

EXHIBIT B.2
OPEN COLLABORATION – OPEN SOURCE AGREEMENT NUMBER _____

This Open Collaboration-Open Source Agreement (“Agreement”) is between _____ (“University”) and ABC Corporation (“ABC”). This Agreement is effective from the date it is signed by the last signatory (“Effective Date”) and will remain in effect until terminated in writing by University or ABC. Either Party may terminate this Agreement upon thirty (30) days written notice.

1.0 DEFINITIONS

1.1 “Copyrightable Material” means any document, report, publication or other original work of authorship, other than Software, created by either Party pursuant to this Agreement.

1.2 “Developing Party” means the Party which develops a particular item of Software or Copyrightable Material.

1.3 “Excluded Materials” means materials (i) that the Party reasonably believes would infringe the intellectual property rights of a third party, or (ii) to which the Party can’t grant a license to third parties.

1.4 “Inventing Party” means the Party whose employees conceive or first reduce to practice an Invention.

1.5 “Invention” means any Joint Invention or Sole Invention.

1.6 “Joint Invention” means any idea, design, concept, technique, invention, discovery or improvement, whether or not patentable, conceived or first reduced to practice jointly by one or more of the employees of one Party with one or more employees of the other Party in the performance of work under this Agreement.

1.7 “Non-Assertion Covenant” means the covenant between the Parties that the Inventing Party will not assert, and that it will cause its Subsidiaries not to assert against the other Party, any claim of infringement of its or their respective rights (including any applicable patent, other statutory rights, or common law rights) in Inventions for making, having made, using, having used, leasing, selling, offering for sale, disclosing, importing and/or otherwise transferring any products or practicing or having practiced any method.

1.8 “Open Copyright License” means any license that grants the licensee the royalty-free right to create derivative works and to publish, reproduce, distribute, display, perform and transmit a work of authorship.

1.9 “Open Source License” means the license specified in the relevant SOW or otherwise agreed to in writing by the Parties.

1.10 “Open Source Software” means any Software, the source code for which is published, available for inspection and use by anyone, and made available under a license agreement that permits licensees to use, execute, copy, modify and distribute the program’s source code without payment of fees or royalties.

1.11 “Party” means a party to this Agreement.

1.12 “Software” means computer programs, computer program changes, computer program enhancements, documentation, or derivative works of any of the foregoing, created by either Party pursuant to this Agreement.

1.13 “Sole Invention” means any idea, design, concept, technique, invention, discovery or improvement, whether or not patentable, conceived or first reduced to practice solely by one or more employees of a Party in the performance of work under this Agreement.

1.14 “SOW” means a statement of work which is subject to the terms of this Agreement and describes collaboration and any other related terms agreed upon by the Parties, the first of which is attached as Appendix C.

1.15 **“Subsidiary”** means a corporation, company, or other entity which: (i) has more than fifty percent (50%) of its outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) now or hereafter owned or controlled, directly or indirectly, by a Party, provided that such corporation, company, or other entity will be deemed to be a Subsidiary only so long as such ownership or control exists; or, (ii) does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but does have more than fifty percent (50%) of its ownership interest representing the right to make the decisions for such corporation, company or other entity now or hereafter owned or controlled, directly or indirectly, by a Party, provided that such corporation, company or other entity will be deemed to be a Subsidiary only so long as such ownership or control exists.

1.16 **“Technical Coordinators”** means the representative identified by each Party as the primary point of contact for communications under a SOW. Either Party may change its Technical Coordinator by giving notice to the other Party.

2.0 GENERAL COLLABORATION TERMS

2.1 **Scope.** The Parties will describe any collaboration under this Agreement in a SOW.

2.2 **Expenses.** Each Party will bear its own expenses under this Agreement unless they agree otherwise in a SOW.

2.3 **Confidentiality.** Each Party agrees not to disclose to the other Party any information which it considers to be confidential. Each Party will be free to use and disclose any information provided by the other Party for any purpose, subject to valid patent and copyright rights.

2.4 **ABC Premises Guidelines.** Any University representative visiting any ABC facility must observe the terms of Appendix A, “Activity on ABC Premises” and sign the agreement in Appendix B.

3.0 SOFTWARE AND COPYRIGHTABLE MATERIALS

3.1 **Ownership.** All rights in Software or Copyrightable Material will be the property of the Developing Party. Except for any documentation, Software developed under this Agreement will not be considered a joint work. Software documentation and Copyrightable Materials may be jointly developed. Copyrightable Materials or Software documentation that are jointly developed by the Parties will be jointly owned by the Parties and each Party will be free to exercise all rights, including to license or assign its ownership rights without accounting to or consent of the other Party.

3.2 **Delivery.** The Parties agree that any Software developed by either Party will be made publicly available by the Developing Party(ies) in source code form under at least one Open Source License and delivered to the other Party under such license. Any Copyrightable Material developed by either Party will be made publicly available by the Developing Party(ies) either by publication, or under at least one Open Copyright License, and delivered to the other Party under such license.

3.3 **Excluded Materials.** The Parties agree not to knowingly incorporate Excluded Materials into any Software or Copyrightable Materials. Notwithstanding anything in this Agreement to the contrary, neither Party is required under this Agreement to publish or to grant licenses to any Excluded Materials.

4.0 INVENTIONS

4.1 **Ownership.** Any Sole Invention will be the property of the Inventing Party. Any Joint Invention will be the property of both Parties and each owner will be free to exercise all rights, including to license or assign its ownership rights without accounting to or consent of the other Party.

4.2 Non-Assertion Covenant. Both Parties agree to the Non-Assertion Covenant. This Non-Assertion Covenant will be binding on the Inventing Party, its successors and permitted assigns, and will survive any exclusive licensing, sale, transfer, or assignment of an Invention. This section will not apply to any Inventions to which the United States government has elected to take title. The benefit of this Non-Assertion Covenant extends without exception or limitation to all activities, products or services that embody or practice the Invention, in total or in part, which products or services are made or offered by the non-Inventing Party; to such Party's customers, partners, resellers, and licensees of such products or services; and to such Party's Subsidiaries and their licensees.

4.3 Licenses in Lieu of Non-Assertion Covenant. If the Non-Assertion Covenant is held to be invalid or illegal by a court of competent jurisdiction, Inventing Party will be deemed to have granted the other Party a license to each of the Inventing Party's Sole Inventions (including any applicable patent, other statutory rights, or common law rights) on the date such Sole Invention was conceived or first reduced to practice. All licenses for Sole Inventions granted under this Agreement will be worldwide, irrevocable, nonexclusive, nontransferable, and fully paid-up, and will include the right to make, have made, use, have used, lease, sell, offer to sell, import and/or otherwise transfer any product, and to practice and have practiced any method. These licenses will include the right of the grantee to grant revocable or irrevocable sublicenses to its Subsidiaries, such licenses to include the right of the sublicensed Subsidiaries correspondingly to sublicense other Subsidiaries.

4.4 Government and Third Party Funding. Each Party will identify in the SOW all government or third party funding which it receives for work it performs under this Agreement. If an Inventing Party's Invention is partly or wholly supported by government or third party funding, the Inventing Party will advise the other Party whether such funding will impair the Inventing Party's ability to meet its obligations under this Agreement.

5.0 DISCLAIMERS

NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE SOFTWARE, COPYRIGHTABLE MATERIALS, OR ANY OTHER DELIVERABLES SUPPLIED UNDER THIS AGREEMENT, OR THE COMPLETION OF THIS COLLABORATION. THE WARRANTIES THAT EACH PARTY EXPLICITLY DISCLAIMS INCLUDE THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NON-INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

6.0 LIMITATION OF LIABILITIES

Neither Party will be liable for any consequential damages, lost profits, lost savings, loss of anticipated revenue, or any exemplary, punitive, special or indirect damages, even if advised of their possibility.

7.0 GENERAL

7.1 Defensive Termination. If not prohibited by either: (i) the license covering any pre-existing materials included in any of the Software or Copyrightable Materials, or (ii) the Open Source License or the Open Copyright License to be used with any of the Software or Copyrightable Materials, either Party may include a defensive termination provision in such Open Source License or the Open Copyright License. Under such a provision, a Party can terminate or suspend any of the intellectual property rights granted in such Open Source License or the Open Copyright License to a third party if: (a) any intellectual property infringement claim or legal action is instituted by the third party against a Party; or (b) any claim or legal action alleging that the Software or Copyrightable Materials infringe any intellectual property rights is instituted by the third party against any licensees of the Software or Copyrightable Materials.

7.2 Party Rights. Except as explicitly provided here, neither Party grants the other any licenses, directly or indirectly, by implication, estoppel or otherwise, under any patent, copyright or other intellectual property right of the first Party. Neither Party grants the other any right to use in advertising, publications or promotional activities any

name, trade name, trademark or other designation (including any contraction, abbreviation or simulation of any of the foregoing). The Parties agree not to use or refer to this Agreement or its terms in any such activities without the express written approval of the other, provided that either Party may: (i) release non-confidential information about the project, the general nature of the research, the level and duration of funding, and the other's identity, if required by U.S. Government or applicable state law, or by its own policies with respect to reporting requirements; and (ii) identify the other Party, in publications of research results in scientific journals and periodicals or conference proceedings, as a collaborator and provider of software, materials or tools. The Parties agree to give each other reasonable written notice of their intent to release any of the information cited in the previous sentence. Neither Party may assign or otherwise transfer its rights or delegate its duties or obligations under this Agreement without prior written consent of the other Party, except that either Party may, without consent and upon written notice, assign its rights and obligations under the Agreement, to an entity: (a) which controls, is controlled by, or is under common control with, such Party, or (b) to which the Party sells or transfers all or parts of its business relating to this Agreement. Except for claims arising out of section 3 or 4, neither Party may bring an action arising out of the performance of this Agreement, regardless of form, more than one year after the cause of action has accrued. Each Party represents that it has appropriate agreements with its employees or others whose services the Party may require to allow it to comply with this Agreement. Neither Party is obligated, nor will assume any obligation, to dispose of rights in a way inconsistent with this Agreement.

7.3 Laws and Regulations. Each Party agrees to comply and to reasonably assist the other in complying with applicable U.S. federal, state and local laws, regulations and ordinances as they apply to this Agreement. Software, Copyrightable Materials, services or other deliverables supplied under this Agreement may be subject to United States export/re-export control laws and regulations. The Parties intend and expect that all work performed, and all results achieved, in the course of the Agreement will constitute fundamental research within the meaning of the Export Control Regulations. Each Party agrees that development of cryptographic software or hardware will not be performed under this Agreement. Each Party also agrees that unless authorized by applicable government license or regulation, or to the extent that exemptions or exclusions under the Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR), including fundamental research, do not apply, it will not export, directly or indirectly, any technology, software, technical data or commodities to nationals, wherever they may be located, of any prohibited country as specified in applicable export, embargo, and sanctions regulations and as published in related ITAR and/or EAR documents in effect at the time of disclosure. These obligations survive the termination of this Agreement.

7.4 Other Terms. This Agreement does not create a joint venture, partnership, employment relationship or agency relationship between the Parties. If any term of this Agreement is held to be invalid or illegal, the remaining terms will be enforced so long as the intent of the Parties can be preserved. This Agreement is governed by the laws of the State of _____, without regard to its conflict of laws provisions. Any proceedings to resolve disputes will be brought in a U.S. Federal court in _____ if there is jurisdiction. The Parties waive the right to trial by jury in any matter which arises under this Agreement. Any rights and obligations which by their nature survive and continue after the end of this Agreement, including but not limited to sections 3 through 7, will survive and continue to bind the Parties and their successors and assigns, until such obligations are fulfilled. Any amendment of this Agreement must be in writing and signed by authorized representatives of the Parties. This Agreement, including its Appendices, is the complete and exclusive agreement between the Parties regarding its subject matter and supersedes any prior oral or written communications or understandings between the Parties related to its subject matter.

DRAFT FOR DISCUSSION PURPOSES ONLY

By signing below, the parties agree to the terms of this Agreement.

ABC

UNIVERSITY

Address: _____

Address: _____

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A: ACTIVITY ON ABC PREMISES

These terms supplement the Agreement and apply to University representatives ("Representative(s)") when they are on ABC premises ("Premises"). ABC may promptly require any Representative to leave the Premises if the Representative violates any ABC policies. University agrees to instruct its Representatives to leave the Premises at ABC's request and not to reassign the Representatives to work at ABC. ABC is not required to provide a reason for the request.

1. University will give ABC the names of Representatives who need access to Premises. The Representatives agree to visibly display their ABC-issued identification badge at all times while on Premises. Badges are only active for one month and must be renewed by the Representative by applying to ABC Security.

Note: If the Representatives will be working on Premises for three months or more, add:

"Representatives agree to adhere to the ABC Technical Ethics Guidelines which are attached as Appendix__."

2. Representatives working on Premises may only perform work covered by the underlying Agreement. Representatives will have access to Premises only during normal working hours.
3. Representatives will comply with local policies regarding sign-in, parking, emergency procedures, smoking and safety. On the first visit to ABC, Representatives will give the ABC Technical Coordinator an emergency contact. Representatives must promptly report to ABC any accident or injury on Premises in which they are involved. They will provide ABC with a copy of the accident report they create or is created on their behalf.
4. Representatives are not eligible to participate in ABC activities which are not directly related to the Agreement. With prior written approval from the ABC Technical Coordinator, Representatives may use ABC's e-mail system in connection with the Agreement.
5. ABC's equipment and assets remain the property of ABC. Representatives will: a) use them only for the purpose of the Agreement; b) not alter them without ABC's prior written permission; and c) use them only on Premises unless otherwise provided in the Agreement. University will compensate ABC for any damage resulting from Representatives' use, excluding normal wear and tear. University will not permit any liens or attachments to be filed against the ABC equipment.
6. Representatives agree not to sell, advertise, or market any products or services or physically or electronically distribute printed, written or graphic materials on Premises. Weapons of any kind are prohibited on Premises. ABC prohibits the manufacture, sale, distribution, use, or possession of alcoholic beverages or of controlled substances for non-medical purposes, on Premises.
7. Representatives may not bring hazardous materials to or use them on Premises, unless authorized by ABC. All use must meet ABC's chemical security and other safety guidelines. These guidelines may require a criminal background check. ABC will not be responsible for the training of University Representatives in the proper use and handling of chemicals, equipment or other materials. On request ABC will make available guidelines for the handling of nanomaterials to Representatives who will be handling or in the presence of nanomaterials.
8. ABC is committed to providing an environment free from harassment. Harassment is unwelcome words or conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or that creates an offensive or hostile work environment. Visitors are expected to refrain from harassment and may expect to be free of harassment. All incidents of harassment should be reported to ABC by calling ABC Corporate Security at (XXX) XXX-XXXX between 8:30 a.m. and 4:30 p.m. (EST). All complaints will be investigated promptly and dealt with appropriately.

APPENDIX B: AGREEMENT WITH UNIVERSITY REPRESENTATIVE

Responsible ABC Manager: _____

Dear _____:

Please read the Agreement to which this Appendix is attached. By signing below, you agree to the terms of the Agreement, including amendments, regarding intellectual property rights.

While the work to be performed under the Agreement is non-confidential, you may be exposed to ABC Confidential Information during your visit to the ABC _____ facility. You agree to hold any information identified by any means as ABC Confidential in trust and confidence for ABC. Though you are not an employee of ABC, you also agree to follow the Computer Security Guidelines for ABC Employees, Document XXXXXX. If you have questions about your responsibilities under these Guidelines, ask your ABC host manager. You also agree to comply with all safety rules in the area in which you perform research work.

At ABC you may have access to data controlled by the U.S. Export Administration Act of 1979 and its implementing regulations, as amended ("the Act"). The Act prohibits the export of certain technical data to specified countries and their nationals (including, but not limited to, Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Iran, Iraq, Laos, Libya, Macau, Moldova, Mongolia, Myanmar (Burma), North Korea, People's Republic of China, Russia, Sudan, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. You agree to comply with the Act and that you will not export or re-export any such data or give access to such data to nationals of the above listed countries except as permitted by the Act.

You agree not to disclose any information confidential to you or any third party to ABC.

ABC Manager

Date

Date

APPENDIX C: STATEMENT OF WORK #1

This Statement of Work #1 ("SOW") incorporates the terms of Open Collaboration – Open Source Agreement Number _____ ("Agreement") executed between _____ ("University") and ABC Corporation, through its XXXX Research Center located at Address, City, State Zip ("ABC"). The terms of this SOW only apply to the scope of collaboration defined in this SOW.

1.0 TECHNICAL COORDINATORS

1.1 ABC Technical Coordinator for this SOW is: _____.

1.2 University Technical Coordinator for this SOW is: _____.

2.0 SCOPE OF COLLABORATION

3.0 OPEN SOURCE LICENSE

4.0 FUNDING