

RESEARCH COLLABORATION AGREEMENT

This Research Collaboration Agreement (the “Agreement”) is made by and 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 1395 S. Knoles Drive, Flagstaff, AZ 86011-4087, (“NAU”) and _____, a _____ corporation with its principal place of business at _____ (“XXX”) (collectively the “Parties” or individually the “Party”).

RECITALS:

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. The Parties wish to collaborate on research projects or to continue collaboration and set forth the obligations for transfers between the laboratories of their investigators, during the term of this Agreement, of proprietary research materials required to conduct the research project. 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:

ARTICLE 1. DEFINITIONS

- 1.1 “**Confidential Information**” includes scientific, business, or financial information pertaining to the Research Project (defined below) that is designated as confidential by Provider (defined below). “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 Provider to Recipient. Confidential Information 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. Confidential Information does not include information that: (i) is in the public domain other than as a result of a disclosure by Recipient (defined below) or any of Recipient’s representatives in violation of this Agreement; (ii) was in the possession of Recipient before disclosure by the Provider; (iii) is acquired by Recipient from a third party having no obligation of confidentiality to Provider; (iv) is hereafter independently developed by Recipient, without reference to Confidential Information received from Provider; or (v) Provider expressly authorizes Recipient to disclose.
- 1.2 “**Invention**” means any invention or discovery that is or may be patentable or protectable under applicable laws.
- 1.3 “**Investigator**” means the principal researcher designated by a Party to direct the Research Project.
- 1.4 “**Material**” means Original Material, Progeny, and any material created by Recipient that constitutes an unmodified functional subunit of or product expressed by Original Material including but not limited to subclones of unmodified cell lines, purified or fractionated subsets, proteins expressed by DNA/RNA, or monoclonal antibodies secreted by a hybridoma cell line.
- 1.5 “**Original Material**” means a material provided by one of the Parties and used in the Research Project.
- 1.6 “**Progeny**” means unmodified descendent from Material, such as virus from virus, cell from cell, or organism from organism.
- 1.7 “**Provider**” means the Party that provides Original Material or discloses Confidential Information to another Party under this Agreement.

- 1.8 “**Recipient**” means the Party that receives Original Material or Confidential Information from another Party under this Agreement.
- 1.9 “**Research Project**” means the collaborative research described in Appendix A.

ARTICLE 2. COLLABORATIVE RESEARCH

- 2.1 The Parties agree to collaborate on the Research Project. The Investigator for NAU will be _____ and the Investigator for _____ will be _____.
- 2.2 Nothing in this Agreement will be construed to limit the freedom of a Party from engaging in similar research with other parties, providing the research does not create a conflict with the Parties’ obligations under this Agreement, especially with regard to Article 3.
- 2.3 The Parties recognize that the Research Project describes the collaborative research to be conducted under this Agreement and that the goals set forth in Appendix A are good faith guidelines. If events occur that require substantial modification of the Research Project, the Parties may amend Appendix A according to Paragraph 6.8 of this Agreement.

ARTICLE 3. CONFIDENTIALITY; PUBLICATIONS

3.1 Confidential Information

- 3.1.1 A Party may disclose or receive Confidential Information pursuant to the terms and conditions set forth in this Agreement.
- 3.1.2 All Confidential Information exchanged between the Parties must conspicuously bear the words “Confidential Information” or “Confidential.” Confidential Information exchanged orally or through observation must be reduced to writing and marked “Confidential Information” or “Confidential” within thirty (30) calendar days after disclosure to be considered Confidential Information.
- 3.1.3 Recipient will maintain Confidential Information in confidence for a period of three (3) years from the effective date of this Agreement and will protect Confidential Information with the same degree of care as Recipient uses to protect its own Confidential Information.
- 3.1.4 Recipient may disclose Confidential Information to its employees, consultants, or contractors to whom it is necessary to disclose this information for the purpose of the Research Project; Recipient may make these disclosures only under terms at least as restrictive as those specified in this Agreement. Recipient agrees that disclosure of Confidential Information may not be made to any party not listed herein unless Provider grants prior written approval to Recipient.
- 3.1.5 Recipient may disclose Provider’s Confidential Information if required to do so by law, regulation, or court order. If Recipient, or anyone to whom it discloses Confidential Information in accordance with Article 3, becomes legally required to disclose any Confidential Information, Recipient will provide timely notice to Provider and, to the extent practicable, consult with Provider prior to any disclosure.
- 3.1.6 A Party may disclose the Abstract of the Research Project (in Appendix A, Section I) to the public. No other section, paragraph or statement contained in the Research Project description in Appendix A may be disclosed to any third party.
- 3.1.7 NAU may disclose the existence of this Agreement should a proper request be made under the Arizona open records procedures.

3.2 Publications; Press Releases

- 3.2.1 Publications
- 3.2.1.1 In addition to the specific goals of the Research Project, the Parties view dissemination of research findings, both by publication and oral presentation, as an essential objective of the Research Project. Authorship will be decided according to commonly accepted conventions for scientific publications.

3.2.1.2 The Parties are encouraged to make publicly available the results of the Research Project subject to restrictions and terms of this Agreement due to Intellectual Property protection concerns of all Parties. Before a Party submits a paper or abstract for publication or otherwise intends to publicly disclose information about any Invention made in the course of the Research Project, other Parties will have thirty (30) calendar days to review proposed manuscripts and three (3) calendar days to review proposed abstracts to assure that its Confidential Information is protected. A Party may request in writing that the proposed publication or other disclosure be delayed for up to thirty (30) additional calendar days as necessary to file a patent application.

3.2.2 Press Releases

All press releases that reference or rely upon the work of a Party under this Agreement will be made available to the Party for review and comment at least seven (7) calendar days prior to publication.

ARTICLE 4. INVENTIONS; DATA

4.1 Inventions

4.1.1 The Parties acknowledge the possibility that Inventions may be made in the course of the Research Project. Inventorship of those Inventions will be determined in accordance with applicable U.S. laws and regulations. The term made, as used in reference to any invention, means the conception or first actual reduction to practice of such invention.

4.1.2 The Provider will own Original Material including any Original Material that is incorporated into an Invention. Inventions made in the course of the Research Project will be owned by the Party employing the inventor or inventors. Inventions that are invented jointly by employees of all Parties will be owned jointly by the Parties.

4.1.3 Each Party will report to the other Parties, in writing, all Inventions made during the Research Project no later than three (3) months from the time the invention is disclosed to a Party by its Investigator. The reports will be written in sufficient detail to determine inventorship and will be treated as Confidential Information in accordance with Article 3. The Parties will confer with each other regarding a patent filing strategy for jointly made Inventions. If a Party files a patent application on a jointly made Invention, then the filing Party will include a statement in the patent application that clearly identifies the Parties and states that the Invention was made jointly under this Agreement.

4.1.4 Notwithstanding the foregoing, the Parties acknowledge intellectual property inherent to and intrinsic to the Material exists. In the event an Invention is commercialized, Parties will discuss in good faith to determine fair, equitable and appropriate contribution to the value created through a commercialization process of the Invention by good faith negotiation of a separate agreement such as an inter-institutional agreement that provides fair and equitable sharing of value created by an Invention without extending any claims of ownership for the Invention.

4.2 Data

Each Party will disclose to the other Parties a summary of all data generated under this Agreement. Subject to the restrictions in Article 3, all Parties will have free access to and use of any data generated under this Agreement.

ARTICLE 5. THE TRANSFER AND USE OF MATERIAL

5.1 Mechanics of Transfer

A Party may provide or receive Original Material under this Agreement. Provider will label Original Material as such upon sending to the Other Party.

5.2 Conditions of Use

- 5.2.1 RECIPIENT WILL NOT USE MATERIAL IN RESEARCH INVOLVING HUMAN SUBJECTS.
- 5.2.2 Recipient's Investigator will use Material solely in connection with the Research Project in the Investigator's laboratory. If Recipient wants to use Material for commercial purposes, Recipient agrees to first obtain the appropriate commercial use or commercialization license from Provider.
- 5.2.3 Recipient agrees that Recipient's Investigator will retain control over Material and further agrees that Recipient's Investigator will not transfer Material to people not under the Investigator's direct supervision without advance written approval of Provider.
- 5.2.4 Recipient will use Material in compliance with all applicable laws, regulations and policies.
- 5.2.5 Provider reserves the right to distribute its Material to others and to use its Material for its own purposes.
- 5.2.6 Upon termination of this Agreement, Recipient agrees that Recipient's Investigator will return any and all remaining Original Material unless Provider gives Recipient's Investigator directions for disposing of Original Material by another means.
- 5.2.7 Nothing in this Agreement will be construed as conferring on Recipient any implied license to Material, or option to license Material, any technology, or any patent or patent application owned by Provider and will not create any obligation, by implication or otherwise, of a Party to enter into any further agreement with another Party.
- 5.2.8 Provider reserves all rights, titles and interests in and to its Confidential Information. Confidential Information is provided to Recipient solely for the Research Project, and nothing herein constitutes a sale of Confidential Information, a license or other transfer or conveyance of rights, titles or interests by Provider 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. Recipient may only use the Confidential Information pursuant to the terms of this Agreement and under the parameters of the Research Project.

ARTICLE 6. TERMINATION AND GOVERNANCE

6.1 Effective Date

This Agreement will be effective on the date of the last authorized signature below.

6.2 Term and Termination

- 6.2.1. The Parties agree that this Agreement will be effective for two (2) years from the date of the last authorized signature below and may be extended as mutually agreed by the Parties in a written amendment to this Agreement.
- 6.2.2 This Agreement will terminate immediately upon the mutual agreement of the Parties in writing.
- 6.2.3 This Agreement will terminate in thirty (30) calendar days after a Party receives written notice of another Party's desire to terminate this Agreement.

6.3 Representations, Warranties, and Liability

- 6.3.1 Material is understood to be experimental in nature and may have hazardous properties. ORIGINAL MATERIAL IS BEING SUPPLIED TO RECIPIENT WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR

FITNESS FOR A PARTICULAR PURPOSE. Provider makes no representations that the use of Material will not infringe any patent or other proprietary rights of third parties.

6.3.2 No indemnification for any loss, claim, damage, or liability is intended or provided by a Party under this Agreement. Each Party will be liable for any loss, claim, damage, or liability that the Party incurs as a result of its activities under this Agreement.

6.4 **Assignment**

Neither this Agreement nor any rights or obligations of a Party hereunder may be assigned or otherwise transferred by a Party without the prior written consent of another Party. This Agreement will be binding upon the Parties and their respective successors and permitted assigns. The prohibition set forth in this Article 6.4 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.

6.5 **Non-endorsement**

By entering into this Agreement, a Party does not directly or indirectly endorse any product or service that is or will be provided, whether directly or indirectly related to this Agreement, from another Party, its successors, permitted assigns, or licensees. A Party will not in any way state or imply that this Agreement is an endorsement of any such product or service by another Party or any of its organizational units or employees.

6.6 **Survivability**

Articles 3, 4, 6.3, 6.5, and 6.6 will survive expiration or earlier termination of this Agreement.

6.7 **Severability**

The illegality or invalidity of any provisions of this Agreement will not impair, affect, or invalidate the other provisions of this Agreement.

6.8 **Entire Agreement**

This Agreement, together with all appendices, constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written agreements or communications between them with respect to the subject matter hereof. This Agreement may be amended only by written instrument signed by authorized representatives of each Party.

6.9 **Notices**

All notices pertaining to or required by this Agreement shall be in writing, shall be signed by an authorized representative and shall be delivered to the addresses indicated on the signature page for each Party. Communications sent via electronic mail (commonly referred to as e-mail) do not constitute a “writing” for purposes of this Agreement.

6.10 **Execution**

This Agreement may be executed in one or more counterparts, each of which together shall be deemed original but all of which together shall constitute one and the same document. A facsimile or Portable Document Format (PDF) of the original signature of the representative of a party shall have the same validity as an original signature for the purpose of this Agreement.

6.11 **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 another Party for any purpose. None of the Parties have the authority to bind another or to incur any liability on behalf of the other.

6.12 **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 all Parties substantially participated in negotiating the provisions of this Agreement; therefore, all Parties agree that this Agreement shall not be construed more favorably toward one party than the other parties, 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.

6.13 **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 any 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.

6.14 **Governing 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.

IN WITNESS WHEREOF, the Parties have executed this valid and binding agreement by their respective officers hereunto duly authorized, as of the date of the last signature.

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

By: _____

Name: _____

APPENDIX A

Research Project

- I. Abstract of the Research Project – for Public Release
A PARTY MAY, WITHOUT FURTHER CONSULTATION OR PERMISSION,
RELEASE THIS ABSTRACT TO THE PUBLIC (THIS SECTION I AND NO OTHER PART OF
THIS APPENDIX A).

- II. Goal(s) of Project

- III. Background

- IV. Respective Contributions of the Parties

- V. Material Contributed by _____

- VI. Material Contributed by _____

- VII. Experimental Plan