

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the “Agreement”), effective **XXX** (the “Effective Date”), is between the Arizona Board of regents for and on behalf of Northern Arizona University, a public land grant university with its principal place of business S. Knoles Drive, Flagstaff, AZ 86011-4087, (“NAU”) and **XXX, [entity type]** having its principal place of business at **xxx** (“**xxx**”) (collectively the “Parties” or individually the “Party”). Each Party, or by an Affiliate on its behalf, may disclose **[or have disclosed]** certain Confidential Information (a “Disclosing Party”) and/or receive certain Confidential Information from the other Party, or an Affiliate on its behalf, (a “Receiving Party”) for the purpose of enabling the Parties to determine whether or not to enter into a license agreement and/or other mutually-beneficial relationship, relating to disclosure **[insert]** (“Purpose”).

WHEREAS, NAU has determined that entering into this Agreement could promote knowledge-based economy in Arizona; thus, it is in the public’s best interest and is consistent with NAU’s missions and goals.

NOW THEREFORE, in consideration of the above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Confidential Information. “Confidential Information” means any information or materials embodied in written, graphical, digital, oral, biological or other tangible form, which is identified and designated as confidential at the time of disclosure, and disclosed by a Disclosing Party to a Receiving Party. Confidential Information of a Disclosing Party may include, but is not limited to, its inventions, invention disclosures, evaluations and assessments of inventions, patent applications and other filings, legal instruments, biological materials, processes, methods, formulae, prototypes, devices, computer software, copyrighted works, experimental data, and its potential intellectual property rights therein.
2. Affiliate. “Affiliate” means any entity which controls, is controlled by, or is under common control with a Party during the term of this Agreement; “control” being the direct or indirect ownership of more than 50% of the stock, shares or interests entitled to vote for election of directors or other governing body of the entity or otherwise having the ability to direct the management of such entity.
3. Disclosure. With regard to any Confidential Information disclosed under this Agreement by the Disclosing Party to the Receiving Party on or after the Effective Date, each Receiving Party shall hold the same in confidence and except as is otherwise stated, not disclose or make available the Confidential Information, by publication or otherwise, to any third party other than an Affiliate, and shall use the Confidential Information disclosed to it pursuant to this Agreement only to the extent necessary to effectuate the Purpose and agrees not to disclose, make available or use, or permit the disclosure, availability or use for any other purpose. Any Affiliate to whom Receiving Party discloses or otherwise makes available Confidential Information of Disclosing Party shall agree prior to such disclosure to be bound by the terms and conditions of this Agreement as if a Receiving Party, and Receiving Party shall remain liable for such compliance. A Receiving Party will notify the Disclosing Party of any disclosure which may have export control ramifications.
4. Duty of Care. Each Receiving Party will:
 - (a) Take the same degree of care to prevent disclosure, availability and use of Disclosing Party’s Confidential Information as it takes to preserve and safeguard its own confidential and proprietary information, but, in any event, no less than a reasonable degree of care. The Receiving Party will not be liable if it accidentally discloses Confidential Information while exercising reasonable care, provided that, upon discovery of such disclosure, the Receiving Party attempts to retrieve the Confidential Information and seeks to prevent further accidental disclosures; and
 - (b) Make copies of the Confidential Information and distribute such copies only to the extent that the copies are reasonably necessary to effectuate the Purpose of this Agreement and only to those of its employees with a need to know such Confidential Information to effectuate such Purpose; and

- (c) At the written request and direction of a Disclosing Party, and without delay, return or destroy, as requested by Disclosing Party, the Confidential Information provided to it pursuant to this Agreement and any copies, summaries or other documents or materials in which the Confidential Information is embodied, except that one copy of all such Confidential Information may be kept by the Party's legal counsel or designee for archival purposes and for the purpose of defending against any claims asserted by Disclosing Party arising in connection with this Agreement or a breach thereof.

5. Exceptions to Duty. The obligations of Articles 3 and 4 shall not apply to Confidential Information that:

- (a) As evidenced by a Receiving Party's written records, was lawfully known to the Receiving Party prior to its communication by the Disclosing Party and was not communicated to the Receiving Party subject to any restrictions on disclosure or use;
- (b) As evidenced by a Receiving Party's written records, is independently developed by the Receiving Party without use or knowledge of or access to the Confidential Information;
- (c) As evidenced by a Receiving Party, is or becomes publicly known other than by a breach of this Agreement by the Receiving Party; or
- (d) As evidenced by a Receiving Party, becomes known to the Receiving Party by the lawful action of a third party not in breach of a duty of confidence and the third party did not restrict the Receiving Party in its further use or disclosure.

Confidential Information specific to particular products or circumstances shall not qualify for the foregoing exceptions merely if embraced by general disclosures regarding other products or circumstances. A combination of features shall not qualify for the foregoing exceptions merely if individual features of such combination qualify for an exception.

6. Forced Disclosure. If Receiving Party is required by law, regulation or court order to disclose any of Disclosing Party's Confidential Information, Receiving Party will: (a) promptly notify the Disclosing Party; (b) reasonably assist the Disclosing Party to obtain a protective order or other remedy of Disclosing Party's election; and (c) only provide that portion of the Confidential Information that is so required. NAU may disclose the existence of this Agreement should a proper request be made under the Arizona open records procedures.

7. Reverse Engineering. The Receiving Party may not alter, modify, break-down, disassemble, analyse, decompile or reverse engineer materials or compositions containing or constituting Disclosing Party's Confidential Information without the express prior written consent of the Disclosing Party.

8. Disclaimer of License. Disclosing Party reserves all rights, titles and interests in and to its Confidential Information. Confidential Information is provided to Receiving Party in bailment, solely for the Purpose, and nothing herein constitutes a sale of Confidential Information, a license or other transfer or conveyance of rights, titles or interests by a Disclosing Party in or to its Confidential Information or in any of its intellectual property rights therein, and no such conveyance or obligation to make sure conveyance will be implied.

9. Term. The term of this Agreement shall commence on the Effective Date and expire three (3) years thereafter unless another written agreement is made between the Parties to the contrary.

10. Entire Agreement. This Agreement represents the entire agreement between the Parties in relation to the Confidential Information disclosed hereunder, and supersedes all other agreements and representations, whether oral or written, with respect to such Confidential Information. This Agreement may only be modified if such modification is in writing and signed by a duly authorized representative of each Party. The delay or failure to assert a right or to insist upon compliance with any term or condition of this Agreement will not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition. A valid waiver must be given in writing and signed by the Party waiving its rights.

11. Remedies. Due to the proprietary and valuable nature of the subject matter, the Parties agree that any breach of this Agreement by a Receiving Party would cause irreparable harm to the Disclosing Party, which will not be adequately compensated for by monetary damages alone, and that the Parties' rights and obligations under this Agreement may be enforced by injunctive and/or other preliminary or equitable relief to the extent such agreement is not construed as a waiver of sovereign immunity, in addition to any other remedies available at law and the obligation to show actual damages.

12. Relationship of the Parties. The Parties are separate and independent legal entities, and are not related in any manner. Without limiting the generality of the foregoing, no Party will be deemed to be the employee, representative, agent, joint

venturer or partner of the other Party for any purpose. Neither Party has the authority to bind the other or to incur any liability on behalf of the other.

13. Severability. The provisions of this Agreement are severable, and in the event that any provision of this Agreement is determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability will not in any way affect the validity or enforceability of the remaining provisions hereof, or the validity and enforceability of such provisions where valid and enforceable.

14. Assignment. This Agreement is not assignable or otherwise transferable by a Party without the prior written consent of the other Party. The failure of a Party to comply with the terms of this Article 14 will render the assignment or transfer null and void and be grounds for termination of the Agreement by the other Party. The prohibition set forth in this Article 14 includes, without limitation (and the following shall be deemed to be "assignments"): (i) a consolidation or merger of a Party; (ii) a change in ownership or voting rights of more than fifty percent (50%) of the issued and outstanding stock of any corporate Party; (iii) any assignment or transfer which would otherwise occur by operation of law, merger, consolidation, reorganization, liquidation, appointment of a custodian, trustee, receiver or similar person, transfer or other significant change in corporate or proprietary structure; (iv) the sale, assignment or transfer of all or substantially all of the assets of a Party; and (v) where a Party is a partnership, a change in control of such partnership.

15. Construction. Headings are included for convenience only and will not be used to construe this Agreement. The use of the term "including" means "including, without limitation." The Parties acknowledge and agree that both Parties substantially participated in negotiating the provisions of this Agreement; therefore, both Parties agree that this Agreement shall not be construed more favorably toward one party than the other party, regardless of which party primarily drafted the Agreement. Each Party acknowledges that it was provided an opportunity to seek advice of counsel prior to entering into this Agreement.

16. Notice. Communications sent via electronic mail (commonly referred to as e-mail) do not constitute a "writing" for purposes of this Agreement. Any notice or request delivered pursuant to this Agreement shall be deemed given when actually received or three days after sent with a written proof to the Party's address set forth hereinafter:

If to NAU:	If to xxx :
Northern Arizona University	Name
Attn: NAU Innovations	Attn:
Box 4087, Building 56	Address:
1395 S. Knoles Drive	Telephone:
Flagstaff, Arizona 86011-4087	Facsimile:
Telephone: 928-523-4620	Email:
Email: NAUInnovations@nau.edu	

The Parties have caused this valid and binding agreement to be executed by their duly authorized representatives as set forth below effective as of the Effective Date.

17. Legislative Action. The Parties acknowledge that legislative action may require that curtailment or termination of some or all of NAU's research and educational programs. The Parties acknowledge further that NAU is obligated to respond to such legislative action and may determine that it is necessary to curtail or terminate those programs. NAU has no obligation to the other Party to perform any research or educational program and nothing in the foregoing or otherwise in this Agreement will be interpreted to create any obligation on NAU to perform research or educational programs. The Parties also agree that termination or failure to perform terms and conditions of this Agreement in response to legislative action will not be deemed a breach of this Agreement.

18. Applicable Law. This Agreement is to be governed by and construed in accordance with laws of the State of Arizona without regard to any principles of conflicts of law. Exclusive venue for any dispute not barred by sovereign immunity arising under, out of, or in connection with this Agreement will be the state and federal courts in or in close proximity to Flagstaff, Arizona, unless the action cannot be brought in such court due to statutory proclamation in which case only the venue will be as so proscribed. **XXX** consents to the personal jurisdiction of all such courts and hereby waives any claims of lack of personal jurisdiction or inconvenience of such court. Nothing herein will be interpreted as a waiver of sovereign immunity.

SIGNATURE PAGE FOLLOWS

The Arizona Board of Regents, for and on behalf of Northern Arizona University “NAU”

By: _____

Name: _____

Title: _____

Date: _____

NAU scientist for acknowledgment purposes only

By: _____

Name: _____

XXX, Inc. “Recipient”

By: _____

Name: _____

Title: _____

Date: _____

XXX scientist for acknowledgment purposes only

By: _____

Name: _____