

Guidelines Governing Faculty, Staff and Student Participation In Companies Commercializing Their University Research

1. Applicability

Who is covered by these Guidelines?

Faculty

F 1-a. Faculty. These Guidelines apply to all faculty who create intellectual property owned by the University and who desire to hold an ownership interest in a private company commercializing their research.

Staff

S 1-a. A &P Staff and Students. These Guidelines apply only to staff members holding Administrative and Professional appointments, Graduate Associates, and student employees who (a) are specifically assigned to engage in research and development activities, (b) create intellectual property owned by the University and (c) desire to hold an ownership interest in a private company commercializing their research.

2. Public Employment/Private Benefit

As a general rule, a public employee is not permitted to solicit or accept any personal financial benefit that arises out of or relates to his or her public responsibilities, other than compensation from his or her public employer. This principle is embodied in Revised Code Sections 102.03, 102.04, 2921.42 and 2921.43. In addition to the statutory prohibitions, there is a strong public sentiment disapproving of state employees who use their governmental positions to obtain a private financial benefit.

The University board of trustees has determined that in certain narrowly defined situations the interests of the University will be served if faculty and some categories of staff are allowed to hold personal financial interests in companies commercializing their University research. While this represents a departure from the general prohibition of personal interests in public work it is justified by the benefits that these arrangements will bring to the University and to the local economy. Faculty and staff participation in technology licensing transactions will facilitate the University's goal of making its inventions available to the marketplace by giving researchers an incentive to develop inventions with practical applications. These opportunities also enhance the University's compensation package and therefore help to attract and retain highly qualified researchers.

In order to comply with Ohio law and to maintain the trust and confidence of the general public, it must be made clear that faculty and staff who are authorized to pursue private business activities may not do so at the expense of their University responsibilities.

Faculty

F 2-a. Faculty Responsibilities. While faculty are permitted by the Policy on Paid External Consulting and these Guidelines to engage in specified private business activities relating to their University positions, they continue to be responsible for the performance of all of their University teaching, research and service obligations. Authorized private business activities must not be allowed to interfere with the performance of any of their University responsibilities and must be undertaken in accordance with the Policy on Paid External Consulting and pursuant to formal consulting and conflict of interest management agreements between the faculty, company and University and approved by the department chair, University conflict of interest officer (COI Officer), the Office for Technology Licensing (OTL) and the Office of Legal Affairs (OLA).

Staff

S 2-a. Staff Responsibilities. Staff members may not perform private business activities of any kind during University working hours. Staff who wish to perform activities for companies commercializing their University research shall do so on their own time. These activities must not interfere with the performance of any of the employee's University responsibilities and must be undertaken in accordance with the to-be-developed Staff Policy on Conflicts of Interest and Work Outside the University and pursuant to a formal conflict of interest management agreement between the Staff member, company and University and approved by the department chair and/or supervisor, COI Officer, OTL and OLA.

3. Responsibilities of Department Chairs and Staff Supervisors

The active participation of department chairs and staff supervisors is essential to our efforts to enforce conflict of interest regulations, to promote accountability, and to ensure that institutional resources are used exclusively for the advancement of the University mission.

Faculty

F 3-a. Department Chairs. Department chairs are responsible for ensuring that faculty participating in approved entrepreneurial

activities continue to perform all of their teaching, research and service obligations. Chairs are also responsible enforcing the Paid External Consulting and Conflict of Interest policies and for reviewing and making a recommendation as to the propriety of private business activities reported by their faculty in disclosure forms required by those policies.

Staff

S 3.-a Staff Supervisors. Staff supervisors are responsible for ensuring that their employees participating in approved entrepreneurial activities continue to perform all of their University responsibilities. They are also responsible for enforcing the Staff Conflict of Interest policy (to be drafted) and for reviewing and making a recommendation as to the propriety of private business activities reported by staff in disclosure forms required by that policy.

4. Potential for Personal Financial Benefit as a Basis for Selection of Research Topics

A researcher may become aware of the commercial potential of an invention or discovery long before it is ripe for licensing to a private company. Under what circumstances may a researcher devote his or her professional attention to a line of inquiry that may, at some point in the future, create an opportunity to hold stock in the company commercializing the research and thereby to realize a personal financial benefit?

Faculty

F 4-a. University Responsibilities and Personal Financial Interests. Faculty are encouraged to develop discoveries and inventions with commercial potential; however, they should do so with due regard to the broader teaching and research mission of the university. Professors should not allow their interest in a financial opportunity arising out of their research efforts to influence their teaching, or to interfere with their relationships with other faculty. Specifically, research assignments for students must be selected solely on the basis of the students' interests and academic development. Faculty should respect and promote the cooperative nature of the academic environment by sharing information and participating in joint research efforts with their colleagues.

Staff

S 4-a. University Responsibilities and Personal Financial Interests. Staff members may pursue research projects as authorized by their supervisors. Supervisors must take extra care to monitor the entrepreneurial activities of their staff employees. They should

authorize only those staff research projects that will advance the missions of the University and the employing unit, without regard to the financial interests of individual employees.

5. Procedure for determining the Applicability of Guidelines.

In order to determine the applicability of these Guidelines, it is first necessary to decide whether the technology which forms the basis of a private business activity arose out of research, development, or other investigation conducted by the faculty or staff member as part of his or her regular University duties. If this is the case, the University owns the technology and these guidelines as well as TTOC procedures must be observed.

If the technology was not created in the course of such University research or development activities, these Guidelines and TTOC procedures will not apply. The private business activities may be permissible; however, chairs and supervisors must still ensure that the activities do not give rise to conflicts of interest or commitment for the employee.

Faculty

F 5-a. Reporting Business Activities. Private business activities that may relate to a faculty member's University research should be reported by the chair to the OTL and the COI Officer.

F 5-b. Determining Applicability of Guidelines. Decisions concerning the relationship between a professor's private business activities and his or her University research shall be made by the dean, the department chair, the OTL, and the COI Officer in consultation with the faculty member and the OLA. If these parties are unable to reach a consensus, the final decision shall be made by the provost.

F 5-c. Activities Not Related to Research. Private business activities that are not subject to these Guidelines because they are unrelated to the faculty member's University research are nevertheless subject to the policies on Paid External Consulting, Conflicts of Interest, and Patents and Copyrights.

F 5-d. Activities Unrelated to Research and Not Covered by the Consulting Policy. Private business activities that are not subject to these Guidelines because they are unrelated to a faculty member's University research, and that do not fall within the definition of approved consulting activities may not be performed during University working hours. Under no circumstances may University facilities, equipment or other resources be used in connection with these activities.

Staff

S 5-a. Reporting Business Activities. Private business activities that may relate to a staff member's University research should be reported by his or her supervisor to OTL and the COI Officer.

S 5-b. Determining Applicability of Guidelines. Decisions concerning the relationship between a staff member's private business activities and his or her University research shall be made by the unit head, the supervisor, the OTL, and the COI Officer in consultation with the staff member and the OLA. If these parties are unable to reach a consensus, the final decision shall be made by the provost.

S 5-c. Activities Not Related to Research. Private business activities that are not subject to these Guidelines because they are unrelated to a staff member's University research are nevertheless subject to the Staff Policy on Conflicts of Interest (to be drafted), the Policy on Patents and Copyrights and the rules of the employing unit.

6. Approval of Research Related Business Activities

What is the process for obtaining University approval of research related business activities?

Faculty

F 6-a. TTOC Approval. Faculty must obtain approval from the Technology Transfer Oversight Committee (TTOC) and a conflict of interest management plan must be in place before any business agreements related to their University research are finalized. Faculty may not execute any agreements relating to commercialization of their research until final written approval from the TTOC is obtained.

F 6-b. OTL Approval. Companies may not execute any agreements with the University relating to the commercialization of a faculty member's research until final written approval from the TTOC is obtained. Faculty who wish to participate in a start-up company may discuss initial company formation matters with the OTL, however, they should not, as a general rule, participate in the ongoing negotiation of option and licensing terms between the company and OTL. As soon as possible, third parties, such as company management and/or legal counsel should perform this function. Companies formed to commercialize faculty research shall, as a general rule, grant the University a ten (10%) percent equity interest in the company in exchange for a license to the University technology.

A company wishing to obtain an exclusive license to the University technology must provide OTL with a viable business plan including, at a minimum, the following: 1) a capitalization plan addressing the acquisition of additional capital and the equity dilution of the faculty member's ownership interests (see F 7-k), 2) a proposed management team and 3) milestones for capitalization, product development, and commercial sale.

F 6-c. Participation of Chair. The faculty member's department chair must be an active participant in discussions with the TTOC and in the development of the conflict of interest management plan.

F 6-d. If the Chair Has a Conflict of Interest. A chair who has a financial interest or is a co-participant with a faculty member in a research related business activity is not in a position to provide effective oversight of that activity. In these situations, another disinterested administrator must be appointed to perform the responsibilities of the chair.

F 6-e. Unavailability of Disinterested Administrator. If the TTOC determines that, for any reason, it is not possible for the chair or another disinterested administrator to provide effective oversight of the research related business activity, the activity should not be approved.

Staff

S 6-a. TTOC Approval. Staff must obtain approval from the Technology Transfer Oversight Committee (TTOC) and a conflict of interest management plan must be in place before any business agreements related to their University research are finalized. Staff may not execute any agreements relating to commercialization of their research until final written approval from the TTOC is obtained.

S 6-b. OTL Approval. Companies may not execute any agreements relating to the commercialization of a staff member's research until final written approval from the TTOC is obtained. While they may find it necessary to do so initially, staff members should not, as a general rule, participate in the ongoing negotiation of option and licensing terms between the company and OTL. When available, third parties, such as company management and/or legal counsel shall perform this function. Companies formed to commercialize staff research shall, as a general rule, grant the University a ten (10%) percent equity interest in the company in exchange for a license to license the University technology. A company wishing to obtain an

exclusive license to the University technology must provide OTL with a viable business plan including, at a minimum, the following: 1) a capitalization plan addressing the acquisition of additional capital and the equity dilution of the staff member's ownership interests (see F 7-k), 2) a proposed management team and 3) milestones for capitalization, product development, and commercial sale.

S 6-c. Participation of the Supervisor. The staff member's supervisor must be an active participant in discussions with the TTOC and in the development of the conflict of interest management plan.

S 6-d. If the Supervisor Has a Conflict of Interest. A supervisor who has a financial interest or is a co-participant with a staff member in a research related business activity is not in a position to provide effective oversight of that activity. In these situations, another disinterested administrator must be appointed to perform the responsibilities of the supervisor.

S 6-e. Unavailability of Disinterested Administrator. If the TTOC determines that, for any reason, it is not possible for the supervisor or another disinterested administrator to provide effective oversight of the research related business activity, the activity should not be approved.

7. Conflict of Interest Management Standards

In a general sense, conflicts management standards are necessary to ensure that approved private business activities of faculty and staff have as their primary purpose the advancement of the university's teaching, research and service missions. More specifically, conflict of interest management plans are intended to assure: (a) compliance with applicable state and federal laws governing ethics and conflicts of interest, (b) the integrity of University research, (c) accountability for the use of University resources and (d) the complete performance by University employees of their assigned responsibilities.

Faculty

F 7-a. Use of University Facilities. University facilities, equipment and other resources may be used for research benefiting a company in which a faculty member has an interest only pursuant to a sponsored research agreement, facilities use agreement or other appropriate contractual arrangement.

F 7-b. Management of Start-up Companies. As a general rule, faculty should not hold management positions in start-up companies commercializing their research. While they may initially find it necessary to play a management role in a newly formed company, it

is expected that their management responsibilities will decrease as the company develops. Professional management should be brought in at the earliest opportunity. In order to ensure the application of this principle, agreements between the University and faculty owned start-up companies should contain enforceable milestones for the reduction of these management responsibilities. Failure to comply with these agreed-upon milestones will result in the company's inability to engage in sponsored research, utilize student employees and the other commercialization agreements and/or activities allowed-for under these guidelines.

F 7-c. Management Positions in Existing Companies. A faculty member who acquires an ownership interest in an existing company (as opposed to a start-up commercializing OSU technology) that contracts with the University to commercialize his or her research may not serve as a director, officer or employee of that company.

F 7-d. Leave to Pursue Private Business Activities. Faculty should not allow their management activities with newly formed companies commercializing their University research to consume a disproportionate amount of their professional attention. See Faculty Guideline 2-a. Faculty engaged in approved private business activities who are unable to perform all of their University responsibilities are encouraged to consider a reduction of appointment or other approved leave mechanism.

F 7-e. Student Research Within the University. Graduate and undergraduate students may use University facilities, equipment and other resources to perform research benefiting a company in which a faculty member has an interest only pursuant to a sponsored research agreement. As stipulated in the Graduate School Handbook, such research may not be used to satisfy the criteria for a thesis or dissertation if the material is restricted from publication. Students should be informed in writing of this policy prior to the start of their research.

F 7-f. Student Employment With the Company. Except as provided in Faculty Guideline 7-g, below, students may be employed by companies in which faculty members hold an ownership interest. Prior to such employment, the student, the faculty member, the chair of the student's department, the chair of the graduate studies committee and a company representative must sign a disclosure agreement in a form substantially similar to that attached as Exhibit A.

F 7-g. Employment of Students Academically Involved with Faculty Owners of the Company. A student may not be employed by a company in which a faculty member has an ownership interest if (a) the student is enrolled in a course taught by the faculty member, (b) the faculty member is a member of the student's thesis or dissertation committee, or (c) the faculty member is the student's advisor or the director of his or her thesis or dissertation research. Such students may perform research benefiting a faculty owned company only pursuant to a sponsored research agreement or formal internship agreement through the University.

F 7-h. Contracts Unrelated to Technology Development. Companies in which faculty hold an ownership interest may not enter into any agreements with the University for the purchase, sale or rental of equipment, supplies or services other than those explicitly authorized by the TTOC.

F 7-i. Investments by Faculty Not Involved with Development of the Technology. As a general rule, faculty who are not directly involved with research and development of technology licensed to a faculty owned start-up company may not hold equity interests in that company. Stock ownership in these situations is permissible only to the extent allowed by Revised Code Section 2921.42.

F 7-j. Regulatory Review Boards. University regulatory review boards including, for example, IRB and ILACUC committees, may be utilized for research benefiting a company in which a faculty member has an interest only pursuant to a sponsored research agreement.

F 7-k. Limitation of Equity Ownership. As a general rule, an individual faculty member should not hold more than twenty five (25%) percent of the outstanding equity in companies commercializing his/her University research. While significant faculty equity ownership may be inherent in a newly formed company, it is expected that their ownership interests, as a percentage of the total outstanding shares or membership interests of the company, will decrease as the company develops and attracts additional equity. In order to ensure the observance of this principle, agreements between the University and faculty owned start-up companies should contain enforceable milestones for the dilution of these equity interests. Failure to comply with these agreed-upon milestones will result in the company's inability to engage in sponsored research, utilize student employees and the other commercialization agreements and/or activities allowed-for under these guidelines.

F 7-l. Principal Investigators. Faculty may not assume the role of principal investigator in sponsored research projects funded by companies commercializing their research involving the use human subjects or veterinary clinical trials involving the use of animals. In other cases, faculty may assume the role of principal investigator pursuant to a formal research integrity plan approved by the TTOC, COI Officer and OLA.

F 7-m. Sponsored Research. As a general rule to ensure research integrity, agreements for sponsored research projects funded by companies commercializing faculty research must include, at a minimum, a requirement for full University publication rights and fully negotiated cost recoveries. Exceptions to these conditions must be approved by the TTOC. If cost recoveries are approved at less than full rates, the department or unit sponsoring the project must be responsible for the funding difference.

F 7-n. Intellectual Property. Faculty participating in start-up companies approved pursuant to these guidelines continue to be bound by the University Policy on Patents and Copyrights. New inventions and/or discoveries made as a result of a faculty member's research efforts for the company, including those made under formal consulting agreements, will be owned by the University and the company shall receive an exclusive option to the technology. New inventions and/or discoveries developed by the faculty member for the company must be disclosed to the OTL as required by the Policy on Patents and Copyrights.

Staff

S 7-a. Use of University Facilities. University facilities, equipment and other resources may be used for research benefiting a company in which a staff member has an interest only pursuant to a sponsored research agreement, facilities use agreement or other appropriate contractual arrangement.

S 7-b. Management of Start-up Companies. As a general rule, staff should not hold management positions in start-up companies commercializing their research. While they may initially find it necessary to play a management role in a newly formed company, it is expected that their management responsibilities will decrease as the company develops. Professional management should be brought in at the earliest opportunity. In order to ensure the application of this principle, agreements between the University and staff owned start-up companies should contain enforceable milestones for the reduction of these management responsibilities. Failure to comply with these

agreed-upon milestones will result in the company's inability to engage in sponsored research, utilize student employees and the other commercialization agreements and/or activities allowed-for under these guidelines.

S 7-c. Management Positions in Existing Companies. A staff member who acquires an ownership interest in an existing company (as opposed to a start-up commercializing OSU technology) that contracts with the University to commercialize his or her research may not serve as a director, officer or employee of that company.

S 7-d. Leave to Pursue Private Business Activities. Staff who wish to perform management activities for newly formed companies commercializing their University research during University working hours may do so only if they take approved leave. See Staff Guideline 2-a. Staff who are unable to perform all of their University duties because of management responsibilities in their private companies are encouraged to consider a reduction of appointment or other approved leave mechanism.

S 7-e. Student Research Within the University. Graduate and undergraduate students may use University facilities, equipment and other resources to perform research benefiting a company in which a staff member has an interest only pursuant to a sponsored research agreement. As stipulated in the Graduate School Handbook, such research may not be used to satisfy the criteria for a thesis or dissertation if the material is restricted from publication. Students should be informed in writing of this policy prior to the start of their research.

S 7-f. Student Employment With the Company. Students may be employed by companies in which staff members hold an ownership interest. Prior to such employment, the student, the staff member, the chair of the student's department, the chair of the graduate studies committee and the company must sign a disclosure agreement in a form substantially similar to that attached as Exhibit A.

S 7-g. Contracts Unrelated to Technology Development. Companies in which staff hold an ownership interest may not enter into any agreements with the University for the purchase, sale or rental of equipment, supplies or services other than those explicitly authorized by the TTOC.

S 7-h. Investments by Staff Not Involved with Development of the Technology. As a general rule, staff who are not directly involved

with research and development of technology licensed to a faculty or staff owned start-up company may not hold equity interests in that company. Stock ownership in these situations is permissible only to the extent allowed by Revised Code Section 2921.42.

S 7-i. Regulatory Review Boards. University regulatory review boards including, for example, IRB and ILACUC committees, may be utilized for research benefiting a company in which a faculty member has an interest only pursuant to a sponsored research agreement.

S 7-j. Limitation of Equity Ownership. As a general rule, an individual staff member should not hold more than twenty five (25%) percent of the outstanding equity in companies commercializing his/her University research. While significant staff equity ownership may be inherent in a newly formed company, it is expected that their ownership interest, as a percentage of the total outstanding shares or membership interests of the company, will decrease as the company develops and attracts additional equity. In order to ensure the observance of this principle, agreements between the University and staff owned start-up companies should contain enforceable milestones for the dilution of these equity interests. Failure to comply with these agreed-upon milestones will result in the company's inability to engage in sponsored research, utilize student employees and the other commercialization agreements and/or activities allowed-for under these guidelines.

S 7-k. Principal Investigators. Staff may not assume the role of principal investigator in sponsored research projects funded by companies commercializing their research involving the use human subjects or veterinary clinical trials involving the use of animals. In other cases, staff may assume the role of principal investigator pursuant to a formal research integrity plan approved by the TTOC, COI Officer and OLA.

S 7-l. Sponsored Research. As a general rule to ensure research integrity, agreements for sponsored research projects funded by companies commercializing staff research must include, at a minimum, a requirement for full University publication rights and fully negotiated cost recoveries. Exceptions to these conditions must be approved by the TTOC. If cost recoveries are approved at less than full rates, the department or unit sponsoring the project must be responsible for the funding difference.

S 7-m. Intellectual Property. Staff participating in start-up companies approved pursuant to these guidelines continue to be bound by the University Policy on Patents and Copyrights. New

inventions and/or discoveries made as a result of a staff member's research efforts for the company, including those made while working outside the University and/or pursuant to a formal employment agreement with the company, will be owned by the University and the company shall receive an exclusive option to the technology. New inventions and/or discoveries developed by the staff member for the company must be disclosed to the OTL as required by the Policy on Patents and Copyrights.

(Sample Student Disclosure Agreement)

Agreement

This agreement is between University, an institution of higher education located at _____, Company, a corporation with its principle place of business at _____ and Student, a graduate student in the _____ graduate program at the University.

Whereas, in order to govern the relationships among the University, its faculty and staff, and Company and to avoid or manage any conflicts of interest that may arise by virtue of these relationships, the University and Company entered into a Memorandum of Understanding executed on _____; and

Whereas, the Student desires to accept an employment position with Company and also proposes to enroll in courses at University;

Now, therefore, the parties agree as follows:

The following conditions shall apply to the employment of the student by Company during the period beginning _____ and ending _____.

1. The student is free to accept or reject an offer of employment by Company and may terminate this employment at any time.
2. The manner in which the student performs his duties while an employee of Company and the voluntary or involuntary termination of his employment shall bear no relation to his status as a student of the University or the evaluation of his academic performance.
3. Employment with Company will not affect consideration of the student for a subsequent appointment as a graduate assistant or for other University financial support.
4. Employment with Company will not contribute to progress towards a degree.
5. University employees shall not be involved in any way in the supervision of the student or the evaluation of his performance while he is acting as an employee of Company.

6. There will be no overlap between work performed by the student in his capacity as an employee of Company and the work he performs at the University on research projects sponsored by Company.
7. The student will receive monetary compensation for his work at Company. The student shall not be compensated through the issuance of shares of stock or stock options.
8. Company agrees that it does not intend, by virtue of the employment of the student, to acquire intellectual property rights that would otherwise be owned by the University.
9. Company shall disclose to the University the terms of employment and the nature of the work to be performed by the student. This disclosure will assure that work performed by the student will not continue, derive or carry forward work performed previously at the University as sponsored research.
10. A copy of this agreement shall be provided to the Chair of the _____ graduate program, who shall advise the student concerning any issues that may arise in connection with his Company employment.

Student

Date

Professor

Date

Company

Date

Chair

Date

Chair, Graduate Studies Committee

Date