

BUSINESS INCUBATOR AND ACCELERATOR MASTER LEASE

**CITY OF FLAGSTAFF
and
NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC.,
DBA NACET**

THIS MASTER LEASE (“Lease”), effective as of January 1, 2019, by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, (the “City” or “Landlord”), and NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC., dba Northern Arizona Center for Entrepreneurship and Technology (NACET) an Arizona nonprofit corporation (“NACET” or “Tenant”) with main office at 2225 North Gemini Drive, Flagstaff, Arizona, 86001.

RECITALS

- A. Landlord previously received a grant from the United States Department of Commerce, Economic Development Administration (“EDA”) (the “Grant”), for the sole purpose of the establishment, development, construction and operation of a science, technology and clean-energy business accelerator and to promote, among other things, business development, job creation and private investment within the greater northern Arizona economic community and separately to house a primary Emergency Operations Center (“Gemini EOC” or “EOC”) when activated if necessary.
- B. Pursuant to the terms of the Grant, Landlord has constructed, equipped and furnished an approximately 28,000 square foot Leadership in Energy and Environmental Design (“LEED”) facility on that parcel of real property located at 2201 North Gemini Drive in the city of Flagstaff, Arizona, which building is commonly known as Flagstaff Business Accelerator, and, also pursuant to the terms of the Grant, Landlord has constructed, equipped and furnished an approximately 10,000 square foot facility on that parcel of real property located at 2225 North Gemini Drive in the city of Flagstaff, Arizona, which building is commonly known as Flagstaff Business Incubator (collectively the “Premises”).
- C. Tenant has been formed as an Arizona 501(c)(3) nonprofit corporation for the purpose of assisting small business startups, Tier 2 companies, 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.
- D. Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord for the purpose of the operation of research and development, science, technology, clean energy, bio-science, healthcare, manufacturing, digital products, emerging technology, tourism, and astronomy focused business accelerator 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 startups, Tier 2 companies, and entrepreneurs meeting the objectives of the Grant, a copy of which has been provided to Tenant.

- E. Landlord has the authority to enter this Lease pursuant to Flagstaff City Charter, Article VIII, Section 9.

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 B* above, together with all equipment, furnishings and fixtures currently located in or which are a part of the Premises, except any belonging to the Gemini EOC. 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's rights, and those of any Subtenant, are subject to and restricted by the activation of the Gemini EOC, which preempts any other right granted under this lease as necessary to complete the EOC's functions and operations. 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 five (5) years and shall commence on January 1, 2019 (the "Commencement Date"), and shall expire on December 31, 2023 (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 Lease by providing a written notice of intent to extend to the other party no later than one hundred eighty (180) days prior to the expiration of the term of this Lease.
 - 2.2. **Options to Extend Term.** The parties shall have the option to elect to extend the Term of this Lease for up to two (2) consecutive five (5) year extension terms (each, an "Extension Term"). In order for a party to extend the Term of this Lease for any one or more Extension Terms:
 - 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 substantial compliance with the terms of this Lease at all times during the Term or the then-current Extension Term, as applicable;

- 2.2.4. 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, unless waived by the City for good cause;
- 2.2.5. 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;
- 2.2.6. 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;
- 2.2.7. Tenant shall be in good standing with the Arizona Corporation Commission as an Arizona 501(c)(3) nonprofit corporation; and
- 2.2.8. Tenant shall not then be in default under the Agreement for Services, if such agreement is still in effect.

If Tenant has met all the above conditions and if the City, in its sole and absolute discretion, wishes to extend this Lease then the City may accept the Tenant's request to extend for an Extension Term and 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 Lease upon mutual consent. In the event the parties desire to mutually cancel/terminate this Lease, 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 Lease on, a pro-rated basis up to and including the date of cancelation/termination.
- 2.4. **Cancellation to Repurpose Building(s).** Upon six (6) months written notice to Tenant, Landlord may cancel and terminate this Lease to repurpose or sell either the Incubator or Accelerator buildings, with no further obligation or liability to Tenant under this Lease.

3. **RENT.**

- 3.1. **Rent.** At the times and in the manner set forth herein, Tenant shall pay to Landlord as rent for the Premises ("Rent") the sum of the following amounts:
 - 3.1.1. **Rental Agent/Calculation of Rents.** NACET will act as the Rental Agent for the City of Flagstaff (refer to section 3.4). This includes charging rents as determined in the sole discretion of the City, which are subject to change upon approval by the City Manager, but currently consist of: a base rent of \$24 per square foot for commercial office space/wet and dry labs and \$15 per square foot for

manufacturing space (“Base Rent”). In addition, NACET will levy a six percent (6%) common area (such as conference room, policy room, collaborative space, kitchen, etc.) charge to each tenant’s Base Rent. NACET will collect these rents per the terms and conditions noted in the Sublease Agreement and remit all rents, except those rents received from any approved co-working subleases, to the City in accordance with *Section 3.4.4* below. The Base Rent shall be increased by two percent (2%) on January 1 of each year. In addition, the City of Flagstaff will monitor utility usage, market conditions, and costs on an annual basis and reserves the right to make adjustments in the sole discretion of the Flagstaff City Manager. Co-working and other short-term leasing arrangements are acceptable if conforming to EDA requirements and with approval by Landlord.

- 3.1.2. **Rent.** NACET will remit to the City \$25,000 annually for its rent of the Premises, including its office space.
- 3.1.3. **Compensation of Rental Agent.** The City of Flagstaff will remit to NACET \$5,000 per month/\$60,000 annually for its work as Rental Agent.
- 3.1.4. **Incentive for Exceeding Minimum Occupancy.** In any full calendar year, if the combined calculated occupancy rate for the entire year for both the Incubator and the Accelerator, excluding co-working subleases, exceeds that as shown in *Section 3.4.1* below, Landlord shall provide an incentive reimbursement to Tenant of twenty percent (20%) of the excess rents. However, occupancy for incentivized Subtenants not paying full rent for the term of their lease will not be included in the occupancy calculation. For purposes of this calculation only, these incentivized leases will be treated as vacancies.
- 3.2. **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 25* below, or at such other place or to such other person as Landlord may from time to time designate by notice hereunder.
- 3.3. **“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 (1st) anniversary of the Commencement Date.
- 3.4. **Rental Agent Responsibilities.** NACET’s responsibility as Rental Agent includes:
 - 3.4.1. Maintaining a combined seventy-five percent (75%) minimum occupancy of the leasable square footage (excluding any approved co-working space) in the Premises, as determined by the City, which is currently 18,098 square feet of the total 24,131 leasable square footage. NACET has full responsibility to attract tenants. Notwithstanding anything contained in this Lease to the contrary, the City and NACET hereby acknowledge and agree that, as a material part of the consideration to the City for its execution of this Lease, NACET is responsible for ensuring occupancy of seventy-five percent (75%) of the leasable square footage of the buildings with Qualified Subtenants as set forth in *Section 5.1* below (the “Minimum Sublease Occupancy Requirement”). Leasable square footage does not

include any space occupied by Tenant for Tenant's offices and "common areas," including but not limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, and area utilized by the EOC. Occupancy will be evaluated by combining the total leasable square footage of both the Incubator and the Accelerator, excluding the square footage leased by NACET, currently 24,131 leasable square feet. Except by mutual agreement otherwise between the parties for good cause shown, at any time if Tenant fails to satisfy the Minimum Sublease Occupancy Requirement for a period of ninety (90) consecutive days or more, Landlord will withhold ten percent (10%) of the monthly payment to Tenant for services set forth in *Section 3.1.3* of this Lease and *Section 3.4* of the Agreement for Services for the Business Incubator and Accelerator as a reasonable estimate of Landlord's difficult to quantify losses and not a penalty for Tenant's failure to comply with its Minimum Sublease Occupancy Requirement obligation. Landlord will resume full monthly payments once Tenant has reached seventy-five percent (75%) occupancy for the full month. Additionally, Landlord also shall have the right, but not the obligation, to elect to terminate or extend this Lease by written notice to Tenant. In the event that Landlord terminates the lease, all further rights, duties and obligations of the parties hereunder shall terminate, except with respect to any continuing indemnity obligations of the parties hereunder.

- 3.4.2. Assisting the City to keep the building in good condition and providing good customer service to the tenants;
- 3.4.3. Providing overall building oversight, including receiving calls for service and notifying the City of Flagstaff in a timely manner of any maintenance concerns within the responsibility of the City;
- 3.4.4. Collecting and remitting rents to the City of Flagstaff on a monthly basis by the 15th of the following month, or as mutually agreed upon by both Parties;
- 3.4.5. Monitoring utility usage to be efficient;
- 3.4.6. Securing the facility, including during off hours when the conference room has been rented, to ensure activities are compliant and equipment is protected; and
- 3.4.7. Managing conference room usage and ancillary rooms such as breakout rooms, bathrooms, kitchen, etc. Tenant is responsible for damage to audio/video equipment as a result of tenant or Subtenant use and will pay for repairs implemented by the City Information Technology Section. Any damage is to be immediately reported to the City. Landlord is responsible for general maintenance.
- 3.4.8. Permitting the use of alcohol at events only in compliance with the Alcohol Policy for the Business Incubator and Accelerator approved by the City, subject to any changes made by the City in the future.

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 parties believe that 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, to 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.** 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, (a) 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, (b) any impositions allocable to or measured by the area of the Premises, (c) any impositions with respect to the possession, leasing, operation, maintenance, alteration, use or occupancy by Tenant of the Premises, (d) 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 (e) any special, unforeseen or extraordinary impositions however described.

5. **USE OF PREMISES.**

- 5.1. **Permitted Uses; Uses Limited to Those Permitted Under Grant.** Except for the housing of the Gemini EOC when activated or otherwise in use, Tenant shall operate, manage, occupy and use the Premises only for the purposes of the operation of a research and development, science, technology, clean energy, bio-science, healthcare, manufacturing, digital products, emerging technology, tourism, and astronomy 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) are located or reside within the general service area of the Northern Arizona Council of Governments ("NACOG"), whose use of its leased portion of the Premises is consistent with the permitted uses described in this *Section 5.1*, (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 ("Qualified Subtenant" of "Subtenant"). 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. “Environmental Law” 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.
 - 5.4.1. Tenant shall immediately notify Landlord of:
 - 5.4.1.1. The existence of any Hazardous Substance, as defined in 29 C.F.R. 1910.120, 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);
 - 5.4.1.2. 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;

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

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

5.4.2. 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, office and manufacturing space within the Premises and either Tenant or the applicable Subtenant shall be responsible for all maintenance, repair and cleaning of such laboratory office and manufacturing space 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. 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 or any Subtenant 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.** To the fullest extent permitted by law, 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") including but not limited to personal injury (including death) or property damage caused, in whole or in part, by the alleged acts, errors, omissions, negligence, or alleged negligence of Tenant or any of Tenant's directors, officers, agents, employees, volunteers or subcontractors, or of any Subtenant. 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 acts 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.

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 the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Water Quality Assurance Revolving Fund (WQARF), the Resource Conservation and Recovery Act (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.**

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

General Aggregate -- \$2,000,000
Each Occurrence -- \$1,000,000

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. **Umbrella/Excess Liability**

Umbrella/Excess Liability insurance with a limit of not less than \$4,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability and Employer's Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement.

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

7.4.2.1. **Commercial General Liability Coverage.**

7.4.2.1.1. For insurance coverage, other than Workers' Compensation, Tenant agrees to procure and maintain at its own cost and expense, during the entire term of this Lease and any extensions thereof, comprehensive public liability insurance covering the Subleased Premises, which insurance shall also

name the City of Flagstaff as additional insured. 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. Tenant will provide the City with certificates of such insurance and appropriate endorsement, satisfactory to the City, evidencing Tenant's compliance with the requirements of this section.

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

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

7.4.2.2. **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.

7.4.3. **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.

7.4.4. **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 protect Tenant from potential insurer insolvency.

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. Or, at the City's election, Tenant or any Subtenant shall remove any alterations and restore the Premises to its original condition.
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 lien, 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 notice is received by Landlord within 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.**

13.1. **Prior Landlord Approval.** Upon identifying a Qualified Subtenant, NACET shall provide written notice to the City in a form satisfactory to the City that includes the identity of the applicant subtenant, a detailed description of the proposed use of the portion of the Premises to be subleased, any hazardous or biological materials to be used or stored on the Premises, the desired term of the proposed sublease, and the subrent to be paid by the Subtenant in connection therewith.

13.2. **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 Qualified Subtenants (each herein, a "Qualified Subtenant" or "Subtenant") 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 as described in *Section 13.1* above. 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 the Flagstaff City Manager. In no event will Tenant permit a Subtenant to occupy any portion of the premises prior to City approval and full execution of the Sublease.

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; or
- 13.3.8. Liable for any and all real estate taxes and other taxes that may be imposed.

14. **MAINTENANCE AND UTILITIES.**

- 14.1. **Obligations of the Landlord.** The Landlord will be responsible to set up and pay the utilities including electric, gas, water, wastewater/sewer, stormwater, environmental management fee, natural gas, electricity, power, telephone, public internet access which includes equipment and Internet Service (in the EOC/conference room, policy room and collaborative space only), trash removal in common areas, recyclables and all other services or utilities used within or about the Premises by the Tenant or any Subtenant. The Landlord will monitor above mentioned utility costs and reserves the right to amend the terms. The Landlord will provide janitorial services, including supplies and pest control as agreed upon through the Landlord's service contracts. Any enhanced janitorial services requested by NACET and/or the Subtenant(s) is NACET or the Subtenant(s) responsibility. The Landlord will be responsible for any structural maintenance. Tenants will be responsible to pay for any and all excessive or careless damages outside of normal wear and tear. The Landlord will provide at least weekly cleaning service for common areas, and the Tenants shall furnish and clean their own leased areas. The Landlord will be

responsible for maintenance of the exterior landscaping and shall be responsible for snow removal from the sidewalks and parking areas.

14.2. **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 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 a quarterly basis.

14.2.6. Provide shower facilities to the occupants of the Business Incubator and Accelerator (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 taker 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.** Aside from any noise or other disruptions resulting from the presence of the EOC in plain view and consequential conditions caused by the same, included but not limited to, typical noise/disruptions caused by the EOC's activation and operation, 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 (as defined in *Section 19.7*) 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 *Sections 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 Lease 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 maintain its status as a 501(c)(3) nonprofit corporation; or
- 19.1.7. 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 International Institute for Conflict Prevention & Resolution, Inc., 30 East 33rd St., 6th Floor, New York, New York 10016, (212) 949-6490, 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 2400 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 in scheduling the use of such conference room.
- Incidental uses of the conference room that do not interfere with the scope of the Economic Development Administration project or economic development purposes are allowable when approved by the Landlord.
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 Tenant 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 Tenant 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 Lease and only matters relating to the Lease.
- 28.3. **Retention of Records.** All records in the possession of the Tenant pertaining to this Lease shall be retained for a period of three (3) years after the expiration of the Lease 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 Lease without prior written approval of the Economic Development Administration.
- 28.5. **Environmental Compliance.**
- 28.5.1. Lessor warrants and represents to the Tenant 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 Tenant 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. Tenant 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 Tenant 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 Tenant's failure to comply with this *Section 28.5*. Such covenants, however, shall not apply to any condition that existed at the time Tenant first took possession of any part of the Premises, or which is caused or results from acts of others, including Lessor.
- 28.5.3. Tenant's obligations under this *Section 28.5* shall automatically terminate and expire one (1) year after Tenant 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 Tenant 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: BARBARA GOODRICH
Title: CITY MANAGER

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

"TENANT"

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

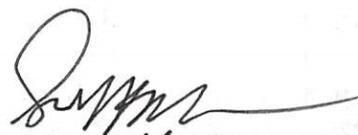
By 
Name: Scott Hartman
Title: President & CEO

EXHIBIT "A"

NORTHERN ARIZONA TECHNOLOGY & BUSINESS INCUBATOR, INC. dba NACET

FLAGSTAFF BUSINESS [ACCELERATOR/INCUBATOR]

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (hereinafter referred to as the "Sublease") is made and entered into as of this ____ day of _____, _____, by and between Northern Arizona Technology & Business Incubator, Inc., d.b.a. NACET, an Arizona nonprofit corporation (hereinafter referred to as "Sublessor"), whose address for rents and notices is 2201 N. Gemini Dr., Flagstaff, AZ 86001 and _____ (hereinafter referred to as "Sublessee"), a(n) _____, whose address for notices is _____, with the consent and acknowledgement of the City of Flagstaff (hereinafter referred to as "Master Lessor"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001. The Master Lessor, Sublessor, and Sublessee may be referred to in this Lease individually as "Party" or together as "Parties", as the case may be.

RECITALS

- A. Master Lessor is the owner and operator of the premises known as the Flagstaff Business Incubator and the Flagstaff Business Accelerator which have a conference room and a combined 24,131 leasable square feet (collectively hereinafter referred to as "Premises").
- B. Sublessor is the Tenant under that Master Lease (the "Master Lease") dated as of January 1, 2019, entered into by Master Lessor and Sublessor. Pursuant to the Master Lease, Sublessor leased from Master Lessor those facilities defined as the Premises.
- C. Sublessor and Sublessee are aware and in agreement with the occupancy and use requirements upon any Sublessees of the Premises and have submitted a form to the Sublessor briefly outlining the Sublessee's business description and the Sublessee's intended use of the Premises (hereinafter referred to as "Primary Submission Form"). Master Lessor has reviewed the Primary Submission Form provided by the Sublessee and has found the submittal in compliance with the occupancy and use requirements of the Premises.
- D. Sublessee has expressed an interest in leasing from the Sublessor that portion of the Premises known as _____ together with all furnishings and fixtures therein (hereinafter referred to as "Subleased Premises"), on the terms and conditions set forth herein. Sublessor has agreed to sublease the Subleased Premises to the 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:

SUBLEASE

1. ACKNOWLEDGEMENT OF MASTER LEASE AND GRANT PROVISIONS. 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. The aforementioned provisions stipulate that the Premises shall be used only for the purposes of fostering businesses in Flagstaff that further research and development, science, technology, clean energy, bio-science, healthcare, manufacturing, digital products, emerging technology, tourism, and astronomy fields (hereinafter referred to as "target fields"). 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 adhere 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. ACKNOWLEDGEMENT OF EOC OPERATIONS. It is hereby expressly understood, acknowledged and agreed by Sublessor and Sublessee that in accordance with the Grant, the Flagstaff Business Accelerator is the primary Emergency Operations Center (hereafter referred to as "Gemini EOC") for Coconino County. In the event of an activation of the Gemini EOC or other use required by the Gemini EOC, normal operations and access to the Flagstaff Business Accelerator may be limited and or restricted for the duration of the activation. Master Lessor and Sublessor make no guarantees to the availability of parking, usage, or access to the Flagstaff Business Accelerator and its amenities during an activation. Sublessee shall in no way interfere or infringe upon activities of an activated Gemini EOC and the Master Lessor reserves the right to impose temporary provisions regarding the use and access of the Premises by way of its officers, officials, agents, employees and or volunteers. If activities of the Gemini EOC require the Master Lessor to impose strict temporary access provisions to the Premises or amenities of the Premises, including, but not limited to, conference rooms, break rooms, or telecommunication services, the Master Lessor shall make in good faith efforts to make comparable facilities and or amenities available to Sublessee.
3. 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.
4. POSSESSION OF SUBLEASED PREMISES. Upon the execution of this Sublease, Sublessor has delivered to Sublessee possession of the Subleased Premises, and Sublessee has taken possession thereof, with no transference of the Subleased Premises from the Sublessor to the Sublessee occurring prior to the execution of this Sublease.
5. TERM. The Term of this Sublease shall be for, ___ months, commencing on _____, ____ (hereinafter referred to as "Commencement Date") and expiring naturally on _____, ____ (hereinafter referred to as "Expiration Date"). However, this Sublease may be terminated early upon thirty (30) days written notice upon the mutual agreement of Sublessor and Sublessee for the purposes of transition from the Incubator to the Accelerator or to graduate from the Incubator or

Accelerator into the commercial market.

6. **RENTAL.** The Sublessee shall pay monthly rent in an amount equal to \$_____, plus current applicable taxes payable on or before the first day of each month during the Term hereof (hereinafter referred to as "Rental"). Rental for any partial month of occupancy shall be prorated.

7. **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.

8. **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:

_____.

9. **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.

10. **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.

11. 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 abovementioned 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.

12. 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.

13. INDEMNIFICATION OF SUBLESSOR AND MASTER LESSOR. To the fullest extent permitted by law, 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 any subleased area(s) or on the common areas (including without limiting the generality of the term "common areas," including but not limited to, stairways, passageways, hallways, conference/meeting rooms, breakout rooms, kitchen areas, and area utilized by the EOC), 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.

14. INSURANCE.

14.1. Insurance. Sublessee shall procure and maintain for the duration of the Sublease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Sublease 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.

14.2. Minimum Scope and Limits of Insurance.

14.2.1. Commercial General Liability - Occurrence Form

| | | |
|-------------------|----|-------------|
| General Aggregate | -- | \$2,000,000 |
| Each Occurrence | -- | \$1,000,000 |

14.2.2. 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 |

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

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

14.2.4.1. Commercial General Liability Coverages.

14.2.4.1.1. For insurance coverage, other than Workers' Compensation, 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 Master Lessor and Sublessor as additional 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 and appropriate endorsement, satisfactory to Master Lessor and Sublessor, evidencing Sublessee's compliance with the requirements of this section.

14.2.4.1.2. Coverage provided by Sublessee shall not be limited to the liability assumed under the indemnification provisions of this Sublease.

14.2.4.2. 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 Sublease.

14.2.5. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Sublease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Master Lessor and Sublessor.

14.2.6. 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 Sublessee from potential insurer insolvency.

15. 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.
16. RULES AND REGULATIONS. Sublessor has established Building Rules and Regulations, Sublessee's acknowledgement of and agreement with which is annexed as "*Exhibit A*" 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.
17. HOLDING OVER. In the event that 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.
18. 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 non-responsibility and to alter, improve or repair the Subleased Premises and any portion of the Subleased Premises without abatement of rent.
19. 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:
 - 19.1. 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;
 - 19.2. 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;
 - 19.3. 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 12* above.
20. REMEDIES OF LESSOR. 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.
21. 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.
22. 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.

23. 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.
24. 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.
25. NOTICES. Except as otherwise specifically provided herein, all notices, demands, consents, approvals or other communications 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: Economic Vitality Director

26. CHANGE IN CONTACT INFORMATION. In the event that Sublessee contact information, including, but not limited to, mailing address, primary business phone number, or primary business email address, has or will change, the Sublessee will notify Sublessor of the aforementioned change in a manner consistent with **Section 25**.
27. INVENTORY OF HAZARDOUS MATERIALS. In accordance with the submitted and approved Primary Submission Form, Sublessee has completed any and all Hazardous Material Inventory Sheets (hereafter referred to as "HMIS") and any and all Safety Data Sheets (hereafter referred to as "SDS") for items listed on the HMIS. Sublessee will maintain all necessary HMIS and SDS documents and will notify Sublessor of changes to said documents within three (3) business days of the aforementioned change. Sublessee will also adhere to National Fire Protection Association (hereafter referred to as "NFPA") Standard 704 by displaying accurate labels and plaques on necessary windows, entrances, and exits. Failure to maintain either the safety documents or labels will be considered an event of default and will be subject to remedies applied by the Sublessor as described therein **Section 20**.

28. TIME OF ESSENCE. Time is of the essence of this Sublease and of each provision hereof.
29. 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.

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

Name: Scott Hathcock

Title: President & CEO

Dated: _____

“SUBLESSEE”

a(n)

Name: _____

Title: _____

Dated: _____

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.

“MASTER LESSOR”

CITY OF FLAGSTAFF
an Arizona municipal corporation

Name: Barbara Goodrich

Title: City Manager

Dated: _____

Attest:

Approved as to form:

City Clerk

City Attorney

Dated: _____

Dated: _____