Conflicts of Interest and Commitment: Implications for Involvement in Start-Up Companies
Faculty and staff involvement in a start-up company (a newly-formed, privately-held, for-profit company) based on his/her own research and intellectual property creates opportunities for development and commercialization of inventions. At the same time, this involvement nearly always creates conflicts of interest and commitment as well as the risk of noncompliance with State law and federal regulations. These issues must all be taken into consideration when planning a business.

This guide includes the following:
- University policy on conflict of interest in research
- University policy on conflict of commitment
- Conflict of interest and conflict of commitment issues applicable to start-up companies

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I. University Policy on Conflict of Interest in Research

UI Policy on Significant Financial Interest in Research
Part II, Chapter 18.6
http://www.uiowa.edu/~our/opmanual/ii/18.htm

Conflict of interest in research involves situations in which an investigator has a significant financial interest that may compromise, or have the appearance of compromising, professional judgment in the design, conduct, or reporting of research. University policy, which is based on federal regulations, requires that all investigators disclose significant financial interests prior to initiating research, regardless of the funding source or whether there is any external funding for the research. The policy also requires investigators to disclose new significant financial interests that arise in ongoing research within 30 days of the occurrence of the new interest.

Whose significant financial interest must be disclosed?
The University policy applies to all "investigators" conducting University research. "Investigator" means the principal investigator and any other person, whether faculty, staff, or student, who is responsible for the design, conduct, or reporting of research. In addition, the investigator must disclose any significant financial interests of his/her spouse and dependent children.

What must be disclosed? "Significant financial interest" means anything of monetary value, including, but not limited to, compensation such as salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options, or other ownership interests); and intellectual property rights (patents, copyrights, and royalties from such rights) held by an investigator or the investigator's immediate family, individually or in aggregate, when such interest involves:

(1) Payments in excess of $10,000 (including salary, consulting fees, royalty or licensing payments from intellectual property, honoraria and/or gifts) received within the past 12 months or anticipated for the next 12 months (excluding salary from the University);

(2) An equity interest in a publicly-traded company worth more than $10,000 or more than 5 percent of the business entity as determined by reference to its publicly-listed price (excluding mutual funds);

(3) Any equity interest in a company if the value cannot be determined by reference to publicly listed prices (i.e., an equity interest in a privately held company, such as a start-up company);

(4) A position giving rise to a fiduciary duty, such as director, officer, partner, trustee, employee, or any other position of management; or

(5) Intellectual property rights (patents or copyrights) or royalties from such rights whose value may be affected by the outcome of the research, including royalties distributable under University policy or any royalty-sharing agreements involving the University.

When a significant financial interest exists, the investigator must do the following at the time of submitting a grant proposal or research contract:

(1) answer "yes" to the question about financial interest on the UI Routing form (question #19),

(2) submit an electronic disclosure form to the Conflict of Interest in Research Office, Office of the Vice President for Research (https://uiris.research.uiowa.edu/coi/index.php),

(3) and, for research involving human subjects, answer "yes" to the conflict of interest question on the IRB application.
outside professional activities are a normal expectation of employees at a research university provided they do not create a conflict of commitment. Many of these activities generally do not require a written disclosure because they are expected to enhance and not interfere with University obligations. However, if the activities do create a conflict of commitment, written disclosure is required.

Disclosure and management of conflict of commitment. Disclosure regarding conflict of commitment must be made in writing to the DEO prior to initiating the activity (or at the point at which a non-disclosed activity exceeds the disclosure threshold), using the University of Iowa Disclosure of an Outside Activity form. This form is available at www.uiowa.edu/~provost/docs/coi/discoutact.pdf.

When a conflict of commitment is disclosed, the DEO (see "Definitions") shall develop a written management plan. The Management Plan for a Conflict of Commitment form is available at www.uiowa.edu/~provost/docs/coi/mgmtplan.pdf. A copy of this management plan shall be maintained in the employee’s personnel file. For faculty, a copy also shall be forwarded to the Office of the dean and/or appropriate Vice President.

If an employee wishes to dispute the proposed management plan, the governing procedures for faculty are the Faculty Dispute Procedures (III-29) and that portion of those procedures dealing with faculty grievances (III-29.6); for non-organized professional and scientific staff the governing procedures are the Grievance Procedures for Professional and Scientific Personnel (III-28.4); and for organized professional and scientific or merit staff the grievance procedures are described in the relevant contract. Student employees may appeal through any existing contractual grievance procedures.

Activities generally requiring no disclosure.

(1) Holding office in, or undertaking an editorial office or duties for a scholarly journal, academic press, or professional organization;

(2) Serving as a referee for a scholarly journal or an academic press;

(3) Serving on a professional review board or peer review bodies;

(4) Attending or presenting at professional meetings, workshops, colloquia, symposia, seminars, or training programs;

(5) Visiting other sites in connection with accreditation, audits, sponsored project reviews, or like activities;

(6) Writing or producing academically related books, articles, software and similar materials, or other creative works ordinarily considered in decisions relating to the employee’s employment status or salary; or

(7) Participating in outside non-professional activities unless the time devoted to them interferes with the employee’s University obligations.

The preceding rules governing outside professional activities do not apply to the intramural practice of medicine and dentistry conducted in the Colleges of Medicine and Dentistry by members of those faculties according to the plan approved and regulated by the Board of Regents, State of Iowa, and specific provisions of the Iowa Code.

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II. University Policy on Conflict of Commitment

UI Policy on Conflict of Commitment
Part II, Chapter 18.4
http://www.uiowa.edu/~our/opmanual/ii/18.htm

Activities requiring disclosure and management. University employees must disclose for review and management outside activities, paid or unpaid, that involve a commitment of time that may interfere with the performance of their University obligations. This includes any activities that would require them to be physically absent from their place of employment during scheduled work hours, as described below.

(1) Professional and scientific or merit staff, or student employees. A member of the professional and scientific or merit staff, or a student employee, who engages in compensated outside professional activities can do so during regularly scheduled work hours only by taking vacation or leave without pay.

(2) Faculty. Nothing in these rules shall be construed to require the disclosure of outside activities for any period during which a faculty member is not on a University appointment.

(a) Nine-month appointments. Faculty with a full-time nine-month appointment must disclose to their DEO, using the University of Iowa Disclosure of an Outside Activity form, compensated outside professional activities if they require a commitment of time exceeding either three business days or more than two consecutive business days in any fall or spring semester.

(b) Twelve-month appointments. Faculty with a full-time twelve-month faculty appointment must disclose to their DEO, using the University of Iowa Disclosure of an Outside Activity form, compensated outside professional activities if they require a commitment of time exceeding either nine business days or more than two consecutive business days over the period of the twelve-month appointment.

(c) One-, two-, or three-month appointments. Faculty with a one-, two-, or three-month faculty appointment (e.g., for summer-session teaching or research) must disclose to their DEO, using the University of Iowa Disclosure of an Outside Activity form, compensated outside professional activities if they require a commitment of time exceeding an aggregate of one business day per month over the period of the appointment.

(d) Other appointments. In the case of other appointments, the number of business days devoted to outside activities allowed before written disclosure to the DEO is required (using the University of Iowa Disclosure of an Outside Activity form) shall be adjusted proportionately to the length of appointment and percent of the appointment.

“University employees must disclose for review and management outside activities, paid or unpaid, that involve a commitment of time that may interfere with the performance of their University obligations.”
III. Issues Applicable to Involvement in Start-Up Companies

Use of University Facilities, Equipment, and Services. University resources, including facilities, equipment (computers, telephones, research equipment, etc), materials (such as office and laboratory supplies), personnel, services (including the chemical waste program, the Institutional Review Board, the Animal Care and Use Committee, etc.) exist for use of the University and not for company business or personal gain. Other than library materials and assigned office space, faculty and staff are not permitted to use University resources (including University stationery or letterhead) for extramural activities without first obtaining approval and arranging for the payment for such use. Exceptions to this prohibition include activities related to a scholarly publication, professional organization, or professional review body. Also, University staff are paid to perform services for the University (and thus for the State of Iowa) and cannot be used to provide services to an outside company (see section on hiring University employees to work at the company).

If you wish to use University facilities, services, or equipment for your company activities, contact the University Business Manager at 5-0126 to initiate a written agreement. If the company is located at the UI Research Park, contact the Park Director at 5-3941.

Some University services, but not all, are available to companies located at the Park.

If you wish to have University personnel perform research for the company in University research space, contact Sponsored Programs to initiate a written research agreement between the University and the company.

Use of University Information & Biologic Materials.
Unpublished research data may be shared with the start-up company if permitted by the research agreement under which the data were generated. Data generated under grants are usually owned by the University. Unpublished data can only be shared if the company accepts a confidentiality obligation. Also, biologic materials owned by the University can only be shared with the company under a written Outgoing Materials Transfer Agreement.

Contact the University of Iowa Research Foundation at 5-4559 about initiating an outgoing Materials Transfer Agreement.

Contact Sponsored Programs about initiating a written confidentiality agreement between the University and the company before you share any unpublished data generated under research conducted at the University.

Use of University Name/Logo. University policy prohibits the use of the its name or logo for any purpose in any non-University endeavor not previously sanctioned by the Office of the Director of University Relations. A start-up company that contracts with the University for research or other services is not permitted to imply an endorsement by the University of company products by virtue of contract with the University.

Contact the Office of University Relations at 5-0057 to discuss use of the University name/logo by the company.

Separation of Company Research from University Research. A clear separation between University research (particularly federally-funded research) and research sponsored by the company should be maintained at all times (including separation of space, separation of research records, etc.). There should be no overlap between the company's scientific program and the investigator's University research (and this determination should be made by someone other than the investigator).

Develop a written plan for the company's scientific program, including how it will be separate from research conducted at the University, and discuss the plan with your DEO.

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Separation of Accounts. There must be complete separation of University grant accounts and company financial records. Care must be taken to charge the purchase of supplies and services to the proper entity, depending on where the research activities will occur (UI versus start-up company). If the company is being located at the UI Research Park, contact the Park Director at 5-3491 for assistance in setting up an account.

Usurpation of University Opportunities. Faculty and staff have an obligation to give the University an opportunity to decide whether it wishes to have an activity (research) carried out under University auspices, and only if the University rejects the opportunity, is the faculty or staff member free to undertake the activity by other means. This means that if a sponsor contacts a UI researcher about conducting a research project, the researcher may not divert to an outside company work that would ordinarily be performed at the University under a sponsored research agreement with the sponsor.

Obtain a written waiver from your DEO and Dean to divert the research project to the start-up company. Prepare a memorandum of understanding about conducting the research at the company, and then obtain the signatures of your DEO and Dean on the document and provide each with a copy of the fully signed document. Keep a signed copy for yourself.

Subcontracting Work to a Start-Up Company. The University of Iowa issues subawards when a portion of the work related to an externally funded project is to be performed by a third party such as a start-up company. The Division of Sponsored Programs develops and negotiates the general administrative terms for subawards. The PI is responsible for determining the budget and monitoring subaward performance and payment, including monitoring the budget and scope of work for compliance with UI and sponsor policies and the terms of the prime award. Grant Accounting, Purchasing, and Accounts Payable work with the purchase order, invoices, and payment. The initial processing of subawards is through Sponsored Programs, and then the Purchasing Department will become involved. Information can be obtained at: http://research.uiowa.edu/dsp/main/index.php?get=subkmain

The UI Vendor Conflict of Interest policy applies to these situations where a subcontract is being issued to a company in which the researcher is a company owner.

Consulting for the Company. University employees may provide consulting services to a start-up company, so long as the activity does not interfere with the employee’s University responsibilities and no University resources are used for the consulting. The University policy on conflict of commitment states:

- Professional and scientific or merit staff and student employees may engage in outside professional activities during regularly scheduled work hours only by taking vacation or leave without pay.

- Faculty members are required to disclose to their DEO, using a form provided by the Provost Office (Disclosure of an Outside Activity form) any outside professional activities that exceed specified periods of time, based on the length of the faculty member’s appointment. Refer to the Operations Manual: http://www.uiowa.edu/~our/opmanual/ii/18.htm#184

The University is normally not a party to individual consulting agreements with companies, and such agreements should be clear that the consultant is not acting on behalf of the University in performing the consulting work. This statement must be inserted in consulting agreements:

Consultant and Company acknowledge that (i) Consultant in entering into this Agreement in Consultant’s individual capacity and not as an employee or agent of the University, (ii) the University is not a party to this agreement and has no liability or obligation hereunder, and (iii) University is an intended third-party beneficiary of this Agreement and certain provisions of this Agreement are for the University’s benefit and are enforceable by the University in its own name.

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As a consultant, you should not accept obligations in a consulting agreement that are inconsistent with obligations that you have to the University. (You may have obligations to the University by reason of contracts between the University and external organizations for research or other activities).

Consulting agreements may not confer rights in University research. It is necessary to keep University research totally separate from consulting activity. Your role as consultant can be advisory only and thus must be limited to exchange of ideas -- not actually conducting research (e.g., you can advise the company how its personnel can do something but not do it yourself).

Generally speaking, the University owns the patents on inventions made (1) in the course of an employee's employment/appointment or reasonably related to his/her field or discipline and (2) inventions made with significant use of UI resources. Therefore, in the case of an invention in either of these categories, you do not have the right to assign such inventions to a third party.

This statement must be inserted in consulting agreements:

*Consistent with University of Iowa policies, Consultant may enter into this agreement with Company and consult with Company contemplated herein. Consultant agrees that s/he will not use University time, resources, personnel, or materials in any manner inconsistent with applicable University policies. Company acknowledges that any such use of University time, resources, personnel, or materials by Consultant may render ineffective any assignment of intellectual property rights provided for by this agreement, and nothing in Company's agreement with Consultant will supersede any obligations Consultant has to the University as his/her employer.*

**Holding a Company Position with a Fiduciary Duty.**

Holding a company position (directorship, operating officer, employee, or scientific officer) involves a fiduciary responsibility to the company and an investment of time and can create a conflict with one's primary commitment to the University. In addition, holding such a position AND being involved in University research in which the company has an interest (sponsoring the research or utilizing technology licensed to the company) creates a conflict of interest that must be disclosed on a Financial Interest Disclosure form prior to initiation of the research. In the case of research involving human subjects, if you serve on a board of directors or hold a position as operating officer for the company sponsoring the research, you will likely be restricted or prevented from participating in the research.

**Development of and Licensing of University Intellectual Property.** Any discoveries, inventions, designs, knowhow, materials, works of authorship (including computer software) and any other intellectual property developed by University employees or visiting scientists is University intellectual property and must be disclosed to the University of Iowa Research Foundation (UIRF).

The UIRF has been designated by the University as the owner of its intellectual property and the manager of its patents and copyrights.


The University is obligated under the Bayh-Dole Act to commercialize its inventions for the public good. Accordingly, technology should be licensed to the entity in the best position to commercialize University inventions, which may or may not be the start-up company. This determination will be made by the University of Iowa Research Foundation on the basis of broad marketing of the license and due diligence/standard licensing practices. Further, licenses should protect background technology and the ability of other investigators to license that intellectual property; exclusivity should not be granted to the licensee company. The University will not grant future rights to all technology from the inventor's lab.

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III. Issues Applicable to Involvement in Start-Up Companies

Finally, you may not negotiate (on behalf of the start-up company) the terms of a licensing agreement between the University and the company.

**Holding Equity in the Company.** Holding equity in a non-publicly traded company AND participating in research in which that company has an interest in the outcome (sponsoring the research or utilizing technology licensed to the company) creates a significant financial interest according to University of Iowa policy and federal regulation. If there is a nexus between your University research and the company in which you hold equity, prior to initiating the research you must submit a Financial Interest Disclosure form.

**Student/Trainee Involvement in Company-Sponsored Research Conducted at the University.** The academic objectives and development of students must be protected. This means that students must be allowed to work in areas of their own choice and interest and should not be assigned to work on research topics that serve the objectives of a company. Students whose chosen area of work does not involve work of interest to the company should not be penalized in any way.

Students in your research group may choose to participate in research conducted at the University and sponsored by the start-up company under a formal sponsored research agreement between the University and the company. You will be required to inform the student that he/she has a financial interest related to the research.

**Employing Students at the Company.** Students’ ability to publish their research results (thesis, dissertation, or other form of publication) and meet degree requirements must be preserved. This is an issue where students are employed by a start-up company and are required to sign confidentiality agreements, but also where the student is performing research for the company and there is overlap between the student’s independent research and the company research.

Hiring University students to conduct company research related to their discipline of study requires prior authorization if the student is:

- under your mentorship (you serve as an advisor or are a member of the thesis or dissertation committee)
- paid under your grants
- enrolled in a course taught by you
- a member of your research group

You should seek prior authorization to employ the student from the office of the dean of the applicable college (Graduate College, College of Medicine, etc.)

**Employing University Staff to Work at the Company.** Hiring University staff (non faculty) to work at the company is permissible so long as the work at the company does not infringe on the employee’s commitment to the University (Conflict of Commitment). If that staff member is also involved in research conducted at the University in which the company has an interest in the outcome (research sponsored by the company or utilizing technology licensed to the company), then he/she has a financial interest in the University research and must submit a Financial Interest Disclosure form.

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III. Issues Applicable to Involvement in Start-Up Companies

Employing University Faculty to Work at the Company. Holding a company position involves a fiduciary responsibility to the company and an investment of time. Such a position can conflict or appear to conflict with a faculty member’s primary commitment to the University (Conflict of Commitment). In addition, such employment will likely restrict or prevent that faculty member’s ability to conduct research sponsored by the company at the University, especially when the research involves human subjects.

The faculty member must disclose the proposed position at the company to the DEO in writing prior to accepting the position and complete a conflict of commitment disclosure form which can be found at www.uiowa.edu/~provost/docs/coi/mgmtplan.pdf

Human Subjects Research. Protection of human subjects cannot be compromised by the desire for favorable research results or the possibility of personal enrichment. Also, protecting human subjects must be the investigator’s primary interest in all of the activities associated with a study. This includes, at a minimum, the following activities: recruitment of subjects; consenting subjects; enrolling subjects (decisions about satisfying eligibility requirements and the issue of meeting enrollment targets); reporting adverse events; and data interpretation.

The University will not usually allow an investigator holding a significant financial interest to conduct clinical research (studies designed to answer questions about the effects or impact of particular drugs, medical devices, treatments, or diagnostic procedures). In the case of an investigator having a financial interest in a start-up company which is sponsoring the research, that investigator will likely be precluded from participation in the research. This prohibition may be waived only upon the showing of a compelling justification based on the unique qualifications of the investigator. The conduct covered by our policy includes selecting research subjects, obtaining informed consent, performing protocol-mandated procedures, and providing clinical care.

The University takes this position because standard conflict management strategies are inadequate in such research and adequate monitoring plans may be difficult or impossible to implement. This prohibition applies not only to the PI, but to anyone who is responsible for the design, conduct, or reporting of the research. Thus, the question for a PI having a significant financial interest is not whether s/he can remain as PI, but whether s/he can remain on the study team.

For human subjects studies to be conducted at the University and sponsored by the start-up company, the IRB application must include the fact that a study team member has a financial interest related to the project.

The optimal method of commercializing UI technology may be through a start-up company founded by, or having a close relationship with, University researchers. When such companies are formed, issues of conflict of interest and conflict of commitment usually arise. The staff of the Conflict of Interest in Research Office aim to assist faculty and staff in navigating these issues so that they can pursue ventures in the commercial arena without compromising their responsibilities to the University.

Please contact us with questions:

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