



# Intellectual Property Policy<sup>1</sup>

## Reason for the Policy

The Policy is designed to assist Clark University (Clark) in fulfilling its mission and achieving its strategic goals.

## Strategic Direction

The Policy supports the strategic goals of creating an outstanding student experience that promotes personal and intellectual development; recruiting and retaining excellent students, faculty and staff; and strengthening research, and scholarship, as well as institutional financial resources.

## Procedures

The procedures associated with Policy implementation appear in full below.

## Forms

Relevant Forms appear in the Appendices to the Policy.

## Contact

The Provost or his/her designee is the Clark official responsible for administration and interpretation of the Policy.

## Policy Provisions

### 1.0 Purpose

#### 1.1 *Statement of Mission*

Clark University's mission is to educate undergraduate and graduate students to be imaginative and contributing citizens of the world, and to advance the frontiers of knowledge and understanding through

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<sup>1</sup> This policy is in effect as of September 1, 2015. Any agreements between Clark University and any of its faculty, staff and/or students with respect to Intellectual Property that were effective prior to this latest Intellectual Property Policy will continue to be governed and administered under the provisions of the previous policy.

rigorous scholarship and creative effort.

The University seeks to prepare students to meet the challenges of a complex and rapidly changing society. In students and faculty, Clark fosters a commitment to excellence in studying traditional academic disciplines, as well as innovation in exploring questions that cross disciplinary boundaries. The free pursuit of inquiry and the free exchange of ideas are central to that commitment.

### 1.2 Guiding Principles for Policy and Statement of Clark Interests

In furtherance of the Clark mission, Clark community members develop inventions, discoveries, copyrightable material and new knowledge that constitute the intellectual property of Clark. Clark seeks to promote application of that knowledge for the benefit of society while enhancing the capacity of Clark to conduct its mission and protecting the interests of Clark, its faculty, students and staff. The Intellectual Property Policy helps achieve these goals by providing the framework that governs the ownership, disposition, use and commercial development of Clark inventions, discoveries and creative endeavors.

- The primary obligation in conducting Clark research and scholarship is the pursuit of knowledge for the benefit of society.
- Since Clark research receives external support, it is incumbent upon Clark to seek assurance that patents resulting from its work be managed in a manner consistent with applicable law.
- In order to provide adequate recognition of, and incentives for, intellectual achievements, inventors and authors will be provided with opportunities to share in the proceeds from their inventive and creative endeavors.
- The contribution of outside sponsors to the research endeavors of Clark is recognized by granting certain rights to sponsors, consistent with the principles outlined herein.
- After payment of the costs associated with intellectual property protection, licensing and related activities as specified in this Policy, revenue accruing to Clark from the commercialization of its intellectual property shall be shared between Clark and the inventors and/or authors on a fair and reasonable basis. Clark's share of that revenue shall be used for a Designated Fund to further technology transfer and Intellectual Property endeavors.

## **2.0 Policy**

### 2.1 Intellectual Property Managed under this Policy

#### 2.1.1 Inventions

The term "Invention" or "Inventions" as used in this Policy describes innovations or discoveries that are or may be patentable or otherwise protectable under Title 35 of the United States Code, as may be amended from time to time, regardless of whether a patent application has been filed or patents have been issued for such innovations or discoveries.

#### 2.1.2. Patents

This Policy shall apply to patent(s) resulting from Clark-related activities of individuals subject to this Policy as described in §2.2. For purposes of this Policy, the term "Patent" or "Patents" shall apply to the

Inventions, as described in §2.1.1. for which a provisional, design or utility patent application or applications is or are filed with the U.S. Patent and Trademark Office, or a foreign patent office, or for which a patent has been issued. Patent(s) shall include divisionals, continuations, continuations-in-part and relevant international counter-parts of issued patents or patent applications, and any reissues, reexaminations or extensions of issued Patents or their foreign counterparts.

### 2.1.3 Copyrights

This Policy applies to those copyrightable works developed or otherwise authored by persons covered by this Policy as described in §2.2. The term “copyrightable works” or “copyrights” applies to those works of authorship considered protectable under Title 17 U.S.C. as it may be amended from time to time. By way of example, but not by way of limitation, “Copyrights” include but are not limited to, copyrightable books, whether fiction or non-fiction, manuscripts, poems, plays, choreography, photography, motion pictures, videos, audio recordings of musical works, works of art or design, pedagogical works such as course materials, syllabi, lecture notes and the like, regardless of the tangible form of medium through which they are expressed, except that copyrightable works that are expressed as “computer software” or computer programs for purposes of this Policy shall be treated as a separate category of intellectual property.

### 2.1.4 Software and Software Documentation

Software means any computer program or database, or part thereof, designed to accomplish a task or allow a user to produce, manage, analyze, or manipulate a product, such as data, text, a physical object or other Software. Software may also be patentable and where the subject of a patent application is treated as a “Patent.” Software without a filed patent application or issued patent is treated as an “Invention.” Documentation in the nature of users’ guides, manuals and instructions developed to assist or facilitate use of software shall be managed as specifically indicated throughout this Policy.

### 2.1.5 Trademarks and Servicemarks

Trademarks and Servicemarks as described under this Policy shall be interpreted in accordance with Title 15 U.S.C. as it may be amended from time to time and also in accordance with validly existing laws of the Commonwealth of Massachusetts covering trademarks and service marks as they may be defined under such laws. The existence of a Trademark or Servicemark does not change the definition or treatment of Patent(s) or Invention(s) associated with such a Trademark or Servicemark.

### 2.1.6 Data and Tangible Research Property

The term “data” as used in this Policy is that recorded information in any form which is generated by individuals who are subject to this Policy as described in §2.2, through use of Clark supported resources as further described under §2.3.2 or the disposition of which is governed by the terms of grants, contracts, cooperative or other agreements to which the Clark is a signatory. “Tangible Research Property” as used in this Policy means products of research that include, but are not limited to, compositions, biological and chemical materials (including but not limited to cell lines, plasmids, DNA, RNA, and transgenic animals), illustrations and drawings, prototypes, devices, equipment and the like developed by persons covered under §2.2. The parties understand and agree that data and tangible research property not otherwise copyrightable may be a subject of scholarly articles and other forms of copyrightable work.

### 2.1.7

For purposes of this Policy, all of the above categories (§§2.1.1-2.1.7) shall be considered “Intellectual Property.”

## 2.2 Individuals covered by this Policy - “Covered Persons”

### 2.2.1 Clark Faculty and Staff

The rights and responsibilities with respect to Intellectual Property as established under this Policy shall govern the activities of Clark faculty and staff regardless of their status as full-time or part-time. Such persons include, but are not limited to, faculty hired to teach specific courses including Summer Session, Continuing and Professional Education, and distance learning, and those persons who do not have faculty status and are employed by Clark to carry out administrative, academic or technical duties of any nature or kind. The latter category shall include, without limitation, research scientists, research scholars, post-doctoral researchers, fellows and trainees, and students who are performing services as Clark employees. Adherence to this Policy is considered a condition of, and in consideration of, employment, for all faculty, staff and students whom Clark employs.

### 2.2.2 Clark Visitors

All non-student visitors to Clark who are participating in research activities and/or making use of Clark facilities and/or resources are considered Covered Persons for purposes of this Policy. It is the responsibility of visitors to ensure that their obligations to third parties, including but not limited to their own employers, are satisfied in a manner consistent with Clark rights described in this Policy. Participation in Clark programs and/or use of Clark facilities and/or resources by Clark visitors is in consideration of, and conditioned upon, agreement with the provisions of this Policy.

### 2.2.3 Undergraduate, Graduate, and Visiting Students, full-time and part-time (“Clark Students”)

Clark Students are considered Covered Persons under this Policy for purposes of disposition of Intellectual Property developed by them as further described under this Policy. All Intellectual Property developed by Clark Students participating in Clark activities shall belong either to Clark or to the Student, according to this Policy and subject to any other agreements. When serving in the capacity of a Clark employee (e.g. students working part-time for Clark), students shall be deemed employees covered under §2.2.1 of this Policy.

### 2.2.4 Covered Persons

For purposes of this Policy, all of the above categories (§§2.2.1.-2.2.3) shall be considered “Covered Persons.”

### 2.3 Statement of Clark Intellectual Property Ownership

#### 2.3.1 Developed in Connection With Clark External Relationships

Intellectual Property developed by Covered Persons in the course of, or directly related to, such individual's participation or involvement in a program, project or other relationship between Clark and a third party including, but not limited to, sponsored research, joint studies, cooperative or collaborative agreements, clinical trials and the like, is assigned to Clark and considered "Clark-Owned" subject to any other agreements between Clark and such third party.

#### 2.3.2 Developed with Support of Clark Financial Assistance or through Use of Clark-Supported Resources

Intellectual Property developed by Covered Persons through the use of significant financial support from Clark, including but not limited to works derived from the use of significant University resources, is assigned to Clark and considered "Clark-Owned" subject to the royalty-sharing provisions of § 4.1.5.a and § 4.1.5.b as applicable. Works significantly derived from University Resources are defined as works created using expert University services, extensive use of the University technology infrastructure and equipment, use of the services of University employees working within the scope of their employment, or extensive use of other University resources that exceeds the level of support that is commonly and customarily accessed by faculty.

The ordinary use of University resources, including the use of desktop computers, the University computer network, reasonable use of administrative assistants and marginal supplies, one's office and the University libraries, constitutes the customary use of University resources. The copyright in works created using such resources vests in the author and not in the University

#### 2.3.3 Developed within the Scope of Employment

Except as expressly set forth in §2.4 of this Policy, Intellectual Property developed by Clark faculty and staff within the scope of their employment is considered "Work Made for Hire" and owned by Clark to the extent permitted by law. Where Clark ownership is not established by operation of law, such Intellectual Property is nevertheless by operation of this Policy assigned to Clark and considered "Clark-Owned" subject to any other agreements.

#### 2.3.4 Clark-Commissioned Works

From time to time Clark, its schools, departments or other units may commission from faculty members or other employees educational materials or tools such as curriculum, syllabi, course content, course modules and educational or technology-aided delivery systems. These Clark-Commissioned works may be either content or text-based or may be software or both and are considered Clark-Owned.

Participating individuals will be notified in advance and in writing of Clark's intention to consider the works as Clark-Commissioned. Clark-Commissioned Works also include works whose authorship cannot be attributed to one or a discrete number of authors, but rather result from simultaneous or sequential contributions over time by multiple authors. For example, software tools developed and improved over time by multiple faculty and students, where authorship is not appropriately attributed to a single or defined group, would constitute a Clark-Commissioned Work. The mere fact that multiple

individuals have contributed to the creation of a work shall not cause the work to constitute a Clark-Commissioned Work.

## 2.4 Statement of Individual Intellectual Property Ownership

### 2.4.1 Scholarly and Artistic Works Including Educational Materials

“Scholarly and Artistic Works” including Educational Materials means copyrightable and copyrighted works that are in the nature of academic and scholarly works of authorship and works of visual art, including but not limited to photography, film, audio-visual works, sculpture, painting, choreography and the like. “Scholarly and Artistic Works” include by way of example 1) scholarly articles and papers written for journal publication, presentations and scholarly papers prepared for seminars and conferences, pedagogical works, and teaching and curriculum materials (including classroom lectures, seminars and presentations reduced by or for the author to written or other recorded form); and 2) paintings, drawings, musical compositions and performances, dramatic compositions and performance, poetry, fiction and other works of artistic expression authored by Clark faculty, post graduate students, postdoctoral fellows and postdoctoral associates. As a general policy and subject to the exceptions described below, these works as described in this paragraph will remain the property of their authors or creators. This definition shall not apply to the works of Clark Students authored pursuant to activities undertaken as Teaching or Research Assistants or otherwise in the employment of Clark, nor to works developed within the scope of employment of non-faculty Clark employees unless it is agreed to in writing in advance that a particular work shall be considered individually owned by the non-faculty Clark employee.

The exceptions to this policy that shall vest ownership of the copyright in a work with Clark University, rather than with the author or authors of the work, are:

- i. if the work is “Developed with Support of Clark Financial Assistance or Derived from Significant University Resources” under §2.3.2;
- ii. if the work is “Developed within the Scope of Employment” under §2.3.3 or Work Made for Hire as defined by United States copyright law;
- iii. if the work is defined as an “Clark-Commissioned Works” under §2.3.4;
- iv. if there is an intent to commercialize the copyrighted material on the part of the copyright owner or owners in an industrial application (e.g., commercial data management and analysis products and services);
- v. if the work is an audio, video, photographic or any form of digital reproduction of a class, course or presentation made by Clark faculty, staff or students;
- vi. if the work includes images of Clark University-owned facilities, buildings or property for purposes other than scholarly research and publication;
- vii. if the work includes rare Clark University holdings or unique data sets that are periodically employed by faculty or students other than the author or authors of the work;
- viii. or if the work includes the name or insignia of Clark University as an endorsement, enhancement or sanction for a product or service.

With respect to the foregoing works, Clark University shall be the owner of the copyright in the work. As such, the University may decide to assign its copyright to the author or authors of the work on a case

by case basis. For cases in which ownership in the copyright of a work vests in the University as a result of a grant or contract, the University shall, if permitted by the grant or contract, assign the copyright to the author or authors if necessary to comply with the requirements of scholarly publications.

For cases in which ownership of Scholarly and Artistic Works including Educational Materials vests in the author or authors of the work, assignment of the copyright shall remain the property of their authors (Individually-Owned Works) and such work need not be approved by the University.

#### 2.4.2 Independently-Developed “Individually-Owned” Intellectual Property

Intellectual Property invented or authored by individuals who are Covered Persons under this Policy that is not Clark-Owned as provided under §2.3, and not otherwise subject to an agreement between the Covered Person and Clark, shall remain the property of the individual (“Individually-Owned” Intellectual Property). Except for Scholarly and Artistic Works including Educational Materials that are considered Individually-Owned Works under § 2.4.1 and are used in conjunction with an individual’s teaching activities, a Covered Person shall not utilize his or her independently-developed Individually-Owned Intellectual Property in any way which may imply or give the impression, intentionally or not, that their independently-developed Intellectual Property is endorsed or owned by or represents the work of the University unless such person discloses to the Provost or his/her designee in writing, his/her intention to do so. Within 30 days of receipt of such disclosure, the Covered Person will be notified by the Provost or a designee of the Provost if permission to utilize the intellectual property has been granted and whether there are any conditions related to its use. If Clark denies permission, or the covered person fails to provide disclosure as required by this § 2.4.2, such Person’s use of the property shall be deemed a waiver of his/her rights to sue or otherwise seek legal redress for any alleged infringement by Clark or any of Clark officers, employees, students or agents.

Nothing in this §2.4.2 shall preclude a Covered Person and Clark from entering into a mutually acceptable agreement for Clark use of Individually-Owned Intellectual Property.

#### 2.4.3 Consulting and Outside Business Relationships

Covered Persons who engage in permitted outside professional services, including without limitation consulting to private companies, are responsible for ensuring that those activities and any related contractual arrangements are consistent and do not conflict with all applicable Clark policies and applicable contractual provisions, including those relating to conflict of interest and commitment. All Covered Persons under this Policy have an obligation to inform all appropriate third parties, including companies with whom they have such a relationship, of the terms of this Policy with respect to ownership of Intellectual Property and other rights and responsibilities as expressed in this Policy.

#### 2.4.4 Student Academic Work

It is the general policy of Clark that Clark Students shall have ownership rights in Intellectual Property developed by them independently, except where it is developed using significant Clark funds, part of any project or sufficiency report, thesis, dissertation, directed study, directed research, or where Clark has external obligations with respect to Student Intellectual Property. In such case Student Intellectual Property may assign to Clark pursuant to §§ 2.3.1 and 2.3.2 of this Policy and be treated as a Clark Invention. The waiver provisions of §3.3.2 shall apply to Clark Students. Tuition assistance in the form

of financial aid shall not be considered “significant Clark funds” unless such assistance consists of employment at Clark (including, but not limited to teaching or research assistantships) or is charged against a grant, contract or other agreement between Clark and an external funding source.

#### 2.4.5 Significant Use of Clark Resources

Given that the totality of circumstances and resource use associated with research and intellectual endeavors will vary it is not possible to specifically demarcate what constitutes a significant use of Clark resources. In addition to the guidance of § 2.3.2, generally, an invention, software, or other copyrightable material, or tangible research property will not be considered to have been developed using Clark funds or facilities if:

1. only a minimal amount of unrestricted funds has been used; and
2. the Intellectual Property has been developed outside of the assigned area of research of the inventor(s)/author(s) under a research assistantship or sponsored project; and
3. only a minimal amount of time has been spent using significant Clark facilities or only insignificant facilities and equipment have been utilized (note: use of office, library, machine shop, lab facilities, and traditional personal computers are examples of facilities and equipment that are not considered significant); and the development has been made on the personal, unpaid time of the inventor(s)/author.

### 3.0 Implementation of Policy

#### 3.1 Obligation to Disclose

All Covered Persons must disclose to Clark in a timely manner any and all Intellectual Property invented or authored by them so that the Clark can determine whether it has an ownership interest according to this Policy. Disclosure does not itself constitute a surrender or determination of ownership. Disclosure shall be made by completion of the appropriate Disclosure Form, and by submitting the Disclosure to the appropriate administrative offices as directed on the Form. Failure on the part of any Covered Person to complete the Disclosure Form(s) as required shall not in any manner impair or diminish the rights (including ownership rights) and obligations of either Clark or the individual as described in this Policy. Covered Persons uncertain whether Intellectual Property developed by them during the period of their employment or relationship with Clark must be disclosed should consult with the Provost or his/her designee. It is important to note that disclosing and filing for intellectual property protection should be done prior to any public disclosure in order to secure the maximum intellectual property rights. Failure to do could possibly lose all rights to intellectual property protection.

#### 3.2 Determination of Ownership and Waiver

##### 3.2.1 Determination of Ownership

Following receipt of a properly completed and signed Disclosure Form, Clark will determine whether, consistent with this Policy, it will take ownership of the Intellectual Property disclosed, and it shall promptly notify the inventor(s) or author(s) in writing of its decision. Clark determinations as to



ownership and disposition of the Intellectual Property will be made in accordance with the institutional mission and principles stated in §1 of this Policy and the requirements of applicable external agreements and obligations under applicable laws and regulations, with due regard for considerations relating to use of Clark facilities and resources. Clark action may, in some instances, include exercising ownership and thereafter placing the Intellectual Property in the public domain.

### 3.2.2 Waiver

Clark may determine that Clark will not take ownership of Intellectual Property or Clark may, after initially exercising ownership, determine that the Clark will no longer pursue or maintain intellectual property protection, for example in cases without a revenue producing license. Where Clark determines that it will not pursue or maintain intellectual property protection and licensing of Clark-Owned Intellectual Property, it will promptly and in writing so advise the inventor(s) or author(s). To the extent permitted by external obligations, including any applicable laws and regulations, Clark may consider application by inventor(s) or author(s) for alternative funding of prosecution or maintenance of intellectual property, or waiver of ownership rights and the terms under which such waiver may be made. Clark will not consider requests for waiver of ownership with respect to any Intellectual Property unless all inventors and authors, as legally determined, concur with the request for waiver. Ownership waivers, if granted, will be made to all relevant inventors and authors as joint owners. Waiver agreement terms between Clark and the inventor(s) will include a perpetual, royalty-free right and license retained by Clark to use the Intellectual Property for its own internal purposes, and will be further subject to any external obligations as may be required.

### 3.2.3 Timeliness

Clark acknowledges the interests of inventors, authors and students in pursuing timely protection and/or publication of innovations and discoveries, and/or theses or dissertations. Once inventorship is established, Clark will act within 60 days with respect to ownership determinations. If Clark concludes that this time period is or will be inadequate, Clark will inform the affected parties in writing of the circumstances of the delay and the expected date of determination.

## 3.3 Process for Seeking Intellectual Property Protection

### 3.3.1 Invention Reporting and Determinations of Patentability

Following the disclosure of an invention pursuant to this Policy, the Clark Provost or her/his designee will be responsible for reporting the invention as required under the terms of external funding agreements, if any. Further, in good faith consultation with the inventor or inventors, the Provost or his/her designee will undertake a patentability review with the assistance of patent counsel if necessary, where in the discretion of Clark, such a review is reasonable to procure based upon the potential commercial value of the invention. Where, in Clark's sole discretion, the filing of a patent application is deemed appropriate, it shall be Clark's responsibility to undertake such filing at its own expense (or at the expense of a third party pursuant to agreement with such third party by the Provost or his/her designee) and in its own name. Where appropriate, Clark may assign Clark-owned inventions to a patent management organization or to such other entity or person as Clark, in its sole discretion, deems advisable.

All inventors of Clark-owned inventions will assign their rights to Clark and shall reasonably cooperate with the Clark or its designees or assignees in securing patent rights for inventions and shall diligently execute all documents as may be required. All patenting activities conducted at the behest of Clark, its designees or assignees shall be at the expense of Clark, its designees or assignees.

### 3.3.2 Protection Determinations with Respect to Software

Upon disclosure of software pursuant to this Policy, Clark's Provost or his/her designee will be responsible for reporting the disclosure in accordance with Clark external contractual obligations, if any. Determinations of patentability of software will be made according to requirements of external contractual agreements and in good faith consultation with the inventors and authors of the software. To the extent consistent with its external obligations, Clark will consult with inventors and authors of the software with respect to whether or not a patent application or copyright covering the potentially patentable or copyright elements of the software will be filed, provided that all final decisions shall be made by Clark in its sole discretion, and in accordance with the Clark mission and purposes described in §1 of this Policy.

Clark shall hold copyright to software code and accompanying documentation to which it has ownership rights under this Policy, consistent with external contractual agreements and law. Registrations for copyright shall be made in Clark's sole discretion and at its expense. To the extent Clark is the owner of software and documentation under this Policy other than as a Work-Made-for-Hire, authors will cooperate with Clark, its designees and assignees in executing any documentation required by Clark to perfect a transfer of copyright, with any expenses to be borne solely by Clark.

### 3.3.3 Copyrights other than Software and Documentation

Copyright to works that are Clark-Owned will be held in the name of the Clark. Registration for such works shall be at the sole discretion of Clark. Where a Clark Employee, Faculty Member, Visitor or Student has an interest in obtaining rights to use Clark-Owned copyrights in furtherance of an educational or research purpose, the Clark Provost or his/her designee will cooperate with the individual in providing such rights as may be needed on a non-exclusive, no-cost basis. Where it is necessary for an individual to secure rights for a publisher, distributor or like third party to Clark-Owned copyrights, the Clark Provost or his/her designee will negotiate with such party to enable use of Clark-Owned copyrights on a reasonable basis.

### 3.3.4 Trademarks and Service Marks

Trademarks and Service Marks that are Clark-Owned in accordance with this Policy and the Clark Trademarks Policy may be registered either federally or with the Commonwealth of Massachusetts in the sole discretion of Clark. Determinations on applying for trademark and service mark registrations will be made by the Provost or his/her designee. Under no circumstance will Clark permit the trademarking by any individual, whether or not associated with Clark, of the name of Clark University, or any abbreviation thereof, or the using as a trademark or service mark of any other mark, logo or indicia that is emblematic of Clark University.

### 3.3.5 Data and Tangible Research Property

Clark-Owned Data and Clark-Owned Tangible Research Property (“Data and TRP”), as defined in §2.1.6, for which a patent application has not been filed will generally remain in the custody of the principal investigator of the research or other project or program under which it was developed, or if there was none, in the custody of the academic department chair or other appropriate administrative unit supervisor. The processes for identifying, recording, managing, and retaining Data and TRP will be in accordance with Clark policies on data and materials management and retention. Faculty and students who have developed the Data and/or TRP wishing to take copies or samples with them upon leaving Clark shall seek permission of the Clark Provost or his/her designee prior to removing these types of materials from Clark and, in any event, title to the Data and TRP shall at all times remain with Clark. The Clark Provost or her/his designee shall make a determination as to whether an individual’s new organization shall be required to execute a Material Transfer Agreement (“MTA”) covering TRP as a condition of using the TRP at that new organization.

### 3.4 Sharing of Intellectual Property for Educational and Research Purposes

Clark manages the Intellectual Property which it owns in a manner consistent with institutional mission and the principles set forth in §1 of this Policy. A prime aspect of this objective is to facilitate access to its Intellectual Property by the educational, scientific and research communities for non-commercial educational and research purposes.

## 4.0 Commercialization of Intellectual Property

### 4.1 Responsibilities of the Provost

#### 4.1.1 Reporting to Research Sponsors and Collaborators

The Provost or his/her designee has primary responsibility for notifying Clark’s external research sponsors and collaborating parties of Intellectual Property developed under agreements with them. Recognizing that such reporting cannot be undertaken until reports of inventions, software and other developments have been received from Clark Covered Persons, the Provost or his/her designee is also responsible for developing, managing and retaining Clark Intellectual Property Assignment Agreements and the processing of Disclosure Forms.

#### 4.1.2 Evaluation of Intellectual Property

The Provost or his/her designee is responsible for collecting all information necessary in order to conduct an evaluation of disclosed Intellectual Property, subject to a duty of reasonable cooperation on the part of disclosing inventors and authors. Information collection includes, but is not limited to, ascertaining participating inventors and authors, sponsored research funding, if any, and any encumbrances that may have attached to the Intellectual Property either through prior commitments or through use of third-party owned intellectual property to which Clark does not have full and unrestricted rights. In conducting such evaluations, the Provost or his/her designee will communicate with inventors and authors to ensure full and accurate information.

#### 4.1.3 Election of Title and Waiver of Rights

The Provost or his/her designee has primary responsibility for making reasonably prompt determinations on election of title to Intellectual Property to which Clark has ownership rights under this Policy, such determinations to be made in any event within any time frame required by external sponsors. All waiver of rights requests by inventors and authors submitted as provided under §3.3.2 shall be directed in writing to the Office of the Provost. The Provost or his/her designee shall respond within 60 days and in writing to requests, such response to inform the requestor(s) of the status of the request. A waiver of rights might first also require sponsor approval. In the event a waiver of rights is determined to be appropriate, the Provost or his/her designee shall negotiate the conditions of such waiver with the requestor(s) including, but not limited to, terms for reimbursement to Clark of patent expenses, if any, retained rights of Clark to use the waived Intellectual Property for purposes of education and research, transfer of sponsor reporting obligations, sharing of royalties, indemnification terms, and any other terms as appropriate. It is understood by inventors that as a consequence of federal law, Clark does not have authority to waive title to inventions developed with federal funding; nevertheless, upon request of inventors and in Clark's sole discretion, the Provost or his/her designee may support the inventor(s)' request for waiver in a letter to the appropriate federal agency officials.

#### 4.1.4 Licensing for Commercialization

Commercialization of Clark-Owned Intellectual Property shall be undertaken and managed by the Provost or his/her designee, with support from such other units within the Clark and/or inventors as deemed necessary or desirable. Authority to sign licenses or other agreements concerning the transfer or other disposition of Clark-Owned Intellectual Property shall rest with the Provost or his/her designee and with such other officials as the President, Board of Trustees, and/or the Provost may duly authorize.

Unless Clark grants a prior written permission, in no case shall inventors or authors of Clark-Owned Intellectual Property have authority to enter into agreements respecting the Clark Intellectual Property.

4.1.4. a. Clark will license its Intellectual Property in a manner that conforms to the mission and principles set forth in §1 of this Policy and consistent with its policy on Conflict of Interest as described in §4.1.7 below.

4.1.4.b. The Clark Provost or his/her designee shall have the authority to engage a third-party as a licensing agent to act on behalf of Clark. In addition, nothing in this Policy shall be interpreted to preclude Clark from joining with like institutions and non-profit organizations for the joint conduct of technology commercialization activities.

4.1.4.c. Where licensing Clark Intellectual Property to Clark faculty, staff or students (such persons including inventors or authors of the Intellectual Property being licensed) is not inconsistent with the terms of an external Clark agreement and does not otherwise disadvantage Clark, Clark may in its discretion consider proposals for licensing to such faculty, staff or students on a non-preferential, non-discriminatory basis. Recognizing the potential for conflict of interest in transacting business with its faculty, staff, and students, Clark may establish guidelines in addition to existing Conflict of Interest policies that specifically address real and potential conflicts of interest in licensing.

#### 4.1.5 Royalty Income Distribution

The term “Royalty Income” as used herein shall mean all revenues received by Clark through the licensing or other transfer of Clark Intellectual Property and includes, but is not limited to: fees, milestone payments, percentages of gross or net sales of licensed products, and shares of stock or other equity; provided that, the term “Royalty Income” shall not include funds paid into Clark as reimbursement for patent costs, for research or for any services supplied by Clark, or for tangible property that may be received by Clark (such as equipment, technological or scientific devices or computer software) even though Clark may receive them pursuant to a licensing transaction.

For purposes of this Policy, “Net Royalty Income” shall mean all Royalty Income, with the exception of Royalty Income received in the form of "Equity" as defined in §4.1.5.c., received by Clark that is attributable to an individual Intellectual Property asset such as a patent or a copyright, less:

- i. Clark’s out-of-pocket costs for securing and maintaining legal protection, such as patenting and prosecuting, outside legal assistance in licensing, or defending against infringers;
- ii. Clark’s out-of-pocket costs associated with the utilization of a licensing agent or organization if applicable;
- iii. Clark’s out-of-pocket costs associated with any Clark internal development or seed funding; and
- iv. the cost of duplication, shipping and handling, where applicable.

"Net Royalty Income" earned by Clark from the licensing or other transfer of Clark Intellectual Property will be distributed not more often than quarterly as further set forth below.

4.1.5.a. Net Royalty Income from Patents, Copyrights, Inventions or Software shall be distributed in the shares of 30% to the Inventor; 15% to support the inventor’s research or creative activity; 15% to the Inventor’s Department or Unit; 25% to a Designated Fund for (i) direct support of the licensing of patents and research development, and (ii) in the case of royalties from instructional materials, for curriculum development and instructional technology, as well as (iii) any purpose appropriate to the mission of the University; and 15% to Clark’s Operating Budget. If the work is collaborative, multiple Departments and/or Units may share funds. If this occurs, the split will go according to how the inventors and department chairs/research center directors mutually have agreed or according to the decision of the Provost or his/her designee.

4.1.5.b. Royalty Income Distribution – Equity. Where all or a portion of the Royalty Income received by Clark is in shares of stock, stock options, warrants or other indicia of ownership ("Equity"), Inventors and Authors shall be entitled to shares to be negotiated with the company. If Inventors and Authors obtain Equity from the company, Clark Equity will be wholly owned by Clark. For all other Inventors/Authors who did not receive Equity from the Company, Clark, upon occurrence of a liquidation event, shall distribute cash according to the distribution agreed upon among the inventors in their original invention disclosure.

4.1.5.c. Royalty Income Distribution – Special Cases. When authors of non-patent intellectual property are not reasonably ascertainable, the Provost or his/her designee will review the circumstances in

consultation with the relevant parties. If such consultation does not yield identification of the authors, royalties will be considered supplemental revenue to be shared between the academic department(s) or administrative unit(s) and Clark in the shares set forth in § 4.1.5.b. In any such instance, final distribution of income is subject to the approval of the Provost or his/her designee.

4.1.5.d. Any inventor or other party entitled to receive Royalty Income under this Policy may waive that share with the approval of the Provost or his/her designee or in accordance with the guidelines established by the Provost or his/her designee.

#### 4.1.6 Licensing Transactions Involving Equity

Where, in the discretion of the Provost or his/her designee it is in the interests of Clark to enter into a licensing transaction that involves the acceptance of company stock, stock options, warrants or other indicia of ownership ("Equity") in lieu of or in combination with royalties payable as dollar amounts, Clark shall enter into such transactions in accordance with any and all applicable federal and state law. Clark recognizes that its inventors and authors, while not parties to the transaction, are important to the success of any licensing activity involving their discoveries and writings. Prior to entering into any license involving the transfer of company stock, options or warrants or the like in which inventors or authors are entitled to share under this Policy, the Provost, or his or her designee, will discuss with inventors and authors who do not wish to hold an equity interest whether there is a reasonable alternative that will better accommodate the interests of the inventor(s) or author(s), provided that, failure to identify such reasonable alternative shall not impair or vitiate Clark's right to participate in an equity transaction.

#### 4.1.7 Conflict of Interest and Conflict Avoidance in Equity Transactions

4.1.7.a. Where an inventor or author holds or will acquire an equity or founder's stock and/or option position in a company to which Intellectual Property that the inventor or author helped develop is licensed by Clark, Clark will accept an equity position in lieu of royalty only with the approval of the Provost or his or her designee. In all such situations, inventor(s) and author(s) who remain in the employ of Clark will not use Clark students for research and development projects sponsored by the company without expressly disclosing to students the inventor(s)/author(s)' equity ownership interest in the company and without the express approval of the academic department chair or other appropriate administrative unit supervisor. In addition, inventor(s)/author(s) will not restrict or delay access to their research results so as to benefit the company (apart from any Clark- authorized agreement with the company) and will not engage in such other activities that may create a presumption of conflict of interest between their activities as faculty or staff of Clark and their activities with or on behalf of the company. The limitations and conditions of this paragraph are in addition to those required by the Clark's conflict of interest or other related policies.

4.1.7.b. In situations where Clark is negotiating the licensing of Intellectual Property with a company, it is a prohibited conflict of interest for any Clark faculty or staff member who supervises an inventor or author of that Intellectual Property to influence or attempt to influence the licensing negotiations. In addition, it is a prohibited conflict of interest for such supervisory personnel to co-fund or invest in a Clark-licensed start-up company with inventors or authors

under their supervision.

4.1.7.c. To avoid any real or apparent conflict of interest or conflict of commitment, Clark personnel engaged in Intellectual Property activity will not personally invest in non-public companies holding licenses to Clark Intellectual Property either directly or, if they are partners in venture funds, will not engage in Clark licensing negotiations with any company in which that fund is invested. Except as otherwise required by law, Clark personnel engaged in intellectual property activity will assure that confidential or proprietary information to which they have access in carrying out their Clark responsibilities is not disseminated in such a way as adversely or favorably to affect the value of or market for stock in any company about which they have special knowledge and will not use that knowledge for investment purposes by themselves, their families, friends or business associates.

## **5.0 Policy Interpretation, Implementation and Oversight**

### *5.1 Responsibility for Oversight*

Except as otherwise specified in this policy or as otherwise duly authorized by the President and/or Board of Trustees, the Provost has responsibility for the interpretation, implementation and oversight of this Policy. The Provost will issue such administrative guidelines and procedures to facilitate Policy as may be reasonable and consistent with it. In accordance with otherwise applicable Clark policy or contract terms, Clark may also pursue disciplinary, or civil or criminal action, for Policy violations.

### *5.2 Exceptions to Policy*

If a disagreement arises between Clark and the inventor(s) concerning the interpretation of this policy, an Intellectual Property Appeal Board (the "Appeal Board") will be appointed and convened to resolve the disagreement. Appeals shall state explicitly what is in dispute and be submitted in writing to the President of Clark and to a Committee on IP Governance which shall include representatives from faculty committees and offices with responsibilities and oversight related to Intellectual Property concerns such as Research Board, Grad Board, Undergraduate Academic Board, the IT Committee, the Dean of Research, and the Office of Sponsored Programs and Research. When a request for an appeal is received, an Appeal Board shall promptly be appointed.

1. The Appeal Board is composed of five persons, three appointed by the Committee on IP Governance (COIG) and two appointed by the Clark administration. The COIG-appointed members shall be members of the faculty chosen from a current list of tenure-track faculty members who have agreed to serve on the Appeal Board if so requested, and who have a variety of experience. In making their respective appointments, COIG and the Clark administration will seek to ensure that some of the appointees are familiar in detail with this policy and its past applications, and some of the appointees are familiar with the technical area of the intellectual property under consideration. No person with a special interest in the outcome of its decisions, including people who have participated in the decision that is under appeal, shall be appointed to the Appeal Board.
2. The Appeal Board shall promptly meet, elect a chair, and hear the appeal.

The Appeal Board shall receive written briefs from each party to the dispute, take oral presentations open to all parties and their counsels, and receive written emendations to the written briefs. The Appeal Board shall have the power to summon witnesses and documents necessary to reaching its decisions. The Appeal Board shall consider all relevant facts, policies, and precedents, and then reach a decision. The Appeal Board shall report its decision in a written finding that includes the principal arguments leading to its conclusions.

## **6.0 Miscellaneous**

### *6.1 Effective Date of Policy*

This Policy shall be effective upon approval by the President in accordance with governing requirements.

### *6.2 Policy Review and Changes*

The Provost will periodically initiate review of this Policy to address legal developments and to reflect experience gained in its administration. Policy changes will be made in accordance with governance and applicable legal requirements.

## **Effective Date:**

See § 6.1 above.

Date: September 1, 2015