



**THE UNIVERSITY of
NEW ORLEANS**

**ADMINISTERED BY: Office of Vice
President for Research and Economic
Development**

Policy No: AP-RE-04.1

**TITLE: Authorizing Contracts Between
the University and a Member of
the Faculty, Research Staff, or
Coaching Staff, or a Company in
which the Employee Has an
Interest Under Specified
Circumstances.**

EFFECTIVE DATE: February 14, 2014

CANCELLATION:

REVIEW DATE: Fall 2018

PURPOSE

To establish policy and procedures for administrative review and authorizing contracts between the University and a member of the faculty, research staff, or coaching staff or a company in which the employee has an interest under specified circumstances in accordance with state law and the policies of the Board of Supervisors for the University of Louisiana System.

AUTHORITY

Louisiana R.S. §42:1101 to R.S. §42:1148, especially §42:1111, §42:1112, §42:1113, and §42:1123(10). University of Louisiana System-Policy Number: M-(15) Authorizing Contracts Between The University And A Member Of The Faculty, Research Staff, Or Coaching Staff Or A Company In Which The Employee Has An Interest Under Specified Circumstances.

GENERAL POLICY

The University of New Orleans and University of Louisiana System both recognize the benefits of certain types of contracts between the University and its employees or legal entities in which these employees or a family member have an interest. A sizable body of Louisiana law (Title 42) addresses the permissible conduct, qualifications, duties, performance, compensation and benefits, and penalties for Public Officers and Employees.

Prior to the passage of Act 229 of the 1987 Regular Session of the Louisiana Legislature, Louisiana law prohibited an employee of a university and any company in which he/she owned an interest from bidding on or entering into a contract with the university or involving the university. Act 229, which became R.S. §42:1123(10), amended the Ethics Code to authorize contracts between a university and members of its faculty or a company in which faculty members have an interest under specified circumstances. Act 1 107 of the 1997 Legislative Session broadened §1123(10) to include members of the university’s research staff or athletic coaching staff regarding research activities or athletic coaching activities.

This policy expressly allows the University to enter into such contracts, and specifies the circumstances and review processes for doing so.

DEFINITIONS

For the purposes of this policy, the following definitions shall apply:

Employee – any member of a faculty, research staff, or coaching staff of the University of New Orleans.

Private Entity – any outside foundation, corporation, company, or partnership in which the employee, or a member of his or her immediate family, has an economic interest. “Economic interest” means a five percent (5%) or larger shareholder position.

PROCEDURE

A. Types of Contracts Permitted. For a proposed contract between the University and an employee or between the University and a private entity to be permitted under this policy, the contract must relate to either:

1. The disposition of a patent, copyright, licensing right, or royalty which is attached to a discovery, technique, technology, or activity resulting from research done, in whole or in part, by the employee in the course of his or her employment at the University;
2. A business activity relating to or resulting from research conducted, in whole or in part, by a University employee in the course of his or her employment at the University; or
3. A business activity relating to or resulting from a coaching activity of a University employee conducted in the course of his or her employment at the University.

B. Requirements. This policy must be followed whenever an employee of the University desires to enter into a contract with the University as described in Types of Contracts Permitted section above. The following essential elements must be adhered to:

1. All contracts and correspondence must be in writing.
2. The ownership interests in the private entity must be disclosed in full and in writing to the Vice President for Business Affairs or, in case of a Conflict of Interest, to an alternate official selected by the President.
3. All negotiations between an employee, or the private entity, and the University must be at arm’s length. Neither the employee nor his or her immediate family, may participate in the negotiations or decision making on behalf the University. The University may, however, elect to consult the employee regarding technical or scientific aspects of the proposed contract.
4. The Facility Security Officer, as head of the Office of Technology Management and Commercialization (OTMC), normally must negotiate the contract on behalf of the University. In case of a conflict of interest, an alternate official will be selected by the

President; the alternate party must not have a conflict of interest, and must not be under the direct supervision of, or a member of the department of, the employee submitting the contract.

5. A University committee, appointed by the President, must review all such proposed contracts after they have been negotiated and the employee and/or the private entity have agreed to their terms. Membership on this committee shall include the Vice President for Business Affairs, the Vice President for Research and Economic Development, and the Facility Security Officer, and may also include other representatives from both the public and private sectors. The committee shall meet as soon as is feasible (normally within 10 business days) following completion of the negotiations. The President or designee shall chair the committee. This committee will be empowered by the Board of Supervisors to certify to the Board of Regents, per Louisiana R.S. §1123(10)(a), semi-annually that entering into the contract will contribute to the economic development of the state and, among readily available alternatives, entering into the contract serves the public interest.

6. The Dean of the college of the employee, or Athletic Director in case of a coach, must certify to the committee that entering into the contract will not interfere or conflict with the performance of the employee or the employee's fulfillment of his/her obligation to the University.

7. An employee with a joint appointment must receive the approval of the other institution; however, if agreement or approval cannot be reached or is unobtainable, the President shall make the final decision without such approval.

C. Financial Payments and Compensation. With respect to payments made pursuant to any contract perfected under this policy, the following standards must be followed:

1. Compensation to the University for the use of services, supplies, facilities, equipment, or technology must be paid at the same rate that such services, supplies, facilities, equipment, or technology would be made available to the general public or to others under arm's-length negotiated contracts.

2. Compensation from the University to the employee, or to the private entity, for services rendered cannot be more than normally would be paid for similar services.

3. Where the University and an employee, as a contractor or subcontractor, or the University and the private entity provide services to a third party, a fair apportionment of the remuneration should be made and specified based on the value of their respective contributions in services, investments, technologies, equipment, or facilities utilized.

4. The employee submitting the contract or a person who is under his or her direct supervision may not authorize Payments or Expenditures under the contract.

D. Contracts and Agreements Involving A University Foundation:

1. Several separate public not-for-profit corporations have been established to perform

certain duties in support of the University. Among these are the tasks of accepting, buying, selling, leasing, licensing, or otherwise alienating intellectual property assigned to it by the University. When a contract, or agreement, is proposed as stipulated above except that it is between the employee and the foundation or the private entity and the foundation, then for purposes of this policy it shall be deemed to be between the employee or the private entity and University for approval and review purposes. In such cases, all of the above policy essentials apply except the negotiation and the final contract execution (signing). Approved University policy and procedures must be followed within the University prior to final approval and execution. In such a case, the tasks of negotiation and final execution of the contract reside with the foundation. Nothing in this policy is intended to preempt, influence, eliminate, or diminish the due diligence responsibilities of the foundation.

E. Relation of this Policy to Policy on Outside Employment:

1. Nothing in this policy shall be used to preempt, influence, eliminate, or diminish the University of New Orleans Administrative Policy & Procedure (AP-BA-31.02) or the University of Louisiana System policy (FS-III.VII) on outside employment.

A handwritten signature in black ink, appearing to read 'Peter J. Fos', is positioned above the printed name and title.

Peter J. Fos, Ph.D., M.P.H.
President
University of New Orleans