

SAMPLE OPTION for an EXCLUSIVE LICENSE AGREEMENT

This option for an exclusive license agreement ("**OPTION AGREEMENT**") is entered into as of the date that this **OPTION AGREEMENT** is fully executed by both parties ("**EFFECTIVE DATE**"), by and between The Regents of the University of California, a California public corporation, having its statewide administrative offices at 1111 Franklin Street, 12th Floor, Oakland, California 94607-5200 acting through its Office of Technology Licensing, at the University of California, Berkeley, having its administrative office at 2150 Shattuck Avenue, Suite 510, Berkeley, CA 94704-1366 ("**REGENTS**"), and **Company Name** ("**OPTIONEE**"), a **type of** corporation, having a principal place of business at **Company Address**.

The parties agree as follows:

1. BACKGROUND

1.1 **INVENTIONS**: REGENTS has an assignment of the intellectual property ("**INVENTIONS**") of the intellectual property ("**INVENTIONS**") characterized as follows: **Case Name**, that was co-invented by **Inventors**, all employed by the University of California at the time of the invention, as described in REGENTS case number **B##-###** and **PATENT RIGHTS** (defined in Paragraph 2.1).

1.2 **OTHER DECLARATIONS**:

1.2a **OPTIONEE** provided **REGENTS** with a plan for researching the **INVENTIONS** pursued by **OPTIONEE** to determine whether to exercise the option contained in this **OPTION AGREEMENT** ("**RESEARCH PLAN**") as described in **APPENDIX A**.

1.2b **OPTIONEE** requested certain rights from **REGENTS** to develop, test and evaluate the **INVENTIONS**, and upon exercise of the option rights in this **OPTION AGREEMENT**, to obtain an exclusive **LICENSE AGREEMENT** with **REGENTS** to make, use, import, offer for sale, and sell products that use the **INVENTIONS**.

1.2c **REGENTS** respond to the request of the **OPTIONEE** by granting the following rights to the **OPTIONEE** to enable the general public to enjoy the products and other benefits derived from the **INVENTION**.

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2. **DEFINITIONS**

As used in this OPTION AGREEMENT, the following terms, whether used in the singular or plural, have the following meanings:

2.1 “**COMMERCIALIZATION PLAN**” means a written plan containing information regarding the development, manufacture, distribution, marketing, licensing and sales of LICENSED PRODUCTS.

2.2 “**LICENSE AGREEMENT**” means the exclusive agreement to be negotiated between OPTIONEE and REGENTS upon exercise of the option in this OPTION AGREEMENT.

2.3 “**LICENSED FIELD-OF-USE**” means: [TBD].

2.4 “**LICENSED PRODUCT**” includes the definition of LICENSED METHOD as defined in Paragraph 2.5, and means any product, service, kit, material, or apparatus either (a) produced by used in or required for the practice of LICENSED METHOD, or (b) the manufacture, use, SALE, offer for SALE, distribution, or import of which, which for both (a) and (b) in the absence of the license granted in this AGREEMENT, would infringe, or contribute to, or induce the infringement of, any PATENT RIGHTS were they issued in a country at the time of the infringing activity in that country.

2.5 “**LICENSED METHOD**” means any process, service or method the use or practice of which, in the absence of the license granted in this AGREEMENT, would infringe, or contribute to, or induce the infringement of, any PATENT RIGHTS were they issued in a country at the time of the infringing activity in that country.

2.6 “**LICENSED TERRITORY**” means the jurisdictions where REGENTS has obtained, or obtains PATENT RIGHTS, and/or filed or files corresponding patent applications under PATENT RIGHTS.

2.7 “**LICENSEE**” means OPTIONEE if OPTIONEE exercises the option in this OPTION AGREEMENT and obtains a license to PATENT RIGHTS.

2.8 “**NEW DEVELOPMENT**” means inventions, or claims to inventions, which constitute advancements, developments, or improvements, whether or not patentable and whether or not the subject of any patent application, but if patentable, are not sufficiently supported by the specification of a previously-filed patent or patent application within the PATENT RIGHTS to be entitled to the priority date of the previously-filed patent or patent application.

2.9 “**PATENT CLAIM**” means a claim of a patent or patent application in any country that (a) has not expired; (b) has not been disclaimed; (c) has not been cancelled or superseded, or if cancelled or superseded, has been reinstated; and (d) has not been revoked, held

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invalid, or otherwise declared unenforceable or not allowable by a tribunal or patent authority of competent jurisdiction over such claim in such country from which no further appeal has or may be taken.

2.10 "**PATENT RIGHTS**" means the PATENT CLAIMS (as defined below) of, to the extent assigned to or otherwise obtained by REGENTS, (a) the U.S. patents and patent applications, (b) the corresponding foreign patents and patent applications, and (c) any reissues, extensions, substitutions, continuations, divisions, and continuation-in-part applications (but only those PATENT CLAIMS in the continuation-in-part applications that are entirely supported in the specification and entitled to the priority date of the parent application) that are based on the following patents and patent applications, and this definition of PATENT RIGHTS excludes any rights in or to NEW DEVELOPMENT(S) (defined in Paragraph 2.3):

2.10a U.S. Patent Application **Number** entitled, **Title**, filed on **Date**, as documented in UC Case **Number**; and

2.10b U.S. Patent Application **Number** entitled, **Title**, filed on **Date**, as documented in UC Case **Number**.

3. **GRANT OF OPTION**

3.1 **Optionee Grant**: Subject to the limitations set forth in this OPTION AGREEMENT, including the rights reserved for REGENTS as well as other educational and non-profit institutions, REGENTS grants to OPTIONEE under PATENT RIGHTS an exclusive right to make, use and import LICENSED PRODUCT and to practice LICENSED METHOD in LICENSED FIELD-OF-USE in LICENSED TERRITORY in order to test and evaluate them to determine the interest of OPTIONEE in exercising the option contained in this OPTION AGREEMENT.

3.2 **Reserved Rights**: REGENTS expressly reserves the rights to (a) publish any and all technical data resulting from any research performed by REGENTS relating to the INVENTION, (b) make and use the INVENTION and related technology, and practice PATENT RIGHTS for educational and research purposes, (c) disseminate tangible materials associated with, or required to practice the INVENTION and/or PATENT RIGHTS to researchers at nonprofit institutions for educational and research purposes, and (d) allow other educational and nonprofit institutions to make and use the INVENTION and related technology for educational and research purposes.

3.3 **Option to License**: Subject to the limitations set forth in this OPTION AGREEMENT, REGENTS grants to OPTIONEE an exclusive, time-limited right to enter into the LICENSE AGREEMENT.

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3.4 Termination: OPTIONEE will notify REGENTS promptly, at any time during the term of this OPTION AGREEMENT, if OPTIONEE decides to not exercise the option contained in this OPTION AGREEMENT. Such notice will provide REGENTS with the reason for the decision. This NOTICE OF TERMINATION will be subject to the Notices Article of this OPTION AGREEMENT, and termination will be effective thirty (30) days from the date of NOTICE OF TERMINATION.

4. FEES

4.1 Option Issue Fee: As partial consideration for all rights granted by REGENTS to OPTIONEE herein, OPTIONEE will pay to REGENTS an option issue fee of **TBD dollars (\$TBD)**, due on signing and payable at execution of this OPTION AGREEMENT.

4.2 First Extension Fee: If OPTIONEE wants to renew this OPTION AGREEMENT for an additional period that is equivalent in duration to the initial period, then OPTIONEE will:

4.2a Notify REGENTS in writing in accordance with the Notice Article of this OPTION AGREEMENT;

4.2b Provide REGENTS with a summary of its progress during the term that is expiring along with a new RESEARCH PLAN for the renewal period acceptable to REGENTS; and

4.2c Pay to REGENTS an extension fee of **TBD dollars (\$TBD)** due and payable on or before the extension date of this OPTION AGREEMENT, if the new RESEARCH PLAN is acceptable to REGENTS.

4.3 Second Extension Fee: If OPTIONEE wants to renew this OPTION AGREEMENT for a second additional period that is equivalent in duration to the initial period, then OPTIONEE will:

4.3a Notify REGENTS in writing in accordance with the Notice Article of OPTION AGREEMENT;

4.3b Provide REGENTS with a summary of its progress during the term that is expiring along with a new RESEARCH PLAN for the renewal period; and

4.3c Pay to REGENTS an extension fee of **TBD dollars (\$TBD)**, due and payable on or before the extension date of OPTION AGREEMENT (or any extension thereof), if the new RESEARCH PLAN is acceptable to REGENTS.

4.4 Fee Notes: The option issue fees and option extension fees are not refundable, not creditable, not an advance against any other payments by OPTIONEE to REGENTS pursuant to OPTION AGREEMENT.

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5. EXERCISE OF OPTION

5.1 **Notification**: If OPTIONEE elects to exercise its option rights contained herein to cause LICENSEE to enter into the LICENSE AGREEMENT, then OPTIONEE must notify REGENTS in writing, as directed in the Notices Article of this OPTION AGREEMENT. Failure of OPTIONEE to so notify REGENTS is deemed to be an election by OPTIONEE not to secure a license. The aforementioned notice will include a COMMERCIALIZATION PLAN that is acceptable to REGENTS. Such COMMERCIALIZATION PLAN will set forth in reasonable detail the then current plan (including supporting data) of OPTIONEE for the commercialization of PATENT RIGHTS as LICENSEE. REGENTS' review of the COMMERCIALIZATION PLAN will take into consideration the possibility of changes based on additional information, new developments or changing market conditions that subsequently become known to OPTIONEE or LICENSEE.

5.2 **Provisions**: Upon exercise of this option, the LICENSE AGREEMENT negotiated will contain provisions as specified in the Material Terms of the License Agreement Article of this OPTION AGREEMENT.

5.3 **Schedule**: Upon exercise of this option, the parties agree to promptly commence negotiations, in good faith, for a LICENSE AGREEMENT which the parties to be entered into no later than three (3) months after the date of written notice provided by OPTIONEE above.

5.4 **Residual Rights**: OPTIONEE will have no residual rights upon expiration or termination of this OPTION AGREEMENT, or upon OPTIONEE's decision not to enter into a LICENSE AGREEMENT under this OPTION AGREEMENT, whichever is earlier.

6. MATERIAL TERMS OF LICENSE AGREEMENT

6.1 The LICENSE AGREEMENT resulting from OPTIONEE's exercise of the option set forth in this OPTION AGREEMENT will include standard and customary terms that are normally contained in similar PATENT RIGHTS agreements granted by REGENTS, including the following provisions:

6.1a **Grant**: REGENTS will grant to LICENSEE the exclusive right (subject to REGENTS' reservation of rights and any applicable third party rights) to do the following: make, have made, use, sell, offer for sale, and import LICENSED PRODUCTS and use and practice LICENSED METHOD limited to the LICENSED FIELD-OF-USE and the LICENSED TERRITORY for the life of the last-to-expire patent or last-to-be-abandoned patent application under PATENT RIGHTS, whichever is later; and Sublicense PATENT RIGHTS.

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6.1b Patent Costs: LICENSEE will pay to REGENTS all unreimbursed costs incurred during and prior to the term of the LICENSE AGREEMENT associated with preparing, filing, prosecuting and maintaining PATENT RIGHTS.

6.1c License Fees: LICENSEE will pay to REGENTS a non-refundable license issue fee.

6.1d Earned Royalties: If LICENSEE achieves sales of LICENSED PRODUCT, then LICENSEE will pay to REGENTS earned royalty on net sales of LICENSED PRODUCT.

6.1e Minimum Annual Royalties: If LICENSEE achieves sales of LICENSED PRODUCT, the LICENSEE will pay REGENTS a minimum annual royalty in each calendar year following the calendar year in which the first sale occurred.

6.1f Sublicense Payments: If LICENSEE sublicenses PATENT RIGHTS to a SUBLICENSEE, then LICENSEE will pay to REGENTS a percentage of any cash and of the cash equivalent of other consideration owed to LICENSEE for the grant of rights under each sublicense agreement.

6.1g Equity: As a partial alternative to license fees and earned royalty, LICENSEE may grant to REGENTS common stock equity in LICENSEE.

6.1h Diligence milestones: LICENSEE will achieve diligence milestones and terms that indicate that LICENSEE is expeditiously progressing on commercializing the INVENTIONS.

6.1i Indemnification: LICENSEE will indemnify REGENTS.

6.1j Disclaim Warranties: REGENTS disclaimer to LICENSEE of any warranties.

7. DUE DILIGENCE

7.1 Obligation: Upon execution of this OPTION AGREEMENT, OPTIONEE will earnestly and diligently proceed with research related to the PATENT RIGHTS (as described in OPTIONEE's RESEARCH PLAN in APPENDIX A).

7.2 Performance Metrics: OPTIONEE specifically commits to achieving the following objectives:

7.2a Date: Milestone:

7.2b Date: Milestone; and

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- Article 14 Indemnification
- Article 15 Confidentiality
- Article 16 Notices
- Paragraph 17.2 Late Payments
- Article 18 Governing Laws; Venue; and Attorneys' Fees.

9.3 No Relief: The termination or expiration of this OPTION AGREEMENT will not:

9.3a Relieve OPTIONEE of its obligation to make any payments pursuant to this OPTION AGREEMENT that are owed to REGENTS as of the time of such termination or expiration;

9.3b Impair any accrued right of REGENTS including the right to fees in accordance with this OPTION AGREEMENT; and

9.3c Relieve any obligation, of either party to the other party, that was established prior to such termination or expiration.

9.4 Bankruptcy: This OPTION AGREEMENT will automatically terminate without the obligation to provide any notice as set forth in this OPTION AGREEMENT upon OPTIONEE'S filing of a petition for relief under the U.S. Bankruptcy Code by or against the OPTIONEE as a debtor or alleged debtor that is not dismissed within ninety (90) days after such filing.

10. TERMINATION

10.1 Termination by REGENTS: If OPTIONEE violates or fails to perform any term of this OPTION AGREEMENT, then REGENTS may give written notice of such default ("NOTICE OF DEFAULT") to OPTIONEE. If OPTIONEE fails to repair such default within sixty (60) days after the date such notice takes effect, then REGENTS will have the right to immediately terminate this OPTION AGREEMENT and the rights hereunder by providing a written notice of termination ("NOTICE OF TERMINATION") to OPTIONEE. Such notices are subject the Notices Article of this OPTION AGREEMENT.

10.2 Termination by Action: This OPTION AGREEMENT will terminate immediately if OPTIONEE files a claim, including in any way, the assertion that any portion of PATENT RIGHTS is invalid or unenforceable where the filing is by the OPTIONEE, a third party on behalf of the OPTIONEE, or a third party at the written urging of the OPTIONEE.

10.3 Termination by OPTIONEE: OPTIONEE has the right at any time to terminate this OPTION AGREEMENT by providing a NOTICE OF TERMINATION to REGENTS. The termination of this OPTION AGREEMENT will be effective no earlier than sixty (60) days from

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the effective date of such notice. Such notices are subject the Notices Article of this OPTION AGREEMENT.

11. USE OF NAMES AND TRADEMARKS

11.1 Obligations: Except as specified in the Metric Exception Paragraph of the Confidentiality Article of this OPTION AGREEMENT, nothing contained in this AGREEMENT will be construed as conferring any right to either party to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of the other party (including a contraction, abbreviation or simulation of any of the foregoing). OPTIONEE is expressly prohibited from using the name "The Regents of the University of California" or the name of any campus of the University of California in advertising, publicity, or other promotional activities unless consent is obtained by OPTIONEE from REGENTS to do so.

11.2 Exceptions: Notwithstanding the foregoing, OPTIONEE can provide a copy of this OPTION AGREEMENT in connection with an actual or potential investment or acquisition, under appropriate obligations of confidentiality no less restrictive than hereunder. OPTIONEE may make the statement of fact that it has an option with REGENTS for one or more patents owned by REGENTS.

12. PATENT PROSECUTION AND MAINTENANCE

12.1 Obligations: REGENTS will diligently prosecute and maintain the U.S. and foreign patents and patent applications comprising the PATENT RIGHTS. Such patents will be held in the name of REGENTS, and obtained using counsel of REGENTS' choice who will take instructions solely from REGENTS.

12.2 Interaction: REGENTS will promptly provide OPTIONEE with copies of all relevant documentation ("**PATENT DOCUMENTATION**") so that OPTIONEE will be informed and apprised of the continuing prosecution, and OPTIONEE agrees to keep PATENT DOCUMENTATION confidential in accordance with Confidentiality Article of this OPTION AGREEMENT. OPTIONEE and its patent counsel have the right to consult with the patent counsel chosen by REGENTS.

12.3 Comments: OPTIONEE can comment on PATENT DOCUMENTATION sufficiently in advance of any initial deadline for filing a response, provided, however, if OPTIONEE has not commented upon PATENT DOCUMENTATION in reasonable time for REGENTS to sufficiently consider OPTIONEE's comments prior to a deadline with the relevant government patent office, or if REGENTS must act to preserve PATENT RIGHTS, then REGENTS is free to respond without consideration of OPTIONEE's comments, if any.

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12.4 Claims Requests: REGENTS will use reasonable efforts to amend any patent application to include or amend claims as requested by OPTIONEE.

12.5 Foreign Filing Requests: At OPTIONEE's request, REGENTS will file, prosecute, and maintain patent applications and patents included under PATENT RIGHTS in foreign countries, if available. OPTIONEE must notify REGENTS at least two (2) months prior to the foreign bar date of its election to obtain foreign patents. This notice concerning foreign filing must be in writing, must identify the countries desired, and must reaffirm OPTIONEE's obligation to underwrite the costs thereof. The absence of such a notice from OPTIONEE to REGENTS will be considered an election by OPTIONEE not to request REGENTS to secure foreign PATENT RIGHTS on OPTIONEE's behalf. REGENTS has the right to file patent applications at its own expense in any country that OPTIONEE does not include in its list of desired countries, and such patent applications and resultant patents, if any, will not be subject to this OPTION AGREEMENT.

12.6 Costs: All costs of obtaining patentability opinions, preparing, filing, prosecuting in whatsoever manner, and maintaining all U.S. and corresponding foreign patent applications and resulting patents specified under PATENT RIGHTS ("PATENT PROSECUTION COSTS") will be borne by OPTIONEE, including, but not limited to, PATENT PROSECUTION COSTS incurred by REGENTS prior to the execution of this OPTION AGREEMENT (with the exception of costs that have been already reimbursed), and all future costs that were incurred while this OPTION AGREEMENT is in effect. The costs of all interferences, oppositions, reexaminations, and reissues are deemed to be PATENT PROSECUTION COSTS and also will be borne by OPTIONEE. However, if REGENTS grants additional options, then the PATENT PROSECUTION COSTS will be divided equally among the optionees from the effective date of each subsequently granted option agreement. OPTIONEE will reimburse REGENTS for all PATENT PROSECUTION COSTS within thirty (30) days following receipt of an itemized invoice from REGENTS for PATENT PROSECUTION COSTS.

12.7 Termination of Option: OPTIONEE will pay any PATENT PROSECUTION COSTS incurred during the sixty (60)-day period after receipt by either party of a NOTICE OF TERMINATION, even if the invoices for such PATENT PROSECUTION COSTS are received by REGENTS after the end of the sixty (60)-day period following receipt of a NOTICE OF TERMINATION. OPTIONEE may terminate its obligation to pay PATENT PROSECUTION COSTS with respect to any particular patent application or patent under PATENT RIGHTS in any or all designated countries upon sixty (60) days' written notice to REGENTS. REGENTS may continue the prosecution and/or maintenance of such patent application or patent at its sole discretion and expense, provided however, such patent applications and resultant patents, if any, will not be subject to this OPTION AGREEMENT.

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13. WARRANTY AND LIABILITY

13.1 THIS OPTION AGREEMENT AND ASSOCIATED INVENTIONS ARE PROVIDED BY REGENTS WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. REGENTS MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY THAT THE INVENTIONS, PATENT RIGHTS, LICENSED PRODUCTS, OR LICENSED METHODS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER RIGHTS.

13.2 REGENTS WILL NOT BE LIABLE FOR ANY LOST PROFITS, COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST BUSINESS, ENHANCED DAMAGES FOR INTELLECTUAL PROPERTY INFRINGEMENT, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES ARISING OUT OF OR RESULTING FROM EXERCISE OF THIS OPTION AGREEMENT OR THE USE OF LICENSED PRODUCTS OR LICENSED METHODS.

13.3 Nothing in this AGREEMENT is or shall be construed as:

13.3a A warranty or representation by REGENTS as to the validity, enforceability, or scope of any PATENT RIGHTS; or

13.3b A warranty or representation that anything made, used, sold, or otherwise exploited under any right granted by REGENTS under PATENT RIGHTS is or will be free from infringement of patents, copyrights, or other rights of third parties; or

13.3c An obligation to bring or prosecute actions or suits against third parties for patent infringement; or

13.3d Conferring by implication, estoppel, or otherwise any license or rights under any patents or other rights of REGENTS other than PATENT RIGHTS, regardless of whether such patents are dominant or subordinate to PATENT RIGHTS; or

13.3e An obligation to furnish any NEW DEVELOPMENTS, know-how, technology, or technological information not provided in PATENT RIGHTS.

14. INDEMNIFICATION

14.1 Requirements: OPTIONEE will indemnify, hold harmless, and defend REGENTS and its officers, employees, and agents, the sponsors of the research that led to the INVENTION, the inventors of any invention claimed in patents or patent applications under PATENT RIGHTS (including the LICENSED PRODUCT, and LICENSED METHODS contemplated there under) and inventors' employers against any and all claims, suits, losses,

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damage, costs, fees, and expenses resulting from, or arising out of, the exercise of the OPTION AGREEMENT.

14.2 Notification: REGENTS will promptly notify OPTIONEE in writing of any claim or suit brought against REGENTS for which REGENTS intends to invoke the provisions of this Indemnification Article. OPTIONEE will keep REGENTS informed of its defense of any claims pursuant to this Indemnification Article.

15. CONFIDENTIALITY

15.1 Obligation: OPTIONEE and REGENTS will treat and maintain the other party's proprietary business, patent prosecution, software, engineering drawings, process and technical information, and other proprietary information, including the negotiated terms of this OPTION AGREEMENT, PROGRESS REPORTS, and PATENT DOCUMENTATION ("PROPRIETARY INFORMATION") in confidence using at least the same degree of care as the receiving party uses to protect its own proprietary information of a like nature.

15.2 Disclosure: OPTIONEE and REGENTS may use and disclose PROPRIETARY INFORMATION to their employees, agents, consultants, contractors, provided that such parties are bound by a like duty of confidentiality as that found in this Confidentiality Article. Notwithstanding anything to the contrary contained in this OPTION AGREEMENT, REGENTS may release this OPTION AGREEMENT, including any terms contained herein, and information regarding income received in connection with this OPTION AGREEMENT to the inventors, senior administrative officials employed by REGENTS, and individual Regents upon their request. If such release is made, REGENTS will request that such terms be kept in confidence in accordance with the provisions of this Confidentiality Article.

15.3 Marking: All written PROPRIETARY INFORMATION must be labeled or marked confidential or proprietary. If the PROPRIETARY INFORMATION is orally disclosed, it must be reduced to writing or some other physically tangible form, marked and labeled as confidential or proprietary by the disclosing party and delivered to the receiving party within thirty (30) days after the oral disclosure.

15.4 General Exceptions: Nothing contained herein will in any way restrict or impair the right of OPTIONEE or REGENTS to use or disclose any PROPRIETARY INFORMATION:

15.4a That recipient can demonstrate by written records was previously known to it prior to its disclosure by the disclosing party;

15.4b That recipient can demonstrate by written records is now, or becomes in the future, public knowledge other than through acts or omissions of recipient;

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15.4c That recipient can demonstrate by written records was lawfully obtained without restrictions on the recipient from sources independent of the disclosing party; or

15.4d That is required to be disclosed pursuant to the California Public Records Act or other applicable law, provided that the recipient uses reasonable efforts to give the party owning the PROPRIETARY INFORMATION sufficient notice of such required disclosure to allow the party owning the PROPRIETARY INFORMATION reasonable opportunity to object to, and to take legal action to prevent, such disclosure.

15.5 Required Exceptions: OPTIONEE or REGENTS may use or disclose PROPRIETARY INFORMATION that is required to be disclosed:

15.5a To a governmental entity or agency in connection with seeking any governmental or regulatory approval, governmental audit, or other governmental requirement; or

15.5b By law, provided that the recipient uses reasonable efforts to give the party owning the PROPRIETARY INFORMATION sufficient notice of such required disclosure to allow the party owning the PROPRIETARY INFORMATION reasonable opportunity to object to, and to take legal action to prevent, such disclosure.

15.6 Inquiry Exceptions: Subject to the California Public Records Act, if a third party makes an inquiry to REGENTS as to whether REGENTS' rights to PATENT RIGHTS are available, then REGENTS may disclose the existence of this OPTION AGREEMENT and the extent of the grant of rights herein to that third party, but REGENTS will not disclose the name or financial terms (other than the extent of grant of rights) of LICENSEE or any SUBLICENSEE to that third party, unless OPTIONEE has already made such disclosure publicly.

15.7 Metric Exceptions: REGENTS can publicly identify OPTIONEE'S corporate name and contact information as an entity with which REGENTS has an agreement that involves the commercialization of technology developed at the University of California, Berkeley; however this exception does not cover other information about this OPTION AGREEMENT including INVENTIONS and their inventors when used in association with OPTIONEE's name.

15.8 Termination: Upon termination of this OPTION AGREEMENT, OPTIONEE and REGENTS will destroy or return any of the disclosing party's PROPRIETARY INFORMATION in its possession within fifteen (15) days following the termination of this OPTION AGREEMENT. OPTIONEE and REGENTS will provide each other, within thirty (30) days following termination, with written notice that such PROPRIETARY INFORMATION has been returned or destroyed. Each party may, however, retain one copy of such PROPRIETARY INFORMATION for archival purposes in non-working files.

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15.9 Expiration: The terms of this Confidentiality Article will expire in five (5) years from the official date of termination of this OPTION AGREEMENT.

16. NOTICES

16.1 Addresses: Any notice or payment that is required to be given to either party will be deemed to have been properly given when done in writing and deposited in the U.S. mail, registered or certified, addressed as follows or to another address as designated in writing by the party changing its address:

16.1a To OPTIONEE:

- OPTIONEE Company Name
- OPTIONEE Mailing Address
- OPTIONEE Email Address
- OPTIONEE Telephone Number
- OPTIONEE Person Name or Position

16.1b To REGENTS:

- Office of Technology Licensing
- 2150 Shattuck Avenue, Suite 510
- Berkeley, CA 94704-1366
- Attn: Director REGENTS Case Number **BXX-XXX**

16.2 Effective Date: Any such properly given notice or payment will be deemed to be effective as follows:

16.2a On the date of delivery if delivered in person;

16.2b On the date of emailing, if emailed;

16.2c On the date of mailing if mailed by first-class certified mail; or

16.2d On the date of mailing if mailed by any global express carrier service that requires the signature of recipient to demonstrate the delivery of such notice or payment.

17. PAYMENTS

17.1 Payment Method: All consideration due REGENTS will be payable in U.S. dollars. OPTIONEE will make all payments to REGENTS under this OPTION AGREEMENT by check payable to "The Regents of the University of California" and forward it to REGENTS in accordance with the Notices Article of this OPTION AGREEMENT.

17.2 Late Payments: If any monies owed to REGENTS are not received by REGENTS when due, then OPTIONEE will pay to REGENTS interest at a rate of ten percent

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(10%) simple interest per annum. Interest will be calculated from the date payment was due until actually received by REGENTS. Accrual of interest will be in addition to, and not in lieu of, enforcement of any other rights of REGENTS due to late payment. Acceptance by REGENTS of any late payment from OPTIONEE under this Article will in no way affect the provision of the Waiver Article of this OPTION AGREEMENT.

18. GOVERNING LAWS; VENUE; AND ATTORNEYS' FEES

18.1 Laws: THIS OPTION AGREEMENT WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, excluding any choice of law rules that would direct the application of the laws of another jurisdiction, but the scope and validity of any patent or patent application will be governed by the applicable laws of the country of such patent or patent application.

18.2 Actions: Any legal action related to this OPTION AGREEMENT will be conducted in San Francisco, California.

18.3 Recoveries: The prevailing party in any suit related to this OPTION AGREEMENT will be entitled to recover its reasonable attorneys' fees in addition to its costs and necessary disbursements.

19. GOVERNMENT EXPORT AND IMPORT LAWS

19.1 Performance: OPTIONEE shall comply with all applicable international, national, state, regional, and local laws and regulations in performing its obligations hereunder and in its use, manufacture, sale, export or import of the LICENSED PRODUCT or practice of the LICENSED METHOD.

19.2 Transfer: OPTIONEE will observe all applicable U.S. and foreign laws with respect to the transfer or provision of licensed product and related technical data to foreign countries, including, without limitation, the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations.

20. ASSIGNMENT

20.1 REGENTS: This OPTION AGREEMENT is binding upon and will inure to the benefit of REGENTS, its successors and assigns.

20.2 OPTIONEE: This OPTION AGREEMENT is personal to OPTIONEE and assignable by OPTIONEE only with the written consent of REGENTS, except that OPTIONEE may freely assign this OPTION AGREEMENT to an acquirer of all or substantially all of OPTIONEE's stock, assets or business.

* The option agreement will not be limited to the provisions of this Sample Option Agreement, and may include other provisions as appropriate on a case by case basis, such as provisions required for inventions arising from Howard Hughes Medical Institute appointees, and the like.

20.3 ASSIGNMENT DOCUMENTATION: If OPTIONEE assigns this OPTION AGREEMENT, then upon execution of the assignment, OPTIONEE will provide REGENTS with updated contact information for Paragraph 16.1a and APPENDIX B of this AGREEMENT.

20.4 ASSIGNMENT FEE: If LICENSEE assigns this AGREEMENT, then LICENSEE will pay REGENTS **TBD dollars (\$TBD)** within thirty (30) days of the execution of this assignment, otherwise the assignment will be void.

21. MISCELLANEOUS

21.1 Waiver:

21.1a No waiver by either party of any breach or default of any of the duties, obligations, or agreements contained herein will be deemed a waiver as to any subsequent and/or similar breach or default.

21.1b No waiver will be valid or binding upon the parties unless made in writing and signed by a duly authorized officer of each party.

21.2 Force Majeure

21.2a Responsibility: Except for OPTIONEE's obligation to make any payments to REGENTS hereunder, the parties will not be responsible for any failure to perform due to the occurrence of any events beyond their reasonable control which render their performance impossible or onerous, including, but not limited to: accidents (environmental, toxic spill, etc.); acts of God; biological or nuclear incidents; casualties; earthquakes; fires; floods; governmental acts, orders or restrictions; inability to obtain suitable and sufficient labor, transportation, fuel and materials; local, national, or state emergency; power failure and power outages; acts of terrorism; strike; and war.

21.2b Termination: Either party to this OPTION AGREEMENT, however, will have the right to terminate this OPTION AGREEMENT upon thirty (30) days prior written notice if either party is unable to fulfill its obligations under this OPTION AGREEMENT due to any of the causes specified in the Paragraph above for a period of one (1) year. When such events have abated, then with the consent of both parties, their respective obligations hereunder will resume.

21.3 Severability: If any of the provisions contained in this OPTION AGREEMENT are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this OPTION AGREEMENT will be construed as if such invalid or illegal or unenforceable provisions had never been contained herein.

* The option agreement will not be limited to the provisions of this Sample Option Agreement, and may include other provisions as appropriate on a case by case basis, such as provisions required for inventions arising from Howard Hughes Medical Institute appointees, and the like.

21.4 Scope: This OPTION AGREEMENT embodies the entire understanding of the parties and supersedes all previous communications, representations, or understandings, whether oral or written, between the parties relating to the subject matter hereof.

21.5 Amendments: No amendment or modification of this OPTION AGREEMENT will be valid or binding upon the parties unless made in writing and signed on behalf of each party.

21.6 Parties: No provisions of this Agreement are intended or will be construed to confer upon or give to any person or entity other than REGENTS and OPTIONEE any rights, remedies, or other benefits under, or by reason of, this OPTION AGREEMENT.

21.7 Independence: In performing their respective duties under this OPTION AGREEMENT, each of the parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, partnership, or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's prior written consent.

21.8 Headings: The headings of the sections are inserted for convenience of reference only and are not intended to affect the meaning or interpretation of this OPTION AGREEMENT.

21.9 Electronic Copy: The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this document in a court of law based solely on the absence of an original signature.

[The remainder of this page is intentionally left blank.]

* The option agreement will not be limited to the provisions of this Sample Option Agreement, and may include other provisions as appropriate on a case by case basis, such as provisions required for inventions arising from Howard Hughes Medical Institute appointees, and the like.

REGENTS and OPTIONEE have executed this OPTION AGREEMENT by their respective duly authorized officers in duplicate originals on the following date.

CORPORATE NAME OF LICENSEE

**The Regents of the University
of California**

By _____
(Signature)

By _____
(Signature)

Name _____
(Please Print)

Name _____
(Please Print)

Title _____

Title _____

Date _____

Date _____

APPENDIX A

RESEARCH PLAN

APPENDIX B

Optionee Contact Information

OPTIONEE NAME:	UC CONTROL NO.:
PATENT PROSECUTION CONTACT	
NAME:	TELEPHONE:
TITLE:	EMAIL:
ADDRESS:	
CITY, STATE, ZIP:	
COUNTRY:	
PROGRESS REPORT CONTACT	
NAME:	TELEPHONE:
TITLE:	EMAIL:
ADDRESS:	
CITY, STATE, ZIP:	
COUNTRY:	
INVOICE CONTACT	
NAME:	TELEPHONE:
TITLE:	EMAIL:
ADDRESS:	
CITY, STATE, ZIP:	
COUNTRY:	