

SPONSORED RESEARCH AGREEMENT

This Sponsored Research Agreement (“Agreement”) is entered into on this date, _____, __, 20__ 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”) or (“University”) and _____, a _____ corporation, with its principal place of business at _____, (“Sponsor”) (collectively the “Parties” or individually the “Party”).

RECITALS:

Sponsor desires to provide an opportunity for the University to provide a service to complement the University’s mission and the University and the Sponsor desire to enter into an Agreement pertaining to the service. The service is to be funded by Sponsor and carried out by the University under the terms and conditions specified herein. NOW THEREFORE, in consideration of the promises hereof and the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. **Statement of Work.** The University shall, with funds made available by the Sponsor, furnish the personnel, materials, services, facilities, and equipment for the conduct of the work described in Exhibit A attached and incorporated (“Work”), or other similar work as mutually agreed in writing by the Parties.

2. **Principal Investigator(s).** A Principal Investigator(s) will be assigned by the University for directing the performance of the Work. If for any reason the Principal Investigator(s) becomes unavailable, the University shall notify the Sponsor with an appointment of a successor Principal Investigator chosen by the University. Unless the Sponsor provides notification of dissent in writing within fifteen (15) days of notice by the University for the appointment of a successor Principal Investigator, the successor Principal Investigator will replace the Principal Investigator of this Agreement and will conduct the Work. If a mutually acceptable successor is not identified, this Agreement or the specific project may be terminated immediately by either Party provided however that all funds paid to the University by the Sponsor prior to such termination will be retained by the University.

3. **Period of Performance.** The Work shall be performed during the period of approximately _____, 20__ through _____, 20__. This date may be extended under the same terms or such other terms as may be mutually agreed upon in writing by the Parties.

4. **Relationship of Parties.** The University shall have control over the Work performed under this Agreement. The University’s relationship to the Sponsor under this Agreement shall be that of independent contractor and not as an agent, joint venturer, or partner of Sponsor. Neither Party has the authority or right to bind the other Party or incur any liability on behalf of the other Party.

5. **Cost of Research.**

5.1 The Sponsor agrees to pay the University the fixed sum of \$ _____ USD for the performance of the Work. Payment is to be made one time in accordance with the schedule in Exhibit A.

5.2 Payments shall be to “Northern Arizona University”, payments by check should be mailed to:

Grants & Contracts Administration
Northern Arizona University

5.3 The University is not obligated to expend any other funds on the Work, and the Sponsor is not obligated to pay the University in excess of the stated amount. The University will retain title to equipment and all other items purchased with funds provided by the Sponsor; however, equipment, which is defined as items over \$5,000 for this Agreement, purchased with funds provided by the Sponsor, as evidenced by the Sponsor’s records, may be used by the Sponsor under the terms of a separately negotiated and executed Facility Use Agreement with the University on a discounted basis for a period of three (3) years or as long as equipment is functional and under ownership and control of the University, whichever is sooner.

5.4 If the U.S. government is the source of any of the funds paid by Sponsor under this Agreement, then Sponsor represents the following:

- Percent of federal funds: 0%, CFDA #: and FAIN #: .
- Federal agency providing funds:

5.5 Prior to the end of a performance period, NAU may request, in writing to the Sponsor, a transfer of remaining publication funds to a departmental account. Once approved, the NAU will transfer the funds and proceed to close the project account. Publication funds that are transferred to a departmental account are to be used to cover publication costs.

6. Fiscal Management. The University shall maintain complete and accurate accounting records in accordance with accepted accounting practices for institutions of higher education. These records shall be available for inspection, review, and audit at reasonable times by the Sponsor, or its duly authorized representative, at Sponsor's expense, for three (3) years following the end of the University's fiscal year (ending June 30 of any given year) in which such costs are incurred.

7. Rights in Work Product. All research results, including but not limited to: data, information, records and service products directly generated from performance of the Work except for any intellectual properties developed by NAU, (collectively, "Work Products"), will be provided to Sponsor. Other than any Background Intellectual Property, Sponsor shall have the right to use the Work Products for any research or commercial purpose whatsoever provided that the Sponsor shall hold NAU harmless from any and all claims and liabilities that may occur from the Sponsor's use of Work Products and subject to the terms of this Agreement. NAU, in accordance with Arizona Board of Regents policy, shall own the tangible original copy of the Work Products.

8. Reporting. Each thirty (30) days following the execution date of this Agreement, the University will furnish to the Sponsor a report summarizing the Work performed and the results thereof.

9. Publication.

9.1 The University will have the right to publish or otherwise disclose the Work Products for the sole purpose of achieving the academic mission of the University. The University agrees to submit all publications and presentations to the Sponsor thirty (30) days prior to the first submission of such proposed publication or presentation to a journal, editor or third party. The Sponsor will have thirty (30) days after the receipt of the publication or presentation to review it ("Review Period").

9.2 Upon notice by the Sponsor that the Sponsor reasonably believes a patent application relating to an Invention should be filed prior to the publication or presentation, Sponsor may request the University to delay the publication or presentation of the Work in writing during the Review Period and the University may delay submission of the publication or presentation for up to sixty (60) days from the date of the Sponsor's request or until a patent application or applications are filed.

9.3 The Sponsor shall not use the name of the University (except in an acknowledgement of sponsorship of this Agreement) in advertising or for any other commercial purpose without the prior written approval of the University. The Sponsor shall not state or imply in any publication, advertisement, or other medium that any product or service bearing any of the Sponsor's names or trademarks, and manufactured, sold, or distributed by the Sponsor, has been tested, approved, or endorsed by the University.

10. Inventions and Discoveries. Background Intellectual Property shall mean Intellectual Property, proprietary information or confidential know-how relevant to the Work which is in the possession of a Party prior to the commencement of the Work or generated after commencement of the Work but independent of the Work. Background Intellectual Property will remain the property of the Party that developed the Background Intellectual Property. Other than Background Intellectual Property, the right to all inventions, discoveries, methods, know-how (both patentable and not patentable) and other developments (hereinafter "Inventions") generated, developed, conceived and/or reduced to practice under this Agreement shall be determined in accordance with U.S. Patent Law. All rights to Inventions made solely by employees, students or researchers of the University shall belong solely to the University. All rights to Inventions made solely by employees of the Sponsor shall belong solely to Sponsor. All rights to Inventions made jointly by employees, students or researchers of the University and employees of the Sponsor ("Joint Inventions") shall belong jointly to the University and the Sponsor. Each Party will notify the other,

in writing (“Invention Notice”), within thirty (30) days of reduction to practice or knowledge of conception or discovery of an Invention solely made by employees, students and/or researchers of a Party, or of a Joint Invention, and each Invention Notice will describe the Invention with sufficient specificity to allow assessment by the other Party. Parties will treat Invention Notice in confidence and will not further disclose or use the same in ways not previously approved in writing by disclosing Party. Sponsor will have an exclusive 100-day option period to review all Work, Work Products, Inventions, and Reports (“Option Period”) beginning from the time NAU sends a report or Invention Notice detailing the Invention to negotiate an appropriate licensing agreement, but will not have any rights to Background Intellectual Property unless it is included in a future license.

11. Termination. This Agreement may be terminated by either Party upon sixty (60) days prior written notice to the other Party. In the event of termination of this Agreement, the Sponsor shall pay to the University, within thirty (30) days of invoice from University, all direct costs, all applicable indirect costs and all outstanding purchase orders related to the Work up to and including the effective date of termination, even though such outstanding purchase orders may be invoiced after the termination date.

12. Waiver. A Party’s failure to enforce any of its rights herein may not be construed as a waiver of such rights; nor may one or more instances of non-enforcement be construed as a continuing waiver or as a waiver in other instances.

13. Severability. If any provision of this Agreement is rendered invalid or unenforceable by any law or regulation, or declared null and void by any court of competent jurisdiction, that part will be reformed, if possible, to conform to law and if reformation is not possible, that part will be deleted and the remainder of the provisions of this Agreement will, subject to this paragraph, remain in full force and effect, unless enforcement of this Agreement without the invalid or unenforceable clause would be grossly inequitable under the circumstances or would frustrate the primary purpose of this Agreement.

14. Confidentiality. The Parties agree that the terms of this Agreement and any Work performed hereunder and Work Products or Inventions developed hereunder will be held as confidential, and any information relating to any of the foregoing must not be disclosed, published, or disseminated except upon written mutual agreement of the Parties, unless otherwise allowed pursuant to this Agreement.

Any information 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 or on behalf of one Party to the other Party shall be considered “Confidential Information”. Confidential Information of the Parties includes, but is not limited to 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, the potential intellectual property rights therein, and all business and legal arrangements discussions by or on behalf of the Parties.

Exclusion includes 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; or
- (b) As evidenced by a receiving Party’s written records, was shown to have been independently developed by the receiving Party without use or knowledge of the Confidential Information; or
- (c) Is or becomes a part of the public domain other than by a breach of this Agreement by the receiving Party; or
- (d) Is or becomes known to the receiving Party by the action of a third party not in breach of a duty of confidence; or
- (e) Is required to be disclosed by the receiving Party to a third party pursuant to any applicable law, governmental regulation, or decision of any court or tribunal of competent jurisdiction, so long as the receiving Party takes reasonable steps to give the disclosing Party prior notice in order to contest such law, governmental regulation, or decision.

NAU may disclose the existence of this Agreement should a proper request be made under the Arizona open records procedures.

15. Amendments. This Agreement embodies the entire understanding of the Parties and shall supersede all previous communication, either verbal or written, between the Parties relating to this Agreement. This Agreement may be amended only by the mutual written agreement of the Parties.

16. Assignments. This Agreement may not be assigned by either Party without the prior written consent of the other. The prohibition set forth in this Article 16 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.

17. 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. Sponsor 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.

18. Force Majeure. A Party will not be liable to the other Party for inability to perform any of its obligations under this Agreement when its inability is the result of an act of God, earthquake, epidemic, order of civil or military authorities, flood, fire, war, civil disturbance, strike, act of terror, or other natural cause over which the Party has no control. A Party failing to perform an obligation under this Agreement because of force majeure must give the other Party written notice of the force majeure as soon as possible after its occurrence. A Party whose performance is excused because of force majeure must resume performance as soon as reasonably possible upon cessation of the force majeure.

19. Funding Out. Parties acknowledge that legislative action may require curtailment or termination of some or all of the University’s research and educational programs. Parties acknowledge further that the University is obligated to respond to such legislative action and may determine that it is necessary to curtail or terminate this program. Parties also acknowledge termination or failure to perform terms of this Agreement in response to legislative action will not be deemed a breach of this Agreement.

20. Order of Precedence. In the event of any conflict, inconsistency or discrepancy amount, the Agreement and any other documents listed below shall be resolved by giving precedence in the following order: 1) this Agreement including the Exhibits hereto; 2) Purchase Order issued by the Sponsor. For avoidance of doubt, in the event a purchase order is issued under this Agreement and such purchase order contains standardized terms and conditions, the terms and conditions of this Agreement shall supersede and replace all such purchase order terms and conditions.

21. Compliance with Laws. In performance of the Work, the Parties shall comply with all applicable international, national, regional and local laws, codes, regulations, rules and orders.

22. Notices. All notices shall be in writing and effective upon receipt with a proof. Communications sent via electronic mail (commonly referred to as e-mail) will constitute a “writing” for purposes of this Agreement only upon the recipient acknowledging and sending an acceptance of the electronic mail to the other Party. Notices shall be sent to the following addresses:

If to University:

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

If to Sponsor:

Company
Attn:
Address:
Telephone:
Facsimile:
Email:

23. 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.

IN WITNESS WHEREOF, the University and the Sponsor have caused this Agreement to be duly executed by duly represented individuals 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. "Sponsor"

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

University scientist for acknowledgment purposes only

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

Description of Work

Principal Investigator: _____

Payment Schedule

Payments of \$_____ due on: