

## **Instructions for Completing the Agreement to Negotiate in Good Faith**

This Agreement should be entered into between a Company and UH. The purpose of this Agreement is to formalize the parties' relationship with respect to research intellectual property and commercialization.

To complete the form:

1. In the first paragraph, insert the effective date, the Company's name and Company's address;
2. In the second paragraph, insert the UH researchers names and the research area;
3. In the third paragraph, insert the Company's activities;
4. In Clause 4, paragraph 2, insert the maximum term in months of the agreement to negotiate in good faith;
5. Sign, date and insert name and title of authorized representatives for Company and UH.

## LETTER OF INTENT - AGREEMENT TO NEGOTIATE IN GOOD FAITH

This Letter of Intent (“AGREEMENT”) is made on date, between Company, of address (“COMPANY”) and University of Houston, an agency of the State of Texas pursuant to Chapter 111, Texas Education Code, having offices at the Office of Intellectual Property Management, E. Cullen Bldg., Room 316, 4800 Calhoun St., Houston, TX 77204 (“UH”).

UH and its researchers, Names, have undertaken research in the area of describe research; [This research is described in detail in Attachment A (“RESEARCH”).]

The activities of COMPANY are list activities;

COMPANY intends to continue funding of the RESEARCH, so that potential commercial products (“PRODUCTS”) can be generated;

COMPANY wishes to formalize its relationship with UH, particularly with respect to intellectual property ownership and commercialization;

COMPANY wishes to acquire certain exclusive rights, in the field of use, to the RESEARCH, PRODUCTS and Patents so that it can commercialize them and UH is willing to grant the exclusive rights to COMPANY in the field of use; and

This AGREEMENT summarizes the preliminary understanding of the parties with respect to the terms and conditions upon which they would contemplate entering into a transaction. When the parties accept this AGREEMENT, it is anticipated that representatives of UH and COMPANY will promptly, in good faith, endeavor to negotiate and prepare a Definitive Agreement embodying the matters set forth below (“DEFINITIVE AGREEMENT”).

**1. Topics for Negotiation.** The parties agree to negotiate in good faith, with the following terms serving as topics for negotiation:

(a) funding by COMPANY of a research program for the further development of the RESEARCH

(b) licensing to COMPANY the background intellectual property to the RESEARCH

(c) licensing to COMPANY any future Patents or intellectual property generated by the new research program

(d) any license would address the following issues:

(i) exclusivity and fields/applications for licensing

(ii) a right to sublicense

(ii) a reasonable license fee and royalty rate on net sales of PRODUCTS

(iv) a commitment from COMPANY to develop and commercialize the RESEARCH, PRODUCTS and Patents

(v) payment of patent costs for any Patents by COMPANY

(vi) reports, records and/or milestones

**2. DEFINITIVE AGREEMENT.** The DEFINITIVE AGREEMENT would contain additional terms and conditions which are appropriate for a transaction of this kind, including, but not limited to, representations and warranties, retention by UH of a right to use the intellectual property for internal research and academic purposes, publications, provisions concerning notice, force majeure, indemnification, liability, confidentiality, choice of law, termination, and other similar provisions.

Execution of the DEFINITIVE AGREEMENT by each party is subject to all necessary consents and approvals, including, but not limited to, all required corporate approvals of each party.

### **3. Confidentiality Clause**

3.1 Confidential Information. For the purposes of this AGREEMENT "Confidential Information" means:

(a) the Licensor PRODUCTS and the Distributor PRODUCTS;

(b) any business or technical information of Licensor or Distributor, including but not limited to any information relating to Licensor's or Distributor's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how;

(c) any information that is designated by the disclosing party as "confidential" or "proprietary" or, if orally disclosed, reduced to writing by the disclosing party within thirty (30) days of the disclosure; and

(d) the terms and conditions of this AGREEMENT.

3.2 Exclusions. Confidential Information does not include information that:

(a) is developed by the receiving party independently and without use of or concerning the disclosing party's Confidential Information;

(b) is obtained by the receiving party from a third party without restriction on disclosure and without breach of a nondisclosure obligation;

(c) is in or enters the public domain other than through the fault or negligence of the receiving party and without breach of this AGREEMENT;

(d) the receiving party possesses before first receiving it from the disclosing party; or

(e) as legally required to be disclosed by law, at which point the disclosing party will notify the other party.

3.3 Obligation. Each party will maintain in strict confidence, and will not use or disclose, except as expressly permitted under this AGREEMENT, any Confidential Information received from the other party. Each party further agrees to use the same degree of care to maintain the confidentiality of all Confidential Information received from the other party that it uses to maintain the confidentiality of its own information of similar importance, but in no event will it use less than reasonable care.

4. Nature of Agreement to Negotiate in Good Faith. This AGREEMENT is not an agreement to agree nor does it commit either party to proceed with the transaction contemplated by this AGREEMENT. Rather it is a contract as to the conduct of the good faith negotiations and the issues, upon which the parties will, in good faith, endeavor to negotiate and prepare the DEFINITIVE AGREEMENT.

UH and COMPANY agree to negotiate in good faith, and exclusively for a period not to exceed number (#) months, unless extended by mutual agreement by the parties. It is not considered good faith bargaining to conduct parallel negotiations with third parties with respect to the transaction contemplated by this AGREEMENT, to fail to disclose information relating to the transaction, and to refuse to negotiate.

If the parties fail to enter into a DEFINITIVE AGREEMENT within the said period then the parties have no further obligations to one another and neither is entitled to any compensation from the other party for any reason connected with the negotiations or their termination, or with respect to the contemplated transaction.

5. Governing Law. The laws of the State of Texas and the United States govern the validity and interpretation of this AGREEMENT and the legal relation of the parties.

The parties have caused this AGREEMENT to be executed by their duly authorized representatives.

COMPANY

By \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

UH

By \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_