

Non-Exclusive Research Tools License and Option Agreement

THIS AGREEMENT, effective as of -----, (hereinafter “Effective Date”), is between the Washington State University Research Foundation (hereinafter “WSURF”), a nonstock, nonprofit Washington corporation having an office at 1610 NE Eastgate Boulevard, Pullman, WA 99163 and -----, a corporation having its principal office at ----- (hereinafter “Company-----”) (WSURF and Company, hereinafter, the “Parties”).

The Parties agree to the following terms and conditions concerning certain materials listed below.

The Materials (as hereinafter defined) were developed and/or discovered by Dr. -----, an employee of Washington State University (hereinafter “WSU”) working either alone or together with other researchers at WSU, and are the subject matter of U.S. Patent/Patent Application Nos----- and entitled “-----” and those claims of any U.S. patent and patent application(s) based thereon which claim an invention described in said patents, and any pending and new divisionals, continuations, reissues or foreign counterparts thereof. The Materials, the patents and the patent applications are the property of WSURF (“WSURF Property”) and are generally referred to as WSURF Case No. -----.

1. Definitions:

- (a) The term “Materials”, for purposes of this agreement, shall mean a -----, as delivered to Company, and any progeny or unmodified derivatives therefrom, and any part of the foregoing clone, progeny, or unmodified derivatives incorporated in modifications and other substances.
- (b) The term “Affiliates”, for purposes of this Agreement shall mean any corporation, firm, limited liability company, partnership or other entity that directly or indirectly controls or is controlled by or is under common control with a Party to this Agreement. For the purpose of this definition, control means ownership, directly or through one or more Affiliates, of fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign entity in a particular jurisdiction) or more of the shares of stock entitled to vote for the election of directors in the case of a corporation, or fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign entity in a particular jurisdiction) or more of the equity interests in the case of any other type of legal entity, or status as a general partner in any partnership, or any other arrangement whereby a Party controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity.

- 2. Materials shall be sent by WSU to Company within thirty (30) days of the Effective Date.
- 3. WSURF grants to Company the non-exclusive right to use the Materials for a period of three (3) years from the Effective Date for research purposes only (“Research Tools License”). Company will not sell or distribute the Materials or use the Materials to manufacture any product for subsequent sale. Company acknowledges that the Materials are and remain the property of WSU.
- 4. WSURF grants to Company an option to a nonexclusive commercial license for use in under WSURF Property (“Option”).
- 5. The availability of the Option shall commence on the Effective Date and terminate on the anniversary date three years from the Effective Date unless sooner terminated by the execution of a license

agreement between the parties for the WSURF Property (“Option Period”). The Option hereunder shall be exercised by Company providing written notice of same to WSURF within the Option Period. In the event that Company exercises its Option, the parties shall negotiate the license terms in good faith. The license shall be sublicensable to Affiliates and shall contain terms standard for agreements between universities and industry including, without limitation, clauses providing for payment of reasonable royalties and other compensation to WSURF; reimbursement of WSURF for all past, present, and future expenses incurred in the preparation, filing, prosecution, issuance, and maintenance of the WSURF Property, provided that such expenses shall be shared on a prorata basis with other licensees of WSURF Property; objective, time-limited due diligence provisions for the development, commercialization and marketing of a product embodying the WSURF Property; and product liability indemnification and insurance requirements which are acceptable to WSURF. In the event that WSURF and Company do not execute a written license agreement under the Option within 90 days following Company’s exercise of the Option, WSURF shall be free to negotiate with and to enter into license agreements, including exclusive license agreements, with third parties.

6. The Parties agree that this Agreement is entered into for research purposes only, and that Company is granted no other rights under WSURF Property except the rights expressly provided to Company by WSURF herein.
7. On or before the three (3) year anniversary of the Effective Date, Company will, at the written request of WSURF, destroy the Materials in its possession and provide a written notification to that effect to WSURF within thirty (30) days of the three (3) year anniversary of the Effective Date or upon Termination (as hereinafter defined), whichever is earlier unless Company exercises its Option and enters into negotiations for a commercial license on or before the three (3) year anniversary of the Effective Date.
8. In consideration of the Research Tools License granted to Company by WSURF, Company will pay WSURF a non-refundable fee of -----U.S. Dollars (US \$-----) within thirty (30) days of WSURF’s invoice for said amount.
9. In consideration of the Option granted to Company by WSURF, Company will pay WSURF a non-refundable fee of ----- U.S. Dollars (US \$-----) within thirty (30) days of Company’s receipt of WSURF’s invoice for said amount.
10. The balance of any amounts due to WSURF which remain unpaid more than thirty (30) days after they are due to WSURF shall accrue interest until paid at the rate of the lesser of one and one-half percent (1.5%) 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.
11. If Company at any time defaults in the timely payment of any monies due to WSURF or commits any breach of any other covenant herein contained, and Company fails to remedy any such breach or default within thirty (30) days after written notice thereof by WSURF, WSURF may, at its option, immediately terminate this Agreement by providing written notice of termination to Company.
12. Company may terminate this Agreement at any time by providing WSURF thirty (30) days advance written notice of termination (“Termination”). Termination shall not relieve Company of any obligation to pay WSURF the fees set forth in Sections 8, 9 and 10, nor of any obligation with respect to the confidential information or materials covered by the Agreement. Articles 12, 13, 16, and 17 shall survive Termination.

13. Company will acknowledge -----, Department of ----- Washington State University, Pullman, WA as the source of Materials in any publications that contain data generated using Materials.
14. WSURF AND WSU MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR DO WSURF OR WSU WARRANT THAT THE USE OF THE RESEARCH MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER INTELLECTUAL PROPERTY RIGHTS.
15. Company expressly agrees that its use of the Materials shall be in compliance with all applicable local, state, and federal procedures, rules, and regulations, and laws.
16. Company agrees to indemnify, hold harmless, and defend WSURF, WSU, and their officers, employees, students, and agents, whether current or former, against any and all claims for death, illness, personal injury, and property damage, including court costs and attorneys fees, arising out of the use of the Materials by Company.
17. Company will not use the name of WSURF or WSU in any advertising or publicity without its written permission.
18. This Agreement shall, in all respects, be construed in accordance with the laws of the State of Washington. 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.
19. WSURF warrants that it has the right to grant the Research Tools License and the Option hereunder.
20. This Agreement is personal to the Parties and shall not be assignable or otherwise transferable in whole or in part, voluntarily, involuntarily or by operation of law including any merger or consolidation, substantial change in ownership or control of a Party's business, or any other means, without the prior written consent of the other Party, except Company may, without such consent, assign this Agreement to an Affiliate or any purchaser of all or substantially all of the assets in the line of business to which this Agreement pertains. Upon assignment, the rights and obligations under this Agreement shall be binding upon and inure to the benefit of said purchaser or successor in interest.
21. Notice with respect to this agreement shall be sent certified return receipt or registered mail and shall be deemed duly given and made on the earlier of the date of actual receipt or five (5) days after being mailed, postage prepaid, and shall be addressed as follows, provided that either party may by written notice designate a substitute address from time to time:

To WSURF:

To Company:

 Name:
 Title:
 Washington State University Research Foundation
 1610 NE Eastgate Boulevard
 Pullman, WA 99163

 Name:
 Title:
 Name of institution
 Address of institution
Attn: -----

22. It is understood that if the United States Government (through any of its agencies or otherwise) has funded research under which any of the Materials were developed and/or discovered, the United States Government is entitled, as a right, under the provisions of 35 U.S.C. 202-212 and applicable regulations of Title 37 of the Code of Federal Regulations, to a nonexclusive, irrevocable, paid up license to practice, have practiced, or otherwise use the Materials for governmental purposes.
23. This Agreement sets forth the entire agreement between Company and WSURF as to its subject matter. None of the terms of this agreement shall be amended except in writing signed by both Parties.
24. No agreement between the Parties shall exist unless the duly authorized representative of Company and the Executive Director of WSURF have signed this document within thirty (30) days of the Effective Date written on the first page of this Agreement. The Parties hereto are independent contractors and not joint venturers or partners.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

**Washington State University
 Research Foundation**

Company

Signed: _____
 Name:
 Title:

Signed: _____
 Name:
 Title:

Date: _____

Date: _____