

ACTION ITEM #5

Commercialization of Intellectual Property (Anson Fatland)

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: Transition of intellectual property commercialization functions from the Washington State Research Foundation to an internal Office of Commercialization and transfer of assets from WSU Research Foundation to the WSU Foundation.

PROPOSED: That the Board of Regents (1) approve proposed changes to the Faculty Manual sections relating to intellectual property in substantially the same form as presented to the Board and (2) delegate authority to President Floyd to terminate the Operating Agreement between Washington State University and Washington State University Research Foundation and take any other action necessary to complete the transition of intellectual property commercialization functions.

SUBMITTED BY: Anson Fatland, Associate Vice President Economic Development and External Affairs

SUPPORTING INFORMATION: Presently, the Office of Intellectual Property Administration (OIPA), an office within WSU, and the Washington State University Research Foundation (WSURF), an affiliated not for profit entity, work together to facilitate the commercialization of research discoveries made at WSU. Over the past year we have analyzed the performance of our commercialization efforts and compared our results to that of our peers. The results show opportunities for improvement in all aspects of commercialization.

The goal is to enhance, promote and grow the activities and performance of WSU's commercialization efforts. After careful consideration of past performance, best practices and the performance of our peers, we have determined that the first step towards this goal is to transition from the WSURF - OIPA model to a fully integrated Office of Commercialization (OC) within WSU.

An integrated OC will be able to provide the WSU community with many of the missing links in the commercialization process, while continuing to protect the intellectual property discovered and developed at WSU. Transitioning to the OC involves many

steps. Major transition steps include dissolution of the WSURF, which the WSURF Board has voted to pursue; transfer of the WSURF assets, which will go to WSU or the WSU Foundation; and changes to underlying policy and operational documents that describe and support current operations. These and other steps, including the communication plan, are further identified in the attached timeline. Attachment 1.

Before the Board of Regents two action items related to the transition: approval of supporting policy changes in the Faculty Manual, and delegation of authority to terminate the Master Agreement between WSU and WSURF and other actions necessary to complete the transition from WSURF to the OC.

The changes to the Faculty Manual are structural/editorial changes, replacing references to the WSURF with references to OC. This is necessary to reflect the fact that the OC will handle what currently resides with WSURF. These changes are exclusive to Section IV, Subsections F, G, H, and J. The changes are written to allow the OC to perform the duties that currently reside within WSURF and OIPA; they do not include any substantive policy changes. Attachment 2 tracks the proposed changes.

The Master Agreement between WSU and WSURF will need to be terminated in conjunction with the dissolution of the WSURF. The dissolution is planned for the summer, but final action will be dependent on completing the transfer of assets. Attachment 3 is the Master Agreement that will be terminated.

The goal is to have the OC operational by July 1.

- ATTACHMENTS:
- 1 Timeline for transition to OC
 - 2 Proposed changes to Faculty Manual, Section IV
 - 3 Master Agreement between WSU and WSURF

BOARD OF REGENTS
Commercialization of Intellectual Property

Resolution #130523-451

WHEREAS, the Board of Regents of Washington State University by virtue of RCW 28B.10.528 has authority to delegate by resolution to the President of the University, or designee, powers and duties vested in or imposed upon the Board by law and to enable the President, or designee to act on behalf of the Board of Regents in matters relating to the administration and governance of the University.

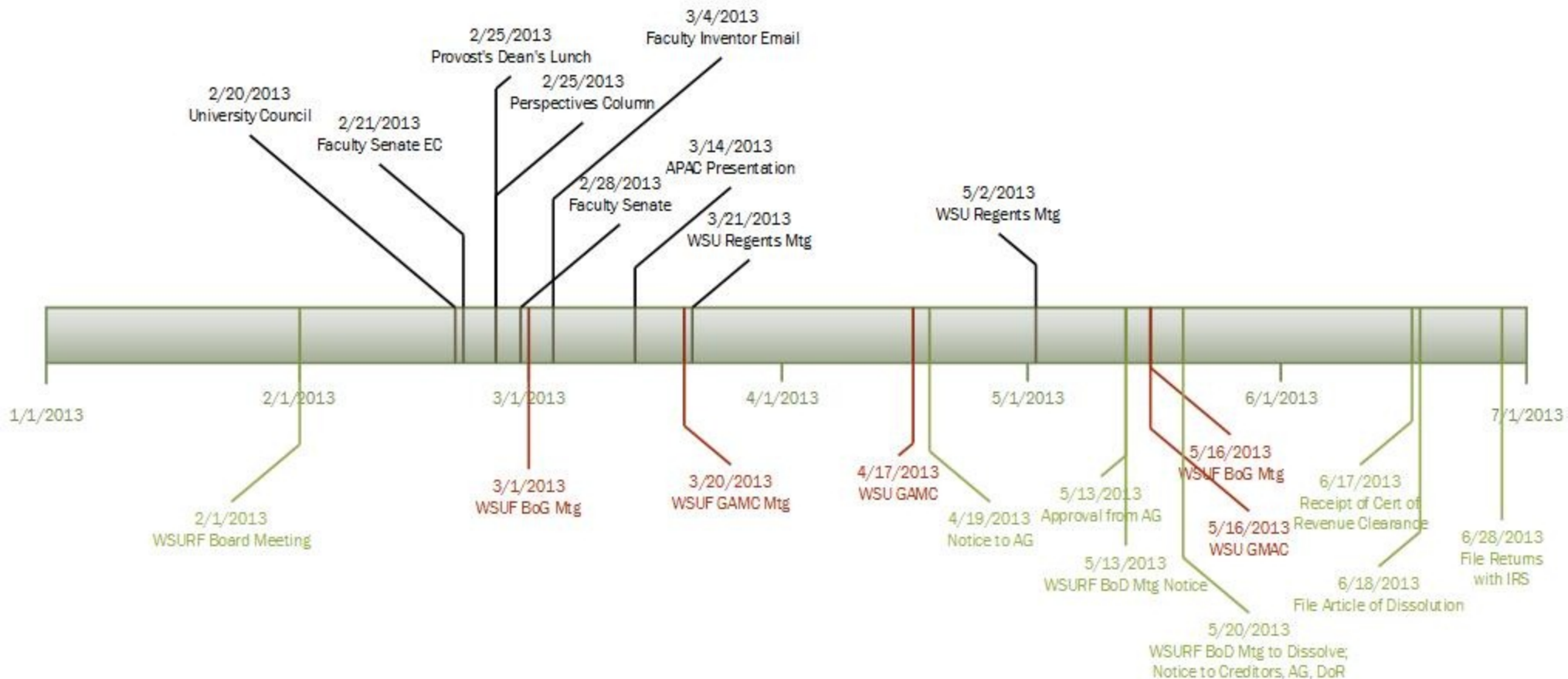
RESOLVED: That the WSU Board of Regents approves the proposed changes to the Faculty Manual sections relating to intellectual property in substantially the same form as presented to the Board, and delegates authority to President Floyd to terminate the Operating Agreement between Washington State University and Washington State University Research Foundation and take any other action necessary to complete the transition of intellectual property commercialization functions.

DATED this 23rd day of May, 2013.

Chair, Board of Regents

Secretary, Board of Regents

WSURF Dissolution Timeline



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SECTION IV: UNIVERSITY POLICIES AFFECTING FACULTY

F. INTELLECTUAL PROPERTY

1. Introduction

a.) Intellectual property is the inherent value produced by human creativity and invention, protected by law from unauthorized exploitation by others, and includes patents, copyrights, trademarks, and other proprietary information.

b.) The University's patent and copyright policies are intended to encourage a healthy atmosphere conducive to research and development through a system of rewards and incentives for the creation of intellectual property while at the same time giving proper consideration to the responsibilities that the University has as a public land-grant university.

c.) The strength of the University lies in its employees. The University's policies can provide invaluable assistance in bringing employee ideas to development and fruition within a framework of mutual trust and collegiality.

d.) These policies are intended to spell out the responsibilities of the University and its employees and establish a framework for ethical conduct. While employees are encouraged to consider the potential market value of their inventions, they shall not be held liable for failing to recognize a potentially patentable invention. Nothing in this policy shall be construed as abridging a faculty members' academic freedom in the classroom.

e.) Employees of Washington State University may create copyrightable works and patentable discoveries. It is desirable in the public interest in some cases to seek University intellectual property protection for these works and discoveries. Commercialization through licensing the use of the property provides an opportunity for both income to the inventor and support for further University research and scholarship.

f.) This Intellectual Property Policy applies to all University Employees. For the Purposes of this Intellectual Property Policy, "Employee" shall be defined as any person receiving compensation for service, or any person volunteering services for the benefit of the University. Employees shall include, but not be limited to, faculty, administrative and professional personnel, classified staff, research fellows, staff assistants, and all other student employees. "Faculty" shall be defined as permanent and temporary teaching, research, service, extension, library, or student affairs appointment faculty, graduate teaching and research assistants, visiting scientists, and ~~postdoctoral~~[postdoctoral](#) researchers. The uncompensated activities of students in furtherance of their education shall not be considered service that benefits the University within the meaning of this policy unless an agreement exists to the contrary.

g.) All employees accept the terms of these policies as conditions of employment or gratis association. Employees shall agree to execute an assignment of their future patentable works and discoveries to the University. These policies may be modified by the administration with approval from the Board of Regents after consulting with faculty and staff of the University.

2. Applicable Laws

a.) Federal law governs the creation of intellectual property. The United States Constitution, Article III, Section 8, gives to Congress, in order "to promote the progress of science and the useful arts, "the power to grant, for limited periods of time, to authors and inventors, the exclusive right to their respective writings and discoveries." The

Copyright Act, in Title 17 of the United States Code, sets out the requirements by which an author of literary, artistic, and similar works may obtain copyright protection, and provides that in the case of a “work made for hire,” the employer is the author for copyright purposes. 17 U.S.C. § 201(b). The Patent Act, in Title 35 of the United States Code, sets out the requirements by which inventors of new and useful processes, machines, manufactures, or compositions of matter may obtain patent protection.

b.) The Washington State Ethics Law (Ethics Law), RCW 42.52, and the rules promulgated pursuant to the law, restrict the use of state resources for private purposes, and state employees are individually responsible for complying with this law. For Ethics Law purposes as it relates to this Policy, state employees are defined as all faculty, staff, and students employed by the University. The Ethics Law provides that "No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another." RCW 42.52.160. However, the Ethics Law allows state officers and employees to receive "honoraria" if "authorized by the agency where they serve." Honoraria is defined in the Ethics Law to mean “money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer’s or state employee’s official role.” RCW 42.52.010(11).

c.) Consistent with the Ethics Law, this Policy authorizes University employees, under defined circumstances, to retain ownership to certain intellectual property created with University resources. Additionally, this Policy authorizes University employees to receive royalty payments from commercialization of certain University-owned intellectual property that they created.

3. Intellectual Property Committee

a.) The Intellectual Property Committee serves as an advisory committee to the Vice ~~Provost~~ President for Research on all University intellectual property (i.e., patent, copyright, trademark, and proprietary information) especially with regard to University policy on these matters. All members of the Committee shall hold confidential all matters coming before the Committee regarding specific intellectual property.

b.) The composition and tenure of the Intellectual Property Committee shall be:

(1) Six faculty with three-year terms, one of who will be appointed chair. The Faculty Senate may suggest faculty members to be considered by the President.

(2) Two Deans or Associate Deans of the colleges for three-year terms.

(3) One member of the administrative and professional personnel or staff, with a three-year term.

(4) Director of ~~Oipa~~ Office Of Commercialization (OC) who serves as secretary to the Committee. Director of the Office of Grant and Research Development. Both Directors act as ex officio members to the committee.

c.) The quorum required for voting at a committee meeting must be no fewer than five voting members; three of whom must be faculty.

4. Office of ~~Intellectual Property Administration~~ Commercialization

a.) The Office of ~~Intellectual Property Administration (OIPA)~~ Commercialization (OC) (~~http://~~ http://commercialization.wsu.edu/ ~~link~~) serves the University and its employees by promoting the transfer of technologies, encouraging the disclosure of intellectual property, conducting preliminary reviews of commercial potential of invention disclosures, and ~~recommending~~ determining copyright and patent protection and licensing ~~of intellectual property to the Washington State University Research~~

~~Foundation (WSURF). OIPA works closely with the WSURF, a private non-profit organization responsible for the commercialization and licensing of inventions and other University intellectual property. In association with the WSURF, OIPAOC monitors~~ manages invention disclosures, patenting status, license agreements, marketing efforts, federal reporting, and royalty income. The professional staff includes the Executive Director, Program Support Supervisor~~Administrative Manager~~, and Technology Licensing Associate(s).

G. PATENT POLICY

An invention may be a design, process, code, biological material, or device that shows novelty, usefulness, and non-obviousness. A patent is a contract between the inventor and the government to allow the inventor exclusive rights to make, sell, or use the invention for a definite period of time (generally 20 years from the filing date). Plant Variety Protection, international Plant Variety Rights, and international patents are other forms of invention protection. Transfer of biological material, software source code, or proprietary information may be protected through confidentiality agreements. For further information about patents, refer to the U.S. Patents and Trademarks Office at <http://www.uspto.gov/>.

1. Scope of Policy.

a.) This policy applies to potentially patentable discoveries and proprietary information which are developed using Washington State University equipment, supplies, facilities, employee time, or proprietary information, or which relate directly to the University's business, research, or development. The University will be assigned ownership in patents and other tangible research property developed by its employees as a result of their University research or employment. The University does not claim rights in inventions for which no equipment, supplies, facilities or proprietary information was used and which was developed entirely on the employee's own time.

2. Sponsored Research.

a.) Where the invention has been developed through research sponsored by a grant or contract with the federal government (or its agencies), it must be reported to the agency and the agency joins the University to determine distribution of the rights in the invention, to determine if patent prosecution should be sought, and how the patent should be administered or disposed of in the public interest. The WSU Office of Grant and Research Development (OGRD) is responsible for the submission and acceptance of sponsored projects to the University. For further information, you may refer to OGRD's home page at <http://www.ogrd.wsu.edu/>.

b.) Where private industry or foundations have sponsored research, licensing of patents or other intellectual property shall be negotiated between the sponsor and the University, or ~~its the University's designee agent~~ where appropriate. The University will strive to protect the financial interests of all and ensure that the University retains the traditions of self-governance and academic freedom. The University, on behalf of its constituent colleges, schools, or departments, will not accept grants or enter into agreements for the support of instruction or research that confer upon an external party the power to censor, unduly delay, or exercise effective veto power over either the content of instruction or the publication of research. Publication of research findings may temporarily be delayed in order to protect patent rights or permit the research sponsor to review the proposed publication for the sole purpose of identifying proprietary information furnished by or belonging to the sponsor.

c.) The University normally retains ownership of property developed under sponsorship

agreements and will negotiate rights to license the property. The proprietary rights of the University and of the University's employees shall be subject to the agreement between the sponsor and the University or its designee. Agreements with outside sponsors shall be approved by the Vice ~~President~~ President for Research or his or her designees.

3. Disclosure of Potentially Patentable Discoveries.

a.) Prior to employment by the University and for the protection of the employee's interests at the time of employment, each new employee shall disclose to OIPAOC all inventions previously developed or being developed by the employee for the purpose of establishing his or her ownership rights to developments made.

b.) While employed at the University, employees shall disclose patentable inventions and discoveries to OIPAOC for review. The ~~Executive~~-Director of OIPAOC will provide assistance in filling out forms for disclosure. Invention Disclosure forms may be found at <http://www.wsu.edu/~oipa/agreements.htm>
http://www.oipa.wsu.edu/Documents/IDF/Invention_Disclosure.pdf link

4. Patent Ownership.

a.) The University or its assignee shall own the rights to all patentable property and other tangible research and scholarship developed as a result of University employment, or when the equipment, supplies, facilities, employee time or proprietary information of the University are used. After the employee terminates his or her Washington State University employment and is re-employed elsewhere, the University or its assignee retains ownership of subsequent inventions where the invention is a direct outgrowth of the University's business or University research and development.

b.) Under the federal patent and trademark legislation of 1980 (35 U.S.C. § 200 et seq.), the University has the right of first refusal to title in inventions made in the performance of federal grants and contracts. The University or its assignee will assert title to and attempt to license inventions made with federal government funds so that the Congressional purpose of fostering the development of industry in the United States will be furthered.

c.) For any patentable inventions and other discoveries in which the University, its assignee, or a sponsor has an interest, the employee shall execute promptly all assignments, waivers, and other legal documents necessary to vest in the University, its assignee, or the sponsor any and all rights to the invention, including assignment of any patents or patent applications.

5. Patent Ownership Appeals.

a.) If there is a question of ownership, OIPAOC will determine whether the potentially patentable property is **owned** by the University, by the employee, jointly by the University and the employee, or by an outside sponsor. The OC may determine that the employee or sponsor is a partial owner of the intellectual property with the University in cases where it would be unfair to determine that the property is wholly owned by the University, e.g., when an employee disclosed enabling discoveries that occurred before employment with the University or when the sponsor's employees have contributed to the invention. In such cases, OIPAOC shall notify the previous employer (if any) and negotiate percentages of respective ownership. If OIPAOC deems it to be in the best interests of the University to release its rights to the invention, it may do so.

b.) When a question of ownership arises, the procedure for determination of ownership

shall be as follows. OIPAOC shall make its determination of ownership, or request additional time, within 45 business days of full disclosure. If OIPAOC asks for additional time, it must, in any event, make its determination within 35 business days of its request for additional time. The employee will be notified of OIPAOC's decision within 5 business days of its determination. The employee shall have 30 business days from the date of OIPAOC's mailing of the notice of the determination of ownership to appeal the decision to the Vice ~~Provost~~ President for Research. If the Vice ~~President~~ Provost for Research cannot resolve determination of ownership within 5 business days of the appeal, the appeal shall be heard by the Intellectual Property Committee within 20 business days of the notice of the appeal. The Intellectual Property Committee will make its recommendation to the Vice ~~Provost~~ President for Research. The decision on appeal shall be issued within 30 business days of the deadline for submitting material. If OIPAOC fails to notify the employee in writing of determination of ownership within 50 business days of full disclosure or 80 business days if additional time is requested, then the University's rights in the patentable property shall automatically become the property of the employee or sponsor.

c.) Following this internal appeal process, the employee will have recourse to settle ownership by binding arbitration administered by the American Arbitration Association (AAA) under AAA Patent Arbitration Rules. The employee shall file his or her claim with any Washington office of the AAA within 60 business days of the Vice ~~President~~ Provost's decision, and provide a copy of such claim to OIPAOC within the same period of time. Costs of the arbitration shall be shared equally by the parties.

d.) After the determination by OIPAOC and exhaustion of the employee's right of internal and external appeal, the employee shall execute documents of assignment to convey to the University, its assignee, or the sponsor all of the employee's interest in the invention determined to be owned by the University, its assignee or the sponsor and assist in obtaining, protecting, and maintaining patent rights.

e.) In the event an appeal results in ownership by the employee, the University shall formally release all claims to the employee's invention.

6. Publication and Disclosure to Third Parties.

a.) Once an invention is identified as potentially patentable, premature publication, public use, or disclosure of an invention can jeopardize the rights of the employee, or the university or its assignee to secure patent protection - particularly patent protection in other countries. In close consultation with the employee inventor and for the benefit of employee inventor, University, and possible Licensee, there shall be no publicity or disclosure concerning the invention until patent applications have been filed. OIPAOC shall act in a timely fashion in such cases so as to not unreasonably delay employee publications. All publicity, public reports, interviews, news releases, speeches, public disclosures, or public demonstrations of the invention subsequent to the filing of the application shall have prior clearance in writing from the University or its assignee.

b.) This section shall not be applicable to sponsorship agreements that impose different obligations on disclosure.

7. Management of Patents.

~~a.) The University will assign its interests in all patents and other intellectual property to the WSURF for development. The assignment will take place under the agreement between the University and the WSURF. Copies of the agreement between the University and the WSURF may be obtained from OIPA. If the agreement is terminated, the University shall select a managing agent and execute the proper assignments to the agent.~~

ab.) Patent protection prosecution and commercialization through licensing are complex and expensive endeavors requiring active participation by the inventors and the University over a period of 20 years after patent filing. ~~The WSURF reserves the right to return the invention to the University if commercialization is not possible.~~ For inventions that were enabled through sponsored research, the federal, state, or private sponsoring agency must be notified and allowed the right to patent the invention. If there was no enabling sponsored research, or the sponsor or the University declines to pursue the invention, then the invention rights will be returned to the inventor.

8. Division of Patent Royalties.

a.) All monetary proceeds from commercialization of University-owned inventions are the property of the ~~WSURF~~University or its assignee. The ~~WSURF~~University or its assignee will collect and distribute royalties, fees, equity interests, or dividends to inventors and University in accordance with procedures established by the University.

- (1) The ~~WSURF~~University or its designee will deduct the costs of obtaining and maintaining legal protection for each invention to arrive at “adjusted income.”
- (2) The ~~WSURF~~University or its designee will deduct twenty percent (20%) from adjusted income and the remainder will be “net income.” This deduction is directed toward covering the expenses (excluding direct patent expenses) for administering OIPAOC and provides initial funds for patent prosecution for other inventions without obvious commercial partners.
- (3) Distribute net income according to the following schedule.

Cumulative Net Income	Inventor	University
\$1-\$10,000	100%	
\$10,001 - \$200,000	50%	50%
Above \$200,000	25%	75%

(4) With consideration to other University priorities and policies, the University or its designee will distribute a portion of its share to the Office of the Vice ~~Provost~~President for Research to be invested in further research and technology efforts for the University and at least 20% of its share to be split equally between the inventor's department and College (or relevant branch campus when appropriate) for further research.

- b.)** Inventors, whose technology was previously assigned to the ~~former non-profit intellectual property manager for WSU, the WSU Research Foundation~~WSURF for administration, will be given the one-time option of selecting the above Division of Royalty policy over any pre-existing royalty policy.
- c.)** In the event of multiple inventors, the inventors will agree among themselves as to the distribution of the income accruing to the inventors; distribution of the inventors’ share shall be made only upon receipt of a signed agreement among the inventors.
- d.)** The ~~WSURF~~University or its designee may negotiate, but shall not be obligated to negotiate, for equity interests in lieu of or in addition to royalty and/or monetary consideration as a part of an agreement relating to inventions or Copyrighted Works.

Any equity interests acquired pursuant to this section shall be assigned to held and managed by the Washington State University Foundation for management. Neither the ~~WSURF~~ Washington State University Foundation nor University acts as a fiduciary for any person concerning equity nor other consideration received under the terms of this regulation.

9. Public Released Agricultural Research Center Plant Varieties

a.) The research and development, patent or plant variety protection, and public release of plant varieties requires the cooperation of the plant breeder(s)/~~breeder team~~, funding agency (USDA), Variety Release Committees, WSU Agricultural Research Center (ARC), Washington State Crop Improvement Association (WSCIA) or similar commodity groups, and OIPAOC. The distribution of Research Fees and Royalties will follow this schedule:

b.) Seed Propagated Crops

- (1) The ~~WSURF~~ University or its designee will deduct the costs of obtaining and maintaining legal protection for each plant variety.
- (2) WSCIA typically collects a two percent (2%) management fee for its services in producing and distributing seeds, and collection and distribution of research fees.
- (3) Seventy percent (70%) of the adjusted income will be distributed to the Agricultural Research Center for enhancement of plant variety programs.
- (4) The remaining thirty percent (30%) of the adjusted income will be distributed
 - 10% to ~~WSURF-OC~~
 - 10% to WSU-ARC
 - 10% to plant breeder (s)/breeder teams

c.) Vegetatively propagated crops

- (1) The ~~WSURF~~ University or its designee will deduct the costs of obtaining and maintaining legal protection for each plant variety.
- (2) Fifty percent (50%) of the adjusted income will be distributed to the Agricultural Research Center for enhancement of plant variety programs.
- (3) The remaining fifty percent (50%) will be distributed as follows:
 - 10% to ~~WSURF-OC~~
 - 10% to WSU-ARC
 - 30% for breeder (s)/breeder teams

H. COPYRIGHT POLICY

The United States government grants a copyright to the author or creator of original works of authorship. Copyrights for works created after January 1, 1978, are granted for the term of the author's life and an additional 70 years. In the case of a work made for hire, the term of the copyright is 95 years from the year of first publication or 120 years from the year of creation, whichever expires first. The copyright allows the author or persons assigned rights for the author to rightfully withhold others from copying or using the works without permission. A copyright is automatically secured when the work is created or "fixed" in a tangible medium. No publication or registration or other action in the Copyright Office is required; however, it is required that a copyright be registered before a lawsuit is brought. Refer to the U.S. Copyright Office at <http://lweb.loc.gov/copyright/> for further information.

1. Copyright Policy Objectives.

a.) The University encourages the publication of scholarly works as an inherent part of

its educational mission. In this connection, it acknowledges the right of faculty, staff, and students to prepare and publish, through individual initiative, architectural designs, photographs and slides, illustrations, computer software, multimedia presentations, sound recordings, video productions, telecasts, music, grant proposals, scholarly publications, and other material. The following statement of University policy on ownership of copyrightable material is provided to clarify the respective rights and responsibilities of individuals and the University in this important area. [OIPAO](#) will administer the policy.

2. Copyright Ownership.

a.) University Ownership of Copyrighted Works

(1) Work Made for Hire. Except as otherwise provided in the Employee Ownership of Copyrighted Works section of this Policy, the University shall own all copyrightable works that were created as a “work made for hire.” “Work made for hire,” as defined by the Copyright Act, includes (1) works prepared by University employees within the employee’s scope of employment, or (2) works not created within the employee’s scope of employment but that are specially commissioned by the University pursuant to a written agreement that is signed by both the University and the employee.

(2) Sponsored Agreements. The University shall have the right to perform its obligations with respect to copyrightable works, data, prototypes, and other intellectual property under any contract, grant, or other arrangement with third parties, including sponsored research agreements, license agreements, and the like. Employees shall assign all rights to the University or as required by the sponsored agreement necessary to facilitate obligations under grants and contracts.

(3) The Employee shall own copyrightable works unrelated to the employee’s University employment responsibilities that are developed on an employee’s own time and without University support or use of University facilities.

b.) Faculty Ownership of Copyrighted Works.

(1) The University shall not assert ownership in the following works created by Faculty within the Faculty’s scope of employment, unless (1) substantial kinds or amounts of University resources, as defined below, were used to create the works; (2) the works are created pursuant to a written agreement between the employee and the University; or (3) the works are created pursuant to a third-party sponsored agreement, contract, or grant, specifically allocating ownership rights to the University.

- (a) scholarly material,
- (b) educational material,
- (c) art works,
- (d) musical compositions, and
- (e) dramatic and nondramatic literary works.

(2) Substantial University Resource Use Resulting in University Ownership. The University shall assert an ownership interest for works identified in the previous paragraph to which the University contributes substantial kinds or amounts of resources. Each department or unit of the University may publish, with the approval of the Provost, a description of what constitutes substantial kinds or amounts of University resources. In the event that a department or unit does not

publish such a policy prior to the creation of the works, substantial kinds or amounts of resources shall mean the use of staff or clerical time other than peer review; provision of university funding specifically for or in support of the development of the work; not to include professional leave, and provision of equipment, facilities, and supplies beyond that which is usually provided for meeting employment obligation.

c.) Student Writings. Students employed by the University in any capacity are covered by the terms of this policy. In addition, where a student receives financial aid or remuneration under a sponsored research, training, or fellowship program, his or her rights in copyrightable material are limited by the terms of the University agreement with the sponsoring agency. The University has no ownership rights in copyrightable material developed by students who are not employees.

d.) Patentable Works. Some works, particularly certain types of computer programs, may qualify for patent as well as copyright protection. An author, upon recognizing that one of his or her works is of this kind, is responsible for disclosing it to [OIPAOC](#) for a determination of (i) ownership and (ii) whether the University wishes to seek patent protection should ownership be vested in the University. [OIPAOC](#), following the procedures set out in the University's patent policy, will make these determinations. If ownership of such a work is vested in the University under the patent policy, but the University decides not to protect the work, ownership and disposition of the work is then determined in accordance with this Policy. If Faculty wish to appeal [OIPAOC](#)'s or its staff's decisions, the procedure set out in section 6 of the Patent Policy shall be followed.

3. Administration of the Copyright Policy

a.) Disclosure. Material subject to copyright and owned by the University under the circumstances set forth in the Copyright Policy should be promptly disclosed to [OIPAOC](#).

b.) Determination of Ownership in Unclear Cases. Such determinations will be made by [OIPAOC](#) and will follow the guidelines set out in this Policy. Either the University or the author may initiate this review.

c.) Distribution of Royalties. See the Division of Copyright Royalties section of this document.

d.) General Advice and Assistance. Contact the Washington State University, Office of ~~Intellectual Property Administration~~[Commercialization](#), WSU Research and Technology Park, Pullman, WA 99164-1802, telephone (509) 335-5526.

4. Management of Copyrights.

a.) The University ~~will either assign its copyright interests to WSURF or will~~ retain ownership ~~of its copyright interests~~ for development by ~~OC or~~ other University publishing units ~~or Colleges~~, e.g., Office of Publications and Printing, Educational Telecommunications and Technology, Information Technology, or the Extended Degree Program. ~~For the WSURF the assignment will take place under the agreement between the University and the WSURF. Copies of the agreement between the University and the WSURF may be obtained from OIPA. If the agreement is terminated, the~~ University ~~shall~~ may select a managing agent and execute ~~the proper any necessary~~ assignments to the agent.

b.) Copyright registration is simple. Software commercialization through sale or licensing may be complex and expensive requiring active participation by the authors and the University. ~~The WSURF reserves the right to return the copyright to the University~~

~~if commercialization is not possible.~~

5. Division of Copyright Royalties.

a.) ~~In cases where the~~The University ~~retains assigns its copyright interest to the WSURF,~~ all monetary proceeds from commercialization of University-owned copyrighted works (often software). When practicable and consistent with any related agreements, the University or its designee may are the property of the WSURF. ~~Often the WSURF will~~ collect and distribute royalties, fees, equity interests, or dividends to authors and University in accordance with procedures established by the University. The guidelines as follows will be used most commonly, but the University reserves the right to adjust the distribution of its share.

(1) The UniversityWSURF or its designee will deduct the costs of obtaining and maintaining legal protection for each copyrighted work to arrive at “adjusted income.”

(2) The UniversityWSURF or its designee will deduct twenty percent (20%) from adjusted income. This deduction is directed toward covering the expenses for administering OIPAOC.

(3) ~~If required by the~~ The University or its designee, ~~the WSURF~~ will first reimburse the appropriate University unit ~~the University~~ for expenses advanced in developing and distributing the copyrighted work, e.g., distance learning courseware. The remaining income is the Net Income.

(4) Copyright royalty income will be distributed as identified in Patent Policy V. a.2.

b.) In the event of multiple authors, the authors will agree among themselves as to the distribution of the income accruing to the authors; distribution of the authors’ share shall be made only upon receipt of a signed agreement between the authors.

c.) The University or its designeeWSURF may negotiate, but shall not be obligated to negotiate, for equity interests in lieu of or in addition to royalty and/or monetary consideration as a part of an agreement relating to Inventions or Copyrightable Works. Any equity interests acquired pursuant to this section shall be assigned to the Washington State University Foundation for management. Neither the Washington State University FoundationWSURF nor the University acts as a fiduciary for any person concerning equity or other consideration received under the terms of this regulation.

I. USE OF FACULTY AUTHORED, EDITED OR PREPARED SCHOLARLY MATERIAL

Faculty members are expected to educate our students using the best scholarly materials and knowledge available. In some cases, this will result in faculty producing materials, such as textbooks or unpublished laboratory manuals, for student purchase. Requiring the use of faculty authored materials must only be done to promote appropriate educational goals. It must not be done for personal benefit or to obtain special privileges for faculty (See the Ethics in Public Service Act, RCW 42.52). Faculty members may not sell any materials directly to students. Students may be required to use textbooks or other material written by WSU faculty only if:

- the faculty member receives no financial gain from sales to WSU students, or
- the materials are printed and copyrighted by a recognized publishing house and either in widespread use in other institutions or with evidence of independent external review by peers, or
- the materials are reviewed and approved for use by a group designated by the Faculty Senate

Executive Committee. A request for review and approval must be submitted every five years or at the issuance of a new edition or whichever comes first.

J. TRADEMARKS

University trademarks include the names, designs, logos, and colors for “Washington State University”, “WSU”, “Cougars”, “Go Cougs”, “Ask Dr. Universe”, and others. Permission of the University is required before use of these trademarks. Commercial use requires licensing and payment of royalties. Royalty income from licensing of University and Athletic marks is administered by the Washington State University Foundation. The Trademarks Officer may be contacted ~~through OIPA at~~ <http://marketing.wsu.edu/staff/index.html> .

From time to time other University trademarks are registered for software, plant varieties, or devices in conjunction with their patent or copyright protection. These trademarks may generate royalty through commercialization. Net royalty income received by the [University or its designee WSURF](#) shall be distributed according to the schedules used for Patents ~~and~~ [for Plant Varieties, as appropriate](#).

K. FACULTY INVOLVEMENT AND RESIDUAL RIGHTS IN FILMS, VIDEOTAPES, AND OTHER INSTRUCTIONAL MEDIA

Washington State University may transmit or reproduce by television, radio, or other means, for local or general distribution, news and general information programs prepared by Washington State University on which faculty members have appeared. The negotiation of a contractual agreement between the responsible faculty member(s) and the University is handled through the Provost and Academic Vice President.

Nothing in this policy shall be construed as abridging a faculty member's academic freedom in the classroom.

ORIGINAL

MASTER AGREEMENT
between
WASHINGTON STATE UNIVERSITY
and

WSU Contract No. 16189

WASHINGTON STATE UNIVERSITY RESEARCH FOUNDATION

This Master Agreement (MASTER AGREEMENT) is entered into by and between Washington State University (UNIVERSITY), and the Washington State University Research Foundation, a nonprofit corporation (FOUNDATION), jointly referred to as the PARTIES.

I. AGREEMENTS REPLACED AND SUPERCEDED

This MASTER AGREEMENT with its attached Exhibits A through G, supplants and replaces all agreements between the PARTIES related to the PARTIES' general relationship and the RESEARCH PARK BUILDINGS ONE and TWO, including but not limited to, the agreement entered into May 8, 1998, and August 3, 1998, except those listed below, which are attached for clarification only:

1. Ground Lease between Washington State University as Lessor and the Washington State University Research Foundation as Lessee, entered into May 5, 1997 (Exhibit A);
2. Wood Materials Lease of Suites A & B, dated December 17, 2001 (Exhibit B);
3. SESRC Lease of Suite F and part of E, dated September 9, 1997 (Exhibit C); and
4. Educational Television Facilities Lease, dated March 11, 1998 (Exhibit D).

Exhibit G to the MASTER AGREEMENT, Lease Of Washington State University's Research & Technology Park (RTP) Building One To Washington State University Research Foundation and Operating Principles for RTP Building Two, will automatically terminate upon termination of the MASTER AGREEMENT, but the PARTIES may mutually agree in writing to amend or terminate Exhibit G independently without termination or amendment of the MASTER AGREEMENT. Amendment of Exhibit G may be done upon the signature of any UNIVERSITY officer with the signature authority for an analogous real estate transaction and the signature of the Chair of the FOUNDATION Board of Trustees. Such amendment or termination must be appended to the MASTER AGREEMENT and will be automatically incorporated into that MASTER AGREEMENT.

WHEREAS:

- A. UNIVERSITY has an obligation and a desire to transfer the knowledge and technology developed at UNIVERSITY into the economy by introducing to use its intellectual properties in an effective manner with due regard for the public interest;
- B. UNIVERSITY has a goal to develop and strengthen linkages between UNIVERSITY and the private sector and provide appropriate means and incentives for the transfer of knowledge and technology created at UNIVERSITY;
- C. UNIVERSITY faculty and employees are required by contract and policy to disclose and assign to UNIVERSITY intellectual properties developed in the course of their employment or residence with UNIVERSITY including, but not limited to, copyrights, UNIVERSITY trademarks, trade secrets, UNIVERSITY-generated inventions, invention disclosures, patent applications, and issued patents;
- D. UNIVERSITY owns a certain fifteen (15) acre parcel of land located off Terre View Drive in Pullman, Washington (RESEARCH PARK) (more fully described in Exhibit E to this MASTER AGREEMENT), which UNIVERSITY has designated as a Research and Technology Park;
- E. UNIVERSITY owns a structure on the grounds of RESEARCH PARK, with addresses of 1334, 1345, 1425, and 1445 N.E. Terre View Drive, Pullman, Washington, (BUILDING ONE);
- F. FOUNDATION owns a building on the grounds of RESEARCH PARK under the terms of the GROUND LEASE, with an address of 1610 N.E. Eastgate Boulevard, Pullman, Washington (BUILDING TWO);
- G. UNIVERSITY desires RESEARCH PARK and its improvements utilized to provide space for businesses and entities that may help develop, improve, or license UNIVERSITY intellectual properties and UNIVERSITY-created technology, and transfer that intellectual property and technology into use, or that work closely with the UNIVERSITY to advance its research and educational mission;
- H. UNIVERSITY has determined that the most appropriate way for it to meet its goals for utilization of the RESEARCH PARK and its legal obligation under federal patent law to transfer UNIVERSITY-created knowledge and technology into use is through FOUNDATION efforts and FOUNDATION possession and operation of all improvements on RESEARCH PARK grounds;
- I. UNIVERSITY has through Exhibit G to this MASTER AGREEMENT, provided FOUNDATION the exclusive right to possess BUILDING ONE, including the right to occupy and sublease BUILDING ONE to those tenants whose occupancy furthers UNIVERSITY goals for utilization of the RESEARCH PARK, including UNIVERSITY;

- J. UNIVERSITY agrees to sublease Suite C in BUILDING ONE for the use of the UNIVERSITY's Wood Products Materials Laboratory without payment of rent on terms otherwise consistent with FOUNDATION's other tenant leases; FOUNDATION agrees to provide the space indicated in the schematic drawing of BUILDING TWO attached to this MASTER AGREEMENT (Exhibit F) in BUILDING TWO for the use of UNIVERSITY's Office of Intellectual Property Administration and FOUNDATION administrative offices without payment,
- K. UNIVERSITY desires the right and option to sublease any available space in BUILDING ONE and to lease any available space in BUILDING TWO, under reasonable terms to be negotiated, that UNIVERSITY may now or in the future need research laboratories or administrative offices;
- L. FOUNDATION is a nonprofit corporation duly organized under the laws of the state of Washington with the purpose of transferring knowledge and technology developed at UNIVERSITY into the economy and receiving intellectual properties for commercialization and for the benefit of UNIVERSITY;
- M. FOUNDATION is equipped to, capable of, and willing to occupy, develop, and operate the RESEARCH PARK to enhance local economic development, commercialize intellectual properties and any improvements to such intellectual properties, negotiate license agreements, extensions, or renewals of licensing agreements either in the United States of America or in any foreign state, country, or territory, and thereby manage and facilitate transfer of technology and other applications of intellectual property to the benefit of the public and UNIVERSITY;
- N. FOUNDATION is empowered to solicit and receive property, hold, transfer, and lease property to others, including to UNIVERSITY and inventors as provided in this MASTER AGREEMENT; and
- O. UNIVERSITY has the authority under RCW 28B.30.150(19) and (24) to enter into contracts for these and other lawful purposes.

NOW, THEREFORE, the PARTIES hereby agree as follows:

II. DEFINITIONS

In this MASTER AGREEMENT, the terms Patent(s) and Intellectual Property are defined as follows:

Patent(s) shall mean any patent, patents, and patent applications, any and all corresponding foreign patents and patent applications whether now existing or hereafter filed; any provisional, substitution, divisional, reissue, renewal, continuation, continuation-in-part, substitute application and inventors' certificate arising from, or based upon, any of the foregoing patents or patent applications or claiming priority from

the foregoing patent applications or patents; and any patent issuing from any of the foregoing applications.

Intellectual property shall mean any or all of the following: patent as herein defined, copyright, trade secret, know how, trademark, service mark, domain name, geographical indicator, literary or artistic work, design, moral right, and other intangible property representing creations of human ingenuity as provided in any state, federal, or common law of the United States, any treaty entered into by the government of the United States existing under the law of any foreign jurisdiction wherein FOUNDATION licenses said intellectual property and/or created by contractual right.

III. SEPARATE OBLIGATIONS

A. UNIVERSITY shall:

1. Grant to FOUNDATION the exclusive right to occupy, develop, sub-lease, and manage BUILDING ONE under the terms in Exhibit G to this MASTER AGREEMENT;
2. Provide FOUNDATION with office space including utilities, use of office furniture, file cabinets, and associated equipment;
3. Provide FOUNDATION with use of office machines, materials, and services as reasonably required for its operation, including consumable office supplies, telephone service, postage, data network service, office computers, photocopying, facsimile transmission, duplication, publication, and audio-visual equipment and services, and professional and/or staff services. The time allocated to services to FOUNDATION shall not be full-time for any UNIVERSITY employee;
4. UNIVERSITY shall be responsible for all costs associated with protection of inventions, writings and other intellectual property under its ownership and control. UNIVERSITY has sole discretion to determine which intellectual property for which it will expend such costs and seek such protection. At its discretion, UNIVERSITY will file with the United States Patents and Trademarks Office, or the appropriate international patent office applications for patents of inventions and prosecute such applications.

At its discretion, assign and transfer to FOUNDATION full title, right, and interest in patents, intellectual properties, and improvements thereto that UNIVERSITY reasonably believes to be of a nature to be fruitfully used by FOUNDATION for successful commercialization or other transfer into use through license, sale, or manufacture. Each transfer of intellectual property made by UNIVERSITY pursuant to this MASTER AGREEMENT shall be in writing and shall set forth the terms of such transfer, including, in view of the research, extension and educational missions of UNIVERSITY, a

reservation of rights to UNIVERSITY sufficient to allow it to use such intellectual property in the pursuit of such missions.

UNIVERSITY may transfer a patented or patentable invention to FOUNDATION prior to finalizing prosecution of a patent if UNIVERSITY and FOUNDATION determine such transfer is necessary to enable timely licensing or commercialization of the invention. FOUNDATION will take responsibility for any and all costs associated with perfecting patent protection for such invention once it is transferred to FOUNDATION. FOUNDATION may, at its sole discretion, decide to seek protection for an invention in foreign venues and may, at its sole discretion, decide to discontinue the patent prosecution if it determines it is unable to license or commercialize the invention, at which time it will transfer such intellectual property to UNIVERSITY and/or inventor, as provided in the *Washington State University Faculty Manual*.

UNIVERSITY will transfer any copyright of works to FOUNDATION only after the copyright is registered with the United States Copyright Office.

UNIVERSITY shall perform all necessary and proper reports, applications, and registrations necessary to perfect assignment or transfer of intellectual property UNIVERSITY determines appropriate to transfer to FOUNDATION.

If FOUNDATION licenses or commercializes an intellectual property transferred to FOUNDATION by UNIVERSITY, FOUNDATION will use its best efforts to obtain, as part of the licensing or commercialization agreement, re-imbusement of UNIVERSITY's costs for legal protection of the intellectual property.

UNIVERSITY shall provide FOUNDATION with access to documentation of UNIVERSITY's costs for the protection of any intellectual property UNIVERSITY assigns to FOUNDATION;

5. UNIVERSITY, in consultation with FOUNDATION, shall select an individual who UNIVERSITY will appoint as Director of UNIVERSITY's Office of Intellectual Property Administration (OIPA) and who FOUNDATION will appoint as Executive Director of FOUNDATION. Either PARTY may dismiss the DIRECTOR from his or her duties as DIRECTOR. The duties and responsibilities of DIRECTOR shall be described in the Job Descriptions provided by both UNIVERSITY and FOUNDATION, which may be amended from time to time as the PARTIES deem necessary and proper and consistent with the terms of this MASTER AGREEMENT and the associated RESEARCH PARK agreement, but the FOUNDATION's job description will include the requirement that the Executive Director of the FOUNDATION will be responsible for the day-to-day management of FOUNDATION and of the

RESEARCH PARK so long as the FOUNDATION leases and operates the RESEARCH PARK as set forth in Exhibit G to this MASTER AGREEMENT;

6. Provide FOUNDATION staff services, technology licensing personnel, and other support personnel to perform the activities and responsibilities under this MASTER AGREEMENT and Exhibits. Such personnel also may work in various UNIVERSITY offices, including OIPA;
7. In view of the allocations of royalty and other income contemplated by this agreement, and in particular the allocation in Section III.B.10 below, UNIVERSITY Vice Provost for Research, in association with FOUNDATION, will develop a technology transfer plan to be administered by FOUNDATION using the "technology transfer funds" set forth in Section III.B.10; and
8. Provide other services through offices of UNIVERSITY pursuant to specified contractual arrangements from time to time.

B. FOUNDATION shall:

1. Comply with all applicable federal and state laws. For this purpose, FOUNDATION will establish rules and procedures for the management of all affairs of FOUNDATION in accordance with (a) the requirements for tax-exempt entities under the federal Internal Revenue Code, including its section 501(c)(3), and (b) the laws governing charitable solicitations (e.g., RCW 19.09) and nonprofit corporations (e.g., RCW 24.03);
2. Receive from UNIVERSITY such intellectual property as is transferred to it under the terms of this MASTER AGREEMENT. If FOUNDATION, in its sole judgment and discretion, deems any intellectual property or improvement thereto to be such that it cannot with its best effort license, commercialize, sell, or manufacture to the benefit of the public or UNIVERSITY, it shall request UNIVERSITY accept a release and reassignment of all rights to such intellectual property or improvement thereto, which request shall not unreasonably be denied;
3. Operate BUILDING ONE and BUILDING TWO, including leasing space to appropriate tenants, to the extent possible, in a manner that advances UNIVERSITY's obligation and desire to transfer knowledge and technology developed by UNIVERSITY into use under the terms and conditions in Exhibit G to this MASTER AGREEMENT;
4. Grant to UNIVERSITY an irrevocable option for UNIVERSITY to lease back or sublease any portion of BUILDING ONE not leased to another entity and to lease any portion of BUILDING TWO not leased to another tenant as UNIVERSITY may from time to time need laboratory or administrative offices, under reasonable terms to be negotiated;

5. Have full and exclusive right, title, and interest in and to any intellectual property, and improvements thereto, which are assigned or transferred hereunder, including but not limited to the full and exclusive right to make, have made, use, sell, and license the same upon such terms and in such manner as FOUNDATION shall deem appropriate and in compliance with the law, including federal reporting statutes;
6. Use its best efforts to commercialize and license intellectual properties in such manner as FOUNDATION deems appropriate and beneficial. FOUNDATION may, in the public interest of the state of Washington, use its best efforts to expand interest in technologies, inventions, or intellectual properties within the state of Washington with the goal of fostering the industrial development of the state. To bring about such development, FOUNDATION may issue licenses to Washington industries directed to that end;
7. Use all assets and earnings of FOUNDATION for the benefit of UNIVERSITY or for payment of royalties as set forth in Section III.B.9 of this MASTER AGREEMENT or for necessary and reasonable administrative expenses of FOUNDATION. No part of such assets and earnings shall accrue to the benefit of any director, officer, member, or employee of FOUNDATION or of any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred;
8. Collect all monetary proceeds from commercialization of intellectual property and distribute those proceeds in accordance with the *Washington State University Faculty Manual*, as it now exists or may be hereafter amended, except that FOUNDATION shall have a deduction for technology transfer duties as provided below;
9. In calculating the royalties or other compensation due the inventor and UNIVERSITY, FOUNDATION will deduct the costs of obtaining and maintaining legal protection for each invention to arrive at "adjusted income." To the extent those costs were incurred by UNIVERSITY, FOUNDATION will forward those funds to UNIVERSITY. FOUNDATION will then deduct twenty percent (20%) from adjusted income and the remainder will be "net income." FOUNDATION will then distribute the net income semiannually according to the applicable schedule in the *Washington State University Faculty Manual* in effect at the time of disclosure to the UNIVERSITY, including royalty payments to the inventor(s) and UNIVERSITY.
10. Deduction for administrative expenses and technology transfer duties (Technology Transfer Fund): FOUNDATION will retain eighty percent

(80%) of the first two hundred, fifty thousand dollars (\$250,000) of royalties payable to UNIVERSITY in any given fiscal year. "Royalties payable to UNIVERSITY" are defined as UNIVERSITY'S portion of the royalties under the terms of the *Washington State University Faculty Manual* in existence at the time of disclosure to the UNIVERSITY, except that royalties payable from agricultural commodities shall not be considered royalties payable to UNIVERSITY for purposes of this MASTER AGREEMENT. This deduction shall be "technology transfer funds" and is intended to provide funds for activities to transfer UNIVERSITY-created knowledge and technology into use as required by Title 37 U.S.C. § 401 federal law, and as provided in Section II.A.6, management expenses, Intellectual Property marketing, fees for servicing FOUNDATION patents held for the benefit of UNIVERSITY, research at UNIVERSITY to enhance technology transfer or perform technology development, or deferred maintenance on BUILDING ONE.

UNIVERSITY may terminate FOUNDATION's right to the above "Technology Transfer Fund" by providing one (1) year's advance written notice.

11. If the Intellectual Property that generates the monetary proceeds is not a UNIVERSITY invention, and if FOUNDATION and UNIVERSITY have no express agreement for the distribution of the monetary proceeds from that Intellectual Property, FOUNDATION shall retain twenty percent (20%) of the net income and distribute eighty percent (80%) of the net income to UNIVERSITY.
12. FOUNDATION shall not merge, consolidate, or change FOUNDATION's Articles of Incorporation during the lifetime of this MASTER AGREEMENT, without the written consent of UNIVERSITY. If FOUNDATION merges, consolidates, or liquidates, then all real, personal, and Intellectual Property owned by FOUNDATION for the benefit of UNIVERSITY will become property of UNIVERSITY, provided UNIVERSITY assumes any associated liabilities of FOUNDATION.

IV. ACCOUNTING AND AUDITING

To provide proper accounting and auditing for the property and services provided by each party under Article I:

- A. Accounting and fiscal functions shall be performed by FOUNDATION and UNIVERSITY shall have the right to review those functions as necessary for UNIVERSITY's protection.

- B. Before each fiscal year (July 1 through June 30), UNIVERSITY Office of Research shall prepare a budget showing all anticipated expenses and services under this MASTER AGREEMENT for that upcoming year, including all space, equipment, supplies, personnel, and other services UNIVERSITY expects to provide to FOUNDATION. The President of UNIVERSITY and the executive director of FOUNDATION, and/or their designees, will review that budget. UNIVERSITY expenditures shall not exceed that budgeted amount without adoption of budget amendments.
- C. The cost of the space and equipment, supplies, personnel, and other services which UNIVERSITY provides to FOUNDATION shall not exceed the total amount of three hundred thousand dollars (\$300,000) in any fiscal year exclusive of the amount of rental FOUNDATION collects from the RESEARCH PARK tenants and royalties and licensing costs retained by FOUNDATION under the terms of this MASTER AGREEMENT. UNIVERSITY will regularly keep track of the space and equipment, supplies, personnel, and other services it is providing to assure that this maximum amount is not being exceeded. The President of UNIVERSITY and the executive director of FOUNDATION and/or their designees will annually review a post-closing summary of the transactions between the two parties to assure that this maximum has not been exceeded.
- D. Before each fiscal year (July 1 through June 30), FOUNDATION shall prepare a budget showing all anticipated transactions and expenditures related to licensing, protection, renewal, or maintenance of Intellectual Property and other anticipated expenses. The budget must be approved by FOUNDATION's Board of Directors and presented to UNIVERSITY for review. FOUNDATION expenditures shall not exceed that budgeted amount without adoption of budget amendments and review of those amendments by UNIVERSITY. The RESEARCH PARK budget will conform to the provisions for budgeting set forth in Exhibit G.
- E. FOUNDATION shall authorize its Executive Director to approve intellectual property management, licensing and Research Park agreements, including applications for protection or management of Intellectual Property, license agreements, patent applications, and trademark and copyright registrations, and shall authorize its Executive Director to sign checks for all necessary and proper expenses up to the limit which is determined by the FOUNDATION Board of Director, such limit to be set by formal Board action, and shall require all checks that exceed that amount to be countersigned by the Treasurer of FOUNDATION Board of Directors. FOUNDATION will use such other standardized accounting practices necessary to monitor expenditures and accounts, and ensure that expenditures stay within budgeted allocations and are properly authorized, accounted for, and recorded.
- F. FOUNDATION shall annually confirm to UNIVERSITY that it has fully complied with its obligation to expend its best efforts to protect and manage those Intellectual Properties transferred to FOUNDATION from UNIVERSITY or otherwise received, to solicit and negotiate licensees for those Intellectual Properties, to effectively

transfer technology and knowledge developed at UNIVERSITY into use, and to administer licenses and royalty agreements into which it enters. At this annual review, FOUNDATION shall list its accomplishments for the preceding year and share with UNIVERSITY its revenue and expense statements for the preceding year and its end-of-year balance sheet. It shall further provide documentation of all royalties and licensing fees, reimbursements from licensees of patenting or Intellectual Property registrations fees and costs paid by UNIVERSITY, and all other sums due UNIVERSITY and inventors under the terms of this MASTER AGREEMENT and shall, at the time of such accounting, pay UNIVERSITY and inventors all sums due and owing.

- G. FOUNDATION is a separate entity from UNIVERSITY, and in conformity with state law and generally accepted accounting practices, FOUNDATION shall be periodically audited by a reputable independent accounting firm to be chosen by FOUNDATION and approved by UNIVERSITY. UNIVERSITY shall designate a representative to serve on the FOUNDATION audit committee.
- H. UNIVERSITY is a state institution of higher education, and shall be audited by the State Auditor's Office.
- I. FOUNDATION shall permit the President of UNIVERSITY, or the President's designee, to inspect and/or copy all FOUNDATION books, accounts, and records, including any sub-lease of a portion of BUILDING ONE, at all reasonable times in order to determine compliance with the commitments made in this MASTER AGREEMENT.
- J. All notices and consents required by this MASTER AGREEMENT and Exhibits shall be in writing and shall be mailed or delivered to the PARTIES' designated authorized representatives set forth below:

FOUNDATION
Executive Director

UNIVERSITY
Vice Provost for Research

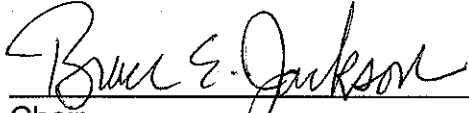
V. OTHER AGREEMENTS

- A. Independent Capacity: At all times and for all purposes of this MASTER AGREEMENT, each party shall act in an independent capacity and not as an agent or representative of the other party.
- B. No Indemnification: Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority, except as set forth in Exhibit G to this MASTER AGREEMENT.
- C. No Assignment: This MASTER AGREEMENT is not assignable by either party, in whole or in part.

- D. Governing Law and Disputes: The laws of the state of Washington shall govern this MASTER AGREEMENT. Before instituting any legal action hereunder, a party, through its president or executive director, shall meet with the president or executive director of the other party and attempt in good faith to resolve the disagreement. Venue of any action hereunder shall be in Whitman County Superior Court.
- E. Entire Agreement: This MASTER AGREEMENT and its Exhibits A,B, C, D, and G constitute the entire agreement of the parties, including all oral understandings, on the subject of their general and overall relationship. However, the parties may enter into other stand-alone agreements on specific subjects. All such agreements shall be in writing and signed by the PARTIES.
- F. Modification: No alteration or modification of any term of this MASTER AGREEMENT shall be valid unless made in writing and signed by the PARTIES.
- G. Dispute Resolution: In the event that a dispute arises under this MASTER AGREEMENT or the EXHIBITS incorporated herein and the PARTIES are unable to negotiate an agreement, the dispute shall be determined by a Dispute Board in the following manner: Each PARTY to this agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. To the extent the decision of the Dispute Board is consistent with law and UNIVERSITY's fiscal limitations, the Dispute Board's decision shall be final and binding on both PARTIES.
- H. Termination: This MASTER AGREEMENT shall continue until terminated. It may be terminated by mutual written agreement of the PARTIES. Either PARTY may terminate it only at the end of a State fiscal biennium, upon written notice to the other PARTY given at least ninety (90) days in advance. However, this MASTER AGREEMENT or a successor overall agreement with UNIVERSITY shall be necessary for FOUNDATION to operate. In the event FOUNDATION is voluntarily or involuntarily dissolved, to the extent allowed by law, all assets held by FOUNDATION shall be returned, transferred, or conveyed to UNIVERSITY.

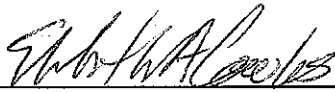
IN WITNESS WHEREOF, this MASTER AGREEMENT has been executed by and on behalf of the PARTIES:

WASHINGTON STATE UNIVERSITY
RESEARCH FOUNDATION



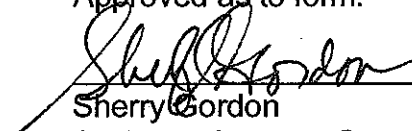
Chair
Date: April 4, 2005

WASHINGTON STATE UNIVERSITY



President, Board of Regents
Date: 5-16-05

Approved as to form:



Sherry Gordon
Assistant Attorney General
Date: 4-12-05