada (“NGen”),**

a corporation incorporated under the laws of Canada, with its registered office located at  
175 Longwood Road South, Unit 301, Hamilton, Ontario L8P 0A1

and

\_\_\_\_\_ (“Lead Applicant”),

a corporation incorporated under the laws of \_\_\_\_\_,  
with offices located at \_\_\_\_\_

and

\_\_\_\_\_ (“Applicant 2”),

a corporation incorporated under the laws of \_\_\_\_\_,  
with offices located at \_\_\_\_\_

and

\_\_\_\_\_ (“Applicant 3”),

a corporation incorporated under the laws of \_\_\_\_\_,  
with offices located at \_\_\_\_\_

and

\_\_\_\_\_ (“Applicant 4”),

a corporation incorporated under the laws of \_\_\_\_\_,  
with offices located at \_\_\_\_\_

and

\_\_\_\_\_ (“Applicant 5”),

a corporation incorporated under the laws of \_\_\_\_\_

with offices located at \_\_\_\_\_  
\_\_\_\_\_

(Hereinafter, “**Applicants**” collectively refers to Lead Applicant, Applicant 2, Applicant 3, Applicant 4, and Applicant 5; and “**Applicant**” refers to any one of them.)

**CONTEXT:**

- A. NGen is a not-for-profit corporation originally created under the Government of Canada’s *Global Innovation Clusters* program to lead Canada’s advanced manufacturing global innovation cluster and build world-leading advanced manufacturing capabilities in Canada.
- B. NGen has received funding from the Minister of Innovation, Science and Industry to invest in next-generation manufacturing capabilities and promote collaboration in various areas of advanced manufacturing.
- C. In carrying out its mandate, NGen provides financial support to collaborative projects selected within the framework of calls for projects launched by NGen from time to time under various funding streams.
- D. The Applicants wish to apply for financial support from NGen under a specific funding stream opened by NGen, for the project entitled “ \_\_\_\_\_ ”.
- E. The purpose of this Application Agreement is to set forth the terms and conditions under which: (i) Applicants will submit their application for funding to NGen in respect of the Project, and (ii) NGen will receive, manage, consider and dispose of such application under the Application Process (as defined in Subsection 1.3).

**NOW THEREFORE**, in consideration of the Context set forth above, and the promises, rights and obligations set forth below, the Parties hereby agree as follows:

**1. DEFINITIONS**

In this Application Agreement, unless otherwise indicated, the following terms shall have the following meanings:

- 1.1 “**Agreement**” means the present Application Agreement, including Schedule A attached hereto.
- 1.2 “**Application**” means the application for funding submitted by the Applicants to NGen in respect of the Project, as well as any ancillary information and/or documents the Applicants provide to NGen as part of or in support of such application.
- 1.3 “**Application Process**” means NGen’s application process described in Section 3.
- 1.4 “**Assessors**” means independent experts selected by NGen to conduct the assessment of the Application pursuant to Subsection 3.3.

- 1.5 **“Claims”** means any and all claims and demands (whether civil, criminal, administrative, or any other claim or demand), losses, damages, penalties, costs, expenses (including reasonable attorney’s fees), actions and other proceedings by whomever made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner whether by a Party or a third party to this Agreement.
- 1.6 **“Confidential Information”** has the meaning ascribed thereto in Subsection 5.1.
- 1.7 **“Consultations”** has the meaning ascribed thereto in Subsection 4.5 (b).
- 1.8 **“Contribution Agreement”** means the *Restated and Amended Contribution Agreement* between NGen and the Crown (as represented by the Minister of Innovation, Science and Industry) and/or any other agreement between NGen and the Crown under which the Crown provides funding to NGen for the purpose of supporting the Funding Stream.
- 1.9 **“Crown”** means His Majesty the King in right of Canada and any of his ministers and other representatives acting on his behalf. The “Crown” includes the Minister of Innovation, Science and Industry.
- 1.10 **“Designated Person”** means a person that is (i) designated under the *Special Economic Measures Act* (Canada), or (ii) listed on any other Sanctions-related list maintained by the Government of Canada, according to the most current version published by the Government of Canada via Global Affairs Canada, at its official website or any replacement website or other replacement official publication of such list or lists, or (iii) listed on any other Sanctions-related list or is a “designated person” under any applicable Canadian law.
- 1.11 **“Effective Date”** means the date this Agreement was executed by the last Party.
- 1.12 **“External Advisor”** means a third party (individual or entity) who assisted, assists, or will assist any of the Applicants with the preparation and/or the submission of any part of the Application. “External Advisor” also includes any of such third party’s employers, employees, officers, directors, contractors, or other persons related to and/or affiliated with it.
- 1.13 **“Funding Stream”** means the particular funding stream of NGen under which the Application is being submitted.
- 1.14 **“Funding Decision”** means the decision made by NGen at the end of the Assessment Phase (as described in Subsection 3.3) as to whether or not the Project is selected for funding under the Funding Stream.
- 1.15 **“Funding Denial Notification”** means the notification (in whatever form) issued by NGen to the Lead Applicant to advise of a negative Funding Decision made in respect of the Application.
- 1.16 **“Funding Recommendation Notification”** means the notification (in whatever form) issued by NGen to the Lead Applicant to advise of a positive Funding Decision made in respect of the Application.
- 1.17 **“Master Project Agreement”** and **“MPA”** mean the agreement to be entered into by the Parties at the end of the Contracting Phase (described in Subsection 3.4) to confirm NGen’s support to the Project and define the terms and conditions subject to which such support will be provided to the Applicants.

- 1.18 **“NGen Policies”** means the policies, guides and procedures of NGen applicable to the Funding Stream, as provided to the Participants or otherwise made available to them by NGen, including the Project Application Guide, the Financial Guide, the IP Guide, and NGen’s IP Strategy.
- 1.19 **“Permitted Use”** has the meaning ascribed thereto in Subsection 5.3.1.
- 1.20 **“Project”** means the project referred to in paragraph D of the Context provisions hereinabove, as further detailed in the Application.
- 1.21 **“Representatives”** means, with respect to a Party, any and all of its employees, officers, directors, agents, representatives, students and contractors. With respect to NGen, “Representatives” includes the Assessors.
- 1.22 **“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Government of Canada (under the *Special Economic Measures Act* (Canada) (S.C. 1992, c. 17) or otherwise).
- 1.23 **“Term”** has the meaning ascribed thereto in Subsection 2.1.

## **2. TERM AND TERMINATION OF THE AGREEMENT**

- 2.1 The term of this Agreement (the **“Term”**) commences on the Effective Date and continues until the occurrence of the first of the following events:
- (a) the Lead Applicant notifies NGen that the Application is withdrawn; in which case the Agreement terminates automatically on the date NGen receives such notification.
  - (b) the Lead Applicant receives a notification from NGen pursuant to Subsections 3.1.4 and/or 3.3.6 (b); in which case the Agreement terminates automatically on the date the Lead Applicant receives such notification.
  - (c) the Parties enter into a MPA pursuant to Subsection 3.4.3 (c); in which case the Agreement terminates automatically on the date the MPA comes into force.
- 2.2 The Parties may terminate the Agreement pursuant to Subsection 2.1 without further obligation or liability to the other Parties, subject however to the provisions of Subsections 2.3, 3.1.5 and 4.3.
- 2.3 Neither the termination of this Agreement nor the withdrawal of an Applicant from the Application releases either Party from obligations and liabilities that accrued before such termination/withdrawal. Any terms and conditions of this Agreement which by their nature extend beyond its Term (expressly including Sections 4.3, 5, 6, 7, 9, and 10) survive the termination of this Agreement and, as the case may be, continue to bind the withdrawing Applicant.

## **3. NGEN’S APPLICATION PROCESS**

### **3.1 Application Process – General Provisions**

- 3.1.1 NGen’s Application Process is divided into three successive phases:
- (a) the **“Development Phase”**, as detailed in Subsection 3.2;

(b) the “**Assessment Phase**”, as detailed in Subsection 3.3; and

(c) the “**Contracting Phase**”, as detailed in Subsection 3.4.

3.1.2 Applicants’ submission of the Application, and NGen’s acceptance of the Application, are subject to the terms and conditions of this Agreement and those set out in NGen Policies. In case of ambiguities or discrepancies between the provisions of this Agreement and those set out in NGen Policies, the provisions of this Agreement will prevail to the extent of the ambiguity/discrepancy involved.

3.1.3 The Application will be handled and assessed by NGen in a fair, open and impartial manner, free from conflicts of interest. Applicants will promptly notify NGen of any comments, concerns and/or information they may have in regard with actual or potential conflicts of interest or other circumstances likely to impede the fair treatment of the Application.

3.1.4 At any time during the Application Process, NGen may notify the Lead Applicant that:

(a) NGen is (I) rejecting the Application as a result of one or more of the following:

i. one or more of the Applicants have failed to (1) abide by the terms of this Agreement and/or meet the requirements of the NGen Policies, and/or (2) follow reasonable material instructions given by NGen during or in respect of the Application Process; or

ii. one or more of the Applicants have intentionally submitted false or misleading material information in support of another application for funding submitted to NGen, whether under the Funding Stream or a different funding stream;

or, (II) alternatively, in either case, NGen is requiring the withdrawal of that Applicant (those Applicants) and is suspending the Application Process until it is (they are) replaced with new Applicant(s); the whole in NGen’s sole absolute discretion.

(b) NGen has decided to suspend or terminate the Application Process as a result of any reasonable cause which, in NGen’s sole absolute discretion, adversely affects the ability and/or possibility of NGen to fund new projects under the Funding Stream, including if the amount available for the Funding Stream has already been committed or has been reduced to a point where sufficient funding is no longer available for the Project.

3.1.5 The decision of NGen to reject the Application under Subsection 3.1.4 (a) above may be appealed to NGen’s Vice President, Projects (or his delegate) within five (5) business days of the notification of such decision. NGen’s Vice President, Projects will consider the appeal and notify the Applicants of the decision on the appeal within five (5) business days thereafter.

### 3.2 Application Process – Development Phase

3.2.1 The Development Phase is the initial phase of the Application Process, during which time the Applicants develop their Project and their Application in accordance with the requirements of NGen’s Policies.

- 3.2.2 During the Development Phase, NGen will endeavor to support the Applicants by answering their reasonable questions in respect of the Application Process and/or the Funding Stream and by assisting them in the development of their Application/Project (including high level advice and guidance with respect to funding rules, eligible activities, project requirements, and help in identifying potential project partners or other sources of funding for the Project).

Applicants however acknowledge and agree that NGen's resources for such support are limited, so NGen's support to Applicants during the Development Phase may generally be provided through workshops and webinars; individual applicant and project support may be provided, but only to the extent that the resources are available and on a first-come first-served basis.

- 3.2.3 During the Development Phase (or later in the Application Process), each Applicant will be subject to financial due diligence review by NGen. The Applicants will cooperate with NGen by providing any document(s) and/or information reasonably requested by NGen to assess the Applicants' ability to support its financial commitments in respect of the Project, as well as its other financial requirements, over the lifetime of the Project.

The failure of the Applicant(s) to provide the requested documents and/or information within the period of time set forth by NGen, and/or NGen's consideration that one or more of the Applicants do not have the financial ability to undertake and compete the Project alongside their other financial requirements, may result, in the Application being rejected or Applicant(s) being required to withdraw, pursuant to Subsection 3.1.4 (a); the whole in NGen's sole absolute discretion.

### 3.3 Application Process – Assessment Phase

- 3.3.1 Subject to Subsection 3.1.4, a complete Application duly submitted to NGen in accordance with this Agreement will be subjected to an independent review by the Assessors, this review being the bulk of the Assessment Phase.
- 3.3.2 The Assessment Phase is confidential and, except as provided for in Subsections 3.3.6 and 5.4.2, no information about the Assessment Phase will be provided to the Applicants or to any third party.
- 3.3.3 To ensure the independence and confidentiality of the Assessment Phase, the identity of the Assessors assigned to the Application will be kept confidential (except for NGen staff specifically and directly responsible for the Assessors), and each Assessor will be bound by written conflict of interest and confidentiality obligations at least as onerous as those set forth in this Agreement.
- 3.3.4 Each Assessor will independently review the Application and provide his/her assessment comments to NGen.

A deliberation meeting will then be held with all the Assessors to deliberate their respective assessment results and to provide NGen with their considered recommendations as to funding of the Project. Such Assessors' deliberation meeting will be chaired by NGen, and Representatives of NGen and the Crown may also attend the meeting with the status of observers.

Other than in exceptional circumstances, the Assessors' deliberation meeting(s) will not be recorded nor transcribed. Where recordings and/or transcriptions have been made, they are deemed to be Confidential Information under this Agreement and subject to the terms of Section 5 hereof.

- 3.3.5 After the Assessors' deliberation meeting, the Chief Executive Officer of NGen will review the Assessors' recommendations and make the Funding Decision for each application having been assessed.

If he so decides, the Chief Executive Officer of NGen may request additional information and/or documents from the Applicants and cause the Application to be reassessed by Assessors prior to making the Funding Decision.

- 3.3.6 The Funding Decision regarding the Application will be notified to the Lead Applicant by NGen as follows:

- (a) If the Funding Decision is positive, NGen will send the Lead Applicant a Funding Recommendation Notification and will provide the Lead Applicant with information and guidance regarding the Contracting Phase. NGen may simultaneously or thereafter provide the Lead Applicant with a summary of the Assessors' comments in respect of the Application.

The Funding Recommendation Notification does not create any obligation on the part of NGen to fund the Project.

- (b) If the Funding Decision is negative, NGen will send the Lead Applicant a Funding Denial Notification and will provide the Lead Applicant, within a reasonable period of time thereafter, a summary of the Assessors' comments on the Application, and any additional information NGen deems appropriate, if any.

#### 3.4 Application Process – Contracting Phase

- 3.4.1 The Contracting Phase is the final phase of the Application Process during which time the Parties will work towards the completion and execution of the MPA with respect to the Project.

- 3.4.2 Notwithstanding the issuance of a Funding Recommendation Notification for the Project, NGen's funding of the Project is conditional upon the Applicants successfully completing the Contracting Phase within the applicable timeframe (as reasonably set out by NGen). The failure of the Applicants to successfully complete the Contracting Phase within the applicable timeframe may result, in NGen's sole absolute discretion, in the Application being rejected or the Applicant(s) being required to withdraw, pursuant to Subsection 3.1.4 (a).

- 3.4.3 The successful completion of the Contracting Phase requires, in particular, that the Applicants:

- (a) Prepare, submit and obtain NGen's approval for several documents detailing (with more precision than had been requested during the Development Phase) various aspects of the

Project's work, risks, intellectual property management, and budget. Guidance and templates for some of these documents will be provided by NGen;

- (b) Prepare, submit and obtain NGen's approval on a collaboration agreement executed by all the Applicants, setting forth the aspects of their collaboration in respect of the Project that are not governed by the MPA. Guidance and a template for the collaboration agreement will be provided by NGen;
- (c) Execute an MPA with NGen with respect to the Project; and
- (d) If NGen considers that the risks with the respect to the Applicant(s) and/or Project are too high, structure the Project in such a way, and/or provide whatever guarantees or security interests, that NGen considers reasonable in order to mitigate such risks; the whole in NGen's sole absolute discretion.

3.4.4 NGen's approval of any documents during the Contracting Phase may be granted or withheld in NGen's sole absolute discretion.

**3.5 Acknowledgment of Administrative Fee. Each Applicant understands and acknowledges that, if and when an MPA is finally executed in respect of the Project, each Applicant will have the obligation to promptly pay to NGen a 5% administrative fee in respect of the Project; the terms and conditions of which will be detailed in that MPA.**

#### **4 APPLICANTS' OBLIGATIONS, REPRESENTATIONS AND COVENANTS**

4.1 General Compliance. In respect of its duties during the Application Process and otherwise under this Agreement, each Applicant will at all times abide by the provisions of this Agreement, NGen's Policies, and other reasonable instructions NGen may from time to time provide.

4.2 Disclosure of External Advisors. In order for NGen to ensure a fair, open and impartial assessment of the Application, including by preventing conflicts of interest during the Assessment Phase, Applicants will promptly notify NGen if, at any time during the Application Process, any of its External Advisors working on/with the Application and/or the Project:

- (a) is a current or former (in the last twelve (12) months) public office holder or public servant in the federal, or a provincial or territorial government; and/or
- (b) will directly or indirectly benefit (financially or otherwise) from the preparation and/or the submission of the Application and/or NGen's funding of the Project.

Any notice required under this Subsection 4.2 will include the name(s) and business address of the External Advisor involved, and the name(s) and business address(es) of any individuals and entity(ies) associated and/or affiliated therewith.

The Applicants understand and agree that NGen may take any action(s) it deems necessary to prevent an actual or potential conflict of interest in the Application Process, including (i) barring an External Advisor from directly or indirectly assisting with the Application and/or the Project, and (ii) rejecting the Application pursuant to Subsection 3.1.4 (a) i. above if, in NGen's reasonable opinion, the conflict of interest (whether potential or actual) in respect of the Application cannot be remedied.



- 4.3 Truth and Accuracy of the Information Provided to NGen. All NGen's decisions during the Application Process rely on – and are therefore subject to – the accuracy of the information and representations provided by (or on behalf of) the Applicants as part of and in support of the Application.

Therefore, the Applicants will ensure that any information provided to NGen at any phase of the Application Process is true, accurate, complete and not misleading. Should an Applicant become aware that any information having been submitted to NGen is not true or accurate or is incomplete or misleading, it will immediately notify NGen of this fact and correct and/or complete the Application accordingly.

Any breach (whether intentional or not) by an Applicant of the obligations set forth in this Subsection 4.3, entitles NGen, in its sole absolute discretion, to exercise any one or more of the following remedies, which Applicants acknowledge are fair and reasonable:

- (a) NGen may reject the Application or require the withdrawal of the Applicant(s) involved, pursuant to Subsection 3.1.4 (a) i.;
- (b) if the breach was intentional, NGen may reject any other application for funding of the Applicant(s) involved (whether under the Funding Stream or other funding streams), as contemplated in Subsection 3.1.4 (a) ii.;
- (c) if the Project has already been granted funding when NGen becomes aware of an Applicant(s)' breach of this Subsection 4.3, NGen may terminate the MPA under which the Project is being funded and/or request the immediate reimbursement of any funding already provided to the Applicant involved, the whole in accordance with the applicable terms of the MPA; and/or
- (d) NGen may also exercise any other right and seek any other remedy available under this Agreement or otherwise at law.

- 4.4 Representations. Each of the Applicants represents and warrants in favour of NGen that:

- (a) it is duly incorporated, amalgamated or continued, and existing, under the laws of the jurisdiction of its incorporation, amalgamation or continuance (as the case may be), and it has all the necessary corporate power and capacity to enter into and perform its obligations under this Agreement and in respect of the Application and the Project;
- (b) the Applicant has taken all necessary action to authorize its execution and delivery of this Agreement;
- (c) none of the Applicant's employees, officers, directors, contractors and/or External Advisors working on/with the Application and/or the Project is a current or former (within the last twelve (12) months) public office holder or public servant in the federal, or a provincial or territorial government. The Applicants will immediately notify NGen should this become the case;
- (d) the disclosure of Confidential Information (and the right granted to NGen therein) under Section 5, and the performance of the Applicant's duties under this Agreement, the Application, and the Project, do and will not breach or result in a default of such Applicant under (i) any of its constituting documents; (ii) any applicable law to which it is subject; nor (iii) any contract or covenant by which it is bound;

- (e) the Project is not a “Designated Project” or “Project” under the *Impact Assessment Act* (Canada) (S.C. 2019, c. 28, s. 1). The Applicants will immediately notify NGen should the Project become a “Designated Project” or a “Project” under the *Impact Assessment Act*; and
- (f) the Applicant (and each of its directors and officers) is in compliance with Sanctions and will conduct its business and otherwise act at all times in compliance with Sanctions. Without restricting the generality of the forgoing, the Applicant represents and warrants that neither it, any of its External Advisors, nor any of either of their respective officers or directors is a Designated Person.

4.5 Other covenants. Each Applicant covenants and agrees that:

- (a) It consents to its information and data (including Confidential Information) being collected and stored by NGen, and shared with the Crown as and to the extent permitted in Section 5.
- (b) During the course of the Application Process, and otherwise conducting its duties under this Agreement, NGen will hold discussions with the Applicants and as part of these discussions NGen may provide the Applicants with information and/or recommendations regarding, among other things, the Application and its content, the Project and its funding, the Applicants’ business, and/or other aspects of the subject matter of this Agreement (collectively, the “**Consultations**”).

With respect to the Consultations, each of the Applicants acknowledges and agrees as follows:

- i. the Consultations do not constitute professional advice of any kind (whether legal, financial or otherwise) and are provided by NGen on an “as is” basis, with no representations or warranties of any kind, including with respect to their accuracy or fitness for any purpose; and Contracting Phase the fact that the Applicant(s) may implement or act upon such Consultations, does not guarantee a positive Funding Decision, NGen’s funding of the Project, nor any other benefit whatsoever for the Applicant, the Application or the Project; and
- ii. the Applicant(s) will not rely on the Consultations for any purpose whatsoever and should any of them decide to implement or act upon the Consultations, they will be doing so entirely at their own risk and benefit – with no guarantee nor liability of any kind from/of NGen.

## 5 CONFIDENTIAL INFORMATION

### 5.1 Definition of Confidential Information:

- 5.1.1 For the purpose of this Agreement, “**Confidential Information**” means any information of any nature (scientific, technical, financial, commercial or otherwise) that is not generally accessible to the public and is disclosed or otherwise made available by or on behalf of an Applicant to NGen under this Agreement, whether in the Application and/or during the Consultations.

- 5.1.2 To the extent practicable, Confidential Information disclosed in writing will be marked “Confidential”, and that disclosed verbally will be identified as such at the time of disclosure and reduced to writing within ten (10) days of such disclosure. Notwithstanding the foregoing, all information disclosed under this Agreement is deemed Confidential Information unless it falls under one of the exceptions listed in Subsection 5.1.3 below.
- 5.1.3 The obligation of confidentiality under this Agreement does not apply to information which, as evidenced by contemporaneous written records of NGen:
- (a) is or becomes publicly available other than by a breach of this Agreement;
  - (b) is or becomes lawfully in the possession of NGen without any obligation of confidentiality,
  - (c) was independently created, developed or acquired by NGen through no use of nor reference to the Confidential Information; or
  - (d) has been authorized for disclosure by the Applicant(s) who has disclosed such information to NGen.
- 5.2 Ownership of Confidential Information: NGen acknowledges and agrees that: (i) each Applicant remains the exclusive owner of all right, title and interest in and to its Confidential Information disclosed to NGen under this Agreement, and (ii) NGen will have no right, title, licence, or interest in or to such Confidential Information, except as strictly specifically permitted under this Agreement.

The Applicants will not disclose to NGen Confidential Information owned by a third-party without first obtaining the written consent of such third-party.

5.3 Permitted Use of Confidential Information:

- 5.3.1 Each Applicant hereby grants to NGen a right to hold and use Confidential Information for the purpose of reviewing, processing, making enquiries about, assessing, referring or otherwise dealing with the Application throughout the Application Process (the “**Permitted Use**”).
- 5.3.2 With respect to its use of Confidential Information, during the Term of this Agreement and for a period of 10 years thereafter, NGen will:
- (a) use the Confidential Information only for the Permitted Use or as otherwise expressly permitted under this Agreement;
  - (b) take reasonable steps to ensure that Confidential Information is held in strict confidence, by using the same standard of care NGen uses to protect its information of a similar nature, which in any event shall not be less than a reasonable standard of care;
  - (c) except as specifically permitted by this Agreement, will not disclose Confidential Information to any third party without the prior consent of the Applicant who disclosed such Confidential Information;
  - (d) limit the access to the Confidential Information to those of its Representatives who have a need to know such Confidential Information to support NGen in the Permitted Use, provided that such Representatives (i) have been advised by NGen of the confidential

nature of the Confidential Information, and *(ii)* are bound in writing by confidentiality and restricted use obligations substantially similar to those set forth herein;

- (e) upon termination of this Agreement or earlier upon request of an Applicant, will cease to use the Confidential Information and promptly return (or destroy, as instructed by Applicants) any document (and any copies thereof) in its possession containing Confidential Information, except for *(i)* one copy in respect of each piece of Confidential Information, which may be retained by NGen for lawful purposes, and *(ii)* Confidential Information that is stored in any automatic electronic archiving or backup system of NGen, provided however that every such retained copy shall remain subject to the provisions of this Section 5.

#### 5.4 Permitted Disclosures of Confidential Information

5.4.1 Notwithstanding anything to the contrary in this Agreement, the restrictions set out in Subsection 5.3 do not apply to Confidential Information in respect of which disclosure is required:

- (a) pursuant to a subpoena, a court order or similar process, or pursuant to any applicable law;
- (b) to permit the Crown to fulfill its obligations in any dispute before the World Trade Organization or under any free trade agreement in which the Crown is a party or a third-party intervener; and/or
- (c) pursuant to NGen's contractual obligations to the Crown, including those stemming from the Contribution Agreement;

provided however that prior to any such disclosure, NGen will, to the extent practicable and legally permitted: *(i)* provide the Applicant(s) involved with notice of such requirement to disclose and NGen's intent to disclose the information, *(ii)* where legally permissible, allow the Applicant(s) the opportunity to seek a protective measure (at such Applicant(s)' expenses), and *(iii)* take reasonable actions to limit the disclosure to only that part of Confidential Information which is required.

5.4.2 Notwithstanding anything to the contrary in this Agreement, the Applicants acknowledge and agree that NGen may provide the Crown with the following information in respect of the Application:

- (a) the identity and address of the Lead Applicant and each of the other Applicants;
- (b) the Project title and a high-level summary of the project provided by the Applicants to NGen;
- (c) the total budget for the Project, the amount of NGen funding requested in the Application, and the amount of and source of any other public funding in respect of the Project;
- (d) the Assessors' deliberation meeting recommendations in respect of the Application; and
- (e) the Funding Decision of NGen with respect to the Application.

5.4.3 NGen will use its best efforts to label any document containing any Confidential Information provided to the Crown under Subsections 5.4.1 (c) and/or 5.4.2 with the following wording: "This document contains Third Party Information referred to in subs. 20(1) of the *Access to Information Act* (Canada)", or with wording of similar effect.

5.5 Opt-in Consent for Additional Disclosure. From time-to-time, NGen may have the opportunity to discuss the Application with other funding entities for the purpose of helping the Applicants seek

additional funding for the Project. NGen will not discuss the Application with such other funding entities unless and until the Applicants have executed and submitted to NGen the *Opt-in Consent for Additional Disclosure* attached hereto in Schedule A. Such Opt-in Consent may be withdrawn by the Applicants at any time by notice to NGen in accordance with this Agreement.

## **6 NGEN’S REPRESENTATIONS AND WARRANTIES**

6.1 NGen represents and warrants that it will perform its duties under this Agreement in good faith, in a competent, honest and diligent manner, and in accordance with the terms and conditions set forth herein, as well as any applicable laws and regulations.

With respect, in particular, to the Applicants’ personal information, NGen represents and warrants that it maintains and complies with its Privacy Policy to ensure that such personal information is, at all times, collected, used and processed in accordance with applicable laws. NGen’s Privacy Policy is available on NGen’s website.

6.2 Except as expressly set forth in Subsection 6.1, NGen makes no warranty, express or implied, as to any matter whatsoever in respect of this Agreement and its execution. In particular, without limiting the generality of the foregoing, NGen makes no warranty as to:

- (a) the availability of any funding at any time during the Application Process;
- (b) the successful outcome of any of the phases of the Application Process;
- (c) the accuracy and/or fitness for any purpose of the Consultations; or
- (d) the compliance of the Crown with the terms of this Agreement, the Contribution Agreement or with any law applicable, with respect to the information the Crown has the right to access or receive under Subsections 3.3.4, 5.4.1(c) and 5.4.2 of this Agreement.

## **7 INDEMNIFICATION & LIMITATION OF LIABILITY**

7.1 NGen agrees to indemnify and hold harmless each of the Applicants and its respective Representatives from and against all Claims caused by, arising out of, occasioned by or attributable, directly to NGen’s gross negligence or willful misconduct with respect to NGen’s obligations under this Agreement.

7.2 Each Applicant agrees to indemnify and hold harmless NGen, the Crown and their respective Representatives from and against all Claims caused by, arising out of, occasioned by or attributable to this Agreement and its execution, except to the extent such Claims are directly attributable to the gross negligence or willful misconduct of NGen or the Crown (as the case may be).

7.3 To ensure that the indemnities and releases provided herein by are enforceable, each Party agrees that the other Parties are each acting as agents for its Representatives with respect to the indemnities and releases intended to be given to those Representatives in this Agreement.

7.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NO PARTY NOR ANY OF ITS REPRESENTATIVES SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL OR

CONSEQUENTIAL, INCIDENTAL, PUNITIVE, CONTINGENT, STATUTORY OR ANY OTHER SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF REVENUES OR PROFITS) ARISING OUT OF, OCCASIONED BY OR ATTRIBUTABLE TO THIS AGREEMENT AND ITS EXECUTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 8 NOTICES

8.1 Any notices required by or made pursuant to this Agreement must be transmitted by e-mail, using the contact details provided below:

If to NGen: Contracts Dept.  
Email: [contracts@ngen.ca](mailto:contracts@ngen.ca)

If to any or all of the Applicants (including the Lead Applicant): at the Lead Applicant's email contact(s) provided in the relevant section of the Application.

Unless otherwise decided by NGen in its sole absolute discretion, notices issued by NGen to the attention of all the Applicants or any one of them will be sent solely to the Lead Applicant, who will be responsible for forwarding them the other Applicant(s) concerned.

8.2 Any notice made pursuant to this Agreement will be deemed to have been given on the day it was sent; unless, however, the notice was sent on a day which is not a business day (in the Province of Ontario), or after 5:00 p.m. (local time of the recipient of the notice), in which cases the notice will be deemed to have been given on the next business day (in the Province of Ontario).

## 9 DISPUTE RESOLUTION

Should a dispute arise between the Parties in connection with the interpretation or execution of this Agreement, the Parties will attempt to resolve the issue amicably, through good-faith negotiations and/or mediation.

If the dispute cannot be resolved amicably, the Parties agree that the Courts of competent jurisdiction of the Judicial District of Toronto, Ontario will have exclusive jurisdiction to hear and decide such dispute.

## 10 MISCELLANEOUS

10.1 Interpretation. In this Agreement, words signifying the singular number include the plural and *vice versa*, and words indicating a gender include all genders. Every use of the terms "including" or "includes" in the Agreement is to be construed as meaning "including, without limitation" or "includes, without limitation," respectively. The division of this Agreement into sections and the insertion of headings are for the convenience of reference only and do not affect the construction or interpretation of this Agreement. References in this Agreement to a section are to be construed as references to a section of or to this Agreement unless otherwise specified. Unless otherwise specified, any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a

reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

- 10.2 Relationship of the Parties. Notwithstanding anything to the contrary in this Agreement, nothing herein shall be construed as creating: (i) a relationship of partnership or joint venture or a relationship of principal-agent, employer-employee, or franchisor-franchisee between any or all of the Parties, nor (ii) an obligation for any Party to, as applicable to the Party involved, disclose Confidential Information to the other Parties, take part, provide funding or otherwise support the Project, nor to enter into any later agreement or business relationship with any or all of the other Parties.

Each Party hereto is entering into this Agreement and will execute its duties hereunder as an independent party and no Party will represent itself as an agent or employee of another Party or of the Crown.

Each Party hereto retains the right to conduct its own separate business activities as it sees fit, and the other Parties shall have no rights whatsoever with respect to the results of such other activities.

Except as expressly permitted under Section 5, a Party will not use another Party (nor the Crown)'s name(s), logo(s), trademark(s) or other identifying mark(s) in any publicity or other public communication, representation or statement, without obtaining the prior written authorization of such other Party.

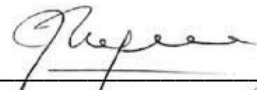
- 10.3 Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the Application and other subject matters contemplated herein, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written in that regards between the Parties. There are no conditions, representations, warranties or other agreements in connection with the subject matter of the Application and other subject matters contemplated herein the Application, whether oral or written, express or implied, statutory or otherwise, except as specifically set out in this Agreement.
- 10.4 Amendments. This Agreement may only be amended, modified or supplemented by a written agreement signed in advance by the authorized representatives of all the Parties.
- 10.5 Waiver. No waiver of breach or default hereunder will be considered valid unless in writing and no such waiver will be deemed to be a waiver of any subsequent breach or default of the same or similar nature.
- 10.6 Assignment. Neither this Agreement, nor any right or obligation under this Agreement or in respect of the Application may be assigned by an Applicant without the prior written consent of NGen. The failure of an Applicant to abide by the forgoing will result in the assignment being void. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and permitted assigns.
- 10.7 Third Party Beneficiaries. Each Party intends that this Agreement does not benefit or create any right or cause of action in, or on behalf of, any person other than the Parties (and the Crown, where expressly provided for in this Agreement).

- 10.8 Severability. If for any reason a provision of this Agreement that is not a fundamental term of the Agreement between the Parties is found to be or becomes invalid or unenforceable, whether in whole or in part, such provision or portion thereof declared invalid or unenforceable is deemed to be severable and is deemed to be deleted from this Agreement and all remaining terms and conditions of this Agreement continue to be valid and enforceable.
- 10.9 Governing Laws. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable therein, without regards to any applicable conflict of laws principles that would lead to the laws of any other jurisdiction(s) being applicable.
- 10.10 Signature. This Agreement may be electronically signed by each of the signatories on different devices via an online document signing service (e.g., DocuSign™); the fully executed copy of this Agreement maintained by the online document signing service being deemed the original. This Agreement may also be signed in counterparts and such counterparts may be delivered by email, facsimile or by other acceptable electronic transmission, each of which when executed and delivered is deemed to be an original, and when taken together, will constitute one and the same Agreement.
- 10.11 Language. The Parties declare that they have expressly required that this Agreement and all writings relating thereto be drawn up in English. *Les Parties déclarent avoir expressément exigé que la présente entente et tous écrits s’y rapportant soient rédigés en anglais.*
- 10.12 Counterparts. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**NGen**

*I have authority to bind the corporation:*



---

Name: Jayson Myers  
Title: President and CEO



**Lead Applicant**

*I have authority to bind the corporation:*

---

Name:  
Title:  
Date:

**Applicant 2**

*I have authority to bind the corporation:*

---

Name:  
Title:  
Date:

**Applicant 3**

*I have authority to bind the corporation:*

---

Name:  
Title:  
Date:

**Applicant 4**

*I have authority to bind the corporation:*

---

Name:  
Title:  
Date:

**Applicant 5**

*I have authority to bind the corporation:*

---

Name:  
Title:  
Date:





Schedule A – Form for the Opt-in Consent to Additional Disclosure

**OPT-IN CONSENT TO ADDITIONAL DISCLOSURE**

Project Title: \_\_\_\_\_

Application Ref.#: \_\_\_\_\_

Lead Applicant: \_\_\_\_\_

Further to Subsection 5.5 of the Application Agreement in respect of the above-noted Project, Applicants hereby provide their consent to NGen disclosing the information referred to in Subsection 5.4.2 (a), (b), (c), and (e) to other funding entities for the purpose of helping the Applicants seek additional funding.

**Lead Applicant**

*I have authority to bind the corporation:*

\_\_\_\_\_  
Name:

Title:

Date:

**Applicant 2**

*I have authority to bind the corporation:*

\_\_\_\_\_  
Name:

Title:

Date:

**Applicant 3**

*I have authority to bind the corporation:*

\_\_\_\_\_  
Name:

Title:

Date:

**Applicant 4**

*I have authority to bind the corporation:*

\_\_\_\_\_  
Name:  
Title:  
Date:

**Applicant 5**

*I have authority to bind the corporation:*

\_\_\_\_\_  
Name:  
Title:  
Date: