

Faculty Guide Start-Up Companies

**Mississippi University Research Authority
Version 4.15.05**

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I. Faculty Participation in Start-Up Companies.

Faculty ownership (equity) in a start-up company can be an excellent means of transferring university developed technology to the public sector and promoting economic development. This is particularly true for embryonic technology where existing companies are unwilling to undertake the required research and development effort.

However, State ethics laws prohibit state employees from maintaining a material financial interest in a company that "contracts" or licenses technology from the university except when it is approved by the **Mississippi University Research Authority (MURA)**. MURA assures that the start-up company/university relationships, that could constitute a conflict of interest under State law, are managed properly. Refer to Mississippi Code 37-147-3 for details (Appendix).

The MURA Law requires university employees to submit a MURA letter applying for permission to establish and maintain a material financial interest in a company formed to license and commercialize technology they developed as a university employee. The MURA letter is submitted to the Office of Technology Management (OTM) for review and further processing. Key requirements of the application letter are shown below.

- The letter should fully describe the nature of the enterprise, the faculty interest in the company, and how the company will benefit the economy of Mississippi.
- In addition, state that the company will not adversely affect the University or any substantial state interest.
- Please submit the MURA letter **PRIOR TO ANY FINANCIAL TRANSACTION** and provide updates any time a change occurs in the company.
- Annual updates are also required.

The review and approval procedure is shown below:

1. The inventor/developer prepares a draft MURA letter and sends it to the OTM office for review.
2. OTM reviews the letter and works with the inventor/developer to prepare a final version for signatures.
3. OTM will circulate the final version of the MURA letter to the Dept Head/Director, Dean/Vice President, VP for Research and finally to the President for signature.
4. After the President approves the MURA letter, it is returned to VP for Research who forwards the letter to MURA for approval.
5. The VP for Research will inform applicant and the OTM office of MURA approval and handle annual follow-up.

Be sure you have allowed enough time for approval before you or the company conducts any financial transactions with the University.

II. Directions for Completing a MURA Application Letter

Directions for completing a MURA letter are shown in blue below. Applicants should replace the *italicized blue text* with the appropriate text for their particular business. The normal text should be used verbatim as they specifically address the required sections of the MURA Act.

Send a draft MURA letter to Office of Technology Management for review and circulation for approval

DATE _____

Dr. Mark E. Keenum
President
Mississippi State University
P.O. Box 6018
Mississippi State, MS 39762

RE: MURA Application

Dear Dr. Keenum:

1. Application is hereby made for permission to establish and maintain a material financial interest in a private entity which has, or will, provide or receive equipment, material, supplies or services in connection with the university. The financial interest and the activities that I or the private entity will engage in are in connection with the university in order to facilitate the transfer of technology developed by me from the university to commercial or industrial enterprises for economic development.

- (a) The private entity and my interest in it are described as follows:

Provide particulars regarding the private entity to include:

- i. Name;
- ii. Type of entity [corporation, partnership, sole proprietor, etc.];
- iii. Major participants or investors;
- iv. When and where established;
- v. Prior business activities, if any;
- vi. Percent of ownership to be vested in applicant;
- vii. Contract provisions benefiting applicant;
- viii. Particulars pertaining to the use of applicant's intellectual property rights [as described in the MURA act]; and
- ix. Contractual connection of private entity to university.

- (b) The nature of the undertaking or enterprise is described as follows:

State what technological innovations [as described in the MURA act] are to be involved; describe the use of the intellectual property of the university or applicant.

- (c) Benefits to the economy of the state are described as follows:

Describe the job creation potential, the addition to the gross state product, spin-off industries or services to be effected and any other benefits to the state's economy.

(d) My activities with the private entity are described as follows:

State the number of hours which will be dedicated to this activity on a weekly or monthly basis, describe how potential conflicts with your university work load will be avoided or minimized; describe any impact such activities will have upon other university research application for other research projects, public service or instructional activities at the university.

(e) To the best of my knowledge, I am not aware of any state or federal statutes, rules, policies, or regulations which would be contravened by the interest or activities sought in this application.

2. I hereby certify that to my knowledge my interest in, or benefit from, the private entity, or the activities it or I will be engaged in, will not adversely affect any substantial state interest.

Please approve the application and forward it with your findings to the Mississippi University Research Authority, 3825 Ridgewood Road, Jackson, MS 39211.

Sincerely,

Name

APPROVED:

Mark E. Keenum
President
Mississippi State University

III. Example of a MURA Letter

This is an example of an approved MURA letter. Applicants should replace the *italicized blue text* with the appropriate text for their particular business. The regular text should be used verbatim.

Send a draft MURA letter to Office of Technology Management for review and circulation for approval

Date: _____

Dr. _____
President
Mississippi State University
P.O. Box 6018
Mississippi State, MS 39762

RE: MURA Application

Dear Dr. _____:

1. Application is hereby made for permission to establish and maintain a material financial interest in a private entity which has, or will, provide or receive equipment, material, supplies or services in connection with the university. The financial interest and the activities that I or the private entity will engage in are in connection with the university in order to facilitate the transfer of technology developed by me from the university to commercial or industrial enterprises for economic development.

(a) The private entity and my interest in it are described as follows:
NEWCO Technologies, LLC is a new entity with no prior business activity. It was established in _____(date), in Starkville, MS. NEWCO Technologies will enter into a contractual arrangement with the university, in accordance with the established intellectual property policy, to license intellectual property created as a result of my research efforts at Mississippi State University.

The co-owners of the NEWCO include me and _____with each party having _____ interest in the business. I will participate in the initial development of the business and product line by my financial investment and by applying my technical capability. The provisions benefiting my involvement will be in proportion to my financial involvement and the success of the business (sales of the product).

(b) The nature of the undertaking or enterprise is described as follows:
NEWCO Technologies, Inc. will develop a _____based on the technology I developed in my prior research. I will provide the technical design and algorithms for deriving _____. The technology as it stands at this time is not economized and has not been completely tested. NEWCO Technology will develop a more commercially friendly version and will deploy it in the field under a pilot basis. If successful, NEWCO Technology will develop a production strategy to bring the product to the market.

(c) Benefits to the economy of the state are described as follows:

If a xx% market penetration can be achieved in the U.S., it is predicted that the

manufacturing, marketing, and sales of this product will require 20 highly skilled personnel, which is a positive contribution to the local economy.

- (d) My activities with the private entity are described as follows:
I will initially participate in defining the product and will play an advisory role in the technical aspects of product development and the testing of the initial products. I will not be involved in the day-to-day management of the private entity. This activity will not interfere in any way to my normal teaching, research, and other service duties at the university because most of involvement will occur during off hours and weekends. The number of hours which will be dedicated to this activity on a monthly basis will be less than ten.
- (e) To the best of my knowledge, I am not aware of any state or federal statutes, rules, policies, or regulations which would be contravened by the interest or activities sought in this application.

2. *I hereby certify that to my knowledge my interest in, or benefit from, the private entity, or the activities it or I will be engaged in, will not adversely affect any substantial state interest.*

Please approve the application and forward it with your findings to the Mississippi University Research Authority, 3825 Ridgewood Road, Jackson, MS 39211.

Sincerely,

_____, *Associate Professor*

APPROVED:

Dr. _____
President
Mississippi State University

IV. Guidelines for the Interaction of University Personnel with Companies Established Under MURA, March, 2005.

When the university engages in activities with university-employee-owned companies (e.g. MURA company), a conflict of interest is inherent in these relationships. Oversight of research relationships with such companies comes under the Mississippi Universities Research Authority and is subject to specific requirements. Companies formed under the MURA law have rigorous reporting requirements to allow the Authority to monitor the inherent conflict of interest. In addition, the President or Chancellor of the University is responsible for assuring that the university is not injured by the relationship between the company and the university. In order to more carefully monitor this relationship, the university is providing certain guidelines and procedures.

The university encourages interested employees to engage in entrepreneurial activities as a way of contributing to the economic development of Mississippi. A MURA company has an intrinsic research relationship with the university and its employees. The university works with such companies on the same basis as work done with companies not owned by university employees. To ensure that such relationships do not harm either the university or its employees, special oversight is required. Research relationships with MSU employee-owned companies can take several forms:

1. *University research is sponsored by the MURA company, including personnel with equity in the company*
2. *Company services or goods are purchased by the university, possibly for personnel with equity in the company*
3. *The company, in exchange for a fee, uses university facilities and/or equipment*
4. *The company employs individuals who are simultaneously university graduate students*
5. *The employee with equity in the MURA company is spending a significant portion of their time on company business, to the extent that it constitutes a conflict of time commitment.*

General guidelines

1. There shall be an initial meeting and then annual meetings between the faculty/staff with a MURA company, their unit head/director, dean, if appropriate, the Director of the Office of Technology Management, the University Ethics Officer, if available, and Vice President for Research and Economic Development or his/her designee (the MURA review committee). These meetings will review all interactions between the MURA company and the University. At the initial meeting, a *modus operandi* will be established with approval required by all parties. Approval will not be unreasonably withheld. Special meetings of the MURA review committee can also be held as needed.
2. For individual joint projects or programs between MSU and the company, each activity should be carried out based on an agreement through the Office of Sponsored Programs Administration and with the approval of the Vice President for Research and Economic Development, following advice from University Counsel. These projects can include grants, contracts, or memoranda of agreement. In each case, the activity should be specified in the agreement. In addition, the following safeguards will be used for the issues listed above:

Issue 1. University research is sponsored by the MURA company, including personnel with equity in the company.

The P.I. shall not be someone with a 2% equity interest or be a principal in the MURA company. There will be an annual review of such research by the P.I.'s supervisors up through the level of Dean/Director and the University Ethics Officer reporting to the results/recommendations of the review to the Vice President for Research and Economic Development. This will ensure the integrity of the research and that performance metrics have been achieved. This review will be

carried out on an annual basis as part of the MURA review, or as requested either by the company, the P.I. or his/her supervisors.

Issue 2. Purchase of company services or goods by the university, possibly for personnel with equity in the company.

Purchases/contracts by Mississippi State University from a MURA company cannot be initiated or executed by a person with equity in that company. Any single-source purchases must be reviewed prior to completion.

Issue 3. Lease of university laboratory and other space and/or equipment by a MURA company.

Appropriate leases will be recommended by the unit head/director responsible for space and/or equipment to the Vice President for Research and Economic Development with sign off by deans, if appropriate. Fees/contracts will be in line with those charged for use by companies not involving MSU employees. The university counsel will review all contracts.

50% of the lease income will accrue to the unit with 50% going to the University E & G budget.

Issue 4. Company employment of individuals who are simultaneously university graduate students.

The Program of Study committee and/or a committee named to oversee research shall be notified of the potential conflict and the student's work for the dissertation or thesis shall be monitored to assure that the quality of the student's research and graduate experience is not compromised by the connection to the company. Generally, it is inadvisable for the student's advisor to be the student's employer or supervisor in the employee-owned company, but exceptions can be sought from the department head.

Issue 5 Time commitment by employee with equity in the MURA company.

The initial and annual review meetings will consider the projected level of time commitment of an employee with equity in the MURA company. If there is an apparent conflict of time commitment, the employee will be required to reduce his/her involvement in the company or reduce his/her percent commitment to the university. In the case of the latter, the leave of absence or partial leave of absence will be reviewed annually until the conflict is resolved. In addition, if there are changes in the time commitments to the MURA company, changes can be made immediately following a special meeting of the MURA review committee.

Remedies

At any point in the process of reviewing disclosures, the Ethics Officer or the unit head or the faculty/staff member with the equity interest in the MURA company may request review by the IP Advisory Committee. The IP Advisory Committee may advise that remedial steps should be taken to protect the interests of all parties involved and to limit the negative impact of any unavoidable conflicts of interest.

Sanctions

Disclosure is the responsibility of the faculty or staff member who becomes involved in activities that may be in conflict. Failure to disclose those relationships is a serious matter, and illegal under state law.

Guidelines for the use of university facilities/equipment by companies/external entities

- Rental income from external companies using university facilities/equipment should be based on the market rate¹.
- Leases² of facilities should be by standard form agreements³ provided by MSU General Counsel.
- All contracts for the lease of research space, facilities and/or equipment to private bodies must be approved by the Vice President for Research and Economic Development.
- Use of facilities by commercial enterprises requires IHL Board approval which will be requested by the Vice President for Research and Economic Development.
- The company/external entity will provide liability insurance for any damage to the research space, facilities and/or equipment and to university personnel and return the space as was.
- The company/external entity will hold the university harmless for damage to its equipment and/or personnel.
- Leases will be for a calendar year or portion thereof.
- Leases can be renewed annually and normally for a maximum of 3 years.
- For units for which E&G pays utilities, the rental income should be split using a formula analogous to the distribution as F&A recovery (based on real costs):
 - 40% E&G,
 - 60% Office of Research (The bulk of these funds will be held⁴ for initiatives involving the department/college/center/institute)
- For units (Departments/Centers) for which E&G does not pay utilities, the rental income should be split in the following manner:
 - 20% E&G,
 - 40% Department/Center
 - 40% Office of Research (The bulk of these funds will be held⁴ for initiatives involving the department/college/center/institute)
- For equipment purchased by and maintained by units, the income should be split in the following manner:
 - 20% E&G,
 - 70% Department/Center
 - 10% Office of Research

¹ State law does not allow the use of State resources for private groups without reasonable compensation. A good faith effort for a market rate triple exempt lease rate (the company leasing space would pay property tax if applicable, insurance and utilities) is required including where possible separate metering of utilities.

² Leases may be exclusive or non-exclusive access fees.

³ Lease documents may be modified to meet the specific needs of units.

⁴ Subject to negotiation.

APPENDIX A

**MISSISSIPPI CODE OF 1972
As Amended
(Version 7.01.15)**

SEC. 37-147-1. Short title.

This chapter shall be known and may be cited as the "Mississippi University Research Authority Act."

SEC. 37-147-3. Mississippi University Research Authority established; purpose.

There is hereby created and established the Mississippi University Research Authority to promote the public welfare and prosperity of the people of Mississippi and foster economic development within the state by forging links among the state's educational institutions, businesses and industrial communities and state government through the development of cooperative ventures of innovative technological significance which will advance education, research or economic development within the state.

SEC. 37-147-5. Definitions.

The following words shall have the meaning ascribed herein unless the context clearly requires otherwise:

- (a) "Act" means the Mississippi University Research Authority Act;
- (b) "Authority" means the entity created pursuant to this act;
- (c) "Board" means the Board of Trustees of State Institutions of Higher Learning;
- (d) "Technological innovations" means research, development, prototype assembly, manufacture, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines, technology and related property rights of all kinds; and
- (e) "University" means a Mississippi educational institution established pursuant to the provisions of Section 213A of the 1890 Constitution of the State of Mississippi.
- (f) "Intellectual property" means any formula, pattern, compilation, program, device, method, technique or process created primarily as a result of the research effort of an employee or employees of an institution of higher learning of the State of Mississippi.

SEC. 37-147-7. Composition of Authority.

The authority shall be composed of the following members: five members appointed by the Board from among the chief research officers of the eight institutions of higher learning, to serve at the will and pleasure of the board; the vice-president of the board during the term of his office; the Director of the Department of Economic and Community Development, or his designee; the President of the Mississippi Resource Development Corporation, a non-profit corporation organized and operating under the laws of the State of Mississippi; and the Commissioner of Higher Education as an ex-officio, non-voting member.

SEC. 37-147-9. Executive director of Authority.

The authority shall select an executive director who shall be the administrative officer of the authority and shall perform such duties as are required of him by law and such other duties as may be assigned by the authority. The executive director shall possess a terminal degree from an accredited university and must have a demonstrated record of experience in the field of university research programs, organizational management and research grant management. He shall receive such compensation as may be fixed by the authority.

The executive director, with the approval of the authority, shall employ such technical, professional and clerical help as may be authorized by the authority; and the authority, upon recommendation of the executive director, shall define the duties and fix the compensation of such employees.

SEC. 37-147-11. University ties with and interest in private entities; application; Authority permission.

(1) Notwithstanding any other provision of state law, an officer or employee of a university, except any chief executive officer, any chief financial officer, any chief research officer or any member of the authority, may, pursuant to subsections (2) and (3) of this section, apply to the authority which, under policies, rules and regulations established by the authority, may grant permission to establish and maintain a material financial interest in a private entity which provides or receives equipment, material, supplies or services in connection with the university **in order to facilitate the transfer of technological innovations from the university to commercial and industrial enterprises for economic development.**

(2) To receive consideration for permission pursuant to subsection (1) of this section, the officer or employee of the university must first receive approval in writing from the chief executive officer, or his designee, of the university at which he is employed. **The chief executive officer may grant approval to the officer or employee only if all the following conditions are met:**

- (a) **The officer or employee provides a detailed description of his interest in the private entity to the chief executive officer;**
- (b) **The nature of the undertaking or enterprise is fully described to the chief executive officer;**
- (c) **The officer or employee demonstrates to the satisfaction of the chief executive officer that the proposed undertaking may benefit the economy of this state;**
- (d) **The officer or employee demonstrates to the satisfaction of the chief executive officer that the proposed undertaking will not adversely affect research, public service or instructional activities at the university; and**
- (e) **The officer's or employee's interest in the private entity, or benefit from the interest, will not adversely affect any substantial state interest.**

(3) The authority may authorize an officer or employee of a university to establish and maintain a material financial interest in a private entity if all of the following conditions are met:

- (a) The application as set forth in subsection (2) of this section is approved by the chief executive officer of the university at which the applying officer or employee is employed;
- (b) The authority enters such application upon its minutes and reaches positive findings:
 - (i) That the application contains an adequately detailed description of the officer's or employee's interest in the private entity;

- (ii) That the application contains a detailed description of the proposed undertaking or enterprise that is sufficient;
- (iii) That the authority is satisfied that the proposed undertaking will benefit the economy of the state;
- (iv) That the authority is satisfied that the proposed venture will not adversely affect research, public service or instructional activities at the university; and
- (v) That the officer's or employee's interests in the private entity or benefit from the interest will not adversely affect any substantial state interest.

(4) On the recommendation of the authority, the chief executive officer of the university at which the officer or employee is employed may require that the university or the university's research corporation have a share in any royalties or shares or other proceeds or equity positions from the proposed undertaking of the private entity.

(5) The authority may establish policies, rules and regulations for the implementation of this section.

SEC. 37-147-13. Powers of Authority.

The authority shall have the power to implement and further the purposes of the Mississippi University Research Authority Act including the power:

- (a) To lease, sell, exchange or transfer to a university or university research corporation personal property, money or other assets on terms and conditions established by the authority which are fair, just and reasonable to the authority and the university involved and to enter into any other contract or agreement with the university research corporation or other private entity.
- (b) To conduct, sponsor, finance and contract in connection with technological innovations of all kinds.
- (c) To receive gifts, grants and donations of money, personal property or other assets of any kind from any source.
- (d) To do anything else which the authority deems appropriate to further the purposes of the Mississippi University Research Authority Act.

SEC. 37-147-15. University formed research corporations.

(1) With the approval of the Board of Trustees of State Institutions of Higher Learning, any university may form, pursuant to the provisions of the Mississippi Nonprofit Corporation Act or the Mississippi Business Corporation Act, one or more research corporations, separate and apart from the state and the university, to promote, develop and administer enterprises arising from research or technological innovations in order to take advantage of opportunities of scientific, educational and economic development.

(2) Each such corporation shall be governed by, and all of the functions, powers and duties of it shall be exercised by, a board of directors appointed by the president of the university. Members of the board of directors may include the president of the university, officers and employees of the university, and other persons selected by the president of the university. Officers and employees of the university may have ownership or financial interests in such corporations.

(3) The board of directors of each such corporation shall adopt bylaws, in accordance with the provisions of the Mississippi Nonprofit Corporation Act or the Mississippi Business Corporation Act, as appropriate, governing the conduct of the corporation in the performance of its duties under its charter and this act.

SOURCES: Laws, 1992, ch. 530, eff from and after July 1, 1992.