



**ADMINISTRATIVE POLICY STATEMENT**

**Policy Title:** Intellectual Property Policy on Discoveries and Patents for Their Protection and Commercialization

**APS Number:** 1013

**APS Functional Area:** **ACADEMIC/RESEARCH**

**Brief Description:** This policy governs the ownership and disposition of intellectual property created by University employees, volunteers, students, and visitors.

**Effective:** March 2, 2006TBD

**Approved by:** Daniel J. Wilkerson, Vice President, University Counsel and Secretary of the Board of Regents President Todd Saliman (Pending)

**Responsible University Officer:**Daniel J. Wilkerson, Vice President, University Counsel and Secretary of the Board of Regents Leonard Dinegar, Senior Vice President for Internal Operations and Chief of StaffThe Principal Technology Transfer Officers

**Responsible Office:** Technology Transfer OfficeTBDThe Offices of the Principal Technology Transfer Officers

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(david.allen@cu.edu)TBDThe Principal Technology Transfer Officers

**Supersedes:** Intellectual Property Policy on Discoveries and Patents for Their Protection and Commercialization, March 2, 2006March 2, 2003

**Last Reviewed/Updated:** February 2011TBD (Pending)

**Applies to:** All campuses

**Reason for Policy:** The purpose of this Administrative Policy Statement is to implement Regent Policy 5.J, "Intellectual Property ~~on~~Related to Discoveries and Patents for Their Protection and Commercialization."

**I. INTRODUCTION**

~~Creating and disseminating knowledge is a fundamental mission for the University of Colorado. The creative environment of the University is conducive to the development of intellectual property. A clear and concise policy enhances the environment for development and commercialization of intellectual property such as inventions, patents and software.~~

The purpose of this Administrative Policy Statement is to implement Regent Policy 5J, "Intellectual Property ~~on~~Related to Discoveries and Patents for Their Protection and Commercialization."

In this policy, the University of Colorado reaffirms its commitment to academic freedom. ~~The University of Colorado also encourages and rewards its discoverers and innovators who benefit society and who create significant economic resources for themselves, their research programs and the University.~~

This policy shall be interpreted to be consistent with other University of Colorado policies, and federal and state statutes and regulations.

## II. SCOPE OF POLICY STATEMENT

~~This policy shall be applicable to all units of the University and all included persons as that term is described below. Employees of the University are bound by this policy including those receiving salaries, scholarships, fellowships or other remuneration from the University, part-time employees, student employees, University employees on sabbatical who receive remuneration from the University, and employees on a leave of absence who partake in substantial use of University resources. Adjunct and adjoint appointees and visitors who are collaborators with included persons and partake in substantial use of University Resources are also bound by this policy.~~

This policy applies to all Included Persons.

This policy does not change the traditional relationship between the University and employees who are creators or authors of teaching, scholarly and artistic/creative works. Ownership and copyrights in teaching, scholarly and artistic/creative works, including, but not limited to, textbooks, electronic media, syllabi, tests, assignments, monographs, papers, models, musical compositions, works of art, and unpublished manuscripts are governed by the Regent Policy 5K "Intellectual Property that is Educational Material" and Administrative Policy Statement (APS), 1014, "Intellectual Property that is Educational Materials."

### A. Campus Management of University Ownership Discoveries

- ~~1. As required by Regent Policy, the University shall take assignment of and shall own all discoveries in which University has an interest. Every included person(s), as a condition of employment, and every collaborator participating with an included person on a discovery, will assign and hereby does assign any legal rights that may exist in such intellectual property.~~

~~The University shall have no ownership rights in the following intellectual property, which shall be owned by its creator:~~

- ~~a. Intellectual property that is Educational Materials and owned by the creator as determined pursuant to the Administrative Policy Statement Intellectual Property that is Educational Materials; or~~
- ~~b. Intellectual property created by a student solely for the purpose of satisfying course requirements, unless the student A) creates the intellectual property with an included person, B) assigns ownership rights in the intellectual property to the University in writing or C) must make an assignment of such ownership rights to the University as a condition for participation in a course.~~

~~Provided, however, that if the intellectual property referred to in (a) or (b) is a derivative of or otherwise uses pre-existing University owned intellectual property, this provision shall not prevent the University from asserting its pre-existing rights.~~

- ~~2. As provided in A.1., the University shall take assignment and shall own "discoveries in which the University has an interest" that are created during the course of sponsored research, consulting, or other contractual arrangements. Only the Principal Technology Officer has the legal, delegated authority to assign ownership, license, or otherwise provide legal rights to discoveries and University intellectual property.~~

76  
77 Each campus of the University shall be responsible for managing the protection and commercialization of  
78 University Discoveries made by Included Persons that are assigned to that campus and, as such, shall each  
79 establish a policy that addresses how the campus will protect and commercialize University Discoveries made by  
80 Included Persons that are assigned to that campus.

81 Each such campus policy shall be drafted to encourage and reward its Discoverers to participate in  
82 commercialization activities that make Discoveries available for widespread use and benefit.

83 Each campus chancellor of the University shall appoint a member of the campus' staff to serve as the Principal  
84 Technology Transfer Officer for that campus, to perform such duties and responsibilities as it shall prescribe in  
85 accordance with Regent Policy 5J and this policy, and shall establish a Technology Transfer Office or shall  
86 delegate the technology transfer function to another campus' Technology Transfer Office that will be responsible  
87 for the protection and commercialization of Discoveries made on that campus.

88 Each campus chancellor of the University shall delegate signature authority for any agreements involving  
89 University Discoveries and Intellectual Property related to a University Discovery to the Principal Technology  
90 Transfer Officer and their designees. Should a University employee not possessing such Delegated Authority sign  
91 an assignment of or other grant of rights to Intellectual Property related to any University Discovery or an  
92 agreement seeking to bind the University, such agreement is null and void.

93 B. Responsibilities of ~~Discoverers~~Included Persons

94 1. ~~Discovery~~Disclosure

95 Included Persons shall disclose any Discovery made by that Included Person in accordance with the  
96 applicable policies and procedures established by that Included Person's campus. For the avoidance of doubt,  
97 Included Persons shall disclose Discoveries made with or for external research, business, and/or other third-  
98 party collaborators or partners or made pursuant to external professional and business activities.

99 ~~1. Disclosure~~

100  
101 ~~Involvement of discoverers in all aspects of the intellectual property protection and commercialization process is~~  
102 ~~essential for successful technology transfer. Discoverers are responsible for preparing a timely written disclosure~~  
103 ~~of discoveries using the University's standard discovery disclosure forms. Discoverers will cooperate with the~~  
104 ~~Technology Transfer Office and take all reasonable steps to fully complete discovery disclosure forms, provide~~  
105 ~~complete description of the discovery, and to execute assignments and other documents necessary for the~~  
106 ~~protection of a discovery or other documents conveying rights to University intellectual property. Discoverers will~~  
107 ~~also cooperate with the Technology Transfer Office in matters such as sharing contacts and leads for potential~~  
108 ~~licensees, communicating or meeting with potential licensees, providing samples and information to potential~~  
109 ~~licensees (when reasonably available), and other activities as reasonably requested by the Technology Transfer~~  
110 ~~Office in support of efforts to secure, market and transfer University intellectual property.~~

112 2. Sponsored Programs, Corporate, and Third-Party Obligations

113 Included Persons shall inform ~~all University and their~~ external research, business, and/or other third-party  
114 collaborators ~~or partners~~ of the terms and conditions of this policy ~~and of any~~. Further, Included Persons shall  
115 not enter into contractual agreements that might substantially affect rights to ~~discoveries~~Discoveries or  
116 Intellectual Property related to Discoveries created ~~by~~with those collaborators. ~~The~~ without prior approval

117 from their campus Principal Technology Transfer Office will assist discoverers in assessing whether Officer  
118 or not a presentation or publication impacts patentability and in explaining this policy to collaborators, their  
119 designee.

120 3. Other Reporting Requirements

121 It is the responsibility of a discoverer/Included Persons to provide the their campus Technology Transfer  
122 Office with current contact information and to provide the address to which the discoverer's/Discoverer's  
123 apportionment of net receipts/Net Receipts should be sent. It is also/Failure to provide current contact  
124 information may result in the responsibility/waiver by the Discoverer of the discoverer to work with the  
125 Technology Transfer Office to create a University account for his or her research program  
126 apportionment/Discoverer's share of net receipts/Net Receipts as set forth in Section H, below.

127 4. Cooperation with the Campus Technology Transfer Office

128 Included Persons, at the request of their campus Technology Transfer Office, shall execute and deliver any  
129 and all documents that may be necessary or desirable to perfect title in the University to all University  
130 Discoveries and related Intellectual Property; execute all documents necessary to complete a patent, license,  
131 or other commercial application; and reasonably cooperate with their campus Technology Transfer Office in  
132 obtaining, protecting, and maintaining rights to University Discoveries, and as necessary to accomplish a  
133 licensing agreement or other activity for commercial development of University Discoveries.

134 C. Responsibilities of the University/Campus Technology Transfer Offices

135 The Associate Vice President for/Principal Technology Transfer has/Officers have the primary responsibility for  
136 the implementation of this policy on behalf of the University. Only University Officials who have specific  
137 delegated authority may undertake actions in the name of the University to execute this policy, their respective  
138 University campuses. The Principal Technology Transfer Officer or their designee will:

139 1. supervise/Supervise the management of each case pursued by/Discovery disclosed to the campus'  
140 Technology Transfer Office, including complete record keeping and required reporting of all actions;

141 2. determine/Determine whether the University or any other party has rights to discoveries/Discoveries  
142 according to Regent Policy 5J and this policy, and if so, the basis and extent of such rights. In, and the  
143 absence of agreement on inventorship, the Technology Transfer Office/extent to which it will pursue  
144 protection and/or commercialization of the Discovery.

145 2-3. For patentable Discoveries, work with the Discoverers and legal counsel to determine the actual  
146 inventors of the Discovery under United States Patent Law;

147 3-4. In those cases in which the University elects to pursue the protection and/or commercialization of a  
148 Discovery, assess what steps should be taken with respect to the protection and commercialization of  
149 discoveries including patentability, licensing or use in the public domain, the Discovery. These  
150 decisions should consider the wishes of the discoverer/Discoverer whenever reasonably feasible, should  
151 be informed by commercially reasonable standards, should consider all relevant legally binding  
152 agreements, and should be in the best interest of the University; Decisions regarding the terms and

conditions of the protection and commercialization of all Discoveries owned by the University are within the sole discretion of the Principal Technology Transfer Officer.

4.5. superviseSupervise the processes of the campus' Technology Transfer Office for ~~obtaining legal protection and/or arranging for licensing or other commercial development in those cases in which~~commercializing Discoveries, including developing Discoveries within the University ~~elects to pursue its rights, including or in partnership with outside parties,~~ preparing and prosecuting applications for patent, copyright registration, and other legal protection, or obtaining counsel or other assistance for that purpose, combining University Discoveries with discoveries made by other individuals, companies, governmental agencies and other research entities, negotiating or assisting in negotiation of licenses and related agreements, and monitoring the collection and distribution of ~~net receipts; and~~Net Receipts.

6. Working with the relevant campus unit responsible for sponsored research agreements, review ~~and,~~ negotiate, and approve sponsored research agreement terms ~~which~~that implicate ~~discoveries~~University Discoveries and existing or future Intellectual Property related to University ~~intellectual property and in particular supervise~~Discoveries.

7. Supervise compliance with government regulations concerning ~~discoveries~~Discoveries developed with government support. ~~The Principal Technology Transfer Officer~~

D. Release of Rights to the Discoverers

~~5. Each campus shall sign any sponsored research agreement which obligates to third parties existing or future University intellectual property establish a policy addressing if and when the campus will release the University's rights in a University Discovery and the Intellectual Property Rights related to a University Discovery to the relevant Discoverers.~~

~~The procedure for administration of discovery disclosures by the Technology Transfer Office will be as follows:~~

~~Upon receipt of a discovery disclosure, the Technology Transfer Office will make all reasonable efforts to work with the discoverer to promptly evaluate the discovery disclosure for patentability, technical feasibility and commercial potential and may undertake any of the following actions: 1) request additional information and data from the discoverer to complete the discovery disclosure as necessary to file a patent application; 2) proceed to file a patent application on the discovery; 3) market the University intellectual property to potential licensees prior to patent filing; or 4) formally decide not to proceed with protecting and/or marketing the University intellectual property. In making this determination, the Technology Transfer Office shall take into account licensing mechanisms for further academic research, open source licensing in the case of software, and the general missions of the University in the creation and dissemination of knowledge for the public good.~~

~~In all cases, based on reasonable cooperation by the discoverer, the Technology Transfer Office shall endeavor to make a preliminary decision on protecting the University discovery within four (4) months of receipt of a complete discovery disclosure.~~

~~Impending publication or other unique circumstances may motivate a decision sooner than the four month period. Should the Technology Transfer Office decide not to protect or market the discovery, the Technology Transfer Office will ask the discoverer in writing if he or she desires that the University release all or a subset of its rights in the discovery to the discoverer, as allowed by law and Section H of this policy, subject to rights of sponsors and the right of the University to practice the discovery for academic use.~~

196 Only designated officials have the delegated authority to bind the University in an agreement involving University  
197 discoveries and University intellectual property. Should a University employee not possessing such delegated  
198 authority sign an assignment of intellectual property rights or an agreement seeking to bind the University, such  
199 an agreement will be null and void.  
200

201 D.— Committee on University Discoveries  
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203 The Committee on University Discoveries ("Committee") shall be composed of nine members. The Associate Vice  
204 President for Technology Transfer shall select the members in consultation with and concurrence by the Campus  
205 Chancellors who shall consult with the chair from the respective Faculty Councils. All members will serve staggered  
206 three year terms. Each year the Committee will elect its Chair, who will serve for the following one year. Committee  
207 members may serve no more than one term of three consecutive years after which time they will be ineligible for  
208 service for one year. Members of the Committee will not participate as members in deliberations or actions of the  
209 Committee concerning matters in which they have a beneficial interest. Official actions of the Committee will require  
210 the concurrence of at least five (5) members. The Principal Technology Transfer Officer will be a permanent ex-officio  
211 member of the Committee.  
212

213 E.— Committee Responsibilities  
214

215 1.— The Committee will:  
216

- 217 a.— review Regent policy, "Intellectual Property on Discoveries and Patents for Their Protection and  
218 Commercialization," at least every three years;
- 219 b.— review and advise the Principal Technology Transfer Officer on the standards and procedures contained in  
220 this policy;
- 221 c.— convene at least once per year to review the procedures used in implementing and administering this policy,  
222 and where deemed necessary, develop and recommend changes in standards and procedures to the Principal  
223 Technology Transfer Officer; and
- 224 d.— serve as a board to which discoverers may appeal actions of University officers responsible for executing  
225 this policy, subject to appropriate review standards and procedures set forth in this policy.  
226

227 2.— Discoverer Appeal Process  
228

229 Discoverers or other included persons may appeal to the Committee actions of University officers responsible for  
230 executing this policy. Grounds for such appeal are alleged failure of University officers to comply with the  
231 provisions of this policy, to substantially follow implementing guidelines, or to demonstrate reasonable diligence  
232 in decision making.  
233

234 A discoverer or other included person will submit the appeal in writing to the Committee Chair who will  
235 determine whether the petitioner has made reasonable efforts to resolve the complaint with the University officer  
236 and whether the substance of the appeal appears to be within the scope of this policy. The Committee Chair shall  
237 schedule the meeting. At least five Committee members must be in attendance. Proceedings will be informal and  
238 held in confidence. All parties will have adequate notice and an opportunity to be heard. After considering all  
239 relevant information, the Committee Chair will send to the University Vice President a written report of the  
240 Committee's findings, which will include a decision on the issues raised by the petitioner and any recommended  
241 corrective action. The University Vice President will review the report and may adopt it in whole or in part  
242 and/or modify it on behalf of the University. The decision of the University Vice President shall be final.  
243  
244  
245  
246

247 E.— Dispute Resolution

Each campus shall develop a process that addresses how disputes between Discoverers and the University will be resolved.

F. Procedures for Receiving and Distributing Tangible Research Property

~~University researchers shall disclose and discuss the terms of transfer of research materials with a campus Sponsored Program Office or the Technology Transfer Office before accepting or distributing tangible research property. University researchers are also responsible for complying with campus policies and procedures on the handling of tangible research property.~~

1.—Receiving tangible research property

~~An agreement specifying the rights and obligations in tangible research property shall be executed by the external (institutional or commercial) parties involved in the transfer. Tangible research property agreements shall be negotiated by Technology Transfer Office, as may be applicable.~~

~~The delegated authority for signing an incoming tangible research property transfer agreement is within the Technology Transfer Office. Researchers receiving tangible research property shall sign the tangible research property agreement acknowledging the terms of the agreement.~~

2.—Distributing tangible research property

~~The delegated authority for signing non-exclusive transfer agreements providing for the distribution of tangible research property to organizations for non-commercial research and/or commercial use research is within the Technology Transfer Office.~~

3.—Costs associated with the transfer of tangible research property

~~Tangible research property transfer agreements may provide for recovery of costs of the tangible research property to be delivered. As a general rule, ten thousand dollars (\$10,000) is the upper limit allowable for recovery of tangible research property costs. Recoverable costs are those direct costs necessary to prepare and ship the materials. According to this general rule, an agreement providing for the transfer of tangible research property involving remuneration in excess of ten thousand dollars (\$10,000) will be treated as a license agreement and the remuneration will be considered as royalty and subject to net receipts distributions.~~

Consulting~~Each campus shall develop a policy regarding the receipt and distribution of Tangible Research Property.~~

G. External Professional and Business Activity Related to the Transfer of Discoveries

~~Consulting~~External professional and business activities, including for example, professional consulting or participation in a start-up company, have the potential to result in the loss or diminishmentcreation~~of University's intellectual property rights; a University Discovery. Included persons~~Persons~~engaging in consulting~~external professional~~or in-business activity~~activities, and those with ~~delegated~~ authority to approve such activities on behalf of the University, are responsible for ensuring that any agreements with external entities are not in conflict with this policy. The relevant campus Technology Transfer Office ~~will provide assistance to discoverers~~may advise Included Persons, and those charged with approving their consulting or business activity, ~~on interpreting and suggesting language in consulting and business related agreements concerning intellectual property rights subject to the application of this policy.~~In some cases, the University manages consulting activities through affiliated entities (e.g., University Physicians, Inc.). Included persons to their external professional or business

294 activity. Prior to engaging in external professional or business activity, Included Persons are responsible for  
295 determining which entity manages its consulting activities,—making their obligations under this policy and related  
296 policies clear to those external entities. It may be prudent for the Included Person to engage outside legal counsel  
297 to provide advice on an Included Person’s participation in such professional and business activities.

298 ~~Prior to engaging in consulting or business activity related to intellectual property, included persons are responsible for~~  
299 ~~making their University intellectual property obligations clear to those external entities. The Technology Transfer~~  
300 ~~Office will assist included persons and University officials reviewing consulting and related legal agreements to~~  
301 ~~understand and appropriately revise, if need be, the intellectual property clauses of such agreements. In some cases it~~  
302 ~~may be prudent for the included person to engage outside legal counsel to provide advice on such agreements~~  
303 ~~concerning matters outside the scope of this policy.~~

304  
305 ~~University intellectual property rights and the obligations of included persons to the University shall not be diminished~~  
306 ~~by the terms of included persons' consulting or business activity agreements with third parties, except as the Principal~~  
307 ~~Technology Transfer Officer may specifically authorize in writing. As a general rule, consulting work that is~~  
308 ~~evaluative or advisory, such as when expert opinion and scientific review are offered, is unlikely to constitute~~  
309 ~~discoveries in which the University has an interest. Conversely, consulting work that is related to an included person’s~~  
310 ~~activities or field of expertise at the University, as articulated in a faculty member’s professional plan or an employee’s~~  
311 ~~position description, and that has the potential for the creation of discoveries in which the University has an interest~~  
312 ~~requires that procedures related to discovery disclosure in this policy be followed. Requests for authorization to~~  
313 ~~remove or limit the University's rights or included persons' obligations in consulting or business activity agreements~~  
314 ~~are to be submitted to the Principal Technology Transfer Officer who, upon a request by the included person, will~~  
315 ~~consult with the individual’s unit supervisor, University Vice President, and other relevant University officers.~~

#### 316 317 H.—Transfer of Rights to Discoverers

318  
319 ~~If the University decides not to pursue a discovery in which the University has an interest, then the discoverer has the~~  
320 ~~right to pursue commercialization of the discovery, subject to any rights of other parties. If the Technology Transfer~~  
321 ~~Office does not exercise its rights to University intellectual property through:~~

- 322  
323 1.—~~securing or maintaining legal protection as described in Section C of this policy, or~~
- 324  
325 2.—~~licensure of rights to another party or dedication of its rights to the public, or~~
- 326  
327 3.—~~if the University chooses to protect intellectual property, but does not arrange for its commercial development or~~  
328 ~~dedication to the public within a reasonable time, then, the Technology Transfer Office will inquire in writing to~~  
329 ~~the discoverer if he or she desires the University to release its rights in the discovery to the discoverer.~~

330  
331 ~~Upon receipt of a written affirmation by the discoverer (or in the case of multiple discoverers, a written affirmation by~~  
332 ~~all discoverers), the Principal Technology Transfer Officer will release to the discoverer(s) the University's rights~~  
333 ~~provided the University will retain a royalty free license to use the discovery for research, educational, and service~~  
334 ~~purposes for the legal life of the discovery. Such release will also be contingent upon the approval by the company or~~  
335 ~~agency that funded research from which the discovery was derived. The Technology Transfer Office will cooperate in~~  
336 ~~obtaining the approval from the company or agency that funded research.~~

#### 337 338 I.—Distribution of Net Receipts

339  
340 ~~In the event that a discoverer or anyone from the group of discoverers is no longer an employee of the University, that~~  
341 ~~discoverer's personal share of net receipts will continue. Upon the death of a discoverer, his or her personal share of~~  
342 ~~net receipts will be directed to his/her heirs or estate.~~



344 The Technology Transfer Office agrees to share and distribute net receipts received from the commercialization of any  
345 discovery developed under the terms of an agreement as follows: 25 percent to discoverer(s) personally; 25 percent to  
346 a University campus account for support of discoverer's(s) research; 25 percent to an account for the benefit of the  
347 University; and 25 percent to the Campus Chancellor, which will be directed to research with technology transfer  
348 potential and distributed on a percentage basis as determined at each individual campus. The Campus Chancellors'  
349 Offices will make information regarding this distribution readily available. In the event that all discoverers related to a  
350 particular discovery, including emeriti with active research accounts as determined by the departmental chair, are no  
351 longer employed by the University, the 25 percent designated to such research account shall be divided 10% to an  
352 account for the benefit of the University and 15% to the Campus Chancellor, which will be distributed in a manner  
353 identical to the Campus Chancellor share mentioned above. Any disputes that are unable to be resolved through  
354 discussions of the Principal Technology Transfer Officer and interested parties related to the distribution of research  
355 accounts shall be presented to and adjudicated by the Committee on University Discoveries. Inventors who have left  
356 University employment and thereby have forfeited their 25 percent for support of discoverers' research, will be eligible  
357 to reinstate this support upon being re-employed by the University.  
358

359 Net receipts amounts allocated to discoverers will be divided equally among them. However, individual discoverers  
360 may enter into agreements to reallocate such amounts either among themselves or others who contributed to the  
361 research upon which the University intellectual property is based. Participants in any apportionment also have the  
362 option of assigning their personal share to any account managed by the University. Such agreements must be in  
363 writing, signed by all of those affected and submitted to the Principal Technology Transfer Officer. In order for  
364 discoverers who desire to assign their personal share of net receipts to an account managed by the University to have  
365 no negative tax consequence, the assignment must occur before the first royalty or related payment is received by the  
366 University from the licensee. If the University does not have the discoverer's address, any net receipts amount  
367 allocated to an individual that cannot be distributed within a reasonable time will be transferred to a reserve account  
368 managed under the rules of the University's escheat property accounting policy.  
369

370 When in the judgment of the Principal Technology Transfer Officer a reasonable basis exists for believing that net  
371 receipts subject to allocation and distribution under this policy may be required to be changed or otherwise expended,  
372 or that others may have a claim to such amounts, the allocation and distribution may be delayed for a reasonable  
373 period required for resolution of the matter. Payments made in good faith prior to such a resolution by the University  
374 to one or more claimants will fully satisfy any obligations on the part of the University to all claimants for the amounts  
375 so paid. Awards, prizes, honoraria, and the like received by individuals primarily as recognition for invention  
376 achievement are not considered as net receipts.  
377

#### 378 J.—Special Circumstances Concerning Scope of this Policy

380 The University shall have no ownership rights in discoveries created by a student solely for the purpose of satisfying  
381 course requirements, unless the student creates the discovery with an included person, or assigns ownership rights in  
382 the discovery to the University in writing or unless assignment of such ownership rights to the University is made a  
383 condition for participation in a course. The University will make no ownership claim on discoveries created by a  
384 student who is not employed by the University or has not used substantial University resources to develop intellectual  
385 property, unless the student's work is part of a discovery in which the University has an interest and is University  
386 intellectual property. If the student created discovery is a discovery in which the University has an interest and is  
387 University intellectual property, the student will be bound by this policy, including but not limited to, rights in the  
388 distribution of net receipts. A student who holds an award such as scholarship or fellowship through the University and  
389 who creates a discovery developed during the course of the award will be bound by this policy. The lab share of any  
390 student covered by this policy shall be directed to such student's supervisor's lab account and such funds should be  
391 directed to the student inventor for the duration of the student's involvement at CU. The University will make no  
392 ownership claim on discoveries created by an included person who has not used substantial University resources to  
393 develop a discovery and who has created a discovery which is not related to his or her research activities or field of  
394 expertise as articulated in a faculty member's professional plan or an employee's position description. However, the

395 University may exercise its rights if the employee's work is part of a discovery in which the University has an interest  
396 such as a new use or improvement of existing University intellectual property.

397 To the extent an Included Person makes a Discovery in the conduct of external professional or business activities,  
398 the Included Person must disclose the Discovery in accordance with this policy so that the relevant campus  
399 Technology Transfer Office may make the determination whether the University owns the Discovery under this  
400 policy. Included Persons have no authority to grant any rights under University Discoveries and Intellectual  
401 Property rights relating to University Discoveries, even if such Discoveries are related to external professional or  
402 business activities with third parties.

403 H. Distribution of Net Receipts

404 A campus Technology Transfer Office, upon receipt of financial consideration pursuant to a transfer or license of  
405 a Discovery and/or Intellectual Property for a Discovery, shall retain from such amounts all unreimbursed  
406 Discovery Expenses. From the Net Receipts, the campus Technology Transfer Office shall then retain any share  
407 of Net Receipts subject to the terms of any applicable allocation agreements with other campuses or affiliate  
408 hospital partners.

409 Each campus Technology Transfer Office shall set its own policy regarding the division of the remaining Net  
410 Receipts but must distribute no less than 30% of any remaining Net Receipts to the Discoverers of the relevant  
411 Discovery.

412 A campus Technology Transfer Office may withhold a Discoverer's share of Net Receipts in the following  
413 instances: (i) making a payment would violate any applicable laws or regulations or (ii) the Discoverer has failed  
414 to comply with their obligations under this policy. If a Discoverer fails to provide updated contact information to  
415 their Technology Transfer Office, and the Technology Transfer Office is unable to locate a Discoverer to provide  
416 the Discoverer's share of Net Receipts for a period of 24 months, such share of Net Receipts shall revert to the  
417 relevant campus Technology Transfer Office.

418 I. Discoveries that Are Software or Other Copyrighted Materials

419 Software or other copyrighted materials may constitute a University Discovery. Each respective campus shall  
420 implement policies specific to Discoveries that are software or other copyrighted materials.

421 ~~K.~~ J. Special Circumstances Related to the Grant of a License to a Start-Up Company

422 The University encourages the ~~start-up formation~~ of companies based upon technology transfer of to commercialize  
423 University ~~intellectual property~~ Discoveries provided that conflicts of interest and commitment are addressed and,  
424 if necessary, managed. The University may license Intellectual Property in University ~~intellectual~~  
425 property Discoveries to companies in which ~~included persons~~ Included Persons have a financial interest provided  
426 that conflict of interest and conflict of commitment concerns have been adequately addressed in a conflict of  
427 interest management agreement between those ~~included persons~~ Included Persons and the University. Similarly,  
428 companies in which ~~included persons~~ Included Persons hold a financial interest may sponsor research and if duly  
429 qualified, that ~~included person~~ Included Person may be an investigator, subject to an approved ~~conflict~~ Conflict of  
430 ~~interest management agreement.~~ Interest Management Agreement. The responsibility for preparing and enforcing  
431 the ~~conflict~~ Conflict of ~~interest management agreement.~~ Interest Management Agreement resides in the University  
432 employee's administrative chain of supervision or in other designated University committees, e.g., ~~Campus~~ campus

433 conflict of interest committees and/or campus research compliance officer.- Such committees or officers may  
434 request assistance from the Technology Transfer Office, the Office of University Counsel and other relevant  
435 University officers in preparing the ~~conflict of interest management agreement~~Conflict of Interest Management  
436 Agreement.

437 ~~The~~Each respective campus Technology Transfer Office,~~in consultation with the discoverer,~~ will ~~make a~~  
438 ~~determination as to whether~~ University intellectual property has the potential to be licensed as the basis of a new  
439 ~~company. Three primary criteria for any start-up company to license University intellectual property are: 1) a~~  
440 ~~business plan that sufficiently identifies the resources and steps necessary to commercialize the University~~  
441 ~~intellectual property, 2) a commitment of sufficient initial capital and a reasonable chance to obtain additional~~  
442 ~~capital necessary to commercialize the University intellectual property, and 3) a sufficiently experienced and~~  
443 ~~available management team capable of raising capital and executing the business plan. If the company does not~~  
444 ~~meet these criteria, the company may receive either a time-limited exclusive option to the University intellectual~~  
445 ~~property during which period the company should work to assemble the resources and information necessary to~~  
446 ~~meet these three-determine~~ requirements for commercializing University Discoveries or an exclusive license  
447 conditional on at least these three criteria. Decisions about whether or not a potential licensee meets the three  
448 primary requirements for a license will be made by the Principal Technology Transfer Officer. The Principal  
449 Technology Transfer Officer may seek input on this decision from the Technology Transfer Office business  
450 advisory board as may be reasonably appropriate. Equity Intellectual Property related to University Discoveries  
451 with start-up companies and when equity received as consideration for a license, by either the University or an  
452 organization designated by the University to hold such equity, will be distributed ~~as soon as it is feasible to do so,~~  
453 ~~except in special circumstances as determined by the University or by the University designee.-~~ Equity received  
454 as consideration for a license to Intellectual Property related to University ~~intellectual property~~Discoveries will be  
455 treated as ~~net receipts~~Net Receipts upon liquidation.-

456 Special Circumstances RelatedK. Where Discoverers from Multiple Campuses Make a Discovery

457 L.—Where Discoverers from multiple campuses contribute to Software

458 ~~In order to determine whether or not software is within the scope~~invention or creation of this policy, ~~included~~  
459 ~~persons will disclose all software intended for use outside of the a~~ University ~~to~~Discovery, the relevant campus  
460 Technology Transfer Office. ~~The~~Offices shall confer and determine which campus Technology Transfer Office  
461 will provide a separate software discovery disclosure form. Software generally is covered by copyright protection;  
462 however, some software is patentable. ~~To the extent the software is a part of a textbook~~shall assume the lead with  
463 respect to protecting and commercializing the Discovery and distributing Net Receipts in accordance with this  
464 policy and the relevant campus policies. Each Discoverer is responsible for disclosing the Discovery to his, her, or  
465 ~~other education program, any non-patent eligible content contained in the program shall not be considered~~  
466 ~~discoveries under this policy. Such content may be covered by the policy on Intellectual Property that is~~  
467 Educational Materials and thetheir respective campus Technology Transfer Office ~~may notify the appropriate~~  
468 ~~parties of such possible coverage. If the software is determined by the Technology Transfer Office to be~~  
469 ~~patentable, it will be handled as patentable intellectual property under the scope of this policy. If the disclosed~~  
470 ~~software is determined by the Technology Transfer Office as not patentable, the Technology Transfer Office may~~  
471 ~~either: 1) legally secure the software through copyright and market it to potential licensees, 2) distribute the~~  
472 ~~software through open source licensing, or 3) assign University intellectual property in the software to the~~  
473 ~~discoverer under the terms of this policy. If the open source licensing is chosen, the discoverer will work with the~~  
474 ~~Technology Transfer Office to ensure that no other parties claim rights to the software, no conflicts of interest~~  
475 ~~would result from the open source license, and the appropriate type of open source license and disclaimer is being~~

utilized in the software distribution. The Technology Transfer Office will use its commercially reasonable efforts to determine these issues and recommend a course of action for disposition of software to the discoverer in a timely manner.

All relevant campus Technology Transfer Offices must agree before any Discovery is released to the Discoverers under subsection II.D. above.

### III. DEFINITIONS

The terms defined in ~~Section 3 of Regent policy~~ Policy 5J, "Intellectual Property Policy ~~on~~ Related to Discoveries and Patents for their Protection and Commercialization," apply to this Administrative Policy Statement. ~~Terms and are included below for convenience. Additional terms~~ used in this policy are defined below:

~~"collaborator" or "collaborators"~~ "Campus Discovery(ies)" means ~~any person or persons who participate with an included person on a discovery.~~

~~"Committee on University Discoveries"~~ means Discovery made by Included Persons that are assigned to a committee specific campus.

~~"Conflict of University employees empowered to oversee matters related to University intellectual property and hear appeals raised by University employees as authorized by Regent policy, "Intellectual Property Policy on Discoveries and Patents for their Protection and Commercialization."~~

~~"conflict of interest agreement"~~ Interest Management Agreement means a written agreement or management plan between the University and the ~~discoverer~~ Discoverer(s) specifying how actual or perceived conflicts of interest or commitment are reduced or eliminated as required by Administrative Policy Statement Conflicts of Interest and Commitment.

~~"delegated authority"~~ Delegated Authority means the approval granted by the ~~University campus chancellor~~ to a ~~University officer~~ campus employee to execute agreements.

~~"discovery"~~ Discovery or ~~"discoveries"~~ Discoveries means any inventive idea and/or its reduction to practice ~~which that~~ relates to, but is not limited to: new processes or methods of producing a new and useful industrial result; any composition of matter, including chemical and biological compounds and research materials; any new devices; any new plant; any new design in connection with the production or manufacture of an article; any new computer hardware and/or software programs; any ~~know-how supporting these inventive ideas, systems, devices, compositions, programs~~ clinical protocol or ~~processes; and survey instrument;~~ any new use or improvement of existing systems, ~~devices, compositions, programs~~ processes, or ~~processes~~ methods of producing a new and useful industrial result, devices, compositions of matter, or software programs; and any know-how and data supporting these inventive ideas.

~~"discoverer"~~ Discoverer or ~~"discoverers"~~ Discoverers means any individual or group of individuals ~~responsible for who are the inventors or creators of a discovery~~ Discovery.

~~"discoveries in which"~~ Discovery Expenses means all documented, unreimbursed expenditures incurred by the University ~~has~~ for any Discovery, including but not limited to:

- to engage third parties to analyze, prepare, determine inventorship/authorship, file, register, record, prosecute, issue, maintain, assess value, and litigate, including defending in litigation or an interest" means ~~discoveries made while~~

513 ~~performing duties required by administrative proceeding, Intellectual Property for a Discovery or any other issue~~  
514 ~~relating to University grant or contract, and/or made Discoveries;~~

- 515 • ~~for obtaining searches and opinions and otherwise in connection with substantial use of University resources, and/or~~  
516 ~~made as marketing, licensing, enforcing, administering contractual obligations, and collecting license income for, a~~  
517 ~~result of the use of sponsored program funds supplied Discovery or administered related Intellectual Property;~~
- 518 • ~~for amounts owed to joint owners of a Discovery under Discovery management agreements or inter-institutional~~  
519 ~~agreements; and~~
- 520 • ~~any award funded and provided by the University, and/or made in fulfillment of an included person's work~~  
521 ~~responsibilities, or supported program to advance commercialization of that Discovery, with Chancellor approval.~~

522 "~~discovery disclosure~~" means the confidential document provided to the Technology Transfer Office by a University  
523 discoverer which specifies the nature of the discovery and which may include information useful to assess University  
524 ownership, patentability, technical feasibility and commercial viability of the discovery.

- 525 • ~~"included persons~~ any unreimbursed grant funding that is required to be repaid by the grant agreement.

526 Discovery Expenses does not include any compensation to University employees.

527 "Included Persons" means all faculty members and other employees ~~(including students on appointment as University~~  
528 ~~employees) employees~~ of the University, including ~~those individuals~~ receiving salaries, ~~scholarships~~ research stipends,  
529 fellowships or other remuneration from the University, part-time employees, student employees, University employees on  
530 sabbatical who receive remuneration from the University, and employees on a paid leave of absence. Included Persons also  
531 includes University volunteers, students, and visitors who ~~partake in substantial use~~ make Substantial Use of University  
532 ~~resources.~~ Resources, and Visiting Scholars.

533 "~~intellectual property~~" Intellectual Property" means any ~~discovery for which~~ legal protection ~~is that exists and/or is or may be~~  
534 ~~sought, for any Discovery.~~ For example, Intellectual Property may include, but is not limited to, a patent, copyright, know-how,  
535 mask work, tangible research property, trademark, trade secret Patent, Copyright, Mask Work, Trademark, Service Mark, Trade  
536 Secret, proprietary and confidential information, ~~tangible materials~~, and other forms of intellectual property legally recognized  
537 now or in the future.

538 "~~net receipts~~" Net Receipts" means all financial consideration received by the ~~University relevant campus Technology~~  
539 ~~Transfer Office~~ or its agent from the transfer, license, ~~development~~ assignment, or ~~commercial exploitation~~ sale of a  
540 University Discovery, the intellectual property, less all unreimbursed legal expenses.

541 "~~patent, "copyright," "mask work," "trade secret", "know-how", "trademark"~~ Intellectual Property for a University Discovery,  
542 and "/or a product/service mark/asset embodying a University Discovery less all Discovery Expenses for the Discovery or  
543 Discoveries (including Intellectual Property for the University Discovery) that generated such financial consideration. For  
544 clarity, proceeds from an investment by the University into a company or used for the development of a University Discovery  
545 that is commercialized by the company, including through an investment fund are not Net Receipts.

546 "Patent, "Copyright," "Mask Work," "Trade Secret", "Trademark" and "Service Mark" have the meanings attributed to those  
547 terms by ~~Federal~~ U.S. statutes, regulations, and case law.

548 "Principal Technology Transfer Officer" means the University officer ~~primarily for each University campus~~ delegated the  
549 responsibility ~~to perform activities to execute~~ by the campus to perform such duties and responsibilities as the University and  
550 ~~the campus may prescribe for the purposes of effecting Regent Policy 5.J, this policy, and the campus policy.~~

551 ~~"sponsored program"~~ Sponsored Program means a research, instruction, or service activity ~~either that has been or is~~ financially  
552 supported, authorized, administered, or managed by the University.

553 ~~"substantial use"~~ Substantial Use of University ~~resources~~ Resources means use of University administered funds,  
554 ~~programs, Sponsored Programs, facilities, research~~ equipment, including software, research space or other physical assets that  
555 ~~goes~~ above and beyond those customarily and currently provided to ~~included persons~~ Included Persons in accordance with  
556 their University position as an employee, student, or volunteer. A Visiting Scholar or any other visitor makes Substantial Use of  
557 University Resources by using any University administered funds, Sponsored Programs, facilities, research equipment,  
558 including software, research space, or other physical assets. For purposes of this policy, offices, office equipment, library  
559 access, desktop and laptop computers, photocopy equipment, telephone, servers, and fax machines, ~~which that~~ are customarily  
560 provided ~~would be, are~~ excluded from ~~determination of substantial use of University resources~~ Substantial Use of University  
561 Resources. Use of University resources as permitted under a separately executed facilities use agreement will not be considered  
562 Substantial Use of University Resources. (This provision is not intended to override any other University policy concerning  
563 reimbursement for facilities or equipment usage.)

564 ~~"tangible research property"~~ Tangible Research Property means a tangible physical or biological entity that is, or may be,  
565 useful in research. Examples include models, devices, designs, avatars, computer software, storage media containing machine  
566 instructions, text, tissues, serum, fluids, organs, cell lines, antibodies, recombinant materials, chemical compounds and  
567 compositions, formulations, plant varieties, laboratory notebooks, clinical information, ~~records and data related to~~  
568 ~~discoveries~~ Discoveries. Some ~~tangible research property~~ Tangible Research Property may comprise ~~discoveries in which the~~  
569 University ~~has an interest~~ Discoveries.

570 "Technology Transfer Office" means the University ~~unit~~ campus units responsible for securing, protecting, marketing, licensing  
571 and managing University ~~intellectual property~~ Discoveries.

572 "University ~~intellectual property~~ Discoveries" means ~~a discovery in which~~ Discoveries made:

- 573 • with the Substantial Use of University ~~has an interest and/or any legal means which the University may employ to~~  
574 claim ownership of intellectual property according to this policy ~~Resources; and/or~~
- 575 • in fulfillment of an Included Person's Work Responsibilities.

576 A Discovery made by an Included Person in connection with consulting or other third-party contractual arrangements is a  
577 University ~~Vice President~~ Discovery if it meets the above criteria.

578 "Visiting Scholar" means ~~the a person who has been granted access to~~ University ~~Vice President, administered funds, Sponsored~~  
579 Programs, facilities, research equipment, including software, research space or other physical assets pursuant to an  
580 appropriately executed Visiting Scholar Agreement.

581 "Visiting Scholar Agreement" means a separately executed written agreement between a person or that person's home  
582 institution and University ~~Counsel and Secretary of the Board~~ permitting Substantial Use of Regents University Resources,  
583 which agreement includes intellectual property provisions approved by the appropriate Principal Technology Transfer Officer.

584 "unreimbursed legal expenses" means all documented legal service expenditures incurred by entities engaged by the  
585 University to analyze, prepare, file, register, record, prosecute, issue, maintain, analyze value and litigate University  
586 intellectual property, including but not limited to searches, opinions and extraordinary expenses in connection with  
587 licensing, infringement protection and collection of license income.

588 "Work Responsibilities" means any work, including third party employment such as consulting activity, that is related to an  
589 Included Person's activities or field of expertise at the University as evidenced by their research focus, or as otherwise  
590 articulated in a faculty member's professional plan or an employee's position description.

591 **IV. RELATED POLICIES, PROCEDURES, FORMS, GUIDELINES, AND OTHER RESOURCES**

592 A. Administrative Policy Statements (APS) and Other Policies

593 Regent Policy 5.K: Policy on Intellectual Property that is Educational Material  
594 APS: Conflicts of Interest and Commitment

596 Regent Policy 5.K: Policy on Intellectual Property that is Educational Material APS: Conflicts of Interest and  
597 Commitment

598 Campus TTO Policies

599 B. Forms

600 Invention Submission Forms

601 -

602 ~~C. Other Resources (i.e. training, secondary contact information)~~

603 Start-up Manual

604 Invention Submission Forms

607 **V. HISTORY**

608 Original APS adopted on January 16, 2003.

609 Subsequent revisions on March 2, 2003 and March 2, 2006.

610 Reviewed but not revised in February 2009.

611 Reviewed and non-substantive cleanup made in July 2010.

612 Reviewed and non-substantive cleanup made in February 2011.

613 Revised TBD (Pending)

614 I. VI. KEY WORDS: Royalty, technology license, material transfer agreement, equity, stock ownership,  
615 commercialization, venture, entrepreneur, Bayh Dole Act, company, intellectual property  
616