



G U N D E R S O N   D E T T M E R



“WHAT’S MARKET”  
IN UNIVERSITY LICENSES IN THE LIFE  
SCIENCE INDUSTRY

We represent *what’s next.*

# Presenter



**BRENDAN C. MCCARTHY**  
**PARTNER**

San Diego  
bmccarthy@gunder.com  
+1 858 436 8013

# Roadmap

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- Gunderson vantage point for university licenses and how this informs the data
- How to think about the data: Negotiating an “Economic Package” (not individual terms)
- Data for upfront fees and equity
- Data for maintenance fees
- Data for royalty rates (and how certain other provisions affect royalty rates)
- Data for sublicense income share percentage
- Data for milestones (R&D, Approval, Sales)
- Data for change of control fees
- Data on the prevalence of certain legal terms and discussion of strategies on using them to achieve better economic terms
- Possibly time for questions.

# Gunderson Dettmer – Our Background and Perspective

Gunderson Dettmer has decades of experience forming high-growth companies and representing them in financing events, exit events, and throughout their lifecycle. We are consistently ranked as the **“most active law firm globally”** in PitchBook’s Global League Tables for venture capital financings.

## LMG LIFE SCIENCES AWARDS

- VC Law Firm of the Year 2022  
- LMG Life Sciences
- Nominated as VC Law Firm of the Year by LMG for 2021, 2022 & 2023



## 2022's MOST ACTIVE VC LAW FIRMS GLOBAL (# of VC FINANCINGS)

1	Gunderson Dettmer	1694
2	Cooley	1379
3	Goodwin	833
4	Wilson Sonsini Goodrich & Rosati	739
5	Orrick	726
6	DLA Piper	551
7	Fenwick & West	427
8	Dentons	403
9	Silicon Legal Strategy	350
10	Reitler Kailas & Rosenblatt	176



### Most Active VC Law Firm by Geography

- Global
- US
- Rest of the World  
(Asia and Latin America)

### Most Active VC Law Firm by Stage

- Late Stage
- Early Stage

Takeaway: The university licenses we see are those for companies that are actually funded or likely to be funded. This is a subset of “all university licenses” and we believe yields a more accurate signal of “what’s market.”

# Negotiating an “Economic Package”

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- Determining whether the terms of a particular university license are “market” requires a holistic analysis of all economic terms in that license (the “Economic Package”).
- The terms of an Economic Package may include:
  - Upfront Fees
  - Maintenance Fees (and/or Minimum Annual Royalties)
  - Royalties
  - Sublicense Income Sharing Percentage
  - Milestone Fees
  - Equity Grant (possibly with anti-dilution)
  - Change of Control/Assignment Fees
- **But licenses do not always contain all of these terms.**
- Our study calculated the prevalence of each economic term in university licenses, while also calculating their average and median values.

# Upfront Fees, Equity, Anti-Dilution

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- Upfront Fees
  - Present in 75% of university license agreements
  - Median Fee: \$17,500
  - Average Fee: \$94,700
- Equity Grants
  - Present in 57% of university license agreements
  - Median Equity Grant: 4.20%
  - Average Equity Grant: 4.00%
- Anti-Dilution (and thresholds for anti-dilution)
  - Present in 83% of university license agreements where equity is granted
  - Median anti-dilution threshold: \$10,000,000
  - Average anti-dilution threshold: \$11,924,000

# Maintenance Fees and/or Minimum Royalties

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- Maintenance Fees and/or Minimum Royalties are present in 86% of university license agreements.
- These fees or minimums are paid annually and are typically tiered to increase over time and/or occurrence of events.
- **Lowest Tier:**
  - Median Maintenance Fee: \$10,000
  - Average Maintenance Fee: \$17,000
- **Highest Tier:**
  - Median Maintenance Fee: \$35,000
  - Average Maintenance Fee: \$68,700
- **All Tier Average:**
  - Median Maintenance Fee: \$25,000
  - Average Maintenance Fee: \$42,900

# Royalty Rates

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- Royalty rates are based on net sales of products covered by the license and are typically tiered to increase as annual net sales cross certain thresholds.
- **Lowest Tier:**
  - Median Royalty Rate: 1.5%
  - Average Royalty Rate: 1.77%
- **Highest Tier:**
  - Median Royalty Rate: 3.00%
  - Average Royalty Rate: 3.08%
- **Cross Tier Average:**
  - Median Royalty Rate: 2.38%
  - Average Royalty Rate: 2.25%



# Royalty Rates – Anti-Stacking

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- Anti-stacking provisions
  - Provisions that prevent the total royalty burden on a product from becoming excessively high if multiple IP rights from different entities must be in-licensed to make, use or sell such product.
  - Typically, anti-stacking provisions allow the licensee to reduce up to 50% of its royalty payment obligations to the licensor by 50% of amounts paid to third parties for other necessary licenses.
- Anti-stacking provisions are present in 65% of university license agreements.
- **Cross Tier Average in agreements with anti-stacking:**
  - Median Royalty Rate: 2.38%
  - Average Royalty Rate: 2.55%
- **Cross Tier Average in agreements without anti-stacking:**
  - Median Royalty Rate: 1.75%
  - Average Royalty Rate: 2.06%

# Sublicensing Income

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- 94% of university license agreements required licensees to share sublicensing income with university licensors.
- The percentages of sublicensing income that licensees are required to share are typically tiered and decrease over time or as the licensee achieves certain milestones.
- **Lowest Tier:**
  - Median Sublicense Income Percentage: 10.00%
  - Average Sublicense Income Percentage: 10.88%
- **Highest Tier:**
  - Median Sublicense Income Percentage: 20.00%
  - Average Sublicense Income Percentage: 20.57%
- **Cross Tier Average:**
  - Median Sublicense Income Percentage: 15.00%
  - Average Sublicense Income Percentage: 15.35%

# Milestones – Research and Development

- Licensors typically require payments of Phase I, Phase II, and Phase III milestones. Some require a variety of pre-clinical milestones (e.g., candidate selection, GLP tox, IND filing, etc.).

R&D / Clinical Milestones						
	Pre-Clinical	Phase I	Phase II	Phase III or Pivotal	Total Clinical Milestones (Phase I -III Only)	Total R&D / Clinical Milestones
Percentage (%) of Agreements Containing Such Milestones	34%	66%	72%	97%	N/A	N/A
Average	\$82,250	\$204,868	\$288,571	\$747,321	\$1,064,741	\$1,123,103
Median	\$30,000	\$110,000	\$200,000	\$450,000	\$600,000	\$725,000

# Milestones – Regulatory Approval

- Licensors require milestone payments upon achievement of regulatory approval in certain countries.
- Agreements vary greatly on the countries where regulatory approval triggers such payment.
  - Some agreements just require payment for US regulatory approval.
  - Others require payment for US and “the first Major Market (i.e., US, EU, or Japan) outside the US.”
  - Others require payment for each of US, EU, and Japan.
  - Licensors increasingly require payment for China (but most still do not).

Regulatory Approval / First Commercial Sale Milestones						
	US (or any first worldwide/major market)	EU (or the first worldwide /major market outside of the US)	Japan (or the first worldwide /major market outside of the US/EU)	China (or the first worldwide /major market outside of the US/EU/Japan)	Other (any other country)	Total Regulatory / First Commercial Sale Milestones
Percentage (%) of Agreements Containing Such Milestones	93%	52%	21%	10%	3%	N/A
Average	\$2,615,741	\$1,278,000	\$1,441,667	\$1,216,667	\$500,000	\$3,799,815
Median	\$1,500,000	\$800,000	\$1,500,000	\$500,000	\$500,000	\$2,250,000

# Milestones – Annual Net Sales Thresholds

- Some licensors require milestone payments for the first year in which annual net sales of Licensed Products exceed certain thresholds.
- These thresholds are intended to represent relative success in commercializing the Licensed Product.
- Lots of variance on these fee amounts. The signal is clearer on the prevalence and threshold data points.

Net Sales Milestones							
	Milestone #1 Amount	Milestone #1 Net Sales Threshold	Milestone #2 Amount	Milestone #2 Net Sales Threshold	Milestone #3 Net Sales Amount	Milestone #3 Net Sales Threshold	Total Net Sales Milestones
Percentage (%) of Agreements Containing Such Milestones	45%		34%		21%		N/A
Average	\$5,043,750	\$496,538,462	\$10,455,556	\$642,000,000	\$6,440,000	\$991,666,667	\$15,693,750
Median	\$2,500,000	\$500,000,000	\$5,000,000	\$750,000,000	\$2,500,000	\$1,000,000,000	\$8,000,000

# Milestones – Miscellaneous Terms

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- 55% of university licenses require that the licensee repeatedly pay upon the achievement of the same milestone when achieved with a different Licensed Product.
- 21% of university licenses require that the licensee repeatedly pay upon the achievement of the same milestone when achieved with the same Licensed Product (e.g., for a different indication).

# Change of Control Payments

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- 41% of university license agreements require the licensee to make a payment upon a licensee change of control or assignment of the license.
- Structures of these payments are too varied to track. Some are lump sum, some scale with the size of the deal (e.g., percentages of deal proceeds or graduated tiers).
- Some of these structures subtract the liquidation value of the licensor's equity grant.
- These payments should not be for an uncapped percentage of the proceeds of a liquidation event.

# Patent Prosecution and Enforcement

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- Prosecution: University licensors control patent prosecution in 80% of license agreements.
- Enforcement:
  - An exclusive patent license is “exclusive” in name only unless the licensor will allow the licensee to enforce the licensed patent rights against third party infringers.
  - In the United States, licensees likely do not have legal standing to assert licensed patent rights against third parties unless the licensor joins the lawsuit as a plaintiff.
  - Exclusive licenses address this by adding a “joinder” provision requiring the licensor to join future legal actions to assert licensed patents against third parties.
  - But university licensors will only agree to joinder provisions in 47% of license agreements.
  - Takeaway: Licensees should make this “legal” term part of the term sheet discussion while negotiating economic points. If the university will not agree, then the other economic terms should be adjusted downward to reflect the reduced value of a de facto non-exclusive license.



# Thank you!

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## *Any Questions?*

You can find me at [bmccarthy@gunder.com](mailto:bmccarthy@gunder.com)