

## **NEW YORK STATE SCIENCE & TECHNOLOGY LAW CENTER**

### **MODEL NEGOTIATION POLICIES**

WORKING DRAFT 2010

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#### **PURPOSE**

The University recognizes that industry satisfaction with the negotiation process is critical in order to build a successful and sustainable relationship. Industry frustration with the negotiation process may result in no agreement being reached or, if an agreement is reached, in a poor start to the parties' partnership. The University also recognizes that its culture and environment are markedly different from industry and that these differences can adversely affect the negotiation process. Although some of the differences between the University and industry are inherent in their disparate institutional roles and responsibilities, others are susceptible to modification and moderation. These Model Negotiation Policies seek to facilitate reasonable, equitable and expeditious negotiations between the University and industry for sponsored research and technology transfer.

#### **NEGOTIATION TIMETABLE**

- The University and its negotiation partner will agree in writing to a timetable at the commencement of the negotiation process. The timetable will include dates for discussions between the parties, dates for exchange of draft agreements and a date for termination of negotiations in the event the parties have not reached a final agreement.
- The length of the negotiation period will depend upon the complexity of the technology at issue, the complexity of the relationship the parties are seeking to establish and the negotiation partner's time-to-market requirements.
- The University and its negotiation partner will generally seek to conclude negotiations within a 1-2 month time period.
- Copies of the negotiation timetable will be given to all persons who will participate in the negotiation whether directly through discussions and drafting, or indirectly through reviews and approvals.

#### **NEGOTIATION PROCESS**

- The University and its negotiation partner will typically have prior sponsored research and technology transfer agreements available. As an initial step, the parties will exchange these prior agreements for review and possible reconciliation. Any confidential or proprietary information, including financial information, will be redacted.
- The University and its negotiation partner will each designate the person or persons who will have primary responsibility for conducting negotiation discussions and preparing draft agreements.
- The University and its negotiation partner will provide each other with a written description of the review and approval process necessary to conclude a binding legal agreement between them.
- The University and its negotiation partner will promptly inform one another of any unforeseen changes or developments that could affect the negotiation.

- The University and its negotiation partner will use their best efforts to respond to communications and questions from the other party in a timely fashion. A timely response will generally be 1-3 business days.
- The University and its negotiation partner will not conduct negotiations with third-parties regarding the same or similar research project, or technology transfer, without informing the other party.

#### **NEGOTIATION TRANSPARENCY**

- The University and its negotiation partner will provide all requested information and documents unless the requested information or document is subject to a confidentiality agreement or contains proprietary material.
- The University will clearly and accurately inform its negotiation partner of the development status of an invention, including all test results, in the case of a technology transfer negotiation. The University will clearly and accurately inform its negotiation partner of its research resources, including all facilities, equipment and personnel, in the case of a sponsored research negotiation.
- The University will provide its negotiation partner clear and accurate information on its financial investment in the development of an invention, including the direct and indirect cost of facilities, equipment and personnel, and research grants received from federal and state governments and other funding sources, in the case of a technology transfer negotiation.
- The University will provide its negotiation partner clear and accurate information on the direct and indirect cost of facilities, equipment and personnel to be used in a research project in the case of a sponsored research negotiation.
- The negotiation partner will provide the University with clear and accurate information regarding its anticipated follow-on investment and risk required to commercialize an invention in the case of a technology transfer or sponsored research negotiation.
- The University and its negotiation partner will seek to determine a risk-adjusted, equal rate of return on their respective investments in an invention in the case of a technology transfer negotiation. The University's investment will be its pre-license investment. The negotiation partner's investment will be its post-license investment. The risk adjustment will take into account technical, market and intellectual property risks associated with the commercial development of the invention.

#### **NEGOTIATION ACCESS**

- The University will provide its negotiation partner full access to the faculty, staff and students who were involved in making the invention in the case of a technology transfer negotiation; and to the faculty, staff and students who will be involved in the research project in the case of a sponsored research negotiation.