

# UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION (UTRF)

POLICY NO. 2018-1\*

## Revenue Sharing

### **SECTION 1. General Policy.**

When a Disclosure is submitted to UTRF by UT, it shall be the policy of UTRF to exercise its discretion 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.**

In its discretion, UTRF will distribute Revenue in the following manner, unless in any case a different manner of distribution to the Originator(s) is otherwise provided in the Basic Agreement:

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

- (1) The first Five Thousand dollars (\$5,000) of Revenue attributable to a particular Current Disclosure shall be distributed entirely (100%) to the Originator(s).
  - i. When Revenue is generated from a Commercialization Agreement granting rights in more than one Disclosure, only the first Five Thousand dollars (\$5,000) of Revenue from that Commercialization Agreement shall be distributed under this Section 2.1(1) regardless of the number of Disclosures licensed in that agreement, and Revenue attributable to that Commercialization Agreement shall be allocated equally among all such Disclosures.
- (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); and Twenty percent (20%) of Net Revenue shall go to the Originator(s)' campus(es)/institute(s);
  - iv. 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 all Expenses attributable to the Former Disclosure.
- (2) As of the first of each fiscal year (and at such other times as the UTRF President may instruct), the UTRF Budget Director shall report to the UTRF President the then Available Cash compared to the sum of the Operating Reserve and Strategic Reserve in effect at that time.
- (3) If the Available Cash is less than the sum of the Operating Reserve and Strategic Reserve, for all distributions made during that fiscal year (or the remainder of that fiscal year), UTRF shall distribute Fifty percent (50%) of Net Revenue to the Originator(s) and retain Fifty percent (50%) of Net Revenue.
- (4) If UTRF's Available Cash is greater than the sum of the Operating Reserve and Strategic Reserve, for all distributions made during that fiscal year (or the remainder of that fiscal year), UTRF shall distribute:
  - i. Fifty percent (50%) of Net Revenue to the Originator(s);
  - ii. Fifteen percent (15%) of Net Revenue to the Originator(s)' academic department(s);
  - iii. Fifteen percent (15%) of Net Revenue to the Originator(s)' campus(es)/institute(s); and
  - iv. UTRF shall retain Twenty percent (20%) of Net Revenue.

2.3 The determination that Available Cash is greater or less than the sum of the Operating Reserve and Strategic Reserve shall have no impact on the order or timing of UTRF Net Revenue distributions to Originators, which shall generally be handled under first-in first-out (FIFO) ordering. No distributions to Originators will be accelerated or delayed based on the level of Available Cash. The UTRF President shall determine the practical timing of distributions to academic departments, campuses and institutes under this Policy, so long as any such amounts due are distributed at least as often as once for each fiscal year.

- 2.4 The UTRF President may instruct the UTRF Budget Director to re-calculate and report the Available Cash compared to the sum of the Operating Reserve and Strategic Reserve at any time other than the first of a fiscal year, if the President believes that there has been a significant change in UTRF expense or revenue.
- 2.5 UTRF takes reasonable care based on all the circumstances, and exercises its discretion under this Policy, to ensure that Revenues shared with the University through distributions under this Section 2, and any UTRF investments from the Strategic Reserve, are applied by recipient departments, campuses and institutes, consistent with the Bayh Dole Act and other applicable law, to expand research resources and capacities, to further technology transfer and maturation, and for economic development.
- (1) Depending on the amount involved in any particular distribution or investment, such care may appropriately range from: a UTRF reminder to the department, campus or institute of the appropriate use of such funds; up to and including a written funding agreement between UTRF and a department, campus or institute specifying the use of a particular substantial distribution or investment.
  - (2) The UTRF President with input from the applicable Executive Committee is delegated responsibility for making the determination as to situations when additional care is practical and warranted.

**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 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.

## **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 operating bank account, less total Current Liabilities coming due within the next twelve (12) months (including amounts due from UTRF, or committed by UTRF, to UTRF subsidiaries) and less cash held by UTRF for current or upcoming events. Available Cash does not include Accounts Receivable, Accrued Receivables, or any Contribution Receivable from UT.

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 to and among Originators 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 **"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.

6.7 **"Former Disclosure"** means a Disclosure received by UTRF before July 1, 2008.

6.8 **"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.

6.9 **"Operating Reserve"** means the minimum amount established from time to time by the UTRF Board of Directors as prudent and deemed appropriate to cover fluctuations in, and unanticipated events affecting, UTRF expenses and income. The Board reviews periodically, and may modify when and as it deems appropriate, the Operating Reserve level as part of the UTRF budget process. For avoidance of doubt, "Operating Reserve" is defined in this Policy for the limited purposes described in the Policy. The terms of the Policy shall not be interpreted or

construed as a restriction on any use or commitment of Available Cash by UTRF, as authorized by its Board or officers.

6.10 **"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 and who has entered into a Basic Agreement with respect to that Disclosure or (b) an individual who is designated an Originator for any or all purposes by UTRF.

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

6.12 **"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.

6.13 **"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.

6.14 **"Strategic Reserve"** shall mean a minimum amount established from time to time by the UTRF Board of Directors as deemed appropriate or desirable to allow UTRF to achieve financial sustainability and self-sufficiency and to have the capacity to support and invest in projects or programs devoted to research, technology transfer and maturation, and economic development. The Board reviews periodically, and may modify when and as it deems appropriate, the Strategic Reserve level as part of the UTRF budget process. For avoidance of doubt, "Strategic Reserve" is defined in this Policy for the limited purposes described in the Policy. The terms of the Policy shall not be interpreted or construed as a restriction on any use or commitment of Available Cash by UTRF, as authorized by its Board or officers.

6.15 **"UT"** means The University of Tennessee.

## **Section 7. Administration**

7.1 Delegation. The UTRF President shall be responsible for implementing this Policy.

7.2 Interpretation. This Policy shall be interpreted and applied to further the purposes of UTRF to support UT's research mission, consistent with UT's Patent, Copyright and Intellectual Property Policy, UTRF's basic agreements with Originators and applicable law. In the event of any question, the Board's interpretation of the Policy and its determination hereunder shall be final.

7.3 Reservation. The Board reserves the right to amend, modify or rescind this Policy at any time.

\*This policy statement replaces UTRF Policy No. 2015-1 which is hereby rescinded.

APPROVED, UTRF BOARD OF DIRECTORS: September \_\_\_\_\_, 2017

EFFECTIVE: October 1, 2017