



HARVARD
Office of Technology Development

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_____, 20__

[Company]

Attn: [_____]

Re: Harvard Case No(s). [_____]

Dear _____:

_____ (“Company”) has indicated its interest in having President and Fellows of Harvard College (“Harvard”) grant Company a license to certain technology that was developed by Harvard researcher _____, together with others. Such technology is disclosed in the patent applications listed on Exhibit A hereto (together with patents issuing thereon, as well as foreign counterparts, reissues, re-examinations, renewals, extensions, continuations, continuations-in-part and divisionals thereof, the “Patent Rights”). Harvard desires to have products developed and commercialized to benefit the public, including products that are covered by the Patent Rights.

Company has requested that Harvard grant it an option to negotiate a worldwide, exclusive, royalty-bearing license under Harvard’s interest in the Patent Rights to commercialize products covered by the Patent Rights for use in _____ (the “Field”). The purpose of this letter agreement is to set forth the terms of such option, which are as follows:

1. Grant and Exercise of Option.

- a. Subject to any applicable rights of any governmental and/or non-profit entities, Harvard hereby grants to Company, and Company hereby accepts from Harvard, an option to negotiate an exclusive license under the Patent Rights to develop, make, have made, use, market, offer for sale, sell and import products solely for use in the Field (the “Option”). Company may exercise the Option only during the period commencing upon the date of this letter agreement (the “Effective Date”) and ending _____ after the Effective Date (the “Option Period”), unless extended by mutual written agreement of Company and Harvard.
- b. If Company elects to exercise the Option, it will do so by providing to Harvard,

during the Option Period, (i) a written statement that sets forth Company's intention to exercise the Option, and (ii) a development and commercialization plan for the technology covered by the Patent Rights that is satisfactory to Harvard (the "Business Plan"). In such event, Harvard and Company shall negotiate in good faith, during the period commencing upon the date on which Harvard receives such notice and Business Plan and ending ninety (90) days thereafter (the "Negotiation Period"), the terms of a license agreement (the "License Agreement") providing for an exclusive license under Harvard's interests in the Patent Rights; provided, however, that no such License Agreement will include any grant of exclusive rights that would be inconsistent with the National Institutes of Health's Principles and Guidelines for Recipients of NIH Research Grants and Contracts on Obtaining and Disseminating Biomedical Research Resources, as published at 64 Fed. Reg. 72090, as may be amended from time to time. Such License Agreement shall include, without limitation, (a) terms consistent with the provisions of 35 USC §§ 200-212 and 37 CFR § 401 et seq., and a reservation of the rights of Harvard and other non-profit institutions to practice and to grant others the right to practice the subject matter of the Patent Rights for research, scholarly and educational purposes; (b) indemnity, insurance, exclusions, limitations and other provisions customary to patent and technology licenses normally granted by Harvard; (c) commercially reasonable due diligence obligations for the development and commercialization of products covered by the Patent Rights; (d) provisions to promote the availability of products developed and commercialized under such License Agreement in developing countries, and (e) commercially reasonable financial terms common to the industry. The Negotiation Period may be extended by mutual written agreement of Harvard and Company.

- c. If Company does not exercise the Option during the Option Period, or if Company exercises the Option during the Option Period and the parties fail to execute a License Agreement within the Negotiation Period, Company shall have no further rights with respect to the Patent Rights.
2. Consideration. In consideration of the Option granted hereunder, Company shall pay an option fee of _____ U.S. dollars (\$_____) (the "Option Fee") to Harvard within fifteen (15) days after the Effective Date. The Option Fee shall be creditable against payments to be made by Company under the License Agreement to reimburse Harvard for expenses incurred by Harvard prior to the Effective Date in connection with the preparation, filing, prosecution, maintenance and defense of the Patent Rights. In addition, Company shall reimburse Harvard for all expenses incurred by Harvard during the Option Period and the Negotiation Period in connection with the preparation, filing, prosecution, maintenance and defense of the Patent Rights. Reimbursement for such fees shall be paid by Company within thirty (30) days after receipt of an invoice from Harvard. Such payment obligation shall accrue to Company upon the incurrence of such expense by Harvard and shall survive termination of this letter agreement.
3. Patent Prosecution. Harvard shall be solely responsible for the preparation, filing, prosecution, maintenance and defense of the Patent Rights, and all decision-making

authority (including, without limitation, as to whether any patent(s), patent application(s) or claim(s) thereof are to be amended or abandoned) shall vest in Harvard, acting in its sole discretion.

4. Notices. All notices required or permitted by this letter agreement shall be in writing and may be delivered personally, or may be sent by facsimile, overnight delivery or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Paragraph 4:

If to Company:

[ADDRESS]

Phone: _____

Attn: _____

If to Harvard:

Office of Technology Development
Harvard University
Richard A. and Susan F. Smith
Campus Center 727E
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
Facsimile: 617-495-9568
Attn: Chief Technology Development Officer

Any notice shall be deemed to have been received as follows: (a) by personal delivery, upon receipt; (b) by facsimile or overnight delivery, one business day after transmission or dispatch; (c) by certified mail, as evidenced by the return receipt. If notice is sent by facsimile, a confirming copy of the same shall be sent by mail to the same address.

5. Liability. Despite the obligation to negotiate during the Negotiation Period in good faith, neither Harvard nor Company shall have any liability for refusing to compromise on any issue or for failing to execute any agreement.
6. Termination. Unless agreed otherwise in writing, this letter agreement will terminate automatically, regardless of cause (a) if Company fails to pay the Option Fee described in Paragraph 2 above by the specified due date, (b) upon the expiration of the Option Period if Company fails to exercise the Option in accordance with Paragraph 1 prior thereto, or (c) if the License Agreement is not executed by Harvard and Company by the end of the Negotiation Period, time being of the essence. This letter agreement may be earlier terminated (a) upon written agreement of both parties, (b) automatically thirty (30) days after written notice given by Harvard of Company's failure to pay any invoice provided in accordance with Paragraph 2 in respect of patent expenses incurred by Harvard and such failure remains uncured for such thirty (30) day notice period, or (c) at any time upon thirty (30) days written notice given by Company, with or without cause.

This sample option agreement is provided for illustrative purposes only. Any actual agreement may be subject to change.

7. Use of Name. Company shall not, and shall ensure that its affiliates shall not, use or register the name “Harvard” (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify Harvard or any Harvard school, unit, division or affiliate for any purpose except with the prior written approval of, and in accordance with restrictions required by, Harvard.
8. Governing Law. This letter agreement will be governed by, and construed in accordance with, the substantive laws of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provision, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent shall have been granted. Any action, suit or other proceeding arising under or relating to this letter agreement (a “Suit”) shall be brought in a court of competent jurisdiction in the Commonwealth of Massachusetts, and the parties hereby consent to the sole jurisdiction of the state and federal courts sitting in the Commonwealth of Massachusetts. Each party agrees not to raise any objection at any time to the laying or maintaining of the venue of any Suit in any of the specified courts, irrevocably waives any claim that Suit has been brought in any inconvenient forum and further irrevocably waives the right to object, with respect to any Suit, that such court does not have any jurisdiction over such party. This letter agreement embodies the entire agreement between the parties and merges all prior agreements with respect to the matters addressed herein.

This sample option agreement is provided for illustrative purposes only. Any actual agreement may be subject to change.

If the terms and provisions of this letter agreement are acceptable to Company, please indicate acceptance by signing and dating the duplicate original hereof in the space indicated below and returning such signed and dated duplicate original to us. Our facsimile to you of this letter agreement and your facsimile signature hereto will constitute acceptance by Company of this letter agreement. Thank you for your consideration of this matter.

President and Fellows of Harvard College

By: _____

Name: Isaac T. Kohlberg

Title: Senior Associate Provost and Chief Technology Development Officer

AGREED TO AND ACCEPTED:

[COMPANY NAME]

By: _____

Name:

Title:

SAMPLE

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EXHIBIT A

Patent Rights

Case	AppTitle	SerialNumber	FilingDate	Patent Number

SAMPLE