

Memorandum of Understanding – TECHNION Materials

This Memorandum of Understanding (hereinafter “Agreement”) is made effective as of the ____ of _____, 20____, by and between _____ (“Institution”), having an address at _____,

and **WiCell Research Institute, Inc.** (“WiCell”), a Wisconsin nonprofit corporation having an address at 614 Walnut Street, Madison, Wisconsin 53726.

WHEREAS, WiCell has been appointed a distributor of certain human embryonic stem cell lines developed by TECHNION (the “**TECHNION Materials**”);

WHEREAS, the Wisconsin Alumni Research Foundation (“**WARF**”) holds certain intellectual property rights provided by U.S. Patent Nos. 5,843,780; 6,200,806; 7,005,252, and various patents or patent applications (foreign and domestic) claiming priority thereto (collectively the “**Patent Rights**”), and has afforded WiCell the right to grant sublicenses under the Patent Rights to non-profit and academic research institutions;

WHEREAS, WARF and WiCell have a mission to serve the public good and desire to provide Institution, and researchers who have entered into a Simple Letter Agreement with WiCell governing the transfer of the TECHNION Materials (“**Recipients**”), the opportunity to use the TECHNION Materials for non-commercial research purposes in the Recipient’s laboratory; and

WHEREAS, Institution agrees that any such research conducted using the TECHNION Materials shall be in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, the parties agree as follows:

1. Institution shall have the nontransferable right under the Patent Rights to maintain and use the TECHNION Materials within the laboratories of its Recipients solely for non-commercial research purposes. As used herein, the “TECHNION Materials” shall further include any progeny and modified version of the TECHNION Materials, other than differentiated cells no longer capable of functioning as a stem cell. Any and all uses of the TECHNION Materials must be in compliance with all applicable statutes, regulations, guidelines (including the NAS Guidelines) and any Institutional Review Board decisions.

2. Institution agrees that it shall require each researcher at Institution who desires to receive and use the TECHNION Materials, to enter into and execute the Simple Letter Agreement attached hereto as Appendix A. WiCell shall cause the requested TECHNION Materials to be shipped to the Recipient upon receipt of both an executed Simple Letter Agreement requesting such TECHNION Materials and the transmittal fee, if any, requested by WiCell pursuant to paragraph 3 below.

3. Institution acknowledges that a transmittal fee may be requested by WiCell to cover the preparation and distribution costs for each sample of TECHNION Materials requested by each Recipient. Such fees will be the responsibility of the requesting Recipient laboratory. Despite the payment of any such fee, the transfer of the TECHNION Materials shall not be considered a sale of the TECHNION Materials to Recipient or Institution.

4. TECHNION Materials are the property of TECHNION and are being made available to Institution and its Recipients as a service by TECHNION and WiCell. Ownership of all TECHNION Materials, including any progeny or modified versions thereof, shall remain with TECHNION, regardless of whether such TECHNION Materials are received from WiCell. Any TECHNION Materials provided to any Recipient hereunder will be returned to WiCell or destroyed upon a material breach of any terms of the Simple Letter Agreement.

5. Institution and its Recipients shall have the right to transfer TECHNION Materials to other Recipients, provided that:

(a) WiCell provides written confirmation that the receiving Recipient has entered into and executed a Simple Letter Agreement relating to the TECHNION Materials to be transferred;

(b) the transfer of the TECHNION Materials shall be made for no consideration (i.e., commercial grantback rights, ownership interest in inventions created by the recipient, or royalties from the recipient due to the commercialization of inventions created using the TECHNION Materials);

(c) the transfer of the TECHNION Materials shall be subject to the terms of this Agreement and the Simple Letter Agreement between WiCell and the receiving Recipient; and

(d) the Recipient provides written notice to the receiving Recipient that the TECHNION Materials are not being provided by or on behalf of WiCell and have been maintained by the Recipient in conditions which may not be consistent with those utilized by WiCell.

6. WiCell recognizes that the technology of the Patent Rights may be used by Recipients in research to make patentable discoveries (“Institution Patent Rights”) which may eventually provide commercial products that benefit the public health. Institution agrees to grant TECHNION, WiCell, the University of Wisconsin and other like non-profit and/or academic research institutions a license under the Institution Patent Rights to use the technology of the Institution Patent Rights for non-commercial research purposes.

7. The rights provided hereunder do not grant Institution the right to grant sublicenses under the Patent Rights, or the right to develop and/or use the TECHNION Materials for any therapeutic or commercial purpose, including the right to use the TECHNION Materials to perform services (including diagnostic services) for consideration, or for the production or manufacture of products for sale or distribution to third parties. Any license needed by a third party under the Patent Rights for the manufacture, production, use or commercialization of any Institution Patent Rights shall be provided by a separate written agreement with WARF. Nothing herein shall be construed to require WARF to enter into any such agreement, or to hinder WiCell or WARF from entering into any other agreement with any third party which may limit the grant of any license under the Patent Rights necessary for the practice of the Institution Patent Rights.

8. Institution and its Recipients shall communicate to WiCell all publications and/or research results made public by Institution or its Recipients based on research using the TECHNION Materials. In addition, any reports, publications, or other disclosure of results obtained with the TECHNION Materials will acknowledge WiCell as the original source of the TECHNION Materials and, in the event that the TECHNION Materials were received from an authorized third party, the conditions in which such TECHNION Materials were maintained prior to their transfer.

9. Any TECHNION Materials delivered pursuant to this Agreement are understood to be experimental in nature and may have hazardous properties. WiCell makes no representations and extends no warranties of any kind, either expressed or implied. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY FOR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY THAT THE USE OF THE TECHNION MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS. Institution assumes all liability for any claim for damages which may arise from the use, storage, handling or disposal of the TECHNION Materials by its Recipients, except to the extent caused by the gross negligence or willful misconduct of WiCell or TECHNION.

10. The provisions of this Agreement, and the obligations hereunder, shall continue as long as the TECHNION Materials continue to be used by Institution or any of its Recipients. Nothing contained herein shall be construed to be a waiver by WiCell or WARF of any rights under the Patent Rights.

11. This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Wisconsin, without reference to its conflicts of laws principles. If the enforcement of 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.

12. This Agreement reflects a negotiated compromise between the parties. Neither party shall be considered to be the drafter of this Agreement, or any of its provisions, for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. The Section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

13. This Agreement is not intended to be for the benefit of and shall not be enforceable by any third party. Nothing in this Agreement, express or implied, is intended to or shall confer on any third party any rights (including third-party beneficiary rights), remedies, obligations or liabilities under or by reason of this Agreement. This Agreement shall not provide third parties with any remedy, claim, reimbursement, cause of action or other right in excess of those existing without reference to the terms of this Agreement. No third party shall have any right, independent of any right that exists irrespective of this Agreement, to bring any suit at law or equity for any matter governed by or subject to the provisions of this Agreement.

14. This Agreement constitutes the full understanding between the parties with reference to the subject matter hereof, and no statements or agreements by or between the parties, whether orally or in writing, except as provided for elsewhere in this paragraph 14, made prior to or at the signing hereof, shall vary or modify the written terms of this Agreement. Neither party shall claim any amendment, modification, or release from any provisions of this Agreement by mutual agreement, acknowledgment, or otherwise, unless such mutual agreement is in writing, signed by the other party, and specifically states that it is an amendment to this Agreement.

15. The persons signing on behalf of WiCell and Institution hereby warrant and represent that they have authority to execute this Agreement on behalf of the party for whom they have signed.

IN WITNESS WHEREOF, the Parties agree to the foregoing and have caused this Agreement to be executed by their duly authorized representatives.

WiCell Research Institute

Institution

By: _____
Robert J. Drape, CEO

By: _____

Date: _____

Date: _____

Name: _____

Title: _____

WiCell Ref: Thomson – P98222US

Order Reference No. _____

WiCell Agreement No. _____

Simple Letter Agreement

INSTITUTION: _____

RECIPIENT: _____

PROVIDER: _____
(WiCell or Name of Authorized Provider)

CELL LINE: _____

RESEARCH PROGRAM TITLE: _____

This Simple Letter Agreement dated and effective _____, is between the above Recipient, a researcher employed by the above Institution, and the WiCell Research Institute, Inc. ("WiCell"), a Wisconsin nonprofit corporation having an address at 614 Walnut Street, Madison, Wisconsin 53726.

It is WiCell’s understanding that the Recipient desires to obtain samples of the Cell Line listed above (hereinafter referred to, along with any progeny or modified versions thereof, as the “Materials”) for use as part of research to be conducted in Recipient’s laboratory at Institution. In accordance with the terms and conditions of the Memorandum of Understanding between WiCell and Institution dated _____ (the “MOU”), which is incorporated herein by reference, Recipient hereby agrees and acknowledges the following:

1. Recipient hereby represents that he/she has read and acknowledges the terms and conditions of the MOU, and agrees to be bound by its terms and conditions. Specifically, Recipient acknowledges and agrees that the research conducted by Recipient will not include the use of the Materials for therapeutic or commercial purposes, including the performance of services (including diagnostic services) for consideration or the production or manufacture of products for sale or distribution.
2. The Materials are the property of TECHNION and are being made available to Institution and Recipient as a service by WiCell, TECHNION and the National Stem Cell Bank. Ownership of all Materials, including any progeny or modified versions thereof, shall remain with TECHNION, regardless of whether such Materials are received from WiCell or an authorized third party. Any Materials provided hereunder will be returned to WiCell or destroyed upon a material breach of any terms of this Simple Letter Agreement or the MOU.
3. Recipient agrees to communicate to WiCell all publications and/or research results made public by Institution or Recipient based on research using the Materials. In addition, any reports, publications, or other disclosure of results obtained with the Materials will acknowledge WiCell and TECHNION as the original source of the Materials and, in the event that the Materials were received from an authorized third party, the conditions in which such Materials were maintained prior to their transfer.

The Institution and Recipient must sign both copies of this letter and return both signed copies to WiCell, along with any fees if applicable, before the Materials may be provided to the Recipient.

Recipient Scientist

Institution

WiCell Research Institute

By: _____

By: _____

By: _____
Robert J. Drape, CEO

Name: _____

Name: _____

Date: _____

Date: _____

Title: _____

Address: _____

Date: _____

