

## Equity Administration Policy

<b>Effective Date:</b>	March 2, 2017
<b>Supersedes:</b>	none
<b>Policy Review Date:</b>	1 year
<b>Issuing Authority:</b>	Research Foundation President
<b>Responsible Party:</b>	Vice President of Industry and External Affairs
<b>Contact Information:</b>	Heather Hage 518.434.7061

### Reason for Policy

The Research Foundation for The State University of New York ("RF") recognizes that in transactions with early stage companies it may be desirable for the RF to receive an equity position in lieu of, or in some combination with payment from the early stage company. This type of an arrangement can be mutually beneficial to the early stage company, which is able to apply its often-limited funds to the company's critical early stage needs rather than the payment to the RF, and the RF, which is able to further its mission of supporting research and discovery at The State University of New York ("SUNY") through transfer and sharing of intellectual property for public benefit and economic growth, while also potentially benefitting from the appreciation in value of an RF equity position.

The purpose of this policy is to establish parameters to protect campus administration from potential liability and the RF's tax-exempt status when the RF acquires Equity in Lieu of Payment ("EILP"). This policy describes the common ways in which the RF may acquire EILP and sets forth the critical factors to consider when evaluating a transaction in which the RF will receive EILP.

### Statement of Policy

The RF may acquire EILP in such cases as may be beneficial to an early stage start-up company and at the desire and direction of the supporting campus. For the RF to acquire EILP, the transaction must be structured in such a way as to mitigate any risk posed to the RF, both organizationally and for purposes of its tax-exempt status.

RF Officers, Operations Managers (OM) and their expressly authorized delegates may execute commitments to transactions that transfer equity in a third party entity to the RF in lieu of a payment which the RF would normally receive as consideration from that third party, pursuant to a License Agreement or Incubator Program agreement.

Form agreements for use in such transactions are provided via the links included in this policy. Any change to the RF standard forms and agreements documenting EILP require the approval of the Director of New Ventures upon the advice of the RF General Counsel or his or her delegate. It is also critical that the RF is aware of the number of shares of, and extent to which it owns, EILP so that it can track the same for federal tax and other purposes. Accordingly, regardless of whether the Director of New Ventures has been previously informed of the transaction pursuant to the above, agreement signatories must provide the Director of New Ventures with a copy of:

any License Agreement or Incubator Program agreement through which the RF has or will receive EILP within thirty (30) days of execution, along with

the organizational documents for the subject third-party entity (e.g., a Certificate of Incorporation and Bylaws in the case of corporations, and Articles of Organization and an Operating Agreement in the

case of limited liability companies), any agreements by and among the owners of the entity (e.g., Shareholders Agreement, Shareholders Rights Agreement, Investor Rights Agreement, or Stockholders Agreement), and any instrument conveying the EILP to the RF or evidencing the RF's interest in the same (e.g. stock purchase agreement, limited liability company interest purchase agreement, membership purchase agreement, stock certificate, membership or unit certificate, warrants, options, convertible promissory notes, etc.).

Additional detail regarding these transactions can be found in the [Equity Administration Guidelines](#) and the [Procedures for Equity Administration](#).

### Consideration of Other Equity Transactions

The RF recognizes that, in certain limited circumstances, it may further the educational mission of SUNY for the RF to use unrestricted funds to make small, passive investments in SUNY student-formed start-up companies pursuant to an entrepreneurship and applied learning program. However, the RF's participation in any such program presents many of the same liability and tax considerations present in EILP transactions. Accordingly, prior to initiating any such program (or any changes to a previously approved program), the subject campus must submit a Campus Research Initiative Plan to the RF's Office of Innovation and Partnerships and such Strategic Initiative Proposal must be reviewed and approved by the RF's Office of General Counsel, Finance Office and, where necessary, Compliance Office.

For the avoidance of doubt, campus Operations Managers and their delegates do not have delegated authority to execute on these transactions without the express approval of a Campus Research Initiative Plan. Further, general investment activities of RF funds and accounts remains solely within the province and authority of the RF's Investment Committee in accordance with the RF's Investment Policy and Guidelines.

### Responsibilities

The following table outlines the responsibilities for compliance with this Policy:

Responsible Party	Responsibility
RF Officers, including OMs	Approval of transactions involving License Agreements or Incubator Programs, including those involving EILP
RF General Counsel	Providing legal advice regarding transactions and agreements involving EILP Approval of deviations from Form agreements (see below)
Office of Innovation and Partnerships	Policy oversight Negotiation of License Agreements involving EILP for centralized campuses Incubator transaction involving EILP oversight and support
Director of New Ventures	Approval of deviation from standard form agreements

### Definitions

*Joint Venture* – For purposes of this policy, a Joint Venture means any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to: (1) whether the RF controls the venture or arrangement; (2) the legal structure of the venture or arrangement; or (3) whether the venture or arrangement is taxed as a partnership or as an association or corporation for federal income tax purposes. This definition is intended to mirror that definition used for purposes of IRS Form 990, Part VI, Section B, Line 16. Should the definition of a joint venture change for these purposes, this definition is modified accordingly.

*Equity in Lieu of Payment ("ELIP")* - equity in a third-party company in an amount of no greater than a

twenty percent (20%) ownership interest in the subject entity which was acquired by the RF through its support of innovation objectives pursuant to a License Agreement or through the Incubator Programs and the subject EILP was obtained pursuant to the RF's standard forms linked in the RF's Equity Administration Policy. For the avoidance of doubt, if the RF will own greater than a twenty percent (20%) ownership interest in the subject entity, or otherwise be involved in the management of the day-to-day operations of the subject entity, such equity interest will not be deemed EILP Equity for purposes of this policy and the campus shall seek approval for such arrangement pursuant to the RF's Joint Venture Policy.

*Exempt Purpose* - The charitable purpose of the RF, which is set forth in the RF's Charter as follows:

- a. To assist in developing and increasing the facilities of State University of New York to provide more extensive educational opportunities for and service to its students, faculty, staff and alumni, and to the people of the state of New York, by making and encouraging gifts, grants, contributions and donations of real and personal property to or for the benefit of State University of New York;
- b. To receive, hold and administer gifts or grants, and to act without profit as trustee of educational or charitable trusts, of benefit to and in keeping with the educational purposes and objects of State University of New York; and
- c. To finance the conduct of studies and research in any and all fields of the arts and sciences, of benefit to and in keeping with the educational purposes and objects of State University of New York."

*License Agreements* – An agreement pursuant to which the RF grants a third-party the right or permission to use the RF's intellectual property, typically in return for a set royalty such as upfront payments, minimum payments, royalties based on a percentage of net sales and/or termination payments.

*Incubator Programs* – Programs housed within campus affiliated or controlled facilities which enable the support of new and growing companies by providing a suite of programs and services, including without limitation the SUNY established incubators throughout the system which provide growth-oriented companies essential business incubation services and access to industry-specific development resources through its connection to SUNY and SUNY's academic and programmatic resources.

## Related Information

[Procedures for Equity Administration](#)

[Equity Administration Guidelines](#)

[Joint Venture Policy](#)

[Joint Venture Guidelines](#)

[Delegation of Authority Policy](#) and [Procedure](#)

## Forms

[Research Initiative Plan Template](#)

[Hold Harmless Letter Template](#)

[Inventor Letter Template](#)

[RF Exclusive License Agreement Template with Equity Alternatives](#)

[RF Incubator Client Agreement Template with Equity Alternatives](#)

## Change History

Date	Summary of Change
July 6, 2020	Updated Policy Owner
March 2, 2017	New document.

**Feedback**

Was this document clear and easy to follow? Please send your feedback to [webfeedback@rfsuny.org](mailto:webfeedback@rfsuny.org).

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