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July 29, 2014

AIMÉE DORR
PROVOST AND EXECUTIVE VICE PRESIDENT
UNIVERSITY OF CALIFORNIA

Re: Rescinded Guidelines on University-Industry Relations and new draft Guidelines for the University's "Principles Regarding Rights to Future Research Results in University Agreements with External Parties"

Dear Aimée:

As you know, the Academic Senate is gravely concerned that the University's 1989 Guidelines on University-Industry Relations have been rescinded without adequate consultation with the Senate. As you also know, we have been assured that "replacement" Guidelines are being prepared and will likely address our substantive concerns. Moreover, parts of the 1989 Guidelines have previously been superseded by the issuance of later policies, and the Guidelines have not been updated to reference later-issued policies. Finally, as you also know, members of the Academic Council have been invited to review the December 2013 draft of the proposed Guidelines covering rights to future research results.

I write now to let you know about the kind of concerns that emerged in a preliminary discussion among Council members pending more thorough consultation with Senate constituencies. Although the proposed replacement Guidelines address some of the policy gaps resulting from rescission of the 1989 Guidelines, they are considerably narrower in scope and leave important matters unaddressed. We also note that the 1989 Guidelines were expressly denoted as "policy," while the 2013 draft Guidelines are presented as "guidance," by definition less binding than the Guidelines they replace. I anticipate that Council will not object to issuance of the proposed new Guidelines, but I need to let you know that they fall considerably short of addressing matters that, in Council's view, require close oversight and clear policy guidance. By outlining key issues, I hope that this letter will open a conversation on how to ensure that appropriate policy is developed before an unregulated "wild west" environment takes form. I urge that those parts of the 1989 Guidelines that have not been expressly superseded by later policies be reinstated pending robust consultation leading to agreement on what will replace them.

Scope: The 1999 Principles Regarding Rights to Future Research Results and the draft 2013 Guidelines regarding those principles do not address the following substantive components of the 1989 Guidelines:

- Outside professional activities, including the balance between faculty members' and other researchers' time dedicated to work included within the scope of their employment by the University and their time devoted to the development of their own or their sponsors' businesses. Although outside professional activities for faculty are addressed in the Academic Personnel Manual (APM), there is potential for extramurally sponsored research to generate ambiguities for which policy formulated in the context of sponsorship agreements may be more precise.
- Responsibility to Students. Although Principle 2 of the 1999 Principles as explicated in the 2013 Guidelines addresses faculty responsibility to students, the 2013 Guidelines differentiate student work that occurs within the context of coursework and work that occurs within the context of employment. The new Guidelines require protection for the student's future research in relation to the former but only informed consent to the conditions imposed by the latter. In this area, too, the Faculty Code of Conduct as codified in the APM provides principles, but the potential ambiguities inherent in the extramurally sponsored research context require particular vigilance.
- Use of University facilities is addressed in the 1989 Guidelines but not in the 1999 Principles or the 2013 Guidelines. The 1989 Guidelines prohibit University facilities from being used for routine product testing without express approval and require collection of fees when such approval is granted. The 2013 Guidelines do not explicitly address this.
- Cost recovery and distinguishing between grants and gifts. The 1989 Guidelines require full cost recovery from research sponsors and delineate the different obligations incurred when receiving grants and receiving gifts. The 2013 Guidelines require documentation of how an "equitable exchange of value" was determined, a weaker directive.
- Investment. The 1989 Guidelines prohibit the University from investing in companies created to exploit University research. As you know, the President wishes to reverse this policy and has announced that she has done so. A 2008 policy on Accepting Equity When Licensing University Technology permits acceptance of equity as partial substitution for fees when the University licenses technology to partners who demonstrate their capacity and willingness to bring the technology to commercial viability and comply with any and all applicable regulations, but this is a much more limited engagement than direct investment. The 2008 policy remains in place.

Escalating risk. Much of Council's concern arises from the unacknowledged escalation of risk inherent in the proposal that the University increase its material support for private business activities as rescission of the 1989 Guidelines permits. This concern is not addressed by the 2008 policy on accepting equity, the 2013 Guidelines, or the 1999 Principles they are intended to implement. I believe it is important to distinguish:

- Opportunity cost. When the University accepts equity in lieu of some or all of the usual licensing fees for a technology as it is now permitted to do, it accepts a near-term opportunity cost in exchange for the possibility of a longer-term reward. We assume that technology transfer officers write into equity-accepting licenses some provision for rescinding the license if the licensee does not perform as anticipated, and a new licensee can be sought. If this assumption is accurate, the risk of net loss is relatively constrained.
- Operating cost. In recent public statements and her June letter to the community, the President has announced that the University will also accept equity in lieu of rent or other user fees for use of University facilities and services. This practice requires the University to carry the operating costs of the affected facilities in exchange for the promise that if the company becomes profitable, the University's equity share will in the future compensate in whole, in part, or with surplus for the expenses borne by the University. If the company does not become profitable and the University's equity share does not accrue value, the University will not recover its expenses. However, these

expenses may be mitigated by the likelihood that the non-performing equity reflects only partial use of a larger facility that the University would operate in any event. Separate from the potential cost, this practice will need to be carefully regulated to avoid actual or perceived conflicts of interest in determinations of which entities may compensate the University for the use of its facilities and services with equity instead of cash.

- Investment cost. When the University invests in a company, it spends cash from existing accounts that could have been used for other purposes. Although the investment is made with hope of securing a profitable return, particularly for new businesses and new products, the risk that the business will not become profitable is real, and the University may lose all or part of its investment stake.

By outlining these areas of substantive policy that are not clearly addressed following the rescission of the 1989 Guidelines along with pointing out two new tiers of increased risk (loss of operating expenses and loss of investment) that were not in play under the 1989 Guidelines or the 2008 policy on accepting equity, I hope to initiate a more complete conversation about how best to protect the interests of the University, its faculty, and its students in a changing environment.

I look forward to engaging these issues with you in a spirit of mutual collaboration while sustaining existing policies during the process of developing new ones.

Sincerely,

Bill Jacob

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Cc: Academic Council
Executive Director Streitz
Executive Director Winnacker