

UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION (UTRF)

POLICY NO. 2008-1*

Revenue Sharing

SECTION 1. General Policy.

When a Disclosure is submitted to UTRF by UT, it shall be the policy of UTRF to share any Revenue resulting from commercialization of that Disclosure with the Originator(s), the Originator(s)' academic department(s) at UT (if any) and the Originator(s)' campus(es) or institute(s) at UT.

SECTION 2. Distribution of Revenue.

UTRF will distribute Revenue in the following manner:

2.1 Current Disclosures (those received on or after July 1, 2008)

- (1) The first Five Thousand dollars (\$5000) of Revenue attributable to a particular Current Disclosure shall be distributed entirely (100%) to the Originator(s).
- (2) The next Nine Hundred Ninety-Five Thousand dollars (\$995,000) of Revenue attributable to a Current Disclosure shall be distributed as follows:
 - i. First, to arrive at Net Revenue, UTRF shall deduct from Revenue all Expenses attributable to the Current Disclosure;
 - ii. Forty percent (40%) of Net Revenue shall go to the Originator(s);
 - iii. Fifteen percent (15%) of Net Revenue shall go to the Originator(s)' academic department(s);
 - iv. Fifteen percent (15%) of Net Revenue shall go to the Originator(s)' campus(es) / institute(s); and
 - v. Thirty percent (30%) of Net Revenue shall be retained by UTRF.
- (3) All further Revenue attributable to a Current Disclosure (that which is in excess of One Million Dollars (\$1,000,000)) shall be distributed as follows:
 - i. First, to arrive at Net Revenue, UTRF shall deduct from Revenue any Expenses attributable to the Current Disclosure that have not previously been deducted;
 - ii. Thirty-five percent (35%) of Net Revenue shall go to the Originator(s);
 - iii. Twenty percent (20%) of Net Revenue shall go to the Originator(s)' academic department(s);
 - iv. Twenty percent (20%) of Net Revenue shall go to the Originator(s)' campus(es)/institute(s); and
 - v. Twenty-five percent (25%) of Net Revenue shall be retained by UTRF.

2.2 Former Disclosures (those received before July 1, 2008)

- (1) First, to arrive at Net Revenue, UTRF shall deduct from Revenue attributable to a particular Former Disclosure all Expenses attributable to that Former Disclosure.
- (2) UTRF shall distribute Fifty percent (50%) of Net Revenue to the Originator(s) (Fifty percent being the Originator(s)' Share under the income-sharing policy in effect when the Former Disclosure was received).
- (3) If UTRF's Available Cash is less than the Reserve in effect at that time, UTRF shall retain Fifty percent (50%) of Net Revenue.
- (4) If UTRF's Available Cash is greater than the Reserve in effect at that time:
 - i. First, UTRF shall calculate Excess Net Revenue (two times the lesser of (a) the Originator(s)' Share of Net Revenue or (b) the Excess Reserve);
 - ii. Fifteen percent (15%) of Excess Net Revenue shall go to the Originator(s)' academic department(s);
 - iii. Fifteen percent (15%) of Excess Net Revenue shall go to the Originator(s)' campus(es)/institute(s); and
 - iv. Twenty percent (20%) of Excess Net Revenue shall be retained by UTRF.

SECTION 3. Multiple Originators.

If there are multiple Originators of a single Disclosure, they may in their discretion, agree on the percentage of the Originators' Share that each of them will receive. If all the Originators do not agree on the division of the Originator(s)' Share within a reasonable time, the division of the Originator(s)' Share among the Originators will be determined by UTRF. Such decision by UTRF shall be subject to modification by UTRF upon the subsequent addition or removal of Originator(s), but shall otherwise be final.

SECTION 4. Multiple Departments or Multiple Campuses / Institutes.

If multiple academic departments or multiple campuses/institutes are represented in a single Disclosure due to the respective affiliations of the Originator(s), the share of Net Revenue (or Excess Net Revenue) that is due to these organizational units shall be divided among them in the same percentages as those established for division of the Originator(s)' Share under Section 3. If a single Originator is affiliated with multiple departments or multiple campuses/institutes, unless the Originator designates one of them to receive his or her entire share, they will each receive a pro rata portion of his or her share.

SECTION 5. Securities.

Securities received as consideration for a Commercialization Agreement do not constitute Revenue. If and when such Securities are sold by UTRF in exchange for cash, such cash revenues will constitute Revenue and will be distributed in accordance with the provisions of this policy. All decisions concerning such Securities, including the timing of any sale thereof, will be made at the discretion of UTRF's Committee for Equity and Investments.

SECTION 6. Definitions.

When used in this Agreement, the following terms shall have the meanings set out below. The singular shall be interpreted as including the plural and vice versa, unless the context clearly indicates otherwise.

6.1 **“Available Cash”** means the total amount of UTRF's cash and cash equivalents.

6.2 **“Basic Agreement”** means a written contract among UT, UTRF, and one or more Originators (and possibly third parties as well) which sets out the agreement of the parties pertaining, among other things, to the distribution of Revenue from one or more Disclosures.

6.3 **“Commercialization Agreement”** means any agreement whereby UTRF is entitled to receive cash and/or Securities as consideration for a grant of rights to a third party in one or more Disclosures.

6.4 **“Current Disclosure”** means a Disclosure received by UTRF on or after July 1, 2008.

6.5 **“Disclosure”** shall mean (a) a written document submitted to UTRF by UT whereby one or more Originators report the development of one or more inventions or creations and (b) the invention(s) and/or creation(s) reported in such document, as well as any intellectual property rights pertaining thereto.

6.6 **“Excess Net Revenue”** means two times the lesser of (a) the Originator(s)' Share of Net Revenue or (b) the Excess Reserve.

6.7 **“Excess Reserve”** means the amount by which the Available Cash exceeds the Reserve.

6.8 **“Expenses”** shall mean attorney fees and other actual out-of-pocket expenses attributable to one or more Disclosures that are incurred by UTRF, excluding the salary paid to any UTRF staff member. By way of illustration, but not limitation, Expenses may include amounts expended in:

- (1) the acquisition and maintenance of intellectual property rights, including but not limited to copyright and trademark registration and the preparation, filing, prosecution, and maintenance of patent rights;
- (2) the negotiation, implementation, monitoring and enforcement of Commercialization Agreements and other agreements relevant to a Disclosure;

- (3) the prosecution or defense of any lawsuit or participation in any mediation, arbitration, interference or other proceeding;
- (4) research and development, testing, marketing, and general administration;
- (5) compensation of any joint owner, co-inventor, co-author, or other third party who has the right to share in Revenue;
- (6) excise, sales, use, value added and other taxes; delivery charges; and expenses connected with the import and export of goods; and
- (7) the determination, judicial or otherwise, of any issues involving or arising out of a Basic Agreement.

6.9 **“Former Disclosure”** means a Disclosure received by UTRF before July 1, 2008.

6.10 **“Net Revenue”** shall mean Revenue allocable to commercialization of one or more Disclosures less Expenses allocable to such Disclosure(s), provided that:

- (1) Where a single Basic Agreement covers multiple Disclosures, UTRF may aggregate Expenses attributable to any or all of the Disclosures and deduct such Expenses from Revenue generated by any or all of the Disclosures.
- (2) UTRF may deduct Expenses from Revenue even though such Expenses are incurred after the receipt of Revenue.
- (3) When Expenses are expected to exceed Revenue under a particular Basic Agreement, UTRF may set aside sufficient funds from Revenue to cover those Expenses.
- (4) Where Revenue is received under a Commercialization Agreement that covers multiple Disclosures, UTRF may allocate that Revenue (and the Expenses attributable to those Disclosures) among those Disclosures as UTRF deems appropriate under the circumstances.

6.11 **“Originator”** means (a) a part-time or full-time (paid or unpaid) faculty, staff, or student employee of UT who has developed an invention or creation that is reported in a Disclosure or (b) an individual who is designated an Originator for any or all purposes by UTRF.

6.12 **“Originator(s) Share”** means the percentage of Net Revenue attributable to a particular Disclosure that is distributed to the Originator(s) of that Disclosure.

6.13 **“Reserve”** means a reserve of funds maintained and administered by UTRF in an amount established from time to time by the UTRF Board of Directors as a threshold for certain distributions of Revenue attributable to Former Disclosures.

6.14 **“Revenue”** shall mean UTRF’s actual cash revenues from a Commercialization Agreement (including cash revenues from sale of Securities). Revenue shall not include payments to UT or UTRF for support of research and development activities.

6.15 **“Securities”** shall mean all securities of every kind and rights and options with respect thereto, including stock, notes, bonds, debentures, evidences of indebtedness and other equity or

debt ownership interests in any partnership, corporation, limited liability company, joint venture, proprietorship or other entity, domestic or foreign, accruing to UTRF's benefit pursuant to a Commercialization Agreement.

6.16 **“UT”** means The University of Tennessee.

*This policy statement replaces UTRF Policy No. 85-1 and 88-1 which is/are hereby rescinded.

APPROVED, UTRF BOARD OF DIRECTORS: November 30, 2007 and June 5, 2008.
EFFECTIVE: July 1, 2008