**COOPERATIVE AGREEMENT**

**between**

**UNIVERSITY of NEW HAMPSHIRE**

**and**

**[COMPANY]**

This Cooperative Agreement (“Agreement”), is made effective as of (Date), 202X (“Effective Date”), between the University of New Hampshire a constituent institution of the University System of New Hampshire and a nonprofit educational and research institution organized under the laws of New Hampshire with offices at 21 Madbury Road, Suite 101, Durham, NH 03824 (“UNH”), and (company name), a company having a principal place of business at (address) (“COMPANY”), is entered into for the purpose of allocating between the parties certain rights relating to a NSF EPSCoR NH BioMade project, as specifically identified in Exhibit A, attached hereto and incorporated herein, (the “Project”) entitled “Title”, to be carried out by UNH and COMPANY. UNH and COMPANY are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

**1. Applicability of this Agreement**

1. This Agreement is applicable only to matters relating to the Project.
2. The provisions of this Agreement apply to any and all consultants, subcontractors, independent contractors, or other individuals participating in or employed by either Party for the purposes of the Project.

**2. Background Intellectual Property**

1. "Background Intellectual Property" means property and the legal rights therein of a Party developed before or independent of this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data such as technical data and computer software.
2. This Agreement does not imply and may not be construed as implying that either Party has the right to use Background Intellectual Property of the other in connection with this Project except as specifically provided hereunder.
3. All Background Intellectual Property of COMPANY is the exclusive property of COMPANY and UNH will acquire no right, title or interest in COMPANY’S Background Intellectual Property except that the Background Intellectual Property listed in Exhibit B of COMPANY may be used by UNH in connection with the performance of the Project.
4. All Background Intellectual Property of UNH is the exclusive property of UNH and COMPANY will acquire no right, title or interest in UNH’S Background Intellectual Property except that the Background Intellectual Property listed in Exhibit B of UNH may be used by COMPANY in connection with the performance of the Project.

**3. Project Intellectual Property**

1. "Project Intellectual Property" means the legal rights relating to inventions (including Subject Inventions as defined in 37 CFR Part 401), patent applications, patents, copyrights, trademarks, mask works, trade secrets and any other legally protectable information, including computer software, first made or generated during the performance of this Agreement.
2. All rights and title to Project Intellectual Property created in the performance of the Project and conceived solely by UNH or its employees, consultants, subcontractors, or other individuals employed by UNH, will be owned by UNH (“UNH Project Intellectual Property”), and all Project lntellectual Property created in the performance of the Project and conceived solely by COMPANY or its employees, consultants, subcontractors, or other individuals employed by COMPANY will be owned by COMPANY (“COMPANY Project Intellectual Property”). For Project lntellectual Property that is created in the performance of the Project and conceived jointly by UNH and COMPANY or each of their respective employees, consultants, subcontractors, or other individuals employed by each Party, UNH and COMPANY will hold joint title (“Joint Project Intellectual Property”).
3. COMPANY will notify UNH in writing of all COMPANY Project Intellectual Property made or generated by COMPANY in connection with the performance of the Project, within thirty (30) days after a written disclosure of such intellectual property is received by COMPANY’S legal department.
4. UNH will notify COMPANY in writing of UNH Project Intellectual Property made or generated by UNH within thirty (30) days after a written disclosure of such intellectual property is received by UNH’s Technology Transfer Office.
5. Each Party will notify the other Party of the existence of Joint Project Intellectual Property within thirty (30) days after a written disclosure of such Joint Project Intellectual Property is received by a Party’s department for intellectual property matters.

**4. Option**

1. UNH hereby grants to COMPANY an option to negotiate a commercial license (the “Option”), under the terms and conditions of a definitive license agreement, to UNH’s rights in UNH Project Intellectual Property and in Joint Project Intellectual Property (“Optioned IP”). The period during which COMPANY may exercise the Option as to any particular Optioned IP (“Option Period”) will commence on will commence on the date on which one Party notifies the other of the existence of particular Optioned IP. Notwithstanding the foregoing, the Option Period for any Optioned IP that is identified in a Proposed Publication as further described in Article 5 below will commence on the date on which the Reviewing Party notifies the Publishing Party that such Optioned IP exists in accordance with the review procedure described in Section 5(c). The Option Period will terminate on the first to occur of the expiration of three (3) calendar months from the first day of the Option Period or proper exercise by COMPANY of its Option relative to such Optioned IP. The Option Period for any particular Optioned IP may be extended for a second three (3) month period upon mutual written agreement of the Parties and agreement by COMPANY to pay all out of pocket costs incurred by UNH in connection with the filing and prosecution of patent applications on such Optioned IP during the second three (3) month period.
2. COMPANY may exercise the Option by giving written notice thereof to UNH’s Technology Transfer Office at any time during the Option Period for such Optioned IP when COMPANY is not in breach or default of its obligations under this Agreement. Such notice  will state specifically that COMPANY is exercising its Option and will identify the particular Optioned IP to which the notice applies. Such notice will constitute an effective exercise of the Option only if, within ten (10) days after the date of such notice, COMPANY makes full payment to UNH of any out-of-pocket expenses incurred up to the date of such notice by UNH in connection with the filing and prosecution of patent application(s) on the Optioned IP that is the subject of the notice; if COMPANY fails to make timely payment of such expenses, the attempted exercise of the Option will have no force and effect. Notwithstanding the foregoing, total out-of-pocket expenses paid by COMPANY shall not exceed fifteen thousand dollars ($15,000) prior to execution of a definitive license agreement. UNH has no obligation to incur expenses in connection with the filing and prosecution of patent application(s) on Optioned IP in excess of fifteen thousand dollars ($15,000).
3. Upon COMPANY’s proper exercise of the Option for any particular Optioned IP, UNH and COMPANY will negotiate in good faith a definitive license agreement regarding such Optioned IP. In the event that COMPANY does not properly exercise the Option within the Option Period, or in the event that the Parties do not reach agreement on license terms within one hundred twenty (120) days after the exercise of the Option (the "Negotiation Period"), then UNH will have no further obligation to COMPANY with regard to UNH’s rights to such Optioned IP. COMPANY will reimburse UNH for the costs of patent filing and prosecution for such Optioned IP that is incurred by UNH from the date of exercise of the Option through the expiration of the Negotiation Period for such Optioned IP.
4. All applications for patent or other intellectual property protection on UNH Project Intellectual Property will be in UNH’s name, and UNH will have the sole right to make all decisions regarding the scope and content thereof, subject to the provisions of 4 (f) below.
5. During the term of this Agreement and the Option Period, and if the Option is effectively exercised during the Option Period with respect to Optioned IP comprising Joint Project Intellectual Property, the Parties will cooperate in good faith to manage such Joint Project Intellectual Property. If the Option Period expires prior to the effective exercise of the Option, or if the Option is effectively exercised during the Option Period but the Parties do not conclude a definitive license agreement prior to the expiration of the Negotiation Period, the Parties will negotiate in good faith an agreement to manage Optioned IP comprising Joint Project Intellectual Property. If the Parties are unable to conclude an agreement to manage such Joint Project Intellectual Property after the expiration of the Option Period prior to the proper exercise of the Option or, if the Option is properly exercised during the Option Period, after the expiration of the Negotiation Period, then upon the earliest to occur of (i) ninety (90) days after the expiration of the Option Period prior to the effective exercise of the Option, or (ii) ninety (90) days after the expiration of the Negotiation Period, if the Option is effectively exercised during the Option Period but the Parties do not conclude a definitive license agreement prior to the expiration of the Negotiation Period, or (iii) thirty (30) days prior to an impending deadline before a patent office for any patent application covering such Joint Project Intellectual Property or prior to any deadline with regard to UNH’s obligations under the Bayh-Dole Act, or (iv) if no patent application has been filed covering such Joint Project Intellectual Property, thirty (30) days prior to an impending public disclosure of such Joint Project Intellectual Property, in accordance with the review procedures described in Section 5(c), then UNH will have the sole right to file, prosecute, and otherwise manage all patent or other intellectual property protection for such Joint Project Intellectual Property in any jurisdiction at any time in its sole discretion. During the negotiation period for such management agreement, the Parties will continue to operate in good faith to manage such Joint Project Intellectual Property.
6. During the Option Period and if the Option is effectively exercised during the Option Period, during the Negotiation Period, UNH will keep COMPANY advised as to all developments with respect to application(s) for patent or other intellection property protection on Optioned IP and will promptly supply COMPANY with copies of all documents filed with and received from any patent or other governmental office in connection with such application(s). UNH will provide COMPANY with draft patent applications and other draft documents to be filed in connection with any patent or other governmental office and COMPANY will have thirty (30) days to review and comment upon such applications and documents. UNH will consider COMPANY’S input in good faith with regard to such draft patent applications and other draft documents. Notwithstanding the foregoing, should UNH receive such draft patent application or other draft document from outside counsel less than thirty (30) days in advance of a deadline before a patent or other governmental office or less than thirty (30) days prior to any impending public disclosure, UNH will promptly provide COMPANY with such draft patent application or other draft document and will notify COMPANY of such deadline or impending public disclosure, and COMPANY will provide its input to UNH as promptly as possible in advance of such deadline or impending public disclosure. All draft patent applications and other draft documents provided by one Party to the other will be kept confidential by the receiving Party under the provisions of Section 5(a) below until made public by an applicable patent or other governmental office.
7. Other than as specified in Section 4(e) regarding the negotiation in good faith of an agreement to manage Joint Project Intellectual Property, UNH will have no further obligation to COMPANY under this Agreement with regard to any particular Optioned IP after the Option Period for such Optioned IP has expired without effective exercise of the Option or, if COMPANY has effectively exercised the Option during the Option Period, after the expiration of the Negotiation Period if the Parties are unable to conclude the definitive license agreement for such Optioned IP prior to the expiration of the Negotiation Period.
8. In the absence of a license agreement between UNH and COMPANY covering Optioned IP comprising UNH Project Intellectual Property, COMPANY will not use such UNH Project Intellectual Property for any commercial or non-commercial purpose. In the absence of a license agreement between UNH and COMPANY covering COMPANY Project Intellectual Property, UNH will not use such COMPANY Project Intellectual Property for any commercial or non-commercial purpose. In the absence of a license agreement between UNH and COMPANY covering Optioned IP comprising Joint Project Intellectual Property, neither Party will make any representations to any third party regarding the other Party’s rights in such Joint Project Intellectual Property except as may be expressly provided in an agreement to manage such Joint Project Intellectual Property, should one be executed under the provisions of Section 4(e) above.
9. Notwithstanding any provision of this Agreement or of any license agreement between the Parties to the contrary, UNH retains a royalty-free, non-exclusive license to use all Optioned IP for educational, academic, and research purposes. Notwithstanding the foregoing, this Section 4(i) does not, and will not be construed to, negate the provisions of Article 5 below regarding review of Proposed Publications.

**5. Confidentiality; Publication**

1. Background Intellectual Property of a Party and other proprietary or confidential information of a Party disclosed by that Party to the other in connection with the Project will be held in confidence by the receiving Party and, except with the consent of the disclosing Party or as permitted under a future agreement between the Parties, will neither be used by the receiving Party nor disclosed by the receiving Party to others. These confidentiality obligations will not apply to use or disclosure of information by the receiving Party after such information is or becomes known to the public without breach of this provision or is or becomes known to the receiving Party in a lawful manner from a source, that, to the best of the receiving Party’s knowledge, is independent of the disclosing Party or is developed by or for the receiving Party independently of its disclosure by the disclosing Party without use or reference to the confidential information. Notwithstanding the foregoing, UNH Project Intellectual Property that is disclosed by UNH to COMPANY in connection with the Project will be deemed confidential information of UNH. COMPANY Project Intellectual Property that is disclosed by COMPANY to UNH in connection with the Project will be deemed confidential information of COMPANY. Joint Project Intellectual Property will be deemed confidential information of each Party until published in accordance with Section 5(c) below or until the publication of a patent application covering such Joint Project Intellectual Property that was filed in accordance with Article 4 above, whichever comes first.
2. The Parties acknowledge and agree that researchers engaged in the Project on behalf of UNH and/or COMPANY will be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the Project, provided, however, that both Parties will have been furnished copies of any proposed publication or presentation (each a “Proposed Publication”) at least thirty (30) calendar days in advance of the submission of such Proposed Publication to a journal, editor, or other third party.
3. Each Party (a “Reviewing Party”) will have seven (7) calendar days after receipt of said Proposed Publication (the “Review Period”) to notify the other Party (a “Publishing Party”) that the Proposed Publication contains the Reviewing Party’s proprietary or confidential information or that the Proposed Publication contains or discloses Project Intellectual Property. A Publishing Party’s researcher(s) may not proceed with the Proposed Publication without first removing the proprietary or confidential information of the Reviewing Party that was identified in such notification. In the event that the Reviewing Party notifies the Publishing Party within the Review Period that the Proposed Publication contains or discloses Project Intellectual Property, the Reviewing Party may request a delay of up to twenty one (21) days after the date of such notice in order to allow for the filing of patent applications covering such Project Intellectual Property in accordance with the provisions of Article 4 above. For the sake of clarity, neither Party may request the removal of Joint Project Intellectual Property from a Proposed Publication; a Reviewing Party may request only the additional delay above with respect to Joint Project Intellectual Property disclosed in a Proposed Publication.

**6. Liability and Risk**

1. UNH represents that it has statutorily prescribed liability insurance coverage for the negligent acts of its officers, employees, and agents while acting within the scope of their employment by UNH, and UNH has no liability insurance policy as such that can extend protection to any other person, including COMPANY.
2. Subject to the provisions of local and state laws, including its limits of liability and exclusions therefrom, UNH assumes any and all risks of personal injury and property damage attributable to the negligent acts or omission of UNH, its officers, employees and agents thereof.
3. COMPANY hereby assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of COMPANY, its officers, employees, and agents thereof. COMPANY agrees to indemnify and hold harmless UNH and its trustees, directors, officers, agents, and employees from any liability, loss, or damage they may suffer as the result of claims, demands, costs, or judgments against them arising out of the activities to be carried out by COMPANY pursuant to this Agreement.

**7. Term and Termination**

1. This Agreement is effective as of the Effective Date, and unless earlier terminated in accordance with Section 7(b) below, will automatically expire one (1) year from the Effective Date
2. In the event that either Party commits any breach of or default of any of the terms or conditions of this Agreement, and does not remedy such default or breach within thirty (30) days after receipt of written notice thereof from the other Party hereto, the Party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other Party, and such termination will be effective as of the date of the receipt of such notice.
3. Either Party may terminate this Agreement without cause upon ninety (90) days’ written notice to the other Party.
4. Expiration or termination of this Agreement for any reason will not affect the rights and obligations of the Parties accrued prior to the effective date of expiration or termination. Sections 3, 5, 6, 7, and 8 will survive any expiration or termination of this Agreement.
5. Neither Party may use the name of the other Party or the other Party’s respective faculty, employees or agents in any form of advertising or promotion without the prior written approval of the other Party. UNH may acknowledge COMPANY’s support for the Project under this Agreement. COMPANY may (a) refer to publications in the scientific literature by employees of UNH and (b) make factual statements that a collaborative research relationship with UNH has been initiated as provided in this Agreement. In any such statement, the relationship of the Parties will be accurately and appropriately described.

**8. Miscellaneous**

1. This Agreement will be governed and construed in accordance with the laws of the State of New Hampshire, notwithstanding any conflict of law provision to the contrary. The forum for any proceeding or suit in law or equity arising from or incident to this Agreement will be located in the State of New Hampshire.
2. This Agreement may not be assigned by either Party without the prior written consent of the other Party. Any purported assignment that does not comply with this Section 8(b) is null and void, *ab initio*. Headings included herein are for convenience only and will not be used to construe this Agreement.
3. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, then such illegality, invalidity, or unenforceability will attach only to such provision and will not in any manner affect or render illegal, invalid, or unenforceable any other provision of this Agreement. This Agreement will be carried out as if any such illegal, invalid or unenforceable provision were not contained herein. A waiver by either Party of a breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of that provision or a waiver of any breach of any other provision of this Agreement.
4. Any notice or other communication required or permitted hereunder (“notice”) shall be in writing and will be hand-delivered, sent by overnight courier, mailed by certified United States mail, return receipt requested, or sent by email or facsimile, to the address(es) given below or to such other address(es) as the Parties may hereafter specify in writing for the purpose of receiving notice. Notice will be deemed given and received five (5) days after being deposited with the U.S. Postal Service certified mail (postage prepaid and return receipt requested), or if notice is hand-delivered or sent by overnight courier, upon the date of actual delivery, or if sent by facsimile or email, upon the date the receiving Party acknowledges receipt in writing, by email or otherwise. If no email address and/or fax number is provided below for a particular recipient, notice may not be given to that recipient by email or facsimile, as the case may be, unless an email address and/or fax number for such recipient is subsequently specified in writing for the purpose of receiving notice.

 If to UNH: UNHInnovation

 ATTN: Licensing Manager

 21 Madbury Rd

 Durham NH 03824

 Email: unh.innovation@unh.edu

 If to COMPANY: COMPANY NAME.

 Attention: NAME

 Address

 Email:

1. This Agreement contains the entire understanding of the Parties and supersedes all prior agreements, arrangements, and understandings relating to the subject matter hereof. This Agreement cannot be modified or amended except in writing designated as modifying or amending this Agreement and signed for each of the Parties by a person authorized to execute and sign agreements.
2. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.
3. The Parties agree that execution of this Agreement by industry standard electronic signature software and/or by exchanging PDF signatures will have the same legal force and effect as the exchange of original signatures, and that in any proceeding arising under or relating to this Agreement, each Party hereby waives any right to raise any defense or waiver based upon execution of this Agreement by means of such electronic signatures or maintenance of the executed agreement electronically. The Parties agree that signatures transmitted electronically (including by facsimile) are acceptable to bind the Parties and will not in any way affect this Agreement’s validity. This Agreement will become binding when each Party has executed at least one counterpart.
4. The Parties’ relationship is that of independent contractors, and nothing in this Agreement establishes or will be deemed to establish a relationship of principal and agent between UNH and COMPANY, or between or among any of either Party’s agents or employees for any purpose whatsoever. This Agreement does not and will not be construed as creating a joint venture, partnership, or any other form of legal association or arrangement which would impose liability upon one Party for the act or failure to act of the other Party. Under no circumstances will one Party be considered an employee or agent of the other Party.
5. Each Party will comply with all prevailing laws, rules, and regulations that apply to its activities and/or obligations under this Agreement. Without limiting the foregoing, it is understood that this Agreement may be subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, articles and information, including the Arms Export Control Act as amended in the Export Administration Act of 1979, and that the Parties’ obligations are contingent upon compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the appropriate agency of the United States Government and/or written assurances by COMPANY that COMPANY will not export data or commodities to certain foreign countries without prior approval of such agency. UNH represents neither that a license is not required nor that, if required, it will issue.

***(signature page to follow)***

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement on the day and year as noted by their signatures.

**UNH:**

The University of New Hampshire

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jenna Matheny, Director, Technology Transfer

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**COMPANY:**

Name.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, Title

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ACKNOWLEDGMENT:**

The signature of NAME of PI, as Principal Investigator, appears below for the sole purpose of acknowledging that they have read the foregoing Agreement and understands their obligations as an employee of the University of New Hampshire.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (*date)*

 **Exhibit A**

**Exhibit B**

UNH Background IP:

**UNHI Disclosure No**.:

**Title**:

**Innovator(s)**:

COMPANY NAME Background IP: