

**UNIVERSITY OF MASSACHUSETTS
INTELLECTUAL PROPERTY POLICY**

AMHERST & BOSTON

The prompt and open dissemination of the results of research and creative work among scholars and, eventually, to the public at large is essential to the University's mission of education and research. The commercial development and distribution of the results of research and creative work to benefit the inventor or creator and the economy is part of the University's mission of public service. This Policy is intended to facilitate the commercial development of intellectual property arising at the University and to provide an incentive to University inventors or creators to participate in such development while acknowledging the University's primary goal of the discovery and dissemination of knowledge.

I. DEFINITIONS

As used in this Policy, the following words shall have the following meanings:

- A. Confidential Information - Information that is received by a Covered Individual from a third party under an express or implied obligation of confidence.
- B. Covered Individuals - All staff, faculty members, students, adjunct professors in residence, and any other individuals associated with the University.
- C. Copyrightable Work - A creative work that is protectable under the copyright laws of the United States or other countries. Copyright protection is available for most literary, musical, dramatic, and other types of creative works, including, for example, computer software, teaching materials, multimedia works, proposals, and research reports.
- D. CVIP - The University Office of Commercial Ventures and Intellectual Property, which has primary responsibility for administering the development and commercialization of Intellectual Property through licensing or other arrangements.
- E. Director - The Executive Director of the CVIP.
- F. Evaluation Committee or Committee - One of several University committees, each with a particular area of technical expertise, that advises the CVIP and Vice Chancellor for Research in evaluating Inventions, Tangible Research Materials, and Copyrightable Works.
- G. Exempted Scholarly Work - A Scholarly Work that falls within certain categories of Copyrightable Works for which academic institutions have historically waived any ownership interest in favor of the author. The University currently recognizes the following categories of Exempted Scholarly Works: textbooks, class notes, research proposals, classroom presentation and instruction, research articles, research monographs, student theses and dissertations, paintings, drawings, sculpture, musical compositions and performances, dramatic works and performances, poetry, and popular fiction and nonfiction.

As modern types of works become clearly established as Scholarly Works, so that individual consideration is no longer deemed necessary, the President may expand this list of Exempted Scholarly Works beyond these historically established categories. Except for the limited circumstances described in Sections III.C.1.b. and III.C.1.c. below, Exempted Scholarly Works need not be disclosed to the University and the University automatically waives any ownership interest in such works.

- H. Intellectual Property - Inventions, Copyrightable Works, and Tangible Research Materials.
- I. Invention - A discovery or development that may be protectable under the patent laws of the United States, the United States Plant Variety Protection Act, or equivalent laws in other countries.
- J. Outside Researcher - An individual who performs or directs research for an organization other than the University.
- K. President - The President of the University or his or her designee.
- L. Public Disclosure or Publicly Disclosed - Any written or oral disclosure of an Invention or Copyrightable Work to any person not under a contractual or fiduciary obligation of confidentiality to the University.
- M. Scholarly Work - A Copyrightable Work that has the primary goal of disseminating academic or scholarly knowledge or is a work of artistic expression. As described in Section III.C. below, whether a Copyrightable Work is a Scholarly Work will be determined by the Director and Vice Chancellor for Research on a case-by-case basis (except that Exempted Scholarly Works are automatically considered Scholarly Works). The University waives all ownership interests in Scholarly Works except in the two circumstances described in Sections III.B.2. and III.B.3.
- N. Tangible Research Materials or Materials - Tangible biological, chemical, and physical materials or equipment. Examples include cell lines, antibodies, DNA or RNA, chemical samples, plasmids, and prototypes.
- O. Vice Chancellor for Research - The Vice Chancellor for Research at each campus, or where no such person exists, the Provost (or their designees).

II. SCOPE

A. Persons Subject to the Policy

All Covered Individuals are subject to this Policy.

B. Types of Intellectual Property Covered by the Policy

This Policy addresses the three categories of Intellectual Property (Inventions, Copyrightable Works, and Tangible Research Materials) as well as Confidential Information. The President shall have authority to designate additional types of Intellectual Property under this Policy.

III. POLICY

A. Participation Agreement

The University has adopted a Participation Agreement, attached as Exhibit A, that confirms acceptance of this Policy by Covered Individuals and assigns to the University all rights in any Intellectual Property in which the University asserts ownership (as described below).

1. Students - Students must sign the Participation Agreement prior to employment by the University in any research-related position. Such employment would include, for example, an arrangement whereby a student is funded as a research assistant under a government research grant or an industry-sponsored research agreement with the University. Students may also be required to sign the Participation Agreement under other appropriate circumstances, as determined by the Vice Chancellor for Research (for example, as required by the terms of a research grant).
2. Individuals Other Than Students - All Covered Individuals other than students must sign the Participation Agreement. The University will confirm that a valid Participation Agreement is on file before a Covered Individual receives any University-administered funds under a research grant or agreement. The University may also refuse to process any agreement involving that Covered Individual to the extent that the agreement would grant rights in Intellectual Property to an outside party.

B. Ownership of Intellectual Property

Any Covered Individual who invents, creates, or discovers any Intellectual Property will own all rights to such Intellectual Property except as follows:

1. Use of University Resources - The University will own any Intellectual Property (other than Exempted Scholarly Works) that is made, discovered, or created by any Covered Individual who makes significant use of University resources (including University-administered funds or University-funded time, facilities, or equipment) in connection with the development of such Intellectual Property. Use of library facilities, facilities available to the general public, and occasional use of office equipment and office staff will not ordinarily be considered "significant use" of University facilities and equipment. In addition, faculty members will not be considered to have made significant use of University resources if (i) the faculty member receives advance written approval of the proposed use from the Department Chair, (ii) academic uses of facilities and equipment have priority, (iii) the faculty member compensates the University for the fair market value of the facilities and equipment (as actually charged by the University to outside users or, in the absence of such documentation, as determined by the Vice Chancellor for Research), (iv) the faculty member is not using University-committed time because the activities are permitted Outside Activities (under the University Policy on Faculty Consulting and Outside Activities), and (v) the faculty member does not use any University-provided funds or University-administered funds in connection with the activity.

If a Covered Individual makes, creates, or discovers Intellectual Property without significant use of University resources, but the Intellectual Property closely resembles a specific research project that the Covered Individual has conducted at the University, it may appear that the Intellectual Property arose with use of University resources. Under

these circumstances, the University and the Covered Individual (or a company for whom the Covered Individual consults) could later argue about ownership of the Intellectual Property because the University might reasonably believe that University resources were in fact used. Such arguments usually arise after the Intellectual Property has gained substantial commercial value. In order to avoid these potentially litigious situations, the University requires Covered Individuals to disclose to the University any Intellectual Property that closely resembles a specific research project at the University, together with an explanation that the Intellectual Property did not arise through use of University resources. The University may ask the Covered Individual for documentation supporting the claim that there was no significant use of University resources. As described below, if there was no significant use of University resources, the University will give the Covered Individual a written acknowledgment that the University has no ownership interest in that Intellectual Property.

2. University-Commissioned Works - The University will own any Intellectual Property (including Exempted Scholarly Works) that is made, discovered, or created by a Covered Individual who is specifically hired or commissioned by the University for that purpose, unless otherwise provided by written agreement between such individual and the University.
3. Intellectual Property Subject to Contractual Obligations - Ownership of any Intellectual Property (including Exempted Scholarly Works) that is made, discovered, or created in the course of research funded by a sponsor pursuant to a grant or research agreement, or which is subject to a materials transfer agreement, confidential disclosure agreement or other legal obligation affecting ownership, will be governed by the terms of such grant or agreement, as approved by the University, although the University will ordinarily claim ownership.
4. Student Works
 - a. Generally - As with other Covered Individuals, students shall own any Intellectual Property that they make, discover, or create in the course of research (e.g., thesis or dissertation research) unless (i) the student received financial support from the University in the form of wages, salary, stipend, or grant funds for the research, (ii) the student made significant use of University resources (including University-administered funds or University-funded time, facilities, or equipment) in connection with the research, or (iii) the research was funded by a sponsor pursuant to a grant or sponsored research agreement or is subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation that restricts ownership of Intellectual Property.
 - b. Theses and Dissertations - The texts of all student theses and dissertations, and derivative works of these works, are considered Exempted Scholarly Works; therefore, the student will own copyright to the Scholarly Work (unless Sections III.B.2. or III.B.3. apply), subject to a royalty-free license to the University to reproduce and publish the Scholarly Work. As described below, students are allowed to publish their theses and dissertations unless they have agreed in writing to restrictions that preclude or delay publication.

Under certain circumstances, as described in Section III.C.3. below, the University will relinquish its rights in Intellectual Property to the inventor or creator of that Intellectual Property at his or her request.

C. Administrative Procedures - Inventions and Copyrightable Works

A primary goal of the University is the discovery and free dissemination of knowledge for the benefit of the public. The University recognizes, however, that in certain instances the public will only benefit from knowledge that is protected under the patent or copyright laws, which provide an incentive for economic development of that knowledge. The University therefore requests that all Covered Individuals disclose Inventions and Copyrightable Works (other than Exempted Scholarly Works) promptly, in order to allow the University an opportunity to evaluate their commercial potential, and to preserve or enhance their value by filing a patent application or obtaining a copyright registration. The University has established the following procedures in order to accomplish the dual objectives of disseminating knowledge and maximizing the economic value of that knowledge.

1. Disclosure to the University - Disclosure forms should be submitted to the CVIP or the Vice Chancellor for Research. The Vice Chancellor for Research and the CVIP will exchange copies of all disclosure forms that each receives. The Vice Chancellor for Research will also make available to the campus Office of Grants and Contracts appropriate information to permit required disclosures to research sponsors (e.g., federal agencies). The CVIP will make available appropriate disclosure forms. The treatment of different categories of Intellectual Property is set forth below.

a. Intellectual Property Developed with University Resources or Closely Resembling a Specific University Research Project - All Covered Individuals are encouraged to disclose promptly all Inventions and Copyrightable Works (except Exempted Scholarly Works) that (i) are developed with significant use of University resources or (ii) closely resemble a specific research project in which that faculty member is engaged at the University (see Section III.B.1. above). Although the disclosure of such Inventions and Copyrightable Works is voluntary, if the Covered Individual intends to commercialize such Intellectual Property, disclosure is required reasonably before the Covered Individual takes any action to commercialize such Intellectual Property. Examples of commercial actions include, without limitation, seeking patent or copyright protection, commencing discussions with potential investors or licensees, or transferring the Intellectual Property to a third party.

If a Copyrightable Work is an Exempted Scholarly Work, no disclosure is required under any circumstances. In other cases in which a Covered Individual desires treatment of a Copyrightable Work as a Scholarly Work, the Covered Individual should submit to the CVIP or Vice Chancellor for Research, in addition to the disclosure form, a request for treatment of the work as a Scholarly Work and a brief explanation of why the work should be a Scholarly Work.

In the case of an Invention or Copyrightable Work that the Covered Individual claims is not subject to University ownership because the Intellectual Property was developed without significant use of University resources, the Covered Individual should submit to the CVIP or Vice Chancellor for Research, in addition to the disclosure form, a request for confirmation of individual

ownership together with documentary evidence which clearly establishes that fact.

- b. University-Commissioned Works - In the case of Inventions and Copyrightable Works (including Exempted Scholarly Works) that a Covered Individual is specifically hired or commissioned by the University to develop (see Section III.B.2. above), disclosure of the Intellectual Property is required unless otherwise provided by written agreement between such individual and the University.
 - c. Intellectual Property Subject to Contractual Obligations (e.g., Sponsored Research Agreements) - In the case of Inventions and Copyrightable Works (including Exempted Scholarly Works) developed in the course of research funded by a sponsor pursuant to a grant or research agreement, or which is subject to a materials transfer agreement, confidential disclosure agreement or other legal obligation requiring disclosure, the disclosure of such Intellectual Property will be governed by the terms of such grant or agreement, as approved by the University, if such terms differ from this Policy.
2. Evaluation and Disposition of Disclosures - The Director and the Vice Chancellor for Research will review, evaluate, and make a disposition of all disclosure forms, and will promptly notify the Covered Individual of their disposition. The evaluation and disposition of a disclosure will be completed as soon as possible, but for Inventions (and computer software) ordinarily no later than ninety (90) days, and for Copyrightable Works (other than software) ordinarily no later than thirty (30) days after the CVIP or the Vice Chancellor for Research receives a complete and accurate disclosure form and any other information that the CVIP or the Vice Chancellor for Research requests in order to make an informed evaluation of an Invention or Copyrightable Work. Disclosure forms will be evaluated for one of more of the following dispositions, subject to the appeals process described in Section III.C.4. below:
- a. Scholarly Work - In the case of a Copyrightable Work that is claimed as a Scholarly Work (but is not an Exempted Scholarly Work), the Director and the Vice Chancellor for Research will decide whether that work is in fact a Scholarly Work.
 - b. No Use of University Resources - In the case of an Invention or Copyrightable Work that the Covered Individual claims is not subject to University ownership because the Intellectual Property was developed without significant use of University resources, the Director and the Vice Chancellor for Research will decide whether there was in fact significant use of University resources.
 - c. Evaluation of Commercial Potential: The Evaluation Committees - In the case of an Intellectual Property that the Covered Individual discloses for possible commercialization by the University, the Director and the Vice Chancellor for Research will determine its commercial potential. To assist in this determination, the Director and the Vice Chancellor for Research may consult with patent or copyright counsel and outside experts in particular fields.

In addition to these resources, the Director and the Vice Chancellor for Research may seek the advice of various Evaluation Committees with expertise in various

fields of research, which Committees the President shall have authority to establish at his or her discretion. Each Committee will be composed of faculty members with relevant expertise, appointed by the Chancellors in consultation with the Director and the Vice Chancellors for Research; a representative from the CVIP; and a Committee Chair, selected by vote of the whole Committee. The Director may invite to any Committee meeting one or more individuals from outside the University with relevant industry experience to advise the Committee.

All intellectual property disclosures shall be considered confidential by the University. The University will inform all members of the Evaluation Committee and all outside experts that the information contained in the disclosures is confidential, and that breach of confidentiality is a violation of University policy that could lead to personnel or other available sanctions or actions and will obtain written acknowledgment of such obligations from these individuals. The Evaluation Committees will establish recusal procedures for members who have a conflict of interest in a particular case.

- d. Intellectual Property Subject to Contractual Obligations (e.g., Sponsored Research Agreements) - In the case of Inventions or Copyrightable Works (including Exempted Scholarly Works) that arise in the course of research funded by a sponsor under a grant or research agreement, or which are subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation affecting evaluation of disclosures, the evaluation process will be governed by the terms of such grant or agreement, as approved by the University, if such terms differ from this Policy.

In the unlikely event that the Director and the Vice Chancellor for Research disagree on the disposition of a disclosed Invention or Copyrightable Work, a final decision shall be made by the President.

3. Request for Relinquishment of Rights - Under certain circumstances, as described below, the University may relinquish its ownership rights in an Invention or Copyrightable Work to the inventor or creator of the Intellectual Property at his or her request.
 - a. Intellectual Property Developed With University Resources - The University automatically waives its rights in Exempted Scholarly Works. In all other cases, the University will ordinarily waive its ownership rights in favor of the inventor or creator of an Intellectual Property if the Covered Individual has made complete and accurate disclosure of such Intellectual Property in accordance with this Policy and the Director and Vice Chancellor for Research have determined that the Intellectual Property comes under one or more of the following categories (as described in detail in this Policy):
 - Copyrightable Work that is a Scholarly Work
 - Intellectual Property developed without significant use of University resources
 - Intellectual Property that the University has decided not to commercialize
 - Intellectual Property that the University ceases to use diligent efforts to commercialize

- b. University-Commissioned Works - The University will not ordinarily waive its ownership rights in any Intellectual Property (including Exempted Scholarly Works) that is developed by a Covered Individual who is specifically hired or commissioned by the University for that purpose, unless otherwise provided by written agreement between such individual and the University.
- c. Intellectual Property Subject to Contractual Obligations - In the case of Intellectual Property (including Exempted Scholarly Works) that is developed in the course of research funded by a sponsor pursuant to a grant or research agreement, or which is subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation affecting ownership, the relinquishment of any University rights in the Intellectual Property will be governed by the terms of the relevant grant or agreement, as approved by the University, if such terms differ from this Policy. This includes research carried out by faculty members within a center of the University when a separate agreement with the University, approved by the Vice Chancellor for Research and the Director, has been executed by the center. Before a change is made in an ongoing research contract between the center and an outside entity, the Vice Chancellor for Research will consult with faculty members who participate in the contract. A Covered Individual may need a separate waiver or assignment of rights from the other party in order to acquire complete rights to the Intellectual Property.

If certain Intellectual Property is available for relinquishment by the University (as set forth above), the inventor or creator of the Intellectual Property may request in writing that the Director grant a release or assignment of rights. The Director in consultation with the Vice Chancellor for Research will promptly respond to this request. The University will retain a royalty-free, non-exclusive license to use any such Inventions or Copyrightable Works for academic research and teaching. If the University has incurred expenses to obtain legal protection for Intellectual Property (e.g., patent-related expenses), the University may condition its relinquishment of rights to that Intellectual Property through a contract with the Covered Individual to reimburse the University from commercialization revenues.

- 4. Appeals - If a Covered Individual disagrees with a decision of the Director and the Vice Chancellor for Research under Section III.C.2., such individual may ask for reconsideration by the appropriate Evaluation Committee. The Committee shall review the matter and make its recommendation to the Director and the Vice Chancellor for Research who shall reconsider the matter.

D. Administrative Procedures - Tangible Research Materials

While potential commercial value should not inhibit the free exchange of University-owned Tangible Research Materials for research purposes, the University nonetheless recognizes that such Materials may have significant commercial value. In addition, Tangible Research Materials received by Covered Individuals may be subject to contractual restrictions that severely limit the use and transfer of such Materials, to the detriment of University researchers. The University has therefore established the following procedures to allow the free exchange of Tangible Research Materials, while at the same time respecting the ownership rights of the University, protecting the rights of its researchers, and limiting the liability of the University and its researchers.

1. Transfer to Outside Researcher for Basic Research - If a Covered Individual desires to transfer Materials to an Outside Researcher for use in internal basic research, and not for the development or sale of commercial products, the Covered Individual must use the appropriate University form of Materials Transfer Agreement ("MTA"), which will be provided by the CVIP together with instructions for the use of each form. The various forms of MTA will establish rights and responsibilities regarding the Materials among the University and the Outside Researcher and his or her employer and will minimize future confusion and controversy regarding the use and transfer of the Materials and ownership of Inventions or Materials based on the supplied Materials. Faculty members (but not other Covered Individuals) are authorized to sign these MTAs on behalf of the University provided that (i) the University-form MTA is not altered or revised in any manner and (ii) a signed original of the MTA is sent to the CVIP when the Materials are sent to the Outside Researcher. Alternatively, CVIP representatives are authorized to approve and sign MTAs, even with revisions. If a Covered Individual is involved in a project that requires frequent exchanges of material with an Outside Researcher, the CVIP representative, in consultation with the General Counsel's office, may develop a blanket MTA to cover all exchanges between the Covered Individual and the Outside Researcher for a specific period.

If Materials are developed by a Covered Individual in the course of sponsored research, or are otherwise subject to contractual restrictions (e.g., a materials transfer agreement or confidential disclosure agreement), the transfer of such Materials to an Outside Researcher will be governed by the terms of the relevant agreement, if such terms differ from this Policy.

These procedures also apply to students who leave the University and desire to bring with them Materials that they developed or discovered in the course of their work at the University.

2. Transfer for Commercial Use - Materials may not be transferred to any Outside Researcher for any use other than internal basic research unless the Outside Researcher has obtained a license from the University through the CVIP under the procedures set forth in this Policy. Materials with commercial uses should be disclosed to the CVIP or Vice Chancellor for Research in the same manner as Inventions and will be treated in the same manner as Inventions.
3. Receiving Materials from Outside Researchers - If a Covered Individual receives Materials from an Outside Researcher at another organization (non-profit or commercial), the other organization or researcher may impose serious use and transfer restrictions on the Materials and may claim an ownership interest in Inventions, Copyrightable Works, or Materials that arise in the course of research performed with such Materials. For this reason, only CVIP representatives are authorized to approve and sign agreements governing receipt of Materials from other organizations. Covered Individuals are encouraged to consult with the CVIP regarding the restrictions applicable to a particular Material from an Outside Researcher before planning to use that Material in their research. Covered Individuals should be aware that, in some instances, these restrictions may be so onerous (e.g., no publications, assignment of inventions) that the CVIP will require modification of the agreement before approval. The CVIP will make available a

University-form MTA for receipt of Materials, although the organization supplying the Materials will usually require use of its own MTA.

If Materials are received by a Covered Individual in the course of sponsored research, the transfer of such Materials will be governed by the terms of the applicable sponsored research agreement, if such terms differ from this Policy.

If any MTA restrictions would apply to research performed by students, the effected students must agree to such restrictions in writing.

4. Administrative Procedures - In instances where the approval and signature of a CVIP representative is required for minor changes in the University form, every attempt will be made to complete this process within three business days. If the approval process extends beyond three business days, the Covered Individual may request the intervention of the Vice Chancellor for Research, who will attempt to expedite the process. For more material changes a CVIP representative in consultation with the General Counsel's office will complete the process as soon as practicable. The Vice Chancellor for Research will maintain a record of any such requests and their disposition.

E. Administrative Procedures - Confidential Treatment of Information

While the academic tradition of free dissemination of knowledge for the public benefit is recognized by the University to be of paramount importance, it may be necessary or desirable, under some circumstances, to restrict disclosure of Confidential Information received from a sponsor company or to delay Public Disclosure of an Invention. The University has developed the following procedures to balance these competing interests. The University will ordinarily not agree to maintain University-generated research results as trade secrets.

1. Guidelines Regarding Public Disclosure of Inventions - Internal disclosure of an Invention to the CVIP or Vice Chancellor for Research will not interfere with the ability to patent the Invention. However, Public Disclosure of an Invention prior to filing for a patent application (even one day before) will preclude the availability of patent protection in most countries. This legal rule applies to any non-confidential written or oral disclosure that describes the Invention (e.g., at a scientific meeting, in a journal, or even in an informal discussion with colleagues outside the University).

Accordingly, the University strongly encourages Covered Individuals to disclose Inventions to the CVIP as soon as possible, and to delay Public Disclosure of the Invention until the evaluation process is completed and a patent application is filed. The CVIP and Vice Chancellor for Research will attempt to minimize delays in publication, but a delay of up to ninety days is often necessary for evaluation. The CVIP and Vice Chancellor for Research will make every effort to expedite the evaluation process when a Covered Individual indicates that there is a compelling need for rapid publication.

During this interim period, an Invention may be safely disclosed outside of the University under the protection of a Confidential Disclosure Agreement ("CDA"), because disclosures made under an appropriate CDA are not considered Public Disclosures. The University therefore recommends that all Covered Individuals use the University-form CDA whenever they disclose information relating to an Invention while the Invention is

under evaluation by the University, and the University strongly recommends use of the University-form CDA and consultation with the CVIP if a Covered Individual wishes to disclose an Invention to an Outside Researcher associated with a company or other for-profit organization, or directly to such an organization. The CVIP will make available appropriate forms of CDA. Faculty members have authority to sign the University-form CDA on behalf of the University when they will disclose information (but will not receive information), provided they send a fully signed original of the CDA to the CVIP as soon as possible. Alternatively, CVIP representatives are authorized to approve and sign CDAs on behalf of the University.

Covered Individuals should be aware that Public Disclosure of an Invention prior to completion of the evaluation process and filing of a patent application will adversely affect the commercial value of the Invention and therefore may decrease the likelihood that the University will proceed with commercialization of that Invention.

In the case of an Invention or Copyrightable Work that arises in the course of sponsored research or a grant, or which is subject to a materials transfer agreement (MTA), confidential disclosure agreement, or other contractual restriction affecting Public Disclosure, any restrictions on Public Disclosure will be governed by the terms of the grant or agreement with the other party, as approved by the University. If such restrictions would prevent or delay the publication of a student thesis or dissertation, then he or she must agree to such restrictions in writing.

2. Receiving Confidential Information from Outside Researchers - If a Covered Individual receives Confidential Information from an Outside Researcher or organization (non-profit or commercial) in relation to research performed by the Covered Individual at the University, the other organization or researcher may impose serious non-disclosure and non-use obligations on the Confidential Information and may claim an ownership interest in Inventions, Copyrightable Works, or Materials that arise in the course of research performed with such Confidential Information. For this reason, only CVIP representatives are authorized to approve and sign CDAs from other researchers or organizations on behalf of the University. The CVIP will make available a University-form CDA for receipt of Confidential Information, although the organization disclosing the Confidential Information will usually require use of its own form of CDA.

When Confidential Information is received by a Covered Individual in the course of sponsored research, the treatment of such Confidential Information will be governed by the terms of the applicable sponsored research agreement, if such terms differ from this Policy.

If any CDA restrictions would apply to research performed by students, the affected students must agree to such restrictions in writing.

F. Administrative Procedures - Sponsored Research with Commercial Organizations

The Vice Chancellor for Research in consultation with the CVIP shall have responsibility for negotiating, executing, and administering funded research agreements between the University and commercial organizations, in accordance with the University policies on sponsored research. The Vice Chancellor for Research may delegate all or some of these responsibilities to the CVIP. CVIP approval is required for any terms of such agreements that affect rights to Intellectual Property (e.g., option rights, license rights, or assignment of ownership). If any restrictions in a funded research agreement (such as publication delays) would apply to research performed by students, the affected students must agree to such restrictions in writing.

G. Commercialization of University-Owned Intellectual Property

The CVIP in consultation with the Vice Chancellor for Research shall have responsibility for commercial development and administration of all University-owned Intellectual Property. This commercial development will ordinarily occur through licensing of Inventions, Copyrightable Works, or Materials to a company. The CVIP will regularly consult with, seek the advice of, and inform the inventor or creator of the Intellectual Property throughout the commercialization process. The University recognizes that involvement of the inventor or creator at every step of the commercialization process is essential for the successful commercialization of Intellectual Property. The CVIP will use diligent efforts to commercialize the Intellectual Property. If the CVIP is successful in its commercialization efforts, the inventor or creator will share in the economic rewards, as will the department and campus.

The University acknowledges the possibility that, in some situations, a Covered Individual and the University may each have ownership of an important element of Intellectual Property. In these situations, the University and the Covered Individual may achieve the highest value only if the combined Intellectual Property is commercialized. This Policy is not intended to limit the ability of a Covered Individual to contract with the CVIP to accomplish this result, even if the terms of that contract differ from this Policy. In any event, the University and the Covered Individual may each license their respective Intellectual Property separately if they cannot agree on contract terms.

1. Distribution of Non-Equity Revenue Derived from Commercialization - Royalty income and other non-equity revenue derived from the licensing of University-owned Intellectual Property will be distributed at the end of each accounting period as follows:

- a. The University will be reimbursed for any out-of-pocket expenses incurred in obtaining and maintaining patent or copyright protection for a specific item of Intellectual Property, and in evaluating and marketing such Intellectual Property.
- b. The remaining net income will be distributed as follows:
 - Fifteen percent (15%) to the CVIP to fund patents, CVIP operations, and research grants
 - Thirty percent (30%) to the inventor or creator

- Fifteen percent (15%) to the University entity or entities that provided the resources for development of the Intellectual Property, to fund research and scholarship

- Forty percent (40%) to the campus of the inventor or creator to fund research and scholarship

In the case of multiple inventors or creators of commercialized Intellectual Property, their shares will be distributed as they unanimously agree or, in the absence of agreement, in equal portions. If multiple departments or programs are involved, their shares will be distributed in the same manner as the distributions to the inventors or creators within such departments or programs.

At the written request of a Covered Individual, the University will furnish an accounting of these expenses and payments, but not more frequently than once each year. Covered Individuals are free to receive additional non-equity compensation directly from a commercial organization (e.g., through a consulting agreement), provided that the Covered Individual complies with other applicable University policies and procedures.

2. Acceptance of Equity - The University may accept an equity interest in a corporation, provided that before the CVIP agrees to accept equity, it must receive the approval of the Vice Chancellor for Research, the Vice President for Economic Development, and the University Treasurer. A Covered Individual must choose either of the following approaches when negotiations commence between the University and the corporation, but the choice is final once selected. If a transaction is completed before the Covered Individual makes a choice of these approaches, the approach in paragraph b shall apply.
 - a. Covered Individuals may elect to receive thirty percent (30%) of the equity that the University would otherwise receive in connection with the commercialization of Intellectual Property, in which case the Covered Individual agrees not to receive any other equity interest from the corporation. The Director may waive this restriction in his or her discretion. The University will not receive or hold this equity on behalf of a Covered Individual, but will instruct the corporation to issue the equity directly to the Covered Individual. Covered Individuals must sign any documents required by the corporation (e.g., stock restriction agreements) and must agree to comply with any restrictions placed on the stock by the corporation. If the corporation refuses to issue the stock directly to the Covered Individual, or if the Covered Individual does not sign the necessary documentation, the University will instruct the corporation to issue the equity directly to the University. In such event, the Covered Individual may still receive equity independent of the University.
 - b. Covered Individuals may elect to receive equity directly from the corporation independent of the University, in which case the Covered Individual agrees not to receive any share of equity that the University may receive in that transaction. Covered Individuals selecting this approach may negotiate with the corporation to receive equity by means of, for example, a consulting agreement or founders stock. Such arrangements may be subject to the University Policy on Conflict of Interest Relating to Intellectual Property and Commercial Ventures.
3. Distribution of Equity Revenue Derived From Commercialization - The University will not receive and hold equity until liquidation on behalf of a Covered Individual. Instead,

as explained in the preceding section, a Covered Individual may receive equity directly from a company (either together with the University or independent of the University). The equity received by the University in connection with the commercialization of Intellectual Property will be held until liquidation, with the proceeds distributed as follows:

- a. First, to the extent the University is not fully reimbursed for out-of pocket expenses from non-equity revenue, the University will be reimbursed for any remaining out-of-pocket expenses incurred in obtaining and maintaining patent or copyright protection for a specific item of Intellectual Property, and in evaluating and marketing such Intellectual Property.
- b. The remaining proceeds from equity liquidation will be distributed as follows:
 - Twenty percent (20%) to the CVIP to fund patents, CVIP operations, and research grants
 - Twenty percent (20%) to the University entity or entities that provided the resources for development of the Intellectual Property, to fund research and scholarship
 - Sixty percent (60%) to the campus of the inventor or creator to fund research and scholarship

Equity held within the University will be managed by the Treasurer. Equity may also be held on behalf of the University by the University of Massachusetts Foundation, Inc. or another outside investment advisor to minimize potential institutional conflicts of interest.

H. Enforcement

The Director, the Vice Chancellor for Research, or the President may refer any matter to the appropriate University official for disciplinary or other appropriate action.

I. Appeals

If a faculty member disagrees with any decision by the Vice Chancellor for Research or the Director, the faculty member may request an advisory opinion from an ad hoc faculty committee composed of three members appointed by the Chancellor for that campus and three members appointed by the Faculty Senate. The faculty member and the Vice Chancellor for Research will each present their views to the committee. The committee will adopt an opinion by vote of a majority of its members. In the event of a deadlock, the committee may adopt two opinions. The committee will transmit its written opinion to the faculty member, the Vice Chancellor for Research, and the Director.

If the disagreement persists, the faculty member may appeal the matter to the President (or his or her designee). The President will consider written statements by the faculty member, the Vice Chancellor for Research, and the Director, as well the advisory opinion rendered by the ad hoc committee. The decision of the President shall be final within the University.

In the case of Covered Individuals other than faculty members, the President shall have authority to overrule any decision of a Vice Chancellor or the Director. The decision of the President shall be final within the University.

If a Covered Individual disagrees with the final University decision, the Covered Individual may exercise his or her individual legal rights to pursue the matter in a court of law located in the Commonwealth of Massachusetts. This acknowledgment by the University that a Faculty Member has the right to pursue a legal claim is not an admission by the University that any Faculty Member actually has any actionable legal claim. Rather, the University seeks to preserve the legal rights of a Faculty Member outside of the collective bargaining process after internal appeals are exhausted.

J. Interpretation of Policy; Exceptions

The Director shall administer this Policy in regular consultation with the Vice Chancellors for Research and the President. The President shall have authority to interpret this Policy and, upon recommendation of the Vice President for Economic Development and in consultation with the General Counsel, may grant exceptions to the Policy in appropriate cases.

K. Reports

The Vice Chancellor for Research shall file with the Faculty Senate an annual report on disclosures and materials transfer agreements, indicating the number received, time involved in processing, and disposition. The report shall present summary statistics and shall maintain the confidentiality of individual disclosures.

(Amherst/Boston Version, 2/3/97 revised 3/24/97)