

**BRIGHAM YOUNG UNIVERSITY
RESEARCH AGREEMENT**

NOTE: The following document is representative only; each Agreement is customized by negotiation, with terms to fit the unique circumstances of the parties and the technology.

This Agreement, effective the ____ day of _____, ____ is entered into between Brigham Young University, a nonprofit corporation, with its campus located in Provo, Utah ("BYU"), and _____, a for-profit corporation duly organized under the laws of _____ with its principal offices located at _____, and authorized to do business in the State of Utah ("Sponsor").

RECITALS

WHEREAS, BYU proposes to conduct a program of research known as"

_____, which is designed to further the instructional and research objectives of BYU consistent with its status as a non-profit, tax-exempt educational and research institution;

WHEREAS, Sponsor is desirous of assisting BYU to conduct such a program of research on the terms and conditions contained in this Agreement;

WHEREAS, BYU and the Sponsor desire to combine their interests in this research for their mutual benefit;

THEREFORE, BYU and the Sponsor in consideration of the promises and conditions contained in this Agreement and for other good and sufficient consideration agree as follows:

1. Scope of Work

BYU agrees in furtherance of its objective of seeking new knowledge to use good faith efforts to conduct and supervise the research program described in the attached Appendix I, which is incorporated by reference into this Agreement.

2. Personnel

The completion of the project, all work assignments, and the use of the facilities or equipment provided by BYU shall be carried out under the direction of _____, the Project Director, who is employed by BYU.

3. Control of Research

Control of the research will rest entirely with BYU. However, it is agreed that BYU, through its Project Director, will maintain a reasonable level of continuing communication with the designated liaison for the Sponsor. The frequency and nature of these communications will be mutually defined by the BYU Project Director and the Sponsor's liaison person.

4. Term

Performance under this Agreement shall commence _____, and shall be completed by _____. This period may be extended by mutual agreement in writing signed by both parties.

5. Contract Costs and Payment

In consideration of performance of work described in Paragraph 1 of this Agreement, BYU shall receive from the Sponsor the total sum of \$_____ to be applied pursuant to the estimated budget in the proposal, Appendix I. Payments shall be made according to the following schedule:

- (a) Payment in the amount of \$_____ upon execution of this Agreement. Thereafter, payment shall be made according to the following schedule:

\$_____ on or before

Any installment payment payable to Brigham Young University shall be sent to Research Account Manager, C-273 ASB, Brigham Young University, Provo, UT 84602. BYU's tax identification number is 87-0217280 (or 87-73-0049-F).

6. Publication

BYU expressly reserves the right to publish, at its sole discretion, any data or information resulting from performance of the work. However, the manuscript of any proposed publication or public presentment shall be submitted to the Sponsor for review and comment. Sponsor shall have thirty (30) days in which it may request changes to the manuscript and Sponsor may require delay of publication or presentment for up to a maximum of an additional ninety (90) days to allow for preparation and filing of patent applications.

7. Confidentiality

During the course of this Agreement, Sponsor may provide BYU with certain information, data or materials which Sponsor regards as confidential or proprietary in nature. Such information, if disclosed in writing and marked by Sponsor as confidential and not otherwise in the public domain, and disclosed to BYU by agents of Sponsor during the period of performance of this Agreement, shall be considered by BYU as confidential. BYU agrees to use good faith efforts to prevent disclosure to third parties of such information in the absence of any written consent by Sponsor of such disclosure. BYU also agrees to treat Sponsor's confidential information in the same manner as BYU treats its own similar information. Sponsor agrees that BYU shall not be held liable for inadvertent disclosure of such confidential material provided BYU has exercised good faith efforts to maintain the confidentiality of the disclosed information.

8. Intellectual Property

All rights, title and interest to any and all inventions, discoveries, data, biological materials or software arising from the research conducted under this Agreement, whether or not patentable, shall belong to BYU. BYU shall report any such inventions, discoveries, data, biological materials or software to Sponsor through its Project Director.

BYU will notify Sponsor of BYU's intention to license any intellectual property created in the performance of the research and, subject to the conditions and limitations of this section of the Agreement, BYU hereby grants Sponsor the first right to negotiate a license agreement. Upon notification, Sponsor shall have an exclusive six (6) month period from the date of the notice to negotiate the terms and conditions of the license agreement with BYU provided Sponsor notifies BYU of its intention to negotiate within thirty (30) days of the date of BYU's notification. Should Sponsor timely elect to negotiate, BYU will not negotiate a license agreement relating to the intellectual property subject of the Sponsored Research with any other party during the six (6) month negotiation period.

BYU further agrees to cause patent applications to be filed and prosecuted in BYU's name as owner at Sponsor's request and expense with respect to inventions or discoveries conceived and reduced to practice in the course of the Sponsored Research. BYU shall promptly notify Sponsor and provide it a copy of any such proposed patent application. In the event the Sponsor does not notify BYU within thirty (30) days of the date of BYU's notification of its intent to file a patent application of Sponsor's election to pay the expenses of the filing, BYU may file at its own expense.

9. Title to Equipment

BYU shall retain title to all equipment purchased, donated and/or fabricated by it with funds provided by Sponsor under this Agreement.

10. Publicity and Use of Name

Neither party will use the name, trademark or other identifier of the other party in any advertisement, promotion, publicity or commercially-related purpose without prior written notice and approval of the other party. A party may, however, acknowledge Sponsor's support for, and the nature of, the investigations being pursued under this Agreement. In any such statement, the relationship of the parties shall be accurately described.

11. Termination

Either party may terminate this Agreement upon giving ninety (90) days written notice to the other without further liability. In addition, BYU may terminate this Agreement if events beyond its control preclude performance of the research program. In the event BYU's Project Director is unavailable or unable to continue direction of the research for a period in excess of ninety (90) days, BYU shall notify Sponsor and may nominate a replacement. If BYU does not nominate a replacement or if that replacement is unsatisfactory to Sponsor, Sponsor may terminate this Agreement upon thirty (30) days written notice and such right to terminate shall be Sponsor's sole remedy at law or in equity.

If Sponsor fails to meet any of its obligations under this Agreement and shall fail to remedy these failures within sixty (60) days after receipt of written notice, BYU shall have the option of terminating this Agreement upon written notice and may terminate any licenses or options granted to Sponsor. In the event BYU fails to meet its obligations

under this Agreement and shall fail to remedy these failures within sixty (60) days after receipt of written notice, Sponsor shall have the option of terminating this Agreement upon written notice and such right to terminate shall be Sponsor's sole remedy at law or in equity.

Upon termination of this Agreement, Sponsor shall reimburse BYU for all reasonable expenses or uncancellable commitments incurred as of the date of notice of termination.

Termination or expiration of this Agreement for reasons other than an unremedied failure to meet the material obligations under this Agreement shall not affect the rights and obligations of the parties accrued prior to termination.

12. Indemnification

Sponsor waives and agrees to indemnify, defend and hold harmless BYU and its present and former officers, governing board members, employees, agents and students from any claim, loss, cost, expense, or liability of any kind including reasonable attorneys fees and expenses arising out of or connected with this Agreement or the research, except to the extent such claim is due to the negligence of BYU, and including, without limitation, product liability claims relating to products or processes based on the research. Sponsor agrees to maintain a reasonable amount of commercial insurance coverage to underwrite the foregoing promise of indemnification. BYU shall promptly notify Sponsor of any such claim and shall cooperate with Sponsor and its insurance carrier in defense of the claim. Sponsor agrees to consult with BYU regarding the defense of such claim and to submit any proposed settlement to BYU in advance for its approval, which shall not be unreasonably withheld.

13. Disclaimer of Warranties and Limitation on Remedies

BYU MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION, ORIGINALITY, OR ACCURACY OF THE RESEARCH OR ANY INVENTIONS, PRODUCTS, OR PROCESSES, WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT; OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION, PRODUCT, OR PROCESS. BYU SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY SPONSOR, ANY LICENSEE, OR ANY OTHERS RESULTING FROM THE USE OF THE RESEARCH OR ANY SUCH INVENTION, PRODUCT, OR PROCESS.

14. Independent Contractor

For purposes of this Agreement and all services provided pursuant to it, each party shall be an independent contractor and not an agent or employee of the other party. Neither party shall have authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other party, except as may be explicitly provided for in this Agreement or authorized by the other party in writing.

15. Assignment

Neither party to this Agreement may assign or transfer any rights or obligations arising from this Agreement without the prior written consent of the other party. Any and all assignments not made in accordance with this section shall be void.

16. Arbitration

This Agreement shall be subject to the laws of the State of Utah. Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement shall be settled by arbitration. Each party shall appoint an arbitrator and a third arbitrator shall be appointed by mutual agreement of the two chosen arbitrators. Otherwise, the procedure governing the arbitration process shall be in accordance with the Rules of the American Arbitration Association or such other process as is mutually agreeable by the parties and reduced to writing. In the event either party believes in good faith that the arbitration process has been hindered or delayed for any reason, it has the right to petition a court of competent jurisdiction in the State of Utah to annex and supervise the arbitration to bring it to an expeditious conclusion. This Agreement shall be enforceable by law and the judgment or any award made by the arbitrators may be entered in any court having appropriate jurisdiction. The prevailing party in the arbitration shall be entitled to its reasonable costs and attorneys fees from the non-prevailing party.

17. Notices

Any notice to either party to this Agreement must be in writing, signed by the party sending it and personally served or delivered by ordinary, registered or certified mail, to the following address:

For Brigham Young University:
Associate Director
Office of Research and
Creative Work
A-261 ASB
Brigham Young University
Provo, UT 84602

For Sponsor:

18. Survival

Clauses Number 6, 7, 8, 9, 10, 12, 13, and 16 shall survive the term of this Agreement.

19. Entire Agreement

This Agreement, together with any and all Appendices, constitutes the full and complete understanding of the parties regarding the subject matter of this Agreement. No modification, alteration of or addition to this Agreement shall be effective to bind the parties unless it shall be in writing, signed by the parties or their authorized representatives.

The Agreement of BYU and the Sponsor to the terms as stated above is indicated by the signatures affixed below.

BRIGHAM YOUNG UNIVERSITY:

SPONSOR:

By _____

By _____

Name: Alan R. Harker
Title: Associate Academic Vice Pres.

Name:
Title:

Date: _____

Date _____

