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 **RESEARCH AGREEMENT**

 **PLEASE NOTE THAT ALL TERMS AND CONDITIONS IN THIS AGREEMENT ARE CONDITIONAL UPON NEGOTIATION WITH BYU RAO ADMINISTRATOR.**

**THIS AGREEMENT**, effective upon full execution, is entered into between Brigham Young University, a nonprofit corporation, with its campus located in Provo, Utah ("BYU"), and **[private institution]**, with principal offices located in **[location]** ("Sponsor").

**RECITALS**: WHEREAS, BYU and Sponsor propose to conduct a program of research entitled: **[title of research project]**, which is designed to further the instructional and research objectives of BYU consistent with its status as a nonprofit, tax-exempt, educational, and research institution;

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

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

**I. 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 proposal, which is incorporated by reference into this Agreement.

**II. 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 **[name of project director]**, the Project Director, who is employed by BYU.

**III. 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.

**IV. Term** Performance under this Agreement shall commence **[start date]** and shall be completed by **[end date]** (“End Date”). This period may be extended by mutual agreement in writing signed by both parties.

**V. 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 **[dollar amount of compensation]** to be applied pursuant to the estimated budget in the proposal. Payment shall be according to the following schedule:

**Fixed Price**

50% upon execution of this Agreement

25% project midpoint, **[date]**
25% at project End Date, net 30 days

Payment(s) may be made to:

*Brigham Young University*

*c/o David Nichols, Grants & Contracts Accounting Manager
A-261 ASB
Brigham Young University
Provo, UT 84602*BYU's tax identification number is 87-0217280

 If, for the purposes of collecting the amount due, BYU should retain an attorney or collection agency, Sponsor will pay all costs of collection including reasonable interest, reasonable attorney’s fees, and reasonable collection agency fees which may be based on a percentage at a maximum of 40% of the debt. Sponsor also agrees that BYU, or its agent, may contact Sponsor via automated telephone dialing equipment and/or leave an automated and/or pre-recorded voice or text message.

**VI. Publication** BYU expressly reserves the right to publish, any data or information resulting from performance of the work. However, the manuscript of a proposed publication or public presentation shall be submitted to the Sponsor for review and comment. It is not the intention of BYU disclose proprietary information of Sponsor. Sponsor shall have thirty (30) days in which it may request changes to the manuscript and Sponsor may require delay of publication or presentation for up to a maximum of an additional sixty (60) days to allow for preparation and filing of patent applications.

**VII. 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 agents of Sponsor during the period of performance of this Agreement, shall be considered by BYU as confidential. BYU agrees to give 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 material provided BYU has exercised good faith efforts to maintain the confidentiality of the disclosed information.

**VIII. Patent Rights, Invention and Intellectual Property** All rights, title and interest to any and all inventions, discoveries, data, biological materials, or software arising from the research conducted at BYU under this Agreement, whether or not patentable, shall belong to BYU. BYU shall report any such inventions, discoveries, data, biological materials, or software to the Sponsor through its Project Director. Patented Intellectual Property brought to the agreement by Sponsor will in all circumstances remain the sole property of Sponsor.
 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 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.
 BYU further agrees, at Sponsor’s request and cost, to cause patent applications to be filed and prosecuted in BYU’s name as owner 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 in its sole discretion continue with the patent filing at its own expense.

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

**X. 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.

**XI. Termination** Either party may terminate this Agreement upon giving ninety (90) days written notice to the other party. 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 make all scheduled payments up to the date of termination, including, when applicable, partial payments of the prorated amount through the termination date. If the payment schedule is based on completion of milestones/tasks, Sponsor shall make all payments due according to the milestones completed and prorated payments based on partial milestones completed.
 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.

**XII. Indemnification** Sponsor 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. 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.

**XIII. 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.

**XIV. 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 statement, 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.

**XV. 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.

**XVI. Mediation** With respect to any and all claims, disputes or controversies arising out of the performance of, or in connection with this Agreement, the parties agree to attempt in good faith to resolve the claims, disputes or controversies by negotiations between the parties. In the event either party believes the negotiation discussions are likely not to result in a settlement, the parties must, in good faith, participate in mediation sessions with a professional mediator to be mutually selected by the parties and the expenses of which is to be paid fifty percent (50%) by each party. In the event, after one or more mediation sessions, either party believes the mediation process is not likely to resolve the dispute by mutual agreement, such party may seek any legal or equitable remedy available through a court of competent jurisdiction.
 Nothing in this section shall be construed to waive any rights of timely performance of any obligation existing under this Agreement.

**XVII. Governing Law**

This agreement is to be governed and construed in accordance with the laws of the State of Utah and all applicable Federal statutes and regulations.

**XVIII. 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: For Sponsor:

 Gene R. Larson **[contact person]**
 Director, Research Administration Office **[title]**
 A-285 ASB, PO Box 21231 **[address]**
 Brigham Young University **[company/institution]**
 Provo, UT 84602 **[city, state zip]**
 (801) 422-3360 **[telephone]**

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

**XX. 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 to BYU and the Sponsor to the terms as stated above is indicated by the signatures affixed below.

 BRIGHAM YOUNG UNIVERSITY: SPONSOR:

 Larry L. Howell **[name]**
 Associate Academic Vice President **[title]**
 **[date]**  **[date]**
 Federal Tax Number: **[federal tax number]**