

SAMPLE ISURF OPTION AGREEMENT

This option agreement (“**Agreement**”) is made effective as of the date of the last signature to this Agreement (“**Effective Date**”) by and between Iowa State University Research Foundation, Inc., a nonprofit Iowa corporation (“**ISURF**”), and _____, a corporation organized and existing under the laws of _____ (“**Company**”).

WHEREAS, as the licensing organization for Iowa State University, ISURF desires to have the Option Technology (defined below) utilized in the public interest;

WHEREAS, Company desires to evaluate the Option Technology to determine whether it has the expertise to develop and commercialize the Option Technology and the interest in negotiating a license from ISURF therefor; and

WHEREAS, ISURF is willing to permit Company to so evaluate the Option Technology in accordance with the terms and conditions of this Agreement.

In consideration of the mutual covenants set forth below, the Parties hereby agree as follows:

Section 1. Definitions.

A. “**Information**” shall mean any information or materials disclosed by one Party, the disclosing Party, to the other, the receiving Party, identified in writing as confidential at the time of disclosure or, if first disclosed orally, identified as confidential and confirmed in writing within forty-five (45) days, and that is not: (i) rightfully possessed by receiving Party, as evidenced by its written records, prior to its receipt from disclosing Party, whether before or during the term of this Agreement; (ii) in the public domain or becomes so through no fault of receiving Party or anyone accessing Information therefrom; (iii) subsequently disclosed without restriction to receiving Party by a third party that has the legal right to so disclose; or (iv) independently developed by receiving Party without knowledge of or access to Information as evidenced by its written records.

B. “**Negotiation Period**” shall mean the period commencing on the date that ISURF gives notice to Company of its receipt of Company’s notice and development plan that is reasonably to ISURF pursuant to Section 2B, and ending four (4) months thereafter.

C. “**Option Field**” shall mean and be limited to _____.

D. “**Option Technology**” shall mean: (i) those patents and patent applications listed on Appendix A attached hereto, any patent application claiming priority thereto, including divisionals and continuations, patents issuing therefrom, reexamination and reissue patents thereof, term extensions thereof and supplemental protection certificate thereon; and (ii) which are solely owned by ISURF, but only in each case, solely to the extent of the subject matter claimed that is sufficiently disclosed in a patent application listed on Appendix A to satisfy 35 U.S.C. §112.

E. “**Option Territory**” shall mean and be limited to _____.

F. “**Option Period**” shall mean the period commencing on the Effective Date and ending _____ (__) months [years] thereafter.

G. “**Products**” shall mean any and all: (i) products claimed in whole or in part by the Option Technology; (ii) products whose use or manufacture is claimed in whole or in part by the Option Technology; and (iii) processes claimed in whole or in part by the Option Technology.

H. “**Term**” shall mean the period commencing on the Effective Date and ending, unless earlier terminated as provided in Section 5, on the earlier of the date: (i) Company provides notice that it will not be exercising the option granted under this Agreement; (ii) the Option Period expires, unless the Negotiation Period has commenced prior thereto; (iii) the Negotiation Period expires; or (iv) Company provides notice that it does not desire to continue to negotiate a license during the Negotiation Period.

Section 2. Option.

A. Grant. Subject to the terms and conditions of this Agreement and Company's compliance therewith, ISURF hereby: (i) grants to Company and Company hereby accepts an option only during the Option Period to negotiate only during the Negotiation Period an exclusive and non-transferable license, with the right to sublicense and have Products made for Company, under the Option Technology in the Option Field and Option Territory to make, use, offer for sale, import and sell Products in the Option Field and the Option Territory; and (ii) ISURF agrees that during the Option Period it will not grant to any other company a commercial license under the Option Technology in the Option Field and Option Territory to make, use, offer for sale, import and sell Products in the Option Territory and the Option Field; and (iii) grants to Company a research license to evaluate the Option Technology only during the Option Period.

B. Exercise of Option. In order to exercise its option, Company must prior to the end of the Option Period: (i) notify ISURF in writing that Company is exercising its option; and (ii) provide to ISURF an acceptable development plan similar in scope to that outlined on Appendix B of this Agreement. Time is of the essence to develop and commercialize the Option Technology and therefore the Option Period shall be strictly construed. Company agrees that its failure to provide such timely notice and an acceptable development plan during the Option Period shall be deemed a waiver of Company's option notwithstanding the requirements in Section 13.

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.

C. Negotiation and Terms of License. ISURF shall notify Company that the Negotiation Period has commenced and the Parties shall enter into good faith negotiations regarding the terms of a license agreement. Time is of the essence to develop and commercialize the Option Technology and therefore the Negotiation Period shall be strictly construed.

D. Reserved Rights. ISURF reserves all other right, title and interest not expressly granted in Section 2A, including the sole right to determine whether to file, prosecute, maintain, enforce or defend the Option Technology and whether to grant other rights and licenses thereunder, without obligation to Company. Nothing contained in this Agreement shall be construed as conferring by implication, estoppel or otherwise, upon Company or any third party, any right, title or interest in or to any intellectual or tangible property right at any time, except for those rights as expressly granted in Section 2A.

Section 3. Payments and Reports.

A. Option Fee. Company shall make a payment to ISURF of \$_____ within thirty (30) days of the Effective Date.

B. Reimbursement of Costs. By written notice to ISURF delivered on or before _____, Company may elect to have ISURF file Patent Cooperation Treaty (PCT) and/or foreign patent applications of the Option Technology in countries selected by Company. All such filing, preparation and/or prosecution expenses and costs incurred by ISURF (including attorneys' fees) during the Term of this Agreement shall be reimbursed by Company within thirty (30) days of receipt of an invoice from ISURF.

C. Reports. As evidence of Company's diligent effort to evaluate the commercial potential of the Option Technology, Company shall provide to ISURF a semi-annual report summarizing its business and technical evaluation efforts by providing to ISURF a an evaluation status report similar in scope to that outlined on Appendix C. The first such report shall be provided on the six (6) month anniversary of the Effective Date and every 6 month period thereafter during the Term.

Section 4. Warranties and Disclaimers.

A. ISURF's Warranty. ISURF warrants that except as otherwise provided under Section 9 of this Agreement with respect to U.S. Government interests, it has the right to enter into and grant the option provided to Company in Section 2A of this Agreement.

B. Company's Warranty. Company warrants that: (i) it is a valid corporation existing under the laws of its state of incorporation; (ii) it has the right to enter into and perform this Agreement, including without further authorization, corporate or otherwise; (iii) its rights and obligations under this Agreement do not conflict with any contractual obligation or court or administrative order by which it is bound; and (iv) it shall comply with all laws, regulations, treaties, court orders, including those controlling the export of commodities and technical data, and the terms and conditions of this Agreement.

C. Disclaimers. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WARRANTY OR REPRESENTATION 1) AS TO THE VALIDITY, ENFORCEABILITY OR SCOPE OF ANY OF THE OPTION TECHNOLOGY; 2) OF NONINFRINGEMENT; 3) OF AN OBLIGATION TO FURNISH ANY KNOW-HOW OR ANY SERVICES; 4) THAT A VALID CLAIM WILL ISSUE FROM ANY PENDING CLAIM OF THE OPTION TECHNOLOGY; OR 5) THAT ISURF 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. THE OPTION TECHNOLOGY IS PROVIDED "AS IS; WHERE IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES WHATSOEVER. OTHER THAN AS EXPRESSLY STATED IN SECTION 4A, ISURF MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, AND EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES NOT EXPRESSLY STATED IN SECTION 4A, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

Section 5. Term and Termination.

A. Term. This Agreement commences on the Effective Date and expires at the end of the Term. Upon the expiration or termination of this Agreement, all rights granted herein shall immediately revert to ISURF.

B. Termination. Either Party may terminate this Agreement at any time after giving the other Party thirty (30) days written notice if such other Party defaults in the performance of any material obligations or otherwise breaches any term under this Agreement and fails to cure such default and/or breach before the expiration of said thirty (30) day notice period. This Agreement terminates immediately and without notice if Company: (i) is declared insolvent or bankrupt by a court of competent jurisdiction, or a voluntary petition of bankruptcy is filed in any court of competent jurisdiction by Company, or Company makes or executes an assignment of its rights for the benefit of creditors; or (ii) directly or indirectly brings any action or proceeding against ISURF, including relating to intellectual property owned by ISURF, unless such action or proceeding is for an uncured material breach of this Agreement by ISURF.

C. Surviving Rights. The expiration or termination of this Agreement, for any reason whatsoever, shall not affect the rights of ISURF or liability or obligation of Company which shall have accrued prior to termination (including without limitation payment of all amounts that have accrued prior thereto and any liability for loss or damage on account of any default or breach), nor shall it affect any provisions hereof which contemplate performance by or continuing obligations of a Party following the termination hereof, including, but not limited to, Sections 7 and 13 of this Agreement. Terms which contemplate performance by or continuing obligations of a Party shall survive the expiration or termination of this Agreement until their purposes are fulfilled.

Section 6. Transferability. This Agreement may not be delegated, transferred or assigned by Company except with the prior written consent of ISURF. Any conveyance, including an assignment or transfer in contravention with this Section 6 shall be null and void. ISURF may assign or transfer this Agreement, its obligations and/or benefits under this Agreement and/or the Option Technology without the consent of Company. This Agreement shall be binding on the Parties, and their successors and assigns and inure to the benefit of the Parties and their permitted successors and assigns. The representations, warranties, covenants, and undertakings contained in this Agreement are for the sole benefit of the Parties and their permitted successors and assigns and shall not be construed as conferring any rights on any third party.

Section 7. Indemnity & Insurance.

A. Indemnification. COMPANY SHALL, AT ALL TIMES DURING THE TERM OF THIS AGREEMENT AND THEREAFTER, INDEMNIFY, DEFEND AND HOLD ISURF (INCLUDING ISURF'S MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND INDEPENDENT CONTRACTORS), IOWA STATE UNIVERSITY (INCLUDING IOWA STATE UNIVERSITY'S TRUSTEES, MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, STUDENTS, AGENTS AND INDEPENDENT CONTRACTORS), AND THE INVENTORS OF THE OPTIONED TECHNOLOGY (HEREINAFTER REFERRED TO EACH AS AN "INDEMNIFIED PARTY" AND ALL COLLECTIVELY REFERRED TO AS THE "INDEMNIFIED PARTIES"), HARMLESS AGAINST ANY AND ALL CLAIMS, PROCEEDINGS, DEMANDS, LIABILITIES, LOSSES AND EXPENSES, INCLUDING LEGAL EXPENSES AND REASONABLE ATTORNEYS FEES, ARISING OUT OF OR RELATING TO COMPANY'S EXERCISE OF ANY RIGHT CONVEYED UNDER OR BREACH OF THIS AGREEMENT OR ACT OR OMISSION OF WILLFUL MISCONDUCT OR NEGLIGENCE. WITHOUT ISURF'S PRIOR WRITTEN APPROVAL, COMPANY SHALL NOT ADMIT THE FAULT OF OR CREATE ANY OBLIGATIONS ON ANY INDEMNIFIED PARTY. EACH INDEMNIFIED PARTY HAS THE RIGHT TO SELECT AND RETAIN COUNSEL OF ITS OWN CHOOSING TO DEFEND ITS INTERESTS.

B. Insurance. Company agrees to continuously maintain liability insurance coverage appropriate to assure its indemnification and other obligations under this Agreement and that such insurance coverage sufficiently covers the Indemnified Parties.

C. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER ISURF NOR IOWA STATE UNIVERSITY SHALL BE LIABLE, INCLUDING TO COMPANY, FOR ANY REASON WHATSOEVER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE OR ANY OTHER DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY RELATED AGREEMENT, AND FURTHER INCLUDING LOSS OF USE, LOSS OF PROFITS, LOSS OF DATA, LOSS OF GOODWILL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

Section 8. Advertising and Use of Names. Company shall not use the name of Iowa State University, ISURF, an affiliate thereof or their respective trustees, officers, directors, members, employees, students or agents, in sales, promotions, advertising, or any other form of publicity without the prior written approval of an authorized representative of the entity, except that the Parties may publicly disclose the existence of this Agreement and the option of the Optioned Technology to the Company. Notwithstanding the foregoing or anything to the contrary herein or authorized, Company shall not suggest or imply any endorsement of Iowa State University or ISURF.

Section 9. United States Government Interests. It is understood that if the United States Government (through any of its agencies or otherwise) funds research, during the course of or under which any of the inventions included in the Option Technology were conceived or made, the United States Government is entitled under the provisions of 35 U.S.C. § 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations ("Bayh-Dole"), to a non-exclusive, non-transferable, irrevocable, fully paid-up license to practice or have practiced such inventions for governmental purposes. Notwithstanding anything to the contrary, Section 2A is subject to such right and Company shall comply and enable ISURF and Iowa State University to comply with Bayh-Dole.

Section 10. Governing Law, Export Laws and Compliance.

A. This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Iowa, without giving effect to any choice-of-law provisions. Any litigation arising under or relating to this Agreement that is not barred by sovereign immunity shall be conducted by a court of competent jurisdiction in Polk County, Iowa. Nothing herein shall be construed as a waiver of sovereign immunity and the prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and recoverable litigation costs and expenses. Company agrees to avail itself of the courts in Polk County and waives any objection to the sufficiency of those courts' jurisdiction over Company. In the event an action cannot be brought in Polk County due to statutory proclamation, Company agrees to submit to the jurisdiction of the courts where such action may be brought.

B. Without limiting the generality of other provisions of this Agreement, including Company's representations and warranties, Company agrees to comply with all applicable U.S. federal and state

laws and regulations. In particular, it is understood and acknowledged that the transfer of certain commodities and technical data is subject to United States laws, regulations, and treaties controlling the export of such commodities and technical data, including Export Administration Regulations of the United States Department of Commerce. These laws, regulations, and treaties may prohibit, or require a license for the export of certain types of technical data to certain specified countries and/or may require written assurances by Company that it will not export commodities or data to certain countries without prior approval of an agency of the U.S. Government ISURF neither represents that a license is required, nor that, if required it will be issued. Company agrees that it will be solely responsible for any violation of such by Company hereunder, and that it will hold ISURF and Iowa State University harmless in the event of any legal action of any nature occasioned by any violation of same.

C. The terms of this Agreement are severable. If any term or conditions of this Agreement are or shall come into conflict with the laws, regulations or court order of any jurisdiction or any governmental entity having jurisdiction over the Parties or this Agreement, those terms and conditions shall be deemed automatically deleted, in such jurisdiction(s) only, and the remaining terms and conditions of this Agreement shall remain in full force and effect. If such a deletion is not so allowed in a given jurisdiction or if such a deletion leaves terms and conditions thereby made clearly illogical or inappropriate in effect, the Parties agree to substitute new terms and conditions as similar in effect to the present terms of this Agreement as may be allowed under the applicable laws, regulations or court order of such jurisdiction. The Parties desire the terms and conditions herein to be valid and enforced to the maximum extent not prohibited by law, regulation or court order in a given jurisdiction.

D. The relationship of the Parties hereto is of independent contractors and not of joint venturers, employers or partners. Company shall have no right or authority by virtue of this Agreement to obligate or bind ISURF or Iowa State University in any manner.

Section 11. 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 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. Notwithstanding the foregoing, notices may be provided via email, except for those under Section 5. Acceptable email addresses shall be provided on an informal basis and/or upon request.

(a) Iowa State University Research Foundation, Inc.
Attn.: Executive Director
Iowa State University Economic Development Core Facility
1805 Collaboration Place, Suite 2100
Ames, IA 50010
Facsimile: (515) 294-0778

(b) Company _____
Attn: _____

Facsimile: _____

Section 12. Integration. This Agreement, including its Appendices attached hereto [*include any MTA, CDA that was signed prior to this option*], all of which the Parties agree are incorporated herein by reference, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and no statements or agreements by or between the Parties, whether oral or in writing, except as provided for elsewhere in this Section 12, made prior to or at the signing hereof, shall vary or modify the written terms of this Agreement and are superseded hereby. Neither Party shall claim any amendment or modification from any provisions of this Agreement, unless such mutual agreement is in writing, signed by the Parties, and specifically states that such writing is an amendment to this Agreement. Each Party acknowledges that it was provided an opportunity to seek advice of counsel and as such this Agreement shall not be strictly construed against the drafter. Reference to: (i) the "provisions" or "terms" of this Agreement shall mean the "terms and conditions of this Agreement;" and (ii) "including" shall mean "including but not limited to." The delay or failure to assert a right or to insist upon compliance with any term or condition of this Agreement, or the 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 or ability to insist on compliance with any other term or condition of this Agreement, to terminate this Agreement in the event of any subsequent breach or default, or excuse the performance of the other Party. A valid waiver must be executed in writing and signed by the Party granting the waiver.

Section 13. Confidentiality.

A. Receiving Party shall hold Information in confidence using the same degree of care that it employs for its own highly-sensitive confidential or proprietary information, which shall in no event be less than a reasonable standard of care. Except as may be authorized in advance in writing by ISURF, Company shall grant access to and permit use of ISURF's Information only by its own employees who need to have access to, know or use such Information to evaluate the Option Technology and Company shall require all employees to agree prior to access, disclosure or use to be bound by terms of confidentiality and non-use no less stringent than the terms of this Agreement. Company agrees not to use any Information to its advantage and ISURF's detriment including but not limited to claiming priority to any application serial numbers of the Option Technology in Company's patent prosecution. ISURF may disclose Information it receives to Iowa State University and their respective employees and use such Information to exercise its rights under and consider Company's compliance with the terms and conditions of this Agreement.

B. If the receiving Party is required by law, regulation, or court order to disclose Information, such Party has the right notwithstanding the obligations in Section 13A to the contrary to make such limited disclosure provided that such Party promptly notifies the disclosing Party and reasonably assists the disclosing Party to obtain a protective order or other remedy of disclosing Party's election at disclosing Party's sole cost and expense.

C. Notwithstanding the expiration or termination of this Agreement, the disclosing Party's rights and receiving Party's obligations hereunder shall survive for five (5) years from the later of the Effective Date or the date of the last disclosure of the Information to the receiving Party.

IN WITNESS WHEREOF, the Parties hereto have duly executed this valid and binding agreement on the dates indicated below, in one or more counterparts, each of which shall be deemed an original agreement and all of which taken together constitute one and the same instrument.

IOWA STATE UNIVERSITY RESEARCH FOUNDATION

By: _____ Date: _____,
Lisa Lorenzen
Executive Director

COMPANY

By: _____ Date: _____,
Name and Title: _____

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

- I. Development activities to be undertaken
- II. Commercialization timeline
- III. Proposed market approach and target markets
- IV. Governmental/regulatory requirements – *If any*

SAMPLE

APPENDIX C

Evaluation Status Report

An evaluation status similar in scope as outlined below shall be submitted to ISURF semi-annually during the Option Period. In general, the plan should provide ISURF with a summary overview of the activities that Company is undertaking to understand the Option Technology and the commercial opportunity for Option Technology

1. Identify the strengths and weaknesses in the Option Technology
2. Describe how Company will likely position its Products such that weaknesses are minimized and strengths maximized.
3. List target customers and describe how the Option Technology fits into each customers business.
4. Summarize the reaction of potential customers to the Company's proposed Products.
5. If Company plans to partner with a third party in the development or commercialization of the Option Technology, describe these potential partners.
6. Summarize the steps being taken to engage such potential development partners.