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Negotiation Strategies

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Summary

- Preparation is key for a successful negotiation. Be sure to create a prioritized list of the objectives and try to predict the other side's prioritized list of objectives. Which objectives align on both sides, and which do not?
- Research industry standards to serve as a reference point.
- Determine what your strongest leverage factors are and try to predict the other side's leverage. Who has more freedom to walk away from the deal?
- Negotiating with startup cofounders is important for determining the fair distribution of equity and any intellectual property (IP) rights based on product conceptualization, expertise, responsibilities, commitment, and risk.
- Physician-scientists may negotiate with industry for sponsored research agreements, joint development agreements, or a position on the scientific advisory board.
- Physician-scientists may negotiate with hiring institutions for objectives like startup package funding, protected research time, start date, salary, and title.

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Negotiation Strategies

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Topic Relevance by Timeline

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Introduction

Strong negotiation skills are a critical element for the successful entrepreneur. Whether dealing with potential employee hires or industry partners, tactful negotiation is the best way to obtain a win-win situation for both parties and create a beneficial business relationship.

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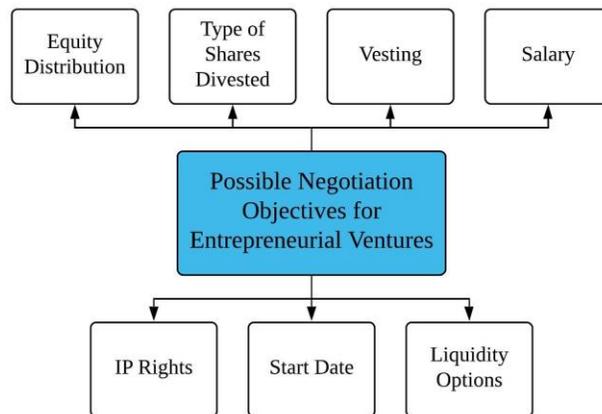
General Negotiation Concepts

Preparation is key for successful negotiations.

The academic entrepreneur should create a prioritized list of the objectives they wish to obtain and decide which ones they want to talk about first (Fisher et al.). It is important to know which objectives are nonnegotiable and thus qualify as a walk-away point if the other side does not agree to them. The academic entrepreneur should also decide which objectives they are willing to concede on, partially or entirely, as these will be useful bargaining chips for creating a win-win situation (Figure 1). Some people prefer to start negotiations with the most important items first, as this will quickly determine whether an agreement can be reached or not. Others prefer to start with the less important items in order to build some friendly rapport with the other side before delving into the more stressful negotiations. In some cases, a letter of intent can precede formal negotiations; the entrepreneur should address all key objectives, as well as their own vulnerabilities. This can be helpful to establish trust during negotiations with a key long-term partner (Cassel).

Some possible objectives for negotiation for entrepreneurial ventures include: equity distribution, type of shares divested (common vs. preferred), vesting, salary, IP rights, start date, and liquidity options (see the chapters “Equity Allocation in Startups” and “Startup Company Formation and Management”). Some possible objectives for physician-scientists seeking a new job include: startup package funding, protected research time, start date, salary, and title.

Figure 1. Possible Negotiation Objectives for Entrepreneurial Ventures.



The academic entrepreneur should try to understand the other side’s point of view and predict their prioritized list of objectives.

It also helps to create a pool of shared knowledge (Fisher et al.). This is a difficult task, particularly when one is not familiar with the person they are negotiating with. It requires a great deal of research, empathy, and insight. What are the opponent’s nonnegotiable walk-away points? What might they be willing to concede on? Understanding these points may help shape the

entrepreneur's own list of prioritized objectives. It is best to foster mutual trust between the parties prior to negotiating and to solidify the desire to reach an agreement. Authenticity and consistency in conversations are key as these conversations will help to better understand the other side's objectives (Cassel).

Which objectives align on both sides, and which do not?

Most often, the objectives on either side of a negotiation will not align, as what benefits one side may be detrimental to the other (Fisher et al.). This is the case for subjects like salary, equity, and IP rights. On the other hand, some objectives may align in favor of both parties. For example, both an employer and the potential hire may want the start date to be as soon as possible. If the potential hire anticipates this aligned objective, they may be able to leverage this understanding by initially proposing a late start date and then "conceding" to an earlier start date with the caveat of some other advantage, like a starting bonus. This presents a double win for the potential hire and a win-lose for the employer. Obviously, there are ethical considerations when pursuing this strategy, and the benefits must be weighed against maintaining friendly relations.

When negotiating for a position or looking to hire an employee, it is important to research industry standard salaries as a reference point.

Many online sources (payscale.com, glassdoor.com) provide salary ranges and averages for a variety of positions. Publicly traded companies also release executive compensations on their published Schedule 14A documents. Potential hires should consider where they place within the standard range of compensation in terms of years of experience and external factors like cost of living. The next step is to define the zone of potential agreement (ZOPA) bounded by the minimum acceptable salary and the maximum salary the employer might agree to. The industry standard average should be somewhere in the ZOPA. Most importantly, the potential hire should do market research and use defensible values to negotiate, even if they are difficult to quantify (Cassel).

It is important to determine the strongest leverage factors and try to predict the other side's leverage. Who has more freedom to walk away from the deal?

Leverage can come in the form of unique skills or other job offers/opportunities to satisfy the new hire's key objectives (Fisher et al.). Leverage may also come in the form of bargaining points—minor objectives one is willing to concede on in order to achieve major objectives. Knowledge of aligned objectives can create powerful leverage. It helps to identify the best alternative to a negotiated agreement (BATNA) and try to predict the other side's BATNA (Cassel). A strong BATNA may be the best leverage point and it may need to be brought up if the opponent is being unreasonable. Understanding the opponent's BATNA can give one an idea of how aggressive they can be about pushing their objectives. If the other side has a strong BATNA, it would be wise to tread lightly.

Closure is not needed on all issues in a complex deal.

“Bulletproofing” the deal with a lawyer’s review can often involve significant time and money (Cassel). In some cases, it may be reasonable to defer some difficult decisions to a later time if it can prevent a breakdown of the negotiations. It may be wise to defer these if the situation seems to be getting too tense. Maintaining trust is important to ensure future resolution of deferred issues (Cassel). This requires patience and creativity, and it goes hand in hand with maintaining a high level of emotional intelligence, a key component to successful negotiations (Goleman and Boyatzis). If one is hard on the problems but easy on the people, it should end as a win-win. On the other hand, difficult issues often expose irreconcilable differences between parties, in which case the negotiation may not be able to move forward.

Lastly, negotiation outcomes should always be documented and looked over by attorneys on both sides.

Some important clauses can help avoid trouble down the road. One good example is a clause to prevent frivolous lawsuits by requiring a 30-day period of principal-to-principal negotiations before any legal action may begin. At-will employment clauses are useful for risky startups because they allow the management team to dismiss employees without any specific reason during times of financial trouble.

Negotiating with Cofounders

Negotiating with startup cofounders is important for determining a fair distribution of equity and any IP rights based on product conceptualization, expertise, responsibilities, commitment, and risk. In general, equity is awarded based on commitment to future work for the company, and IP rights are awarded for work done in the past developing the concept and product. “The Founder’s Pie Calculator” by Frank Demmler is a useful tool for determining fair equity splits between founders (Demmler). It uses the five categories of idea, business plan, domain expertise, commitment/risk, and responsibilities to score a founder’s prior and future contributions. Vesting schedules may be used to keep founders or early employees engaged in the company. For example, cofounders may negotiate a four-year cliff vesting schedule in which a quarter of the founders’ shares vest after the first year and the remaining shares vest in 1/48 increments each month after the first year. Creating an options pool may be used as leverage to offer cofounders less equity because the options pool would prevent dilution of equity when giving share benefits to future employees (see the chapter “Equity Allocation in Startups”). Other bargaining points include fringe benefits like health insurance and paid time off.

As a cofounder or employee, one can negotiate additional compensation if key performance indicators (KPIs) are met. This can be delivered through issuing stock out of an options pool or a commission, depending on the scope of the work. For example, goPuff, a startup company based on an online convenience store delivered to a client’s door, has quarterly performance reviews.

Employees are graded on a scale. Depending on the grade received, employees could be eligible for a bonus or promotion. It is important to clearly lay out KPIs and incentives during the negotiations.

Other important negotiation objectives include key controls of the company. Do all cofounders get voting rights on the board of directors? Who controls the company finances in terms of large capital investments? Who must approve new hires? These roles are usually delegated to different chief executives (CEO, CFO, COO), but cofounders in early startups often wear many hats. In addition, higher level hires, like chief executives and vice presidents, often negotiate a severance package, which provides some protection in case the startup does not perform well and they are laid off.

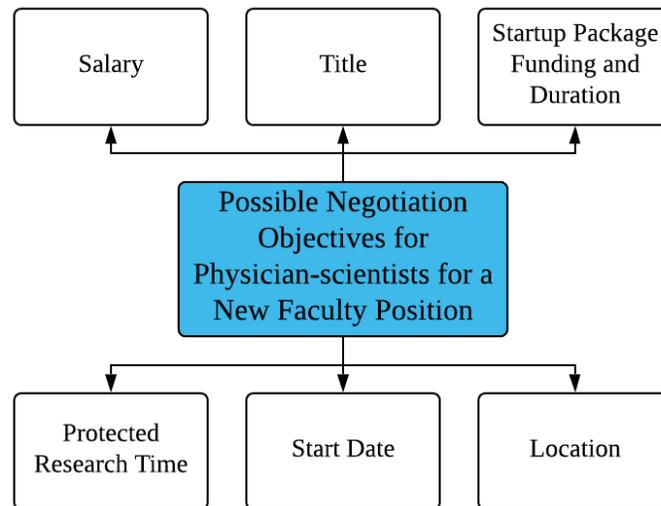
Negotiating with Industry as a Physician-Scientist

When a company comes to a physician-scientist, they may offer a sponsored research agreement, a joint development agreement, or a position on the scientific advisory board (Gooneratne and Max). Sponsored research agreements (SRAs) are usually informal deals in which a company offers to pay a stipend to the physician-scientist's institution in return for the completion of a research project related to a company product. Part of this stipend covers the researcher's salary and affords them more research time, similar to federal grant funding. The institution must approve the agreement and may require that certain clauses be included in the contract, such as a "freedom to publish" clause, which allows the researcher to publish the results of the research project. Another clause may be about joint IP ownership for any add-on IP that results from the research (see the chapter "Intellectual Property: Ownership and Protection in a University Setting"). It is important for the researcher to work both with their institution and the sponsoring company to negotiate the best terms for the agreement.

Joint development agreements (JDAs) usually include the development or improvement of some technology for commercial use; the filing of joint IP between the company and the institution is common. The stipend package also includes indirects to the institution, which must approve the agreement.

Appointment to a company's scientific advisory board is essentially independent consulting work for hire and does not require institutional approval, although it may consume a considerable amount of time and therefore should be discussed with the researcher's division chief. The appointment must also be disclosed to the institution. Physicians are usually paid in equity from early startups and should target 0.5%–5% of company shares. It is important to review all appointment contracts with a personal lawyer, as institutional lawyers will usually only screen for items that may damage the institution.

Figure 2. Possible Negotiation Objectives for Physician-Scientists for a New Faculty Position.



Negotiating for a New Faculty Position

Physician-scientists have unique objectives when negotiating for a new faculty position because they must consider both clinical duties/compensation and research opportunities (Figure 2). Some possible objectives for physician-scientists include: salary, title, startup package funding and duration, protected research time, start date, and location. Many of these objectives may align between both parties (start date, location). Determining a salary ZOPA requires market research for industry standards, but industry standards may be difficult to find for certain unique physician-scientist roles; thus, having several job offers could serve as a substitute. Indirects from grant funding could be used as leverage to request a higher salary or larger startup packages. Family considerations like childcare or anticipated life events may require that a physician pursue more protected research time in order to have a more flexible schedule.

Conclusion

In summary, any negotiation involves both a personal aspect and a monetary aspect. The best way to start any business negotiation is with the question, “what is important to me?” This will allow one to prioritize common issues between the two negotiating sides and to identify issues that they might value differently. Having predetermined priorities allows one to trade these issues and maximize the outcome for both parties. Remember not to neglect the relationship component of the negotiation. Discuss both personal goals and the goals for the startup. Make sure that both sides have the same vision for the company. Disputes are a natural part of any business or personal

relationship, and they need to be managed just as one would manage a cash flow problem. Early intervention is the key.

Sample checklist of items to use when entering a negotiation:

- Prepare for any negotiation before entering the room.
- Know what issues are deal breakers for you but keep an open mind when entering the negotiation.
- Determine if nonmonetary issues are of equal value/importance to you as monetary issues.
- Have a list of standards ready to rely on to support your position.
- The first question you should ask of yourself and the other party is “what is important to you?”
- Listen to understand, not just to hear.
- Ask follow-up questions and show an interest in the other party’s goals.
- If an agreement in principle is reached, always give each side 10 days for attorney review.
- Trust is a key component of any negotiation; if you do not trust the other party, it is best to walk away from the deal.

Thorough preparation, in-depth market research, strong emotional intelligence, trust, and patience are the key ingredients to successful negotiations. Negotiating with cofounders of a startup is required to establish distribution of equity, IP rights, and company control. Negotiations between physicians-scientists and industry are important when establishing sponsored research agreements, joint development agreements, and scientific advisory board positions. Negotiating for a new faculty position requires comprehensive market research.

Resources

1. *Getting to Yes: Negotiating Agreement Without Giving In*
 - a. This book by Roger Fisher offers step-by-step guidance on how to negotiate mutually acceptable agreement in all kinds of situations.
 - b. https://www.amazon.com/Getting-Yes-Negotiating-Agreement-Without/dp/0143118757/ref=dp_ob_title_bk
2. *Difficult Conversations: How to Discuss What Matters Most*
 - a. This book by Douglas Stone provides a step-by-step approach to having low-stress, difficult conversations to achieve one’s goals.
 - b. https://www.amazon.com/Difficult-Conversations-Discuss-What-Matters/dp/0143118447/ref=sr_1_3?s=books&ie=UTF8&qid=1527862730&sr=1-3&keywords=Difficult+Conversations
3. The Founder’s Pie Calculator

- a. This guide by Frank Demmler helps cofounders distribute company equity based on idea generation, business plan preparation, domain expertise, commitment, risk, and responsibilities.
 - b. <https://www.andrew.cmu.edu/user/fd0n/35%20Founders'%20Pie%20Calculator.htm>
4. *Bargaining for Advantage: Negotiation Strategies for Reasonable People.*
- a. This book by Richard Schell provides key insights on negotiating strategies.
 - b. <https://www.penguinrandomhouse.com/books/298835/bargaining-for-advantage-by-g-richard-shell/9780143036975/>

References

- Cassel, Tom. *Engineering Entrepreneurship I*. School of Engineering and Applied Science, University of Pennsylvania. Lecture.
- Demmler, Frank. "Cutting Up the Founders' Pie." *Carnegie Mellon University*, <https://www.andrew.cmu.edu/user/fd0n/35%20Founders'%20Pie%20Calculator.htm>. Accessed 26 July 2019.
- Fisher, Roger, et al. *Getting to Yes: Negotiating Agreement Without Giving In*. 2nd ed, Houghton Mifflin Harcourt, 1992, https://www.amazon.com/Getting-Yes-Negotiating-Agreement-Without-dp-0395631246/dp/0395631246/ref=mt_hardcover?_encoding=UTF8&me=&qid=
- Goleman, Daniel, and R. Boyatzis. "Emotional Intelligence Has 12 Elements. Which Do You Need to Work On?" *Harvard Business Review*, vol. 84, no. 2, 2017, pp. 1–5, <http://www.proveritas.com.au/downloads/Emotional-Intelligence-12-Elements.PDF>.
- Gooneratne, Nalaka, and Eric Max. *Effective Negotiation*. Entrepreneurial Science Seminar, Perelman School of Medicine, University of Pennsylvania.

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