


<p>Name of Policy: Commercialization policy.</p> <p>Policy Number: 3364-70-15</p> <p>Approving Officer: President</p> <p>Responsible Agent: Vice President for Research Development</p> <p>Scope: all University of Toledo campuses</p>	 <p>Original effective date: May 28, 2009</p>
<p><input type="checkbox"/> New policy proposal</p> <p><input type="checkbox"/> Major revision of existing policy</p>	<p><input checked="" type="checkbox"/> Minor/technical revision of existing policy</p> <p><input type="checkbox"/> Reaffirmation of existing policy</p>

(A) Policy statement

- (1) Pursuant to section 3354.14 of the Ohio Revised Code, The University of Toledo Board of Trustees has determined that University of Toledo (hereinafter “University”) faculty and staff should be afforded the opportunity to hold personal financial interests in companies commercializing technology developed in conjunction with their university research and development activities. Faculty and staff participation in technology licensing transactions will facilitate the university’s goal of making products of its research and development available for use in the private marketplace by providing an incentive for inventors, who develop inventions with commercial applications. The procedures and guidelines set forth in this policy are intended to enable the university to realize the benefits of these entrepreneurial activities while protecting the integrity of the university’s research and educational mission and to comply with university policies and applicable federal and state laws and regulations.
- (2) The university's ownership of intellectual property rights in discoveries, inventions or patents created by its faculty and staff is determined in accordance with section 3345.14 of the Ohio Revised Code and the university’s patent policy number: 3364-70-04.

(B) Purpose of policy

Provide a guideline for university entrepreneurs participation in the licensing, development, and commercialization of university discoveries, inventions, or patents.

(C) Definitions

- (1) “Business Overview Document” is a written paper, submitted by a university entrepreneur, who is planning to establish a technology commercialization company, in which the university entrepreneur provides a summary and overview of the company’s products and/or services, the markets for these products and/or services, and the research and product development strategies. The business overview document should include the management and organizational structure of the technology commercialization company, the specific university intellectual property involved, the nature and extent of the university entrepreneur’s participation and management responsibilities, if any, and the expected financial arrangements with the technology commercialization company.
- (2) “Conflicts-of-interest Administrator” is the university official who is responsible for assisting university entrepreneurs (defined below) in identifying, managing and eliminating conflicts-of-interest, and in particular for facilitating the development of conflicts-of-interest management agreements (defined below) for university entrepreneurs participating in technology commercialization companies. Where required, or deemed appropriate, this individual will seek counsel and/or formal recommendations from the university conflict-of-interest review committee on matters associated with these technology commercialization companies.
- (3) “Conflicts-of-interest Management Agreements” are written agreements prepared by the university and entered into by
 - (i) the university and each university entrepreneur to establish a conflicts-of-interest management plan to define how the university entrepreneur interacts with the technology commercialization company in a manner that is in compliance with all university policies and allows him/her to meet their university responsibilities, obligations and commitments; and
 - (ii) the university and the technology commercialization company to define the terms under which the technology commercialization company will interact with the university and the university entrepreneur(s) to ensure the highest ethical standards and compliance with all applicable laws, regulations, and university policies.
- (4) “Conflicts-of-Interest Review Committee” is the university body responsible for overseeing conflicts-of-interest management agreements and making written recommendations to the vice president for research administration.
- (5) “Member of His/Her Family” means immediate family, including the individual’s spouse or domestic partner, and dependent children.

- (6) “Patent and Commercialization Committee” is the university body responsible for reviewing business overview documents and making written recommendations to the vice president for research development.
- (7) “Science and Technology Innovation Enterprises” is the university office charged with overseeing and coordinating technology transfer activities, negotiating licensing agreements for university intellectual property, and leading economic development efforts of the university.
- (8) “Technology Commercialization Company” is a private or public commercial business that is owned in whole or in part by one or more university entrepreneur(s) and that has as a purpose the development and commercialization of university intellectual property.
- (9) “University Entrepreneur” is any university employee, member of the faculty, staff, or administration who:
 - (i) Creates university intellectual property (defined below) owned or partially owned by the university; and
 - (ii) Desires to hold an ownership interest in a technology commercialization company (defined below) that intends to commercialize university intellectual property created by him or her.

Note as per section 3345.14 of the Ohio Revised Code that members of the board of trustees shall be governed by chapter 102 and sections 2921.42 and 2921.43 of the Ohio Revised Code.

- (10) “University Intellectual Property” shall mean and includes all discoveries, inventions, or patents, which result from research or investigation conducted in any experiment station, bureau, laboratory, research facility, or other university facility or other facility of any state college or university, or by any university employee acting within the scope of their employment, or with funding, equipment, or infrastructure provided by or through the university or any state college or university, pursuant to Section 3345.14 of the Ohio Revised Code, as amended.
 - (11) “Vice President for Research Administration” or her or his designee is the university official who is responsible for assisting university entrepreneurs in identifying, minimizing, and managing conflicts-of-interest, and developing conflicts-of-interest management agreements for university entrepreneurs involved in the development of technology commercialization companies.
 - (12) “Vice President for Research Development” or her or his designee is the university official who is responsible for the acquisition, protection, and disposition of university intellectual property.
- (D) Applicability

- (1) This policy shall apply to any university employee, member of the faculty, staff, or administration, who desires to hold an ownership interest in a technology commercialization company.
- (2) This policy defines exceptions to the Ohio ethics law and related statutes Ohio Revised Code chapter 102, section 2921.42 of the Ohio Revised Code, and section 2921.43 of the Ohio Revised Code, which might otherwise apply. Matters outside the scope of this policy will be subject to such laws to the extent applicable.

(E) Process

- (1) University entrepreneurs who wish to participate in a technology commercialization company must first obtain approval from their deans and/or department chairs or other appropriate supervisors. A technology transfer representative from the science and technology innovation enterprises office will be responsible for negotiating the business terms of the transaction between the technology commercialization company and the university, and the conflicts-of-interest administrator will facilitate the execution of conflicts-of-interest management agreements, in consultation with the conflicts-of-interest review committee.
- (2) The university entrepreneur's dean, department chair or staff supervisor must be an active participant in discussions with the conflicts-of-interest review committee regarding that individual's participation in the technology commercialization company and in the implementation of the conflicts-of-interest management agreements. A dean, department chair or staff supervisor, or anyone else in the reporting structure of a technology commercialization company, who has, or whose member of his/her family have, a financial interest in, or is a co-participant with a faculty or staff member in a technology commercialization company, is not in a position to provide effective oversight of that activity. In these situations, another disinterested administrator must be appointed by the president, provost or their designee to perform the responsibilities of the dean, chair or staff supervisor.
- (3) As a prerequisite to the granting of a license to university intellectual property, university entrepreneurs who wish to procure an equity position in a technology commercialization company shall provide the dean or staff supervisor, as appropriate and a technology transfer representative with a business overview document. The dean will provide the business overview document to the appropriate department chair.
- (4) University entrepreneurs who wish to participate in a technology commercialization company may discuss initial company formation with technology transfer representatives from the science and technology innovation enterprises office; however, they should not participate in the ongoing negotiation of option or licensing terms between the technology commercialization company and the university. A third party, such as company management and/or legal counsel,

should perform this function on behalf of the technology commercialization company.

- (5) In recognition of the university's ownership of the university intellectual property, the university shall have the right, but not the obligation, to negotiate and obtain an equity interest in the technology commercialization company. Terms of such interest will be negotiated by a university technology transfer representative. The disposition of any proceeds derived from the equity in a technology commercialization company shall be in accordance with the terms and conditions of the license agreement with the technology commercialization company and university policy 3364-70-13.

(F) Responsibilities of deans, department chairs and staff supervisors

- (1) Deans and department chairs are responsible for ensuring that faculty, who participate in technology commercialization companies, comply with this policy. Deans and department chairs are also responsible for ensuring compliance with the university consulting policy 3364-72-50 and conflicts-of-interest policy 3364-70-01 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.
- (2) Staff supervisors are responsible for ensuring that staff, who participate in technology commercialization companies comply with this policy. They are also responsible for ensuring compliance with university policies on conflicts-of-interest and work outside the university applicable to staff and for reviewing and making a recommendation as to the propriety of private business activities reported by staff in disclosure forms required by those policies.

(G) Responsibility for university duties

- (1) University entrepreneurs are encouraged to develop discoveries and inventions with commercial potential. University entrepreneurs shall not allow their interest in a technology commercialization company to influence their positional responsibilities or to interfere with their relationships with other faculty, staff, or students. In particular, assignments for students, including research assignments, must be based on the students' interest and academic development. University entrepreneurs shall respect and promote the cooperative nature of the academic environment by sharing information and participating in joint research efforts with their colleagues, as appropriate.
- (2) While faculty are permitted by the faculty consulting policy 3364-72-50 and this policy to engage in certain private business activities, they continue to be responsible for all of their university teaching, research, and service obligations. Authorized private business activities must be undertaken in accordance with the university's consulting policies and conflicts-of-interest management agreements

between the university entrepreneur and the university, and between the technology commercialization company and the university.

- (3) Staff members may not engage in activities relating to a technology commercialization company during regularly assigned working hours unless they take approved leave in order to engage in activities relating to a technology commercialization company during regularly assigned working hours. When performed outside regularly assigned working hours, these activities must be undertaken in accordance with university policies and pursuant to a formal conflicts-of-interest management agreement between the staff member, the technology commercialization company, and the university.
 - (4) Staff members shall pursue research projects as authorized by their supervisors. Supervisors shall 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.
- (H) Conflicts-of-interest standards
- (1) University entrepreneurs may not use university facilities, equipment and other resources for research benefiting a technology commercialization company, except when such use is pursuant to a sponsored research agreement, facilities use agreement, or other appropriate contractual arrangement between the university and the technology commercialization company.
 - (2) As a general rule, university entrepreneurs should not hold management positions in technology commercialization companies. 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 technology commercialization company develops. Professional management should be brought in at the earliest opportunity. In order to ensure the application of this principle, agreements between university and a technology commercialization company shall contain reasonable milestones for the reduction of these management responsibilities. Failure to comply with these agreed-upon milestones may result in the technology commercialization company's inability to engage in sponsored research with university, utilize university staff or students, or the other activities permitted under these guidelines.
 - (3) University entrepreneurs should not allow their management activities with companies to consume a disproportionate amount of their professional attention. Faculty who are unable to perform all of their university responsibilities because of activities in connection with a technology commercialization company must reduce the amount of activity at the technology commercialization company, request a reduction of their appointment or request a leave of absence. Professional improvement (sabbatical) leave authorized under section 3345.28 of the Ohio Revised Code may not be used for private business purposes.

- (4) Staff members who are unable to perform all of their university duties because of activities in connection with technology commercialization companies must reduce those activities, request a reduction of appointment or request a leave of absence.
- (5) Students should be informed in writing of any restriction that their involvement in research related to the technology commercialization company may impose upon them (e.g. confidentiality requirements that may negatively impact or delay public disclosure of their research results, the loss of inventor rights, etc.) prior to the start of technology commercialization company-related research.
- (6) Students may be employed by a technology commercialization company, subject to the limitation set forth in section (VI) (7) of this policy. Prior to such employment, the student, the student's faculty advisor, the chair of the student's department, the dean of the college of graduate studies (if the student is a graduate student), the provost, and a representative of the technology commercialization company must sign an agreement disclosing the student's rights and obligations. A template student disclosure agreement will be attached to the university-company conflicts-of-interest management agreement.
- (7) A student may not be employed by a technology commercialization company in which a faculty member has an ownership interest if:
 - (a) the student is enrolled in a course taught by the faculty member, or
 - (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.
- (8) Technology commercialization companies may not enter into any agreements with the university for the purchase, sale or rental of equipment, supplies or services other than those explicitly recommended by science and technology innovation enterprises, the conflicts-of-interest review committee, and approved by the president, as required.
- (9) As a general rule, university faculty and other employees, who are not directly involved with research and development of the university intellectual property licensed to a technology commercialization company, may hold equity interests in that technology commercialization company, but only to the extent allowed by relevant sections of the Ohio Revised code, including, but not limited to, chapter 102 and sections 2921.42 and 2921.43.
- (10) University regulatory review boards including, but not limited to, an institutional review board and the institutional animal care and use committee, may be utilized for research benefiting a technology commercialization company only pursuant to

a sponsored research agreement between the university and the technology commercialization company and then only for work performed in university facilities by university faculty, staff or students.

- (11) As a general rule, a university entrepreneur should not hold more than twenty-five (25%) percent of the outstanding equity in a technology commercialization company. While significant university entrepreneur equity ownership may be inherent in a newly formed technology commercialization company, it is expected that their ownership interests, as a percentage of the total outstanding shares or membership interests of the technology commercialization company, will decrease as the technology commercialization company develops and attracts additional equity. In order to ensure the observance of this principle, agreements between the university and technology commercialization companies shall contain reasonable milestones for the dilution of these equity interests. Failure to comply with these agreed-upon milestones will result in the technology commercialization company's inability to engage in sponsored research, utilize university faculty, staff, or students, and the other activities allowed for under this policy.
- (12) University entrepreneurs may not assume the role of principal investigator/project director in sponsored research awarded to university by technology commercialization companies in which they have an interest if the projects involve the use of human subjects. In other projects, where no human subjects are involved, university entrepreneurs may assume the role of principal investigator/project director, if the following are in place: a) fully executed formal conflicts-of-interest management agreements, as defined in this policy; b) approval by the conflicts-of-interest review committee; and c) approval by the appropriate provost.
- (13) University agreements for sponsored research projects funded by technology commercialization companies must contain the usual and customary terms utilized by the university when contracting with other companies for similar activities. These agreements must include, at a minimum, a requirement for full university publication rights, university rights to own or use data, and payment of facilities and administrative cost at the university's on-campus research rate negotiated with the federal government. The vice president for research development in consultation with the office of research and sponsored programs shall approve any exceptions to these conditions.
- (14) University entrepreneurs participating in technology commercialization companies approved pursuant to this policy continue to be bound by all university policies, including the university patent policy. New inventions and/or discoveries made as a result of research efforts of university faculty, staff, or student's for the technology commercialization company, including those made under formal consulting agreements, will be owned by university. The technology commercialization company may be offered an exclusive option to

license the technology. New inventions and/or discoveries developed by the faculty, staff member or student at the company must be disclosed to a technology transfer representative as required by the university patent policy.

<p>Approved by:</p> <p><u>/s/ laj</u> Lloyd A. Jacobs, M.D. President</p> <p><u>May 28, 2009</u> Date</p> <p><i>Review/Revision Completed by: Vice President for Research Development Vice President for Research Administration Director, Technology Licensing and Contracts Research Council</i></p>	<p>Policies Superseded by This Policy:</p> <ul style="list-style-type: none"> • <i>03-013 Faculty and Staff Participation in Companies Commercializing Products of University of Toledo Health Science Campus Activities (former Health Science Campus policy, review date 2/27/07)</i> • <i>3360-25-01 Rules Governing Participation in Companies Commercializing University Discoveries, Inventions, and Patents by University Entrepreneurs (former Main Campus Policy effective 7/14/03)</i> <p>Initial effective date: May 28, 2009</p> <p>Review/Revision Date:</p> <p>Next review date: May 28, 2012</p>
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