

OPTION AGREEMENT NUMBER XXXXXX
BETWEEN
BATTELLE MEMORIAL INSTITUTE
AND
COMPANY

date

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**OPTION AGREEMENT
BETWEEN
BATTELLE MEMORIAL INSTITUTE
AND
COMPANY**

This Option Agreement (the “Agreement”) is made by and is effective as of the date of last signature (“Effective Date”) by Battelle Memorial Institute (“BATTELLE”), which operates the Pacific Northwest National Laboratory (“PNNL”) at 902 Battelle Blvd., Richland, WA 99354 USA under Contract No. DE-AC05-76RL01830 with the United States Department of Energy (“DOE”) and (“OPTIONEE”) having a place of business at_____.

Whereas, BATTELLE owns certain U.S. patent properties and has the right to grant options and licenses to practice the technology described within those patent properties and wishes to deploy that technology for commercial development in the public interest; and

Whereas, OPTIONEE is interested in exploring commercial development of those patent properties and wishes to obtain an option to negotiate a license under those patent rights.

NOW THEREFORE, in consideration of the mutual promises of the parties and intending to be bound hereby, the parties hereby enter into this Option Agreement.

1. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- A. “Commercialization Plan” means a reasonably detailed document describing the general market need and business opportunity OPTIONEE expects to address using the Patents; a set of product development and commercialization milestones; and the associated financial and personnel requirements to achieve those milestones.
- B. “Field of Use” means.
- C. “License Agreement” means any license of rights by BATTELLE arising from the Option rights granted in this Option Agreement.
- D. “Licensed Product” means any product, service or process whose manufacture, use, practice, sale, offer for sale, or importation would constitute an infringement of Patent rights without a license from BATTELLE.
- E. “Option Fee” means the consideration set forth in Article 3, below.

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- F. "Option Term" means the period beginning on the Effective Date and continuing for twelve (12) months thereafter. The Option Term may be extended by BATTELLE upon request from OPTIONEE prior to expiration of any specifically granted Option Term set forth above and in compliance with Article 3.
- G. "Patents" means the following:

<u>Title</u>	<u>Country</u>	<u>Number</u>	<u>Date</u>
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*These inventions were made with government support under Contract Number DE-AC05-76RL01830 awarded by the U.S. Department of Energy. The government has certain rights in the inventions.

- A. "Territory" means those countries where BATTELLE has issued or pending PATENTS.

2. GRANT OF OPTION

- A. BATTELLE hereby grants to OPTIONEE the exclusive right to negotiate an exclusive royalty-bearing license to make, have made, use and sell Licensed Products in the Field of Use and the Territory, with the right to sublicense.
- B. Any License Agreement granted shall contain commercially reasonable terms to be mutually negotiated in good faith and agreed upon within ninety (90) days after BATTELLE receives notice pursuant to Paragraph 2C, below; this negotiation period may be extended by mutual written agreement of the Parties. The Option to negotiate a License Agreement is contingent upon OPTIONEE remaining in good standing regarding its obligations to BATTELLE. Any License Agreement shall be subject to a reasonable license fee, royalty, diligence requirements, Patent expense reimbursement provisions, assignment restrictions and fees, and when the Patents arose from inventions created under U.S. Government funded research, U.S. Manufacturing requirements and the retention by the U.S. Government of a non-exclusive, royalty-free, irrevocable right to use the Patents for U.S. Government purposes only.
- C. At any time during the Option Term, OPTIONEE may exercise the Option by notifying BATTELLE in writing prior to expiration of the Option Term that OPTIONEE wishes to negotiate a License Agreement.

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- D. This Option Agreement is entered into with the understanding that the Parties may not be able to negotiate a License Agreement, and the Option Term may expire without an acceptable License Agreement to execute.

3. OPTION FEE

- A. As consideration, in part, for the rights granted under this Option Agreement, OPTIONEE shall pay to BATTELLE an Option Fee of United States Dollars (\$ US), as follows:
1. United States Dollars (\$ US) due on the Effective Date and payable on or before thirty (30) days following the Effective Date; and
 2. United States Dollars (\$US) due on or before ninety (90) days following the Effective Date.

Payment of the Option Fee shall be sent to BATTELLE as follows:

- (i) If payments are made by check, please submit payment in U.S. funds to:

Battelle

PAYMENT ADDRESS INFORMATION

- (ii) If payments are made by wire transfer, such transfers shall be in accordance with the following wire instructions; unless and until written notice is provided by BATTELLE of a change in the wire instructions. If LICENSEE makes payments to BATTELLE by Electronic Funds Transfers, LICENSEE shall also provide a written report to BATTELLE to the address set forth in Article 11 along with a statement indicating that payments have been made by Electronic Funds Transfers. Such payments shall be made to the following account (for international transfers, use Swift Code: XXXXXXXX):

WIRE TRANSFER INFORMATION

- B. As additional consideration for the rights granted under this Option Agreement, OPTIONEE shall reimburse BATTELLE for any Patent annuity fees due and payable during the Option Term and any extension of the Option Term, including the negotiation period in Paragraph 2B, above. OPTIONEE shall pay BATTELLE such Patent annuity fees within sixty (60) days following invoice by BATTELLE, even if such invoice is received following termination of the Option Term.

4. PUBLICITY

Each Party agrees not to use or imply the name of the other Party or any affiliated

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company of the other or the identifying characteristics of either, in any publicity material including materials designed for the news media without the prior approval, in writing, of the other Party. The Parties agree that OPTIONEE can use or imply the name of BATTELLE or PNNL as the assignee and owner of the Patents in prospectus or other fund raising material during the term of this Option Agreement, with prior approval from BATTELLE, in writing. Any mention of BATTELLE or PNNL will not be used to imply endorsement of the OPTIONEE.

5. ASSIGNABILITY

OPTIONEE shall not transfer or assign any of its rights under this Option Agreement without the prior written approval of BATTELLE. Any transfer of this Option Agreement shall be approved in advance in writing by BATTELLE, and shall only occur upon written request from OPTIONEE including the name, address and other contact information regarding the proposed transferee.

6. PATENTING

- A. BATTELLE shall have the sole right and discretion to file, prosecute, maintain, reexamine, and participate in any proceedings before a patent office, domestic or foreign, for all of the Patents, and shall have the right to determine whether or not, and where, to file a patent application, to abandon the prosecution of any patent application, or to discontinue the maintenance of any Patents. BATTELLE may consult with OPTIONEE regarding Patent filings and OPTIONEE will notify BATTELLE within fifteen (15) days of notice from BATTELLE regarding foreign filings, if any, and OPTIONEE's willingness to include such filings in the definition of Patents under this Agreement.
- B. OPTIONEE agrees to inform BATTELLE of any evidence it may have of Patent infringement during the Option Term.

7. TERMINATION

- A. Should OPTIONEE breach any material provision of this Option Agreement, BATTELLE shall have the right to immediately terminate this Option Agreement prior to the expiration of the Option Term. If in BATTELLE's sole discretion it elects to permit partial performance of any obligation hereunder, permission to partially perform shall be granted only by a written instrument signed by a BATTELLE authorized representative.
- B. OPTIONEE may terminate this Option Agreement at any time prior to the expiration of the Option Term by sending written notice to BATTELLE at the address set forth in Article 11.
- C. Option Fees paid under Article 3 are non-refundable even in the event of termination. No

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further Patent annuity fees will be paid from OPTIONEE if incurred after termination.

8. COMMERCIALIZATION PLAN

- A. In order to exercise this Option, COMPANY shall submit a short strategic Commercialization Plan to BATTELLE prior to the expiration of the Option Term, addressing the following:
- (i) revenue model for Licensed Products;
 - (ii) Licensed Product development “roadmap” outlining development steps and projected milestones;
 - (iii) market projections; and
 - (iv) a strategy for reaching the market for Licensed Products.
- B. BATTELLE shall have the right to withhold the grant of a license if the Commercialization Plan a) is not submitted; b) is submitted but fails to reasonably inform the reader of the scope and nature of the activities to be conducted using the technology, or c) proposes activities in the Commercialization Plan that would include any violation of law, regulation, contract or BATTELLE policy.

9. DISCLAIMER

NEITHER BATTELLE, THE UNITED STATES DEPARTMENT OF ENERGY (DOE), NOR PERSONS ACTING ON THEIR BEHALF MAKE ANY WARRANTY, EXPRESS OR IMPLIED: (1) WITH RESPECT TO THE MERCHANTABILITY, ACCURACY, COMPLETENESS OR USEFULNESS OF ANY SERVICES, MATERIALS, LICENSED PATENTS, INVENTIONS OR INFORMATION FURNISHED HEREUNDER; (2) THAT THE USE OF ANY SUCH SERVICES, MATERIALS, LICENSED PATENTS, OR INFORMATION WILL NOT INFRINGE PRIVATELY OWNED RIGHTS; (3) THAT THE SERVICES, MATERIALS, LICENSED PATENTS, OR INFORMATION FURNISHED HEREUNDER WILL NOT RESULT IN INJURY OR DAMAGE WHEN USED FOR ANY PURPOSE; OR (4) THAT THE SERVICES, MATERIALS OR INFORMATION FURNISHED HEREUNDER WILL ACCOMPLISH THE INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE, INCLUDING THE INTENDED OR PARTICULAR PURPOSE. FURTHERMORE, BATTELLE AND THE DOE HEREBY SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, FOR ANY PRODUCTS MANUFACTURED, USED OR SOLD BY LICENSEE, THEIR AFFILIATES, ASSIGNS OR SUBLICENSEES. NEITHER BATTELLE NOR THE DOE SHALL BE LIABLE FOR CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES IN ANY EVENT.

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10. CONSTRUCTION

This Agreement shall be construed in accordance with the laws of the State of Washington of The United States of America and in the English language, and any action brought to enforce any provision or obligation hereunder shall be brought in a court of competent jurisdiction in the State of Washington.

11. ADDRESSES

All formal communications and payments relating to this Option Agreement should be addressed to:

Battelle Memorial Institute
Technology Deployment and Outreach
Attention PNNL IP Compliance Office
P.O. Box 999, Mailstop K1-71
902 Battelle Blvd.
Richland, WA 99352 USA
Telephone: 1 (509) 375-2075
Fax: 1 (509) 372-4589
Email: complianceoffice@pnnl.gov

COMPANY
Attention

ADDRESS

Telephone:
Email:

12. ENTIRE UNDERSTANDING

This Agreement represents the entire understanding between the Parties, and supersedes all other agreements, express or implied, between the Parties concerning the subject matter of this Option Agreement. Specifically, no future representations made by BATTELLE staff shall be effective to alter any provision herein unless such representation shall be made in writing by an authorized representative of BATTELLE having the power to do so.

13. EXPIRATION

The offer to execute this Option Agreement shall expire if this Option Agreement is not signed by both parties and returned to BATTELLE on or before (DATE).

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Option Agreement Number xxxxxx
Company Name
Date
Version 1

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IN WITNESS WHEREOF the parties have caused this Option Agreement to be executed by their duly authorized officers on the respective dates hereinafter set forth.

BATTELLE MEMORIAL INSTITUTE

COMPANY

BY
PRINTED
NAME

BY
PRINTED
NAME

TITLE

TITLE

DATE

DATE

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