

This draft is dated _____, and is solely for purposes of negotiation. No contract shall exist until a final, written agreement is signed by WARF and an authorized representative of Company. This draft shall expire thirty (30) days after the above date.

OPTION AGREEMENT

This Agreement is made effective the ___ day of _____, ____, by and between Wisconsin Alumni Research Foundation (hereinafter called "WARF"), a nonstock, nonprofit Wisconsin corporation and _____ (hereinafter called "Company"), a corporation organized and existing under the laws of _____;

In consideration of the mutual covenants and agreements set forth below, the parties covenant and agree as follows:

Section 1. Definitions.

For the purpose of this Agreement, the Appendix A definitions shall apply.

Section 2. Grant.

A. Option to a License.

WARF hereby grants to Company an option during the Option Period to negotiate a license under the Patents in the Option Field and Option Territory.

B. Term and Exercise of Option.

The option granted hereunder shall terminate at the end of the Option Period. In order to exercise its option, Company must, prior to the end of the Option Period, both notify WARF in writing that it is exercising its rights and provide WARF with an acceptable development plan similar in scope to that outlined on Appendix C hereto.

C. Negotiation and Terms of License.

(i) Upon WARF's receipt of notice and a development plan reasonably acceptable to WARF pursuant to Section 2B, WARF and Company shall enter into good faith negotiations regarding the terms of a license agreement. WARF and Company shall have ninety (90) days from the date that WARF receives notice pursuant to Section 2B to negotiate such a license. If WARF and Company fail to enter a license within such time period, the option granted in this Agreement shall terminate, unless extended by a written agreement signed by both parties.

(ii) The terms of the license agreement shall contain reasonable commercial terms and shall be substantially the same in format as those generally used in WARF's agreements with companies concerning similar technology.

Section 3. Consideration.

Company shall pay to WARF a \$_____ option fee within thirty (30) days of Company's execution of this Agreement.

Section 4. Certain Warranties of WARF.

A. WARF warrants that except as otherwise provided under Section 5 of this Agreement with respect to U.S. Government interests, it is the owner of the Patents or otherwise has the right to grant the options granted under this Agreement. Nothing in this Agreement shall be construed as:

(i) a warranty or representation by WARF as to the validity or scope of any of the Patents;

(ii) a warranty or representation that anything made, used, sold or otherwise disposed of under a license granted pursuant to this Agreement will or will not infringe patents of third parties;

(iii) an obligation to bring or prosecute actions or suits against third parties for infringement of the Patents;

(iv) an obligation to furnish any know-how not provided in the Patents; or

(v) a warranty or representation by WARF that it will not grant licenses to others to make, use or sell products not covered by the claims of the Patents which may be similar and/or compete with Products made or sold by Company.

Section 5. United States Government Interests.

It is understood that if the United States Government (through any of its agencies or otherwise) has funded research, during the course of or under which any of the inventions of the Patents were conceived or made, the United States Government is entitled, as a right, under the provisions of 35 U.S.C. § 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations, to a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced the inventions of such Patents for governmental purposes. Any license granted to Company pursuant to this Agreement shall be subject to such right.

Section 6. Notices.

Any notice required to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given at the earlier of the time when actually received as a consequence of any effective method of delivery, including but not limited to hand delivery, transmission by telecopier, or delivery by a professional courier service or the time when sent by certified or registered mail

addressed to the party for whom intended at the address below or at such changed address as the party shall have specified by written notice, provided that any notice of change of address shall be effective only upon actual receipt.

- (a) Wisconsin Alumni Research Foundation
Attn: Contracts Manager
614 Walnut Street
Madison, Wisconsin 53726

- (b) Company _____
Attn: _____

Section 7. Miscellaneous.

This Agreement may not be transferred or assigned by Company except with the prior written consent of WARF. This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Wisconsin. The parties hereto are independent contractors and not joint venturers or partners. This Agreement constitutes the full understanding and entire agreement between the parties and merges all prior agreements with respect to the subject matter hereof and may be amended or extended only by express, written agreement between the parties which specifically states that it is an amendment to this Agreement.

Section 8. Confidentiality.

Both parties agree to keep any information identified as confidential by the disclosing party, confidential using methods at least as stringent as each party uses to protect its own confidential information. "Confidential Information" shall include Company's development plan and development reports, the Patents and all information concerning them and any other information marked confidential or accompanied by correspondence indicating such information is confidential exchanged between the parties hereto. Except as may be authorized in advance in writing by WARF, Company shall grant access to the Confidential Information only to its own employees involved in research relating to the Patents and Company shall require such employees to be bound by this Agreement as well. Company agrees not to use any Confidential Information to its advantage and WARF's detriment, including but not limited to claiming priority to any application serial numbers of the Patents in Company's patent prosecution. The confidentiality and use obligations set forth above apply to all or any part of the Confidential Information disclosed hereunder except to the extent that:

- (i) Company or WARF can show by written record that it possessed the information prior to its receipt from the other party;
- (ii) the information was already available to the public or became so through no fault of the Company or WARF;

(iii) the information is subsequently disclosed to Company or WARF by a third party that has the right to disclose it free of any obligations of confidentiality;

(iv) the information is required by law, rule, regulation or judicial process to be disclosed (if such requirement arises, the party requested to disclose the Confidential Information of the other party shall, prior to any such disclosure, promptly notify said party and provide assistance in any reasonable effort to obtain confidential treatment with respect to such disclosure); or

(v) five (5) years have elapsed from the expiration of this Agreement.

Section 9. Authority.

The persons signing on behalf of WARF and Company hereby warrant and represent that they have authority to execute this Agreement on behalf of the party for whom they have signed.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates indicated below.

WISCONSIN ALUMNI RESEARCH FOUNDATION

By: _____ Date: _____

Michael E. Falk, General Counsel

COMPANY

By: _____ Date: _____

Name and Title: _____

_____ - P _____

APPENDIX A

- A. “Option Field” shall be limited to _____.
- B. “Option Period” shall mean the period commencing on the effective date of this Agreement and ending _____ thereafter.
- C. “Option Territory” shall be limited to _____.
- D. “Patents” shall refer to and mean those patents and patent applications listed on Appendix B hereto that are in countries in the Territory and any subsequent patent application owned by WARF in a country in the Territory but only to the extent it claims priority to an invention claimed in a patent application listed on Appendix B in such country.
- E. “Products” shall refer to and mean any and all products that employ or are in any way produced by the practice of an invention claimed in the Patents or that would otherwise constitute infringement of any claims of the Patents.

APPENDIX B

PATENTS AND PATENT APPLICATIONS

REFERENCE NUMBER	COUNTRY	PATENT NUMBER	ISSUE DATE	APPLICATION SERIAL NUMBER
------------------	---------	---------------	------------	---------------------------

Technology Title (Inventors...)

P_____US	UNITED STATES			
----------	---------------	--	--	--

Technology Title (Inventors...)

P_____US	UNITED STATES			
----------	---------------	--	--	--

APPENDIX C

DEVELOPMENT PLAN

A development plan of the scope outlined below shall be submitted to WARF by Company upon Company's exercise of its option. In general, the plan should provide WARF with a summary overview of the activities that Company believes are necessary to bring Products to the marketplace.

Estimated
Start Date Finish Date

I. Development Program

A. Development Activities to be Undertaken

(Please break activities into subunits with the date of completion of major milestones)

- 1.
- 2.

B. Estimated Total Development Time

II. Governmental Approval

A. Types of submissions required

B. Government agency e.g. FDA, EPA, etc.

III. Proposed Market Approach

IV. Competitive Information

A. Potential Competitors

B. Potential Competitive Devices/Compositions

C. Known Competitor's plans, developments, technical achievements

D. Anticipated Date of Product Launch

Total Length: approximately 2-3 pages