

RESEARCH COLLABORATION AGREEMENT
BETWEEN
THE TRANSLATIONAL GENOMICS RESEARCH INSTITUTE
AND

This Research Collaboration Agreement (the “Agreement”) is made between The Translational Genomics Research Institute (“TGen”), an Arizona non-profit corporation having its primary offices at 445 North Fifth Street, Suite 600, Phoenix, Arizona 85004 and _____, a _____ corporation (“_____”), having its primary offices at _____, referred to herein individually as a Party and collectively as the Parties.

The purpose of this Agreement is to further advance scientific knowledge, discoveries, and clinical service through the conduct of collaborative research.

Guidance principles to develop a collaboration to serve clinical, research and educational purposes between TGen and _____

The following principles shall be used to develop the framework for the terms and conditions set forth in this Agreement:

1. The interests of _____ and TGen will be furthered by this collaboration.
2. Clinical service, research and educational opportunities will be enhanced for all participants.
3. The relationship sought is one of true collaboration where investment and value are recognized bilaterally both in economic and non-economic terms.
4. The areas of collaboration will advance _____’s and TGen’s predetermined strategic priorities and **[initially will focus on _____]**.
5. In general, this collaboration should not be exclusively binding on either participant. If the Parties agree in writing to exclusivity in certain circumstances, it should be applied as narrowly as possible.
6. Predetermined and agreed upon exit clauses will be developed to allow respectful disengagement should the collaboration fail to meet objectives.

1. Definitions.

- a. “Confidential Information” with respect to a Party or its affiliates (the “Disclosing Party”) means all technical, business and financial information including, where appropriate and without limitation, all information, licenses, business plans, data, patent disclosures, patent applications, structures, models, techniques, processes, compositions, and compounds relating to the same disclosed by the Disclosing Party to the other Party (the “Receiving Party”) or obtained by the Receiving Party through observation or examination of information, but only to the extent such information is maintained as confidential by the Disclosing Party and is disclosed in writing and designated “Confidential,” or disclosed in any manner such that a reasonable person would understand its confidential or proprietary nature.
- b. “Effective Date” shall mean _____, 2005.
- c. “Invention” shall mean any invention or discovery, made by a _____n and/or _____ Investigator(s) of either and/or both of the Parties, whether a patent application has been filed thereon or not, that is conceived in the performance of a Research Plan. Inventorship will be determined by United States Patent law.
- d. “Joint Inventions” shall mean any invention or discovery which is made by one or more inventors and at least one inventor is required to assign the rights in the Invention to TGen and at least one inventor is required to assign the rights in the Invention to _____. Both Parties shall jointly own such Inventions.
- e. “Materials” include any biological material including without limitation genes, vectors, cell lines, strains, transgenic organisms, model organisms, DNA, RNA, proteins, small molecules, tissues, blood, plasma, urine, spinal fluid or other fluids (including any fragments, variants, derivatives and/or progeny of each of the foregoing, as applicable).
- f. “Patent Application” shall mean and include any application for patent.
- g. “Patent Costs” shall mean and include all costs associated with the preparation, filing and prosecution of Patent Applications, and the maintenance of the patents and/or Patent Applications.
- h. “Principal Investigator(s)” means the person(s) designated respectively by the Parties to this Agreement who will be responsible for the scientific and technical conduct of the research as well as the implementation of the specific Research Plan(s). The Principal Investigators should, as far as is reasonably practicable, ensure that researchers and staff in the TGen and/or _____ laboratories under their control abide by the legal terms and conditions contained in this Agreement.
- i. “Research Plan(s)” shall refer to the research work, experiments or any other activities, and include terms related to licensing, protection and commercialization of intellectual property, as outlined in each individual Research Plan. Each Research Plan shall be attached to this Agreement and will be incorporated into and become a part of this Agreement.
- j. “Results” shall refer to all data, information or materials, which are developed in the performance of a Research Plan. Unless otherwise agreed in a Research Plan, all Results will be jointly owned by the Parties.
- k. “Sole Inventions” shall mean any invention or discovery which is made by one or more inventors all of whom are required to assign their rights in the Invention to a

single Party, either TGen or _____. Such Inventions shall be the property of that Party.

2. **Research Plan(s).** Either TGen or _____ Investigators may propose specific research activities in a Research Plan as set forth in this Agreement. The Research Plan shall describe the respective contributions of the individual TGen and _____ laboratories and Principal Investigators. Each Research Plan shall contain a statement of aims and objectives. The Research Plan will also include, as applicable: (i) whether one or both Parties will lead commercialization activities related to Inventions and Results for such Research Plan; (ii) licensing terms as between the Parties, including royalties or other consideration; and (iii) additional terms as the Parties may mutually agree. The licensing terms will take into account the respective contributions of the Parties, including know-how and expertise. Nothing in this Agreement shall be construed as granting or conferring any rights on the part of either Party by license or otherwise, express or implied, to any background intellectual property (i.e., existing prior to the Effective Date or arising outside of work under the Research Plan(s)) of the other Party; provided, however, that the Parties may specifically grant a license under background intellectual property in a Research Plan. In the event of any conflict between the terms of a Research Plan and this Agreement, the terms of the Research Plan shall govern.

3. **Materials.** Materials may be transferred between _____ and TGen in connection with this Agreement. The following terms shall govern any transfer of such Materials.
 - a. Materials developed during the course of a Research Plan may be transferred between the Parties in connection with a Research Plan, subject to approval by the Principal Investigator(s) of the laboratory that carried out the Research Plan in which the Materials were developed and any required institutional approvals, including without limitation, IRB approval.
 - b. Neither _____ nor TGen shall be required to transfer any of its Materials to the other Party. Where the transfer of third party Materials from one Party to another Party will significantly contribute to the goals of a Research Plan or Plans, the Party in receipt of such Materials will make reasonable efforts to secure an agreement from the original supplier of the Materials to facilitate transfer of the Materials to the other Party.
 - c. All Materials transferred in connection with this Agreement are experimental in nature and shall be used with prudence and appropriate caution, since not all of their characteristics are known. **ALL MATERIALS ARE PROVIDED WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED.** A Party providing Materials makes no representation or warranty that the use of such Materials will not infringe any patent or other proprietary rights.

Legal title to any Materials shall be unaffected by this Agreement or the transfer made hereunder. Unless otherwise provided for in an amendment to this Agreement or a Research Plan, Materials owned by a Party will continue to be owned by that Party after any transfer. All Materials will be maintained by the

receiving Party so that such Materials are readily identifiable. Further, the transfer of Materials to a Party gives such Party no rights in such Material other than those specifically set forth in this Agreement.

- d. _____ will use TGen Materials only in work done in the performance of a Research Plan or Plans, and only in the laboratory of _____'s Principal Investigator in research by laboratory personnel under that Principal Investigator's immediate and direct control ("_____'s Investigators"). TGen will use _____ Materials only in work done in the course of a Research Plan or Plans, and only in the laboratories of TGen's Principal Investigator in research by laboratory personnel under that Principal Investigator's immediate and direct control ("TGen Investigators"). In addition, any other Materials developed during the course of the Research Plan that are transferred under this Agreement will not be used by the recipient other than in the Research Plan, unless the additional use is approved in writing by the providing Party.
- e. Any use of TGen Materials by _____, or of _____ Materials by TGen, other than in accordance with this Article is a material breach of this Agreement for purposes of the termination provisions of Article 12 below.
- f. The transfer of TGen Materials to _____ and the transfer of _____ Materials to TGen provide the recipient with no intellectual property or commercial rights in such Materials.

4. **Confidentiality.** Subject to Articles 5 and 6 below, Confidential Information shall be treated as confidential during the term of this Agreement and for a period of five (5) years thereafter. During such period, the Parties will not: (a) disclose the Confidential Information of the Disclosing Party to any third party, using at least the same degree of care as it uses to protect its own confidential information, but not less than reasonable care or (b) use such information for any purpose other than to perform its obligations under this Agreement (including the Research Plans). Confidential Information does not include information that: (i) is or later becomes available to the public through no breach of this Agreement; (ii) is obtained from a third party who had the legal right to disclose the information; (iii) as of the date of disclosure, is already in the possession of the Receiving Party without an obligation of confidentiality; (iv) is developed independently without reference to the Disclosing Party's Confidential Information, or (v) is required to be disclosed by law, government regulation, or court order, provided that the Receiving Party promptly notifies the Disclosing Party upon learning of any such legal requirement, and cooperates with the Disclosing Party in the exercise of its right to protect the confidentiality. All information obtained on _____ patients will be furnished to TGen in a coded format, which protects patient identities and confidential information. TGen's ability to review the patients' medical record shall be subject to reasonable safeguards for the protection of patient confidentiality. Both Parties shall comply with all applicable laws and regulations, as amended from time to time, with respect to the collection, use, storage and disclosure of any data, including without limitation, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations (45 C.F.R. et. seq.).

5. **Results.**

- a. Each Party will keep the other Party informed of Results obtained from its work in connection with a Research Plan in a timely manner through detailed written reports and meetings. Information shared in accordance with this Article, if stamped or otherwise marked as Confidential, shall be treated as Confidential Information by the Investigators to whom it is disclosed and shall be handled by the Investigators to whom it is disclosed in accordance with the procedures set forth in Article 6, below. Results produced under a Research Plan may not be shared with individuals or entities outside of a Research Plan prior to publication or other public presentation of Results without the written agreement of TGen and _____. The Parties understand, however, that informal scientific exchange within TGen or _____ is not precluded by the foregoing provision. Any non-research use of information on methodology or discoveries or any other Results produced under a Research Plan before their publication in accordance with Article 6 of this Agreement is strictly forbidden unless authorized in advance in writing by TGen and _____.
- b. The Parties shall promptly report to each other in writing each Invention resulting from the research conducted under this Agreement that is reported to them by their respective employees. Each Party shall report all Inventions to the other Party in sufficient detail to determine inventorship. Such reports shall be treated as Confidential Information in accordance with Article 6.
- c. The Parties shall consult with each other to determine inventorship of all Inventions prior to any filing, whenever possible. Each Party may give its opinion as to sole or joint inventorship to the other Party. Inventorship and ensuing ownership of Inventions shall be determined in accordance with U.S. patent laws. If a patent application is not filed on an Invention, ownership will be determined under the same principles of patent law by treating such Invention as if it were patented.
- d. Subject to the terms of a specific Research Plan, which may include terms that add to or supersede the following, a Party owning a Sole Invention, including any copyrights arising in performance of a Research Plan:
 - (i) may retain, release or otherwise dispose of its rights to it in accordance with its own policies and procedures as long as such a disposition, subject to any background rights, permits the other Party to use the Sole Invention for internal, non-commercial research purposes; and
 - (ii) will ensure that it retains the right to grant the other a royalty-free, worldwide license for non-commercial research use of such inventions in any exclusive license(s) it grants to third parties for such invention(s).
- e. Unless otherwise agreed in a Research Plan, TGen and _____ may pursue joint patent protection of Joint Inventions and will jointly own copyrights any joint works arising in performance of a Research Plan, without the duty to account to each other. Each Party recognizes that the other Party will only seek patent protection so long as such patent protection is consistent with its institutional practices and policies and the Parties will jointly direct prosecution and share jointly in the Patent Costs.
- f. The Parties acknowledge the academic nature of this collaboration and that there may be a need to transfer technology to a commercial third party in order to bring

such technologies to market and benefit patients. The licensing of Joint Inventions will be addressed in the Research Plans.

6. Publication.

- a. It is contemplated that Results of a Research Plan(s) will be jointly published; however, _____ and TGen each separately reserve the right to publish its own Results generated in the course of a Research Plan(s); provided that such publication is consistent with the intent of the Research Plan. The Parties agree to abide by the policies of journals in which publications will appear as to such matters as the public release or availability of data or materials relating to the publication. Authorship of Results of the Research Plan will be based on contributions to the Research Plan and in accordance with academic standards and custom. Proper acknowledgment will be made for the contributions of each Party to the Results being published.
- b. Where a proposed publication is not a joint publication, the Party wishing to make the publication shall provide a copy of the manuscript or abstract to the other Party at least thirty (30) days prior to submission of the manuscript or abstract for publication in order to allow the other Party an opportunity to protect proprietary information or intellectual property that might be disclosed by the manuscript or abstract. In addition, a Party will not publish Confidential Information received from the other Party without such other Party's written consent.
- c. Publication of Results of the Research Plan shall include but not be limited to the publication of such Results in any journal, magazine, web site, newspaper article or any other written form of conveyance including posters as are commonly used at scientific meetings and any oral presentation of such Results in any public forum or meeting.

7. Assignment of Personnel

- a. It is contemplated that each Party may assign personnel to the other Party's facility to participate in or observe the research to be performed under this Agreement. Such personnel shall not during the period of such assignments be considered employees of the host Party for any purposes, including but not limited to any requirements to provide workers' compensation, liability insurance coverage, payment of salary or other benefits, or withholding of taxes, unless through a separate mutual written agreement of the Parties.
- b. Notwithstanding the foregoing, the host Party shall have the right to exercise routine administrative and technical oversight of the occupational activities of such personnel during the assignment period and shall have the right to approve the assignment of personnel or request their removal. The assigning Party's employees and agents shall observe the working hours, security and safety rules, and holiday schedule of the host Party while working on the host Party's premises.

- c. Unless otherwise agreed to in writing by the Parties, the assigning Party shall bear any and all costs, expenses, and liabilities (including salary and fringe benefits) with regard to its personnel assigned to the host Party's facilities under this Agreement; provided that where such personnel are expected to provide substantial services for the benefit of the other Party over a significant period of time, the Parties shall negotiate in advance a mutually acceptable financial arrangement whereby the assigning Party will be reimbursed fairly for such services. The host Party's policies and procedures relating to employment-related matters, such as (among others) minimum and maximum salaries, financial rights, and employment benefits for which there is a monetary outlay (such as health insurance and retirement contributions), shall not apply to the assigned employee.
- d. Unless otherwise agreed in writing, the host Party shall bear facility costs of such assignments.
- e. For visiting personnel, the host Party may require confidentiality agreements to protect confidential or proprietary information not related to the specific Research Plans under this Agreement.

8. **No Warranties.** EACH PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE RESULTS OF THE RESEARCH PLAN, ITS MATERIALS, OR ANY INVENTION, PROCESS OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT; OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY INVENTION OR PRODUCT MADE UNDER A RESEARCH PLAN. NO PARTY SHALL BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY ANY OTHER PARTY, ANY LICENSEE, OR ANY OTHERS INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM LOSS OF DATA OR TERMINATION OF THE RESEARCH PLAN, OR FROM THE USE OF THE RESULTS OF THE RESEARCH PLAN, OR ANY INVENTION OR PRODUCT MADE UNDER A RESEARCH PLAN.

9. **Representation and Publicity.**

- a. By entering into this Agreement, neither TGen nor _____ directly or indirectly endorses any product or service provided, or to be provided, by the other Party whether directly or indirectly related to this Agreement.
- b. Each Party represents to the other that only individuals having an obligation to assign their intellectual property rights solely to TGen or _____ (as the case may be) will be permitted to work under this Agreement. No other personnel will be permitted to work under this Agreement or allowed access to the other Party's Confidential Information.
- c. Neither Party shall use the names or trademarks of the other Party or its employees in any advertising, promotional or related non-scientific publications without the prior written consent of the other Party.

10. **Compliance with Laws and Regulations.** All research done in connection with a Research Plan, including without limitation, all use of Materials transferred hereunder, will be done in compliance with all applicable laws, governmental regulations and guidelines
11. **Term of Agreement; Duration of Research Plan.** This Agreement shall go into effect on the Effective Date. This Agreement shall continue in effect until the earlier of five (5) years after the Effective Date or the completion or termination of all Research Plan(s).
12. **Termination.** TGen or _____ may terminate this Agreement without cause at any time upon sixty (60) days written notice to the other Party, regardless of whether the Research Plan(s) has been completed or not. In addition, in the event of a material breach of this Agreement by either TGen or _____, either TGen or _____ may terminate this Agreement upon written thirty (30) days' prior written notice to the other Party, provided such default has not been cured within such thirty (30) day period. If this Agreement or a specific Research Plan is terminated under this Article, TGen Materials received pursuant to this Agreement by _____ shall, at the direction of TGen, be returned to TGen or properly destroyed, and _____ Materials received pursuant to this Agreement by TGen shall, at the direction of _____, be returned to _____ or properly destroyed.

In addition, in the event of a termination, the Parties may mutually agree in writing to continue one or more existing Research Plans until the expiration of such Research Plan. A Research Plan may specify what terms therein survive any termination or expiration of the Research Plan or this Agreement. If a laboratory is not complying with the terms of the Agreement in connection with a particular Research Plan, the other Party shall notify that laboratory, which shall have thirty (30) days to correct the problem. If, after thirty (30) days, the problem has not been corrected, that laboratory shall cease further work under that Research Plan and shall be precluded from working with the other Party's Materials without the other Party's express written permission.

The terms of Articles 3c, 4, 5 6, 8, 9, 10, 12, 13, 14, 16, and the relevant provisions of 18-23 shall survive any termination or expiration of this Agreement.

13. **Assignment.** This Agreement is not assignable by a Party, whether by operation of law or otherwise, without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and permitted assigns.
14. **Legality.** TGen and _____ each hereby represents and warrants to the other that it has full legal power to enter into this Agreement, that it has duly executed and delivered this Agreement, and that this Agreement is its valid and binding obligation.
15. **Dispute Resolution.**

- a. The Parties shall carry out this Agreement using reasonable efforts. However, in the event of any dispute between the Parties relating to this Agreement or its subject matter, they shall first seek to amicably resolve or settle the dispute in good faith by mutual agreement. If they have not reached a resolution or settlement within ninety (90) days, which period may be extended upon the mutual written consent of the Parties, then any of them may thereafter submit the dispute to mediation as set forth in the following.
- b. The Parties may establish a mediation committee of three persons composed of one member appointed by each Party and a neutral third member appointed by the agreement of the two appointees.

The third member shall call and chair a meeting of all the appointees for the purpose of reviewing the issues in dispute and then the three member committee shall make a non-binding recommendation to the Parties as to settlement of the issues in dispute. The Parties will then have thirty (30) days in which either to accept the recommended non-binding proposal of the mediation committee or to seek whatever legal or administrative remedies may be available.
- c. Notwithstanding anything herein to the contrary, none of the Parties has any obligation to mediate any claims relating to the infringement or violations of its trademarks, copyrights, patents or other intellectual property. Such Party may assert such infringement claims in any court of competent jurisdiction in the United States of America.
- d. Where the mediation committee is established, the Parties shall share in equal amounts all the cost for convening the mediation committee appointed under this Section 15.

16. **Cost and Shipping.** Each Party shall bear the cost of packing, insurance, and shipping, of Materials to the other Party.
17. **Modification.** This Agreement and any Research Plans may only be modified or amended by written agreement by the authorized signatories of both Parties which is identified as an amendment to this Agreement.
18. **Notices.** All notices required or permitted by this Agreement shall be given by prepaid, first class, registered or certified mail or by an express/overnight delivery service provided by a commercial carrier, properly addressed to the other Party at the address designated on the signature page, or to such other address as may be designated in writing by such other Party.

Notices shall be considered timely if such notices are received on or before the established deadline date as verifiable by a Postal Service postmark or dated receipt from a commercial carrier. Parties should request a legibly dated Postal Service postmark or obtain a dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing.

Notices under this Agreement, notices shall be sent to:

If to TGen:

The Translational Genomics Research Institute
Attn: Chief Operating Officer
445 North Fifth Street, Suite 600
Phoenix, AZ 85004

With a copy to:

The Translational Genomics Research Institute
Attn: General Counsel
445 North Fifth Street, Suite 600
Phoenix, AZ 85004

If to _____:

Attn: _____

19. **Independent Contractor.** The relationship between the Parties is that of independent contractors. Neither Party is an agent, employee, or servant of the other. Except as specifically set forth herein, neither Party shall have nor exercise any control or direction over the methods by which the other Party performs work or obligations under this Agreement. Further, nothing in this Agreement is intended to create any partnership, joint venture, lease, or equity relationship, expressly or by implication, between the Parties. In the event that the Internal Revenue Service or any other party should question the independent contractor status of the Parties, each Party hereto agrees that the other shall have the right to participate, at its own cost, in any discussions or negotiations regarding such status.
20. **Entire Agreement.** This Agreement, together with any attachments, including without limitation the Research Plans, constitutes the final, complete and exclusive agreement between the Parties with respect to its subject matter and supersedes all past and contemporaneous agreements, promises, and understandings whether oral or written, between the Parties. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealing.
21. **Counterparts.** This Agreement may be executed in any number of counterparts which, when taken together, will constitute one original, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.

22. **Severability**. In the event any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect as if the invalid or unenforceable provision has never been part of this Agreement.
23. **Waiver**. The failure of either Party to complain of any default by the other Party or to enforce any of such Party's rights, no matter how long such failure may continue, will not constitute a waiver of the Party's rights under this Agreement. The waiver by either Party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other provision. No part of this Agreement may be waived except by the further written agreement of the Parties.

SIGNATURE PAGE

**THE TRANSLATIONAL GENOMICS
RESEARCH INSTITUTE**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____