## Shaded Area - Internal University Use Only

**OTC Agreement No.:**

**OTC Docket No.(s):**

**Document Revision Date:**

****

**OPTION AGREEMENT**

 **THIS OPTION AGREEMENT** is dated and effective as of the date of last signature (the “Effective Date”), and is made by and between Regents of the University of Minnesota, a constitutional corporation under the laws of the state of Minnesota, having a place of business at McNamara Alumni Center, 200 Oak Street SE, Suite 280, Minneapolis, Minnesota 55455 (the “University”), and **[Enter Entity Name]** , a **[Enter Entity Type, i.e. Corporation, L.L.C. etc.]**, under the laws of the **[Enter Either Word State or Word Country]** of **[Enter State or Country Name],** having a place of business at **[Enter Address of Entity]** (the “Company”).

**Purpose**

 The Company desires to consider and investigate the commercialization of certain University-owned technology described in section 1 of attached Exhibit A (the “Technology”) and only in the field of use described in section 4 of attached Exhibit A (the “Field of Use”). The Company further desires the University grant it an option on the terms set forth below for the exclusive rights to license the University’s rights, including any patent rights, in the Technology, and the University is willing to grant such an option.

 **NOW, THEREFORE**, the parties agree that:

**1.** **Grant of Option.** At any time during the period set forth in section 2 of attached Exhibit A (the “Option Exercise Period), the Company may exercise this Option by delivering to the University to the address set forth in section 13 of this Option Agreement written notification thereof. Promptly after the University’s receipt of such written notice, the parties shall enter into good faith negotiations which may or may not lead to an agreement pursuant to which the University would grant and the Company would accept a license of the University’s rights in the Technology. The parties agree that there will be no pre-negotiated terms for any such license included in this Option Agreement, except as provided in Section 4 of attached Exhibit A.

**2. Other Terms.** This Option Agreement is subject to and the parties agree to such other terms as specified in section 5 of attached Exhibit A.

**3.** **Option Fee.** The Company shall pay the University, as a non-refundable, non-creditable fee, the amount set forth in section 3 of attached Exhibit A.

**4.** **No Shop.** Throughout the term of this Option Agreement, the University shall not submit a term sheet or enter into an agreement granting a third party a commercial right, option or license to the University’s rights in and to the Technology in the Field of Use.

**5.** **Termination.**

 5.1. This Option Agreement shall expire immediately after the expiration of the Option Exercise Period or, if the Company exercises the Option, thirty (30) days after the expiration of the Option Exercise Period.

5.2. The Company may terminate this Option Agreement at any time during the Option Exercise Period by delivering to the University written notice of termination. Unless the Company otherwise specifies in the notice of termination, this Option Agreement shall terminate as of the date on which the University receives the notice of termination.

 5.3. If a party (the “Non-Performing Party”) shall fail to perform one or more of its obligations under this Option Agreement, the other party (the “Aggrieved Party”) may deliver to the Non-Performing Party a written notice of default. The Aggrieved Party may terminate this Option Agreement if the Non-Performing Party shall not have performed such obligations within thirty (30) days after its receipt of the notice of default by delivering to the Non-Performing Party a written notice of termination.

 5.4. After the expiration or termination of this Option Agreement, the Company shall have no rights or interests whatsoever as granted in this Option Agreement in the Technology or the University’s rights in the Technology, and the University shall be under no further obligation to negotiate or enter into any license agreement with Company.

**6.** **Amendment and Waiver.** This Option Agreement may be amended from time to time only by a written instrument signed by the parties. A party’s failure to exercise a right or remedy granted it under this Option Agreement or its failure to demand prompt performance by the other party of an obligation under this Option Agreement shall not be deemed a waiver of such right or remedy or of the requirement for timely performance. No waiver by a party of any default or nonperformance hereunder shall be deemed a waiver of any subsequent default or nonperformance.

**7.** **Applicable Law.** The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Option Agreement, without giving effect to the conflict of laws principles thereof.

**8.** **Collection Costs and Attorneys’ Fees.** If a party shall fail to perform an obligation or otherwise breaches one or more of the terms of this Option Agreement, the other party may recover from the non-performing breaching party all its costs (including reasonable attorneys' and investigative fees) to enforce the terms of this Option Agreement.

**9.** **Damages.**

9.1. Remedy Limitation. **EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR (A) PERSONAL INJURY OR PROPERTY DAMAGES OR (B) LOST PROFITS, LOST BUSINESS OPPORTUNITY, INVENTORY LOSS, WORK STOPPAGE, LOST DATA OR ANY OTHER RELIANCE OR EXPECTANCY, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OF ANY KIND.**

 9.2. Damage Cap. **IN NO EVENT SHALL THE UNIVERSITY’S TOTAL LIABILITY FOR THE BREACH OR NONPERFORMANCE OF THIS OPTION AGREEMENT EXCEED THE AMOUNT OF THE OPTION FEE PAID TO THE UNIVERSITY UNDER THIS OPTION AGREEMENT. THIS LIMITATION SHALL APPLY TO CONTRACT, TORT AND ANY OTHER CLAIM, OF WHATEVER NATURE.**

**10.** **Entire Agreement.** This Option Agreement is intended by the parties as the final and binding expression of their contract and agreement and as the complete and exclusive statement of the terms thereof. This Option Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements, whether oral or written, relating to the subject matter hereof.

**11.** **Forum Selection.** A suit, claim or other action to enforce the terms of this Option Agreement shall be brought exclusively in the state courts of Hennepin County, Minnesota. The Company hereby submits to the jurisdiction of that court and waives any objections it may have to that court asserting jurisdiction over the Company or its assets and property.

**12.** **No License.** The parties acknowledge and agree that the University has not granted and has no obligation under this Option Agreement to grant the Company any license, express or implied, or any other right of any nature to license or use the University’s rights in the Technology.

**13.** **Notices.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

 If to the University: University of Minnesota

 Office for Technology Commercialization

 200 Oak Street SE, Suite 280

 Minneapolis, MN 55455

 Fax: 612.624.6554

 E-mail: OTCAgree@umn.edu

For notices sent University of Minnesota

 pursuant to section 4, Office of the General Counsel

 with a copy to: Attn: Transactional Law Services

 200 Oak Street SE, Suite 360

 Minneapolis, MN 55455-2006

 Facsimile No.: 612.626.9624

 E-mail: contracts@mail.ogc.umn.edu

 If to the Company

 Attn:

 Facsimile No.:

 E-mail:

**14.** **Publicity.** The University reserves the right to disclose to the public the execution and delivery of this Option Agreement along with the Company’s name and the name of the Development.

**15.** **Relationship of Parties.** In entering into, and performing their duties under, this Option Agreement, the parties are acting as independent contractors and independent employers. No provision of this Option Agreement shall create or be construed as creating a partnership, joint venture, or agency relationship between the parties. No party shall have the authority to act for or bind the other party in any respect.

**16.** **Security Interest.** In no event shall the Company grant, or permit any person to create, assert or perfect a security interest in the Company’s rights under this Option Agreement.

**17.** **Survival.** The terms of sections 3, 8, 9 and 11 of this Option Agreement shall survive expiration or termination.

 **IN WITNESS WHEREOF**, the parties hereto have caused this Option Agreement to be duly executed and delivered as of the date first above written.

**Regents of the University of Minnesota** **Insert Name of Company**

By: By:

       Name:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Associate Director Title:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

######  Office for Technology Commercialization

Date: Date:

## Shaded Area - Internal University Use Only

**OTC Agreement No.:**

**OTC Docket No.(s):**

**Document Revision Date:**

# EXHIBIT A

**OPTION AGREEMENT SCHEDULE**

1. Technology.

University of Minnesota Docket No.  entitled, “”, Including the following patents:

|  |  |  |  |
| --- | --- | --- | --- |
| Patent No. | Country | Issue Date | Title |
|       |       |       |       |
|       |       |       |       |

 And the following patent applications:

|  |  |  |  |
| --- | --- | --- | --- |
| ApplicationNo. | Country | Filing Date | Title |
|       |       |       |       |
|       |       |       |       |

2. Option Exercise Period.

The Option Exercise Period shall start with Effective Date of this Option Agreement and terminate Enter number of months or years from the Effective Date.

3. Option Fee.

      dollars ($     ), due within       (     ) days of the Effective Date of this Option Agreement.       dollars ($     ) due the earlier of the Company’s actual receipt of the Materials or Enter a specific date.

4. Field of Use.

5. Other Terms.