

Intellectual Property Policy

*On the Ownership and Commercial
Development of Western Michigan University Discoveries and
Intellectual Property, the Distribution of Royalties therefrom, and
on the Retention of and Access to Data*

These revised policies shall be applied to all Intellectual Property disclosed and
agreements executed after March 1, 2007.

TABLE OF CONTENTS

PART I – BACKGROUND, DEFINITIONS, AND DESCRIPTIONS	3
1.0 INTELLECTUAL PROPERTY, SCHOLARLY WORKS, AND RELATED RIGHTS	3
1.1 PATENTS AND PATENT RIGHTS	4
1.2 COPYRIGHTS	4
1.3 TRADE AND SERVICE MARKS	4
1.4 MASK WORKS	5
1.5 TANGIBLE RESEARCH PROPERTY	5
1.6 TRADE SECRETS	5
1.7 OTHER	5
1.8 DATA	5
1.9 RESEARCH RECORD	5
1.10 INVENTOR(S)	6
 PART 2 - WMU INTELLECTUAL PROPERTY POLICY STATEMENTS	 6
2.0 GENERAL POLICY STATEMENT	6
2.1 OWNERSHIP OF INTELLECTUAL PROPERTY	7
2.2 OWNERSHIP AND EXTERNAL SPONSORSHIP	7
2.3 USE OF WMU NAME AND LOGO	7
2.4 OWNERSHIP OF TRADE AND SERVICE MARKS	8
2.5 DISTRIBUTION OF INCOME FROM ROYALTIES, LICENSE AGREEMENTS, EQUITY INTERESTS, SALE OF INTELLECTUAL PROPERTY, AND SIMILAR REVENUE GENERATING INTELLECTUAL PROPERTY AGREEMENTS	8
2.6 COMMITMENT OF FUTURE INTELLECTUAL PROPERTY	9
2.7 CONFLICT OF INTEREST	9
 PART 3 – WMU DATA RIGHTS POLICY STATEMENT	 10
3.0 GENERAL POLICY STATEMENT.	10
3.1 OWNERSHIP, RETENTION OF, AND ACCESS TO DATA	10

**PART 4 - INTELLECTUAL PROPERTY DISCLOSURE AND
COMMERCIALIZATION11**
4.0 GENERAL POLICY STATEMENT ON COMMERCIALIZATION 11
4.1 RESPONSIBILITY AND PROCESS 12

**PART 5 - PERSONNEL INVENTION AND PROPRIETARY INFORMATION
AGREEMENT POLICY13**
5.0 GENERAL POLICY13
5.1 WHO THIS APPLIES TO13
5.2 ADMINISTRATION OF INVENTION AND PROPRIETARY INFORMATION
AGREEMENTS 13

PART 6 - ADMINISTRATION OF INTELLECTUAL PROPERTY.....14
6.0 VICE PRESIDENT FOR RESEARCH 14
6.1 RESEARCH MISCONDUCT 14

Policy on the Ownership and Commercial Development of Western Michigan University Discoveries and Intellectual Property, the Distribution of Royalties therefrom, and on the Retention of and Access to Data

PART 1: BACKGROUND, DEFINITIONS, and DESCRIPTIONS

1.0 INTELLECTUAL PROPERTY, SCHOLARLY WORKS, AND RELATED RIGHTS

The material set forth in this document covers the ownership, commercialization, and distribution of royalties, license agreements, equity interests, sale of intellectual property, and similar income generating intellectual property agreements arising from Intellectual Property developed by Western Michigan University (WMU) faculty, staff, and students and others participating in WMU programs. These policies apply equally to the main campus and to other WMU programs at other locations and the Biosciences Research and Commercialization Center (BRCC).

The term “Intellectual Property” is broadly defined in this document to include technical innovations, inventions, creations, discoveries, tangible research property (TRP), and IC mask works, as well as computer “software” code. Intellectual Property, as defined herein, is not intended to include “Scholarly Works” as defined in this policy.

For the purposes of this policy, Scholarly Works are defined as traditional items of scholarly activity such as textbooks, scholarly books, or other written documents, except for those Scholarly Works that are prepared at the request of WMU and for which WMU is providing direct remuneration*, which shall be treated as Intellectual Property for the purposes of this policy. Scholarly Works may also be subject to the WMU-AAUP Collective Bargaining Agreement.

The principal rights governing the ownership and disposition of intellectual property are derived primarily from legislation and common law granting patent, copyright, trademark, trade secret, and integrated circuit mask work protection.

In some instances, the distribution and commercialization of Intellectual Property may be accomplished by the transfer (or “licensing”) or by offering for sale the rights to the Intellectual Property. In other instances, distribution and commercialization of Intellectual Property may be aided by or depend upon access to the physical or tangible embodiment of the Intellectual Property, as in the case of biological organisms, plant varieties, or computer software.

Therefore, this policy will define not only the ownership, distribution, and commercialization rights associated with the intellectual property, but will also define policies and procedures which govern use and distribution of the Intellectual Property in its tangible form.

*Note: The preparation of a work while on an approved sabbatical leave for that purpose or other approved leave of absence, in and of itself, does not qualify as direct remuneration by WMU. Direct remuneration should not be interpreted to refer to activities that fall within the normal scope of scholarly activity.

The following overview of intellectual property rights is limited in scope. The WMU Vice President for Research (VPR) should be contacted for further information regarding any of these rights.

1.1 PATENTS AND PATENT RIGHTS

A patent is a grant issued by the United States Patent and Trademark Office giving an inventor the right to exclude all others from making, using, or selling the invention within the United States, its territories and possessions, for a period of 20 years from the effective U.S. Filing Date of the parent patent application. The period of 20 years is exclusive of certain regulatory delays such as those sometimes imposed by the Food and Drug Administration and the patent grant process itself. Patents may also be granted in foreign countries; procedures for filing, regulations for patentability, and term of patent grant vary considerably from country to country.

To be patentable in most countries, an invention must be new, useful, and non-obvious. In the United States, a grace period of 12 months from the first written public disclosure of an invention is allowed to file a patent application. In most foreign countries, an invention is unpatentable unless the application is filed before public disclosure (written or oral). However, if one has filed in the United States prior to disclosure, the applicant has 12 months from the U.S. filing date to file in most non-U.S. countries without losing filing rights.

1.2 COPYRIGHTS

As provided in copyright law, a copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly. Under federal copyright law, copyright subsists in "original works of authorship" which have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. For an individual author, copyright protection of a work extends for the author's life plus 70 years. For employers, copyright protection of a work extends for 95 years from the date of publication. In contrast to a patent which protects the "idea", copyright covers the "artistic expression" in the particular literary work, musical work, computer program, video or motion picture or sound recording, photograph, sculpture, and so forth, in which the "expression" is embodied, illustrated, or explained, but does not protect the "idea."

1.3 TRADE AND SERVICE MARKS

A trade or service mark is a word, name, symbol, or device (or any combination) adopted by an organization to identify its goods or services and to distinguish them from the goods and services of others. In the United States, trademark ownership is generally acquired through use of a term to identify origin of goods or services, although effective November 1989, legislation enables organizations to file for trademark protection based on intent to use a particular term. Trade or service mark ownership is not dependent upon federal or state registration, but upon use of the mark. Registration of trade and service marks may be obtained on both the state and federal levels. However, to apply for a federal registration of a mark, it must be used in interstate commerce.

1.4 MASK WORKS

A mask work is defined as a series of related images representing a predetermined, three-dimensional pattern of metallic, insulating, or semiconducting layers of a semiconductor chip product. Under the Semiconductor Chip Act of 1984, mask work protection extends for 10 years and gives the owner of the qualifying mask work exclusive rights to its exploitation. Mask works are registered with the United States Copyright Office. Failure to apply within 2 years of the initial commercial exploitation results in the termination of the exclusive rights.

1.5 TANGIBLE RESEARCH PROPERTY

The term “tangible research property” (TRP) refers to those research results, which are in a tangible form as distinct from intangible (or intellectual) property. Examples of TRP include integrated circuit chips, computer software, biological organisms, engineering prototypes, engineering drawings, and other property, which can be physically distributed. Although TRP may often have intangible property rights associated with it, such as biological organisms which may be patented or computer software which may be either patented or copyrighted, where appropriate, TRP may be distributed without securing intellectual property protection by using some form of contractual agreement, such as formal contract, loan agreement, letter agreement, or user license as further set forth in this document. TRP is specifically intended to fall within the definition of Intellectual Property as defined herein.

1.6 TRADE SECRETS

The law of trade secret may be applied to almost any secret, which is used in business and gives the owner of the trade secret a competitive edge over others. It is used to protect valuable proprietary information and is a commonly used form of protection for software. Unlike copyrights, there is no federal trade secret statute. Trade secret laws are determined by the individual states but generally adhere to similar principles. The most important aspect of this type of protection is that of secrecy. The protection will remain legally valid only as long as a trade secret is maintained. In order to maintain protection while a trade secret is being used, it is necessary to bind those individuals having access to the secret by a contractual agreement not to disclose it. Such agreements are called nondisclosure or confidentiality agreements. WMU's policy with regard to the protection of third parties' confidential material used in conjunction with research projects is specified in the University's research policy statements, which are available from the Office of the Vice President for Research.

1.7 OTHER

There can be other exclusive rights for developers of new technology or their backers including Orphan Drug Act rights, exclusive assignments of broadcast spectrum by the Federal communications system, other exclusive franchises granted by public or private parties.

1.8 DATA

Factual information derived from sponsored research projects or experimentation used as a basis for reasoning, calculation, or discussion.

1.9 RESEARCH RECORD

Is the record of data or results that embody the facts resulting from scientific inquiry, and includes the data leading to the production of such materials as

laboratory records, both physical and electronic, research proposals, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

1.10 INVENTOR(S)

Any individual(s) who:

- for patentable subject matter, has made a material contribution to the Intellectual Property (IP) as defined under US patent laws, meaning he/she must have contributed to the conception of the ideas claimed in the patent;
- for software and other copyrightable subject matter and trade/service marks, has contributed materially to the conception of the IP of the operation or design thereof, or has contributed extensively in translating the idea into a fixed medium;
- for TRP, has taken part in the conception of the IP, or has participated significantly in making the material (but only where making the material was not a routine or known practice);

and who has fully disclosed the IP to and has assigned any right(s) of ownership in the IP to WMU. In cases where Inventorship is in dispute, the VPR, in consultation with the Director of Intellectual Property Management and Commercialization, shall make a final determination of the identity of the Inventor(s).

PART 2: WMU INTELLECTUAL PROPERTY POLICY STATEMENTS

2.0 GENERAL POLICY STATEMENT

The prompt and open dissemination of the results of WMU research and the free exchange of information among scholars are essential to the fulfillment of WMU's obligations as an institution committed to excellence in education and research. Further, it has long been acknowledged that the primary functions of WMU are education, research, and public service. It is in the context of public service that WMU supports efforts directed toward bringing the fruits of WMU research to the public use and benefit. In many cases, publication of research results will be sufficient to transfer WMU research to the research community and the public. In other cases, it is necessary to encourage industry, by the granting of license or other rights to Intellectual Property, to invest its resources to develop products and processes for use by the public. These commercialization activities are intended to co-exist with the open dissemination of research results and information exchange among scholars.

The provisions of this policy generally applies to all WMU faculty, students, staff, contractors, and others participating in WMU programs or activities, including visitors, whose activities lead to Intellectual Property. However, with respect to WMU employees who are members of a collective bargaining unit at WMU, this policy applies only to the extent allowed by the applicable collective bargaining agreement provisions. In case of conflict, the provisions of the applicable collective bargaining agreement shall control to the extent required to resolve the conflict. The term "applicable collective bargaining agreement" shall mean the collective bargaining agreement that was in effect at the time of disclosure of the invention, or at the time of the effective date for agreements involving Intellectual Property, whichever date is later.

2.1 POLICY STATEMENT ON THE OWNERSHIP OF INTELLECTUAL PROPERTY

For WMU employees who are members of the WMU chapter of the AAUP, Article 43 of the currently applicable AAUP collective bargaining agreement shall provide control regarding ownership and royalty sharing for Intellectual Property.

For non bargaining unit WMU faculty, students, staff, and others participating in WMU programs, including visitors, whose activities lead to Intellectual Property (the “Inventor(s)”), all right, title, and interest in said Intellectual Property shall belong to the Board of Trustees of Western Michigan University (the “Board”) when the activities:

- are part of the work for which WMU is paying the individual(s) from any source; or,
- involve the use of WMU resources.

The VPR may choose to waive ownership rights for Intellectual Property that is derived primarily from classroom activities. Ownership of Intellectual Property in which the Board has an interest may be assigned to the Western Michigan University Research Foundation (“WMURF”), which was created to, among other activities, manage and commercialize the Intellectual Property of WMU. For information on royalty distribution, see Article 2.5.

In the event that WMU decides not to file for patent or other IP protection or registration, or decides to cease commercialization activity for a specific case, WMU shall agree to re-assign said IP to the Inventor(s) subject to a negotiated IP re-assignment agreement between the parties.

All Intellectual Property rights acquired by WMU in the course of the research and/or by WMU Faculty or staff prior to any move of the project from WMU, remain with WMU and, cooperation of the PI, even after the move, with WMU’s efforts to protect, perfect interest in, and utilize the intellectual property is expected and required under former agreements.

2.2 POLICY STATEMENT ON OWNERSHIP AND EXTERNAL SPONSOR AGREEMENTS

The above provisions on the ownership of Intellectual Property shall apply in all cases unless they are inconsistent with the terms of any applicable agreement with an external sponsor or other provider of funds, in which case WMU’s agreement with such party shall provide control as long as both WMU and the principal investigator have signed the agreement.

2.3 POLICY STATEMENT ON THE USE OF THE WMU NAME AND LOGO

The WMU name, logo, or other identification shall not be used in connection with any Intellectual Property in which the WMU Board of Trustees has an interest without prior written permission from the treasurer or assistant treasurer of the Board.

2.4 POLICY STATEMENT ON TRADE AND SERVICE MARKS

Trade and service marks relating to goods and services developed at WMU will be owned by the WMU Board of Trustees.

2.5 POLICY STATEMENT ON DISTRIBUTION OF INCOME FROM ROYALTIES , LICENCE AGREEMENTS, EQUITY INTERESTS, SALE OF INTELLECTUAL PROPERTY AND SIMILAR REVENUE GENERATING INTELLECTUAL PROPERTY AGREEMENTS ASSOCIATED WITH INTELLECTUAL PROPERTY OWNED BY WESTERN MICHIGAN UNIVERSITY

The distribution of royalty and equity revenue from licenses and related Intellectual Property (IP) transactions is intended to incent faculty, staff, departmental, and college-level participation in the commercialization of WMU IP, and also to ensure the continued success of intellectual property operations, including OVPR (Office of the Vice President for Research) activities. Revenues will be used to support further research and educational activities within WMU. This policy shall apply to all income from royalties, licenses, equity interests, sale of intellectual property and similar revenue generating Intellectual Property agreements signed after the effective date of this policy statement except as provided for otherwise in this policy.

“Net Revenue” from royalties, license agreements, equity interests, sale of intellectual property and similar revenue generating intellectual property agreements shall be distributed as follows:

50 % to Inventors (this portion is the amount provided for in the AAUP contract).

35 % to WMU

7.5 % to the Inventor’s Department, or divided between the Departments of all co-inventors in proportion to the number of inventors from each Department, if there is more than one inventor from different Departments (e.g., if there were two co-inventors from the Chemistry Department and one co-inventor from the Biological Sciences Department, net revenue would be distributed such that the Chemistry Department received 2/3’s of the 7.5% Departmental portion and Biological Sciences Department received 1/3 of the 7.5% Departmental portion).

7.5 % to the Inventor’s College, or divided equally between the Colleges of all co-inventors in proportion to the number of inventors from each College, if there is more than one inventor from different Colleges as described for the Departmental portion. For inventors from Departments, Centers or Institutes that are not part of an academic college, the 7.5% College portion of net revenues as outlined above will go to that Inventor’s Department, Center or Institute as appropriate. If there is more than one Inventor, the 7.5% College portion will be divided between the Department(s), Center(s), Institute(s) and/or College(s) of the co-inventors in proportion to the number of inventors from each as described for the Departmental portion of net revenue.

Net Revenue shall be defined as the gross revenues received from a revenue generating Intellectual Property agreement less direct expenses for patenting and/or marketing costs for the Intellectual Property. Patenting and marketing costs will only include direct costs for filing and

maintaining IP applications or registrations and for direct marketing costs attributed to specific IP. Net revenues shall accrue and be distributed on a yearly basis.

In those instances when several patents are outlicensed as a package, or income results from a combination of more than one patent, the inventor's portion of the net revenue will be divided among all inventors in proportion to their relative contributions (e.g., if inventor A and inventor B are co-inventors on two patents and inventor B is also the sole inventor on a third patent, and all three patents are out-licensed as a package, then inventor A receives 1/3 of the 50 % inventors portion of net revenue and inventor B receives 2/3 of the 50 % inventors portion of net revenue. This scenario assumes that inventors A and B have contributed equally to the patents and that each patent contributes equally to the income received. The assumption that each patent contributes equally to the income received is the standard assumption). Relative contributions of inventors are to be recorded at the time of initial disclosure on the Intellectual Property disclosure form.

In some cases, distribution of royalties to individuals will be impractical or inappropriate; for example, where the material was developed as a laboratory project or where the authors/inventors are not easily identifiable. The Vice President for Research, in consultation with the principal investigator (or laboratory director/department chair if not under a sponsored agreement) will review the circumstances of development when such situations have been identified. Generally in such cases, royalties will be split equally between the department, Center, Institute, or laboratory, and the College or Unit. In any situation when royalty distribution to individuals is not recommended, distribution of Net Revenue is subject to the approval of the Vice President for Research. Inventors entitled to receive royalties shall receive such royalty distribution even if they have left WMU, and royalties will be distributed to their estate, or an estate, individual, or organization of their choosing, in the event of death.

In exceptional cases, in order to benefit WMU, the VPR may make modifications to the royalty distribution plan and shall record a description of the exceptional circumstances.

2.6 POLICY STATEMENT ON COMMITMENT OF FUTURE INTELLECTUAL PROPERTY

It is the policy of WMU not to commit future Intellectual Property to licensees even where improvements to Intellectual Property are anticipated. Some very narrowly drawn exceptions may occasionally be appropriate to handle subordinate patents and well-defined derivative works for licensed software. These exceptions are to be determined on a case-by-case basis by the Vice President for Research.

2.7 POLICY STATEMENT ON CONFLICT OF INTEREST OR COMMITMENT

Any of the following factors may signify a conflict of interest, which will be taken into account prior to waiving or licensing WMU's rights to inventors or inventor owned companies under this Section 2.7 or to authors under Section 2.1:

- (1) an adverse impact on WMU's educational responsibility to its students;
- (2) an undue influence on the employment commitment of the inventor/author to WMU in terms of time or direction of effort;
- (3) a detrimental effect on WMU's obligation to serve the needs of the general public;

(4) potential conflict of interest as defined in WMU's policies and procedures;

(5) federal and state laws, regulations, or guidelines.

If the inventor/author holds or will shortly acquire an equity or founder's stock and/or option position in a company, WMU may accept equity as consideration for licensing in lieu of royalty only with the prior approval of the Vice President for Research. The inventor/author will be required to sign a Conflict Avoidance Statement if a license is granted to the company in which the inventor/author has an equity position. This form can be obtained from the OVPR.

PART 3: WMU DATA RIGHTS POLICY STATEMENT

3.0 GENERAL POLICY STATEMENT

WMU is committed to excellence in research. Accurate and appropriate records are essential to that commitment. Both WMU and the Principal Investigator (PI) have responsibilities and rights concerning access to, use of, and maintenance of original research records. This policy shall govern those rights and responsibilities. This policy shall apply to all WMU faculty, students, and others participating in WMU programs, including visitors, for activities conducted at WMU, under its auspices, or utilizing WMU resources, and which become incorporated into a final work, database, Intellectual Property, Scholarly Work, or other product.

Principal Investigator (PI) as used herein means the WMU employee directing the activity, which leads to the creation of research records. For research activities performed in partial fulfillment of a thesis or dissertation, the committee chair will be considered the P.I. or if the chair is not a WMU faculty member a WMU committee member will be appointed to this role by the committee.

3.1 OWNERSHIP, RETENTION OF, AND ACCESS TO DATA

Whenever WMU faculty, students, and others (including visitors) are acting as agents of the institution or have generated research under work for hire, the Board will own the research records.

WMU's rights regarding research records for projects conducted at or under its auspices or with its resources is based on both regulations and sound management principles. WMU's responsibilities include, but are not limited to:

1. complying with the terms of sponsored project agreements;
2. ensuring the appropriate use of animals, human subjects, recombinant DNA, etiological agents, radioactive materials, etc.;
3. protecting the rights of students, scholars and staff, including, but not limited to, their rights to access data from research in which they participated;
4. securing intellectual property rights;
5. facilitating the investigation of charges, such as scientific misconduct or conflict of interest.

3.1.1 Collection and Retention of Data

The PI is responsible for the collection, management, and retention of scientific data and other research records. The mechanisms for research record maintenance and retention may be

determined by the PI, unless subject to other WMU policies, but must be communicated to his/her department chair or laboratory director. Whenever possible, procedures should be in place for the protection of research records in the event of a natural disaster or other emergency. Research records must be retained and access available for a minimum of four years after completion of the activity, with original data retained whenever possible. Any of the following circumstances may require longer periods of retention:

1. data must be kept for as long as necessary to protect intellectual property resulting from the activity;
2. if any charges regarding the research arise, such as allegations of scientific misconduct or conflict of interest, research records must be retained until such charges are fully resolved;
3. if a student is involved, research records must be retained at least until the degree is awarded or it is clear that the student has abandoned the work;
4. if rules, regulations, laws, sponsor conditions or publisher has requirement for a longer retention period.

At the conclusion of the retention period specified here, destruction of research records is at the discretion of the PI and his/her department chair.

Research records will normally be retained in the unit where they are produced. Unless specific written permission is given by the Vice President for Research, research records must be retained on the WMU campus or in facilities under WMU auspices. The policies in 3.1.1 apply, unless required otherwise by another WMU policy, such as HSIRB policies for data retention and research conduct.

3.1.2 Access to Data

When necessary to assure needed and appropriate access, WMU has the option to take custody of the scientific data and/or research records in a manner specified by the Vice President for Research.

3.1.3 Transfer of Data in the Event a Researcher Leaves WMU

When an individual involved in a research project leaves WMU, he/she may take copies of the research records which he/she generated. WMU may have access to, or retain copies of such research records for projects continuing at WMU after the researcher leaves.

If a PI leaves WMU and the grant agency rules that a project is to be moved to another institution, ownership of the research records may be transferred to the new institution only after the written notification of the Vice President for Research and with a written agreement that guarantees: (1) its acceptance of custodial responsibilities for the research records and (2) WMU access to the records should that become necessary.

If a PI leaves WMU, retires or dies, original research records for completed projects or projects not being moved to a new institution shall be maintained in a manner specified by the Vice President for Research. Responsibility for and custody of the research records shall first be transferred to an additionally named WMU PI.

Questions about this policy may be directed to the Vice President for Research.

PART 4: INTELLECTUAL PROPERTY DISCLOSURE AND COMMERCIALIZATION

4.0 GENERAL POLICY STATEMENT ON COMMERCIALIZATION

WMU has two principal goals in commercializing Intellectual Property. The first is to facilitate the transfer of discoveries developed at WMU to the public use and benefit. The second, where consistent with the first, is to provide an additional source of unrestricted income to support research and education at WMU. The WMURF was established, at least in part, to work with WMU's developers of Intellectual Property and with industry. However, it will do so in a manner which does not interfere with the normal flow of technical and academic information through publications, conferences, and other means of scholarly communication.

4.1 RESPONSIBILITY AND PROCESS

All WMU faculty, staff, students, visitors, and others participating in WMU programs developing Intellectual Property, as defined in Section 2.1, shall have an obligation to disclose promptly and completely to the University. The disclosure process is initiated by submitting an Intellectual Property disclosure form to the OVPR. When submitted, this form will initiate action by the Director of Technology Transfer and Licensing/Commercialization to investigate the patentability (or use of other methods of legal protection, such as copyright or trademark), marketing, and commercialization of the Intellectual Property, unless accompanied by a letter requesting other action by WMU, such as a Waiver of WMU's Ownership Rights in the Intellectual Property, which may also be obtained from the OVPR.

The OVPR will be responsible for facilitating the commercialization of WMU Intellectual Property to the public use and benefit. To accomplish this task, the OVPR will receive Intellectual Property disclosures from WMU faculty, staff, and students and will evaluate disclosures and decide whether to obtain proprietary protection. Further, the OVPR will also be responsible for commercial development and dissemination by identifying potential markets and negotiating licenses or other necessary commercial agreements.

4.1.1 INTELLECTUAL PROPERTY FROM SPONSORED PROGRAMS

The terms of sponsored research and other agreements normally create obligations with respect to the reporting of Intellectual Property, technical data, and copyrightable works such as software. In particular, there is an obligation by Inventors to report all Intellectual Property developed under sponsored research to WMU by submitting an Intellectual Property disclosure form. OVPR is responsible for discharging WMU's obligations to research sponsors.

4.1.2 INTELLECTUAL PROPERTY FROM OTHER PROGRAMS

Intellectual Property developed under WMU-administered programs, either as work-for-hire or with use of WMU funds or facilities, should also be submitted using the Intellectual Property Disclosure Form. Independently owned or developed intellectual property need not be disclosed unless the inventor(s) desires for the University to commercialize the technology in exchange for giving up ownership rights in the Intellectual Property. In such cases, the Intellectual Property should be disclosed as described above.

4.1.3 TANGIBLE RESEARCH PROPERTY

Tangible research property (TRP) such as biological materials, chemical samples, and computer software can be patented or copyrighted as appropriate and then licensed for commercial purposes, and/or distributed for research purposes.

Since the traditional modes of dissemination through scholarly exchange and publication may not be fully effective for most TRP, it is WMU policy that those research results which have tangible form should also be promptly and openly made available to other scientists for their scientific research, unless such distribution is inappropriate due to factors such as safety, the need to more fully characterize or develop the TRP prior to distribution, or unless such distribution is incompatible with other obligations. However, TRP may have potential commercial value as well as scientific value, and WMU faculty, staff, and students should make TRP available for scientific use in a manner which will not diminish its value or inhibit its commercial development, and should therefore seek guidance from OVPR when distributing TRP. There are also other issues, such as contractual obligations to sponsors, disclaimers of liability, and indemnity. Therefore, a Material Transfer Agreement, or similar contract, is typically needed when distributing TRP. TRP should also be given an unambiguous identification code prior to distribution. As with other forms of Intellectual Property, WMU faculty, staff, and students have an obligation to disclose TRP as per Article 4.1.

PART 5: PERSONNEL INVENTION AND PROPRIETARY INFORMATION AGREEMENT POLICY

5.0 GENERAL POLICY

It is the policy of WMU that individuals, through their employment by WMU or by participating in a sponsored research project, or using WMU-administered funds or facilities, hereby accept the principles of ownership of Intellectual Property as stated under this policy and that these individuals agree to promptly disclose such Intellectual Property to WMU. In furthering such undertaking, all participants shall be required to sign the Invention and Proprietary Information Agreement in accordance with this policy.

5.1 WHO THIS APPLIES TO:

Individuals at WMU who:

- (a) receive support from sponsored research or WMU-funded projects; or
- (b) otherwise may be in a position to make, conceive or reduce to practice Intellectual Property or otherwise develop technology under sponsored research or WMU-funded projects, whether or not salary or other support is received from such projects, or through the use of significant WMU-administered funds or facilities, are required to sign the WMU Invention and Proprietary Information Agreement prior to participating in those projects. This form may be obtained from the OVPR. Note that this requirement specifically extends not only to WMU personnel but also to students, visiting scientists, fellows or others.

5.2 ADMINISTRATION OF INVENTION AND PROPRIETARY INFORMATION AGREEMENTS

Each WMU laboratory and department through its director/chair is responsible for ensuring that all faculty, students, staff, and visitors, who may be or are involved with sponsored projects or

who may have opportunities to use significant WMU funds or facilities administered by that laboratory or department have signed the Invention and Proprietary Information Agreement.

PART 6: ADMINISTRATION OF INTELLECTUAL PROPERTY

6.0 VICE PRESIDENT FOR RESEARCH

The Vice President for Research (VPR) is the arbiter of any disputed issues related to Intellectual Property, or the interpretation of this policy. In unusual circumstances, the Vice President for Research may also authorize exceptions to the normal procedure.

The OVPR is responsible for the negotiation, execution, and administration of all WMU agreements with external sponsors of research grants and contracts and for ensuring that the rights of the sponsors in Intellectual Property developed under external grants and contracts are protected. The OVPR is available to assist all principal investigators and sponsored program administrators in the negotiation and interpretation of intellectual property terms of grants and contracts.

Research priorities will have precedence over Intellectual Property priorities. Thus, no grant or contract terms are to be accepted which inhibit the utilization by the public of the results of research at WMU, although occasional exceptions may be considered by the VPR for certain corporate sponsored research projects. In unclear situations or where there appears to be a conflict between the priorities, the Vice President for Research will be the final arbiter.

6.1 RESEARCH MISCONDUCT

Failure to comply with the terms of this policy statement and/or the Invention and Proprietary Information Agreement may be deemed to be research misconduct, as defined in the WMU Research Misconduct Policy, or misconduct under other WMU rules or policies and shall be dealt with according to the applicable disciplinary procedures.