

FLORIDA ATLANTIC UNIVERSITY
DIVISION OF RESEARCH



Startup Guide

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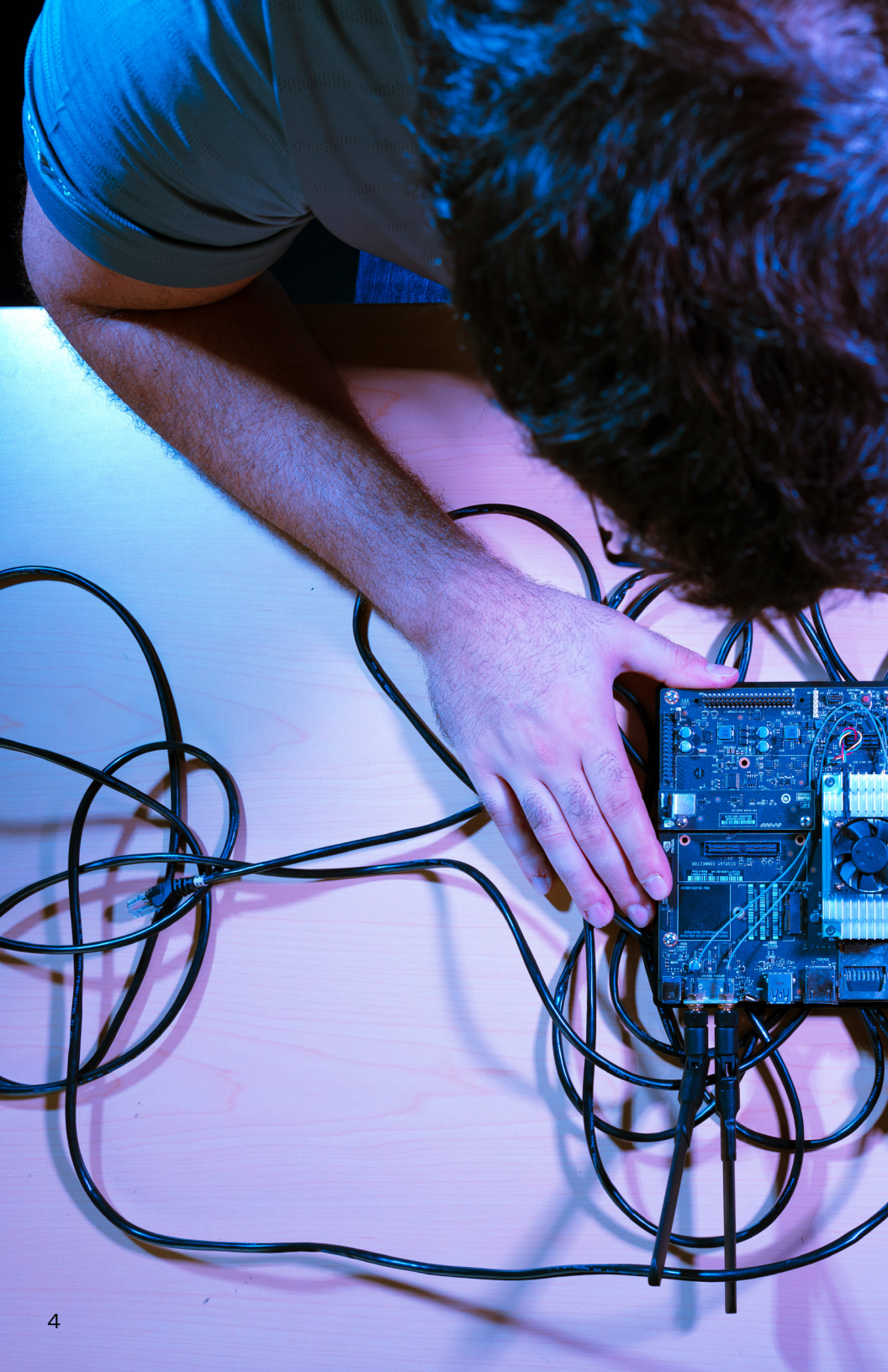
Website: www.fau.edu/research-admin/technology-development

This guide was created by the Office of Technology Development at Florida Atlantic University and is based in part on similar handbooks created by Stanford University, Yale University, and University of Florida. It has been updated and modified to reflect the specific policies and procedures of Florida Atlantic University.

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Introduction

Florida Atlantic University (FAU) is a place where research and development of innovative ideas is strongly encouraged. Faculty, staff, and students have access to a wide variety of opportunities and resources to foster unique collaborations and explore entrepreneurial endeavors. This network of support is intended to set you up for success no matter where your ideas take you.

The Office of Technology Development (OTD) manages intellectual property created by faculty, staff, and students at FAU. The mission of the office is to obtain legal protection for intellectual property arising from FAU innovations (e.g. patents, copyrights, trademarks), and to commercialize those innovations through license agreements with existing companies or startups.

Whether OTD grants an intellectual property license to an existing company or a startup, the goal remains the same—to maximize the chances of successfully commercializing the innovation while prioritizing FAU's missions of research and education. This goal is the shared responsibility of the university and the company.

This guide is designed for faculty, staff, and students interested in launching a startup company based on intellectual property that is owned by FAU. It provides a broad overview of topics relevant to startups and offers information on various resources available to FAU entrepreneurs.

FAU's policies and procedures related to startups may be revised from time to time. Individuals are expected to take responsibility for knowing and following FAU's policies on intellectual property, conflicts of interest and related matters. The FAU website is the best source for current information on these matters. Additional information may be obtained by contacting OTD at techdevelop@fau.edu.



Technology Transfer Overview

Technology transfer is the process by which innovations are transformed into commercial products that can benefit the general public. The technology transfer process at FAU can be conceptualized as a continuous cycle wherein innovations created through university research are developed into licensed products the sales of which help to fund the next generation of research and innovation.

Highlighted in this section are the steps in FAU's technology transfer process that are particularly relevant to entrepreneurs starting a new company based on FAU intellectual property.

1. Research

Observations and experiments during research activities often lead to the development of intellectual property such as patentable inventions or copyrightable works. Often multiple researchers—including students, postdocs and research staff—contribute to the creation of an innovation and are joint inventors or authors.

2. Disclosure

A written notice of the development of intellectual property—either an invention disclosure or a works disclosure—is submitted to OTD and starts the technology transfer process. The disclosure is a confidential document that fully describes all aspects of the innovation, including critical solutions it provides and competitive advantages it possesses.

3. Assessment

OTD assesses the commercial potential of the innovation based generally on the need in the marketplace, competition, and potential costs and revenues to a commercializing entity. This assessment guides the licensing strategy.

If the researchers are contemplating starting a company based on the innovation, it is helpful to inform OTD of these plans during the assessment stage. OTD will take this into consideration when evaluating the innovation and developing a strategy for intellectual property protection, marketing, and licensing.

4. Protection

OTD determines an appropriate method of legal protection for the innovation and evaluates the likelihood of success of securing such protection. If a patent application is filed, it may take several years and tens of thousands of dollars to obtain an issued patent. Other common forms of intellectual property protection include copyrights and trademarks. Unique biological materials and software can often be successfully licensed without formal intellectual property protection.

5. Marketing

OTD is committed to broadly marketing all innovations to appropriate companies that may be interested in commercialization. With the researchers' input, OTD creates a non-confidential summary of the innovation, identifies potential licensees that have the expertise, resources, and business networks to bring the innovation to market, and contacts those companies to generate interest and gauge commercial potential.

To ensure fair and open access to potential licensees, OTD markets all FAU innovations, including those with startup interest. Broad marketing helps the university find companies who may be interested in developing the innovation and helps to mitigate and manage conflicts of interest if the innovation is licensed to a startup. The marketing period typically lasts one to three months before OTD selects a licensee (if there is any commercial interest at all). Sometimes entrepreneurial researchers receive valuable industry feedback and begin to establish relationships with potential partners during this stage.

6. Licensing

To choose the best licensee, OTD evaluates which company is in the best position to develop the innovation and bring it to market. To assess the commitment of potential licensees, OTD asks companies to provide a business plan with details about how they intend to develop and market the innovation. This plan should make the case that the company and its leadership are the best choice for commercializing the innovation.

When FAU faculty, staff, or students are involved in a startup company, licensing to that company can raise concerns about conflicts of commitment and conflicts of interest. The university needs to maintain an arms-length relationship in all its business transactions (including license negotiations). The final license agreement must fall within the normal range of terms and conditions of similar licenses to non-FAU-associated companies. OTD cannot conclude any agreements until the appropriate conflict of interest reviews and approvals are completed.

7. Commercialization

Most university innovations are very early stage and require further research and development efforts. The licensee typically makes significant business investments of time and funding to commercialize the product or service. These steps may include regulatory approvals, sales and marketing, technical support and training, and other activities. The licensee will be expected to meet commercialization milestones described in the license.

It is fairly common for licensees, particularly early stage ventures, to evolve their strategy and development plans as the company grows, faces technical challenges, and recognizes new market opportunities. OTD can work with licensees to amend and renegotiate license agreements in response to these changes if the request and reasons to renegotiate are reasonable.



8. Royalties

Royalties received by the university from licensees are distributed semi-annually to individual inventors or authors, departments, and colleges. All inventors or authors, including those who are involved with the startup, will receive their individual share of royalties as outlined in the FAU Intellectual Property Policy.

9. Reinvestment

Royalties that are shared throughout the university collectively foster the creation of the next generation of research and innovation at FAU.



Launching a Startup

OTD realizes that most innovations that are created at FAU are very early stage and require a significant financial investment to commercialize. Launching a successful startup based on a FAU innovation requires commitment, dedication, and perseverance. Many companies fail even if the core innovation is promising. Components of a successful startup include a compelling concept, strong market opportunity, competitive advantage, sound business plan, sufficient financing to execute the business plan, and an experienced management team.

Every startup follows its own unique path, but there are some common steps that many entrepreneurs follow in order to get a new business up and running. Highlighted below are several steps in the startup creation process that are particularly relevant to entrepreneurs starting a new company based on FAU intellectual property.

1. Communication

Contact OTD early in the process to discuss your innovation, how to obtain intellectual property protection, and your plans for forming a startup.

2. Protection

Work with OTD and its outside patent counsel to obtain the appropriate type of legal protection (e.g. patent, copyright, trademark) for your innovation before publicly disclosing it outside of FAU.

3. Networking

Utilize the commercialization and economic development resources available to you through FAU to educate yourself on all aspects of startup formation and build relationships with experienced entrepreneurs and investors.

4. Planning

Develop a business plan to demonstrate your understanding of the startup's market potential, competition and funding needs and define your path for growing the company.

5. Negotiating

Designate a representative of the startup to negotiate an intellectual property license with OTD.

6. Funding

Meet with venture capitalists, angel investors and other sources to raise the funds necessary to commercialize the innovation.



Elements of a Business Plan

A business plan is the foundation of your startup. It serves as a guide for starting, managing and growing your new venture. If your plan is thoughtfully constructed, it can help you secure funding and attract strategic partners. A good business plan will convince others that working with or investing in your company is a smart choice. Listed below are the basic elements of a traditional business plan.

1. Executive Summary

An executive summary briefly tells the reader what your startup is and why it will be successful. It may include a mission statement, a description of your product or service, information about the leadership team and plans for financing and growth.

2. Company Description

The company description provides more detailed information about your startup. You should address the problem your business solves, who your target customers are, the competitive advantages that will make your product or service successful, the expertise your team has and any other strengths of your company.

3. Market Analysis

In the market analysis section you must demonstrate a good understanding of your target market. Conduct competitive research to determine what similar businesses are doing and what their strengths and weaknesses are. Identify industry trends, what makes others successful and how you can do better.

4. Organization and Management

Tell the reader about the structure of your startup in the organization and management section. State if your business is a C or S corporation, general or limited partnership, sole proprietorship or limited liability company. Identify company leadership and employees and explain how each individual's experience will contribute to your success.

5. Service or Product Line

The service or product line section should describe what your startup is selling. Discuss how your product or service will benefit your customers. If you have plans for research and development or intellectual property protection you should share those here.

6. Marketing and Sales

Your marketing and sales strategy will evolve as your startup grows, and there are many different approaches to marketing a product or service that a startup can take. In this section you will describe your plans for attracting and retaining customers and how the sales process will work.

7. Funding Request

In this section you will outline the funding needed for your startup. Clearly explain how much funding you are asking for and what it will be used for. You can specify if you want debt or equity, the terms that will apply and the length of time the request will cover. Describe your future financial plans like paying off debt or selling the business.

8. Financial Projections

The financial projections section will be used to support your funding request. You should use this information to convince the reader that your startup is stable and will be financially successful. Provide a financial outlook for the next five years, including forecasted income statements, balance sheets, cash flow statements, and capital expenditure budgets.

9. Appendix

You can use an appendix to provide any other supporting documents. Common items to include are resumes, product images, letters of reference, patents and other legal documents.

Intellectual Property Licensing

As part of continuing efforts to expand programs and support for FAU entrepreneurs who are interested in starting their own companies based on FAU innovations, OTD offers pre-negotiated intellectual property option and license agreements. These agreements are intended to speed up and streamline the licensing process.

An option agreement is often used to reserve rights in an innovation so a company can begin exploring funding opportunities to acquire the rights in question. A startup company sometimes prefers to start by taking an option to license, rather than an outright license itself.

The agreements are based on transparency and fairness, offering the exact same, very favorable terms to all FAU startups. They have been designed in consultation with attorneys, entrepreneurs, and investors to be “no negotiation” deals that companies can feel comfortable signing without reservation. By reducing the time and legal expense for both parties to finalize an agreement, entrepreneurs can focus their efforts on growing their business.

While FAU’s primary mission in licensing innovations to startups is to promote the development of products or services that benefit society, FAU does seek a reasonable financial return so that it can reinvest in future education and research.

Eligibility Requirements

- At least one company founder is a FAU employee and creator of the intellectual property rights
- The intellectual property rights are owned solely by FAU
- A detailed business plan with commercialization milestones is reviewed and approved by OTD
- All conflicts of interest have been disclosed to FAU
- The agreement is executed without modification

Key Terms

Option

An option is a short-term agreement that provides a company with the first right to negotiate a license to practice the university’s intellectual property rights in a specific innovation. During the option period the university agrees not to license the rights to other parties. This gives the company an opportunity to evaluate the innovation and its commercial potential prior to executing a license.



Option Fee: The company pays a \$500 upfront fee in consideration for the university’s grant of option rights.

Grant: The company receives an option to negotiate an exclusive license.

Term: The option remains in effect for a term of one year.

Field of Use: The option specifies the field in which the company may practice the intellectual property rights in the event the option is exercised and a license is negotiated. The breadth of the field of use is based on the company’s business plan.

Territory: The option specifies the territory in which the company may practice the intellectual property rights in the event the option is exercised and a license is negotiated. The extent of the territory is based on the company’s business plan.

Legal Protection: The university retains ownership of the intellectual property rights and therefore maintains sole responsibility for and control over legal protection efforts.

Diligence Obligations: The option identifies specific milestones that the company must use diligent efforts to achieve. These milestones are based on the company’s business plan and may include obtaining financing from investors, participating in customer discovery programs, recruiting an advisory board or arranging strategic partnerships.

License

A license is an agreement that permits a company to practice the university's intellectual property rights in a specific innovation. The agreement addresses what is being licensed, in what territory, for how long, whether the license is exclusive or not, whether there are any field of use restrictions, the compensation payable for the license and other routine terms.

License Fee: The company pays a \$1,000 upfront fee in consideration for the university's grant of license rights.

Grant: The company receives an exclusive license with the right to sublicense.

Term: The license remains in effect for the life of the intellectual property rights.

Field of Use: The license specifies the field in which the company may practice the intellectual property rights and is based on the company's business plan.

Territory: The license specifies the territory in which the company may practice the intellectual property rights and is based on the company's business plan.

Legal Protection: The university retains ownership of the intellectual property rights and therefore maintains sole responsibility for and control over legal protection efforts.

Legal Expenses: Past legal expenses are paid by the company with 33% due on the 2-year anniversary of the license, 33% due on the 3-year anniversary and the remainder due on the 4-year anniversary. Thereafter future legal expenses are paid by the company on a quarterly basis.

Diligence Obligations: The license identifies specific milestones that the company must use diligent efforts to achieve. These milestones are based on the company's business plan and may include recruiting a corporate management team, securing financing, constructing and testing a prototype, obtaining regulatory approval or commencement of commercial sales.

Running Royalty: The company pays 2% of net sales of licensed products or services to the university.



Non-Royalty Sublicense Consideration: The company pays 10% of non-royalty consideration received from sublicensee(s) to the university.

Exit Fee: If the company is acquired, merges or goes public then the company pays an exit fee of 1% of the company's value to the university.



Innovation & Business Development at FAU

Over the years, FAU has developed an innovation and business development pipeline that moves research discoveries from the lab to the market, fostering economic growth and promoting life-changing innovations in South Florida and beyond. Featured below are the prominent components of this pipeline, with contact information for each of them.

1. FAU Wave

FAU Wave is an undergraduate and graduate applied research and entrepreneurial competition challenging students to submit and develop innovative ideas targeting societal problems. The competition provides seed funding and mentors for students to develop their projects, with top projects receiving cash prizes at an annual award ceremony.

www.fau.edu/innovation-and-business-development/fau-wave

2. Adams Center for Entrepreneurship

The Adams Center for Entrepreneurship brings students, faculty and the community together in the spirit of entrepreneurship to fuel the innovation needed to create new opportunities in the ever-changing global marketplace. The center offers a portfolio of innovative programs to provide “real world” experiences in areas such as: cross disciplinary academics, community outreach and venture creation from emerging technologies.

business.fau.edu/centers/adams-center

3. NSF I-Corps at FAU

The NSF I-Corps at FAU regional curriculum provides faculty and students with entrepreneurial education, mentoring and funding to accelerate the translation of fundamental research into emerging products and services to attract subsequent third-party funding. Participant outcomes include gathering evidence for or against product-market fit, identifying customer segments and corresponding value propositions and developing a compelling narrative for potential partners.

fau.edu/innovation-and-business-development/i-corps

4. Office of Technology Development

The Office of Technology Development secures intellectual property protection such as patents, copyrights and trademarks for innovations developed by FAU faculty, staff and students. Innovators receive assistance with developing a commercialization strategy, identifying potential industry partners and negotiating license agreements.

www.fau.edu/research-admin/technology-development

5. FAU Tech Runway

FAU Tech Runway is a South Florida public-private partnership that serves as a hub to accelerate technology development and incubate startup companies. Tech Runway’s companies can access mentoring, introductions to early-stage capital, a rigorous entrepreneur bootcamp, business and technology events and connections to a thriving regional innovation network.

www.fau.edu/techrunway

6. Florida SBDC at FAU

The Florida SBDC at FAU offers high-level consulting and training to small and medium-sized businesses in Broward and Palm Beach counties. The center has access to robust databases, business research resources and knowledgeable expert consultants to help business owners and entrepreneurs successfully navigate obstacles that come with each stage of the business life cycle.

fau.edu/sbdc

7. Research Park at FAU

The Research Park at FAU is home to technology companies and research-based organizations working to support the research and development activities of FAU. The 70-acre park serves as a destination for R&D companies to thrive and works to foster economic development and broaden the economic base of Broward and Palm Beach counties.

researchparkfau.com



FAU Policies, Conflict of Interest and Conflict of Commitment

1. Intellectual Property Policy

For new companies started by FAU faculty, staff, or students based on innovations created at FAU, ownership of the underlying intellectual property rights typically belongs to the university. This ownership policy applies to all types of intellectual property, including patents, copyrights, and trademarks. FAU's Intellectual Property Policy is available for review on the OTD website

fau.edu/research-admin/technology-development/forms

2. Conflict of Interest

OTD works with FAU employees both to facilitate technology transfer and to manage the licensing process. In the case of FAU-affiliated startups, this process often raises issues regarding conflicts of interest. A conflict of interest depends on the situation and not on the character or actions of the individual. The university is concerned with whether or not an individual can separate university research from company research, provide unbiased and appropriate guidance and support to students, maintain academic integrity in research and education, and adhere to government mandated policies. A full explanation of FAU's policies and procedures for managing conflicts of interest can be found on the Office of Compliance & Ethics website

fau.edu/compliance/conflict-of-interest

3. Conflict of Commitment

FAU employees owe their primary professional allegiance to the university. Their primary commitment of time and intellectual energies should be to the education, research, and scholarship programs of the institution. Conflicts of commitment usually involve issues of time allocation. If a situation raising issues of conflict of commitment arises, an individual should discuss the situation with his or her supervisor. More information about university policies concerning conflicts of commitment can be found on the Office of Compliance & Ethics website

fau.edu/compliance/conflict-of-interest

4. Consulting Agreements

Startups may hire FAU employees as consultants, however individuals should be clear about the delineation between university work and private consulting. FAU employees cannot enter into any agreement that creates obligations that conflict with FAU's Intellectual Property Policy. The university does not assert ownership of an innovation made while an employee is consulting for an outside company provided that the innovation was made without significant use of university support or the innovation is not within the scope of the individual's employment by FAU. Information on requirements for consulting activities can be found on the Office of Compliance & Ethics website

fau.edu/compliance/conflict-of-interest

5. Obligations to Sponsors

OTD requires the disclosure of all sponsors, including companies and non-profit foundations, whose funding or materials led to the creation of an innovation at FAU. Sponsored research agreements specify what rights a sponsor has in any intellectual property developed as a result of the sponsored research. Under most circumstances, federal funding of research leading to an innovation will not impose significant impediments on commercializing the innovation via a startup. Funding or materials provided by other entities (such as companies or non-profit foundations) may result in license rights to those entities, limiting the license rights available for a startup. Corporate sponsors are typically granted rights to negotiate a license for any intellectual property arising from sponsored research, but sponsorship agreements vary widely. Additional information on sponsored research can be found on the Office of Sponsored Programs website

fau.edu/research-admin/sponsored-programs

Frequently Asked Questions

1. How are FAU faculty, staff, and students involved in the intellectual property licensing process?

In most ways, faculty, staff, or student involvement in the licensing process is similar to that of any other licensee. However, OTD's relationship with these individuals becomes more complex when they want to start a company. The licensing process starts when they disclose their innovation to OTD and continues as they collaborate with the office throughout the life cycle of the technology. OTD carefully considers their feedback and strives to keep them informed along the way. OTD encourages them to recommend leads on potential licensees, to provide input for assessing technical and market feasibility, and to offer suggestions on which licensing strategy would be best to commercialize the innovation. However, in the case of a FAU startup, they do not participate in any license agreement negotiations. This approach is based on the principle that FAU faculty, staff, and students cannot represent the company and the university at the same time. Therefore, their role should not include representing the potential licensee or negotiating directly with OTD.

2. How much can I tell potential investors about the innovation?

OTD understands that FAU startups will need to describe the general aspects of an innovation to potential investors in order to generate interest in their company. If the company wants to discuss the details of an innovation prior to securing intellectual property protection through OTD, a confidential disclosure agreement (CDA) can be used to facilitate open discussions and to prevent the loss of intellectual property rights. The startup's management or legal counsel typically handles these agreements for discussions of the innovation on behalf of the company. It is important to keep in mind that many investors will not sign CDAs for fear it will constrain them from pursuing related opportunities in the future.

3. When can a FAU startup request a license?

After broad marketing efforts, if the FAU startup is the best choice for commercializing the innovation, OTD will work with a representative of the company to grant a license. FAU markets its innovations because it is committed to looking for the best licensees to transfer them from FAU to the marketplace for the public benefit. The university also has a legal obligation to ensure that innovations funded by the federal government are effectively commercialized. Under FAU policy, faculty, staff, and students cannot represent the company in licensing discussions due to conflicts of interest.

4. What is an option and can a startup take that instead of a license?

An option agreement is a commitment from FAU not to license an innovation to a party other than the startup. It is often used to reserve rights in an innovation

while the company evaluates it, explores funding opportunities, and raises the capital needed to fully license the rights in question. Option agreements include financial consideration to FAU in order to reserve those rights.

5. Are the terms of the option or license negotiable?

No, the preferred option and license terms offered to FAU startups are fixed and if not acceptable to the startup, a more detailed and extensive standard option or license agreement will have to be negotiated. Standard options and licenses typically take 3-6 months to negotiate at any university, and it is common for startups to incur legal fees with their outside counsel of \$10,000-\$20,000 or more on a license negotiation, depending upon the extent of the language changes requested by the startup.

6. Will FAU assign intellectual property rights to a startup?

No, FAU does not assign intellectual property rights to startups. When appropriate, FAU may grant an exclusive license after deciding that the startup is the best candidate to commercialize the innovation.

7. Can a startup get an option or license without being incorporated?

A startup must be legally incorporated in order to execute an option or license agreement with FAU. The university must be able to sign an agreement with a legal entity, not an individual.

8. If the startup is based on an innovation jointly owned by FAU and another institution, what happens to the innovation?

Typically, OTD enters into an Inter-Institutional Agreement whereby one of the institutions will take the lead in protecting and commercializing the innovation. This way a company can negotiate a single agreement with a license to both parties' intellectual property rights.

9. If a startup needs an innovation from another institution besides FAU, but the innovation is not jointly-owned with FAU, will the company need a separate license?

Under most circumstances the company will need to negotiate separately with the other institution for a license. However, universities do sometimes package their innovations together in a single license agreement.

10. Can I continue to do research at FAU on the innovation that is the basis of a startup?

FAU always reserves the right to practice its innovations for research purposes. However, FAU employees may not be permitted to continue to develop an innovation at FAU for the benefit of a startup in which the employee has a financial interest unless the conflict of interest is appropriately managed.



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