

Policy Title: Intellectual Property

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Responsible Office: Office of the Vice Provost for Research

Intellectual Property Policy BU-PP 721

Policy Statement

Baylor University (“Baylor” or the “University”) encourages basic research and the publication and dissemination of knowledge gained through basic research. Baylor University also encourages applied research wherein the questions answered may have a direct impact on the common good and/or facilitate further basic research.

Baylor’s resources, including facilities, are to be used for University purposes and not for personal gain or personal commercial advantage, except as specifically addressed hereinafter.

This policy is intended to support faculty, staff, and students in identifying, protecting, and administering intellectual property matters; defining the rights and responsibilities of all involved; and establishing support at Baylor to provide the required assistance. It also stipulates how income generated should be distributed to the developers and to Baylor.

Reason for the Policy

Baylor University faculty, staff, and students are regularly involved in scholarly activities that include teaching, research, and other creative activities. While the primary focus of such efforts is the advancement of the central purposes of Baylor, the products of scholarship often have implications for wider and differing applications. The resulting intellectual properties thus may be of benefit to the individuals involved, Baylor, and society at large.

Individuals/Entities Affected by this Policy

Faculty, staff, students, and anyone using Baylor University facilities

Exclusions

NONE.

Related Documents and Forms

University Policies and Documents

Conflict of Interest Policy
Acknowledgment of Terms and Conditions of the Intellectual Property Policy of Baylor University
Baylor University Invention Disclosure Form
Agreement for Distribution of Patent Income Between Baylor University Research Units
Inventor's Agreement for Distribution of Patent Income

Other Documents

U.S. Patent Act, 35 U.S.C. Section 101
Bayh-Dole Act
America Invents Act

Forms and Tools

Forms and tools are available at <https://www.baylor.edu/research/resources/>.

Definitions

These definitions apply to terms as they are used in this policy.

Confidential Information	Information that may not rise to the level of a trade secret, but is disclosed to another under an obligation of confidentiality
Copyrights	The copyright laws protect the authors of literary, musical, pictorial, artistic, dramatic, audiovisual, collective works, compilations of data, and other kinds of intellectual works, as well as computer software.
Intellectual Property	Intellectual property includes inventions of all description, computer programs, ideas, know-how, trade secrets, writings, art, audiovisual works, multi-media presentations, electronic presentations, internet-based instructional materials, names and symbols and combinations thereof, which, because of their characteristics, are governed and protected by the body of law of intellectual property. The law of intellectual property includes the law of patents, copyrights, trade secrets and confidential information, trademarks, service marks, and trade names.
Inventor	An inventor is a member of the Baylor faculty, staff, or a Baylor student who, either individually or jointly, develops intellectual property.
Faculty	Those bearing the title, including not limited to, "Assistant Professor", "Associate Professor", "University Professor", "Distinguished Professor", "Professor", "Assistant Research Professor", "Associate Research Professor", "Research Professor", "Visiting Scholar", "Academic Professional", "Senior Lecturer" or "Lecturer" (part time or full time). Any individual with emeritus standing is

	considered to be a faculty member for the purposes of this policy as long as that individual is actively associated with Baylor or is utilizing Baylor facilities.
Patents	The patent laws protect inventions that are useful, novel, and non-obvious. A patent is a government grant made upon full written disclosure of the details of an invention and compliance with other conditions, and permitting its recipient to exclude others for a term of years from making, using, or selling the patented subject matter.
Publication	As used in this policy, publication shall mean the disclosure, distribution, sale, lease, or transfer of the original or copies of the information in question. Publication shall include, but is not limited to, the delivery of speeches, data (written or electronic), abstracts, posters, or manuscripts disclosing all or a portion of such information, or the delivery of embodiments, to publishers, colleagues, researchers (at corporations, educational or research institutions), or other third parties.
Staff	Non-faculty, non-student employees of the University including, but not limited to, post-doctoral researchers, research scientists, technicians, engineers, research support staff, or administrative personnel.
Students	Those seeking a degree and/or research experience including, but not limited to, undergraduate students, graduate students and part-time students.
Trademarks	The trademark laws protect any word, name, phrase, symbol, or device or combination thereof that identifies the origin of goods or services, and distinguishes them from the goods or services of others.
Trade Secrets	The law of trade secrets covers knowledge or information, whether or not patentable or copyrightable, typically of an engineering or business nature, giving one a competitive advantage, which is intended by its holder to be maintained in secret and is not generally accessible or known.

Contacts

Subject	Contact	Telephone	Office email/web site
Questions	Office of General Counsel	254-710-3821	https://www.baylor.edu/ogc/
	Office of the Vice Provost for Research	254-710-3851	https://www.baylor.edu/research/resources/

Responsibilities

Faculty, Staff, and Student Researchers	<p>All researchers and students are required to disclose inventions arising out of their research, teaching, and educational efforts to the Baylor Technology Transfer Committee.</p> <p>As requested by the University, researchers shall timely execute all documents required to fully protect the intellectual property associated with their invention.</p>
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3. Intellectual Property Policy (BU-PP 721)

Office of General Counsel (OGC)	The Office of General Counsel is responsible for legal oversight of all IP-related operations of the University and the protection of IP assets.
Office of the Vice Provost for Research (OVPR)	<p>The Office of the Vice Provost for Research is responsible for the technology commercialization efforts of Baylor University including, but not limited to, technology evaluations, patent recommendation, faculty education, and technology asset management.</p> <p>Additionally, the Office of the Vice Provost for Research is responsible for the proper execution and enforcement of this policy. The Office of the Vice Provost for Research also manages the Technology Transfer Committee and staffs the operational requirements of the University Committee on Intellectual Property.</p>
Lab to Market Collaborative (L2M)	The Lab to Market Collaborative is an academia-private collaboration (made up of Baylor University, Blueprints Lab, and Waco Ventures) responsible for commercialization of Baylor technologies.
University Committee on Intellectual Property (UCIP)	<p>The University Committee on Intellectual Property is responsible for advising the Office of the Vice Provost for Research and the Technology Transfer Committee on the academic perspective of Intellectual Property Management.</p> <p>Additionally, the University Committee on Intellectual Property may propose amendments to this Policy.</p>

Principles

Part 1: General

Ownership of Intellectual Property

- A. Unless specifically addressed elsewhere within this policy, Baylor owns all intellectual property that falls under the following classifications:
 - i. The intellectual property results from research, in whole or in substantial part, supported by a grant or contract with any government or government agency, federal, state or local, non-profit foundation or commercial, corporate or for-profit organization of any kind whatsoever, subject to applicable grant terms and conditions.
 - ii. The intellectual property is prepared by students in the course of performing academically related activities in conjunction with their matriculation at Baylor.
 - iii. The intellectual property results from the efforts of faculty, and/or staff receiving direct research or development support from Baylor. Direct support involves use of Baylor facilities and personnel for research leading to or development of the intellectual property. For example, it includes situations where equipment, materials, and/or staff services of Baylor

University are used in the development of the intellectual property, or when the author or inventor has received support for the development of the intellectual property in excess of normal teaching salary, including reduced teaching loads or reassigned time.

- B. Baylor **does not** claim any ownership in intellectual property that falls under the following classifications:
- i. The intellectual property is not related to the individual's employment responsibility and has resulted entirely from the individual's efforts without Baylor involvement or the use of Baylor resources.
 - ii. The intellectual property has resulted from research or other activities performed by the individual utilizing less than the level of support as defined previously. Included in this category are materials resulting from teaching, research, scholarly and artistic activities utilizing only normal customary secretarial assistance and library, studio, and office usage.

Part 2: Duties of Inventors of Intellectual Property

Section 2.1: Acknowledgment of Terms and Conditions of Policy

All faculty, students and staff expected to conduct research of any kind are required, as a condition of employment or participation, to sign an Acknowledgment of Terms and Conditions of the Baylor University Intellectual Property Policy (APPENDIX A). However, failure of faculty, students or staff or volunteer to sign an Acknowledgment does not relieve them of their obligations under this policy and they remain bound by the policy's terms and conditions.

Section 2.2: Agreement to Execute Additional Documents

All faculty, students and staff are required to execute promptly all contracts, assignments, waivers, or other legal documents necessary to vest in Baylor or its assignees any and all rights to inventions or patents as required to carry out the provisions of this policy.

Section 2.3: Disclosure of Inventions/Creations by Baylor Personnel

As soon as reasonably possible, not more than 30 days after the discovery or invention or other creation (e.g. computer software), and prior to submission of the findings of the discovery or invention for publication or other public disclosure, the principal investigator of a research project shall file a written disclosure statement with the chair of the University Committee on Intellectual Property (i.e., Vice Provost for Research).

The Baylor University Invention Disclosure form, which satisfies the disclosure requirements, is attached to this policy as APPENDIX B.

Section 2.4: Assignment of Intellectual Property Rights

All Baylor faculty, staff, students, and all individuals who use Baylor facilities agree to assign and do hereby assign to Baylor University all right, title and interest in all intellectual property described in Part 1.A. of this Policy.

All Baylor faculty, staff, students, and all individuals who use Baylor facilities may not assign to any entity other than Baylor University any intellectual property he or she invents and falls within Part 1.A. of this Policy.

Notwithstanding the preceding paragraphs, Baylor and all individuals who use Baylor facilities may negotiate agreements which supersede these assignment obligations.

Part 3: University Action in Response to Intellectual Property Disclosure

Section 3.1: Action by the Office of Vice Provost for Research

In reviewing a disclosure, the Vice Provost for Research will consider the types of protection applicable to the intellectual property disclosed and recommend to the Provost any form(s) of protection he/she deems suited to the intellectual property in the disclosure. After consideration of a disclosure statement and on any advice of counsel sought, the Vice Provost for Research may recommend to the Provost any reasonable course of action with regard to disclosed intellectual property, including, but not limited to, any of the following:

- A. The Vice Provost for Research may recommend filing for patent, copyright, and/or trademark protection for the intellectual property. The Vice Provost for Research shall then recommend to the Provost that the intellectual property be turned over to the Office of General Counsel for appropriate steps in this regard.
- B. When, in the opinion of the Vice Provost for Research, it is more appropriate to publish the intellectual property than to seek patent or other protection for it, the Baylor University Invention Disclosure form is submitted to the University Committee on Intellectual Property (“UCIP”) for evaluation and the UCIP may recommend to the Provost that the person making the disclosure be released to publish his or her findings.
- C. The UCIP may recommend to the Provost that Baylor’s interest in the intellectual property be assigned to the inventor. As part of such return of rights, Baylor shall retain:
 - i. A perpetual, non-exclusive, royalty free license to use the intellectual property for educational and research purposes; and

- ii. A 10% interest in any royalties or consideration obtained by licensing or use of the intellectual property, after any costs of prosecuting or maintaining the intellectual property rights are recovered by the inventor, if the inventor chooses to license such intellectual property.

Section 3.2: Action by the University Committee on Intellectual Property

Roles and Responsibilities: The UCIP, or its designated subcommittee or successor committee or group, is responsible for advising the Provost on whether Baylor should release its ownership interest in intellectual property for those intellectual properties referred to the UCIP. The UCIP is also responsible for periodically reviewing the procedures for implementing this Intellectual Property Policy and proposing amendments to it. The UCIP shall convey its recommendations on the release of intellectual property and/or revisions of the Intellectual Property Policy to the Provost or his or her designee.

Membership: The UCIP shall consist of 17 members: three non-voting members who serve *ex officio*, and fourteen voting members from the faculty. The *ex officio* members of the UCIP are the Vice Provost for Research, General Counsel, and the Assistant Vice Provost for Pre-Award Administration and/or their designees. The Vice Provost for Research serves as chairperson and the Assistant Vice Provost for Pre-Award Administration as secretary of the UCIP.

Half of the faculty members of the UCIP are appointed by the President or his or her designee and the other half by the faculty, through the Committee on Committees, such that each of the following colleges and schools is represented:

- College of Arts and Sciences (three from the sciences, one from humanities),
- School of Business (one member),
- School of Education (one member),
- School of Computer Science and Engineering (one member),
- School of Music (one member),
- School of Nursing (one member),
- Honors College (one member),
- School of Social Work (one member),
- University Libraries (one member),
- School of Law (one member), and
- Seminary (one member).

The terms for the faculty members are three years, except initially when they are arranged to provide staggering of terms.

Section 3.3: Action by the Provost

Upon receipt of the recommendation of the Vice Provost for Research or the UCIP, the Provost shall take such action as he or she deems prudent. The Provost is not bound by the recommendation of the Vice Provost for Research or the UCIP.

The Provost may, at any time, elect not to pursue a patent or other legal protection at which time all of Baylor's rights to the intellectual property may be released by Baylor to the inventors of the intellectual property at their request, except those rights outlined in Section 3.1.C. above and, subject to any restrictions imposed by grant, sponsor, or other requirements. The inventors of the intellectual property must be informed promptly in writing (not later than six weeks following the date of intellectual property disclosure) of the action Baylor intends to pursue with respect to the intellectual property.

Part 4: Distribution of Intellectual Property Royalties and Other Income

Section 4.1: Allocation of Intellectual Property Royalties and Other Income

For any intellectual property to which Baylor has full or partial title or any other rights by any provision of this Policy, whether patent, trade secret, confidential information, copyright, trademark, or service mark, Baylor may, in its sole discretion, accept any form of consideration including, but not limited to, royalties, licensing fees, assignment fees, equity, maintenance fees, etc. paid to Baylor in any reasonable manner, hereinafter referred to as Gross Income.

Gross Income created from commercialization shall be distributed as follows:

- First, Baylor shall recover all direct expenses incurred in connection to that intellectual property, including, but not limited to, fees paid to outside legal, consulting, marketing and licensing organizations and any other out-of-pocket costs incurred by Baylor.
- Then, 15% of the Gross Income or other consideration remaining after deduction of direct expenses per item shall be paid to Baylor.
- The resulting "Net Proceeds" shall be distributed as follows:
 - 40% to the inventor(s);
 - 20% to the Office of the Vice Provost for Research in support of research and scholarly activity;
 - 25% to the inventor's College(s), with at least 50% of such amount going to the inventor's department(s), program(s), center(s), and/or institute(s) for the support of research and scholarly activity;
 - 15% to supporting commercialization of Baylor Intellectual Property in accordance with Section 9.3 of this Policy.

The following provisions apply to the distribution of the Net Proceeds and other considerations:

- A. An inventor may arrange for a portion or the entirety of his/her personal share to be retained by Baylor to be utilized in a manner agreed in writing by Baylor and the inventor. The inventor may elect annually whether or not to direct a portion or the entirety of his/her share to be retained by Baylor. The inventor shall continue to receive his/her share even if the inventor leaves Baylor. Any payments made to an inventor are subject to applicable tax laws.
- B. If an inventor(s) is affiliated with more than one department, program, center, and/or institute within a given College, then the equal or unequal distribution of the Net Proceeds will be decided by the Dean of said College, wherein at least 50% of the College's share of patent royalties is distributed to the inventor(s) department(s), program(s), center(s), and/or institute(s).
- C. If an inventor(s) is affiliated with more than one college, then each College will receive an equal share of that portion of the Net Proceeds set aside for the inventor's College(s). Unequal distribution of the Net Proceeds between Colleges is possible, pending a signed agreement between the appropriate Deans. The Administrator Agreement for Unequal Distribution of Net Proceeds form is attached to this Policy as APPENDIX C. A signed copy of this agreement must be on file in the Office of General Counsel.
- D. The calculation of "yearly" Net Proceeds shall be made based on Baylor's fiscal year.

Section 4.2: Distribution to Multiple Inventors and Non-Inventors

In the event that intellectual property results from the contribution of two or more faculty, student, staff inventors, or other inventors using Baylor facilities, then the inventors' portion of Net Proceeds under Section 4.1 will be split, by default, equally among the inventors.

Inventor(s) may mutually agree to any equal or non-equal distribution of the inventors' portion the Net Proceeds under Section 4.1 to be distributed amongst any of the following:

- Faculty, student, staff inventors, or other inventors using Baylor facilities;
- Faculty, student, or staff non-inventors;
- Colleges;
- Departments, programs, centers, and/or institutes;
- Endowments;
- Individuals or organizations not within Baylor University;
- Any other individual or entity upon who the inventor(s) mutually agree;

where consistent with Baylor's mission and by providing the corresponding agreement to Baylor in writing signed by all inventors. Wherein none of the inventors are subject to this policy under Section 1.4, the Vice Provost for Research may recommend a distribution of the inventors' portion of Net Proceeds to be approved and signed by the Provost. The Inventor's Agreement for Distribution of Net Proceeds form is attached to this Policy as APPENDIX D. A signed copy of this agreement must be on file in the Office of General Counsel.

Baylor may not be involved in resolution of disputes between inventors over distribution of Net Proceeds or other consideration, and in the absence of a written agreement signed by all inventors, the default provisions of this section shall apply. Baylor is not liable for any distribution of Net Proceeds to inventors made in error or by mistake.

Part 5: Patents

Section 5.1: Introduction

Much of the research conducted at universities is hypothesis-driven and seeks to answer fundamental questions related to a particular discipline. In general, the results of such basic or fundamental research are not patentable (e.g., one cannot patent the law of gravity or the absorption spectrum of a compound). However, from time to time during the normal course of university research, novel ideas or inventions may arise as a result of applied research. This applied research may result in discoveries, ideas, or inventions that have commercial value and are worthy of protection by a patent.

Questions dealing with patentability are complex and involve both legal and commercial considerations. Thus, in addition to meeting the statutory requirements related to patentability (novelty, non-obviousness, etc.), the decision to pursue a patent must also be viewed in terms of its potential commercial value (an invention may be patentable under law but not worth the considerable expense of obtaining it in terms of potential commercial value). The Office of Vice Provost for Research and the Office of General Counsel will work together with the inventor(s) to assess all potentially patentable concepts.

Therefore, if during the course of research or other activity in which direct support from Baylor is involved, an inventor or principal investigator in charge of a research group believes a commercially valuable invention has been conceived, the inventor or principal investigator must report this invention to the Office of Vice Provost for Research in accordance with Section 2.3 of this policy. The disclosure must include the names of all parties who contributed to the invention.

The terms and policies dealing with potentially patentable inventions are outlined below.

Section 5.2: Objectives

- A. Baylor recognizes that the research of its faculty, staff, and students may lead to inventions that should be patented to:
- i. protect the public interest;
 - ii. fulfill the terms of a research contract with a sponsoring agency;
 - iii. promote the development of useful processes, machines, manufactures, and compositions of matter under the Patent Act that might not be developed without patent protection;
 - iv. encourage invention and ensure adequate rewards for the inventors; and/or
 - v. increase Baylor's financial support of research by means of internal allocation of Baylor's share of Gross Income derived from inventions.
- B. It is Baylor policy to make available to industry and the public inventions resulting from Baylor research, and at the same time provide appropriate recognition and incentive to inventors.

Section 5.3: Patentable Subject Matter, Patentability Standards, and Bars to Patentability

A. Patentable Subject Matter

Each potentially patentable discovery in which Baylor may have an ownership interest requires independent evaluation for patentability. Although there are three statutory types of patents, utility patents form the majority of patents that are filed in a university setting. The three types of patents are:

- i. Utility Patents: A "utility patent" may be obtained for any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.
- ii. Design Patents: A "design patent" may be obtained for any new, original, and ornamental design for an article of manufacture.
- iii. Plant Patents: A "plant patent" may be obtained by one who invents or discovers and sexually and/or asexually reproduces a distinct and new variety of plant.

B. Standards of Patentability

The U.S. Patent Act, 35 U.S.C. Section 101, requires an invention be novel, non-obvious, and useful in order to form the basis for a United States patent. As part of their determination as to whether it is appropriate for a patent application to be

supported by Baylor, the Office of Vice Provost for Research and the Office of General Counsel will consider the technology in view of these legal requirements.

C. Bars to Patentability

No United States patent can validly issue on an invention that was disclosed in a printed publication in any country, or was on sale or in non-experimental public use in the United States more than one year before the filing date of the application in the United States. Publication includes any disclosure to the public, such as disclosure in journal articles, books, theses, dissertations, talks at meetings, poster presentations, distribution of abstracts, publication of an abstract or presentation on the World Wide Web, etc. Further, most foreign countries do not allow a one-year grace period, and any publication prior to the filing of a patent application will prevent a valid patent from issuing in these countries. However, some foreign countries do acknowledge a United States filing prior to publication, so long as a corresponding foreign application is filed within a set time period, usually one year. Therefore, any publication and commercialization efforts relating to an invention to be patented should be delayed until after the United States application is filed, so that rights to patents in both the United States and foreign countries are preserved. Foreign patent applications represent significant expenditures of Baylor funds and will only be sought in specific circumstances.

If there has been any disclosure in a publication, any offer to sell, or sale, of the invention, or any public disclosure or commercial use of the invention, the complete circumstances including the dates of publication, offer to sell, sale, or use, must be disclosed to Baylor during invention disclosure. Failure to advise the United States Patent and Trademark Office of prior offers for sale, uses, or publications could result in the invalidation of a patent.

Section 5.4: Ownership

All potentially patentable inventions in which Baylor may have an ownership interest must be disclosed to the Office of Vice Provost for Research in accordance with the provisions of this policy. Upon receipt of a disclosure, the Office of the Vice Provost for Research and the Office of the General Counsel will classify the property rights in an invention or discovery based on the support that funded the invention or discovery. The UCIP may review this classification of the property rights. In the event that the inventor disagrees with this classification, the inventor may appeal to the Provost, whose decision shall be final. The classification types of research are:

- Externally Sponsored Research;
- Internally Sponsored Research;
- Individual Research;
- Research as a Consultant; and
- Third-Party Research.

A. Rights in Inventions Resulting from Externally Sponsored Research

Inventions which are subject to the terms of a sponsored research or other agreement between Baylor and a third party comprise externally sponsored research. Ownership of these inventions is determined in accordance with the terms of the applicable agreement. Examples of this category are as follows:

i. Government

a. Grants and Contracts

Grants and contracts supporting research sponsored by the federal government usually provide that the government has the right to inventions resulting from the research, and are usually subject to specific federal statutes. The rights acquired by the government may vary, depending on the terms of the agreement. Because of such statutory and grant provisions, Baylor cannot grant requests that the inventor acquire personal ownership of inventions resulting from government-sponsored research, without complying with statutory requirements. In some cases, Baylor, by action of the Provost upon the recommendation of the University Committee for Intellectual Property, may determine that it is appropriate to allow the inventors to receive rights to their inventions from Baylor insofar as Baylor's commitments to the government permit, subject to terms and conditions determined by the UCIP and the Provost.

All potentially patentable inventions and discoveries resulting from work performed pursuant to a government grant or contract must be disclosed to the Office of Vice Provost for Research pursuant to the provisions of this policy. If, under the rules and statutes, governing the relevant grant or contract, Baylor has any rights in the invention, any Gross Income arising from those rights will be administered under the relevant provisions of this policy.

b. Other Government Rights

The federal government may also acquire rights to inventions in the field of a federally sponsored program of research in which the inventor has participated or made use of research equipment of other facilities, materials, or services maintained or supported by the federal government. The circumstances of such an

invention should be disclosed to the Office of Vice Provost for Research in the disclosure required by this policy.

ii. Industrial and Other Sponsored Research

Sponsored research contracts and grants frequently contain complex provisions relating to patents, copyrights, inventions, discoveries, rights in data, royalties, publications and various categories of material including proprietary data, computer software, licenses, etc. Contracts with industrial sponsors usually provide that Baylor acquires full patent rights with a license to the sponsor. Under certain circumstances, however, the sponsor may acquire such rights, subject to a license to Baylor. Grants from industrial sponsors, as well as grants from private foundations, should not have patent restrictions unless such restrictions have been specifically approved by the Office of the Vice Provost for Research and the Office of General Counsel. Any sponsored research contract, grant, or agreement having a provision relating to intellectual property must be reviewed by the Office of the Vice Provost for Research and the Office of General Counsel prior to execution. Questions regarding the specific terms and conditions of individual contracts and grants, or regarding rules, regulations, and statutes applicable to the various government agencies, should be addressed to the Office of the Vice Provost for Research and the Office of General Counsel.

All potentially patentable inventions and discoveries developed under a sponsored research contract or grant must be disclosed to the Office of Vice Provost for Research pursuant to the provisions of this policy. The Vice Provost for Research shall then make appropriate recommendations in view of the technology and the relevant sponsored research contract or grant. Any Gross Income arising from such rights will be distributed according to the provisions of this policy.

B. Rights in Inventions Resulting from Internally Sponsored Research

Inventions of faculty, students, or staff involving direct support from Baylor, but without any Baylor obligations to others in connection with such support, are the property of Baylor. With regard to such inventions, Baylor will exercise its rights in inventions of the faculty, students, and staff in a manner designed to further Baylor's mission by giving full consideration to making the invention available to industry and the public on a reasonable and effective basis, avoiding unnecessary exclusion of any qualified manufacturer from the use of the inventions, and providing adequate recognition to inventors. When, in such cases, Baylor

undertakes patenting and commercial development and exploitation, a share of the Gross Income is provided to the inventors pursuant to Part 4 of this policy.

C. Rights in Inventions Resulting from Individual Research or Third Parties

i. Inventions Resulting from Individual Research by Faculty, Students, or Staff

Inventions produced wholly at the expense of a faculty, student, or staff without direct support from Baylor are the property of the individual. If an inventor so desires, inventions or discoveries made on the inventor's personal time and utilizing his or her own facilities and materials may be assigned to Baylor for administration on behalf of Baylor under terms to be agreed between the inventor and Baylor. Under this agreement, the procedures will be the same as described in this Policy under Section 5.4(B).

ii. Inventions Resulting from Individual Research Involving Significant Use of Baylor Resources

When a discovery is made partially at the expense of the individual but with the use of Baylor support, the procedure is the same as that indicated under Section 5.4(B).

iii. Rights in Inventions Resulting from Third-Party Research

Persons not associated with Baylor may come to Baylor with patented or patentable intellectual property which may benefit the public. Where such an invention is consistent with Baylor's mission and where approved by the Vice Provost for Research and Office of General Council, the inventions may be assigned to Baylor for administration on behalf of Baylor under terms to be agreed between the inventor and Baylor. Under this arrangement, the procedures will be the same as described in this Policy under Section 5.4(B).

Wherein the patentable item requires further development and refinement before its advantages may be fully realized and where personnel of Baylor, upon administrative approval, become associated with its continued development, the invention may be assigned to the joint ownership of the inventor and Baylor. The procedure will be the same as under Section 5.4(B); however, the division of Gross Income may be modified to be in accordance with an agreement made between Baylor and the third party.

D. Rights in Inventions Resulting from Research as a Consultant

Faculty or staff are free to make their own agreements with respect to patent rights arising out of consulting contracts for services outside Baylor, except as circumscribed by this policy and the University's Conflict of Interest Policy, and these rights are governed solely by the mutual understanding of those parties

thereto. If not properly addressed in a consulting agreement, a discovery made by an individual acting as a consultant may unnecessarily complicate the rights of Baylor, the consultant, and the sponsor. Consulting agreements involving patent obligations of the consultant, therefore, should be approved by the Dean of the appropriate school, the Office of the Vice Provost for Research, the Provost and the Office of General Counsel. A faculty or staff member acting as a consultant shall notify the Dean of the appropriate school, the Office of the Vice Provost for Research, the Provost and the Office of General Counsel of all patents attributable to such agreements. A faculty or staff member who is engaged in consulting work or in business is responsible for ensuring that his or her agreements are not in conflict with his or her employment contract, Baylor's Personnel Policy Manual, this policy, or with existing Baylor commitments.

Part 6: Trade Secrets and Confidential Information

Section 6.1: Introduction

Generally, trade secrets and confidential information are protected only as long as they are kept secret or confidential. Protection of trade secrets and confidential information are most often irrevocably lost by inadvertent or unintentional disclosure outside of an obligation of confidentiality, including publication. The Definitions section and Section 5.3.C offer examples of activities that constitute publication.

Trade secrets and confidential information can constitute valuable intellectual property. Therefore, Baylor policy prohibits the disclosure, without prior approval, of any trade secret or confidential information in which Baylor may have any interest. Because the only protection available for a trade secret and confidential information often will be the contractual obligations of confidentiality, no disclosure of the trade secret or confidential information should be made without first obtaining the approval of the Provost.

Section 6.2: Disclosure and Protection

In the event Baylor personnel suspect they have developed trade secrets and confidential information in which Baylor may claim ownership interest, they must report this in writing to the Office of Vice Provost for Research. This report must be made using the Baylor University Invention Disclosure Form (APPENDIX B) as soon as possible, but prior to publication or other forms of disclosure, because failure to make disclosure as required under this section may result in loss of confidentiality, marketability, viability, ownership, etc. of the trade secret or confidential information.

The Vice Provost for Research will then recommend appropriate action to the Provost, who may accept this recommendation or may order alternative action, as he or she deems appropriate.

Section 6.3: Administration of Trade Secrets or Confidential Information

Under normal circumstances, the process for internal consideration of trade secret and confidential information will be the same as set forth for patents under Part 5, i.e., confidential disclosure for assessment, determination of ownership, and division of proceeds, if any, resulting from licensing.

Section 6.4: Confidentiality Agreements

Nothing contained herein shall be construed as amending or altering in any manner individual confidentiality agreements duly entered into by Baylor with Baylor personnel and/or third-party contractors. Any person subject to this policy who develops a trade secret and/or confidential information and who has a need to convey that trade secret and/or confidential information to a third-party must contact the Office of the Vice Provost for Research for the preparation of a confidentiality agreement. The confidentiality agreement must be executed by Baylor and the third-party prior to disclosure of the trade secret and/or confidential information.

Part 7: Copyrights

Section 7.1: Objectives

The objectives and policy considerations relating to Baylor's copyright policy are to:

- enable Baylor to foster the free and creative expression and exchange of ideas and comment;
- preserve traditional university practices and privileges with respect to the ownership and publication of scholarly works;
- establish principles and procedures for allocating income derived from copyrightable material produced at Baylor; and
- protect Baylor's assets and imprimatur.

Section 7.2: Copyright Ownership

Copyright law provides that the author of a copyrightable work owns the copyright in the work, unless the work is a "work made for hire" or the author is contractually obligated to transfer ownership of the work to another after its creation. A "work made for hire" is a work which is either (i) created by an employee within the scope of his or her employment, or (ii) is specially commissioned and the commissioning party and the creator agree in writing that the work is to be a "work made for hire." If a work is a "work made for hire" then the employer or the commissioning party is the author and owns the copyright in the work.

Where two or more authors create a single work that is not a “work made for hire”, or where they intend their separate creations to be merged into a jointly owned single work, then each author owns an equal, undivided share in the single work, absent an Inventors Agreement for Distribution of Gross Income (APPENDIX D) between or among the authors.

Section 7.3: Ownership of Works Created by Administration, Faculty, Staff and Students

It is the policy of Baylor that all copyright rights in copyrightable works created by Baylor administration, faculty, staff and students shall remain with the creator(s) of the copyrightable works, unless:

- A. the works are “works made for hire” within the meaning of applicable law where Baylor is either the employer or the commissioning party and the author(s) are either Baylor employees acting within the scope of their employment or are commissioned parties; or
- B. the copyrights are otherwise subject to contractual obligations.

For the purpose of Section 7.3.A above, a “work made for hire” includes works which either Baylor specifically directs the creators to create under Baylor’s supervision or which are funded by direct support from Baylor as defined in Part 1. For purposes of this policy, books, articles, notes, syllabi, charts, dissertations and other works, the intended purpose of which is to facilitate teaching or disseminate the results of academic research or scholarly study, are not to be claimed by Baylor as a “work made for hire” and if ever determined to be a “work made for hire,” the resulting copyright shall be assigned by Baylor to the creator; provided, however, that if Baylor resources are used in its creation, the creator shall grant to Baylor a perpetual non-exclusive royalty-free license to use such copyrightable work.

Each employee who is expected to create copyrightable works is required to sign an Acknowledgment of Terms and Conditions of the Baylor University Intellectual Property Policy. By signing an Acknowledgment, every employee agrees (i) that ownership of all “works made for hire” as defined in subparagraph (A) above shall be vested in Baylor, (ii) to cooperate with Baylor in signing any additional assignments or other documents necessary to vest ownership of such works in Baylor, and (iii) that Baylor, in its sole discretion, may elect whether and how Gross Income received from the exploitation of works made for hire will be distributed to individual employees. Failure of an employee to sign an Acknowledgment does not relieve the employee of his or her obligations under this policy.

Section 7.4: Ownership of Works Created by Non-Employees

Under applicable copyright law, non-employees may own “works made for hire” by non-employees unless a written agreement concerning copyright ownership vesting ownership in Baylor is made. Accordingly, it is a requirement of Baylor that non-employees agree in writing that ownership of copyrightable works “made for hire” be vested in Baylor when a non-employee is hired to produce such a work. Questions concerning such agreements should be directed to the Office of General Counsel.

Section 7.5: Software Ownership

Computer software may be subject to patent or copyright protection. Baylor staff who develop software as part of their assigned duties at the University shall be deemed “works-for-hire” and shall be owned by Baylor. Software developed by staff unrelated to his or her duties at Baylor and without the use of Baylor resources, shall be owned by the staff member.

Faculty and students who develop software normally will own the software except when:

- a prior, written agreement between the individual and Baylor exists;
- the individual is engaged in a research grant or contract, where software ownership is specified by the grant or contract;
- the software is an integral part of a patentable invention or machine developed at Baylor, in which case ownership will be the same as for the patentable intellectual property;
- Baylor has committed substantial resources to the development of the software, in which case ownership shall be the same as described for patentable intellectual property as described above; and
- software is created by a student hired by Baylor in a staff position not directly related to his or her education as a student, and who creates the software as part of his or her job responsibilities and duties, in which case Baylor shall own the software.

Section 7.6: Administration, Assignment and Commercialization of Baylor’s Copyrights

Under normal circumstances, the process for internal consideration of Baylor copyrights will be the same as set forth under Part 2 for patents, i.e., disclosure for assessment, determination of ownership and, subject to Part 4 above, division of Gross Income, if any, resulting from commercialization. No assignment or license of copyrights owned by Baylor may be made except in accordance with the Recurring Signature Authorization Resolution of the Board of Regents.

Section 7.7: Maintenance of Copyrights

Copyright protection for copyrighted works owned by Baylor may be lessened without adherence to certain notice requirements. It is the policy of Baylor that all published works owned by Baylor shall bear the following copyright notice:

Copyright © [year] Baylor University. All Rights Reserved.

No other institutional, departmental, or individual name is to be used in the copyright notice, although the name and address of the department to which readers can direct inquires may be listed below the copyright notice. The year to be inserted in the above notice is the year in which the work was first published. Generally, a work is “published” when it is distributed by sale, lease or lending to the public or an otherwise appreciable audience without a restriction of confidentiality.

A special form of notice must be used on computer software and on sound recordings (e.g., phonograph records and audio tapes). Contact the Office of General Counsel for the appropriate copyright notice form for these types of works.

All copyrightable works owned by Baylor should ordinarily be registered within three months of first publication with the United States Copyright Office using its official forms. Forms may be obtained through the Office of General Counsel, to which questions concerning copyright registration may also be addressed.

Section 7.8: Respect of Copyrights of Others

The ongoing teaching and administrative activities at Baylor routinely require the use of copyrighted works belonging to others. It is the policy of Baylor that Baylor’s administration, faculty, staff and students respect all copyright rights of such third parties. Questions related to permissible use of copyrighted works for educational purposes in light of various Copyright Act exemptions, including the fair use doctrine, should be directed to the Office of General Counsel.

Part 8: Trademarks and Service Marks

Section 8.1: Baylor Trademarks

Baylor owns many trademarks and service marks related to the goods and services distributed by Baylor and its licensees. Examples include the Baylor University seal, the name “Baylor University,” representations of athletic team mascots, and other names, symbols, and other indicia used in conjunction with Baylor programs, activities, and events. Use of Baylor marks without permission of Baylor is prohibited. Consult the Office of General Counsel for permission to use Baylor marks and for

information about registration, protection, and proper usage of Baylor marks. Information concerning unauthorized use of Baylor marks by third parties also should be directed to the Office of General Counsel.

Section 8.2: Trademarks Created by Baylor Faculty, Staff, or Students

Trademarks and/or service marks created by faculty, staff, or students during the course of employment or matriculation at Baylor that relate to goods or services offered by or made by Baylor shall be owned and administered by Baylor, unless the Provost determines otherwise for a given trademark or service mark. The Provost will communicate, in writing, his or her decision regarding ownership of the trademark.

Part 9: Commercialization of Baylor Intellectual Property

Section 9.1: Introduction

The commercialization and marketing of intellectual property provides public use of new knowledge as well as a source of revenue for Baylor and the inventor. These purposes are best realized when cooperation exists between Baylor and the inventor.

Section 9.2: Discretionary Commercialization Efforts of Baylor

Baylor may, in its sole discretion, elect to develop or commercialize, directly or indirectly, Baylor intellectual property by, among other things, (i) investigating or contributing funds, equipment or assets, or (ii) contracting with affiliates of Baylor or third parties for the rendition of investment, venture capital, marketing, management or other services, or (iii) both. Baylor may undertake such actions, including assigning to such affiliates of Baylor or third parties undivided interests in Baylor intellectual property or a portion of income or equity to be received in exchange for the rendition of services by such parties.

Section 9.3: Expenditures to Support Commercialization

Funds designated for supporting commercialization of Baylor Intellectual Property, including, but not limited to, Gross Income and other income outlined in section 4.1 of this policy, endowed funds, equity sale, and grants, shall be distributed by the Vice Provost for Research for the purposes of executing the efforts outlined in Section 9.2 of this policy.

Section 9.4: Use of Affiliates and Third Parties

Baylor may, in its sole discretion, contract with affiliates of Baylor or an outside corporation, agency or any organization deemed suitable by Baylor, on such terms and conditions, including the consideration for its services, as Baylor shall deem

appropriate, for the seeking of patent or other protection for intellectual property and for the licensing, assignment, sale or other commercialization thereof.

Section 9.5: Obligations of Baylor on Commercializing Intellectual Property

Notwithstanding anything to the contrary contained in this policy, this policy shall not require Baylor to exploit, license, assign or otherwise commercialize or develop any Baylor Intellectual Property or other Intellectual Property in which Baylor has rights. While Baylor and its staff may wish to obtain the thoughts and recommendations of Baylor personnel involved with any Baylor Intellectual Property, it is not obligated to comply with the requests of such parties as the manner in which such Baylor Intellectual Property is treated. The decision of Baylor in deciding whether or how to pursue commercialization shall be determined at the sole discretion of Baylor.

Section 9.6: Obligations of Faculty on Commercializing Intellectual Property

Baylor strongly encourages faculty inventor participation in identifying potential licensees and companies whose business interests coincide with the field of the invention. In some instances the relationship between the principal investigator, a company as a sponsor/licensee, and Baylor can result in synergistic research activities and revenue that benefit all parties. These benefits may take the form of research sponsorship, graduate fellowship opportunities, and access to corporate data for the principle investigator; licensees for current and future inventions, reimbursement of patent costs, indirect costs revenue, and royalty income and fees from existing inventions for Baylor; and license to existing inventions, first right to negotiate license to new inventions, and research collaboration for the sponsor/licensee. The research and teaching missions of Baylor always take precedence over patent considerations. While Baylor recognizes the benefits of patent development and research collaborations, it is most important that the direction of Baylor's research not be established or unduly influenced by patent considerations or personal financial interests.

Inventors often have knowledge pertaining to the management and marketing of particular intellectual properties. Further, newly created technologies or processes can be the focus of new business entities that develop and commercialize a given technology or process. Under appropriate circumstances, Baylor may seek to include in a commercialization agreement the right of Baylor and the inventor to participate in the management of a business entity commercializing the intellectual property. Further, commercialization agreements may provide an equity position to Baylor and/or the inventor, so long as obtaining an equity position does not adversely impact the overall financial return to Baylor.

Part 10: General Provisions

Section 10.1: Disputes

Disputes involving ownership, equity in, or administration of intellectual properties, including the interpretation of this policy, shall be submitted to the University Committee on Intellectual Property for consideration. After consideration, the Committee shall submit written findings and recommendations to the Provost, who shall rule on the dispute.

Section 10.2: Contractual Obligations of Baylor

Notwithstanding any provision of this policy to the contrary or any right granted to any party herein, Baylor must perform its contractual obligations with respect to intellectual property developed at Baylor as may be required under any contract, grant, or other arrangement with third parties, including government grants, sponsored research agreements, joint research agreements, license agreements and the like.

Section 10.3: Amendment

Baylor reserves the right to alter or amend the Intellectual Property Policy of Baylor University from time to time in order to better carry out the mission of Baylor. The Office of the Vice Provost for Research and the Office of General Counsel jointly have the overall responsibility for monitoring the effectiveness of this policy and recommending to the Provost any amendments or changes to this policy which in the opinion of the Vice Provost for Research and the General Counsel would serve to advance the dissemination and distribution of knowledge.