

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 Licensee. This draft shall expire thirty (30) days after the above date.

NON-EXCLUSIVE COPYRIGHT LICENSE

This Agreement is made effective the ___ day of _____, _____, by and between Wisconsin Alumni Research Foundation (“WARF”), a nonstock, nonprofit Wisconsin corporation, and _____ (“Licensee”), a corporation organized and existing under the laws of _____;

WHEREAS, WARF owns certain “Works” defined below, to which pertain certain “Licensed Copyrights” defined below, and WARF is willing to grant a license to Licensee under any one or all of the Licensed Copyrights and Licensee desires a license under all of them;

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

Section 1. Definitions.

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

Section 2. Grant.

A. License.

WARF hereby grants to Licensee a non-exclusive license under the Licensed Copyrights to use the Works to prepare Products and to reproduce, distribute copies of, publicly perform and publicly display Products in the Licensed Field and Licensed Territory.

B. Assignment to WARF.

Licensee hereby assigns, conveys and transfers to WARF all right, title and interest whatsoever, throughout the world, in and under the copyrights in the Products for the full duration of all such rights and any renewals and extensions thereof. Upon WARF’s request and at WARF’s expense, Licensee will execute any documents WARF might need or desire to register the copyrights in the Products anywhere in the world. Licensee hereby waives any and all economic and moral rights (to the extent lawful), that Licensee might have regarding the Products under any federal or state statute or international treaty, including without limitation any rights of attribution or integrity. Licensee shall provide WARF with a copy of each Product within six (6) months of first Publication of same, or earlier upon WARF’s request.

Section 3. Development.

A. Licensee shall diligently develop, manufacture, market and sell Products in each Licensed Field and Licensed Territory throughout the term of this Agreement. Such activities shall include, without limitation, those activities listed in the Development Plan attached hereto as Appendix E.

Licensee agrees that said Development Plan is reasonable and that it shall take all reasonable steps to meet the development program as set forth therein.

B. Beginning in calendar year 20__ and until the Date of First Commercial Sale, Licensee shall provide WARF with a written Development Report summarizing Licensee's development activities since the last Development Report and any necessary adjustments to the Development Plan. Licensee agrees to provide each Development Report to WARF on or before thirty (30) days from the end of each semi-annual period ending June 30 and December 31 for which a report is due, and shall set forth in each Development Report sufficient detail to enable WARF to ascertain Licensee's progress toward the requirements of the Development Plan. WARF reserves the right to audit Licensee's records relating to the development activities required hereunder. Such record keeping and audit procedures shall be subject to the procedures and restrictions set forth in Section 6 for auditing the financial records of Licensee.

C. Licensee agrees to and warrants that it has, or will obtain, the expertise necessary to independently evaluate the Works and to develop Products for sale in the commercial market and that it so intends to develop Products for the commercial market. Licensee acknowledges that any failure by Licensee to reasonably implement the Development Plan, or to make timely submission to WARF of any Development Report, or the providing of any false information to WARF regarding Licensee's development activities hereunder, shall be a material breach of this Agreement.

Section 4. Consideration.

A. License Fee.

Licensee agrees to pay to WARF a license fee of _____, due on _____, _____.

B. Royalty.

In addition to the Section 4A license fee, Licensee agrees to pay to WARF as "earned royalties" a royalty calculated as a percentage of the Selling Price of Products in accordance with the terms and conditions of this Agreement. The royalty is deemed earned as of the earlier of the date the Product is actually sold, leased or otherwise transferred for consideration, the date an invoice is sent by Licensee, or the date a Product is transferred to a third party for any promotional reasons. The royalty shall remain fixed while this Agreement is in effect at a rate of _____ percent (___ %) of the Selling Price.

C. Minimum Royalty.

Licensee further agrees to pay to WARF a minimum royalty of _____ per calendar year or part thereof during which this Agreement is in effect starting in calendar year _____, against which any earned royalty paid for the same calendar year will be credited. The minimum royalty for a given year shall be due at the time payments are due for the calendar quarter ending on December 31. It is understood that the minimum royalties will apply on a calendar year basis, and that sales of Products requiring the payment of earned royalties made during a prior or subsequent calendar year shall have no effect on the annual minimum royalty due WARF for any given calendar year.

D. Copyright Registration Fees and Costs.

Licensee shall pay to WARF \$_____ per United States copyright registration application to help defray the costs associated with registering the Licensed Copyrights in the United States. Licensee shall pay to WARF such copyright registration fees within thirty (30) days of execution of this Agreement or within thirty (30) days of filing of additional copyright registration applications in the United States. WARF is not obligated to make or maintain any foreign filing of the Licensed Copyrights.

E. Accounting; Payments.

(i) Amounts owing to WARF under Section 4B shall be paid on a quarterly basis, with such amounts due and received by WARF on or before the thirtieth day following the end of the calendar quarter ending on March 31, June 30, September 30 or December 31 in which such amounts were earned. 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. However, in no event shall this interest provision be construed as a grant of permission for any payment delays.

(ii) Except as otherwise directed, all amounts owing to WARF under this Agreement shall be paid in U.S. dollars to WARF at the address provided in Section 14. All royalties owing with respect to Selling Prices stated in currencies other than U.S. dollars shall be converted at the rate shown in the Federal Reserve Noon Valuation Value of Foreign Currencies on the day preceding the payment. WARF is exempt from paying income taxes under U.S. law. Therefore, all payments due under this Agreement shall be made without deduction for taxes, assessments, or other charges of any kind which may be imposed on WARF by any government outside of the United States or any political subdivision of such government with respect to any amounts payable to WARF pursuant to this Agreement. All such taxes, assessments, or other charges shall be assumed by Licensee.

(iii) A full accounting showing how any amounts owing to WARF under Section 4B have been calculated shall be submitted to WARF on the date of each such payment. Such accounting shall be on a per country and per-Product basis and shall be summarized on the form shown in Appendix C of this Agreement. In the event no payment is owed to WARF, a statement setting forth that fact shall be supplied to WARF.

Section 5. Certain Warranties.

A. WARF warrants that it is the owner of the Licensed Copyrights or otherwise has the right to grant the licenses granted to Licensee in this Agreement. However, 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 Licensed Copyrights;

(ii) a warranty or representation by WARF that anything made, used, sold or otherwise disposed of under the license granted in this Agreement will or will not infringe any copyrights, trademarks or patents of third parties; or

(iii) an obligation to furnish any know-how not provided in the Licensed Copyrights or any services other than those specified in this Agreement.

B. WARF MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO USE, SALE, OR OTHER DISPOSITION BY LICENSEE OR ITS VENDEES OR OTHER TRANSFEREES OF ANY PRODUCTS.

C. Licensee warrants that the Products are original to Licensee or, as of the date Licensee executed this Agreement, that Licensee owns all copyrights not otherwise belonging to WARF, and that the Products do not infringe the intellectual property rights of any third party.

Section 6. Recordkeeping.

A. 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. In addition, Licensee shall maintain documentation evidencing that Licensee is in fact pursuing development of Products as required herein. Such documentation may include, but is not limited to, invoices for studies advancing development of Products, internal job cost records, and filings made to the Internal Revenue Department to obtain tax credit, if available, for development of Products. Such books and records shall be preserved for a period not less than six (6) years after they are created during and after the term of this Agreement.

B. Licensee shall take all steps necessary so that WARF may 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 Licensee's royalty reports. 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.

C. If a royalty payment deficiency is determined, Licensee shall pay the royalty deficiency outstanding within thirty (30) days of receiving written notice thereof, plus interest on outstanding amounts as described in Section 4E(i).

D. If a royalty payment deficiency for a calendar year exceeds the lesser of five percent (5%) of the royalties paid for that year or \$50,000, then Licensee shall be responsible for paying WARF's out of pocket expenses incurred with respect to such review.

Section 7. Term and Termination.

A. The term of this license shall begin on the effective date of this Agreement and continue until this Agreement is terminated as provided herein or, as to each Licensed Copyright, until

each Licensed Copyright expires, or the payment of earned royalties under Section 4B, once begun, ceases for more than four (4) calendar quarters.

B. Licensee may terminate this Agreement at any time by giving at least ninety (90) days written and unambiguous notice of such termination to WARF. Such a notice shall be accompanied by a statement of the reasons for termination.

C. WARF may terminate this Agreement by giving Licensee at least ninety (90) days written notice if the Date of First Commercial Sale does not occur on or before _____, 20__.

D. If Licensee at any time defaults in the timely payment of any monies due to WARF, fails to actively pursue the development plan, 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 Licensed Copyrights to its creditors, WARF may, at its option, terminate this Agreement by giving notice of termination to Licensee.

E. 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 and any minimum royalties shall be prorated as of the date of termination by the number of days elapsed in the applicable calendar year. Licensee shall also remain obligated to pay all other amounts owed under this Agreement to WARF prior to termination. Such accountings and payments shall be due within thirty (30) days of termination.

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

Section 8. Assignability.

This Agreement may not be transferred or assigned by Licensee, whether pursuant to a change-of-control event or otherwise, without the prior written consent of WARF.

Section 9. Contest of Validity.

In the event Licensee contests the validity of any Licensed Copyright, Licensee shall continue to pay royalties with respect to that copyright as if such contest were not underway until the copyright is adjudicated invalid or unenforceable by a court of last resort.

Section 10. Product Marking.

Licensee shall mark all Products with the appropriate copyright notice naming WARF as the copyright owner as required by or permitted under United States law (17 U.S.C. § 401, et. seq.), international treaty (including without limitation the Berne Convention for the Protection of Literary and

Artistic Works (Paris Act) and the Universal Copyright Convention (Paris Act)), and other applicable national law within the Licensed Territory. On all Products, Licensee shall credit the authors as the creators of the Work. This provision is of the essence in this Agreement, and the license granted herein is conditioned upon the inclusion of the correct copyright notice in the Products. The entire copyright in the Work and the Product shall be and shall remain in WARF, subject only to the rights granted herein. After termination of this Agreement, all rights granted herein shall revert to WARF. In addition to the copyright notice required in the Licensed Territory, Licensee shall print on each copy of a Product a copyright notice in the following form, or otherwise as WARF may designate:

[Type of derivative work] Copyright © [year of first publication by WARF] Wisconsin Alumni Research Foundation [title for the Work].
 Copyright © [year]. All Rights Reserved. Original by [authors].
 [Derivative work] by [creator].

Section 11. Product Liability; Conduct of Business.

A. Licensee shall, at all times during the term of this Agreement and thereafter, indemnify, defend and hold WARF and the authors of the Work 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 copying, distribution, performance, display, use or advertisement of Products or any items pertaining to the 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.

B. Licensee warrants that it now maintains and will continue to maintain liability insurance coverage appropriate to the risk involved in marketing the Products and that such insurance coverage lists WARF and the authors of the Work as additional insureds. Within ninety (90) days after the execution of this Agreement and thereafter annually between January 1 and January 31 of each year, Licensee will present evidence to WARF that the coverage is being maintained with WARF and its authors listed as additional insureds. In addition, Licensee shall provide WARF with at least thirty (30) days prior written notice of any change in or cancellation of the insurance coverage.

Section 12. Use of Names.

Licensee shall not use WARF's name, the name of any author of any Works, 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 13. Miscellaneous.

This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Wisconsin and the United States of America. If any provisions of this Agreement are or shall 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 shall be deemed automatically deleted, if

such deletion is allowed by relevant law, and the remaining terms and conditions of this Agreement shall 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 14. 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, 13th Floor
Madison, Wisconsin 53726
Phone: (608) 263-2500
Facsimile: (608) 263-1064
Email: contracts@warf.org

(b) Licensee _____

Attn: _____

Phone: _____
Facsimile: _____
Email: _____

Section 15. Integration.

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, except as provided for elsewhere in this Section 15, made prior to or at the signing hereof, shall vary or modify the written terms of this Agreement. Neither party shall 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.

Section 16. 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 and any 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, Licensee shall grant access to the Confidential Information only to its own employees who have a need to know same for Licensee to meet its obligations and exercise its rights hereunder, and Licensee shall require such employees to be bound by this Agreement as well. Licensee agrees not to use any Confidential Information to its advantage and 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 clear and convincing 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 (5) years have elapsed from the expiration of this Agreement.

Section 17. Authority.

The persons signing on behalf of WARF and Licensee 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: _____,
Appropriate WARF representative, Title

LICENSEE

By: _____ Date: _____,

Name and Title: _____

WARF Ref: _____ - P _____

APPENDIX A

A. “Date of First Commercial Sale” shall mean the date when cumulative sales to the retail market of Products exceeds \$_____.

B. “Derivative Work” shall refer to and mean a work based upon one or more preexisting works that recasts, transforms or adapts such preexisting work, including without limitation translations, musical arrangements, dramatizations, fictionalizations, motion picture adaptations, sound recordings, art reproductions, abridgements and condensations, or an original work that consists of editorial revisions, annotations, elaborations or other modifications.

C. “Licensed Copyrights” shall refer to and mean those registered and unregistered copyrights listed on Appendix B attached hereto that pertain to the Works and any subsequent registered or unregistered copyrights owned by WARF, but only to the extent such subsequent copyrights pertain to a Work listed on Appendix B.

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

E. “Licensed Territory” shall be limited to _____.

F. “Non-Commercial Research Purposes” shall mean the use of the Works for academic research purposes or other not-for-profit or scholarly purposes not involving the use of the Works to perform services for a fee or for the production or manufacture of products for sale to third parties.

G. “Products” shall refer to and mean any and all products that are Derivative Works based upon one or more Works or that would otherwise constitute infringement of the Licensed Copyrights.

H. “Publication” shall refer to and mean the distribution of copies of the Product to the public by sale, rent, lease, lending or other transfer of ownership.

I. “Selling Price” shall mean, in the case of Products that are sold or leased, the invoice price to the end user of Products (regardless of uncollectible accounts) less any shipping costs, allowances because of returned Products, or sales taxes. The “Selling Price” for a Product that is transferred to a third party for promotional purposes without charge or at a discount shall be the average invoice price to the end user of that type of Product during the applicable calendar quarter.

J. “Works” shall refer to and mean _____.

APPENDIX B

LICENSED COPYRIGHTS

REFERENCE NUMBER	COUNTRY	APPLICATION SERIAL NUMBER	PATENT NUMBER
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Technology Title (Inventors...)

APPENDIX C

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.						
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.

APPENDIX D

DEVELOPMENT REPORT

- A. Date development plan initiated and time period covered by this report.
- B. Development Report (4-8 paragraphs).
 - 1. Activities completed since last report including the object and parameters of the development, when initiated, when completed and the results.
 - 2. Activities currently under investigation, i.e., ongoing activities including object and parameters of such activities, when initiated, and projected date of completion.
- C. Future Development Activities (4-8 paragraphs).
 - 1. Activities to be undertaken before next report including, but not limited to, the type and object of any studies conducted and their projected starting and completion dates.
 - 2. Estimated total development time remaining before a product will be commercialized.
- D. Changes to initial development plan (2-4 paragraphs).
 - 1. Reasons for change.
 - 2. Variables that may cause additional changes.
- E. Items to be provided if applicable:
 - 1. Information relating to Product that has become publicly available, e.g., published articles, competing products, patents, etc.
 - 2. Development work being performed by third parties other than Licensee to include name of third party, reasons for use of third party, planned future uses of third parties including reasons why and type of work.
 - 3. Update of competitive information trends in industry, government compliance (if applicable) and market plan.

PLEASE SEND DEVELOPMENT REPORTS TO:

Wisconsin Alumni Research Foundation
Attn.: Contracts Manager
614 Walnut Street
P.O. Box 7365
Madison, WI 53707 7365

APPENDIX E

DEVELOPMENT PLAN

(To be provided by Licensee prior to execution)