#### **EMPLOYMENT AGREEMENT**

This is an EMPLOYMENT AGREEMENT between AgriFuel ("Employer") and Dr. Debbie Harry ("Employee").

### RECITAL

Employer, Employer, is a company in Goodyear, Arizona that received a \$60 million federal grant, and is seeking to create and commercialize a cost-effective way to produce cellulosic ethanol. Employee is a chemical engineer known for her work on alternative fuels and renewable energy sources. Employer reached out to Employee to stay ahead of competitors in the race to commercializing cellulosic ethanol. Employee and Employer share the goal of leading Employer to becoming the first United States company to make cellulosic ethanol commercially available.

Employee left her position a Director of Research and Development at Hexxon Inc. for the opportunity to pursue this endeavor of pioneering the commercialization of cellulosic ethanol in the United States. Employee and Employer share the collective interest in becoming the first company in the United States to achieve the goals of the Project. Each party is represented by counsel, and this mutual interest in the Project is the consideration for each party's waiver of its right to a jury trial.

Employee frequently lectured at various universities prior to this Employment Agreement on her research. Employer will to continue to allow Employee to lecture at such events so long as she approaches the engagements with the utmost care and does not disclose Confidential Information.

The nature of the project requires confidentiality because the information is highly sensitive and extremely valuable. This Confidential Information is the direct vehicle of achieving the goals of the Project, and the first company to commercialize cellulosic ethanol in the United States will have a substantial business advantage for being first to the market.

Moreover, the cost of collecting the Confidential Information through the work already put into the Project is extremely expensive, as evidenced by the \$60 million grant awarded to Employer for the pursuit of the Project. The release of such confidential Information would be irreparable as much of the work towards the Project has yielded Confidential Information that has yet to be monetized, and there are many competitors that could utilize the Confidential Information to gain a substantial business advantage.

#### **DEFINITIONS**

- 1. "Vice President" means the Vice President of Biorefinery Operations for AgriFuel's Project.
- 2. "Project" means AgriFuel's endeavor to pioneer the commercialization of cellulosic ethanol in the United States.
- 3. "Confidential Information" means all nonpublic information disclosed to Employee by

  Employer or its employees, agents, contractors, representatives, consultants and advisors in

  connection with the Project. Such information in connection with the Project includes, but is

  not limited to: (i) information marked confidential; (ii) information not generally known or

  readily ascertainable; (iii) information that provides a competitive advantage for Employer;

  (iv) any and all business, technical, marketing, financial or other information; (v) trade secrets,

  business plans, techniques, methods, or systems, data, formulae, compositions, designs,

  sketches, mock-ups, prototypes, photographs, charts, graphs, forms, documents, drawings,

  samples, inventions, ideas, research and development, customer and vendor lists not publicly

  available. Confidential Information does not include information that: (a) is or becomes part of
  the public domain other than as a result of disclosure by Employee; (b) becomes available to

  Employee on a non-confidential basis from a source other than Employer, provided that, to the
  best of Employee's knowledge, such source is not prohibited from transmitting such

information by a contractual, legal, or other obligation; (c) was in Employee's possession prior to disclosure of the same by Employer; or (d) is nonpublic information which, under the circumstances surrounding disclosure, a reasonable person would conclude should be treated as confidential.

- 4. "Grant" means the \$60 million federal grant issued to Employer for the Project.
- 5. "Outside Work" means any work relating to developing alternative fuels, renewable energy sources, or other related research that is not under the supervision of Employer. Such Outside Work includes but is not limited to, (i) Employee's various speaking engagements she conducts annually on her research, (ii) lectures at universities and conferences, and (iii) any similar public platforms a scholar might showcase her research.
- 6. "For Cause" means Employer's termination of employee for any one of the following reasons:

  (i) conviction of a felony, or a misdemeanor where imprisonment is imposed, (ii) commission of any act of theft, fraud, or falsification of any employment or Company records in any material way, (iii) Employee's failure or inability to perform any material reasonable assigned duties after written notice from Employer of, and a reasonable opportunity to cure, such failure or inability, or (iv) material breach of this Agreement which breach is not cured within ten (10) days following written notice of such breach.
- 7. "Work Product" means any intellectual property Employee creates during the course of her employment as Vice President.

#### **OPERATIVE TERMS**

1. **Duties.** By accepting the position of Vice President, Employee assumes all positional duties associated with the role of Vice President. Employee shall report to the Board of Directors of Employer. During her employment as Vice President, Employee shall to the best of her ability:

- a. supervise a team of researchers in a way that fosters a collaborative and innovative research environment;
- develop and execute comprehensive research plans aligned with organizational goals and objectives;
- c. present research findings to executive leadership, providing strategic recommendations and insights for business development and growth;
- d. ensure research remains confidential to the utmost degree and meets industry standards; and
- e. assume any other duty necessary to achieving the goals of the Project that would be associated with an executive role with Employer.

### 2. Compensation.

- **a. Base Salary.** Base salary will be at the annual rate of \$200,000, payable in bi-weekly installments consistent with Employer's payroll practices. Payment of all compensation to Employee will be in accordance with Employer's standard policies including normal payroll practices and will be subject to all applicable employment and withholding taxes.
- b. **Business Expenses.** Upon submission of itemized expense statements in the manner specified by Employer, Employee shall be entitled to reimbursement for reasonable travel and other reasonable business expenses duly incurred by Employee in the performance of his duties under this Agreement.
- c. **Benefit Plans.** Employee will be entitled to participate in Employer's medical and dental plans, life and disability insurance plans and retirement plans pursuant to their terms and conditions. Employee shall be entitled to participate in any other benefit plan

- offered by Employer to its employees during the term of this Agreement. Nothing in this Agreement will preclude Employer from terminating or amending any employee benefit plan or program from time to time.
- d. **Vacation.** Employee is be entitled to three weeks of vacation each year of full employment, exclusive of legal holidays, as long as the scheduling of Employee's vacation does not interfere with Employer's normal business operations.
- **3. Term.** This Employment Agreement will begin on March 15, 2024. The term of employment will continue for a period of three years, unless terminated as outlined in this Agreement. If Employee and Employer decide to renew this agreement, both parties must negotiate in good faith the new term of employment.
- 4. **Termination.** This Agreement will terminate immediately upon any of the following: (i) For Cause at the discretion of Employer's Board of Directors; (ii) Without Cause at the discretion of Employer's Board of Directors; (iii) mutual agreement between Employer and Employee; (iv) death of Employee; (v) commission of an act involving unlawful, dishonest, or unethical conduct that a reasonable person would consider damaging to the reputation of Employer; (vi) Employee's failure to perform her duties in a satisfactory manner as to achieve the goals of the Project; or (vii) material breach of this agreement. Employer shall refrain from termination of Employee solely based on a reduction or withdrawal of the Grant.
  - a. For Cause. Upon termination of Employee's employment with Employer For Cause, Employer will be under no further obligation to Employee for salary or bonus, except to pay all accrued but unpaid base salary, accrued bonus (if any) and accrued vacation to the date of termination.

- b. Without Cause. Employer may terminate Employee's employment at any time without cause, provided, however, that Employee will be entitled to severance pay in the amount of one year of Base Salary as specified in "Compensation" in addition to accrued but unpaid Base Salary and accrued vacation, less deductions required by law.
- 5. Covenant Not to Compete. For the period ending twenty-four months following the termination or end of this Agreement, Employee shall not render any services to any other person or business, engage in any competitive activity with any person or business in competition with Employer as related to the Project, or acquire any interest of any type in any other business in Arizona which is in competition with Employer. Businesses in Arizona considered to be in competition with Employer include, but are not limited to, any business or person (i) pursuing the commercialization of cellulosic ethanol, (ii) pursuing objectives that align with the Project, (iii) conducting any work related to the development, production, and commercialization of renewable energy resources, or (iv) that a reasonable individual would deem to be in competition with Employer. Competitive activity includes, but is not limited to, working for, consulting with, investing in, or otherwise assisting any person or entity that is engaged in or planning to engage in the same or similar business as the company or any of its affiliates, subsidiaries, or related entities. By accepting this agreement, Employee represents she is not violating any other agreement or obligation that the employee has with any current or former employer or any other person or entity. Employee agrees to indemnify and hold harmless the company from any and all claims, liabilities, damages, costs, and expenses (including reasonable attorney's fees) arising out of or relating to any breach or alleged breach of this representation. As consideration for this covenant not to compete, Employer shall allow Employee to continue her Outside Work as outlined in this Agreement.

- a. Breach. In the event of a breach of the Covenant Not to Compete in this Agreement by Employee, the parties acknowledge Employer will suffer irreparable harm and will be entitled to injunctive relief of Employee immediately ceasing employment with the competitor, and liquidated damages in an amount equal to the salary and benefits that the employee received from the company during the period of breach, in addition to any other remedies available at law or in equity.
- 6. Confidentiality and Non-Use. During the Term of this Agreement, Employer will provide Employee with access to Confidential Information. Employee acknowledges that such Confidential Information is confidential and proprietary, and shall refrain from disclosing such Confidential Information to anyone outside Company except to the extent that
  - a. (i) Employee is required by order of a court of competent jurisdiction (by subpoena or similar process) to disclose or discuss any Confidential Information, provided that in such case, Employee shall promptly inform Employer of such an event by the "Notice" terms outlined in this agreement, and Employee shall cooperate with Employer in attempting to obtain a protective order or to otherwise restrict such disclosure and shall only disclose Confidential Information to the minimum extent necessary to comply with any such court order; or
  - b. (ii) such Confidential Information becomes generally known to and available for use in the renewable energy industry in which Employer does business, other than as a result of any action or inaction by Employee. Employee shall not during the Term of this Agreement or at any time thereafter use such Confidential Information to compete, directly or indirectly, with Employer.

- **c. Breach.** In the event of a breach of the Confidentiality and Non-Use provision in this Agreement by Employee, the parties acknowledge Employer will suffer irreparable harm and will be entitled to liquidated damages in an amount equal to the salary and benefits that the employee received from the company during the period of breach, in addition to any other remedies available at law or in equity.
- 7. **Outside Work.** Employee may continue Outside Work so long as it in no way (i) risks a release of Confidential Information, (ii) hinders her ability to perform her duties as Vice President, (iii) hinders the goals of the Project, or (iv) otherwise negatively impacts Employer in any way. In the event Employer, believes Employee's Outside Work is at all hindering the Project, Employer may limit or prevent entirely all Outside Work. Such a determination is subject to Employer's sole discretion.
- 8. **Intellectual Property.** Employee acknowledges that, unless otherwise agreed in writing by the Company, all Work Product eligible for any form of copyright, trademark or patent protection made or contributed to in whole or in part by the Employee within the scope of Employee's employment during the period of this agreement is be deemed "work made for hire" and will be owned by Employer.
- 9. **Headings.** The headings and subheadings used in this Agreement are for convenience and ease of reference and do not limit the scope or intent of the clause.
- 10. **Choice of Forum.** Any dispute or legal proceeding arising out of or relating to this Agreement will be determined in Arizona.
- 11. **Choice of Law.** This Agreement is governed by the laws of the state of Arizona, without effect to the principles of conflict of law.

- 12. **Waiver of Jury Trial.** Each party gives up its right to receive a jury trial in the event of a dispute arising out of this Employment Agreement. Waiver of this right is an indication of the parties' collective interest in a good faith Employment Agreement as to best achieve all goals associated with the Project.
- 13. **Non-Waiver.** If either party fails or delays to perform any obligation under this contract, or to use any right or remedy under this contract or by law, this is not a waiver of that obligation, right, or remedy, or of the contract. A waiver of any part of this contract is only effective if it is written and signed by Employer and Employee. A written waiver only applies to the specific situation and purpose that it is given for and does not stop either party from using any other part or right under this contract or by law.
- 14. **Notice.** All notices, requests, demands, and other communications required or permitted under this Agreement will (1) be in writing and (2) will be deemed given and received only: (a) upon personal delivery to the party to whom it is directed; or (b) when sent by email. If either party intends to terminate the agreement or exercise any other right with a notice requirement specified in this Agreement, the party exercising such a right must provide notice no less than one week in advance.
- 15. **Attorney Fees.** In the event of any dispute arising out of or relating to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs, and necessary disbursements incurred in connection with the dispute, provided that the total amount of attorneys' fees recovered shall not exceed \$50,000.
- 16. **Assignment of Rights.** Employee shall not assign or transfer its rights or obligations under this contract to another person or entity, without the prior written consent of Employer. Any attempt to do so without consent is void and has no effect.

- 17. **Fully Integrated.** This Agreement is a final written expression of all of the terms of this agreement and is a complete and exclusive statement of those terms. No course of prior dealings between the parties and no usage of the trade will be relevant to supplement or to interpret any term used in this agreement.
- 18. **Damages**. If Employee engages in any conduct prohibited by this Agreement or in breach of any provision, Employer may, in addition to any other remedies it may have at law or in equity, immediately terminate the Employee's employment and require the Employee to cease any further activities on behalf of any competitor. Employee acknowledges that the restrictions contained in this Agreement are necessary for the protection of the business and goodwill of Employer and are considered by the Employee to be reasonable for such purpose. In the event of a breach specified in the "Covenant Not to Compete" and "Confidentiality and Non-Use" provisions of this Agreement, damages available are subject to the terms listed in those provisions.

## **CLOSING**

AgriFuel, LLC		
By:	Date:	
Name: Patti Smith		
Title: President and CEO		
Vice President		
Name: Dr. Debbie Harry		
By:	Date:	

Contract Drafting and negotiating Professor Chesler Spring 2024

# **DRAFTING ASSIGNMENT 2 (EMPLOYMENT AGREEMENT)**

**Facts:** AgriFuel is optimistic that with continued funding by the federal government, along with the advancements it is making in pretreatment technology, collection, and storage logistics, commercial production of cellulosic ethanol will be economically feasible within the next two to three years. In order to keep AgriFuel's development and operations ahead of its competitors, Patti Smith, President and CEO of AgriFuel, decided to retain an expert in the field to take over as Vice President of Biorefinery Operations and to lead AgriFuel in its current endeavor.

Accordingly, Smith contacted Dr. Debbie Harry. Dr. Harry is a chemical engineer with a Ph.D. in environmental science, who is currently employed by Hexxon Inc. as Director of Research and Development. Harry is very well known for her work on developing alternative fuels and renewable energy sources; she also often guest lectures at Texas A & M and Rice University and is sought after for various speaking engagements throughout the year.

At first, Harry was hesitant to leave her stable position at Hexxon to work for such a small and specialized company like AgriFuel. However, after speaking with Smith by telephone on several occasions, Harry became very interested in leading AgriFuel to become the first United States company to make cellulosic ethanol available for commercial consumption. Smith was similarly very interested in retaining Harry due to her expertise as well as her reputation in the field. Harry and Smith ultimately agreed that Harry would begin her employment with AgriFuel on March 15, 2024. They agreed to the following general terms:

- 1. Harry agreed to accept a starting salary of \$200,000 as long as she could continue with her outside teaching and speaking engagements.
- Harry insists on receiving an assurance that her position will not be terminated solely because AgriFuel's federal grant is either withdrawn or reduced.
- Smith would like the employment contract to contain a provision prohibiting
  Harry from disclosing any confidential information to the public. Smith also
  insists that the contract include a covenant not to compete precluding Harry
  from competing with AgriFuel in the event the employment relationship is
  terminated.

Assignment: You are either an associate at the law firm representing AgriFuel or the law firm representing Dr. Debbie Harry. If this assignment sheet is on green paper, you represent AgriFuel; if it is on yellow paper, you represent Dr. Harry. Your assignment is to draft the employment contract between the parties. Your contract must address all of the parties' concerns, as stated above. You must research the issue of whether covenants not to compete are enforceable in Arizona and, if so, what factors a court will look at to determine the enforceability of such a covenant. Your contract must contain a non-compete provision that will be enforceable under Arizona law. While the contract should be written on behalf of your client, it should also be a document that is fair to both sides and one that the other party would not simply reject. The contract must follow the ground rules and may not be more than ten pages. This assignment must be submitted before 10:00 p.m. on March 3, 2024 via TWEN.