

This draft is dated _____, and is solely for purposes of negotiation. No contract shall exist until a final, written agreement is signed by an authorized representative of ISURF and an authorized representative of Licensee. This draft shall expire on _____.

OPTION AGREEMENT

This Agreement is made effective as of the date of the last signature to this Agreement by and between Iowa State University Research Foundation, Inc. (hereinafter called "ISURF"), a nonprofit Iowa corporation, and _____ (hereinafter called "Company"), a corporation organized and existing under the laws of _____;

WHEREAS, ISURF owns by assignment certain inventions that are described in the "Option Technology" defined below, and ISURF desires to have the inventions of the Option Technology utilized in the public interest;

WHEREAS, Company is or intends to evaluate the Option Technology to determine whether it will acquire a license from ISURF under the inventions of the Option Technology; and

WHEREAS, ISURF is willing and hereby offers to grant an option to the Option Technology to Company, and Company hereby states its desire for such an option.

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

Section 1. Definitions.

A. "Option Technology" shall refer to and mean the intellectual property entitled "_____" as described in ISURF Docket Number _____, including any patents and patent applications listed on Appendix A hereto that are in countries in the Option Territory and any subsequent patent applications owned by ISURF in a country in the Option Territory but only to the extent it claims an invention claimed in a patent application listed on Appendix A in such country. [If appropriate: Option Technology shall also include any technique and know-how relating to the inventions of the Option Technology and assigned to ISURF as of the effective date of this Agreement.]

[Alternate A: "Option Technology" shall refer to and mean the intellectual property entitled "_____" as described in ISURF Docket Number _____, and any intellectual property rights thereto, including any rights arising under any laws in the countries of the Option Territory with respect to patents, copyrights, trademarks, trade secrets and computer software.]

B. "Option Field" shall be limited to _____.

C. "Option Territory" shall be limited to _____.

D. "Option Period" shall mean the period commencing on the effective date of this Agreement and ending _____ (__) months [years] thereafter.

E. "Products" shall refer to and mean any and all products that employ or are in any way produced by the practice of the Option Technology or that would otherwise constitute infringement of any intellectual property rights in the Option Technology.

[If applicable: F. “Services” shall refer to and mean any and all services that employ or are in any way produced by the practice of the Option Technology or that would otherwise constitute infringement of any intellectual property rights in the Option Technology.]

Section 2. Grant.

A. Option to a License.

ISURF hereby grants to Company an option to obtain a license under the Option Technology to make, use and sell Products [or Services] in the Option Field and the Option Territory.

B. Standstill.

ISURF hereby agrees that during the Option Period it will not grant to any other third party any license under the Option Technology to make, use and sell Products [or Services] in the Option Territory and the Option Field.

C. Term and Exercise of Option.

(i) The option granted under Section 2A above 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 ISURF in writing that it is exercising its rights and provide to ISURF an acceptable development plan similar in scope to that outlined on Appendix B of this Agreement. The failure of Company to provide timely notice and an acceptable development plan shall be deemed a waiver of Company’s option.

(ii) Company agrees to notify ISURF promptly at any time during the Option Period if Company has determined not to exercise the option granted under this Agreement. Company agrees to provide ISURF, in reasonable detail, the basis for such determination with said notice. The option granted under this Agreement shall terminate upon the giving of such notice by Company.

(iii) Upon the expiration or termination of its option, Company shall have no residual rights or other rights in the Option Technology.

D. Negotiation and Terms of License.

(i) Upon ISURF’s receipt of notice and a development plan reasonably acceptable to ISURF pursuant to Section 2C, ISURF and Company shall enter into good faith negotiations regarding the terms of a license agreement, said agreement to be entered into no later than (3) months after the date Company exercises its option.

(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 ISURF’s agreements with companies concerning similar technology.

Section 3. Consideration.

Company shall pay ISURF an option fee of \$_____ upon Company’s execution of this Agreement.

Section 4. Patent Fees and Costs.

By written notice to ISURF delivered on or before [date] , Company may elect to have ISURF file foreign patent applications corresponding to the Option Technology in countries selected by Company. Such filing shall be at Company's sole expense. If Company and ISURF fail to enter into a license agreement including a license under said foreign patent applications, or any patents or foreign rights derived therefrom, Company shall be liable to ISURF for all foreign filing, prosecution, and maintenance costs incurred by ISURF (including attorneys' fees) in those countries selected by Company and incurred prior to the termination of contract negotiations. Such costs shall be reimbursed by Company within thirty (30) days of receipt of an invoice from ISURF evidencing such costs.

Section 5. Certain Warranties of ISURF.

A. ISURF warrants that except as otherwise provided under Section 6 of this Agreement with respect to U.S. Government interests, it is the owner of the Option Technology or otherwise has the right to grant the option granted under this Agreement. However, nothing in this Agreement shall be construed as:

(i) a warranty or representation by ISURF as to the validity or scope of any patents, copyrights, trademarks or trade secrets included in the Option Technology;

(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 intellectual property rights of third parties;

(iii) an obligation to bring or prosecute actions or suits against third parties for infringement of any rights under the Option Technology;

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

(v) a warranty or representation by ISURF that it will not grant licenses to others to make, use or sell products not included in the Option Technology which may be similar and/or compete with Products made or sold by Company.

Section 6. 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 include in the Option Technology 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 such inventions for governmental purposes. Any license granted to Company pursuant to this Agreement shall be subject to such right.

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, 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) Iowa State University Research Foundation, Inc.
Attn.: Executive Director
Iowa State University
310 Lab of Mechanics
Ames, IA 50011

(b) Company _____
Attn: _____

Section 8. 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 8, 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 9. Miscellaneous.

This Agreement may not be transferred or assigned by Company except with the prior written consent of ISURF. This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Iowa. 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 10. 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 Company's development plan, the Option Technology and all information concerning it and any other information marked confidential or accompanied by correspondence indicating such information is confidential exchanged between the parties hereto prior to or during the Option Period. [insert if applicable: ISURF Confidential Information shall include any information received by Company pursuant to the confidentiality agreement dated [date] covering the Option Technology and any information provided to Company from Iowa State University researchers pursuant to this Agreement.] Except as may be authorized in advance in writing by ISURF, Company shall grant access to ISURF Confidential Information only to its own employees involved in research relating to the Option Technology and Company shall require such employees to be bound by this Agreement as well. Company agrees not to use any ISURF Confidential Information to its advantage

and ISURF's detriment. Except as may be authorized in advance in writing by Company, ISURF shall grant access to the Company's Confidential Information only to its own employees involved in this Option Agreement and ISURF shall require such employees to be bound by this Agreement as well. ISURF agrees not to use any Company Confidential Information to its advantage and Company'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) Company or ISURF 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 ISURF;

(iii) the information is subsequently disclosed to Company or ISURF 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 11. Authority.

The persons signing on behalf of ISURF 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.

IOWA STATE UNIVERSITY RESEARCH FOUNDATION

By: _____ Date: _____, _____
Lisa Lorenzen, Ph.D.
Executive Director

COMPANY

By: _____ Date: _____, _____
Name and Office: _____

APPENDIX A

PATENTS AND PATENT APPLICATIONS

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

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APPENDIX B

DEVELOPMENT PLAN

A development plan of the scope outlined below shall be submitted to ISURF by Company upon exercise of the option granted under this Agreement. In general, the plan should provide ISURF with a summary overview of the activities that Company believes are necessary to make Products available for sale in the commercial 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

V. Anticipated Date of Product Launch

Total Length: approximately 2-3 pages