

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

/__/2015

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I. INTRODUCTION

Across the nation, universities are being asked by their external stakeholders to be an active participant in the entrepreneurial and innovation ecosystem. One element of this participation is supporting new businesses created by students, staff and faculty and/or based on university-developed inventions. Campuses are creating incubators and accelerators where new companies can begin to develop business or product development plans.

A common element of non-university incubators or accelerators is the ability to accept equity in the companies as an element of the financial consideration for access to space and business support services. On June 20, 2014, President Napolitano authorized the University to initiate a pilot program whereby the University may accept equity in a company as full or partial consideration for access to University facilities and/or services (“AFS”) in the context of University Incubators or Accelerators. This document provides guidelines to campuses seeking to develop new programs or modify existing programs to take advantage of this pilot. Through this pilot, the University seeks to understand if and how any permanent program could or should be operated and what, if any policy changes will be needed to formally enact it. The guidelines seek to provide a systematic and consistent framework for campuses to implement the pilot so that it can both be effective in its implementation and provide meaningful feedback for determining the basis upon which to formally enact certain or all aspects of the pilot as conceived in one or more modalities as implemented by campuses.

This pilot program has been created so that the university can understand how to best manage this issue, based on the experiences of campus-based programs that participate. These guidelines are designed to ensure that any program does not create unmanageable risk, either directly for the program, or for the University. This pilot program will run for three years, at which time the Office of the President will evaluate the outcomes and determine if and/or how to codify this pilot program into University Policy.

II. REFERENCES

A. Policies, Principles and Guidelines

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

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

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

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

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

B. State of California Government Code

California Political Reform Act, Government Code Sections 81000-91015.

California Fair Political Practices Commission, Political Reform Act of 1974 - 2015

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III. DEFINITIONS

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

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

IV. EQUITY GUIDELINES

A. Scope

The AFS pilot program shall be limited to campus created and authorized Incubator and Accelerators. These guidelines apply to transactions related to early stage businesses/companies with issued Equity in the form of Stock or Units or those that intend to issue Equity in the form of Stock or Units that are: a) founded by the University's faculty, staff, and/or students or having a defined relationship to the University based on the affiliation of its founders, and b) advancing academic innovations wherein campus management grants such companies (a "Company") access to their local campus Incubator or Accelerator facilities and services. These guidelines also apply to the Department of Energy's (DOE) Lawrence Berkeley National Laboratory to the extent that there is no conflict with the obligations of the University under its management and operating contracts with the DOE. These guidelines are intended to support the implementation of the AFS pilot program. Note that each participating campus and the Laboratory is expected to designate a DCM who has the relevant experience with and knowledge of startup equity transactions, complex financial instruments and University policy so as to be able to develop its own procedures by ways of standard templates consistent with these guidelines and to allow for the acceptance of equity in return for access to University resources, in compliance with University policies and applicable law. Appendix F highlights some material items that should be considered by the DCM when preparing internal procedures and forms to implement the pilot.

B. Accepting Equity

The University may accept Equity in Companies to support recently organized or incorporated businesses that arise from or have relationships to the University based in part on the affiliation of their founders. The acceptance of Equity for AFS is subject to the provisions of these guidelines:

1. A portion of the financial consideration may be provided in the form of cash, taking into account the financial condition and structure of the Company and the specific elements of the campus programs under which the Equity is accepted.
2. The University's preference is to take Equity in the form of Stock, Units or similar securities that are fully paid for rather than Warrants or options which are a right to later purchase securities of a company at a predetermined price. Acceptance of options or Warrants may be approved on a case-specific basis by exception. At a minimum, approval for such exception will require that 1) private funding (e.g., not state funding) is available and reserved to provide cash needed to exercise such options or Warrants and 2) the options or Warrants comprise a minority portion of total financial consideration. In addition, prior arrangements would need to be made by the campus to manage the rights and interests of all involved parties in such options or Warrants.
3. The DCM should be aware that there are strict rules under the tax laws that prohibit certain "private use" of tax-exempt bond-financed space or equipment by private individuals or entities. In order to avoid such private use issues in connection with the AFS pilot program, the Accelerator or Incubator should not be financed, in whole or in part, with the proceeds of tax-exempt debt. In specific circumstances the University may permit limited private use of tax-exempt bond-financed space or equipment by a private party participating in the program provided the DCM can demonstrate in advance to the satisfaction of the University that such use is in compliance with rules allowing for a limited percentage of space to be set aside for private-use and that such private-use will not jeopardize the tax-exempt status of any bonds. The DCM should contact the individual at the campus, Laboratory or University who is responsible for maintaining its tax-exempt bond financing records to determine whether such space or equipment falls within this prohibition.

C. Conflict-of-Interest and "Private-Benefit" Considerations

1. University acceptance of Equity for AFS shall be based upon the educational, research, and public service missions of the University over financial or individual personal gain.
2. The support of new businesses affiliated with the University is in the public interest and furthers the University's training and educational objectives. Further, University

- engagement with new businesses is appropriate and represents a useful contribution because the University's engagement with industry is consistent with the University's mission. Any involvement of University employees, however, must be in accordance with the California Political Reform Act of 1974 ("Act"), federal law and regulations, and University policy.
3. Because University employees may have the opportunity to influence University decisions in ways that could lead to personal gain or give advantage to companies in which they have a financial interest, the employees must be aware of and be in compliance with the relevant state and federal laws and regulations and University policies.. Generally, University employees are prohibited from "making, participating in making or influencing a University decision," if they have a disqualifying personal financial interest in the decision, unless certain specific actions are taken. Disclosure of financial interests, institutional review and management of conflicts of interest may also be required.
 4. In order to comply with the Act, the Designated Campus Manager ("DCM") must ensure that any University employee, unless specifically permitted under University Conflict of Interest Policy and the California Political Reform Act, with a current or likely future interest in the Company is excused from, does not to participate in, and does not influence or attempt to influence any decision involving Equity acceptance for AFS. A sample communication to the employee is provided in Appendix A.
 5. The University's status as a Section 501(c)(3) organization could be jeopardized if it provides more than "incidental" benefits to any private party. To help avoid such "private benefit" issues as well as conflicts of interest in the University's decision making, accusations of favoritism, misuse of University resources and other related legal issues, campuses should establish and have documented a uniform methodology for determining the amount of equity in lieu of cash consideration for University resources in a manner that ensures the University is receiving fair or equivalent value for the resources provided. The amount of equity (i.e., number of shares) in lieu of cash for University resource(s) provided to a company would be determined by dividing (i) the fair market cash value for access to University resource(s) provided by (ii) the price per Unit of the Company (as reasonably determined in good faith by the DCM in accordance with the provisions of these guidelines) at the time the equity transaction was sought. If a uniform methodology for valuing University resource(s) is not established or is not used in a particular case, the DCM must have documents showing how the fair value of any University resource(s) provided was calculated and provide an affirmative written statement of what cash consideration would otherwise be due and that the Equity accepted in lieu of cash is deemed by the DCM's independent and

good faith assessment to be fair or equivalent in value to the resource(s) provided. For assistance with the foregoing, the DCM is strongly encouraged to discuss in advance their methodology with the EAM to ensure that it meets all policy and legal requirements. See Appendix F for additional information that may be useful to a DCM when addressing the fair market valuation issues described above.

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

E. Future Relationships with Company

The University shall manage all subsequent relationships with a Company in which the University has accepted Equity at arms-length and in a fair manner pursuant to relevant University policies and guidelines.

The University has an affirmative obligation to prevent “pipelining” of inventions (intellectual property) to a Company in which the University holds an Equity interest. For example, University inventions should be made available for licensing to appropriate companies and should not automatically be made exclusively available to Companies in which the University has taken Equity under this pilot. At the same time, holding Equity in a Company should not preclude the Company from licensing any invention when that Company is best able to develop the successor inventions

F. Company-Sponsored Product Testing

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

whether a management plan is required, and the relevant IRB has reviewed and approved the protocol.

G. Determining How Much Equity to Accept

The University must ensure that it is receiving fair or equivalent value as consideration for University resources accessed by a company in accordance with the provisions set forth in Section V.C.5 and Appendix F of these guidelines. At the same time, the University shall not accept a level of Equity that places it in a controlling position of a company, since such a situation may expose the University to unacceptable management, conflict of interest, and public relations and other problems. Generally, the University's Equity holdings in a publicly traded company shall be less than ten percent (10%).

For a privately-held company (startup), the University's initial equity ownership can sometimes be greater than 10% (especially where such entity is only recently formed) as that the expectation is that that ownership stake will be diluted over time by subsequent rounds of financing, etc. Accordingly, the DCM may request approval to accept more than 10% equity in a privately-held company (startup,) but less than twenty percent (20%) (in the aggregate, cumulative from all transactions including but not limited to G-44, this AFS pilot, and as calculated on a fully diluted and as converted basis) provided there is a clear expectation of subsequent dilution to less than a ten percent (10%) share ownership at the time the company goes public.

A DCM considering taking Equity in a Company must review the total percentage preexisting ownership, if any, the University may already hold in the company through other transaction arrangements, including any technology licensing-related arrangements (G-44). IAS will maintain on a restricted-access basis, a listing of Companies in which the University holds such Equity interests, the name of campus from which the service or access-related transaction arose, and other relevant information. The DCM should consult the EAM who will provide the most current information regarding any other University Equity holding in that Company.

V. APPROVAL OF EQUITY ACCEPTANCE.

A Required Approvals

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

the transaction.

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

B. Submission to IAS

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

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

ATTN: Equity Approval Manager

C. Contents of Submission

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

D. Requests for Exceptions

Any requests for deviations from these guidelines should be submitted in writing by the DCM to the EAM. Upon review, written authority to proceed (if accepted) will be provided by the Senior Vice President - Finance or the appropriate designee.

E. Timing of Submission

The DCM should allow sufficient time after IAS receipt of all the information provided under Section C and D, above, for IAS, legal and policy reviews in support of the Senior Vice President's or the appropriate designee's consideration of an Equity approval request. Normally, if forms submitted by the DCM are complete and approved by OGC, IAS will have approved the request to accept Equity within 10 business days. Requests for approval should be submitted to IAS when the terms of an agreement are negotiated for such Equity acceptance, even if pursuant to the agreement, the actual delivery of Equity shares may come at some later point in time. However, preliminary informal discussions with the EAM concerning AFS related transaction terms and Equity arrangements are strongly encouraged to expedite subsequent formal review and approval.

F. Where to Send Equity and Corporate Actions

1. University Shares

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

Therefore, Equity interests in Companies, including Stock certificates, Unit certification, options, and Warrants, due to The Regents pursuant to the terms of an AFS transaction agreement shall be issued by the Company to The Regents' nominee

name of “Shellwater & Co.” and delivered to the DCM. The DCM shall forward such Equity, together with the completed University Acceptance of Equity Form (Appendix C) to:

Office of the Chief Investment Officer of
The Regents of the University of California
1111 Broadway St., 14th floor
Oakland, CA 94623-1000

ATTN: Director, Treasury Operations

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

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

ATTN: Equity Approval Manager

3. Corporate Actions

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

VI. CHIEF INVESTMENT OFFICER’S MANAGEMENT OF EQUITY

A. General

1. All decisions and administrative actions concerning the management of Equity issued to the University by a Company and all subsequent corporate or other entity actions received by the DCM pertaining to the University’s shareholder, membership or other interest in a Company shall be made by and at the sole discretion of the CIO. This

includes decisions on when Equity will be converted to cash and when options, Warrants and similar convertible securities will be exercised. No consideration shall be given to Company information uniquely available to the University through its AFS pilot. The CIO intends to carry out such functions using the Equity Management Model (Appendix D) or other processes as the CIO may approve, based upon sound business practice and publicly available information. Such functions shall be consistent with the guidelines in this Bulletin.

2. At least monthly, the CIO shall notify the EAM and the EAM in turn shall notify the DCM of all significant actions taken by the CIO, including those involving purchase, distribution, or transfer of Equity, and those involving Company mergers, acquisitions, and similar change of control transactions or name changes.
3. Any decision made by the CIO to purchase additional shares of Equity in a Company in which the University has accepted Equity as part of an AFS transaction should be evaluated in terms of the financial return to the University. Such subsequent investments should be considered and maintained separately from the original AFS-related arrangement and the resulting proceeds from such subsequent investments shall not be considered for distribution under the University Equity Policy.

B. Valuation

1. The CIO shall record the value of Equity issued to the University by a Company
2. Upon transmittal of such Equity to the CIO, the DCM shall provide the CIO with its good faith and reasonable estimate of the valuation of such Equity using Appendix C, University Acceptance of Equity Form unless stock has been obtained at par value in which case par value will be communicated to the CIO by the DCM.

C. Distribution of Equity Interests to the Campus or Laboratory

1. The University's Equity interests received directly pursuant to the AFS program will be converted to cash and distributed to the Campus or Laboratory in accordance with Section 2, below.
2. Upon conversion to cash of the University's Equity interests received directly pursuant to the AFS program, the CIO shall instruct Corporate Accounting to transfer such cash proceeds to the appropriate Campus or Laboratory account and provide the Campus or Laboratory with appropriate identifying information. For clarification purposes, any additional Equity subsequently purchased by the University or University affiliates or assignees of participation rights related to such Equity (with such purchase occurring

pursuant to the exercise of any assigned participation or other rights, or otherwise) that is liquidated by the CIO will remain the property of such subsequent purchaser and will not be distributed to the campus or Laboratory that acquired the initial Equity pursuant to the AFS program. Each Campus or Laboratory obtaining Equity interests in a third party should use reasonable efforts to obtain participation rights for the University or University affiliates or assignees in future rounds of financing undertaken by such third party.

3. The Campus or Laboratory's subsequent use and distribution of its portion of any cash proceeds shall be handled in accordance with the schedules, formulas, and practices established by the Campus or Laboratory, and other applicable policies.

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APPENDIX A

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

What University Employees Need to Know about Conflicts of Interest with respect to the University accepting Equity in companies in which they may have a substantial financial or controlling interest in return for Access by the company to University Facilities and/or Services
(March , 2015)

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

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

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

APPENDIX B

EQUITY APPROVAL REQUEST CHECKLIST

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

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

Please submit the completed checklist with appropriate documentation to:

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

Basic UC Identification Information

Campus: _____

DCM Contact: _____

DCM: _____

Phone Number: _____

Company Information

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Status of Company: Privately Held Inventor Start-Up

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

If "Other," please describe:

Agreement Terms/Documents

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

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

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

Please list:

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

For Common Stock:

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

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

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

Policy Issues

a. Accepting Equity

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

Up-Front Cash (if any)

Amount: \$

Stock

Shares/Type (including class and series):

Other (please describe):

- ii. Please identify the University Department and funding source that will forgo all or partial cash payment by accepting instead the proposed equity considerations and indicate how such University Department intends to cover or recoup the cost of such services, facilities or equipment.

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

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

No

Yes

If Yes, please complete the following;

The bond(s) involved is (are) _____

Percentage used over the lifetime of the bond is _____%

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

c. Conflict of Interest Considerations

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

Yes

No

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

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

No

Yes

- iii. If the above response was "Yes", did the campus-designated conflict of interest committee review the reported financial interest(s) and determine whether a management plan should be implemented?

No

Yes

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

d. Other University Relationships with Company

Does the University already hold equity in the proposed Company?

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

No

Yes

If “Yes” please

i) indicate the following:

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

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

The type of shares to be accepted: Preferred Common

Series: _____

- The total number of shares outstanding by the Company: _____;

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

ii) discuss whether this was a factor in DCM’s decision to consider accepting equity in the Company under the present transaction agreement.

e. Transaction Terms

Are the transaction agreement terms, other than those relating to equity, consistent with standard

terms in non-equity agreements for University like transactions for space/facility access, equipment use and/or services?

Yes

No

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

f. Percentage of Ownership

i. Total number of Company’s outstanding shares of capital stock (include information on each class and series of outstanding Equity securities as well): _____

ii. The percentage of ownership in Company to be held by the University (on the basis of total outstanding Equity securities and on a class and series basis where applicable): _____%

iii. For start-up Companies, will the University’s holdings be greater than 19.5%

No

Not applicable

Yes

If “Yes” please discuss the timing and extent of anticipated dilution of the University’s interest to below the 19.5% cap established by the University Equity Policy:

Additional information

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

APPENDIX C

UNIVERSITY ACCEPTANCE OF EQUITY FORM

(Revised 08/01/2014)

To: *Director, Treasury Operations*
Office of the Chief Investment Officer
Address: 1111 Broadway, 14th Floor
Oakland CA, 94607
Phone: (510)987-9668

From:					
Originating Office	<input type="checkbox"/> UCSF	<input type="checkbox"/> UCB	<input type="checkbox"/> UCD	<input type="checkbox"/> UCI	<input type="checkbox"/> UCLA
	<input type="checkbox"/> UCSD	<input type="checkbox"/> UCM	<input type="checkbox"/> UCR	<input type="checkbox"/> UCSB	<input type="checkbox"/> UCSC
	<input type="checkbox"/> LBNL				
Transaction Contact: _____			Phone: _____		

Subject: Acceptance of Equity as full or partial consideration for

Space use Equipment Use Service provided

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

Company Name:	

Legal Address:	

Company Contact: _____	Phone: _____

Total number of shares transmitted: _____

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

Value of \$ _____

Please attach rationale for this valuation

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

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

_____ No

_____ Yes, SEC Rule 144

_____ Yes, Other _____

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

___ Yes ___ No.

If yes, attach explanation.

Attachments:

___ Stock certificate

___ Approval Letter

___ Agreement under which equity is accepted

___ Other equity-related documents

Designated Campus Manager Signature

Date

DCM Election of a Longer Term Position in Company

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

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

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

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

(select one of the following):

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

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

APPENDIX D

Equity Management Model (Revised 8/5/2014)

Summary

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

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

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

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

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

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

Responsibilities

Designated Campus Manager (“DCM”)

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

UCOP/Innovation Alliances and Services (“IAS”)

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

Office of the General Counsel (“OGC”)

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

Office of the Chief Investment Officer (“OCIO”)

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

APPENDIX E

PROCEDURES

Equity Acceptance Review Process

1. Designated Campus Manager (“DCM”) negotiates the terms of access agreements after consultation with and sign-off from any campus officials with requisite delegated authority.
2. DCM requests from IAS approval to accept Equity as consideration for access to space, equipment use and/or services. Requests for approval to accept Equity should be forwarded to the Equity Approval Manager (“EAM”). Such requests **must**:
 - a) Be submitted directly by DCM (or, alternatively, by an individual designated in writing by the DCM).
 - b) State that any potential conflict of interest issues have been addressed by the campus.
 - c) State that the deal adheres to the Guidelines on Accepting Equity for Facility Access and/or Services.
 - d) Include a fully completed Equity Approval Request Checklist for Facility Access and/or Services.
 - e) Include all relevant documents (*e.g.*, copy of transaction agreements, Stockholder’s Agreement, Stock Purchase/Issuance Agreements, any existing agreements the company may have with the University, or other relevant legal agreements/documents. All agreements requiring signature from UC managers (legal forms) must be reviewed and approved in writing by the Office of the General Counsel (“OGC”).
3. EAM responds to indicate that request has been received, and reviews documentation to ensure that it is complete.
 - a) If after initial review there is information missing, whether the requested acceptance should cause The Regents to hold more than **19.5%** of the Company’s total capitalization of the company at the time of approval or more than 10% of a company upon its initial public offering (as determined on an as converted and fully-diluted basis), or there is a need for clarification, EAM writes back to DCM indicating so.
 - b) If no information missing and no clarification required, EAM sends all documentation for written approval from Executive Director, IAS.

4. If approved, Executive Director sends a letter to DCM indicating that the request for Equity approval has either been accepted, or that the acceptance is conditional (in which case any changes required are outlined in the letter). Message from Executive Director IAS will further include a copy of the University Acceptance of Equity Form, and a request that the form be used when accepting Equity. Any Equity issued to The Regents must be in the nominee name “Shellwater & Co.”, and the actual Stock certificates issued, as well as any stockholder information received, should be forwarded directly to the Office of the Chief Investment Officer of The Regents (with a copy of the transmittal to Executive Director’s attention). Copy of any amendments to any related agreement(s) should be sent to the attention of the Executive Director, IAS.
5. Normally, if forms submitted by the DCM are complete, accurate and with all legal forms approved, IAS will approve the request to accept Equity within 10 business days.

Notes:

1. Contacts at Innovation Alliances and Services (IAS):
William Tucker, Executive Director, 1111 Franklin St., Suite 5100
william.tucker@ucop.edu; 510-587-6037
John Shih, Equity Approval Manager, 1111 Franklin St., Suite 5110
john.shih@ucop.edu; 510-587-6034
2. Contacts at the Office of the Chief Investment Officer:
Trevor Woods, Investment Accountant: 1111 Broadway St., Suite 1400
trevor.woods@ucop.edu ; 510-987-0859
Robert Yastishak, Director, Treasury Operations: 1111 Broadway St., 14th Floor
robert.yastishak@ucop.edu; 510-987-9668

APPENDIX F

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

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

1. Bond Financed Space and Equipment

There are strict rules under the tax law restricting certain “private use” of tax-exempt bond-financed space or equipment by a private party (e.g., a for-profit corporation or private individual). In order to avoid such private use issues in connection with the AFS pilot program, the strong preference of the University is to not permit a private party to use any of its space or equipment that has been financed, in whole or in part, with the proceeds of tax-exempt debt. In limited circumstances the University may permit limited private use of tax-exempt bond-financed space or equipment provided the DCM can demonstrate in advance to the satisfaction of the University that such use is in compliance with rules allowing for a limited percentage of space to be set aside for private-use and that such private-use will not jeopardize the tax-exempt status of any bonds. A program participant should contact the individual at the campus, Laboratory or University who is responsible for maintaining its tax-exempt bond financing records if it is not sure whether University space or equipment falls within this prohibition.

2. Private Benefit

The University’s status as a Section 501(c)(3) organization could be jeopardized if it provides more than “incidental” benefits to any private party. To address this “private benefit” concern, the Guidelines require a University program participant either to ensure: (1) that it receives at least fair market value for the goods or services it provides to any private party or, (2) where the fair market value for generalized or incidental services provided by a University program participant to a private party cannot be reasonably ascribed, that a formulaic and fair process

applied on a reasonable and consistent basis among all third-party startup companies be used. This may be a difficult undertaking given that the valuation of the equity in a recently organized or incorporated typically would be negligible. With regard to valuation of shares of a startup corporation that is issuing common stock, the fair market value per share of common stock most likely would either be (i) the price any company options are being issued at, since those need to be issued at fair market value under Internal Revenue Code (“IRC”) and many existing companies will either have a board determination or third party IRC Section 409A valuation noting the current fair market value for the common stock which would be valid until the earlier of one year from the date of the valuation or occurrence of a material event such as a third party financing, etc. or (ii) the latest price at which stock was issued to the founders or that any friends and family investor just paid for such stock (which is most likely the par value or some fraction of a penny for a startup corporation that has recently been formed)(such amount being the “Current FMV”). The University understands that determination of valuation is more complicated with regard to companies that are not corporations or in which a University program participant is taking preferred stock where a third party is not setting the pricing for such stock, but expects a University program participant to use good faith efforts to make a reasonable valuation determination.

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

- Charge cash for the space and services provided. A flat amount of equity in the company could also be part of this transaction. It would be prudent to have a slight corresponding reduction in the cash amount charged for the space equal to the Current FMV per share if that can be determined, or at least the par value, to show a payment of at least par value for that Equity.
- Rather than accepting only cash for the space and services, subject to compliance with applicable finance lender laws, take a note or convertible note with a principal amount equivalent to the value of the space and services provided. The note would need to have a reasonable rate of interest which can be determined based on the then current applicable federal rate or AFR (<http://apps.irs.gov/app/picklist/list/federalRates.html>). Similar to above, additional common stock in the company could be taken at the time the note is issued pursuant to a warrant or direct issuance of stock (with a minor adjustment to the note amount to reflect the value of any common stock that is issued outright to ensure that par value at least has been paid in).

- Accept equity in the form of a convertible security (such as the “YC SAFE”, “KISS forms” championed by 500 Startups: <http://500.co/kiss>) with a reasonable rate of interest at the AFR where applicable. Such a convertible security would convert at a later time upon a triggering event such as a change of control or third party financing that values the company. Similar to a convertible debt security, additional common stock in the company could be taken at the time the note is issued pursuant to a warrant or direct issuance of the same (with a minor adjustment to the convertible security amount to reflect the value of any common stock that is issued outright to ensure that par value at least has been paid in).
- With regard to startups where the fair market value for generalized or incidental services cannot be readily determined, a University program participant may consider accepting a flat percentage of equity in such startups based on what is market consideration for other incubators operating in a similar region or space or providing similar services and resources; provided, the University program participant has made a determination that any such flat percentage arrangement is arrived at pursuant to a formulaic and fair process and such process is applied on a reasonable and consistent basis to all similarly-situated startups. This is important to ensure that the University receives reasonable compensation for the space, resources and/or services it provides. A University program participant may wish to consult with OGC in making such determination..
- The following fictitious example is included solely to demonstrate what may constitute a formulaic and fair process that would be applied on a fair and consistent basis to all similarly- situated startups where the value of University services offered cannot be readily determined. Assume that a campus incubator offers all newly-formed startups accepted into its program with the same service and resource package and 250 square feet of campus incubator space. In this example, the campus may choose to take a flat amount of equity in each newly-formed startup (such as 2% of the startup, with such amount to be tied to relevant market research of what other similarly situated incubators typically charge for similar resources and services, and such amount to be updated on a regular basis). For a newly formed startup using 500 square feet of campus space and other standard incubator services, a campus might take twice as much equity calculated on a flat percentage basis (or 4% of the startup as per the example). The square footage and percentage equity amounts in the prior example are fictional and solely for purposes of example only.

3. Unrelated Business Income

It is possible that income distributions associated with the University’s equity interest in certain entities could generate unrelated business taxable income (“UBTI”). Any UBTI that is generated needs to be tracked and reported in accordance with University policies and procedures. Investments in entities taxed as “c” corporations that produce dividends generally should not generate UBTI. Investments in Companies that are formed as LLCs, partnerships or

“s” corporations that distribute income may generate UBTI to the extent any such entity generates operating income from the active conduct of a trade or business (i.e., income is not subject to an exception from UBTI under the tax law, e.g., is not merely a “passive” investment) Whether an investment may generate UBTI requires additional review of the facts and circumstances and may delay the ability of IAS to internally approve an investment. As such, use of the corporate form for newly established start-up entities (especially those intending to seek venture financing or exit pursuant to a change of control, merger or public offering) is encouraged.

4. IAS and OGC Review

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

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

5. Operational Considerations

Each campus should consider issues of a general operational nature that may arise as a result of participating in the program. The following are a few high level concerns that have been expressed and will require a program participant to consult its advisors with assistance with addressing these and other relevant concerns:

- Facilities – Need to (i) confirm leased space is actively being used for its intended purpose; (ii) address the University’s ability to remove a tenant and any resulting impacts an early removal would have on equity delivered in advance of the completion of the rental term; (iii) address concepts such as security deposit, utilities and insurance for matters that occur on the leased premises; and (iv) determine the form of agreement that will be used to address the above (i.e., simple lease, professional services agreement, or some similar form of agreement).
- Equipment – Where applicable, need to (i) ensure that Company service providers using University equipment are properly trained on such equipment; (ii) set clear usage guidelines to ensure that there is not an expectation of unlimited use or use that interferes with existing University obligations; and (iii) establish procedures to monitor equipment use, among others.