

**Memorandum of Understanding**  
(referred to as the “MOU”)

**BETWEEN**

**HEALTH RESEARCH ETHICS AUTHORITY FOR  
NEWFOUNDLAND AND LABRADOR**  
(referred to as “HREA”)

**AND**

**MEMORIAL UNIVERSITY OF NEWFOUNDLAND**  
(referred to as “Memorial”)

**AND**

**EASTERN REGIONAL INTEGRATED HEALTH AUTHORITY**  
(referred to as “Eastern Health”)

**AND**

**HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND  
AND LABRADOR, AS REPRESENTED BY THE MINISTER OF  
HEALTH AND COMMUNITY SERVICES**  
(referred to as the “Dept”)

**WHEREAS** the HREA became operational as of July 1, 2011;

**AND WHEREAS** Memorial and Eastern Health have agreed to provide financial and other support to the HREA, as outlined in this MOU;

**AND WHEREAS** the Dept has agreed to provide financial support to the HREA, to the extent that budgeted operating costs exceed budgeted funds available to the HREA from Cash Contributions and In-Kind Contributions from Memorial and Eastern Health and from revenue generated from private industry;

**AND WHEREAS** the HREA recognizes Memorial’s obligations to various federal research granting councils and other funding agencies;

**AND WHEREAS** the parties wish to enter into this MOU to set out the contributions to be made by the parties hereto and various processes and policies which will apply to the operation and funding of the HREA;

**NOW THEREFORE** in consideration of the undertakings and MOUs contained herein, the parties agree as follows:

## **1. Definitions**

1.1 In this MOU:

- (a) “Applicant” refers to a party who has applied to the HREA, for approval to conduct health research involving human subjects;
- (b) “Approved Operating Budget” has the meaning set out in section 8.1 of this MOU;
- (c) “Board of Record” means the party responsible for the continuing oversight and monitoring of health research projects;
- (d) “Business Day” means a weekday on which the chartered banks are open in St. John’s, NL.
- (e) “Cash Contribution” refers to the cash contributions described in Schedule “A” to this MOU;
- (f) “Cost Overruns” has the meaning set out in section 6.1 of this MOU;
- (g) “Dispute Resolution Process” has the meaning set out in section 14.1 of this MOU;
- (h) “Draft Operating Budget” means the budget prepared by the HREA for the next fiscal year;
- (i) “HREA Office” has the meaning set out in Schedule “A” of this MOU;
- (j) “In-Kind Contribution” refers to an expense which Memorial or Eastern Health, as the case may be, will absorb internally or pay directly to the payee on behalf of the HREA, as set out in more detail in Schedule “A” to this MOU;
- (k) “Losses” has the meaning set out in section 9.2 of this MOU;
- (l) “Monthly Budget Statement” has the meaning set out in section 6.1 of this MOU;
- (m) “MOU” means this MOU and any mutually agreed upon modifications that may be made in writing from time to time;
- (n) “Original Employer” has the meaning set out in section 9.1 of this MOU.

## **2. Cash Contributions**

2.1 Memorial and Eastern Health agree that each shall make the annual Cash Contribution to the HREA as is set out in Schedule “A” to this MOU.

## **3. In-Kind Contributions**

3.1 Memorial and Eastern Health agree that each shall make the In-Kind Contributions to the HREA as are set out in Schedule "A" to this MOU. The In-Kind Contributions shall commence on July 1 and shall be provided on a continuous basis thereafter.

#### **4. Memorial's Role Re: Accounts Payable and Receivable**

4.1 Memorial agrees that all expenses and receivables of the HREA shall be routed through Memorial's accounts.

4.2 Memorial administrative and/or finance staff will take care of paying all HREA expenses incurred during the course of the HREA fiscal year and taking deposit of all receipts received by the HREA.

4.3 At the end of each fiscal year of the HREA, Eastern Health shall pay to Memorial the Cash Contribution which Eastern Health has agreed to contribute to the HREA.

4.4 In the event that there is any deficit once expenses and income (including the Cash Contributions of Memorial and Eastern Health) of the HREA have been reconciled at the end of a particular fiscal year, the Dept shall be required to fund such deficit by direct payment of the required amount to Memorial, subject to the cap referred to in section 8.2 of this MOU.

#### **5. Annual Review of Cash and In-Kind Contributions**

5.1 Memorial, Eastern Health and the HREA agree to conduct an annual review of the Cash and In-Kind Contributions committed herein, to determine whether any adjustment to such contributions is reasonably required. This review shall take place by September 30<sup>th</sup> of each year. The HREA shall provide Memorial and Eastern Health with a copy of the Draft Operating Budget for the upcoming fiscal year in order to facilitate such discussions.

#### **6. Monthly Budget Statements**

6.1 Memorial agrees that it shall, on a monthly basis, provide the HREA with a budget report which shows the expenses incurred to date as compared to the expenses and income budgeted for the same period (each, a "**Monthly Budget Statement**"). The first such report shall cover the period July 1 to July 31 and subsequent reports shall be prepared for each calendar month thereafter. Any deficit shall be noted on the Monthly Budget Statement as a cost overrun ("**Cost Overruns**").

#### **7. Quarterly Meetings**

7.1 The HREA, Memorial, Eastern Health and the Dept shall meet on a quarterly basis to discuss the Monthly Budget Statements relating to the immediately preceding quarter. During such meetings, it shall be

determined, what, if any, measures need to be taken to address the Cost Overruns for the preceding quarter. Options may include the Dept agreeing to provide funding for such Cost Overruns within an agreed upon time frame prior to the fiscal year end, Memorial agreeing to continue to finance such Cost Overruns for an agreed upon time frame or such other actions as the parties may agree to.

## **8. Approval of Draft Operating Budget**

- 8.1 The HREA shall provide the Dept with a copy of the Draft Operating Budget, highlighting the new budget items and/or the increases in expenses and/or decreases in income from the prior fiscal year by September 30<sup>th</sup> of each fiscal year. The Dept shall advise the HREA as soon as reasonably possible whether it approves the Draft Operating Budget (such approved budget to be referred to as the “**Approved Operating Budget**”). Expenses reflected in the Approved Operating Budget which are not funded by Memorial and/or Eastern Health as noted herein, shall be funded by the Dept and such funds shall be provided to the HREA by the Dept as soon as reasonably possible following a written request being received by the Dept from the HREA.
- 8.2 Notwithstanding the any provision of this MOU, the parties acknowledge and agree that the Dept’s contributions to funding Cost Overruns and the Approved Operating Budget in any given fiscal year is limited to One Hundred and Seventy-Five Thousand Dollars (\$175,000).

## **9. Employees**

- 9.1 Employees of Memorial and/or Eastern Health who are seconded or assigned to the HREA shall remain employees of Memorial and/or Eastern Health (the “**Original Employer**”), as the case may be. For greater certainty, the Original Employer shall remain responsible for:
- (a) any and all benefits accrued or accruing to seconded or assigned employees, including but not limited to retirement plans, pension plans, health and dental plans and insurances (including but not limited to life, disability, dismemberment, accident and critical illness insurance);
  - (b) paying all Workplace Health, Safety and Compensation Commission premiums relating to a seconded or assigned employee;
  - (c) paying all salaries/bonuses/vacation pay relating to a seconded or assigned employee;
  - (d) making all government payroll remittances relating to a seconded or assigned employee.
- 9.2 The Original Employer also remains liable for any and all actions, proceedings, claims, demands, debts, losses, costs, damages, expenses,

legal fees, liabilities and penalties (collectively referred to as “Losses”) resulting from the termination of such seconded employee(s), for whatever reason, and agrees to indemnify and save harmless the HREA from all such Losses immediately upon demand.

- 9.3 Eastern Health agrees that it shall be the employer of the individual occupying the position of Ethics Officer as of the date of signing of this MOU. This individual shall be assigned by Eastern Health to the HREA. Should this individual leave the employ of Eastern Health, Eastern Health may provide an employee to act as the Ethics Officer for the HREA. In such cases, the Ethics Officer may be seconded or assigned from Eastern Health to the HREA and shall report to the HREA. HREA shall pay Eastern Health the following in respect of any Eastern Health employee seconded or assigned from Eastern Health to the HREA:
- (i) the employee’s base annual salary;
  - (ii) 20% of the employee’s base annual salary, to cover the cost of benefits.
- 9.4 Memorial agrees that it shall be the employer of the following employee positions: **two** Intermediate Clerk Stenographers and one Intermediate Secretary. It is understood that Memorial will work with the HREA to transition to two permanent intermediate secretary positions and one permanent intermediate clerk stenographer. The HREA shall not be actively involved in the recruitment, hiring or disciplinary processes for these positions. The aforementioned employees shall be seconded from Memorial to the HREA.
- 9.5 The Ethics Officer will provide day-to-day management of the Ethics Office, and may provide day-to-day direction of tasks to the seconded employees of Memorial.
- 9.6 Employees of Eastern Health who are seconded or assigned to the HREA shall be subject to regularly scheduled employee performance reviews. Eastern Health shall be entitled to actively participate in such reviews and shall be entitled to review any documentation prepared in relation thereto. The HREA agrees that it shall adopt a written employee performance review policy, which shall be approved by Eastern Health. In no event shall the HREA have any involvement in any performance or other reviews undertaken in respect of employees seconded by Memorial to the HREA hereunder.
- 9.7 In the event that there are issues regarding the competency or suitability for the position of seconded employees or in the event that there are disciplinary issues involving a seconded employee, the HREA shall be entitled to provide input to the Original Employer as to the appropriate resolution of the issue. However, the HREA shall not have the authority to impose disciplinary measures without the approval of the Original

Employer, and all decisions respecting such employee shall remain with the Original Employer.

- 9.8 For greater certainty, nothing in this Agreement (including the provisions allowing for secondment or assignment of staff from Memorial and Eastern Health) shall preclude the HREA from hiring staff on its own account and at its own expense.
- 9.9 Subject to section 10.1 of this MOU, Eastern Health and Memorial shall have no liability whatsoever in regards to employees hired directly by the HREA, and the HREA agrees to indemnify and save harmless Eastern Health and Memorial from all Losses relating to such employees immediately upon demand.
- 9.10 Collective agreements and employer policies (including but not limited to policies regarding vacation time and sick leave) of the Original Employers applicable to any seconded employee, shall continue to apply to the employee during the period of time such person is seconded or assigned to the HREA.

## **10. Cessation of In-Kind Contribution**

- 10.1 In the event that Memorial or Eastern Health cease to make an In-Kind Contribution to the HREA, such party shall increase the amount of its Cash Contribution to the HREA to directly compensate the HREA for the loss of the In-Kind Contribution.

## **11. Insurance**

- 11.1 The HREA shall maintain tenant's content insurance policies for the HREA Office for fire and other perils on a replacement value basis. Memorial and Eastern Health shall be named as insured parties in such policy of insurance, to the extent of their respective interests.
- 11.2 The HREA agrees to purchase and maintain directors and officer's liability insurance for all members of the Board of Directors of the HREA and members of the Health Research Ethics Board.

## **12. Computer/Internet Policies**

- 12.1 For as long as the HREA is connected to Memorial's computer lines, internet or email systems, the HREA acknowledges and agrees that it shall be subject to compliance with Memorial's policies and procedures regarding computer/internet/email use and access, as same may be amended from time to time.
- 12.2 Memorial and Eastern Health agree to provide the HREA with written copies of all policies with which the HREA, or its seconded or assigned employees, are required to comply as noted herein.

### **13. Role of Human Investigation Committee**

- 13.1 Memorial and Eastern Health confirm that research projects completed and closed under the mandate of the Human Investigation Committee shall remain the responsibility of Memorial and Eastern Health.
- 13.2 The HREA shall become the Board of Record with respect to any active files of the Human Investigation Committee. The Health Research Ethics Board shall be the Board of Record for all research approved by the Health Research Ethics Board.

### **14. Dispute Resolution Mechanism**

- 14.1 Subject to any dispute resolution process that is adopted by unanimous approval of the parties, in the event that there is any disagreement or dispute with respect to the interpretation of this MOU, the performance of a party's obligations under this MOU or an unresolved issue regarding funding, the parties agree to attempt, expeditiously and in good faith, to resolve the dispute according to the following procedures (the "**Dispute Resolution Process**"):

#### Step 1 – Formal Consultation

Any issue which is the subject of dispute between the parties shall be reduced to writing (the "**Notice of Dispute**") by either party and forwarded to the other parties. Upon receipt of the Notice of Dispute, the Vice-President Research of Memorial (or his or her designate), the legal counsel of Eastern Health (or his or her designate), the Ethics Officer of the HREA (or his or her designate) and the legal counsel of the Dept (or his or her designate) shall attempt to resolve the matter through discussion and negotiation.

#### Step 2

If a resolution is not reached through the process outlined in Step 1 within fourteen (14) Business Days of receipt by all parties of the Notice of Dispute, the parties shall proceed to have the dispute mediated by a neutral third party mediator chosen by agreement between the parties. The cost of such mediation shall be shared equally between the parties.

#### Step 3

If a resolution is not reached through the process outlined in Step 2 within thirty (30) days, the parties shall proceed to submit the matter to arbitration.

The arbitration will be carried out by a single arbitrator who is acceptable to all parties. If a single arbitrator who is acceptable to all parties has not been found within ten (10) days of the matter being submitted to

arbitration, then an arbitrator shall be chosen by random draw from the parties preferred arbitrator list.

Except as set out in this section, the arbitration will be carried out in accordance with the provisions of the *Arbitration Act*, R.S.N. 1990, c.A-14 or its successor legislation. The arbitrator shall decide all questions of procedure not provided for under the *Arbitration Act* and shall provide a written decision on the issue in dispute.

The expense of the arbitration shall be paid as specified by the arbitrator(s).

- 14.2 Notwithstanding that a Dispute Resolution Process has been invoked by a party, the HREA shall continue to operate and the parties to this MOU shall continue to meet their obligations under the MOU.

## **15. Accounting Records**

- 15.1 Full and accurate books of the HREA shall be maintained by Memorial on behalf of the HREA, showing all receipts and expenditures, assets and liabilities, profits and losses, and all other records related to the management and operation of the HREA. The books of the HREA will be kept on an accrual basis. The books and records shall be open to the inspection and examination of all parties in person or by their duly authorized representatives at any reasonable time.

## **16. Termination**

- 16.1 Either party may withdraw from the arrangement described in this MOU by giving the other parties one (1) year advance written notice.

## **17. Review of Terms of MOU**

- 17.1 The parties agree that the terms of this MOU shall be reviewed at least once every three (3) years, to ensure that the MOU is adequate to address the needs of the HREA and that it adequately reflects the parties' intentions.

## **18. General Provisions**

- 18.1 Relationship of the Parties - This MOU relates specifically to the operation and funding of the HREA. Nothing in this MOU shall be interpreted to mean that either party hereto has any rights or obligations with respect to the independent operations or activities carried on by each of the other parties hereto, except to the extent set out herein.
- 18.2 Right of Set-off - The parties are entitled to deduct or off-set any monies owing from one to the other pursuant to this MOU.



- 18.3 Accrued Rights and No Waiver - Termination of this MOU shall not prejudice rights and liabilities accrued hereunder prior to such termination. No previous condoning, excusing or overlooking of breaches or defaults by a party shall be taken as a waiver of any of the terms or conditions of this MOU.
- 18.4 Notices - Any notice or other communication to be given under this MOU shall be given in writing and delivered, faxed or mailed by registered, certified or electronic mail (email), to the address noted below. A party may at any time in the manner provided above give notice in writing to the other of any change of address of the party giving such notice.

Memorial University of Newfoundland:  
Vice President (Research)  
Arts & Administration Building  
230 Elizabeth Avenue  
St. Johns, NL A1C 5S7

**Eastern Health:**

Katherine Chubbs, VP and Chief Nursing Officer  
  
Room 1347, Level 1, Administration, Executive Suite  
Health Science Centre  
300 Prince Philip Drive  
St. John's, NL A1B 3V6  
  
709-777-1041  
709-777-1302 Fax

**Government of Newfoundland and Labrador:**

Bruce Cooper - Deputy Minister  
1st floor, Confederation Building West Block  
PO Box 8700  
St. John's, NL A1B 4J6

**Health Research Ethics Authority:** Ethics Officer, 95  
Bonaventure Avenue, Suite 200, St. John's, NL A1B 2X5 Fax:  
709-777-8776

- 18.5 Each such notice or other communication by a party shall be deemed to have been given and received on the date of delivery thereof or, if mailed, on the fourth business day following the date of mailing, or if made by fax or email, on the first business day following the transmittal.
- 18.6 No Modification Unless in Writing - No modification of this MOU shall be of any force or effect unless made in writing and signed by all parties.

The parties agree that any proposed revision to this MOU shall be described in a written notice, which shall be provided to the other parties at least sixty (60) days prior to a meeting being held to discuss such proposed changes.

- 18.7 Severability - If any provision of this MOU is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force provided that the intent of the remaining provisions is not substantially altered. Where possible, the parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 18.8 Time of the Essence/ Headings - Time shall be of the essence in the performance of this MOU. The headings in this MOU are provided for the sake of convenience only and do not constitute part of this MOU.
- 18.9 Execution in Counterparts/ Fax Copies - This MOU may be executed in two or more counterparts with the same effect as if all the parties had signed the same document. All such counterparts shall be construed together and shall constitute one MOU. Executed fax copies of this MOU have the same binding effect as the original executed MOU.

**IN WITNESS WHEREOF** the parties have executed this MOU.

A. Stany  
Witness

Memorial University of Newfoundland

Per: [Signature]

Name: DR. C.W. LOOMIS

Title: VP (RESEARCH)

I/We have the authority to bind the corporation

Paula Dillon  
Witness

Eastern Regional Health Authority

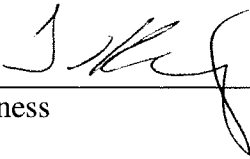
Per: [Signature]


Name: Katherine Chubbs

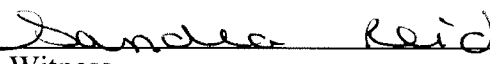
Title: Vice President

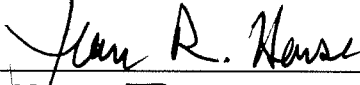
I/We have the authority to bind the corporation

Government of Newfoundland and Labrador as represented by the Minister of Health and Community Services

  
\_\_\_\_\_  
Witness

Per:   
\_\_\_\_\_  
Name: Bruce Cooper  
Title: Deputy Minister  
I/We have the authority to bind the corporation

  
\_\_\_\_\_  
Witness

Health Research Ethics Authority of  
Newfoundland and Labrador  
Per:   
\_\_\_\_\_  
Name: Jean R. House  
Title: Vice Chair HREA  
I/We have the authority to bind the corporation

5th July <sup>2012</sup>  
September

## Schedule "A"

### Cash Contributions:

Memorial - \$65,000 per annum

Eastern Health - \$65,000 per annum

### In-Kind Contributions:

#### **1. Memorial**

- a. Lease of space for HREA office and storage space as required (the "HREA Office") (the terms of such lease being subject to Memorial's approval, which shall not be unreasonably withheld) and all legal and other expenses relating to same;
- b. Provision of computer lines/internet access;
- c. Payment of all utilities (phone, heat, light, water) and all municipal business taxes relating to the HREA Office;
- d. Provision of all equipment and furniture for the HREA Office;
- e. Provision of all accounts payable/receivable, payroll, administrative book-keeping and accounting and audit services as required by the HREA;
- f. Access to boardroom space within Memorial upon request, subject to availability;
- g. Provision of seconded employees to fill the following positions:
  - i. Two (2) Intermediate Clerk Stenographers
  - ii. One (1) Intermediate Secretaryit being understood that Memorial will work with the HREA to transition to instead having one (1) permanent intermediate clerk stenographer and two (2) permanent intermediate secretaries;
- h. Mail/courier services;
- i. Use of Memorial's purchasing and contractual services, including but not limited to participation in materials or services purchasing plans where deemed appropriate by Memorial;
- j. Access to and use of Memorial's library services;

- k. Access to and use of Memorial's human resources expertise for consultation purposes, including but not limited to having designated Memorial staff assist with the hiring of HREA staff;

## **2. Eastern Health**

- a. Provision of advice and consultation services with regards to compliance with the *Transparency and Accountability Act*;
- b. Provision of advice and consultation services with regards to the submission of Draft Operating Budgets to support compliance with section 20 of the *Health Research Ethics Authority Act*;
- c. Access to boardroom space within Eastern Health upon request, subject to availability;
- d. Access to and use of Eastern Health's library services;
- e. Access to Eastern Health staff who are experienced in conducting clinical trials, for consultation purposes.