Option Agreement

This Option Agreement (this "Agreement"), executed by and between _____("OPTIONEE"), a corporation organized and existing under the laws of the State of _____, having its principal office in _____ and The University of Houston ("UH"), an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, located at 316 E. Cullen Building, Houston, Texas, 77204-2015. This Agreement is effective on _____("Effective Date").

RECITALS

A. UH, in its role as an educational institution, carries out scientific research through its faculty, staff, and students, and is committed to bringing the results of that research into widespread use.

B. UH is Owner by assignment from the _____ of the entire right, title, and interest in the technology disclosed in UH Invention Disclosure docket number _____ titled _____, and the inventions, patents and patent applications described and claimed in Appendix A.

C. OPTIONEE is desirous of obtaining an exclusive, time-limited right to exercise an option for an exclusive license agreement corresponding to the technology described above.

In consideration of the covenants set forth, the parties agree as follows:

ARTICLE I: DEFINITIONS

SECTION 1.1. PATENT RIGHTS means the discoveries, know-how, information and inventions created by the inventor(s) corresponding to _____, any U.S. or foreign patent applications or patents further described in Appendix A, and any divisions, continuations, continuations-in-part, or reissues.

SECTION 1.2. LICENSED APPLICATION means the use of PATENT RIGHTS within the _____.

SECTION 1.3. LICENSED PRODUCTS means products claimed in PATENT RIGHTS or products made by LICENSED PROCESSES.

SECTION 1.4. LICENSED PROCESSES means the processes claimed in PATENT RIGHTS.

SECTION 1.5. TECHNOLOGY means any and all information or PATENT RIGHTS supplied by UH to OPTIONEE.

SECTION 1.6. OPTION PERIOD means the period commencing on the Effective Date of this Agreement and continuing until the expiration or termination of this Agreement.

ARTICLE II:

SECTION 2.1. OPTIONEE has the right to evaluate PATENT RIGHTS and their market potential for the LICENSED APPLICATION. OPTIONEE shall, within three (3) months, report to UH the results of the evaluations.

SECTION 2.2. OPTIONEE shall reimburse UH for all reasonable expenses incurred during

the term of this Agreement for the preparation, filing, prosecution, litigation, claims, defense, and maintenance of PATENT RIGHTS. If OPTIONEE fails to reimburse these costs, it automatically relinquishes all rights under this Agreement.

ARTICLE III: GRANT AND EXERCISE OF THE OPTION

SECTION 3.1. UH, to the extent it is permitted to do so by state and federal law, by its agreements with sponsors of research, and by the provisions of Public Laws 96-517 and 98-620, grants to OPTIONEE an exclusive option to obtain an exclusive license for the LICENSED APPLICATION under PATENT RIGHTS.

SECTION 3.2. In consideration for granting the Option, OPTIONEE shall pay to UH a non-refundable option fee in the sum of _____ Dollars ($_____) upon execution of this Agreement.

SECTION 3.3. This exclusive option will extend for a period twelve (12) months from the Effective Date of this Agreement. Until the end of the OPTION PERIOD, UH will not offer these rights to any third party.

OPTIONEE may exercise this Option by informing UH of the identity of at least one (1) product or process in the area of the LICENSED APPLICATION, and by providing a written statement, reasonably satisfactory to UH, of its intention and ability to develop the product or process under PATENT RIGHTS for public use as soon as practicable, consistent with sound and reasonable business practices and judgment.

Upon exercise of the Option and for a reasonable period not to exceed four months, UH agrees to negotiate in good faith to establish the terms of a license agreement granting OPTIONEE exclusive rights to make, have made, use and sell LICENSED PRODUCTS in the area of the LICENSED APPLICATION under terms customary in the trade. The license agreement will include at least the following provisions: non-refundable upfront license fees, minimum annual royalty payments, milestone payments royalty payments, a commitment by OPTIONEE and any sublicensee to exert their best efforts to introduce the licensed material into public use as rapidly as practicable, the right of UH to terminate the license should licensee not meet specified due-diligence milestones, and indemnity and insurance provisions satisfactory to UH's insurance carrier. Before receiving a license, OPTIONEE will outline for UH its and/or its sublicensee's capability and/or plans to introduce the licensed material into public use.

ARTICLE IV: TERMINATION

SECTION 4.1. This Agreement terminates at the end of the OPTION PERIOD unless the Option is exercised, in which case this Agreement will terminate at the end of the stipulated negotiation period or upon execution of a license agreement, whichever occurs first.

SECTION 4.2. All duties and obligations owed by OPTIONEE pursuant to this Agreement shall survive expiration or termination of this Agreement, including, without limitation those set forth in Sections 2.2 and 5.9 of this Agreement.

ARTICLE V: MISCELLANEOUS PROVISIONS

SECTION 5.1. This Agreement is construed and the rights of the parties determined under the laws of the State of Texas.

SECTION 5.2. FINANCIAL OBLIGATIONS TO THE STATE OF TEXAS. OPTIONEE acknowledges that, pursuant to Government Code § 403.055, that if the Texas Comptroller of Public Accounts is currently prohibited from issuing a warrant to the OPTIONEE, OPTIONEE agrees that payments under the attached Agreement will be applied towards the debt or delinquent taxes owed to the State of Texas until the debt or delinquent taxes are paid in full.

_____INITIAL

SECTION 5.3. OUT-OF-STATE VENDOR CERTIFICATIONS. OPTIONEE acknowledges that, pursuant to Government Code § 2155.004, UH may not accept a bid or award a contract to (i) any individual not residing in this State, or (ii) any business entity not incorporated in or whose principal domicile is not in this State, unless the individual or business entity:

(1) Holds a permit issued by the Texas Comptroller of Public Accounts to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in this State; or

(2) Certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.

Under Section 2155.004, Government Code, OPTIONEE certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

_____INITIAL

SECTION 5.4. No use of the name of UH in any form of promotion or concerning the sale of products, processes, devices, or designs is permitted without prior written approval from UH.

SECTION 5.5. All notices required or permitted to be given under this Agreement must be in writing and are deemed to have been sufficiently given for all purposes when mailed by certified mail to the party to be notified. All notices are deemed to have been given when mailed as evidenced by the postmark at the point of mailing.

All notices to UH and any correspondence respecting this Agreement should be addressed as follows:

To UH:

Executive Director
Office of Intellectual Property Management
University of Houston
316 E. Cullen Building
Houston, Texas 77204-2015

To OPTIONEE:

_____
_____
_____
_____
_____

SECTION 5.8. WARRANTY. UH EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED OR EXPRESS WARRANTIES AND MAKES NO EXPRESS OR IMPLIED WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSES OF THE TECHNOLOGY SUPLIED BY UH, OR THE LICENSED PROCESSES OR LICENSED PRODUCTS CONTEMPLATED BY THIS AGREEMENT.

_____INITIAL

SECTION 5.9 LIABILITY. OPTIONEE SHALL INDEMNIFY AND HOLD UH, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, SUB CONTRACTORS, AND AGENTS HARMLESS AGAINST ANY AND ALL CLAIMS FOR LOSS, DAMAGE, OR INJURIES CONCERNING OR ARISING OUT OF (1) USE BY OPTIONEE, ITS DIRECTORS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR AGENTS OR BY THIRD PARTIES OF TECHNOLOGY OR (2) THE DESIGN, MANUFACTURE, DISTRIBUTION, OR USE OF ANY LICENSED PROCESSES OR LICENSED PRODUCTS OR OTHER PRODUCTS DEVELOPED OR ARISING OUT OF TECHNOLOGY. THE INDEMNITY SHALL INCLUDE ALL COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES AND ANY COSTS OF SETTLEMENT. THE RIGHTS AND OBLIGATIONS OF THIS SECTION SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

The parties have signed by their duly authorized officers.

UNIVERSITY OF HOUSTON

By: _____
Rathindra N. Bose
Vice President/Vice Chancellor
for Research and Technology Transfer

OPTIONEE

By: _____

Name: _____

Title: _____

Appendix A

The following comprise PATENT RIGHTS:

1. Title of Invention:

2. Patent Application#: Date Filed:

3. Patent Serial#: Date Issued: