



The
UNIVERSITY
of **VERMONT**

Policy V. 3.2.1.1

Responsible Official: Vice President for Research

Effective Date: February 7th, 2006

Intellectual Property

Policy Statement

The University Intellectual Property Policy appears in full below.

Reason for the Policy

The Policy is designed to assist the University in fulfilling its mission and achieving its strategic goals.

Strategic Direction

The Policy supports the strategic goals of creating an outstanding student experience that promotes personal and intellectual development; recruiting and retaining excellent students, faculty and staff; and strengthening research, scholarship, and the creative arts as well as institutional financial resources.

Policy Elaboration

1. Purpose

1.1. *Statement of Mission*

1.1.1. The mission of the University of Vermont (“UVM”) is to create, interpret and share knowledge, to prepare our students to lead productive, responsible and creative lives and to promote the application of relevant knowledge to the benefit of the State of Vermont and society as a whole.

1.2. *Guiding Principles for Policy and Statement of University Interests*

1.2.1. In furtherance of the UVM mission, University community members develop inventions, discoveries, copyrightable material and new knowledge that constitute

the intellectual property of the Institution. The University seeks to promote application of that knowledge for the benefit of society while enhancing the capacity of the University to conduct its mission and protecting the interests of the University, its faculty, students and staff. The Intellectual Property Policy helps achieve these goals by providing the framework that governs the ownership, disposition, use and commercial development of University inventions, discoveries and creative endeavors.

- 1.2.2. The primary obligation in conducting University research and scholarship is the pursuit of knowledge for the benefit of society.
- 1.2.3. Since University research has substantial public support, it is incumbent upon the University to seek assurance that patents resulting from its work be administered in a manner consistent with applicable law.
- 1.2.4. In order to provide adequate recognition of, and an incentive for, intellectual achievements, inventors and authors will be provided with opportunities to share in the proceeds from their inventive and creative endeavors.
- 1.2.5. The contribution of outside sponsors to the research endeavors of the University is recognized by granting certain rights to sponsors, consistent with the principles outlined herein.
- 1.2.6. After payment of the costs associated with intellectual property protection, licensing and related activities as specified in this Policy, revenue accruing to the University from the commercialization of its intellectual property shall be shared between the University, inventors and authors on a fair and reasonable basis. The University's share of that revenue shall be used to advance institutional research and scholarship endeavors.

2. Policy

2.1. *Intellectual Property Managed under this Policy*

2.1.1. Patents This Policy shall apply to patent(s) resulting from the University-related activities of individuals subject to this Policy as described in §2.2. For purposes of this Policy, the term "patent" or "patents" shall apply to those inventions (e.g. innovations or discoveries) that are or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant protectable under the Plant Variety Protection Act, 7 U.S.C. §2321 et seq., as either may be amended from time to time and for which a provisional, design or utility patent application or applications is or are filed with the U.S. Patent and Trademark Office or under the Plant Variety Protection Act, or for which a patent has been issued. Patent(s) shall include divisionals, continuations, continuations-in-part and relevant international counter-parts of issued patents or patent applications, and any reissues, reexaminations or extensions of issued Patents or their foreign counterparts.

2.1.2. Inventions The term "invention" or "inventions" as used in this Policy describes

innovations or discoveries that come within the definition of “patents” in §2.1.1 except that part of the definition specifying that a patent application shall have been filed, or a patent issued, for the protection of an “invention,” which shall not apply.

2.1.3. **Copyrights** This Policy applies to those copyrightable works developed or otherwise authored by persons covered by this Policy as described in §2.2. The term “copyrightable works” or “copyrights” applies to those works of authorship considered protectable under Title 17 U.S.C. as it may be amended from time to time. By way of example, but not by way of limitation, “Copyrights” include but are not limited to, copyrightable books, whether fiction or non-fiction, manuscripts, poems, plays, choreography, photography, motion pictures, videos, audio recordings, musical works, works of art or design, pedagogical works such as course materials, syllabi, lecture notes and the like, regardless of the tangible form of medium through which they are expressed, except that copyrightable works that are expressed as “computer software” or computer programs for purposes of this Policy shall be treated as a separate category of intellectual property.

2.1.4. **Computer Software and Computer Software Documentation** “Computer software” as the term is used in this Policy shall include, but not be limited to, copyrightable computer programs in source and object code form. A computer program is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. Computer software may also be patentable and where the subject of a patent application shall be treated as a “patent”. Documentation in the nature of users’ guides, manuals and instructions developed to assist or facilitate use of computer software shall be managed as specifically indicated throughout this Policy.

2.1.5. **Trademarks and Service Marks** Trademarks and Service Marks as described under this Policy shall be interpreted in accordance with Title 15 U.S.C. as it may be amended from time to time and also in accordance with validly existing laws of the State of Vermont covering trade marks and service marks as they may be defined under such laws.

2.1.6. **Mask Works** Mask Works are those series of related images which are fixed in a semiconductor chip product as described under Title 17, U.S.C. Ch. 9 §901. This Policy covers Mask Works developed by persons covered by this Policy as described in §2.2.

2.1.7. **Data and Tangible Research Property** The term “data” as used in this Policy is that recorded information in any form which is generated by individuals who are subject to this Policy as described in §2.2, through use of University supported resources as further described under §2.3.2 or the disposition of which is governed by the terms of grants, contracts, cooperative or other agreements to which the University is a signatory. “Tangible Research Property” as used in this Policy applies generally to biological and chemical materials, including but not limited to

cell lines, plasmids, DNA, RNA, transgenic animals and the like developed by persons covered under §2.2. The parties understand and agree that data and tangible research property not otherwise copyrightable may be a subject of scholarly articles and other forms of copyrightable work.

2.1.8. For purposes of this Policy, all of the above categories (§§2.1.1-2.1.7) shall be considered “Intellectual Property”.

2.2. Individuals Covered by this Policy

2.2.1. University Faculty and Staff - The rights and responsibilities with respect to Intellectual Property as established under this Policy shall govern the activities of University faculty and staff regardless of their status as full-time or part-time. Such persons include, but are not limited to, faculty hired to teach specific courses including Summer Session, Evening Division and distance learning, and those persons who do not have faculty status and are employed by the University to carry out administrative, academic or technical duties of any nature or kind. The latter category shall include, without limitation, post-doctoral associates, fellows and trainees, and students who are performing services as University employees. The term “faculty” shall also include those full-time and part-time faculty members who are members of duly certified bargaining units. All individuals described in this §2.2.1 shall be considered, for purposes of this Policy, persons covered by this Policy, referenced as “Covered Persons.” Adherence to this Policy is considered a condition of, and in consideration of, employment, for all faculty, staff and students whom the University employs.

2.2.2. University Visitors - All non-student visitors to the University who are participating in research activities and/or making use of University facilities and/or resources are considered “Covered Persons” for purposes of this Policy. It is the responsibility of visitors to ensure that their obligations to third parties, including but not limited to their own employers, are satisfied in a manner consistent with University rights described in this Policy. Participation in University programs and/or use of University facilities and/or resources by University visitors is in consideration of, and conditioned upon, agreement with the provisions of this Policy.

2.2.3. Undergraduate, Graduate, Medical and Visiting Students, full-time and part-time (“University Students”) - University Students are considered “Covered Persons” under this Policy for purposes of disposition of Intellectual Property developed by them as further described under this Policy. All Intellectual Property developed by University Students participating in University activities shall belong either to the University or to the Student, according to this Policy. When serving in the capacity of a University employee (e.g. students working part-time for the University), students shall be deemed employees covered under §2.2.1 of this Policy.

2.3. Statement of University Intellectual Property Ownership

- 2.3.1. Developed in Connection With University External Relationships - Intellectual Property developed by Covered Persons in the course of, or directly related to, such individual's participation or involvement in a program, project or other relationship between the University and a third party including, but not limited to, such relationships as sponsored research, joint studies, cooperative or collaborative agreements, clinical trials and the like, shall be assigned to the University and considered "University-Owned".
- 2.3.2. Developed with Support of University Financial Assistance or through Use of University-Supported Resources - Except for scholarly and artistic works as described in §§ 2.4.1 and 2.4.2, Intellectual Property developed by Covered Persons through the use of significant financial support from the University, including but not limited to use of University-supported facilities and resources as well as time devoted to University functions of research and other University activities, shall be assigned to the University and considered "University-Owned". University-owned intellectual property shall be subject to the royalty-sharing provisions of § 4.1.5.4 and § 4.1.5.5 as applicable.
- 2.3.3. Developed within the Scope of Employment - Except as expressly set forth in §2.4 of this Policy, Intellectual Property developed by University faculty and staff within the scope of their employment shall be considered work-for-hire and owned by the University to the extent permitted by law. Where University ownership is not established by operation of law, such Intellectual Property shall nevertheless by operation of this Policy be assigned to the University as "University-Owned".
- 2.3.4. University-Commissioned Works - From time to time the University, its colleges, schools, departments or other units may commission from faculty members or other employees educational materials or tools such as curriculum, syllabi, course content, course modules and educational or computer-aided delivery systems. These University-Commissioned works may be either content or text-based or may be computer software or both and shall be considered University-Owned. Participating individuals will be notified in advance and in writing of the University's intention to consider the works as University-Commissioned. The University recognizes its obligation reasonably to maintain the currency of Commissioned and Supplementally-Compensated Materials in active use so as to preserve the quality of educational programs and to protect the reputational integrity of the authors. Authors will be provided the opportunity no less than once annually to comment on the currency of their Materials. If invited by the University to update Materials, they will be offered compensation commensurate with the work in accordance with this Article.

2.4. *Statement of Individual Intellectual Property Ownership*

2.4.1. Scholarly and Artistic Works Exception for Copyrighted Works “Scholarly and Artistic Works” means copyrightable and copyrighted works that are in the nature of academic and scholarly works of authorship and works of visual art, including but not limited to photography, film, audio-visual works, sculpture, painting, choreography and the like. "Scholarly and Artistic Works" include by way of example 1) scholarly articles and papers written for journal publication, presentations and scholarly papers prepared for seminars and conferences, pedagogical works, and teaching and curriculum materials (including classroom lectures, seminars and presentations reduced by or for the author to written or other recorded form); and 2) paintings, drawings, musical compositions and performances, dramatic compositions and performance, poetry, fiction and other works of artistic expression authored by University faculty, post-graduate students, postdoctoral fellows and postdoctoral associates; provided that, the definition shall not apply to the works of University Students authored pursuant to activities undertaken as Teaching Assistants. Distance Learning Materials that are Scholarly or Artistic Works as described in this paragraph will remain the property of their authors, subject to the provisions of § 5.1.3. “Scholarly and Artistic Works” shall be and remain the property of their Authors (“Individually-Owned Works”) unless such copyrighted works are (i) developed as part of a University project, program or activity that is the subject of an external University agreement; (ii) developed within the scope of employment by non-faculty University Employees; or (iii) developed as part of a University-Commissioned project or program under §2.3.4 above. All Scholarly and Artistic Works described in the preceding sentence under (i), (ii) or (iii) shall be University-Owned. In addition, the University shall be granted a non-exclusive, royalty-free license to use, reproduce and distribute for non-instructional administrative purposes all Individually-Owned Works that are used for teaching at the University. Registration is not a requirement of assertion of a copyright interest. In addition, the medium in which Scholarly and Artistic Works are preserved shall not affect copyright ownership interests.

2.4.2. Independently-Developed “Individually-Owned” Intellectual Property - Intellectual Property invented or authored by individuals who are Covered Persons under this Policy that is not University-Owned as provided under §2.3, and not otherwise subject to an agreement between the Covered Person and the University, shall remain the property of the individual (“Individually-Owned” Intellectual Property). Except for Scholarly and Artistic Works that are considered Individually-Owned Works under § 2.4.1 and are used in conjunction with an individual’s teaching activities, a covered person shall not utilize his or her independently-developed Individually-Owned intellectual property in furtherance of activities on behalf of the University unless such person discloses to the Director of Sponsored Programs, in writing, his/her intention to do so. Within 30 days of receipt of such disclosure, the Covered Person will be notified by the Director of Sponsored Programs or his/her designee if permission to utilize the intellectual property has

been granted and whether there are any conditions related to its use. If the University denies permission, or the covered person fails to provide disclosure as required by this § 2.4.2, such Person's use of the property shall be deemed a waiver of his/her rights to sue or otherwise seek legal redress for any alleged infringement by the University or any of the University's officers, employees, students or agents. Nothing in this §2.4.2 shall preclude a Covered Person and the University from entering into a mutually acceptable agreement for University use of Individually-Owned Intellectual Property.

2.4.3. Consulting and Outside Business Relationships – Faculty who engage in permitted outside professional services, including without limitation consulting to private companies, are responsible for ensuring that those activities and any related contractual arrangements are consistent and do not conflict with all applicable University policies and applicable contractual provisions, including those relating to conflict of interest and commitment. All Covered Persons under this Policy have an obligation to inform all appropriate third parties, including companies with whom they have such a relationship, of the terms of this Policy with respect to ownership of Intellectual Property and other rights and responsibilities as expressed in this Policy. Under no circumstances will the University be deemed to have waived any of its rights under this Policy unless specifically agreed in a writing signed by a duly authorized University official.

2.4.4. Student Academic Work - It is the general policy of the University that University Students shall have ownership rights in Intellectual Property developed by them independently or as a part of their coursework, except where it is developed using University funds or where the University has external obligations with respect to Student Intellectual Property. In such case Student Intellectual Property shall be assigned to the University pursuant to §§ 2.3.1 and 2.3.2 of this Policy. The waiver provisions of §3.3.2 shall apply to University Students. Activities undertaken by University Students receiving financial aid as tuition assistance shall not be considered "University funds" unless such assistance consists of employment at the University (including, but not limited to teaching assistantships) or is charged against a grant, contract or other agreement between the University and an external funding source.

3. *Implementation of Policy*

3.1. Intellectual Property Assignment Agreement - All University faculty and staff, University Visitors and University Students who engage in activities that will or may result in University ownership of Intellectual Property in accordance with this Policy must, prior to participating in any such activity, execute the University's Intellectual Property Assignment Agreement ("IPAA"), attached hereto as Appendix A. Execution of the IPAA shall be deemed a condition to participation in any such University activities. If this Agreement is not executed as required under this §3.1, such individual shall nevertheless be subject to this Policy as a condition of his or her participation. The University and all necessary parties must approve the use of any agreement documents

other than Appendix A.

3.2. **Obligation to Disclose** - All individuals participating in University activities as University faculty and staff, University Visitors and/or University Students must disclose to the University in a timely manner any and all inventions and computer software invented or authored by them in which the University has an ownership interest according to this Policy. Disclosure does not itself constitute a surrender or determination of ownership. Disclosure shall be made by completion of the appropriate Disclosure Form, appended to this Policy as Appendices B and B-S, and by submitting the Disclosure to the appropriate administrative offices as directed on the Form. Failure on the part of any Covered Person to complete the Disclosure Form(s) as required shall not in any manner impair or diminish the rights (including ownership rights) and obligations of either the University or the individual as described in this Policy. Covered Persons uncertain whether intellectual property developed by them during the period of their employment or relationship with UVM must be disclosed should consult with the Vice President for Research or his/her designee. The University and United Academics respectively agree periodically to communicate to Covered Persons the disclosure requirement.

3.3. Determination of Ownership and Waiver

3.3.1. **Determination of Ownership** - Following receipt of a properly completed and signed Disclosure Form, the University will determine whether, consistent with this Policy, it will take ownership of the invention or software disclosed, and it shall promptly notify the inventor(s) or author(s) in writing of its decision. University determinations as to ownership and disposition of inventions and software will be made in accordance with the institutional mission and principles stated in § 1 of this Policy and the requirements of applicable external agreements and obligations under applicable laws and regulations, with due regard for considerations relating to use of University facilities and resources. University action may, in some instances, include exercising ownership and thereafter placing the invention or software in the public domain.

3.3.2. **Waiver** - Where the University determines that it will not pursue intellectual property protection and licensing of University-Owned Intellectual Property, it will promptly and in writing so advise the inventor(s) or author(s). To the extent permitted by external obligations, including any applicable laws and regulations, the University may consider application by inventor(s) or author(s) for a waiver of ownership rights and the terms under which such waiver may be made. The University will not consider requests for waiver of ownership with respect to any invention or software program unless all inventors and authors, as legally determined, concur with the request for waiver. Ownership waivers, if granted, will be made to all relevant inventors and authors as joint owners. Waivers will be subject to a perpetual, royalty-free right and license retained by the University to use the invention or software for its own internal purposes, and will be further subject to any external obligations as may be required. The University reserves the right to

deny a waiver without itself pursuing intellectual property protection or licensing provided that, prior to such denial, the University will first obtain the advice of the Senate Research and Scholarship Committee established under § 6.3. In the event of a grievance by a Covered Person or United Academics on behalf of such Person and/or represented employees, it will be the University's burden to demonstrate the circumstances warranting denial of the waiver.

3.3.3. Timeliness - The University acknowledges the interests of inventors, authors and students in pursuing timely protection and/or publication of innovations and discoveries, and/or theses or dissertations. Once inventorship is established, the University will act within 75 days with respect to ownership determinations. If, notwithstanding best efforts, the University concludes that this time period is or will be inadequate, the University will inform the affected parties in writing of the circumstances of the delay and the expected date of determination.

3.4. *Process for Seeking Intellectual Property Protection*

3.4.1. Invention Reporting and Determinations of Patentability - Following the disclosure of an invention pursuant to this Policy, the University's Vice President for Research or her/his designee (hereinafter "VPR") will be responsible for reporting the invention as required under the terms of external funding agreements, if any. Further, in good faith consultation with the inventor or inventors, the VPR will undertake a patentability review with the assistance of patent counsel if necessary, such counsel to be retained under the auspices of the Office of General Counsel where, in the discretion of the University, such a review is reasonable to procure based upon the potential commercial value of the invention. Where, in the University's sole discretion, the filing of a patent application is deemed appropriate, it shall be the University's responsibility to undertake such filing at its own expense (or at the expense of a third party pursuant to VPR agreement with such third party) and in its own name. Where appropriate, the University may assign University-owned inventions to a patent management organization or to such other entity or person as the University, in its sole discretion, deems advisable. All inventors of University-owned inventions shall reasonably cooperate with the University or its designees or assignees in securing patent rights for inventions and shall diligently execute all documents as may be required. All patenting activities conducted at the behest of the University, its designees or assignees shall be at the expense of the University, its designees or assignees.

3.4.2. Protection Determinations with Respect to Computer Software - Upon disclosure of computer software pursuant to this Policy, the University's VPR will be responsible for reporting the disclosure in accordance with the University's external contractual obligations, if any. Determinations of patentability of computer software will be made according to requirements of external contractual agreements and in good faith consultation with the inventors and authors of the software. To the extent consistent with its external obligations, the University will consult with inventors and authors of the software with respect to whether or not a patent

application covering the potentially patentable elements of the software will be filed, provided that all final decisions shall be made by the University in its sole discretion, and in accordance with the University mission and purposes described in § 1 of this Policy. The University shall hold copyright to computer software code and accompanying documentation to which it has ownership rights under this Policy, consistent with external contractual agreements and law. Registrations for copyright shall be made in the University's sole discretion and at its expense. To the extent the University is the owner of computer software and documentation under this Policy other than as a work-for-hire, authors will cooperate with the University, its designees and assignees in any executing any documentation required by the University to perfect a transfer of copyright, with any expenses to be borne solely by the University.

- 3.4.3. Copyrights other than Computer Software and Documentation - Copyright to works that are University-Owned will be held in the name of the University. Registration for such works shall be at the sole discretion of the University. Where a University Employee, Faculty Member, Visitor or Student has an interest in obtaining rights to use University-Owned copyrights in furtherance of an educational or research purpose, the University's VPR will cooperate with the individual in providing such rights as may be needed on a non-exclusive, no-cost basis. Where it is necessary for an individual to secure rights for a publisher, distributor or like third party to University-Owned copyrights, the University's VPR will negotiate with such party to enable use of University-Owned copyrights on a reasonable basis.
- 3.4.4. Trademarks and Service Marks - Trademarks and Service Marks that are University-Owned in accordance with this Policy may be registered either federally or with the State of Vermont in the sole discretion of the University. Determinations on applying for trademark and service mark registrations will be made by the VPR in consultation with the University's Office of General Counsel. Under no circumstance will the University permit the trademarking by any individual, whether or not associated with the University, of the name of the University of Vermont, or any abbreviation thereof, or the using as a trademark or service mark of any other mark, logo or indicia that is emblematic of the University.
- 3.4.5. Mask Works - The University, through its VPR, shall seek federal registrations for University-owned mask works at its discretion and consistent with external contractual obligations. Mask works for which registration is not pursued will be made generally available for public use in accordance with §3.5.
- 3.4.6. Data and Tangible Research Property - University-Owned Data and University-Owned Tangible Research Property ("Data and TRP"), as defined in §2.1.7, for which a patent application has not been filed will generally remain in the custody of the principal investigator of the research or other project or program under which it was developed, or if there was none, in the custody of the academic department chair or other appropriate administrative unit supervisor. The processes for

identifying, recording, managing, and retaining Data and TRP will be in accordance with the University's policies on data and materials management and retention. Faculty and students who have developed the Data and/or TRP wishing to take copies or samples with them upon leaving UVM shall seek permission of the VPR or his/her designee prior to removing these types of materials from UVM and, in any event, title to the Data and TRP shall at all times remain with the University. The University VPR shall make a determination as to whether an individual's new organization shall be required to execute a Material Transfer Agreement ("MTA") covering TRP as a condition of using the TRP at that new organization.

3.5. *Sharing of Intellectual Property for Educational and Research Purposes* - The University will endeavor to manage the Intellectual Property which it owns in a manner consistent with institutional mission and the principles set forth in § 1 of this Policy. A prime aspect of this objective will be to facilitate access to its Intellectual Property in a by the educational, scientific and research communities for non-commercial educational and research purposes.

4. *Commercialization of Intellectual Property*

4.1. *Responsibilities of the Vice President for Research*

4.1.1. *Reporting to Research Sponsors and Collaborators* - The VPR has primary responsibility for notifying the University's external research sponsors and collaborating parties of Intellectual Property developed under agreements with them. Recognizing that such reporting cannot be undertaken until reports of inventions, computer software and other developments have been received from University faculty, staff and students, the VPR is also responsible for developing, managing and retaining University Intellectual Property Assignment Agreements and the processing of Disclosure Forms.

4.1.2. *Evaluation of Intellectual Property* - The VPR is responsible for collecting all information necessary in order to conduct an evaluation of disclosed Intellectual Property, subject to a duty of reasonable cooperation on the part of disclosing inventors and authors. Information collection includes, but is not limited to, ascertaining participating inventors and authors, sponsored research funding, if any, and any encumbrances that may have attached to the Intellectual Property either through prior commitments or through use of third-party owned intellectual property to which the University does not have full and unrestricted rights. In conducting such evaluations, the VPR will communicate with inventors and authors to ensure full and accurate information.

4.1.3. *Election of Title and Waiver of Rights* - The VPR has primary responsibility for making reasonably prompt determinations on election of title to Intellectual Property to which the University has ownership rights under this Policy, such determinations to be made in any event within any time frame required by external

sponsors. All waiver of rights requests by inventors and authors submitted as provided under §3.3.2 shall be directed in writing to the Office of the VPR. The VPR shall respond promptly and in writing to requests, such response to inform the requestor(s) of the status of the request. In the event a waiver of rights is determined to be appropriate, the VPR shall negotiate the conditions of such waiver with the requestor(s) including, but not limited to, terms for reimbursement to the University of patent expenses, if any, retained rights of the University to use the waived Intellectual Property for purposes of education and research, and any other terms as appropriate. It is understood by inventors that as a consequence of federal law, the University does not have authority to waive title to inventions developed with federal funding; nevertheless, upon request of inventors and in the University's sole discretion, the VPR may support the inventor(s)' request for waiver in a letter to the appropriate federal agency officials.

- 4.1.4. Licensing for Commercialization - Commercialization of University-Owned Intellectual Property shall be undertaken and managed by the VPR, with support from such other units within the University as deemed necessary or desirable. Authority to sign licenses or other agreements concerning the transfer or other disposition of University-owned Intellectual Property shall rest with the VPR and with such other officials as the University may duly authorize. In no case shall inventors or authors of University-owned Intellectual Property have authority to enter into agreements respecting the University's Intellectual Property. Any such attempted agreements are void.
- 4.1.4.1. The University will license its Intellectual Property in a manner that conforms to the mission and principles set forth in §1 of this Policy and consistent with its policy on conflict of interest as described in §4.1.7 below.
- 4.1.4.2. The University VPR shall have the authority, with approval of the Provost, to engage a third-party as a licensing agent to act on behalf of the University. In addition, nothing in this Policy shall be interpreted to preclude the University from joining with like institutions and non-profit organizations for the joint conduct of technology commercialization activities.
- 4.1.4.3. Where licensing University Intellectual Property to University faculty, staff or students (such persons including inventors or authors of the Intellectual Property being licensed) is not inconsistent with the terms of an external University agreement and does not otherwise disadvantage the University, the University may in its discretion consider proposals for licensing to such faculty, staff or students on a non-preferential, non-discriminatory basis. Recognizing the potential for conflict of interest in transacting business with its faculty, staff and, students, the University may establish guidelines in addition to existing Conflict of Interest policies that specifically address real and potential conflicts of interest in licensing.

4.1.5. Royalty Income Distribution - The term “Royalty Income” as used herein shall mean all revenues received by the University through the licensing or other transfer of University Intellectual Property and includes, but is not limited to, fees, milestone payments, percentages of gross or net sales of licensed products, and shares of stock or other equity; provided that, the term “Royalty Income” shall not include funds paid into the University as reimbursement for patent costs, for research or for any services supplied by the University, or for tangible property that may be received by the University (such as equipment, technological or scientific devices or computer software) even though the University may receive them pursuant to a licensing transaction. For purposes of this Policy, “Net Royalty Income” shall mean all Royalty Income, with the exception of Royalty Income received in the form of "Equity" as defined in § 4.1.5.4., received by the University that is attributable to an individual Intellectual Property asset such as a patent or a copyright, less:

- 4.1.5.1. i. the University’s out-of-pocket costs for securing and maintaining legal protection, such as patenting and prosecuting or defending against infringers;
- 4.1.5.2. ii. the University’s out-of-pocket costs associated with the utilization of a licensing agent or organization if applicable; and
- 4.1.5.3. iii. the cost of duplication, shipping and handling, where applicable "Net Royalty Income" earned by the University from the licensing or other transfer of University Intellectual Property will be distributed within sixty (60) days of its receipt as further set forth below.
- 4.1.5.4. Net Royalty Income from Patents shall be distributed in the shares of 45% to the inventor and 55% to the University.
- 4.1.5.5. Net Royalty Income from Copyrights and Other Non-Patent Intellectual Property shall be distributed in the following percentages:

Annual Net Income	Author(s)	University
First \$ 18,000	100%	0%
Amount in Excess of \$18,000	45%	55%

4.1.5.6. Royalty Income Distribution – Equity. Where all or a portion of the Royalty Income received by the University is in shares of stock, stock options, warrants or other indicia of ownership ("Equity"), Inventors and Authors shall be entitled to shares in the same percentages as set out in § 4.1.5, except that distribution shall occur as described under § 4.1.6. 4.1.5.6. Royalty Income Distribution – Special Cases. When authors of non-patent intellectual property are not reasonably ascertainable, the VPR will review the circumstances in

consultation with the relevant parties. If such consultation does not yield identification of the authors, royalties will be considered supplemental revenue to be shared between the academic department(s) or administrative unit(s) and the University in the shares set forth in § 4.1.5.5. In any such instance, final distribution of income is subject to the approval of the VPR.

- 4.1.5.7. It is the policy of the University that administrative and University shares of royalty income shall be used to further the educational and research interests of the University, and may be used as reasonably necessary for the support and advancement of the University's technology transfer program.
- 4.1.6. Licensing Transactions Involving Equity Where, in the discretion of the VPR, and with approval of the Provost, it is in the interests of the University to enter into a licensing transaction that involves the acceptance of company stock, stock options, warrants or other indicia of ownership ("Equity") in lieu of or in combination with royalties payable as dollar amounts, the University shall enter into such transactions in accordance with any and all applicable federal and state law. The University recognizes that its inventors and authors, while not parties to the transaction, are important to the success of any licensing activity involving their discoveries and writings. Prior to entering into any license involving the transfer of company stock, options or warrants or the like in which inventors or authors are entitled to share under this Policy, the VPR, or his or her designee, will discuss with inventors and authors who do not wish to hold an equity interest whether there is a reasonable alternative that will better accommodate the interests of the inventor(s) or author(s), provided that, failure to identify such reasonable alternative shall not impair or vitiate the University's right to participate in an equity transaction.
- 4.1.6.1. Inventors and/or authors shall be entitled to the Inventor's share of the University's stock as described under §§ 4.1.5.4 and 4.1.5.5.; however, in all such cases, the company formed will be directed to issue the shares of stock directly to the qualified recipients, deducting such shares from the overall shares negotiated with the University as consideration for the license. It is the policy of the University that it will not hold shares of stock for the benefit of inventors and authors.
- 4.1.6.2. Where the University transacts a licensing arrangement with a company that includes the payment of royalties in cash as well as stock, or in the event the arrangement is for all cash, all inventors and authors will be entitled to their otherwise established share of cash royalties, regardless of whether they have also received an equity share.
- 4.1.7 Conflict of Interest and Conflict Avoidance in Equity Transactions
- 4.1.7.a. Where an inventor or author holds or will acquire an equity or founder's stock and/or option position in a company to which Intellectual Property that the inventor or author helped develop is licensed by the University, the University will accept an equity position in lieu of royalty only with the approval of the Provost or his or her designee. In all such situations, inventor(s) and author(s) who remain in the employ of the University will not use University students for research and development projects sponsored by the company without expressly disclosing

to students the inventor(s)/author(s)' equity ownership interest in the company and without the express approval of the academic department chair or other appropriate administrative unit supervisor. In addition, inventor(s)/author(s) will not restrict or delay access to their research results so as to benefit the company (apart from any University- authorized agreement with the company) and will not engage in such other activities that may create a presumption of conflict of interest between their activities as faculty or staff of the University and their activities with or on behalf of the company. The limitations and conditions of this paragraph are in addition to those required by the University's conflict of interest or other related policies. 4.1.7.b. In situations where the University is negotiating the licensing of Intellectual Property with a company, it is a prohibited conflict of interest for any University faculty or staff member who supervises an inventor or author of that Intellectual Property to influence or attempt to influence the licensing negotiations. In addition, it is a prohibited conflict of interest for such supervisory personnel to co-found or invests in a University-licensed start-up company with inventors or authors under their supervision. 4.1.7.c. To avoid any real or apparent conflict of interest or conflict of commitment, University personnel engaged in technology transfer activities as part of the office of the VPR or his/her designees will not personally invest in non-public companies holding licenses to University Intellectual Property either directly or, in the case of personnel identified above who are partners in venture funds, will not engage in University licensing negotiations with any company in which that fund is invested. Except as otherwise required by law, Office of the VPR personnel will assure that confidential or proprietary information to which they have access in carrying out their University responsibilities is not disseminated in such a way as adversely or favorably to affect the value of or market for stock in any company about which they have special knowledge and will not use that knowledge for investment purposes by themselves, their families, friends or business associates.

5.0 Educational Materials Developed for Distance Learning (“Distance Learning Materials”)

5.1 Identification of Distance Learning Materials Materials coming within the definition of “Distance Learning Materials” as described in this § 5.0 include, but are not limited to, course syllabi and curricula, lectures, pedagogical materials of any nature or kind (excluding computer software and its documentation), video and audio materials used in instruction and the like, in any format and which are developed for the purpose of teaching off-campus distance learners by means of electronic (or digital) delivery whether or not such materials are developed within or outside of the scope of employment. Subject to the requirements of § 5.1.3, Distance Learning Materials do not include educational materials developed and delivered for classroom teaching where the course may be simulcast or delivered by time-delayed transmission to students not in the classroom. Computer software and its documentation which may be developed in aid of delivery or utilization of Distance Learning Materials shall be subject to those sections of this Policy specifically addressing computer software and its documentation. As previously set forth in § 2.4.1, Distance Learning Materials that otherwise constitute “Scholarly or Artistic Works” and do not fall within the scope of the exceptions also described in § 2.4.1 will be owned by their

authors.

5.1.1 University-Commissioned or Supplementally-Compensated Distance Learning Materials Distance Learning Materials authored by University faculty or other teaching personnel that are University-Commissioned or Supplementally-Compensated under separate agreement with the University will generally be considered University-owned. Intellectual Property rights in such Materials, including copyright, will be transferred to the University in accordance with § 5.2.1. Provisions as to currency of Materials appear in § 2.3.4 of this Policy.

5.1.2 Jointly-Owned Distance Learning Materials Certain Distance Learning Materials may be jointly developed by faculty or other teaching personnel who are uncompensated and University faculty or staff who co-author materials or who may write accompanying computer software or documentation within the scope of their University employment. (An example is materials jointly-authored by a faculty member and his or her teaching assistant or other member of the University

administrative staff wherein the contribution of the non-faculty member is considered a work-for-hire.) In the case of joint authorship, the rights of the co-authors of the joint works, whether the co-authors are an individual and University or individuals as co-authors, will be determined in accordance with U.S. Copyright law (17 U.S.C.).

5.1.3 Author-Owned Distance Learning Materials Distance Learning Materials authored by faculty or other teaching personnel without compensation by the University and not otherwise considered University-Owned under § 2.4.1 shall remain the property of the author(s). Use of University resources or facilities by such persons in the development of Distance Learning Materials will not change the status of author-owned Distance Learning Materials. Before seeking to commercialize these materials, authors must first obtain the written approval of the Provost. The Provost may approve or deny the request, or place conditions upon approval of the request. Denial or conditions will be based upon determination by the Provost that, absent such denial or condition, the commercialization proposal will adversely affect the University because (1) it will interfere with the author's effective performance of University duties; or (2) it will present a conflict (a) of time or effort commitment with respect to the author's University duties or (b) with the University's mission, responsibilities or initiatives.

5.2 Allocation of Rights and Responsibilities with respect to Distance Learning Materials

5.2.1 Rights and Responsibilities of the University In all instances where the University solicits the participation of faculty or other teaching personnel (but not students or Teaching Assistants) in the preparation of Distance Learning Materials, whether Commissioned as under § 2.3.4 or compensated as under § 5.1.1, the University and the individual will enter into a written agreement setting forth the terms under which the materials will be developed and delivered. Faculty and other teaching personnel wishing to participate will give deference to obligations of the University with respect to third party agreements that cover the funding, ownership, distribution and other aspects of the production of a distance learning course. The University will seek to permit authors to retain the right to use University-owned Distance Learning Materials for the author's own purposes to the extent they do not compete with University purposes, as determined in the sole discretion of the Provost. All such agreements will accord faculty or other teaching personnel the right to modify the Distance Learning Materials.

5.2.2 Rights and Responsibilities of Authors Agreements between the University and faculty or other teaching personnel participating in the development of Distance Learning Materials will cover areas such as license rights granted to the University where the University does not own materials, representations of originality on the part of the authors, reasonable restrictions on the author(s) use of the materials for competing purposes, and prohibitions on implication or expression of endorsement of content by the University.

5.3

Distribution of Royalty Income Participating faculty and other teaching personnel are entitled to a share of Income derived from the University's commercialization of distance learning programs in the same percentages as set for in §4.1.5(b), notwithstanding the award of compensation in the development of Distance Learning Materials. Income derived from the licensing or other arrangement for distribution of Distance Learning Materials shall not, however, include payment received by the University for development of the distance learning course or program. Author(s)' royalty shares shall be distributed from Income earned after recoupment of the University's internal costs of production, as satisfactorily reported to the participating faculty member or other teaching personnel.

6.0 Policy Interpretation, Implementation and Oversight

6.1 Responsibility for Oversight Except as otherwise specified in this policy or as otherwise duly authorized by the University, the Office of the VPR has responsibility for the interpretation, implementation and oversight of this Policy. The VPR will issue such administrative guidelines and procedures to facilitate Policy as may be reasonable and consistent with it. In accordance with otherwise applicable University policy or contract terms, the University may also pursue disciplinary, or civil or criminal action, for Policy violations.

6.2 Exceptions to Policy Exceptions to this Policy shall be authorized only upon approval of the Provost in consultation with the VPR. It is in the interest of the general University community that exceptions are kept to a minimum and granted only upon demonstrable extenuating circumstances with the advice of the Research and Scholarship Advisory Committee pursuant to § 6.3 below.

6.3 Research and Scholarship Advisory Committee The Provost shall appoint a Research and Scholarship Advisory Committee comprised minimally of two members of the United Academics full-time faculty bargaining unit (one of whom will be designated by United Academics), and a staff member. The purpose of this Committee is to advise the VPR on research matters including, but not limited to, this Intellectual Property and related research policies, and questions of interpretation or exceptions to this Policy.

7.0 Miscellaneous

7.1 Effective Date of Policy This Policy shall be effective upon approval by the President in accordance with governing requirements and upon contract ratification by represented employees as required by law.

7.2 Policy Review and Changes The Provost will periodically initiate review of this Policy to address legal developments and to reflect experience gained in its administration. Policy changes will be made in accordance with governance and applicable legal requirements and, as to bargainable provisions affecting represented employees, the applicable collective bargaining agreement(s).

Procedures

The procedures associated with Policy implementation appear in full below.

Forms

Relevant Forms appear in the Appendices to the Policy.

Contact

The Vice President for Research is the University official responsible for administration and interpretation of the Policy.

Related Policies

- o [Alleged Misconduct in Research and other Scholarly Activities](#)
- o [Related Significant Financial Interest in Research and Scholarly Activity](#)
- o [Conflict of Interest Policy](#)

Also note: Represented faculty and staff are subject to relevant provisions of governing collective bargaining agreements.

Appendices

Appendix A : [Intellectual Property Assignment Agreement](#)

Appendix B : [Invention Disclosure Form](#)

Appendix B-S: [Computer Software Disclosure Form](#)

Effective Date:

See § 7.1 above. Approved by Senior Vice President and Provost President February 7, 2006 (on behalf of President Daniel M. Fogel)