

Example for Reference Only

To establish an option and evaluation agreement with University of Toronto, contact a Commercialization Manager or Industry Licensing Officer for assistance.

SAMPLE OPTION AND EVALUATION AGREEMENT

THIS AGREEMENT is made and effective as of [] the (“**Effective Date**”)

B E T W E E N:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO, a corporation vested with the government, management and control of the University of Toronto by the *University of Toronto Act, 1971* and having offices at Banting Institute, 100 College Street, Suite 413, Toronto, Ontario M5G 1L5, Canada

(hereinafter “**UT**”)

- and -

[] a corporation incorporated under the laws of [] and having offices at [< >].

(hereinafter the “**Optionee**”)

WHEREAS, [] (the “**Inventors**”), while employed by UT, created an invention titled: []”, as more fully described in Schedule B (the “**Invention**”);

WHEREAS, the Inventors have assigned their entire right, title and interest in the Invention to UT;

WHEREAS UT has filed patent applications related to the Invention that are described in Schedule B; and

WHEREAS, the Optionee is a company whose purpose is to commercialize, develop, manufacture, market, distribute and sell useful products; and

WHEREAS, the Optionee wishes to perform an evaluation of the Invention to determine if it will seek to acquire rights in and to the “**Technology**” (as hereinafter defined) by license from UT to enable the Optionee to commercially produce and market products and/or services using the Technology, and the Optionee wants and UT is prepared to withhold rights from third parties while the Optionee performs such evaluation; and

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WHEREAS UT is willing to grant to the Optionee a limited license to perform an evaluation of the Invention, and an option to negotiate and acquire the exclusive right to develop, manufacture, market, distribute and sell products and services which may be derived in whole or in part from the practice of the Technology.

NOW THEREFORE in consideration of the premises and the mutual covenants, terms conditions and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the meanings set forth below:

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with the first Person. The term **“control”** means the ability to direct the management and policies of such Person, whether through ownership of equity, by contract or otherwise;

“Agreement” means this Option Agreement including all attached schedules, as the same may be supplemented, amended, restated or replaced in writing from time to time by mutual agreement of the Parties;

“Beneficiaries” means UT and its Affiliates, as applicable, and UT’s current, former and future trustees, board members, officers, employees, appointees, faculty, professional staff, consultants, affiliated corporations and agents and their respective heirs, successors and assigns and **“Beneficiary”** means one of them;

“Commercialization Plan” has the meaning defined in section 2.3 of this Agreement;

“Confidential Information” means the specific terms and conditions of this Agreement, the Know-how, and any information, which is non-public, confidential or proprietary in nature, including, without limitation, business information, trade secrets, and any information related to the Technology, whether written, oral or in electronic form, provided that tangible materials are marked as confidential, and provided that information given orally or by visual inspection is identified as confidential at the time of disclosure, and confirmed as confidential in writing within fifteen (15) days, but shall not include information that:

- (a) is or becomes generally available to the public other than as a result of any act by a receiving Party to this Agreement;

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- (b) is rightfully received from a third party without similar restriction or without breach of this Agreement;
- (c) a receiving Party is able to demonstrate, in writing, was known to it on a non-confidential basis; or
- (d) a receiving Party can show through tangible evidence was independently developed by the receiving Party without the use of any of the Confidential Information.

“**Copyright**” means the rights prescribed in the *Copyright Act* (Canada), including those copyright registrations and applications relating to the Technology identified in Schedule “A” herein;

“**Evaluation Report**” means as defined in section 2.2 of this Agreement;

“**Field of Use**” means and includes, during the Term, Technology and product validation, verification, testing, regulatory submissions to pertinent governmental authorities and includes research and development activities directed to any of the foregoing in [all Fields of Use or specific Fields of Use (TBD)], but not for sale or other commercial use;

“**Intellectual Property Rights**” means all Patents, Copyright, trade-names and other intellectual property rights relating to the Invention, whether registered or not, owned by or licensed by UT;

“**Invention**” means the invention titled “[]” as more fully described in the University of Toronto Confidential Invention Disclosure attached hereto as Schedule A;

“**Know-how**” means any and all trade secrets, technical expertise, knowledge, confidential information and know-how, whether patentable or unpatentable relating to the Patents, whether in written, machine readable, drawing or oral form, including, without limiting the generality of the foregoing, all technical information, raw material, data, product specifications, processes and designs, operating and production data, calculations, computer programs, instructions and techniques, quality control and other standards, and drawings relating to the Inventions and which exist at the Effective Date;

“**Option**” has the meaning ascribed to that term in Section 2.1(a);

“**Parties**” means UT and the Optionee collectively, and “**Party**” means any of them;

“**Patents**” means the patents listed in Schedule A appended hereto, and shall include any divisional, re-examination, renewal, or continuation applications based on the said patent applications, any patents which may issue on, from or as a result of any of the foregoing, including all foreign patents, and any reissue of said patents;

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“**Person**” includes any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate and a natural person in his or her capacity as trustee, executor, administrator or other legal representative;

“**Technology**” means the Know-how, the Invention and all Intellectual Property Rights;

“**Term**” has the meaning ascribed to the term in Section 6.1;

“**Territory**” means [worldwide or by jurisdiction (TBD)]; and

1.2 Headings

The division of this Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The article, section, subsection and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and are not to be considered part of this Agreement. All uses of the words “hereto”, “herein”, “hereof”, “hereby” and “hereunder” and similar expressions refer to this Agreement and not to any particular section or portion of it. References to an Article, Section, Subsection or Schedule refer to the applicable article, section, subsection or schedule of this Agreement.

1.3 Currency

Unless specified otherwise, all statements of or references to dollar amounts in this Agreement are to lawful money of Canada.

1.4 Schedules

The following schedules are attached to and incorporated by reference into this Agreement:

Schedule A	Intellectual Property Rights (Patents / copyright)
Schedule B	Confidential Invention Disclosure
Schedule C	License Agreement Terms
Schedule D	Evaluation Plan

ARTICLE 2 TECHNOLOGY OPTION

2.1 Grant of Option

- (a) Subject to the terms of this Agreement, UT hereby grants to the Optionee and any Affiliate thereof that is either a Canada or Ontario corporation, an exclusive option to obtain an exclusive license to the Technology (the “**Option**”).

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- (b) During the term of this Agreement, UT will not grant any new license for the Technology under the Field of Use within the Territory to any other party.
- (c) To enable the Optionee to perform the Technology, Product and Market evaluation of Section 2.2, and subject to the other provisions of this Agreement, UT hereby grants to Optionee a sole non-commercial license to, during the Term and in the Option Territory only, make and use the Technology in and for the Field of Use to complete the Evaluation Plan (as per Schedule D). The Optionee will have the right to sublicense to third party service providers or contractors under such license for such evaluation purposes. Any modifications, enhancements, upgrades or additions to the Technology made by or for Optionee shall be owned by UT and are hereby assigned by Optionee to UT.
- (d) The Optionee may exercise the Option at any time within the Term provided the Optionee has completed and evidenced all of the preconditions listed below (the “**License Trigger**”) in a form and with sufficient detail that is satisfactory to UT, acting reasonably:

License Trigger	
1	TBD (related to project and/or financial milestone)
2	Optionee shall provide proof of insurance pursuant to section 5.4
3	Optionee shall provide UT with the Evaluation Report pursuant to section 2.2.
4	Optionee shall present UT with a Commercialization Plan pursuant to section 2.3.

- (e) Subject to section 2.1 (d) of this Agreement, upon the Optionee providing UT written notice of its exercise of the Option the parties will have **60** days, or such further period as the parties may agree (the “Negotiation Period”), to execute a definitive exclusive license agreement upon the terms and conditions summarized in the License Agreement Term Sheet attached hereto as Schedule C; the license agreement will also include other reasonable and customary licensing terms and consideration which will be negotiated by the Parties.
- (f) Nothing in this Agreement grants the Optionee the right to use the Technology for the purpose of making, using or selling a commercial product; but upon the successful negotiation of a license agreement such rights will be granted to Optionee.
- (g) In the event that the Optionee fails to exercise the Option in writing within the term of this Agreement or within any extension thereof, or if the parties fail to execute a license agreement within the Negotiation Period, or if this

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Agreement is terminated pursuant to Section 6.2 herein, UT is free to deal with the Technology as it sees fit in its sole and unfettered discretion including to offer exclusive worldwide licenses in relation to the Technology to third parties.

2.2 Evaluation Plan

Prior to its exercise of the Option, Optionee shall disclose to UT a summary of information resulting from the performance of the Evaluation Plan as set out in Schedule “D” (the “**Evaluation Report**”), in a form and with sufficient detail that is satisfactory to UT, acting reasonably and including results of any sponsored and contract research carried out on behalf of Optionee for such evaluation.

2.3 Commercialization Plan

Prior to its exercise of the Option, Optionee shall disclose to UT a development plan for commercializing the Technology prepared in accordance with generally accepted industry standards (the “**Commercialization Plan**”) describing, at a minimum the following in a form and with sufficient detail that is satisfactory to UT, acting reasonably:

- (a) The steps required for fulfilling all applicable regulatory requirements to take the Technology to market;
- (b) Details respecting the field(s) of use in which it intends to work the Technology;
- (c) Expected developmental and commercial milestones;
- (d) Expected steps required to further develop the Technology.

ARTICLE 3 CONSIDERATION

3.1 Fees

- (a) Upon execution of this Agreement, Optionee shall pay to UT a non-refundable and non-creditable Option Fee of

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ARTICLE 4
INTELLECTUAL PROPERTY

4.1 Ownership and Patent Prosecution

- (a) All aspects and parts of the Technology shall be exclusively owned by UT and nothing herein shall serve to, or should be construed to transfer any ownership rights whatsoever in the Technology.
- (b) During the term of this Agreement UT will pay all expenses related to patent filing, prosecution, and maintenance of the Patents and Optionee shall within 30 days of receipt of monthly invoice reimburse UT for all such expenses. Such Patents will be filed, prosecuted, and maintained by UT in the name of UT.
- (c) UT undertakes to keep Optionee reasonably advised of the progress of prosecution and of any actions UT proposes to take or has taken in connection with the prosecution or maintenance of the Patents or any patent application included in the definition of Patents. The Optionee will have the opportunity to provide input regarding additional continuations, divisionals and national phase conversions as required to protect and appropriately develop the Patents.
- (d) If the Optionee elects not to pursue a patent application in any country, UT shall be entitled to do so. In such a case, Optionee would not have any rights to or in any patents arising from such applications made by UT and the definition of "Territory" for the purposes of this Agreement shall not include any such country.

4.2 Confidentiality

- (a) All Confidential Information will remain the property of its owner or the party that furnished it as the case may be.
- (b) For a period of five (5) years from the date of disclosure of Confidential Information, each Party agrees to maintain in confidence all Confidential Information disclosed with the same degree of care as it normally takes to preserve its own confidential information of similar grade, but in any event, no less than a reasonable degree of care.
- (c) Each Party may only disclose Confidential Information to persons with a "need to know" who shall be made aware of and be required to observe and comply with the covenants and obligations contained herein, and the Confidential Information shall only be used to carry on or facilitate business as contemplated under this Agreement.

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- (d) A Party may disclose Confidential Information pursuant to the requirements of a government agency or pursuant to a court order, provided that the Party shall take all reasonable steps, including, but not limited to the seeking of an appropriate protective order, to preserve the confidentiality of the Confidential Information provided.
- (e) If this Agreement is terminated for any reason, any Party in receipt of Confidential Information shall promptly deliver or destroy all Confidential Information of the disclosing Party without retaining copies thereof, except that the receiving Party may retain in the office of its legal counsel one (1) copy of written Confidential Information for record purposes only.
- (f) In the event that a Party becomes aware of, or perceives any threat that, any Confidential Information may be disclosed contrary to the provisions of this Section 4.2, or in the circumstances referred to in Subsection 4.2(d) hereof, such Party shall immediately provide written notice thereof to the other Party.

ARTICLE 5 REPRESENTATIONS, WARRANTIES AND INDEMNITY

5.1 Representations and Warranties of Parties

The representations of the Optionee and UT, one to the other are as follows:

- (a) The Optionee is a corporation duly organized, validly existing and in good standing, and it has the right and authority to enter this Agreement, and do all acts and things as required or contemplated to be done, observed and performed by it hereunder;
- (b) the execution, delivery and performance of this Agreement does not contravene any law, rule or regulation of any Party or of the jurisdiction in which it is incorporated; and
- (c) UT is a corporation duly organized, validly existing and in good standing, and it has the right to grant the Option as provided herein and that such grant is not in conflict with any other agreement to which it is a party.

EXCEPT FOR THE FOREGOING REPRESENTATIONS AND WARRANTIES PROVIDED IN THIS SECTION 5.1, UT DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS AS TO QUALITY, MERCHANTABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, SCOPE, PATENTABILITY, VALIDITY OR ENFORCEABILITY OF THE TECHNOLOGY OR THAT THE TECHNOLOGY IS

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SAFE FOR ANY USE OR PURPOSE WHATSOEVER, OR THAT THE TECHNOLOGY DOES NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY.

5.2 Indemnity

- (a) The Optionee shall indemnify, defend and hold harmless each and all of the Beneficiaries, from and against any and all claims, threats, loss, liabilities, damages, fees or expenses, including reasonable attorney's fees, (individually a "**Claim**" and collectively the "**Claims**") by reason or arising out of any acts or failure to act by or out of any use of the Technology or a Licensed Product by the Licensee or its sub-licensee(s) or their respective servants, agents, Affiliates, officers, directors, stock-holders, employees or customers.
- (b) Notwithstanding anything contained herein: (i) the Licensee shall not be entitled to settle any Claim against any one or more Beneficiaries without the prior written approval of the UT in respect of which such Claim has been made, which approval shall not be unreasonably withheld; (ii) the Licensee shall consult with UT and shall keep UT reasonably informed with respect to all Claims in respect of which indemnification may be sought hereunder; and (iii) the Licensee shall not be required to indemnify UT, to the extent allowed by law where such Claim is caused by the gross negligence or willful misconduct of UT.
- (c) The indemnity provided herein shall survive any termination or assignment of this Agreement subject to any prescription rights available to the Licensee under the *Limitations Act, 2002*. The Licensee acknowledges that UT is entering this Agreement and obtaining the foregoing indemnification on its own behalf and also on behalf of the other Beneficiaries and is holding the rights contained in this Section in trust for the other Beneficiaries.

5.3 Limitation of Liability

- (a) IN NO EVENT SHALL UT NOR ANY OF ITS DIRECTORS, OFFICERS, CONTRACTORS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR EXPENSES OF ANY TYPE (INCLUDING BUT NOT LIMITED TO ANY DAMAGES FOR LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, LOST BUSINESS OR LOST SAVINGS) ARISING OUT OF THIS AGREEMENT OR THE TECHNOLOGY, WHETHER SUCH DAMAGES OR EXPENSES ARISE OUT OF BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH), OR TORT OR ON ANY OTHER STATUTORY OR COMMON LAW BASIS, EVEN IF UT OR ANY OF ITS DIRECTORS, OFFICERS, CONTRACTORS,

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EMPLOYEES OR AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- (b) IN NO EVENT SHALL UT'S TOTAL LIABILITY FOR ALL DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO UT BY THE OPTIONEE UNDER THIS AGREEMENT.
- (c) The Parties acknowledge and agree that the exclusions of liability contained herein reflect the allocations of risk between the Parties and the value of the optioned Technology, and accordingly are reasonable and appropriate in the circumstances and were a material factor in determining the fees payable hereunder.

5.4 Insurance

The Optionee shall maintain in force and at its sole cost and expense, general liability insurance with coverage in an amount reasonably sufficient to protect against its activities in relation to this Agreement, including liabilities arising under section 5.2; such policy of insurance shall name UT as an additional insured and be with a reputable insurance company, and UT shall have the right to require from time to time proof that such coverage satisfactory to UT exists.

ARTICLE 6 TERM AND TERMINATION

6.1 Term

- (a) This Agreement shall come into effect upon the Effective Date.
- (b) Unless earlier terminated, this Agreement shall expire [] months from the Effective Date or upon the execution of a License Agreement, whichever first occurs.

6.2 Termination

- (a) This Agreement may be terminated for material breach by any of the Parties upon at least thirty (30) days prior written notice (in accordance with the notice provisions of Section 7.1 hereof) to the Party asserted to be in breach thereof.
- (b) If such breach is not cured within sixty (60) days, UT may immediately terminate this Agreement.

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- (c) The Optionee may terminate this Agreement, at its sole discretion, at any time upon thirty (30) days prior written notice to UT if it is not in breach of any of its obligations hereunder on the date of such notice or on the date of such termination.
- (d) If a Party:
 - (i) is adjudicated insolvent or a bankrupt,
 - (ii) is the subject of any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, or
 - (iii) makes a general assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension or re-adjustment of all or substantially all of its obligations,

then the other Party, within the conditions of applicable law, may immediately terminate this Agreement by giving written notice.

- (e) Termination as set forth in this Section shall not relieve any of the Parties of any obligations accrued under this Agreement prior to the date of termination. The following provisions shall survive termination of this Agreement: Sections 1.1 (Definitions); 4.2 (Confidentiality); 5.2 (Indemnity); 5.3 (Limitation of Liability); Subsection 6.2(e) (Survival); 6.3 (Effect of Termination); and Article 7 (General Provisions).

6.3 Effect of Termination

Subject to any License Agreement, then upon expiry or termination of this Agreement:

- (a) All rights granted hereunder to Optionee shall revert to UT;
- (b) the Optionee shall immediately cease use of the Technology; and
- (c) subject to the provisions of Subsection 4.2(e) hereof, the Optionee shall return to UT all Confidential Information.

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**ARTICLE 7
GENERAL**

7.1 Notices

All notices required and permitted under this Agreement shall be in writing and shall be sufficiently given or made if delivered personally or sent by prepaid registered mail to its address or electronically by email to the attention of the person set forth below:

- (a) In the case of a notice to the Licensee:

[]

Attention: []

Email:

Telecopier No.: (•) •

- (b) In the case of a notice to UT:

For legal matters:

The Governing Council of the University of Toronto
University of Toronto Innovations & Partnerships Office
Banting Institute,
100 College Street, Suite 413,
Toronto, Ontario M5G 1L5, Canada

Attention: Director, Innovations

Email: commercialization@utoronto.ca

With a copy to: [Commercialization Manager]

Email:

For patent related matters:

Attention: Patent Portfolio Manager

Name:

E-mail: []

With a copy to: patents@utoronto.ca

With a copy to: [Commercialization Manager]

Email:

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Each notice sent in accordance with this Section shall be deemed to have been given and received:

- (i) if delivered, on the day it was delivered if received within normal business hours;
- (ii) if mailed, on the fifth (5th) business day following the date on which it was mailed, unless an interruption of postal services occurs or is continuing on or within the five (5) business days after the date of mailings in which case the notice shall be deemed to have been received on the fifth (5th) business day after postal service resumes; upon confirmation by recognized national overnight courier or confirmed electronic mail, to the following addresses of the parties
- (iii) upon confirmation by recognized national overnight courier or confirmed electronic mail.

Either Party may by notice to the other, given as aforesaid, designate a changed address, email address or telecopier number.

7.2 Conflict

In the event any term or any part of any term of this Agreement is determined to be void or unenforceable, such term or part of a term shall be considered separate and severable from this Agreement and the remaining terms shall continue in full force and effect.

7.3 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with the laws in force in the Province of Ontario and the federal laws of Canada applicable therein (excluding any conflict of laws, rule or principle which might refer such interpretation to the laws of another jurisdiction). Each Party hereby attorns and submits to the exclusive jurisdiction of the Ontario Superior Court of Justice in any action or proceeding arising out of or relating to this Agreement. Finally, each Party hereby agrees that all such claims in respect of such actions or proceedings shall be heard and determined in Toronto in such Ontario court.

7.4 Further Assurances

The Parties agree to execute, acknowledge and deliver all such further instruments, and to do all such other acts, as may be necessary or appropriate to carry out the intent and purpose of this Agreement.

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7.5 Waiver of Rights

No failure or delay on a part of a Party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or future exercise thereof or the exercise of any other right, power or remedy. No waiver by a Party hereto of a default hereunder shall operate against such Party as a waiver of such default unless made in writing and signed by an authorized officer of such Party.

7.6 Relationship of the Parties

- (a) The relationship of the Optionee to UT is that of an independent legal entity and neither the Optionee nor its agents or employees shall be considered employees of UT. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between the Optionee and UT.
- (b) A Party will not use the name of any other Party, nor any member of such Party's staff in any advertising or publicity without the prior written approval of an authorized representative of the body whose name is to be used. However, a Party may notify others of the fact that this Agreement is in effect.

7.7 Force Majeure

No Party shall be liable to any other party for delay or failure in the performance of any of its obligations hereunder if such failure is caused by Force Majeure, as hereinafter defined. For the purposes hereof, "**Force Majeure**" means any act of God, action or failure to act of any government or governmental or regulatory authority, failure of supplies, materials, equipment, labour or transportation being provided by any other person, power failure or shortage, strike, lockout, work slowdown or stoppage, accident, fire, flood, explosion, storm, other natural occurrence, sabotage or other event beyond the control of the relevant party.

7.8 Entire Agreement

This Agreement, including all attached Schedules which are hereby incorporated by reference, sets forth the entire agreement and understanding of the Parties relating to the subject matter contained herein and merges all prior discussions and agreements between them, and neither Party shall be bound by any definition, condition, warranty or representation other than expressly stated in this Agreement. Any amendment to this Agreement shall not be effective unless it is in writing and signed by the duly authorized signing officers of each Party.

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7.9 Counterparts and Electronic Exchange of Signatures

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, together, shall constitute one and the same instrument.

A Party may send a copy to the other Party of its signed counterpart via email in PDF format, or by the use of secure signature software upon consent of the other Party.

7.10 Assignment

This Agreement shall not be assigned by the Optionee without the prior written consent of UT, such consent not to be unreasonably withheld.

7.11 Succession

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective heirs, executors, administrators, and other legal representatives and, to the extent permitted hereunder, their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in a legally binding manner.

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

Per: _____

Jennifer Fraser
Director, Innovations
Innovations & Partnerships Office
University of Toronto

[]

Per: _____

Name:
Title:

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SCHEDULE A

INTELLECTUAL PROPERTY RIGHTS

CID/P #	Title	Serial Number	Country WIPO ID	File Date

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SCHEDULE B

INVENTION

University of Toronto Confidential Invention Disclosure (attached)

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SCHEDULE "C"

LICENSE AGREEMENT TERMS

<u>Parties</u>	UT, Optionee (hereinafter "Licensee"),
<u>Licensed Technology</u>	The Technology [list Patents / Patent Applications here] and all related full/non-provisionals, continuations, continuations-in-part, divisionals, reexaminations, additions and reissues, all patents issuing therefrom, as well as any extensions or supplementary protection certificates allowed on any of the foregoing.
<u>Licensed Product</u>	Products or services in the Field of Use that are made, made for, used, imported, sold or offered for sale by Licensee or its affiliates or sublicensees and that is derived from the Technology or that results from practicing or using the Technology or would otherwise infringe at least one claim of the Patents.
<u>License Grant</u>	Exclusive, sublicensable, royalty-bearing, to make, have made, use, import, sell, or offer for sale Licensed Products in the Licensed Field and Licensed Territory.
<u>Licensed Field</u>	Shall be determined prior to execution of the License as agreed by the Parties
<u>License Territory</u>	Shall be determined prior to execution of the License as agreed by the Parties
<u>Milestones</u>	Company will use commercially reasonable efforts to []
<u>Retention of Rights</u>	UT reserves rights for itself and sublicensable by UT to its academic partners to use the Technology

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for non-commercial research and/or academic purposes.

UT Consideration

UT's consideration for entering into this License Agreement with the Licensee is comprised of, but not limited to, the combination of equity and the cash payments cited in this term sheet including royalties as further described below.

Royalty

For the purposes of these license terms, "**Net Sales**" means the gross amount received by the Licensee or its affiliates (including, without limitation, the fair market value of any non-cash consideration received in connection therewith) net of any of the following charges or expenses that are incurred in connection with the sales, leases or other transfers of Licensed Products the calculation and application of which shall be in accordance with normal industry practice:

- (a) credits, rebates or allowances because of damaged goods or returns with respect to the Licensed Products;
- (b) freight, postage, shipping and insurance charges incurred in transporting the Licensed Product(s) to the end customer; and
- (c) taxes, duties or other governmental charges (other than income taxes) levied on, absorbed or otherwise imposed on sales of Licensed Products.

Subject to the provision under Royalties, Licensee and Sub-Licensees will pay royalties annually at a royalty rate of [] % of Net Sales of all Licensed Products which are made, made for, used, imported, sold or offered for sale.

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Licensing Fees

As applicable, upfront, maintenance and/or AMPs.

Milestones

As applicable, development and commercial milestones as per the Commercialization Plan.

Non-royalty Sub-Licensing Fee

Licensee will pay []% percentage of consideration received by Licensee from Sub-Licenses. Sub-Licenses includes license fees, but excludes R&D support, reimbursements, royalties and equity investments in Licensee. Any non-cash consideration received by Licensee from sublicensees will be valued at its fair market value.

Sub-License Royalty Payment

If the Licensee sub-licenses any rights under this Agreement to a Third Party (a “Sub-Licensee”), then Licensee must obtain a royalty on the Net Sales of such Sub-Licensee at least equivalent to the Royalty Payment, which shall be payable by Licensee to UT on a flow-through basis.

Shares

Upon execution of the License Agreement, (the “Share Issuance Event”) Licensee will issue, to UT, at no cost to UT, non-voting shares that equal a total of [] percent (%) of the Licensee’s issued and outstanding shares, on a fully diluted basis, as of the date of the Share Issuance Event.

Patent Filing, Prosecution & Maintenance

All out-of-pocket costs associated with filing, prosecution and maintenance of the Patents and any other patent applications filed thereon, including foreign counterparts, provisional, regular, continuation, continuation-in-part and divisional applications, patents issuing thereon and any reissue or extension thereof, occurring on or after the effective date of the License Agreement shall be the responsibility of the Licensee.

With reasonable input from UT, Licensee shall have the right to control the preparing, filing, prosecuting, obtaining and maintaining (at its sole

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cost and expense, using patent counsel acceptable to UT, approval not to be unreasonably withheld) all Patents throughout the Territory. Licensee will (i) provide UT with a copy of any proposed additional patent application in respect of the Patents for review and comment reasonably in advance of filing, and (ii) ensure is UT reasonably informed of the status of all filings and associated prosecution and maintenance activities in respect of the Patents, including: (a) copy UT on all material communications with patent counsel, and with patent office(s) with respect to such matters, and (b) providing UT notice within a reasonable time prior to taking or failing to take any action that would materially affect the scope or validity of any Patents. Prior written notice of any such proposed action or inaction is required so that UT has a reasonable opportunity to review and comment. In the event that Licensee decides to (i) forego or cease prosecution, or (ii) cease maintenance, of the Patents (in whole or in part) in any jurisdiction, UT may (at its sole discretion and expense) continue such prosecution or maintenance, and Licensee shall have no further obligations and rights in respect of such Patents.

Assignment

The License Agreement shall be assignable to an affiliate of Licensee (with notice to UT) but not to any third party without the expressed written consent of UT, such consent not to be unreasonably withheld but in all cases shall be subject to such further terms as are agreed between the parties.

In the event of the sale, transfer, assignment or other disposition to an arm's length party of the whole of Licensee's business or rights encompassing the Technology (collectively referred to as the "Transfer"), Licensee may assign its rights and obligations hereunder to the surviving or acquiring entity if: (i) Licensee is not then in breach of this Agreement; (ii) the proposed assignee has or will have sufficient available resources, including liquid financial assets, management experience, and sufficient scientific, business and other expertise comparable or superior to Licensee, that will be committed in order to satisfy its

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obligations hereunder; (iii) Licensee provides written notice of the assignment to UT, together with documentation satisfactory to UT sufficient to demonstrate the requirements set forth in subparagraphs (i) through (ii) above, at least thirty (30) days prior to the effective date of the assignment; and (iv) UT receives from the assignee, in writing, at least thirty (30) days prior to the effective date of the assignment: (a) reaffirmation of the terms of the license agreement, (b) an agreement to be bound by and perform the terms of the license agreement as though the assignee were the Licensee and (c) details satisfactory to UT concerning the foregoing.

Term and Termination

If Licensee fails to pay royalties or any other monies or consideration owed under the license agreement, and such breach is not cured within sixty (60) days, UT may immediately terminate the License Agreement.

In case of a material breach for any reason other than failure to pay royalties (or monies/consideration owed under the License Agreement), UT may terminate the license upon ninety (90) days prior written notice. Licensee can cure the breach within the 60 or 90 days (as applicable) to maintain the license agreement.

In case of insolvency or bankruptcy of Licensee, the license is terminated immediately.

Licensee may terminate the license agreement with sixty (60) days prior written notice to UT. Upon such termination by Licensee, all outstanding monies and consideration owed and due under the license agreement shall be paid to UT on the termination date.

“**Term**”: Unless earlier terminated, the term of the License Agreement shall be for such time until the expiration or termination of the last Patent. Thereafter, the rights granted will then become perpetual, irrevocable, and fully paid up.

Other Provisions

The Technology will be provided on an “as is” basis, and UT makes no representation or warranties, express or implied.

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Optionee will indemnify, defend and hold harmless UT from and against any and all liability, loss, damage, action, claim or expense that results from or arises out of the development, use, manufacture, promotion, sale or other disposition of any Licensed Products by Licensee or its affiliates or sublicensees or other third parties; and any breach by Licensee or its affiliates or sublicensees.

Licensee and its affiliates will procure and maintain policies of insurance, including broad form and contractual liability, for comprehensive general liability, and, at the point in time that Licensee and its affiliates are offering products for commercial sale, products liability, coverage in a minimum amount of \$2,000,000 combined single limit per occurrence and \$5,000,000 in the aggregate as respects personal injury, bodily injury and property damage arising out of such party's performance of the license agreement.

Licensee and its affiliates, employees and agents will not use UT's name, seal, logo, trademark, or service mark or any adaptation of them, or the name, mark or logo of any representative or organization of UT in any way without the prior written consent of UT.

Definitive Agreement

A draft of a definitive License Agreement will be prepared by UT and presented to Licensee for negotiation in good faith.

Currency

[Canadian/United States] dollars)

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SCHEDULE D
Evaluation Plan

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