

UNIVERSITY of HOUSTON



Bilateral Confidentiality Agreement

This Bilateral Confidentiality Agreement (“Agreement”) is made between the University of Houston, an agency of the State of Texas, pursuant to Chapter 111 of the Texas Education Code (“UH”), and _____ (“Company”), having its principal offices at _____. University and Company may be referred to in this Agreement individually as a “Party” and collectively as the “Parties”.

Pursuant to this Agreement and as related to the Purpose (defined below), the Parties may exchange through correspondence and during discussions technical and business information concerning the Parties’ research and development efforts. Each Party agrees to receive the information on the following terms and conditions:

1. This Agreement governs all communications between the Parties made during the period beginning _____ (“Effective Date”) and ending _____, unless this Agreement is terminated sooner by either Party in writing.
2. The term Proprietary Information means all information relating to research, development and intellectual property in the areas of _____, which is exchanged by the Parties during the term of this Agreement by any means, including written, electronic and verbal, and which is neither in the public domain, nor known to the Party receiving the information (“Receiving Party”) before the time of the disclosure as evidenced by the written records of Receiving Party.
3. Proprietary Information does not include any information which:
 - a. becomes public information or is generally available to the public other than by an unauthorized act or omission of Receiving Party;
 - b. is received by Receiving Party from third parties who rightfully possess the information and have the legal right to disclose such information;
 - c. Receiving Party and/or Affiliates of Receiving Party can show by written records that such party possessed the information before the time of the disclosure and that the information was acquired legally and not directly or indirectly from the other Party;
 - d. is required by law to be disclosed , provided however, as allowed by law, the Receiving Party shall provide the other Party notice and an opportunity to seek a protective order to prevent such disclosure; or
 - e. is generated by employees or Affiliates of Receiving Party who did not have access to the Proprietary Information as evidenced by written records.
4. As used in this Agreement, the term Affiliates means any entity which controls, or is controlled by, or is under common control with, such Party. When applicable, the Receiving Party is responsible for proving that the exceptions in Section 3 apply to any disclosure of Proprietary Information.
5. Proprietary Information will be exchanged between the Parties solely to _____ (“Purpose”).

Each Party agrees not to disclose the other Party’s Proprietary Information to any third party without the written prior consent of the disclosing Party, except as otherwise allowed in this Agreement. This Agreement governs disclosures of Proprietary Information in written and electronic form, as well as oral disclosures which are then summarized in written or electronic form within thirty (30) days after the oral disclosure. The Receiving Party shall protect the other Party’s Proprietary Information with the same degree of care as it applies to protect its own proprietary information, but in no event less than a commercially reasonable standard of care. Nothing contained in this Agreement will be construed as an obligation to enter into any

further agreement concerning the Proprietary Information, or as a grant of license to Receiving Party to use the Proprietary Information other than for the Purpose.

- 6. Except as provided for in this section, and except to the extent otherwise required by law, neither Party shall, for a period of three (3) years from the Effective Date of this Agreement, disclose any Proprietary Information received from the other Party to any third party, nor use Proprietary Information other than for the Purpose, without the prior written consent of the other Party. Receiving Party may, however, disclose Proprietary Information to any of its Affiliates for the Purpose, subject to Receiving Party ensuring that its Affiliates agree to treat the Proprietary Information in a manner consistent with the terms and conditions of this Agreement. In so doing, Receiving Party and its Affiliates will take all reasonable and necessary precautions to prevent the disclosure of Proprietary Information to third parties.
- 7. Within four (4) months or within any extension period granted by the Parties from the Effective Date of this Agreement, Company will notify UH in writing as to its interest in negotiating a licensing agreement regarding the use of the disclosed UH Proprietary Information beyond the evaluation granted under this Agreement. If the Parties agree to negotiate said license agreement, the Parties will commence good faith negotiations upon UH's receipt of Company's written notification.
- 8. The failure of either Party to require performance of any provisions of this Agreement in no manner affects its right to enforce the provision at a later time. It is understood that neither Party releases the other Party from any liabilities based upon any copyright or patent or other rights each Party now possesses or may acquire concerning its own Proprietary Information. No license or other right under any U.S. or foreign patent, copyright, trademark or other intellectual property right is granted by this Agreement.
- 9. Except as otherwise allowed by this Agreement, neither Party shall disclose to any third party the content of this Agreement or any discussions between the Parties.
- 10. This Agreement will be governed by the laws of the State of Texas without regard to choice of law principles. The Parties consent to the jurisdiction of the federal and state courts in Harris County, Texas, over any proceeding initiated with respect to the enforcement or interpretation of this Agreement.
- 11. Upon expiration or termination of this Agreement, each Party will promptly return the other Party's Proprietary Information, including copies, at the request of the disclosing Party. Such Proprietary Information includes, but is not limited to, written documentation, drawings, photographs, models, DNA sequence, programs and specimens, less those specimens necessarily consumed in evaluation. Each Party is permitted to keep one copy of this Agreement to document the Proprietary Information disclosed by the other Party under this Agreement. Upon expiration or termination of this Agreement, provisions intended to survive this Agreement will continue in full force and effect.
- 12. This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement, and no amendment or modification to this Agreement will be valid unless made in writing and signed by each Party.
- 13. The signatories warrant and represent that they have the competent authority on behalf of their respective organizations to enter into the obligations of this Agreement.

Accepted and Agreed to,

UNIVERSITY OF HOUSTON

COMPANY

Signature Date
Name: _____
Title: _____

Signature Date
Name: _____
Title: _____

Note: Modification of this Form requires approval of OGC