

ACADEMIC AFFILIATION AGREEMENT

BETWEEN

THE TRANSLATIONAL GENOMICS RESEARCH INSTITUTE

AND

**ARIZONA BOARD OF REGENTS,
for itself and on behalf of**

ARIZONA STATE UNIVERSITY

NORTHERN ARIZONA UNIVERSITY

UNIVERSITY OF ARIZONA

January 15, 2004

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ACADEMIC AFFILIATION AGREEMENT

2 THIS ACADEMIC AFFILIATION AGREEMENT, ("**this Agreement**") is
3 entered into as of the 15th day of January, 2004 (the "**Effective Date**"), by and between the
4 Arizona Board of Regents ("**ABOR**"), for itself and its Universities and operating units,
5 including Arizona State University ("**ASU**"), Northern Arizona University ("**NAU**"), and the
6 University of Arizona ("**UA**") (ASU, NAU, and UA being referred to at times individually as a
7 "**University**" or collectively as "**the Universities**"); and The Translational Genomics Research
8 Institute ("**TGen**"), an Arizona non-profit corporation (each of the foregoing being an
9 "**institution**" or a "**Party**" and collectively being the "**Parties**" hereto).

10 In consideration for their respective covenants, undertakings, and agreements set
11 forth herein, and other good and valuable consideration, the receipt and sufficiency of which are
12 hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

13 1. DEFINITIONS

14 Unless otherwise qualified in specific provisions of this Agreement, the following
15 terms shall have the meanings indicated:

16 "**Affiliation Confirmation**" has the meaning set forth in Section 5.1.2.

17 "**Affiliation Liaison**" has the meaning set forth in Section 4.2.

18 "**Amenities**" means University amenities and privileges generally afforded to its
19 faculty, as described in Section 5.4.

20 "**Annual Report**" means an annual written summary of TGen's operations,
21 prepared for the benefit of TGen's Board and other TGen stakeholders, which shall include
22 financial statements certified by TGen's outside independent auditors.

23 "**Best Efforts**" means, as to a Party hereto, an undertaking by such Party to
24 perform or satisfy an obligation or duty or otherwise act in a manner reasonably calculated to
25 obtain the intended result by action or expenditure not disproportionate or unduly burdensome
26 under the circumstances. Best Efforts does not mean that a Party will be required to institute
27 litigation or arbitration as part of its Best Efforts.

28 "**Chair**" means the chairperson of a board, committee, department or other
29 institutional body or organizational unit, or another (not additional) University employee vested
30 by Law or policy with the responsibility for the decision or action specified in this Agreement for
31 the Chair.

32 "**Confidential Information**" means all proprietary or confidential information
33 that relates to or is used in connection with the business and affairs of a Party (for purposes of

1 this definition only, TGen on the one hand, and ABOR and all the Universities collectively on
2 the other hand, are each referred to as a "Party"), that is provided by a Party (the "originating
3 Party") to the other Party (the "recipient Party"), including written material, information and
4 programs in a computer, and information in any other medium. A Party shall be obligated to
5 identify its Confidential Information. Confidential Information shall exclude any information
6 that, other than as a result of the wrongful act or omission of the recipient Party, including any
7 breach of an obligation of confidentiality, the recipient Party can prove through reasonable
8 documentary evidence: (a) is already lawfully known to the person to whom it is disclosed, (b) is
9 a matter of public knowledge, or (c) has been published in any medium for public distribution.
10 Confidential Information also shall exclude any information that is, in the opinion of counsel to
11 any recipient Party from whom disclosure is sought, a public document not subject to exemption
12 from disclosure, or is required to be disclosed in accordance with any applicable Law. In any
13 instance in which a Party is requested or required to disclose any Confidential Information
14 originally obtained from another Party hereto, it shall so advise the originating Party by the most
15 expeditious reasonable means, and shall afford the originating Party a reasonable opportunity to
16 convey its objections or concerns in advance of such disclosure.

17 "Costs" has the meaning set forth in Section 10.4.4.

18 "Covered IP" has the meaning set forth in Section 10.1.

19 "Department" means a University academic department, denoted as such in
20 University and ABOR organizational documents, policies and rules.

21 "Dispute" means a disagreement relating to any actual or alleged breach of this
22 Agreement by a Party, or any other material disagreement between the Parties concerning their
23 rights or obligations hereunder.

24 "Employment-Appointment Confirmation" has the meaning set forth in
25 Section 5.1.1.

26 "Fringe Benefits" means those benefits (such as health insurance, disability
27 insurance, life insurance, pensions and other benefits) provided to employees by their employer
28 as a term of employment.

29 "Grantee" means the institution that receives funds directly from the Grantor
30 pursuant to an externally sponsored research project (under either a "grant" or a "contract"), to
31 support such research, and has principal or sole responsibility for scientific compliance, financial
32 accounting and other administrative obligations in connection with such research.

33 "Grantor" means an institution, entity or government agency (other than a Party
34 hereto) that funds and/or otherwise sponsors a research project (under either a "grant" or a
35 "contract").

36 "Gross Revenues" has the meaning set forth in Section 10.4.4.

37 "IACUC" means a Party's Institutional Animal Care and Use Committee.

1 **“include”** or **“including”** means including but not limited to.

2 **“Independent Contractor”** has the meaning set forth in Section 10.3.1.

3 **“Initial Term”** means a ten (10) year period commencing on the Effective Date,
4 as set forth in Section 17.1.

5 **“IRB”** means a Party’s Institutional Review Board.

6 **“Jointly Owned IP”** has the meaning set forth in Section 10.4.4.

7 **“Law”** or **“Laws”** means all federal, state and local statutes, laws, ordinances,
8 regulations, rules, resolutions, orders, official determinations, writs, injunctions, awards
9 (including awards of any arbitrator), judgments and decrees applicable to the relevant entity and
10 to the businesses and assets thereof, including those affecting: the sale, leasing, ownership or
11 management of real property; building standards; land use and zoning; safety, health and fire
12 prevention; environmental protection; employment practices, terms and conditions; civil rights;
13 provision of institutional or professional health services; provision of any management services;
14 charging or receiving fees or remuneration for health care or other services; the conduct of
15 biomedical research, including research with animal or human subjects; and technology transfer,
16 licensing or use.

17 **“Lead Institution”** means, with respect to any Jointly Owned IP, the Party
18 responsible for managing the patenting and other intellectual property protection, and
19 commercialization of the Jointly Owned IP, pursuant to Section 10.2.

20 **“Net IP Revenues”** has the meaning set forth in Section 10.4.4.

21 **“Principal Investigator”** has the meaning set forth in Section 10.2.1.

22 **“Project Summary”** means a separate agreement, by and between TGen and one
23 or more Universities, governing a specific collaborative research project.

24 **“Publisher”** has the meaning set forth in Section 10.4.6.

25 **“Resources”** has the meaning set forth in Section 10.4.4(a).

26 **“State”** means the State of Arizona.

27 **“Subcontract”** **“Subcontractor”** have the meaning set forth in Section 18.1.

28 **“Term”** means the Initial Term and all successive terms, as described in
29 Section 17.

30 **“TGen-Employed Faculty”** means persons who are employees of TGen who
31 hold faculty appointments at a University pursuant to the procedures and Employment-
32 Appointment Confirmation set forth in Section 5.1.1 (or, as applicable, Section 5.1.3) and
33 Section 5.3.1. Unless otherwise specified elsewhere herein or in a separate Project Summary, the

1 terms of this Agreement shall not affect TGen-Employed Faculty other than in connection with
2 their activities at, or performed as a faculty member of, a University.

3 **“TGen Facilities”** means real and other tangible property owned or leased by
4 TGen or its affiliates.

5 **“TGen Owned IP”** has the meaning set forth in Section 10.4.4.

6 **“TGen’s President-Scientific Director”** (President-SD) means the senior TGen
7 officer who is empowered to lead and manage TGen’s overall research program and operations
8 and is denoted in the TGen Bylaws by that or a similar title, provided that the TGen President-
9 SD may delegate performance of certain of his/her functions herein to subordinate TGen officials.

10 **“Transition Plan”** has the meaning set forth in Section 17.6.

11 **“University-Employed Faculty”** means persons who are faculty employees of a
12 University and are affiliated with TGen for some aspect of their work, pursuant to the procedures
13 and written Affiliation Confirmation as set forth in Section 5.1.2 (or, as applicable, Section 5.1.3)
14 and Section 5.3.2. Unless specified elsewhere herein or in a separate Project Summary, the
15 terms of this Agreement shall not affect University-Employed Faculty other than in connection
16 with their activities at or in affiliation with TGen.

17 **“University Facilities”** means real and other tangible property owned or leased
18 by ABOR or a University (or University affiliated entities, as defined in Section 2.6).

19 **“University Owned IP”** has the meaning set forth in Section 10.4.4.

20 **“will”** means “shall.”

21 **2. PURPOSES AND SCOPE OF AFFILIATION**

22 **2.1 Purposes.** The purposes of this Agreement are to: (a) provide a framework
23 within which TGen as an independent § 501(c)(3) research organization, and the Universities,
24 can work together and use their respective resources in a mutually reinforcing manner in order to
25 coalesce and expand the spectrum of genomics, bioscience and biotechnology research and
26 development conducted in Arizona; (b) support TGen’s efforts to attract and retain world-class
27 scientists; (c) support the Universities’ efforts to attract world-class bioscience faculty and to
28 conduct and participate in cutting-edge biomedical research, teaching and applications; and
29 (d) establish equitable financial arrangements among the Parties, and administrative processes
30 conducive to achieving these goals.

31 **2.2 Locations.** The Parties may conduct their affiliation activities at a number of
32 locations, including: (a) TGen headquarters; (b) other TGen Facilities; (c) University Facilities
33 that each University agrees to make available for joint TGen-University activities; and (d) other
34 sites as agreed upon by the Parties from time to time.

1 **2.3 Expanded Affiliation.** This Agreement describes many important components of
2 the affiliation between TGen and the Universities. However, the Parties acknowledge that their
3 respective bioscience enterprises are all evolving. Accordingly, it is the intent of this Agreement
4 that they will continue in good faith throughout the Term to explore other ways in which the
5 Parties can collaborate to mutual advantage.

6 **2.4 Non-exclusivity.** The Parties acknowledge that fulfillment of their respective
7 missions requires their affiliation and/or involvement with many other organizations, and that
8 accordingly, this Agreement is non-exclusive. However, consistent with the Parties' important
9 collaboration described herein, it is agreed that:

10 (a) If TGen desires to engage a scientist who would be principally located in
11 Arizona and who desires a University faculty appointment, it shall provide
12 the relevant University with a reasonable opportunity to arrange for such
13 appointment before making any preclusive alternative arrangements, so
14 long as the University acts promptly and proposes an appointment on
15 terms reasonably acceptable to TGen and the scientist; and

16 (b) If any University desires a major new or significantly expanded facility,
17 program, or faculty complement in areas directly related to TGen's
18 mission as set forth in TGen's Articles of Incorporation or Bylaws, *or* if
19 TGen desires a major new or significantly expanded facility or program in
20 areas directly related to any then-current University program or line of
21 research, the Parties agree that it is in their mutual interest to coordinate
22 with one another to the extent reasonably feasible, and to explore in good
23 faith the potential for mutually beneficial interactions involving such
24 facilities, programs or personnel. In that regard, TGen's President-SD
25 and each University's Affiliation Liaison will meet at least quarterly, or
26 more frequently as needed, pursuant to Section 4.2, to discuss current and
27 potential collaborative research, IP arrangements, and other matters. The
28 Parties' failure to conclude an agreement with respect to any potential
29 opportunity, however, following such good faith discussions, shall not be
30 deemed a breach of this Agreement by either party.

31 (c) Subject to the foregoing, nothing in this Agreement shall preclude: (a) a
32 TGen scientist who is not a University faculty member from holding a
33 faculty appointment at a non-Party university or educational or research
34 institution; or (b) TGen itself from granting persons who do not hold
35 University appointments appropriate TGen academic titles (*e.g.*, "TGen
36 Research Investigator"), provided that reasonable measures are taken to
37 avoid creating the impression that such TGen academic titles are
38 University titles.

39 **2.5 No State Instrumentality or Agency.**

1 2.5.1 TGen Not Part of the University System. The Parties acknowledge and
2 agree that TGen has been established as an independent § 501(c)(3) charitable/educational and
3 research organization. It is not an agency or instrumentality of the State of Arizona, and
4 therefore is not an instrumentality nor part of the Arizona public university system.
5 Consequently, TGen is not a University “Center” or “Institute” for purposes of ABOR Policy 2-
6 301 or related University policies.

7 2.5.2 TGen Not Subject to ABOR/University Policies. As an entity that is not
8 part of the Arizona public university system, TGen is not subject to ABOR or University policies
9 and procedures, except as expressly set forth herein. Without limiting the generality of the
10 foregoing sentence, and except as otherwise expressly set forth elsewhere in this Agreement or
11 as required by Law, TGen shall implement its own policies and is not subject to:

- 12 • ABOR/University policies and procedures relating to grants
13 and research;
- 14 • ABOR/University policies and procedures relating to the
15 development, ownership, licensure, assignment and
16 commercialization of intellectual property;
- 17 • ABOR/University policies and procedures relating to
18 competition with private enterprises; and
- 19 • ABOR/University policies and procedures relating to
20 scientific integrity misconduct and conflicts of interest.
- 21 • ABOR/University labor policies and procedures, including
22 but not limited to policies and procedures relating to sexual
23 harassment, accommodation of individuals with disabilities,
24 and equal opportunity and affirmative action;
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31 The provisions of this Section 2.5.2 relate to TGen as an entity; certain ABOR/University
32 policies may apply to certain TGen employees and contractors, to the extent set forth in
33 Section 5 or elsewhere in this Agreement. Moreover, TGen as an entity will at all times be
34 subject to, and shall materially comply with, all applicable Laws, as well as its own policies and
35 procedures governing such matters as labor and employment, grants and research, intellectual
36 property and technology transfer, and scientific integrity and conflicts of interest. To the extent
37 set forth elsewhere in this Agreement, TGen also will endeavor to adopt measures that are
38 consistent with, or do not materially conflict with, related ABOR and University policies,
39 procedures and rules.

40 **2.6 University Affiliates.** The provisions of this Agreement shall apply to those
41 University affiliated entities that (a) directly or indirectly control, are controlled by, or are under
42 common control with a University or ABOR; and (b) are principally engaged in research,
43 teaching or clinical care, or in governance or bio-medical program fundraising directly on behalf

1 of a University or ABOR (for the avoidance of doubt, the University Medical Center (“UMC”)
2 shall be considered a University affiliated entity for purposes of this Agreement only if and when
3 it executes a specific agreement with TGen to that effect). The provisions of this Agreement
4 shall not apply to University alumni associations; special purpose foundations unrelated to
5 research, teaching or clinical care; or other University affiliates that are not engaged in the
6 activities set forth in the preceding sentence.

7 **3. REPRESENTATIONS AND CERTAIN COVENANTS.**

8 **3.1 Representations of ABOR.** ABOR, on behalf of itself and each University,
9 represents to TGen as follows.

10 3.1.1 Organization; Power. ABOR is a duly organized and validly existing
11 component of the State of Arizona. ABOR has all requisite corporate power and authority under
12 applicable law and its organizational documents to enter into, execute, and perform this
13 Agreement in accordance with its terms.

14 3.1.2 Authorization of Agreement. The execution and delivery by ABOR of
15 this Agreement, and the consummation by ABOR of the transactions and matters contemplated
16 by this Agreement, have been duly and validly authorized by ABOR, and constitute valid and
17 binding obligations of ABOR and each respective University, enforceable in accordance with its
18 terms, except as enforceability may be limited by (a) bankruptcy, insolvency, reorganization,
19 moratorium or similar laws now or hereafter in effect relating to creditors’ rights generally; or
20 (b) any Law generally applicable to State entities; provided that if any such Law shall limit in
21 any respect the full performance by ABOR of this Agreement, ABOR shall nevertheless perform
22 this Agreement to the maximum extent not so limited by such Law.

23 3.1.3 Effect of Agreement. The execution and delivery by ABOR of this
24 Agreement and the performance by ABOR and the Universities of their obligations hereunder
25 will not violate any Laws or the organizational documents under which ABOR or any University
26 functions, or any judgment, award, decree, contract, agreement or other instrument to which
27 ABOR or any University is a Party or by which ABOR or any of the Universities or their
28 property or activities are bound, or conflict with or result in a breach of or constitute (with due
29 notice or lapse of time or both) a default under any of the same.

30 3.1.4 Governmental Approvals; Appropriations. No approval, authorization,
31 consent, order, or action or filing with any court or governmental body is required for the due
32 and lawful execution and delivery by ABOR of this Agreement (on behalf of itself and the
33 Universities), or (except for licenses, permits, authorizations, or other approvals the need for
34 which may arise in the ordinary course of performance hereof) for ABOR’s (and each
35 University’s) due performance of its obligations hereunder, subject to Section 17.4 (e) and –(f).

36 **3.2 Representations and Certain Covenants of TGen.** TGen represents to ABOR
37 and each University, as follows.

1 3.2.1 Organization; Power. TGen is duly organized, validly existing and in
2 good standing as an Arizona non-profit corporation. TGen has all requisite corporate power and
3 authority under applicable law and its organizational documents to enter into, execute, and
4 perform this Agreement in accordance with its terms.

5 3.2.2 Authorization of Agreement. The execution and delivery by TGen of this
6 Agreement, and the consummation by TGen of the transactions and matters contemplated by this
7 Agreement, have been duly and validly authorized by TGen, and constitute valid and binding
8 obligations of TGen, enforceable in accordance with its terms, except as enforceability may be
9 limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws now or
10 hereafter in effect relating to creditors' rights generally, or (b) other statutory or legal obligations
11 of TGen; provided that if any such statutory or legal obligation shall limit in any respect the full
12 performance by TGen of this Agreement, TGen shall nevertheless perform this Agreement to the
13 maximum extent not so limited by such statutory or legal obligation.

14 3.2.3 Effect of Agreement. The execution and delivery by TGen of this
15 Agreement and the performance by TGen of its obligations hereunder will not violate any Laws
16 or the organizational documents under which TGen functions, or any judgment, award, decree,
17 contract, agreement or other instrument to which TGen is a Party, or conflict with or result in a
18 breach of or constitute (with due notice or lapse of time or both) a default under any of the same.

19 3.2.4 Governmental Approvals. No approval, authorization, consent, order, or
20 action or filing with any court or governmental body is required for the due and lawful execution
21 and delivery by TGen of this Agreement, or (except for customary licenses, permits,
22 authorizations, or other approvals the need for which may arise in the ordinary course of
23 performance hereof) for TGen's due performance of its obligations hereunder.

24 **3.3 Covenants of TGen.**

25 3.3.1 Tax Exempt Status. Throughout the term of this Agreement, TGen shall
26 remain a nonprofit corporation in good standing qualified for federal income tax exemption
27 pursuant to Section 501(c)(3) of the Internal Revenue Code. TGen will notify ABOR (and
28 furnish ABOR with copies of relevant documents) within ten (10) business days after its filing
29 any amended Articles of Incorporation or receiving any modified determination letter from the
30 IRS. TGen shall not pay compensation to any person that constitutes more than incidental
31 private benefit or constitutes private inurement, or engage in any transaction involving an excess
32 economic benefit to a disqualified person within the meaning of I.R.C. §4958 and the regulations
33 thereunder.

34 3.3.2 Board Approvals of Annual Budgets and of Business Plans. On or before
35 the 60th day of each fiscal year of TGen, the Board of Directors of TGen will approve a budget of
36 TGen of revenues and expenses for that fiscal year. In addition, TGen shall at all times have in
37 effect (and shall make available to ABOR and each University upon request) a business plan
38 adopted by its Board of Directors.

1 3.3.3 Covenants Relating to Material Changes. TGen shall advise ABOR
2 thereof in writing within ten (10) days and shall promptly provide such documents as may be
3 reasonably requested by ABOR evidencing (a) any material change in the governance structure
4 of TGen from that described in Article III, §2 of the Bylaws of TGen; (b) any change in the
5 nonprofit status of TGen; (c) any other material change in the purposes or intent of TGen;
6 (d) any change in the President-SD of TGen; or (e) adoption by TGen of any overall policy
7 governing intellectual property or conflicts of interest. ABOR may submit to TGen, from time to
8 time, a reasonable list of TGen policies that ABOR wishes to review annually, and TGen shall
9 furnish to ABOR within thirty (30) days of the start of each fiscal year the current versions of
10 any policies reasonably so requested.

11 4. **GOVERNANCE RELATIONSHIPS**

12 **4.1 Representation on TGen Board.** Throughout the term of this Agreement, the
13 TGen Board of Directors shall include: (a) one representative designated by the Chair of ABOR
14 from among the President, President-Elect and Immediate Past President of ABOR; and (b) each
15 of the Presidents of ASU, NAU and UA, serving ex officio with full rights as a Director
16 including voting rights; provided that any such persons shall be subject to the conflict of interest,
17 recusal, disqualification, and removal rules of TGen applicable to its Board members generally.
18 If at any time TGen has an Executive Committee of the Board of Directors, then ABOR shall
19 have the right to designate one of the ABOR representatives or University Presidents who is then
20 a TGen Director to serve on TGen's Executive Committee.

21 **4.2 Affiliation Liaisons.** Each University shall appoint an Affiliation Liaison (such
22 as the Vice President for Research or Provost or appropriately empowered designee) who shall
23 meet with TGen's President-Scientific Director ("**President-SD**") (and other of his appropriately
24 empowered designees) as often as necessary (but no less often than quarterly) in order to
25 facilitate effective relations between TGen and such University and advance the purposes of this
26 Agreement. In addition, each Affiliation Liaison shall develop with TGen's President-SD a
27 mutually acceptable "protocol," pursuant to which the TGen's President-SD or his designees will
28 consult with individual Department Chairs, Department staff and/or officers of such University
29 on affiliation-related matters of importance to these various constituencies.

30 5. **FACULTY RELATIONSHIPS**

31 **5.1 Recruitment of Faculty.**

32 **5.1.1 TGen-Employed Faculty.** If TGen anticipates the recruitment of a TGen
33 employed scientist who would seek a faculty appointment at a University, TGen will discuss
34 with him/her the most functional University affiliation. TGen will then consult with the relevant
35 Affiliation Liaison and Department Chair and if they agree, TGen and the University will jointly
36 conduct such recruitment. If the person is appointed to a University faculty position, then in
37 accordance with recruitment and appointment procedures satisfactory to both Parties, TGen and
38 the University will confirm in writing (the "**Employment-Appointment Confirmation**") (for

1 the benefit of TGen, the University, and the scientist being recruited) their agreement as to the
2 scope of each institution's financial commitment, and the scientist's duties and reporting
3 relationships at each institution (in addition to any provisions required by Section 5.3.1), and
4 shall specify that TGen is the primary employer of record. In addition, such writing may specify
5 conditions for the continuation of the scientist's appointment at the University, if applicable, in
6 the event of termination of his/her TGen employment.

7 Prior to issuing the Employment-Appointment Confirmation, the Parties shall verify, with the
8 University's Affiliation Liaison and/or Department Chair, that all Necessary University
9 approvals have been obtained. Each such Employment-Appointment Confirmation shall require
10 the TGen-Employed Faculty to confirm in writing, not less than annually, that his/her actual
11 activities in connection with his/her University appointment are still within the scope of the
12 original Employment-Appointment Confirmation, and that all generally applicable reporting and
13 on-going University approval obligations have been met.

14 Upon issuance of the Employment-Appointment Confirmation, signed by the scientist, TGen and
15 the applicable University, such scientist shall be deemed to be "TGen-Employed Faculty" for
16 purposes of this Agreement.

17 5.1.2 University-Employed Faculty. If a University desires that an existing
18 University-employed faculty member, or a faculty member to be recruited by the University, be
19 TGen-affiliated for a particular project or course of research, the Affiliation Liaison and/or
20 Department Chair and/or other appropriate University Administrators shall consult with the
21 President-SD of TGen to make mutually acceptable arrangements. Such arrangements will be
22 not inconsistent with the specific provisions of this Agreement, will be memorialized in writing
23 in each case (the "**Affiliation Confirmation**"), will include the financial commitment to be made
24 by each institution, as well as the faculty member's duties and reporting relationships at each
25 institution, and will reflect that the University is the primary employer of record (in addition to
26 any other provisions required by Section 5.3.2).

27 Prior to issuing the Affiliation Confirmation, the Parties shall verify, with the University's
28 Affiliation Liaison and/or Department Chair, that all Necessary University approvals have been
29 obtained. Each such Affiliation Confirmation shall require the University-Employed Faculty to
30 confirm in writing, not less than annually, that his/her actual activities in connection with his/her
31 TGen affiliation are still within the scope of the original Affiliation Confirmation, and that all
32 generally applicable reporting and on-going University approval obligations have been met.

33 Upon issuance of the Affiliation Confirmation, signed by the scientist, TGen and the applicable
34 University, such individual will be deemed to be "University-Employed Faculty" for purposes of
35 this Agreement.

36 5.1.3 Other Categories. From time to time, TGen and/or a University may wish
37 to recruit scientists under "Visiting Professor" or similar short-term arrangements, with the intent
38 that such individuals engage in some activities on behalf of both TGen and a University. Before
39 doing so, they shall discuss the matter with one another and set forth in writing the expectations,
40 roles, and financial, supervisory and related responsibilities of TGen, the University and the

1 scientist, and establish clear expectations for the work to be performed (including but not limited
2 to Covered IP rights under Section 10), all of which shall be memorialized in writing in each
3 case, and will be subject to the requirements of Section 5.3.3, and to the usual existing University
4 policies governing such arrangements, unless in writing some other arrangement is agreed to by
5 the Parties. Each such writing shall specify the institution that is to be deemed the primary
6 employer of record, and the designation of the primary employer of record shall determine
7 whether such individual is to be considered "TGen-Employed Faculty" or "University-Employed
8 Faculty" for purposes of this Agreement.

9 **5.2 Faculty Appointments.**

10 5.2.1 All Categories of Appointments. TGen scientists may apply for all
11 categories of academic appointments that exist at each University (including but not limited to
12 tenured, tenure track, adjunct, clinical, and research), and shall be considered based on their
13 qualifications and the applicable established University criteria. TGen scientists may not hold
14 tenured or tenure track appointments at more than one University, but may hold non-tenure track
15 adjunct, research or clinical appointments at more than one University. A University shall apply
16 the same standard for reviewing an applicant for a faculty appointment who is to be a TGen
17 employee as for any other applicant, provided that in accordance with a University's own general
18 policies, tenured and tenure-track positions may be available only to persons who devote the
19 specified, substantial amount of their total time to teaching or other University functions.

20 5.2.2 Multi-Year Appointments. Recognizing that adjunct faculty appointments
21 (particularly those made on an expedited basis without ABOR action) usually are for one year
22 only, and that for certain recruits it may be necessary and/or desirable to provide reasonable
23 assurances of longer term assignments, the Parties will in good faith explore possible ways to
24 accomplish this in appropriate cases.

25 5.2.3 Cooperation. TGen shall ensure that its officers and staff cooperate with
26 the Universities, and each University shall ensure that its Provost, Department Chairs and faculty
27 committees cooperate with TGen, in timely review and consideration of applications for faculty
28 appointments for TGen scientists.

29 **5.3 Salary and Benefits.**

30 5.3.1 TGen-Employed Faculty. TGen shall be solely responsible for the full
31 salary and Fringe Benefits for all TGen-Employed Faculty, provided that (a) in advance of such
32 services being provided, TGen and a University shall enter into a cost reimbursement agreement
33 to reimburse TGen fairly for any academic services provided to the University by such TGen-
34 Employed Faculty that ordinarily would be compensated by the University in accordance with its
35 usual policies and procedures; and (b) some faculty compensation obligations may be included
36 within the University's funding obligations as set forth in Section 6 hereof. ABOR/University
37 policies and procedures relating to employment-related financial matters, such as (among others)
38 minimum and maximum salaries, financial rights, and employment benefits for which there is a
39 monetary outlay (such as health insurance and retirement contributions), shall not apply to
40 TGen-Employed Faculty.

1 5.3.2 University-Employed Faculty. A University shall be solely responsible
2 for the salary and Fringe Benefits of University-Employed Faculty; provided that where such
3 Faculty are expected to provide substantial services for the benefit of TGen rather than for the
4 University over a significant period of time, the Parties shall negotiate in advance a mutually
5 acceptable financial arrangement whereby TGen will reimburse the University fairly for such
6 services to TGen; and provided further that if specified by ABOR or University policies,
7 University-Employed Faculty members may not provide less than 51% of their time commitment
8 to their employer University. TGen policies and procedures relating to employment-related
9 matters, such as (among others) minimum and maximum salaries, financial rights, and
10 employment benefits for which there is a monetary outlay (such as health insurance and
11 retirement contributions), shall not apply to University-Employed Faculty.

12 5.3.3 Other Categories. In some circumstances, such as those involving
13 “Visiting Scientists”, as described in Section 5.1.3, TGen and a University may agree that the
14 services of such individual will be shared by them on a shared employment basis, as leased
15 employees, or under some other arrangement. In such case, each Party’s obligations with respect
16 to salary, Fringe Benefits and, as appropriate, reimbursement of one Party by the other will be set
17 forth in a written agreement.

18 5.3.4 Status Changes. From time to time, a University and TGen may agree (at
19 an employee’s request or with his/her consent) to change such individual’s status (*e.g.*, from
20 TGen employment to University employment). In accordance with Sections 5.10 and 5.11, when
21 the employing institution changes, the individual will become fully subject to the new
22 employer’s rules and policies.

23 **5.4 Access to University Amenities.** TGen-Employed Faculty shall have the same
24 access (at the same rates, if any) as other University faculty of the same rank to general amenities
25 and privileges made available at the University in which they hold an appointment
26 (“**Amenities**”). TGen-Employed Faculty shall have equivalent access to such Amenities
27 notwithstanding the fact that they are TGen employees; if University policies provide access to
28 such Amenities only to University-employed faculty, such policies are deemed extended to
29 TGen-Employed Faculty. Such Amenities include:

- 30 (1) Access to University parking.
- 31 (2) Use of generally available University infrastructure (libraries,
32 computers, databases, etc.).
- 33 (3) Eligibility for membership in faculty clubs/dining facilities.
- 34 (4) Eligibility for use of childcare centers.
- 35 (5) Eligibility for use of athletic or recreational facilities.
- 36 (6) Use of University immigration visa processing services.
- 37 (7) Eligibility for use of University health services on campus.

1
2 If use by TGen-Employed Faculty of such Amenities results in any material additional cost to a
3 University (including without limitation any additional fee for expanding the University's library
4 site licenses), and if the University provides prior notice thereof to TGen, then if TGen agrees
5 such costs will be paid by TGen, and if TGen does not agree the right to the amenity use giving
6 rise to such additional cost shall terminate.

7 **5.5 Participation in Governance.** TGen-Employed Faculty shall have only such
8 rights to participate in faculty governance processes as are defined in their individual
9 Employment-Appointment Confirmation based on the judgment of the University President (or
10 designee), consistent with the constitution and by-laws of the University, that such rights are
11 commensurate with the scope of the particular TGen-Employed Faculty member's services to the
12 University.

13 **5.6 Commitment to Faculty Salary "Lines."** Each University hereby agrees to
14 commit "faculty lines" to support properly qualified and credentialed faculty who will be
15 affiliated with TGen for some aspect of their work, as set forth in Section 6.

16 **5.7 Faculty Obligations.**

17 5.7.1 Written Statement of Academic Obligations. TGen-Employed Faculty
18 will perform academic obligations (such as participation in didactic and clinical teaching of
19 undergraduate and graduate students, participation in colloquia, participation in academic and
20 research administration, and participation on committees) in a manner that is (a) appropriate to
21 their category of faculty appointment; (b) agreed to as appropriate by their University
22 Department Chair and by the President-SD of TGen; and (c) consistent with their other
23 commitments to TGen. The academic obligations of each TGen-Employed Faculty, consistent
24 with the foregoing principles, shall be set forth in writing at the beginning of each academic year,
25 signed by the applicable University Department Chair and the President-SD of TGen, and
26 furnished to the faculty member. TGen-Employed Faculty's continued or renewed University
27 faculty appointments will be contingent upon their ongoing fulfillment of such academic
28 obligations, unless such obligations are specifically modified in writing by mutual agreement of
29 the University Department Chair, the President-SD of TGen, and the affected faculty member,
30 and each University shall accord TGen-Employed Faculty comparable credit (for advancement
31 and tenure purposes) for their TGen work that has academic or research value as they would earn
32 for similar work for the University. TGen's President-SD and the relevant Department Chair
33 shall consult annually: (x) to ensure a mutually acceptable understanding of the University's
34 expectations for each TGen-Employed Faculty member; (y) to consider issues relating to
35 appointment renewal, advancement and tenure; and (z) to determine the written academic
36 obligations and rights of each TGen-Employed Faculty member for the upcoming academic year.
37 This shall be deemed to satisfy ABOR Policy 6-201, which requires the Department head to
38 establish such written expectations.

39 5.7.2 No Other Academic Obligations. The teaching, administrative, University
40 governance and other academic obligations and expectations relating to a TGen Employed

1 Faculty member's academic appointment at a University, including any requirements or
2 obligations relating to eligibility for academic promotion, shall be set forth or referenced in the
3 TGen Employed Faculty member's Employment-Appointment Confirmation and/or in the
4 written statement furnished to each such Faculty member at the beginning of each academic year,
5 as described in Section 5.7.1. TGen Employed Faculty members shall not have academic
6 obligations, other than those set forth or referenced in such documents.

7 **5.8 Outside Activities; Competition with Private Enterprise.** Work performed by
8 TGen-Employed Faculty or University-Employed Faculty for TGen shall not be considered as
9 "outside activities" for purposes of ABOR and University restrictions on outside activities and
10 supplemental income of faculty. However, the TGen President-SD and each University
11 Affiliation Liaison will develop a mutually acceptable method for disclosing activities of TGen-
12 Employed Faculty involving third parties (subject to appropriate mechanisms to protect the
13 confidentiality of such disclosures) in order to satisfy any customary "conflict of interest" or
14 "conflict of commitment" reviews of a University or ABOR. Similarly, ABOR/University
15 policies relating to competition with private enterprise will not apply to TGen- Employed
16 Faculty when engaged in activities at or on behalf of TGen, except to the extent set forth
17 elsewhere in this Agreement.

18 **5.9 Promotion and Tenure.**

19 5.9.1 Eligibility. TGen-employed scientists who when recruited are not initially
20 University faculty members may nevertheless later elect to apply for faculty
21 positions in accordance with ABOR's and each University's policies and the terms
22 of this Agreement. Persons who are TGen-Employed Faculty will be eligible for
23 consideration for academic promotion and for tenure in accordance with ABOR's
24 and each University's policies and the terms of this Agreement.
25

26 5.9.2 Process. Applications for promotion and/or tenure for TGen-Employed
27 Faculty will be reviewed under the applicable University's established process.
28 When a TGen-Employed Faculty member's promotion or tenure depends in part
29 upon his/her role and accomplishments in TGen research or leadership, relevant
30 information will be provided to the appropriate University committees by TGen
31 (subject to appropriate mechanisms to protect Confidential Information). When
32 evaluating a TGen-Employed Faculty member for promotion or tenure, scholarly
33 research or related accomplishments for TGen shall be given the same weight as
34 accomplishments of similar nature for a University, consistent with ABOR Policy
35 6-201. To remain on track for possible advancement, TGen-Employed Faculty
36 who are tenure-track generally must fulfill the specific obligations set forth or
37 referenced in his or her Employment-Appointment Confirmation and in the annual
38 written document furnished to such faculty members pursuant to Section 5.7.1
39 hereof, but shall not be required to fulfill any obligations not set forth or referenced
40 in such documents.

1 5.9.3 State Funding Contingency. Consistent with Arizona law, and as stated in
2 ABOR/University policies, it is acknowledged that “it is within neither the President nor
3 ABOR’s power to commit the State of Arizona to an obligation for which an appropriation has
4 not been made. The use of the term ‘with tenure’ [therefore] neither constitutes nor implies a
5 legal obligation” beyond that which is in fact supported by appropriations, although “[i]n
6 practice, renewals of appointments of tenured faculty members have been approved and funds
7 have been allocated annually for these appointments.” Accordingly, both TGen and each
8 University shall inform prospective recruits of the relevant policies governing promotion and
9 tenure, including policies as to state funding and its contingency.

10 5.9.4 Salary Lines. Awarding of a tenured or tenure-track professorial title to a
11 TGen-Employed Faculty member or University –Employed Faculty member does not necessarily
12 carry with it a state salary line from the University. The question of salary source should be
13 determined on a case-by-case basis. (see also Section 5.13.3).

14 5.10 Applicability of TGen Policies Other Than IP and Technology Transfer Policies,
15 which are governed by Section 10.

16
17 5.10.1 TGen-Employed Faculty. TGen-Employed Faculty shall be fully subject
18 to TGen policies.

19
20 5.10.2 University-Employed Faculty. TGen will regard its policies as applicable
21 to University-Employed Faculty only with respect to their work at TGen Facilities, or on projects
22 for which TGen is the Grantee, or otherwise as necessary to comply with Law, and any such
23 applicability will be described in the person’s Employment Appointment Confirmation. If
24 University-Employed Faculty materially fail to comply with such policies in activities to which
25 they apply, TGen may, after consulting with the Faculty member and the relevant Affiliation
26 Liaison to the degree appropriate, take action with regard to such person’s involvement with
27 TGen.

28 **5.11 Applicability of ABOR and University Policies Other Than IP and**
29 **Technology Transfer Policies, which are governed by Section 10.**

30 5.11.1 TGen-Employed Faculty. TGen, ABOR and University will regard
31 University and ABOR policies as applicable to TGen-Employed Faculty only with respect to
32 their conduct as University Faculty or their activities in University Facilities or projects on which
33 the University is the Grantee, or otherwise as necessary to comply with Law, and any such
34 applicability will be described in a Project Summary pertaining to the work of such individual.
35 Each Project Summary contemplated by this Section shall specify a representative of ABOR and
36 University to whom any such TGen-Employed Faculty may refer questions as to the applicability
37 of University or ABOR policies. If TGen-Employed Faculty materially fail to comply with such
38 policies in activities to which they apply, a University may, after consulting with the Faculty
39 member and the TGen President-SD, take action with respect to the person’s Faculty
40 appointment.

41 5.11.2 University-Employed Faculty. University-Employed Faculty shall be fully
42 subject to ABOR and University policies.

1 **5.12 Conflicting Duties and Coordination.**

2 5.12.1 Primacy of Employer's Policies. As set forth in Sections 5.10 and 5.11,
3 the policies of an individual's employer will primarily govern his or her conduct. Thus, TGen
4 policies will primarily govern the conduct of TGen-Employed Faculty, and a University's and
5 ABOR's policies will primarily govern the conduct of University-Employed Faculty. If TGen
6 and a University (and/or ABOR) each has policies that require certain processes or approvals, the
7 Parties will coordinate to avoid unnecessary duplication of effort, and where lawful, the non-
8 employer institution will delegate the process or approval at issue to the employer institution (or
9 will deem the employer institution's findings or approvals as sufficient to constitute its own
10 findings or approvals).

11 5.12.2 Illustration of Principles. By way of illustrating the principles in Sections
12 5.10, and 5.11, and without in any way limiting the general applicability of those Sections,
13 ABOR/University policies and procedures relating to grievances, for example, will not apply to
14 TGen Employed Faculty in connection with their TGen employment, but shall apply only with
15 regard to their University faculty appointment. Consequently, if TGen wishes to sanction or
16 terminate a TGen Employed Faculty member with respect to his or her TGen employment, that
17 individual will not be entitled to utilize ABOR/University grievance procedures. If, however, a
18 University wishes to sanction or terminate such an individual with respect to his or her academic
19 appointment, the ABOR/University grievance policies and procedures (and any other
20 ABOR/University policies and procedures relating to the proposed sanction or termination) will
21 apply.

22 5.12.3 Intellectual Property Policies. The Parties agree that with respect to
23 intellectual property policies, an individual shall, to the extent permitted by Law, at all times be
24 deemed the "employee" of, and subject only to the intellectual property policies of, his/her
25 primary employer of record, regardless of where such individual's research is performed or
26 whether such individual is affiliated with another Party for some part of her/his work.

27 5.12.4 Resolution of Inconsistencies. The Parties recognize that despite their
28 attempts to clarify and consolidate roles, expectations, and responsibilities in this Agreement,
29 there may arise special circumstances in which there is a divergence or inconsistency between an
30 individual's obligations under applicable TGen policies and his or her obligations under
31 applicable ABOR/University policies. The Parties agree to use their Best Efforts to resolve such
32 circumstances in a manner that is lawful, and that is fair and equitable to TGen, the University
33 and the individual.

34 5.12.5 Unreconciled Disputes. It is the Parties' intent that, unless (a) otherwise
35 required by Law; or (b) otherwise expressly specified herein; or (c) agreed to by the Parties after
36 a reasonable period of consultation; or (d) resolved via Dispute Resolution under Section 19, in
37 the event of an unresolved conflict between TGen and ABOR/University policies with respect to
38 a given individual's activities: TGen policies shall take precedence with regard to TGen-
39 Employed Faculty; and ABOR/University policies shall take precedence with regard to
40 University-Employed Faculty.

1 5.12.6 Access to Policies. At all reasonable times, ABOR and each University
2 shall have access to all TGen policies to which University-Employed Faculty may be subject. At
3 all reasonable times, TGen shall have access to all ABOR and University policies to which
4 TGen-Employed Faculty may be subject.
5

6 **5.13 Terminations or Change in Status.**

7 5.13.1 General Principle. TGen shall be entitled to terminate the employment of
8 TGen-Employed Faculty in accordance with its policies, and a University shall be entitled to
9 terminate the employment of University-Employed Faculty in accordance with
10 ABOR/University policies. However, unless otherwise advised by their respective counsel, the
11 Parties shall consult with one another in advance concerning the effect of their termination
12 decisions on each other. For example, if TGen or a University expects to terminate a researcher
13 who is a principal investigator on a collaborative project, such institution shall use its Best
14 Efforts to designate a substitute investigator who is acceptable to the other institution and to the
15 sponsor of the research.

16 5.13.2 TGen-Employed Faculty. The Parties agree to adopt or apply policies
17 such that:

- 18 (a) If a TGen-Employed Faculty who is tenured ceases TGen
19 employment for reasons other than termination for cause, he/she
20 may continue to hold tenure, but contingent upon assuming a range
21 or "load" of University duties that are customary for persons of
22 similar rank in the Department and are acceptable to the
23 Department Chair. With respect to University salary support for
24 such tenured individuals after their TGen employment terminates,
25 the University will address such situations in accordance with
26 University and ABOR rules and in light of available appropriations.
27 In some cases, ongoing University support may depend on the
28 ability of the faculty member to obtain grants or other outside
29 funding. The University shall apply the same principles and
30 procedures in such cases as it would apply to other faculty in the
31 same Department and/or area of research seeking University salary
32 support through grants or other outside funding.
- 33 (b) If a TGen-Employed Faculty who is tenure track but not yet
34 tenured ceases TGen employment for reasons other than
35 termination for cause, he/she may be eligible to revert to his/her
36 University Department with accrued status, consistent with
37 University rules and contingent upon factors including assuming a
38 range or "load" of University duties that are customary for persons
39 of similar rank in the Department and are acceptable to the
40 Department Chair. However, such individual's employment by the
41 applicable University is dependent on the individual reaching such
42 a mutually acceptable employment/salary arrangement with the

1 University (and on the availability of funding for the individual's
2 salary, Fringe Benefits and functions).

- 3 (c) If a TGen-Employed Faculty who holds an adjunct faculty
4 appointment ceases TGen employment for reasons other than
5 termination for cause, he/she may be eligible to continue to hold a
6 faculty appointment consistent with University rules and
7 contingent upon reaching a mutually satisfactory alternative
8 arrangement with the relevant Department Chair.

9 5.13.3 University-Employed Faculty. ABOR and the Universities acknowledge
10 that if a University-Employed Faculty member ceases to be affiliated with TGen, his/her status
11 with the University thereafter will be determined solely by reference to (a) University policies,
12 and (b) any written contracts or commitments between the University and the faculty member.

13 5.13.4 Loss of Academic Appointment. If a TGen-Employed Faculty member's
14 academic appointment expires (without renewal) or is terminated, his/her TGen employment will
15 not then terminate unless continued academic appointment is an express condition of continued
16 TGen employment, or unless the loss of academic appointment substantially impedes his/her
17 ability to perform his/her employment obligations to TGen or otherwise causes the person not to
18 comply with his/her employment agreement.

19 **5.14 Graduate Students and Post-Doctoral Fellows.**

20 5.14.1 Graduate Students. TGen-Employed Faculty are eligible to have
21 University graduate students assist in work at TGen Facilities (or at University Facilities),
22 subject to the students' availability and interest and subject to prior written approval by the
23 relevant University in accordance with its policies. The TGen-Employed Faculty member shall
24 then provide appropriate supervision, direction and evaluation. Such graduate students shall at
25 all times be subject to University policies, and in addition shall be subject to TGen policies with
26 respect to their activities in TGen research or at TGen Facilities. In the event of a policy conflict,
27 the principles set forth in Section 5.12 will apply, with the University being deemed the
28 employer of such graduate students.

29 5.14.2 Post-Doctoral Fellows. TGen-Employed Faculty are eligible to have
30 University post-doctoral fellows assist in work at TGen Facilities (or at University Facilities),
31 subject to the post-doctoral fellows' availability and interest and subject to approval by the
32 relevant University in accordance with its policies. The TGen-Employed Faculty member shall
33 then provide appropriate supervision, direction and evaluation. Such post-doctoral fellows shall
34 at all times be subject to University policies, and in addition shall be subject to TGen policies
35 with respect to their activities in TGen research or at TGen Facilities. In the event of a policy
36 conflict, the principles set forth in Section 5.12 will apply, with the University being deemed the
37 employer of such post-doctoral fellows.

38 5.14.3 Other Categories of Employees. Because the procedures for hiring non-
39 tenure eligible positions not otherwise covered in this Section 5 may vary among Departments

1 across the Universities, any TGen employee wishing an affiliation with a University in such a
2 position will apply to the appropriate Department Chair and the normal hiring process for that
3 Department will be followed. Such appointments generally will carry the same academic rights,
4 privileges and responsibilities as apply to other University personnel within a particular job
5 category. The provisions of Section 5.12 shall determine the various institutional policies that
6 apply to such individuals.

7 **5.15 Non-Discrimination.** The Parties shall comply with applicable Law with regard
8 to State Executive Order No. 99-4 (which is incorporated herein by this reference) to the extent it
9 is applicable to TGen and with A.R.S. §§41-1461 *et seq.*, which mandate certain action by
10 entities contracting with the State of Arizona to ensure that all persons, regardless of race, color,
11 religion, sex, age, national origin or political affiliation, shall have equal access to employment
12 opportunities. TGen shall comply with all other applicable federal and state employment Laws,
13 rules and regulations, including the State of Arizona Equal Employment Opportunity ordinances
14 and the Americans with Disabilities Act. TGen shall take action to ensure that applicants for
15 employment and employees are not discriminated against due to race, creed, color, religion, sex,
16 national origin or disability in activities including, but not limited to the following: employment,
17 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination;
18 rates of pay or other forms of compensation; and selection for training, including apprenticeship.
19 TGen further agrees that this clause will be incorporated in all Subcontracts for performance of
20 TGen's duties hereunder.

21 **5.16 Health and Medical Information.** Each Party will furnish to any other Party,
22 upon request, copies of all its policies with respect to protected health information and medical
23 records confidentiality.

24 **5.17 Other Laws.** The Parties further agree to comply with all State and federal Laws,
25 regulations and executive orders governing equal employment opportunity, immigration, the
26 Americans with Disabilities Act, and affirmative action to the extent such may apply to them
27 respectively.

28 **6. FUNDING COMMITMENTS.** ABOR and each University respectively agrees to
29 fulfill the following funding commitments for TGen Faculty and facilities:

30 **6.1 University of Arizona.**

Gift from Research Corporation Technologies through the University of Arizona Foundation, \$200,000 per year salary or other support for Dr. Trent (for five years)	\$1,000,000
Salary support (\$150,000 per year) and provision of benefits in connection with University of Arizona's appointment of Dr. John Carpten (five years)	Approximately \$1,000,000
Salary support for existing University of Arizona faculty who become affiliated with TGen for some portion of	\$5,500,000

their work (\$1.1M/year for five years)	
Provision of Affymetrix Scanner station equipment (already delivered) and annual delivery of microarray chips valued at \$50,000 for four years (beginning January 2004)	\$450,000
In-kind support and staff for general clinical research, having an aggregate value of \$600,000 per year, to support all clinical investigators working in Phoenix	\$3,000,000
TOTAL:	\$10,950,000

1 In addition, the University of Arizona has offered to provide a platform for TGen/UA
2 interactions in the form of clinical genetics research infrastructure and in-kind support for
3 general clinical research, together valued at \$6,000,000 over five years.

4 **6.2 Arizona State University**

5 A. TGen Faculty and Facilities (Out of Pocket Costs) FY03-FY07

Salary support for up to four existing faculty positions for individuals to be nominated by Dr. Jeffrey Trent \$400K/year (for five years)	\$2,000,000
Start-up equipment for these faculty	\$1,600,000
Supercomputer facility	\$5,200,000

6 B. Campus Resources Available for TGen Support (In Kind)

New ASU faculty affiliated with TGen	\$2,000,000
Upgrade to ASU animal care facility	\$1,800,000
Upgrade/improvements to Tech Transfer operation	\$500,000
Information Technology facilities support	\$1,500,000
TOTAL	\$14,600,000

7 **6.3 Northern Arizona University.**

Two faculty lines @\$70K/year (for five years)	\$700,000
Potential funding grants to biotechnology researchers (support for the DNA Sequencing Core)	\$5,000,000

Laboratory and other space on the NAU campus	\$1,000,000
TOTAL:	\$6,700,000

1 A given University's foregoing specific funding commitments are subject to reallocation within
2 the total amount of such University's commitment by prior mutual consent of such University
3 and TGen.

4 **6.4 Added Conditions.** It is acknowledged that the funding set forth in Sections 6.1
5 through 6.3 is subject to the funding contingency described in Section 3.1.4.

6 **7. AVAILABILITY OF FACILITIES AND PERSONNEL**

7 **7.1 TGen Facilities.** TGen Facilities will be available for periodic use by TGen-
8 Employed Faculty for purposes of teaching appropriately qualified University undergraduate and
9 graduate students and for other University purposes, under arrangements approved by TGen's
10 President-SD. If TGen space, non-routine equipment, IT resources or personnel are used in
11 connection with such instruction to any material extent, the University shall pay the reasonable
12 costs thereof as specified by the Parties in advance.

13 **7.2 TGen Technology "Cores".** Universities may apply to TGen's President-SD to
14 utilize TGen scientific technology "cores" for purposes of research to be conducted by
15 University-employed faculty, whether or not otherwise affiliated with TGen. The President-SD
16 will make reasonable efforts to accommodate such requests, consistent with available capacity,
17 TGen's other plans and commitments, and efficient management of TGen Facilities. The
18 Universities shall pay TGen's usual rates for such use.

19 **7.3 University Facilities.** Except as governed by Section 5.4 (regarding access by
20 TGen-Employed Faculty to University Amenities) if TGen-Employed Faculty utilize University
21 laboratory or classroom space, non-routine equipment, IT resources, or personnel to any material
22 extent for which a charge or cost allocation customarily is made to University or outside users,
23 TGen shall pay the reasonable costs thereof as specified by the Parties in advance.

24 **7.4 Service Agreements.** TGen and a University (through its Departmental, School,
25 or University channels, as determined by the University) may enter into special bilateral or
26 multi-lateral agreements concerning (a) the use of one another's space and equipment, (b) shared
27 services, (c) joint purchasing, or (d) other special arrangements, all of which shall be in writing
28 and involve fair compensation for any material items or services furnished by any Party.

29 **7.5 Multiple Sites.** Given the advantages to TGen's working scientists of being
30 located in proximity to University Facilities and programs or to University faculty of being co-
31 located with TGen researchers, it is expected that TGen may conduct certain programs on the

1 campuses of, or in collaboration with campus-based programs of, NAU, ASU, and UA; and
2 conversely that some University scientists may choose to locate research programs at TGen
3 Facilities.

4 **8. PROGRAM INTERACTIONS**

5 In addition to the individual faculty relationships that may develop, TGen and the
6 Universities agree to explore all mutually beneficial means by which they can collaborate and
7 build upon each of the successful existing biotechnology and biomedical programs at the
8 Universities, including but not limited to: (a) the Initiative for Advancement of Therapeutics, the
9 IBSB, and the Arizona Health Science Center's clinical programs (including the Cancer Center)
10 at UA; (b) AZBIO and other programs at ASU; (c) programs in infectious agents, environmental
11 biology and related disciplines at NAU; and (d) the Arizona Health Science Center.

12 **9. CONDUCT OF RESEARCH**

13 **9.1 Grantee.** Each institution will apply separately for sponsored research unless
14 some or all agree to pursue a project jointly in a given case.

- 15 (a) TGen shall be the Grantee for all externally sponsored research for which
16 the principal investigator is a TGen-Employed Faculty, and (unless
17 otherwise provided by Law or sponsor rules) TGen in such cases will be
18 responsible for scientific compliance, financial accounting and other
19 scientific and administrative obligations relating to the research.
- 20 (b) A University shall be the Grantee for all externally sponsored research for
21 which the principal investigator is a University-Employed Faculty (or post-
22 doctoral fellow or the like), and (unless otherwise provided by Law or
23 sponsor rules) the University in such cases will be responsible for scientific
24 compliance, financial accounting and other scientific and administrative
25 obligations relating to the research.
- 26 (c) In cases in which there are co-principal investigators, consortium
27 arrangements, or other situations involving proposed joint research not
28 falling within the preceding sub-paragraphs of this Section 9.1, TGen's
29 President-SD and the relevant University Affiliation Liaison(s) will devise
30 a mutually satisfactory resolution and the project will be pursued jointly
31 only after TGen and the University have agreed as to their relative roles and
32 obligations.

33 **9.2 Research Cost, Overhead Costs and Indirect Cost Recovery.** When
34 University Facilities or employees are utilized in research for which TGen is the Grantee, or
35 TGen Facilities or employees are utilized in research for which a University is the Grantee, the
36 Grantee will reimburse the other institution(s) for such use of personnel and facilities at the rates

1 paid by the Grantor, or if rates are not specified by the Grantor, at the rates agreed to in advance
2 between the institutions in a given case. In such cases, the non-Grantee institution shall be
3 subject to, and shall comply with, the reasonable rules of the Grantee and the Grantor regarding
4 documentation of expenses and other similar requirements.

5 **9.3 Separate Agreements.** With respect to personnel and research not falling under
6 preceding Section 9.1, nothing in this Agreement precludes, and indeed the Parties expressly
7 acknowledge and agree that each may enter into, separate sponsored research agreements not
8 involving the other.

9 **9.4 Research Credit.** To the extent consistent with NIH rules and their respective
10 roles and functions as described herein, the Parties will use their Best Efforts to see that a
11 University receives appropriate "credit," for NIH ranking purposes, for sponsored research for
12 which a faculty member is a principal investigator.

13 **9.5 Avoidance of Duplication.** In accordance with Section 9.1, in cases where both
14 TGen and a University participate in an externally sponsored research project, the Parties will
15 coordinate in order to avoid duplicative compliance efforts, unless duplicative efforts are legally
16 required or mandated by the Grantor. In the event of a policy conflict, the non-Grantee
17 institution shall defer to the compliance rules and policies of the Grantee to the extent allowed by
18 Laws and the Grantor.

19 **9.6 Scientific Integrity and Conflicts of Interest.**

20 (a) In accordance with Sections 5.10-5.12: TGen-Employed Faculty will at all
21 times be subject to applicable Law and TGen's policies, rules and
22 procedures regarding scientific integrity, scientific misconduct and
23 conflict of interest; and such individuals also shall be subject to ABOR
24 and University policies, rules and procedures regarding scientific integrity,
25 misconduct and conflict of interest only when they engage in research (a)
26 on a University campus or involving University Facilities or personnel; or
27 (b) for which a University employee, student or post-doctoral fellow is the
28 Principal Investigator and/or a University is the Grantee.

29 (b) In accordance with Sections 5.10-5.12: University-Employed Faculty will
30 at all times be subject to applicable Law and the employer-University's
31 (and ABOR's) policies, rules and procedures regarding scientific integrity,
32 scientific misconduct and conflict of interest; such individuals also shall
33 be subject to TGen policies, rules and procedures regarding scientific
34 integrity, misconduct and conflict of interest only when they engage in
35 research (a) on TGen premises or involving TGen Facilities or personnel;
36 or (b) for which a TGen employee is the Principal Investigator and/or
37 TGen is the Grantee.

1 (c) In accordance with Section 5.12.1, where feasible, and subject to any due
2 process or other rights of the affected individuals, TGen and the
3 University will coordinate efforts relating to the investigation and
4 handling of scientific misconduct and/or conflict of interest allegations
5 against persons who have relevant roles in both institutions, in order to
6 minimize duplication and cost.

7 **9.7 Proposal Preparation and Pre-Submission Review.** In cases where both TGen
8 and a University agree jointly to pursue an externally sponsored research project, the Parties will
9 coordinate the preparation of all related submissions. To the extent feasible, and permissible
10 under Law and Grantor rules, the Parties also shall coordinate internal pre-submission reviews,
11 including IRB and IACUC review. In situations where the proposal contemplates co-Grantees or
12 multiple Grantees, the relevant University Affiliate Liaison(s) and the TGen President-SD (or
13 their appropriately empowered designees) will meet in advance, and determine which institution
14 should be primarily responsible for conducting, obtaining and/or coordinating pre-submission
15 reviews and approvals (subject to applicable federal Law). In order to facilitate the coordination
16 set forth in this Section 9.7, TGen shall use reasonable efforts to adopt internal pre-submission
17 review and IRB and IACUC rules, policies and procedures that are consistent with (or, at
18 minimum, do not materially conflict with) ABOR/University rules, policies and procedures, and
19 in all cases will ensure that such TGen rules, policies and procedures comply with applicable
20 federal Law.

21 **9.8 Compliance With Law and Policies.** Each Party's research policies shall
22 comply with applicable Laws and will encourage scientists to conduct research and make
23 inventions. University-Employed Faculty shall not be subject to TGen policies and procedures
24 relating to grants and research except as set forth in this Section 9 or as otherwise applicable in
25 accordance with Section 5.10.2. TGen-Employed Faculty shall not be subject to
26 ABOR/University policies and procedures relating to grants and research except as set forth in
27 this Section 9 or as otherwise applicable in accordance with Section 5.11.1.

28 **9.9 State Law Requirements.** If state legislation is enacted so requiring, ABOR
29 shall have authority hereunder to bar on a prospective basis, for ethical reasons, the participation
30 of persons holding faculty appointments, or the use of University facilities, in certain designated
31 kinds of research. In such cases, ABOR shall in writing advise TGen's President-SD of the
32 reasons for barring such research, and the Parties shall consult in good faith to agree on an
33 appropriate course of action, including any appropriate modifications of the proposed research or
34 this Agreement.

35 **9.10 Export of Technical Data.** Export of certain technical data may be prohibited by
36 United States export control Laws and regulations, including the International Traffic in Arms
37 Regulations (22 CFR Part 120 *et seq.*) and the Export Administration Regulations (15 CFR Part
38 730 *et seq.*). The parties agree to comply with these export Laws and regulations, including
39 obtaining necessary exemptions, licenses or approvals prior to making actual or deemed exports
40 or re-exports. In connection with Confidential Information, the Parties acknowledge that the
41 originating Party is in the best position to evaluate its own Confidential Information, and

1 accordingly, export control compliance will be the responsibility of the provider of such
2 Confidential Information. Any export controlled Confidential Information must be identified as
3 such by the originating Party, including its Commerce Control List and/or United States
4 Munitions List classification. The originating Party will obtain the necessary licenses with the
5 cooperation of the Party receiving such Confidential Information, at the originating Party's
6 expense.

7 **10. INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER**

8 The Parties shall coordinate the application of their respective intellectual
9 property and technology transfer policies to research conducted pursuant to this Agreement, as
10 set forth in this Section 10. **"Research conducted pursuant to this Agreement"** means
11 research at or in affiliation with TGen (a) conducted pursuant to a Project Summary; or (b)
12 involving, to a material extent, University-Employed Faculty; or (c) involving, to a material
13 extent, TGen-Employed Faculty; or (d) involving material contributions, in the form of personnel
14 or Resources (as defined in Section 10.4.4(a)), by both TGen and one or more Universities.

15 **10.1 Covered Intellectual Property.** This Agreement is intended to cover all
16 intellectual property rights, including all patent, trademark, copyright and trade secret rights (as
17 defined in the Uniform Trade Secrets Act) in all subject matters created, conceived of or reduced
18 to practice or writing or first fixed in a tangible medium of expression in the course of or as a
19 direct result of research conducted pursuant to this Agreement, including but not limited to such
20 rights in inventions or innovations (whether or not patentable), in all copyright, and
21 copyrightable material (unless published in academic or scholarly media or otherwise in the
22 public domain), and all such intellectual property rights inhering in tangible research property
23 such as cell lines, vectors, other biological and agricultural materials, therapeutic agents or
24 pharmaceuticals, medical devices, biologics, engineering drawings, computer software and code,
25 integrated circuit chips, computer databases and prototype devices, improvements, modifications
26 to and derivative works on hybrids of the foregoing, and all patents and patent applications
27 thereon domestic and foreign, including all continuations, provisionals and divisionals thereof
28 and all registrations and renewals of the foregoing ("**Covered IP**"). For the avoidance of doubt,
29 and without limitation, Covered IP excludes (a) pre-existing intellectual property; and (b)
30 tangible property of a Party to the extent that such tangible property involves only the realization
31 of pre-existing intellectual property and involves *de minimus* inventive or original effort. The
32 scope of each significant collaborative project or course of research shall be set forth in a Project
33 Summary which will set forth the research tasks and objectives to be performed by each relevant
34 Party. Each Party may engage (alone, or with other entities that are non-Parties) in other
35 research within the same general field of research but outside the scope of work as expressed in
36 any Project Summary, and conducted separately from any research conducted pursuant to this
37 Agreement, and this Agreement shall not constitute any license or grant of rights by the Party
38 engaging in such other research with respect to such research or resulting intellectual property.

1 **10.2 Lead Institution.**

2 10.2.1 Designation of Lead Institution. At the commencement of each research
3 project that involves, or may result in the creation or invention of, Jointly-Owned IP (or if the
4 creation of Jointly-Owned IP is not then contemplated, then as soon as it becomes apparent), the
5 Joint-Owner Parties (as defined in Section 10.4.4) involved in the project will designate a "Lead
6 Institution." The Party that is the sole or prime Grantee with regard to an externally sponsored
7 research project will be deemed the Lead Institution (subject, however, to the requirements of
8 any applicable grant or sponsor agreement). In the case when two or more Parties are co-equal
9 Grantees, or where there is no external sponsor (and subject to the requirements of any
10 applicable grant or sponsor agreement), the Lead Institution shall be the employer of the
11 "Principal Investigator" (defined as the individual with primary responsibility for conducting and
12 supervising the research project). However, the applicable University Affiliation Liaison(s) and
13 the TGen President-SD may by mutual consent agree to a different arrangement with respect to a
14 specific research project (including in cases where the Lead Institution is not clearly identified
15 pursuant to this Section 10.2.1), consistent with the Joint- Owner Parties' interests and applicable
16 internal policies and Law, and subject to the provisions of any applicable grant or sponsored
17 research agreement.

18 10.2.2 Rights and Obligations of Lead Institution. The Lead Institution, in
19 consultation with the other Joint-Owner Parties pursuant to Sections 10.2.3 and 10.2.5: (i) shall
20 initiate and control the filing, prosecution and maintenance of copyright applications and
21 registrations, patent applications and patents, registrations and other protective measures
22 concerning the Jointly-Owned IP, at the Lead Institution's expense (and subject to Section
23 10.5.5), provided that the other Joint-Owner Parties hereby retain the right to review and approve
24 any such applications or registrations prior to filing; and (ii) will have the exclusive right to
25 manage the commercialization of the Jointly-Owned IP (such as licensing, assignment (subject to
26 Section 20.3), joint venture or spin-off of a solely owned company), including full authority to
27 negotiate and conclude such arrangements on behalf of all the Joint-Owner Parties, without
28 obtaining the other Joint Owner Party(ies)'s prior approval of specific terms and conditions,
29 subject to the terms set forth in this Agreement, any third party contracts and grants, and
30 applicable Law.

31 10.2.3 Commercialization of Jointly-Owned IP. To promote flexibility, TGen
32 will seek to qualify as an "organization which has as one of its primary functions the
33 management of inventions" as that phrase is used in the Bayh-Dole Act, 35 U.S.C. §202
34 (c)(7)(A). The Lead Institution will use its Best Efforts to ensure that each agreement entered
35 into by the Lead Institution for the commercialization of Jointly-Owned IP:

- 36 (a) shall be commercially reasonable and shall include provision for the
37 payment of reasonable royalties or other reasonable compensation;
- 38 (b) shall require a regular accounting to the Lead Institution of revenues and
39 other amounts payable in connection with the grant of rights in the Jointly-
40 Owned IP, and shall include a right to audit;

- 1 (c) shall not violate any existing contract of any of the joint owners of the
2 Jointly-Owned IP of which the Lead Institution has notice;
- 3 (d) shall reserve on behalf of ABOR and the other Joint Owner Party/ies (a
4 royalty-free license to use the Jointly-Owned IP in connection with
5 education and research (without sublicensing, other than in connection
6 with non-commercial experimental use and collaborative research
7 involving non-profit or educational institutions), and the right to make the
8 Jointly-Owned IP public through publication or presentation, consistent
9 with the provisions set forth in Sections 10.4.6 and 16 below.

10 The Lead Institution shall promptly report to the other Joint Owner Party/ies on any material
11 deviation from these principles prior to concluding such agreement, and shall not conclude such
12 agreement without the written approval of the other Joint Owner Party/ies with respect to all
13 such non-conforming terms and conditions.

14 10.2.4 Lead Institution Not Subject to Other Party's Technology Transfer Policy.
15 As a joint owner of Jointly-Owned IP, the Lead Institution shall not be considered to be a "Patent
16 Management, Technology Management or Technology Development Entity," as contemplated
17 by ABOR Technology Transfer Policy 6-909.10C, nor shall Lead Institution be considered a
18 "technology management agent or firm" pursuant to TGen's Intellectual Property policy; and
19 therefore the Lead Institution shall not be subject to the policies of any other Party/ies applicable
20 to technology transfer.

21 10.2.5 Consultation With Co-Owners. The Lead Institution will consult with the
22 other institution(s) that participated in the development of the Jointly-Owned IP regarding
23 commercialization to a reasonable extent or as specifically provided in a Project Summary. If
24 the parties fail to enter into a Project Summary, then all Joint Owners shall be deemed to have
25 agreed to commercialize the Jointly-Owned IP, subject to the other terms and conditions of this
26 Agreement applicable to such commercialization.

27 10.2.6 Ownership Interests Unaffected. Parties shall have ownership interests
28 and rights to Net IP Revenues as determined pursuant to Section 10.4 below, without regard to
29 which institution is the Lead Institution.

30 **10.3 Disclosure; Government and Sponsor Rights.**

31 10.3.1 Disclosures. TGen-Employed Faculty, University-Employed Faculty, and
32 Independent Contractors (as defined below in this section) retained by a Party in connection with
33 research projects hereunder, will be required by their respective employers or contracting Parties
34 to make disclosures of intellectual property in accordance with Law and the policies of such
35 employer (or of the institution retaining the Independent Contractor), and to disclose promptly to
36 their employer (or, in the case of an Independent Contractor, to the Party retaining the
37 Independent Contractor) all inventions and other intellectual property developed in the course of
38 their employment or other work for such Party, whether or not such intellectual property is
39 patentable. An "Independent Contractor" is an individual who performs work or research for

1 one or more Parties, but who is not, with respect to such activity, subject to the Party/ies'
2 direction as an employer, and as used in this Section 10, such term excludes those independent
3 contractors retained by an external sponsor or other unaffiliated third party involved in the work
4 or research.

5 **10.3.2 Notification of Parties.** The institution to which disclosure is made under
6 Section 10.3.1 will promptly advise the other Party (*i.e.*, TGen will advise each University
7 involved in the applicable research project, and vice versa) of the disclosure of any Covered IP
8 and identify any trade secret information included in such disclosure as "Confidential
9 Information"; provided, however, that in the case of Covered IP that is not Jointly-Owned IP but
10 is owned by a Party pursuant to Section 10.4.4(a) or (b), such notification shall be subject to any
11 additional protective measures as may be required by the owner in order to prevent the possible
12 loss of intellectual property protection through improper disclosure; and, without limitation of
13 the foregoing, each Party that receives such disclosure of Covered IP shall treat such disclosure
14 as Confidential Information pursuant to Section 16. Notification by TGen to the Universities
15 shall be sent to the attention of the office or entity charged with managing each University's
16 intellectual property (*i.e.*, University of Arizona, to Director, Office of Technology Transfer;
17 Arizona State University, to the Chief Executive Officer of Arizona Technology Enterprises; and
18 Northern Arizona University, to the Associate Provost for Research and Graduate Studies); and
19 notification by a University to TGen shall be sent by such office or entity to the attention of
20 TGen's Director of Technology Transfer.

21 **10.3.3 Government and Sponsor Rights.** Certain Covered IP may be subject to
22 the rights of external sponsors or federal or state agencies that support the Principal
23 Investigator's laboratory and work in the field of research. Each Party involved in a research
24 project shall inform the other Party of the ownership or use rights of any sponsor or government
25 agency when it provides any disclosure required hereunder (*i.e.*, TGen will so advise each
26 University involved in the applicable research project, and vice versa).

27 **10.4 Ownership of Covered IP.**

28 **10.4.1 Assignment of Rights.** Subject to the provisions of this Agreement
29 regarding revenue-sharing, TGen will require its employees and Independent Contractors
30 performing any work under this Agreement (including but not limited to TGen-Employed
31 Faculty) to assign to TGen all rights to any Covered IP developed by such individuals in the
32 course of their employment by (or work for) TGen. Subject to the provisions of this Agreement
33 regarding revenue-sharing, each University will require its employees and Independent
34 Contractors performing any work under this Agreement (including but not limited to University-
35 Employed Faculty) to assign to their respective University all rights to any Covered IP developed
36 by such individuals in the course of their employment by (or work for) the University.

37 **10.4.2 Internal Distribution of Proceeds.** TGen and each University shall
38 maintain an intellectual property policy that provides a clear process for determining in each case
39 the portion (if any) of that Party's share of Net IP Revenues that will be offered to any author or
40 inventor of Covered IP (as determined by the U.S. Copyright or Patent Laws), to any author's or
41 inventor's academic Department (where applicable), and other internal institutional stakeholders.

1 10.4.3 Participation in For-Profit Ventures. TGen and each University shall
2 maintain an intellectual property policy that provides a clear process for determining in each case
3 whether and under what conditions such Party, its employed authors and inventors or others may
4 receive equity participation in for-profit ventures arising from their research or work.

5 10.4.4 Ownership Principles. Ownership of Covered IP shall be determined
6 based on the following.

- 7 (a) **“TGen Owned IP”** is Covered IP (as defined in Section 10.1 above)
8 created, conceived of or reduced to practice or writing or first fixed in a
9 tangible medium of expression solely by TGen-Employed Faculty (or by
10 other TGen employees or Independent Contractors retained solely by
11 TGen) in the course of or as a direct result of research conducted pursuant
12 to this Agreement, without any University employee (or Independent
13 Contractor retained solely by any University) qualifying as a co-inventor
14 or joint author of the Covered IP under applicable U.S. patent or copyright
15 law, *and* with no significant use of Resources (as defined in Section
16 10.4.4(h) below) of any University. TGen Owned IP shall remain the sole
17 and exclusive property of TGen, and will be subject to TGen intellectual
18 property and technology transfer policies. ABOR and the Universities
19 (and their employees) shall have no title or claim to such TGen Owned IP,
20 except as expressly provided for herein or in a separate written agreement.
- 21 (b) **“University Owned IP”** is Covered IP (as defined in Section 10.1 above)
22 that is owned by ABOR, on behalf of one or more University/ies, and that
23 is created, conceived of or reduced to practice or writing or first fixed in a
24 tangible medium of expression solely by University-Employed Faculty (or
25 by other University employees or Independent Contractors retained solely
26 by University) in the course of or as a direct result of research conducted
27 pursuant to this Agreement, without any TGen employee (or Independent
28 Contractor retained solely by TGen) qualifying as a co-inventor or joint
29 author of the Covered IP under applicable U.S. patent or copyright law,
30 *and* with no significant use of Resources (as defined in Section 10.4.4(h)
31 below) of TGen. TGen (and its employees) shall have no title or claim to
32 such University Owned IP, except as expressly provided for herein or in a
33 separate written agreement.
- 34 (c) **“Jointly-Owned IP”** is Covered IP (as defined in Section 10.1 above)
35 created, conceived of or reduced to practice or writing, or first fixed in a
36 tangible medium of expression by both TGen-Employed Faculty (and/or
37 other TGen employees or Independent Contractors) and University-
38 Employed Faculty (and/or other University employees or Independent
39 Contractors) in the course of or as a direct result of research conducted
40 pursuant to this Agreement; provided that to qualify as Jointly-Owned IP:
41 (i) there must be at least one inventor or author of such Covered IP (as
42 defined under applicable U.S. patent or copyright law) who is an

1 employee of (or Independent Contractor retained for purposes of the
2 research by) TGen and at least one inventor or author of such Covered IP
3 who is an employee of (or Independent Contractor retained for purposes of
4 the research by) a University or (ii) section 10.4.4 (d) applies. Jointly-
5 Owned IP shall be owned by TGen on the one hand, and by ABOR on
6 behalf or one or more University/ies, on the other as "joint owners" as
7 such term is defined under the applicable U.S. patent and/or copyright
8 Laws. Jointly-Owned IP shall be owned equally by each JointOwner
9 Party, unless a different percentage of ownership is agreed to in writing by
10 TGen on the one hand, and ABOR and all Universities on whose behalf
11 ABOR is the owner of record, on the other. A "**Joint-Owner Party**" for
12 purposes of this Section 10 shall be defined as TGen and each University
13 involved in the research (on whose behalf ABOR is the owner of record)
14 that results in Jointly-Owned IP (collectively, the "**Joint-Owner Parties**").

- 15 (d) **Covered IP Developed by a Party Through Significant Use of the**
16 **Other Party's Resources.** Notwithstanding any other provision of this
17 Section 10.4.4, with respect to Covered IP that would otherwise be
18 considered "TGen Owned IP" or "University Owned IP" but for the
19 significant use of the other Party's Resources (as defined in Section
20 10.4.4(a) above), such Covered IP shall be considered Jointly-Owned IP
21 unless otherwise agreed by TGen and the applicable University(ies) in
22 writing at the commencement of the research project leading to the
23 creation of such Covered IP.
- 24 (e) "**Gross IP Revenues**" means all revenues including sales revenues,
25 royalties, current or future equity, or other interests, options, licensing fees,
26 "milestone payments," or other remuneration or things of value received
27 by a Party hereto from third parties as consideration for the grant of rights
28 in Jointly-Owned IP, and all infringement damages awards received by a
29 Party attributable to the Jointly-Owned IP (but shall *not* include amounts
30 received as research funding, provided that the research funding only
31 includes cost plus reasonable and customary overhead rates).
- 32 (f) "**Costs**" means all direct, out-of-pocket costs reasonably incurred, and not
33 otherwise reimbursed in connection with: obtaining, maintaining,
34 licensing or conveying, defending in litigation or otherwise, such Jointly-
35 Owned IP rights substantially for the benefit of all owners thereof, and any
36 actions specifically undertaken in connection with the licensing or other
37 commercialization of the Jointly-Owned IP. Costs shall expressly exclude
38 research costs, overhead and other indirect costs unless otherwise agreed
39 to in writing by the Joint Owner Parties.
- 40 (g) "**Net IP Revenues**" means Gross IP Revenues less: (i) all Costs; and (ii)
41 the Lead Institution's technology licensing fee pursuant to Section 10.6,

1 which fee shall be calculated as a percentage of the difference between
2 Gross IP Revenues and Costs.

- 3 (h) “**Resources**” shall mean those resources of a Party that significantly
4 contribute to the creation of Covered IP, *and* which are either (i) the result
5 of the intellectual efforts of that Party’s employees or Independent
6 Contractors or (ii) involve use of facilities embodying substantial
7 intellectual property of that Party’s employees or Independent Contractors,
8 and the use of which is not customarily made available by that Party to
9 third parties solely on a fee for service or cost recovery basis. The
10 determination of whether such Resources are or are not used, and whether
11 a resource made available by one Party to another Party pursuant to
12 Section 5.4(2) or Section 6 is or is not the kind customarily made available
13 solely on a fee for service or cost recovery basis, shall be made prior to the
14 commencement of the research and concurrent with the Parties’ agreement
15 on the Project Summary and associated budget, or pursuant to
16 amendments thereto mutually agreed by the Parties.

17 Except as otherwise specified herein or by the processes set forth herein, no Party grants any of
18 its intellectual property rights to any other Party, and each Party retains all of its intellectual
19 property ownership rights.

20 10.4.5 Publication Rights Related to Jointly- Owned IP. Unless otherwise
21 expressly agreed in writing by the Joint Owner Parties and by the Principal Investigator with
22 respect to any specific research project that involves Jointly-Owned IP, and subject to the pre-
23 publication review procedures in Section 10.4.6 and the provisions of Section 10.12, the Joint-
24 Owner Parties of Jointly-Owned IP each shall have the right to present at international, national
25 or regional professional meetings or symposia, and to publish in journals, theses or dissertations,
26 or otherwise publish in the manner of their choosing (consistent with the publishing Party’s
27 applicable policies and prevailing academic standards), methods, information and data resulting
28 from or gained in pursuing a research project giving rise to Jointly-Owned IP.

29 10.4.6 Pre-Publication Review. Prior to the publication or other public
30 presentation of any methods, information or data resulting from or gained in pursuing a research
31 project hereunder that gives rise to Jointly-Owned IP, the Joint-Owner Party wishing to publish
32 or present (herein, the “**Publisher**”) shall comply (and shall cause its PI and other employees
33 involved in the research to comply) with the following procedures:

- 34 (a) In order to avoid improper disclosure of Confidential Information or loss
35 of patent or other intellectual property protection through public disclosure
36 of said information, the Publisher will furnish the other Joint Owner
37 Party/ies with copies of any proposed publication or presentation at least
38 thirty (30) days in advance of such proposed publication or public
39 presentation;
- 40 (b) The other Joint Owner Party/ies shall have thirty (30) days after receipt of
41 said copies to object to such proposed public dissemination; in which

1 event the Publisher shall refrain from making such publication or
2 presentation for such reasonable time (not to exceed ninety (90) days,
3 except that a reasonable, limited extension may be agreed upon by the
4 Joint Owner Party/ies in exceptional circumstances) as required for the
5 other Joint Owner Party/ies to file the appropriate patent application or to
6 take other appropriate measures to protect intellectual property interests;

- 7 (c) The Joint Owner Party/ies shall have the right to require that any
8 information it/they can substantiate as being proprietary (other than their
9 proprietary interest in the Jointly-Owned IP) or Confidential Information
10 of such Party/ies be deleted from the materials published or presented to
11 third parties by the Publisher, or that portions thereof be rewritten so as to
12 protect the Joint-Owner Party/ies' proprietary rights and Confidential
13 Information.

14 **10.4.7 Access to Data.** Data generated under this Agreement shall be the
15 property of the institutional Party or Parties that created the data. Except as may be prohibited by
16 Law or otherwise as agreed to in writing by the Parties, all Parties participating in research will
17 have access to all data arising from it, subject to applicable requirements for the treatment of
18 Confidential Information as set forth in this Agreement.

19
20
21 **10.4.8 Distribution of Revenues.**

- 22 (a) TGen shall have the right to retain (and internally distribute,
23 pursuant to Section 10.8) all revenues derived solely from all TGen
24 Owned IP, unless it agrees otherwise in writing in a given case.
- 25 (b) Each University shall have the right to retain (and internally
26 distribute, pursuant to Section 10.8) all revenues derived solely
27 from that institution's University-Owned IP, unless it agrees
28 otherwise in writing in a given case.
- 29 (c) With respect to Jointly-Owned IP, the Joint Owner Parties shall
30 share in and receive distributions of Net IP Revenues equally,
31 unless a different royalty distribution has been agreed to in writing.
- 32 (d) The Lead Institution will issue reports to the other Joint Owner
33 Parties regarding the commercialization of Jointly-Owned IP,
34 along with reports regarding the payment of all Costs and the
35 distributions of Net IP Revenue. Such reports shall be issued (and
36 such distributions shall be made) on a schedule consistent with the
37 Lead Institution's policies, but no less often than annually.

38 **10.5 Lead Institution Technology Licensing Fee.** For its indirect expenses and
39 efforts in managing the patenting/copyrighting and commercialization process with respect to

1 any Jointly-Owned IP, the Lead Institution in each case shall be entitled to a reasonable fee to be
2 negotiated, but not exceeding 15% of the difference between Gross IP Revenues and Costs.

3 **10.6 Maintenance of Records.** For the term of any related patent or copyright, but in
4 no event less than five (5) years, the Lead Institution shall maintain accurate records (in
5 accordance with generally accepted accounting principles for such organizations and applicable
6 Law), of the Costs incurred by the Lead Institution (and as applicable, by other Joint Owner
7 Parties of which the Lead Institution has notice), and Gross IP Revenues received, in connection
8 with all Jointly-Owned IP. Prior to incurring material costs, which it will or may seek to treat as
9 Costs hereunder, the Joint-Owner Party that is not the Lead Institution will consult with the Lead
10 Institution and then shall seek in good faith to agree on the appropriate treatment of such costs,
11 subject (in the event of any Dispute) to Section 19. Each Joint-Owner Party hereto, and ABOR,
12 shall have the right, as to any Jointly-Owned IP in which it has an ownership interest, to inspect
13 the Lead Institution's and other Joint Owner Parties' records with respect to such Jointly-Owned
14 IP, upon reasonable advance notice.

15 **10.7 Internal Distribution.** TGen and each University (a) shall be responsible for
16 distributing a portion of its respective share of Net IP Revenues to its own employed authors and
17 inventors to the extent required by that institution's applicable policies and contracts and (b) may
18 distribute the other portions of that institution's share of Net IP Revenues internally to authors
19 and inventors, other participating scientists, staff, a Department, other institutional stakeholders,
20 or the institution itself as it deems proper under its own policies and applicable Law.

21 **10.8 Compliance With Intellectual Property Policies.** TGen and each University
22 shall require their respective personnel (*e.g.*, TGen-Employed Faculty, University-Employed
23 Faculty, other employees, technical staff, post-graduate students, post-doctoral fellows, other
24 student employees, and Independent Contractors) to comply with the applicable intellectual
25 property policies of the institution that employs them or otherwise retains their services, and with
26 the applicable terms hereof applicable to Covered IP, including the disclosure obligations and the
27 requirement of assignment of rights in any Covered IP to such institution.

28 **10.9 Further Assurances.** TGen and each University will execute such documents
29 and provide such assistance and cooperation as is necessary or reasonably requested by a Party to
30 implement this Section 10, and will, when needed or reasonably requested, use its Best Efforts to
31 obtain the same from its employees, students and Independent Contractors. ABOR and each of
32 the Universities represents to TGen, and TGen represents to ABOR and the Universities, that this
33 Section 10 complies with all of their respective intellectual property and technology transfer
34 policies.

35

1 **11. APPROVAL PROCESS**

2 TGen, on the one hand, and ABOR and each University, on the other, each hereby
3 agrees that it shall use its Best Efforts to complete as promptly as feasible whatever internal
4 processes are required, and obtain whatever approvals are necessary, in order fully to effectuate
5 this Agreement in accordance with its terms.

6 **12. IMPLEMENTATION**

7 Each of the Parties hereto shall take or cause to be taken such further actions,
8 execute waivers or consents, and deliver and file or cause to be executed, delivered and filed
9 such further documents and instruments, and use its Best Efforts to obtain third party consents
10 (including regulatory approvals), as may be reasonably necessary or as may be reasonably
11 requested by a Party in order to fully effectuate the provisions of this Agreement.

12 **13. COORDINATION IN FUNDRAISING**

13 **13.1 Protocol.** The Parties acknowledge that an effective program of development and
14 philanthropy is critical to the long-term success both of TGen as an independent biomedical
15 research institute, and to various specialized biomedical programs of the Universities. Therefore,
16 with due respect for the independent missions of each Party, the Parties agree to use their Best
17 Efforts to develop, no later than March 30, 2004, a mutually acceptable fundraising protocol
18 involving coordination whenever appropriate, with the goal of attracting maximum contributions
19 from donors and expanding their overall fundraising success. This protocol will relate primarily
20 to development efforts within Arizona. It will be respectful of each University's right separately
21 to continue to pursue development opportunities with respect to non-biomedical and non-
22 genomics related missions, and of both TGen's and the Universities' right separately to pursue
23 development opportunities of any kind from sources outside of Arizona.

24 **13.2 Non-Applicability of ABOR/University Policies to TGen Fundraising.**
25 ABOR/University policies on development and gifts will not apply when TGen Employed
26 Faculty (or other TGen employees, directors, officers or contractors) engage in fundraising on
27 behalf of TGen; provided that when engaging in such activities such individuals shall make clear
28 (to the extent there is any reasonable likelihood of confusion) that they are not fundraising on
29 behalf of any University; and provided further that such individuals shall act in a manner
30 consistent with the fundraising protocol described in Section 13.1 of this Agreement.

31 **14. REPORTS AND OTHER INFORMATION**

32 **14.1 Periodic Reports.** TGen shall promptly provide ABOR and each University
33 President with each Annual Report, or more frequent summary of operations, which TGen
34 prepares for distribution to stakeholders. The Annual Report shall include financial statements
35 certified by TGen's outside independent auditors and prepared in accordance with accounting
36 principles generally accepted for similar organizations.

1 **14.2 Examination of Back-Up Documentation.** For good cause arising from any of
2 their rights or interests hereunder, set forth in writing in a request to TGen, ABOR or a
3 University shall have the right to reasonable review of relevant TGen books, documents and
4 records relating to transactions and functions involving faculty or otherwise arising under this
5 Agreement; provided that provision of such information may be conditioned upon appropriate
6 arrangements to ensure that if such information is inappropriate for public disclosure (such as
7 proprietary, trade secret information, legal matters and sensitive personnel matters), it will be
8 handled in a manner so that it will not become publicly available, except as provided by Law.

9 **14.3 Inspection and Audit of TGen Records.** To the extent required by law, TGen
10 shall comply with the certified financial and compliance audit provision of A.R.S. §35-181.03
11 and A.R.S. §§35-214, 41-2548 and 41-1279.04. The Parties also shall be subject to the specific
12 information sharing requirements set forth in Sections 10.7 and 18, and to any other records-
13 access provisions contained herein. To the extent required by A.R.S. § 35-214, TGen agrees to
14 retain all records relating to this Agreement and make such records available at all reasonable
15 times for inspection and audit by the Auditor General of the State of Arizona during the Term of
16 this Agreement and for a period equal to the term of any related patent or copyright, but in no
17 event less than five (5) years after the completion of this Agreement. The records shall be
18 provided at Phoenix, Arizona, or another location designated by the Auditor General upon
19 reasonable notice to TGen.

20 **14.3.1 Post-Termination Retention.** If this Agreement is completely or partially
21 terminated, the records relating to the work terminated shall be preserved and made available for
22 a period of five (5) years from the date of any such termination.

23 **14.3.2 Records Relating to Disputes.** Records that relate to disputes, litigation or the
24 settlement of claims arising out of the performance of this Agreement or to cost and expenses
25 under such Subcontract to which exception has been taken by ABOR shall be retained by TGen
26 until such appeals, litigation, claims or exceptions have been finally resolved.

27 **14.4 Public Records.** Section 16 and any other provision of this Agreement to the
28 contrary notwithstanding, the parties acknowledge that ABOR is a public agency, and as such is
29 subject to the Arizona Public Records Act, A.R.S. §§39-121.01, 39-121.02 and 39-121.03. Any
30 provision of this Agreement regarding confidentiality of information or records is limited to the
31 extent necessary to comply with the provisions of State Law. ABOR agrees to keep confidential
32 any and all information and/or documents designated as confidential or proprietary by TGen to
33 the fullest extent permitted by Law, including A.R.S. §15-1640. In the event a public records
34 request is made for information and/or documents designated as confidential or proprietary by
35 TGen, ABOR will notify TGen as soon as possible.

36 **14.5 Enforcing Rights.** Without limiting the other provisions of this Section 14, each
37 Party shall promptly provide to another Party upon request, all information, records or reports
38 which it possesses which are reasonably requested by another Party to monitor or enforce the
39 requesting Party's rights under this Agreement, in the case of production to ABOR, subject to the
40 proviso set forth in Section 14.2.

1 **14.6 New or Changed Policies.** TGen shall promptly make available to and advise
2 ABOR and each University of, and each of them shall promptly make available to TGen and
3 advise it of, any new or changed policies they adopt of which the other might reasonably need
4 notice in order to manage its personnel and facilities or in order to perform its obligations under
5 this Agreement.

6 **15. INSURANCE AND INDEMNIFICATION**

7 **15.1 ABOR and University Insurance.** ABOR and each University provide
8 statutory insurance coverage as provided by State Risk Management pursuant to A.R.S. §§ 41-
9 621 to §§ 41-625.

10 **15.2 ABOR and University Liability.** ABOR and each University each shall bear
11 responsibility for its own wrongful conduct or negligence in connection with or in performance
12 of this Agreement by such Party, its officers, directors, trustees, employees, contractors or agents.

13 **15.3 TGen Insurance.** TGen shall obtain and maintain throughout the Term at its
14 expense in commercially reasonable amounts: (a) property, general liability, automobile liability,
15 and employers' liability insurance coverage for any TGen Facilities; (b) professional liability and
16 workers compensation insurance for the performance by TGen employees of their functions on
17 behalf of TGen; and (c) directors and officers liability insurance. By June 2004, TGen shall
18 obtain, and shall thereafter maintain throughout the Term, at its expense in commercially
19 reasonable amounts, errors and omissions liability insurance for TGen and its officers, directors,
20 trustees, employees and agents. By the earlier of September 2004 and the commencement of
21 clinical trials, TGen shall obtain, and shall thereafter maintain throughout the Term, at its
22 expense in commercially reasonable amounts, professional liability insurance for TGen and its
23 officers, directors, trustees, employees and agents. All insurance required pursuant to this
24 Agreement shall be on an occurrence basis unless a particular type of insurance is not available
25 on an occurrence basis on commercially reasonable terms and is available on commercially
26 reasonable terms only on a claims made basis, in which case such insurance shall include (or
27 subsequently be made to include) "tail" coverage in the event of this Agreement's expiration or
28 termination (provided that tail coverage is available on commercially reasonable terms). Upon
29 request, TGen shall provide to ABOR written documentation evidencing such insurance
30 coverage and its basis for the amount of insurance being commercially reasonable, and any
31 determination that a type of insurance is not available on commercially reasonable terms or that
32 naming an additional insured or loss payee for a type of insurance is not available on
33 commercially reasonable terms or that obtaining any additional insurance required under Section
34 15.3.5 is not commercially reasonable or not available to TGen. For purposes of this Section 15,
35 insurance coverage or features will be deemed "commercially available" or "available on
36 commercially reasonable terms" and obtaining additional coverage will be deemed
37 "commercially reasonable" if such coverage or feature is available at a premium that is not
38 unreasonable or unduly burdensome to TGen given its then-current financial condition and the
39 potential for liability to ABOR and the Universities given TGen's then-current activities.
40 Without limiting any liability or any other obligation of TGen, TGen shall purchase and maintain

1 (and use reasonable efforts to cause its Subcontractors (other than any Subcontractor that is an
2 agency of the State of Arizona) to purchase and maintain where applicable), in a company or
3 companies lawfully authorized to do business in the State of Arizona, and rated at least A VII in
4 the Current A.M. Best's, the minimum insurance coverage below:

5 (i) Directors and Officers Liability (Nonprofit) coverage for \$5,000,000 Each
6 Wrongful Act and \$5,000,000 Aggregate Wrongful Acts, including
7 coverage for all elected and/or appointed positions including outside
8 directors (specifically, but without limitation, any person appointed
9 pursuant to Section 4.1).

10 (ii) Fidelity/Employee Dishonesty coverage (also known as "Crime Policy")
11 for \$2,000,000 naming the State of Arizona and ABOR and the
12 Universities as additional insureds. Such Policy shall include coverage for
13 any third party in custody or control of, or access to, money and securities
14 under this Agreement.

15 (iii) Excess liability coverage for property damage liability, general liability,
16 automobile liability, and employers' liability insurance, in an amount such
17 that the sum of primary and excess coverage is at least \$ 5,000,000.
18

19 15.3.1 Certified Copies. The State of Arizona and ABOR reserve the right to
20 request and receive a binder or certificate of insurance with respect to each policy required
21 hereunder within ten (10) calendar days of execution of this Agreement (and within ten (10)
22 calendar days after each policy renewal) and certified copies of all policies required hereunder as
23 soon after request as reasonably possible.

24 15.3.2 Certificates of Insurance. Certificates of Insurance or binders acceptable to
25 the State of Arizona and ABOR shall be issued and delivered prior to the commencement of this
26 Agreement, and shall identify this Agreement and shall, for coverage under Section 15.3 (other
27 than Directors and Officers Liability, professional liability, errors and omission, workers
28 compensation and property insurance where the State of Arizona and ABOR have no insurable
29 interest in the property), name the State of Arizona and ABOR and the Universities as Additional
30 Insured (or, during any period in which naming an additional insured on a particular type of
31 insurance is not commercially available, then naming the State of Arizona and ABOR and the
32 Universities as loss payee). The certificates, insurance policies and endorsements required
33 hereunder shall contain a provision that coverages afforded will not be canceled until at least
34 thirty (30) days (or sixty (60) days if such provision is commercially available) prior written
35 notice has been given to each University, the State of Arizona and ABOR. All coverages,
36 conditions, limits and endorsements shall remain in full force and effect as required in this
37 Agreement.

38 15.3.3 Noncompliance. Failure on the part of TGen to meet these requirements
39 shall constitute a material breach of contract, upon which the State of Arizona and ABOR may
40 terminate this Agreement pursuant to Section 17 or, at its discretion, after five (5) business days
41 from lapse of coverage, procure or renew such insurance and pay any and all premiums in
42 connection therewith, and all monies so paid by the State of Arizona and ABOR shall be repaid

1 by TGen upon demand, or the State of Arizona and ABOR may offset the cost of the premiums
2 against any monies or disbursements due to TGen.

3 15.3.4 Rights of Recovery. TGen and its insurer(s) providing the required
4 coverages shall waive their rights of recovery against each University, ABOR, the State of
5 Arizona, its Departments, Employees and Officers, Agencies, Boards and Commissions.

6 15.3.5 Changes. If TGen undertakes new material activities which are of a kind
7 not covered by the types of insurance set forth in the preceding subsections of this Section 15.3,
8 or, if the level of risk to the State of Arizona arising from TGen activities, as reasonably
9 determined by any of the Universities, ABOR, or the Arizona Department of Administration,
10 Risk Management Department, materially increases due to a new type of activity, such as
11 through the sponsorship or conduct of clinical trials by TGen, ABOR reserves the right, upon
12 direction from the Arizona Department of Risk Management, to require in writing that TGen
13 obtain additional insurance, provided that (1) obtaining such additional insurance is
14 commercially reasonable and it is available to TGen, and (2) TGen is afforded sixty (60) days, or
15 such longer period as is necessary, to diligently seek and obtain such insurance. In any event,
16 TGen shall notify the Universities of the date TGen expects to commence the sponsorship or
17 conduct of clinical trials by TGen, as soon as reasonably possible after such date becomes known
18 to TGen.

19 **15.4 TGen Indemnification.** TGen hereby agrees to indemnify, hold harmless and
20 defend the State of Arizona, ABOR and each University, and each of their respective officers,
21 directors, trustees, employees, contractors and agents, from and against any and all liability, loss,
22 damages, claims, causes of action and expenses associated therewith (including reasonable
23 attorneys' fees and costs of litigation, which may include reasonably allocated costs of in-house
24 counsel and staff) to the extent caused or asserted to have been caused by any act or omission in
25 connection with or in performance of this Agreement by TGen, its officers, directors, trustees,
26 employees, contractors or agents, including without limitation, any actual or alleged
27 infringement of any United States patents or copyrights arising from TGen's use of any
28 equipment, materials, or information prepared or developed in connection with this Agreement.
29 ABOR shall give TGen written notice of such claim, action, or suit together with full information.
30 ABOR shall cooperate with TGen with regard to any claim, action, or suit. ABOR, acting in its
31 sole discretion, may participate in the defense of any such claim, action, or suit if principles of
32 governmental or public law are involved. However, if ABOR participates it shall not assess its
33 costs or expenses to TGen under this subsection without TGen's written consent.

34 **15.5 Substitution of Equipment, Materials or Information.** If, in the opinion of
35 counsel for TGen or ABOR (on behalf of one or more University), any equipment, materials or
36 information to be made available by one Party to the other hereunder are likely to or do become
37 the subject of a claim of infringement of a United States patent or copyright, then without
38 diminishing TGen's obligations under Section 15.4, or ABOR's obligations under Section 15.2,
39 either such Party may, with the written consent of the other Party, substitute other equally
40 suitable equipment, materials and information, or at the option and expense of such Party, obtain
41 the right for TGen or ABOR to continue the use of such equipment, material and information.

1 **15.6 Survival.** The provisions of Sections 15.2, 15.4 and 15.5 shall survive the
2 expiration or termination of this Agreement.

3 **16. CONFIDENTIAL INFORMATION**

4 In negotiating and performing this Agreement, each Party may become privy to
5 Confidential Information of another Party or Parties. The Parties agree that all Confidential
6 Information and all copies and modifications thereof are the property of the originating Party;
7 that Confidential Information constitutes valuable assets and trade secrets of such Party; and that
8 during and after the Term, each recipient Party shall, except as required by Law or by order of
9 court (in which case a Party shall provide prompt prior notice to the Party whose property the
10 Confidential Information is) or as necessary to perform its obligations or exercise its rights under
11 this Agreement:

- 12 (a) hold such Confidential Information of an originating Party in strict
13 confidence with at least the same degree of care as the recipient Party uses
14 for its own Confidential Information;
- 15 (b) refrain from using such originating Party's Confidential Information except
16 in advancement of the Parties' joint efforts and future cooperation pursuant
17 to the Affiliation;
- 18 (c) limit access to such originating Party's Confidential Information to only
19 those of its employees and agents who need access to such Confidential
20 Information, and, if reasonably requested by the originating Party, require its
21 employees, and agents to execute nondisclosure agreements; and
- 22 (d) refrain from, and instruct its employees and agents to refrain from, directly
23 or indirectly, voluntarily or involuntarily, using, selling, leasing, assigning,
24 transferring, disclosing or otherwise making available any part of such
25 originating Party's Confidential Information to others, except with the
26 written consent of the originating Party.

27 **17. TERM AND TERMINATION**

28 **17.1 Initial Term.** The Initial Term of the affiliation under this Agreement shall be
29 for a period of ten (10) years commencing at the Effective Date hereof, subject to each Party's
30 termination rights as set forth in this Section 17, and in Section 3.1.4, and provided that: (a) the
31 Universities' funding commitments set forth in Section 6 are for five years only, and (b) there is
32 no assurance of, but the Universities and ABOR will make reasonable efforts to arrange, funding
33 hereunder after such initial five-year period.

34 **17.2 Successive Terms.** ABOR (on behalf of itself and one or more of the
35 Universities) and TGen may elect to renew this agreement for successive five (5) year Terms by

1 providing each other with written notice of its decision to renew, at least one hundred eighty
2 (180) days prior to the end of any then-current Term. If either ABOR or TGen does not provide
3 notice of intent to renew, then this Agreement shall terminate at the end of the then-current Term
4 (subject to earlier termination as provided herein).

5 **17.3 Termination By TGen.**

6 17.3.1 Total Termination. TGen may terminate this Agreement in its entirety
7 upon written notice to ABOR and each University if ABOR breaches any material obligation
8 under this Agreement (including but not limited to the funding obligations set forth in Section 6);
9 provided, however, that the right to terminate under this Section 17.3.1 shall not become
10 effective in such instance: (a) if ABOR promptly seeks to cure such event and diligently pursues
11 cure, and does cure such event within ninety (90) days; provided, however, that if such breach is
12 not curable by the payment of money, does not involve an immediate threat to health or safety,
13 and cannot reasonably be cured within ninety (90) days (but is reasonably susceptible of cure),
14 the right to terminate hereunder shall not become effective if the defaulting party commences
15 such cure within the ninety (90) day period and thereafter diligently and continuously prosecutes
16 same to completion (and satisfies requests for evidence of diligent and continuous prosecution of
17 cure) and continues to perform for all of its other obligations hereunder during such period,
18 unless otherwise resolved pursuant to the Dispute Resolution procedure described in Section 19.

19 17.3.2 Termination as to University. TGen may terminate this Agreement as to a
20 particularly University if that University breaches any material obligation under this Agreement;
21 provided, however, that the right to terminate under this Section 17.3.2 shall not become
22 effective in such instance: (a) if the University promptly seeks to cure such event and diligently
23 pursues cure, and does cure such event within ninety (90) days; provided, however, that if such
24 breach is not curable by the payment of money, does not involve an immediate threat to health or
25 safety, and cannot reasonably be cured within ninety (90) days (but is reasonably susceptible of
26 cure), the right to terminate hereunder shall not become effective if the defaulting party
27 commences such cure within the ninety (90) day period and thereafter diligently and
28 continuously prosecutes same to completion (and satisfies requests for evidence of diligent and
29 continuous prosecution of cure) and continues to perform for all of its other obligations
30 hereunder during such period, unless otherwise resolved pursuant to the Dispute Resolution
31 procedure described in Section 19.

32 **17.4 Termination by ABOR.** ABOR, on behalf of itself and all Universities, may
33 terminate this Agreement in its entirety upon written notice to TGen if:

34 (a) TGen breaches any material obligation under this Agreement; provided,
35 however, that the right to terminate under this Section 17.4 shall not become
36 effective in such instance: if TGen promptly seeks to cure such event and
37 diligently pursues cure, and does cure such event within ninety (90) days;
38 provided, however, that if such breach is not curable by the payment of
39 money, does not involve an immediate threat to health or safety, and cannot
40 reasonably be cured within ninety (90) days (but is reasonably susceptible of
41 cure), the right to terminate hereunder shall not become effective if the

1 defaulting party commences such cure within the ninety (90) day period and
2 thereafter diligently and continuously prosecutes same to completion (and
3 satisfies requests for evidence of diligent and continuous prosecution of cure)
4 and continues to perform for all of its other obligations hereunder during
5 such period, unless otherwise resolved pursuant to the Dispute Resolution
6 procedure described in Section 19.

7 (b) TGen fails to maintain the insurance coverage required pursuant to
8 Section 15.3 above for the duration of this Agreement, unless any such
9 failure or lapse is cured without actual prejudice to ABOR within ten (10)
10 business days from lapse of coverage, or there is a Dispute involving the
11 level of coverage required, which shall be resolved pursuant to Section 19.

12 (c) TGen loses its status as a tax-exempt organization under I.R.C. Section
13 501(c)(3).

14 (d) TGen is unable to pay its debts when due; or the existence of a general
15 assignment made by TGen for the benefit of its creditors; or upon the filing
16 by or against TGen of a voluntary or involuntary petition in bankruptcy; or
17 upon the appointment of a receiver or the commencement under any law
18 relating to bankruptcy, insolvency, reorganization or relief of debtors, or
19 proceedings for the composition, extension, arrangement or adjustment of
20 any of TGen's obligations (unless any of the foregoing are promptly
21 dismissed or resolved); or upon the suspension or discontinuance of TGen's
22 business.

23 (e) Given that ABOR's and the Universities' performance hereunder is
24 dependent upon the appropriation of funds by the Legislature of the State of
25 Arizona, and should the Legislature fail to appropriate the funds necessary to
26 allow ABOR or a University to fulfill its obligations hereunder as determined
27 by ABOR or the affected University, ABOR (on its own behalf or behalf of
28 one or more of the affected Universities) may terminate this Agreement
29 without any further obligation upon ABOR or the affected University, as
30 applicable, provided that ABOR shall use its Best Efforts to reallocate or
31 allocate funds so as to fulfill to the fullest extent possible its obligations
32 hereunder. ABOR agrees to notify TGen as soon as reasonably possible after
33 the unavailability of said funds comes to ABOR's attention, and ABOR may
34 terminate within 90 days thereafter upon written notice to TGen, provided
35 that this shall not reduce ABOR's or the University's obligation to fund costs
36 and expenses previously and duly incurred for the then-applicable Arizona
37 fiscal year by TGen in reliance upon any ABOR or University funding
38 commitment and which ABOR has agreed to pay in accordance with other
39 provisions of this Agreement.

40 (f) This Agreement is subject to the provisions of ARS 38-511, and ABOR (on
41 behalf of one or more of the Universities) may cancel this Agreement if any
42 person significantly involved in negotiating, drafting, securing or obtaining

1 this Agreement for or on behalf of ABOR or any University becomes an
2 employee or a consultant to TGen with reference to the subject matter of this
3 Agreement while this Agreement or any extension thereof is in effect.

4 **17.5 Termination By A University.** A University may terminate this Agreement
5 specifically as to its affiliation with TGen on the same basis as ABOR is permitted to terminate
6 under Section 17.4 above, but only with the prior written consent of ABOR.

7 **17.6 Effect of Termination.** Prior to the effective date of expiration or termination
8 (entirely or as to some Parties) of this Agreement for any reason, ABOR, the affected University
9 or Universities, and TGen shall agree upon a plan to effectuate the orderly termination of
10 functions, and to novate or transfer sponsored research as necessary to resolve any outstanding
11 financial, operational, clinical or other issues (the "**Transition Plan**"). Each Party shall provide
12 to the other a level of support, cooperation and access to records reasonably sufficient to
13 complete and implement such Transition Plan and to satisfy each Party's duties and obligations
14 thereunder.

15 **17.7 Remedies.** In the event of any material breach hereof which is uncured during
16 the cure periods provided in Sections 17.3 and 17.4, the nonbreaching party may, (i) terminate
17 this Agreement upon written notice to the other Party, and (ii) to the extent permitted by Law and
18 not prohibited by Section 19, take whatever action at law or in equity as may appear necessary or
19 desirable.
20

21 **17.8 Attorneys' Fees and Other Expenses.** If any legal action becomes necessary
22 pursuant to this Agreement, reasonable attorneys' fees and other expenses as may be fixed and
23 awarded by the court in accordance with A.R.S. §§12-341.01 and 12-348.

24 **18. SUBCONTRACTS**

25 **18.1 No Subcontract Without Compliance With Conditions.** "**Subcontract**" means
26 any contract between TGen and a third party to provide or be accountable for providing any
27 material part of the performance, which TGen has itself contracted with ABOR to perform or
28 provide under this Agreement, and for which the third part indirectly receives state funds under
29 this Agreement. The books, accounts, reports, files, and other records of any other party to a
30 Subcontract ("**Subcontractor**") shall be subject to inspection, audit, and production to the extent
31 required by A.R.S. §§ 35-214 (A). TGen shall not enter into a Subcontract unless such
32 Subcontract is in a written agreement that (a) requires the Subcontractor's compliance with
33 applicable federal and State Laws, and (b) provides, to the extent required by A.R.S. §§ 35-214,
34 that all books, accounts, reports, files and other records relating to the Subcontract are subject to
35 such inspection, audit and production for a period ending five (5) years after completion or
36 termination of the Subcontract.

37 **18.1.1 TGen Primary Liability.** TGen is responsible for the performance of this
38 Agreement without regard to whether Subcontractors are used.

1 18.1.2 Accounting Procedures. TGen shall maintain a system of accounting
2 procedures and controls, which permit inspection, audit and production of all Subcontracts to the
3 extent required by A.R.S. §§35-214.A and 41-2548(B).

4 **18.2 Preservation of Records.** TGen shall preserve and make available to ABOR and
5 its auditors all records required under Section 18.1 for a period of five (5) years from the date of
6 final payment under the Subcontract and for such period as is required by any other paragraph of
7 this Agreement, including the following:

8 18.2.1 Post-Termination Retention. If any Subcontract is completely or partially
9 terminated, the records relating to the work terminated shall be preserved and made available for
10 a period of five (5) years from the date of any such termination.

11 18.2.2 Records Relating to Disputes. Records that relate to disputes, litigation or
12 the settlement of claims arising out of the performance of any Subcontract or to cost and
13 expenses under such Subcontract to which exception has been taken by ABOR shall be retained
14 by TGen until such appeals, litigation, claims or exceptions have been finally resolved.

15 **19. DISPUTE RESOLUTION**

16 **19.1 Informal Resolution.** If any Party believes there is a Dispute, the Parties will
17 attempt to resolve it promptly by discussion between management of the relevant Parties. If the
18 Dispute cannot be resolved thereby within a reasonable period of time, then any Party may
19 submit the Dispute to mediation as provided in Section 19.2; and if the relevant Parties still are
20 unable to resolve the Dispute within a reasonable time, then any Party may submit the Dispute to
21 arbitration as provided in Section 19.3. The existence and details of a Dispute notwithstanding,
22 the Parties shall, pending the completion of the Dispute Resolution procedures described in this
23 Section 19, continue without delay the performance of their other obligations under this
24 Agreement.

25 **19.2 Mediation.** In the event that the dispute is not resolved under Section 19.1, the
26 Parties may agree to submit the dispute to non-binding mediation (the "Mediation"). In that
27 event, the Parties will endeavor to appoint a mutually agreeable neutral mediator (the
28 "Mediator"). If the parties are unable to agree on a Mediator within ten (10) days after the
29 Mediation is agreed to, either Party may refer the matter to the Phoenix office of the American
30 Arbitrators Association ("AAA") in an effort to settle the dispute by mediation administered by
31 the AAA under its Commercial Mediation Rules.

32 **19.3 Arbitration.** Notice is provided of A.R.S. §§ 12-1518 and 12-133. Except as
33 specifically provided therein and elsewhere in this Agreement, any Dispute arising out of or in
34 connection with this Agreement that is not resolved pursuant to Section 19.1 or 19.2 shall be
35 submitted by any Party (or all Parties) to binding arbitration applying the provisions of the
36 Arizona Uniform Arbitration Act, ARS §§ 12-1501, *et seq*, which rules shall govern the
37 interpretation, enforcement and proceedings pursuant to this Section. Arbitration shall be
38 initiated by any Party (or all Parties) by written notice of intent to arbitrate, which notice shall

1 include a statement of the nature of the dispute, the amount involved, if any, and the remedy
2 sought. The dispute shall then be submitted to an arbitrator mutually selected by TGen and the
3 relevant University/ies. To the extent feasible, the involved Parties shall select an arbitrator with
4 experience in the issues submitted for arbitration (*e.g.*, expertise in intellectual property, if the
5 dispute involves the intellectual property provisions of this Agreement; or expertise in the
6 operation and management of medical research, if the dispute involves such issues). If the
7 Parties are unable to agree upon an arbitrator within seven (7) calendar days, then the arbitrator
8 shall be selected in the manner provided for by the Arizona Uniform Arbitration Act. The
9 arbitrator and the involved Parties shall schedule a hearing promptly and the arbitrator shall
10 render a decision no more than sixty (60) days after such arbitrator's selection. Any decision and
11 award of the arbitration shall be final, binding and conclusive upon the involved Parties except as
12 otherwise provided by A.R.S. §§ 12-1512 and 12-1513. Any arbitration shall occur in the City
13 of Phoenix. Judgment on the arbitration award may be entered in any court having jurisdiction
14 thereof.

15 20. MISCELLANEOUS PROVISIONS.

16 **20.1 Binding Effect; Benefit.** This Agreement shall be binding upon and inure to the
17 benefit of the Parties hereto, and their successors and permitted assigns. It is the explicit
18 intention of the Parties hereto that no person (such as a faculty member or other person) or entity
19 other than such Parties (or their successors or permitted assigns) is or shall be entitled to bring
20 any action to enforce any provision of this Agreement against any of the Parties, as a third party
21 beneficiary or otherwise. The covenants, undertakings, and agreements set forth in this
22 Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties and
23 their respective successors and permitted assigns. No third party shall rely upon or derive any
24 claim of any kind from this Agreement.

25 **20.2 Entire Agreement; Amendment; Priority.** This Agreement contains the entire
26 agreement between the Parties relating to the subject matter herein. All prior proposals,
27 discussions and writings by and among the Parties relating to the subject matter herein are
28 superseded by this Agreement. This Agreement may not be amended unless such amendment is
29 in writing, signed by duly authorized representatives of TGen and ABOR, and recites
30 specifically that it is an amendment to this Agreement.

31 **20.3 Assignment.** ASU shall be entitled to assign all IP in which it has any interest
32 and to delegate all its obligations with respect to the management of IP protection and
33 commercialization process to Arizona Science and Technology Enterprises. Except as provided
34 in the preceding sentence, no Party shall sell, delegate, transfer or assign (including by operation
35 of Law) its interest in this Agreement, or any of its rights or obligations hereunder, without (a)
36 providing reasonable prior written notice to the other Party(ies), and (b) obtaining the prior
37 written consent of the other Party(ies), which consent shall not unreasonably be withheld. TGen
38 acknowledges that the structure and purposes of TGen are material to this Agreement and
39 accordingly, any event defined in Section 3.3.3(a) hereof is for practical purposes a prohibited
40 assignment of the rights and responsibilities set forth in this Agreement. In the event of any

1 prohibited assignment, no voluntary or involuntary assignee or successor in interest of TGen
2 shall acquire any rights or powers under this Agreement. A mere change of name of TGen or
3 other non-structural developments such as expansion of its Board shall not be deemed a
4 prohibited assignment.

5 **20.4 Waiver.** No Party's delay or failure to exercise any right, power or privilege
6 under this Agreement or under any other instrument given in connection with or pursuant to this
7 Agreement shall impair any such right, power or privilege or be construed as a waiver of any
8 event of default hereunder or any acquiescence therein. No single or partial exercise of any such
9 right, power or privilege shall preclude the further exercise of such right, power or privilege, or
10 the exercise of any other right, power or privilege. No waiver shall be valid against any Party
11 unless made in writing and signed by an authorized officer of the Party against whom
12 enforcement of such waiver is sought and then only to the extent expressly specified therein.

13 **20.5 Severability.** If either (a) a court of competent jurisdiction holds that a particular
14 provision or requirement of this Agreement violates any applicable Laws or (b) a government
15 agency with jurisdiction definitively advises the Parties that a feature or provision of this
16 Agreement violates Laws over which such agency has jurisdiction, then each such provision,
17 feature or requirement shall be fully severable and: (1) this Agreement shall be construed and
18 enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof;
19 (2) the remaining provisions hereof that reasonably can be given effect apart from that which is
20 invalidated shall remain in full force and effect and shall not be affected by the severable
21 provision; and (3) the Parties shall in good faith negotiate and substitute a provision as similar to
22 such severable provision as may be possible and still be legal, valid and enforceable. If the
23 effect of such severance and the inability to agree upon substitution would be to deprive a Party
24 materially of the benefits contemplated under this Agreement, then either Party may terminate
25 this Agreement by giving thirty (30) days' written notice to the other Party or such greater period
26 of time as is acceptable to such court or governmental agency and is necessary to provide for an
27 orderly transition under a Transition Plan.

28 **20.6 Governing Law.** This Agreement has been entered into in the State of Arizona,
29 and its interpretation, its construction, and the remedies for its enforcement or breach are to be
30 applied in accordance with the Laws of the State of Arizona (excluding the choice of law rules
31 thereof).

32 **20.7 Notices.** All notices, requests, demands, waivers, consents and other
33 communications hereunder shall be in writing, shall be delivered either in person, by overnight
34 air courier, by certified, registered or express mail, or transmitted by confirmed facsimile
35 followed by first class mail, postage prepaid, and shall be deemed to have been duly given and to
36 have become effective (a) upon receipt if delivered in person or by electronic means, including
37 by confirmed facsimile as described above, arriving on any business day prior to 6:00 p.m. local
38 time at the address of the addressee, or on the next succeeding business day if delivered on a
39 non-business day or after 6:00 p.m. local time, (b) one business day after having been delivered
40 to an air courier for overnight delivery, or (c) three (3) business days after having been deposited
41 in the mails as certified, registered or express mail, return receipt requested, all fees prepaid,

1 directed to the Parties at the following addresses (or at such other addressee and/or address as
2 shall have previously been specified in writing by the Party to whom such notice is owed);

3 If to ABOR, to:

4 President
5 Arizona Board of Regents
6 2020 N. Central, Ste. 230
7 Phoenix, AZ 85004
8 Fax: (602) 229-2555

9 with a copy to Office of Counsel:

10 Joel Sideman, Esq.
11 General Counsel
12 Arizona Board of Regents
13 2020 N. Central, Ste. 230
14 Phoenix, AZ 85004
15 Fax: (602) 229-2555

16 And a copy to:

17 Scott DeWald, Esq.
18 Lewis and Roca LLP
19 40 N. Central, Ste. 1800
20 Phoenix, AZ 85004
21 Fax: 602/734-3745

22
23 If to ASU:

24 Jonathan Fink
25 Vice President for Research and Economic Affairs
26 Box 872703
27 Tempe, AZ 85287-2703

28 With a copy to:

29 Paul Ward
30 Vice President and General Counsel
31 Box 872003
32 Tempe, AZ 85287-2003

33
34 And a copy to:

35 Peter Slate
36 Chief Executive Officer
37 Arizona Science and Technology Enterprises
38 The Brickyard
39 699 S. Mill Avenue, Suite 601
40 Tempe, AZ 85281

41 If to NAU: Carl A. Fox, Ph.D.

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Vice Provost for Research
Northern Arizona University
Dean Pickett
Legal Counsel
Northern Arizona University
Box 10
Flagstaff, AZ 86002-0010

With a copy to:

A. Dean Pickett, Esq.
Mangum Wall Stoops & Warden, P.L.L.C.
100 N. Elden
PO Box 10
Flagstaff, AZ 86002
Fax: (928) 773-1312

If to UA, to:

Dr. Richard C. Powell
Vice President, Research & Graduate Studies; Vice
President for Research
Administration Building 601
P.O. Box 210066
Tucson, Arizona 85721-0066

AND

Dr. Raymond L. Woosley
Vice President, Health Sciences:
AHSC Administration
AHSC 2225
P.O.Box 245018
Tucson, Arizona 85724-5018

1 with a copy to Office of Counsel:

2 Judith E. Leonard
3 Vice President for Legal Affairs & General Counsel
4 The University of Arizona
5 Administration Building, Room 103
6 P.O. Box 210066
7 Tucson, Arizona 85721-0066
8 Phone : 520-621-5335
9 Fax : 520-621-9001
10

11 If to TGen, to: President-Scientific Director
12 The Translational Genomics Research Institute
13 400 North Fifth Street
14 Phoenix, AZ 85004

15 with a copy to: Clifford D. Stromberg, Esq.
16 Hogan & Hartson
17 555 Thirteenth Street, N.W.
18 Washington, D.C. 20004
19 Phone: (202) 637-560
20 Fax (202) 637-5910
21

22 **20.8 Survival.** This Agreement's termination shall not terminate the Parties'
23 obligations and rights that have arisen during the period in which this Agreement was in effect,
24 and accordingly, the provisions hereof, and in particular all obligations relating to confidentiality
25 and Sections 9, 10, 15, 16, and 20, shall survive to the extent necessary to satisfy their specific
26 terms or as necessary to enforce the Parties' rights and obligations arising during any Term
27 hereof.

28 **20.9 Construction.** Each Party hereto acknowledges that it was represented by
29 counsel and participated equally in the drafting and negotiation of this Agreement and that,
30 accordingly, no court construing this Agreement shall construe it more stringently against one
31 Party than against another.

32 **20.10 Execution in Counterparts.** To facilitate execution, this Agreement may be
33 executed in as many counterparts as may be required. All counterparts shall collectively
34 constitute a single agreement. It shall not be necessary in making proof of this Agreement to
35 produce or account for more than a number of counterparts containing the respective signatures
36 of authorized representatives of each of the Parties.

37 **20.11 No Agency.** TGen and ABOR are not and shall not be considered as joint
38 venturers, partners or agents of each other. No officers, employees, agents and subcontractors of
39 a Party shall be considered as officers, employees or agents of another Party. ABOR and TGen

1 hereby agree not to represent to anyone that they are agents of one another or have authority to
2 act on behalf of one another.

3 **20.12 Permits.** Each Party hereto, unless otherwise exempt by law, shall obtain and
4 maintain all licenses, permits and authority necessary to do business and perform its obligations
5 under this Agreement.

6 **20.13 Nonliability of ABOR Officials and Employees.** No member, official or
7 employee of ABOR shall be personally liable to TGen, or any successor in interest, in the event
8 of any default or breach by ABOR or for any amount which may become due to TGen or
9 successor, or for any obligation of ABOR under the terms of this Agreement.

1 **IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement
2 to be duly executed by an authorized representative, in its name and on its behalf, as of the
3 Effective Date.

ARIZONA BOARD OF REGENTS
(for itself, and on behalf of ARIZONA
STATE UNIVERSITY, NORTHERN
ARIZONA UNIVERSITY and the
UNIVERSITY OF ARIZONA)

By: Chris Herstam
Name: CHRIS HERSTAM
Title: President
Date: 1-15-04

ARIZONA STATE UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

THE TRANSLATIONAL GENOMICS
RESEARCH INSTITUTE

By: _____
Name: _____
Title: _____
Date: _____

NORTHERN ARIZONA UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

UNIVERSITY OF ARIZONA

By: _____
Name: _____
Title: _____
Date: _____

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(for itself, and on behalf of ARIZONA
STATE UNIVERSITY, NORTHERN
ARIZONA UNIVERSITY and the
UNIVERSITY OF ARIZONA)

By: _____
Name: _____
Title: _____
Date: _____

ARIZONA STATE UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

**THE TRANSLATIONAL GENOMICS
RESEARCH INSTITUTE**

By:  _____
Name: Richard Love _____
Title: Chief Operating Officer _____
Date: 02/11/04 _____

NORTHERN ARIZONA UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

UNIVERSITY OF ARIZONA

By: _____
Name: _____
Title: _____
Date: _____

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STATE UNIVERSITY, NORTHERN
ARIZONA UNIVERSITY and the
UNIVERSITY OF ARIZONA)

By: _____
Name: _____
Title: _____
Date: _____

ARIZONA STATE UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____


THE TRANSLATIONAL GENOMICS
RESEARCH INSTITUTE

By: _____
Name: _____
Title: _____
Date: _____

NORTHERN ARIZONA UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

UNIVERSITY OF ARIZONA

By: 
Name: Peter Likins
Title: President
Date: 1/17/04

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3 Effective Date.

ARIZONA BOARD OF REGENTS
(for itself, and on behalf of ARIZONA
STATE UNIVERSITY, NORTHERN
ARIZONA UNIVERSITY and the
UNIVERSITY OF ARIZONA)

By: _____
Name: _____
Title: _____
Date: _____

ARIZONA STATE UNIVERSITY

By: Michael Crow
Name: Michael Crow
Title: President
Date: January 21, 2004

**THE TRANSLATIONAL GENOMICS
RESEARCH INSTITUTE**

By: _____
Name: _____
Title: _____
Date: _____

NORTHERN ARIZONA UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

UNIVERSITY OF ARIZONA

By: _____
Name: _____
Title: _____
Date: _____

1 **IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement
2 to be duly executed by an authorized representative, in its name and on its behalf, as of the
3 Effective Date.

ARIZONA BOARD OF REGENTS
(for itself, and on behalf of ARIZONA
STATE UNIVERSITY, NORTHERN
ARIZONA UNIVERSITY and the
UNIVERSITY OF ARIZONA)

By: _____
Name: _____
Title: _____
Date: _____

ARIZONA STATE UNIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

**THE TRANSLATIONAL GENOMICS
RESEARCH INSTITUTE**

By: _____
Name: _____
Title: _____
Date: _____

NORTHERN ARIZONA UNIVERSITY

By: John D. Hager
Name: John D. Hager
Title: President
Date: 11/17/04

UNIVERSITY OF ARIZONA

By: _____
Name: _____
Title: _____
Date: _____