I. Summary Guidelines related to Conflict-of-Interest (COI): Faculty Involvement with Start-up Companies

New Jersey State Law and University policy and regulations require the disclosure and management of real and perceived conflict-of-interest (COI) related to start-up companies in which faculty are shareholders and which have, or plan to have, a technology license from Rutgers.

Following are some basic guidelines to keep in mind when considering getting involved with a start-up company.

- **The key to a smooth and successful management of a COI situation is full and early disclosure.** If a faculty or a family member of a faculty are, or plan to be, involved in ANY way with a start-up company that is, or about to become, a licensee of Rutgers, let your Chair and/or Director know, and inform OTC. A COI review will be administered by the university and your relationship with the start-up will be streamlined to avoid potential COI problems. The faculty will undergo an annual COI review for as long as he/she holds equity in the start-up.

- **Equity in start-up companies:** Faculty can own equity in start-up companies that have a license with Rutgers. Such equity should be issued to faculty for specific contribution by faculty to the company and not solely as the result of the license agreement with Rutgers.

- **No decision-making role in or fiduciary responsibility to the start-up:** A faculty member is first and foremost an employee of Rutgers. A decision-making role or fiduciary responsibility to the company may conflict with the faculty's responsibilities and obligations as a Rutgers employee. Faculty can serve the start-up on an advisory capacity (e.g. being a member of the start-up's Scientific Advisory Board). The university may allow a faculty to serve the start-up in a management capacity but only for a very limited period and with a clear plan for the faculty to phase out of this position.

- **Use of students for work on behalf of the start-up:** Except in limited circumstances and under well-defined written agreement, Rutgers students should not be used to perform any work that benefits a company in which a faculty is a shareholder.

- **Use of Rutgers facilities and equipment:** With specific permission from the relevant Dean, Rutgers facilities and equipment could be made available for a specific use to start-up companies at market rates. Rutgers will only offer space to start-up companies if such space is in a facility that is specifically designated as an incubator.
• **Consulting agreement with start-ups:** Faculty should make sure that their commitment to a company under a consulting agreement does not conflict in any way with their obligations as Rutgers employees (e.g. commitment not to publish new discoveries).

• **Conflict of commitment:** It is important for faculty to make sure their involvement with the start-up will not negatively affect their work at the university. The faculty should discuss with their superiors the extent of their involvement in the start-up.

II. Rutgers Startup Conflicts of Interest Committee and Review Process

• **Committee make up:** The committee is designed for review, advice, and oversight of COI issues related to Rutgers startups and as such is primarily composed of faculty with experiential knowledge of university startups and entrepreneurial arrangements with faculty. In addition, the committee is supported by staff from Research Commercialization, Research Regulatory Affairs, and General Council.

• **Committee areas of review may include:**
  o General Conflicts of Interest
  o Conflicts of Commitment
  o Utilization of Students for work associated with faculty startups
  o Research and Academic Integrity related to work associated with faculty startups
  o Rutgers Intellectual Property Right Assurances
  o Adherence of State and Federal laws which are assessed through the review process and not necessarily directly by the faculty committee members

• **Triggers for COI review:**
  o All agreements between Rutgers and a company owned ≥1% by a Rutgers faculty/staff member or their immediate family, and all agreements involving ≥ $25.00 between Rutgers and faculty/staff members should be reviewed using the established Rutgers COI and ethics policies.
  o This includes licenses and options to faculty/staff owned startups as well as licenses directly to faculty/staff (license-to-inventors).
  o Any required COI review needs to be completed prior to the execution of any agreement.
  o *The COI and ethics policies are established and interpreted by Rutgers and are designed to meet State and Federal conflicts of interest and ethics laws. This allows for some flexibility with the implementation of Rutgers COI policy driven actions. One example is a non-disclosure agreement between Rutgers and a Rutgers startup owned ≥1% by a faculty member. The agreement per the NJ Conflicts of Interest Law falls under its prohibitive exception clause (19.1), the*
law still mandates that it goes through our COI/ethics “procedures” before execution. In the case of essentially all non-disclosure agreements, the Rutgers “procedure” does not require a formal COI review.

- **Circumstances where ownership criteria are not triggered, but a COI review is advisable:**
  - Faculty consulting agreements with a startup
  - Visitor scientist agreements (startup scientists working in the same lab as faculty owner), and
  - Sponsored research agreements involving a Rutgers startup where a faculty member is an inventor (hence, with potential revenue from royalties).
  - These reviews can be requested by faculty members, department chairs, or other departments throughout Rutgers. The COI committee will review the matter, offer advice, and ultimately confirm that any COI issues are being managed in an appropriate manner.

The Committee from time to time may also want a status update from faculty involved with Rutgers startup companies to determine if there are changes in COI status. These reviews may trigger the need to modify or update any COI management plans that were put into place or may result in new management plans.

- **General Conflicts of Interest**
  - Faculty cannot use Rutgers resources for one’s own profit or benefit without establishing a formal agreement (i.e. research agreement) that complies with Rutgers COI policies.
  - Examples: faculty members should not use their Rutgers email for startup related correspondence, faculty members should not be using any Rutgers equipment or supplies (including computers) from their offices or labs to do startup work, faculty cannot negotiate the terms of any licensing or option agreement with Rutgers, if a faculty member is an officer in their startup then they should not be the Rutgers PI on sponsored research coming from that company.
  - All options or license agreements with faculty startups require the faculty member to get written approval from their chair prior to the agreement being executed (related to conflicts of commitment below)
  - **All faculty/staff need to keep their e-COI financial record up to date.** Faculty need to update their records to reflect equity and income from their startup company.

- **Conflicts of Commitment**
  - Faculty should inform their department chair of outside work.
• Their outside work (including consulting) is limited to 20% effort or a total of 5 eight-hour days per month. Any percent effort over this amount must be reported and requires approval by the department Chair and or Dean. For faculty, every day of the month including weekends is included in the 5-day calculation.
  o Faculty can never be a PI on an SBIR application because of the requirement to be working for the company at least 51% time.
  o There are no financial restricts associated with outside work such as consulting, but present effort time should be tracked and recorded.

• Utilization of Students for work associated with faculty startups
  o Undergraduate or Graduate students should never be assigned tasks or projects to benefit faculty owned startups unless and only after careful review:
    ▪ The student will directly benefit from the work and if the work is aligned with their study/degree pursuits
    ▪ The work should not be assigned or overseen by the faculty member who has an interest in the startup
  o Although there is no prohibition on faculty owned startups offering internships or work through their companies for students, faculty members need to prioritize the wellbeing of any students who work for their startup.

• Research and Academic Integrity related to work associated with faculty startups
  o Research done for a faculty startup should never incur publication restrictions above those required for intellectual property protection after disclosure to Rutgers
  o Researchers must disclose their interests in the startup when publishing research results sponsored by the startup
  o A management plan should be put into place to ensure the integrity of the results of any research sponsored by the faculty’s startup in their lab
  o The faculty member should avoid being the PI for sponsored research work that would financial benefit his company

• Rutgers Intellectual Property Right Assurances
  o The COI committee emphasis the importance of clear invention ownership. All faculty should disclose inventions made while doing research involving their startup regardless of any consulting agreements or positions within the company. The Office of Research Commercialization will ultimately determine the ownership of disclosed inventions.

• Adherence of State and Federal laws which are assessed through the review process and not necessarily directly by the faculty committee members
When applicable, qualified non-faculty members of the committee can provide advices and insure adherence to any applicable State and Federal Laws. Some frequently referenced laws involving Rutgers COI reviews include the NJ Conflicts of Interest Law (NJSA 52:13D-19 and the federal Bayh–Dole Act.

- **Referenced documents**: Rutgers Policy 90.2.5 Investigator Conflict of Interest, Rutgers Policy 60.5.8 Conflict of Interest – Faculty, Rutgers Policy 60.5.9 Faculty or Staff Involvement with Commercial Enterprise – Contacts with the University, N.J.S.A. 52:13D-19 State Conflicts of Interest Law, Rutgers Policy 60.5.8 Professional Activities Outside the University and Outside Employment for Academic Personnel

Language of the NJSA prohibitive exclusion clause – contracts and agreement may be entered into if they are “for the development of scientific or technological discoveries or innovations in which the State agency has a property right.”