

## BOWLING GREEN STATE UNIVERSITY

### BGSU POLICY ON FACULTY, STAFF, AND STUDENTS PARTICIPATION IN COMPANIES COMMERCIALIZING DISCOVERIES, INVENTIONS, PATENTS AND PRODUCTS OF BOWLING GREEN STATE UNIVERSITY RESEARCH AND DEVELOPMENT

#### **PREAMBLE**

Bowling Green State University is a state institution of higher education that holds undergraduate and graduate education as its number one priority, and, the primary responsibility of the University professor is “to educate”. As part of the education process, BGSU encourages its faculty, staff and students to conduct research. By virtue of what they do, certain university faculty, staff or students may produce commercial opportunities based on their research work. The University is obligated by State of Ohio law to protect resulting intellectual property and to promote its full development and public use. In doing so, it also has an obligation to the faculty member, staff or student and to the public interest, to provide the flexibility needed to advance the research, attract investors and to achieve commercialization of the product. That flexibility is defined by this policy.

BGSU POLICY ON FACULTY, STAFF AND STUDENTS PARTICIPATION IN COMPANIES  
COMMERCIALIZING DISCOVERIES, INVENTIONS, PATENTS AND PRODUCTS OF BOWLING  
GREEN STATE UNIVERSITY RESEARCH AND DEVELOPMENT

May 25, 2003

I. Policy:

Pursuant to Ohio Revised Code §3345.14, Bowling Green State University's (BGSU) Board of Trustees has determined that employees of the institution may be afforded the opportunity to hold personal financial interests in companies commercializing technology developed in conjunction with their BGSU research and development activities. The Board recognizes that participation by employees of BGSU in the ownership and commercialization of technology and other intellectual property may increase the transfer of discoveries and knowledge generated at BGSU to the private marketplace by providing an incentive for faculty who develop inventions with commercial applications. The opportunity to participate in these transactions is also essential to BGSU's efforts to attract and retain highly qualified faculty, staff or student. 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 its research and educational mission and to comply with BGSU policies and applicable federal and state laws. These rules serve as an exception to the Ohio Ethics Law and related statutes [R.C. Chapter 102, R.C. §2921.42, R.C. §2921.43], which might otherwise apply. Matters outside the scope of these rules will be subject to such laws to the extent applicable.

II. Procedure:

(A) Definitions

- (1) A Commercialization Company is a private, commercial entity that is owned in whole or in part by a university employee and that has as its purpose, the development and commercialization of university owned intellectual property created by that employee.
- (2) BGSU's ownership of intellectual property rights in technology created by its faculty, staff or students is determined in accordance with Ohio Revised Code §3345.14 and the BGSU Policy on Patents and Copyrights. As more fully explained in the Policy on Patents and Copyrights, university owned technology generally does not include textbooks and other scholarly or artistic works created with minimal use of BGSU resources.
- (3) A BGSU employee is any member of the faculty or staff, including, but not limited to full-time and part-time faculty, adjunct faculty, non-tenure track research faculty, postdoctoral fellows, classified and administrative employees, graduate assistants/students, work-study students, employed undergraduate assistants, and technicians.
- (4) The Patent Advisory and Technology Commercialization Oversight Committee is a university body responsible for making recommendations to the Vice Provost for Research regarding Commercialization Companies.
- (5) The Vice Provost for Research is the university official who is responsible for assisting employees of BGSU in identifying, managing and eliminating conflicts of interest, and in developing conflict of interest management plans for employees of BGSU involved in the development of commercialization companies.
- (6) The Sponsored Programs and Research Office is the unit of the institution charged with providing leadership in setting the research agenda of the university and facilitating and overseeing research and sponsored programs and technology transfer.

(B) Applicability

- (1) This policy shall apply to all BGSU employees.
- (2) This policy shall apply to students who
  - (a) engage in research and development activities
  - (b) create intellectual property owned by BGSU; and
  - (c) desire to hold an ownership interest in a commercialization company.

(C) Responsibilities of Department Chairs, School Directors, Center Directors, and Staff Supervisors

- (1) Department Chairs and School Directors are responsible for ensuring that faculty who participate in commercialization companies comply with applicable university policies governing the terms and conditions of employment, academic and research activities. Department Chairs and School Directors are also responsible for ensuring compliance with the policies on consulting and conflict of interest, and for reviewing and making recommendations as to the propriety of private business activities as reported by their faculty in disclosure forms required by those policies.
- (2) Center Directors are responsible for ensuring that members of their centers who participate in commercialization companies comply with applicable university policies governing the terms and conditions of employment and academic and research activities. Center Directors are also responsible for ensuring compliance with the University policies on consulting, conflict of commitment, and conflict of interest. Further, they are responsible for reviewing and making recommendations addressing the propriety of private business activities as reported by their faculty in any required disclosure forms.
- (3) Staff supervisors are responsible for ensuring that staff members who participate in technology commercialization companies comply with this policy. They are also responsible for ensuring compliance with the university policies on conflict of interest and work outside the university applicable to staff employees 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.

(D) Approval Process

- (1) Faculty and staff members or students who wish to participate in a commercialization company must first obtain approval from their department chairs, school or center directors, and deans or other appropriate supervisors. The Vice Provost for Research will be responsible for negotiating the business terms of the transaction between the company and BGSU, and will facilitate the development of a Conflict-of-Interest Management Plan, in consultation with the Patent Advisory and Technology Commercialization Oversight Committee.
- (2) The Patent Advisory and Technology Commercialization Oversight Committee will review the sufficiency of business terms and conflict of interest management plans relating to technology commercialization companies. Written approval from this committee must be obtained before any business agreements relating to a technology commercialization company are finalized.
- (3) Faculty, staff or students who wish to participate in a commercialization company may discuss initial company formation with the Sponsored Programs and Research Office; however, they should not, as a general rule, participate in the ongoing negotiation of option and licensing terms between the company and BGSU. As soon

as possible, third parties, such as company management and/or legal counsel should perform this function.

- (4) As a prerequisite to the granting of an exclusive license to BGSU technology, a commercialization company must provide the Vice Provost for Research with a due-diligence review as evidenced by the following:
  - (a) a capitalization plan demonstrating access to funds necessary for company growth;
  - (b) a proposed management team;
  - (c) milestones for product development and commercial sale, and
  - (d) a periodic review of progress within a timeframe identified at the time of negotiation
  - (e) reversionary rights for the institution when company fails due-diligence after a mutually agreed-upon period of time.
- (5) In recognition of the university's ownership of the technology or invention, a commercialization company in early stage may grant the university an equity interest in the company as negotiated by the Office of Sponsored Programs and Research and approved by the Vice Provost for Research, to be held by the BGSU Foundation.
- (6) The faculty member's department chair, school director, center director, dean or staff supervisor shall be active participants in discussions with the Office of Sponsored Programs and Research and in the development of conflict of interest management plans relating to a commercialization company.
- (7) A chair, school director, center director or staff supervisor who has a financial interest or is a co-participant with a faculty, staff member or student in a commercialization company 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, center director or staff supervisor.
- (8) If the Patent Advisory and Technology Commercialization Oversight Committee members determine that, for any reason, it is not possible for the chair, school director, center director, the staff supervisor or another disinterested administrator to provide effective oversight of a transaction involving a commercialization company, the transaction should not be approved.

#### (E) Responsibility For University Duties

- (1) Faculty members are encouraged to develop discoveries and inventions with commercial potential within the broader teaching and research mission of BGSU. Care must be taken that faculty not allow their interest in a financial opportunity arising out of their research efforts to result in a potential for either a conflict of interest or a conflict of commitment to the institution, or the misuse of students, employees or resources of the university for benefit of the company.
- (2) While faculty members are permitted to serve as consultants to commercialization companies and other private enterprises, 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 BGSU policy on consulting and pursuant to formal consulting and conflict of interest management

plans signed by the faculty, the commercialization company and the university, and approved by the department chair, the center director, the Vice Provost for Research, the Office of Sponsored Programs and Research and the General Counsel.

- (3) Staff members may take approved leave in order to engage in activities relating to a 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 conflict of interest and conflict of commitment agreement between the staff member, the commercialization company, and the university. The department chair, the school or center director, the dean and/or supervisor, and the Office of Sponsored Programs and Research must approve such an agreement.
- (4) Staff members may pursue research projects as authorized by their supervisors. Supervisors shall authorize only those staff research projects that will advance the mission of the university without regard to the financial interests of the individual employees.

(F) Conflict-of-Interest Management Standards

- (1) BGSU facilities, equipment and other resources may not be used for research benefiting a commercialization company except when such use is pursuant to a sponsored research agreement, facilities use agreement or other appropriate contractual arrangement.
- (2) As a general rule, faculty, staff or students shall not hold management positions in 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 company develops. Professional management should be brought in at the earliest opportunity. In order to ensure the application of this principle, agreements between BGSU and a commercialization company 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 with BGSU, utilize BGSU faculty, staff or student employees and the other commercialization agreements and/or activities permitted under these guidelines.
- (3) Faculty members engaged in approved private business activities who find they are unable to perform all of their regular university responsibilities shall request a reduction of appointment or other approved leave subject to the restrictions found in the Ohio Revised Code Section § 3345.28.
- (4) Staff members who are unable to perform all of their university duties because of activities in connection with commercialization companies must reduce those activities or request a reduction of appointment or other approved leave.
- (5) Graduate and undergraduate students may use university facilities, equipment, and other resources to perform research benefiting a commercialization company only pursuant to a sponsored research agreement or other formal agreement made with BGSU. Research leading to thesis or dissertation may not be unreasonably restricted from publication or public disclosure, as determined by the Patent Advisory and Technology Commercialization Oversight Committee. Students should be informed in writing of any restrictions that their involvement in research related to the company may impose upon them (e.g. confidentiality requirements that may negatively impact public disclosure of their research results) prior to the start of their

research. Faculty investigators should exercise care in involving students in research that may impede completion of their academic program.

- (6) Students may be employed by a commercialization company subject to limitations set forth in Division G (7) of this policy. Prior to such employment, the student, the faculty or staff member, the chair of the student's department and/or school or center director, the chair of the graduate studies committee and a company representative must sign an agreement disclosing the student's rights and obligations.
- (7) A student may not be employed by a 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;
  - (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 commercialization company only pursuant to a sponsored research agreement or other formal internship agreement through the university.

- (8) 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 authorized by the Vice Provost for Research on the advice of the Patent Advisory and Technology Commercialization Oversight Committee.
- (9) As a general rule, faculty and staff members who are not directly involved with research and development of technology licensed to a commercialization company may hold equity interests in that company. Equity ownership in these situations is permissible only to the extent allowed by §2921.42 and §2921.43 of the Ohio Revised Code.
- (10) BGSU regulatory review boards including, for example, the Human Subjects Review Board (HSRB) 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 BGSU and the company, and then only for work performed in BGSU facilities by BGSU faculty, staff and students.
- (11) As a general rule, an individual faculty or staff member or their immediate family should not hold more than twenty-five (25%) percent of the outstanding equity in a commercialization company on an ongoing basis. Under circumstances where family ownership exceeds 25% but does not interfere with the employee's obligation to BGSU and does not create an additional conflict-of-interest, this ownership provision limit may be considered and amended by the Vice Provost for Research. While significant faculty or staff 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 commercialization 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 with BGSU, utilize BGSU

faculty, staff or students, and the other commercialization agreements and/or activities allowed for under this policy.

- (12) Faculty or staff members may not assume the role of Principal Investigator/Project Director in sponsored research projects awarded to BGSU and funded by commercialization companies in which they have an interest if the projects involved the use of human subjects. Faculty or staff members may assume the role of Principal Investigator/Project Director for sponsored research projects funded by commercialization companies in which they have an interest if a formal research integrity, conflict of interest management plan approved by the Patent Advisory and Technology Commercialization Oversight Committee and the Vice Provost for Research is in place.
- (13) Agreements for sponsored research projects funded by companies must include, at a minimum, a requirement for full BGSU publication rights, BGSU rights to own or use data, and payment of fully negotiated Facilities and Administrative fees at the on-campus research rate assigned by the U.S. Department of Health and Human Services. The Office of Sponsored Programs and Research must approve any exceptions to these conditions.
- (14) Faculty, staff and students participating in commercialization companies approved pursuant to these rules continue to be bound by all BGSU policies regarding the development and ownership of intellectual property. New inventions and/or discoveries made as a result of research efforts of BGSU faculty, staff and students for the company, including those made under formal consulting agreements through the institution, will be owned by BGSU. The company will be offered an exclusive option to license the technology. If it is in the best interests of the institution, the President has the authority under ORC §3345.14 and Article 10 of the institution's Patent Policy, to sell, assign, convey or grant ownership of intellectual property rights to companies. New inventions and/or discoveries developed by the faculty, staff or student for the company must be disclosed to the Office of Sponsored Programs and Research as required by the university patent policy.