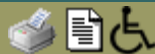


# THE UNIVERSITY OF NORTH CAROLINA

A multi-campus university


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## The UNC Policy Manual: 500.6

500.6

Adopted 01/14/05

### UNIVERSITY EQUITY ACQUISITION POLICY

#### I. Introduction

Constituent Institutions occasionally have the opportunity to acquire equity in companies in relation to inventions. Usually, equity agreements are structured to enhance technology transfer whenever cash reserves for new companies are not available for payment of intellectual property rights as the result of licensing or other transfer of technology.

Acceptance of equity for constituent institution intellectual property rights presents issues considerably different from fee-generating licensing transactions and therefore should be treated differently within the framework of the UNC Patent and Copyright Policies, in regard to distribution of equity and/or earnings on equity to inventors.

This policy has been designed to limit the issues of institutional conflicts of interest and conflicts of interest of inventors, departments, schools and technology transfer offices and officers. Decisions on when to convert equity into earnings should be made at "arms length" from the technology development and licensing offices to limit securities exchange violations.

#### II. Policy

##### A. Conditions for Receipt of Equity

Equity in a company may only be received by a constituent institution in the UNC system as partial or full consideration for a technology license or transfer of technology, as negotiated by the technology transfer office or by the Chief Research Officer, Chief Academic Officer, or University Counsel. Constituent institutions should designate the unit responsible for effecting such negotiations and the unit responsible for receiving and managing such equity. Without the approval by a constituent institution's Chancellor, no other

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unit of the constituent institution, including affiliated foundations, may acquire equity in a company from which the constituent institution has received or is negotiating to receive equity in conjunction with a licensing or transfer of technology transaction, except as provided in Section II(F) of this Policy. Acceptance of equity will be based upon similar principles of constituent institution fee-generating licensing where transactions occur in an atmosphere of openness, objectivity and fairness, placing education, research and public service before institutional or individual gain. Equity transactions will be conducted in accordance with other University policies such as: the Policy on Conflicts of Interest and Commitment, the Policy on Ethics in Research, the Policy on External Professional Activities for Pay, and other related University policies and guidelines.

#### **B. Negotiations, Founder's Shares, Voting Representation**

1. **Negotiations.** Except as expressly approved by the constituent institution's Chief Research Officer, there shall be no negotiation on behalf of a constituent institution independent of the appropriate technology transfer office (or other responsible unit, as designated by constituent institution) by any constituent institution inventor regarding any constituent institution license with or on behalf of a licensee, including a licensee company founded in whole or in part by that inventor. Independent negotiations by an inventor regarding personal consulting contracts with the potential licensee are permissible, provided the inventor complies with the Policy on External Professional Activities for Pay, the Policy on Conflicts of Interest and Commitment, the Patent and Copyright Policies, and other applicable University policies.
2. **Founder's Shares.** Any constituent institution inventor who is a Founder of a company shall not be eligible to be a recipient of equity or the proceeds of equity accepted on behalf of the constituent institution. For the purposes of this Policy, a "Founder" shall be any person who has received, receives or is likely to receive a substantial economic benefit as a result of acting as a founder, originator, or promoter of a company.
3. **Voting Representation.** No constituent institution or its assigns will seek or accept voting representation on the board of directors of a licensee company that provided equity as consideration for a license from the constituent institution, regardless of the level of its equity received as consideration for a license. Constituent institution employees may accept appointments to boards of directors and scientific advisory boards of licensees in their individual capacities and not as constituent institution representatives, but are still subject to all applicable university policies in doing so.

### C. **Constituent institution Employee or Officer Equity Ownership**

Other than a founder or inventor, no officer or employee of a constituent institution will be allowed to hold or acquire equity in a company with which the constituent institution has negotiated or is negotiating a license agreement if that license agreement includes the transfer of equity to the constituent institution as either partial or complete consideration for the license agreement and if the officer or employee is engaged in or has access to or knowledge of the negotiation between the company and the constituent institution.

### D. **Equity Terms and Minority Ownership**

1. **Equity Terms.** The terms of any equity-based technology licensing transaction, with the exception of the form of consideration, shall be consistent with constituent institution licensing transactions for comparable technologies.
2. **Minority Ownership.** Neither constituent universities nor their assigns will accept more than a minority ownership share in a licensee as consideration for a license.

### E. **Timing and Nature of Distribution**

Where there is a proposal for equity in a company to be accepted by the constituent institution or its assign as consideration for a technology licensing transaction, the constituent institution technology transfer office or other designated responsible unit may elect either:

1. **Distribution at Licensing.** Arrange for inventor(s) other than Founder(s) to receive in the aggregate a one time distribution of no less than 15% of the total shares due to the constituent institution or its assign directly from the licensee upon execution of the relevant agreement, including provisions relating to restrictions, if any, on transfer or disposition of inventor(s) equity, in which case the inventor will be responsible for retaining his/her own business advisors, legal counsel and tax counsel and will be responsible for all financial, tax and legal consequences related to the equity he/she receives; or
2. **Distribution After Licensing.** Arrange for all equity, including shares attributable to the inventor(s) other than Founder(s), to be issued in the name of and held by the constituent institution or its assign. The inventor(s)' sole right under these circumstances is the receipt of no less than 15% in the aggregate of the total

shares, or the pro-rata total shares, or cash equivalent, of equity held by the constituent institution or its assign that become unrestricted and have market value. The inventor will be responsible for retaining his/her own business advisors, legal counsel and tax counsel and will be responsible for all financial, tax and legal consequences related to the equity or cash equivalent he/she receives.

## F. Management of Equity

1. **Independent Management Decisions.** The constituent institution or its assign shall make decisions regarding the management and disposition of equity it receives pursuant to this Policy based upon sound business judgment, which may include a decision that it is in the best interests of the constituent institution to establish a certain date of liquidation of equity, and publicly available information. Such decisions shall be made independent of any undue influence by the inventors, the technology transfer office, or any other campus licensing unit.
2. **Limited Additional Investment.** Under no circumstances shall the constituent institution or its assign make any direct investment in any licensee in which equity has been accepted by the constituent institution or assign in consideration for license pursuant to this Policy unless and until the licensee company is publicly traded or until licensee's equity is priced by unrelated and independent means.

## III. Institutional Policies

Each constituent institution may adopt internal policies, procedures, and guidelines consistent with this Policy. The internal policies, procedures, and guidelines may include a provision that recognizes the unique nature of equity acquisition and allows the constituent institution's Chancellor to approve exceptions to certain provisions of this Policy, in extraordinary individual cases, where those exceptions comply with all University of North Carolina and constituent institution policies, relevant laws, regulations, and ethical requirements.

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