

This draft is dated _____, 2013, and is solely for purposes of negotiation. No contract shall exist until a final, written agreement is approved and signed by WARF and an authorized representative of Sponsor. This draft shall expire thirty (30) days after the above date.

SPONSOR OPTION AGREEMENT

THIS AGREEMENT, dated and effective as of _____, _____ (“Effective Date”), is by and between the Wisconsin Alumni Research Foundation (“WARF”), a nonstock, nonprofit Wisconsin corporation, and _____ (“Sponsor”), a _____ corporation.

WHEREAS, Sponsor, pursuant to a separate agreement with the University of Wisconsin-Madison (“University”), has committed financial support to the University for the purpose of conducting research; and

WHEREAS, WARF is willing and hereby offers to grant options to licenses under certain patents pursued on Inventions (as defined below) and Sponsor hereby states its desire for such options;

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

Section 1. DEFINITIONS.

For the purposes of this Agreement, the Appendix 1 definitions shall apply.

Section 2. GRANT OF OPTIONS TO LICENSES.

A. Option for Existing Patents. WARF hereby grants to Sponsor an option to negotiate a nonexclusive, royalty-bearing license under any one or more of the Existing Patents in the Licensed Field. Such option shall terminate (i) with respect to all of the Existing Patents, ninety (90) days after this Agreement terminates; or (ii) with respect to a specific disclosed Existing Patent, ninety (90) days after WARF has provided Sponsor with a copy of the claims of an Existing Patent in its allowed form, whichever period is shorter. During the term of this Agreement, WARF shall promptly notify Sponsor when a claim is allowed in an Existing Patent by providing Sponsor with a copy of the claim in its allowed form.

B. Option for patents pursued on Inventions. WARF hereby grants to Sponsor an option to negotiate a nonexclusive, royalty-bearing license under patents pursued on Inventions in the Licensed Field. Such option shall terminate (i) with respect to a specific Invention, ninety (90) days after WARF has given written notification to Sponsor of the Invention; or (ii) with respect to all Inventions, ninety (90) days after this Agreement terminates, whichever period is shorter. The University or WARF shall promptly notify Sponsor of each Invention, which Sponsor will treat as WARF Confidential Information pursuant to Section 9 below.

C. Exercise of Options. Exercise of an option granted hereunder shall be by written notification to WARF. Such notification must include a Development Plan. A failure by Sponsor to

timely notify WARF shall be deemed a waiver of Sponsor's options. Upon the exercise by Sponsor of an option hereunder, WARF and Sponsor shall promptly enter into good faith negotiations with respect to a license agreement. WARF and Company shall have ninety (90) days from the date that WARF receives notice pursuant to this Section 2C 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.

D. U.S. 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 Existing Patents or Inventions were or are 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 Existing Patents or Inventions for governmental purposes. Any license granted to Sponsor as a result of this Agreement shall be subject to such right.

Section 3. CONSIDERATION.

A. In consideration for the option granted to the Existing Patents in Section 2A, Sponsor will pay to WARF an option fee of XXXXX dollars (\$_____) within thirty (30) days of execution of this Agreement ("Existing Patents Option Fee"). The Existing Patents Option Fee will be creditable against any license fee required under any license to the Existing Patents executed pursuant to Section 2C.

B. Consideration for the option to patents pursued on Inventions granted in Section 2B is the Financial Support, which is accepted by WARF in lieu of any separate option fees, which otherwise would have been required by WARF. It is agreed that Sponsor shall contribute at least XXXXX dollars (\$ _____) per year of its own money to the Financial Support in addition to any government funds which may comprise the Financial Support.

C. As further consideration, Sponsor agrees to provide WARF with a Research Report at the end of each calendar quarter.

Section 4. CERTAIN WARRANTIES OF WARF.

WARF makes no warranty other than WARF warrants that the Principal Investigator ("PI") and Researchers signing Appendices 3A and 3B have agreed to assign to WARF all inventions that any of them conceive and reduce to practice in the performance of the Research Program. The PI has further agreed to require each additional Researcher who may work on the Research Program to accept the same obligation to assign. (See Appendix 3A.) However, the PI and Researcher(s) are not employees or agents of WARF and WARF cannot guaranty their performance under the Research Program. Furthermore, nothing in this Agreement shall be construed as an obligation by WARF to provide Sponsor with any know-how or materials not provided in the Existing Patents or patents pursued on the Inventions.

Section 5. TERMINATION.

A. This Agreement shall commence on the Effective Date and terminate on _____, _____, provided, however, that Sponsor may extend this Agreement for ___ (__) additional one-year terms if WARF approves such additional terms after WARF has received a written renewal notification and a copy of a fully executed new memorandum agreement between Sponsor and the Board of Regents of the University of Wisconsin System that corresponds with the renewal period and provides at least \$_____ per year funding of Sponsor's own money for the Research Program. Sponsor shall also provide WARF with a copy of an updated Research Program mutually agreed upon by Sponsor and PI for the renewal period.

B. This Agreement shall terminate if the University Agreement, or a successor agreement, is terminated for any reason.

C. Sponsor may terminate this Agreement at any time upon giving WARF thirty (30) days' written notice but only with respect to its obligations to WARF and WARF's obligations to Sponsor.

Section 6. ASSIGNMENT.

This Agreement is not assignable by either party, whether pursuant to a change-of-control event or otherwise, without the prior written consent of the other party.

Section 7. 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) Sponsor _____
Attn: _____

Phone: _____
Facsimile: _____
Email: _____

Section 8. 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 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 9. 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 the terms of this Agreement, Sponsor's development plan and development reports, the Inventions 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, Sponsor shall grant access to the Confidential Information only to its own employees involved in research relating to the Inventions and Sponsor shall require such employees to be bound by this Agreement as well. Sponsor 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 patents pursued on the Inventions in Sponsor'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) 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; or
- (iv) five years have elapsed from the expiration of this Agreement.

Section 10. AUTHORITY.

The persons signing on behalf of WARF and Sponsor 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: _____,
Leigh Cagan, Chief Technology Commercialization Officer

SPONSOR

By: _____ Date: _____,

Name and Title: _____

WARF Ref: _____ - P_____

APPENDIX 1

1. “Development Plan” shall mean a summary overview of the activities believed necessary to commercialize the invention(s) of the Existing Patents and Inventions, similar in scope to the outline set forth in Appendix 4.

2. “Existing Patents” shall mean WARF’s interest in United States Patent Application Serial No(s). _____ and United States Patent No(s). _____.

3. “Financial Support” shall mean the funds provided by Sponsor to the University in support of the Research Program in an amount of at least \$_____ per year as required in the University Agreement.

4. “Invention” shall mean WARF’s interest in each patent pursued on any invention conceived and reduced to practice in the performance of the Research Program that is assigned to WARF by the Principal Investigator and Researchers.

5. “Licensed Field” shall be limited to the field of _____.

6. “Principal Investigator” shall mean the individual identified in the University of Wisconsin Principal Investigator Patent Agreement, attached hereto as Appendix 3A.

7. “Research Program” shall be limited to the ongoing program of research described in Appendix 2 during the period such program is funded by Sponsor pursuant to the University Agreement.

8. “Research Report” shall mean a written account of Sponsor’s activities, if any, under the Research Program.

9. “Researchers” shall be limited to those individuals performing research under the Research Program who have signed the University of Wisconsin Researcher Patent Agreement which is attached hereto as Appendix 3B.

10. “University Agreement” shall mean the separate, contemporaneous research agreement between Sponsor and the University, a copy of which is attached as Appendix 5.

APPENDIX 2

RESEARCH PROGRAM

(To be provided by Sponsor prior
to execution of this Agreement)

APPENDIX 3A

**UNIVERSITY OF WISCONSIN
PRINCIPAL INVESTIGATOR PATENT AGREEMENT**

_____ Principal Investigator

_____ Sponsor

I am the above Principal Investigator at the University of Wisconsin on the Research Program as described in Appendix 2 hereto. I understand that the Research Program is now or is soon to be supported, directly or indirectly, by funds supplied by the Sponsor.

In consideration for such support, I hereby agree and obligate myself to disclose promptly to the Wisconsin Alumni Research Foundation (WARF) any invention conceived and reduced to practice by me, whether solely or jointly with others, resulting in whole or in part from activity undertaken by me as a part of the Research Program. I so agree and obligate myself on the condition that WARF will consider the patentability and the licenseability of any such invention and advise me of WARF's interest in taking title to the invention and pursuing patent protection for it.

At the sole option of WARF and if WARF so requests, I hereby assign to WARF all my right, title and interest in each such invention in the United States, its territories and possessions and in all foreign countries. The making of this assignment shall be conditioned solely upon WARF's willingness to accord to me the benefit of its then-standard Memorandum Agreement for use with University inventors assigning inventions to WARF, a copy of such Agreement shall be executed both by me and WARF.

I also agree to require any other researchers working on the Research Program to similarly assign their rights in any such inventions to WARF. To fulfill this obligation, I will require that each investigator sign a copy of the University of Wisconsin Investigator Patent Agreement attached hereto as Appendix 3B, and forward the signed copy to WARF. All such inventors assigning to WARF will have the same opportunity for financial reward as any other University inventor who brings an invention to WARF under the terms of the then-standard Memorandum Agreement.

Principal Investigator: _____

Date: _____

APPENDIX 3B

UNIVERSITY OF WISCONSIN INVESTIGATOR PATENT AGREEMENT

_____ Researcher

_____ Principal Investigator(s)

_____ Sponsor

I am the University of Wisconsin researcher identified above. I am currently involved in or am about to enter into research forming part of the Research Program described in Appendix 2 conducted by the above Principal Investigator(s) at the University of Wisconsin that is covered by an Agreement between WARF and the above Sponsor. As a consequence, the research work I am undertaking, or about to undertake, may be supported, directly or indirectly, by a grant from the Sponsor.

In consideration for such support, I hereby agree and obligate myself to disclose promptly to the Wisconsin Alumni Research Foundation (WARF) any invention conceived and reduced to practice by me, whether solely or jointly with others, resulting in whole or in part from activity undertaken by me as part of the Research Program. I so agree and obligate myself on the condition that WARF will consider the patentability and the licenseability of any such invention and advise me of WARF's interest in taking title to the invention and pursuing patent protection for it.

At the sole option of WARF and if WARF so requests, I hereby assign to WARF all right, title, and interest in any such invention in the United States, its territories and possessions and in all foreign countries. The making of this assignment shall be conditioned solely upon WARF's willingness to accord to me the benefit of its then-standard Memorandum Agreement for use with University inventors assigning inventions to WARF, a copy of which Agreement shall be executed both by me and by WARF.

Researcher: _____

Date: _____

APPENDIX 4

DEVELOPMENT PLAN

	<u>Estimated Start Date</u>	<u>Estimated Duration (Months)</u>
I. Development Plan		
A. Studies to be Undertaken		
(To be broken into 3-9 month subunits with major milestones dated)		
1.		
2.		
3.		
4.		
To be provided prior to agreement execution		
B. Total Estimated Development Time		
II. Government Compliance		
A. Types of submissions required		
B. Government agency e.g. FDA, EPA, etc.		
C. Projected date of compliance		
III. Market Plan (sufficient to make royalty, preliminary pricing, distribution and volume projections)		
IV. Competitive Information (two-three pages)		
A. Potential Competitors		
B. Potential Competitive Devices/Compositions		
C. Known competitor's plans, developments, technical achievements		
V. Trends in Industry		

APPENDIX 5

UNIVERSITY AGREEMENT

(To be provided by Sponsor prior
to execution of this Agreement)