

Executive Director--Research Administration and Technology Transfer

Alan B. Bennett

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I. REFERENCES

A. Policies, Principles and Guidelines

University of California Policy on Copyright Ownership, August 19, 1992.

University of California Interim Policy and Procedures on Disclosure of Financial Interests Related to Sponsored Projects, October 1, 1995.

Presidential Administrative Statement - Reporting of Inventions to the Board of Patents [now Office of Technology Transfer or Authorized Licensing Office], July 13, 1973.

University of California Patent Policy (as amended October 1, 1997).

Guidelines on University-Industry Relations, May 17, 1989.

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

B. Delegations of Authority and Reassignments of Responsibility

Delegation of Authority to Senior Vice President Kennedy from President Peltason: Execution of Documents for Administration of University Patent and Other Intellectual Property Matters, July 29, 1993.

Delegation to Executive Director Feuerborn from Senior Vice President Kennedy: Execution of Documents for Administration of University Patent and Other Intellectual Property Matters, August 1, 1994.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Director, Lawrence Berkeley Laboratory, from Senior Vice President Brady, effective 9/18/87.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Director, Lawrence Livermore National Laboratory, from Senior Vice President Brady, effective 9/18/87.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Director, Los Alamos National Laboratory, from Senior Vice President Brady, effective 9/18/87.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Chancellor, Los Angeles Campus, from Senior Vice President of Administration effective 9/01/90.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Chancellor, Berkeley Campus, from Senior Vice President of Administration effective 01/01/90.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Chancellor, San Diego Campus, from Senior Vice President of Administration effective 01/01/90.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Chancellor, Irvine Campus, from Senior Vice President of Administration effective 10/01/94.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Chancellor, San Francisco Campus, from Senior Vice President of Administration effective 10/01/96.

Reassignment of Responsibility for Administration of University Patent and Other Intellectual Property Matters, to the Chancellor, Davis Campus, from Senior Vice President of Business and Finance effective 07/01/2000.

C. Business and Finance Bulletin

Business and Finance Bulletin [G-40](#), University of California Patent Program.

D. Federal Regulations

Public Health Service (PHS) regulations, "Objectivity in Research," 42 CFR Part 50 and 45 CFR Part 94.

National Science Foundation (NSF) regulations, "Investigator Financial Disclosure Policy," effective October 1, 1995.

University Principles Regarding Rights to Future Research Results in University Agreements with External Parties, August 26, 1999.

University Licensing Guidelines, December 1, 2000.

Guidelines Regarding Managing Potential Conflicts of Interest in Licensing Under California's Political Reform Act, OTT Operating Guidance Memo No. 01-02, August 1, 2001; Supplement No.1, October 11, 2001.

E. State of California Government Code

California Fair Political Practices (Fair Political Practices Commission, West's Government code sec. 83, 101-83,123).

II. DEFINITIONS

Authorized Licensing Office (ALO)	The Office of Technology Transfer or the office of those campuses and Laboratories that have been delegated Patent, Copyright, or Tangible Research Products (TRP) licensing authority. (Note: The definition of ALO has been broadened for purposes of this Bulletin from that included in Business and Finance Bulletin G-40 to include those offices with Copyright and TRP licensing authority).
Author:	A creator of a Copyrighted Work.
Copyright:	A right granted by the government to the creator of an original work of authorship that is fixed in a tangible form of expression. The "copyright" actually refers to a bundle of rights that allow the originator of the work the exclusive right to reproduce the work; make derivative works based on the original work; distribute the work; perform the work publicly; and display the work in a public setting.
Copyrighted Works:	Original works of authorship including literary (including computer software), musical, dramatic, choreographic, pictorial, graphic, architectural, and sculptural works, motion pictures and other audiovisual works, and sound recordings.
Disclosure:	The communication to the University by an Inventor of a potentially Patentable Invention in sufficient detail for the recipient to understand and use the Invention.
Equity:	Shares of common or preferred Stock, Warrants, Options, convertible instruments, units of a limited partnership, or any other instrument conveying ownership or economic interest in a corporation, limited partnership, limited liability company or other business entity.
Field of Use:	The specified area of technology application as defined in a University License or Option Agreement for which the Licensee is being granted certain rights.
Invention:	For purposes of this Bulletin, a Patentable Invention, Copyrighted Work or Tangible Research Product.
Inventor:	For purposes of this Bulletin, the individual(s) who first conceives of the Patentable Invention in sufficient detail that someone skilled in the art could reproduce the invention, who develops a Tangible Research Product or who is an Author of Copyrighted Works.

Laboratory:	One of the three University National Laboratories that are funded primarily by the U.S. Department of Energy--Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory.
License:	For purposes of this Bulletin, both License Agreements and Option Agreements.
License Agreement:	An agreement between the University and another party(ies) in which the University gives the other party(ies) a grant of certain rights to an Invention but retains ownership of the Invention itself.
Licensee:	The party to whom the University has granted certain rights, or granted an option to such rights, in an Invention through a License.
License Issue Fee:	Consideration paid by the Licensee to the University in the form of an up-front payment and representing the value of the Invention to the Licensee at the time of licensure.
Licensing Decision Review (LDR):	Intervening substantive review process of certain licensing decisions required under the California Political Reform Act of 1974.
Licensing-Related Transaction:	A License, Option Agreement, inter-institutional agreement, invention marketing agreement, or assignment, or an amendment thereto, or a settlement agreement relating to such.
Office of Technology Transfer (OTT):	The Universitywide office within the Office of the President, responsible for the overall operation, management and performance of the University patent program.
Option Agreement:	An agreement that holds open a right to do or elect to do certain acts. The agreement is used to extend the term of election of a right to negotiate a License Agreement.
Option:	A binding promise in which the owner of property agrees that another shall have the privilege of buying the property at a fixed price within a stated period of time.
Patent:	A property right to an Invention granted by the government to an Inventor conferring the right to exclude others from manufacturing, using or selling the Invention defined by the claims in the printed patent.

Patentable Invention:	A new and useful process, machine, or composition of matter, including any new variety of asexually propagated plant, or any new or useful improvement thereof.
Patent Coordinators: (PC)	The person at each campus/Laboratory assigned to assist the faculty in interactions with the ALO.
Patent License Agreement:	A contract in which a Patent owner grants to another party an exclusive or a non-exclusive right to make, use and/or sell an Invention covered by the Patent, providing a defense against infringement of the licensed Patent.
Royalty:	Consideration paid by a Licensee to a licensor for the right to make, use and/or sell an Invention.
Stock:	An equity or ownership interest in a corporation. Its unit of measurement is the share, and the owner is entitled to participate in the company's management, profits, and in distribution of assets upon dissolution of the company. Ownership of stock may be evidenced by a written instrument known as a stock certificate.
Stockholder's Agreement:	An agreement (separate from a License 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, etc.
Tangible Research Products (TRP)	A result of research that is transferable in a physical medium such as a biological organism, software disk, or integrated circuit mask. In some cases, the TRP will be eligible for Patent or Copyright protection.
Warrant:	A contract that gives the holder the right to purchase shares of the underlying Stock for a specified price and within a specified time period.

III. EQUITY GUIDELINES

A. Introduction

On February 16, 1996, President Atkinson issued the University Policy on Accepting Equity When Licensing University Technology (Appendix A). The Policy provides that the University may accept equity in a company as partial consideration for licensing-related transactions in appropriate circumstances pursuant to the provisions of that Policy and the implementing guidelines contained in this Bulletin. The Equity Policy superseded Guideline 13, "Organizational Arrangements," of the Guidelines on University-Industry

Relations issued on May 17, 1989 by President Gardner, with regard to the acceptance of equity when licensing University technology.

B. Scope

The Equity Policy and the guidance provided in this Bulletin apply to licensing-related transactions in technology transfer concerning University rights in patents, copyrights, and tangible research products and related matters at the Office of the President, individual campuses, and all other University facilities and locations. This Bulletin applies to the Department of Energy (DOE) Laboratories to the extent that there is no conflict with the obligations of the University under its management and operating contracts with the DOE. Guidance provided in this Bulletin is intended to clarify and implement the University Policy on Accepting Equity When Licensing University Technology and is supplemental to that provided in Business and Finance Bulletin [G-40](#) which sets forth the general administrative procedures implementing the University of California Patent Policy.

C. Accepting Equity

The University may accept equity in a company to facilitate the practical application of a University invention for the general public benefit when that company is able to bring the invention to the marketplace (i.e., the company has the means to develop, market, and deliver the invention to the public in a timely manner). The acceptance of equity is subject to the following guidance:

1. A portion of the financial consideration should be provided in the form of cash, taking into account the financial condition and structure of the licensee. The amount of cash received generally should be at least sufficient to cover the University's out-of-pocket expenses related to the patenting and licensing of its inventions. Acceptance of equity generally should not be taken as compensation in lieu of an earned royalty.
2. The University's preference is to take equity in the form of stock rather than options. While accepting an equity interest in a licensee in the form of options or warrants may be appropriate under individual circumstances, case-specific arrangements would need to be made prior to acceptance to identify University fund sources where cash is needed to exercise such options or warrants. In addition, prior arrangements would need to be made to manage the rights and interests of all involved parties in such options or warrants.

D. Conflict-of-Interest Considerations

1. University acceptance of equity when licensing inventions shall be based upon the education, research, and public service missions of the University over financial or individual personal gain.
2. The transfer of University technology to industry is in the public interest, and it is understood that University inventors sometimes will be invited by University licensing professionals to work closely with those licensing professionals or potential licensees, with the objective of commercializing University inventions. This is appropriate and represents a useful contribution, because the transfer of University technology to industry is consistent with the University's mission. Any involvement of inventors, however, must be in accordance with the California Political Reform Act of 1974 (Act), with University Guidelines on Managing Potential Conflicts of Interest in Licensing (see OTT Guidance Memo No. 01-02, <http://patron.ucop.edu/ottmemos/docs/ott01-02.html>) and any supplements thereto, and with University Licensing Guidelines (see OTT Guidance Memo No. 00-05, <http://patron.ucop.edu/ottmemos/docs/ott00-05.html>).
3. Because University inventors may have the opportunity to influence University licensing decisions in ways that could lead to personal gain or give advantage to companies in which they have a financial interest, the inventors must be aware of and in compliance with the Act. Generally, University inventors are prohibited from "making, participating in making or influencing a University decision," including selection of licensees and other decisions made in the course of commercializing University research results, if they have a disqualifying personal financial interest in the decision, unless certain specific actions are taken.
4. In order to comply with the Act, the Authorized Licensing Office (ALO) must advise each University inventor of the provisions of the Act (see Appendix C, "What Inventors Need To Know About Conflicts of Interest in Licensing"). The ALO also must determine and document the level of inventor involvement in the licensing-related transaction decision-making process. Both the licensing professional and the inventor must be agreeable to any inventor involvement, understanding that the extent to which the inventor participates in or influences licensing-related transaction decisions may be a factor in the consideration and ultimate recommendations of a Licensing Decision Review body, if appropriate. See OTT Operating Guidance Memo 01-02, Supplement No. 1, Exhibit C, "Required Elements for Campus/Laboratory Plans for Licensing Decision Reviews" for specific details.

5. When an inventor with a disqualifying personal financial interest in a candidate licensee has not and will not be making, participating in making or influencing a licensing related-transaction decision, no financial disclosure is required. When an inventor without such a financial interest makes or participates in making or influencing a licensing-related transaction decision, again, no disclosure is required. If, however, an inventor who has been or who will be participating in the licensing-related transaction decision has a disqualifying personal financial interest in any candidate licensee identified by the ALO, that inventor is required under the Act to disclose his or her interest. This is accomplished using UC Form TT-100. If an inventor does not complete UC Form TT-100 and the inventor has been or will be involved in the licensing-related transaction decision, the ALO may determine that a Licensing Decision Review is appropriate.
6. The Act permits participation by an inventor, even when that inventor has a disqualifying personal financial interest, in advising, influencing, or making recommendations with respect to a University licensing-related transaction decision, so long as there is an appropriate intervening substantive review, called a Licensing Decision Review. Thus, when an inventor with a disqualifying personal financial interest in a potential licensee is invited by the ALO to participate in licensing-related transaction decisions, and does not disqualify him or herself from participation, Licensing Decision Review of the licensee selection and other licensing-related transaction decisions is required under the Act.

The Licensing Decision Review should conform with the local campus/Laboratory plans developed to ensure the carrying out of required intervening substantive reviews of decisions relating to licensing University research results. Consult the University Guidelines on Managing Potential Conflicts of Interest in Licensing (see OTT Guidance Memo No. 01-02, <http://patron.ucop.edu/ottmemos/docs/ott01-02.html>) and any supplement thereto for specific details regarding this process.

7. Finally, in cases where future research support is a condition of the licensing-related transaction, the ALO must assure that disclosure and review is conducted by the local Independent Substantive Review Committee (ISRC) by informing the local sponsored project's office that disclosure and review of the inventor's financial interests is required under the University of California Policy on Disclosure of Financial Interest in Private Sponsors of Research. Disclosure is made on UC Form 730U and a review is conducted by the local ISRC prior to execution of the license. Alternatively, the licensing-related transaction agreement condition that the licensee support additional research by the inventor(s) might be made conditional on the ISRC's future approval of such research by providing an appropriate escape provision in the licensing-related transaction agreement in the event the ISRC does not approve such research.

E. Board Representation / Voting Rights

Employees of the University, acting in their capacity as University employees, shall not accept a position on the board of directors of a licensee in which the University holds an equity interest, 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 as a University employee might expose the University to unacceptably large management, conflict of interest, and public relations problems. An inventor may participate on scientific boards of the licensee.

F. Future Relationships with Licensee

The University shall manage all subsequent relationships with a licensee in which the University has accepted equity in a businesslike manner pursuant to relevant University policies and guidelines.

1. The University has an affirmative obligation to prevent "pipelining" of future inventions to a licensee in which the University holds an equity interest. New inventions not directly related to the original licensed technology for which equity was taken should be licensed to the company best able to develop them. Consequently, such 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.
2. This should not preclude a company from licensing more than one invention when that company is best able to develop the successor inventions. This also should not prevent patent provisions in research agreements that allow a company that has paid the costs of research the right to negotiate a license to inventions resulting from the University's performance of that research.

G. Licensing Terms

1. The terms of a licensing-related transaction, other than those related to the acceptance of equity in the company by the University, shall be consistent with those of University transactions for comparable inventions and fields of use.
2. The ALO shall ensure that the terms of a licensing-related transaction relating to the acceptance of equity include the following:

- a. provisions permitting the issuance of stock by the licensee directly to inventors if such option is selected by the ALO pursuant to Section I.1. of this Bulletin; or if the ALO determines that all of the stock should be accepted by The Treasurer, provisions permitting subsequent transfer of stock by the Treasurer to the inventor pursuant to Section V.C. of this Bulletin.
 - b. provisions that are consistent with guidance that may be issued from time to time by OTT and by the Office of General Counsel concerning appropriate terms for the acceptance of equity when licensing University inventions.
3. In some circumstances, in the early stage of a company's formation, appropriate documentation (i.e., stockholders agreements, qualified investors statement, capitalization plan, etc.) may not be available to the ALO for evaluating the financial equities of the proposed licensing-related transaction. In such cases, and where the ALO judges it essential to execute the licensing-related transaction agreement before documentation is available in order to bring the invention to the marketplace, conditional language shall be incorporated into the licensing-related transaction agreement. The language should provide that if the ultimate conditions placed on the University as a shareholder in the licensee are not acceptable to the University, then the University may either terminate the licensing-related transaction agreement or renegotiate the agreement to either eliminate the equity consideration or replace it with other consideration. In such cases, the ALO shall not accept any equity after the execution of the licensing-related transaction agreement until the ALO's request for the acceptance of equity has been approved.
4. For any licensing-related transaction where the University conveys its licensing interest in an invention to a third party (e.g. inter-institutional agreements, patent marketing agreements, etc.), any acceptance of equity by such third party on behalf of the University shall require the approval of the University in accordance with the provisions of this Bulletin.
5. Licensing-related transactions may be carried out only by University personnel who have been formally delegated patenting and licensing authority and in accordance with University Licensing Guidelines (<http://patron.ucop.edu/ottmemos/docs/ott00-05.html>). Licensing professionals shall conduct licensing-related activities within the parameters of their respective delegation. In cases where a licensee wishes to support future research at the University, where the terms of the license agreement or equity arrangement require such research funding by the licensee, or where future research and/or resulting inventions are otherwise addressed in a license agreement, the licensing professional must obtain approval of the involved principal investigator(s) or affected inventors and, in the case of prospective research sponsored by the

licensee, the appropriate University Contract and Grant Office. Licensing professionals shall not grant rights to inventions made by University employees at other campuses or Laboratories without appropriate coordination and authority.

H. Licensee-Sponsored Product Testing

A University investigator may perform clinical trials or other comparable licensed-product testing for companies in which the University holds equity as part of a technology licensing-related transaction on the campus/Laboratory where that technology arose only upon the specific approval of a Chancellor/Laboratory Director-appointed committee convened to assess any real or perceived organizational conflict of interest in the performance of such trials or testing activities.

1. This approval requirement does not apply to basic academic research, but only to clinical trials or other comparable product-testing projects. Those individuals delegated University authority to enter into such agreements are responsible to ensure that agreements are not executed with companies in which the University holds equity as part of a licensing-related transaction for inventions arising from that campus/Laboratory, without appropriate approval. A listing of companies in which the University holds such equity interests, the campus from which the licensed invention arose, and other relevant information is maintained by OTT on a restricted-access basis. To access this information, use the “Equity Holdings” button on the OTT Operational Tools Home Page at: <http://www.ucop.edu/ott/special.html>
2. Factors that may need to be considered by such committees, in addition to traditional conflict of interest considerations are: i) any unique qualifications of the inventor to move the invention to its next stage; ii) participation in a multi-center study where results from other institutions could ameliorate any potential for conflict from the University holding equity; iii) data for multi-center studies being provided in primary form by the University to another institution for analysis; and iv) data from other institutions not being analyzed by the University.
3. Such committee consideration and approval is not required for research activities occurring on campuses or DOE Laboratories other than at the site from which the licensed invention arose.

I. Determining Who Should Receive the Equity

1. An ALO may negotiate the acceptance of equity in a licensee in one of two ways, at its discretion. Taking into account any legal restrictions and the wishes of each inventor, the ALO may either:

- a. arrange for the inventor to receive his or her share of equity directly from the company upon execution of the license; or
 - b. accept all equity, including the inventor's share, in The Regents' nominee name of "Shellwater & Co." for management by the Treasurer and subsequent distribution to the inventor, generally in the form of cash, pursuant to Section V.C.
2. In general, it is preferable for the inventor's share of equity to be issued by the licensee directly to the inventor. If at all possible, each inventor should be allowed to assume responsibility for management of his or her own stock interests. However, in certain circumstances, other factors surrounding the licensing-related transaction arrangement, as discussed in Section 4, below, may make it appropriate for the University to manage all equity and to turn over to the Treasurer management of that equity, including the inventor's share.
3. An ALO must consider the need to cover any unreimbursed University costs related to the technology. Under the Equity Policy, "expenses identified in such policies [University Patent Policy and comparable campus policies concerning disposition of income from copyrightable works or tangible research products] will not be applied to any inventor's share distribution made in the form of equity." The University, therefore, will not be able to recover case-related expenses from transfers made to the inventor in the form of equity either directly from the licensee to the inventor or subsequently from the Treasurer to the inventor. The University, however, may recover such expenses before any cash distribution to the inventor resulting from the conversion or sale of equity held by the Treasurer. Generally, it would be expected that sufficient cash would be obtained as part of the licensing arrangement to cover anticipated costs.
4. The wishes of the inventor(s) as to whether to accept his or her share of equity directly or to have the University manage it also should be sought and considered by the ALO, although the final decision shall be made by the ALO. Each inventor of the licensed invention should be consulted, as differing arrangements for each inventor are possible. The ALO should advise each inventor to seek personal legal counsel regarding the effects of directly accepting such equity. Among the various issues that should be considered in determining the inventor's preference on how equity should be accepted are the following:
 - a. The ability of each inventor to accept equity directly from a licensee in compliance with applicable laws and regulations.

- b. Any personal tax liability to the inventor that may be triggered when equity is directly transferred to the inventor.
- c. If an inventor's share of equity is accepted by the University, management and disposition of such equity will be at the discretion of the Treasurer. The Treasurer will make decisions regarding equity disposition based upon sound business judgment and publicly available information, and will coordinate with the appropriate University officials as necessary, the inventor's sole right being the receipt of the appropriate share of such equity or its cash equivalent at such time and in such form as the Treasurer shall deem appropriate. The University will have no obligation to the inventor to maximize the value of the shares on behalf of the inventor.
- d. Conflict of interest concerns must be considered, particularly when it is anticipated that the inventor may be involved in subsequent research related to the licensed technology. Direct holding of equity by an inventor who intends to be involved in subsequent research would likely require special considerations under the California Fair Political Practices Act of 1974, Public Health Service regulations on "Objectivity in Research," National Science Foundation regulations on "Investigator Financial Disclosure Policy," and related University policies. The ALO should discuss the applicability and implications of these regulations and policies with the inventor and with the campus/Laboratory independent substantive review committee, as appropriate. Appendix D, Conflict of Interest Issues When Equity is Accepted Directly by Inventor, is provided as a summary document for use by the ALO, as needed.

J. Determining How Much Equity to Accept

1. Percentage of University Equity Ownership

The University shall not accept a level of equity that places it in a controlling position of the licensee, since such a situation may expose the University to unacceptable management, conflict of interest, and public relations problems.

- a. The University generally shall hold less than a ten percent (10%) share ownership in a mature company. In practice, the University would typically accept equity in an early-stage private company and not invest cash during subsequent financing rounds. Unless anti-dilution protection is obtained through the terms of the licensing-related transaction agreement, the University's initial proportionate equity interest would be successively diminished by

each subsequent round of financing. Accordingly, the ALO may accept initial stock holdings of ten percent (10%) or more in start-up companies when there is a clear expectation of subsequent dilution to less than a ten percent (10%) share ownership at the time the company goes public.

- b. An ALO considering taking equity in a licensee must assess the total percentage ownership, if any, in that licensee already held by the University through other technology licensing-related transaction arrangements. A listing of companies in which the University holds such equity interests is maintained on a restricted-access basis by OTT. To access this information, use the "Equity Holdings" button at the OTT Operational Tools Home Page at: <http://www.ucop.edu/ott/special.html>.

2. Percentage of Inventor Equity Ownership

The University shall determine the inventor's share of equity consistent with formulas established in the University of California Patent Policy and other relevant policies, with the exception that expenses identified in such policies will not be applied to any inventor's share distribution made in the form of equity.

IV. APPROVAL OF EQUITY ACCEPTANCE

A. Required Approvals

1. Acceptance of an equity interest in a licensee shall be in accordance with the University Policy on Accepting Equity When Licensing University Technology; guidelines in this Bulletin; and upon the case-specific approval of the director of the ALO, and the Senior Vice President - Business and Finance or the appropriate designee. OTT provides staff support to the Senior Vice President in the consideration of requests for approval to accept equity. In the course of providing such support, OTT will provide guidance and make recommendations to the ALO concerning legal and policy issues related to the acceptance of equity. Upon request of the ALO, OTT staff will also provide recommendations to the ALO concerning any business issues related to the acceptance of equity request.
2. University General Counsel review and approval as to legal form also must be obtained for all agreements and documents related to the University's acceptance of equity. Such approval as to legal form of agreements involving OTT and campus technology transfer agreements is handled by OTT's designated General Counsel representative. Any preliminary legal reviews of the agreement would not obviate the need for review and approval as to legal form of equity acceptance of the entire proposed final agreement.

3. Consideration of requests for both legal and equity approval will be integrated by OTT. OTT will consider such requests using the process described in Sections B through E, below, and will forward its recommendations to the Senior Vice President or the appropriate designee for consideration.

B. Submission to OTT

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

Office of Technology Transfer
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 E) should be submitted with the ALO request for approval of equity acceptance along with the required documentation.

D. Requests for Exceptions

Any deviations from the guidance provided in this Bulletin should be noted and justified as an exception to University policy for consideration by the Senior Vice President - Business and Finance or the appropriate designee.

E. Timing of Submission

The ALO should allow sufficient time after OTT receipt of all the information provided under Section C, above, for OTT legal and policy reviews in support of the Senior Vice President's or the appropriate designee's consideration of an equity approval request. Requests for approval should be submitted to OTT 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 OTT staff concerning licensing-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. Inventor(s)' Shares Reserved

If the ALO has negotiated a licensing-related transaction arrangement under which an inventor is to receive his or her share directly from the company, the ALO shall instruct the company to issue and send those shares directly to the inventor. If the ALO has negotiated for both the inventor's shares and the University shares to be managed by the Treasurer, the ALO shall instruct the company to issue and send shares in accordance with Section 2, below.

2. University Shares

Regents Bylaw 21.4(c) states, "The Treasurer 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 licensees, including stock certificates, options, and warrants, due to The Regents pursuant to the terms of a licensing-related transaction agreement shall be issued by the licensee to The Regents' nominee name of "Shellwater & Co." and delivered to the ALO. The ALO shall forward such equity, together with the completed University Acceptance of Equity Form (Appendix F) to:

Treasurer of The Regents
University of California
P.O. Box 24000
Oakland, CA 94623-1000

ATTN: Director, Treasury Operations

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

Office of Technology Transfer
University of California
1111 Franklin St., 5th Floor
Oakland, CA 94607-5200

ATTN: Executive Director.

3. Corporate Actions

All correspondence received by the ALO from the licensee concerning corporate actions (shareholder voting actions and notices, merger notifications, shareholder meeting notices, etc.) resulting from the University's shareholder interest in the licensee should be forwarded to the Treasurer at the address listed in 2, above.

V. TREASURER'S MANAGEMENT OF EQUITY

A. General

1. All decisions and administrative actions concerning the management of equity issued to the University by a licensee and all subsequent corporate actions received by the ALO pertaining to the University's shareholder interest in the licensee shall be made by and at the sole discretion of the Treasurer. This includes decisions on when stocks will be converted to cash and when options will be exercised. No consideration shall be given to unpublished University research program results related to the technology or to company information uniquely available to the University through its technology transfer program activities. The Treasurer intends to carry out such functions using the Equity Management Model (Appendix G) based upon sound business practice and publicly available information. Such functions shall be consistent with the guidelines in this Bulletin.
2. At least monthly, the Treasurer shall notify OTT of all significant actions taken by the Treasurer, including those involving purchase, distribution, or transfer of stock, and those involving company mergers, acquisitions, or name changes.
3. Any decision made by the Treasurer to purchase additional shares of equity in a licensee in which the University has accepted equity as part of a technology licensing-related transaction should be evaluated in terms of the financial return to the University, not in terms of the status of nor the need for support of the subject invention. Such subsequent investments should be considered and maintained separately from the original invention licensing arrangement and the resulting proceeds from such subsequent investments shall not be considered for distribution under the University Equity Policy.

B. Valuation

1. The Treasurer shall establish the value of equity issued to the University by a licensee, considering the following factors:

- a. If a stock is publicly traded, its valuation should be established at market value upon acquisition.
- b. If a stock is not publicly traded, to the degree possible its valuation should be based upon:
 - i. an estimate of the cash-equivalent of the equity as established in the licensing negotiation, and/or
 - ii. the University's percentage ownership in the company and a recent determination of the company's asset base.
- c. If a valuation cannot be reasonably determined based upon the factors above, valuation should be based upon a default value (e.g., ten cents (\$.10) per share).

2. The ALO shall provide recommendations to the Treasurer concerning the valuation of equity upon transmittal of such equity to the Treasurer using Appendix F, University Acceptance of Equity Form.
3. At least quarterly, the Treasurer shall provide reports to OTT on the value of equity held under licensing-related transactions.

C. Distribution of Equity Interests to Inventors

1. When the inventor's share of equity is being held by the University, the timing of the distribution or liquidation of the inventor's interest in such equity shall be at the sole discretion of the Treasurer. Other "liquidity events," such as the acquisition of the company in which the Treasurer holds equity by another company that is publicly traded, also may trigger the distribution or liquidation process. The Treasurer shall be responsible for monitoring the status of equity holdings and for initiating in a timely manner the removal of any restrictions placed on the University's ability to transfer or liquidate the inventor's interest in equity held by the Treasurer.
2. The University shall determine the inventor's share of equity consistent with formulas established in the University of California Patent Policy or other relevant policies, with the exception that expenses identified in such policies will not be applied to any inventor's share distribution made in the form of equity.
3. Generally, distribution of the inventor's interest shall be in the form of cash. Upon conversion of equity to cash, the Treasurer shall notify OTT and instruct Corporate Accounting to transfer such cash proceeds to the ALO. The ALO's subsequent allocation of such cash proceeds between the University, the campus research fund (if applicable), and an inventor

shall be made in accordance with the schedules and formulas established in the University of California Patent Policy (<http://www.ucop.edu/ott/patentpolicy/pat-pol.html>), or other applicable policies concerning disposition of income for copyrightable works or tangible research products, recognizing the inventor's equity distributions, if any, already made pursuant to Provision I.1 of this Bulletin.

4. For those inventor distributions to be made in the form of equity, the issues identified in Section I.4 should be considered by inventors, who should seek private legal counsel. The ALO shall determine appropriate inventor's share calculations, secure contact information, and address other distribution-related matters. The ALO will provide such information to the Treasurer and the Treasurer shall distribute to the inventor the appropriate equity interests and related information, notifying OTT when the transfer is complete.

D. Distribution of Equity Interests to the ALO

1. The University's equity interests will be converted to cash and distributed to the ALO in accordance with Section 2, below, at the same time such conversion and distribution is made to the inventor pursuant to Section C, above.
2. Upon conversion to cash of the University's equity interests (those interests remaining after the distribution of the inventor's interest pursuant to Section C, above), the Treasurer shall instruct Corporate Accounting to transfer such cash proceeds to the appropriate ALO account and provide the ALO with appropriate identifying information.
3. The ALO's subsequent use and distribution of such cash proceeds shall be handled in accordance with the schedules, formulas, and practices established under the University of California Patent Policy, and other applicable policies concerning disposition of income for copyrightable works or tangible research products, recognizing the inventor's distributions, if any, already made pursuant to Section C, above and any direct distribution of equity to the inventor pursuant to Section IV.F.1.

APPENDIX A

February 12, 1996

**CHANCELLORS
LABORATORY DIRECTORS
MEMBERS, PRESIDENT'S CABINET**

Dear Colleagues:

The enclosed Policy on Accepting Equity When Licensing University Technology is effective immediately.

An active technology licensing program is increasingly important in bringing research results to the marketplace for the benefit of the general public. Under certain circumstances, licensing involves the need to accept equity in the licensee in order for the University to realize the full potential of the technology. Accordingly, the enclosed Policy permits the acceptance of equity in a company as partial consideration for receiving a license. The principles set forth in the Policy establish parameters for entering into such arrangements.

This Policy supersedes Guideline 13, "Organizational Arrangements," of the Guidelines on University-Industry Relations, issued on May 17, 1989 by President Gardner, to the extent Guideline 13 is applicable to the acceptance of equity when licensing technology.

In the near future, guidelines and procedures to implement this Policy will be issued by the Senior Vice President -- Business and Finance.

Sincerely,

Richard C. Atkinson
President

Enclosure

cc: Academic Council Chair Leiman
Technology Transfer Advisory Committee
Special Assistant Gardner

POLICY ON ACCEPTING EQUITY WHEN LICENSING UNIVERSITY TECHNOLOGY

The University of California recognizes the importance of encouraging the practical application of the results of University research for the benefit of the general public. One important way in which the University supports this transfer of technology is through an active technology licensing program.

Technologies disclosed by University faculty, research scientists, and other staff are offered to potential licensees, often during the early stages of developmental research. These technologies typically require a considerable amount of additional research to prove the value of the technology or to support good patent protection, if appropriate. Therefore, the University seeks licensees able to demonstrate that they currently are adequately financed or that adequate financing will be available, and that they are willing to focus such resources on the developmental research necessary to advance the technology to a marketable condition. Further, such licensees must be able to meet regulatory requirements for introduction of the technology into the marketplace and to satisfy adequately the market demand for the technology.

The University generally will seek from the licensee the costs of obtaining patent or other intellectual property protection and other customary financial considerations. The resulting licensing income provides an incentive to University inventors and authors (hereafter, inventors) to participate in the complex technology transfer process, funds further University research, and supports the operation of the University technology transfer program.

The combination of developmental costs and risk, and uncertainty as to the potential value of the technology, occasionally make it difficult for the University to identify a licensee possessing both the requisite capabilities and willingness to assume such financial risks. Small or startup companies may find it particularly difficult to commit significant cash outlays for both developmental and licensing costs.

Accordingly, the University may accept equity in a company as partial consideration for technology licensing-related transactions in appropriate circumstances pursuant to the following provisions of this Policy:

1. When the company selected to develop, market, and deliver the technology to the marketplace is not reasonably able to provide adequate compensation for licensing in cash, the University may choose to accept equity in that company, in partial lieu of cash, to facilitate the practical application of a University technology for the general public benefit.
2. University acceptance of equity in consideration of licensing a University technology shall be based upon the principles of openness, objectivity and fairness in

decision-making, and preeminence of the education, research, and public service missions of the University over financial or individual personal gain. Such licensing activity shall be conducted in accordance with the University Guidelines on University-Industry Relations, the Conflict of Interest Policy, the University Policy on Integrity in Research, and related University policies and guidelines.

3. The University shall neither seek nor accept representation on the board of directors of a licensee in which it holds equity, nor exercise any voting rights on board actions, regardless of the level of its equity interest.
4. The University shall handle all subsequent relationships with a licensee in which the University has accepted equity in a business-like manner pursuant to relevant University policies and guidelines.
5. The terms of a technology licensing-related transaction, other than those related to the acceptance of equity in the company by the University, shall be consistent with University transactions for comparable technologies.
6. University investigators on the campus/Laboratory that generates a licensed technology may perform clinical trials or other comparable licensed-product testing for companies in which the University holds equity as part of the technology licensing-related transaction only upon the specific approval of a campus/Laboratory independent substantive review committee or other body authorized by the Chancellor/Director to assess any real or perceived organizational conflict of interest in the performance of such trials or testing activities.
7. The University generally shall not accept more than a ten percent (10%) share ownership in a licensee.
8. When the University accepts equity in a company as partial consideration for a technology licensing-related transaction, the University, taking into account any legal restrictions and the wishes of each inventor involved, shall:
 - a. arrange for the inventor(s) to receive his or her share of equity directly from the company upon execution of the relevant agreement; or
 - b. take all equity, including the inventor(s)' share, in the name of The Regents of the University of California; in which case, the Treasurer will make decisions regarding equity disposition based upon sound business judgment and publicly available information, and will coordinate with the appropriate University officials if necessary; the inventor(s)' sole right being the receipt of the appropriate share of such equity or its cash equivalent at such time and in such form as the Treasurer shall deem appropriate.

The University shall determine the inventor(s)' share of equity consistent with formulas established in the University of California Patent Policy or other relevant policies, with the exception that expenses identified in such policies will not be applied to any inventor(s)' share distribution made in the form of equity.

The University shall distribute cash proceeds, upon conversion of equity to cash, in accordance with the schedules and formulas established in the University of California Patent Policy, or other relevant policies, recognizing the inventor(s)' equity distributions, if any, already made pursuant to a. or b., above.

This Policy applies to licensing-related transactions concerning University rights in patents, copyrights, and tangible research property at the Office of the President, individual campuses, and all other University facilities and locations. Applicability to the Department of Energy (DOE) Laboratories is to the extent that this Policy does not conflict with the contractual obligations of the University to the DOE.

The Senior Vice President--Business and Finance shall issue administrative guidelines for use by campuses, Laboratories, and the Office of the President in implementing this Policy. Such guidelines shall require compliance with this Policy and approval by the Senior Vice President--Business and Finance of each University licensing-related transaction involving the acceptance of equity. Exceptions to this Policy shall be approved by the Senior Vice President--Business and Finance.

APPENDIX B

Inventor / Author Statement Concerning Involvement in Licensing Decisions

Form TT-100 (August 2001)

This form is to be completed by University inventors/authors and submitted to the University Authorized Licensing Office in accordance with OTT Operating Guidance Memo No. 01-02 located at <http://patron.ucop.edu/ottmemos/docs/ott01-01.html>. It should be completed after discussions with the Licensing Professional responsible for managing the invention or work of authorship (herein, "invention"). Generally it is submitted:

- upon selection by the Licensing Professional of candidate licensees, and
- upon any change in a disclosed financial interest of an inventor in a candidate licensee.

SECTION I.

Title of Invention: _____ UC Case # (if known) _____

Inventor/Author Name: _____

Department: _____ Campus/Lab: _____

___ Initial statement for this invention

___ Supplemental statement for this invention

SECTION II.

I understand the applicability of the California Political Reform Act to my involvement in University licensing decisions. Based on that understanding, I assert the following:

(CHECK ONE)

/ ___ / DISQUALIFICATION

I hereby disqualify myself. I have not and do not intend to participate in making, or attempting to influence a University licensing decision concerning the invention identified above, including the selection of a licensee(s), and other decisions made in the course of attempting to license this invention.

STOP HERE (No need to complete Section III below).

/ ___ / ELIGIBILITY TO PARTICIPATE

I do not disqualify myself. I have, or wish to remain eligible to participate in or influence a University licensing decision concerning the invention identified above, including the selection of a licensee(s), and other decisions made in the course of attempting to license this invention. I understand all such University decisions will be subject to an intervening Licensing Decision Review by a disinterested official or committee.

COMPLETE SECTION III BELOW.

Signature: _____ Date: _____

SECTION III.
(complete only if you have not disqualified yourself in II, above)

Inventor's/Author's Statement of Financial Interest in Candidate Licensee

Provide the following information about this candidate licensee:

Company Name (candidate licensee): _____
Company location: _____

A. Are you or a member of your immediate family a director, officer, trustee, or employee of, or do you hold any position of management in the company identified above? _____ No _____ Yes
If yes, identify specific position (s): _____

B. Do you, or does a member of your immediate family, have:

1. An investment of \$2,000 or more in the company identified above? ___ No ___ Yes
If yes, \$ _____ Value
2. Income (including any payment, such as salary or consulting fees, or any loan or any gift) of \$320 or more received from the company identified above within the last 12 months? (Do not include any salary paid by the University with funds provided by the company). _____ No _____ Yes
If yes, \$ _____ Value

C. Will there be a current or future impact on the personal finances of you or your immediate family as a result of the licensing decision(s)? _____ No _____ Yes
If yes, explain _____

I have used all reasonable diligence in preparing this Statement and to the best of my knowledge it is true and complete.

Signature: _____ Date: _____

This is a public document. All of the information on this form will be available to any member of the public upon request. This information is to be used to reveal to public scrutiny certain financial interests of public officials and employees in order to disclose potential conflicts of interest and to aid in the prevention of actual conflicts of interest.

APPENDIX C

Sample Notice to Inventors: This notice will be used by the Office of Technology Transfer (OTT) as part of its acknowledgement sent to inventors of receipt of a Record of Invention. A comparable notice should be given to all campus or Laboratory inventors by Authorized Licensing Offices at the time of invention disclosure. This notice may be excerpted or adapted by campuses or Laboratories for their own use as they may choose. If the local notice is intended to be shared routinely with authors disclosing their works of authorship for licensing consideration, this sample notice should be modified accordingly.

**What Inventors Need to Know about Conflicts of Interest in Licensing
(October 1, 2001)**

UC Policy and State Law Concerning Conflicts of Interest in Licensing

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 to UC policy, University faculty and staff must comply with state statutes and regulations governing conflicts of interest, specifically the Political Reform Act of 1974 (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).)

The Act and its implementing regulations apply to University licensing decisions. In other words, University inventors and University licensing staff must not allow their personal financial interests to influence their or other's University licensing decisions.

Guidelines on Managing Potential Conflicts of Interest in Licensing

Licensing decisions for the University are made by Licensing Professionals (LP) within authorized campus and Laboratory licensing offices. The work of the LP is sometimes aided by the inventor, who may be invited by the LP to work with University licensing staff and potential licensees to effectively commercialize University inventions.

Because inventors may have the opportunity to influence University licensing decisions in ways that could lead to personal gain or give advantage to companies in which they have a financial interest, inventors must comply with the disqualification and disclosure requirements of the Act.

1. The disqualification requirements of the Act require an inventor who has a disqualifying personal financial interest in a University licensing decision to refrain from participating in or influencing the decision. However, if the LP determines that the inventor's involvement is necessary to the decision, or if the inventor will negotiate "across the table" from the University on behalf of a company in which the inventor has a disqualifying personal financial interest, the inventor may participate so long as proposed University licensing decisions are reviewed by an independent body (a Licensing Decision Review). (Note: Under the Act, University negotiations with an inventor who is also the sole proprietor or who solely, or jointly, with his or her spouse, exercises sole direction and control of a candidate licensee may not trigger the need for Licensing Decision Review).

2. The disclosure requirements of the Act require the inventor to specifically disclose any disqualifying personal financial interest in the licensing decision when he or she is involved in a proposed University licensing decision.

How does an inventor disqualify him or herself?

If an inventor has a disqualifying personal financial interest in a University licensing decision, as early as at the time of invention disclosure--the inventor may disqualify him or herself by formally asserting in writing on Form TT-100 (available at www.ucop.edu/ott/tt-100) that he or she has not and will not in the future make, participate in making, or attempt to influence a University licensing decision concerning the invention, including the selection of a licensee(s), and other decisions made in the course of licensing the invention. Alternatively, simple (and absolute) nonparticipation in all licensing decisions, even without formal written self-disqualification, would constitute an acceptable disqualification under the Act. Inventors who do not wish to be involved in the licensing decision-making process in any way do not have to complete any form, as long as they make their wishes clear to the Licensing Professional.

How does an inventor become involved?

When an inventor is invited to be involved in a University licensing decision by the Licensing Professional, or intends to negotiate "across the table" from the University, inventor disclosure of any disqualifying personal financial interest must be made on Form TT-100, promptly upon request by the LP. In most cases, this would be upon identification by the LP of a candidate licensee(s) and prior to the commencement of University negotiations with the company. If Form TT-100 indicates that an inventor has a disqualifying personal financial interest, and if the inventor has been or will be involved in the LP's licensing decisions, the LP must initiate a Licensing Decision Review. If no Form TT-100 is completed by the inventor (and thus there is no definitive assertion, positive or negative, of the inventor's personal financial interest), and if the inventor has been or will be involved in the LP's licensing decisions, the LP, in his or her judgement, may determine that a Licensing Decision Review is appropriate. If inventors have any questions about how the disqualification/disclosure process should be carried out, the LP can provide assistance.

How does the licensing decision undergo review?

Licensing Decision Review means there is a review by a non-interested person or persons before the proposed licensing decision goes to the final decision-maker for approval. The review must be based on an independent review and assessment of the facts of the case and must be conducted by qualified staff with appropriate expertise, knowledge and professional judgment, who must independently check the Licensing Professional's original data, analysis, proposed selection of licensees, and other licensing decisions. This is necessary under the Act since the LP may have been influenced by the inventor with the disqualifying personal financial interest.

Who conducts the Licensing Decision Review?

Each campus and Laboratory and the Office of Technology Transfer was directed in a June 18, 2001 letter to Chancellors and Laboratory Directors from Provost King and Senior Vice President Mullinix to establish a plan for Licensing Decision Review. At OTT the nature of the licensing decision review will depend on the level of the inventor's personal financial interest in the potential licensee. Most Licensing Decision Reviews will be conducted by another licensing official within the Office of Technology Transfer who has not been involved in the original proposed decision. More complex cases involving more significant inventor personal

financial interests will be reviewed by an appropriate independent reviewer or by a committee appointed by the Executive Director or the Senior Vice President.

More detailed information and guidance on managing potential conflicts of interest in University licensing decisions are available at <http://patron.ucop.edu/ottmemos/docs/ott01-02.html>

APPENDIX D

**CONFLICT OF INTEREST (COI) CONSIDERATIONS
WHEN EQUITY IS ACCEPTED DIRECTLY BY AN INVENTOR**

The University of California has a number of conflict of interest policies, two of which are required by external statute or regulation and which may be triggered when equity is accepted directly by a University inventor as part of a technology licensing transaction. In considering whether to request direct receipt of an equity interest in a commercial licensee, you should consider the consequences of holding such interest in terms of requirements for disclosure of the financial interest as it relates to future research projects. Issues related to each of these University policies are summarized below.

State COI Statute

Under current requirements of the California Fair Political Practices Act, a Principal Investigator must disclose whether or not s(he) has a financial interest in any private sponsor of research. A financial interest includes any equity or ownership interest in the sponsor that exceeds \$2,000. When a Principal Investigator does have a financial interest in a research sponsor, the Principal Investigator's Statement of Economic Interests (730-U Form) must be reviewed by a campus or DOE Laboratory Independent Substantive Review Committee (ISRC) prior to acceptance of any contract, grant, or gift from the private sponsor. As such, if an inventor directly accepts an equity interest in a licensee and the licensee is required to support future work of the inventor as a condition of the license, then the ISRC must review and recommend whether the funding can be accepted and, if so, whether any modifications or conditions are needed, before the license can be issued. Further, in the event that the licensee wishes to support further research activities by the inventor, even though such support is not a requirement of the license, the inventor must file a 730-U Form for review and action by the ISRC prior to acceptance of such future research support. However, if the equity interest of the inventor in a licensee is not accepted directly by the inventor, but held by the Treasurer for future conversion to cash and distribution to the inventor in the form of cash, then the equity interest would not constitute a positive disclosure on the 730-U Form and no ISRC consideration would be required.

Federal COI Regulations

As a separate matter, any project supported by the National Science Foundation or the Public Health Service requires that all Investigators responsible for the design, conduct, or reporting of the project disclose any financial interests in entities that would reasonably appear to be affected by the work performed under the NSF or PHS project. In the event that the equity in a licensee directly held by the inventor exceeds \$10,000, disclosure and review by a campus or DOE Laboratory ISRC would be required in all cases where the inventor proposed projects for NSF or PHS support in research areas related to the licensed invention. As with the State statute discussed above, equity interests held by the Treasurer instead of the inventor do not constitute discloseable financial interests under the federal regulations. Royalty payment made in the form of cash by The Regents to the inventor also are not discloseable financial interests related to NSF or PHS-sponsored projects.

Questions about the disclosure requirements under either the State or Federal regulations can be answered by staff in sponsored projects offices. Inventors may want to consider the consequences of directly accepting equity versus allowing the Treasurer to hold the equity in cases where future sponsored projects, either funded by the licensee or by NSF or PHS requiring disclosure of financial interests are anticipated. Directly holding equity interests in a licensee does not necessarily preclude future projects from being supported, but does entail disclosure and review of the financial interest by an ISRC and, possibly, implementation of special conditions or restrictions to manage a real or perceived conflict of interest.

APPENDIX E

EQUITY APPROVAL REQUEST CHECKLIST

Please provide the following information to UCOP/OTT along with your request for approval to accept equity. Any deviations from the guidance provided in Business and Finance Bulletin G-44 (Bulletin) should be noted and justified as an exception for consideration by the Senior Vice President - Business and Finance. Written approval of the director of the Authorized Licensing Office (ALO) must be provided.

Please note that in carrying out specific licensing-related transactions, the ALOs are called upon to make complex licensing decisions by applying their professional experience in consideration of a multiplicity of facts and circumstances surrounding such transactions. The ALO license file should contain appropriate documentation supporting the checklist information provided in support of each equity approval request along with the licensing professional's consideration of the University Licensing Guidelines issued in December 2000 (<http://patron.ucop.edu/ottmemos/docs/ott00-05.html>).

Please submit the completed checklist with appropriate documentation to:

Office of Technology Transfer
University of California
Office of the President
1111 Franklin St., 5th Floor
Oakland, CA 94607-6090

ATTN: Equity Approval Manager
Campus Liaison Group

Basic UC Identification Information

Campus: _____ ALO Contact: _____

ALO: _____ Phone Number: _____

UC Case No(s).	Short Title	UC Inventor(s)	Non-UC Inventor(s) (if applicable)

Company Information

Licensee: _____

Address: _____

City: _____ State: _____ Zip: _____

Status of Company: Publicly Traded Privately Held Small Business
(check all that apply) Start-Up Pre-Start-Up Inventor Start-Up
 Other

If "Other," please describe:

Agreement Terms/Documents

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

<input type="checkbox"/> Licensing-Related Transaction Agreement (Check type of agreement submitted) <ul style="list-style-type: none"><input type="checkbox"/> License agreement<input type="checkbox"/> Amendment to license agreement license agreement number: _____ amendment number: _____<input type="checkbox"/> Option agreement<input type="checkbox"/> Inter-institutional agreement<input type="checkbox"/> Patent marketing agreement<input type="checkbox"/> Other (please describe): <p style="margin-left: 20px;"><u>Status of Agreement(s) Checked Above:</u></p> <ul style="list-style-type: none"><input type="checkbox"/> Draft<input type="checkbox"/> Executed; Effective date: _____
<input type="checkbox"/> Shareholder's Agreement, Stock Transfer Agreement, or other comparable documents
<input type="checkbox"/> If appropriate, the completed Inventor Statement Concerning Involvement in Licensing Decisions (UC Form TT-100) [see Section III.D of this Bulletin for further guidance] <i>Note: Only required for those University inventors employed by the University</i>
<input type="checkbox"/> Other legal agreements/documents pertaining to the proposed licensing-related transaction (e.g. 3 rd party licensing agreements, promissory notes, Licensing Decision Review committee decisions, campus/Lab Independent Substantive Review Committee recommendations, alternate inventor share distribution agreements, etc.) Please list:

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 licensing-related 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, pursuant to Section III.G.3 of this Bulletin.

Please list:

Request for Business Review

Please note that the equity approval review process will not include an equity valuation or review of the business terms of the licensing-related transaction. OTT does, however, retain experienced staff capable of performing an equity valuation and licensee capital structure assessment of the proposed equity arrangement should the ALO wish to take advantage of these services. OTT can also provide an evaluation and recommendations about the overall business terms of the proposed arrangement should the ALO wish to take advantage of OTT licensing staff expertise in this area.

If you would like to have OTT perform an equity valuation/licensee capital structure assessment and/or a business review of the proposed licensing-related transaction, please check the appropriate boxes below:

- Please provide an equity valuation and licensee capital structure assessment of the proposed licensing-related transaction.
- Please provide review and comment of the overall business terms of the proposed licensing-related transaction.

The quality of any review and recommendations provided by OTT is predicated on accessibility to certain information not readily available in the licensing-related transaction agreement. The submittal of the following documents is useful if either of the review request options listed above is selected. Please indicate those documents included with this request by checking the appropriate boxes below:

- Licensee's business plan
- Investor prospectus
- Licensee's articles of incorporation
- Other, please list:

Policy Issues

a. Accepting Equity

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

Up-Front Cash

Amount: \$

Stock

Shares/Type:

Option

Shares/Type:

Warrant

Shares/Type:

Other (please describe):

- ii. If consideration will be delivered in the form of options or warrants, please identify the University funding source that will be used to exercise such options or warrants, if required, and the arrangements that have been made to secure such funding:

- iii. Are there any current and anticipated unreimbursed costs of The Regents associated with the UC cases being licensed?

No

Yes

If "Yes" discuss how that amount relates to the amount of cash that is anticipated to be received from the licensee:

b. Conflict of Interest Considerations

- i. Has the ALO made the inventor aware of the University of California Political Reform Act Disqualification Requirements?

Yes

No

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

ii. Please provide documentation indicating the ALO's determination of the level of inventor involvement in the proposed licensing-related transaction decision (refer to OTT Operating Guidance Memo No. 01-02, Supplement 1, Exhibit C, "Required Elements for Campus/Laboratory Plans for Licensing Decision Reviews"). Where OTT is the ALO, this requires the submission of a completed Licensing Professional Statement of Influence.

iii. Did any inventor participate in or attempt to influence the University licensing-related transaction decision concerning the invention(s) identified above?

No

Yes

If "Yes" please provide a completed Inventor Statement Concerning Involvement in Licensing Decisions (UC Form TT-100) for each such inventor.

iv. Does the licensing-related transaction require a Licensing Decision Review (LDR) by a campus/Laboratory under University policy for Managing Potential Conflicts of Interest in Licensing under the California Political Reform Act? (refer to <http://patron.ucop.edu/ottmemos/ottmemos.html> for copies of OTT Operating Guidance Memo 01-02 and any supplements issued thereafter).

No

Yes

If "Yes" please provide the recommendations resulting from the LDR and how they were addressed by the ALO:

v. Does the licensing-related transaction involve future sponsored research requiring action by a campus/Laboratory independent substantive review committee (ISRC)?

No

Yes

If "Yes" please discuss the recommendations made by the ISRC and how they were addressed by the campus/Laboratory:

c. Board/Voting Representation

Does the University or inventor retain any board representation or voting rights?

- No
 Yes

If "Yes" please provide details about such board representation or voting rights:

d. Other University Relationships with Proposed Licensee

Does the University already hold equity in the proposed licensee?

(refer to <https://patron.ucop.edu/equity/equity.html>)

- No
 Yes

If "Yes" please

i) indicate the following:

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

- The number of shares to be provided by licensee under the proposed licensing-related 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 licensee to be held by the University (includes currently held shares and shares to be accepted under the proposed licensing-related transaction): _____%; and

ii) discuss whether this was a factor in selecting the proposed licensee. Also, discuss and explain any rights to future University technologies that would be granted to the proposed licensee through the equity arrangement:

e. Licensing Terms

Are the agreement terms, other than those relating to equity, consistent with standard terms in non-equity agreements for University transactions for comparable technologies and fields of use?

- Yes
 No

If "No" please identify and justify any non-standard terms:

f. Product Testing

Is it anticipated that the proposed licensee will consider the University campus/Laboratory as a location to conduct subsequent clinical trials or other comparable licensed-product testing related to the inventions listed above?

- No
 Yes

If "Yes" discuss the required approval of a Chancellor/DOE Laboratory Director-appointed committee charged to consider any organizational conflicts of interest, pursuant to Section III.H of this Bulletin:

g. Percentage of Ownership

i. Total number of licensee's outstanding shares of capital stock: _____

ii. The percentage of ownership in licensee to be held by the University: _____%

iii. For mature companies, will the University's holdings be greater than 10%?

- No
 Not applicable
 Yes

If "Yes" please indicate that this is a request for a policy exception and provide a justification:

iv. For start-up companies, will the University's holdings be greater than 10%?

- No
 Not applicable
 Yes

If "Yes" please discuss the timing and extent of anticipated dilution of the University's interest to below the 10% cap established by the University Equity Policy:

h. Issuance of Equity

- i. For each inventor, assert below that his or her preference in receiving the equity interest directly from the proposed licensee or in having the Treasurer hold such interest has been explored and that he or she understands the implications of each distribution option. Also indicate the ALO determination as to whom the inventor's equity interest shall be issued by the proposed licensee:

Inventor's Name	Inventor Preference Considered	ALO Determination
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Inventor Direct <input type="checkbox"/> UC
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Inventor Direct <input type="checkbox"/> UC
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Inventor Direct <input type="checkbox"/> UC
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Inventor Direct <input type="checkbox"/> UC
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Inventor Direct <input type="checkbox"/> UC
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Inventor Direct <input type="checkbox"/> UC

Additional entries:

- ii. Indicate the location of specific language in the licensing-related transaction agreement that supports the issuance of stock to the party determined appropriate by the ALO:

Additional information

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

ALO Election of a Longer Term Position in Licensee

The equity disposition management model will allow the campus/Laboratory Authorized Licensing Office (ALO) to make a one-time, irrevocable election to take a longer-term position on the final 25% of the University's equity holdings (including any inventors' shares) in a particular licensee, 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 Treasurer's Office.

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

(Default) The ALO 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 ALO 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 Treasurer's Office.

Equity Management Model

(Revised 2/10/03)

Summary

Licensing securities accepted by an Authorized Licensing Office (ALO) are submitted to the Treasurer's Office for management in accordance with the provisions of the University's Policy on Accepting Equity when Licensing University Technology. Such securities usually carry some restriction or a "lock up" period restricting when the Treasurer's Office is free to sell the shares. The Treasurer's Office 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 Treasurer's Office, at its discretion, may solicit feedback from the Office of the General Counsel and the ALO regarding such actions.

Once the securities are DTC-qualified, the Treasurer's Office will use the following "rule-based" equity disposition management model in liquidating stocks resulting from approved University licensing-related transactions:

- 1) 50% of the security (which may include any inventor shares being held by the University) 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.

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 ALO wish to capture a portion of the longer-term potential value of equity received under a University technology licensing-related transaction, the Treasurer's equity disposition management model will allow the ALO 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 (including any inventors' shares) in a particular licensee, 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 Treasurer's Office (including any inventor shares being held by the Treasurer's Office). This one-time election can be exercised by the ALO by indicating its preference on the University Acceptance of Equity Form (Appendix F) when the equity is initially transferred to the Treasurer's Office. Each ALO should advise University inventors of the "rule-based" model when seeking their preference as to holding their shares of equity directly or having the University hold and manage their shares along with the University's shares of equity.

Responsibilities

Authorized Licensing Office

- Negotiate and execute license agreement
- Secure local and UCOP approvals to accept equity
- Transmit stock certificates to the Treasurer's Office

UCOP/Office of Technology Transfer (OTT)

- Provide policy guidance to the ALOs
- Provide equity approval consideration
- Coordinate administrative processes between OTT and Treasurer's Office

Treasurer's Office

- 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 ALO at Treasurer's discretion
- For DTC-qualified stock in equity portfolio:
 - Implement the "rule-based" equity disposition management model