

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**ACCURAY INCORPORATED**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**20-8370041**  
(I.R.S. Employer  
Identification Number)

**1310 Chesapeake Terrace  
Sunnyvale, California 94089**  
(Address of Principal Executive Offices including Zip Code)

**Options Assumed by Accuray Incorporated  
originally granted under the TomoTherapy Incorporated  
2000 Stock Option Plan, 2002 Stock  
Option Plan and 2007 Equity Incentive Plan**  
(Full Title of the Plan)

**Euan S. Thomson, Ph.D**  
**Chief Executive Officer**  
**Accuray Incorporated**  
**1310 Chesapeake Terrace**  
**Sunnyvale, California 94089**  
**(408) 716-4600**

(Name and Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Agent for Service)

**Copy to:**  
**Stephen W. Fackler, Esq.**  
Gibson, Dunn & Crutcher LLP  
1881 Page Mill Road  
Palo Alto, California 94304  
(650) 849-5300

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title Of Securities To Be Registered (1)	Amount To Be Registered (2)	Proposed Maximum Offering Price Per Share (3)	Proposed Maximum Aggregate Offering Price (3)	Amount Of Registration Fee
Common Stock, par value \$0.001 per share	1,539,255	\$ 10.41	\$ 16,023,644.55	\$ 1,860.35

- (1) The securities to be registered include options to acquire Common Stock.
- (2) This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the TomoTherapy Incorporated 2000 Stock Option Plan, 2002 Stock Option Plan and 2007 Equity Incentive Plan pursuant to this Registration Statement by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of outstanding shares of Common Stock of Accuray Incorporated.
- (3) Calculated solely for the purposes of this offering under Rule 457(h) on the basis of the maximum number of shares of Common Stock issuable upon the satisfaction of assumed and converted options originally granted under the TomoTherapy Incorporated 2000 Stock Option Plan, 2002 Stock Option Plan and 2007 Equity Incentive Plan, based on the weighted average exercise price of such options.

**EXPLANATORY NOTE**

The shares of common stock subject to options registered hereunder have been assumed by Accuray Incorporated (the “Registrant”) pursuant to an Agreement and Plan of Merger, dated as of March 6, 2011, among the Registrant, Jaguar Acquisition, Inc. and TomoTherapy Incorporated. These options were originally granted to directors, employees, consultants and officers of TomoTherapy Incorporated under the TomoTherapy Incorporated 2000 Stock Option Plan, 2002 Stock Option Plan and 2007 Equity Incentive Plan (hereinafter the “Plans”).

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

We are not filing or including in this Form S-8 the information called for in Part I of the Form S-8 (by incorporation by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission (the “Commission”).

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**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference**

The following documents, which were filed with the Commission, are incorporated herein by reference (excluding any portions of such documents that have been “furnished” but not “filed” for purposes of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)):

- (a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended June 30, 2010, filed with the Commission on September 1, 2010 (File No. 001-33301) (including portions incorporated by reference to the Registrant’s proxy statement on Schedule 14A);
- (b) The Registrant’s Quarterly Reports on Form 10-Q filed with the Commission (File Nos. 001-33301) on November 8, 2010, January 27, 2011 and May 10, 2011;
- (c) The Registrant’s Current Reports on Form 8-K filed with the Commission (File Nos. 001-33301) on September 3, 2010, October 7, 2010, November 23, 2010, December 10, 2010, February 4, 2011, March 7, 2011, March 14, 2011, March 18, 2011, March 30, 2011, April 26, 2011, May 5, 2011, May 9, 2011, June 7, 2011, June 9, 2011, and June 13, 2011; and
- (d) The description of the Common Stock contained in the Registrant’s Registration Statement on Form 8-A filed with the Commission on February 7, 2007 (File No. 001-33301), including any subsequently filed amendments and reports updating that description.

All documents subsequently filed by the Registrant pursuant to section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Registration Statement and before the filing of a post-effective amendment stating that all securities offered hereby have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part of this Registration Statement from the date of the filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement, or in any other subsequently filed document which also is or is deemed to be incorporated by reference in this Registration Statement, modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to be a part of this Registration Statement. Information contained in a Current Report on Form 8-K furnished to the Commission will not be incorporated by reference into this Registration Statement.

**Item 4. Description of Securities**

The Common Stock being registered hereunder has been registered pursuant to Section 12 of the Exchange Act.

**Item 5. Interests of Named Experts and Counsel**

Not Applicable.

**Item 6. Indemnification of Directors and Officers**

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation’s board of directors to grant indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act of 1933, as amended (the “Securities Act”). Our certificate of incorporation provides for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and our bylaws provide for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, which prohibits our amended and restated certificate of incorporation from limiting the liability of our directors for the following:

- any breach of the director's duty of loyalty to us or to our stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock repurchases or redemptions; and
- any transaction from which the director derived an improper personal benefit.

If Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. Our amended and restated certificate of incorporation does not eliminate a director's duty of care and, in appropriate circumstances, equitable remedies, such as injunctive or other forms of non-monetary relief, remain available under Delaware law. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or other state or federal laws. Under our amended and restated bylaws, we are empowered to enter into indemnification agreements with our directors, officers, employees and other agents and to purchase insurance on behalf of any person whom we are required or permitted to indemnify. In addition to the indemnification required in our amended and restated certificate of incorporation and amended and restated bylaws, we entered into indemnification agreements with each of our current directors, officers, and some employees before the completion of this offering. These agreements provide for the indemnification of our directors, officers, and some employees for all reasonable expenses and liabilities incurred in connection with any action or proceeding brought against them by reason of the fact that they are or were our agents. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain directors' and officers' liability insurance.

**Item 7. Exemption From Registration Claimed**

Not applicable.

**Item 8. Exhibits**

See Index to Exhibits following the signature page.

**Item 9. Undertakings**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

- (i) to include any prospectus required by section 10(a)(3) of the Securities Act;
- (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered

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would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or



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**INDEX TO EXHIBITS**

<b>Exhibit Number</b>	<b>Exhibit</b>
5.1	Opinion and consent of Gibson, Dunn & Crutcher LLP.
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Gibson, Dunn & Crutcher LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on the signature page hereto).
99.1	TomoTherapy Incorporated 2000 Stock Option Plan and Forms of Award Agreements.
99.2	TomoTherapy Incorporated 2002 Stock Option Plan and Forms of Award Agreements.
99.3	TomoTherapy Incorporated 2007 Equity Incentive Plan and Forms of Award Agreements.
99.4	Form of Supplemental Notice Delivered to Option Holders In Connection With Assumption of Options

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June 16, 2011

Accuray Incorporated  
1310 Chesapeake Terrace  
Sunnyvale, California 94089

Re: *Accuray Incorporated Registration Statement on Form S-8*

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the "Registration Statement"), of Accuray Incorporated, a Delaware corporation (the "Company"), to be filed with the Securities and Exchange Commission (the "Commission") on or about June 16, 2011 pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the registration by the Company of 1,539,255 shares (the "Shares") of the Company's common stock, par value \$0.001 per share, issuable upon exercise of outstanding stock options (the "Assumed Options") granted under the TomoTherapy Incorporated 2000 Stock Option Plan, 2002 Stock Option Plan and 2007 Equity Incentive Plan that were assumed by the Company in connection with the merger of Jaguar Acquisition, Inc., a wholly owned subsidiary of the Company, with and into TomoTherapy Incorporated ("TomoTherapy"), with TomoTherapy surviving the Merger as a wholly owned subsidiary of the Company (the "Merger"), effective June 10, 2011.

We have examined the TomoTherapy Incorporated 2000 Stock Option Plan and 2002 Stock Option Plan, as filed by TomoTherapy with the Commission on February 12, 2007 as Exhibits 10.17 and 10.18, respectively, to TomoTherapy's Registration Statement on Form S-1, and the TomoTherapy Incorporated 2007 Equity Incentive Plan, as filed by TomoTherapy with the Commission on April 16, 2007 as Exhibit 10.19 to Amendment No. 2 of TomoTherapy's Registration Statement on Form S-1 (collectively, the "Plans"). We have also examined the forms of award agreements used to grant options under the Plans as filed by TomoTherapy with the Commission as appendices to the applicable Plan, and the form of supplemental notice provided by the Company to holders of the Assumed Options notifying them of the assumption of the Assumed Options in the Merger and the related adjustments to the terms of the Assumed Options (together with the Plans, the "Grant Documents"). We also have examined the Registration Statement, as well as the originals, or photostatic or certified copies, of such proceedings and records of the Company and certificates of officers of the Company and of public officials and such other documents as we have deemed relevant and necessary or appropriate as the basis for the opinions set forth below. We have also made such other investigations as we have deemed relevant and necessary or appropriate in connection with the opinions hereinafter set forth. In our examination, we have assumed the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies. We also have assumed that there are no agreements or understandings between or among the Company, TomoTherapy and/or any holder of an Assumed Option that would expand, modify or otherwise affect the terms of the Plans or the respective rights or obligations of the holders of the Assumed Options, as such, other than the Grant Documents.

Based upon the foregoing examination and in reliance thereon, and subject to the assumptions stated and in reliance on statements of fact contained in the documents that we have examined, we are of the opinion that the Shares are duly authorized for issuance, and, when issued and sold upon exercise of the Assumed Options in accordance with the terms and conditions set forth in the Grant Documents, will be validly issued, fully paid and non-assessable.

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We render no opinion herein as to matters involving the laws of any jurisdiction other than the Delaware General Corporation Law. We are not admitted to practice in the State of Delaware; however, we are generally familiar with the Delaware General Corporation Law as currently in effect and the reported judicial decisions thereunder, and have made such inquiries as we consider necessary to render the opinion contained herein. This opinion is limited to the effect of the current state of the Delaware General Corporation Law to the limited extent set forth above and the facts as they currently exist. We assume no obligation to revise or supplement this opinion in the event of future changes in such law or the interpretations thereof or such facts. We consent to the filing of this opinion as an exhibit to the Registration Statement and we further consent to the use of our name under the caption "Legal Matters" in the Registration Statement and the prospectus that forms a part thereof. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated August 31, 2010 with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report on Form 10-K for the year ended June 30, 2010 of Accuray Incorporated and subsidiaries, which are incorporated by reference in this Registration Statement. We consent to the incorporation by reference in the Registration Statement of the aforementioned reports.

/s/ GRANT THORNTON LLP

San Francisco, California  
June 16, 2011

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**TOMOTHERAPY INCORPORATED**  
**2000 STOCK OPTION PLAN**

As Amended and Restated May 23, 2001

**1. Purpose.** The purpose of the TomoTherapy Incorporated 2000 Stock Option Plan (the "Plan") is to provide favorable opportunities to certain employees, directors, and advisors of TomoTherapy Incorporated, (the "Company") to acquire or increase their stock ownership in the Company, to provide an incentive to such individuals to promote the financial success of the Company, and to enable the Company to attract and retain personnel necessary for growth and profitability.

Pursuant to the Plan, options to purchase the Company's common stock ("Options") may be granted by the Company. Options granted under the Plan may be either "Incentive Stock Options," as defined in Section 422(b) of the Internal Revenue Code of 1986, as amended (the "Code"), or options which do not meet the requirements of Section 422(b) of the Code, herein referred to as "Nonqualified Stock Options."

**2. Effective Date and Term of Plan.** The Plan shall be effective as of the 15<sup>th</sup> day of August, 2000 and shall continue for a period of ten years thereafter unless sooner terminated as provided in Paragraph 16.

**3. Approval of Shareholders.** The Plan is subject to the approval of the shareholders of the Company. If it is not so approved on or before one year after the date of adoption of the Plan by the Board of Directors, the Plan shall not come into effect and any options granted pursuant to the Plan shall be deemed cancelled. No Option may be exercised prior to approval of the Plan by the shareholders.

**4. Stock Subject to Plan.** Only common stock, with \$.01 par value per share, of the Company ("Common Stock") may be issued pursuant to options granted under this Plan (the "Shares"). The maximum number of shares of Common Stock that may be issued pursuant to the exercise of options granted under the Plan is 5,694 shares, subject to any adjustments provided in Paragraph 15, all of which may be Incentive Stock Options. The shares may be authorized and unissued, or issued and reacquired shares, as the Board of Directors may determine. Shares with respect to which Options are not exercised prior to termination shall be available for future grants under the Plan.

**5. Administration.** The Plan shall be administered by the Board of Directors of the Company or a committee of the Board of Directors (the "Administrator"). Subject to the express provisions of the Plan, the Administrator shall have complete authority in its discretion, to determine those persons ("Participants") to whom Options shall be granted, the option price, the option periods and the number of shares to be subject to each Option. Subject to the express provisions of the Plan, the Administrator shall also have the authority in its discretion to prescribe the time or times at which Options may be exercised, the

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limitations upon the exercise of Options (including limitations effective upon the death, disability or termination of employment of any Participant) and the restrictions, if any, to be imposed upon the transferability of shares acquired upon exercise of Options. In making such determinations, the Administrator may take into account the nature of the services rendered by the respective Participants, their present and potential contributions to the success of the Company and such other factors as the Administrator in its discretion shall deem relevant. Subject to the express provisions of the Plan, the Administrator shall also have complete authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan, to determine the terms and provisions of the respective option agreements (which need not be identical), to determine whether the shares delivered upon exercise of Options will be treasury shares or will be authorized but previously unissued shares and to make all other determinations necessary or advisable for the administration of the Plan. The Administrator's determinations on the matters referred to in this paragraph shall be conclusive. Options granted pursuant to the Plan shall be evidenced by stock option agreements between the Company and the Participant to whom the Options are granted (the "Option Agreement"), in such form as the Administrator shall from time to time adopt.

**6. Eligibility.** An Option may be granted under the Plan to those current or prospective employees, directors, and advisors designated as eligible to participate by the Administrator (the "Participants"). The Administrator shall inform each individual so designated of his or her eligibility to participate in the Plan. Participation in the Plan shall be entirely voluntary. The foregoing notwithstanding, only employees of the Company are eligible to receive Incentive Stock Options.

**7. Option Price.** The option price per share will be determined by the Administrator at the time each Option is granted, but the price for an Incentive Stock Option shall not be less than 100% of the fair market value as determined by the Administrator of a share of Common Stock on the date of grant. If an Incentive Stock Option is granted to a person who owns, directly or indirectly, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company on the date of the grant, the option price per share shall not be less than 110% of its fair market value.

**8. Option Periods.** The term of each Option will be for such period as the Administrator shall determine; provided, however, that for an Incentive Stock Option, the term shall not exceed ten years from the date of grant, and further provided that if an Incentive Stock Option is granted to a person who owns, directly or indirectly, stock possessing more than 10% of the total combined voting power of all classes of stock of the Company on the date of the grant, the term of such Option shall not exceed five years from the date of grant. An Option shall be considered granted on the date the Administrator acts to grant the Option or such later date as the Administrator shall specify. Each Option shall be subject to earlier termination as described under Paragraphs 13 and 16.

**9. Exercise of Options.** Each Option may be exercised at any time during the option period for such Option (subject to the restrictions in this paragraph, in Paragraph 13 and in the Option Agreement) by written notice delivered to an officer of the Company, stating the number of shares with respect to which the Option is being exercised. In no event shall the Company be required to issue fractional shares to a Participant.

**10. Payment for Shares.** The Shares that may be purchased under an Option shall be paid in full at the time of the exercise (i) in cash, (ii) if permitted by the Administrator, by means of tendering shares of Common Stock, which have been held by the Participant for more than six months and have not been used within the prior six-month period to exercise an option, either directly or by attestation, valued at fair market value on the date of exercise, or (iii) any

combination thereof. Shares of Common Stock tendered shall be duly endorsed in blank or accompanied by stock powers duly endorsed in blank. Upon receipt of the payment of the entire option price for the shares so purchased, certificates for such shares shall be delivered to the Participant. Such certificates shall bear a legend on the reverse side reflecting the transfer restrictions described in Paragraph 11. A holder of an Option shall have none of the rights of a shareholder until the shares are issued to him or her.

**11. Transfer Restrictions.** Options under the Plan are not transferable by a Participant other than by will or the laws of descent or distribution, and may be exercised during the lifetime of a Participant only by such Participant. Shares of common stock purchased under the Plan are governed by, and may not be sold or otherwise disposed of except in compliance with (i) the Company's Bylaws; (ii) the registration requirements of the Securities Act of 1933 and any applicable state securities laws (unless such transaction is, in the opinion of counsel for the Company, exempt from registration under such Act and laws), and (iii) the restrictions contained in a shareholder agreement dated as of the date shares are issued to the Participant, which agreement shall be substantially in the form of an agreement to be attached to the Participant's Option Agreement. The Participant shall execute such documents as may be required by the Company to become a party to such shareholder agreement.

**12. Exercise Limits.** If the aggregate fair market value (determined as of the date the Option is granted) of any option shares that become exercisable for the first time by the Participant during any calendar year exceeds One Hundred Thousand Dollars (\$100,000) or such other limit as may be required by the Code, then the option for the first \$100,000 worth of option shares to become exercisable in such calendar year will be an Incentive Stock Option and the option for the amount in excess of \$100,000 that become exercisable and are exercised in that calendar year will be Nonqualified Stock Options.

**13. Termination of Employment.**

(a) If the employment of a Participant terminates, or service to the Company by a non-employee terminates, other than pursuant to paragraphs (b) through (d) of

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this Section 13, all unvested Options shall immediately terminate and all vested but unexercised, deferred or unpaid Options shall terminate three (3) months after such termination of employment or service, unless the Administrator agrees to extend this period, in which case such extension will render those Options Nonqualified Stock Options. During the three (3) month period described herein, the Options shall be exercisable only to the extent provided in the Option Agreement. In all events, an Option will not be exercisable after the end of its term as set forth in the Option Agreement.

(b) If termination of employment is a termination for "cause," as defined herein, then none of the Options may be exercised and all of the Participant's rights in the Options shall be forfeited upon termination. "Cause" shall mean any of the following: (i) any act, failure to act, conduct, pattern of conduct, or condition injurious or potentially injurious to the business or reputation of the Company; (ii) any conviction for a misdemeanor or felony the circumstances of which the Administrator determines is substantially related to the circumstances of the Participant's job; (iii) the willful and continued failure to perform substantially the Participant's duties for the Company, which failure remains uncured fourteen (14) days after written notice from the Company of such failure; or (iv) theft or fraud by the Participant with respect to the business of the Company.

(c) In the event of a Participant's death, the Participant's estate or beneficiaries shall have a period specified in the Stock Option Agreement within which to exercise any outstanding Options held by the Participant under such terms, and to the extent, as may be specified in the applicable Stock Option Agreement. Rights to any such outstanding Options shall pass by will or the laws of descent and distribution.

(d) In the event a Participant is deemed by the Company to be disabled within the meaning of Company's group long-term disability plan, or if the Company does not have such a plan, Section 22(e)(3) of the Code, the Options shall be exercisable for the period, and to the extent, specified in the Option Agreement. Options and rights to any such Options may be paid to or exercised by the Participant, if legally competent, or a legally designated guardian or representative if the Participant is legally incompetent by virtue of such disability.

(e) In the event of uncertainty as to interpretation of or controversies concerning this Section 13, the Administrator's determinations shall be binding and conclusive.

**14. Tax Withholding.** The Company shall have the right to deduct applicable taxes from any Option payment and withhold, at the time of delivery or vesting of shares under the Plan, an appropriate number of shares for payment of taxes required by law or to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for withholding of such taxes. The Company may defer making delivery with respect to Common Stock obtained pursuant to an Option hereunder until arrangements satisfactory to it have been made with respect to any such withholding obligation. If

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Common Stock is used to satisfy tax withholding, such stock shall be valued based on the fair market value when the tax withholding is required to be made.

**15. Adjustment of Number of Shares.** In the event of any change in the outstanding Common Stock of the Company by reason of a stock split, stock dividend, combination or reclassification of shares, recapitalization, merger, or similar event, the Administrator may adjust proportionally (a) the number of shares of Common Stock (i) reserved under the Plan, (ii) available for Incentive Stock Options, (iii) for which Options may be granted to an individual Participant, and (iv) covered by outstanding Options denominated in stock; (b) the stock prices related to outstanding Options; and (c) the appropriate fair market value and other price determinations for such Options. In the event of any other change affecting the Common Stock or any distribution (other than normal cash dividends) to holders of Common Stock, such adjustments as may be deemed equitable by the Administrator, including adjustments to avoid fractional shares, shall be made to give proper effect to such event. In the event of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization or liquidation, the Administrator shall be authorized to issue or assume stock options, whether or not in a transaction to which Section 424(a) of the Code applies, by means of substitution of new stock options for previously issued stock options or an assumption of previously issued stock options.

**16. Amendment, Suspension or Termination.** The Board of Directors, without further approval of the shareholders, may from time to time amend, suspend or terminate the Plan in such respects as the Board may deem advisable, provided, however, that no amendment shall become effective without prior approval of the shareholders which would with respect to Incentive Stock Options, (i) increase the aggregate number of shares which may be issued pursuant

to Options granted under the Plan, except as permitted under Paragraph 15 or (ii) increase the maximum number of Shares that may be issued under the Plan, to any individual in any twelve month period. No amendment shall, without a Participant's consent, alter or impair any of the rights or obligations under any Option theretofore granted to the Participant.

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**TOMOTHERAPY INCORPORATED**  
**2000 STOCK OPTION PLAN**  
**Amendments**

1. Pursuant to the following separate unanimous written consent resolutions of the Board of Directors and all of the shareholders of the Company, effective in both cases, March 15, 2001, the Board of Directors and the Shareholders approved amending the 2000 Stock Option Plan as described below:

“**RESOLVED**, that Section 4 of the TomoTherapy Incorporated 2000 Stock Option Plan (“the Plan”) be amended by adding 2,334 shares of the Corporation’s Common Stock to the maximum number of shares that may be issued pursuant to the exercise of options granted under the Plan, thereby increasing the current maximum number under the Plan from 3,360 to 5,694 shares of Common Stock.”

“**RESOLVED**, that an amendment to Section 4 of the TomoTherapy Incorporated 2000 Stock Option Plan (“the Plan”) that adds 2,334 shares of the Corporation’s Common Stock to the maximum number of shares that may be issued pursuant to the exercise of options granted under the Plan, thereby increasing the current maximum number under the Plan from 3,360 to 5,694 shares of Common Stock., is hereby approved.”

2. Pursuant to a resolution duly approved by the Board of Directors at their meeting on May 23, 2001, the Board of Directors approved amending the 2000 Stock Option Plan, as follows:

“**RESOLVED**, that Sections 1 and 6 of the TomoTherapy Incorporated 2000 Stock Option Plan be amended by adding the following text after the word “employees” in the second line of each Section: “, directors, and advisors”.

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**Amendments to the Incentive Stock Option Plan,  
2000 Stock Option Plan, and 2002 Stock Option Plan, as amended**

**Adopted April 16, 2007**

1. Maximum Shares Reserved

Section 4 of each Plan shall be amended to provide that the maximum number of Shares that may be issued pursuant to the exercise of options under the Plan is: (i) 192,500 Shares under the Incentive Stock Option Plan; (ii) 125,080 Shares under the Corporation’s 2000 Stock Option Plan; and (iii) 5,151,946 Shares under Corporation’s 2002 Stock Option Plan, as amended.

2. Certain Reserved Shares Released

The following Shares previously reserved for issuance upon the exercise of options granted shall be released from reservation under the Plans: (i) 39,452 Shares under the Corporation’s Incentive Stock Option Plan; (ii) 32,480 Shares under the Corporation’s 2000 Stock Option Plan; (iii) 1,621,074 Shares under the Corporation’s 2002 Stock Option Plan, as amended; and (iv) all Shares underlying outstanding options that are cancelled prior to exercise.

3. New Grants Prohibited

Neither the Committee (as defined in the Incentive Stock Option Plan) nor the Administrator (as defined in each of the 2000 Stock Option Plan and 2002 Stock Option Plan) shall grant or otherwise authorize the grant of options under the respective Plan which it administers.

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**TOMOTHERAPY INCORPORATED**  
**STOCK OPTION AGREEMENT**  
(Incentive Stock Option)

This Stock Option Agreement (this “Agreement”) is made as of \_\_\_\_\_, 200\_\_\_\_, by and between **TomoTherapy Incorporated** (the “Company”) and \_\_\_\_\_ (the “Participant”).

**Background**

The Company has adopted the TomoTherapy Incorporated 2000 Stock Option Plan (the “Plan”) to encourage certain employees, directors, and advisors of the Company to acquire or increase their stock ownership in the Company, to provide an incentive to such individuals to promote the financial success of the Company, and to enable the Company to attract and retain personnel necessary for continued growth and profitability. Terms not otherwise defined in this Agreement have the meanings ascribed to them in the Plan.

The Company considers it desirable and in its best interest to grant the Participant an option to purchase shares of the common stock, par value \$0.01, of the Company (“Common Stock”).

The option granted under this Agreement is intended by the parties to be, and shall be treated as, an “Incentive Stock Option,” as defined in Section 422(b) of the Internal Revenue Code of 1986, as amended (the “Code”). To the extent, if any, that the option granted under this Agreement does not, as of the date of this Agreement or any date hereafter, qualify as an Incentive Stock Option under the terms of this Agreement, the Plan, or Section 422(b) of the Code, it is the intent of the parties that all or that portion of the option granted under this Agreement that does not so qualify shall be, and shall be treated and referred to in this Agreement as, a “Nonqualified Stock Option,” as that term is defined in the Plan.

### Agreement

In consideration of the mutual covenants set forth below, it is agreed as follows:

1. **Grant of Option.** The Company hereby grants the Participant the option (the “Option”) to purchase up to \_\_\_\_\_ shares of the Common Stock of the Company (the “Option Shares”), subject to the terms and conditions of this Agreement.

2. **Option Price.** The purchase price for the Option Shares shall be \$ \_\_\_\_\_ per share, which is the fair market value of the shares on the date of this Agreement (the “Option Price”).

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### 3. Term of the Option and Vesting.

(a) In all events, if the Option is not terminated earlier pursuant to the provisions of Sections 8 or 10(b), below, the Option shall expire and all of the Participant’s rights under the Option shall terminate as of 5 p.m. Central Time on the tenth (10<sup>th</sup>) anniversary of the date of this Agreement (the “Option Termination Date”).

(b) Subject to the accelerated vesting provided in Sections 3(c) and 10(b), below, and subject to the limitations and termination provisions of Sections 7 and 8, below, the Option shall vest, and the Participant shall have the right to exercise the Option with respect to such vested Option Shares according to the following schedule:

(i) Twenty-five percent (25%) of the Option Shares shall vest as of the date of this Agreement *[or such other date after the grant date as the Administrator may approve]*; and,

(ii) An additional twenty-five (25%) of the Option Shares shall vest thereafter on *[insert 2<sup>nd</sup> vesting date, whether 1 year after date of agreement or some other date]* and on each of the subsequent two (2) annual anniversaries of such date, provided that as of each such date the Participant continues to be an employee of the Company.

(c) Notwithstanding the foregoing vesting schedule in Section 3(b), above, all of the Option Shares shall vest and the Participant shall have the right to exercise the Option to purchase all of the Option Shares, including those Option Shares that would otherwise be unvested, upon the occurrence of any of the following:

(i) the Participant’s Involuntary Termination within the period commencing three (3) months prior to and ending twelve (12) months after a Change in Control, as those terms are defined in Sections 3(d) and 3(e), respectively, below;

(ii) the Participant’s death; or

(iii) the Participant’s Disability, as defined in Section 3(f), below.

(d) For purposes of this Agreement, the term “Change in Control” shall mean the occurrence of any of the following after the date of this Agreement:

(i) Any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes the “beneficial owner” (as defined in Rule 13d-3 under such Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company’s then outstanding voting securities, other than in a private financing transaction approved by the Board of Directors;

(ii) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the outstanding capital stock, other than to an affiliate of the Company as determined by the Board of Directors of the Company;

(iii) a merger or consolidation in which the Company is a party and in which the shareholders of the Company before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such transaction; or

(iv) the sale or disposition by the Company of all or substantially all of the Company’s assets.

(e) For purposes of this Section 3 of this Agreement, the term “Involuntary Termination” shall mean the occurrence of any of the following:

(i) any termination by the Company of the Participant’s employment that is effected for any reason other than death, Disability, as defined below, or one or more of the reasons set forth in Section 8(b), below;

(ii) without the Participant’s express written consent, a material reduction by the Company in the base compensation or overall employee benefits package of the Participant as in effect immediately prior to such reduction; or

(iii) without the Participant’s express written consent, the relocation of the Participant to a facility or a location more than 50 miles from the Participant’s then present location.

(f) For purposes of this Agreement, the term “Disability” shall mean that the Participant is deemed by the Company to be (a) disabled within the meaning of the Company’s group long-term disability plan, or, (b) if the Company does not have such a plan, permanently and totally disabled as that term is defined in Section 22(e)(3) of the Code, as such Section may be amended from time to time and which currently provides that an individual is permanently and totally disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

**4. Method of Exercise.** Subject to the limitations in Sections 3 and 7 and the termination provisions of Sections 8 and 10(b), below, that portion of the Option that is vested may be exercised at any time from the date of this Agreement until 5 p.m. Central Time on the Option Termination Date, as defined in Section 3(a), above, by delivery of the Exercise Notice attached as Exhibit A to an officer of the Company, stating the number of Option Shares with respect to which the Option is being exercised. No partial exercise of such Option may be for less than one (1) share and in no event shall the Company be required to transfer fractional shares to the Participant.

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**5. Payment for Option.** At the time of exercise, the Participant shall make full payment of the Option Price (i) in cash; (ii) if permitted by the Administrator, by means of tendering shares of Common Stock that have been held by the Participant for more than six months and have not been used within the prior six-month period to exercise an option, either directly or by attestation, valued at fair market value on the date of exercise; or (iii) any combination of (i) and (ii). Shares of Common Stock tendered shall be duly endorsed in blank or accompanied by stock powers duly endorsed in blank. Upon the Company’s receipt of (a) the payment of the entire Option Price for the Option Shares so purchased, (b) a fully executed copy of the shareholder agreement as provided in Section 6, below, and (c) satisfactory proof of the Participant’s payment of any income or employment tax withholding obligations, if any, as provided in Sections 7 and 11, below certificates for such shares shall be delivered to the Participant. If the items listed in the preceding sentence, including full payment of the Option Price, are not received by the Company at the time of exercise, the Exercise Notice will be deemed null and void, the Company shall not be obligated to deliver a certificate for the Option Shares, and the Company shall have no further obligation with respect to the Exercise Notice or the Option Shares described therein.

**6. Transfer Restrictions and Obligation to Execute Shareholder Agreement.** Upon exercise, in full or in part, of the Option and the issuance of any of the Option Shares pursuant thereto, such Option Shares shall be subject to restrictions on transfer, and the Company will be granted the right to repurchase the issued Option Shares under certain circumstances, including termination of employment, all as set forth in a shareholder agreement substantially in the form attached to this Agreement as Exhibit B, which form, as the same may be revised by the Company through the date the Participant first exercises the Option, is hereinafter referred to as the “Shareholder Agreement.” As a condition to the Participant’s right to exercise the Option, in full or in part, the Participant agrees to execute and deliver the Shareholder Agreement as of the date the Participant first exercises the Option, whether in full or in part, and be bound by the terms of such agreement.

#### **7. Limitations.**

(a) If the aggregate fair market value (determined by the Administrator as of the date the Option is granted) of any Option Shares that become exercisable for the first time by the Participant during any calendar year exceeds One Hundred Thousand Dollars (\$100,000) or such other limit as may be required by the Code from time to time, then that amount of the Option attributable to the first \$100,000 worth of Option Shares to become exercisable in such calendar year will be an Incentive Stock Option, and the remaining portion of the Option for the amount in excess of \$100,000 that become exercisable in that calendar year will be a Nonqualified Stock Option.

(b) The Participant agrees to satisfy all applicable federal, state, and local income and employment tax withholding obligations or other taxes, if any, that may be incurred at any time in connection with the Participant’s receipt or exercise of the Option and any subsequent sale or other disposition of any of the Option Shares.

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#### **8. Termination.**

(a) In all events, the Option shall expire and all of the Participant’s rights thereunder shall terminate not later than the Option Termination Date, as defined in Section 3(a), above. Except as expressly provided otherwise in subsections (b) through (d) of this Section 8, if the employment of the Participant terminates, then all of the unvested portion of the Option shall terminate immediately and that portion of the Option that is vested but unexercised shall terminate as of 5 p.m. Central Time upon the earlier of (i) three (3) months after termination of employment with the Company, or (ii) the Option Termination Date. To the extent the Participant fails to exercise the vested portion of the Option within the time specified in the preceding sentence, the Option terminates and all rights of the Participant with respect to the Option are forfeited.

(b) If termination of employment is a termination for “Cause,” as defined herein, then the Option, or that portion of it that remains unexercised as of the date of such termination, may not be exercised and all of the Participant’s rights in the Option shall be forfeited upon such termination. As used in this Agreement, the term “Cause” shall mean any of the following: (i) any act, failure to act, conduct, pattern of conduct, or condition injurious or potentially injurious to the business or reputation of the Company; (ii) any conviction for a misdemeanor or felony the circumstances of which the Administrator determines is substantially related to the circumstances of the Participant’s job; (iii) the willful and continued failure to perform substantially the Participant’s duties for the Company, which failure remains uncured fourteen (14) days after written notice from the Company of such failure; or (iv) theft or fraud by the Participant with respect to the business of the Company.

(c) If termination of employment results from the Disability, as defined in Section 3(f), above, of the Participant, the Option may be exercised at any time within one (1) year after such termination of employment, but in no event beyond the Option Termination Date. The Option may be exercised by, and upon such exercise the Option Shares issued to, the Participant if legally competent or a legally designated guardian or representative of the Participant if the Participant is legally incompetent as a result of such Disability.

(d) If termination of employment results from the death of the Participant, the personal representative of the Participant’s estate, or a person who by bequest, inheritance, or otherwise by reason of the Participant’s death acquired the right to exercise the Option, may exercise the Option at any time within one (1) year after the death of the Participant, but in no event beyond the Option Termination Date.

9. **Nontransferability of Options.** The Option granted hereunder is not transferable by the Participant other than by will or the laws of descent or distribution, and, except as provided in Section 8(c), above, may be exercised during the lifetime of the Participant only by the Participant.

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#### 10. **Adjustments Upon Changes in Capitalization, Merger, or Asset Sale.**

(a) **Changes in Capitalization.** Subject to any required action by the shareholders of the Company, the number of Option Shares subject to the Option, the number of shares of Common Stock that have been authorized for issuance under the Plan but as to which no Options have yet been granted (or which have been returned to the Plan upon cancellation or expiration of an Option), and the Option Price, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. No adjustment shall require the Company to issue or sell a fractional share and the total adjustment shall be limited accordingly. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Option Shares or the Option Price.

(b) **Merger or Asset Sale.** In the event of a merger of the Company with or into another corporation or other business entity, or the sale of substantially all of the assets of the Company, the Option shall be assumed, as described below, by the successor entity or its parent or subsidiary (in either case, the "Successor") by substitution of an equivalent option or right. If the Successor refuses or otherwise fails to assume the Option, (i) the Participant shall immediately vest in and have the right to exercise the Option as to all of the Option Shares, including those Option Shares as to which the Participant would not otherwise be vested or have the right to exercise; and (ii) the Option shall be exercisable as to all Option Shares for a period of fifteen (15) days from the date the Administrator gives written notice to the Participant stating that a substituted option or right will not be issued by or on behalf of the Successor and that the Option is therefore immediately vested and exercisable as to all Option Shares for fifteen (15) days under this Section 10(b). The Administrator's notice to the Participant under this Section 10(b) shall be given not less than fifteen (15) days prior to the closing of such merger or asset sale. If the Option is not fully exercised within the fifteen (15) day period provided under this Section 10(b), the Option and all rights of the Participant thereunder will terminate. For purposes of this Section 10(b), the Option shall be considered assumed if, following the merger or sale of assets, the equivalent option or substituted right confers the right to purchase or receive, for each Option Share subject to the Option on the effective date of the transaction, the same consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or sale of assets is not solely common stock of the successor entity or its parent or subsidiary, the Administrator may, with the consent of the Successor, provide for the consideration to be received upon the exercise of the Option, for each Option Share, to be solely common stock of the successor entity or its parent or subsidiary equal in fair market value to the per share consideration received by holders of Common Stock in the merger or sale of assets. No such substitution shall require the

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Company, the successor entity, or its parent or subsidiary to issue or sell a fractional share and the total substitution shall be limited accordingly.

11. **Tax Consequences.** Some of the federal tax consequences relating to the exercise of this Option or the disposition of the Option Shares, as of the date of this Agreement, are set forth below. **This Summary is not complete, and the tax laws and regulations are subject to change. The Participant should consult a tax advisor before exercising this Option or disposing of any of the Option Shares.**

(a) **Exercise of an Incentive Stock Option.** With respect to that portion of the Option that qualifies as an Incentive Stock Option, the Participant will have no regular federal income tax liability upon its exercise, although the excess, if any, of the fair market value of the Option Shares on the date of exercise over their aggregate Option Price will be treated as an adjustment to the alternative minimum tax for federal tax purposes and may subject the Participant to alternative minimum tax in the year of exercise. In addition, after the date of this Agreement, the Code and/or the regulations thereunder may be amended so as to require the Participant to pay, and the Company to withhold, at the time of exercise employment taxes on the excess, if any, of the fair market value of the Option Shares on the date of exercise over their aggregate Option Price.

(b) **Exercise of Non-Qualified Stock Option.** With respect to that portion, if any, of the Option that qualifies as a Non-Qualified Stock Option, the Participant will be treated as having received compensation income (taxable at ordinary income rates) equal to the excess, if any, of the fair market value of the Option Shares on the date of exercise over their aggregate Option Price, and the Company will be required to withhold from the Participant's compensation or collect from the Participant (if the Participant is no longer employed by the Company) and pay to the applicable taxing authorities at the time of exercise an amount in cash equal to a percentage of this compensation income, and the Company may refuse to deliver the Option Shares if such withholding amounts are not delivered at the time of exercise.

(c) **Disposition of Option Shares.** If Option Shares acquired pursuant to exercise of that portion of this Option that qualifies as an Incentive Stock Option are held by the Participant until the later of one year from the date of their acquisition or the second anniversary of this Agreement, any gain realized by the Participant on the subsequent sale of such Option Shares will be treated as long term capital gain for federal income tax purposes. Conversely, if any Option Shares are sold either within one year of their acquisition or prior to the second anniversary of this Agreement, any gain realized by the Participant on such sale will be treated as compensation income (taxable at ordinary income tax rates) to the extent of the difference between the aggregate Option Price and the lesser of (i) the fair market value of such Option Shares on the date of exercise, or (ii) the sale price of such Option Shares. Any additional gain will be taxed as capital gain, short-term or long-term depending on the period that the Option Shares were held. In the case of Option Shares acquired pursuant to exercise of that portion, if any, of this Option that qualifies as a Non-Qualified Stock Option, if such Option Shares are held by the Participant for at least one year after their acquisition, any gain realized on their subsequent sale will be treated as long-term capital gain for federal income tax purposes.

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(d) **Notice of Disqualifying Disposition of Option Shares.** If the Participant sells or otherwise disposes of any of the Option Shares acquired pursuant to exercise of that portion of this Option that qualifies as an Incentive Stock Option before the later of (i) one year after the exercise date, or (ii) the second anniversary of this Agreement, the Participant shall immediately notify the Company in writing of such disposition. The Participant acknowledges that he or she may be subject to income tax withholding by the Company on the compensation income recognized from such early disposition of the Option Shares by payment in cash or out of the current earnings paid to the Participant.

12. **Binding Effect.** This Agreement shall be construed in accordance with the provisions of the Plan as implemented from time to time by the Administrator (as defined in the Plan) and shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

13. **Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Wisconsin.

14. **Notices.** The Exercise Notice, in the form attached hereto, shall only be considered given by the Participant and received by the Company when actually received by an officer of the Company along with (a) full payment for the Option Shares being purchased thereby, (b) a fully executed copy of the Shareholder Agreement required under Section 6, above, and (c) the Participant's satisfaction of any income or employment tax withholding obligations, as required by Sections 5, 7, and 11, above. Any other notice or other communication required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered to be given and received in all respects (i) when personally delivered to a party, (ii) on the next business day following the date on which it is sent via reputable overnight courier service; (iii) five (5) days after being sent by certified or registered United States mail, postage prepaid, return receipt requested, or (iv) when transmitted by fax if confirmation of receipt is printed on the sending fax machine. Any notice to the Participant shall be addressed to that address last appearing on the Company's records. Any notice to the Company shall be addressed to the Company's Chief Executive Officer at the Company's then principal place of business.

15. **No Continuing Rights.** This Agreement shall not confer upon the Participant any right with respect to continuation of employment by the Company, alter the Participant's at-will employment status, or interfere in any way with the right of the Company to terminate the Participant's employment to the Company at any time with or without notice, except as may otherwise be provided in any other written agreement between the Participant and the Company.

**[Remainder of page intentionally left blank. Signature page follows.]**

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IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first above written.

**TOMOTHERAPY  
INCORPORATED**

By: \_\_\_\_\_  
Paul Reckwerdt, President

The undersigned Participant hereby accepts the foregoing Option and agrees to the terms and conditions of this Stock Option Agreement and of the Plan.

**PARTICIPANT:**

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

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**TOMOTHERAPY INCORPORATED 2000 STOCK OPTION PLAN — Exhibit A  
EXERCISE NOTICE**

1. **Exercise of Option.** Effective as of today, \_\_\_\_\_, 20\_\_\_\_, the undersigned (the "Participant") hereby elects to exercise the Participant's option (the "Option") to purchase \_\_\_\_\_ shares of the Common Stock (the "Shares") of **TomoTherapy Incorporated** (the "Company") under and pursuant to the Company's 2000 Stock Option Plan (the "Plan") and the Participant's Stock Option Agreement with the Company dated \_\_\_\_\_ (the "Option Agreement").

2. **Representations of the Participant.** The Participant acknowledges that the Participant has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions. The Participant also acknowledges that as a condition of exercise, the Participant agrees to execute and be bound by a shareholder agreement that places restrictions on transfer of the Shares and grants the Company the right to repurchase the Shares upon the occurrence of certain events, including termination of employment (the "Shareholder Agreement").

3. **Rights as Shareholder.** Until (a) the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) and delivered to the Participant, and (b) the Shareholder Agreement is executed and delivered by the Participant, no right to vote or receive dividends or any other rights as a shareholder of the Company shall exist with respect to the Shares,

notwithstanding the exercise of the Option. The Company shall issue and deliver (or cause to be issued and delivered) such stock certificate promptly after the Option is exercised and the Shareholder Agreement is executed and delivered to the Company.

Thereafter, the Participant shall enjoy rights as a shareholder until such time as the Participant disposes of the Shares or the Company and/or its assignee(s) exercises its right of first refusal or the repurchase rights contained in the Shareholder Agreement. Upon such exercise, the Participant shall have no further rights as a holder of the Shares except the right to receive payment for the Shares so purchased in accordance with the provisions of the Shareholder Agreement, and the Participant shall cause the certificate(s) evidencing the Shares to be surrendered to the Company for transfer or cancellation.

**4. Delivery of Payment.** The Participant shall deliver payment of the aggregate Option Price for the Shares to the Company with this Exercise Notice.

**5. Tax Consultation.** The Participant understands that the Participant may suffer adverse tax consequences as a result of the Participant’s purchase or disposition of the Shares. The Participant represents that the Participant has consulted with any tax consultants that the Participant deems advisable in connection with the purchase or disposition of the Shares and that the Participant is not relying on the Company for any tax advice.

**6. Taxes.** The Participant agrees to satisfy all applicable federal, state and local income and employment tax withholding obligations, if any, incurred as a result of this exercise and shall have either (a) delivered to the Company with this Exercise Notice the full amount of

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such obligations, or (b) made arrangements acceptable to the Company to satisfy such obligations. In the case of an Incentive Stock Option, the Participant also agrees, as partial consideration for the designation of the Option as an Incentive Stock Option, to notify the Company in writing within thirty (30) days of any disposition of any shares acquired by exercise of the Option if such disposition occurs within two (2) years from the date of the Option Agreement or within one (1) year from the date such Shares were purchased by the Participant. If the Company is required to satisfy any federal, state or local income or employment tax withholding obligations as a result of such an early disposition, the Participant agrees to satisfy the amount of such withholding in a manner that the Administrator prescribes.

**7. Interpretation.** Any dispute regarding the interpretation of this Exercise Notice shall be submitted by the Participant or by the Company to the Administrator of the Plan, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all persons.

**8. Successors and Assigns.** The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon the Participant and his or her heirs, executors, administrators, successors and assigns.

**9. Governing Law; Severability.** This Exercise Notice shall be governed by and construed in accordance with the laws of the State of Wisconsin. Should any provision of this Exercise Notice be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and enforceable.

**10. Notices.** Any notice required under Section 6, above, shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, with postage and fees prepaid, addressed to the Company at its then principal place of business. The Participant acknowledges, however, that this Exercise Notice is not effective until actually received by an officer of the Company pursuant to Section 14 of the Option Agreement.

**11. Further Instruments.** The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this agreement.

Submitted by:  
PARTICIPANT

Accepted by:  
TOMOTHERAPY INCORPORATED

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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**Exhibit B to Stock Option Agreement**

**SHAREHOLDER AGREEMENT  
WITH  
TOMOTHERAPY INCORPORATED  
(For Employee Shareholders)**

This Shareholder Agreement (this “Agreement”) is made as of \_\_\_\_\_, by and between TomoTherapy Incorporated, a Wisconsin corporation (the “Company”), and the employee shareholder of the Company whose name appears on the signature page hereof (“Employee”).

**BACKGROUND**

The Company granted Employee the option to purchase shares of the Company’s common stock pursuant to the TomoTherapy Incorporated 2000 Stock Option Plan for its employees, directors, and advisors. Employee has exercised all or a part of such option and now owns shares of the Company’s common stock as set forth in the Schedule attached hereto as Exhibit A. As a condition of Employee’s right to exercise the stock option and upon his or her first exercise thereof, the Company requires that Employee sign and deliver a written agreement restricting the transfer of Employee’s shares and imposing other restrictions thereon. Those restrictions on transfer and other restrictions are set forth in this Agreement.

Therefore, and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

## **ARTICLE I**

### **RESTRICTIONS ON TRANSFER**

In this Article I and throughout this Agreement, the capitalized term “Shares” refers to all of the following:

- (i) Shares of the Company’s common stock that are purchased by Employee through the exercise of any stock options granted to Employee, including those shares listed on Exhibit A and any other shares hereafter purchased through the exercise of other stock options;
- (ii) Other shares of the Company’s common stock now owned or hereafter purchased or otherwise acquired by Employee other than by exercise of stock options, whether acquired from the Company or another shareholder of the Company; and
- (iii) Shares of the Company’s capital stock or other securities issued to Employee for no additional consideration in exchange for, or on account of, Employee’s ownership of the shares of common stock listed in the preceding clauses (i) and (ii) and including capital stock or other securities of the Company issued as dividends or as a result of a division, combination, or other reorganization of the Company’s capital stock.

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#### **1.1 General Restrictions on Transfer.**

(a) Except in accordance with this Agreement, Employee and his/her spouse (“Spouse”), if any, agree that neither of them, nor their executors, personal representatives, administrators, heirs, legatees, guardians or other legal representatives may sell, transfer, encumber or dispose of any Shares (or interest therein) now owned or hereafter acquired by Employee, whether by purchase, assignment, exchange, gift, bequest, pledge, encumbrance or transfer either by operation of law or any other means. Employee has executed Exhibit B that affirms Employee’s acknowledgment and agreement that Employee is acquiring the Shares for investment purposes and that Employee is aware that the Shares are also subject to restrictions pursuant to the Securities Act of 1933, as amended.

(b) For purposes of this Agreement, all references to Shares owned or held by Employee shall include, without limitation, all interests in Shares now owned or hereafter acquired by his/her Spouse as marital property, quasim marital property, individual property, or pursuant to the augmented marital property estate. The creation of an interest in the Shares of the Spouse by operation of marital property laws during Employee’s lifetime shall not be deemed to be a transfer of such Shares or any portion thereof or interest therein for purposes of Section 1.2 of this Agreement so long as (i) the Shares in which such interest is created continue to be registered on the Share transfer records of the Company solely in the name of Employee, and (ii) Employee maintains all rights to manage, control, vote and transfer such Shares; provided, however, that if any of the foregoing rights cease to be satisfied, then the Company shall have the right and option to purchase the Spouse’s interest in the Shares in the manner and on the same terms and conditions as provided in Section 1.6 hereof as if the marital relationship of Employee and Spouse had been terminated. During the marriage of Employee and his/her Spouse, Employee’s obligation to sell or transfer, or to offer to sell or transfer, Shares shall include an obligation on the part of his/her Spouse to sell or transfer, or to offer to sell, or transfer any interest of the Spouse in the Shares in the same manner and on the same terms and conditions as set forth in this Agreement. The Spouse’s consent to these terms and all other terms of this Agreement, including, without limitation, the provisions of Section 1.6, shall be indicated by his or her execution of the consent form attached as Exhibit C, the provisions of which are incorporated herein by reference.

(c) The prohibitions of Section 1.1(a) and (b), above, and the requirements of Section 1.2, below, shall not apply to the transfer of any or all of the Shares (i) to Employee’s “Immediate Family,” as that term is defined in Section 1.1(d), below, or to a trust, corporation, limited partnership, or other type of limited liability entity, of which the beneficiaries, shareholders, partners, or members, as the case may be, are limited to one or more of Employee and/or Employee’s Immediate Family, provided that Employee, as trustee or otherwise, retains the right to vote any Shares so transferred; (ii) in connection with any merger or consolidation of the Company with or into any other corporation that is approved by the requisite majority of the Company’s shareholders, including, without limitation, any required approval by the holders of any class or series of the Company’s shares; (iii) in connection with any exchange of Shares for other shares of the same or a different class or series in the Company, whether through the exercise of conversion rights or otherwise; or (iv) to the Company. A transfer of Shares to a person or entity described in clause (i) of the preceding sentence (a “Permitted Transferee”) shall

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be subject to the following: (i) Shares held by a Permitted Transferee shall be deemed to be Shares beneficially owned by Employee personally and such Shares shall be subject to all rights that the Company and its Shareholders may have pursuant to this Agreement as if those Shares were legally and beneficially owned by Employee; (ii) if Employee dies, the Permitted Transferee, without regard to whether the Permitted Transferee is a natural person, shall also be deemed to have died for all purposes under this Agreement; and (iii) the Company shall have the option to require the Permitted Transferee to execute a counterpart of this Agreement applicable to the transferred Shares.

(d) As used in this Agreement, the term “Immediate Family” shall mean (i) any spouse or domestic partner (as defined by the Company) of Employee; (ii) all children, parents, other lineal descendants and antecedents, and siblings of Employee; and (iii) the spouses and lineal descendants of those persons listed in the preceding clause (ii).

#### **1.2 Voluntary Transfer; Right of First Refusal to Company.**

(a) In the event Employee should decide to effect a voluntary transfer of any of his or her Shares, Employee shall first deliver written notice to the Company of such intent to transfer (the “Notice of Transfer”), which shall specify (i) the number of Shares proposed to be transferred (the “Offered Shares”), (ii) the date of the proposed transfer, which shall not be fewer than sixty (60) days after the actual receipt of the Notice of Transfer, (iii) the identity, including the complete name, address and telephone number of the proposed transferee of the Offered Shares (the “Proposed Transferee”), and (iv) the proposed consideration to be received, which shall be cash only (the “Offer Price”), and the terms of payment upon such transfer. The Notice of Transfer shall be accompanied by a copy of any bona fide written offer to purchase the Offered Shares. The date of actual receipt by the Company of the Notice of Transfer

shall be referred to hereinafter as the "Offer Date." The Notice of Transfer shall constitute an offer to sell and transfer the Offered Shares, in whole or in part, to the Company at the Offer Price.

(b) For a period of thirty (30) days after the Offer Date (the "Company Option Period"), the Company shall have the right and option to elect to purchase all, or any portion, of the Offered Shares at the Offer Price on the terms set forth in either Section 3.2 of this Agreement or in the Notice of Exercise, as elected by the Company in its sole discretion. In the event the Company shall exercise its right and option to purchase in whole, or in part, the Offered Shares, the Company shall signify such exercise and the number of Offered Shares to be purchased (the "Purchased Shares") by giving written notice to Employee (the "Notice of Exercise") within the Company Option Period. In the event of such exercise by the Company, Employee shall sell and transfer the Purchased Shares to the Company within ninety (90) days of the Offer Date. Any Notice of Exercise that is mailed in the manner provided herein shall be conclusively presumed to have been duly given when mailed, whether or not Employee shall have actually received such Notice of Exercise.

**1.3 Sale to Third Party.** If the Company, after receiving the Notice of Transfer, fails or declines, in whole or in part, to exercise the option provided in Section 1.2(b), above, Employee may transfer the Offered Shares, or that number of the Offered Shares that the Company declined or failed to purchase under Section 1.2(b), above, to the Proposed Transferee

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on the terms contained in the Notice of Transfer, and, upon such transfer may have such Shares transferred on the books of the Company, but only if the Proposed Transferee executes a counterpart of this Agreement. If Employee fails to close the transfer of such Shares within the sixty (60) day period after the Company's option has expired or has been waived, the restrictions contained in this Article I shall again apply and must be met prior to effecting any transfer of Shares. Any transfer of Shares by Employee to any Proposed Transferee shall comply with all applicable securities laws, and the Company may refuse to transfer any Shares unless it receives assurance and opinions from legal counsel acceptable to the Company that any such transfer is in compliance with all applicable securities laws.

#### **1.4 Drag-Along Rights.**

(a) If one or more of the Company's shareholders holding in the aggregate fifty percent (50%) or more of all the then issued and outstanding shares (regardless of class) of the Company (the "Controlling Shareholders") decide to sell their shares representing fifty percent (50%) or more of all issued and outstanding voting stock of the Company (a "Controlling Interest") in one transaction, or a series of related transactions, to a third party who is not an affiliate of such Controlling Shareholders (a "Sale Transaction"), such Controlling Shareholders may, in their sole discretion, require Employee to sell all of his/her Shares or the same proportionate amount as the Controlling Shareholders are selling in accordance with this Section 1.4 ("Drag-Along Rights"). If the Controlling Shareholders exercise their Drag-Along Rights, Employee shall be required to sell his/her Shares or a portion of his/her Shares at a purchase price per share and upon the same terms as the shares of the Controlling Shareholders.

(b) Not less than twenty (20) days before the proposed closing date for the Sale Transaction (the "Closing Date"), the Controlling Shareholders who desire to exercise their Drag-Along Rights shall (i) deliver a notice (the "Sale Notice") to Employee and the Company setting forth the terms of the Sale Transaction (including the proposed Closing Date), and (ii) provide all documents required to be executed by Employee in order to consummate such Sale Transaction. At least seven (7) business days prior to the Closing Date, Employee shall deliver to the Controlling Shareholders all documents and certificates, correctly endorsed and executed, necessary to close the Sale Transaction. If Employee fails to deliver such documents to the Controlling Shareholders, the Company shall cause its books and records to show that the Shares held by Employee have been transferred pursuant to the provisions of this Section 1.4 and in connection with such Sale Transaction and that Employee has forfeited his/her rights in the Shares.

(c) The Controlling Shareholders shall have one hundred twenty (120) days from the date of the Sale Notice described in Section 1.4(b) above, to consummate any Sale Transaction and, promptly after such consummation, shall notify the Company and Employee to that effect. The Controlling Shareholders shall also cause to be remitted to Employee the proceeds attributable to the sale of Employee's Shares not later than two days after the closing of the Sale Transaction. If any Sale Transaction is not consummated prior to the expiration of the one-hundred twenty (120) day period referred to in this Section, the Controlling Shareholders may not thereafter consummate the proposed Sale Transaction (without complying again with Section 1.4(b), above) and shall return to Employee all documents previously delivered to the Controlling Shareholders in connection with such Sale Transaction.

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#### **1.5 Involuntary Transfer.**

(a) Whenever Employee has any notice or knowledge of any impending or consummated involuntary transfer of or lien, charge, security interest, claim or encumbrance upon any of his/her Shares, whether by operation of law or otherwise (collectively, "Involuntary Transfer"), such Employee shall give immediate written notice thereof to the Company. Whenever the Company has any other actual notice or actual knowledge of any such attempted, impending or consummated Involuntary Transfer, it may give written notice thereof to Employee. In either case, Employee agrees to disclose in writing immediately to the Company all pertinent information in his/her possession relating to such Involuntary Transfer.

(b) If any Shares are subject to any such Involuntary Transfer, the Company shall at all times have the immediate and continuing right and option for a period of ninety (90) days after the Company first receives actual notice of such Involuntary Transfer to purchase such Shares at a price equal to the lesser of the original purchase price paid by Employee for such Shares (the "Exercise Price") or the Fair Market Value of the Shares, determined as provided in Section 3.1, and upon the payment terms provided in Section 3.2. If the Company elects to purchase such Shares pursuant to this Section 1.5(b), the Company shall signify such election by delivering written notice to such effect to Employee within such ninety (90) day period.

#### **1.6 Termination of Marital Relationship.**

(a) If the marital relationship of Employee and his/her Spouse is terminated by the death of the Spouse or by divorce and Employee does not receive, or succeed to, all of the Spouse's interest in the Shares acquired through marital property laws or otherwise, whether by testamentary disposition, disposition by the laws of intestacy, operation of law, property settlement agreement, court order or otherwise, then Employee shall have the right and option for a period of thirty (30) days after the Fair Market Value of the Shares is established pursuant to Section 3.1 (the "Spousal Option Period") to purchase all (but not less than all) of his/her Spouse's interest in the Shares at a purchase price equal to the Fair Market Value and upon the payment terms set forth in this

Section 1.6(a). If Employee elects to purchase all of his/her Spouse's interest in the Shares under this Section 1.6(a), Employee shall signify such election by delivering written notice to such effect to the Spouse or the personal representative of the Spouse's estate, as the case may be, and to the Company within the Spousal Option Period. In such event, the Spouse or personal representative of the Spouse's estate, as the case may be, shall be required to sell and transfer all of such interest in the Shares upon the terms set forth herein. Payment for the Shares purchased under this Section 1.6(a) shall be in cash, delivered to the Spouse or the personal representative of the Spouse's estate, as the case may be, within thirty (30) days of the delivery of the written notice of Employee's election to purchase under this Section 1.6(a).

(b) If Employee fails to either (i) exercise such right and option within the Spousal Option Period or (ii) make payment in full within thirty (30) days of the Employee's delivery of written notice of such exercise, the Company shall have the right and option for a period of thirty (30) days following either such failure to purchase all or a portion of the Spouse's interest in the Shares at a purchase price equal to the Fair Market Value of such Shares, determined as provided in Section 3.1, and upon the payment terms provided in Section 3.2. If

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the Company elects to purchase some or all of the Spouse's interest in the Shares under this Section 1.6(b), the Company shall signify such election by delivering written notice within such thirty (30) day period to the Spouse or to the personal representative of the Spouse's estate, as the case may be. In such event, the Spouse or the personal representative of the Spouse's estate, as the case may be, shall be required to sell and transfer all or the selected portion of the Spouse's interest in the Shares to the Company upon the terms set forth above.

(c) If both Employee and the Company decline or fail to exercise their options pursuant to Sections 1.6(a) and (b), above, to purchase all of the Spouse's interest in the Shares, then all such Shares, notwithstanding the Spouse's interest therein, remain subject to this Agreement.

(d) If Employee marries, or if Employee remarries following termination of his/her current marital relationship, Employee agrees to cause his/her new Spouse to execute a consent to the terms of this Agreement substantially in the form attached as Exhibit C within sixty (60) days of such marriage or remarriage. In the event Employee fails to carry out his/her obligation pursuant to the preceding sentence, and such failure shall continue thirty (30) days after the giving of notice by the Company, the Company shall then have the immediate and continuing right and option, exercisable upon delivery of written notice to Employee, to purchase all of the Shares at a purchase price equal to the lesser of (i) the Exercise Price, as defined in Section 1.5(b), above, or (ii) the Fair Market Value of such Shares, determined as set forth in Section 3.1, and upon the payment terms provided in Section 3.2.

## **ARTICLE II**

### **PURCHASE OF SHARES UPON TERMINATION OF EMPLOYMENT**

Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of the events discussed in this Article II, the Company shall have the right and option to redeem and purchase all or some of the Shares held from time to time by Employee.

**2.1 Death.** Upon the death of Employee, the Company shall have the right and option to redeem and purchase the Shares, in whole or in part, by giving written notice to such effect to the appropriate party within thirty (30) days after the Fair Market Value of the Shares is established pursuant to Section 3.1, and, upon exercise of such option, shall pay the Fair Market Value for such Shares on the terms set forth in Section 3.2. In such event, the personal representative of Employee shall sell such Shares upon the terms provided herein.

#### **2.2 Termination of Employment.**

(a) In the event that the employment relationship of Employee with the Company is terminated by either party for any reason other than death but including disability within the meaning of Section 22(e)(3) of the Internal Revenue Code of 1986, as amended, the Company shall have the right and option to redeem and repurchase the Shares, in whole or in part, by giving written notice to Employee at any time (i) during the ninety (90) day period following the date on which the employment relationship was terminated, or (ii) during the ninety (90) day period following Employee's post-termination purchase or other acquisition of

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Shares pursuant to his or her exercise, after the date on which the employment relationship was terminated, of a stock option or other right to acquire Shares, which option or other right was outstanding on the date the employment relationship was terminated. The notice shall indicate the number of Shares to be repurchased and the date on which the repurchase is to be effected, which date shall be not fewer than ten (10) nor more than thirty (30) days after delivery of such notice. The Company shall pay the price set forth in Section 2.2(b) or (c), below, as applicable, and, in either case, payment shall be on the terms set forth in Section 3.2. In the event the Company gives such written notice, Employee shall sell such Shares to the Company upon the terms provided herein.

(b) Except if the termination is for "cause" as provided in Section 2.2(c), below, if the Company elects to exercise its option to purchase all or part of the Shares as described in Section 2.2(a), above, the Company shall purchase such Shares at the Fair Market Value of such Shares determined pursuant to Section 3.1.

(c) If the termination is for "cause," as defined herein, and the Company elects to exercise its option to purchase all or part of the Shares as described in Section 2.2(a), above, the Company may purchase such Shares at the lesser of (i) the Exercise Price, as defined in Section 1.5(b), above, or (ii) the Fair Market Value of such Shares, determined as set forth in Section 3.1. As used in this Section 2.2, the term "cause" shall mean any of the following: (i) any act, failure to act, conduct, pattern of conduct, or condition injurious or potentially injurious to the business or reputation of the Company; (ii) any conviction for a misdemeanor or felony the circumstances of which the Company determines are substantially related to the circumstances of Employee's job; (iii) the willful and continued failure to perform substantially Employee's duties for the Company, which failure remains uncured fourteen (14) days after written notice from the Company of such failure; or (iv) theft or fraud by Employee with respect to the business of the Company.

## **ARTICLE III**

### **PURCHASE PRICE AND PAYMENT TERMS**

**3.1 Fair Market Value.** For purposes of this Agreement, the “Fair Market Value” of the Shares shall be determined in good faith by the Board of Directors as of the end of the fiscal month immediately preceding the event triggering the need to establish a fair market value, including the events described in Sections 1.5, 1.6, 2.1, and 2.2 of this Agreement (including any post-employment acquisition of Shares by Employee) (each a “Triggering Event”). The determination of Fair Market Value shall be made by the Board of Directors no later than sixty (60) days after the Triggering Event.

**3.2 Payment.** In the event of the purchase or redemption by the Company of Shares under any section of this Agreement, the Company, shall, within thirty (30) days of the delivery to Employee of the notice that the Company is exercising the option to purchase Shares, pay the purchase or redemption price all in cash or shall have the option to evidence that amount of the redemption or purchase price that exceeds Twenty-Five Thousand Dollars (\$25,000) by delivery of a promissory note, dated as of the day of the purchase or redemption (the “Promissory Note”). The Promissory Note shall be payable in five (5) equal annual installments of principal and

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interest. Interest shall accrue at the annual Mid-Term Federal Rate published by the Internal Revenue Service as of the end of the month preceding or coincident with the Triggering Event and shall be payable with each installment of principal. The Company shall have the right to prepay the deferred balance at any time, without penalty. All payments shall be applied first to interest that is accrued and unpaid and then to principal. The parties may, by written agreement, alter or modify the payment schedule provided herein.

#### **ARTICLE IV** **STOCK LEGEND**

All certificates representing Shares now owned or hereafter acquired by a party to this Agreement or their transferee(s) shall bear a legend in substantially the form set forth below:

- (a) THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS UPON TRANSFER, RIGHTS OF FIRST REFUSAL, AND MANDATORY SALE, AT THE CORPORATION’S OPTION, UPON THE HAPPENING OF CERTAIN EVENTS AS SET FORTH IN AN AGREEMENT BETWEEN THE ORIGINAL HOLDER OF THE SHARES AND THE CORPORATION, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE CORPORATION.
- (b) THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY APPLICABLE STATE SECURITIES LAW. SUCH SHARES MAY NOT BE PLEDGED, SOLD, TRANSFERRED, OR HYPOTHECATED IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS THE CORPORATION RECEIVES AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO IT STATING THAT SUCH PLEDGE, SALE, TRANSFER, OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND ANY APPLICABLE STATE SECURITIES LAW.

#### **ARTICLE V** **MARKET STAND-OFF AGREEMENT**

If so requested by the managing underwriters or the Company in connection with an initial public offering of the Company’s common stock, Employee hereby agrees that, without the prior written consent of such managing underwriters, Employee will not offer, sell, contract to sell, grant any option to purchase, make any short sale or otherwise dispose of, assign any legal or beneficial interest in, or make a distribution of any capital stock of the Company held by or on behalf of Employee or beneficially owned by Employee in accordance with the rules and regulations of the Securities and Exchange Commission for a period of up to 365 days after the date of the final prospectus relating to the Company’s initial public offering. This Article V shall not apply to any Shares registered in the public offering.

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#### **ARTICLE VI** **TERMINATION**

This Agreement shall terminate and be of no further force or effect upon the earlier of (a) the closing date of a sale of substantially all of the assets of the Company; (b) merger of the Company pursuant to which shareholders of the Company receive securities of a buyer whose securities are publicly traded; or (c) consummation by the Company of a public offering of its equity securities pursuant to a registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended. Upon termination of this Agreement, Employee may deliver the certificate(s) representing the Shares to the Secretary of the Company and have the certificate(s) reissued without the legend required under this Agreement appearing thereon.

#### **ARTICLE VII** **GENERAL PROVISIONS**

**7.1 Further Assurances.** Subject to the terms and conditions herein provided, each party hereto agrees to use its reasonable efforts to take, or cause to be taken, all actions necessary, proper or advisable, within applicable laws and regulations to consummate and make effective, as soon as practicable, the transactions contemplated by this Agreement. If at any time before or after the date of this Agreement any further action is reasonably necessary, proper, or advisable to carry out the purposes of this Agreement, each party hereto shall, at the expense of the requesting party and as soon as reasonably practical, take all such reasonably necessary, proper, or advisable action to effectuate such purposes.

**7.2 Governing Law; Jurisdiction.** The interpretation and construction of this Agreement and the resolution of any disputes arising out of or of in connection with this Agreement or any breach hereof, shall, unless otherwise expressly provided, be governed by and be construed in accordance with the internal laws of the State of Wisconsin without regard to the conflicts of laws principles thereof.

**7.3 Notices.** All notices and other communications under this Agreement shall be in writing and shall, unless otherwise expressly provided in this Agreement, be deemed given or delivered when (a) delivered by hand, (b) sent by certified mail, return receipt requested, (c) sent by overnight express

delivery service, or (d) sent by facsimile transmission (receipt confirmed) to the addressee at the following addresses (or to such other address as a party may specify by notice hereunder):

If to the Company: TomoTherapy Incorporated  
1240 Deming Way  
Madison, WI 53717-1954  
Fax No. (608) 824-2996  
Phone (608) 824-2800

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With a copy to: Michael E. Skindrud  
LaFollette Godfrey & Kahn  
One East Main Street, Suite 500  
Madison, WI 53703  
Fax No. (608) 257-0609  
Phone (608) 257-3911

If to Employee: To the address listed below  
Employee's name on attached Exhibit A

**7.4 Entire Agreement; Amendments.** This Agreement constitutes a complete statement of all of the arrangements between the parties as of the date hereof with respect to the subject matter hereof and supersedes all prior agreements and understandings between them with respect thereto. This Agreement may be amended only by a writing signed by all parties.

**7.5 Headings and Defined Terms.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

**7.6 Successors.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their heirs, successors, and assigns.

**7.7 No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.

**7.8 No Continuing Rights.** This Agreement shall not confer upon Employee any right with respect to continuation of employment by or service to the Company, alter Employee's at-will employment status, or interfere in any way with the right of the Company to terminate Employee's employment or service to the Company at any time with or without notice, except as otherwise provided in any other written agreement between Employee and the Company.

**7.9 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be considered an original, but all of which together shall constitute the same instrument.

**7.10 Severability.** The invalidity of any provision in this Agreement shall not affect the validity of any other provision.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**TOMOTHERAPY INCORPORATED,**  
a Wisconsin corporation (the "Company")

By: \_\_\_\_\_  
John J. Barni, Chief Executive Officer

**EMPLOYEE**

\_\_\_\_\_

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**EXHIBIT A**

**Schedule**

Name and Address of Employee	Number of Shares of Common Stock

**EXHIBIT B****INVESTMENT REPRESENTATION STATEMENT**

EMPLOYEE:

COMPANY: TOMOTHERAPY INCORPORATED

SECURITY: COMMON STOCK

AMOUNT: SHARES

DATE:

In connection with the purchase of the above-listed shares of common stock (the "Securities"), the undersigned Employee represents to the Company the following:

(a) Employee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. Employee is acquiring these Securities for investment for Employee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act").

(b) Employee acknowledges and understands that the Securities constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Employee's investment intent as expressed herein. In this connection, Employee understands that, in the view of the Securities and Exchange Commission, the statutory basis for such exemption may be unavailable if Employee's representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one year or any other fixed period in the future. Employee further understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Employee further acknowledges and understands that the Company is under no obligation to register the Securities. Employee understands that the certificate evidencing the Securities will be imprinted with a legend which prohibits the transfer of the Securities unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company, and any other legend required under applicable state securities laws.

(c) Employee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to Employee, the exercise will be

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exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter (or such longer period as any market stand-off agreement may require) the Securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including: (1) the resale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934); and, in the case of an affiliate, (2) the availability of certain public information about the Company, (3) the amount of Securities being sold during any three month period not exceeding the limitations specified in Rule 144(e), and (4) the timely filing of a Form 144, if applicable.

In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires the resale to occur not less than one year after the later of the date the Securities were sold by the Company or the date the Securities were sold by an affiliate of the Company, within the meaning of Rule 144; and, in the case of acquisition of the Securities by an affiliate, or by a non-affiliate who subsequently holds the Securities less than two years, the satisfaction of the conditions set forth in sections (1), (2), (3) and (4) of the paragraph immediately above.

(d) Employee further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. Employee understands that no assurances can be given that any such other registration exemption will be available in such event.

Signature of Employee:

Date: \_\_\_\_\_

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**EXHIBIT C**

**Spousal Consent**

The undersigned, spouse of \_\_\_\_\_, being first fully advised concerning the financial condition of my spouse and the Company hereby consents and agrees to the terms and conditions of the foregoing Shareholder Agreement and further agrees that any type of marital property interest, deferred marital property interest or community property interest she or he may at any time have in the stock of the Company, and all such stock registered in his/her sole name, shall at all times be subject to all of the terms and conditions of the Shareholder Agreement, as amended from time to time. The undersigned agrees to comply with all of the terms and conditions of the Shareholder Agreement applicable to the Shares, including but not limited to; (i) any disposition made in or pursuant to such Agreement of any interest I may now or hereafter have in the Shares of the Company through marital property, divorce decree, or otherwise and (ii) the provisions set forth in Section 1.6 of such Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Spouse  
Print Name: \_\_\_\_\_

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**TOMOTHERAPY INCORPORATED  
STOCK OPTION AGREEMENT  
(Non-Qualified Stock Option)**

This Stock Option Agreement (this "Agreement") is made as of \_\_\_\_\_, 200\_\_\_\_, by and between **TOMOTHERAPY INCORPORATED** (the "Company") and \_\_\_\_\_ (the "Participant").

**Background**

The Company has adopted the TomoTherapy Incorporated 2000 Stock Option Plan (the "Plan") to encourage certain employees, directors, and advisors of the Company to acquire or increase their stock ownership in the Company, to provide an incentive to such individuals to promote the financial success of the Company, and to attract and retain the personnel necessary for the Company's continued growth and profitability. Terms not otherwise defined in this Agreement have the meanings ascribed to them in the Plan.

The Company considers it desirable and in its best interest to grant the Participant an option to purchase shares of the Company's common stock, \$0.01 par value per share ("Common Stock").

The option granted under this Agreement is intended by the parties to be, and shall be treated as, a "Nonqualified Stock Option," as that term is defined in the Plan.

**Agreement**

In consideration of the mutual covenants set forth below, it is agreed as follows:

1. **Grant of Option.** The Company hereby grants the Participant the option (the "Option") to purchase up to \_\_\_\_\_ ( ) shares of the Common Stock of the Company (the "Option Shares"), subject to the terms and conditions of this Agreement.

2. **Option Price.** The purchase price for the Option Shares shall be \_\_\_\_\_ Dollars( \$ ) per share [which is the fair market value of the Common Stock on the date of this Agreement] (the "Option Price").

**3. Term of the Option and Vesting.**

(a) In all events, if the Option is not terminated earlier pursuant to the provisions of Sections 8 or 10(b), below, the Option shall expire and all of the Participant's rights under the Option shall terminate as of 5 p.m. Central Time on the \_\_\_\_\_ anniversary of the date of this Agreement (the "Option Termination Date").

(b) Subject to the accelerated vesting provided in Section 3(c), below, and subject to the termination provisions of Sections 8 and 10(b), below, the Option shall vest, and the Participant shall have the right to exercise the Option with respect to such vested Option Shares according to the following schedule:

(i) \_\_\_\_\_ percent ( ) of the Option Shares shall vest as of the date of this Agreement [or any later date], which is hereafter referred to as the "Vesting Commencement Date"; and,

(ii) An additional \_\_\_\_\_ percent ( ) of the Option Shares shall vest thereafter on each of the following \_\_\_\_\_ ( ) annual anniversaries of the Vesting Commencement Date, provided that the Participant continues to be a director, advisor, or employee of the Company as of each such anniversary.

(c) Notwithstanding the foregoing vesting schedule in Section 3(b), above, all of the Option Shares shall vest and the Participant shall have the right to exercise the Option to purchase all of the Option Shares, including those Option Shares that would otherwise be unvested, upon the occurrence of any of the following: (1) a “Change in Control,” as that term is defined below; (2) the death of the Participant; or (3) the Participant’s “Disability,” as that term is defined below.

(d) For purposes of this Agreement, the term “Change in Control” shall mean the occurrence of any of the following after the date of this Agreement:

(i) Any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes the “beneficial owner” (as defined in Rule 13d-3 promulgated under such Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company’s then outstanding voting securities, other than in a private financing transaction approved by the Board of Directors;

(ii) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the outstanding capital stock, other than to an affiliate of the Company as determined by the Board of Directors of the Company;

(iii) a merger or consolidation in which the Company is a party and in which the shareholders of the Company before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such transaction; or

(iv) the sale or disposition by the Company of all or substantially all the Company’s assets.

(e) For purposes of this Agreement, the term “Disability” shall mean that the Participant is deemed by the Company to be either (a) disabled within the meaning of the

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Company’s long-term disability plan, or (b) if the Company does not have such a plan, “permanently and totally disabled” as that term is defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), as such Section may be amended or otherwise modified from time to time and which currently provides that an individual is permanently and totally disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

4. **Method of Exercise.** Subject to the termination provisions of Sections 8 and 10(b), below, that portion of the Option that is vested may be exercised at any time from the date of this Agreement until 5 p.m. Central Time on the Option Termination Date, as defined in Section 3(a), above, by delivery of the Exercise Notice attached hereto as Exhibit A to an officer of the Company, stating the number of Option Shares with respect to which the Option is being exercised. No partial exercise of the Option may be for less than one (1) share, and in no event shall the Company be required to transfer fractional shares to the Participant.

5. **Payment for Option Shares.** At the time of exercise, the Participant shall make full payment of the Option Price (i) in cash; (ii) if permitted by the Administrator, by tendering shares of Common Stock that have been held by the Participant for more than six months and have not been used within the prior six-month period to exercise an option, either directly or by attestation, valued at fair market value on the date of exercise; or (iii) any combination of (i) and (ii). Shares of Common Stock tendered shall be duly endorsed in blank or accompanied by stock powers duly endorsed in blank. Upon the Company’s receipt of (a) the payment of the entire Option Price for the Option Shares so purchased, (b) a fully executed copy of the shareholder agreement as provided in Section 6, below, and (c) satisfactory proof of the Participant’s payment of any income or employment tax withholding obligations as provided in Sections 7 and 11, below, certificates for such shares shall be delivered to the Participant. If the items listed in the preceding sentence, including full payment of the Option Price, are not received by the Company at the time of exercise, the Exercise Notice will be deemed null and void, the Company shall not be obligated to deliver a certificate for the Option Shares, and the Company shall have no further obligation with respect to the Exercise Notice or the Option Shares described therein.

6. **Transfer Restrictions and Obligation to Execute Shareholder Agreement.** Upon exercise, in full or in part, of the Option and the issuance of any of the Option Shares pursuant thereto, such Option Shares shall be subject to restrictions on transfer, and the Company will be granted the right to repurchase the issued Option Shares under certain circumstances, including termination of employment or service to the Company as a director or advisor, all as set forth in a shareholder agreement substantially in the form attached to this Agreement as Exhibit B, which form, as the same may be revised by the Company through the date the Participant first exercises the Option, is hereinafter referred to as the “Shareholder Agreement.” As a condition to the Participant’s right to exercise the Option, in full or in part, the Participant agrees to execute the Shareholder Agreement as of the date the Participant first exercises the Option, whether in full or in part, and be bound by the terms of such agreement.

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7. **Tax Consequences.** Some of the federal tax consequences relating to the exercise of this Option or the sale or other disposition of the Option Shares, as of the date of this Stock Option Agreement, are set forth below. **This Summary is not complete, and the tax laws and regulations are subject to change. The Participant should consult a tax advisor before exercising this Option or disposing of any of the Option Shares.** Upon any exercise of the Option, the Participant may incur regular federal income tax liability. The Participant will be treated as having received compensation income (taxable at ordinary income rates) equal to the excess, if any, of the fair market value of the Option Shares on the date of exercise over their aggregate Option Price. If the Participant is an employee or a former employee, the Company will be required to withhold from his or her compensation or collect from the employee and pay to the applicable taxing authorities at the time of exercise an amount in cash equal to a percentage of this compensation income, and the Company may refuse to deliver the Option Shares if such withholding amounts are not delivered at the time of exercise. If the Option Shares are held for at least one year following exercise, any gain realized on the sale or other disposition of the Option Shares will be treated as long-term capital gain for federal income tax purposes.

#### 8. **Termination of the Option.**

(a) In all events, the Option shall expire and all of the Participant’s rights thereunder shall terminate not later than the Option Termination Date, as defined in Section 3(a), above. Except as expressly provided otherwise in subsections (b) — (d) of this Section 8, and subject to the accelerated vesting

provisions of Section 3, above, if the service by the Participant as a director, advisor, or employee to the Company terminates, then all of the unvested portion of the Option shall terminate immediately and that portion of the Option that is vested but unexercised shall terminate as of 5 p.m. Central Time upon the earlier of (i) three (3) months after termination of service with the Company, or (ii) the Option Termination Date. To the extent the Participant fails to exercise the vested portion of the Option within the time specified in the preceding sentence, the Option terminates and all rights of the Participant with respect to the Option are forfeited.

(b) If termination of service is a termination for "Cause," as defined below, then the Option, or that portion of it that remains unexercised as of the date of such termination, may not be exercised and all of the Participant's rights in the Option shall be forfeited upon such termination. For purposes of this Agreement, the term "Cause" shall mean any of the following: (i) any act, failure to act, conduct, pattern of conduct, or condition injurious or potentially injurious to the business or reputation of the Company; (ii) any conviction for a misdemeanor or felony the circumstances of which the Administrator determines is substantially related to the circumstances of the Participant's service to the Company; (iii) the willful and continued failure to perform substantially the Participant's duties for the Company, which failure remains uncured fourteen (14) days after written notice from the Company of such failure; or (iv) theft or fraud by the Participant with respect to the business of the Company.

(c) If termination of service results from the Participant's "Disability," as defined in Section 3(e), above, the Option may be exercised at any time within one (1) year after such termination of service, but in no event beyond the Option Termination Date. In such event,

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the Option may be exercised by, and upon such exercise the Option Shares issued to, the Participant if legally competent or a legally designated guardian or representative of the Participant if the Participant is not legally competent.

(d) If termination of service results from the death of the Participant, the personal representative of the Participant's estate, or a person who by bequest, inheritance, or otherwise by reason of the Participant's death acquired the right to exercise the Option, may exercise the Option at any time within one (1) year after the death of the Participant, but in no event beyond the Option Termination Date.

**9. Nontransferability of Options.** The Option granted hereunder is not transferable by the Participant other than by will or the laws of descent or distribution, and, except as provided in Section 8(c), above, may be exercised during the lifetime of the Participant only by the Participant.

#### **10. Adjustments Upon Changes in Capitalization, Merger, or Asset Sale.**

(a) **Changes in Capitalization.** Subject to any required action by the shareholders of the Company, the number of Option Shares subject to the Option, the number of shares of Common Stock that have been authorized for issuance under the Plan but as to which no Options have yet been granted (or which have been returned to the Plan upon cancellation or expiration of an Option), and the Option Price, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. No adjustment shall require the Company to issue or sell a fractional share and the total adjustment shall be limited accordingly. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Option Shares or the Option Price.

(b) **Merger or Asset Sale.** In the event of a merger of the Company with or into another business entity, or the sale of substantially all of the assets of the Company, the Option shall be assumed or an equivalent option or right substituted by the successor entity or its parent or subsidiary (in either case, the "Successor"). In the event that the Successor refuses or otherwise fails to assume or substitute for the Option, (i) the Participant shall immediately vest in and have the right to exercise the Option as to all of the Option Shares, including those Option Shares, if any, as to which the Participant would not otherwise be vested or have the right to exercise; and (ii) the Option shall be exercisable as to all Option Shares for a period of fifteen (15) days from the date the Administrator gives written notice to the Participant stating that a substituted option or right will not be issued by or on behalf of the Successor and that the Option is therefore immediately vested and exercisable as to all Option Shares for fifteen (15) days under this Section 10(b). The Administrator's notice to the Participant under this Section 10(b) shall be given not less than fifteen (15) days prior to the closing of such merger or asset sale. If

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the Option is not exercised within the fifteen (15) day exercise period provided under this Section 10(b), the Option and all rights of the Participant thereunder will terminate. For the purposes of this Section 10(b), the Option shall be considered assumed if, following the merger or sale of assets, the equivalent option or substituted right confers the right to purchase or receive, for each Option Share subject to the Option on the effective date of the transaction, the same consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or sale of assets is not solely common stock of the successor entity or its parent or subsidiary, the Administrator may, with the consent of the Successor, provide for the consideration to be received upon the exercise of the Option, for each Option Share, to be solely common stock of the successor entity or its parent or subsidiary that is equal in fair market value to the per share consideration received by holders of Common Stock in the merger or sale of assets. No substitution shall require the Company, the successor entity, or its parent or subsidiary to issue or sell a fractional share and the total substitution shall be limited accordingly.

**11. Taxes.** The Participant agrees to satisfy all applicable federal, state and local income and employment tax withholding obligations with respect to any exercise of the Option.

**12. Binding Effect.** This Agreement shall be construed in accordance with the provisions of the Plan as implemented from time to time by the Administrator and shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**13. Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Wisconsin.

14. **Notices.** The Exercise Notice, in the form attached hereto, shall only be considered given by the Participant and received by the Company when actually received by an officer of the Company along with (a) full payment for the Option Shares being purchased thereby, (b) a fully executed copy of the Shareholder Agreement required under Section 6, above, and (c) the Participant's satisfaction of any income or employment tax withholding obligations, as required by Sections 5, 7, and 11, above. Any other notice or other communication required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered to be given and received in all respects (i) when personally delivered to a party, (ii) on the next business day following the date on which it is sent via reputable overnight courier service; (iii) five (5) days after being sent by certified or registered United States mail, postage prepaid, return receipt requested, or (iv) when transmitted by fax if confirmation of receipt is printed on the sending fax machine. Any notice to the Participant shall be addressed to that address last appearing on the Company's records. Any notice to the Company shall be addressed to the Company's Chief Executive Officer at the Company's then principal place of business.

15. **No Continuing Rights.** This Agreement shall not confer upon the Participant any right with respect to continuation of employment by or service to the Company, alter the

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Participant's at-will employment status, if applicable, or interfere in any way with the right of the Company to terminate the Participant's employment or service to the Company at any time with or without notice, except as may otherwise be provided in any other written agreement between the Participant and the Company.

**IN WITNESS WHEREOF**, the parties have signed this Agreement as of the date first above written.

**TOMOTHERAPY INCORPORATED**

By: \_\_\_\_\_

Paul Reckwerdt, President

The undersigned Participant hereby accepts the foregoing Option and agrees to the terms and conditions of this Stock Option Agreement and of the Plan.

**PARTICIPANT**

\_\_\_\_\_  
Signature of Participant

\_\_\_\_\_  
print name

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**TomoTherapy Incorporated 2000 Stock Option Plan**  
**Exhibit A to Stock Option Agreement**

**EXERCISE NOTICE**

1. **Exercise of Option.** Effective as of today, \_\_\_\_\_, 20\_\_\_\_, the undersigned (the "Participant") hereby elects to exercise the Participant's option (the "Option") to purchase \_\_\_\_\_ shares of the Common Stock (the "Shares") of **TOMOTHERAPY INCORPORATED** (the "Company") under and pursuant to the Company's 2000 Stock Option Plan (the "Plan") and the Participant's Stock Option Agreement dated \_\_\_\_\_, 200\_\_\_\_ (the "Option Agreement").

2. **Representations of the Participant.** The Participant acknowledges that the Participant has received, read, and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions. The Participant also acknowledges that as a condition of exercise, the Participant agrees to execute and be bound by a shareholder agreement that places restrictions on transfer of the Shares and grants the Company the right to repurchase the Shares upon the occurrence of certain events (the "Shareholder Agreement").

3. **Rights as Shareholder.** Until (a) the stock certificate evidencing the Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) and delivered to the Participant, and (b) the Shareholder Agreement is executed and delivered by the Participant, no right to vote or receive dividends or any other rights as a shareholder of the Company shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue and deliver (or cause to be issued and delivered) such stock certificate promptly after the Option is exercised and the Shareholder Agreement is executed and delivered to the Company.

Thereafter, the Participant shall enjoy rights as a shareholder until such time as the Participant disposes of the Shares or the Company and/or its assignee(s) exercises its right of first refusal or any repurchase right contained in the Shareholder Agreement. Upon such exercise, the Participant shall have no further rights as a holder of the Shares except the right to receive payment for the Shares so purchased in accordance with the provisions of the Shareholder Agreement, and the Participant shall cause the certificate(s) evidencing the Shares to be surrendered to the Company for transfer or cancellation.

4. **Delivery of Payment.** The Participant shall deliver payment of the aggregate Option Price for the Shares to the Company with this Exercise Notice.

5. **Tax Consultation.** The Participant understands that the Participant may suffer adverse tax consequences as a result of the Participant's purchase or disposition of the Shares. The Participant represents that the Participant has consulted with any tax consultants that the Participant deems advisable in connection with the purchase or disposition of the Shares and that the Participant is not relying on the Company for any tax advice.

6. **Taxes.** The Participant agrees to satisfy all applicable federal, state, and local income and employment tax withholding obligations incurred as a result of this exercise and shall have either (a) delivered to the Company with this Exercise Notice the full amount of such

obligations, or (b) made arrangements acceptable to the Company to otherwise satisfy such obligations. In the case of an Incentive Stock Option, the Participant also agrees, as partial consideration for the designation of the Option as an Incentive Stock Option, to notify the Company in writing within thirty (30) days of any disposition of any shares acquired by exercise of the Option if such disposition occurs within two (2) years from the date of the Option Agreement or within one (1) year from the date such shares were purchased by the Participant. If the Company is required to satisfy any federal, state or local income or employment tax withholding obligations as a result of such an early disposition, the Participant agrees to satisfy the amount of such withholding in a manner that the Administrator prescribes.

7. **Interpretation.** Any dispute regarding the interpretation of this Exercise Notice shall be submitted by the Participant or by the Company to the Administrator of the Plan, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all persons.

8. **Successors and Assigns.** The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon the Participant and his or her heirs, executors, administrators, successors, and assigns.

9. **Governing Law; Severability.** This Exercise Notice shall be governed by and construed in accordance with the laws of the State of Wisconsin. Should any provision of this Exercise Notice be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and enforceable.

10. **Notices.** Any notice required under Section 6, above, shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, with postage and fees prepaid, addressed to the Company at its then principal place of business. The Participant acknowledges, however, that this Exercise Notice is not effective until actually received by an officer of the Company pursuant to Section 14 of the Option Agreement.

11. **Further Instruments.** The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this agreement.

Submitted by:  
PARTICIPANT

Accepted by:  
TOMOTHERAPY INCORPORATED

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_

print name: \_\_\_\_\_

Its: \_\_\_\_\_

**TOMOTHERAPY INCORPORATED**  
**2002 STOCK OPTION PLAN**

**1. Purpose.** The purpose of the TomoTherapy Incorporated 2002 Stock Option Plan (the "Plan") is to provide favorable opportunities to certain employees, members of the Board of Directors, and advisors of TomoTherapy Incorporated (the "Company"), to acquire or increase their stock ownership in the Company, to provide an incentive to such individuals to promote the financial success of the Company, and to attract and retain the personnel necessary for the Company's continued growth and profitability.

Pursuant to the Plan, options to purchase the Company's common stock ("Options") may be granted by the Company. Options granted under the Plan may be either "Incentive Stock Options," as defined in Section 422(b) of the Internal Revenue Code of 1986, as amended (the "Code"), or Options that do not meet the requirements of Section 422(b) of the Code ("Nonqualified Stock Options").

**2. Effective Date and Term of Plan.** The Plan shall be effective as of August 16, 2002, and shall continue for a period of ten (10) years thereafter unless sooner terminated as provided in Paragraph 16.

**3. Approval of Shareholders.** The Plan is subject to the approval of the shareholders of the Company. If it is not so approved on or before one year after the date of adoption of the Plan by the Board of Directors, the Plan shall not come into effect and any Options granted pursuant to the Plan shall be deemed cancelled. No Option may be exercised prior to approval of the Plan by the shareholders.

**4. Stock Subject to Plan.** Only common stock, \$0.01 par value per share, of the Company ("Common Stock") may be issued pursuant to Options granted under the Plan. The maximum number of shares Common Stock that may be issued pursuant to the exercise of Options granted under the Plan is **Five Thousand Nine Hundred Twenty-one (5,921)** shares, subject to any adjustments provided in Paragraph 15 (the "Option Shares"), all of which may be reserved for issuance and issued pursuant to the exercise of Incentive Stock Options awarded under this Plan. The Option Shares may be authorized and unissued, or issued and reacquired, shares of Common Stock, as the Board of Directors may determine. Option Shares with respect to which Options are not exercised prior to termination shall be available for future grants under the Plan.

**5. Administration.** The Plan shall be administered by the Board of Directors of the Company or a committee of the Board of Directors (in either case, the "Administrator"). Subject to the express provisions of the Plan, the Administrator shall have complete authority in its discretion, to determine those persons ("Participants") to whom Options shall be granted, the option price, the option periods and the number of shares to be subject to each Option. Subject to the express provisions of the Plan, the Administrator shall also have the authority in its discretion to prescribe the time or times at which Options may be exercised, the limitations upon

the exercise of Options (including limitations effective upon the death, disability or termination of employment of any Participant) and the restrictions, if any, to be imposed upon the transferability of shares acquired upon exercise of Options. In making such determinations, the Administrator may take into account the nature of the services rendered by the respective Participants, their present and potential contributions to the success of the Company and such other factors as the Administrator in its discretion shall deem relevant. Subject to the express provisions of the Plan, the Administrator shall also have complete authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan, to determine the terms and provisions of the respective option agreements (which need not be identical), to determine whether the shares delivered upon exercise of Options will be treasury shares or will be authorized but previously unissued shares and to make all other determinations necessary or advisable for the administration of the Plan. The Administrator's determinations on the matters referred to in this paragraph shall be conclusive. Options granted pursuant to the Plan shall be evidenced by stock option agreements between the Company and the Participant to whom the Options are granted (the "Option Agreement"), in such form as the Administrator shall from time to time adopt.

**6. Eligibility.** An Option may be granted under the Plan to those current or prospective employees, directors, and advisors designated as eligible to participate by the Administrator (the "Participants"). The Administrator shall inform each individual so designated of his or her eligibility to participate in the Plan. Participation in the Plan shall be entirely voluntary. The foregoing notwithstanding, only employees of the Company are eligible to receive Incentive Stock Options.

**7. Exercise Price.** The exercise price per Option Share under any Option will be determined by the Administrator at the time each Option is granted, but the exercise price for Option Shares under an Incentive Stock Option shall not be less than 100% of the fair market value of a share of Common Stock on the date of grant, as determined by the Administrator. If an Incentive Stock Option is granted to a person who owns, directly or indirectly, stock representing more than 10% of the total combined voting power of all classes of stock of the Company on the date of the grant, the exercise price per Option Share shall not be less than 110% of the fair market value of a share of Common Stock on such date.

**8. Option Periods.** The term of each Option will be for such period as the Administrator shall determine; provided, however, that for an Incentive Stock Option, the term shall not exceed ten (10) years from the date of grant, and further provided that if an Incentive Stock Option is granted to a person who owns, directly or indirectly, stock representing more than 10% of the total combined voting power of all classes of stock of the Company on the date of the grant, the term of such Incentive Stock Option shall not exceed five (5) years from the date of grant. An Option shall be considered granted on the date the Administrator acts to grant the Option or such later date as the Administrator shall specify. Each Option shall be subject to earlier termination as described under Paragraphs 13 and 16 of this Plan.

**9. Exercise of Options.** Each Option may be exercised at any time during the option period for such Option (subject to the restrictions in this Paragraph 9, in Paragraph 13, and in the Option Agreement) by written notice delivered to an officer of the Company, stating

the number of Option Shares with respect to which the Option is being exercised. In no event shall the Company be required to issue fractional shares to a Participant.

**10. Payment for Option Shares.** The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely (i) cash or check, (ii) other shares of Common Stock that have been held by the Participant for more than six months, have not been used within the prior six-month period to exercise an option, either directly or by attestation, and that have an aggregate fair market value on the date of exercise equal to the aggregate exercise price of the Option Shares being purchased, (iii) any combination of the foregoing methods of payment; or (iv) such other consideration and method of payment as may be permitted by the Administrator. Shares of Common Stock tendered under clause (ii), above, shall be duly endorsed in blank or accompanied by stock powers duly endorsed in blank. An Option shall be deemed exercised when the Company receives from the Participant (A) written notice of exercise (in accordance with the Option Agreement), (B) executed copies of any shareholder agreement or other documents then required by the Company and/or the Option Agreement applicable to the Option Shares, and (C) full payment for the Option Shares for which the Option is being exercised, which payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and/or the Plan. Upon exercise of an Option pursuant to this Paragraph 10 and subject to the Participant's satisfaction of all tax withholding obligations as provided in Paragraph 14, below, the Company shall deliver a certificate for the Option Shares purchased by such exercise to the Participant. Such certificates shall bear a legend on the reverse side reflecting the transfer restrictions described in Paragraph 11, below. A holder of an Option shall have none of the rights of a shareholder of the Company until exercise of the Option in accordance with the provisions of this Paragraph 10 and the provisions of the Participant's Option Agreement and until a certificate for the Option Shares has been issued to him or her.

**11. Transfer Restrictions.** Options are not transferable by a Participant other than by will or the laws of descent or distribution, and may be exercised during the lifetime of a Participant only by such Participant. Upon exercise in full or in part of any Option, the Option Shares purchased thereby shall be governed by, and may not be sold or otherwise disposed of except in compliance with, (i) the Company's Bylaws; (ii) the registration requirements of the Securities Act of 1933, as amended, and any applicable state securities laws (unless such transaction is, in the opinion of counsel for the Company, exempt from registration under such Act and laws), and (iii) the restrictions on transfer and other terms set forth in any shareholder agreement between the Participant and the Company and applicable to the Option Shares.

**12. Exercise Limits.** In the case of Incentive Stock Options, if the aggregate fair market value, as of the date the Incentive Stock Options were granted, of all Option Shares (whether pursuant to Incentive Stock Options awarded to the Participant under this Plan or any other plan of the Company that provides for the grant of Incentive Stock Options) that become exercisable for the first time by the Participant during any calendar year exceeds One Hundred Thousand Dollars (\$100,000) or such other limit as may be required by the Code, then that portion of any Incentive Stock Option awarded under this Plan equal to the first \$100,000 of

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such Option Shares will be an Incentive Stock Option, and the remaining portion of the Incentive Stock Option for the amount in excess of \$100,000 that becomes exercisable in that calendar year will thereupon be deemed a Nonqualified Stock Option.

**13. Termination of Employment.**

(a) If the employment of a Participant terminates, or service to the Company by a non-employee terminates, other than for "Cause" (as defined in Paragraph 13(b), below), death, or "Disability" (as defined in Paragraph 13(d), below) pursuant to Paragraphs (b) through (d) of this Paragraph 13, the unvested portions, if any, of all of the Participant's Options shall terminate immediately and the Option Shares reserved for issuance upon exercise of such unvested portions of the Participant's Options shall immediately revert to the Plan. In the event of such a termination, the Participant's right to exercise any Option with respect to those Option Shares that are vested but unexercised, deferred, or unpaid as of the date of such termination shall terminate on the date specified in the Option Agreement, provided that the Participant's right to exercise any vested Incentive Stock Options shall terminate not later than three (3) months following the date on which the Participant's employment or service to the Company terminated, unless the Administrator agrees to extend this period, in which case such extension will render the Options subject to such extension Nonqualified Stock Options. If the Option Agreement does not specify a time within which the vested portion of a Participant's Option must be exercised following the date of termination of employment or service to the Company, the vested portion may be exercised not later than three (3) months after such date. In the event that any Options are not exercised within the time periods specified in the Option Agreement or this Paragraph 13, then all of the Participant's rights under such Options shall be immediately forfeited and all of the Option Shares reserved for issuance upon exercise of such Options shall revert to the Plan. During the exercise periods described in this Paragraph 13(a), the Options shall be exercisable only to the extent provided in the Option Agreement. In all events, an Option will not be exercisable after the end of its term as set forth in the Option Agreement.

(b) If termination of employment is a termination for "Cause," as defined below, then none of the Participant's Options, whether vested or unvested as of the date of such termination, may be exercised, all of the Participant's rights in the Options shall be forfeited, and all of the Option Shares reserved for issuance upon exercise of the Participant's Options shall revert to the Plan. For purposes of this Plan, "Cause" shall mean any of the following: (i) any act, failure to act, conduct, pattern of conduct, or condition injurious or potentially injurious to the business or reputation of the Company; (ii) any conviction for a misdemeanor or felony the circumstances of which the Administrator determines is substantially related to the circumstances of the Participant's job; (iii) the willful and continued failure to perform substantially the Participant's duties for the Company, which failure remains uncured fourteen (14) days after written notice from the Company of such failure; or (iv) theft or fraud by the Participant with respect to the business of the Company.

(c) In the event of a Participant's death, the Participant's estate or beneficiaries shall have such period of time as is specified in the Option Agreement within which to exercise any vested Options held by the Participant under such terms, and to the extent, as

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may be specified in the applicable Option Agreement. Rights to any such vested Options shall pass by will or the laws of descent and distribution.

(d) In the event a Participant's employment is terminated by reason of a "Disability," as defined below, then the vested portions of the Participant's Options shall be exercisable for the period, and to the extent, specified in the Option Agreement. For purposes of this Plan, "Disability" shall mean that a Participant is deemed by the Company to be disabled within the meaning of Section 22(e)(3) of the Code, as such Section may be amended or otherwise modified from time to time, and which currently provides that an individual is permanently and totally disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months. In the event of such Disability, Options may be exercised by, and Option

Shares delivered to, the Participant, if legally competent, or a legally designated guardian or representative if the Participant is legally incompetent by virtue of such Disability.

(e) In the event of either uncertainty as to the interpretation or controversies concerning the application of this Paragraph 13, the Administrator's determinations shall be binding and conclusive.

**14. Tax Withholding.** The Company shall have the right to (i) deduct applicable income and employment taxes from any Option payment, (ii) withhold, at the time of delivery or vesting of Option Shares under the Plan, an appropriate number of Option Shares for payment of such taxes, or (iii) take such other action as may be necessary in the opinion of the Company to satisfy all obligations for withholding of such taxes. The Company may defer making delivery with respect to Option Shares pursuant to exercise of an Option hereunder until arrangements satisfactory to it have been made with respect to any such withholding obligation. If Common Stock is used to satisfy tax withholding, such stock shall be valued based on the fair market value when the tax withholding is required to be made.

**15. Adjustments Upon Changes in Capitalization, Merger, or Asset Sale.** In the event of any change in the outstanding Common Stock of the Company by reason of a stock split, reverse stock split, stock dividend, or reclassification of Common Stock, recapitalization, merger, or similar event, the Administrator may adjust proportionally (a) the number of Option Shares (i) reserved under the Plan, (ii) available for reservation and issuance pursuant to exercise of Incentive Stock Options, (iii) for which Options may be granted to an individual Participant under the Plan, and (iv) covered by outstanding Options; (b) the applicable exercise prices related to outstanding Options; and (c) the appropriate fair market value and other price determinations for such Options. In the event of any other change affecting the Common Stock or any distribution (other than normal cash dividends) to holders of Common Stock, such adjustments as may be deemed equitable by the Administrator, including adjustments to avoid fractional shares, shall be made to give proper effect to such event. In the event of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization or liquidation, the Administrator shall be authorized to issue or assume stock options, whether or not in a transaction to which Section 424(a) of the Code applies, by means of substitution of new stock options for previously issued stock options or an assumption of previously issued stock options.

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The determination of the Administrator as to any such adjustment or substitution shall be final and conclusive. No adjustment or substitution shall require the Company to issue or sell a fractional share and the total adjustment or substitution shall be limited accordingly.

**16. Amendment, Suspension or Termination.** The Board of Directors, without further approval of the shareholders, may from time to time amend, suspend or terminate the Plan in such respects as the Board may deem advisable, provided, however, that no amendment shall become effective without prior approval of the shareholders if such amendment would, with respect to Incentive Stock Options, (i) increase the aggregate number of Option Shares that may be issued pursuant to Options granted under the Plan, except as permitted under Paragraph 15, or (ii) increase the maximum number of Option Shares that may be issued pursuant to Incentive Stock Options granted under the Plan to any individual in any twelve month period. No amendment shall, without a Participant's written consent, alter or impair any of the rights or obligations under any outstanding Options.

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**First Amendment  
to  
TOMOTHERAPY INCORPORATED  
2002 STOCK OPTION PLAN**

1. Pursuant to the following resolutions approved by (i) the unanimous written consent of the Board of Directors, and (ii) the shareholders of the Company at a Special Meeting of the Shareholders on February 13, 2004, effective in both cases, February 13, 2004, the Board of Directors and the Shareholders approved amending the TomoTherapy Incorporated 2002 Stock Option Plan as described below.

(a) Resolution approved by unanimous written consent of the Board of Directors:

**"RESOLVED**, that Section 4 of the TomoTherapy Incorporated 2002 Stock Option Plan (the "Plan") be amended by adding 77,731 shares of the Corporation's Common Stock to the maximum number of shares that may be issued pursuant to the exercise of options granted under the Plan, thereby increasing the current maximum number of shares from 296,050 to 373,781 shares of Common Stock."

(b) Resolution approved by majority vote of the Company's shareholders:

**"RESOLVED**, that an amendment to Section 4 of the TomoTherapy Incorporated 2002 Stock Option Plan (the "Plan") that adds 77,731 shares of the Corporation's Common Stock to the maximum number of shares that may be issued pursuant to the exercise of options granted under the Plan, thereby increasing the current maximum number of shares from 296,050 to 373,781 shares of Common Stock, is hereby approved."

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**Second Amendment  
to  
TOMOTHERAPY INCORPORATED  
2002 STOCK OPTION PLAN**

1. Pursuant to the following resolutions approved by (i) the unanimous written consent of the Board of Directors, and (ii) the shareholders of the Company at a Special Meeting of the Shareholders on November 15, 2004, the Board of Directors and the Shareholders approved amending the TomoTherapy Incorporated 2002 Stock Option Plan as described below.

- (a) Resolution approved by unanimous written consent of the Board of Directors:

**“NOW, THEREFORE, BE IT RESOLVED**, that Section 4 of the TomoTherapy Incorporated 2002 Stock Option Plan (the “Plan”) be amended by adding 500,000 shares of the Corporation’s Common Stock to the maximum number of shares that may be issued pursuant to the exercise of options granted under the Plan, thereby increasing the current maximum number of            shares of Common Stock that may be issued under the Plan from 373,781 to 873,781, and that such amendment be proposed to the shareholders of the Corporation for their approval.”

- (b) Resolution approved by majority vote of the Company’s shareholders:

**“RESOLVED**, that an amendment to Section 4 of the TomoTherapy Incorporated 2002 Stock Option Plan (the “Plan”) that adds 500,000 shares of the Corporation’s Common Stock to the maximum number of shares that may be issued pursuant to the exercise of options granted under the Plan, thereby increasing the current maximum number of shares from 373,781 to 873,781 shares of Common Stock, is hereby approved.”

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**Third Amendment  
to  
TOMOTHERAPY INCORPORATED  
2002 STOCK OPTION PLAN**

1. Pursuant to the following resolutions approved by (i) the unanimous written consent of the Board of Directors, and (ii) the shareholders of the Company at a Special Meeting of the Shareholders on June 29, 2005, the Board of Directors and the Shareholders approved amending the TomoTherapy Incorporated 2002 Stock Option Plan as described below.

- (a) Resolution approved by the Board of Directors:

**“NOW, THEREFORE, BE IT RESOLVED**, that immediately following the effective time and date of the Company’s Amended and Restated Articles of Incorporation effecting a 4-for-1 stock split, Section 4 of the TomoTherapy Incorporated 2002 Stock Option Plan (the “Plan”) be amended by adding 2,000,000 (post-split) shares of the Company’s Common Stock to the maximum number of shares that may be issued pursuant to the exercise of options granted under the Plan, thereby increasing the current maximum number of            shares of Common Stock that may be issued under the Plan from 3,495,124 (post-split) to 5,495,124 (post-split), and that such amendment be proposed to the shareholders of the Company for their approval.”

- (b) Resolution approved by majority vote of the Company’s shareholders:

**“RESOLVED**, that immediately following the effective time and date of the Company’s Amended and Restated Articles of Incorporation effecting a 4-for-1 stock split, Section 4 of the TomoTherapy Incorporated 2002 Stock Option Plan (the “Plan”) be amended by adding 2,000,000 (post-split) shares of the Company’s Common Stock to the maximum number of shares that may be issued pursuant to the exercise of options granted under the Plan, thereby increasing the current maximum number of shares of Common Stock that may be issued under the Plan from 3,495,124 (post-split) to 5,495,124 (post-split).”

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**Fourth Amendment  
to  
TOMOTHERAPY INCORPORATED  
2002 STOCK OPTION PLAN**

1. Pursuant to the following resolutions approved by (i) the Board of Directors of the Company at a meeting held on November 14, 2006, and (ii) the shareholders of the Company at a Special Meeting of the Shareholders on December 7, 2006, the Board of Directors and the Shareholders approved amending the TomoTherapy Incorporated 2002 Stock Option Plan as described below.

- (a) Resolution approved by the Board of Directors:

**“FURTHER RESOLVED**, that the Board of Directors hereby recommends to the shareholders of the Corporation to amend Section 4 of the 2002 Stock Option Plan to increase the maximum number of shares of Common Stock that may be issued pursuant to the exercise of Options granted under the Plan to 7,895,124.”

- (b) Resolution approved by majority vote of the Company’s shareholders:

**“FURTHER RESOLVED**, that the Shareholders hereby approve the Fourth Amendment to the 2002 Stock Option Plan, substantially in the form distributed with the Notice of the Special Meeting of Shareholders, to increase the maximum number of shares of Common Stock that may be issued pursuant to the exercise of Options granted under the Plan to 7,895,124.”

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**Amendments to the Incentive Stock Option Plan,  
2000 Stock Option Plan, and 2002 Stock Option Plan, as amended**

**Adopted April 16, 2007**

1. Maximum Shares Reserved

Section 4 of each Plan shall be amended to provide that the maximum number of Shares that may be issued pursuant to the exercise of options under the Plan is: (i) 192,500 Shares under the Incentive Stock Option Plan; (ii) 125,080 Shares under the Corporation's 2000 Stock Option Plan; and (iii) 5,151,946 Shares under Corporation's 2002 Stock Option Plan, as amended.

## 2. Certain Reserved Shares Released

The following Shares previously reserved for issuance upon the exercise of options granted shall be released from reservation under the Plans: (i) 39,452 Shares under the Corporation's Incentive Stock Option Plan; (ii) 32,480 Shares under the Corporation's 2000 Stock Option Plan; (iii) 1,621,074 Shares under the Corporation's 2002 Stock Option Plan, as amended; and (iv) all Shares underlying outstanding options that are cancelled prior to exercise.

## 3. New Grants Prohibited

Neither the Committee (as defined in the Incentive Stock Option Plan) nor the Administrator (as defined in each of the 2000 Stock Option Plan and 2002 Stock Option Plan) shall grant or otherwise authorize the grant of options under the respective Plan which it administers.

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# TOMOTHERAPY INCORPORATED STOCK OPTION AGREEMENT (Incentive Stock Option)

This Stock Option Agreement (this "Agreement") is made as of (**Grant Date**), by and between **TomoTherapy Incorporated** (the "Company") and (**Employee Name**) (the "Participant").

## Background

The Company has adopted the TomoTherapy Incorporated 2002 Stock Option Plan (the "Plan") to encourage certain employees, directors, and advisors of the Company to acquire or increase their stock ownership in the Company, to provide an incentive to such individuals to promote the financial success of the Company, and to enable the Company to attract and retain personnel necessary for continued growth and profitability. Terms not otherwise defined in this Agreement have the meanings ascribed to them in the Plan.

The Company considers it desirable and in its best interest to grant the Participant an option to purchase shares of the common stock, par value \$0.01, of the Company ("Common Stock").

The option granted under this Agreement is intended by the parties to be, and shall be treated as, an "Incentive Stock Option," as defined in Section 422(b) of the Internal Revenue Code of 1986, as amended (the "Code"). To the extent, if any, that the option granted under this Agreement does not, as of the date of this Agreement or any date hereafter, qualify as an Incentive Stock Option under the terms of this Agreement, the Plan, or Section 422(b) of the Code, it is the intent of the parties that all or that portion of the option granted under this Agreement that does not so qualify shall be, and shall be treated and referred to in this Agreement as, a "Nonqualified Stock Option," as that term is defined in the Plan.

## Agreement

In consideration of the mutual covenants set forth below, it is agreed as follows:

**1. Grant of Option.** The Company hereby grants the Participant the option (the "Option") to purchase up to (**number of shares**) shares of the Common Stock of the Company (the "Option Shares"), subject to the terms and conditions of this Agreement.

**2. Exercise Price.** The purchase price for the Option Shares shall be \$     per share, which is the fair market value of the shares on the date of this Agreement (the "Exercise Price").

### 3. **Term of the Option and Vesting.**

**(a)** In all events, if the Option is not terminated earlier pursuant to the provisions of Sections 8 or 10(b), below, the Option shall expire and all of the Participant's rights under the

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Option shall terminate as of 5 p.m. Central Time on the sixth (6<sup>th</sup>) anniversary of the date of this Agreement (the "Option Termination Date").

**(b)** Subject to the accelerated vesting provided in Sections 3(c) and 10(b), below, and subject to the limitations and termination provisions of Sections 7 and 8, below, the Option shall vest, and the Participant shall have the right to exercise the Option with respect to such vested Option Shares, according to the following schedule:

(i) Twenty-five percent (25%) of the Option Shares shall vest on the first anniversary of the date of this Agreement; and,

(ii) An additional twenty-five (25%) of the Option Shares shall vest thereafter on each of the subsequent three (3) annual anniversaries of such date, provided that as of each such date the Participant continues to be an employee of the Company.

**(c)** Notwithstanding the foregoing vesting schedule in Section 3(b), above, all of the Option Shares shall vest and the Participant shall have the right to exercise the Option to purchase all of the Option Shares, including those Option Shares that would otherwise be unvested, upon the occurrence of any of the following:

(i) the Participant's Involuntary Termination within the period commencing three (3) months prior to and ending twelve (12) months after a Change in Control, as those terms are defined in Sections 3(d) and 3(e), respectively, below;

(ii) the Participant's death; or

(iii) the Participant's Disability, as defined in Section 3(f), below.

**(d)** For purposes of this Agreement, the term "Change in Control" shall mean the occurrence of any of the following after the date of this Agreement:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes the "beneficial owner" (as defined in Rule 13d-3 under such Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities, other than in a private financing transaction approved by the Board of Directors;

(ii) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the outstanding capital stock, other than to an affiliate of the Company as determined by the Board of Directors of the Company;

(iii) a merger or consolidation in which the Company is a party and in which the shareholders of the Company before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such transaction; or

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(iv) the sale or disposition by the Company of all or substantially all of the Company's assets.

**(e)** For purposes of this Section 3 of this Agreement, the term "Involuntary Termination" shall mean the occurrence of any of the following:

(i) unless otherwise agreed in writing between the Participant and the Company, any termination by the Company of the Participant's employment that is effected for any reason other than death, Disability, as defined below, or one or more of the reasons set forth in Section 8(b), below;

(ii) without the Participant's express written consent, a material reduction by the Company in the base compensation or overall employee benefits package of the Participant as in effect immediately prior to such reduction; or

(iii) without the Participant's express written consent, the relocation of the Participant to a facility or a location more than 50 miles from the Participant's then present location.

**(f)** For purposes of this Agreement, the term "Disability" shall mean that the Participant is deemed by the Company to be permanently and totally disabled as that term is defined in Section 22(e)(3) of the Code, as such Section may be amended from time to time and which currently provides that an individual is permanently and totally disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

**4. Method of Exercise.** Subject to the limitations in Sections 3 and 7 and the termination provisions of Sections 8 and 10(b), below, that portion of the Option that is vested may be exercised at any time from the date of this Agreement until 5 p.m. Central Time on the Option Termination Date, as defined in Section 3(a), above, by delivery of the Exercise Notice attached as Exhibit A to an officer of the Company, stating the number of Option Shares with respect to which the Option is being exercised. No partial exercise of such Option may be for less than one (1) share and in no event shall the Company be required to transfer fractional shares to the Participant.

**5. Payment for Option.** At the time of exercise, the Participant shall make full payment of the Exercise Price (i) in cash; (ii) if permitted by the Administrator, by means of tendering shares of Common Stock that have been held by the Participant for more than six months and have not been used within the prior six-month period to exercise an option, either directly or by attestation, valued at fair market value on the date of exercise; or (iii) any combination of (i) and (ii). Shares of Common Stock tendered shall be duly endorsed in blank or accompanied by stock powers duly endorsed in blank. Upon the Company's receipt of (a) the payment of the entire Exercise Price for the Option Shares so purchased, (b) a fully executed copy of the shareholder agreement as provided in Section 6, below, and (c) satisfactory proof of the Participant's

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payment of any income or employment tax withholding obligations, if any, as provided in Sections 7 and 11, below certificates for such shares shall be delivered to the Participant. If the items listed in the preceding sentence, including full payment of the Exercise Price, are not received by the Company at the time of exercise, the Exercise Notice will be deemed null and void, the Company shall not be obligated to deliver a certificate for the Option Shares, and the Company shall have no further obligation with respect to the Exercise Notice or the Option Shares described therein.

**6. Transfer Restrictions and Obligation to Execute Shareholder Agreement.** Upon exercise, in full or in part, of the Option and the issuance of any of the Option Shares pursuant thereto, such Option Shares shall be subject to restrictions on transfer, and the Company will be granted the right to repurchase the issued Option Shares under certain circumstances, including termination of employment, all as set forth in a shareholder agreement in the form required by the Company on the date of such exercise. As a condition to the Participant's right to exercise the Option, in full or in part, the Participant agrees to execute and deliver such shareholder agreement as of the date the Participant first exercises the Option, whether in full or in part, and be bound by the terms of such agreement.

#### **7. Limitations.**

**(a)** If the aggregate fair market value (determined by the Administrator as of the date the Option is granted) of any Option Shares that become exercisable for the first time by the Participant during any calendar year exceeds One Hundred Thousand Dollars (\$100,000) or such other limit as may be required by the Code from time to time, then that amount of the Option attributable to the first \$100,000 worth of Option Shares to become exercisable in

such calendar year will be an Incentive Stock Option, and the remaining portion of the Option for the amount in excess of \$100,000 that become exercisable in that calendar year will be a Nonqualified Stock Option.

(b) The Participant agrees to satisfy all applicable federal, state, and local income and employment tax withholding obligations or other taxes, if any, that may be incurred at any time in connection with the Participant's receipt or exercise of the Option and any subsequent sale or other disposition of any of the Option Shares.

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## 8. Termination.

(a) In all events, the Option shall expire and all of the Participant's rights thereunder shall terminate not later than the Option Termination Date, as defined in Section 3(a), above. Except as expressly provided otherwise in subsections (b) through (d) of this Section 8, if the employment of the Participant terminates, then all of the unvested portion of the Option shall terminate immediately and that portion of the Option that is vested but unexercised shall terminate as of 5 p.m. Central Time upon the earlier of (i) three (3) months after termination of employment with the Company, or (ii) the Option Termination Date. To the extent the Participant fails to exercise the vested portion of the Option within the time specified in the preceding sentence, the Option terminates and all rights of the Participant with respect to the Option are forfeited.

(b) If termination of employment is a termination for "Cause," as defined herein, then the Option, or that portion of it that remains unexercised as of the date of such termination, may not be exercised and all of the Participant's rights in the Option shall be forfeited upon such termination. As used in this Agreement, the term "Cause" shall mean any of the following: (i) any act, failure to act, conduct, pattern of conduct, or condition injurious or potentially injurious to the business or reputation of the Company; (ii) any conviction for a misdemeanor or felony the circumstances of which the Administrator determines is substantially related to the circumstances of the Participant's job; (iii) the willful and continued failure to perform substantially the Participant's duties for the Company, which failure remains uncured fourteen (14) days after written notice from the Company of such failure; or (iv) theft or fraud by the Participant with respect to the business of the Company.

(c) If termination of employment results from the Disability, as defined in Section 3(f), above, of the Participant, the Option may be exercised at any time within one (1) year after such termination of employment, but in no event beyond the Option Termination Date. The Option may be exercised by, and upon such exercise the Option Shares issued to, the Participant if legally competent or a legally designated guardian or representative of the Participant if the Participant is legally incompetent as a result of such Disability.

(d) If termination of employment results from the death of the Participant, the personal representative of the Participant's estate, or a person who by bequest, inheritance, or otherwise by reason of the Participant's death acquired the right to exercise the Option, may exercise the Option at any time within one (1) year after the death of the Participant, but in no event beyond the Option Termination Date.

**9. Nontransferability of Options.** The Option granted hereunder is not transferable by the Participant other than by will or the laws of descent or distribution, and, except as provided in Section 8(c), above, may be exercised during the lifetime of the Participant only by the Participant.

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## 10. Adjustments Upon Changes in Capitalization, Merger, or Asset Sale.

(a) **Changes in Capitalization.** Subject to any required action by the shareholders of the Company, the number of Option Shares subject to the Option, the number of shares of Common Stock that have been authorized for issuance under the Plan but as to which no Options have yet been granted (or which have been returned to the Plan upon cancellation or expiration of an Option), and the Exercise Price, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. No adjustment shall require the Company to issue or sell a fractional share and the total adjustment shall be limited accordingly. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Option Shares or the Exercise Price.

(b) **Merger or Asset Sale.** In the event of a merger of the Company with or into another corporation or other business entity, or the sale of substantially all of the assets of the Company, the Option shall be assumed, as described below, by the successor entity or its parent or subsidiary (in either case, the "Successor") by substitution of an equivalent option or right. If the Successor refuses or otherwise fails to assume the Option, (i) the Participant shall immediately vest in and have the right to exercise the Option as to all of the Option Shares, including those Option Shares as to which the Participant would not otherwise be vested or have the right to exercise; and (ii) the Option shall be exercisable as to all Option Shares for a period of fifteen (15) days from the date the Administrator gives written notice to the Participant stating that a substituted option or right will not be issued by or on behalf of the Successor and that the Option is therefore immediately vested and exercisable as to all Option Shares for fifteen (15) days under this Section 10(b). The Administrator's notice to the Participant under this Section 10(b) shall be given not less than fifteen (15) days prior to the closing of such merger or asset sale. If the Option is not fully exercised within the fifteen (15) day period provided under this Section 10(b), the Option and all rights of the Participant thereunder will terminate. For purposes of this Section 10(b), the Option shall be considered assumed if, following the merger or sale of assets, the equivalent option or substituted right confers the right to purchase or receive, for each Option Share subject to the Option on the effective date of the transaction, the same consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or sale of assets is not solely common stock of the successor entity or its parent or subsidiary, the Administrator may, with the consent of the Successor, provide for the consideration to be received upon the exercise of the Option, for each Option Share, to be solely common stock of the successor entity or its parent or subsidiary equal in fair market value to the per share consideration received by holders of Common Stock in the merger or sale of assets. No such substitution shall require the

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Company, the successor entity, or its parent or subsidiary to issue or sell a fractional share and the total substitution shall be limited accordingly.

**11. Tax Consequences.** Some of the federal tax consequences relating to the exercise of this Option or the disposition of the Option Shares, as of the date of this Agreement, are set forth below. **This Summary is not complete, and the tax laws and regulations are subject to change. The Participant should consult a tax advisor before exercising this Option or disposing of any of the Option Shares.**

**(a) Exercise of an Incentive Stock Option.** With respect to that portion of the Option that qualifies as an Incentive Stock Option, the Participant will have no regular federal income tax liability upon its exercise, although the excess, if any, of the fair market value of the Option Shares on the date of exercise over their aggregate Exercise Price will be treated as an adjustment to the alternative minimum tax for federal tax purposes and may subject the Participant to alternative minimum tax in the year of exercise. In addition, after the date of this Agreement, the Code and/or the regulations thereunder may be amended so as to require the Participant to pay, and the Company to withhold, at the time of exercise employment taxes on the excess, if any, of the fair market value of the Option Shares on the date of exercise over their aggregate Exercise Price.

**(b) Exercise of Non-Qualified Stock Option.** With respect to that portion, if any, of the Option that qualifies as a Non-Qualified Stock Option, the Participant will be treated as having received compensation income (taxable at ordinary income rates) equal to the excess, if any, of the fair market value of the Option Shares on the date of exercise over their aggregate Exercise Price, and the Company will be required to withhold from the Participant's compensation or collect from the Participant (if the Participant is no longer employed by the Company) and pay to the applicable taxing authorities at the time of exercise an amount in cash equal to a percentage of this compensation income, and the Company may refuse to deliver the Option Shares if such withholding amounts are not delivered at the time of exercise.

**(c) Disposition of Option Shares.** If Option Shares acquired pursuant to exercise of that portion of this Option that qualifies as an Incentive Stock Option are held by the Participant until the later of one year from the date of their acquisition or the second anniversary of this Agreement, any gain realized by the Participant on the subsequent sale of such Option Shares will be treated as long term capital gain for federal income tax purposes. Conversely, if any Option Shares are sold either within one year of their acquisition or prior to the second anniversary of this Agreement, any gain realized by the Participant on such sale will be treated as compensation income (taxable at ordinary income tax rates) to the extent of the difference between the aggregate Exercise Price and the lesser of (i) the fair market value of such Option Shares on the date of exercise, or (ii) the sale price of such Option Shares. Any additional gain will be taxed as capital gain, short-term or long-term depending on the period that the Option Shares were held. In the case of Option Shares acquired pursuant to exercise of that portion, if any, of this Option that qualifies as a Non-Qualified Stock Option, if such Option Shares are held by the Participant for at least one year after their acquisition, any gain realized on their subsequent sale will be treated as long-term capital gain for federal income tax purposes.

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**(d) Notice of Disqualifying Disposition of Option Shares.** If the Participant sells or otherwise disposes of any of the Option Shares acquired pursuant to exercise of that portion of this Option that qualifies as an Incentive Stock Option before the later of (i) one year after the exercise date, or (ii) the second anniversary of this Agreement, the Participant shall immediately notify the Company in writing of such disposition. The Participant acknowledges that he or she may be subject to income tax withholding by the Company on the compensation income recognized from such early disposition of the Option Shares by payment in cash or out of the current earnings paid to the Participant.

**(e) Determination of Fair Market Value of the Option Shares.** Notwithstanding the Company's good faith determination of the fair market value of the Company's Common Stock for purposes of determining the Exercise Price of the Options as set forth in the Notice, the taxing authorities may assert that the fair market value of the Option Shares on the Date of Award was greater than the Exercise Price. If designated in the Notice as an Incentive Stock Option, the Option may fail to qualify as an Incentive Stock Option if the Exercise Price of the Option is less than the fair market value of the Common Stock on the date of this Agreement. In addition, under Section 409A of the Code, if the Exercise Price of the Option is less than the fair market value of the Common Stock on the date of this Agreement, the Option may be treated as a form of deferred compensation and the Participant may be subject to an additional 20% tax, plus interest and possible penalties. The Participant is encouraged to consult a tax adviser regarding the potential impact of Section 409A of the Code.

**(f) Compliance with Section 409A of the Code.** The Participant acknowledges that the Company, in the exercise of its sole discretion and without the consent of the Participant, may amend or modify this Agreement in any manner and delay the payment of any amounts payable pursuant to this Agreement to the minimum extent necessary to meet the requirements of Section 409A of the Code as amplified by any Internal Revenue Service or U.S. Treasury Department regulations or guidance as the Company deems appropriate or advisable.

**12. Binding Effect.** This Agreement shall be construed in accordance with the provisions of the Plan as implemented from time to time by the Administrator (as defined in the Plan) and shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**13. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

**14. Notices.** The Exercise Notice, in the form attached hereto, shall only be considered given by the Participant and received by the Company when actually received by an officer of the Company along with (a) full payment for the Option Shares being purchased thereby, (b) a fully executed copy of the shareholder agreement required under Section 6, above, and (c) the Participant's satisfaction of any income or employment tax withholding obligations, as required by Sections 5, 7, and 11, above. Any other notice or other communication required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered to be given and received in all respects (i) when personally delivered to a party, (ii) on the next business day following the date on which it is sent via reputable overnight courier service; (iii) five (5) days after being sent by certified or registered United States mail, postage prepaid, return

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receipt requested, or (iv) when transmitted by fax if confirmation of receipt is printed on the sending fax machine. Any notice to the Participant shall be addressed to that address last appearing on the Company's records. Any notice to the Company shall be addressed to the Company's Chief Executive Officer

at the Company's then principal place of business.

**15. No Continuing Rights.** This Agreement shall not confer upon the Participant any right with respect to continuation of employment by the Company, alter the Participant's at-will employment status, or interfere in any way with the right of the Company to terminate the Participant's employment to the Company at any time with or without notice, except as may otherwise be provided in any other written agreement between the Participant and the Company.

**IN WITNESS WHEREOF**, the parties have signed this Agreement as of the date first above written.

**TOMOTHERAPY  
INCORPORATED**

By: \_\_\_\_\_  
Paul Reckwerdt, President

The undersigned Participant hereby accepts the foregoing Option and agrees to the terms and conditions of this Stock Option Agreement and of the Plan.

**PARTICIPANT:**

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

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**Exhibit A  
to Stock Option Agreement  
EXERCISE NOTICE**

**1. Exercise of Option.** Effective as of today, \_\_\_\_\_, 20\_\_\_\_, the undersigned (the "Participant") hereby elects to exercise the Participant's option (the "Option") to purchase \_\_\_\_\_ shares of the Common Stock (the "Shares") of **TomoTherapy Incorporated** (the "Company") under and pursuant to the Company's 2002 Stock Option Plan (the "Plan") and the Participant's Stock Option Agreement with the Company dated (the "Option Agreement").

**2. Representations of the Participant.** The Participant acknowledges that the Participant has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions. The Participant also acknowledges that as a condition of exercise, the Participant agrees to execute and be bound by a shareholder agreement that places restrictions on transfer of the Shares and grants the Company the right to repurchase the Shares upon the occurrence of certain events, including termination of employment (the "Shareholder Agreement").

**3. Rights as Shareholder.** Until (a) the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) and delivered to the Participant, and (b) the Shareholder Agreement is executed and delivered by the Participant, no right to vote or receive dividends or any other rights as a shareholder of the Company shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue and deliver (or cause to be issued and delivered) such stock certificate promptly after the Option is exercised and the Shareholder Agreement is executed and delivered to the Company.

Thereafter, the Participant shall enjoy rights as a shareholder until such time as the Participant disposes of the Shares or the Company and/or its assignee(s) exercises its right of first refusal or the repurchase rights contained in the Shareholder Agreement. Upon such exercise, the Participant shall have no further rights as a holder of the Shares except the right to receive payment for the Shares so purchased in accordance with the provisions of the Shareholder Agreement, and the Participant shall cause the certificate(s) evidencing the Shares to be surrendered to the Company for transfer or cancellation.

**4. Delivery of Payment.** The Participant shall deliver payment of the aggregate Exercise Price for the Shares to the Company with this Exercise Notice.

**5. Tax Consultation.** The Participant understands that the Participant may suffer adverse tax consequences as a result of the Participant's purchase or disposition of the Shares. The Participant represents that the Participant has consulted with any tax consultants that the Participant deems advisable in connection with the purchase or disposition of the Shares and that the Participant is not relying on the Company for any tax advice.

**6. Taxes.** The Participant agrees to satisfy all applicable federal, state and local income and employment tax withholding obligations, if any, incurred as a result of this exercise and shall have either (a) delivered to the Company with this Exercise Notice the full amount of such

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obligations, or (b) made arrangements acceptable to the Company to satisfy such obligations. In the case of an Incentive Stock Option, the Participant also agrees, as partial consideration for the designation of the Option as an Incentive Stock Option, to notify the Company in writing within thirty (30) days of any disposition of any shares acquired by exercise of the Option if such disposition occurs within two (2) years from the date of the Option Agreement or within one (1) year from the date such Shares were purchased by the Participant. If the Company is required to satisfy any federal, state or local income or employment tax withholding obligations as a result of such an early disposition, the Participant agrees to satisfy the amount of such withholding in a manner that the Administrator prescribes.

**7. Interpretation.** Any dispute regarding the interpretation of this Exercise Notice shall be submitted by the Participant or by the Company to the Administrator of the Plan, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all persons.

**8. Successors and Assigns.** The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon the Participant and his or her heirs, executors, administrators, successors and assigns.

**9. Governing Law; Severability.** This Exercise Notice shall be governed by and construed in accordance with the laws of the State of Wisconsin. Should any provision of this Exercise Notice be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and enforceable.

**10. Notices.** Any notice required under Section 6, above, shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, with postage and fees prepaid, addressed to the Company at its then principal place of business. The Participant acknowledges, however, that this Exercise Notice is not effective until actually received by an officer of the Company pursuant to Section 14 of the Option Agreement.

**11. Further Instruments.** The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this agreement.

Submitted by:  
PARTICIPANT

Accepted by:  
TOMOTHERAPY INCORPORATED

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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**TOMOTHERAPY INCORPORATED**  
**STOCK OPTION AGREEMENT**  
(Non-Qualified Stock Option)

This Stock Option Agreement (this "Agreement") is made as of [Date], by and between TomoTherapy Incorporated (the "Company") and [Name] (the "Participant").

**Background**

The Company has adopted the TomoTherapy Incorporated 2002 Stock Option Plan (the "Plan") to encourage certain employees, directors, and advisors of the Company to acquire or increase their stock ownership in the Company, to provide an incentive to such individuals to promote the financial success of the Company, and to attract and retain the personnel necessary for the Company's continued growth and profitability. Terms not otherwise defined in this Agreement have the meanings ascribed to them in the Plan.

The Company considers it desirable and in its best interest to grant the Participant an option to purchase shares of the Company's common stock, par value \$0.01 per share ("Common Stock").

The option granted under this Agreement is intended by the parties to be, and shall be treated as, a "Nonqualified Stock Option," as that term is defined in the Plan.

**Agreement**

In consideration of the mutual covenants set forth below, it is agreed as follows:

**1. Grant of Option.** The Company hereby grants the Participant the option (the "Option") to purchase up to [Number] (#####) shares of the Common Stock of the Company (the "Option Shares"), subject to the terms and conditions of this Agreement.

**2. Exercise Price.** The purchase price for the Option Shares shall be [Amount] (\$#.##) per share, which is the fair market value of the Common Stock on the date of this Agreement (the "Exercise Price").

**3. Term of the Option and Vesting.**

(a) In all events, if the Option is not terminated earlier pursuant to the provisions of Sections 8 or 10(b), below, the Option shall expire and all of the Participant's rights under the Option shall terminate as of 5 p.m. Central Time on the **sixth** anniversary of the date of this Agreement (the "Option Termination Date").

(b) Subject to the accelerated vesting provided in Section 3(c), below, and subject to the termination provisions of Section 8, below, the Option shall vest, and the Participant shall

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have the right to exercise the Option with respect to such vested Option Shares according to the following schedule:

(i) twenty-five percent (25%) of the Option Shares shall vest as of the date of this Agreement, which is hereafter referred to as the "Vesting Commencement Date"; and

(ii) An additional twenty-five percent (25%) of the Option Shares shall vest thereafter on each of the following three (3) annual anniversaries of such date, provided that the Participant continues to be a director, advisor, consultant, or employee of the Company as of each such anniversary.

(c) Notwithstanding the foregoing vesting schedule in Section 3(b), above, all of the Option Shares shall vest and the Participant shall have the right to exercise the Option to purchase all of the Option Shares, including those Option Shares that would otherwise be unvested, upon the occurrence of any of the following:

(i) the Participant's Involuntary Termination within the period commencing three (3) months prior to and ending twelve (12) months after a "Change in Control," as those terms are defined in Sections 3(d) and (e), respectively, below;

(ii) the death of the Participant; or

(iii) the Participant's "Disability," as defined in Section 3(f), below.

(d) For purposes of this Agreement, the term "Change in Control" shall mean the occurrence of any of the following after the date of this Agreement:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes the "beneficial owner" (as defined in Rule 13d-3 promulgated under such Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities, other than in a private financing transaction approved by the Board of Directors;

(ii) the direct or indirect sale or exchange by the shareholders of the Company of all or substantially all of the outstanding capital stock, other than to an affiliate of the Company as determined by the Board of Directors of the Company;

(iii) a merger or consolidation in which the Company is a party and in which the shareholders of the Company before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such transaction; or

(iv) the sale or disposition by the Company of all or substantially all the Company's assets.

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(e) For purposes of this Section 3 of this Agreement, the term "Involuntary Termination" shall mean the occurrence of any of the following:

(i) unless otherwise agreed in writing between the Participant and the Company, any termination by the Company of the Participant's employment or service as an advisor or director that is effected for any reason other than death, Disability, as defined below, or one or more of the reasons set forth in Section 8(b), below;

(ii) without the Participant's express written consent, a material reduction by the Company in the base compensation or overall employee or advisor/director benefits package of the Participant as in effect immediately prior to such reduction; or

(iii) without the Participant's express written consent, the relocation of the Participant to a facility or a location more than 50 miles from the Participant's then present location.

(f) For purposes of this Agreement, the term "Disability" shall mean that the Participant is deemed by the Company to be permanently and totally disabled within the meaning of Section 22(e)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), as such Section may be amended or otherwise modified from time to time and which currently provides that an individual is permanently and totally disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

**4. Method of Exercise.** Subject to the termination provisions of Sections 8 and 10(b), below, that portion of the Option that is vested may be exercised at any time from the date of this Agreement until 5 p.m. Central Time on the Option Termination Date, as defined in Section 3(a), above, by delivery of the Exercise Notice attached hereto as Exhibit A to an officer of the Company, stating the number of Option Shares with respect to which the Option is being exercised. No partial exercise of the Option may be for less than one (1) share, and in no event shall the Company be required to transfer fractional shares to the Participant.

**5. Payment for Option Shares.** At the time of exercise, the Participant shall make full payment of the Exercise Price (i) in cash; (ii) if permitted by the Administrator, by tendering shares of Common Stock that have been held by the Participant for more than six months and have not been used within the prior six-month period to exercise an option, either directly or by attestation, valued at fair market value on the date of exercise; or (iii) any combination of (i) and (ii). Shares of Common Stock tendered shall be duly endorsed in blank or accompanied by stock powers duly endorsed in blank. Upon the Company's receipt of (a) the payment of the entire Exercise Price for the Option Shares so purchased, (b) a fully executed copy of the shareholder agreement as provided in Section 6, below, and (c) satisfactory proof of the Participant's payment of any income or employment tax withholding obligations as provided in Section 11, certificates for such shares shall be delivered to the Participant. If the items listed in the preceding sentence, including full payment of the Exercise Price, are not received by the

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Company at the time of exercise, the Exercise Notice will be deemed null and void, the Company shall not be obligated to deliver a certificate for the Option Shares, and the Company shall have no further obligation with respect to the Exercise Notice or the Option Shares described therein.

**6. Transfer Restrictions and Obligation to Execute Shareholder Agreement.** Upon exercise, in full or in part, of the Option and the issuance of any of the Option Shares pursuant thereto, such Option Shares shall be subject to restrictions on transfer, and the Company will be granted the right to repurchase the issued Option Shares under certain circumstances, including termination of employment or service to the Company as a director, advisor, or consultant, all as set forth in a shareholder agreement in the form required by the Company on the date of such exercise. As a condition to the Participant's right to exercise the Option, in full or in part, the Participant agrees to execute and deliver such shareholder agreement as of the date the Participant first exercises the Option, whether in full or in part, and to be bound by the terms of such agreement.

**7. Tax Consequences.** Some of the federal tax consequences relating to the exercise of this Option or the sale or other disposition of the Option Shares, as of the date of this Stock Option Agreement, are set forth below. **This Summary is not complete, and the tax laws and regulations are subject to change. The Participant should consult a tax advisor before exercising this Option or disposing of any of the Option Shares.** Upon any exercise of the Option, the Participant may incur regular federal income tax liability. The Participant will be treated as having received compensation income (taxable at ordinary income rates) equal to the excess, if any, of the fair market value of the Option Shares on the date of exercise over their aggregate Exercise Price. If the Participant is an employee or a former employee, the Company will be required to withhold from his or her compensation or collect from the employee and pay to the applicable taxing authorities at the time of exercise an amount in cash equal to a percentage of this compensation income, and the Company may refuse to deliver the Option Shares if such withholding amounts are not delivered at the time of exercise. If the Option Shares are held for at least one year following exercise, any gain realized on the sale or other disposition of the Option Shares will be treated as long-term capital gain for federal income tax purposes.

#### **8. Termination of the Option.**

(a) In all events, the Option shall expire and all of the Participant's rights thereunder shall terminate not later than the Option Termination Date, as defined in Section 3(a), above. Except as expressly provided otherwise in subsections (b) — (d) of this Section 8, and subject to the accelerated vesting provisions of Section 3, above, if the service by the Participant as a director, advisor, consultant, or employee to the Company terminates, then all of the unvested portion of the Option shall terminate immediately and that portion of the Option that is vested but unexercised shall terminate as of 5 p.m. Central Time upon the earlier of (i) three (3) months after termination of service with the Company, or (ii) the Option Termination Date. To the extent the Participant fails to exercise the vested portion of the Option within the time specified in the preceding sentence, the Option terminates and all rights of the Participant with respect to the Option are forfeited.

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(b) If termination of service is a termination for "Cause," as defined below, then the Option, or that portion of it that remains unexercised as of the date of such termination, may not be exercised and all of the Participant's rights in the Option shall be forfeited upon such termination. For purposes of this Agreement, the term "Cause" shall mean any of the following: (i) any act, failure to act, conduct, pattern of conduct, or condition injurious or potentially injurious to the business or reputation of the Company; (ii) any conviction for a misdemeanor or felony the circumstances of which the Administrator determines is substantially related to the circumstances of the Participant's service to the Company; (iii) the willful and continued failure to perform substantially the Participant's duties for the Company, which failure remains uncured fourteen (14) days after written notice from the Company of such failure; or (iv) theft or fraud by the Participant with respect to the business of the Company.

(c) If termination of service results from the Participant's "Disability," as defined in Section 3(e), above, the Option may be exercised at any time within one (1) year after such termination of service, but in no event beyond the Option Termination Date. In such event, the Option may be exercised by, and upon such exercise the Option Shares issued to, the Participant if legally competent or a legally designated guardian or representative of the Participant if the Participant is not legally competent.

(d) If termination of service results from the death of the Participant, the personal representative of the Participant's estate, or a person who by bequest, inheritance, or otherwise by reason of the Participant's death acquired the right to exercise the Option, may exercise the Option at any time within one (1) year after the death of the Participant, but in no event beyond the Option Termination Date.

**9. Nontransferability of Options.** The Option granted hereunder is not transferable by the Participant other than by will or the laws of descent or distribution, and, except as provided in Section 8(c), above, may be exercised during the lifetime of the Participant only by the Participant.

#### **10. Adjustments Upon Changes in Capitalization, Merger, or Asset Sale.**

(a) **Changes in Capitalization.** Subject to any required action by the shareholders of the Company, the number of Option Shares subject to the Option, the number of shares of Common Stock that have been authorized for issuance under the Plan but as to which no Options have yet been granted (or which have been returned to the Plan upon cancellation or expiration of an Option), and the Exercise Price, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. No adjustment shall require the Company to issue or sell a fractional share and the total adjustment shall be limited accordingly. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities

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convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Option Shares or the Exercise Price.

(b) **Merger or Asset Sale.** In the event of a merger of the Company with or into another business entity, or the sale of substantially all of the assets of the Company, the Option shall be assumed or an equivalent option or right substituted by the successor entity or its parent or subsidiary (in either case, the "Successor"). In the event that the Successor refuses or otherwise fails to assume or substitute for the Option, (i) the Participant shall immediately vest in and have the right to exercise the Option as to all of the Option Shares, including those Option Shares, if any, as to which the Participant would not otherwise be vested or have the right to exercise; and (ii) the Option shall be exercisable as to all Option Shares for a period of fifteen (15) days from the date the

Administrator gives written notice to the Participant stating that a substituted option or right will not be issued by or on behalf of the Successor and that the Option is therefore immediately vested and exercisable as to all Option Shares for fifteen (15) days under this Section 10(b). The Administrator's notice to the Participant under this Section 10(b) shall be given not less than fifteen (15) days prior to the closing of such merger or asset sale. If the Option is not exercised within the fifteen (15) day exercise period provided under this Section 10(b), the Option and all rights of the Participant thereunder will terminate. For the purposes of this Section 10(b), the Option shall be considered assumed if, following the merger or sale of assets, the equivalent option or substituted right confers the right to purchase or receive, for each Option Share subject to the Option on the effective date of the transaction, the same consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or sale of assets is not solely common stock of the successor entity or its parent or subsidiary, the Administrator may, with the consent of the Successor, provide for the consideration to be received upon the exercise of the Option, for each Option Share, to be solely common stock of the successor entity or its parent or subsidiary that is equal in fair market value to the per share consideration received by holders of Common Stock in the merger or sale of assets. No substitution shall require the Company, the successor entity, or its parent or subsidiary to issue or sell a fractional share and the total substitution shall be limited accordingly.

**11. Taxes.** The Participant agrees to satisfy all applicable federal, state and local income and employment tax withholding obligations with respect to any exercise of the Option.

**12. Binding Effect.** This Agreement shall be construed in accordance with the provisions of the Plan as implemented from time to time by the Administrator and shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**13. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

**14. Notices.** The Exercise Notice, in the form attached hereto, shall only be considered given by the Participant and received by the Company when actually received by an officer of the Company along with (a) full payment for the Option Shares being purchased thereby, (b) a fully executed copy of the shareholder agreement required under Section 6, above, and (c) the

Participant's satisfaction of any income or employment tax withholding obligations, as required by Sections 5 and 11, above. Any other notice or other communication required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered to be given and received in all respects (i) when personally delivered to a party, (ii) on the next business day following the date on which it is sent via reputable overnight courier service; (iii) five (5) days after being sent by certified or registered United States mail, postage prepaid, return receipt requested, or (iv) when transmitted by fax if confirmation of receipt is printed on the sending fax machine. Any notice to the Participant shall be addressed to that address last appearing on the Company's records. Any notice to the Company shall be addressed to the Company's Chief Executive Officer at the Company's then principal place of business.

**15. No Continuing Rights.** This Agreement shall not confer upon the Participant any right with respect to continuation of employment by or service to the Company, alter the Participant's at-will employment status, if applicable, or interfere in any way with the right of the Company to terminate the Participant's employment or service to the Company at any time with or without notice, except as may otherwise be provided in any other written agreement between the Participant and the Company.

**IN WITNESS WHEREOF**, the parties have signed this Agreement as of the date first above written.

**TOMOTHERAPY INCORPORATED**

By:

\_\_\_\_\_  
Frederick A. Robertson, M.D.,  
Chief Executive Officer

The undersigned Participant hereby accepts the foregoing Option and agrees to the terms and conditions of this Stock Option Agreement and of the Plan.

**PARTICIPANT**

\_\_\_\_\_  
Signature of Participant

\_\_\_\_\_  
Print name

**TomoTherapy Incorporated 2002 Stock Option Plan  
Exhibit A to Stock Option Agreement  
EXERCISE NOTICE**

**1. Exercise of Option.** Effective as of today, \_\_\_\_\_, 20\_\_\_\_, the undersigned (the "Participant") hereby elects to exercise the Participant's option (the "Option") to purchase \_\_\_\_\_ shares of the Common Stock (the "Shares") of **TomoTherapy Incorporated** (the "Company,"") under and pursuant to the Company's 2002 Stock Option Plan (the "Plan") and the Participant's Stock Option Agreement dated \_\_\_\_\_, 200\_\_\_\_ (the "Option Agreement").

**2. Representations of the Participant.** The Participant acknowledges that the Participant has received, read, and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions. The Participant also acknowledges that as a condition of exercise, the

Participant agrees to execute and be bound by a shareholder agreement that places restrictions on transfer of the Shares and grants the Company the right to repurchase the Shares upon the occurrence of certain events (the "Shareholder Agreement").

**3. Rights as Shareholder.** Until (a) the stock certificate evidencing the Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) and delivered to the Participant, and (b) the Shareholder Agreement is executed and delivered by the Participant, no right to vote or receive dividends or any other rights as a shareholder of the Company shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue and deliver (or cause to be issued and delivered) such stock certificate promptly after the Option is exercised and the Shareholder Agreement is executed and delivered to the Company.

Thereafter, the Participant shall enjoy rights as a shareholder until such time as the Participant disposes of the Shares or the Company and/or its assignee(s) exercises its right of first refusal or any repurchase right contained in the Shareholder Agreement. Upon such exercise, the Participant shall have no further rights as a holder of the Shares except the right to receive payment for the Shares so purchased in accordance with the provisions of the Shareholder Agreement, and the Participant shall cause the certificate(s) evidencing the Shares to be surrendered to the Company for transfer or cancellation.

**4. Delivery of Payment.** The Participant shall deliver payment of the aggregate Exercise Price for the Shares to the Company with this Exercise Notice.

**5. Tax Consultation.** The Participant understands that the Participant may suffer adverse tax consequences as a result of the Participant's purchase or disposition of the Shares. The Participant represents that the Participant has consulted with any tax consultants that the Participant deems advisable in connection with the purchase or disposition of the Shares and that the Participant is not relying on the Company for any tax advice.

**6. Taxes.** The Participant agrees to satisfy all applicable federal, state, and local income and employment tax withholding obligations incurred as a result of this exercise and shall have either (a) delivered to the Company with this Exercise Notice the full amount of such obligations, or (b) made arrangements acceptable to the Company to otherwise satisfy such

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obligations. In the case of an Incentive Stock Option, the Participant also agrees, as partial consideration for the designation of the Option as an Incentive Stock Option, to notify the Company in writing within thirty (30) days of any disposition of any shares acquired by exercise of the Option if such disposition occurs within two (2) years from the date of the Option Agreement or within one (1) year from the date such shares were purchased by the Participant. If the Company is required to satisfy any federal, state or local income or employment tax withholding obligations as a result of such an early disposition, the Participant agrees to satisfy the amount of such withholding in a manner that the Administrator prescribes.

**7. Interpretation.** Any dispute regarding the interpretation of this Exercise Notice shall be submitted by the Participant or by the Company to the Administrator of the Plan, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all persons.

**8. Successors and Assigns.** The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon the Participant and his or her heirs, executors, administrators, successors, and assigns.

**9. Governing Law; Severability.** This Exercise Notice shall be governed by and construed in accordance with the laws of the State of Wisconsin. Should any provision of this Exercise Notice be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and enforceable.

**10. Notices.** Any notice required under Section 6, above, shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, with postage and fees prepaid, addressed to the Company at its then principal place of business. The Participant acknowledges, however, that this Exercise Notice is not effective until actually received by an officer of the Company pursuant to Section 14 of the Option Agreement.

**11. Further Instruments.** The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this agreement.

Submitted by:  
PARTICIPANT

Accepted by:  
TOMOTHERAPY INCORPORATED

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_

\_\_\_\_\_  
print name:

Its: \_\_\_\_\_

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**TomoTherapy Incorporated**  
**Second Amendment**  
**to**  
**2007 Equity Incentive Plan**

This Second Amendment (“Amendment”) amends the TomoTherapy Incorporated 2007 Equity Incentive Plan (the “Plan”), effective as of the date of approval by the Company’s shareholders, and as amended by the Company’s shareholders on May 1, 2009.

**Background**

The Plan was effective as April 16, 2007, the date the Plan was approved by the Company’s shareholders and amended by the Shareholders on May 1, 2009. Pursuant to the provisions of Section 14.1, the Committee and Board have the authority to amend the Plan in certain respects.

**Amendment**

Section 14.1 of the Plan is hereby amended to add the following language at the end of the existing paragraph:

“Also notwithstanding any provision in this Plan to the contrary, absent approval of the shareholders of the Company:

(A) no Stock Appreciation Right may be amended to reduce the “Fair Market Value of the Stock on the date the Stock Appreciation Right was granted” (as that phrase is used in Section 7.1(b)(i)(B) of the Plan) of such Stock Appreciation Right;

(B) except as permitted by Article 11 hereof, no Stock Appreciation Right may be granted in exchange for, or in connection with, the cancellation or surrender of, a Stock Appreciation Right having a higher “Fair Market Value of the Stock on the date the Stock Appreciation Right was granted” (as that phrase is used in Section 7.1(b)(i)(B) of the Plan);

(C) except as permitted by Article 11 hereof, no cash payment may be made to any Participant who holds an Option that is terminated in an amount that exceeds the product obtained by multiplying (i) the excess of: (a) the Fair Market Value per share of the Stock covered by such Option at the time of the Option’s termination over (b) the exercise price per share of Stock subject to the Option; by (ii) the number of shares of Stock covered by such Option; and

(D) except as permitted by Article 11 hereof, no cash payment may be made to any Participant who holds a Stock Appreciation Right that is terminated in an amount which exceeds the product obtained by multiplying (i) the excess of: (a) the Fair Market Value per share of the Stock covered by such Stock Appreciation Right at the time of the Stock Appreciation Right’s termination, over (b) the Fair Market Value of the Stock on the date the Stock Appreciation Right was granted; by (ii) the number of shares of Stock covered by such Stock Appreciation Right.

Executed on this 9th day of December, 2010.

/s/ Brenda S. Furlow  
 Brenda S. Furlow,  
 Corporate Secretary

Unanimously approved by the TomoTherapy Inc. Board of Directors on December 9, 2010.

**TomoTherapy Incorporated**  
**First Amendment**  
**to**  
**2007 Equity Incentive Plan**

This First Amendment (“Amendment”) amends the TomoTherapy Incorporated 2007 Equity Incentive Plan (the “Plan”), effective as of the date of approval by the Company’s shareholders.

**Background**

The Plan was effective as April 16, 2007, the date the Plan was approved by the Company’s shareholders. On May 8, 2007, the Company effected a 1.36-for-1 stock split. Accordingly, the Committee adjusted the number of shares available under the Plan from 1,693,006 to 2,302,488, pursuant to its authority to adjust for stock splits as provided in Section 11.1(a) of the Plan.

The Company’s Board of Directors approved an increase of 5,033,334 shares available for issuance under the Plan on March 6, 2009.

The Company’s shareholders approved this Amendment on May 1, 2009.

**Amendment**

Section 3.1(a) of the Plan is hereby amended as follows:

“3.1 *Number of Shares.*

(a) Subject to Article 11 hereof and Section 3.1(b) hereof, the aggregate number of shares of Stock which may be issued or transferred pursuant to Awards under the Plan is 7,335,822.”

Executed on this 1st day of May, 2009.

**TOMOTHERAPY INCORPORATED  
2007 EQUITY INCENTIVE PLAN**

**ARTICLE 1.**

**PURPOSE**

The purpose of the TomoTherapy Incorporated 2007 Equity Incentive Plan (the “Plan”) is to promote the success and enhance the value of TomoTherapy Incorporated by linking the personal interests of the members of the Board, Employees, and Consultants to those of Company shareholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company shareholders. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of members of the Board, Employees, and Consultants upon whose judgment, interest, and special effort the successful conduct of the Company’s operations are largely dependent.

**ARTICLE 2.**

**DEFINITIONS AND CONSTRUCTION**

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 “Award” means an Option, a Restricted Stock award, a Stock Appreciation Right award, a Performance Share award, a Performance Stock Unit award, a Dividend Equivalents award, a Stock Payment award, a Deferred Stock award, a Restricted Stock Unit award, a Performance Bonus Award, or a Performance-Based Award granted to a Participant pursuant to the Plan.

2.2 “Award Agreement” means any written agreement, contract, or other instrument or document evidencing an Award, including through electronic medium.

2.3 “Board” means the Board of Directors of the Company.

2.4 “Change in Control” means and includes each of the following:

- (a) A transaction or series of transactions (other than an offering of Stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any “person” or related “group” of “persons” (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a “person” that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company’s securities outstanding immediately after such acquisition; or
- (b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in Section 2.4(a) hereof or Section 2.4(c) hereof) whose election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or
- (c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company’s assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:
  - (i) Which results in the Company’s voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company’s assets or otherwise succeeds to the business of the Company (the Company or such person, the “Successor Entity”)) directly or indirectly, at least a majority of the combined voting power of the Successor Entity’s outstanding voting securities immediately after the transaction, and
  - (ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however*, that no person or group shall be treated for purposes of this Section 2.4(c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or
- (d) The Company’s shareholders approve a liquidation or dissolution of the Company.

2.5 “Code” means the Internal Revenue Code of 1986, as amended.

2.6 “Committee” means the committee of the Board described in Article 12 hereof.

2.7 “*Company*” means TomoTherapy Incorporated, a Wisconsin corporation, or any successor corporation (including, without limitation, the surviving corporation in any consolidation, merger or reincorporation effected exclusively to change the domicile of the Company).

2.8 “*Consultant*” means any consultant or adviser if: (a) the consultant or adviser renders bona fide services to the Company or any Subsidiary; (b) the services rendered by the consultant or adviser are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company’s securities; and (c) the consultant or adviser is a natural person who has contracted directly with the Company or any Subsidiary to render such services.

2.9 “*Covered Employee*” means an Employee who is, or could be, a “covered employee” within the meaning of Section 162(m) of the Code.

2.10 “*Deferred Stock*” means a right to receive a specified number of shares of Stock during specified time periods pursuant to Section 8.5 hereof.

2.11 “*Disability*” means that the Participant qualifies to receive long-term disability payments under the Company’s long-term disability insurance program, as it may be amended from time to time.

2.12 “*Dividend Equivalents*” means a right granted to a Participant pursuant to Section 8.3 hereof to receive the equivalent value (in cash or Stock) of dividends paid on Stock.

2.13 “*Effective Date*” shall have the meaning set forth in Section 13.1 hereof.

2.14 “*Eligible Individual*” means any person who is an Employee, a Consultant or an Independent Director, as determined by the Committee.

2.15 “*Employee*” means any officer or other employee (as defined in accordance with Section 3401(c) of the Code) of the Company or any Subsidiary.

2.16 “*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

2.17 “*Fair Market Value*” means, as of any given date, (a) if Stock is traded on an exchange, the closing price of a share of Stock as reported in the *Wall Street Journal* (or such other source as the Company may deem reliable for such purposes) for such date, or if no sale occurred on such date, the first trading date immediately prior to such date during which a sale occurred; or (b) if Stock is not traded on an exchange but is quoted on a quotation system, the mean between the closing representative bid and asked prices for the Stock on such date, or if no sale occurred on such date, the first date immediately prior to such date on which sales prices or bid and asked prices, as applicable, are reported by such quotation system; or (c) if Stock is not publicly traded, the fair market value established by the Committee acting in good faith.

2.18 “*Incentive Stock Option*” means an Option that is intended to meet the requirements of Section 422 of the Code or any successor provision thereto.

2.19 “*Independent Director*” means a member of the Board who is not an Employee of the Company.

2.20 “*Non-Employee Director*” means a member of the Board who qualifies as a “Non-Employee Director” as defined in Rule 16b-3(b)(3) under the Exchange Act, or any successor rule.

2.21 “*Non-Qualified Stock Option*” means an Option that is not intended to be an Incentive Stock Option.

2.22 “*Option*” means a right granted to a Participant pursuant to Article 5 hereof to purchase a specified number of shares of Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Non-Qualified Stock Option.

2.23 “*Participant*” means any Eligible Individual who, as a member of the Board, Consultant or Employee, has been granted an Award pursuant to the Plan.

2.24 “*Performance-Based Award*” means an Award granted to selected Covered Employees pursuant to Section 8.7 hereof, but which is subject to the terms and conditions set forth in Article 9 hereof. All Performance-Based Awards are intended to qualify as Qualified Performance-Based Compensation.

2.25 “*Performance Bonus Award*” has the meaning set forth in Section 8.7 hereof.

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2.26 “*Performance Criteria*” means the criteria that the Committee selects for purposes of establishing the Performance Goal or Performance Goals for a Participant for a Performance Period. The Performance Criteria that will be used to establish Performance Goals are limited to the following: net earnings (either before or after interest, taxes, depreciation and amortization), economic value-added, sales or revenue, net income (either before or after taxes), operating earnings, cash flow (including, but not limited to, operating cash flow and free cash flow), cash flow return on capital, return on net assets, return on shareholders’ equity, return on assets, return on capital, shareholder returns, return on sales, gross or net profit margin, productivity, expense, margins, operating efficiency, customer satisfaction, working capital, earnings per share, price per share of Stock, and market share, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group. The Committee shall define in an objective fashion the manner of calculating the Performance Criteria it selects to use for such Performance Period for such Participant.

2.27 “*Performance Goals*” means, for a Performance Period, the goals established in writing by the Committee for the Performance Period based upon the Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, or an individual. The Committee, in its discretion, may, within the time prescribed by Section 162(m) of the Code, adjust or modify the calculation of Performance Goals for such Performance Period in order to prevent the dilution or enlargement of the rights of Participants (a) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event, or development, or (b) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions.

2.28 “*Performance Period*” means the one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to, and the payment of, a Performance-Based Award.

2.29 “*Performance Share*” means a right granted to a Participant pursuant to Section 8.1 hereof, to receive Stock, the payment of which is contingent upon achieving certain Performance Goals or other performance-based targets established by the Committee.

2.30 “*Performance Stock Unit*” means a right granted to a Participant pursuant to Section 8.2 hereof, to receive Stock, the payment of which is contingent upon achieving certain Performance Goals or other performance-based targets established by the Committee.

2.31 “*Plan*” means this TomoTherapy Incorporated 2007 Equity Incentive Plan, as it may be amended from time to time.

2.32 “*Public Trading Date*” means the first date upon which Stock is listed (or approved for listing) upon notice of issuance on any securities exchange or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system.

2.33 “*Qualified Performance-Based Compensation*” means any compensation that is intended to qualify as “qualified performance-based compensation” as described in Section 162(m)(4)(C) of the Code.

2.34 “*Restricted Stock*” means Stock awarded to a Participant pursuant to Article 6 hereof that is subject to certain restrictions and may be subject to risk of forfeiture.

2.35 “*Restricted Stock Unit*” means an Award granted pursuant to Section 8.6 hereof.

2.36 “*Securities Act*” shall mean the Securities Act of 1933, as amended.

2.37 “*Stock*” means the common stock of the Company, \$0.01 par value per share. “Stock” shall also include (i) the common stock of the surviving corporation in any consolidation, merger or reincorporation effected exclusively to change the domicile of the Company and (ii) such other securities of the Company that may be substituted for Stock pursuant to Article 11 hereof.

2.38 “*Stock Appreciation Right*” or “*SAR*” means a right granted pursuant to Article 7 hereof to receive a payment equal to the excess of the Fair Market Value of a specified number of shares of Stock on the date the SAR is exercised over the Fair Market Value on the date the SAR was granted as set forth in the applicable Award Agreement.

2.39 “*Stock Payment*” means (a) a payment in the form of shares of Stock, or (b) an option or other right to purchase shares of Stock, as part of any bonus, deferred compensation or other arrangement, made in lieu of all or any portion of the compensation, granted pursuant to Section 8.4 hereof.

2.40 “*Subsidiary*” means any “subsidiary corporation” as defined in Section 424(f) of the Code and any applicable regulations promulgated thereunder or any other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

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### **ARTICLE 3. SHARES SUBJECT TO THE PLAN**

#### *3.1 Number of Shares.*

- (a) Subject to Article 11 hereof and Section 3.1(b) hereof, the aggregate number of shares of Stock which may be issued or transferred pursuant to Awards under the Plan is 1,693,006.
- (b) To the extent that an Award terminates, expires, or lapses for any reason, any shares of Stock subject to the Award shall again be available for the grant of an Award pursuant to the Plan. To the extent permitted by applicable law or any exchange rule, shares of Stock issued in assumption of, or in substitution for, any outstanding awards of any entity acquired in any form of combination by the Company or any Subsidiary shall not be counted against shares of Stock available for grant pursuant to this Plan. To the extent that a SAR is exercised for or settled in Stock, only the actual number of shares issued upon such exercise or settlement shall be counted for purposes of calculating the aggregate number of shares of Stock available for issuance under the Plan as set forth in Section 3.1(a). To the extent that a SAR is exercised for or settled in cash, no shares underlying such SAR shall be counted for purposes of calculating the aggregate number of shares of Stock available for issuance under the Plan as set forth in Section 3.1(a). The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the shares available for issuance under the Plan. Notwithstanding the provisions of this Section 3.1(b), no shares of Stock may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

*3.2 Stock Distributed.* Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.

### **ARTICLE 4. ELIGIBILITY AND PARTICIPATION**

*4.1 Eligibility.* Each Eligible Individual shall be eligible to be granted one or more Awards pursuant to the Plan.

*4.2 Participation.* Subject to the provisions of the Plan, the Committee may, from time to time, select from among all Eligible Individuals, those to whom Awards shall be granted and shall determine the nature and amount of each Award. No Eligible Individual shall have any right to be granted an Award pursuant to this Plan.

4.3 *Foreign Participants*. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries operate or have Eligible Individuals, the Committee, in its sole discretion, shall have the power and authority to: (i) determine which Subsidiaries shall be covered by the Plan; (ii) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with applicable foreign laws; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable (any such subplans and/or modifications shall be attached to this Plan as appendices); *provided, however*, that no such subplans and/or modifications shall increase the share limitations contained in Sections 3.1 and 3.3 hereof; and (v) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Committee may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act, the Code, any securities law or governing statute or any other applicable law.

## ARTICLE 5. STOCK OPTIONS

5.1 *General*. The Committee is authorized to grant Options to Participants on the following terms and conditions:

- (a) *Exercise Price*. The exercise price per share of Stock subject to an Option shall be determined by the Committee and set forth in the Award Agreement; *provided*, that, subject to Section 5.2(c) hereof, the per share exercise price for any Option shall not be less than 100% of the Fair Market Value of a share of Stock on the date of grant.

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- (b) *Time and Conditions of Exercise*. The Committee shall determine the time or times at which an Option may be exercised in whole or in part; *provided* that the term of any Option granted under the Plan shall not exceed ten years. The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised.
- (c) *Forfeiture if Termination for Cause*. If a Participant's employment is terminated for "Cause", as defined below, then none of the Participant's Options may be exercised, all of the Participant's rights in the Options shall be forfeited, and all of the shares reserved for issuance upon exercise of the Participant's Options shall revert to the Plan. For purposes of this Plan, "Cause" shall mean any of the following: (i) any act, failure to act, conduct, pattern of conduct, or condition injurious or potentially injurious to the business or reputation of the Company; (ii) any conviction for a misdemeanor or felony the circumstances of which the Committee determines is substantially related to the circumstances of the Participant's job; (iii) the willful and continued failure to perform substantially the Participant's duties for the Company, which failure remains uncured fourteen (14) days after written notice from the Company of such failure; or (iv) theft or fraud by the Participant with respect to the business of the Company.
- (d) *Payment*. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation: (i) cash, (ii) shares of Stock held for such period of time as may be required by the Committee in order to avoid adverse accounting consequences and having a fair market value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof, or (iii) other property acceptable to the Committee (including through the delivery of a notice that the Participant has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price; *provided* that payment of such proceeds is then made to the Company upon settlement of such sale), and the methods by which shares of Stock shall be delivered or deemed to be delivered to Participants. Notwithstanding any other provision of the Plan to the contrary, after the Public Trading Date, no Participant who is a member of the Board or an "executive officer" of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to pay the exercise price of an Option, or continue any extension of credit with respect to the exercise price of an Option with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.
- (e) *Evidence of Grant*. All Options shall be evidenced by an Award Agreement between the Company and the Participant. The Award Agreement shall include such additional provisions as may be specified by the Committee.

5.2 *Incentive Stock Options*. Incentive Stock Options shall be granted only to Employees and the terms of any Incentive Stock Options granted pursuant to the Plan, in addition to the requirements of Section 5.1 hereof, must comply with the provisions of this Section 5.2.

- (a) *Expiration*. Subject to Section 5.2(c) hereof, an Incentive Stock Option shall expire and may not be exercised to any extent by anyone after the first to occur of the following events:
- (i) Ten years from the date it is granted, unless an earlier time is set in the Award Agreement;
  - (ii) Three months after the Participant's termination of employment as an Employee other than by reason of the Participant's death or Disability; and
  - (iii) One year after the date of the Participant's termination of employment or service on account of Disability or death. Upon the Participant's Disability or death, any Incentive Stock Options exercisable at the Participant's Disability or death may be exercised by the Participant's legal representative or representatives, by the person or persons entitled to do so pursuant to the Participant's last will and testament, or, if the Participant fails to make testamentary disposition of such Incentive Stock Option or dies intestate, by the person or persons entitled to receive the Incentive Stock Option pursuant to the applicable laws of descent and distribution.
- (b) *Dollar Limitation*. The aggregate Fair Market Value (determined as of the time the Option is granted) of all shares of Stock with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed \$100,000 or such other limitation as imposed by Section 422(d) of the Code, or any successor provision. To the extent that Incentive Stock Options are first exercisable by a Participant in excess of such limitation, the excess shall be considered Non-Qualified Stock Options.

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- (c) *Ten Percent Owners.* An Incentive Stock Option may not be granted to any individual who, at the date of grant, owns stock possessing more than ten percent of the total combined voting power of all classes of Stock of the Company (or the Company's parent or subsidiary corporation, within the meaning of Section 422(b)(6) of the Code) unless such Option is granted at a price that is not less than 110% of Fair Market Value on the date of grant and the Option is exercisable for no more than five years from the date of grant.
- (d) *Notice of Disposition.* The Participant shall give the Company prompt notice of any disposition of shares of Stock acquired by exercise of an Incentive Stock Option within (i) two years from the date of grant of such Incentive Stock Option or (ii) one year after the transfer of such shares of Stock to the Participant.
- (e) *Right to Exercise.* Except as set forth in Section 5.2(a)(iii) above, during a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant.
- (f) *Failure to Meet Requirements.* Any Option (or portion thereof) purported to be an Incentive Stock Option, which, for any reason, fails to meet the requirements of Section 422 of the Code shall be considered a Non-Qualified Stock Option.

## **ARTICLE 6. RESTRICTED STOCK AWARDS**

6.1 *Grant of Restricted Stock.* The Committee is authorized to make Awards of Restricted Stock to any Participant selected by the Committee in such amounts and subject to such terms and conditions as determined by the Committee. All Awards of Restricted Stock shall be evidenced by an Award Agreement.

6.2 *Issuance and Restrictions.* Restricted Stock shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). These restrictions may lapse separately or in combination at such times, pursuant to such circumstances, in such installments, or otherwise, as the Committee determines at the time of the grant of the Award or thereafter.

6.3 *Forfeiture.* Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of employment or service during the applicable restriction period, Restricted Stock that is at that time subject to restrictions shall be forfeited; *provided, however*, that, the Committee may (a) provide in any Restricted Stock Award Agreement that restrictions or forfeiture conditions relating to Restricted Stock will lapse in whole or in part in the event of terminations resulting from specified causes, and (b) provide in other cases for the lapse in whole or in part of restrictions or forfeiture conditions relating to Restricted Stock.

6.4 *Certificates for Restricted Stock.* Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing shares of Restricted Stock are registered in the name of the Participant, certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, at its discretion, retain physical possession of the certificate until such time as all applicable restrictions lapse.

## **ARTICLE 7. STOCK APPRECIATION RIGHTS**

### *7.1 Grant of Stock Appreciation Rights.*

- (a) A Stock Appreciation Right may be granted to any Participant selected by the Committee. A Stock Appreciation Right shall be subject to such terms and conditions not inconsistent with the Plan as the Committee shall impose and shall be evidenced by an Award Agreement.
- (b) A Stock Appreciation Right shall entitle the Participant (or other person entitled to exercise the Stock Appreciation Right pursuant to the Plan) to exercise all or a specified portion of the Stock Appreciation Right (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount equal to the product of (i) the excess of (A) the Fair Market Value of the Stock on the date the Stock

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Appreciation Right is exercised over (B) the Fair Market Value of the Stock on the date the Stock Appreciation Right was granted and (ii) the number of shares of Stock with respect to which the Stock Appreciation Right is exercised, subject to any limitations the Committee may impose.

### *7.2 Payment and Limitations on Exercise.*

- (a) Subject to Section 7.2(b) below, payment of the amounts determined under Sections 7.1(b) above shall be in cash, in Stock (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised) or a combination of both, as determined by the Committee in the Award Agreement.
- (b) To the extent any payment under Section 7.1(b) hereof is effected in Stock, it shall be made subject to satisfaction of all provisions of Article 5 above pertaining to Options.

## **ARTICLE 8. OTHER TYPES OF AWARDS**

8.1 *Performance Share Awards.* Any Participant selected by the Committee may be granted one or more Performance Share awards which shall be denominated in a number of shares of Stock and which may be linked to any one or more of the Performance Criteria or other specific performance criteria determined appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. In making

such determinations, the Committee shall consider (among such other factors as it deems relevant in light of the specific type of award) the contributions, responsibilities and other compensation of the particular Participant.

**8.2 Performance Stock Units.** Any Participant selected by the Committee may be granted one or more Performance Stock Unit awards which shall be denominated in unit equivalent of shares of Stock and/or units of value including dollar value of shares of Stock and which may be linked to any one or more of the Performance Criteria or other specific performance criteria determined appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. In making such determinations, the Committee shall consider (among such other factors as it deems relevant in light of the specific type of award) the contributions, responsibilities and other compensation of the particular Participant.

**8.3 Dividend Equivalents.**

- (a) Any Participant selected by the Committee may be granted Dividend Equivalents based on the dividends declared on the shares of Stock that are subject to any Award, to be credited as of dividend payment dates, during the period between the date the Award is granted and the date the Award is exercised, vests or expires, as determined by the Committee. Such Dividend Equivalents shall be converted to cash or additional shares of Stock by such formula and at such time and subject to such limitations as may be determined by the Committee.
- (b) Dividend Equivalents granted with respect to Options or SARs that are intended to be Qualified Performance-Based Compensation shall be payable, with respect to pre-exercise periods, regardless of whether such Option or SAR is subsequently exercised.

**8.4 Stock Payments.** Any Participant selected by the Committee may receive Stock Payments in the manner determined from time to time by the Committee; *provided*, that unless otherwise determined by the Committee such Stock Payments shall be made in lieu of base salary, bonus, or other cash compensation otherwise payable to such Participant. The number of shares shall be determined by the Committee and may be based upon the Performance Criteria or other specific performance criteria determined appropriate by the Committee, determined on the date such Stock Payment is made or on any date thereafter.

**8.5 Deferred Stock.** Any Participant selected by the Committee may be granted an award of Deferred Stock in the manner determined from time to time by the Committee. The number of shares of Deferred Stock shall be determined by the Committee and may be linked to the Performance Criteria or other specific performance criteria determined to be appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. Stock underlying a Deferred Stock award will not be issued until the Deferred Stock award has vested, pursuant to a vesting schedule or performance criteria set by the Committee. Unless otherwise provided by the Committee, a Participant awarded Deferred Stock shall have no rights as a Company shareholder with respect to such Deferred Stock until such time as the Deferred Stock Award has vested and the Stock underlying the Deferred Stock Award has been issued.

**8.6 Restricted Stock Units.** The Committee is authorized to make Awards of Restricted Stock Units to any Participant selected by the Committee in such amounts and subject to such terms and conditions as determined by the Committee. At the time of grant, the Committee shall specify the date or dates on which the Restricted Stock

Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate. At the time of grant, the Committee shall specify the maturity date applicable to each grant of Restricted Stock Units which shall be no earlier than the vesting date or dates of the Award and may be determined at the election of the grantee. On the maturity date, the Company shall, subject to Section 10.5(b) hereof, transfer to the Participant one unrestricted, fully transferable share of Stock for each Restricted Stock Unit scheduled to be paid out on such date and not previously forfeited.

**8.7 Performance Bonus Awards.** Any Participant selected by the Committee may be granted a cash bonus (a “*Performance Bonus Award*”) payable upon the attainment of Performance Goals that are established by the Committee and relate to one or more of the Performance Criteria or other specific performance criteria determined to be appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. Any such Performance Bonus Award paid to a Covered Employee may be a Performance-Based Award and be based upon objectively determinable bonus formulas established in accordance with Article 9 hereof.

**8.8 Term.** Except as otherwise provided herein, the term of any Award of Performance Shares, Performance Stock Units, Dividend Equivalents, Stock Payments, Deferred Stock or Restricted Stock Units shall be set by the Committee in its discretion.

**8.9 Exercise or Purchase Price.** The Committee may establish the exercise or purchase price, if any, of any Award of Performance Shares, Performance Stock Units, Deferred Stock, Stock Payments or Restricted Stock Units; *provided, however*, that such price shall not be less than the par value of a share of Stock on the date of grant, unless otherwise permitted by applicable state law.

**8.10 Exercise upon Termination of Employment or Service.** An Award of Performance Shares, Performance Stock Units, Dividend Equivalents, Deferred Stock, Stock Payments and Restricted Stock Units shall only be exercisable or payable while the Participant is an Employee, Consultant or a member of the Board, as applicable; *provided, however*, that the Committee in its sole and absolute discretion may provide that an Award of Performance Shares, Performance Stock Units, Dividend Equivalents, Stock Payments, Deferred Stock or Restricted Stock Units may be exercised or paid subsequent to a termination of employment or service, as applicable, or following a Change in Control of the Company, or because of the Participant’s retirement, death or Disability, or otherwise; *provided, however*, that any such provision with respect to Performance Shares or Performance Stock Units shall be subject to the requirements of Section 162(m) of the Code that apply to Qualified Performance-Based Compensation.

**8.11 Form of Payment.** Payments with respect to any Awards granted under this Article 8 shall be made in cash, in Stock or a combination of both, as determined by the Committee.

**8.12 Award Agreement.** All Awards under this Article 8 shall be subject to such additional terms and conditions as determined by the Committee and shall be evidenced by an Award Agreement.

9.1 *Purpose.* The purpose of this Article 9 is to provide the Committee the ability to qualify Awards other than Options and SARs and that are granted pursuant to Articles 6 and 8 hereof as Qualified Performance-Based Compensation. If the Committee, in its discretion, decides to grant a Performance-Based Award to a Covered Employee, the provisions of this Article 9 shall control over any contrary provision contained in Articles 6 or 8 hereof; *provided, however,* that the Committee may in its discretion grant Awards to Covered Employees that are based on Performance Criteria or Performance Goals but that do not satisfy the requirements of this Article 9.

9.2 *Applicability.* This Article 9 shall apply only to those Covered Employees selected by the Committee to receive Performance-Based Awards. The designation of a Covered Employee as a Participant for a Performance Period shall not in any manner entitle the Participant to receive an Award for the period. Moreover, designation of a Covered Employee as a Participant for a particular Performance Period shall not require designation of such Covered Employee as a Participant in any subsequent Performance Period and designation of one Covered Employee as a Participant shall not require designation of any other Covered Employees as a Participant in such period or in any other period.

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9.3 *Procedures with Respect to Performance-Based Awards.* To the extent necessary to comply with the Qualified Performance-Based Compensation requirements of Section 162(m)(4)(C) of the Code, with respect to any Award granted under Articles 6 or 8 hereof which may be granted to one or more Covered Employees, no later than ninety (90) days following the commencement of any fiscal year in question or any other designated fiscal period or period of service (or such other time as may be required or permitted by Section 162(m) of the Code), the Committee shall, in writing, (a) designate one or more Covered Employees, (b) select the Performance Criteria applicable to the Performance Period, (c) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period, and (d) specify the relationship between Performance Criteria and the Performance Goals and the amounts of such Awards, as applicable, to be earned by each Covered Employee for such Performance Period. Following the completion of each Performance Period, the Committee shall certify in writing whether the applicable Performance Goals have been achieved for such Performance Period. In determining the amount earned by a Covered Employee, the Committee shall have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Committee may deem relevant to the assessment of individual or corporate performance for the Performance Period.

9.4 *Payment of Performance-Based Awards.* Unless otherwise provided in the applicable Award Agreement, a Participant must be employed by the Company or a Subsidiary on the day a Performance-Based Award for such Performance Period is paid to the Participant. Furthermore, a Participant shall be eligible to receive payment pursuant to a Performance-Based Award for a Performance Period only if the Performance Goals for such period are achieved. In determining the amount earned under a Performance-Based Award, the Committee may reduce or eliminate the amount of the Performance-Based Award earned for the Performance Period, if in its sole and absolute discretion, such reduction or elimination is appropriate.

9.5 *Additional Limitations.* Notwithstanding any other provision of the Plan, any Award which is granted to a Covered Employee and is intended to constitute Qualified Performance-Based Compensation shall be subject to any additional limitations set forth in Section 162(m) of the Code (including any amendment to Section 162(m) of the Code) or any regulations or rulings issued thereunder that are requirements for qualification as qualified performance-based compensation as described in Section 162(m)(4)(C) of the Code, and the Plan shall be deemed amended to the extent necessary to conform to such requirements.

## **ARTICLE 10. PROVISIONS APPLICABLE TO AWARDS**

10.1 *Stand-Alone and Tandem Awards.* Awards granted pursuant to the Plan may, in the discretion of the Committee, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

10.2 *Award Agreement.* Awards under the Plan shall be evidenced by Award Agreements that set forth the terms, conditions and limitations for each Award which may include the term of an Award, the provisions applicable in the event the Participant's employment or service terminates, and the Company's authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award.

10.3 *Limits on Transfer.* No right or interest of a Participant in any Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or a Subsidiary, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or a Subsidiary. Except as otherwise provided by the Committee, no Award shall be assigned, transferred, or otherwise disposed of by a Participant other than by will or the laws of descent and distribution. The Committee by express provision in the Award or an amendment thereto may permit an Award (other than an Incentive Stock Option) to be transferred to, exercised by and paid to certain persons or entities related to the Participant, including but not limited to members of the Participant's family, charitable institutions, or trusts or other entities whose beneficiaries or beneficial owners are members of the Participant's family and/or charitable institutions, or to such other persons or entities as may be expressly approved by the Committee, pursuant to such conditions and procedures as the Committee may establish. Any permitted transfer shall be subject to the condition that the Committee receive evidence satisfactory to it that the transfer is being made for estate and/or tax planning purposes (or to a "blind trust" in connection with the

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Participant's termination of employment or service with the Company or a Subsidiary to assume a position with a governmental, charitable, educational or similar non-profit institution) and on a basis consistent with the Company's lawful issue of securities.

10.4 *Beneficiaries.* Notwithstanding Section 10.3 hereof, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Award Agreement applicable to the Participant, except to the extent the Plan and Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his or her beneficiary with respect to more than 50% of the Participant's interest in the Award shall not be effective without the prior written consent of the Participant's spouse. If no beneficiary has been designated or survives the Participant, payment shall be made to the person entitled thereto pursuant to

the Participant's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee.

#### 10.5 *Stock Certificates; Book Entry Procedures.*

- (a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates evidencing shares of Stock pursuant to the exercise of any Award, unless and until the Board has determined, with advice of counsel, that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed or traded. All Stock certificates delivered pursuant to the Plan are subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal, state, or foreign jurisdiction, securities or other laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Board may require that a Participant make such reasonable covenants, agreements, and representations as the Board, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements. The Committee shall have the right to require any Participant to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Committee.
- (b) notwithstanding any other provision of the Plan, unless otherwise determined by the Committee or required by any applicable law, rule or regulation, the Company shall not deliver to any Participant certificates evidencing shares of Stock issued in connection with any Award and instead such shares of Stock shall be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

10.6 *Paperless Exercise.* In the event that the Company establishes, for itself or using the services of a third party, an automated system for the exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless exercise of Awards by a Participant may be permitted through the use of such an automated system.

### ARTICLE 11. CHANGES IN CAPITAL STRUCTURE

#### 11.1 *Adjustments.*

- (a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation, spin-off, recapitalization or other distribution (other than normal cash dividends) of Company assets to shareholders, or any other change affecting the shares of Stock or the share price of the Stock, the Committee shall make proportionate adjustments to any or all of the following in order to reflect such change: (a) the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Sections 3.1 and 3.3 hereof); (b) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (c) the grant or exercise price per share for any outstanding Awards under the Plan. Any adjustment affecting an Award intended as Qualified Performance-Based Compensation shall be made consistent with the requirements of Section 162(m) of the Code.

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- (b) In the event of any transaction or event described in Section 11.1(a) hereof or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate, or of changes in applicable laws, regulations or accounting principles, the Committee, in its sole and absolute discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Participant's request, is hereby authorized to take any one or more of the following actions in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:
  - (i) To provide for either (A) termination of any such Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 11.1 the Committee determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment) or  
  
(B) the replacement of such Award with other rights or property selected by the Committee in its sole discretion;
  - (ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;
  - (iii) To make adjustments in the number and type of shares of Stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Restricted Stock or Deferred Stock and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding options, rights and awards and options, rights and awards which may be granted in the future;
  - (iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Award Agreement; and
  - (v) To provide that the Award cannot vest, be exercised or become payable after such event.

11.2 *Acceleration Upon a Change in Control.* Notwithstanding Section 11.1 hereof, and except as may otherwise be provided in any applicable Award Agreement or other written agreement entered into between the Company and a Participant, if a Change in Control occurs and a Participant's Awards are not

converted, assumed, or replaced by a successor entity, then immediately prior to the Change in Control such Awards shall become fully exercisable and all forfeiture restrictions on such Awards shall lapse. Upon, or in anticipation of, a Change in Control, the Committee may cause any and all Awards outstanding hereunder to terminate at a specific time in the future, including but not limited to the date of such Change in Control, and shall give each Participant the right to exercise such Awards during a period of time as the Committee, in its sole and absolute discretion, shall determine. In the event that the terms of any agreement between the Company or any Company subsidiary or affiliate and a Participant contains provisions that conflict with and are more restrictive than the provisions of this Section 11.2, this Section 11.2 shall prevail and control and the more restrictive terms of such agreement (and only such terms) shall be of no force or effect.

11.3 *No Other Rights.* Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Committee under the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of shares of Stock subject to an Award or the grant or exercise price of any Award.

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## ARTICLE 12. ADMINISTRATION

12.1 *Committee.* Unless and until the Board delegates administration of the Plan to a Committee as set forth below, the Plan shall be administered by the full Board, and for such purposes the term "Committee" as used in this Plan shall be deemed to refer to the Board. The Board, at its discretion or as otherwise necessary to comply with the requirements of Section 162(m) of the Code, Rule 16b-3 promulgated under the Exchange Act or to the extent required by any other applicable rule or regulation, shall delegate administration of the Plan to a Committee. The Committee shall consist solely of two or more members of the Board each of whom is an "outside director," within the meaning of Section 162(m) of the Code, a Non-Employee Director and an "independent director" under the rules of The NASDAQ Global Market (or other principal securities market on which shares of Stock are traded), provided that any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 12.1 or otherwise provided in the charter of the Committee. Notwithstanding the foregoing: (a) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to all Awards granted to Independent Directors and for purposes of such Awards the term "Committee" as used in this Plan shall be deemed to refer to the Board and (b) the Committee may delegate its authority hereunder to the extent permitted by Section 12.5 hereof. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Rule 16b-3 under the Exchange Act or Section 162(m) of the Code, or any regulations or rules issued thereunder, are required to be determined in the sole discretion of the Committee. The governance of the Committee shall be subject to the charter of the Committee as approved by the Board.

12.2 *Action by the Committee.* Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Subsidiary, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

12.3 *Authority of Committee.* Subject to any specific designation in the Plan, the Committee has the exclusive power, authority and discretion to:

- (a) Designate Participants to receive Awards;
- (b) Determine the type or types of Awards to be granted to each Participant;
- (c) Determine the number of Awards to be granted and the number of shares of Stock to which an Award will relate;
- (d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, or purchase price, any reload provision, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Committee in its sole discretion determines; *provided, however*, that the Committee shall not have the authority to accelerate the vesting or waive the forfeiture of any Performance-Based Awards;
- (e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
- (f) Prescribe the form of each Award Agreement, which need not be identical for each Participant;
- (g) Decide all other matters that must be determined in connection with an Award;
- (h) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;
- (i) Interpret the terms of, and any matter arising pursuant to, the Plan or any Award Agreement; and

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- (j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Committee deems necessary or advisable to administer the Plan.

12.4 *Decisions Binding.* The Committee's interpretation of the Plan, any Awards granted pursuant to the Plan, any Award Agreement and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties.

12.5 *Delegation of Authority.* To the extent permitted by applicable law, the Committee may from time to time delegate to a committee of one or more members of the Board or one or more officers of the Company the authority to grant or amend Awards to Participants other than (a) senior executives of the Company who are subject to Section 16 of the Exchange Act, (b) Covered Employees, or (c) officers of the Company (or members of the Board) to whom authority to grant or amend Awards has been delegated hereunder. Any delegation hereunder shall be subject to the restrictions and limits that the Committee specifies at the time of such delegation, and the Committee may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 12.5 shall serve in such capacity at the pleasure of the Committee.

### **ARTICLE 13. EFFECTIVE AND EXPIRATION DATE**

13.1 *Effective Date.* The Plan is effective as of the date the Plan is approved by the Company's shareholders (the "*Effective Date*"). The Plan will be deemed to be approved by the shareholders if it receives the affirmative vote of the holders of a majority of the shares of stock of the Company in accordance with applicable law and the applicable provisions of the Company's bylaws. The Plan shall not be effective unless it is approved by the Company's shareholders within a period commencing twelve (12) months prior to and ending twelve (12) months after the date the Plan is approved by the Board. If the Plan is not approved within this period, any options granted pursuant to the Plan shall be deemed cancelled. No option may be exercised prior to approval of the Plan by the Company's shareholders.

13.2 *Expiration Date.* The Plan will expire on, and no Award may be granted pursuant to the Plan after, the tenth anniversary of the earlier of (i) the date the Plan is approved by the Board or (ii) the Effective Date. Any Awards that are outstanding on the date the Plan expires shall remain in force according to the terms of the Plan and the applicable Award Agreement.

### **ARTICLE 14. AMENDMENT, MODIFICATION, AND TERMINATION**

14.1 *Amendment, Modification, and Termination.* Subject to Section 15.14 hereof, with the approval of the Board, at any time and from time to time, the Committee may terminate, amend or modify the Plan; *provided, however*, that (a) to the extent necessary and desirable to comply with any applicable law, regulation, or stock exchange rule, the Company shall obtain shareholder approval of any Plan amendment in such a manner and to such a degree as required, and (b) shareholder approval shall be required for any amendment to the Plan that (i) increases the number of shares available under the Plan (other than any adjustment as provided by Article 11 hereof), (ii) permits the Committee to grant Options with an exercise price that is below Fair Market Value on the date of grant, (iii) permits the Committee to extend the exercise period for an Option beyond ten years from the date of grant, or (iv) changes the definition of "Eligible Individual" or otherwise changes the classes of Employees eligible to participate in the Plan. Notwithstanding any provision in this Plan to the contrary, absent approval of the shareholders of the Company, no Option may be amended to reduce the per share exercise price of the shares subject to such Option below the per share exercise price as of the date the Option is granted and, except as permitted by Article 11 hereof, no Option may be granted in exchange for, or in connection with, the cancellation or surrender of an Option having a higher per share exercise price.

14.2 *Awards Previously Granted.* Except with respect to amendments made pursuant to Section 15.14 hereof, no termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted pursuant to the Plan without the prior written consent of the Participant.

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### **ARTICLE 15. GENERAL PROVISIONS**

15.1 *No Rights to Awards.* No Eligible Individual or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Committee is obligated to treat Eligible Individuals, Participants or any other persons uniformly.

15.2 *No shareholders Rights.* Except as otherwise provided herein, a Participant shall have none of the rights of a shareholder with respect to shares of Stock covered by any Award until the Participant becomes the record owner of such shares of Stock.

15.3 *Withholding.* The Company or any Subsidiary shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Participant's employment tax obligations) required by law to be withheld with respect to any taxable event concerning a Participant arising as a result of this Plan. The Committee may in its discretion and in satisfaction of the foregoing requirement allow a Participant to elect to have the Company withhold shares of Stock otherwise issuable under an Award (or allow the return of shares of Stock) having a Fair Market Value equal to the sums required to be withheld. Notwithstanding any other provision of the Plan, the number of shares of Stock which may be withheld with respect to the issuance, vesting, exercise or payment of any Award (or which may be repurchased from the Participant of such Award within six months (or such other period as may be determined by the Committee) after such shares of Stock were acquired by the Participant from the Company) in order to satisfy the Participant's federal, state, local and foreign income and payroll tax liabilities with respect to the issuance, vesting, exercise or payment of the Award shall be limited to the number of shares which have a Fair Market Value on the date of withholding or repurchase equal to the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such supplemental taxable income.

15.4 *No Right to Employment or Services.* Nothing in the Plan or any Award Agreement shall interfere with or limit in any way the right of the Company or any Subsidiary to terminate any Participant's employment or services at any time, nor confer upon any Participant any right to continue in the employ or service of the Company or any Subsidiary.

15.5 *Unfunded Status of Awards.* The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Agreement shall give the Participant any rights that are greater than those of a general creditor of the Company or any Subsidiary.

15.6 *Indemnification.* To the extent allowable pursuant to applicable law, each member of the Committee or of the Board shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; *provided* he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to

handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

15.7 *Relationship to Other Benefits.* No payment pursuant to the Plan shall be taken into account in determining any benefits pursuant to any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Subsidiary except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

15.8 *Expenses.* The expenses of administering the Plan shall be borne by the Company and its Subsidiaries.

15.9 *Titles and Headings.* The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

15.10 *Fractional Shares.* No fractional shares of Stock shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding up or down as appropriate.

15.11 *Limitations Applicable to Section 16 Persons.* Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any Participant who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange

Act (including any amendment to Rule 16b-3 under the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

15.12 *Government and Other Regulations.* The obligation of the Company to make payment of awards in Stock or otherwise shall be subject to all applicable laws, rules, and regulations, and to such approvals by government agencies as may be required. The Company shall be under no obligation to register pursuant to the Securities Act, as amended, any of the shares of Stock paid pursuant to the Plan. If the shares paid pursuant to the Plan may in certain circumstances be exempt from registration pursuant to the Securities Act, as amended, the Company may restrict the transfer of such shares in such manner as it deems advisable to ensure the availability of any such exemption.

15.13 *Governing Law.* The Plan and all Award Agreements shall be construed in accordance with and governed by the laws of the State of Wisconsin.

15.14 *Section 409A.* To the extent that the Committee determines that any Award granted under the Plan is subject to Section 409A of the Code, the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A of the Code. To the extent applicable, the Plan and Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Committee determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Committee may adopt such amendments to the Plan and the applicable Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Committee determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance.

\* \* \* \* \*

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of TomoTherapy Incorporated on \_\_\_\_\_, 2007.

\* \* \* \* \*

I hereby certify that the foregoing Plan was approved by the shareholders of TomoTherapy Incorporated on \_\_\_\_\_, 2007.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Corporate Secretary

**TOMOTHERAPY INCORPORATED  
2007 EQUITY INCENTIVE PLAN  
STOCK OPTION GRANT NOTICE AND  
STOCK OPTION AGREEMENT**

TomoTherapy Incorporated, a Wisconsin corporation (the "**Company**"), pursuant to its 2007 Equity Incentive Plan (the "**Plan**"), hereby grants to the holder listed below ("**Participant**"), an option to purchase the number of shares of the Company's common stock, par value \$ per share ("**Stock**"), set forth below (the "**Option**"). This Option is subject to all of the terms and conditions set forth herein and in the Stock Option Agreement attached hereto as *Exhibit A* (the "**Stock Option Agreement**") and the Plan, which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Stock Option Agreement.

**Participant:**

**Grant Date:**

**Exercise Price per Share:** \$

**Total Exercise Price:** \$

**Total Number of Shares Subject to the Option:** \_\_\_\_\_ shares

**Expiration Date:**

**Type of Option:** Incentive Stock Option Non-Qualified Stock  
Option

**Vesting Schedule:**

**VESTING SCHEDULE FOR GRANTS:**

The Option shall vest and become exercisable with respect to twenty-five percent (25%) of the shares of Stock subject thereto on each anniversary of the Grant Date beginning with the first anniversary of the Grant Date.

By his or her signature, the Participant agrees to be bound by the terms and conditions of the Plan, the Stock Option Agreement and this Grant Notice. The Participant has reviewed the Stock Option Agreement, the Plan and this Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of this Grant Notice, the Stock Option Agreement and the Plan. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan or relating to the Option.

**TOMOTHERAPY INCORPORATED**

**PARTICIPANT**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A  
TO STOCK OPTION GRANT NOTICE  
TOMOTHERAPY INCORPORATED STOCK OPTION AGREEMENT**

Pursuant to the Stock Option Grant Notice (the "**Grant Notice**") to which this Stock Option Agreement (this "**Agreement**") is attached, TomoTherapy Incorporated, a Wisconsin corporation (the "**Company**"), has granted to the Participant an option under the Company's 2007 Equity Incentive Plan (as amended from time to time, the "**Plan**") to purchase the number of shares of Stock indicated in the Grant Notice.

**ARTICLE I.  
GENERAL**

1.1 *Defined Terms.* Wherever the following terms are used in this Agreement they shall have the meanings specified below, unless the context clearly indicates otherwise. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan and the Grant Notice.

- (a) "**Termination of Consultancy**" shall mean the time when the engagement of the Participant as a Consultant to the Company or a Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, by resignation, discharge, death or retirement, but excluding: (a) terminations where there is a simultaneous employment or continuing employment of the Participant by the Company or any Subsidiary, and (b) terminations where there is a simultaneous re-establishment of a consulting relationship or continuing consulting relationship between the Participant and the Company or any Subsidiary. The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to Termination of Consultancy, including, but not by way of limitation, the question of whether a particular leave of absence constitutes a Termination of Consultancy. Notwithstanding any other provision of the Plan, the Company or any Subsidiary has an absolute and unrestricted right to terminate a Consultant's service at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in writing.

- (b) "**Termination of Directorship**" shall mean the time when the Participant, if he or she is or becomes an Independent Director, ceases to be a Director for any reason, including, but not by way of limitation, a termination by resignation, failure to be elected, death or retirement. The Board, in its sole and absolute discretion, shall determine the effect of all matters and

questions relating to Termination of Directorship with respect to Independent Directors.

- (c) **“Termination of Employment”** shall mean the time when the employee-employer relationship between the Participant and the Company or any Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, a termination by resignation, discharge, death, disability or retirement; but excluding: (a) terminations where there is a simultaneous reemployment or continuing employment of the Participant by the Company or any Subsidiary, and (b) terminations where there is a simultaneous establishment of a consulting relationship or continuing consulting relationship between the Participant and the Company or any Subsidiary. The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to Termination of Employment, including, but not by way of limitation, the question of whether a particular leave of absence constitutes a Termination of Employment; provided, however, that, if this Option is an Incentive Stock Option, unless otherwise determined by the Committee in its discretion, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Employment if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then applicable regulations and revenue rulings under said Section.
- (d) **“Termination of Services”** shall mean the Participant’s Termination of Consultancy, Termination of Directorship or Termination of Employment, as applicable.

1.2 *Incorporation of Terms of Plan.* The Option is subject to the terms and conditions of the Plan which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

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## ARTICLE II. GRANT OF OPTION

2.1 *Grant of Option.* In consideration of the Participant’s past and/or continued employment with or service to the Company or a Subsidiary and for other good and valuable consideration, effective as of the Grant Date set forth in the Grant Notice (the **“Grant Date”**), the Company irrevocably grants to the Participant the Option to purchase any part or all of an aggregate of the number of shares of Stock set forth in the Grant Notice, upon the terms and conditions set forth in the Plan and this Agreement. Unless designated as a Non-Qualified Stock Option in the Grant Notice, the Option shall be an Incentive Stock Option to the maximum extent permitted by law.

2.2 *Exercise Price.* The exercise price of the shares of Stock subject to the Option shall be as set forth in the Grant Notice, without commission or other charge; *provided, however*, that the price per share of the shares of Stock subject to the Option shall not be less than 100% of the Fair Market Value of a share of Stock on the Grant Date. Notwithstanding the foregoing, if this Option is designated as an Incentive Stock Option and the Participant owns (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any “subsidiary corporation” of the Company or any “parent corporation” of the Company (each within the meaning of Section 424 of the Code), the price per share of the shares of Stock subject to the Option shall not be less than 110% of the Fair Market Value of a share of Stock on the Grant Date.

2.3 *Consideration to the Company.* In consideration of the grant of the Option by the Company, the Participant agrees to render faithful and efficient services to the Company or any Subsidiary. Nothing in the Plan or this Agreement shall confer upon the Participant any right to continue in the employ or service of the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Subsidiaries, which rights are hereby expressly reserved, to discharge or terminate the services of the Participant at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between the Company or a Subsidiary and the Participant.

## ARTICLE III. PERIOD OF EXERCISABILITY

### 3.1 *Commencement of Exercisability.*

- (a) Subject to Sections 3.2, 3.3, 5.11 and 5.14, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.
- (b) No portion of the Option which has not become vested and exercisable at the date of the Participant’s Termination of Employment, Termination of Directorship or Termination of Consultancy shall thereafter become vested and exercisable, except as may be otherwise provided by the Committee or as set forth in a written agreement between the Company and the Participant.

3.2 *Duration of Exercisability.* The installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment which becomes vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice shall remain vested and exercisable until it becomes unexercisable under Section 3.3.

### 3.3 *Expiration of Option.* The Option may not be exercised to any extent by anyone after the first to occur of the following events:

- (a) The expiration of ten years from the Grant Date;
- (b) If this Option is designated as an Incentive Stock Option and the Participant owned (within the meaning of Section 424(d) of the Code), at the time the Option was granted, more than 10% of the total combined voting power of all classes of stock of the Company or any “subsidiary corporation” of the Company or any “parent corporation” of the Company (each within the meaning of Section 424 of the Code), the expiration of five years from the Grant Date;
- (c) The expiration of ninety (90) days from the date of the Participant’s Termination of Services, unless such termination occurs by reason of the Participant’s death or Disability; or
- (d) The expiration of one year from the date of the Participant’s Termination of Services by reason of the Participant’s death or Disability.

The Participant acknowledges that an Incentive Stock Option exercised more than three months after the Participant’s Termination of Employment, other than by reason of death or Disability, will be taxed as a Non-Qualified Stock Option.

3.4 *Special Tax Consequences.* The Participant acknowledges that, to the extent that the aggregate Fair Market Value (determined as of the time the Option is granted) of all shares of Stock with respect to which Incentive Stock Options, including the Option (if applicable), are exercisable for the first time by the Participant in any calendar year exceeds \$100,000, the Option and such other options shall be Non-Qualified Stock Options to the extent necessary to comply with the limitations imposed by Section 422(d) of the Code. The Participant further acknowledges that the rule set forth in the preceding sentence shall be applied by taking the Option and other "incentive stock options" into account in the order in which they were granted, as determined under Section 422(d) of the Code and the Treasury Regulations thereunder.

#### ARTICLE IV. EXERCISE OF OPTION

4.1 *Person Eligible to Exercise.* Except as provided in Section 5.2(b), during the lifetime of the Participant, only the Participant may exercise the Option or any portion thereof. After the death of the Participant, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3, be exercised by the Participant's personal representative or by any person empowered to do so under the deceased the Participant's will or under the then applicable laws of descent and distribution.

4.2 *Partial Exercise.* Any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3.

4.3 *Manner of Exercise.* The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Secretary of the Company (or any third party administrator or other person or entity designated by the Company) of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3:

- (a) An Exercise Notice in a form specified by the Committee, stating that the Option or portion thereof is thereby exercised, such notice complying with all applicable rules established by the Committee;
- (b) The receipt by the Company of full payment for the shares of Stock with respect to which the Option or portion thereof is exercised, including payment of any applicable withholding tax, which may be in one or more of the forms of consideration permitted under Section 4.4;
- (c) Any other written representations as may be required in the Committee's reasonable discretion to evidence compliance with the Securities Act or any other applicable law rule, or regulation; and
- (d) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 by any person or persons other than the Participant, appropriate proof of the right of such person or persons to exercise the Option.

Notwithstanding any of the foregoing, the Company shall have the right to specify all conditions of the manner of exercise, which conditions may vary by country and which may be subject to change from time to time.

4.4 *Method of Payment.* Payment of the exercise price shall be by any of the following, or a combination thereof, at the election of the Participant:

- (a) Cash;
- (b) Check;
- (c) With the consent of the Committee, delivery of a notice that the Participant has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate exercise price; *provided*, that payment of such proceeds is then made to the Company at such time as may be required by the Company, but in any event not later than the settlement of such sale;
- (d) With the consent of the Committee, surrender of other shares of Stock which have a fair market value on the date of surrender equal to the aggregate exercise price of the shares of Stock with respect to which the Option or portion thereof is being exercised;
- (e) With the consent of the Committee, surrendered shares of Stock issuable or transferable upon the exercise of the Option having a fair market value on the date of exercise equal to the aggregate exercise price of the shares of Stock with respect to which the Option or portion thereof is being exercised; or

- (f) With the consent of the Committee, property of any kind which constitutes good and valuable consideration.

4.5 *Conditions to Issuance of Stock Certificates.* The shares of Stock deliverable upon the exercise of the Option, or any portion thereof, may be either previously authorized but unissued shares of Stock or issued shares of Stock which have then been reacquired by the Company. Such shares of Stock shall be fully paid and nonassessable. The Company shall not be required to issue or deliver any shares of Stock purchased upon the exercise of the Option or portion thereof prior to fulfillment of all of the following conditions:

- (a) The admission of such shares of Stock to listing on all stock exchanges on which such Stock is then listed;
- (b) The completion of any registration or other qualification of such shares of Stock under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or of any other governmental regulatory body, which the Committee shall, in its absolute discretion, deem necessary or advisable;

- (c) The obtaining of any approval or other clearance from any state or federal governmental agency which the Committee shall, in its absolute discretion, determine to be necessary or advisable;
- (d) The receipt by the Company of full payment for such shares of Stock, including payment of any applicable withholding tax, which may be in one or more of the forms of consideration permitted under Section 4.4; and
- (e) The lapse of such reasonable period of time following the exercise of the Option as the Committee may from time to time establish for reasons of administrative convenience.

4.6 *Rights as shareholder.* The holder of the Option shall not be, nor have any of the rights or privileges of, a shareholder of the Company in respect of any shares of Stock purchasable upon the exercise of any part of the Option unless and until such shares of Stock shall have been issued by the Company to such holder (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment will be made for a dividend or other right for which the record date is prior to the date the shares of Stock are issued, except as provided in Section 11.1 of the Plan.

## ARTICLE V. OTHER PROVISIONS

5.1 *Administration.* The Committee shall have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee in good faith shall be final and binding upon Participant, the Company and all other interested persons. No member of the Committee or the Board shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, this Agreement or the Option.

### 5.2 *Option Not Transferable.*

- (a) Subject to Section 5.2(b), the Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the shares of Stock underlying the Option have been issued, and all restrictions applicable to such shares of Stock have lapsed. Neither the Option nor any interest or right therein shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.
- (b) Notwithstanding any other provision in this Agreement, with the consent of the Committee, the Participant may transfer the Option (or any portion thereof) to any one or more Permitted Transferees (as defined below), subject to the following terms and conditions: (i) any portion of the Option transferred to a

Permitted Transferee shall not be assignable or transferable by the Permitted Transferee other than by will or the laws of descent and distribution; (ii) any portion of the Option which is transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Option as applicable to the Participant (other than the ability to further transfer the Option); and (iii) the Participant and the Permitted Transferee shall execute any and all documents requested by the Committee, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under applicable federal and state securities laws and (C) evidence the transfer. For purposes of this Section 5.2(b), "Permitted Transferee" shall mean, with respect to a Participant, any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the Participant's household (other than a tenant or employee), a trust in which these persons (or the Participant) control the management of assets, charitable institutions, or trusts or other entities whose beneficiaries or beneficial owners are these persons (or the Participant) and/or charitable institutions, and any other entity in which these persons (or the Participant) own more than fifty percent of the voting interests, or any other transferee specifically approved by the Committee after taking into account any state or federal tax or securities laws applicable to transferable Options. Notwithstanding the foregoing, (i) in no event shall the Option be transferable by the Participant to a third party (other than the Company) for consideration, and (ii) no transfer of an Incentive Stock Option will be permitted to the extent that such transfer would cause the Incentive Stock Option to fail to qualify as an "incentive stock option" under Section 422 of the Code.

5.3 *Adjustments.* The Participant acknowledges that the Option is subject to adjustment, modification and termination in certain events as provided in this Agreement and Article 11 of the Plan.

5.4 *Notices.* Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the address given beneath the signature of the Company's authorized officer on the Grant Notice, and any notice to be given to Participant shall be addressed to Participant at the address given beneath Participant's signature on the Grant Notice. By a notice given pursuant to this Section 5.4, either party may hereafter designate a different address for notices to be given to that party. Any notice which is required to be given to Participant shall, if Participant is then deceased, be given to the person entitled to exercise his or her Option pursuant to Section 4.1 by written notice under this Section 5.4. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

5.5 *Titles.* Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.6 *Governing Law; Severability.* The laws of the State of Wisconsin shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

5.7 *Conformity to Securities Laws.* The Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

5.8 *Amendments, Suspension and Termination.* To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Committee or the Board, *provided*, that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely effect the Option in any material way without the prior written consent of the Participant.

5.9 *Successors and Assigns.* The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth in Section 5.2, this Agreement shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns.

5.10 *Notification of Disposition.* If this Option is designated as an Incentive Stock Option, Participant shall give prompt notice to the Company of any disposition or other transfer of any shares of Stock acquired under this Agreement if such disposition or transfer is made (a) within two years from the Grant Date with respect to such shares of Stock or (b) within one year after the transfer of such shares of Stock to Participant. Such notice shall

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specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by Participant in such disposition or other transfer.

5.11 *Limitations Applicable to Section 16 Persons.* Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Option and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule

5.12 *Entire Agreement.* The Plan, the Grant Notice and this Agreement (including all Exhibits thereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

5.13 *Section 409A.* This Option is not intended to constitute “nonqualified deferred compensation” within the meaning of Section 409A of the Code (“**Section 409A**”). However, notwithstanding any other provision of the Plan, this Agreement or the Grant Notice, if at any time the Committee determines that the Option (or any portion thereof) may be subject to Section 409A, the Committee shall have the right, in its sole discretion, to adopt such amendments to the Plan, this Agreement or the Grant Notice or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate either for the Option to be exempt from the application of Section 409A or to comply with the requirements of Section 409A.

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Attachment 2

**TOMOTHERAPY INCORPORATED  
2007 INCENTIVE AWARD PLAN  
RESTRICTED STOCK AWARD GRANT NOTICE AND  
RESTRICTED STOCK AWARD AGREEMENT**

TomoTherapy Incorporated, a Wisconsin corporation (the “**Company**”), pursuant to its 2007 Equity Incentive Plan (the “**Plan**”), hereby grants to the individual listed below (“**Participant**”), the number of shares of the Company’s common stock, par value \$ per share, set forth below (the “**Shares**”). This Restricted Stock Award is subject to all of the terms and conditions as set forth herein and in the Restricted Stock Award Agreement attached hereto as *Exhibit A* (the “**Restricted Stock Agreement**”) (including without limitation the Restrictions on the Shares set forth in the Restricted Stock Agreement) and the Plan, each of which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Restricted Stock Agreement.

**Participant:**

**Grant Date:**

**Total Number of Shares of  
Restricted Stock:**

shares

**Purchase Price:** \$

**Vesting Schedule:** [To be specified in individual Grant Notices.]

By his or her signature and the Company's signature below, Participant agrees to be bound by the terms and conditions of the Plan, the Restricted Stock Agreement and this Grant Notice. Participant has reviewed the Restricted Stock Agreement, the Plan and this Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of this Grant Notice, the Restricted Stock Agreement and the Plan. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Restricted Stock Agreement. If Participant is married, his or her spouse has signed the Consent of Spouse attached to this Grant Notice as *Exhibit B*.

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**TOMOTHERAPY INCORPORATED:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**PARTICIPANT:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

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**EXHIBIT A  
TO RESTRICTED STOCK AWARD GRANT NOTICE  
TOMOTHERAPY INCORPORATED RESTRICTED STOCK AWARD AGREEMENT**

Pursuant to the Restricted Stock Award Grant Notice (the "**Grant Notice**") to which this Restricted Stock Award Agreement (the "**Agreement**") is attached, TomoTherapy Incorporated, a Wisconsin corporation (the "**Company**"), has granted to Participant the right to purchase the number of shares of Restricted Stock under the Company's 2007 Equity Incentive Plan (as amended from time to time, the "**Plan**") as set forth in the Grant Notice.

**ARTICLE I.  
GENERAL**

1.1 *Definitions.* All capitalized terms used in this Agreement without definition shall have the meanings ascribed in the Plan and the Grant Notice.

1.2 *Incorporation of Terms of Plan.* The Award is subject to the terms and conditions of the Plan which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

**ARTICLE II.  
AWARD OF RESTRICTED STOCK**

2.1 *Award of Restricted Stock.*

- (a) *Award.* In consideration of the Participant's agreement to remain in the service or employ of the Company or one of its Subsidiaries, and for other good and valuable consideration, the Company issues to the Participant the Award described in this Agreement (the "**Award**"). The number of shares of Restricted Stock (the "**Shares**") subject to the Award is set forth in the Grant Notice. The Participant is an Employee, Director or other Service Provider.
- (b) *Purchase Price; Book Entry Form.* The purchase price of the Shares is set forth on the Grant Notice. At the sole discretion of the Committee, the Shares will be issued in either (i) uncertificated form, with the Shares recorded in the name of the Participant in the books and records of the Company's transfer agent with appropriate notations to the extent that the Shares remain subject to the Restrictions (as defined below); or (ii) certificate form pursuant to the terms of Sections 2.1(c) and (d).
- (c) *Legend.* Certificates representing Shares issued pursuant to this Agreement shall, until all restrictions on transfer imposed pursuant to this Agreement lapse or shall have been removed and new certificates are issued, bear the following legend (or such other legend as shall be determined by the Committee):

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN VESTING REQUIREMENTS AND MAY BE SUBJECT TO FORFEITURE UNDER THE TERMS OF THAT CERTAIN RESTRICTED STOCK AWARD AGREEMENT, DATED [           , 200 ], BY AND BETWEEN TOMOTHERAPY INCORPORATED AND THE REGISTERED OWNER OF SUCH SHARES, AND SUCH SHARES MAY NOT BE, DIRECTLY OR INDIRECTLY, OFFERED, TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNDER ANY CIRCUMSTANCES, EXCEPT PURSUANT TO THE PROVISIONS OF SUCH AGREEMENT."

- (d) *Escrow.* The Secretary of the Company or such other escrow holder as the Committee may appoint may retain physical custody of the certificates representing the Shares until all of the restrictions on transfer imposed pursuant to this Agreement lapse or shall have been removed. In such event the Participant shall not retain physical custody of any certificates representing unvested Shares issued to the Participant.

2.2 *Restrictions.*

- (a) *Repurchase of Shares Subject to Restrictions.* In the event that the Participant ceases to be an Employee, Director or other Service Provider for any reason, the Company shall have the right to repurchase from the Participant any or all Shares then subject to the Restrictions at a cash price per Share equal to the price paid

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by the Participant for such Shares. For purposes of this Agreement, “**Restrictions**” shall mean the restrictions on sale or other transfer set forth in Section 3.1 and the exposure to repurchase set forth in this Section 2.2(a).

- (b) *Vesting and Lapse of Restrictions.* Subject to Section 2.2(a), the Award shall vest and the Restrictions shall lapse in accordance with the vesting schedule set forth on the Grant Notice.
- (c) *Tax Withholding; Conditions to Issuance of Certificates.* Notwithstanding any other provision of this Agreement (including without limitation Section 2.1(b)):
  - (i) No Shares shall be recorded in the name of the Participant in the books and records of the Company’s transfer agent and no new certificate shall be delivered to the Participant or his legal representative unless and until the Participant or his legal representative shall have paid to the Company the full amount of all federal and state withholding or other taxes applicable to the taxable income of Participant resulting from the grant of Shares or the lapse or removal of the Restrictions.
  - (ii) The Company shall not be required to record any Shares in the name of the Participant in the books and records of the Company’s transfer agent or issue or deliver any certificate or certificates for any Shares prior to the fulfillment of all of the following conditions: (A) the admission of the Shares to listing on all stock exchanges on which the Company’s common stock is then listed, (B) the completion of any registration or other qualification of the Shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Committee shall, in its sole and absolute discretion, deem necessary and advisable, (C) the obtaining of any approval or other clearance from any state or federal governmental agency that the Committee shall, in its absolute discretion, determine to be necessary or advisable and (D) the lapse of any such reasonable period of time following the date the Restrictions lapse as the Committee may from time to time establish for reasons of administrative convenience.

### **ARTICLE III. OTHER PROVISIONS**

3.1 *Restricted Stock Not Transferable.* No Shares that are subject to the Restrictions or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of the Participant or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect; *provided, however,* that this Section 3.1 notwithstanding, with the consent of the Committee, the Shares may be transferred to certain persons or entities related to Participant, including but not limited to members of Participant’s family, charitable institutions or trusts or other entities whose beneficiaries or beneficial owners are members of Participant’s family and/or charitable institutions, or to such other persons or entities as may be expressly approved by the Committee, pursuant to any such conditions and procedures the Committee may require. Notwithstanding the foregoing, in no event shall the Award be transferable by the Participant to a third party (other than the Company) for consideration.

3.2 *Rights as shareholder.* Except as otherwise provided herein, upon the Grant Date the Participant shall have all the rights of a shareholder with respect to the Shares, subject to the Restrictions herein, including the right to vote the Shares and the right to receive any cash or stock dividends paid to or made with respect to the Shares.

3.3 *Not a Contract of Employment.* Nothing in this Agreement or in the Plan shall confer upon the Participant any right to continue to serve as an employee or other service provider of the Company or any of its Subsidiaries.

3.4 *Governing Law.* The laws of the State of Wisconsin shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

3.5 *Conformity to Securities Laws.* The Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act of 1933, as amended, and the Exchange Act, and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission, including without limitation Rule 16b-3 under the Exchange Act. Notwithstanding anything herein to the contrary,

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the Plan shall be administered, and the Awards are granted, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

3.6 *Amendment, Suspension and Termination.* To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Committee or the Board, *provided,* that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely effect the Award in any material way without the prior written consent of the Participant.

3.7 *Notices.* Notices required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, with postage and fees prepaid, addressed to the Participant to his address shown in the Company records, and to the Company at its principal executive office.

3.8 *Successors and Assigns.* The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns.

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**EXHIBIT B  
TO RESTRICTED STOCK AWARD GRANT NOTICE  
CONSENT OF SPOUSE**

I, \_\_\_\_\_, spouse of \_\_\_\_\_, have read and approve the foregoing Agreement. In consideration of issuing to my spouse the shares of the common stock of TomoTherapy Incorporated set forth in the Agreement, I hereby appoint my spouse as my attorney-in-fact in respect to the exercise of any rights under the Agreement and agree to be bound by the provisions of the Agreement insofar as I may have any rights in said Agreement or any shares of the common stock of TomoTherapy Incorporated issued pursuant thereto under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the foregoing Agreement.

Dated: \_\_\_\_\_,  
\_\_\_\_\_  
Signature of Spouse

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**APPENDIX B  
TOMOTHERAPY INCORPORATED  
2007 INCENTIVE AWARD PLAN  
RESTRICTED STOCK UNIT GRANT NOTICE**

TomoTherapy Incorporated, a Wisconsin corporation (the "**Company**"), pursuant to its 2007 Equity Incentive Plan (the "**Plan**"), hereby grants to the individual listed below ("**Participant**"), the following award of Restricted Stock Units ("**RSUs**"). This Restricted Stock Unit is subject to all of the terms and conditions set forth herein and in the Restricted Stock Unit Agreement attached hereto as *Appendix A* (the "**Restricted Stock Unit Agreement**") and in the Plan, each of which are incorporated herein by reference. All capitalized terms used and not otherwise defined in this Grant Notice or the Restricted Stock Unit Agreement shall have the meanings ascribed to such terms in the Plan unless the context clearly indicates otherwise.

**Participant:**

**Grant Date:**

**Number of RSUs:**

**Vesting Schedule:** Subject to the Participant's continued service as an Employee, Consultant or Director through the applicable vesting date, [ ] percent ( % ) of the RSUs shall vest on the [ ] anniversary of the Grant Date and an additional [ ] percent ( % ) of the RSUs shall vest on each of the [ , and ] anniversaries of the Grant Date (each such date, a "**Vesting Date**").

**Termination of RSUs:** In the event that the Participant ceases to be an Employee, Consultant or Independent Director for any reason prior to the applicable Vesting Date, all RSUs that have not vested as of the date of such termination shall thereupon automatically be forfeited by the Participant as of such date of termination without payment of any consideration therefor.

By his or her signature and the Company's signature below, the Participant agrees to be bound by the terms and conditions of the Plan, the Restricted Stock Unit Agreement and this Grant Notice. Participant has reviewed the Restricted Stock Unit Agreement, the Plan and this Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of this Grant Notice, the Restricted Stock Unit Agreement and the Plan. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Plan, this Grant Notice or the Restricted Stock Unit Agreement. If Participant is married, his or her spouse has signed the Consent of Spouse attached to this Grant Notice as *Exhibit B*.

**TOMOTHERAPY INCORPORATED:**

**PARTICIPANT:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_

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**APPENDIX A  
TO RESTRICTED STOCK UNIT GRANT NOTICE  
RESTRICTED STOCK UNIT AGREEMENT**

1. **Grant.** Pursuant to the Restricted Stock Unit Grant Notice (the "**Grant Notice**") to which this Restricted Stock Unit Agreement (the "**Agreement**") is attached, TomoTherapy Incorporated, a Wisconsin corporation (the "**Company**"), has granted to the Participant an award of [ ] RSUs under the Company's 2007 Equity Incentive Plan (the "**Plan**") as set forth in the Grant Notice, subject to all of the terms and conditions contained in this Agreement and the Plan. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan and the Grant Notice unless the context clearly indicates otherwise.

2. **Vesting and Termination.** The RSUs shall vest and shall terminate as set forth in the Grant Notice. In the event of a termination of the Participant's status as an Employee, Consultant or Independent Director for any reason prior to the applicable Vesting Date, all RSUs that have not vested as of the date of such termination shall thereupon automatically be forfeited by the Participant as of such date of termination without payment of any consideration therefor. RSUs which are not vested as of the date of such termination shall not thereafter become vested.

3. *RSUs.* As of the applicable Vesting Date, each RSU that vests on such date shall represent the right to receive payment, in accordance with Section 4 below, in the form of one share of Stock. Unless and until an RSU vests, the Participant will have no right to payment in respect of any such RSU. Prior to actual payment in respect of any vested RSU, such RSU will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company.

4. *Payment after Vesting; Code Section 409A.* Payment in respect of any RSUs that vest in accordance herewith shall be made to the Participant (or in the event of the Participant's death, to the Participant's estate) in whole shares of Stock as soon as practicable after the applicable Vesting Date, but in no event later than sixty (60) days, after such Vesting Date (for the avoidance of doubt, this deadline is intended to comply with the "short-term deferral" exemption from Section 409A of the Code).

5. *Tax Withholding.* The Company shall have the authority and the right to deduct or withhold, or to require the Participant to remit to the Company, an amount sufficient to satisfy all applicable federal, state and local taxes (including the Participant's employment tax obligations) required by law to be withheld with respect to any taxable event arising in connection with the RSUs. Unless otherwise determined by the Committee, the Company shall, in satisfaction of the foregoing requirement, withhold shares of Stock otherwise issuable in respect of any RSUs having a Fair Market Value equal to the sums required to be withheld, and the Participant hereby agrees to such withholding of shares.

6. *Rights as Shareholder.* Neither the Participant nor any person claiming under or through the Participant will have any of the rights or privileges of a shareholder of the Company in respect of any shares of Stock that may become deliverable hereunder unless and until certificates representing such shares of Stock shall have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to the Participant or any person claiming under or through the Participant.

7. *Non-Transferability.* Unless transferred to a Permitted Transferee (as defined below), RSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution. For purposes of this Section 7, "Permitted Transferee" shall mean, with respect to a Participant, certain persons or entities related to the Participant, including but not limited to members of the Participant's family, charitable institutions or trusts or other entities whose beneficiaries or beneficial owners are members of Participant's family and/or charitable institutions, or to such other persons or entities as may be expressly approved by the Committee, pursuant to any such conditions and procedures the Committee may require. Neither the RSUs nor any interest or right therein shall be liable for the debts, contracts or engagements of the Participant or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

8. *Distribution of Stock.* Notwithstanding anything herein to the contrary, no payment shall be made under this Agreement in the form of shares of Stock prior to the fulfillment of all of the following conditions: (i) the admission

of such shares to listing on all stock exchanges on which the Stock is then listed, (ii) the completion of any registration or other qualification of such shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Committee shall, in its sole and absolute discretion, deem necessary and advisable, (iii) the obtaining of any approval or other clearance from any state or federal governmental agency that the Committee shall, in its absolute discretion, determine to be necessary or advisable and (iv) the lapse of any such reasonable period of time following the Vesting Date as the Committee may from time to time establish for reasons of administrative convenience. All certificates delivered pursuant to this Agreement shall be subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal, state, or local securities or other laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the shares of Stock are listed, quoted, or traded. The Committee may place legends on any certificate to reference restrictions applicable to the shares of Stock. In addition to the terms and conditions provided herein, the Committee may require that the Participant make such covenants, agreements, and representations as the Committee, in its sole discretion, deems advisable in order to comply with any such laws, regulations, or requirements. The Committee shall have the right to require the Participant to comply with any timing or other restrictions with respect to the settlement of any RSUs pursuant to this Agreement, including a window-period limitation, as may be imposed in the discretion of the Committee. Any shares of Stock distributed pursuant to this Agreement may consist, in whole or in part, of authorized and unissued shares, treasury shares or shares purchased on the open market. No fractional shares shall be issued and the Committee shall determine, in its sole discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding up or down as appropriate.

9. *No Effect on Employment.* Nothing in this Agreement or in the Plan shall confer upon the Participant any right to continue to serve as an Employee, Consultant, member of the Board or other service provider of the Company or any of its Subsidiaries.

10. *Severability.* In the event that any provision in this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement, which shall remain in full force and effect.

11. *Tax Consultation.* The Participant understands that the Participant may suffer adverse tax consequences in connection with the RSUs granted pursuant to this Agreement. The Participant represents that the Participant has consulted with any tax consultants that the Participant deems advisable in connection with the RSUs and that the Participant is not relying on the Company for tax advice.

12. *Amendments, Suspension and Termination.* To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Committee or the Board.

13. *Conformity to Securities Laws.* The Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder, and all applicable state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the RSUs are granted, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

14. *Limitations Applicable to Section 16 Persons.* Notwithstanding any other provision of the Plan or this Agreement, if the Participant becomes subject to Section 16 of the Exchange Act, the Plan, the RSUs and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

15. *Code Section 409A.* The RSUs are not intended to constitute or provide for “nonqualified deferred compensation” within the meaning of Section 409A of the Code (“**Section 409A**”). However, notwithstanding any other provision of the Plan, this Agreement or the Grant Notice, if at any time the Committee determines that the RSUs (or any portion thereof) may be subject to Section 409A, the Committee shall have the right, in its sole discretion, to adopt such amendments to the Plan, this Agreement or the Grant Notice or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate either for the RSUs to be exempt from the application of Section 409A or to comply with the requirements of Section 409A. Nothing herein shall, or shall be construed so as to, limit the generality of Section 15.14 of the Plan.

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16. *Adjustments.* The Participant acknowledges that the RSUs are subject to modification and termination in certain events as provided in this Agreement and Article 11 of the Plan.

17. *Notices.* Notices required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, with postage and fees prepaid, addressed to the Participant to his or her address shown in the Company records, and to the Company at its principal executive office.

18. *Successors and Assigns.* The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer contained herein, this Agreement shall be binding upon the Participant and his or her heirs, executors, administrators, successors and assigns.

19. *Governing Law.* The laws of the State of Wisconsin shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

20. *Captions.* Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

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**EXHIBIT B  
TO RESTRICTED STOCK UNIT GRANT NOTICE  
CONSENT OF SPOUSE**

I, \_\_\_\_\_, spouse of \_\_\_\_\_, have read and approve the foregoing Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement (the “**Agreement**”). In consideration of issuing to my spouse the Restricted Stock Units of TomoTherapy Incorporated set forth in the Grant Notice and the Agreement, I hereby appoint my spouse as my attorney-in-fact in respect to the exercise of any rights under the Grant Notice and the Agreement and agree to be bound by the provisions thereof insofar as I may have any rights therein or in or to any shares of the common stock of TomoTherapy Incorporated issued pursuant thereto under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the Grant Notice and the Agreement.

Dated: \_\_\_\_\_,

\_\_\_\_\_  
Signature of Spouse

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Accuray Incorporated  
Stock Option Assumption Notice

Dear [Full Name]

As you know, on June 10, 2011 (the "Closing Date") Accuray Incorporated ("Accuray") acquired TomoTherapy Incorporated ("TomoTherapy") (the "Acquisition") pursuant to the Agreement and Plan of Merger by and among Accuray, Jaguar Acquisition, Inc., and TomoTherapy dated March 6, 2011 (the "Merger Agreement"). On the Closing Date, you held one or more outstanding options to purchase shares of TomoTherapy common stock ("Options"), which were granted to you under one or more of the TomoTherapy Incorporated 2000 Stock Option Plan, TomoTherapy Incorporated 2002 Stock Option, and TomoTherapy Incorporated 2007 Equity Incentive Plan (each, a "Plan") and documented by a stock option agreement(s) between you and Tomotherapy, as amended (each, an "Option Agreement").

Pursuant to the Merger Agreement, on the Closing Date, Accuray assumed all obligations of TomoTherapy under your Option(s) and your Option(s) were converted into options to purchase shares of Accuray common stock. This Stock Option Assumption Notice ("Notice") evidences the terms of Accuray's assumption and conversion of your Option(s) including any adjustments required in connection with the Acquisition.

The table below provides information regarding your Option(s) immediately before and after the Acquisition:

**Grant Details**

<b>Employee ID</b>	[Employee ID]
<b>Plan Name</b>	[Plan from where option was granted]
<b>Grant Date</b>	[Grant Date]
<b>Type of Award</b>	[Grant Type]
<b>Original Grant Number</b>	[Tomo Grant Number]
<b>New Grant Number</b>	(New Grant Number)
<b>Original Number of Option Shares</b>	[Acquisition Shares]
<b>New Number of Option Shares</b>	[Shares Granted]
<b>Original Exercise Price per Share</b>	[Acquisition Exercise Price]
<b>New Exercise Price per Share</b>	[Option price]
<b>Vesting Commencement Date</b>	[Vest Start Date]
<b>Expiration Date</b>	[Expiration Date]

The adjustment to the number of shares of common stock subject to your Option(s) and the exercise price of your Option(s) following the closing of the Acquisition is based on the stock option exchange ratio of .6148 (the "Stock Option Exchange Ratio"), as determined in accordance with the terms of the Merger Agreement. The adjustment is intended to: (a) assure that the total spread of your Option(s) (i.e., the difference between the aggregate fair market value of the shares underlying the Option(s) and the aggregate exercise price of the Option(s)) immediately following the Acquisition does not exceed the total spread that existed immediately prior to the Acquisition; and (b) to preserve, on a per share basis, the ratio of exercise price to the fair market value that existed immediately prior to the Acquisition. The new number of shares of Accuray common stock subject to your Option(s) was determined by multiplying the Stock Option Exchange Ratio by the original number of shares subject to your Option(s) on the Closing Date and rounding the resulting product down to the next whole number of shares of Accuray common stock. The new exercise price per share of your Option(s) was determined by dividing the original exercise price per share of your Option(s) by the Stock Option Exchange Ratio and rounding the resulting quotient up to the next whole cent.

With the exception of the adjustments to the type of shares subject to your Option(s), the number of shares subject to your Option(s) and the exercise price per share described above, all terms of your Option Agreement(s), including the vesting commencement date, vesting schedule, expiration date, and provisions governing the exercise or the termination of your Option(s), remain the same as set forth in the Option Agreement(s) and/or any notice of grant, except that references to "the Company" or "TomoTherapy Incorporated" shall mean "Accuray Incorporated." The only permissible methods to exercise your Option(s) are cash, check, wire transfer, or through a cashless exercise program with an Accuray-designated broker. Upon termination of your employment with Accuray or any present or future Accuray subsidiary, you will have the applicable limited post-termination period specified in your Option Agreement(s) to exercise your Option(s), to the extent vested and outstanding at the time of termination, after which time your Option(s) will expire and will NOT be exercisable.

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To exercise your Option(s) through a cashless exercise program, you must utilize our captive broker E\*trade ([www.etrade.com](http://www.etrade.com)).

Nothing in this Notice, your Option Agreement(s), the Plans or any notice of grant interferes in any way with the rights of you, Accuray or its affiliates, which rights are expressly reserved, to terminate your employment at any time for any reason. Future stock option awards, if any, you may receive from Accuray will be governed by the terms of the Accuray equity plans under which such stock option awards are granted, and such terms may be different from the terms of your Option(s).

If you have any questions regarding this Notice or your Option(s), please contact Oria De La Cerda, Accuray Stock Administrator at [ocerda@accuray.com](mailto:ocerda@accuray.com) or by phone at 408 716-4680.

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