

**RESEARCH AGREEMENT**  
University of Hawai'i

This Research Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005 ("Effective Date"), by and between the University of Hawai'i whose address is University of Hawai'i, Office of Research Services, 2530 Dole Street, Sakamaki D200, Honolulu, Hawai'i 96822 ("University"), and \_\_\_\_\_, whose principal address is \_\_\_\_\_ ("Sponsor").

University and Sponsor hereby covenant and mutually agree as follows:

**1. STATEMENT OF WORK**

University agrees to use reasonable efforts to perform the work under this Agreement in accordance with the proposal dated \_\_\_\_\_, for the research project entitled "\_\_\_\_\_" ("Research Project"), attached hereto and incorporated herein as Exhibit A. Sponsor acknowledges that the Research Project is a scientific undertaking and, consequently, University does not guarantee that the Research Project will yield any particular outcome. This Agreement shall not be construed to limit the freedom of individuals participating in the Research Project to engage in any other research.

**2. PRINCIPAL INVESTIGATOR**

\_\_\_\_\_ is University's Principal Investigator and will be responsible for the direction of all effort hereunder in accordance with applicable University policies. If for any reason the Principal Investigator is unable to conduct or complete the Research Project, University will appoint a successor, subject to the approval of Sponsor. If the parties are unable to agree upon a successor, this Agreement may be terminated by either party.

**3. PERIOD OF PERFORMANCE**

The Research Project under this Agreement shall be performed during the period beginning on \_\_\_\_\_ ("Start Date") and ending on \_\_\_\_\_ ("End Date") unless extended by mutual written agreement.

**4. BUDGET**

Sponsor shall pay all direct and indirect costs in connection with the Research Project up to a total estimated cost of U.S. \$ \_\_\_\_\_ as stated in the Budget, attached hereto and incorporated herein as Exhibit B. If at any time University has reason to believe that the cost of the Research Project will be greater than estimated, University will notify Sponsor in writing to that effect, giving a revised budget of the cost to complete the Research Project. Sponsor shall not be obligated to reimburse the University for costs incurred in excess of the amount referenced herein unless and until Sponsor has notified the University in writing that additional funds will be provided. Upon expenditure of the agreed upon amount of this award, University's obligation to continue performance of the Research Project shall cease.

**5. PAYMENT**

5.1 Payment Schedule. Sponsor shall pay University 50% of the annual Budget upon execution of the Agreement and 50% of the annual Budget at the midpoint of the annual performance period, within thirty (30) days of receipt of an invoice from University. All payments shall be made in United States Dollars.

5.2 Sponsor may pay by wire transfer to:

Bank of Hawai'i  
P.O. Box 2900  
Honolulu, Hawai'i 96846

Routing No. 121301028  
Account No. 0001055569

or by checks, which will be made payable to "University of Hawai'i" and sent to:

University of Hawai'i  
Office of Research Services  
2530 Dole Street, Sakamaki D200  
Honolulu, Hawai'i 96822

Each wire or check payment must reference the invoice number, project title, and name of the Principal Investigator for purposes of identification.

## **6. EXPENDABLES AND EQUIPMENT**

University shall own all expendables and equipment purchased or fabricated in the performance of the Research Project.

## **7. CONFIDENTIALITY**

It is agreed that the parties shall disclose only information necessary to the Research Project and, if any such information is considered confidential, it shall be clearly marked "Confidential Information" and sent in writing to the other party. If the "Confidential Information" is orally disclosed, the disclosing party must summarize such "Confidential Information" in writing and forward it to the receiving party within thirty (30) days of disclosure. The parties agree that for a period of three (3) years from the end of this Agreement, "Confidential Information" shall not be used or disclosed to others, to the extent permitted by law, except in furtherance of this Agreement unless Confidential Information: (a) is or shall have been known to the receiving party before receipt thereof; (b) is disclosed to the receiving party by a third party with the legal authority to do so; (c) is or shall have become known to the public through no fault of the receiving party; (d) is independently developed by University; or (e) is required to be disclosed pursuant to law or court order. University will safeguard Sponsor Confidential Information with at least the same standard of care that University uses to safeguard its own information.

## **8. CONFLICTS OF INTEREST**

If either party is, or becomes, aware of facts or circumstances which may create a conflict of interest in the performance of its obligations under this Agreement, then such party must notify the other party immediately. Both parties shall cooperate in good faith to resolve any such conflicts, but in the event that the conflict cannot be resolved to the satisfaction of both parties within 30 days of notice, either party may terminate this Agreement immediately.

## **9. PUBLICATION**

University retains the right at its discretion to publish freely any results of the Research Project. University agrees to provide Sponsor a copy of any manuscript at the time it is submitted for publication. Sponsor may review the manuscript to: (a) ascertain whether Sponsor's confidential or proprietary information would be disclosed by the publication; or (b) identify potentially patentable technology so that appropriate steps may be taken to protect such technology. Sponsor will provide comments, if any, within thirty (30) days of receipt of the manuscript. University will use good faith efforts to address Sponsor's comments and in its sole discretion may withhold publication for a period not to exceed thirty (30) days. University will give Sponsor the option of receiving an acknowledgement in such publication for its sponsorship of the Research Project.

## **10. INTELLECTUAL AND OTHER PROPERTY**

10.1 Sponsor agrees that University shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data conceived or developed in the performance of the Research Project, including anything developed using University facilities or by University personnel, and funded under this Agreement (hereinafter "University Technology").

10.2 University agrees that Sponsor shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information and data solely conceived or developed by Sponsor personnel and using Sponsor facilities under this Agreement (hereinafter "Sponsor Technology").

10.3 University and Sponsor agree that technology that is jointly developed by University and Sponsor personnel under this Agreement shall be jointly owned (hereinafter "Joint Technology"). The parties shall mutually agree as to which party shall be responsible for the protection of Joint Technology.

10.4 University shall provide Sponsor a written confidential disclosure of any University Technology within sixty (60) days after such disclosure is received by the University's Office of Technology Transfer and Economic Development. Sponsor shall hold such disclosure on a confidential basis and will not disclose the information to any third party without the written consent of University.

10.5 To the extent University has the legal right to do so and in accordance with the provisions of 10.6 below, University shall offer Sponsor a time-limited first right to negotiate a commercial license for any University Technology and University's interest in any Joint Technology. Sponsor shall advise University in writing within sixty (60) days of disclosure to Sponsor whether or not it wishes to secure a commercial license (hereinafter "Date of Election").

10.6 If Sponsor elects to secure a commercial license, Sponsor shall have ninety (90) days from the Date of Election to conclude a commercial license agreement with University. Said commercial license shall contain reasonable terms and shall require diligent performance by Sponsor for the timely commercial development and early marketing of such University Technology and/or Joint Technology. Sponsor shall also be required to reimburse University for all costs expended to secure and maintain protection for such University Technology and/or Joint Technology and assume all future costs. If such commercial license is not concluded in said period, University has no further obligations to Sponsor. If Sponsor does not elect to secure a commercial license, rights to University Technology and/or University's interest in Joint Technology shall be disposed of in accordance with University policies with no further obligation to Sponsor.

10.7 Nothing contained in this Agreement shall be deemed to grant either party directly or by implication, estoppel, or otherwise any license under any patents, patent applications or other proprietary interests of any other invention, discovery or improvement of either party.

## **11. INDEMNIFICATION**

11.1 Sponsor agrees to defend, indemnify, and hold harmless University, its officers, employees, and agents and the State of Hawai'i, from and against any and all liabilities, claims, demands, damages, expenses and losses, of whatsoever kind or nature, including court costs and reasonable attorneys' fees arising out of the performance of this Agreement but only in proportion to and to the extent such liabilities, claims, demands, damages, expenses and losses are caused by or result from the negligent or intentional acts or omissions of Sponsor, its officers, employees, or agents.

11.2 University shall be responsible for damages or injury caused solely by University's officers, employees, and agents in the course of their employment under this Agreement to the extent that University's liability for such damage or injury has been determined by a court or otherwise agreed to by University, and University shall pay for such damages and injury to the extent permitted by law and approved by the Legislature of the State of Hawai'i.

**12. FACILITIES, PROPERTY AND RESPONSIBILITY** (This Article 12 shall be applicable for any Research Project authorized under this Agreement that involves Sponsor's or Sponsor's officers, agents, or employees use of University facilities, property, or equipment.)

Sponsor shall assume the risks of and pay from its assets the costs, expenses, damages, claims, losses and liabilities relating to any injury, harm, death, damage or other peril that is suffered by Sponsor, or Sponsor's officers, agents, employees and property. Sponsor shall further waive any rights of recovery from or rights of subrogation against

University or University's Board of Regents, officers, employees and agents for any cost, expense, damage, claim, loss or liability that arises out of or is related to the use of University property by Sponsor or Sponsor's officers, agents and employees.

**13. FORCE MAJEURE**

University will not be liable for any failure to perform as required by this Agreement, if the failure to perform is caused by circumstances reasonably beyond University's control, such as labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, thefts, or other such occurrences.

**14. NOTICES**

All notices or other communications required or desired to be given hereunder shall be given in writing and shall be deemed given or made if personally delivered to the party to whom such notice is addressed or if deposited in the United States mail, certified or registered, postage prepaid, and addressed to the party to whom given at its address as shown below, or if sent by telex or facsimile transmission addressed to the party to whom given at its address shown below. All notices shall be deemed to be given upon personal delivery thereof, or when received if in the form of a telex or facsimile transmission. Airmail shall be used for all mailings to or from outside the State of Hawai'i. A party may change its address for notices by giving written notice of any such change to all of the other parties as set forth below.

**If to University:**

For technical matters:

University of Hawai'i  
Department  
Address  
Address  
Honolulu, Hawai'i 96822  
Attn: Principal Investigator  
Telephone: (808) 956-xxxx  
Facsimile: (808) 956-xxxx

For contractual matters:

University of Hawai'i  
Office of Research Services  
2530 Dole Street  
Sakamaki D200  
Honolulu, Hawai'i 96822-2303  
Attn: Director  
Telephone: (808) 956-7800  
Facsimile: (808) 956-9081

**If to Sponsor:**

For technical matters:

Company Name  
Department  
Address  
Address  
Address  
Attn:  
Telephone:  
Facsimile:

For contractual matters:

Company Name  
Department  
Address  
Address  
Address  
Attn:  
Telephone:  
Facsimile:

**15. PUBLICITY**

Sponsor shall not identify University in any products, publicity, promotion, promotional advertising, or other promotional materials to be disseminated to the public, or use any trademark, service mark, trade name, logo, or symbol that is representative of University or its entities, whether registered or not, or use the name, title, likeness, or statement of any University faculty member, employee, or student, without University's prior written consent. Any use of University's name shall be limited to statements of fact and shall not imply endorsement by University of Sponsor's products or services.

## 16. NO WARRANTIES

UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE RESULTS OF THE RESEARCH PROJECT 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 THE RESEARCH PROJECT OR ANY SUCH INVENTION OR PRODUCT. UNIVERSITY SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY SPONSOR, ANY LICENSEE, OR ANY OTHERS INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM LOSS OF DATA OR DELAY OR TERMINATION OF THE RESEARCH PROJECT, OR FROM THE USE OF THE RESULTS OF THE RESEARCH PROJECT, OR ANY SUCH INVENTION OR PRODUCT. THIS PROVISION SHALL SURVIVE THE EXPIRATION AND/OR TERMINATION OF THIS AGREEMENT.

## 17. TERMINATION

17.1 Either party may terminate this Agreement upon thirty (30) days written notice. In the event of any termination of this Agreement prior to the End Date, Sponsor shall reimburse University all costs and non-cancelable commitments made prior to termination.

17.2 The provisions of 6, 7, 9, 10, 11, 12, 15, 16 and 18 shall survive the expiration and/or termination of this Agreement.

## 18. MISCELLANEOUS

18.1 **Governing Law.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i. Sponsor, by execution of this Agreement, acknowledges the jurisdiction of the courts of the State of Hawai'i in this matter.

18.2 **Governing Language.** This Agreement has been executed in the English language and no translation into any other language shall be used in its interpretation.

18.3 **Severability.** The legality or invalidity of any provisions of the Agreement shall not impair, effect or invalidate any other provisions of this Agreement.

18.4 **Headings.** The titles and headings of the sections and subsections are for convenience only and shall not be deemed to affect the interpretation of this Agreement.

18.5 **Waivers.** The failure of a party in any instance to insist upon the strict performance of the terms of this Agreement shall not be construed to be a waiver or relinquishment of any of the terms of this Agreement, either at the time of the party's failure to insist upon strict performance or at any time in the future, and such term or terms shall continue in full force and effect. No term or condition of this Agreement shall be deemed waived, and no breach shall be deemed excused, unless such waiver or excuse is in writing and is executed by the party against whom such waiver or excuse is claimed.

18.6 **Amendments.** If either party desires a modification of this Agreement, the parties shall, upon reasonable notice of the proposed modification or extension by the party desiring the change, confer in good faith to determine the desirability of such a modification or extension. Such modification shall not be effective until a written amendment is signed by the signatories to this Agreement or by their respective representatives duly authorized to execute such amendment.

18.7 **Assignment.** Neither this Agreement nor any rights or obligations of either party shall be assigned or otherwise transferred by either party without the prior written consent of the other party.

18.8 **Independent Contractors.** University and Sponsor are independent contractors and neither is an agent, joint venturer, or partner of the other. Each party shall maintain sole and exclusive control over its personnel and operations.

18.9 **Precedence.** In the event of any inconsistency between the terms of this Agreement and the documents referenced or incorporated herein, the terms of this Agreement shall prevail.

18.10 **Entire Agreement.** This Agreement represents the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior and/or contemporaneous discussions, representations, understandings or agreements, whether oral or written, of the parties regarding this subject matter.

In Witness Whereof, the parties have caused this Agreement to be executed by their duly authorized representatives.

UNIVERSITY OF HAWAI'I ("University")

\_\_\_\_\_ ("Sponsor")

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: Yaa-Yin Fong

Name:

Title: Director, Office of Research Services

Title:

Date:

Date: