EAST CAROLINA UNIVERSITY EQUITY ACQUISITION POLICY

RELATED POLICIES:
UNC Policy Manual 300.2.2-Conflicts of Interest and Commitment Affecting Faculty and Non-Faculty EPA Employees
UNC Policy Manual 300.6.1.2[G]-Guidelines on External Professional Activities of Faculty and Other Professional Staff
UNC Policy Manual 500.2-Intellectual Property-Patent and Copyright Policies
UNC Policy Manual 500.6-University Equity Acquisition Policy
ECU Faculty Manual Appendix I-ECU Policy on Conflicts of Interest and Commitment
ECU Faculty Manual Part VI(V)-External Professional Activities of Faculty and Other Professional Staff
ECU Faculty Manual Part VII(II)-Patent Procedures of East Carolina University
ECU Faculty Manual Part VII(III)-East Carolina University Copyright Policy

Additional References:
N.C. Gen. Stat. § 14-234, Public Officers or Employees Benefiting from Public Contracts

Contact Information: Office of Technology Transfer (252-328-9549); Office of the University Attorney (252-328-6940)

1. Introduction

East Carolina University occasionally has 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 University 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 and East Carolina University 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.

This Policy applies to all licensing activities involving the acquisition of Equity as partial or full consideration for licensing activities.

II. Definitions

**Equity** – Corporate stock, either common or preferred.
**Equity Agreement** – A form of a license agreement between the University and a company in which the University receives Equity as a form of compensation for partial or full financial consideration.
**Equity Licensee** – The licensee providing Equity to the University as a form of compensation.
**Founder** – An individual, originating or leading the development and implementation of a company’s initial business model, who has received, receives or is likely to receive a substantial economic benefit as a result of founding activities.
**Founder’s Shares** – Shares of stock provided to a founder of a company as compensation for good and valuable services or resources.
**Inventor** – An individual who has participated in the conception of an Invention.
**Minority Ownership** – Holding less than 50% ownership in a company who has licensed or would like to license a University Invention.
**Invention** – An idea or product development opportunity (patentable or not) that has been conceived or reduced to practice through use of University resources such as time, facilities, staff, materials and information.

III. Policy

A. **Conditions for Receipt of Equity**

1. Equity in a company may only be received by East Carolina University as partial or full consideration for an Equity Agreement license or transfer of technology, as negotiated by the Office of Technology Transfer.

2. The Vice Chancellor for Administration and Finance is responsible for receiving and managing such Equity.

3. Without the approval by the Chancellor, no other unit of East Carolina University or its affiliated foundations, may acquire Equity in a company from which East Carolina University has received or is negotiating to receive Equity in conjunction with an Equity Agreement or transfer of technology transaction, except as provided in Section III(F) and Section IV of this Policy.
4. Acceptance of Equity will be based upon similar principles of East Carolina University 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 and applicable state statutes.

B. Negotiations, Founder’s Shares, Voting Representation

1. Negotiations. Except as expressly approved by the Vice Chancellor for Research and Graduate Studies, there shall be no negotiation of an Equity Agreement on behalf of East Carolina University independent of the Office of Technology Transfer. No negotiations for an Equity Agreement may occur between East Carolina University and an Inventor or Founder, nor shall an Inventor or Founder attempt to influence any person who is involved in negotiating or managing the Equity Agreement. 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 related University policies and guidelines and applicable state statutes. All Equity Agreements must be approved in writing by the Vice Chancellor for Research and Graduate Studies.

2. Founder’s Shares. East Carolina University Founders are not eligible to be a recipient of Equity or the proceeds of Equity accepted on behalf of East Carolina University.

3. Voting Representation. Either East Carolina University or its assigns may seek or accept non-voting shares of Equity or non-voting representation on the board of directors of an Equity Licensee that provides Equity as consideration for an Equity Agreement from East Carolina University, regardless of the level of its Equity received as consideration for a license, provided however that neither may accept voting shares of stock nor voting representation on the board of directors. Nothing contained herein shall prohibit East Carolina University employees from accepting appointments to boards of directors and scientific advisory boards
of Equity Licensees in their individual capacities and not as representatives of East Carolina University, provided however that the employee is compliant with all related University policies and guidelines and applicable state statutes.

C. **East Carolina University Employee or Officer Equity Ownership**

1. Other than a Founder or Inventor, no officer or employee of East Carolina University will be allowed to hold or acquire Equity in a company with which East Carolina University has negotiated or is negotiating a license agreement if that license agreement includes the transfer of Equity to East Carolina University as either partial or complete consideration for the license agreement and if the officer or employee is engaged in or has access to or substantial demonstrable knowledge of any Equity Agreement negotiations between the company and East Carolina University.

2. Notwithstanding the above paragraph, an officer or employee of East Carolina University may be allowed to hold or acquire Equity in a company with which East Carolina University has negotiated or is negotiating a license agreement as either partial or complete consideration for an Equity Agreement, provided that the officer or employee asserts no knowledge of the terms of negotiation for the Equity Agreement between the company and East Carolina University and, provided, furthermore, that the officer or employee is compliant with all related University policies and guidelines and applicable state statutes.

D. **Equity Terms and Minority Ownership**

1. **Equity Terms.** The terms of any Equity Agreement, with the exception of the form of consideration, shall be consistent with East Carolina University licensing transactions for comparable technologies.

2. **Minority Ownership.** Neither East Carolina University nor its assigns will accept more than a Minority Ownership share in an Equity Licensee as consideration for an Equity Agreement.

E. **Timing and Nature of Distribution**

Where there is a proposal for Equity in a company to be accepted by East Carolina University or its assign as consideration for an Equity Agreement, arrangements for Equity distribution to Inventors who are not Founders shall be either:
1. **Distribution at Licensing.** To the best of its ability, East Carolina University will encourage a one time distribution of no less than 15% of the total Equity due to East Carolina University or its assign directly from the Equity Licensee upon execution of the Equity Agreement, including provisions relating to restrictions, if any, on transfer or disposition of Inventor(s) Equity. 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.** Alternatively, East Carolina University may 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 East Carolina University 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 East Carolina University 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 Vice Chancellor for Administration and Finance, on behalf of East Carolina University or its assign shall make decisions regarding the management and disposition of Equity received by the University pursuant to this Policy based upon sound business judgment for the furtherance of research at East Carolina University. Decisions shall be made in the best interests of the University and may include consideration of the timing of liquidation of Equity, based on publicly available information. Such decisions shall be made independently 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 East Carolina University or its assign make any direct investment in any Equity Licensee in which Equity has been accepted by East Carolina University or its assign in consideration for Equity Agreement 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.
IV. **Exceptions to this Policy**

The Chancellor may approve exceptions to certain provisions of this Policy, in extraordinary individual cases, where those exceptions comply with all University of North Carolina and East Carolina University policies, relevant laws, regulations, and ethical requirements.