



OPTION AGREEMENT
between
and
AUBURN UNIVERSITY

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, (the "Effective Date") by and between Auburn University, a university duly established and organized under the laws of the State of Alabama, and with offices located at Office of Technology Transfer, 570 Devall Drive, Suite 102, Auburn, Alabama, 36832 (hereinafter referred to as "AUBURN"), and _____, a corporation duly organized under the laws of the State of _____ and having its principal office at _____ (hereinafter referred to as "COMPANY"):

WHEREAS, AUBURN, as a public institution engaged in educational, research, and extension activities of national and international significance, is committed to a policy that intellectual property produced by AUBURN should be used for the greatest possible public benefit; and

WHEREAS, AUBURN owns or controls the entire right and title to AUBURN Technology (as defined below in Article 1.1); and

WHEREAS, COMPANY desires an exclusive option for a limited period of time to conduct further technical and commercial evaluation of AUBURN Technology and AUBURN is willing to grant such an option;

NOW, THEREFORE, in consideration of the premises and undertakings hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1 - DEFINITIONS

- 1.1 AUBURN Technology shall mean the proprietary information, AUBURN Patents, trade secrets, know-how, and other technical information, relating to <insert specific description of technology>.
- 1.2 AUBURN Patents shall mean United States Patent No. _____ dated _____, 20__, all patents which may issue thereon, all foreign counterparts thereof, and continuations and divisions thereof, and patents of addition, reissues, re-examinations, renewals, or extensions based on any patent issuing therefrom.
- 1.3 Field of Use shall mean _____.
- 1.4 Territory shall mean _____.

ARTICLE 2 - OPTION

- 2.1 AUBURN hereby grants to COMPANY an exclusive option to negotiate for an exclusive, royalty-bearing license under all AUBURN Patents related to AUBURN Technology in the Field of Use in the Territory. Such option may be extended upon mutual written agreement of the parties.
- 2.2 This exclusive option shall extend for a period of ____months from the Effective Date of this Agreement ("Option Period"). Until the end of this Option Period, AUBURN shall not offer these rights to any third party.
- 2.3 If COMPANY elects on or before the end of the Option Period to exercise its option in Article 2.1 and so notifies AUBURN in writing, both parties shall negotiate in good faith to reach agreement and to execute a binding License Agreement which is acceptable to both parties. Such license agreement shall include at least the following provisions: license fees, royalty payments, the right to grant sublicenses, a commitment by COMPANY and any sublicensee to exert their best efforts to introduce the licensed material into public use as rapidly as practicable, the right of AUBURN to terminate the license should COMPANY not meet specified due-diligence milestones, a commitment by COMPANY to pay all past and future domestic and foreign patent costs, and indemnity and insurance provisions. Before receiving such a license, COMPANY shall outline for AUBURN its and/or its sublicensees' capability and/or plans to introduce such licensed material into public use. Should COMPANY not elect to exercise its option or if AUBURN and COMPANY cannot agree upon the terms of such a binding License Agreement within ninety (90) days after the end of the Option Period, AUBURN shall be free to license the AUBURN Patents to a third party without further obligation to COMPANY.
- 2.4 For the option period granted herein, COMPANY will pay to AUBURN a non-refundable option fee in the sum of _____Dollars (\$_____) due upon full execution of this Agreement. If said option fee is not received within thirty (30) days from the date of full execution, this Agreement shall terminate immediately and be deemed null and void. AUBURN will then have no further obligations to COMPANY and will be free to offer the AUBURN Patents to other parties.

ARTICLE 3 - SECRECY

- 3.1 All AUBURN Technology disclosed to COMPANY and all "COMPANY Technology" disclosed to AUBURN shall remain the property of the disclosing party. "COMPANY Technology" shall mean the proprietary information, trade secrets, know-how, and other technical information owned or controlled by COMPANY as of the date of this Agreement or at any time thereafter during the term of this Agreement.
- 3.2 The receiving party shall maintain for a period of three (3) years from the Effective Date of this Agreement the confidentiality of any and all information disclosed by the disclosing party (hereinafter "Confidential Information") pursuant to this Agreement, provided such information is in writing or other tangible form and clearly marked as proprietary when disclosed, or is so designated in writing within thirty (30) days of such disclosure. The receiving party shall use the same level of care to prevent the use or disclosure of the Confidential Information as it exercises in protecting its own information of similar nature.
- 3.3 The receiving party will have no such confidential obligation with respect to any information which:
 - a. information which is now or hereafter becomes a part of the public domain;
 - b. information known to the receiving party before disclosure to it by the disclosing party hereunder as evidenced by its records;
 - c. information given to the receiving party by a third party having a right to disclose the same; or

- d. information which is hereinafter independently developed by the receiving party without reference to or benefit from the Confidential Information received from the disclosing party; or
 - e. information which the receiving party is compelled to publicly disclose by judicial or administrative process, or by other mandatory requirements of law.
- 3.4 Receiving party agrees to protect the Confidential Information from further disclosure by taking reasonable and customary precautions, but in no event less than the equivalent precautions as used to protect Confidential Information of the receiving party.

ARTICLE 4 - GENERAL

- 4.1 COMPANY may terminate the option in this Agreement at anytime during the option period by providing written notice to AUBURN. COMPANY is responsible for all payments due AUBURN under this Agreement through the effective date of termination, such payments to be due no later than thirty (30) days from the effective date of termination. In the event COMPANY fails to comply with such payment requirements, AUBURN will be entitled to receive its reasonable attorneys' fees and costs from the COMPANY should AUBURN prevail in legal action regarding such delinquent payments.
- 4.2 Within ten (10) days following termination or expiration of this Agreement, COMPANY and AUBURN will return all then existing samples and Confidential Information provided to each other under this Agreement. Each party, however, may retain one archival copy of Confidential Information for the purpose of determining their obligations hereunder.
- 4.3 This Agreement shall be construed, governed, interpreted and applied in accordance with and under the jurisdiction of the laws of the State of Alabama, U.S.A., notwithstanding the residence or principal place of business of any party, the place where this Agreement may be executed by any party or the provisions of any jurisdiction's conflict-of-laws principles.
- 4.4 No use of the name of AUBURN in any form of promotion or in connection with the sale of products, processes, devices, or designs is permitted without prior written approval from AUBURN.
- 4.5 Any notice required or permitted by this Agreement to be given by either party to the other shall be in writing, may be first transmitted to the other party by telefax, and shall be considered served when delivered personally, by commercial courier verified by the return receipt, or deposited in the United States mail in a sealed envelope with sufficient postage affixed and addressed as follows:
- To AUBURN: Director, Office of Technology Transfer
 Auburn University
 570 Devall Drive, Suite 102
 Auburn, AL 36832
- To COMPANY:
- 4.6 Nothing in signing of the Option Agreement shall be construed to constitute the immediate grant of any license to COMPANY by AUBURN under any present or future patent rights, copyrights, trademarks, or trade secrets of AUBURN; however, COMPANY has the right to use the AUBURN Technology solely for its further internal technical and commercial evaluation during the Option Period.
- 4.7 AUBURN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION, ORIGINALITY, OR

ACCURACY OF THE RESEARCH OR ANY INVENTION(S) OR PRODUCT(S), WHETHER TANGIBLE OR INTANGIBLE, CONCEIVED, DISCOVERED, OR DEVELOPED UNDER THIS AGREEMENT; OR THE MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY SUCH INVENTION OR PRODUCT. A PARTY SHALL NOT BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, OR OTHER DAMAGES SUFFERED BY THE OTHER PARTY RESULTING FROM THE USE OF THE FIRST PARTY'S RESEARCH, INVENTIONS OR PRODUCTS.

- 4.8 COMPANY shall indemnify and hold AUBURN, its directors, officers, employees, contractors, subcontractors, and agents harmless against any and all claims for loss, damage, or injuries in connection with or arising out of use by COMPANY, its directors, employees, contractors, subcontractors, or agents or by third parties of AUBURN Technology. Such indemnity shall include all costs and expenses, including attorney's fees and any costs of settlement. The rights and obligations of this section shall survive termination or expiration of the Agreement.
- 4.9 This instrument contains the entire agreement between parties hereto. No verbal agreement, conversation, or representation between any officers, agents, or employees of the parties hereto either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year set forth below.

COMPANY

AUBURN UNIVERSITY

By: _____

By: _____

Name: _____

Name: John M. Mason

Title: _____

Title: Associate Provost and
Vice President for Research

Date: _____

Date: _____