

THIS AGREEMENT made this day of May, 2006, under the laws of the Province of Ontario, Canada.

**BETWEEN:**

nichola feldman-kiss, an individual,  
residing at 273 Stewart Street, Ottawa, Ontario, K1N 6K3 (the "Artist")

and

National Research Council of Canada, Institute for Information  
Technology, a Crown corporation, having its head office at  
1200 Montreal Road, Ottawa, Ontario, K1A 0R6 (the "NRC")

**WHEREAS** the Artist is an artist who creates works of art in multi-media, including performance, data elements, photography, sculpture and video;

**AND WHEREAS** in 2002 the Artist created an artistic work comprising an expanded performance of self portraiture which the artist has titled *the mean body database, 2002* (the "Mean Body Artistic Work") in which the artist is the owner of copyright;

**AND WHEREAS** the Mean Body Artistic Work consists of a compilation of 66 surface anthropometric scans of the Artist's body using a Cyberware whole body colour 3D scanner model WB4 and 16 high resolution surface anthropometric scans of the Artist's face using a Cyberware head and face colour 3D scanner model 3030RGBPS and the entire performance of creating the data generated by the scans through eight months of physical training and dietary manipulation to achieve her idealized body shape and manipulating the Cyberware equipment to secure the desired scans;

**AND WHEREAS** the Mean Body Artistic Work includes detailed personal and intimate information about the Artist's body;

**AND WHEREAS** the Artist is currently creating, and intends in the future to create, derivative art works inspired by, and using, the Mean Body Artistic Work;

**AND WHEREAS** the Artist desires to facilitate the use of the Mean Body Artistic Work by other researchers for specified non-profit research purposes;

**AND WHEREAS** the Artist also desires to entrust an archive copy of the Mean Body Artistic Work with NRC and upon expiry of copyright in the work to provide access and use of the work in the public domain;

**AND WHEREAS** the parties acknowledge that the Artist has delivered to NRC one archival copy of the Mean Body Artistic Work;

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**AND WHEREAS** NRC desires to obtain the right to use the Mean Body Artistic Work for certain non-profit research purposes;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the Artist and NRC hereby agree as follows:

1. In this Agreement:
  - (a) "Artistic Research" shall mean research, investigation, examination, analysis and criticism of the works of the Artist or any other visual artist;
  - (b) "Artist's Heirs" shall mean the heirs or beneficiaries of the Artist in respect of any or all of the copyright that subsists in the Mean Body Work in Canada or elsewhere;
  - (c) "Copyright Notice" shall mean © 2002 nichola feldman-kiss;
  - (d) "Permitted Research" shall mean non-profit research in the field of anthropometry; medical and health applications; statistical analysis; ergonomics for non-military tools, vehicles and furniture; film animation and garment design intended to enhance the body of human knowledge, but shall not include any Prohibited Research;
  - (e) "Prohibited Research" shall mean research both for profit and non-profit in the field of biometric applications for surveillance, security or military applications; ergonomics directed towards weaponry design or for military purposes; and modeling, visualization or other research directed towards the sex or adult entertainment industry; and
  - (f) "Territory" shall mean Canada.
2. The Artist hereby grants to NRC a fully paid up non-exclusive licence:
  - (a) to use, reproduce and communicate in the Territory all or any substantial part of the Mean Body Artistic Work for Permitted Research by NRC and its permitted contractors and employees;
  - (b) to authorize its contractors and researchers to use and reproduce in the Territory all or any substantial part of the Mean Body Artistic Work for Permitted Research provided that each such contractor and other person shall have previously signed and delivered to NRC an acknowledgement and undertaking in the form attached hereto as Schedule A to this Agreement; and
  - (c) to authorize artists to use and reproduce in the Territory all or any substantial part of the Mean Body Artistic Work for the purpose of Artistic Research but excluding for the purpose of making a work of art provided that each such artist
  - (d) shall have previously signed and delivered to NRC an acknowledgement and undertaking in the form attached as Schedule B to this Agreement.
3. NRC shall provide the Artist with a copy of each acknowledgement and undertaking referred to in clauses 2(b) and 2(c) within thirty (30) days from the date that NRC authorizes a contractor or other person pursuant to that clause.

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4. Notwithstanding the terms of clause 2 of this Agreement, NRC shall not use, reproduce, or authorize the use or the reproduction of the Mean Body Artistic Work or any substantial part thereof for the purpose of making a replica of the Artist in either two or three dimensions.
5. NRC will store one archival copy of the Mean Body Artistic Work in its archives and shall provide the Artist and the Artist's Heirs with access to the archival copy and upon request by the Artist or the Artist's Heirs shall provide a copy of all or any part of the work as may be consistent with the rights then held by the Artist or the Artist's Heirs.
6. NRC shall maintain and conserve the archival copy of the Mean Body Artistic Work under substantially the same conditions as it maintains and conserves the research product of its employees.
7. NRC shall apply the Copyright Notice on a prominent location of each copy of the Mean Body Artistic Work and any part thereof made by NRC pursuant to the terms of this Agreement.
8. NRC may publish the results of any research conducted by it or on its behalf pursuant to this Agreement in a scholarly publication in print or electronic form, provided that in any electronic publication NRC shall not reproduce any substantial part of the data elements comprising the Mean Body Artistic Work.
9. This Agreement shall be for a term coincident with the term of copyright in Canada in the Mean Body Artistic Work and shall expire upon the expiry of copyright in the work in Canada at which time the work enters into the public domain.
10. The Artist hereby warrants that, immediately prior to execution of this Agreement, she owned and held unencumbered the rights granted to NRC pursuant to this Agreement.
11. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the parties have signed this Agreement as of the date first set out herein.

SIGNED by NRC in quintuplicate at: Toronto, Ontario, Canada  
Institute for Information Technology, National Research Council of Canada.

Date: May 5, 2006

Per: [Signature]  
Name and title: Christian Coulter, Director General

Date: May 5, 2006

Witness: [Signature]  
Name and title: Assistant

SIGNED by the Artist in quintuplicate at: Canada

[Signature]

Per: [Signature]  
Name and title: Nichola Feldman-Kiss, Artist

**Schedule A**

I acknowledge that I am being provided with access to, and a limited right to reproduce, the *mean body database*, 2002, an artistic work of *nichola feldman-kiss* protected by the laws of copyright. I understand that I may only reproduce any part of the work for the purpose of non-profit research in the field of anthropometry; medical and health applications; statistical analysis; ergonomics for tools, vehicles (non-military) and furniture; film animation and garment design. I will not use the reproduction of the work or any substantial part of the work for the purpose of making a replica of *nichola feldman-kiss* in either two or three dimensions. I acknowledge that I may publish the results of my research in print or electronic form but that in any electronic publication I will not reproduce any substantial part of the data elements comprising the work. In any such publication I will acknowledge *nichola feldman-kiss* as the owner of copyright in the work and the National Research Council as the repository of the work.

**Schedule B**

I acknowledge that I am being provided with access to, and a limited right to reproduce, the *mean body database*, 2002, an artistic work of *nichola feldman-kiss* protected by the laws of copyright. I understand that I may only reproduce any part of the work for the purpose of research, investigation, examination, analysis and criticism of the works of the Artist or any other visual artist. I will not use the reproduction of the work or any substantial part of the work for the purpose of making a replica of *nichola feldman-kiss* in either two or three dimensions or for the purpose of making an artistic work. I acknowledge that I may publish the results of my research in print or electronic form but that in any electronic publication I will not reproduce any substantial part of the data elements comprising the work. In any such publication I will acknowledge *nichola feldman-kiss* as the owner of copyright in the work and the National Research Council as the repository of the work.