

**GUIDELINES ON ACCEPTING AND MANAGING EQUITY IN RETURN FOR ACCESS TO
UNIVERSITY FACILITIES AND/OR SERVICES**

July 1, 2016

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I. INTRODUCTION

Across the nation, governments are asking and expecting universities to be an active participant in the entrepreneurial and innovation ecosystem that supports economic development and also generate a return (not necessarily financial) for public investments in research and higher education. If and how universities should embrace innovation, entrepreneurship and technology commercialization is the subject of considerable debate in the U.S. and beyond. Efforts to support early stage companies that have a nexus to universities are seen by some stakeholders as an element of a university's public service mission and the 21st century equivalent of the Land Grant mandate for knowledge transfer under the Morrill Act. One element of support for early stage companies is the creation and management of Incubators or Accelerators. These facilities are almost always populated by individuals with a direct link to the university, be they faculty, post-doctoral fellows, graduate or undergraduate students so beyond such facilities' role in economic development, they play an integral part in knowledge transfer for public benefit. The development of on-campus Incubators and Accelerators also provides a broader educational experience for our students by giving them hands-on experience in an entrepreneurial environment that could pave the way to future careers.

President Napolitano has embraced this vision of the University expanding its entrepreneurial ecosystem as evidenced by her public statements and her initiative to enhance innovation, entrepreneurship and technology commercialization. Campus administrations have created and are creating incubators and accelerators where new companies can begin to develop business or product development plans. At last count, UCOP has identified 15 incubators/accelerators associated with University campuses, with undoubtedly more in the planning/development stage.

As an integral part of her initiative, on June 20, 2014, President Napolitano authorized the University to initiate a pilot program whereby the University may accept equity in a company as full or partial consideration for access to University facilities and/or services ("AFS") in the context of University Incubators or Accelerators. Accepting equity as part of the consideration for participating in non-university incubators or accelerators is common, so this pilot program allows the University's Incubators and Accelerators to operate under the same model as their non-university counterparts.

UC already accepts equity in companies as partial consideration for access to intellectual property rights associated with inventions created by our researchers. This practice was formally incorporated into the university's Patent Policy in 1996 following a pilot program during which time the administration and the Academic Senate had the opportunity to assess the risk and benefits associated with the practice. Because of the similarities in the transactions, these guidelines are based on Business and Finance Bulletin G-44 which provide guidance to campuses on implementing the equity component of the Patent Policy.

This document is not intended as guidance to campus administrations with respect to establishing Incubators or Accelerators. Rather, this document provides guidance to campuses

seeking to develop new programs or modify existing Incubators or Accelerators and choose to participate in the pilot program ability to accept Equity in a company as part of the consideration of participating in an Incubator or Accelerator, the Office of the President has developed these guidelines because, under University policy, the approval to accept and manage Equity resides at the Office of the President.

Any decision to establish an Incubator or Accelerator is the purview of campus administrations and should be made with appropriate consultation and oversight by the campus governance structures. Such decisions must be compatible with the overarching academic mission of the University and not be dilutive or distracting of our fundamental commitment to the University's education and research missions, and our commitment to protect the interests of faculty, students and staff.

These guidelines are designed to provide a systematic and consistent framework for campuses seeking to implement the pilot so that the program can be both effective and provide meaningful feedback for determining whether or not to formally enact some or all aspects of the pilot. It does include some operational procedures necessary for the Office of the President to track and manage any Equity accepted under the pilot, and for consistency these procedures follow the model set out in Business and Finance Bulletin G-44 for Equity accepted in the context of a patent license agreement.

These guidelines are NOT intended to be proscriptive with respect to the way in which a program may operate; rather, they are intended to be the basis for discussions between the campus Incubator and Accelerator managers and staff at the Office of the President prior to implementing of a specific program. For any program that chooses to accept equity, the approaches described in these guidelines are an attempt to mitigate risk, either directly for the program, or for the University.

By running this pilot, the University seeks to understand if and how any permanent program could or should be operated and, if so what, if any, policy changes may be needed. This pilot program will run for three years, at which time the Office of the President will evaluate the outcomes and determine if and/or how to codify this pilot program into University Policy. The review of the AFS pilot program will be managed under the auspices of the Technology Transfer Advisory Committee ("TTAC") which was established under the Patent Policy to advise the President on matters relating to technology commercialization. TTAC is chaired by the Provost and membership includes senior research administrators, operational leaders and Academic Senate representatives, and as such can provide valuable perspectives on the activities anticipated by the AFS pilot program. TTAC will be charged with developing the appropriate metrics by which to assess the AFS pilot program.

II. REFERENCES

A. Policies, Principles and Guidelines

University of California Policy on Disclosure of Financial Interests and Management of Conflicts of Interest Related to Sponsored Projects, October 15, 1997.

University Policy on Integrity in Research, June 19, 1990.

University Policy on Disclosure of Financial Interests & Management of Conflicts of Interest, Public Health Service Research Awards

Principles of Delegation of Authority and Protocol
(http://policy.ucop.edu/files/da/da_definitions.html)

Summary Statement of Principles and Policies on Institutional Conflict of Interest in Research (<http://www.ucop.edu/raohome/cgmemos/11-05.pdf>)

B. State of California Government Code

Political Reform Act of 1974, Government Code secs. 81000 – 91015

Regulations of the California Fair Political Practices Commission, Title 2, sections 18109 - 18995, of the California Code of Regulations

C. University of California Academic Personnel Manual - University Policy Regarding Academic Appointees

APM - 025, Conflict of Commitment and Outside Activities of Faculty Members
<http://www.ucop.edu/academic-personnel-programs/files/apm/apm-025-07-01.pdf>

APM - 671, Conflict of Commitment and Outside Activities of Health Sciences Compensation Plan Participants
<http://ucop.edu/academic-personnel-programs/files/apm/apm-671.pdf>

APM - 025 and APM - 671 govern the reporting of outside professional activities and in the case of HSCP participants, the disposition of any earnings, including stock, options, etc., derived from engaging in outside professional activities.

The Faculty Code of Conduct (APM - 015, Part II, C) which defines the use of university resources or facilities on a significant scale for personal or commercial use as a type of unacceptable conduct. <http://www.ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>

University Regulation No. 4, published as APM - 020, Special Services to Individuals and Organizations <http://www.ucop.edu/academic-personnel-programs/files/apm/apm-020.pdf>

III. DEFINITIONS

Designated Campus Manager (“DCM”)	In accordance with the Principles of Delegation of Authority and Protocol (http://policy.ucop.edu/files/da/da_definitions.html), each campus shall identify and grant delegated authority to the Designated Campus Manager (DCM) to 1) execute AFS agreements wherein approval to accept equity may be required, 2) ensure compliance with system-wide guidelines and policy, and 3) request formal equity acceptance approval from the Executive Director of Innovation Alliance and Services. In accordance with these Guidelines, for the benefit of consistency, and in compliance with state, federal, and institutional requirements, each campus may wish to identify a single position title for its DCM.
Equity:	Shares of common or preferred Stock, Warrants, options, convertible instruments, units of a limited partnership or limited liability company (“Units”), or any other instrument conveying ownership or economic interest in a corporation, limited partnership, limited liability company or other business entity.
Incubator or Accelerator	A University-designated physical location where University-associated startup companies can start commercial ventures.
Innovation Alliances and Services (“IAS”)	The University-wide office within the Office of the President responsible for coordinating, facilitating, and reporting on the University’s technology commercialization program.
IAS Equity Approval Manager (“EAM”)	The individual designated by IAS to have responsibility for managing Equity approvals.
Laboratory:	The U.S. Department of Energy’s Lawrence Berkeley National Laboratory.
Stock:	An equity or ownership interest in a corporation. Its unit of measurement is the share, and the owner is entitled to certain rights in the company pursuant to its status as a Stock holder whether pursuant to law or contractually agreed upon rights, as well as distribution of assets upon liquidation or dissolution of the company. Ownership of Stock may be evidenced by a written instrument known as a stock certificate.

Stockholder's Agreement	An agreement or agreements (separate from any other agreement) that sets forth the rights and duties of the holder of Equity and the company with regard to the Equity being held, including such issues as registration rights, transfer rights, dilution considerations, future rights, co-sale and rights of first refusal, special voting rights, etc.
Warrant	A contract or agreement that gives the holder the right to subscribe for, purchase or otherwise acquire shares of the underlying Stock or convertible securities for a specified price and within a specified time period.

IV. EQUITY GUIDELINES

A. Scope

The AFS pilot program is limited to officially-recognized campus-created Incubators and Accelerators. These guidelines apply to transactions related to early stage businesses/companies with issued Equity in the form of Stock or Units or those that intend to issue Equity in the form of Stock or Units that are: a) founded by the University's faculty, staff, and/or students or having a defined relationship to the University based on the affiliation of its founders, and b) advancing academic innovations wherein campus management grants such companies (a "Company") access to their local campus Incubator or Accelerator facilities and services. These guidelines also apply to the Department of Energy's (DOE) Lawrence Berkeley National Laboratory to the extent that there is no conflict with the obligations of the University under its management and operating contracts with the DOE.

These guidelines are intended to support the implementation of the AFS pilot program. Each participating campus and the Laboratory is expected to designate a DCM who has the relevant experience with and knowledge of startup equity transactions, complex financial instruments and University policy to assist in developing Campus procedures, including developing standard templates consistent with these guidelines that will allow for the acceptance of equity in return for access to University resources in compliance with University policies and applicable law. In addition to suggesting various approaches that may be used, [Appendix F](#) highlights some issues that should be considered by the DCM when preparing internal procedures and forms to implement the pilot.

B. Accepting Equity

Under this pilot program, the University may accept Equity in companies that arise from or have relationships to the University. The acceptance of Equity for AFS is subject to the following provisions:

1. A portion of the consideration may be provided in the form of cash, taking into account the financial condition and structure of the Company and the specific elements of the campus programs under which the Equity is accepted.
2. Preferably, equity shall be in the form of Stock, Units or similar securities that are fully paid for rather than Warrants or options, which are a right to later purchase securities of a company at a predetermined price. Acceptance of options or Warrants may be approved on a case-specific basis by exception. At a minimum, approval for such exception will require that a) the requestor identifies a mechanism for a cash-less exercise of the option or Warrant at the time approval is sought; or b) private funding (e.g., not state funding) is available and reserved to provide cash needed to exercise such options or Warrants, and the options or Warrants comprise less than 50% of total consideration. In addition, prior arrangements would need to be made by the campus to manage the rights and interests of all involved parties in such options or Warrants.

C. Conflict-of-Interest and “Private Benefit” Considerations

1. University acceptance of Equity for AFS shall be based upon advancing the educational, research, and public service missions of the University over financial or institutional (<http://www.ucop.edu/raohome/cgmemos/11-05.pdf>) or individual personal gain.
2. The University believes that the support of new businesses associated with the University is in the public interest and furthers the University’s scientific and educational objectives. Further, University believes engagement with new businesses can represent a useful contribution when the University’s engagement with industry is consistent with the University’s mission to ensure that the products of its research are disseminated in a way that furthers the public good. Any involvement of University employees, however, must be in accordance with the California Political Reform Act of 1974 (“Act”), federal law and regulations, and University policy.
3. Because University employees may have the opportunity to influence (or the appearance to influence) University decisions in ways that could lead to personal gain or give advantage to companies in which they have financial interests, the employees

must be aware of and be in compliance with the relevant state and federal laws and regulations and University policies. Generally, University employees are prohibited from “making, participating in making or influencing a University decision,” if they have a disqualifying financial interest in the decision, unless certain specific actions are taken. Disclosure of financial interests, institutional review and management of conflicts of interest may also be required. Incubator and accelerator directors and the DCM should consult with their campus conflict of interest committee to develop guidelines on scenarios that would require a full review by that committee of any proposed decision to accept equity as set forth in Section V.A 3 below.

4. In order to comply with the Act, the DCM must ensure that any University employee, unless specifically permitted under University Conflict of Interest Policy (<http://www.ucop.edu/general-counsel/legal-resources/conflict-of-interest-code.html>) and the Act, with a current or likely future interest in the Company is excused from, does not to participate in, and does not influence or attempt to influence any decision involving Equity acceptance for AFS. A sample communication to the employee is provided in Appendix A.
5. The University’s status as a Section 501(c)(3) organization could be jeopardized if it provides more than “incidental” benefits to any private party. To help avoid such “private benefit” issues as well as conflicts of interest in the University’s decision making, accusations of favoritism, misuse of University resources and other related legal issues, campuses should establish and have documented a uniform methodology for determining the amount of equity as consideration for University resources in a manner that ensures the University is receiving fair market value for the resources provided.

If a uniform methodology for valuing University resource(s) is not established or is not used in a particular case, the DCM must document how the fair market value of any University resource(s) provided was calculated. The DCM is strongly encouraged to discuss in advance their methodology with the EAM and staff in the Office of General Counsel to ensure that it meets all policy and legal requirements. See Appendix F for additional information that may be useful to a DCM when addressing the fair market valuation issues described above.

6. Employees who are Academic Personnel are subject to APM - 025, Conflict of Commitment and/or Outside Activities of Faculty Members and APM – 671. Conflict of Commitment and Outside Activities of Health Sciences Compensation Plan Participants require prior approval for the Category I activities described in the “Guidelines.” These policies include language limiting the use of university resources,

quoting The Faculty Code of Conduct (APM - 015, Part II, C) which defines the use of university resources or facilities on a significant scale for personal or commercial use as a type of unacceptable conduct. APM - 025 and APM - 671 govern the reporting of outside professional activities and in the case of HSCP participants, the disposition of any earnings, including stock, options, etc., derived from engaging in outside professional activities. Furthermore, HSCP Implementing Procedures include specific language on stock, warrants, options, etc. and restrict members from forming partnerships, separate corporations, or from becoming members of a group professional corporation. Lastly, University Regulation No. 4, published as APM - 020, Special Services to Individuals and Organizations, describes allowances and limitations to the use of university facilities and principles underlying faculty service and contract research. APM - 020 also describes certain limitations regarding faculty compensation which are now contained in the APM 600 series.

D. Board Representation / Voting Rights

Except as allowed under University policy APM - 025, employees of the University, acting in their capacity as University employees, shall not accept a position on the board of directors in a Company in which the University has an Equity interest pursuant to this program, nor shall they exercise related voting rights, but may accept and exercise observer rights on such boards. Active board participation and/or the exercise of voting rights by an individual in his or her capacity as a University employee might expose the University to unacceptably large management, conflict of interest, and public relations problems. A University employee who is an inventor of intellectual and tangible property licensed by the University to a Company may participate on the scientific advisory board of that Company, but only if such boards do not have delegated voting authority to act independently on behalf of the full board of directors.

E. Future Relationships with Company

The University shall manage all subsequent relationships with a Company in which the University has accepted Equity at arms-length and in a fair manner pursuant to relevant University policies (<http://www.ucop.edu/raohome/cgmemos/11-05.pdf>) and guidelines and in accordance with applicable law.

The University has an affirmative obligation to prevent “pipelining” of inventions (intellectual property) to a Company in which the University holds an Equity interest. For example, University inventions should be made available for licensing to appropriate companies and

should not automatically be made exclusively available to Companies in which the University has taken Equity under this pilot. At the same time, holding Equity in a Company should not preclude the Company from licensing any invention when that Company is best able to develop such inventions

F. Company-Sponsored Product Testing

A University investigator may perform clinical trials or other comparable product-testing involving human subjects for Companies in which the University holds Equity as part of an AFS transaction on the campus/Laboratory where that technology arose provided that the campus conflict of interest committee has assessed any real or perceived organizational conflict of interest in the performance of such trials or testing activities and determined whether a management plan is required, and the relevant IRB has reviewed and approved the protocol.

G. Determining How Much Equity to Accept

The University must ensure that it is receiving fair market value as consideration for University resources (e.g., space, equipment and time of personnel) provided to a company in accordance with the provisions set forth in these guidelines. At the same time, the University shall not accept a level of Equity that places it in a controlling position of a company, since such a situation may expose the University to unacceptable management, conflict of interest, and public relations and other problems. To reduce the University's risk of having a controlling interest, the University's Equity holdings in a publicly traded company shall be less than a ten percent (10%).

For a privately-held company (startup,) the University's initial equity ownership can sometimes be greater than 10% (especially where such entity is only recently formed). Accordingly, the DCM may request approval to accept more than 10% equity in a privately-held company (startup,) but less than twenty percent (20%) (in the aggregate, cumulative from all transactions including but not limited to licensing arrangements (see BFB G-44), this AFS pilot, and as calculated on a fully diluted and as converted basis). This limit is set because at holdings greater than 20%, the University incurs substantial additional liability. Accepting equity at aggregate levels of greater than 10% may be approved provided there is a clear expectation of subsequent dilution to less than a 10% share ownership at the time the company goes public or a private stock sale immediately prior to the initial public offering.

To avoid exceeding the 10% or 20% limits discussed above, the DCM must review the total percentage preexisting ownership, if any, the University may already hold in the company through other transaction arrangements, including any technology licensing-related arrangements (BFB G-44). IAS will maintain on a restricted-access basis, a listing of

Companies in which the University holds such Equity interests, the name of campus from which the service or access-related transaction arose, and other relevant information. The DCM should consult the EAM who will provide the most current information regarding any other University Equity holding in that Company.

V. APPROVAL OF EQUITY ACCEPTANCE.

A Required Approvals

In addition to the Office of the President approvals listed below, campuses are responsible for creating standardized procedures to ensure that relevant campus offices review and approve the transaction.

1. Acceptance of an Equity interest in a Company shall be in accordance with these guidelines and upon the case-specific approval requests submitted by the DCM, review by the Office of the General Counsel, and approval by the Executive Director of IAS. In the course of supporting the equity acceptance approval review process, the EAM may provide guidance and make recommendations to the DCM concerning legal and policy issues related to the acceptance of Equity. Upon request of the DCM, the EAM may also provide recommendations to the DCM concerning any business issues related to the acceptance of an Equity request.
2. Office of General Counsel (“OGC”) review and approval as to legal form must be obtained for all agreements and documents related to the University’s acceptance of Equity. No preliminary legal reviews of the agreement would obviate the need for formal review and approval as to legal form of Equity acceptance of the entire proposed final agreement.
3. Under the guidelines developed as indicated in Section IV C 3 above, , a campus-designated official(s) shall review agreements and, if appropriate, recommend management plans to the DCM, who shall submit verification of this review and management plan, if any, with the request for approval to accept Equity submitted to IAS.
4. Consideration of requests for any required legal and Equity approval will be managed by IAS. IAS will consider such requests using the process described in Sections B through E, below.

5. Faculty are subject to APM - 025, Conflict of Commitment and/or Outside Activities of Faculty Members and/or APM – 671, Conflict of Commitment and Outside Activities of Health Sciences Compensation Plan Participants. Such individuals must secure applicable and required prior approval(s) for the Category I activities described in the “Guidelines.”

B. Submission to IAS

DCM requests for approval to accept equity shall be submitted to:

Innovation Alliances and Services
University of California
Office of the President
1111 Franklin Street, 5th Floor
Oakland, CA 94607-5200

ATTN: Equity Approval Manager

C. Contents of Submission

A completed Equity Approval Request Checklist ([Appendix B](#)) should be submitted with the DCM’s request for approval of Equity acceptance along with relevant and required documentation referenced therein.

D. Requests for Exceptions

Any requests for deviations from these guidelines should be submitted in writing by the DCM to the EAM. Upon review, written authority to proceed (if accepted) will be provided by the –Chief Financial Officer or the appropriate designee.

E. Timing of Submission

The DCM should allow sufficient time after IAS receipt of all the information provided under Section C and D, above, for IAS, legal and policy reviews in support of the Executive Vice President/Chief Financial Officer’s or the appropriate designee’s consideration of an Equity approval request. Normally, if forms submitted by the DCM are complete and approved by OGC, IAS will have approved the request to accept Equity within 10 business days. Requests for approval should be submitted to IAS when the terms of an agreement are

negotiated for such Equity acceptance, even if pursuant to the agreement, the actual delivery of Equity shares may come at some later point in time. However, preliminary informal discussions with the EAM concerning AFS related transaction terms and Equity arrangements are strongly encouraged to expedite subsequent formal review and approval.

F. Where to Send Equity and Corporate Actions

1. University Shares

Regents Bylaw 21.4(c) states, “The Chief Investment Officer shall be the custodian of all bonds, stocks, notes, contracts of sale, mortgages, and deeds of trust for real property held or acquired for investment purposes, and all other securities belonging to the Corporation ... and shall keep them in such places and in such manner as shall be approved by the Committee on Investments.”

Therefore, Equity interests in Companies, including Stock certificates, Unit certification, options, and Warrants, due to The Regents pursuant to the terms of an AFS transaction agreement shall be issued by the Company to The Regents’ nominee name of “Shellwater & Company” and delivered to the DCM. The DCM shall forward such Equity, together with the completed University Acceptance of Equity Form (Appendix C) to:

Office of the Chief Investment Officer
The Regents of the University of California
1111 Broadway St., 21st floor
Oakland, CA 94623-1000

ATTN: Investment Transaction Services

A copy of the University Acceptance of Equity Form, with attachments, shall be sent by the DCM to the IAS as follows:

Innovation Alliances and Services
University of California
Office of the President
1111 Franklin Street, 5th Floor
Oakland, CA 94607-5200

ATTN: Equity Approval Manager

3. Corporate Actions

All correspondence received by the DCM from the Company concerning Company actions (including, without limitation, shareholder or member voting actions and notices, merger notifications, meeting notices, etc.) resulting from the University's Equity interest in the Company should be forwarded to the Office of the Chief Investment Officer ("CIO") at the address listed above.

VI. CHIEF INVESTMENT OFFICER'S MANAGEMENT OF EQUITY

A. General

1. All decisions and administrative actions concerning the management of Equity issued to the University by a Company and all subsequent corporate or other entity actions received by the DCM pertaining to the University's shareholder, membership or other interest in a Company shall be made by and at the sole discretion of the CIO. This includes decisions on when Equity will be converted to cash and when options, Warrants and similar convertible securities will be exercised. To avoid any accusations of insider trading, no weight shall be given to Company information uniquely available to the University through its AFS pilot. The CIO intends to carry out such functions using the Equity Management Model ([Appendix D](#)) or other processes as the CIO may approve, based upon sound business practice and publicly available information. Such functions shall be consistent with these guidelines.
2. At least monthly, the CIO shall notify the EAM and the EAM in turn shall notify the DCM of all significant actions taken by the CIO, including those involving purchase, distribution, or transfer of Equity, and those involving Company mergers, acquisitions, and similar change of control transactions or name changes.
3. Any decision made by the CIO in the normal course of business to purchase additional shares of Equity in a Company in which the University has accepted Equity as part of an AFS transaction should be evaluated in terms of the financial return to the University. Any such subsequent investments should be maintained separately from the original AFS-related Equity and the resulting proceeds from such subsequent investments shall not be eligible for distribution under the pilot program.

B. Distribution of Equity Interests to the Campus or Laboratory

1. The University's Equity interests received directly pursuant to the AFS program will be sold for cash and distributed to the Campus or Laboratory in accordance with Section 2, below.
2. Upon sale for cash of the University's Equity interests received directly pursuant to the AFS program, the CIO shall instruct corporate accounting to transfer such cash proceeds to the appropriate Campus or Laboratory account and provide the Campus or Laboratory with information needed to identify the source of funds. For clarification purposes, any additional Equity subsequently purchased by the University or University affiliates or assignees of participation rights related to such Equity (with such purchase occurring pursuant to the exercise of any assigned participation or other rights, or otherwise) that is liquidated by the CIO will remain the property of such subsequent purchaser and will not be distributed to the Campus or Laboratory that acquired the initial Equity pursuant to the AFS program. Each Campus or Laboratory obtaining Equity interests in a third party should use reasonable efforts to obtain participation rights for the University or University affiliates or assignees in future rounds of financing undertaken by such third party.
3. The Campus or Laboratory's subsequent use and distribution of its portion of any cash proceeds shall be handled in accordance with the schedules, formulas, and practices established by the Campus or Laboratory, and other applicable policies.

APPENDIX A

Sample Notice to employees: Prior to the University accepting equity in a company pursuant to this pilot, the DCM shall give this notice to any and all campus or Laboratory employees with a current or likely future interest in a Company considered to be a party to an AFS transaction, to ensure any such University employee is excused from, does not to participate in, and does not influence or attempt to influence any decision involving the Equity acceptance for AFS under consideration. This notice may be excerpted or adapted by campuses or Laboratories for their own use as they may choose.

What University Employees Need to Know about Conflicts of Interest with respect to the University accepting Equity in companies in which they may have a substantial financial or controlling interest in return for Access by the company to University Facilities and/or Services

The University of California’s policy on conflicts of interest provides that none of the University’s “faculty, staff, managers, or officials shall engage in any activities which place them in a conflict of interest between their official activities and any other interest or obligation.” In addition under University policy, University faculty and staff must comply with state statutes and regulations governing conflicts of interest, specifically the Political Reform Act of 1974-2015 (the Act).

The Act requires public officials to “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Gov. Code, § 81001, subd. (b)). Accordingly, University employees must not allow their personal financial interests to influence their or other’s University decisions regarding the provision of access to University facilities and/or services to a Company.

Any University employee with a current or likely future interest in the Company **must** excuse him or herself from and not to participate in any University decision making process as to whether to accept Equity from that Company. An interest may include income or reimbursements from or investments or a position in the Company. The DCM must also confirm to the University that no University employee with a current or potential financial interest in the Company in any way participated in or influenced the transaction decision-making process. University employees who are the sole owners or who have sole control of the Company may communicate with the University decision makers so long their communications are in the same manner as is afforded to any member of the public.

APPENDIX B

EQUITY APPROVAL REQUEST CHECKLIST

Please complete, attach supporting documentation, and submit this Appendix-B (Equity Approval Request Checklist) to IAS to formalize your request for approval to accept equity as consideration for an AFS transaction. Any deviations from the guidance provided in the University of California Guidelines: Accepting and Managing Equity in Return for Access to University Facilities and/or Services document should be separately noted and justified as an exception for consideration by the Executive Director, IAS.

Please note that in carrying out space/facility access, equipment use, and/or service transactions, the Designated Campus Manager (“DCM”) is called upon to make decisions by applying his or her professional judgment and experience when considering of a multiplicity of facts and circumstances surrounding each transactions. The DCM’s transaction records should include appropriate documentation supporting assessments and representations made on the Equity Approval Request Checklist.

Please submit the completed checklist with appropriate documentation to:

Innovation Alliances and Services (IAS)
University of California
Office of the President
1111 Franklin St., 5th Floor
Oakland, CA 94607-6090
ATTN: Equity Approval Manager

Basic UC Identification Information

Campus: _____

DCM Contact: _____

DCM: _____

Phone Number: _____

Company Information

Company: _____

Address: _____

City: _____

State: _____

Zip: _____

Status of Company: Privately Held Inventor Start-Up

(Check all that apply) Pre-Start-Up Start-Up Other

If "Other," please describe:

Agreement Terms/Documents

Submittal of the following documents is **REQUIRED** prior to the initiation of the formal review process for approval. Please indicate those documents included with this request for approval by checking the appropriate boxes below:

<input type="checkbox"/> Stockholder's Agreement, Stock Purchase/Transfer Agreement, or other comparable documents
<input type="checkbox"/> Additional Transaction Agreement (Check type of agreement submitted) <ul style="list-style-type: none"><input type="checkbox"/> Space/Facility Use Agreement<input type="checkbox"/> Equipment Use Agreement<input type="checkbox"/> Service Agreement<input type="checkbox"/> Other (please describe):
<input type="checkbox"/> Other legal agreements/documents pertaining to the transaction (e.g. right of first refusal and co-sale agreements, voting agreements, pre-existing or draft licensing agreements by and between the campus and Company, promissory notes, any internal campus/Laboratory committee recommendations or decisions to manage possible conflict of interest, etc.)
Please list:
<u>Status of All Agreement(s) Checked Above:</u> <input type="checkbox"/> Draft <input type="checkbox"/> Executed; Effective date: _____

In those cases where all agreements are not available (usually due to the early stage of the Company formation), indicate the location of specific language in the agreements related to the draft or executed transaction agreement that allows the University to terminate the agreement or renegotiate the terms to eliminate the equity consideration or replace it with other consideration.

Please list:

DCM used the following method to determine the fair market value for Equity received by the University pursuant to the AFS program:

For Common Stock:

- Recent 409A valuation or other third party valuation
- Most recent option issuance price
- Recent sales or issuance price
- For early –stage startups where the above is not available, stock par value for recently issued founders’ shares
- Other based on DCM reasonable determination as made in good faith (Please describe or, if there are any specific questions, call IAS to discuss):

For Equity other than Common Stock (eg, Preferred Stock, Units, etc.):

- Recent third party valuation
- Recent sales price
- Other based on DCM reasonable determination as made in good faith (Please describe or, if there are any specific questions, call IAS to discuss): _____

Policy Issues

Note: Employees who are Academic Personnel are subject to APM - 025, Conflict of Commitment and Outside Activities of Faculty Members and/or APM – 671. Conflict of Commitment and Outside Activities of Health Sciences Compensation Plan Participants require prior approval for the Category I activities described in the “Guidelines.” These policies include language limiting the use of university resources, quoting The Faculty Code of Conduct (APM - 015, Part II, C) which defines the use of university resources or facilities on a significant scale for personal or commercial use as a type of unacceptable conduct. APM - 025 and APM - 671 govern the reporting of outside professional activities and in the case of HSCP participants, the disposition of any earnings, including stock, options, etc., derived from engaging in outside professional activities. Furthermore, HSCP Implementing Procedures include specific language on stock, warrants, options, etc. and restrict members formulating partnerships, separate corporations, or from becoming members of a group professional corporation.

a. Accepting Equity

- i. Indicate the form of equity and up-front cash considerations for AFS transaction (Check all that apply):

Up-Front Cash (if any)

Amount: \$

Stock

Shares/Type (including class and series):

Other (please describe):

b. Use of Facilities or Services Involving Tax-free bond

Will the Company be granted access to facilities constructed or maintained, equipment purchased or maintained, or services made possible due to funding from the sale of tax-free bonds (i.e. Lease Revenue Bonds) ?

No

Yes

If Yes, please complete the following;

The bond(s) involved is (are) _____

Percentage used over the lifetime of the bond is _____ %

Name, title, and contact information of the campus person responsible for the managing tax-free bond 'use' is

c. Conflict of Interest Considerations:

Note: Employees who are Academic Personnel are subject to APM - 025, Conflict of Commitment and Outside Activities of Faculty Members and APM – 671. Conflict of Commitment and Outside Activities of Health Sciences Compensation Plan Participants require prior approval for the Category I activities described in the “Guidelines.”

- i. Has the DCM given notice (Appendix-A) to any and all campus or Laboratory employees with a current or potential future interest in the subject Company, to ensure any such University employee is excused from, does not to participate in, and does not influence or attempt to influence any decision involving the Equity acceptance for AFS under consideration?

Yes

No

If “No” please provide an explanation why this action has not occurred:

ii. Did any University employee who may have had or was to likely to have any financial interest from decisions relating to taking equity in Company pursuant to the transaction described participate in or attempt to influence the University this transaction

No

Yes

iii. If the above response was “Yes”, did the campus counsel or Office of General counsel review the reported financial interest(s) and determine whether a mitigation plan should be implemented?

No

Yes

iv. By submitting, the DCM certifies that he or she understands and accepts that the Office of the Chief Investment Officer shall manage equity received under this Policy using a “rule-based” equity disposition management model in liquidating stocks.

d. Other University Relationships with Company

Does the University already hold equity in the proposed Company?

(Refer to <https://ottwebapps.ucop.edu/equity/equity.html> and/or other records)

No

Yes

If “Yes” please

i) indicate the following:

- The cumulative total # of shares currently held by the University: _____;

- The number of shares to be provided by Company under the proposed transaction: _____; and

The type of shares to be accepted: Preferred Common

Series: _____

- The total number of shares outstanding by the Company: _____;
- The cumulative percentage of ownership in Company to be held by the University (includes currently held shares and shares to be accepted under the proposed transaction): _____%; and

f. Percentage of Ownership

- i. Total number of Company's outstanding shares of securities (include information on each class and series of outstanding Equity securities as well): _____
- ii. The percentage of ownership in Company to be held by the University (on the basis of total outstanding Equity securities and on a class and series basis where applicable): _____%
- iii. For start-up Companies, will the University's holdings be greater than 20%
 - No
 - Not applicable
 - Yes

If "Yes" please discuss the timing and extent of anticipated dilution of the University's interest to below the 20% cap established by the University Equity Policy:

Additional information

Please provide any additional information or comments that IAS should consider in evaluating this request for approval to accept equity:

APPENDIX C

UNIVERSITY ACCEPTANCE OF EQUITY FORM

To: *Investment Transaction Services*
Office of the Chief Investment Officer
Address: 1111 Broadway, 21st Floor
Oakland CA, 94607
Phone: (510) 987-9668

From:
Originating Office ___ UCSF ___ UCB ___ UCD ___ UCI ___ UCLA
___ UCSD ___ UCM ___ UCR ___ UCSB ___ UCSC
___ LBNL
Transaction Contact: _____ Phone: _____

Subject: Acceptance of Equity as full or partial consideration for

Space use___ Equipment Use___ Service provided_____

Please accept the enclosed stock certificate/Equity security (as the case may be), as described below, for the above referenced transaction. These equity interests should be managed pursuant to the University Equity Guidelines for Facility Access and Services.

Company Name:

Legal Address:

Company Contact: _____ Phone: _____

Total number of shares transmitted: _____

DCM has determined in good faith that a reasonable valuation per share for the Treasurer to book these shares is:

Value of \$ _____

Please attach rationale for this valuation

_____ Default valuation (e.g. \$.10 per share)

Are there restrictions on the future transfer or sale of this stock?

_____ No

_____ Yes, SEC Rule 144

_____ Yes, Other _____

Does the transaction include provisions for additional equity to be issued to the University?

___ Yes ___ No.

If yes, attach explanation.

Attachments:

____ Stock/Equity certificate, Equity security

____ Approval Letter

____ Agreement under which equity is accepted

____ Other equity-related documents

Designated Campus Manager Signature

Date

DCM Election of a Longer Term Position in Company

The equity disposition management model will allow the campus/Laboratory DCM to make a one-time, irrevocable election to take a longer-term position on the final 25% of the University's equity holdings in a particular Company, on a case-by case basis. Such a longer-term position would be for a fixed period of time ranging from 2-5 years (to be determined at the time of such election) from initiation of disposition under the "rule-based" model employed by the Treasurer's Office, including any inventor shares being held by the Office of the Chief Investment Officer of The Regents.

Please indicate your election below (the default selection is indicated below should the DCM fail to indicate a choice):

± **(Default)** The DCM does NOT elect to take a longer-term position on the final 25% of the University's equity holdings herein submitted to the Treasurer's Office.

± The DCM does elect to take a longer-term position on the final 25% of the University's equity holdings herein submitted to the Treasurer's Office for a term of

(select one of the following):

- ± 2 years
- ± 3 years
- ± 4 years
- ± 5 years

from initiation of disposition under the "rule-based" model employed by the Office of the Chief Investment Officer of The Regents.

APPENDIX D

Equity Management Model

Summary

Securities accepted per request from Designated Campus Manager (“DCM”) are submitted to the Office of the Chief Investment Officer of The Regents (“OCIO”) for management in accordance with the provisions of the University’s Guidelines on Accepting Equity for Facility Access or Services. Such securities usually carry some restriction or a “lock up” period restricting when the OCIO is free to sell the shares. The OCIO will handle all corporate actions, restriction removals, and registration activities until the securities qualify for transfer to the Depository Trust Company (“DTC”) whereby the securities would have an established market value and are re-registered free and clear (without the restrictions). The OCIO, at its discretion, may solicit feedback from the Office of the General Counsel and the DCM regarding such actions.

Once the securities are DTC-qualified, the OCIO will use the following “rule-based” equity disposition management model in liquidating stocks resulting from approved University Access to Facility or Services transactions:

- 1) 50% of the security will initially be sold at the first available opportunity;
- 2) 25% of the shares will be sold approximately six months later; and
- 3) the remaining 25% will be sold approximately six months after that unless the DCM has previously elected to take a longer term as provided for in Appendix C.

This disciplined strategy reflects the Treasurer’s preferred approach to capturing, on balance, reasonable value from the class of securities typically received under a licensing-related transaction.

Should the DCM wish to capture a portion of the longer-term potential value of equity received under a University Access to Facility and Service transaction, the OCIO’s equity disposition management model will allow the DCM the option of making a one-time, irrevocable election to take a longer-term position on the final 25% of the University’s equity holdings in a particular transaction, on a case-by case basis.

Such a longer-term position would be for a fixed period of time ranging from 2-5 years (to be determined at the time of such election) from initiation of disposition under the “rule-based” model and would apply to the final 25% remaining shares of equity held by the OCIO. This one-time election can be exercised by the DCM by indicating its preference on the University Acceptance of Equity Form Access to Facility and Service when the equity is initially transferred to the OCIO.

Responsibilities

Designated Campus Manager (“DCM”)

- Negotiate, have approved, and have executed Transaction agreement
- Secure local and UCOP/IAS approvals to accept equity
- Transmit stock certificates to the Office of the Chief Investment Officer of The Regents
- in good faith, determine reasonable value of equity received by the University and to be held by OCIO

UCOP/Innovation Alliances and Services (“IAS”)

- Provide policy guidance to the DCM
- Provide equity approval consideration
- Coordinate administrative processes between IAS and OCIO

Office of the General Counsel (“OGC”)

- Review and, if acceptable, approve all signature documents (legal form)

Office of the Chief Investment Officer (“OCIO”)

- Manage equity portfolio
- For unregistered stock in equity portfolio:
 - Remove restrictions from stock certificates
 - Re-register stock certificates
 - Manage corporate actions for unregistered stock certificates
 - secure legal review of documents
 - solicit feedback from DCM at OCIO’s discretion
- For DTC-qualified stock in equity portfolio:
 - Implement the “rule-based” equity disposition management model

APPENDIX E

PROCEDURES

Equity Acceptance Review Process

1. Designated Campus Manager (“DCM”) negotiates the terms of access agreements after consultation with and sign-off from any campus officials with requisite delegated authority. The DCM must provide participating employees who are Academic Personnel notice that they are subject to APM - 025, Conflict of Commitment and/or Outside Activities of Faculty Members and APM – 671. Conflict of Commitment and Outside Activities of Health Sciences Compensation Plan Participants require prior approval for the Category I activities described in the “Guidelines.”
2. DCM requests from IAS approval to accept Equity as consideration for access to space, equipment use and/or services. Requests for approval to accept Equity should be forwarded to the Equity Approval Manager (“EAM”). Such requests **must**:
 - a) Be submitted directly by DCM (or, alternatively, by an individual designated in writing by the DCM).
 - b) State that any potential conflict of interest issues have been addressed by the campus.
 - c) State that the deal adheres to the Guidelines on Accepting Equity for Facility Access and/or Services.
 - d) Include a fully completed Equity Approval Request Checklist for Facility Access and/or Services.
 - e) Include all relevant documents (*e.g.*, copy of transaction agreements, Stockholder’s Agreement, Stock Purchase/Issuance Agreements, any existing agreements the company may have with the University, or other relevant legal agreements/documents. All agreements requiring signature from University managers (legal forms) must be reviewed and approved in writing by the Office of the General Counsel (“OGC”).
3. EAM responds to indicate that request has been received, and reviews documentation to ensure that it is complete.
 - a) If after initial review there is information missing, whether the requested acceptance should cause The Regents to hold more than **20%** of the Company’s total capitalization of the company at the time of approval or more than 10% of a

company upon its initial public offering (as determined on an as converted and fully-diluted basis), or there is a need for clarification, EAM writes back to DCM indicating so.

- b) If no information missing and no clarification required, EAM sends all documentation for written approval from Executive Director, IAS.
4. If approved, Executive Director sends a letter to DCM indicating that the request for Equity approval has either been accepted, or that the acceptance is conditional (in which case any changes required are outlined in the letter). Message from Executive Director IAS will further include a copy of the University Acceptance of Equity Form, and a request that the form be used when accepting Equity. Any Equity issued to The Regents must be in the nominee name "Shellwater & Company", and the actual Stock certificates issued, as well as any stockholder information received, should be forwarded directly to the Office of the Chief Investment Officer of The Regents (with a copy of the transmittal to Executive Director's attention). Copy of any amendments to any related agreement(s) should be sent to the attention of the Executive Director, IAS.
 5. Normally, if forms submitted by the DCM are complete, accurate and with all legal forms approved, IAS will approve the request to accept Equity within 10 business days.

Notes:

1. Contacts at Innovation Alliances and Services (IAS):
William Tucker, Executive Director, 1111 Franklin St., Suite 5100
william.tucker@ucop.edu; 510-587-6037
John Shih, Equity Approval Manager, 1111 Franklin St., Suite 5110
john.shih@ucop.edu; 510-587-6034
2. Contacts at the Office of the Chief Investment Officer:
Trevor Woods, Investment Accountant: 1111 Broadway St., Suite 2100
trevor.woods@ucop.edu; 510-987-0859

APPENDIX F

SUMMARY OF SOME MATERIAL ISSUES FOR CAMPUS AND LABORATORY CONSIDERATION WHEN PARTICIPATING IN THE PROGRAM TO ACCEPT EQUITY AS CONSIDERATION FOR ALLOWING ACCESS TO UNIVERSITY FACILITIES AND/OR SERVICES

Pursuant to the Guidelines on Accepting and Managing Equity in Return for Access to University Facilities and/or Services (the “Guidelines”), the University is rolling out a pilot program under which participants in the program may accept equity in recently organized or incorporated Companies affiliated with the University as full or partial consideration for access to authorized Incubators or Accelerators. As per the Guidelines, each program participant is expected to develop its own procedures and forms to allow for the acceptance of equity in return for access to University resources. To help ensure the success of the program, as well as protection of the University’s interests, the following is a non-exhaustive list of some identified issues that program participants should address at the outset. Program participants should still carefully review the entire set of Guidelines before accepting equity in exchange for providing access to University facilities, equipment or services.

1. Private Benefit

The University’s status as a Section 501(c)(3) organization could be jeopardized if it provides more than “incidental” benefits to any private party. To address this “private benefit” concern, the Guidelines require a program participant to ensure it receives at least fair market value for the goods or services it provides to any third party or, where the fair market value for generalized or incidental services cannot be reasonably ascribed, that a formulaic and fair process that is applied on a reasonable and consistent basis is used; provided, the details of any such arrangement is preapproved by IAS and OGC. This may be a difficult undertaking given that the valuation of the equity in a recently organized or incorporated typically would be negligible. With regard to valuation of shares of a startup corporation that is issuing common stock, the fair market value per share of common stock most likely would either be (i) the price any company options are being issued at, since those need to be issued at fair market value under Internal Revenue Code (“IRC”) and many existing companies will either have a board determination or third party IRC Section 409A valuation noting the current fair market value for the common stock which would be valid until the earlier of one year from the date of the valuation or occurrence of a material event such as a third party financing, etc. or (ii) the latest price at which stock was issued to the founders or that any friends and family investor just paid for such stock (which is most likely the par value or some fraction of a penny for a startup corporation that has recently been formed)(such amount being the “Current FMV”). The University understands that determination of valuation is more complicated with regard to companies that are not corporations or in which a campus is taking preferred stock where a third party is not setting the pricing for such stock,

but expects a program participant to use good faith efforts to make a reasonable valuation determination, which determination should be applied to specific circumstances in a consistent manner.

It is highly recommended that program participants consult with the Innovation Alliances and Services (“IAS”) group and Office of General Counsel (“OGC”) to establish alternatives or a formal process to adequately address this issue. Additionally, a program participant may find the following non-exhaustive list of potential financing options helpful when establishing its own procedures to ensure the University is receiving fair value in return for resources it provides to third party participants in the AFS program:

- Charge cash for the space and services provided. A flat amount of equity in the company could also be part of this transaction. It would be prudent to have a slight corresponding reduction in the cash amount charged for the space equal to the Current FMV per share if that can be determined, or at least the par value, to show a payment of at least par value for that Equity.
- Rather than accepting only cash for the space and services, subject to compliance with applicable finance lender laws, take a note or convertible note with a principal amount equivalent to the value of the space and services provided. The note would need to have a reasonable rate of interest, as determined based on the then current applicable federal rate or AFR (<https://apps.irs.gov/app/picklist/list/federalRates.html>). Similar to the above, additional common stock in the company could be taken at the time the note is issued pursuant to a warrant or direct issuance of stock (with a minor adjustment to the note amount to reflect the value of any common stock that is issued outright to ensure that par value at least has been paid in).
- Accept equity in the form of a convertible security (such as the “KISS forms” championed by 500 Startups: <http://500.co/kiss>) with a reasonable rate of interest at the AFR where applicable. Such a convertible security would convert at a later time upon a triggering event such as a change of control or third party financing that values the company. Similar to a convertible debt security, additional common stock in the company could be taken at the time the note is issued pursuant to a warrant or direct issuance of the same (with a minor adjustment to the convertible security amount to reflect the value of any common stock that is issued outright to ensure that par value at least has been paid in). This security helps with the California finance lender law issue and is what is used by other incubators such as 500 Startups.
- With regard to a startup that cannot be easily valued, a program participant may consider accepting a flat percentage of equity in that company based on what is market consideration for other incubators operating in a similar region or space or providing similar services and resources; provided, that the program participant has made a determination that any such flat percentage arrangement is arrived at pursuant to a formulaic and fair process and such

process is applied on a reasonable and consistent basis to all similarly-situated startups. This is important to ensure that the University receives compensation that is at least equal to the fair market value of the space, resources and/or services it provides. A program participant is encouraged to consult with IAS and OGC in making any such determination. Below is a fictitious example that is included solely to demonstrate what may constitute a formulaic and fair process for taking a flat percentage of equity, which would be applied on a fair and consistent basis to all similarly-situated startups.

Example: Assume that an incubator offers all start-ups accepted into its program with the same service and resource package and 250 square feet of incubator space. In this example, the campus may choose to take a flat amount of equity in each start-up (such as 2%), with such amount to be tied to relevant market research of what other similarly-situated incubators typically charge for similar resources and services, and such amount to be updated on a regular basis). For a start-up using 500 square feet of space and otherwise receiving the standard incubator service and resource package, a campus might take twice as much equity calculated on a flat percentage basis (or 4% of the startup as per the example).

2. Unrelated Business Income

It is possible that income recognized as a result of the University's equity interest in certain entities could constitute unrelated business taxable income ("UBTI"). Any UBTI that is generated needs to be tracked and reported in accordance with University policies and procedures. In the case of investments in entities taxed as "C" corporations, dividends distributed to the University will generally not constitute UBTI. In the case of investments in "S" corporations, all income that the University recognizes as a result of its ownership interest will be UBTI. In the case of investments in entities that are formed as partnerships, or LLCs that are taxed as partnerships, the University's distributive share of the income from the active conduct of a trade or business by the partnership or LLC may be UBTI, while the University's share of "passive" income earned by the partnership or LLC, such as dividends, interests, royalties and rent, may not be. Whether an investment may generate UBTI requires additional review of the facts and circumstances and may delay the ability of IAS to internally approve an investment. As such, use of the corporate form (i.e., a "C" corporation) for newly established start-up entities (especially those intending to seek venture financing or exit pursuant to a change of control, merger or public offering) is strongly encouraged.

3. IAS and OGC Review

Each program participant is encouraged to establish a uniform set of agreements which would allow, among other benefits, for the ability of the IAS and OGC to more efficiently review any requests from a program participant to accept equity in accordance with the Guidelines.

Incubators in the private arena have established various customary sets of form that are generally accepted in the accelerator/incubator market space. Such forms (especially those such as a convertible equity or convertible debt security that defer the valuation of a startup until the occurrence of a significant trigger event such as a third party financing or change of control) may be an ideal starting point for the drafting of University forms. If appropriately used, these forms may also be useful in addressing the fair market valuation issue described above.

4. Operational Considerations

Each campus should consider issues of a general operational nature that may arise as specifically a result of participating in the program. For example, what impact would early removal of a tenant have on equity delivered in advance of the completion of the rental term.