

**BUSINESS INCUBATOR MASTER LEASE**

THIS MASTER LEASE ("Lease") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation ("Landlord"), and NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba Northern Arizona Center for Entrepreneurship and Technology (NACET) an Arizona nonprofit corporation ("Tenant").

**RECITALS**

- A. All previous Lease Agreements and Amendments thereto are hereby terminated, null and void, as they are superseded and replaced by this Lease.
- B. Landlord previously received a grant from the United States Department of Commerce, Economic Development Administration ("EDA") (the "Grant") for which Grant was provided by the EDA for the sole purpose of the establishment, development, construction and operation of a science, technology and clean-energy startup business incubator facility to promote, among other things, business development, job creation and private investment within the greater northern Arizona economic community.
- C. Pursuant to the terms of the Grant, Landlord has constructed, equipped and furnished an approximate 10,000 square foot building on that parcel of real property located at 2225 North Gemini Drive in the city of Flagstaff, Arizona, which building is commonly known as the Business Incubator Facility (the "Premises").
- D. Tenant has been formed as an Arizona nonprofit corporation for the purpose of assisting small business startups and entrepreneurs in connection with the development of new and innovative businesses within northern Arizona. In connection therewith, Landlord and Tenant are executing contemporaneously herewith that Agreement for Services pursuant to which Tenant agreed to perform the foregoing described services and other services for the benefit of Landlord and its citizenry as more particularly described in the Agreement for Services, including, without limitation, entering into this Lease of the Premises.
- E. Landlord desires to continue to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord for the purpose of the operation for research and development, science, technology and clean energy focused business incubator for the benefit of Landlord, Tenant and the citizens of the city of Flagstaff and the State of Arizona. In connection therewith, subject to the limitations and other provisions of this Lease, the parties hereto acknowledge that the Tenant intends to sublease portions of the Premises to third parties for the purpose of the development of technology and science startup companies meeting the objectives of the Grant, a copy of which has been provided to Tenant.

NOW THEREFORE, in consideration of the foregoing and of the rents, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

1. **LEASE OF PREMISES; CONDITION OF PREMISES.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described in *Recital C* above, together with all equipment, furnishings and fixtures currently located in or which are a part of the Premises. Tenant's rights under this Lease are subject to and restricted by the provisions of the Grant and of any covenants, conditions, restrictions and easements, and all other matters of record which may affect the Premises, including, without limitation, that first priority lien recorded against the Premises in favor, and for the benefit, of the EDA, which lien restricts and imposes conditions upon any sale, transfer, conveyance or encumbrance of the Premises. Tenant acknowledges that it has examined the Premises, is familiar with the physical condition, status of title and use that may be made of the Premises, and is leasing the same in its "as is," "where is" condition existing on the date of this Lease. Landlord has not made and does not make any representation or warranty whatsoever with respect to the Premises or otherwise with respect to this Lease except as is expressly provided in this Lease. Except as otherwise provided herein, Tenant assumes all risks resulting from any defects (patent or latent) in the Premises or from any failure of the same to comply with any applicable laws, rules, regulations or requirements.

2. **TERM; EXTENSION OPTIONS.**

2.1. **Term.** The term of this Lease (the "Term") shall be three (3) years and shall commence on \_\_\_\_\_, 2015 (the "Commencement Date"), and shall expire on \_\_\_\_\_, 2017 (the "Termination Date"), unless the Term is extended as hereinafter provided. The parties shall have the right to request extension of this Lease for one or more of the Extension Terms pursuant to Section 2.2 of this Agreement by providing a written notice of intent to extend to the other party no later than six (6) months prior to the expiration of the term of this Lease.

2.2. **Options to Extend Term.** Subject to the satisfaction of the conditions hereinafter set forth, the parties shall have the right to elect to extend the Term of this Lease for up to three (3) consecutive five (5) year extension terms (each, an "Extension Term"). The conditions precedent to the party's right to elect to extend the Term of this Lease for any one or more of such Extension Terms are as follows:

2.2.1. Tenant shall not then be in default under this Lease;

2.2.2. Tenant shall provide written notice to Landlord of its desire to elect to extend the Term of this Lease not later than one hundred eighty (180) days prior to the end of the initial Term or the then current Extension Term, as applicable;

2.2.3. Tenant shall have been in compliance with the Minimum Sublease Occupancy Requirement set forth in *Section 13* below at all times during the Term or the then-current Extension Term, as applicable;

2.2.4. The Landlord shall have approved and otherwise agreed to provide continued funding to Tenant in connection with the services to be provided by Tenant to Landlord under the terms and conditions of the Agreement for Services (or a similar agreement), or Tenant shall have demonstrated to Landlord, to Landlord's reasonable satisfaction, that Tenant has secured a third-party funding source which will provide operational funding to Tenant in amounts sufficient to satisfy Tenant's obligations under this Lease, including without limitation, the payment of

Base Rent and all other monetary obligations of Tenant, during the entire Extension Term with respect to which Tenant is exercising its right and option to extend;

- 2.2.5. Tenant shall have provided to Landlord evidence satisfactory to Landlord that Tenant is not then in default of any other obligations of Tenant, including any financial instruments, agreements, loans or grants;
- 2.2.6. Tenant shall be in good standing with the Arizona Corporation Commission as an Arizona nonprofit corporation; and
- 2.2.7. Tenant shall not then be in default under the Agreement for Services, if such agreement is still in effect.

All terms and conditions of this Lease shall remain in full force and effect and shall define the legal relationship between Landlord and Tenant during each Extension Term.

- 2.3. **Mutual Right to Cancel/Terminate.** The parties may cancel and terminate this Agreement upon mutual consent. In the event the parties desire to mutually cancel/terminate this agreement, a date of cancellation/termination shall be mutually agreed upon by the parties. If a mutual termination occurs, each party shall be entitled to, and obligated under this agreement on a pro-rated basis up to and including the date of cancelation/termination.

### 3. **FINANCIAL OBLIGATIONS.**

- 3.1. **Base Rent.** A base monthly rent in the amount of one dollar (\$1.00) (“Base Rent”). The Base Rent shall be paid on the first day of each calendar month during the Term hereof, as may be extended;
- 3.2. **Monthly Maintenance Payment.** Tenant shall make monthly payments to the Landlord in the amount of three thousand three hundred and thirty four dollars (\$3334.00) to assist the Landlord in its upkeep and maintenance of the Premises (“Maintenance Payment”). The Maintenance Payment shall be paid on the first day of each calendar month during the Term hereof, as may be extended. From and after the anniversary of the commencement date of this Agreement, on the first full calendar month thereafter (the “Adjustment Date”) and on every anniversary of the Adjustment Date thereafter, the Maintenance Payment due hereunder shall be adjusted on a percentage basis of the Consumer Price Index for all Urban Consumers using the US City average. Tenant agrees that the Landlord alone shall determine the timing and scope of the maintenance of the Premises and may contract for some or all of the maintenance work to be performed on the Premises. The Landlord agrees to maintain the Premises in good condition and repair.
- 3.3. Tenant agrees that the total maximum compensation for services performed and costs incurred under this Agreement shall not exceed the sum of Two-Hundred Twenty Thousand Dollars (\$220,000) per fiscal year (July 1 – June 30) , and Tenant agrees to perform all services required by this Agreement for an amount not to exceed such dollar amount. This dollar amount is the maximum amount that the City shall pay to Tenant as reimbursement, not as advances, during the applicable time periods.

- 3.4. Tenant agrees to submit quarterly invoices to the City based upon actual expenses incurred during the term of this Agreement. Tenant will also submit with its invoices a balance sheet and profit and loss statement for each such quarter.
- 3.5. In the event that the City makes any advances to Tenant, which Tenant understands is not a requirement under this Agreement, Tenant agrees that any unexpended funds which have been advanced to the Tenant by the City and which remain in Tenant's possession at the end of each fiscal year of this Agreement will be refunded to the City within ninety (90) days after the end of such fiscal year if the sum of any advances and reimbursements exceeds the maximum amounts set forth above for a given fiscal year.
- 3.6. All disbursement of funds to Tenant from the City under this Agreement will be subject to the annual appropriation by the City Council and limitations of the State of Arizona budget law and all other applicable laws.
- 3.7. **Payment.** All sums payable pursuant to this Lease shall be paid when due, in lawful money of the United States of America, without deduction, offset, prior notice or demand to Landlord at the address set forth in *Section 23 below*, or at such other place or to such other person as Landlord may from time to time designate by notice hereunder.
- 3.8. **"Lease Year" Defined.** "Lease Year" is each twelve (12) month period during the Term or Extension Term, as applicable, with the first Lease Year commencing at 12:01 A.M. on the Commencement Date and ending at midnight on the day immediately preceding the first (1<sup>st</sup>) anniversary of the Commencement Date.

#### 4. **TAXES.**

- 4.1. **Real Estate Taxes.** Landlord and Tenant believe that, as a result of the fact that Landlord will retain ownership of fee simple title to the Premises during the entire Term of this Lease, as may be extended, the Premises will not be subject to Real Estate Taxes and Assessments or that Tenant may be entitled to apply for an exemption to any such Real Estate Taxes and Assessments; provided, however, that, if for any reason, the Premises becomes subject to any obligation for the payment of Real Estate Taxes and Assessments, for which no exemption applies, Tenant shall pay all such Real Estate Taxes and Assessments levied upon the Premises during the Term of this Lease as may be extended. The term "Real Estate Taxes and Assessments" shall mean all taxes and assessments imposed or levied upon the real property and improvements constituting the tax parcel of which the Premises is a part.
- 4.2. **Taxes on Rent.** Tenant shall pay to Landlord, in addition to and together with the Rent payable hereunder, a sum equal to the aggregate of any municipal, city, county, state or federal excise, sales, use or transaction privilege taxes levied or imposed against or on account of the amounts payable hereunder or the receipts thereof by Landlord (except state, federal or any other income taxes imposed or levied against Landlord).
- 4.3. **Personal Property Taxes.** Unless exempt under law, Tenant shall pay or cause its Subtenants to pay, prior to delinquency, all taxes assessed against or levied upon any fixtures, equipment, leasehold improvements and all personal property located in or upon

the Premises and which is owned by Tenant or such Subtenant ("Taxed Personal Property").

4.4. **Changes in Taxing Methods.** If any authority having the power to tax or assess shall alter the methods and/or standards of taxation and assessment in existence as of the date of this Lease against the interests of Landlord in the Premises, in whole or in part, so as to impose a different or additional tax plan, all such taxes or assessments based upon such other tax plan shall be considered as "real estate taxes" for purposes of this Lease, including, without limitation:

4.4.1. A tax, assessment, surcharge, fee, levy, penalty, bond or similar imposition (collectively, "impositions") on Landlord's right to rental or other income from the Premises or as against Landlord's business of leasing the Premises,

4.4.2. Any impositions allocable to or measured by the area of the Premises,

4.4.3. Any impositions with respect to the possession, leasing, operation, maintenance, alteration, use or occupancy by Tenant of the Premises,

4.4.4. Any impositions upon the Lease transaction or any document to which Tenant is a party which creates or transfers any interest or estate in or to the Premises, or

4.4.5. Any special, unforeseen or extraordinary impositions however described.

## 5. **USE OF PREMISES.**

5.1. **Permitted Uses; Uses Limited to Those Permitted Under Grant.** Tenant shall operate, manage, occupy and use the Premises only for the purpose of the operation of a science, technology and clean-energy startup business incubator facility consistent and strictly in accordance with the Grant obtained by Landlord from the EDA, which use shall include the sublease of portions of the Premises to Subtenants who (a) meet the requirements set forth in *Section 13.1* below, (b) are approved by Landlord pursuant to the provisions set forth in *Section 13.1*, and (c) shall utilize such subleased portions of the Premises only for the purposes permitted under the Grant. In no event shall Tenant utilize the Premises for any other purpose without the prior written approval of Landlord and the EDA, which approval may be given or withheld in the sole and absolute discretion of Landlord and the EDA, respectively. In connection with the foregoing, Tenant hereby acknowledges, covenants and agrees that it shall not use or permit the use of the Premises for any purpose that is not consistent with the general and special purpose of the Grant. In addition, Tenant hereby acknowledges, covenants and agrees that, in its use of the Premises, it shall observe and comply with all requirements of the EDA as described in the Grant, including, without limitation, prohibitions against discrimination on the basis of race, color, national origin, handicap, age, religion or sex, and all requirements regarding environmental impacts which any uses within the Premises may have on the environment.

5.2. **Insurance Requirements.** In addition to the requirements in *Section 7* of this Lease, Tenant shall not engage in or permit any activity which will cause the cancellation of, or increase the existing premiums on, any insurance relating to the Premises. Tenant shall

not permit to remain in or about the Premises any article that may be prohibited by the broadest form of "All Risk" or "Special Form" property damage insurance policies.

5.3. **Compliance with Laws.** Tenant, at its expense, shall observe and comply with all applicable rules, regulations, ordinances, orders, codes, laws and requirements of all municipal, county, state, federal and other applicable governmental authorities, the Board of Fire Underwriters, Landlord's insurance companies and other organizations that establish insurance rates pertaining to the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether or not Landlord is a party thereto, that Tenant has violated any such rule, regulation, ordinance, order, code, law or requirement, shall be conclusive of that fact as between Landlord and Tenant.

5.4. **Hazardous Substances.** Tenant shall not construct or use any improvements, fixtures or equipment, or engage in any act on or about the Premises, or permit any Subtenant from engaging in any of the foregoing, that would require the procurement of any license or permit pursuant to any Environmental Law. Tenant shall immediately notify Landlord of:

5.4.1. The existence of any Hazardous Substance on or about the Premises that may be in violation of any Environmental Law (regardless of whether Tenant is responsible for the existence of such Hazardous Substance),

5.4.2. Any proceeding or investigation by any federal, state or local governmental authority regarding the presence of any Hazardous Substance on the Premises or the migration thereof to or from any other property,

5.4.3. All claims made or threatened by any third party against Tenant relating to any loss or injury resulting from any Hazardous Substance, or

5.4.4. Tenant's notification of the National Response Center of any release of a reportable quantity of a Hazardous Substance in or about the Premises.

"Environmental Laws" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Hazardous Materials Transportation Act, as amended, the Federal Water Pollution Control Act, as amended, the Resource Conservation and Recovery Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, and the Arizona Environmental Quality Act, as amended.

"Hazardous Substance" shall mean all substances, materials and wastes that are or become regulated, or classified as hazardous or toxic, under any Environmental Law. Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that the Premises may be used (in whole or in part) for scientific, technological, medical, biological and/or "biomedical" treatment, research and manufacturing and related purposes, including practices, substances, procedures, or otherwise that are potentially hazardous (collectively, "Scientific Activities"); and that as long as such Scientific Activities are conducted or performed in accordance with all applicable laws and in manners that are consistent with generally-accepted theory or practice at the time such

Scientific Activities are conducted or performed, all such Scientific Activities shall be permitted and shall not constitute a breach of this Lease.

5.5. **Collaborative Marketing.** Tenant and Landlord agree to work together in good faith to attract and secure Subtenants for the Premises that comply with or complement the permitted use of the Premises as contemplated in this Lease. In connection therewith, Landlord and Tenant shall agree upon and adopt a protocol for the purpose of marketing the Premises which shall, among other things, require prior mutual approval of all press releases, public notices and marketing activities relating to the Premises and its operation. Notwithstanding the foregoing, the primary obligation to attract and secure Subtenants for the Premises shall be that of Tenant.

6. **LANDLORD'S MAINTENANCE; LANDLORD'S INSURANCE.** Landlord shall, at Landlord's sole cost and expense, keep, maintain and repair the Premises, including the interior and exterior of all improvements on or within the Premises, in good, safe and sanitary order, condition and repair. Landlord's obligations for such maintenance and repair shall include providing normal and customary janitorial services and providing maintenance and repair of all structural portions of the Premises, including the foundation, roof, glass, doors, window casements, glazing, plumbing, pipes, electrical wiring and conduits, and the heating and air-conditioning systems, as well as all exterior landscaping, parking areas and sidewalks, including snow removal; provided, however, that in no event shall Landlord be responsible for the maintenance, repair or cleaning of any laboratory within the Premises and either Tenant or the applicable Subtenant shall be responsible for all maintenance, repair and cleaning of such laboratory areas and any other areas which are secured-work areas. If Tenant determines that some item of maintenance or repair is needed, Tenant shall notify Landlord and Landlord shall cause such maintenance or repair to occur within a reasonable period of time after receipt of Tenant's notice. Tenant hereby acknowledges and agrees that Landlord shall have the right to enter upon the Premises at any reasonable time for the purpose of performing its maintenance and repair obligations under this Lease.

In addition, Landlord shall, at Landlord's sole cost and expense, obtain and maintain casualty loss insurance with respect to the Premises in such amounts as Landlord may determine.

7. **WAIVER, INDEMNITY AND TENANT'S INSURANCE.**

7.1. **Assumption and Waiver.** Tenant assumes all risk of, and waives all claims against Landlord arising from, damage, loss or theft of property or injury to persons in, upon or about the Premises from any cause, except for loss or damage caused by the gross negligence or intentional acts of Landlord or its agents or employees. The foregoing waiver includes, without limitation, the following risks against which Tenant should maintain adequate insurance to protect Tenant equipment and other personal property:

7.1.1. All-risk casualty loss insurance with respect to all Improvements constructed by Tenant on the Premises,

7.1.2. Any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring, water pipes, stairs, railings or walks;

7.1.3. The disrepair of any equipment;

- 7.1.4. The bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises;
- 7.1.5. The backup of any sewer pipe or down spout;
- 7.1.6. The escape of steam or hot water;
- 7.1.7. Water, snow or ice;
- 7.1.8. The falling of any fixture, plaster or stucco;
- 7.1.9. Broken glass; and
- 7.1.10. Any unauthorized or criminal entry of third parties within the Premises.

7.2. **Indemnification.**

7.2.1. **Tenant's Indemnification of Landlord.** Tenant agrees to indemnify, defend, save and hold harmless Landlord, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as "Indemnitee") for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Tenant or any of Tenant's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Tenant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Tenant for, from and against any and all Claims. It is agreed that Tenant will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. The foregoing indemnity by Tenant shall extend, but not be limited, to:

- 7.2.1.1. Construction by or through Tenant of any improvements or any other work or thing done in, on or about the Premises or any part thereof;
- 7.2.1.2. Any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises and any improvements, areas adjacent thereto or improvements thereon by or through Tenant, or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof in a safe condition;

- 7.2.1.3. Any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises, areas adjacent thereto or improvements thereon or any part thereof or in, on or about any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof;
- 7.2.1.4. Any lien or claim which may be alleged to have arisen against or on the Premises or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto;
- 7.2.1.5. Any acts of Tenant or any Subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;
- 7.2.1.6. Any failure on the part of Tenant to pay rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with, including without limitation, the failure to comply with or observe the requirements of the Grant, and the exercise by Landlord of any remedy provided in this Lease with respect thereto;
- 7.2.1.7. Any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Improvements or any part thereof, on Tenant's part to be kept, observed or performed;
- 7.2.1.8. Any tax which Tenant is obligated to pay or cause to be paid.

The foregoing provisions shall survive the expiration or earlier termination of this Lease to the extent the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

Tenant will hold all goods, materials, furniture, fixtures, equipment, and machinery and other property whatsoever on the Premises at the sole risk of Tenant, and, to the extent set forth above, save Landlord harmless from any loss or damage thereto by any cause whatsoever.

The obligations of Tenant under this **Section 7.2** shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

If any claim, action or proceeding is made or brought against Landlord by reason of any event, specified or unspecified, which is the subject of Tenant's foregoing indemnity, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend

it or to assist in its defense and Tenant shall pay the reasonable fees and disbursements of such attorneys.

7.2.2. **Landlord's Indemnification of Tenant.** Landlord agrees to indemnify, defend, save and hold harmless Tenant, and its officers and directors, for, from and against any and all Claims arising as a result of the negligence or willful misconduct of Landlord or from the failure of Landlord to perform its obligations under this Lease as and when required herein. If any Claim is made or brought against Tenant by reason of any event, specified or unspecified, which is the subject of Landlord's foregoing indemnity, then, upon demand by Tenant, Landlord, at its sole cost and expense, shall resist or defend such Claim in Tenant's name. Notwithstanding the foregoing, Tenant may engage its own attorneys, subject to the approval of Landlord, to defend it or to assist in its defense, and Landlord shall pay the reasonable fees and disbursements of such attorneys.

7.3. **Environmental Indemnification of Landlord by Tenant.** Tenant shall defend, indemnify, and hold harmless Landlord for, from and against any and all future claims, demands, complaints and/or actions made or brought against Landlord pertaining to the Premises and arising under any Environmental Law, Rule, Regulation or otherwise based upon any Hazardous Materials condition. This defense and indemnity includes, without limitation, any claims, demands, complaints, and/or action, asserted under CERCLA, WQARF, RCRA, and federal and state common law pertaining to Hazardous Materials, including any such claim based upon Landlord's alleged liability as an owner or operator of the Premises under CERCLA or WQARF.

7.4. **Insurance.** Tenant shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Tenant, Tenant's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Landlord does not represent or warrant that the minimum limits set forth herein are sufficient to protect Tenant from liabilities that might arise out of this Lease, and Tenant is free to purchase such additional insurance as Tenant may determine is necessary.

7.4.1. **Minimum Scope and Limits of Insurance.** Tenant shall provide coverage at least as broad and with limits not less than those stated below.

7.4.1.1. **Commercial General Liability - Occurrence Form**

*(Form CG 0001, ed. 10/93 or any replacement thereof)*

General Aggregate -- \$2,000,000

Personal and Advertising Injury -- \$1,000,000

Each Occurrence -- \$1,000,000

Fire Damage (any one fire) -- \$50,000

Medical Expense (any one person) -- Optional

7.4.1.2. **Workers' Compensation and Employer's Liability**

Workers' Compensation -- Statutory  
Employer's Liability: Each Accident -- \$500,000  
Disease - Each Employee -- \$500,000  
Disease - Policy Limit -- \$500,000

7.4.1.3. **Professional Liability**

Each Claim -- \$1,000,000.00  
Annual Aggregate -- \$1,000,000.00

7.4.2. **Self-Insured Retention/Deductibles**. Any self-insured retentions and deductibles must be declared to and approved by Landlord.

7.4.3. **Other Insurance Requirements**. The policies shall contain, or be endorsed to contain, the following provisions:

7.4.3.1. **Commercial General Liability and Automobile Liability Coverages**.

7.4.3.1.1. Landlord, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Tenant, including products and completed operations of Tenant; and automobiles owned, leased, hired or borrowed by Tenant.

7.4.3.1.2. Tenant's insurance shall contain broad form contractual liability coverage.

7.4.3.1.3. Landlord, its officers, officials, agents, employees and volunteers shall be named as additional insureds to the full limits of liability purchased by Tenant even if those limits of liability are in excess of those required by this Lease.

7.4.3.1.4. Tenant's insurance coverage shall be primary insurance with respect to Landlord, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by Landlord, its officers, officials, agents, employees or volunteers, shall be in excess to the coverage of Tenant's insurance and shall not contribute to it.

7.4.3.1.5. Tenant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7.4.3.1.6. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

7.4.3.1.7. The policies shall contain a waiver of subrogation against Landlord, its officers, officials, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.

7.4.3.2. **Workers' Compensation and Employee's Liability Coverage.** The insurer agrees to waive all rights of subrogation against Landlord, its officials, officers, agents, employees and volunteers for losses arising from Tenant's operations, occupancy and use of the Premises subject to this Lease.

7.4.4. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord.

7.4.5. **Acceptability of Insurers.** Tenant shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Landlord does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.

7.4.6. **Verification of Coverage.** Tenant shall furnish Landlord with certificates of insurance (*ACORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

7.4.7. **Policy Review and Adjustment.** Such policies of insurance shall be subject to review and adjustment on the fifth (5<sup>th</sup>) anniversary of the Commencement Date of this Lease and on each subsequent fifth (5<sup>th</sup>) anniversary during the Term hereof, as may be extended, in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

7.4.8. **Failure to Maintain Insurance.** If Tenant fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and upon five (5) days' notice to Lessee, to procure and maintain such insurance. Any premiums paid by Landlord hereunder shall be due and payable by Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

## 8. **ALTERATIONS.**

8.1. **Landlord's Approval.** Neither Tenant nor any Subtenant shall make any alteration, addition or improvement to the Premises, including, without limitation, to the entrances and exits of the Premises, or to any fixture, wiring, plumbing, heating and air-

conditioning or other equipment therein without Landlord's prior written consent, including obtaining any required building permits from the Landlord which shall be obtained through Landlord's normal review processes for such permits. If such consent is granted, Tenant or the respective Subtenant, as applicable, must acquire, prior to the commencement of construction, all necessary building permits and must provide Landlord with certificates of property (course of construction), workmen's compensation and liability insurance in form and amounts satisfactory to Landlord. Any alteration, addition or improvement to which Landlord consents shall be completed in the exercise of due diligence in a good and workmanlike manner, in accordance with plans, specifications and drawings approved in writing by Landlord, and in compliance with this Lease and all applicable laws, regulations and codes and all requirements of any insurer providing coverage for the Premises. Tenant, or the respective Subtenant, as applicable, shall pay in a timely manner all costs and fees incurred in connection therewith.

8.2. **Alterations Become Part of Premises.** All alterations, additions or improvements to the Premises by Tenant or any Subtenant (except movable furniture, equipment and trade fixtures installed and/or owned by Tenant or any Subtenant, as applicable) shall become part of the Premises and Landlord's property immediately upon expiration or termination of this Lease.

9. **LIENS.** Tenant shall keep the Premises free and clear of all liens incurred by or resulting from acts of Tenant and any Subtenant. If any lien is filed, Tenant shall, within thirty (30) days thereafter, and at its expense, cause the lien to be fully discharged by either paying the obligation secured thereby or, at Tenant's election, by obtaining and recording a surety bond in accordance with A.R.S. §33-1004. Tenant is not authorized to act for or on behalf of Landlord for the purpose of constructing any improvements to the Premises and neither Landlord nor Landlord's interest in the Premises shall be subject to any obligations incurred by Tenant. Landlord shall be entitled, but not obligated, to post on the Premises during the course of any construction by Tenant such notices of nonresponsibility as Landlord deems appropriate. Tenant shall, at least five (5) days before the commencement of any work which might result in a liens, including, without limitation, the initial construction of the Improvements, provide notice thereof to Landlord so that Landlord may post such notices. If any lien is filed or any action affecting the title to the Premises is commenced, the party receiving such information shall immediately notify the other party.

10. **DAMAGE AND DESTRUCTION OF PREMISES.** In the event that all or any portion of the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall continue in full force and effect and Landlord, utilizing the proceeds of any casualty loss insurance policy, may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. §33-343 shall not apply to this Lease. If Landlord elects not to repair or restore the Premises, then in that event, this Lease shall terminate as to that portion of the Premises that has been damaged or destroyed and the Base Rent shall be equitably adjusted to reflect the fact that the area of the Premises has been reduced by such damage or destruction; provided, however, that if the damage or destruction renders more than fifty percent (50%) of the Premises unusable or untenable, then in that event, Tenant shall have the right to elect to terminate this Lease by written notice to Landlord so long as such thirty (30) days after Tenant's receipt of Landlord's election not to repair or restore the Premises.

11. **EMINENT DOMAIN.**

- 11.1. **Total Condemnation.** If the entire Premises are taken under the power of eminent domain or conveyed by Landlord under the threat thereof (a "Condemnation"), this Lease shall terminate as of the date of Condemnation. All Rent and other obligations of Tenant shall be paid and performed up to such date.
- 11.2. **Partial Condemnation.** If any portion of the Premises is taken by a Condemnation and such partial taking renders the Premises unsuitable for Tenant's purposes, this Lease shall terminate as of the date of Condemnation. If the partial taking by Condemnation does not render the Premises unsuitable for Tenant's purposes, Landlord shall, in the exercise of reasonable diligence and utilizing all or a portion of any condemnation award, restore the Premises to a condition comparable to its condition prior to the Condemnation less the portion lost in the Condemnation and this Lease shall continue in full force and effect. In the event a partial Condemnation results in the taking of a portion of the Premises, the Rent shall be reduced in proportion to the gross area of the Premises so taken.
- 11.3. **Condemnation Award.** In the event of a Condemnation, whether whole or partial, Landlord shall be entitled to the entirety of the condemnation award and Tenant shall have no right or interest therein.
- 11.4. **Date of Condemnation.** The date of Condemnation shall mean the earlier of the date (a) possession of the Premises is delivered to the condemning authority, or (b) title to the Premises is vested in the condemning authority.

12. **ASSIGNMENT.**

- 12.1. **Restriction on Transfers.** Tenant shall not, without the prior written consent of Landlord and the EDA, which consent may be given or withheld in the sole and absolute discretion of Landlord and the EDA, respectively, assign, hypothecate, mortgage or otherwise encumber or convey Tenant's interest in this Lease (herein, a "Transfer"); provided, however, that Tenant shall use commercially reasonable efforts to sublease and shall have the right to sublease portions of the Premises to Subtenants pursuant to and in accordance with the provisions set forth in *Section 13* below.
- 12.2. **Void Transfers.** Any Transfer or attempted Transfer which has not first been approved by Landlord and the EDA shall be null and void and shall constitute a default by Tenant under this Lease.

13. **SUBLEASES; MINIMUM SUBLEASE OCCUPANCY REQUIREMENT.**

- 13.1. **Subleases; Form of Sublease.** Notwithstanding anything contained herein to the contrary, including, without limitation, the provisions of *Section 12* above, Tenant shall use commercially reasonable efforts, and shall have the right, to sublease portions of the Premises (herein, a "Sublease") to subtenants (each herein, a "Subtenant") who are located or reside within the general service area of the Northern Arizona Council of Governments ("NACOG"), whose use of its subleased portion of the Premises is consistent with the permitted uses described in *Section 5* above, and who has been approved as a Subtenant of the Premises by the Landlord. In connection therewith, prior

to entering into a Sublease for space in the Premises to a Subtenant, Tenant shall provide written notice to Landlord, which notice shall include the identity of the Subtenant, the proposed use of the portion of the Premises to be subleased by the Subtenant, the term of the proposed Sublease and the Subrent to be paid by the Subtenant in connection therewith. The Tenant hereby acknowledges and agrees that each Sublease entered into by Tenant for any portion of the Premises shall be in the form attached hereto as Exhibit "A" unless another form of Sublease is approved by Landlord.

13.2. **Minimum Sublease Occupancy Requirement.** Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby acknowledge and agree that, as a material part of the consideration to Landlord for its execution of this Lease, Tenant shall, commencing upon the first anniversary of the Commencement Date, and continuing thereafter through the duration of the Term, and each Extension Term, as applicable, maintain a minimum number of Subtenants within the Premises occupying at least sixty percent (60%) of the total gross square footage of leasable space within the Premises, exclusive of any space occupied by Tenant for Tenant's offices (the "Minimum Sublease Occupancy Requirement"). Except for any delay caused by the completion of the Business Accelerator, and except by mutual agreement otherwise between the parties, after the Business Accelerator is completed, at any time after the first anniversary of the Commencement Date, if Tenant fails to satisfy the Minimum Sublease Occupancy Requirement for a period of ninety (90) consecutive days or more, Landlord shall have the right, but not the obligation, to elect to terminate this Lease by written notice to Tenant, whereupon all further rights, duties and obligations of the parties hereunder shall terminate, except with respect to any continuing indemnity obligations of the parties hereunder. The City of Flagstaff reserves the right to extend the occupancy requirement period with a written notice to the Tenant.

13.3. **Effect of Lease Termination on Subleases.** In the event that this Lease is terminated for any reason, including as a result of a default by Tenant under this Lease, such termination shall not effect a cancellation of any Subleases, but shall operate as an assignment to Landlord of any and all such affected Subleases. So long as any Subtenant under a Sublease is not in default under the terms, covenants or conditions of its Sublease beyond any applicable notice and cure period, and attorns to and accepts Landlord as the successor sublessor to Tenant, Landlord shall honor such Sublease and shall not disturb the use of such Subtenant, except in accordance with the applicable provisions of such Sublease. Landlord will agree to recognize each such Subtenant and not disturb the possession of the Subtenant, except that Landlord shall not be:

13.3.1. Liable for any act or omission of (i) any prior sublessor (including Tenant) under the Sublease, or (ii) Subtenant (or its successors or permitted assigns) under the Sublease; or

13.3.2. Subject to any offsets or defenses which Subtenant may have against any prior sublessor (including Tenant) under the Sublease; or

13.3.3. Bound by any payment which Subtenant might have paid for more than one (1) month in advance to any prior sublessor (including Tenant); or

- 13.3.4. Bound by any provision set forth in the Sublease requiring Tenant to indemnify or hold Subtenant harmless; or
- 13.3.5. Liable for any security deposit unless actually delivered to Landlord; or
- 13.3.6. Responsible for representations, warranties, covenants and indemnities of Tenant except to the extent that such representations, warranties, covenants and indemnities apply to the Premises and relate to the operation of the Premises prior to assignment of the Sublease to Landlord; or
- 13.3.7. Liable for any of Tenant's obligations for alterations, demolition or other improvements or work upon the Premises subject to the Sublease.

14. **MAINTENANCE AND UTILITIES.**

14.1. **General Utilities.** Prior to delinquency, Tenant shall set up and pay all charges for water, wastewater/sewer, stormwater, environmental management fee, natural gas, electricity, power, telephone and internet service, trash removal, recyclables and all other services or utilities used within or about the Premises by the Tenant or any Subtenant.

14.2. **Specific Obligations of Tenant and Subtenants.** Tenant and the Subtenants agree to:

- 14.2.1. Furnish their own office equipment, lab materials, manufacturing equipment, office supplies, etc. in their own area areas.
- 14.2.2. Provide for individual blue recyclable bins in each utilized space.
- 14.2.3. Provide for collection on a regular basis of individual blue bins and group bins in breakroom and cardboard collection in copy room, for distribution to outside dumpster recycle bin and glass container.
- 14.2.4. Provide for pick-up of recyclables including at a minimum of paper, corrugated cardboard, glass, plastics and metal from the outside dumpster enclosure by solid waste on a contract basis.
- 14.2.5. Provide for onsite cleaning of the walk-off mats at the entry doors each week, and offsite cleaning of the same mats, at a minimum on quarterly basis.
- 14.2.6. Provide shower facilities to the occupants of Innovation Mesa (which are already located in the Business Incubator), for those who elect to bike to work. A total of two shower facilities shall be made available.
- 14.2.7. Provide the building utility usage data to the United States Green Building Council (USGBC upon request.
- 14.2.8. Cooperate with Leadership in Energy and Environmental Design (LEED) survey takers to periodically provide information about comfort, energy use patterns, etc.

15. **SURRENDER OF PREMISES.** Tenant shall, upon the expiration or prior termination of this Lease for any reason, quit and peaceably surrender the Premises, to Landlord in good order,

condition, repair (reasonable wear and tear excepted), free of refuse in a broom-clean state and in accordance with this **Section 15**. At least thirty (30) days prior to the expiration or termination of this Lease as to the Premises, Tenant shall provide Landlord with written notice of the specific date upon which Tenant will surrender the Premises. Tenant shall deliver all keys for the Premises to Landlord at the address at which Tenant makes rent payments and shall inform Landlord in writing of the combinations of all safes, locks and vaults, if any, in the Premises. Landlord's acceptance of surrender of the Premises by Tenant shall only arise from, and must be evidenced by, written acknowledgment of acceptance of surrender signed by Landlord. No other act or conduct of Landlord, whether consisting of the acceptance of the keys to the Premises, or otherwise, shall be deemed to be an acceptance by Landlord of the surrender of the Premises by Tenant prior to the expiration of the Term as may be extended.

16. **ENTRY AND INSPECTION**. Upon reasonable prior notice, which notice may be given in writing, verbally or telephonically (provided, however, that no notice shall be required in the event of an actual or perceived emergency), Landlord and its agents shall be entitled to enter upon the Premises at any time for the purpose of conducting inspections, to show the Premises to any prospective purchaser, tenant, lender or insurer, and to take necessary action in the event of an emergency. No such entry shall entitle Tenant to terminate this Lease, to reduce or abate rent or other amounts due hereunder or to any claims for damages. Landlord shall be entitled to use any reasonable means to enter the Premises in the event of emergency and shall not be liable for any damages resulting therefrom.
17. **ESTOPPEL CERTIFICATE**. Upon receipt of a request from either Landlord or Tenant, the other party shall within thirty (30) days after receipt of such request, execute, acknowledge and deliver to the requesting party a written statement (a) certifying that this Lease is unmodified (or, if modified, stating the nature of such modification) and in full force and effect and the dates to which rent and other charges are paid in advance, (b) acknowledging that there are no uncured defaults by the requesting party, or specifying any claimed defaults, and (c) certifying or acknowledging any other matters that the requesting party may reasonably request. Any such statements may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises, or of Tenant's interest in the leasehold established by this Lease. Tenant's failure to timely deliver such statement to Landlord shall be conclusive against Tenant that (i) this Lease is in full force and effect, without modification, except as represented by Landlord in the request, (ii) there are no uncured defaults by Landlord, and (iii) Rent has not been paid more than one (1) year in advance.
18. **QUIET ENJOYMENT**. Provided Tenant is not in default hereunder, Landlord will do nothing to prevent Tenant from peaceably and quietly enjoying and occupying the Premises during the Term of this Lease, as may be extended. This covenant shall not extend to, and Landlord shall not be liable for, any disturbance, act or condition brought about by anyone not otherwise claiming by or through Landlord, or to any action required or permitted to be taken by or on behalf of Landlord under this Lease. This Lease conveys no interest to Tenant in light, air or view and Landlord shall not be liable to Tenant for interference with or diminution of the light, air or view.
19. **DEFAULT; REMEDIES**.

19.1. **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

19.1.1. Tenant's abandoning or vacating the Premises;

19.1.2. Tenant's failure to make any payment of Rent or other sum due under this Lease, as and when due, together with Default Interest thereon, where such failure continues for a period of fifteen (15) days after the date such payment is due;

19.1.3. Tenant's failure to observe or perform any of Tenant's obligations under this Lease (except as described in *Section 19.1.2*, including without limitation, failing to observe the restrictions on the use of the Premises as set forth in the Grant, where such failure continues for a period of thirty (30) days after written notice from Landlord;

19.1.4. Any Transfer of Tenant's interest in this Lease contrary to *Section 12* or any Sublease contrary to *Section 13*;

19.1.5. To the extent not prohibited by law, (i) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; (ii) the filing by or against Tenant of a proceeding under state or federal insolvency and/or bankruptcy laws (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets at the Premises or of Tenant's interest in this Leases where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets at the Premises or of Tenant's interest in this Lease;

19.1.6. Tenant's failure to satisfy the Minimum Sublease Occupancy Requirement for a period in excess of ninety (90) consecutive days. Unless the City has exercised its right under Section 13.2 to extend the occupancy requirement;

19.1.7. Tenant's failure to maintain its status as a nonprofit corporation; or

19.1.8. Tenant defaults under or breaches any provision of the Agreement for Services, if such agreement is still in effect.

19.2. **Remedies.** In the event of any such default or breach, Landlord shall be entitled to exercise the following rights and remedies at any time thereafter, with or without notice or demand:

19.2.1. To terminate this Lease effective immediately upon delivery of notice to Tenant and Tenant shall immediately surrender possession of the Premises upon receipt of such notice. Notwithstanding such termination, Tenant shall remain liable for any and all damages incurred by Landlord as a result of Tenant's breach.

19.2.2. To immediately reenter and remove all persons and property from the Premises, without liability for damages sustained by reason of such reentry and removal.

Such property may be stored in a public warehouse or elsewhere at Tenant's expense. If Landlord elects to reenter or take possession pursuant to legal proceedings or any notice provided by law, Landlord shall have the right to terminate this Lease (as provided in *Section 19.2.1* above), or without terminating this Lease, to relet the Premises or any part thereof for such term (which may be for a term in excess of the Term) and upon such conditions as Landlord, in its sole discretion, may deem advisable (which may include concessions of free rent, alterations or repairs). If Landlord elects to relet the Premises, the rents received thereafter shall be applied first to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, employees expenses, alteration, remodeling and repair costs and expenses of preparing for such reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied to payment of future rent as the same becomes due. If the rent to be received from such reletting will be less than the total of all rental and other payments that Tenant would have been obligated to make during the balance of the Term, Tenant shall immediately pay any such deficiency in full to Landlord. No such reentry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless termination is decreed by a court. Notwithstanding any such reletting without termination, Landlord may, at any time thereafter, elect to terminate this Lease for such previous breach, upon delivery of notice to Tenant.

19.2.3. To seek or pursue any other remedies which may be available at law or in equity.

- 19.3. **Remedies Cumulative.** No remedy or option of Landlord shall be considered exclusive of any other remedy, but the same shall be cumulative and in addition to every other remedy or option given hereunder, or now or hereafter existing at law, in equity or by statute, including, without limitation an action to recover amounts due hereunder. Landlord may exercise its rights and remedies at any time, in any order, to any extent, and as often as Landlord deems advisable.
- 19.4. **Landlord's Right to Act.** If Tenant fails to perform any of its obligations, Landlord shall have the right, without any passage of time or declaring Tenant in default, to perform such obligation on Tenant's behalf and to charge to Tenant all costs and expenses (including an administration fee equal to ten percent (10%) of such costs and expenses) incurred in connection therewith.
- 19.5. **Rent Defined.** Rent and all other sums payable by Tenant hereunder shall be deemed to be rent payable for use of the Premises for all purposes, including, without limitation, for purposes of Section 502(b)(6) of the Bankruptcy Code, whether or not such sums are designated as rent hereunder.
- 19.6. **Late Charges.** The late payment by Tenant of any sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of

any encumbrance covering the Premises. Accordingly, if amounts payable by Tenant are not received by Landlord within five (5) days after the due date of such payment, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such payment. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of Tenant's late payment, and shall be in addition to the payment of Default Interest.

19.7. **Interest on Past-Due Obligations.** Any amount owed Landlord that is not paid when due shall bear interest from the date due until paid at a rate equal to the lesser of (a) 18% per annum, or (b) a variable rate per annum equal to five (5) percentage points in excess of the Prime Rate designated as such in the Wall Street Journal from time to time during the period such amount is owed to Landlord ("Default Interest"). If the Wall Street Journal is no longer in publication or ceases to publish or designate a Prime Rate, Landlord shall, in its reasonable judgment, substitute another means of determining the annual interest rate charged by major commercial banks on 90-day unsecured commercial loans to their most creditworthy borrowers, and such interest rate as so determined shall thereafter be the Prime Rate. Payment of such interest shall not excuse or cure any default by Tenant.

19.8. **Attorneys' Fees; Waiver of Jury Trial and Counterclaims.** In any dispute between the parties, the prevailing party shall be entitled to recover from the other party immediately upon demand all costs and attorneys' fees, expert witness fees, costs of tests and analysis, travel and accommodation expenses, deposition and trial transcript copies, court costs and other similar costs and fees incurred in enforcing its rights and remedies under this Lease, regardless of whether legal proceedings are actually commenced. The parties waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and/or any claim of injury or damage. If Landlord commences any proceedings for nonpayment of rent, Tenant shall not interpose any counterclaim of whatever nature or description in any such proceedings, other than compulsory counterclaims. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in any separate action or action brought by Tenant.

19.9. **Accord and Satisfaction.** Payment by Tenant or receipt by Landlord of a lesser amount than the rent or other charges due hereunder shall be deemed to be on account of the earliest due stipulated rent or other charges, and no endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or other charges or pursue any other remedy in this Lease.

## 20. **LANDLORD'S LIABILITY.**

20.1. **Default by Landlord.** Landlord shall not be considered in default or breach of this Lease for the nonperformance of any obligation imposed herein unless such nonperformance shall continue for a period of at least thirty (30) days after notice from Tenant; provided, however, if the nature of the nonperformance is such that it cannot be reasonably cured

within thirty (30) days, Landlord shall not be deemed to be in default if Landlord commences to cure such nonperformance within such 30-day period and thereafter pursues such cure to completion in the exercise of reasonable diligence.

20.2. **Sale of Landlord's Interest.** Upon any sale or conveyance of Landlord's interest in this Lease, and the assumption by the transferee of Landlord's obligations arising under this Lease, Landlord shall be entirely relieved of all liability for Landlord's obligations under this Lease accruing thereafter, and the assignee or purchaser shall be deemed without any further agreement between the parties or their successors in interest to have assumed all of Landlord's obligations accruing after such conveyance.

20.3. **Nonrecourse Liability.** If Landlord fails to perform any of its obligations under this Lease and, as a consequence of such nonperformance, Tenant recovers a money judgment against Landlord, such judgment shall be satisfied only out of Landlord's interest in the Premises. Landlord shall have no liability whatsoever for any deficiency, and no other assets of Landlord shall be subject to levy, execution or other enforcement procedures as a result of such judgment. None of Landlord's obligations under this Lease shall be subject to specific performance or injunctive remedies, and Tenant waives all rights with respect to such remedies. No officer, official, employee, agent or representative of Landlord, including, without limitation, any City Council member, shall be liable to Tenant or any Subtenant or successor-in-interest in the event of a default or breach by Landlord under this Lease.

21. **DISPUTE RESOLUTION; MEDIATION.** If a dispute arises out of or relates to this Lease and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, [www.cpradr.org](http://www.cpradr.org), with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

22. **FORCE MAJEURE.** If either party is delayed or prevented from the performance of any act by reason of acts of God, strikes, lockouts, labor troubles, failure or refusal of governmental authorities to timely issue permits or approvals or conduct reviews or inspections, civil disorder, abnormally inclement weather (i.e., not typical of the normal weather for the City of Flagstaff during the relevant season), inability to procure materials, restrictive governmental laws or regulations, or other causes beyond the control of the party obligated (financial inability of Tenant excepted), performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing herein shall excuse Tenant from the prompt payment of rent or any other sum.

23. **BROKERS**. Tenant represents and warrants that Tenant has not retained a broker and there are no claims for brokerage commissions or finder's fees in connection with this Lease, and Tenant shall indemnify, defend and hold harmless Landlord for, from and against any claim by any party claiming through Tenant for a brokerage commission or finder's fee in connection with this Lease.
24. **NOTICES**. No notice, consent, approval or other communication given in connection herewith shall be validly given, made, delivered or served unless in writing and delivered in person or sent by registered or certified United States mail, postage prepaid, to the parties at the following addresses:

To Landlord:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: City Manager
With a Copy to:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: City Attorney
With a Copy to:	City of Flagstaff 211 West Aspen Avenue Flagstaff, Arizona 86001 Attn: Economic Vitality Director
To Tenant:	NACET 2225 N. Gemini Dr. Flagstaff, Arizona 86004 Attn: President/CEO

Notices, consents, approval or communications shall be deemed given or received upon delivery, if delivered in person, or upon thirty-six (36) hours after deposit in the mail, if delivered by mail.

25. **GENERAL**.
- 25.1. **Arizona Law; Venue**. This Lease shall be construed in accordance with the laws of the State of Arizona. The parties agree that Coconino County, Arizona shall be the venue for any litigation relating to this Lease.
- 25.2. **No Partnership**. Nothing contained in this Lease shall be deemed to create any relationship other than that of landlord and tenant.
- 25.3. **Amendments**. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties.
- 25.4. **No Waiver**. No delay or omission of Landlord to exercise any right or power shall impair any such right or powers or shall be construed to be a waiver of any nonperformance by Tenant or an acquiescence therein. No waiver of any

nonperformance shall be effective unless it is in writing. No written waiver by Landlord shall be deemed to be a waiver of any other Lease provision, or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the procurement of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved.

- 25.5. **Exhibits.** All exhibits and addenda attached hereto shall by this reference be deemed a part of this Lease as if set forth in full herein.
- 25.6. **Partial Invalidity.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, that provision may be modified to the minimum extent necessary and the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 25.7. **Captions.** The various headings and numbers herein and the grouping of the provisions of this Lease into separate articles and sections are for the purpose of convenience only and shall not control or affect the meaning or construction of any of the provisions.
- 25.8. **Time.** Time is of the essence. If any time period provided for herein expires on a Saturday, Sunday or legal holiday, such time period shall be extended to the next succeeding day that is not a Saturday, Sunday or legal holiday.
- 25.9. **No Third-Party Rights.** Except as expressly provided herein, no Term of this Lease is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.
- 25.10. **Joint and Several Obligations.** If Tenant is constituted of two or more persons, corporations or other entities, all agreements, covenants, representations and warranties of Tenant herein are the joint and several obligations of the entities constituting Tenant. If Tenant is husband and wife, the obligations hereunder shall extend individually to the sole and separate property of each as well as to their community property. Notice given to any one of the entities constituting Tenant shall be deemed as having been given to all such entities.
- 25.11. **Authority to Execute.** Any individual executing this Lease on behalf of or as representative for a corporation or other person, partnership or entity represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such party, and that this Lease is binding upon such party in accordance with its terms. If Tenant is a corporation or a partnership, Tenant shall deliver to Landlord within ten (10) days after the execution of this Lease a certified copy of a resolution of the board of directors or of all partners, as the case may be, authorizing or ratifying the actions of the individual(s) executing and delivering this Lease.
- 25.12. **Binding on Successors and Assigns.** Each of the provisions of this Lease shall bind, extend to, and inure to the benefit of the respective heirs, legal representatives, and successors and assigns of both Landlord and Tenant; provided however, that this clause shall not permit any assignment contrary to the provisions of *Section 12* or Sublease contrary to the provisions of *Section 13*.

- 25.13. **Impartial Interpretation.** This Lease is the result of negotiations between Landlord and Tenant and, therefore, the language contained in this Lease shall be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.
- 25.14. **Plurals.** The words "Landlord" and "Tenant," as herein used, shall include the plural as well as the singular. The neuter gender shall include the masculine and feminine genders.
- 25.15. **Not Binding Until Signed.** Submission of this instrument to Tenant for examination shall not bind Landlord in any manner, until this instrument is executed and delivered by both Landlord and Tenant.
- 25.16. **Notice of Cancellation.** Notice is hereby given that this Lease is subject to cancellation in accordance with the provisions of A.R.S. §38-511.
26. **LANDLORD'S USE OF CONFERENCE ROOM.** The Landlord and Tenant hereby acknowledge and agree that, during the Term of this Lease, as may be extended, the Landlord shall have the right to utilize the main conference room within the Premises, together with all equipment and facilities contained therein, at no cost or charge to Landlord; provided, however, that (a) Landlord's use of such conference room and facilities shall be limited to economic development purposes, (b) Landlord shall provide at least forty-eight (48) hours prior notice to Tenant of its desire to use such conference room, and (c) Landlord shall coordinate such use with the use of Tenant and any Subtenants within the Premises who shall have priority in scheduling the use of such conference room.
27. **GRANT REQUIREMENTS.** Landlord and Tenant hereby acknowledge that this Lease has been approved by EDA as being consistent and in accordance with the terms and purposes of the Grant and each of Landlord and Tenant shall, during the term of this Lease, observe and perform their respective duties and obligations under this Lease such that the Premises shall be operated in a manner which provides adequate employment and economic benefits for the greater northern Arizona business community in accordance with the terms, covenants, restrictions and limitations of the Grant.
28. **FEDERAL COMPLIANCE.**
- 28.1. **Civil Rights.** The Lessee shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, religion, sex, age or physical or mental disability.
- 28.2. **Audits and Inspections.** At any time during normal business hours, and as frequently as is deemed necessary, the Lessee shall make available to the Lessor and the Economic Development Administration (EDA) or EDA's authorized agents, for their examination, all of its records pertaining to matters covered by this Agreement and only matters relating to the Agreement.
- 28.3. **Retention of Records.** All records in the possession of the Lessee pertaining to this Agreement shall be retained for a period of three (3) years after the expiration of the Agreement or any extensions thereof. All records shall be retained beyond the three (3)

year period if audit findings have not been resolved within that period or if other disputes have not been resolved.

28.4. **Assignment and Subletting.** Assignment and subletting are not permitted under this Agreement without prior written approval of the Economic Development Administration.

28.5. **Environmental Compliance.**

28.5.1. Lessor warrants and represents to the Lessee that it has no knowledge of the presence or of the release, now or in the past, of any hazardous substance or material on the Premises. Lessor agrees to hold Lessee free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever related to any damage or condition that might be caused by any existing environmental condition that currently exists on the Premises.

28.5.2. Lessee covenants and agrees that throughout the Term its use and occupancy of the Premises will at all times be in strict compliance with all governmental regulations, be they federal, state or local, that pertain to the use and storage of hazardous materials and substances, and Lessee shall save and hold Lessor free, harmless and indemnified from any penalty, fine, liability, cost or charge whatsoever which Lessor may incur by reason of Lessee's failure to comply with this **Section 28.5**. Such covenants, however, shall not apply to any condition that existed at the time Lessee first took possession of any part of the Premises, or which is caused or results from acts of others, including Lessor.

28.5.3. Lessee's obligations under this **Section 28.5** shall automatically terminate and expire one (1) year after Lessee no longer occupies the Premises unless an action has been filed in some judicial tribunal of competent jurisdiction prior to that time which related to a period during which Lessee in fact did occupy any part of the Premises.

***SIGNATURE PAGE FOLLOWS***

IN WITNESS WHEREOF, the parties have duly executed this Master Lease as of the date first above written.

**"LANDLORD"**

**CITY OF FLAGSTAFF**, an Arizona municipal corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**"TENANT"**

**NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC.**, dba NACET an Arizona nonprofit corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT "A"**

**NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR INC., dba NACET**

**BUSINESS INCUBATOR**

**SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT (hereinafter referred to as this "Sublease") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba NACET an Arizona nonprofit corporation (hereinafter referred to "Sublessor"), whose address for rents and notices is \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as "Sublessee"), whose address for notices is \_\_\_\_\_.

**R E C I T A L S**

- A. Sublessor is the Tenant under that Master Lease (the "Master Lease") dated as of \_\_\_\_\_, 2014, entered into by Sublessor and the City of Flagstaff, an Arizona municipal corporation (the "Master Lessor"). Pursuant to the Master Lease, Sublessor leased from Master Lessor those premises consisting of approximately 10,000 rentable square feet and commonly known as the "Business Incubator Facility" (the "Premises").
- B. Sublessee has expressed an interest in subleasing from Sublessor that portion of the Premises described in *Exhibit "A"* attached hereto, together with all existing furnishings and fixtures therein (the "Subleased Premises"), on the terms and conditions set forth herein. Sublessor has agreed to sublease the Premises to Sublessee subject to the matters set forth in this Sublease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

**S U B L E A S E**

- 1. ACKNOWLEDGEMENT OF MASTER LEASE. It is hereby expressly understood, acknowledged and agreed by Sublessor and Sublessee that this Sublease is subject to the terms, covenants, provisions and conditions of the Master Lease. Sublessee agrees to observe, and comply with, all obligations of Sublessor as the tenant under the Master Lease as applicable to the use and occupancy of the Subleased Premises, including, without limitation, limiting its use of the Subleased Premises to those uses which are permitted under the terms of the Master Lease and the Grant provided by the United States Department of Commerce, Economic Development Administration (the "EDA"), provided by the EDA in connection with the development and construction of the Premises. Sublessee shall not commit or permit to be committed on the Subleased Premises any act or omission which shall violate any term or condition of the Master Lease or any term or condition of the Grant. Sublessee hereby agrees that, in the event that Sublessor's rights with respect to the Subleased Premises expire or are terminated for any reason, whether as a result of the termination of the Master Lease by the Master Lessor in accordance

with the Master Lessor's rights under the Master Lease or otherwise, then this Sublease and all of the rights and obligations of Sublessee hereunder shall continue in full force and effect; provided, however, that Sublessee shall attorn to and perform all of its obligations under this Sublease to and for the benefit of the Master Lessor pursuant to the terms of the Master Lease. A copy of the Master Lease and the Grant provided by the EDA to Master Lessor shall be made available from time to time by Sublessor to Sublessee for Sublessee's review.

2. LEASE OF SUBLEASED PREMISES. In consideration of the rents to be paid and the covenants to be performed by Sublessee hereunder, Sublessor does hereby lease to Sublessee, and Sublessee does hereby lease from Sublessor, upon the terms and conditions hereinafter set forth, the Subleased Premises.
3. TERM. The Term of this Sublease shall be for \_\_\_\_\_ (\_\_\_) months, commencing on \_\_\_\_\_, 20\_\_ ("Commencement Date"), and continuing through \_\_\_\_\_, 20\_\_ ("Termination Date").
4. RENTAL. The Sublessee shall pay monthly rent in an amount equal to \$\_\_\_\_\_, plus current rental tax of 2.051% (\$\_\_\_\_\_), for a total rental of \$\_\_\_\_\_ per month payable on or before the first day of each month during the Term hereof. Rental for any partial month of occupancy shall be prorated.
5. SECURITY DEPOSIT. Upon execution of this Sublease, Sublessee has deposited with Sublessor the sum of \$\_\_\_\_\_, as security for the full and faithful performance of each and every term, condition, covenant and provision of this Sublease on Sublessee's part to be performed. In the event that Sublessee fails to pay any installment of monthly rent required to be paid under this Sublease as and when due, then Sublessor shall have the right to apply the security deposit to the obligations of Sublessee, whereupon Sublessee shall immediately upon demand of Sublessor replenish the security deposit to the amount described herein. If, upon the expiration or termination of this Sublease, Sublessee returns the Subleased Premises, including all furnishings and fixtures therein, to Sublessor in the condition in which the Subleased Premises was delivered to Sublessee, ordinary wear and tear excepted, then within fourteen (14) days after the expiration or termination of this Sublease, the security deposit shall be returned by Sublessor to Sublessee.
6. PURPOSE AND USE OF THE SUBLEASED PREMISES. The Subleased Premises are to be used only for the following purpose and for no other purpose without the prior written consent of Sublessor and the Master Lessor pursuant to the terms of the Master Lease, which consent may be withheld in the sole and absolute discretion of Sublessor and the Master Lessor, respectively:  
\_\_\_\_\_.
7. CONDITION OF SUBLEASED PREMISES; ALTERATIONS. Sublessee hereby acknowledges and agrees that it shall accept the Subleased Premises on the Commencement Date in their existing "as is" condition, and neither Sublessor nor Master Lessor shall have any obligation for the construction or installation of any improvements within the Subleased Premises other than the existing improvements. If Sublessee desires to make any alterations or improvements to the Subleased Premises, then prior to commencing any such alterations or improvements, it must obtain the prior written consent of the Sublessor and the Master Lessor pursuant to the terms of the Master Lease and, if such approvals are provided, then all construction, alterations or

improvements within the Subleased Premises by Sublessee must be performed in accordance with the terms and conditions of the Master Lease applicable thereto.

8. REPAIRS AND MAINTENANCE. Except for damage caused by the negligent or intentional acts of Sublessee, its agents, employees or invitees, and except for any areas including laboratory, office, manufacturing or other areas within the Subleased Premises which are secured work areas (with respect to which Sublessee shall clean, maintain and repair at its expense), the parties hereto acknowledge that the Master Lessor shall keep, maintain and repair the Premises, including the Subleased Premises, in good, safe and sanitary order, condition and repair and, as a result thereof, Sublessor shall have no responsibility in connection therewith, except to provide notice to Master Lessor of the need for any maintenance or repairs within the Subleased Premises after receipt of notice of the need therefor from Sublessee. Sublessee shall, upon the expiration or sooner termination of the term of this Sublease, surrender the Subleased Premises to Sublessor, including all furnishings and fixtures therein, in the same condition as received, ordinary wear and tear excepted.
9. SERVICES AND UTILITIES. The parties hereby acknowledge that utilities and services to the Subleased Premises shall be provided by Master Lessor under the terms of the Master Lease. The Master Lessor will monitor the above mentioned utility costs and reserves the right to amend the terms to require the Sublessee to pay Sublessor all or a portion of anything that is in excess of a reasonable amount for typical utility usage, which excess amounts Sublessor will in turn pay to Master Lessor.): sewer, water, natural gas, electricity and trash removal. Sublessee shall be responsible for obtaining and paying for any other utilities and services to the Subleased Premises, including telephone, data communications, cable and the like. Notwithstanding anything contained in the foregoing or elsewhere in this Sublease to the contrary, Sublessor and Master Lessor shall have the right to install a submeter to the Subleased Premises for the purpose of monitoring Sublessee's electricity usage within the Subleased Premises and, if such electricity usage exceeds that of normal office use as reasonably determined by Sublessor or Master Lessor, then Sublessor and/or Master Lessor shall have the right to charge Sublessee for such additional electrical usage, without profit or markup, which shall be paid by Sublessee within then (10) days after receipt of invoices or statements therefor from Sublessor and/or Master Lessor.
10. ASSIGNMENT AND SUBLETTING. Sublessee shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Sublease, or any interest therein, nor further sublet the Subleased Premises or any part thereof, or any right or privilege appurtenant thereto, or permit any other person (the agents and servants of Sublessee excepted) to occupy or use the Subleased Premises or any part thereof, and any such assignment, transfer, mortgage, pledge, hypothecation or encumbrance of this Sublease or any interest therein, or any attempt to effect any of the foregoing, shall be deemed to be an immediate and incurable default under this Sublease by Sublessee.
11. INDEMNIFICATION OF SUBLESSOR AND MASTER LESSOR. Sublessee agrees to indemnify, defend and hold harmless Sublessor and the Master Lessor for, from and against any and all penalties, costs, expenses (including attorneys' fees), claims, demands and causes of action arising out of or in connection with any accident or other occurrence in or on the common areas (including without limiting the generality of the term "common areas," including but limited to, sidewalks, driveways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas), the use of which Sublessee may have in conjunction with other tenants and

occupants of the Premises, when such injury or damage shall be caused in part or in whole by the act, neglect, fault or omission of any duty with respect to the same by Sublessee, its agents, servants, employees, invitees, visitors, permittees, customers, clients, guests or tenants.

12. INSURANCE.

12.1. Insurance. Sublessee shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Sublessee, Sublessee's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Master Lessor and Sublessor do not represent or warrant that the minimum limits set forth herein are sufficient to protect Sublessee from liabilities that might arise out of this Lease, and Sublessee is free to purchase such additional insurance as Sublessee may determine is necessary.

12.2. Minimum Scope and Limits of Insurance. Sublessee shall provide coverage at least as broad and with limits not less than those stated below.

12.2.1. Commercial General Liability - Occurrence Form

*(Form CG 0001, ed. 10/93 or any replacement thereof)*

General Aggregate -- \$2,000,000

Personal and Advertising Injury -- \$1,000,000

Each Occurrence -- \$1,000,000

Fire Damage (any one fire) -- \$50,000

Medical Expense (any one person) -- Optional

12.2.2. Workers' Compensation and Employer's Liability

Workers' Compensation -- Statutory

Employer's Liability: Each Accident -- \$500,000

Disease - Each Employee -- \$500,000

Disease - Policy Limit -- \$500,000

12.3. Self-Insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by Master Lessor and Sublessor.

12.4. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

12.4.1. Commercial General Liability and Automobile Liability Coverages.

12.4.1.1. Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Sublessee, including products and completed operations of Sublessee; and automobiles owned, leased, hired or borrowed by Sublessee.

- 12.4.1.2. Sublessee's insurance shall contain broad form contractual liability coverage.
- 12.4.1.3. Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers shall be named as additional insureds to the full limits of liability purchased by Sublessee even if those limits of liability are in excess of those required by this Lease.
- 12.4.1.4. Sublessee's insurance coverage shall be primary insurance with respect to Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by Master Lessor and Sublessor, its officers, officials, agents, employees or volunteers, shall be in excess of the coverage of Sublessee's insurance and shall not contribute to it.
- 12.4.1.5. Sublessee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 12.4.1.6. Coverage provided by Sublessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.
- 12.4.1.7 The policies shall contain a waiver of subrogation against Master Lessor and Sublessor, its officers, officials, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.
- 12.4.2. Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against Master Lessor and Sublessor, its officials, officers, agents, employees and volunteers for losses arising from Sublessee's operations, occupancy and use of the Premises subject to this Lease.
  - 12.4.2.1. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Master Lessor and Sublessor.
  - 12.4.2.2. Acceptability of Insurers. Sublessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Master Lessor and Sublessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.
  - 12.4.2.3. Verification of Coverage. Sublessee shall furnish Master Lessor and Sublessor with certificates of insurance (*ACORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

12.4.2.4. **Policy Review and Adjustment.** Such policies of insurance shall be subject to review and adjustment on the fifth (5<sup>th</sup>) anniversary of the Commencement Date of this Lease and on each subsequent fifth (5<sup>th</sup>) anniversary during the Term hereof, as may be extended, in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

12.4.2.5. **Failure to Maintain Insurance.** If Sublessee fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Master Lessor and Sublessor shall have the right, at Master Lessor and Sublessor's election, and upon five (5) days' notice to Lessee, to procure and maintain such insurance. Any premiums paid by Master Lessor and Sublessor hereunder shall be due and payable by Sublessee to Master Lessor and Sublessor on the first day of the month following the date on which the premiums were paid. Master Lessor and Sublessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

12.5 **Liability Insurance.** Sublessee agrees to procure and maintain at its own cost and expense, during the entire term of this Sublease and any extensions thereof, comprehensive public liability insurance covering the Subleased Premises, which insurance shall also name Sublessor and Master Lessor as additional named insureds. The liability coverage under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury, illness or death to persons or damage to property in any one incident. Prior to, and as a condition of, taking possession of the Subleased Premises, Sublessee will provide Sublessor with certificates of such insurance, satisfactory to Sublessor, evidencing Sublessee's compliance with the requirements of this **Section 12.5**.

12.6 **Personal Property.** Sublessee hereby acknowledges that Sublessor's insurance will not cover Sublessee's specialized equipment or any other fixtures, furniture or personal property owned by Sublessee. Neither Master Lessor nor Sublessor shall be liable to Sublessee, or to any other person, for any damages on account of loss, damage, fire or theft to any personal or business property, and Sublessee shall be solely responsible for obtaining and maintaining any property loss insurance in connection therewith.

13. **PERSONAL PROPERTY TAXES.** Sublessee agrees to pay or cause to be paid before delinquent any and all taxes levied or assessed and which become payable during the term of this Sublease and any renewal thereof upon all equipment, furniture, fixtures and other personal property owned by Sublessee and located in the Subleased Premises, except that which may be owned by Master Lessor.

14. **RULES AND REGULATIONS.** Sublessor has established Building Rules and Regulations which are annexed as **Exhibit "B"** to this Sublease. Sublessor may from time to time make such modifications, additions and deletions in the building Rules and Regulations as are reasonably

necessary or convenient for the management and operation of the Premises on reasonable notice to tenants.

15. HOLDING OVER. If Sublessee remains on the Subleased Premises after the expiration of the term hereof, Sublessee shall become, at Sublessor's election, a tenant on a month-to-month basis at a rent equal to one hundred twenty-five percent (125%) of the rent payable for the last month of the term hereof. Such holdover rent shall be payable by Sublessee in advance on the first day of such holdover period and on the first day of each month thereafter until Sublessee vacates the Subleased Premises. Such tenancy shall be subject to all of the other provisions of this Sublease.
16. ENTRY BY SUBLESSOR AND MASTER LESSOR. Sublessor and Master Lessor shall each have the right to enter the Subleased Premises at any time to inspect the same or to cure any default (including a breach of the Building Rules and Regulations), to supply any service to be provided by Sublessor and/or Master Lessor hereunder, to submit the Subleased Premises to prospective subtenants, purchasers or mortgagees, to post notices of nonresponsibility and to alter, improve or repair the Subleased Premises and any portion of the Subleased Premises without abatement of rent.
17. EVENTS OF DEFAULT. In addition to any events defined elsewhere in this Sublease as constituting a default of Sublessee, any of the following shall also be considered an event of default by Sublessee hereunder:
  - 17.1. If Sublessee shall fail to pay rent or any part thereof or any other sums payable pursuant to this Sublease on the date where such failure continues for ten (10) days after written notice by Sublessor to Sublessee;
  - 17.2. If Sublessee shall fail to observe or perform any of the other covenants or agreements contained in this Sublease to be observed or performed by Sublessee;
  - 17.3. If the Sublessee's interest in this Sublease shall pass to any person or entity except that named as Sublessee herein, by law or otherwise, in violation of **Section 10** above.
18. REMEDIES OF SUBLESSOR. In the event of any default by Sublessee, then Sublessor, in addition to any other rights or remedies it may have by statute or otherwise, including the right to take no action other than to sue for damages or rental in default, shall have the immediate right of reentry and may remove all persons and property from the Subleased Premises.
19. ESTOPPEL CERTIFICATES. Sublessee agrees at any time, and from time to time, upon not less than ten (10) days prior request by the Sublessor, to execute, acknowledge and deliver to the Sublessor estoppel certificates in such form as may reasonably be required by Sublessor.
20. ATTORNEYS' FEES. In the event of any action or proceeding to compel compliance with, or for a breach of, the terms and conditions of this Sublease, the prevailing party shall be entitled to recover from the losing party all costs and expenses of such action or proceeding, including, but not limited to, the reasonable attorneys' fees of the prevailing party.
21. WAIVER. The waiver by Sublessor of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance

of rent hereunder by Sublessor shall not be deemed to be a waiver of any preceding breach by Sublessee of any term, covenant or condition of this Sublease, other than the failure of Sublessee to pay the particular rent so accepted, regardless of Sublessor's knowledge of such preceding breach at the time of acceptance of such rent.

22. CONSTRUCTION AND SEVERABILITY. This Sublease shall be governed by and construed in accordance with Arizona law. The invalidity or unenforceability of any provision of this Sublease shall not affect or impair the validity of any other provision of this Sublease.
23. NOTICES. All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing. All notices and demands by the Sublessor to the Sublessee shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Sublessee at the address indicated on page one hereof, or to such other place as the Sublessee may from time to time designate in a notice to the Sublessor. All notices and demands by the Sublessee to the Sublessor shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Sublessor at the address indicated on page one hereof, or to such other person or place as the Sublessor may from time to time designate in a notice to the Sublessee. Any notice shall be deemed to have been given at the time of personal delivery or, if mailed, three (3) days after the date of mailing thereof. Each of the parties hereto hereby acknowledges, covenants and agrees that any notice or demands provided by one party to the other under the terms of this Sublease shall also be provided to Master Lessor at the following address:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attention: City Attorney

24. TIME OF ESSENCE. Time is of the essence of this Sublease and of each provision hereof.
25. SUCCESSORS AND ASSIGNS. Subject to all limitations on assignment and subletting set forth herein, all of the terms and provisions of this Sublease shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.
26. APPROVAL OF SUBLEASE BY MASTER LESSOR. Notwithstanding anything contained in this Sublease to the contrary, the Sublessor and Sublessee hereby acknowledge that this Sublease is subject to the review and approval of the Master Lessor pursuant to the provisions set forth in the Master Lease. Promptly after the mutual execution of this Sublease by Sublessor and Sublessee, Sublessor shall submit a fully-executed copy of this Sublease to the Master Lessor for its review and approval. Upon Sublessor's receipt of approval of this Sublease by the Master Lessor, Sublessor shall deliver exclusive possession of the Subleased Premises to Sublessee. If the Master Lessor disapproves this Sublease for any reason, then immediately upon Sublessor's delivery of notice of such disapproval to Sublessee, this Sublease shall be null and void and of no further force or effect.

***SIGNATURE PAGE FOLLOWS***

IN WITNESS WHEREOF the parties have executed this Sublease Agreement as of the day and year first written above.

**"SUBLESSOR"**

NORTHERN ARIZONA TECHNOLOGY & BUSINESS  
INCUBATOR, INC., dba NACET an Arizona nonprofit  
corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**"SUBLESSEE"**

\_\_\_\_\_,  
a \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**CONSENT AND ACKNOWLEDGEMENT  
OF MASTER LESSOR**

The undersigned, as the Master Lessor referred to in the foregoing Sublease, hereby consents to the Sublease of the Subleased Premises described herein on the terms and conditions contained in the Sublease. This Consent shall apply only to the foregoing Sublease and shall not be deemed to be a consent to any other sublease of any other portion of the Premises or any assignment by Sublessor of the Master Lease to any other party.

DATED: this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF FLAGSTAFF, an Arizona municipal corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_