

MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement (the “Agreement”) is made **Date, Month 201_** (the “Effective Date”) 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 **[legal full name of the entity]** having a registered principal place of business at **XXX** (“Recipient”), (collectively the “Parties” or individually the “Party”).

RECITALS:

Recipient requests to receive certain Material (defined below) made by NAU and NAU has determined that entering into this Agreement to provide the Material and explore a mutually beneficial relationship between the Parties 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 hereby agree as follows:

1. **Material.** This Agreement applies to: the material(s) described in Exhibit A attached hereto and incorporated herein by reference; any progeny or descendant, as applicable; any material that incorporates, and/or is replicated, derived and/or obtained therefrom; any related confidential information supplied in connection herewith by NAU; and any information or materials that are obtained through the use of any of the foregoing (collectively, or in part, depending upon the reference, hereinafter defined as the “Material”).
2. **Purpose.** Recipient agrees to use the Material only for its internal, non-commercial, experimental research purposes described in Exhibit B attached hereto and incorporated herein by reference (“Purpose”). Recipient is authorized to use the Material solely and restrictedly in facilities of Recipient, under appropriate containment conditions, in accordance with this Agreement and all applicable laws and regulations, under full control of the Recipient at all times, solely for the Purpose, and only by Recipient’s employees who: (a) are capable and qualified to safely handle Material; (b) exercise the necessary care and precautions to minimize any risk of harm to persons and property; (c) safeguard Material from theft and misuse; (d) need access to the Material to perform the Purpose; and (e) are bound by written agreements to comply with this Agreement (“Authorized Use”). Recipient will notify NAU of any use or disclosure of Materials or information that would possibly have export control ramifications.

Recipient agrees to use the Material solely for the Authorized Use and for no other use including, without limitation:

- (a) Direct commercial or for-profit purpose (e.g. sales, services or lease);
- (b) Any collaboration or consultancy with any third party;
- (c) Any projects sponsored by a third party;
- (d) Reverse engineering, decompiling, deconstructing or in any analyzing the Material to determine its structure or composition;
- (e) Creating tangible materials (e.g. antibody or vaccine);
- (f) On human subjects;
- (g) On animal subjects without compliance with all applicable laws and regulations; or
- (h) Release to environment; collectively the (“Restricted Use”).

3. **Receipt Form.** The quantity of Material defined in Exhibit A will be delivered by NAU to Recipient in bailment solely for the Authorized Use by mail to the address of Recipient stated below, or as otherwise provided to NAU in writing. Risk of loss for the Material and liability for any damage to or resulting from the Material while in transit shall pass to Recipient upon departure from NAU. Recipient will pay NAU in the amount of **[XXX]** to reimburse NAU for the cost of providing the Material. NAU has no obligation to provide additional quantities of Material. Nothing herein will be construed as a sale of the Materials or to convey any right, title or interest in or to any intellectual or tangible property rights of NAU, all of

which rights, titles and interests are expressly reserved by NAU including, without limitation, any patent rights that may claim the Material, and no obligation to convey such rights will be implied.

4. Reports. NAU may, up to twice a year, request and Recipient will provide to NAU, within thirty (30) days of request a report containing the full data and detailed results of the use of the Material.

5. Confidentiality. Recipient will maintain the Material strictly in confidence and will not disclose or transfer the Material to any third party (including affiliates of Recipient). In addition, Recipient will exercise at least the same degree of care with the Material that it uses for its own proprietary and confidential materials, which in no event shall be less than a reasonable standard of care, and maintain adequate security to prevent unauthorized disclosure and transfer of Material including, without limitation, distribution, dispersal, access, escape, theft, loss, destruction and Restricted Use. The obligations of Recipient under this Paragraph 5 shall not apply to any Material which Recipient evidences to NAU:

- (a) Was lawfully in Recipient's possession without restriction prior to disclosure by NAU, as evidenced by Recipient's written records;
- (b) Was in the public domain prior to disclosure by NAU, or subsequently becomes part of the public domain through no fault, action, inaction, or omission of Recipient or anyone with access to Material from Recipient;
- (c) Is made available to Recipient, without restriction, by a third party with written evidence of right to do so and who is under no obligation of confidentiality to NAU; or
- (d) Was developed by Recipient independently of knowledge of, and without reference or access to, the Material, as evidenced by Recipient's written records.

6. Representations and Warranties.

Recipient represents and warrants to Recipient that:

- (a) it is and will be at all times during the duration of this Agreement a valid legal entity existing under the law of [state of incorporation] [jurisdiction] with the power to own all of its properties and assets and to carry on its business as it is currently being conducted;
- (b) the execution and delivery of this Agreement has been duly authorized and no further approval, corporate or otherwise, is required in order to execute this binding Agreement; and
- (c) it will comply with the terms and conditions of this Agreement and all applicable laws, regulations and court orders in its performance under this Agreement.

7. Disclaimer.

THE MATERIAL IS EXPERIMENTAL IN NATURE AND NAU PROVIDES THE MATERIAL WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND NAU EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT AND ARISING OUT OF ANY COURSE OF DEALING. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE TO THE CONTRARY, IN NO EVENT WILL NAU BE LIABLE TO THE RECIPIENT OR ANY OTHER PERSON OR ENTITY: (A) WITH RESPECT TO USE, HANDLING, STORAGE AND DISPOSAL OF THE MATERIAL; OR (B) FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF RECIPIENT HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.

8. Liability. To the extent not prohibited by law, Recipient will indemnify and hold NAU, its affiliates, and their respective trustees, directors, officers, students, independent contractors, agents and employees harmless from and against any and all claims and liabilities arising from or relating to Recipient's use, handling, storage and/or disposal of the Material and/or for breach of this Agreement. The Recipient shall indemnify and hold harmless NAU, and its officers, directors, consultants, employees, agents and assigns from and against any claim, liability, loss or damage, including reasonable attorney's fees, arising out of the Recipient's violation and/or NAU's enforcement of any of the terms and conditions of this Agreement. Recipient assumes all risk and responsibility in connection with complying with applicable laws and regulations including, without limitation, concerning the import, export, handling, transportation, storage, use, disposal and misuse or other wrongdoing with respect to Material. Recipient has advised NAU in writing of any regulatory requirements pertaining to the requested Material's shipment to be implemented in connection to this Agreement.

9. Duration. This Agreement will commence on the Effective Date and expire upon the earlier of the: (a) fifth (5th) anniversary of the Effective Date; or (b) date on which NAU notifies the Recipient in writing that this Agreement is terminated. NAU may terminate this Agreement with or without cause at any time and from time to time, by giving written notice thereof to Recipient. Immediately upon the expiration or termination of this Agreement, the Recipient will stop using the Material, and at NAU's election, return to NAU or destroy all Material remaining in its possession. In the case of destruction, the Recipient will certify to NAU in writing with a signature of authorized representative of Recipient that such destruction has taken place and is complete. The terms and conditions of this Agreement that specify on-going or continuing obligations shall survive the expiration or termination of this Agreement until their purposes are fulfilled including, without limitation, Paragraphs 5 and 8.

10. General Provisions.

10.1 This Agreement is not assignable or otherwise transferable by Recipient without the prior written consent of NAU. The failure of Recipient to comply with the terms of this Article 10.1 will render the assignment or transfer null and void and be grounds for termination of the Agreement by NAU. The prohibition set forth in this Article 10.1 includes, without limitation (and the following shall be deemed to be "assignments"): (i) a consolidation or merger of Recipient; (ii) a change in ownership or voting rights of more than fifty percent (50%) of the issued and outstanding stock of any corporate Recipient; (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 Recipient; and (v) where Recipient is a partnership, a change in control of such partnership.

10.2 No amendment or modification of this Agreement will be valid or binding upon the Parties unless made in writing and signed by the Parties hereto. The delay or failure to assert a right or to insist upon compliance with any term or condition of this Agreement shall 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 executed in writing and signed by the Party granting the waiver. Each Party acknowledges that it was provided an opportunity to seek advice of counsel and as such this Agreement shall not be strictly construed against a drafter.

10.3 Nothing in this Agreement will be deemed to place the Parties in a partnership, joint venture, employment or agency relationship, and neither Party will have the right or authority to obligate or bind the other Party.

10.4 Given the nature of the Confidential Information and the damage that would result to NAU upon breach or threatened breach of this Agreement, the Parties hereto agree that monetary damages would not be a sufficient remedy for any such breach or threatened breach. In addition to all other remedies, Recipient agrees that NAU is entitled to seek and obtain specific performance and injunctive and other equitable relief as a remedy for any breach or threatened breach of this Agreement, and agrees to waive any requirement for the securing or posting of any bond and the showing of actual monetary damages in connection with such remedy hereunder.

10.5 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.

10.6 Any notice, report or written communication permitted or required by this Agreement will be given in writing, sent or delivered to the respective address of a Party given below, or to such other address as a Party designates by written notice hereunder, and will be deemed to have been properly given and effective: (a) on the date delivered in person to a Party during normal business hours; (b) on the date transmitted by facsimile, if confirmation is received (c) on the day following the date mailed if delivered by courier, express mail, registered or certified.

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

If to Recipient:
Name
Attn:
Address:
Telephone:
Facsimile:
Email:

Communications sent via electronic mail (commonly referred to as e-mail) do not constitute a “writing” for purposes of this Agreement.

10.7 This Agreement, including its Exhibits, embodies the entire understanding of the Parties regarding the Materials and supersedes all previous communications, representations or understandings, either oral or written, between the Parties relating to Material.

10.8 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.

11. 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.

12. 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. Recipient 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, NAU and Recipient have caused this valid and binding agreement to be duly executed by authorized signatories as of the date first above written and as indicated below.

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

XXX, Inc. “Recipient”

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NAU scientist for acknowledgment purposes only

Recipient scientist for acknowledgment purposes only

By: _____

By: _____

Name: _____

Name: _____

Exhibit A

Specific name, description, quantity (number and volume) of material.

Exhibit B

Details of the Purpose.

Example: Use of Material by XXX, Inc. in [location of laboratory] for XXX experiment. The experiment consist of [details of experiments]