

A Guide for
New Business Ventures
At NDSU

For faculty and staff interested in licensing a
technology from NDSU/RF for starting a business.

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A Guide for New Business Ventures at NDSU

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Executive Summary

Intellectual property is a concern for every university. Understanding the roles of researchers, appreciating the various entities within NDSU who deal with intellectual property (IP) and the policies that govern its use, and abiding by the state and federal statutes that outline an employee's obligations as well as the university's obligations, are a key part of any intellectual property discussion.

The first handbook, *A Guide to NDSU's Intellectual Development Process*, is an outline of the process of development and protection of an invention. This second guide, *A Guide for New Business Ventures at NDSU* is devoted to those faculty members who want to license their technology from the NDSU Research Foundation (NDSU/RF) to start their own business. Neither guides are intended to be exhaustive compendiums of the activities to be conducted; rather they are to be used as an overview of the more common issues involved in each area. For further details, please contact the appropriate departments indicated, the NDSU Technology Transfer Office (NDSUTTO), or the NDSU/RF

Mandates

In 1980, Congress passed the Bayh-Dole Act to allow universities to claim inventions developed from federally sponsored projects, along with the federal government. Today, like most institutions of higher learning, NDSU does claim ownership of intellectual property generated by its faculty, staff or students.

In addition, the federal government also has rights to any invention developed using federal funds, under the Bayh-Dole Act.

A second funding mandate comes into play when a researcher receives third-party research funding, such as sponsored research funding from corporate, consortia or private granting agencies. When agreements with third parties contain provisions specifically addressing intellectual property rights resulting from the research, those agreement terms, negotiated through the Sponsored Programs Administration office, dictate the handling of any resulting inventions.

Employees Must Report

To be able to meet its legal contractual obligations for intellectual property rights, *all inventions* made by any NDSU employee/student must be reported to the university. Reporting is a legal obligation of employment at the university. To properly protect intellectual property, reporting must be done prior to any publication, presentation or public dissemination. The NDSUTTO can assist in protecting the IP through the preparation of confidentiality agreements, material transfer agreements, inter-institutional agreements, or beginning the work for provisional patents, etc., depending on the needs and nature of the IP.

Outside professional activities that contribute to the employee's profession and/or to the general public are encouraged and supported by the university. However, when those activities involve consulting or other potential conflicts of interest or commitment to the university, they must be disclosed to the university as well. As a part of any outside activity, no agreement to assign IP can be negotiated, except through the Sponsored Programs Administration office.

Protecting IP Provides Benefits

When the intellectual property is properly protected and licensed, there are distinct benefits, not only to the university, but also to the individual inventor(s). In times past when intellectual property was simply "given away," the inventor rarely benefited personally, although the commercial use of the invention may have had enormous profit implications. Today, with proper protection, the inventor not only provides benefits to his or her department in the university since they receive a significant portion of the licensing fees, but the inventor(s) also receive a significant share. In addition, the NDSU/RF benefits from a small portion, which is then used to help provide grants to staff to develop other inventions.

The protected IP is also a benefit for those faculty who wish to start their own business. With the IP protected throughout the research process, and then through patents or copyright, the employee can then work out a license agreement with NDSU/RF to develop the invention into a commercial product.

IP Process Overview

The following overview covers the key events involved in the development, protection and commercialization of an invention. The list depicts the order in which these events typically occur; however, some events may take place simultaneously or in a different order, depending on the needs of the inventors and the university.

For ease of use, the following steps are broken into two handy guides:

A Guide to NDSU's Intellectual Property Development Process includes those steps that would provide IP protection for any NDSU employee or student who wants to retain the rights to their discoveries.

A Guide for New Business Ventures at NDSU includes information for faculty who want to license their own technology from NDSU/RF and begin a new company.

A Guide for New Business Ventures at NDSU, which is the focus of this handbook, outlines the commercialization of the invention by a new faculty start-up business:

- Inventor discusses company feasibility with potential business partners, NDSU/RF licensing associate and outside professionals.
- Optional: Inventor/company enters standstill agreement with NDSU/RF for a specified period of time, under which NDSU/RF agrees not to license the technology in question to a third party while the inventor/company prepares its business plan.
- Inventor submits required paperwork outlining potential conflicts for review by the University's Conflict of Interest Committee.
- Inventor's company becomes an established legal entity.
- Inventor prepares business plan, including financial projections, and submits it to NDSU/RF for review by NDSU/RF licensing staff.
- Inventor's company and NDSU/RF finalize license and, if applicable, equity agreements.
- Inventor's company finds location in which to operate.
- NDSU/RF and company monitor agreements, meet obligations and milestones (ongoing).

About Faculty Start-Ups

An important mechanism for transforming NDSU research into commercial products is the launch of technology-based companies involving university inventors. In some instances, the faculty and staff members who create an early-stage technology may be in the best position to develop it. Not only do they possess unsurpassed technical knowledge about their invention, but they can often best appreciate and express the promise it holds, as well.

The challenge for many new startup businesses is to turn a good idea into a viable, financially stable entity. This section of the handbook outlines many of the steps necessary to building a new business framework. In addition, to assist NDSU faculty and staff who want to start a company based on NDSU-developed technology licensed from the NDSU Research Foundation (NDSU/RF), both NDSU/RF and NDSU have created a number of initiatives, policies and resources for faculty entrepreneurs.

This guide offers a roadmap for navigating NDSU's policies and procedures during the early stages of company formation, as well as a list of university resources and outside professionals who may be able to provide assistance as the company grows. The goal in presenting this information is not to endorse any particular firm or prescribe a specific approach to developing a company. Instead, we hope this guide assists faculty and staff in carrying out the upfront decisions and planning activities that will increase their chances of a successful and rewarding entrepreneurial experience.

Note: This section of the guide is intended for readers who already possess a basic understanding of NDSU/RF's and the University's intellectual property procedures. Although this section does contain a brief description of these procedures, for more complete information on intellectual property, visit the NDSU Technology Transfer Office (NDSUTTO) website to review ***A Guide to NDSU'S Intellectual Property Development Process*** at <http://www.ndsu.edu/techtransfer> or the NDSU Policy Manual at http://www.ndsu.edu/policy/al_index.htm.

General Considerations When Starting a Business

Although starting a business can be challenging and exciting, owning and operating a company is not for everyone, especially when the venture is a technology-based business that may not see product revenues for months or years. If you launch a company without an honest evaluation of your motives, the company's feasibility, and the requirements and possible pitfalls of the endeavor, you may find yourself unhappy and disillusioned. An evaluation that includes a detailed examination of financial and market realities should allow you to make a more informed "go" or "no go" decision.

A sampling of topics that should be honestly appraised includes:

What are the effects on your academic career and your personal life?

- Have you defined your personal needs and your financial objectives?
- Have you examined your family's needs?
- Why do you think you will be happy as a business owner?
- Are you more interested in being a business owner or in maintaining your university position?
- Will the new endeavor conflict with existing academic career goals and pursuits (e.g., obtaining tenure, training graduate students)?
- How will you balance the company's need for you to engage in product-related activities with your need to fulfill your academic research and teaching obligations?
- How will your role as a business owner affect your relationships with academic colleagues (e.g., graduate students, collaborators)?

How feasible is the chosen business? A thorough market survey will help you answer these questions.

- What product or service will your company sell?
- Is intellectual property available that will give your company a proprietary position and therefore a competitive advantage?
- What is the size of the market for your product? How much of that market can your company reasonably expect to capture?
- Have you researched market demand or have you just assumed that people need or want your product or service? How much is the market willing to pay for your product?
- Why would customers buy your product over existing ones? Is your product significantly better? What is your competition?
- What potential competing products are under development (i.e., not yet on the market)?
- Will your new company have "freedom to operate" or are there conflicting patents that would restrict the use of your invention?
- Are your management skills adequate to develop and oversee the business operation? Be honest with yourself here!

- If you need help managing the company, are you willing to enlist business partners or employees who have the needed skills? Are you willing to share ownership of your venture with those whose skills you need?

Financial considerations:

- Do you have the financial skills to be able to attract investment capital?
- If your product will require a period of research and development, how will you generate funds to support the company until sales generate enough income to cover operating expenses?
- If you need to raise money to get your business started, do you have some cash or own other assets you can pledge?
- What other funding sources will you pursue once you have a business plan in place (e.g., angel investors, venture capital, SBIR grants)?
- What are the specific rewards, both monetary and personal, that you expect to reap from the business? Are they worth the effort and investment you will make?
- What is the worst thing that could happen if you go into business for yourself?
- Are you capable of, and willing to, deal with the worst possibility if it occurs?

A start-up will require you to:

- Learn about the legal form (e.g., C-Corp., LLC, subchapter S) of the organization you are creating and the steps you must take to establish a legal business entity. Consider which legal form best serves your long-term interests. Please note that venture capitalists usually require a C-corporation form of business organization.
- Learn which permits, licenses, rules and regulations are applicable to your proposed business.
- Determine the types of records you will need to keep for tax purposes and for management and control.
- Consider your professional needs, such as legal, accounting and tax, insurance, and banking.
- Find the right professionals and firms to help you with all of the above.

Some common pitfalls to avoid:

- *Thinking you can do all the work yourself.* Make certain that you hire a professional management team to run the company and a technical staff to work on product development as early as possible. No one can operate a business completely on his or her own, especially not a professor with a multitude of research, teaching and administrative commitments outside the company.
- *Letting others impose more work on you than you are able and willing to handle.* Balancing academic and start-up pursuits requires that you establish firm priorities. You must be able to say no to other activities and commitments that will overburden you.
- *Trying to pursue and develop too many ideas at once.* Keep things simple. Many exciting applications may exist for your technology, but success is much more

likely if you focus initially on one product idea. Other ideas and applications can always be explored later.

- *Assuming ownership of intellectual property prematurely.* It's important to realize that at the earliest stages of company formation, the value of your business lies primarily in intellectual property. Don't assume ownership of this IP until you have signed a license agreement with NDSU/RF.
- *Choosing company co-founders and allocating equity too quickly.* In the rush to launch your company, you may be tempted to choose co-founders and allocate equity before you've had time to reflect carefully on the long-term implications of these decisions. Resist this temptation: remember that once you've signed away part of your company to someone, you will be tied to that person for a long, long time. You also need a plan that will be appealing for future employees, owners, investors and venture capitalists.
- *Refusing to give up equity to others.* Entering into business partnerships and equity relationships with others is essential to the health of your business. Again, you can't do it all on your own and expect to enjoy success. Careful planning can make it more comfortable, and less threatening.
- *Failing to distinguish between ownership and inventorship.* While it may be reasonable to view all of the technology's co-inventors as co-founders and co-owners of the new company, it is by no means mandatory. Choose co-owners and allocate equity between them based on what each brings to the business venture, not on what each contributed to the invention. Great inventors do not always make good business partners.
- *Entering into verbal partnership agreements.* Partnerships with co-workers, new business acquaintances, friends, and even family should be entered into with caution and legal guidance. You may be in general verbal agreement now, but future events can cause serious problems. Prepare a written partnership agreement, identifying each partner's responsibilities. Be specific in the methods of entering into, and exiting from, a partnership.
- *Paying licenses and fees before you have adequate funds to start the business.* Your business may be legally established, but you may be unable to obtain financing.
- *Entering into contracts before securing funds to open the business.* Do not legally commit yourself to any contracts before you are certain you have adequate funding to complete the tasks. You will be responsible for contract performance regardless of whether you actually open your business or not. In some instances, it may be possible to make an agreement contingent upon obtaining business financing.

- *Thinking it will cost less and/or take less time to get a business going than it actually will.* It will cost more and take longer than you ever imagined, so be prepared for delays.

These considerations by no means cover all the start-up requirements you must be prepared to handle or the common pitfalls you may encounter as a business owner. In the end, the best advice for someone entering into a proposition as risky and unpredictable as a new business is this: Be cautious, be prepared, and be flexible.

Note: Your decision to start a company should not be finalized without the assistance of outside professionals, such as an accountant, an attorney, a financial advisor, and an experienced entrepreneur. The Fargo-Moorhead community has many professionals who are willing to provide advice. See the “Resources” section of this guide for links to a partial listing of resources.

NDSU/RF's Process and Criteria for Licensing Technology to a Start-up Company

This section describes the process and procedures that faculty members typically follow in obtaining a license to technology from NDSU/RF for the purpose of starting a company.

Fundamentally, NDSU/RF must receive an acceptable business plan and a start-up application from your company before licensing agreements or equity agreements can be finalized. Some faculty entrepreneurs and their business partners may be able to submit a full business plan relatively quickly, while others need more time to fully assess the company's feasibility and build a solid plan. Whatever your circumstances, NDSU/RF's licensing staff will help you navigate the steps below as quickly and efficiently as possible.

Steps to Obtaining a License

1. Inventors discuss company's feasibility with NDSU/RF licensing manager and outside professionals.
2. Company enters into standstill agreement on the technology with NDSU/RF (optional).
3. Company completes full business plan and start-up application; establishes itself as legal entity.
4. Company submits business plan and start-up application for review by NDSU/RF.
5. NDSU/RF approves finalization of license and equity (if applicable) agreements between NDSU/RF and company.
6. Company and NDSU/RF finalize the terms of agreements.
7. License and equity (if applicable) agreements executed.
8. NDSU/RF and company monitor agreements, meet obligations and milestones (ongoing).

Determining the Feasibility of a Technology-based Business

In addition to the general business considerations listed in the preceding section, NDSU inventors should address the following questions regarding the feasibility of starting a technology-based company. We suggest you discuss these issues with your licensing associate and outside professionals as you prepare your business plan.

- Will the technology require considerable additional development before it's ready for the marketplace?
- Is the market for the product or service large enough to warrant starting a company?
- Is the market for the product or service accessible to a start-up company?
- Is an existing business unlikely to license the technology unless it is developed further?
- What rights to use the technology (exclusive, non-exclusive) will your company need in order to successfully enter and compete in the marketplace with a product?

Entering into a “Standstill” Agreement with NDSU/RF (Optional)

Once you’ve discussed the company’s feasibility and have decided to move forward, your next step is to prepare a business plan describing the company’s business model.

To gain additional time to evaluate the commercial potential of the technology and develop a full business plan, companies may enter into a “standstill agreement” with NDSU/RF, although this step is not required. During the standstill period, which normally lasts up to six months, NDSU/RF agrees not to license the technology in question to a third party.

Please note that the standstill period is not meant to provide time for your company to develop a product. Instead, the standstill gives you time to further evaluate the market potential for your product.

At the end of the standstill period, your company must provide a business plan and a completed start-up company application (see Appendix 1) to an NDSU/RF licensing associate if you are interested in negotiating agreements with NDSU/RF. If an acceptable business plan is not received, NDSU/RF reserves the right to enter into license negotiations with a third party.

Preparing a Business Plan for Review by NDSU/RF

Before NDSU/RF can finalize license and equity agreements with your company, this action may be reviewed by the NDSU/RF Board. The Board, composed of highly regarded business people, is the governing body for NDSU/RF. In reviewing your business plan, NDSU/RF will expect to see the answers to several key questions:

- What problem will your company solve?
- What value does your start-up company bring to the technology you hope to license?
- What are your company’s products?
- What is the expected market for these products and the market size?
- Who are your company’s competitors or potential competitors in this market?
- What is your process and timeline for developing the products?
- Who will manage the company?
- What are your financial projections for the first five years of company operation?

The above items represent only the *essential* content of a business plan. Potential investors and other business partners will expect to see a fully developed plan as outlined in the business plan section of this guide entitled, “Business Plans – Not Just for Raising Capital.” You may also consult the list of resources at the end of this guide for companies and professionals who can help you write a well-structured, thorough and effective plan.

Once you have completed your business plan, submit it along with a completed start-up application form (see Appendix 1) to your licensing manager for review by NDSU/RF. NDSU/RF will use these two documents to aid its decision as to whether NDSU/RF can finalize agreements with your company. You must also establish your

company as a legal entity before NDSU/RF can enter into license and equity agreements with you.

Important note: Please provide the business plan and start-up application to your NDSU/RF licensing associate to ensure a timely response to your request. Once the NDSU/RF has had an opportunity to review your materials, your licensing associate will inform you of the NDSU/RF decision.

Negotiating the Terms of Agreements with NDSU/RF

Once NDSU/RF agrees to pursue an agreement, you and your licensing associate will finalize the license and, if applicable, equity agreements, between NDSU/RF and your company.

These discussions typically center on a few key financial and non-financial terms. Financial terms include the license fee (which can possibly be waived in lieu of equity – see description of the equity agreement below), the royalty rate paid on product sales, and reimbursement of patent costs. An important non-financial term is the “field of use” restriction, which defines the specific technological applications your company has the right to develop. NDSU/RF restricts your company’s use of a technology to only those applications your company will actively develop so that other businesses can license and develop the technology for other non-competing applications and markets.

The licensing process typically begins with NDSU/RF presenting to your company a set of draft license terms. NDSU/RF’s licensing staff analyzes the value of the technology in the marketplace and looks at the terms of license deals completed on comparable technologies in the recent past, in order to make an offer that is as fair as possible to all parties. If your company is willing to accept the terms as they are presented, a license agreement can be quickly executed. If your company wants to make changes to the offer, NDSU/RF will work with you to reach a mutually acceptable agreement; however, each round of back-and-forth discussions will extend the length of time it takes to execute the final agreement.

NDSU/RF’s Standard Agreements

Below are short descriptions of the three main agreements that NDSU/RF enters into with companies:

The Option Agreement

This agreement is basically a “standstill” agreement with two significant differences. First, if a start-up company gives solid justification for why it does not want to proceed immediately with a license agreement, the option agreement can be used for potentially longer periods of time (i.e., one to two years) than a standstill. Secondly, NDSU/RF normally requires some financial consideration for an option.

Although it is available, NDSU/RF generally doesn’t use the option agreement when licensing technology to a start-up company; such an agreement would require extraordinary circumstances.

The License Agreement

This agreement is the method NDSU/RF uses to convey to a company the rights to use and develop a technology. In the case of faculty start-up companies, the license agreement often goes hand-in-hand with an equity agreement, under which NDSU agrees to waive the usual cash license fees in exchange for an equity stake in the company (see below).

The common features of NDSU/RF's standard license agreement are:

- Term – the life of the patent(s).
- Equity in lieu of cash license fees.
- Royalty rate on product sales.
- Patent cost reimbursement.
- Due diligence clauses (partial list).
 - o Assembly of a qualified management team.
 - o Acquisition of a certain level of financing and capital.

The Equity Agreement

In lieu of a cash license fee for a technology, NDSU/RF has occasionally either required or accepted (depending on the circumstances) an equity relationship with start-up companies. The equity agreement relieves a business of having to make a large cash payment right at company launch, allowing it instead to preserve its cash assets for critical research and development efforts. Whether NDSU/RF will take equity in a start-up company is determined on a case-by-case basis and will be discussed with you in detail when you begin license discussions with NDSU/RF.

After Agreement Execution: NDSU/RF's Requirements of Start-up Licensees

Once you have negotiated and acquired a license to the technology, there are certain milestones and obligations your company must meet.

Financial obligations include a cash license or an equity fee, and reimbursement of patent costs. A payment schedule for patent reimbursement can be set up to accommodate the specific needs of the company.

NDSU/RF also requires the company to submit royalty reports on a quarterly basis once product sales begin. The royalty rate is calculated as a percentage of the selling price of the products.

Finally, the company agrees to the following development obligations:

- Obtain the expertise necessary to independently evaluate the invention(s).
- Develop products for sale in the commercial market.
- Provide NDSU/RF with a development plan (for information on what to include in this plan, see Appendix 2).
- Provide NDSU/RF with a written development report (for instructions on what to include, see Appendix 3).
- Hire a qualified chief executive officer (CEO) within a specified period of time.
- Obtain an agreed-upon amount of financing within a certain period of time.
- Specify a date of first commercial sale.
- Provide audited financial reports on a regular basis.

NDSU/RF Policies and Procedures Regarding Start-up Company Activities

As an employee of NDSU, your decision to start a new company and your activities in launching it may raise issues with regard to your university obligations. Considerations to bear in mind are:

- Conflict of interest
- Potential use of university facilities for private purposes

Conflict of Interest

NDSU encourages faculty and staff to engage in activities and share expertise with companies. In fact, the university is obliged to transfer technology to the private sector so that the public can benefit from the results of NDSU research. Within this context, the university acknowledges that conflict of interest can be common and, in fact, may be unavoidable. The university does not consider some conflict of interest as inherently bad or improper, so long as it is properly managed.

Anytime a university employee becomes involved in a private enterprise while maintaining his or her university position, there is potential for conflict of interest. Thus, regulations have been established at both the federal and state levels governing conflict of interest, and procedures have been set up at NDSU to ensure that conflict of interest is identified and managed in compliance with those regulations.

What is a conflict of interest?

A conflict of interest is a situation where an NDSU employee has financial interests that could adversely impact or influence his or her professional research or teaching responsibilities. Conflict of interest also exists if a university employee has the opportunity to use his or her public position for personal financial gain.

Why is conflict of interest important to manage?

Strict adherence to conflict of interest regulations is critical to the credibility of NDSU. Real or perceived conflict of interest can jeopardize taxpayer support for academic research, allow critics to challenge the credibility of scientific research by questioning the objectivity of investigators, and can undermine academic freedom by interfering with the image of the university as a producer and certifier of knowledge.

Who sets conflict of interest regulations?

The National Institutes of Health (NIH) and the National Science Foundation (NSF) have established federal conflict of interest regulations. The procedures of both agencies, which are very similar, are based on disclosure by principal investigators of any significant financial interests that may affect the proposed research to be funded by the agency. Other federal agencies are likely to implement similar requirements. Under state law and university policy, university employees are prohibited from using their public positions or state property in a manner contrary to the interests of NDSU to obtain anything of substantial value for themselves, their families, or an organization or business with which they are associated.

How does NDSU manage conflict of interest?

NDSU identifies and manages potential or real conflict of interest through an ongoing disclosure process. Each university employee must submit annual outside activity reports. These reports are required and disclosures must be made even if no conflict of interest is associated with the activity. The reports must be updated at any time during the year when the employee's outside activities change significantly.

Additionally, if an employee becomes involved in any situation where a material conflict of interest might affect their responsibilities to the university, a report of that activity must be filed.

How do I address conflict of interest issues when starting a company?

When you become involved in a start-up company, you must submit an updated outside activity report, also known as a disclosure form. Details on NDSU's conflict of interest policies and procedures, including the process for filing conflict of interest, may be found in the "Conflict of Interest" section of the NDSU web site at <http://www.ndsu.edu/policy/151.htm>

Holding a management position within the new company, sitting on the Board of Directors, consulting for the new company, involving NDSU students in research for the company, or holding stock in the new company are just a few scenarios that could create a significant conflict of interest. Be sure to detail all your activities with the new company on the outside activity report.

Upon filing of the appropriate disclosure forms, the information goes to the university's Conflict of Interest Committee for review. The committee is composed of faculty peers as well as representatives from various NDSU schools or colleges. The committee determines whether a conflict exists and if so, the extent of the conflict and what actions must be taken to manage its potential adverse effects.

Use of University Facilities for Private Purposes

Related to the above discussion, under state law, university employees may not use their university position or university property to obtain anything of substantial financial value for themselves, their immediate families, or an organization (including an association, a business, or any legal entity) to which they belong without written permission. NDSU relies on the disclosure process outlined above to identify and manage potential private use of public facilities.

If research using specialized NDSU facilities is needed in order to further develop a start-up company's product, a signed, sponsored research or facilities access agreement must be established between the company and the university. These agreements can be structured to allow the research to progress, while assuring fair compensation to the university for use of facilities.

Specific arrangements, contract personnel and agreement forms related to the use of university facilities by companies with which faculty have consulting or equity relationships, or for more information about securing appropriate use of university facilities for developmental research, contact the NDSU Sponsored Programs Administration office.

About the Research Technology Park

The NDSU Research & Technology Park, Inc., (RTP) is a 501(c)(3) corporation created to provide university researchers and private industry a central location to combine their talents to develop new technologies, methods and systems. Covering 55 acres on the north end of the NDSU campus, the RTP plans to provide a full range of services to incubator tenants, including but not limited to technical assistance, supply services, business networking and access to venture capital and economic development financing programs.

The organization is lead by an Executive Director and a ten-person Board of Directors. The Executive Director has more than ten years of economic development experience and has served as a state senator since 1992. The Board is comprised of representatives from North Dakota State University and community members who represent legal, finance, economic development, manufacturing, service and high technology sectors.

Since groundbreaking for the RTP on May 19, 2001, both educational and business representatives have been excited about the collaborative possibilities. Currently, there are three buildings in the Park, two owned by NDSU and one by Phoenix International®, a John Deere company. There are two additional buildings underway for the park: a 75-room hotel and conference center and a business and technology incubator.

RTP Summary of Services

Goals and Vision

- Create one-stop center providing entrepreneurial tools such as access to venture capital, supply services, business networking and technical assistance
- Nurture new technologies to help translate them into commercial enterprises
- Diversify the region's economy and create high-quality, long-term jobs
- Optimize resources and contributions provided by NDSU scientific researchers
- Apply and transfer technology from NDSU and Tri-College University researchers to the global economy

Benefits

- Link start-up businesses with established entrepreneurial support networks in region
- Facilitate technology commercialization, licensing and joint venture opportunities
- Retain talented researchers and graduates in region

Location & Building

- Located in northwest quadrant of 55-acre NDSU Research & Technology Park
- Flexible, affordable space: 49,757 sq. ft. includes web lab space, dry-lab/manufacturing space, customizable tenant space, shared production areas

Initial Successes

- Phoenix International®, a John Deere company, operates 75,000 sq. ft. facility as Park cornerstone tenant
- Alien Technology® anticipates 120,000 sq. ft. research/manufacturing site in Park in 2006
- Research 1, a 40,000 sq. ft. facility houses NDSU researchers
- Research 2, Center for Nanoscale Science & Engineering, 76,000 sq. ft. facility specializes in practical materials, processes and devices for 21st century technology

Feasibility Study Results

The RTP conducted a thorough assessment of the Research Technology Park feasibility, assisted by Claggett Wolfe Associates, Auburn, California, which was completed in March 2003. According to the study, the incubator will focus on four industry clusters in the region that have shown rapid growth: biosciences, advanced manufacturing, material sciences and information technology.

The entrepreneurial support program is further strengthened by University-sponsored offices and programs including the Office of the Vice President for Research, Creative Activities and Technology Transfer, the NDSU Research Foundation (provides intellectual property services, including expertise in copyright and patent issues), the Center for Advanced Technology Transfer and Training (helps students intern with the area manufacturers to improve manufacturing processes), and the Institute for Business and Industry Development.

Incubator Advisory Committee

The NDSU Research & Technology Park has an Incubator Advisory Committee which serves as an outside resource for entrepreneurs, provides coaching and mentoring, links incubator clients to the business community and North Dakota State University. The Advisory Committee also advises and recommends new ideas and opportunities involving the incubator operation to the NDSU Research and Technology Park governing board of directors. The Committee is comprised of local business persons.

For more information about the RTP, please see www.ndsuresearchpark.com or call 701-231-7450 for more information or to arrange a tour of facilities.

Business Plans: Not Just for Raising Capital

While forming a company is relatively easy, it is only the first step in building a business. Similarly, although getting a business plan down on paper represents a major milestone, it is only the first step in molding your company into a sustainable venture. Think of your business plan as your repository of ideas about bringing your product to the market and selling it profitably on a continuing basis. As Thomas Edison said, “The value of an idea lies in the using of it,” and likewise, the real value of your plan also “lies in the using of it.” If thoughtfully prepared and well-executed, the business plan can guide your company beyond launch, taking you through the start-up development process and serving a variety of purposes as your company grows.

Purpose of a Business Plan

At a minimum, a sound business plan is a pre-requisite for discussions with those considering a financial investment in your company. Important as the completed plan may be to gaining financial support, however, the actual *experience* of preparing the plan will help you immeasurably in understanding how all the pieces fit together. If you can set down on paper a definitive, cohesive and defensible set of steps necessary to building your business, you will have accomplished the first major hurdle in establishing a successful, ongoing venture.

It's never too early to begin. The sooner you can prepare an accurate representation of how you will implement your business concept, the faster your company can move forward and the more successful you will be in sharing your vision and convincing others to follow your lead. Although the Technology Transfer Office will be happy to answer questions related to your business plan, its development, writing and implementation is your responsibility.

Here are some additional key points about the business plan:

- Preparing a plan forces you to understand the relationship of the key ingredients in your company – technology, people and capital – and how those components will be blended to create a viable and profitable company.
- It provides a means of sharing your goals and objectives, as well as how you intend to implement them, with your company team.
- It serves as a roadmap detailing the milestones and timelines that will guide the growth of your business.
- It provides a tool for management to plan company growth and, more importantly, to respond to the surprises that inevitably arise.
- It provides a means for sharing your vision with the outside professionals you will need to secure financing and to establish strategic supplier and customer relationships.

Support from the College of Business

The NDSU College of Business has many resources to assist start up or established companies. The faculty is available in various capacities to provide assistance relative to their areas of expertise.

A list of faculty can be found at www.ndsu.nodak.edu/cba/faculty/ with links to their individual pages. The Small Business Institute (SBI), www.ndsu.edu/cba/outreach/sbi, exists to assist small businesses with business problems. The SBI Director, Paul Brown (paul.brown@ndsu.edu) can determine if the SBI can provide the needed assistance. The College's ND BIZ Toolbox (www.ndsu.edu/ndsu/nd.biz.toolbox/main/) is a comprehensive web site designed to assist entrepreneurs and established businesses in all aspects of starting and managing enterprises. The College's administrators including the Dean (Ronald.D.Johnson@ndsu.edu), department chairs (gerry.macintosh@ndsu.edu , charles.harther@ndsu.edu), and the associate dean for graduate education (john.elder@ndsu.edu), are available to help identify appropriate resources.

The College's student professional organizations (www.ndsu.edu/cba/studentorgs/) are also potential sources of assistance to entrepreneurs.

Ingredients of an Effective Business Plan

To be effective, a business plan must be a sales document that addresses all the factors relevant to the success of the company. A typical table of contents includes:

- *Executive summary.* One to three pages highlighting all key points in a way that captures the interest of the reader, and would encourage them to be involved in your organization, either as an employee, an investor or business partner.
- *Company description.* Provide a brief description of the company's business, organizational structure and strategy.
 - Provide a summary of how the company's patent(s), or licenses to patents, are connected with the development and introduction of products.
- *Products and services.* Include a layman's overview of how the company's technology and patents relate to its products and services.
 - Describe the products or services the company will sell;
 - Include a discussion of why people will want the products or services;
 - Discuss what problems the products or services solve;
 - Include a rationale for the anticipated pricing of the products or services;
 - Outline the research and development processes required to develop a product that will have commercial viability;
 - Discuss any regulatory approvals that may be required.

- *Market analysis.* Identifies the need for the product, the extent of that need, who the customers will be and why they will buy your product.
 - Include the strengths of your product or services as compared to the competition.
 - Review the weak areas of your product or service, and how you plan to overcome those obstacles.
 - Define the key market opportunities for your product, and anticipated share of the available market.
 - Consider any threats or barriers to your products' success, such as competitors changing their product line, legislative restrictions, geographic limits, etc.
 - Discuss competitors or potential competitors and why your product will have a competitive advantage over their offerings.
 - Include any considerations of barriers to entry in this market.
 - Recap industry trends as they relate to your product.

- *Proprietary position.* If your market position will rely on patents or licenses to patents, discuss how these patents will contribute to the company's competitive position and whether other patents (competitors or otherwise) might limit the company's ability to market its products.
 - If similar products do not already exist, discuss the alternative means by which customers are currently meeting the needs that your product addresses.

- *Marketing and sales plan.* Show how the company plans to attract and maintain their customers.
 - Discuss product pricing, including the justification for pricing your product or service at a higher or lower price point than your competitors.
 - Review promotional plans to introduce your product to the marketplace, and your plan to sustain market interest.
 - Include both direct marketing efforts through advertising, personal contacts, trade shows, etc., and indirect efforts such as public relations efforts, partnering with other organizations to jointly market, etc.
 - Include your positioning strategy—how do you want to be perceived in the marketplace? What will set you apart?

- *Management team.* Describe the management team, with special emphasis on its track record at accomplishing tasks similar to those it will face in making the company successful.

- *Investors place major emphasis on the management team*, viewing it as the critical ingredient in catalyzing the growth of the company and responding to the unexpected.
 - Review why this team of individuals can help make your company successful.
- *Operations plan*. Describe the day-to-day operations of the company:
 - Prepare overview of the organizational structure;
 - Indicate who will be responsible for the various activities described earlier to produce the products and services;
 - Include answers to any environmental concerns, government regulatory concerns, safety issues or quality assurance challenges that might arise from production or sale of your product.
- *Finances*. Identify the capital that will be required to build the business and how it will be used.
 - Include projections of revenues and expenses that show investors how they will get their money back and what return they can expect on their investment.
 - Many investors prefer a conservative approach to budget projections, since they will expect you to meet or exceed the projections.
 - Identify funding sources, and impact on company ownership if equity positions are taken.

The above outline is illustrative. The specific content and organization of any business plan varies depending on the nature of the business. In preparing your business plan, consult the references listed later in this publication for additional examples of how to approach business planning.

Maintaining Confidentiality during Business Planning

Although the process of business planning will inevitably require you to share your plan with others, including potential investors, employees and potential employees, keep in mind that your business plan contains highly privileged information. Disclosure of this information, particularly if details of your technology and patents are included, could help competitors beat you to the market or adversely affect the patentability of your technology.

New companies should, therefore, take special precautions to control distribution of their business plans to only those with a need-to-know. Frequently, those receiving such plans are asked to sign a non-disclosure or confidentiality agreement. In some cases, patent disclosure details are included in an addendum that is distributed only on a limited, confidentiality protected basis. Before including detailed information in your business plan about the inventions underlying your company, consult your legal advisors and your NDSU/RF licensing associate.

The Next Steps – Once You Have a Completed Business Plan

Invariably an early question facing every company founder is how to finance his or her idea. A factor that often drives completion of the business plan is the need for cash investment to implement the plan and create the products that will realize the founder's goals. Although the NDSUTTO may recommend sources for you to pursue, again, the responsibility in making the contacts and pursuing the financial channels rests with you and the new company.

Common sources of financing for early stage companies include:

- *You*. For example, your savings, investments or your personal line of credit through a major credit card or a home equity line of credit.
- *Co-inventors, friends and family*. After yourself, your best source of early capital is those who know you best and are most likely to appreciate your venture plans.
- *Grants*. Federal grants, such as those available through the Small Business Innovation Research (SBIR) or Strategic Technology Transfer (STTR) programs offer significant funds for early-stage companies to assist with development research. These grants are extremely attractive because, unlike loans, they do not bear interest or require payback; and unlike equity, they do not require the founders to give up ownership. The disadvantage of SBIR/STTR grants is the uncertainty of funding given the competitive nature of the federal award process and the relatively long amount of time from grant submittal to approval. Other state and university grant or loan programs may be available that can help offset early stage research expenses. See the Resources Section for further information.
- *Angel investors*. Angels in this context are high net-worth individuals who invest in privately held companies. They are often people who are themselves entrepreneurs and earned their wealth through the success of a start-up venture. The motivation of angel investors varies widely – they may want to help others achieve success or they may want to invest in a company that could potentially help solve a social problem. Whatever their underlying motivations, angels always invest for a high return. Also, because they enter the business at a very early stage, they take substantially more risk than later investors, and expect to be paid for that risk. Because angels are so individual, finding them can be difficult. They are often referred to a start-up company by friends or by the company's attorney (another reason to retain a well-connected attorney). Angel networks have evolved to bring angels together with companies needing early stage investment.
- *Venture capital*. Venture capital companies possess pools of money managed by professional fund managers. They invest in high-growth companies they perceive as having particularly high return potential in a reasonably short period of time.

Often venture capital is one of the first sources of funding thought of by entrepreneurs, but venture capitalists typically don't invest at the beginning (or first-money phase) during the formation of a new company.

- **Banks:** Banks are frequently overlooked by entrepreneurs because they are not equity investors and they require collateral for loans they make. Despite this, establishing a banking relationship is important for an early-stage company. At the very least, you should have a checking account to establish a minimal banking relationship. Bankers can help you make connections with other sources of capital and they can, in some circumstances, participate with early equity investors by providing funds for equipment purchases or other assets that can be collateralized.

Summary:

Starting a new business is always an adventure. Careful planning along with wise assessment of skills, goals and resources, can help you determine if owning a business is the right step. The object of this guide is to point out some of the steps needed to make your venture successful, but the ultimate responsibility for the success of the venture remains in the hands of the business owner. NDSU/RF's goal is to license the new technology to a company who can bring it to market successfully.

Appendix 1: NDSU/RF Company Start-up Application Form

Company Name: _____
Date of Incorporation: (Entity Type) _____
State of Incorporation: _____
Founders: _____

NDSU/RF Technology to be Licensed:

Company Concept and Target Market:

Management Structure:

Capital Needs/Capital Resources:

Projected Product Timeline:

Principal Competition/Similar Technology/Market Barriers:

Appendix 2: Sample Development Plan

A development plan of the scope outlined below shall be submitted to NDSU/RF by Licensee upon application for license. In general, the plan should provide NDSU/RF with a summary overview of the activities that Licensee believes are necessary to make products available for sale in the commercial marketplace.

Include estimated start date and finish date on all activities.

I. Development Program

A. Development activities to be undertaken

(Please break activities into subunits with the date of completion of major milestones)

- 1.
- 2.

B. Estimated total development time

II. Governmental Approval

A. Types of submissions required

B. Government agency involved in funding, research etc., e.g. FDA, EPA, etc.

III. Proposed Market Approach

IV. Competitive Information

A. Potential competitors

B. Potential competitive devices/compositions

C. Known competitor's plans, developments, technical achievements

D. Anticipated date of product launch

Total Length: approximately 2-3 pages

Appendix 3: Sample Development Report

- A. Date development plan initiated and time period covered by this report.
- B. Development Report (4-8 paragraphs).
 - 1. Activities completed since last report including the object and parameters of the development, when initiated, when completed and the results.
 - 2. Activities currently under investigation, i.e., ongoing activities including object and parameters of such activities, when initiated, and projected date of completion.
- C. Future Development Activities (4-8 paragraphs)
 - 1. Activities to be undertaken before next report including, but not limited to, the type and object of any studies conducted, and their projected start and completion dates.
 - 2. Estimated total development time remaining before a product will be commercialized.
- D. Changes to initial development plan (2-4 paragraphs).
 - 1. Reasons for change.
 - 2. Variables that may cause additional changes.
- E. Items to be provided if applicable:
 - 1. Information relating to product that has become publicly available, e.g., published articles, competing products, patents, etc.
 - 2. Development work being performed by third parties other than Licensee to include name of third party, reasons for use of third party, planned future uses of third parties including reasons why and type of work.
 - 3. Update of competitive information trends in industry, government compliance (if applicable) and market plan.

PLEASE SEND DEVELOPMENT REPORTS TO:

NDSU Research Foundation
Attn: Licensing Associate
1735 NDSU Research Park Drive
P.O. Box 5002
Fargo, ND 58105-5002

Appendix 4: NDSU and NDSU Research Foundation Intellectual Property Policies and Procedures

This section provides a brief overview of the NDSU and NDSU/RF policies and procedures concerning intellectual property created by NDSU researchers. Note that the following **policies and procedures apply to all inventions created at NDSU**, not simply those that are licensed to start-up companies.

For more detailed information on the NDSU intellectual property policies, faculty activities and policy governance, view the NDSU web site for a list of policies you should review at http://www.ndsu.edu/policy/al_index.htm.

- NDSU 151: Conflict of Interest
- NDSU 152: External Professional Activities
- NDSU 190: Intellectual Property
- NDSU 343: Confidential Proprietary Information
- NDSU 700: Services & Facilities Usage
- NDSU 700.2: Taking Equipment Home
- NDSU 700.3: Personal Use of State Property

Invention Disclosure Reporting and Equity Reviews

The patent process begins when you make a discovery. As a university employee, your first step in documenting a discovery or invention is the filing of an “Invention Disclosure Report” (IDR) with NDSUTTO. *All inventions must be disclosed to NDSUTTO, regardless of their funding source* (e.g., federal grant, sponsored research dollars from a company).

Researchers must disclose to NDSU/TTO so that the university can conduct an equity review of the invention in compliance with federal law (see the sections on ownership of inventions and the equity review).

An invention disclosure provides a summary description of the invention, including:

- Short descriptive title
- Simple description of the invention
- Date of the invention
- Summary of the ways the invention could be used
- Names of all inventors
- Names of others to whom the invention has been disclosed
- Publications, posters, seminars or presentations in which the invention has been disclosed
- Funding sources supporting the research that led to the invention.

Forms are available for download on the NDSUTTO web site at <http://www.ndsu.edu/techtransfer/>.

Ownership of inventions

Ownership of inventions is an issue to be carefully reviewed. Like most corporations and other institutions of higher learning, the university does claim ownership of intellectual property generated during research by its faculty, staff or students.

Invention ownership may be affected by two limitations associated with the funding sources that supported the research leading to the invention. First of all, under the federal Bayh-Dole Act – which governs the ownership of intellectual property arising from federally funded research – the university’s patent designee is NDSU/RF and any invention arising from federally funded research must be disclosed to NDSUTTO.

If the foundation accepts an invention for licensing, the inventor is then also required to assign the discovery to NDSU. NDSU will then assign the discovery to its designee—NDSU/RF. To assure compliance with Bayh-Dole, the university conducts an equity review that evaluates the funding profile of the invention. If the invention is funded in whole or in part by federal funds, Bayh-Dole applies.

The second funding limitation comes into play when a researcher receives third-party research funding, such as sponsored research funding from corporate, consortia or private granting agencies. When agreements with third parties contain provisions specifically addressing intellectual property rights resulting from the research, those agreement terms dictate the handling of any resulting inventions.

Equity review determines ownership

After NDSUTTO receives an invention disclosure, an equity review is conducted to determine ownership of the invention. The equity review process establishes clear title to the intellectual property in much the same way that a title search establishes clear title to real estate. You cannot sell a house without showing you hold title to the property. Likewise, ownership of an invention must be clearly determined before a patent application can be filed or a license agreement signed. Based on the equity review, an invention will be handled in one of the following ways:

- If the equity review finds that federal or state funds contributed to the invention, NDSU can take title to the invention, and then assigns the title to NDSU Research Foundation.
- If federal funding *and* funding from other sources (e.g., corporate, consortium or private granting agency funds) contributed to the invention, the appropriate organization(s) is notified so that agreement can be reached on any subsequent patent filing actions.
- If no federal funding or other third party obligations exist, the inventors are still required to assign ownership of the invention to NDSU. In this case, if NDSU is not interested in the invention, it may be turned back to the inventors, who can then proceed to patent the invention themselves or assign it to another patenting and licensing organization. If NDSU does want to patent the invention, the inventor may still negotiate a license agreement from the NDSU/RF.

Inventorship

Although outwardly straightforward, determining who should be named as inventors of an invention can be a complex process. Because “invention” and “inventors” are terms integral to patent law, the determination of inventorship is a legal process requiring the participation of competent legal counsel.

Patent law dictates the specific factors that make an individual an inventor or co-inventor of an invention. Applying these legal principles to a particular invention may be especially complex when the invention involves several people from the principal inventor’s laboratory; when collaborators from other institutions have contributed; when an invention has been reduced to practice over an extended period; or when several claims are needed to obtain the broadest patent protection.

Despite the potential difficulties, inventorship must be very precisely determined because only the inventor or co-inventors may apply for a patent. Including individuals who aren’t actually inventors, or excluding those who really are, may result in invalidation of the patent. For more information about inventorship as it pertains to your start-up company, consult your corporate legal counsel or your NDSU/RF licensing associate.

Appendix 5: Directory of Resources

- For more information about various resources available for new business startups, you can turn to the following:
 - **Small Business Administration** can help small businesses get properly established; at 657 2nd Avenue, Fargo, ND 701-239-5131, www.sba.gov
 - **Regional Small Business Center** provides start-up businesses with office space at 417 Main Avenue, Fargo, ND 701-235-7885 or www.lakeagassiz.com and then direct to the RSBC.
 - **Lake Agassiz Regional Development Corp.** can provide resources for small businesses at 417 Main Avenue, Fargo, ND 701-235-1197. www.lakeagassiz.com
 - **NDSU Research Technology Park (NDSU RTP)** offers technically oriented office/lab facilities for small businesses at 1735 NDSU Research Park Drive, Fargo, ND 701-231-7450 or www.ndsuresearchpark.com .
 - **NDSU College of Business** offers support for start up companies. The Small Business Institute (SBI), www.ndsu.edu/cba/outreach/ , exists to assist small businesses with business problems. The SBI Director is Paul Brown (paul.brown@ndsu.edu). The College's ND BIZ Toolbox (www.ndsu.edu/ndsu/nd.biz.toolbox/) is a comprehensive web site designed to assist entrepreneurs and established businesses in all aspects of starting and managing enterprises.
 - **NDSU Business College's student professional organizations** (www.ndsu.edu/cba/studentorgs/) are also potential sources of assistance to entrepreneurs.
 - **Fargo-Cass County Economic Development Corp.** provides resources to help businesses at 51 Broadway, Suite 500, Fargo, ND, 58102 701-364-6132. <http://www.fedc.com>.
 - **North Dakota Department of Commerce** provides resources, including grant and loan options for North Dakota businesses at 1600 E. Century Ave., Suite 2, Bismarck, ND 58502-2057, 701-328-5300 or www.ndcommerce.com
 - **Research and Commercial Development Support (RCDS) program** provides awards up to \$10,000 for a one-year time period for accepted NDSU faculty proposals; at NDSU/RF at 1735 NDSU Research Park Drive, Fargo, ND 701-231-6659 See NDSU/RF RCDS program at www.ndsuresearchfoundation.org.
 - **Small Business Innovation Research Program (SBIR) or Small Business Technology Transfer Program (STTR)** are two federal programs for small business that will award grants that fulfill needs in federal programs. Center for Innovation, Rural Technology Center, University of North Dakota, P.O. Box 8372 - 4300 Darmouth Drive, Grand Forks, ND 58202-8372, 701-777-3132 or <http://www.ed.gov/offices/OERI/SBIR/states/nd.html> or <http://sbir.gsfc.nasa.gov/SBIR/states/ndtm.htm>

- **Service Corps of Retired Executives (SCORE)** provides support and counseling resources for businesses from retired business professionals; at 657 2nd Ave. N., Fargo, 701-239-5677. www.score.org
- **Experimental Program to Stimulate Competitive Research (EPSCoR)** coordinates merit-based grants and contracts in support of science and technology research from federal funding agencies. 1735 NDSU Research Park Drive, Fargo, ND 58105 701-231-7516 or <http://www.ndsu.nodak.edu/epscor>
- **North Dakota state government** has a number of regulatory and other helpful information at <http://www.northdakota.gov/business/>. It includes sites to register your business in the state, employer regulations, information on licenses and sales taxes, as well as many other topics.
- **Angel investors:** there are a number of angel investors in the F-M area. For example, CEO Praxis offers two angel funds for North Dakota entrepreneurs (Regional Angel Investor Network and Center of North America Capital Fund) at 101 Tenth Street North, Fargo, ND, 701-237-4850 or www.ceopraxis.com. Additional angel funds do operate in the area, so ask your attorney, NDSU RTP director, NDSU/RF licensing associate or other faculty.
- **Helpful resources** for start-up businesses include www.entrepreneur.com; *Entrepreneur News*; www.inc.com; www.Business.com; and the *Wall Street Journal's* entrepreneur option at <http://startup.wsj.com/>.

You can work with your licensing associate at NDSU/RF for help in identifying additional resources.