

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

OPTION AND RESEARCH LICENSE AGREEMENT

This Option and Research Agreement (“Agreement”) is made effective the ___ day of _____, ____ (“Effective Date”), by and between Wisconsin Alumni Research Foundation (“WARF”), a nonstock, nonprofit Wisconsin corporation and _____ (“Company”), a corporation organized and existing under the laws of _____.

WHEREAS, WARF owns certain intellectual property rights to the inventions described in the Optioned Patents as defined below. WARF is willing to grant an internal research license to Company under any one or all of the Optioned Patents and Company desires a license under all of them. Company will not commercialize, sell, disclose, or transfer any results of such research without exercising the option to a license granted hereunder.

NOW, THEREFORE, in consideration of the representations, covenants warranties and agreements set forth below, the parties agree as follows:

Section 1. Definitions.

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

Section 2. Grant.

A. Research License.

WARF hereby grants to Company a non-exclusive, nontransferable license under the Optioned Patents to make, use, and receive the inventions of the Optioned Patents, solely in the Option Field and Option Territory for internal evaluation purposes. Said license will commence on the Effective Date and terminate upon the expiration of the Option Period.

B. Limitations.

Company acknowledges and agrees that the license granted hereunder does not provide any right or license to, and Company will not: (1) grant any sublicenses or otherwise purport to extend any rights under this Agreement to any third parties; (2) sell, offer for sale, distribute or otherwise transfer or provide the inventions of the Optioned Patents, or any Products, to any third party; (3) perform any process or service for a fee or for any third party that employs or is in any way derived or developed by the practice of an invention claimed in the Optioned Patents or that would otherwise constitute infringement of any claims of the Optioned Patents; (4) use the inventions of the Optioned Patents in any human clinical trial without the express written consent of WARF; or (5) use the inventions of the Optioned Patents for any purpose other than its own internal evaluation purposes in the Licensed Field.. Company further agrees that, except as expressly set forth in Section 2A, Company is not being granted any rights, either express or

implied, under this Agreement to any patents, trade secrets, know-how, data, copyrights, materials, or other intellectual property of WARF.

C. Option to a License.

(i) WARF hereby grants to Company an option during the Option Period to negotiate a license agreement under the Optioned Patents solely in the Option Field and Option Territory to make, use and sell Products. Said option will terminate at the end of the Option Period.

(ii) In order to exercise the option granted hereunder, Company must, prior to the end of the Option Period, both notify WARF in writing that it is exercising its rights and provide to WARF an acceptable development plan similar in scope to that outlined in Appendix C.

(iii) Upon WARF's receipt of Company's notice and development plan reasonably acceptable to WARF, WARF and Company will enter into good faith negotiations regarding the terms of a license. WARF and Company will have ninety (90) days from the date that WARF receives Company's notice pursuant to Section 2C(ii) to negotiate such a license agreement. If WARF and Company fail to enter a license within such time period, the option granted in this Agreement will terminate, unless extended by a written agreement signed by both parties. The terms of the license will include, without limitation, a license fee, royalties, patent reimbursement fees and other commercially reasonable terms as negotiated by the parties, and will be substantially the same in format as those generally used in WARF's agreements with companies concerning similar technology.

D. Improvements.

Company agrees and covenants not to sue WARF or the University of Wisconsin, or any academic or non-profit organizations or government agencies, working for or in collaboration with the University of Wisconsin, for patent infringement of any Improvements for activities that are Non-Commercial Research Purposes. "Improvements" will mean any patented modification of an invention described in the Optioned Patents that (1) would be infringed by the practice of an invention claimed in the Optioned Patents; or (2) if not for the license granted under this Agreement, would infringe one or more claims of the Optioned Patents.

Section 3. Consideration.

A. As consideration for the option granted hereunder, Company agrees to pay to WARF an option fee of \$ _____ within thirty (30) days after the Effective Date. Except as otherwise directed, all amounts owing to WARF under this Agreement will be paid in U.S. dollars using the address provided in Section 12(a) or paid via wire transfer if agreed upon.

B. As consideration for the evaluation license provided hereunder, Company agrees to provide to WARF a Development Report within thirty (30) days of the end of the Option Period. "Development Report" will mean a written report summarizing the nature of Company's research involving the Optioned Patents, all results and data arising from Company's evaluation, and any other products or services that incorporate or relate to the inventions of the Optioned Patents.

Section 4. Certain Warranties.

A. WARF warrants that except as otherwise provided under Section 11 of this Agreement with respect to U.S. Government interests, it is the owner of the Optioned Patents or otherwise has the right to grant the licenses granted Company in this Agreement. However, nothing in this Agreement will be construed as: (i) a warranty or representation by WARF as to the validity or scope of any of the Optioned Patents; (ii) a warranty or representation that any product or process made, used, sold, or otherwise disposed of under or in association with the license granted in this Agreement is or will be free from any claim of infringement or misappropriation of any intellectual property rights other than the Optioned Patents; or (iii) an obligation to furnish any know-how not provided in the Optioned Patents or any services other than those specified in this Agreement.

B. WARF MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, MARKETABILITY, REGULATORY APPROVAL, SAFETY, OR ACCURACY. WARF ASSUMES NO RESPONSIBILITIES AND MAKES NO PROMISES WHATSOEVER WITH RESPECT TO THE USE, EVALUATION, OR OTHER DISPOSITION BY COMPANY OF THE INVENTIONS OF THE OPTIONED PATENTS OR ANY PRODUCTS OR SERVICES EMPLOYING, EMPLOYED IN, INCORPORATING, OR MADE BY USE OF SUCH INVENTIONS.

C. Company hereby acknowledges that this is an Agreement for internal evaluation purposes, and that Company's use of the inventions of the Optioned Patents will be experimental in nature; Company therefore agrees to rely solely on its own expertise and judgment regarding its use of the inventions of the Optioned Patents.

D. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WARF OR ITS TRUSTEES, DIRECTORS, OFFICERS AND EMPLOYEES (INCLUDING WITHOUT LIMITATION ANY INVENTORS OF THE OPTIONED PATENTS) BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGES OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. For clarity, the foregoing limitation of liability will not relieve Company of its obligations under Section 9 in regard to any covered third party claims for indirect, incidental, or consequential damages.

Section 5. Recordkeeping.

Company will keep books and records sufficient to verify its compliance with this Agreement and the accuracy and completeness of Company's Development Report referred to above, including, without limitation, protocols and records of studies and evaluation testing of the inventions of the Optioned Patents, laboratory notebooks, internal job cost records, specifications and design materials for any prototypes or models, and test data and conclusions drawn from evaluation studies relating to the inventions of the Optioned Patents. Such books and records will be preserved for a period not less than six (6) years after

they are created during and after the term of this Agreement. Company will take all steps necessary so that WARF may, via a WARF employee, attorney or registered CPA designee and upon reasonable notice and during regular business hours within thirty (30) days of its request, review and copy all the books and records at a single U.S. location to allow WARF to verify the accuracy of Company's Development Reports.

Section 6. Term and Termination.

A. The term of this license and Agreement will begin on the Effective Date and will terminate upon the expiration of the Option Period or, if Company exercises its option, ninety (90) days from the date that WARF receives notice pursuant to Section 2(C)ii.

B. Company may terminate this Agreement at any time by giving at least ninety (90) days' written and unambiguous notice of such termination to WARF, which will include a statement of the reasons for termination.

C. If Company at any time defaults in the timely payment of any monies due to WARF or fails to timely provide to WARF any Development Report or provides any false information with respect thereto, or commits any breach of any other covenant, representation, or warranty herein contained, and Company fails to remedy any such breach or default within thirty (30) days after written notice thereof by WARF, or if Company commits any act of bankruptcy, becomes insolvent, is unable to pay its debts as they become due, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not dismissed within sixty (60) days, or Company offers any component of the Optioned Patents to its creditors, WARF may, at its option, terminate this Agreement immediately by giving notice of termination to Company.

D. Upon the effective termination of this Agreement, the licenses granted herein will immediately terminate and Company will cease all activities involving the use of the inventions of the Optioned Patents.

E. Waiver by either party of a single breach or default, or a succession of breaches or defaults, will not deprive such party of any right to terminate this Agreement in the event of any subsequent breach or default.

Section 7. Assignability.

This Agreement may not be transferred or assigned by Company, whether pursuant to a change-of-control event or otherwise, without the prior written consent of WARF. Any transfer or assignment in breach of this Section 7 will be deemed null and void, and immediately ineffective.

Section 8. Contest of Validity.

Company must provide WARF at least three (3) months prior written notice before filing any proceeding that contests the validity of any Optioned Patent during the term of this Agreement. In the event Company files any such proceeding, Company's option shall immediately terminate, and WARF shall be relieved of any obligation to negotiate in good faith with Company in regard to any license.

Section 9. Product Liability; Conduct of Business.

A. All research and development activities, strategies, and decisions are entirely at the discretion of Company, and Company will rely entirely on its own expertise with respect thereto. Company will, at all times during the term of this Agreement and thereafter, indemnify, defend, and hold harmless the inventors of the Optioned Patents, WARF and the University of Wisconsin-Madison, and their respective employees, trustees, contractors, and agents against all claims and expenses, including legal expenses and reasonable attorneys fees, arising out of the death of or injury to any person or persons or out of any damage to any property and against any other claim, proceeding, demand, expense, loss, and liability of any kind whatsoever resulting from each of the following: (1) the development, design, production, manufacture, sale, use, lease, consumption, marketing, import/export, or advertisement of any Products; (2) the internal evaluation of the inventions of the Optioned Patents and any decisions, designs, or actions taken or avoided by Company based on such evaluation; (3) the exercise of any right or the performance or non-performance of any obligation of Company hereunder; or (4) the negligent, reckless, or willful actions or omissions of Company. WARF at all times reserves the right to select and retain counsel of its own to defend WARF's interests.

B. Company warrants that it will, on or before the Effective Date, maintain and will continue to maintain liability insurance coverage appropriate to the risk involved in performing the research and development contemplated under this Agreement and that such insurance coverage lists WARF and the inventors of the Optioned Patents as additional insureds. Upon WARF's request, Company will present evidence to WARF that such coverage is being maintained.

Section 10. Use of Names.

Company will not use WARF's name, or any derivation thereof, the name of any inventor of inventions governed by this Agreement, or the name of the University of Wisconsin in sales promotion, advertising, or any other form of publicity without the prior written approval of the entity or person whose name is being used.

Section 11. 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 Optioned 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 invention of such Optioned Patents for governmental purposes. Any license granted to Company pursuant to this Agreement will be subject to such right.

Section 12. Notices.

Any notice required to be given pursuant to the provisions of this Agreement will be in writing and will 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 or electronic transmission, i.e.,

email, 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 will have specified by written notice, provided that any notice of change of address will be effective only upon actual receipt.

(a) Wisconsin Alumni Research Foundation

Attn: Contracts Manager
614 Walnut Street
Madison, Wisconsin 53726
Phone: (608) 263-2500
Email: contracts@warf.org

(b) Company _____

Attn: _____

Phone: _____

Email: _____

Section 13. Confidentiality.

A. The parties hereto 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" will include the terms of this Agreement, Company's Development Reports, the Optioned Patents and all information concerning them (including without limitation all know-how, research results and similar information held by WARF) and any other information either (i) marked confidential or accompanied by correspondence indicating such information is exchanged in confidence between the parties or (ii) that is, or should be, reasonably understood to be otherwise proprietary or confidential to a party. Except as may be authorized in advance in writing by WARF, Company will only grant access to WARF's Confidential Information to those employees of Company involved in research relating to the Optioned Patents. Company will require all such employees to be bound by terms of confidentiality no less restrictive than those set forth in this Section 13. Company will not use any Confidential Information to WARF's detriment, including, but not limited to, claiming priority to the Optioned Patents in any patent prosecution.

B. The confidentiality obligations set forth above apply to all or any part of the Confidential Information disclosed hereunder except to the extent that: (i) the receiving party can show by competent evidence that it possessed the information prior to its receipt from the disclosing party; (ii) the information was already available to the public or became so through no fault of the receiving party; (iii) the information is subsequently disclosed to the receiving party 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 receiving party will, prior to any such disclosure, promptly notify the disclosing 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 or termination of this Agreement.

Section 14. Miscellaneous.

This Agreement will be governed by and construed in all respects in accordance with the laws of the State of Wisconsin. If any provisions of this Agreement are or will come into conflict with the laws or regulations of any jurisdiction or any governmental entity having jurisdiction over the parties or this Agreement, those provisions will be deemed automatically deleted, if such deletion is allowed by relevant law, and the remaining terms and conditions of this Agreement will remain in full force and effect. If such a deletion is not so allowed or if such a deletion leaves terms thereby made clearly illogical or inappropriate in effect, the parties agree to substitute new terms as similar in effect to the present terms of this Agreement as may be allowed under the applicable laws and regulations. The parties hereto are independent contractors and not joint venturers or partners.

Section 15. Integration; Execution.

A. This Agreement constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing made prior to or at the signing hereof, will vary or modify the written terms of this Agreement. Neither party will claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this Agreement.

B. 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. This Agreement may be executed in one or more counterparts by the parties by signature of a person having authority to bind the party, each of which when executed and delivered by facsimile, electronic transmission, or by mail delivery, will be an original and all of which will constitute but one and the same Agreement. The parties agree this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. No agreement between the parties will exist unless the duly authorized representatives of Company and WARF have signed this document within sixty (60) days of the Effective Date written on the first page of this Agreement.

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

(Signature Block Appears On Next Page)

WISCONSIN ALUMNI RESEARCH FOUNDATION

By: _____ Date: _____,
Appropriate WARF representative, Title

COMPANY

By: _____ Date: _____,

Name and Title: _____

WARF Ref.: _____ - P _____ US

APPENDIX A

A. “Non-Commercial Research Purposes” means use for academic research purposes or other not-for-profit or scholarly purposes not involving the performance of services for a fee or the production or manufacture of products for sale to third parties.

B. “Option Field” is limited to _____.

C. “Option Period” is the period commencing on the Effective Date and ending ___ () months thereafter.

D. “Option Territory” is be limited to _____.

E. “Optioned Patents” means those patents and patent applications listed on Appendix B attached hereto that are in countries in the Option Territory, as well as any divisional, continuation (but not continuation-in-part) or reexamination application thereof and each patent that issues or reissues from any such application, but only to the extent it claims an invention claimed in a patent application listed on Appendix B in such country.

F. “Products” means any and all products that incorporate, comprise, employ or are in any way produced by the practice of an invention claimed in the Optioned Patents, or the manufacture, use, sale, offer for sale, importation, or marketing of which would otherwise constitute infringement of any claim(s) of the Optioned Patents.

APPENDIX C

DEVELOPMENT PLAN

A development plan of the scope outlined below will 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 |

II. 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

III. Governmental Approval

A. Types of submissions required

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

IV. Proposed Market Approach

V. 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