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Licensing, Agreements, and Transactions: Turning IP Into Commercial Value and for Securing FTO

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A patent grant, a trademark registration, or a portfolio of carefully guarded trade secrets represents potential value — but that value is only realized when the intellectual property (IP) is put to work in the marketplace. For life sciences startups, the primary mechanisms through which IP is commercialized are licensing agreements, collaborative arrangements, and ultimately larger transactions such as partnerships with major pharmaceutical companies or outright acquisitions. Understanding how these arrangements work, how to prepare for them, and how to approach them strategically is an essential competency for any founding team navigating the commercial landscape of the life sciences industry. A startup that understands the value of its IP but lacks the knowledge to structure and negotiate transactions around it is in a fundamentally weaker position than one that approaches these processes with preparation, clarity, and strategic intent. The sections that follow address each of the major transaction types a life sciences startup is likely to encounter, together with the preparation, best practices, and strategic considerations that apply to each.

Understanding the Landscape of Life Sciences Licensing

Licensing is the mechanism by which the owner of intellectual property — the licensor — grants another party — the licensee — the right to use that IP under defined terms and conditions, in exchange for compensation that typically takes the form of upfront payments, milestone payments tied to development or commercial events, and ongoing royalties on product sales. In the life sciences context, licensing transactions span an enormous range of scale and complexity, from a simple agreement allowing a research institution to use a startup's assay technology for internal purposes, to a major out-licensing deal in which a large pharmaceutical company pays hundreds of millions of dollars for the right to develop and commercialize a startup's drug candidate across global markets. Between these extremes lies a wide variety of arrangements — co-development agreements, platform technology licenses, diagnostic partnerships, device distribution agreements, and many others — each with its own commercial logic and its own set of legal and strategic considerations. What all of these arrangements share is that their terms will be shaped by the relative bargaining power of the parties, the perceived value of the IP being licensed, the competitive landscape, and the quality of the preparation that the startup brings to the negotiating table.

Exclusive vs. Non-Exclusive Licenses

One of the most fundamental distinctions in any licensing arrangement is whether the license being granted is exclusive or non-exclusive, and understanding the implications of this choice is essential for any startup entering licensing negotiations. An exclusive license grants the licensee the sole right to practice the licensed IP within a defined scope — which may be defined by field of use, geographic territory, time period, or some combination of all

three — meaning that the licensor agrees not to grant the same rights to any other party within that scope. A non-exclusive license, by contrast, allows the licensor to grant the same rights to multiple licensees simultaneously. From the licensee's perspective, exclusivity is enormously valuable because it eliminates competition from other licensees and provides the commercial certainty needed to justify significant investment in development and commercialization. From the licensor's perspective, granting exclusivity is a significant concession that should be reflected in the financial terms of the deal — typically through higher upfront payments, more substantial milestone obligations, and meaningful diligence requirements that obligate the licensee to actively develop the technology rather than shelving it to prevent competitors from accessing it. For a startup out-licensing its core technology to a larger partner, the decision of whether to grant exclusivity — and how to define its scope — is one of the most consequential it will make, with implications that will shape the company's strategic options for years to come.

Key Financial Terms: Structuring the Economics of a License

The financial architecture of a life sciences license typically consists of several components, each serving a different purpose and each subject to negotiation. An upfront license fee is a payment made at signing that compensates the licensor for the value of the rights being granted and provides immediate capital — it is non-refundable and not contingent on the success of development efforts. Milestone payments are contingent payments triggered by the achievement of defined development, regulatory, or commercial events — the initiation of a clinical trial, the filing of a regulatory application, the receipt of marketing approval, or the achievement of a specified level of product sales. Royalties are ongoing payments calculated as a percentage of net product sales, providing the licensor with a share of the commercial success of the licensed product over its lifetime. In addition to these core components, licenses may also include sublicensing fees — payments due when the licensee grants sublicenses to third parties — as well as minimum annual royalties that ensure a baseline level of compensation even in years of modest commercial performance. For a startup negotiating its first significant out-licensing deal, benchmarking these financial terms against comparable transactions in the relevant therapeutic area or product category is an important part of ensuring that the economics of the deal reflect the true value of the IP being licensed.

Preparing for a Licensing Transaction

The quality of a startup's preparation before entering licensing negotiations will significantly influence both the terms it achieves and the speed with which a deal can be completed. Preparation begins with a thorough understanding of the company's own IP position — knowing precisely what is owned, what is licensed in, what is pending, and what the scope of protection covers in each relevant jurisdiction. A startup that cannot clearly and confidently articulate the strength and scope of its patent portfolio will struggle to command premium terms, because sophisticated licensees will probe these questions carefully and any uncertainty or inconsistency will be used as leverage to reduce the valuation. Preparation also requires a realistic assessment of the IP's commercial value — ideally supported by a formal valuation analysis that considers the size of the addressable market, the competitive landscape, the stage of development, and comparable transaction data from similar deals in the industry. Assembling a well-organized data room, as described in the due diligence section of this booklet, is an essential part of preparation, because a potential licensee will conduct its own due diligence before finalizing terms, and the ability to respond quickly and completely to information requests signals competence and builds confidence. Finally, preparation means understanding the other party — their strategic priorities, their existing portfolio, their development capabilities, and their reasons for seeking the license — because a negotiator who understands what the other side truly needs is far better positioned to structure a deal that works for both parties.

Best Practices in License Negotiation

Negotiating a life sciences license effectively requires both substantive knowledge of the deal terms and a clear sense of strategic priorities. Several best practices apply across most licensing contexts.

1. Identify your walk-away points before negotiations begin — know which terms are truly non-negotiable, which are important but flexible, and which are relatively minor, and resist the temptation to treat every point as a battle.
2. Pay as much attention to the non-financial terms as to the economics — provisions governing diligence obligations, sublicensing rights, patent prosecution and enforcement responsibilities, representations and warranties, indemnification, and termination rights can have as much long-term impact as the royalty rate.
3. Ensure that the field of use and territory definitions are drafted with precision — ambiguity in these definitions is a frequent source of disputes, and vague language that seems acceptable at signing can become deeply problematic when a product enters a new therapeutic area or a new geographic market.
4. Address what happens to the IP if the licensee fails to develop the product or goes bankrupt — reversion rights that return the licensed IP to the licensor upon termination for cause or insolvency are important protections that should be negotiated from the outset rather than added as an afterthought.
5. Involve experienced licensing counsel throughout the process — the cost of good legal advice in a significant licensing transaction is modest relative to the value at stake, and the asymmetry of experience between a startup entering its first major deal and a large company that has completed hundreds of similar transactions makes professional guidance especially important.

In-Licensing: Acquiring the IP You Need

While much of the discussion in this section has focused on out-licensing — a startup licensing its technology to others — in-licensing is equally important and deserves specific attention. In-licensing is the process by which a startup acquires rights to technology owned by a third party — typically a university, research institution, or another company — that it needs to develop or commercialize its own products. For many life sciences startups, particularly those that originate from academic research, the foundational technology underlying the business will be in-licensed from the institution where the founders conducted their research. Understanding the terms of these foundational in-licenses is critical, because they define the boundaries of what the startup can do with the technology, what financial obligations it carries, and what happens to the license if the company is acquired or undergoes a change of control. Common features of university in-licenses include field of use restrictions, diligence milestones that require the startup to advance development on a defined timeline or risk losing the license, sublicensing provisions that may require the university's consent or entitle it to a share of sublicensing revenue, and publication rights that preserve the institution's ability to publish research results even when doing so might affect the startup's patent strategy. Reviewing these terms carefully, negotiating them as favorably as possible at the time of licensing, and actively managing compliance with ongoing obligations are all essential responsibilities for a startup built on in-licensed technology.

Strategic Partnerships and Co-Development Agreements

Beyond pure licensing arrangements, life sciences startups frequently enter into strategic partnerships and co-development agreements with larger industry players — arrangements in which the parties agree to collaborate on the development of a product or technology, sharing costs, capabilities, and risks in exchange for defined rights to the resulting IP and commercial opportunities. These arrangements can take many forms, from relatively simple research collaboration agreements to complex multi-program partnerships involving hundreds of millions of dollars in committed funding and intricate IP allocation provisions. From a startup's perspective, a well-structured strategic partnership can provide not only capital but also access to clinical development expertise, regulatory experience,

manufacturing capabilities, and commercial infrastructure that would take years and enormous resources to build independently. The IP provisions in these agreements are among the most consequential elements to negotiate carefully. Key questions include: who owns improvements and new inventions arising from the collaboration, how are jointly developed inventions owned and licensed, which party is responsible for prosecuting and maintaining patents arising from the collaboration, and what rights does each party retain to use the collaboration IP outside the scope of the partnership. Getting these provisions right requires both legal expertise and a clear strategic vision of where the company wants to be in five or ten years — because the IP terms agreed to in a partnership today will shape the company's options and leverage in every subsequent transaction.

Transactions: Preparing for Partnerships and Acquisitions

For many life sciences startups, the ultimate commercial objective is not to build a fully integrated pharmaceutical or medical device company but to reach a point at which the company's technology and programs are sufficiently advanced and de-risked that a larger strategic partner or acquirer is willing to pay a substantial premium for them. Preparing for this outcome — whether it takes the form of a major licensing deal, a strategic collaboration with an equity component, or an outright acquisition — requires a sustained and deliberate effort to build the kind of IP position that makes the company an attractive and defensible target. In an acquisition context, the acquiring company is fundamentally buying the right to develop and commercialize products that no competitor can replicate, and the scope, quality, and enforceability of the patent portfolio protecting those products will be among the primary determinants of the acquisition price. Startups that have built layered patent portfolios covering their core technology from multiple angles — the molecule or device itself, the manufacturing process, the formulation, and the methods of use — are in a fundamentally stronger negotiating position than those with a single foundational patent and limited additional coverage. Similarly, companies that have maintained a clean chain of title, properly executed all assignments, resolved any inventorship questions, and managed their license agreements compliantly will move through acquisition due diligence more smoothly and with fewer value-reducing surprises than those that have neglected these administrative fundamentals.

Strategic Considerations for Long-Term IP Value

Building an IP position that maximizes long-term transaction value requires thinking several steps ahead of the company's current stage of development. A startup at the seed stage should already be considering what its portfolio will need to look like to support a Series B raise, a partnership with a major pharmaceutical company, or an eventual acquisition — and working backwards from those future requirements to determine what filings need to be made, what data needs to be generated, and what prosecution strategies need to be pursued today. Continuation applications, which allow a company to pursue additional claims based on an already-filed parent application, are a powerful tool for keeping the patent portfolio aligned with the evolving product and competitive landscape — but they require active management and forward planning to deploy effectively. Trade secret protection for manufacturing processes, formulations, and know-how should be maintained in parallel with patent protection, because trade secrets can provide competitive advantages that persist even after patents expire. Trademark strategy should be integrated with the overall IP plan from an early stage, ensuring that the company's brand assets are protected in all key markets as the commercial identity of the business takes shape. And throughout all of this, the overarching principle that should guide every IP decision is alignment with the business strategy — because intellectual property that is not connected to a clear commercial purpose is an expense rather than an investment, and the startups that build the most valuable IP positions are invariably those that treat every filing, every prosecution decision, and every licensing negotiation as an expression of a coherent and forward-looking vision for the business.

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