

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

BIOMATERIALS LICENSE 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 "Licensee"), a company organized and existing under the laws of _____.

WHEREAS, the materials identified below (the "Materials"), have resulted from the research efforts of Prof. _____, a professor at the University of Wisconsin-Madison ("University"), working either alone or together with other researchers at the University ("Researchers");

WHEREAS, WARF, as the designated patent management organization for the University, holds certain rights in and to the Materials by assignment; and

WHEREAS, Licensee desires to obtain a license under WARF's Rights to the Materials to make, use and sell Products.

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

Section 1. Definitions. The following definitions shall apply in this Agreement:

- A. "Licensed Field" shall be limited to the field of _____.
- B. "Materials" shall mean the _____, referred to by WARF Ref. No.: _____, entitled "_____" obtained by or on behalf of Licensee with WARF's consent from Professor _____, any Researchers working with Professor _____, WARF or any other party.
- C. "Net Sales" shall mean the amount Licensee actually receives from its customers for the sale, lease or assignment of Products.
- D. "Products" shall mean the Materials, and any derivatives of the Materials made by Licensee, in a form suitable for commercial distribution.
- E. "WARF's Rights" shall mean WARF's rights as owner by assignment of the Materials and the know-how embodied in the Materials.

Section 2. Grant. WARF hereby grants to Licensee a nonexclusive, nontransferable, worldwide license under WARF's Rights to possess and use the Materials to make, use and sell Products in the Licensed Field.

Section 3. Transfer and Disposition of Materials.

A. WARF shall direct Professor _____ to transfer the Materials to Licensee within thirty (30) days of Licensee's execution of this Agreement. Licensee shall not sell, transfer, assign or otherwise provide access to or dispose of any of the Materials. Upon termination of this Agreement, Licensee will, at WARF's option, either return or destroy the Materials and any derivatives of the Materials, and cease making and selling Products produced under this Agreement.

B. Licensee is responsible for maintaining a sufficient quantity of the Materials during the term of this Agreement for Licensee's back-up purposes. WARF shall only cause replacement Materials to be delivered to Licensee for a one (1) year period after the effective date of this Agreement. Such replacement Materials shall be provided the first time to Licensee at WARF's expense. Any subsequent requests for Materials shall include a transfer fee, which shall reimburse WARF, Professor _____ and/or the University for the costs associated with providing the additional Materials.

Section 4. Consideration.

A. Licensee agrees to pay to WARF a license fee of \$_____ within thirty (30) days of Licensee's execution of this Agreement.

B. Licensee shall also pay to WARF a royalty of _____ (___%) of the Net Sales of Products. Such royalties shall be paid to WARF on a quarterly basis, with such amounts due and received by WARF on or before the thirtieth (30th) day following the end of the calendar quarter ending on March 31, June 30, September 30 or December 31 in which such royalties were earned. Royalties paid to WARF shall be accompanied by a Royalty Report in the form as shown in Appendix A of this Agreement, detailing the calculation of the royalties paid. The balance of any amounts which remain unpaid more than thirty (30) days after they are due to WARF shall accrue interest until paid at the rate of the lesser of one percent (1%) per month or the maximum amount allowed under applicable law. In no event, however, shall this interest provision be construed as a grant of permission for any payment delays. If however, no payment is owed to WARF, a statement setting forth that fact shall be supplied to WARF.

C. Licensee shall keep books and records sufficient to verify the accuracy and completeness of Licensee's accounting referred to above, including without limitation inventory, purchase and invoice records relating to the Products or their manufacture. WARF reserves the right to review and copy all the books and records at a single U.S. location to verify the accuracy of Licensee's accounting. Such review may be performed by any employee of WARF as well as by any attorney or registered CPA designated by WARF, upon reasonable notice and during regular business hours.

Section 5. Certain Warranties of WARF. WARF warrants that it has the right to enter into this Agreement. However, nothing in this Agreement shall be construed as a warranty or representation by WARF that any Materials or Products or anything else made, used, sold or otherwise disposed of under the license granted in this Agreement will or will not infringe patents of third parties. WARF MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES FOR MERCHANTABILITY OR FITNESS

FOR A PARTICULAR PURPOSE, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE MATERIALS, THE PRODUCTS, OR THE USE, SALE, OR OTHER DISPOSITION BY LICENSEE OR ITS VENDEES OR OTHER TRANSFEREES OF PRODUCTS.

Section 6. Term; Termination. The term of this license shall begin on the effective date of this Agreement and continue for a period of _____ (___) years thereafter, unless otherwise terminated as provided herein or as permitted by law. If Licensee has paid WARF all fees specified in Section 4A, Licensee may terminate this Agreement at any time by giving at least ninety (90) days written notice of such termination to WARF. If Licensee at any time defaults in the timely payment of any monies due to WARF or commits any breach of any other covenant herein contained, and Licensee fails to remedy any such breach or default within ninety (90) days after written notice thereof by WARF, or if Licensee 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 offers any component of the Materials to its creditors, WARF may, at its option, terminate this Agreement and any license granted hereunder by giving notice of termination to Licensee. Upon the termination of this Agreement, Licensee shall remain obligated to provide an accounting for and to pay royalties earned up to the date of the termination.

Section 7. Product Liability; Conduct of Business. All development and marketing activities, strategies, design and decisions are entirely at the discretion of Licensee, and Licensee shall rely entirely on its own expertise with respect thereto. Licensee shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold WARF and the inventors of the Materials harmless 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 property and against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from the production, manufacture, sale, use, lease, consumption or advertisement of Products arising from any right or obligation of Licensee hereunder. WARF at all times reserves the right to select and retain counsel of its own to defend WARF's interests. Licensee warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in marketing and selling the products subject to this Agreement. Upon WARF's request, Licensee will present evidence to WARF that such coverage is being maintained.

Section 8. U.S. Government Interests. The parties acknowledge that if any U.S. agency has funded research from which the Materials or any of WARF's Rights arose, the United States may be entitled to certain rights under the provisions of 35 U.S.C. § 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations. The license granted hereunder shall be subject to such rights.

Section 9. 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, electronic transmission, i.e., email, 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
Phone: (608) 263-2500
Facsimile: (608) 263-1064
Email: contracts@warf.org

(b) _____

Attn: _____

Phone: _____

Facsimile: _____

Email: _____

Section 10. Miscellaneous. 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. Licensee agrees not to use WARF's name, the names of the inventors of the Materials, 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. Confidentiality.

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" shall include the terms of this Agreement and any other information marked confidential or accompanied by correspondence indicating such information is exchanged in confidence between the parties. Except as may be authorized in advance in writing by WARF, Licensee shall only grant access to WARF's Confidential Information to those employees of Licensee involved in research under this Agreement. Licensee shall require its employees to be bound by terms of confidentiality no less restrictive than those set forth in this Section 11. Licensee shall not use any Confidential Information to WARF's detriment. 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) the receiving party can show by written record 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 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 12. Authority. The persons signing on behalf of WARF and Licensee 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: _____,
Appropriate WARF representative, Title

[LICENSEE]

By: _____ Date: _____,

Name and Title: _____

APPENDIX A

WARF ROYALTY REPORT

Licensee: _____ Agreement No: _____
 Inventor: _____ P#: _____
 Period Covered: From: _____ Through: _____
 Prepared By: _____ Date: _____
 Approved By: _____ Date: _____

If license covers several major product lines, please prepare a separate report for each line. Then combine all product lines into a summary report.

Report Type: **Single Product Line Report:** _____
 Multiproduct Summary Report. Page 1 of _____ Pages
 Product Line Detail. Line: _____ Tradename: _____ Page: _____
Report Currency: **U. S. Dollars** **Other** _____

Country	Gross Sales	* Less: Allowances	Net Sales	Royalty Rate	Period Royalty Amount	
					This Year	Last Year
U.S.A						
Canada						
Europe:						
Japan						
Other:						
TOTAL:						

Total Royalty: _____ Conversion Rate: _____ Royalty in U.S. Dollars: \$ _____

The following royalty forecast is non-binding and for WARF's internal planning purposes only:
 Royalty Forecast Under This Agreement: Next Quarter: _____ Q2: _____ Q3: _____ Q4: _____

* On a separate page, please indicate the reasons for returns or other adjustments if significant. Also note any unusual occurrences that affected royalty amounts during this period. To assist WARF's forecasting, please comment on any significant expected trends in sales volume.