


<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</p> <p>Scope: all University of Toledo campuses</p>	 <p>Revision date: March 16, 2020</p> <p>Original Effective date: May 28, 2009</p>
<p><input type="checkbox"/> New policy proposal</p>	<p><input type="checkbox"/> Minor/technical revision of existing policy</p>
<p><input type="checkbox"/> Major revision of existing policy</p>	<p><input checked="" type="checkbox"/> Reaffirmation of existing policy</p>

(A) Policy statement

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

(B) Purpose of policy

Provide a guideline for University employees' entrepreneurial participation in the licensing, development, and commercialization of University Intellectual Property.

(C) Definitions

- (1) "University Intellectual Property" 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 University or any other state college or university, pursuant to Ohio Revised Code Section 3345.14, as amended.
- (2) "University Entrepreneur" is any University employee who:
 - (i) Creates intellectual property owned or partially owned by University; and
 - (ii) Desires to hold an ownership interest in a Technology Commercialization Company as defined in paragraph (3) of this policy that intends to commercialize University Intellectual Property that he/she has created.

Note: Per Ohio Revised Code Section 3345.14, members of the board of trustees will be governed by chapter 102 and Ohio Revised Code Sections 2921.42 and 2921.43.

- (3) "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 whose purposes are development and commercialization of University Intellectual Property.
- (4) "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 will 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 his/her expected financial arrangements with the Technology Commercialization Company.

- (5) "Conflicts-of-Interest Management Agreements" are written agreements prepared by University and entered into by:
 - (a) 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 his/her University responsibilities, obligations and commitments; and
 - (b) University and Technology Commercialization Company to define the terms under which the Technology Commercialization Company will interact with University and University Entrepreneur(s) to ensure the highest ethical standards and compliance with all applicable laws, regulations and University policies.
- (6) "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.
- (7) "Conflicts-of-Interest Administrator" is the University official responsible for assisting University Entrepreneurs in identifying, managing and eliminating conflicts-of-interest, and in particular for facilitating the development of Conflicts-of-Interest Management Agreements for University Entrepreneurs participating in Technology Commercialization Companies. Where required, or deemed appropriate, University Entrepreneurs will seek counsel

and/or formal recommendations from the University Conflicts-of-Interest Review Committee on matters associated with these Technology Commercialization Companies.

- (8) “Member of His/Her Family” means immediate family, including the individual University Entrepreneur’s spouse or domestic partner, and dependent children.
- (9) “Vice President for Research,” or his/her 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 development of Technology Commercialization Companies.

(D) Applicability

- (1) This policy applies to any University faculty, staff, and administrator, who desire to hold an ownership interest in a Technology Commercialization Company.
- (2) This policy defines exceptions to Ohio ethics law and related statutes Ohio Revised Code, Chapter 102, and Sections 2921.42 and 2921.43, 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, department chairs or other appropriate supervisors. A technology transfer representative will be responsible for negotiating the business terms of the transaction between the Technology Commercialization Company and University. 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 University employee in a Technology Commercialization Company, is not permitted to provide oversight of that activity. In these situations, a 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 will 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; however, they are not permitted to 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 University's ownership of University Intellectual Property, University will 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 will be in accordance with the terms and conditions of the license agreement between the Technology Commercialization Company and University, pursuant to University disposition of start-up equity policy 3364-70-13.
- (F) Responsibilities of deans, department chairs and staff supervisors

- (1) Deans and department chairs are responsible for ensuring faculty who participate in Technology Commercialization Companies comply with this policy. Deans and department chairs are also responsible for ensuring compliance with 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 staff who participate in Technology Commercialization Companies comply with this policy 3364-70-15. They are also responsible for ensuring compliance with University policies on conflicts-of-interest and work outside the University applicable to staff; for reviewing private business activities reported by staff in disclosure forms required by University policies, and making recommendations as to the propriety of such private business activities.

(G) Responsibility for University duties

- (1) University Entrepreneurs are encouraged to develop discoveries and inventions with commercial potential. University Entrepreneurs may 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 will 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 University faculty consulting policy 3364-72-50 and this policy 3364-70-15 to engage in certain private business activities, they will continue to be responsible for all of their University teaching, research and service obligations. Authorized private business activities must be undertaken in accordance with 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 such 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 University.
 - (4) Staff members may pursue research projects as authorized by their supervisors. Supervisors will authorize only those staff research projects that will advance the missions of 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 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 will 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 any other activities permitted under these guidelines.

- (3) University Entrepreneurs should not allow their management activities with Technology Commercialization Companies to consume a disproportionate amount of their professional attention.
 - (a) 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 Ohio Revised Code Section 3345.28 may not be used for private business purposes.
 - (b) 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.
- (4) 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.
- (5) Students may be employed by a Technology Commercialization Company, subject to the limitations set forth in paragraph (H)(6) 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/Technology Commercialization Company Conflicts-of-Interest Management Agreement.
- (6) 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.
- (7) Technology Commercialization Companies may not enter into any agreements with University for the purchase, sale or rental of equipment, supplies or services other than those explicitly recommended by the Vice President for Research and approved by the president, as required.
- (8) As a general rule, University 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.
- (9) University regulatory review boards, including, but not limited to, the institutional review board (IRB) and the institutional animal care and use committee (IACUC), may be utilized for research benefiting a Technology Commercialization Company only pursuant to a sponsored research agreement between University and the Technology Commercialization Company and then only for work performed in University facilities by University faculty, staff or students.
- (10) As a general rule, a University Entrepreneur should not hold more than twenty-five percent (25%) 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 those 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 Technology Commercialization Companies will 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/or any other activities allowed for under this policy.

- (11) 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; and
 - b) approval by the Conflicts-of-Interest Review Committee; and
 - c) approval by the appropriate provost.
- (12) University agreements for sponsored research projects funded by Technology Commercialization Companies are required to contain the usual and customary terms utilized by 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 University's on-campus research rate negotiated with the federal government. The Vice President for Research may approve any exceptions to these conditions.
- (13) University Entrepreneurs participating in Technology Commercialization Companies approved pursuant to this policy will continue to be bound by all University policies, including University patent policy 3364-70-04. New inventions and/or discoveries made as a result of research efforts of University employees 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 University employees for the Technology

Commercialization Company must be disclosed to a technology transfer representative as required by University patent policy 3364-70-04.

<p>Approved by:</p> <p>/s/ _____ Sharon L. Gaber, Ph.D. President</p> <p><u>March 16, 2020</u> Date</p> <p><i>Review/Revision Completed by:</i> <i>Vice President for Research</i> <i>Associate Vice President for Technology</i> <i>Transfer</i> <i>SLT</i></p>	<p>Policies Superseded by This Policy:</p> <ul style="list-style-type: none"> • <i>Former 3364-70-15, effective date February 21, 2017</i> <p>Initial effective date: May 28, 2009</p> <p>Review/Revision Date: April 1, 2011; December 10, 2012; February 21, 2017, March 16, 2020</p> <p>Next review date: March 16, 2023</p>
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