

Equity Administration Guidelines

Effective Date: March 2, 2017

Function: Industry and External Affairs

Procedure: Equity Administration

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Anti-Dilution of Equity

The Research Foundation for The State University of New York (“RF”) will generally require anti-dilution protection for any equity interests that it receives in an entity, including without limitation stock in a corporation, membership interests in an LLC or warrants for stock or membership interests. For instance, if the equity holding represents a minor percentage of the outstanding stock of the corporation or outstanding membership interests in a limited liability company (“LLC”), the RF may insist upon an undiluted equity interest up to a reasonable level of capitalization or for a specified period of time.

General Protections of the RF’s Interests

Neither the RF nor any of its personnel or representatives, shall be a manager, director, managing member, officer or similar fiduciary of an entity in which the RF holds or plans to hold an equity interest without the prior written approval of the RF Chief Compliance Officer. In addition to the foregoing, the form equity documentation referenced below contain the standard protections and provisions which the RF generally requires be incorporated into transactions in which the RF will receive an equity interest in a third-party entity, which protections include, but are not limited to, the following:

- (1) Restrictions on the ability of the stockholders or members to sell or transfer their stock or membership interests without written consent of the other stockholders or members. However, the RF should generally be permitted to transfer its interest to any employee or former employee of the RF or The State University of New York (“SUNY”), and any institution that is a party to an inter-institutional agreement with the RF or SUNY in connection with any technology licensed in a License Agreement pursuant to which the RF has received equity.
- (2) RF will generally need to receive co-sale (in the case of transfers of less than 50% of all equity interests in the company) and tag-along rights (in the case of transfers of 50% or more of all equity interests in the company) with respect to any permitted sales or transfers of any other equity interests in the subject company. In any such sale that the RF chooses to participate, the RF should not be required to make any representations and warranties jointly and severally with any other stockholder or member, or make any representation

and warranties other than reasonable and customary representations and warranties relating to authority, enforceability, title to its ownership interest, the absence of restrictions, liens and encumbrances on its stock or membership interest (than those imposed by the company's organizational documents and applicable federal and state securities laws), and securities laws matters.

- (3) RF will also generally attempt to obtain the right to review and approve any changes to the formation documents for the subject entity (e.g., Articles of Incorporation or Certificate of Organization, etc.), and operating documents for the subject entity (e.g., By-laws or Operating Agreement). At minimum, the RF will generally require that any change that would eliminate, limit or materially alter any of the other protections which the RF has received or is entitled to the benefit of in such documents will require the review and approval of the RF.
- (4) The RF will also generally require that the subject entity not make or approve any distribution or other dividend from such entity to any stockholder or member other than as provided in the subject entity's applicable organizational documents.
- (5) The subject entity must not engage in any activities which could result in the RF becoming liable for the debts or liabilities of the subject entity.
- (6) In the event that the subject entity was formed under the laws of the State of New York or will be engaging in business in the State of New York, in appreciation for the minimal role of the RF in the operation of the business and affairs of the Company and the passive nature of the RF's investment in the Company, the RF will generally require that the other Stockholders or Members indemnify and hold the RF harmless from and against any costs, fees or penalties incurred by the RF for unpaid employee wages and other benefits and costs pursuant to Section 630(c) of the N.Y. Business Corporations Law and Sections 609(c)-(d) of the N.Y. Limited Liability Company Law, as the same laws may be amended from time to time.

Form and Parameters of Equity Participation in LLCs

In addition to the foregoing, in situations where the RF is receiving an equity interest a partnership or limited liability company which is disregarded for federal income tax purposes ("LLC"), the RF will generally require that the following provisions be included in the Operating Agreement of the LLC to safeguard the interests of the RF:

- (1) The LLC will distribute cash annually in an amount that will, at least, enable RF to pay taxes arising out of its membership interest in the LLC.
- (2) The LLC's purposes should be limited to the particular business being conducted to prevent the LLC from going into any line of business the RF may want to avoid. The LLC shall also not be

permitted to engage in any activities to create or promulgate propaganda, influence legislation, engage in direct or indirect lobbying, or participate directly or indirectly in any political campaign without the prior written consent of the Office of General Counsel of the RF.

As noted above, model language for these provisions and others are included in the forms linked below. For specific procedures for the administration of equity positions please refer to the [Procedures for Equity Administration](#).

Related Information

[Equity Administration Policy](#)

[Joint Venture Policy](#)

[Joint Venture Guidelines](#)

[Procedures for Equity Administration](#)

[Responsibility for Losses Policy](#)

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

Forms

[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
May 23, 2024	Updated Contact. Updated links
July 6, 2020	Updated Function
March 2, 2017	New Document

Feedback

Was this document clear and easy to follow? Please send your feedback to webfeedback@rfsuny.org.