

CORPORATE VISITING SCIENTIST AGREEMENT

THIS AGREEMENT effective on the date of final execution (the "Effective Date") by and between YALE UNIVERSITY, a corporation organized and existing under and by virtue of a charter granted by the general assembly of the Colony and State of Connecticut and having offices located at 25 Science Park, 150 Munson Street 3rd Floor, New Haven, Connecticut 06511-3572 ("YALE"), [insert name and address of company], and [insert name of visiting scientist], an employee of COMPANY ("VISITING SCIENTIST").

RECITALS

WHEREAS, COMPANY is a business corporation which conducts commercial research in the field of [insert brief description of Company's field of research relevant to visiting scientist]; and

WHEREAS, VISITING SCIENTIST is a research scientist employed by COMPANY; and

WHEREAS, YALE is a university whose mission includes advancing knowledge by providing undergraduate and graduate education and conducting non-profit research, including in fields of interest to COMPANY and VISITING SCIENTIST; and

WHEREAS, COMPANY desires to give VISITING SCIENTIST the opportunity to learn research methods at YALE for the purpose of enhancing his or her and the COMPANY's skills and knowledge pursuant to this Agreement in a manner consistent with the educational and research objectives of YALE as a non-profit, tax-exempt institution; and

WHEREAS, YALE desires to give YALE faculty, students, and staff the opportunity to learn corporate research methods and best practices from the VISITING SCIENTIST, and to receive research assistance from the VISITING SCIENTIST in the laboratory of [insert name of Hosting Faculty Member] ("HOSTING FACULTY MEMBER"); and

WHEREAS, YALE, HOSTING FACULTY MEMBER and VISITING SCIENTIST agree that the scope of VISITING SCIENTIST's activities shall be as described in detail in Exhibit A (the "RESEARCH");

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. University Permission

- 1.1. YALE will allow [insert name of Visiting Scientist] to be a VISITING SCIENTIST in the [insert name of Department/School] in the laboratory of HOSTING FACULTY MEMBER for a [insert duration of visit] period beginning _____, **20** through _____ **20** to engage in the RESEARCH. It is a condition of this Agreement that VISITING SCIENTIST will not engage in activities outside the scope of Exhibit A, including without limitation performing work for COMPANY using any YALE resources or facilities. Renewal of this Agreement for VISITING SCIENTIST for additional period(s), or earlier termination of such PERMISSION, shall be at the sole discretion of YALE.
- 1.2. VISITING SCIENTIST shall apply for and shall obtain status as a Yale Visiting Fellow or Laboratory Associate prior to commencing the RESEARCH.
- 1.3. During the term of this Agreement, commencing when and if VISITING SCIENTIST receives either Visiting Fellow or Laboratory Assistant status, YALE agrees that VISITING SCIENTIST shall have the privilege of having access to YALE academic resources, as specified by HOSTING FACULTY MEMBER, from time to time, including access to and the opportunity to use research facilities and equipment useful for the RESEARCH in the laboratory of the HOSTING FACULTY MEMBER on a non-interference basis, for non-profit educational and research purposes consistent with the objectives of this Agreement and relevant YALE policies.
- 1.4. Any amendment to Exhibit A shall be subject to a written and mutually agreed upon amendment to this Agreement.
- 1.5. During the period of VISITING SCIENTIST's appointment at YALE, VISITING SCIENTIST shall abide by and be subject to all YALE policies, procedures and guidelines applicable to employees of YALE, including training requirements relevant to use of YALE facilities, unless otherwise stated in this Agreement.

2. Employment by COMPANY

- 2.1. VISITING SCIENTIST shall at all times remain an employee of COMPANY. COMPANY agrees to pay the salary and all benefits, including, without limitation, health, accident and disability insurance, and statutory worker's compensation and unemployment insurance of and for VISITING SCIENTIST. COMPANY and VISITING SCIENTIST shall be solely responsible for the withholding and payment of all federal, state and local taxes or contributions imposed or required by unemployment insurance, social security, workman's compensation insurance and income tax laws on all compensation paid to

VISITING SCIENTIST hereunder. COMPANY agrees to indemnify YALE for any loss, payment or expenses incurred by YALE in respect of any claim by any taxing authority pertaining to taxes owed by COMPANY on VISITING SCIENTIST's compensation. COMPANY and VISITING SCIENTIST represent and warrant that VISITING SCIENTIST has and will maintain any legally required permissions to work in the United States, including being in compliance with all immigration and visa requirements.

3. Expense Reimbursement by COMPANY

3.1. In consideration for YALE granting VISITING SCIENTIST the privileges stated in Article 1 hereof, *COMPANY* agrees to pay for all documented direct and indirect costs incurred as a consequence of VISITING SCIENTIST performing the RESEARCH within thirty (30) days of presentation of invoices.

3.1.1. An estimate of the direct and indirect non-salary costs associated with the performance of the RESEARCH by VISITING SCIENTIST is provided and incorporated into this Agreement as Exhibit B. Payment from COMPANY in the amount of \$_____, covering such costs shall be made by COMPANY within thirty (30) days of final execution of this Agreement.

3.1.2. All checks shall be made payable to "Yale University", shall include reference to HOSTING FACULTY MEMBER and this Agreement, and shall be sent to:

Yale University
Office of Sponsored Projects
P.O. Box 1873
New Haven, CT 06508-1873

Or wired to:

Bank of America Merrill Lynch
100 West 33rd Street, New York, NY 10001
Account Title: Yale University Grants; ABA Number 026009593
Account Number: 9415849808

SWIFT #: BORAUS3N (SWIFT # is needed for international wires only)

Reference: [insert name of host faculty member] - Visiting Scientist Agreement

4. Proprietary COMPANY Materials, and Provision of VISITING SCIENTIST with Supplies or Equipment

4.1. Neither COMPANY nor VISITING SCIENTIST shall bring equipment, supplies, or materials ("COMPANY MATERIALS") to YALE without the permission of HOSTING FACULTY MEMBER, the written approval of YALE Environmental Health & Safety department, and an executed agreement that references this agreement (e.g., a material transfer agreement or equipment/supplies use agreement governing the terms and conditions of the use of such material, equipment or supplies. COMPANY MATERIALS brought to YALE without such an agreement shall be considered proprietary materials of YALE.

4.2. Compliance with the occupational health and safety aspects of this section shall be coordinated by

For YALE by:

Kevin Charbonneau, CHP
Manager Safety Advisor program &
Assistant Radiation Safety Officer
Environmental Health & Safety
135 College Street - Suite 100
New Haven, CT 06510
Phone: (203)737-2139
Fax: (203)737-4228
Cell: (203)410-8527
kevin.charbonneau@yale.edu
Yale EHS Website: <http://yale.edu/ehs>

5. Inventions

5.1. The parties agree that, the following provisions shall govern the ownership of all inventions, discoveries and intellectual property developed or discovered by VISITING SCIENTIST pursuant to this Agreement:

5.1.1. "INVENTIONS" shall mean any and all inventions, discoveries, developments, technical information, trade secrets, know-how, methods, techniques, formulae, data, processes and other proprietary ideas, whether or not patentable or copyrightable made by VISITING SCIENTIST during the term of this Agreement.

- 5.1.2. VISITING SCIENTIST shall promptly and confidentially disclose to YALE all INVENTIONS that result from VISITING SCIENTIST's activities under this Agreement to the YALE Office of Cooperative Research ("OCR") in writing via the OCR invention disclosure procedure and form available from <http://www.yale.edu/ocr/disclose.html>. Promptly upon written disclosure of any INVENTION by VISITING SCIENTIST to OCR, OCR shall confidentially disclose such INVENTION to COMPANY. Any such disclosure shall be considered CONFIDENTIAL INFORMATION of YALE.
- 5.1.3. YALE shall retain all right, title and interest to all INVENTIONS which are first conceived, discovered or reduced to practice by VISITING SCIENTIST: (a) as a result of the use of YALE funds, equipment, facilities or other resources; and/or (b) as a result of the use or application of any pre-existing YALE intellectual property; and/or (c) jointly with any YALE faculty or staff member or student. VISITING SCIENTIST and COMPANY agree to cooperate with YALE in the assignment of the foregoing INVENTIONS to YALE and in providing information for the preparation of patent or copyright applications or other intellectual property protections (collectively hereinafter referred to as "PATENTS" or "PATENT APPLICATIONS") on such INVENTIONS. VISITING SCIENTIST hereby assigns all such INVENTIONS to YALE, and shall execute any documents reasonably requested by YALE to evidence such assignment. To the extent COMPANY has rights in any such INVENTIONS, COMPANY hereby assigns such rights to YALE and shall execute any documents reasonably requested by YALE to evidence such assignment. Inventorship shall be determined by United States Patent Law.
- 5.2. YALE will, in a reasonable period of time, make an independent determination whether it wishes to proceed with the filing of a PATENT APPLICATION on such INVENTION. If YALE chooses not to file a PATENT APPLICATION, YALE agrees to grant to COMPANY a fully-paid, royalty-free, perpetual, sublicensable, worldwide non-exclusive license to COMPANY for such INVENTION, except to the extent such grant would be inconsistent with any pre-existing third-party rights in the invention.
- 5.3. For INVENTIONS made by VISITING SCIENTIST which YALE owns pursuant to this Agreement, YALE hereby grants to COMPANY a first option to negotiate to obtain a royalty-bearing license to practice such INVENTIONS, except to the extent such option would be inconsistent with any pre-existing third-party rights in the invention. Such option shall be subject to the following terms and conditions:

5.3.1. COMPANY shall have, on an exclusive basis, three (3) months from the date of disclosure of such Invention to COMPANY (the "EVALUATION PERIOD") to evaluate the INVENTION. By the end of the EVALUATION PERIOD, COMPANY shall notify YALE in writing whether or not it wishes to exercise its option to negotiate terms of a license agreement with YALE. If COMPANY exercises its option, YALE agrees to negotiate license terms with COMPANY for a period of three (3) months (the "NEGOTIATION PERIOD") beginning on the date COMPANY exercises its option. Negotiations shall be conducted in good faith.

5.3.2. Any license agreement negotiated pursuant to the foregoing option shall include, at a minimum, provisions for: reimbursement of YALE expenses associated with filing and prosecuting licensed PATENT APPLICATIONS, associated with maintaining licensed PATENTS, and any outside expenses associated with licensing the technology; terms facilitating access for nations with developing economies; publication rights; reservation of government rights as required by law or by government regulations; indemnification of YALE by COMPANY; management of infringement actions; protection of confidential information and materials; use of name protections; payment of earned royalties on net sales of products covered by licensed PATENT APPLICATIONS on such INVENTION; payment of minimum royalties; sharing of sub-license fees and royalties if sublicense(s) are granted; commercial due diligence and milestones; and other customary license terms and conditions.

5.3.3. In the event that COMPANY: (a) fails to exercise its option on an INVENTION prior to the end of the EVALUATION PERIOD; or (b) fails to execute a license agreement with YALE on an INVENTION prior to the end of the NEGOTIATION PERIOD, then YALE shall be free to license such INVENTION to any party upon such terms as YALE deems appropriate, without any further obligation to COMPANY.

5.3.4. Any license granted to COMPANY pursuant to this Section shall be subject to any applicable rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder, as such statutes or regulations may be amended from time to time.

6. Term and Termination

6.1. The term of this Agreement shall begin on the Effective Date and terminate on _____, 20, unless earlier terminated as provided in this Agreement. This Agreement may be extended only by a written and fully executed

amendment signed by authorized representatives of both parties.

- 6.2. In the event that either party breaches the terms of this Agreement, the other party may immediately terminate this Agreement.
- 6.3. In the event that VISITING SCIENTIST ceases to be employed by COMPANY for any reason, this Agreement shall terminate automatically upon the cessation of VISITING SCIENTIST's employment by COMPANY, or, at YALE's option, at any time after YALE is informed that VISITING SCIENTIST'S employment is expected to end.
- 6.4. Notwithstanding any other provision of this Agreement to the contrary, either party shall have the right to terminate this Agreement at any time upon thirty (30) days' prior written notice to the other party.
- 6.5. YALE shall have the right to terminate this Agreement if VISITING SCIENTIST does not meet expectations of HOSTING FACULTY MEMBER or comply with any YALE policy procedure or practice.
- 6.6. Termination of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination hereof.

7. Confidentiality

- 7.1. COMPANY and VISITING SCIENTIST shall maintain in confidence and shall not disclose to any third party any confidential information of YALE received pursuant to this Agreement for a period of five (5) years from receipt thereof, without the prior written consent to YALE. The foregoing obligation shall not apply to:
 - 7.1.1. information that is known to COMPANY or VISITING SCIENTIST or independently developed by COMPANY or VISITING SCIENTIST prior to the time of disclosure, in each case, to the extent evidenced by written records promptly disclosed to YALE upon receipt of the Confidential Information;
 - 7.1.2. information disclosed to COMPANY or VISITING SCIENTIST by a third party that has a right to make such disclosure;
 - 7.1.3. information that becomes patented, published or otherwise part of the public domain as a result of acts by YALE or a third person obtaining such information as a matter of right; or

- 7.1.4. information that is required to be disclosed by order of government authority or a court of competent jurisdiction; provided that the parties shall use their best efforts to obtain confidential treatment of such information by the agency or court.
- 7.2. COMPANY and VISITING SCIENTIST will take all reasonable steps to protect the confidential information of YALE with the same degree of care COMPANY and VISITING SCIENTIST use to protect their own confidential or proprietary information. Without limiting the foregoing, COMPANY shall ensure that all of its employees having access to the confidential information of YALE are obligated in writing to abide by COMPANY's and VISITING SCIENTIST's obligations hereunder.
- 7.3. YALE and YALE personnel shall not be obligated to accept any confidential information of COMPANY from COMPANY directly or through VISITING SCIENTIST. If COMPANY or VISITING SCIENTIST desire to furnish any such confidential information to YALE personnel, COMPANY shall first execute a confidentiality agreement with YALE.

8. Publication

- 8.1. COMPANY acknowledges that the basic objective of research and development activities at YALE is the generation of new knowledge and its expeditious dissemination. To further that objective, YALE retains the right, at its discretion, to demonstrate, publish or publicize the results of research or any INVENTIONS that result from VISITING SCIENTIST's activities under this Agreement, subject to the following provisions:
- 8.2. Should YALE desire to disclose publicly, in writing or oral presentation, the results of the research or any INVENTION disclosed by VISITING SCIENTIST under this Agreement and for which a PATENT APPLICATION has not been filed, YALE shall notify COMPANY in writing of its intention at least thirty (30) days before such disclosure. YALE shall include with such notice a description of the oral presentation, or in the case of a manuscript or other proposed written disclosure, a current draft of such written disclosure. COMPANY may request YALE, no later than thirty (30) days following the receipt of YALE's notice, to file a PATENT APPLICATION, copyright or other filing related to such INVENTION. All such filings shall be subject to the provisions of Article 4 of this Agreement. Upon receipt of such request, YALE shall arrange for a short delay in publication, not to exceed sixty (60) days, to permit filing of a PATENT APPLICATION or other application by YALE, or if YALE declines to file such application, to permit COMPANY to make such a filing.

- 8.3. If YALE desires to demonstrate, publish or publicize the results of research or any INVENTION that result from VISITING SCIENTIST's activities under this Agreement and that is not patentable, and COMPANY objects to such proposed disclosure within the time period specified in Section 7.2 above, the parties will negotiate in good faith to determine whether the proposed disclosure can be modified or delayed, consistent with the objectives of each party. In no event shall YALE be prohibited from proceeding with any such publication for more than a total of ninety (90) calendar days. VISITING SCIENTIST may publish or publicize the results of research that result from VISITING SCIENTIST's activities under this Agreement only with the prior written permission of the HOSTING FACULTY MEMBER.

9. Use of Name

COMPANY and VISITING SCIENTIST shall not directly or indirectly use the YALE name, or the name of any trustee, officer, faculty member, student or employee thereof on any product, service, advertisement, or promotional materials, without the prior written consent from YALE and the person(s) involved.

10. Indemnity

- 10.1. COMPANY agrees to defend, indemnify and hold harmless YALE and any of YALE's faculty, students, employees, trustees, officers, affiliates and agents (hereinafter referred to collectively as the "INDEMNIFIED PERSONS") from and against any and all liability, claims, lawsuits, losses, damages, costs or expenses (including attorneys' fees), which the INDEMNIFIED PERSONS may hereafter incur, suffer or be required to pay by reason of this Agreement, the INVENTIONS, the RESEARCH, or COMPANY use of the results of the RESEARCH or of other results of VISITING SCIENTIST's activities at YALE, or any act or omission of COMPANY or its employees, including VISITING SCIENTIST. YALE shall notify COMPANY upon learning of the institution or threatened institution of any such liability, claims, lawsuits, losses, damages, costs and expenses and YALE shall cooperate with COMPANY in every proper and reasonable way in the defense or settlement thereof at COMPANY request and expense.

11. Governing Law

- 11.1. This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Connecticut, without giving effect to its conflict of law provisions.

12. Notices

12.1. Notices, with the exception of INVENTION disclosures, under this Agreement shall be in writing and sent by public courier and addressed as follows:

If to YALE, to:

If to COMPANY, to:

Yale University
Office of Sponsored Projects
P.O. Box 208327
New Haven, CT 06520-8327
Attn: Executive Director, Office of Sponsored Projects

And with a copy to:

Office of Cooperative Research
Yale University
433 Temple Street
New Haven, CT 06511
Attn: Managing Director

13. Third Party Obligations

13.1. To the extent VISITING SCIENTIST participates in activities subject to YALE'S obligations to a third-party, VISITING SCIENTIST and COMPANY agree that VISITING SCIENTIST's activities and creations may be subject to such third-party obligations, as applicable, anything in this Agreement to the contrary notwithstanding.

14. Relationship of the Parties. The relationship of YALE and COMPANY established by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed to create a relationship of employment or agency, nor shall either party's employees, servants, agents, or representatives be considered the employees, servants, agents, or representatives of the other. Nothing in this Agreement shall be construed to constitute the parties as partners or joint venturers, or allow either of the parties to create or assume any obligation on behalf of the other party.

15. NO WARRANTIES. YALE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, INCLUDING, WITHOUT LIMITATION, THE RESULTS OF THE RESEARCH OR ANY INVENTIONS OR PRODUCT, TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED,

OR DEVELOPED UNDER THIS AGREEMENT; OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH RESULTS OR OF ANY SUCH INVENTION OR PRODUCT.

YALE shall not be liable for any direct, consequential, or other damages such as lost profits, loss of economic opportunity, unabsorbed overhead, or imputed costs, suffered by the COMPANY, its licensees, or any others resulting from the use of the Research results or any such invention or product.

16. Force Majeure. YALE shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond the control of YALE, or by reason of any of the following: labor disturbances or disputes of any kind, accidents, governmental policy, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failure of utilities, mechanical breakdowns, material shortages, disease, or similar occurrences.

17. Assignment. Neither YALE nor the COMPANY shall assign this Agreement to any other person without the prior written consent of the other, and any purported assignment without such consent shall be void.

18. Severability. In the event that a court of competent jurisdiction holds any provision of this Agreement to be invalid, such holding shall have no effect on the remaining provisions of this Agreement, and they shall continue in full force and effect.

19. Entire Agreement: Amendments. This Agreement and the Exhibits hereto contain the entire Agreement between the parties. No amendments or modifications to this Agreement shall be effective unless made in writing and signed by authorized representatives of both parties.

20. Similar Research. Nothing in this Agreement shall be construed to limit the freedom of YALE or of its researchers from engaging in research made under other grants, contracts or agreements with parties other than the COMPANY.

21. Export Regulation. Each party shall observe the laws and regulations related to the export controls of the United States of America.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

YALE UNIVERSITY

COMPANY

By:

By:

Name:

Name:

Title:

Office of Sponsored Projects

Title:

Date:

Date:

Read and acknowledged:

By:

Name: [insert name of Hosting Faculty Member]

Date:

By:

Name: [insert name of Visiting Scientist]

Date:

Exhibit A: RESEARCH

[insert brief description of the research plan]

SAMPLE - NOT FOR SIGNATURE

Exhibit B: Estimated Costs of the RESEARCH

[insert budget comprised of direct research costs (e.g., materials, reagents, supplies, equipment, animal housing costs, etc.) and indirect costs at standard rate]

SAMPLE - NOT FOR SIGNATURE