



## **SBIR ASSETS FORUM**

### **Strategic Partnerships: Let's Make a Deal**

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## **What Kinds of Deals**

- Acquisition
- Equity Investment
- Loan
- License Agreement
- Distribution Arrangement
- Collaboration and Joint Development Arrangement
- Sponsored Research
- Options
- Combinations

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## What Format to Choose

### Factors Favoring an Acquisition Strategy

- Common business goals
- Few opportunities for buyer to obtain related/similar products or technology
- Seller has late-stage products with a good pipeline
- Buyer wants to control all IP and decisions
- Seller's IP dominates the industry space or has posed a problem to the buyer in the past
- No litigation problems
- Buyer's high upfront cost can be justified by lower overall cost
- Seller is cash-poor

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## What Format to Choose

### Factors Favoring Equity Investment

- Early-Stage technology and/or product development is not yet complete
- Market opportunities are not yet identified/prioritized
- Achieving development or sales milestones will create substantial additional value
- Investor desire for early access and/or ability to influence direction of development efforts
- Acquisition price would not be a significant step-up from prior financing rounds

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## What Format to Choose

### Factors Favoring Loan

- Later-stage company with established products and distribution
- Subchapter S limits on stockholders
- Bridge to next round of equity financing without need to agree on current valuation

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## What Format to Choose

### Factors Favoring a Licensing Strategy

- Divergent business goals
- Partners can be selective about technology, products or markets
- Several opportunities for licensee to obtain related/similar products
- Licensor has Earlier-Stage products and a technology platform that fits with licensee's needs
- Licensor wants to preserve independence
- Pending or threatened litigation creates risk
- Licensee just needs freedom to operate

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## What Format to Choose

### Factors Favoring Distribution Arrangement

- Product development and regulatory approvals, if needed, are complete
- Distributor has existing sales force that matches geographic and industry markets
- Distributor sells complementary products
- Manufacturer has limited financial resources and/or marketing and sales expertise
- Distributor wants to test the market before an acquisition

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## What Format to Choose

### Factors Favoring a Collaboration Strategy

- Generally the same as for licenses
- Business goals are common as to a particular indication or research program
- Technology platform can benefit other initiatives of each partner
- Parties want to preserve independence but share costs and burdens
- Parties want a certain degree of control or input into decision making
- Complementary technologies and/or development skills

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## License and Collaboration Agreements

- Particular importance must be paid to issues of division, exploitation and enforcement of IP, improvements to the technology.
- Agreements may address clinical trials, product marketing and distribution.
- Steering committees provide the ability of a company to influence the collaborative process. Equal weighting can result in deadlocks. Unequal weighting by aggregate obligations.
- Dissolution of an ineffective collaboration.

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## Impact of Strategic Partnerships

- The Law of Unintended Consequences
- Impact on Future Transactions
  - On financing transactions
  - On customers
  - On the sale of the business
- Type of Impact
  - Valuation
  - Other partners
  - Rights of first refusal
- The Deal will be restructured

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## Summary

- **Many factors come into play when two companies seek to enter into a business relationship.**
- **Appropriate planning and due diligence is important prior to the initiation of serious discussions.**
- **While many deals may appear similar on their face, each is driven by distinct corporate cultures in view of global economic and market forces. As such, each transaction is distinct.**
- **Opportunities for maximizing return and minimizing risk appear at many points in the deal process, and need to be carefully uncovered and analyzed.**

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