

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into, effective as of February 10, 1995, by and among the University of Utah (the "University"), having an address at 421 Wakara Way, Suite 170, Salt Lake City, Utah 84108, the Public Health Service ("PHS"), as represented by the Office of Technology Transfer, having an address at National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804, and Myriad Genetics, Inc. ("Myriad"), having an address at 390 Wakara Way, Salt Lake City, Utah 84108. The University, PHS and Myriad are hereinafter collectively referred to as the "Parties."

WHEREAS the University and Myriad have engaged in a collaborative research program (the "Research Program") to isolate, sequence and characterize the human chromosome 17q-linked gene predisposing to breast and ovarian cancer (the "BRCA1 gene"), which program resulted in the successful discovery of the BRCA1 gene during 1994;

WHEREAS a portion of the funding for the Research Program was provided through Department of Health and Human Services grants, and scientists at the National Institute of Environmental Health Sciences ("NIEHS") participated in certain aspects of the Research Program;

WHEREAS subsequent to the discovery of the BRCA1 gene, a dispute arose among the Parties concerning whether two NIEHS scientists, Dr. Roger W. Wiseman and Dr. P. Andrew Futreal, should by virtue of their contributions to the research effort leading to the discovery of the BRCA1 gene, be named as joint inventors in one or more of the patent applications (or divisions, continuations-in-part, continuations and foreign counterparts thereof) filed by the University and Myriad directed to the BRCA1 subject matter, in which event the PHS would have joint ownership rights, by virtue of an assignment from Drs. Wiseman and Futreal, with respect to patents which may issue from such applications, divisions, continuations-in-part or continuations;

WHEREAS the Parties have carefully reviewed the facts with respect to the contributions of Drs. Wiseman and Futreal to the discovery of the BRCA1 gene, with the assistance of their respective patent counsel, and have engaged in extensive discussions with a view to making a proper determination under U.S. patent law of inventorship with respect to the aforementioned patent applications;

WHEREAS the Parties mutually desire that the inventions claimed in the aforementioned patent applications be administered in a manner to ensure their rapid commercialization and to make their benefits widely available to the public, and in furtherance of such goals, the University and the PHS are contemporaneously herewith entering into an Interinstitutional Agreement (a copy of which is attached hereto) providing for a license to the University of any rights PHS may have in such inventions; and

WHEREAS the Parties desire and agree that the Interinstitutional Agreement shall be subject to the terms of this Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions.

All terms used herein and not otherwise defined herein shall have the meanings given to them in the Interinstitutional Agreement.

2. Inventorship Determinations and Related Patent Filings.

2.1 As a result of the analyses undertaken by the Parties concerning discovery of the BRCA1 gene, it has been determined pursuant to principles of U.S. patent law that Drs. Wiseman and Futreal are joint inventors of certain subject matter.

5. Additional Provisions.

5.1 The PHS represents and warrants that Drs. Wiseman and Futreal are legally and/or contractually obligated to assign all of their ownership rights under any patent applications and patents issuing therefrom related to the INVENTIONS (as defined in the Interinstitutional Agreement), such that the PHS has or will have complete and unencumbered rights to the INVENTIONS as to which it is granting an exclusive worldwide license to the University pursuant to the Interinstitutional Agreement.

5.2 The University and the PHS agree that each shall contemporaneously send to Myriad copies of any notices pursuant to the Interinstitutional Agreement that they send to each other. Myriad and the University agree that each shall contemporaneously send to the PHS copies of any notices pursuant to the License Agreement that they send to each other.

5.3 This Settlement Agreement is binding upon and shall inure to the benefit of the Parties, their successors and assigns, but shall not be assigned by any of the Parties without the prior written consent of the other Parties, except that Myriad may assign this Settlement Agreement to any party to whom it assigns the License Agreement. This Settlement Agreement, together with the Interinstitutional Agreement, as it may be amended from time to time (collectively, the "Agreements"), constitute the entire agreement, both written and oral, among the Parties with respect to the subject matter of the Agreements, and all other agreements or understandings, whether written or oral, respecting such subject matter (other than the funding agreements identified in Paragraph 1.1 of the Interinstitutional Agreement) are superseded by the Agreements and shall have no force or effect. Any modification of this Settlement Agreement must be in writing and signed by all of the Parties.

5.4 All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) made by telex, telecopy or facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered or certified mail, return receipt requested, postage prepaid.

If to PHS:

Arthur J. Cohn, Esq.
Technology Licensing Specialist
Office of Technology Transfer
National Institutes of Health
6011 Executive Boulevard, Suite 325
Rockville, Maryland 20852-3804
Fax number: (301) 402-0220

If to the University:

Mr. Thomas D. Major
Director of Technology Transfer
Technology Transfer Office
University of Utah
421 Wakara Way
Salt Lake City, Utah 84108
Fax number: (801) 581-7538

If to Myriad:

Peter D. Meldrum, President and Chief Executive Officer
Myriad Genetics, Inc.
390 Wakara Way
Salt Lake City, Utah 84108
Fax number: (801) 584-3640

With a copy to:

Jonathan L. Kravetz, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Fax number: (617) 542-2241

All notices, requests, consents and other communications hereunder shall be deemed to have been given either (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (ii) if made by telex, telecopy or facsimile transmission, at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, or (iv) if sent by registered or certified mail, on the 5th business day following the day such mailing is made.

5.5 The terms and provisions of this Settlement Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Settlement Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

5.6 This Settlement Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by federal law as interpreted by the U.S. District Court for the District of Columbia.

5.7 The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify, or affect the meaning or construction of any of the terms or provisions hereof.

5.8 None of the Parties will issue any press release to the media regarding the existence or terms of the Agreements without the prior consent of the other Parties. The Agreements and any other information and materials furnished or disclosed and marked "Confidential" by any of the Parties shall be treated by the Parties as confidential information which may not be disclosed to any third party without the prior consent of all of the Parties, except as required by law. PHS shall treat the Agreements and all such information and materials as commercial and financial information obtained from a person and as privileged and confidential, and, to the extent permitted by law, shall not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. §552.

5.9 This Settlement Agreement may be executed on one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties have each executed this Settlement Agreement by their duly authorized officers or representatives, as the case may be, as of the date in the first paragraph hereof, with the intention that it take effect as an instrument under seal.

PUBLIC HEALTH SERVICE

By: Maria Freire
Maria C. Freire, Ph.D.
Director, Office of Technology Transfer
National Institutes of Health

UNIVERSITY OF UTAH:

By: Richard K. Koehn
Richard K. Koehn
Vice President for Research

MYRIAD GENETICS, INC.

By: Peter D. Meldrum
Peter D. Meldrum, President and Chief
Executive Officer