

**Orrick's Technology Companies Group**

**Start-Up Forms Library**

The attached document is part of the Start-Up Forms Library provided by Orrick's Technology Companies Group. By using/viewing the attached document, you agree to the Terms of Use Agreement for the Start-Up Forms Library, which can be viewed at:

<https://www.orrick.com/Total-Access/Tool-Kit/Start-Up-Forms/Terms-and-Conditions>

**Rev 1/20**

[Company Name]

Action by Unanimous Written Consent

OF THE BOARD OF DIRECTORS

In accordance with Section 141(f) of the Delaware General Corporation Law and the Bylaws of [Company Name], a Delaware corporation (the “Company”), the undersigned, constituting all of the members of the Company’s Board of Directors (the “Board”), hereby take the following actions and adopt the following resolutions by unanimous written consent without a meeting:

1. **Valuation Determination**

**WHEREAS:** The Company engaged \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Valuation Firm”), who is independent from, and not affiliated with, the Company, to provide an appraisal of the fair market value of the Company’s Common Stock as of [Date] (the “Valuation Date”).

[*Use if Approving Valuation Report for First Time:* **WHEREAS:** The Valuation Firm has provided the Company with a valuation report attached hereto as Attachment I (the “Valuation Report”), which concludes that the valuation of the Company’s Common Stock as of the Valuation Date is $\_\_\_\_\_\_\_\_\_\_ per share, and this Valuation Report has been provided to the Board.

**RESOLVED:** That the Board hereby determines that the factual bases set forth in the Valuation Report are materially accurate and after consideration and review of the Valuation Report, the Board hereby accepts the valuation of the fair market value of the Company’s Common Stock as set forth in the Valuation Report, and therefore determines the fair market value of the Company’s Common Stock to be $\_\_\_\_\_\_\_\_\_\_ per share as of the Valuation Date, which determination has been made in good faith and based on all of the relevant facts and circumstances as of the Valuation Date and taking into account, to the extent applicable, some or all of the following factors: the value of the Company’s tangible and intangible assets, the present value of anticipated future cash-flows of the Company, the market value of similar companies engaged in a substantially similar business, recent arm’s length transactions involving the Company’s Common Stock, and other relevant factors such as control premiums or discounts for lack of marketability (collectively, the “Valuation Factors”).

**RESOLVED FURTHER:** That the Board, having considered all information material to the valuation of the Company’s Common Stock, including but not limited to the Valuation Factors, hereby determines in good faith that (i) no events affecting the Company have occurred between the Valuation Date and the date hereof that would materially affect the fair market value of the Company’s Common Stock, and (ii) the fair market value of the Company’s Common Stock remains $\_\_\_\_\_\_\_\_\_\_ per share as of the date hereof.]

**OR**

[*Previously Approved Past Valuation Report With No Changes:*

**RESOLVED:** That the Board has previously reviewed the written valuation report prepared by the Valuation Firm as of the Valuation Date and determined that $\_\_\_\_\_\_\_\_\_\_ per share was the per share fair market value of the Company’s Common Stock on the Valuation Date, which determination was made in good faith, based on all of the relevant facts and circumstances as of the Valuation Date, including, to the extent applicable, some or all of the following factors: the value of the Company’s tangible and intangible assets, the present value of anticipated future cash-flows of the Company, the market value of similar companies engaged in a substantially similar business, recent arm’s length transactions involving the Company’s Common Stock, and other relevant factors such as control premiums or discounts for lack of marketability (collectively, the “Valuation Factors”).

**RESOLVED FURTHER:** That the Board, having considered all information material to the valuation of the Company’s Common Stock, including, but not limited to, the Valuation Factors, hereby determines in good faith that (i) no events affecting the Company have occurred between the Valuation Date and the date hereof that would materially affect the fair market value of the Company’s Common Stock, and (ii) the fair market value of the Company’s Common Stock remains $\_\_\_\_\_\_\_\_\_\_ per share as of the date hereof.]

1. **Issuance of Options**

**RESOLVED:** That each person whose name is set forth on Exhibit A attached hereto is hereby granted an option (each an “Option” and collectively the “Options”) to purchase the number of shares of the Company’s Common Stock set forth opposite the name of such person on Exhibit A pursuant to the Company’s stock plan set forth opposite the name of such person on Exhibit A.

**RESOLVED FURTHER:** That, unless otherwise set forth on Exhibit A, the exercise price for the Options shall be $\_\_\_\_\_\_\_\_\_\_ per share (or 110% of such amount for Optionees that hold 10% or more of the outstanding capital stock of the Company), each of the Options shall have a 10-year term and be exercisable at the rate of 25% of the shares on the 12**-**month anniversary of the Vesting Commencement Date, which shall be the effective date of these resolutions (unless otherwise set forth on Exhibit A), and 1/48th of the shares shall vest and become exercisableon the same day ofeach month thereafter for so long as the recipient of the Option remains an employee of or consultant to the Company.

**RESOLVED FURTHER:**  That each of the Options, unless otherwise indicated on Exhibit A or unless and to the extent limited by applicable law, shall be an Incentive Stock Option under Section 422 of the Internal Revenue Code of 1986, as amended.

**RESOLVED FURTHER:** That each Option shall be evidenced by, and subject to, the terms and conditions of the form of stock option agreement previously approved by the Board, as modified by any officer of the Company to give effect to any terms approved by the Board or to make any changes thereto that will not have a material adverse financial, legal, tax or accounting consequence to the Company or any of its affiliates.

**RESOLVED FURTHER:** That the grant of each Option shall be subject to compliance with all applicable laws, rules and regulations.

1. [**Interested Director Transaction**]

**WHEREAS:** The Optionees referenced above include \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_.

**WHEREAS:** As a result, \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ have a financial interest in the above Option grant, therefore the offering of the Options may be an interested director transaction under Section 144 of the Delaware General Corporation Law.

**WHEREAS:** The Board is aware that \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ have a financial interest in the Options and has been fully apprised of all of the material facts relevant to the acquisition of such Options by \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_.

**NOW, THEREFORE, BE IT RESOLVED:** That the Options granted to \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ are hereby determined to be [fair, just and reasonable] to the Company within the meaning of Section 144 of the Delaware General Corporation Law[ and [Interested Director Section of Code of Applicable State Law]], and such Options are authorized and approved for all purposes, including without limitation with respect to Section 144 of the Delaware General Corporation Law.

1. **Omnibus Resolution**

**RESOLVED:** That each of the officers of the Company is authorized and empowered to take such other actions and sign such other documents as may be necessary or advisable to carry out the intent and accomplish the purposes of the foregoing resolutions.

*[Signature Page Follows]*

In accordance with the Company’s Bylaws, this action may be executed in writing[, or consented to by electronic transmission,] in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same action.

|  |  |  |
| --- | --- | --- |
| Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Director 1] |
| Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Director 2] |
| Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Director 3] |

EXHIBIT A

STOCK OPTION GRANTS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name** | **ISO Shares** | **NSO Shares** | **Stock Plan & Vesting Schedule** | **Vesting Commencement Date** |
| [Advisor Name] | \_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_ | [Stock Plan Name]  \_\_\_\_\_\_\_\_\_\_ shares vest on the \_\_-month anniversary of the Vesting Commencement Date and 1/48th of total shares vest each month thereafter[, subject to \_\_\_\_% acceleration (single trigger) upon a Change of Control (as defined in the Plan) ] **OR** [, subject to \_\_\_\_% acceleration (double trigger) upon termination of Purchaser’s Continuous Service Status (as defined in the Plan) in connection with or following the consummation of a Change of Control (as defined in the Plan)]. | [Date] |

[*Use if Approving Valuation Report for First Time:]*

attachment i

valuation report