

TEXAS STATE UNIVERSITY SYSTEM

Examined and Recommended:

President _____

Date

Chancellor _____

Date

The Honorable _____
Chair, _____ Committee

Date

APPROVED by the Board of Regents on [date] at [place] .

The Honorable _____
Chairman of the Board

Date

11. COPYRIGHT POLICY.

11.1 Policy Statement and Purpose.

Copyright is the ownership and control of the intellectual property in original works of authorship that is subject to copyright law. The purpose of The Texas State University System copyright policy is to outline the respective rights which a Component and members of its faculty, staff, and student body have in copyrightable materials created by them while affiliated with the Component.

All rights in copyright shall remain with the creator of the work except as otherwise provided by *Section 11.2* of this policy.

11.2 Ownership of Copyright.

11.21 The System and its Components claim no ownership of fiction, popular nonfiction, poetry, music compositions, or other works of artistic imagination that are not Component works. For other materials that are totally faculty generated with no university equipment or aid other than that routinely used by faculty in duties associated with teaching, the faculty member holds the copyright and complete intellectual property rights.

11.22 If the work is contracted in writing by the Component of the employee on a work-for-hire basis, the Component then owns the copyright and all benefits of the materials.

11.23 Copyright of all materials (including software) that are developed with the significant use of funds, space, equipment, or facilities administered by a Component, including but not limited to classroom and laboratory materials, but without any obligation by the Component to others in connection with such support, shall be held by the Component.

The provision of office or library facilities alone shall not be construed as providing "substantial resources," which shall include, for example, the purchase of new technology software or equipment not normally needed for the employee's duties, and/or a substantial monetary award explicitly for the creation of the work.

11.24 Copyright ownership of all material (including software) that is developed in the course of or pursuant to a sponsored research or support agreement (i.e., an agreement which provides funds, space, equipment, or facilities for research purposes) shall be determined in accordance with the terms of such agreement, or, in the absence of such terms, the copyright shall be held by the Component. The agreement may grant the employee a non-exclusive educational license allowing the employee to share royalties from third parties using the materials.

11.3 Mediated Courseware.

11.31 Mediated courseware includes, but is not necessarily limited to, instructional materials delivered over the Internet, synchronous or asynchronous video or audio courses, Components of course, or instructional support materials.

11.32 Copyright of mediated courseware developed without specific direction or significant support of the Component shall remain with the employee. No royalty, rent, or other consideration shall be paid to the employee or former employee when that mediated courseware or a modification thereof is used for instruction by the Component. The employee or former employee shall take no action that limits the Component's right to use the instructional materials and shall provide written notice on the courseware itself if the Component's right of use. See *Chapter V, Paragraph 4.76* of these Rules for the policy on noncompetitive use of employee-owned, mediated courseware.

11.33 Copyright of mediated courseware, developed at the specific direction or with the substantial resources of a Component shall be jointly held by the Component and the employee, unless otherwise specified at the time of commissioning of the work, and shall not be used without written consent of the Component. The Component shall have the right to modify the courseware

and decide who will utilize it in instruction. Royalties or revenues generated from the licensing of such mediated courseware may be jointly shared with the employee as noted in this *Paragraph 11*. The Component may specifically agree to share control rights with the employee.

11.4 Distribution of Copyright Royalties.

- 11.41 Creators of copyrightable material not owned by a Component, or to which a Component has relinquished any ownership claim, own the copyrights in their works and are free to publish them, register the copyright and receive any revenues which may result therefrom.
- 11.42 Royalty income received by a Component through the sale, licensing, leasing, or use of copyrightable material in which a Component has a property interest will normally be shared with the author and the Component where the material originated.
 - 11.421 The net royalties or other net income received by the Component will, in most instances, be distributed under a formula of fifty percent (50%) to the author and fifty percent (50%) to the Component.
 - 11.422 Any distribution which grants the author more than fifty percent (50%) of net royalties shall require approval of the Board of Regents.
 - 11.423 In the event of multiple authors, the proper distribution of the fifty percent (50%) author's share shall be determined by their Component President, as appropriate.
 - 11.424 The disposition of the fifty percent (50%) dedicated to the Component is within the discretion of the Component President.
- 11.43 In the event that an author contributes a personal work to a Component, a written agreement accepting such contribution shall be executed. The terms of the agreement shall include a statement governing the division of royalties between the Component and the author.
- 11.44 In cases of extramural funding, the terms of the funding agreement shall govern the division of any royalties that may result from commercialization of materials resulting therefrom. In the event that the funding agreement vests royalty rights in a Component, and does not provide any royalty share for the author, the author shall be entitled to the same proportionate share he or she would have received if the work had not been extramurally funded. Such a royalty payment to the author,

however, may not violate the terms of the funding agreement. Such share shall be a proportion of whatever share is owned by the Component under the terms of the funding agreement and this policy.

- 11.5 Revision of Materials. Materials owned by a Component under the terms of this policy shall not be altered or revised without providing the author a reasonable opportunity to assume the responsibility for the revision. If the author declines the opportunity to revise such material, the assignment of responsibility for the revision will be made by the President.
- 11.6 Withdrawal of Materials. Materials owned by a Component shall be withdrawn from use when the Component in consultation with the author deems such use to be obsolete or inappropriate. No withdrawal or other discontinuance shall take place that would violate the terms of any licensing or other agreement relating to the materials.
- 11.7 Use of Copyrighted Software.

The Texas State University System and its Components are committed to: (1) providing faculty, staff and students with the computer hardware and software necessary to perform their respective job tasks and instructional assignments; (2) protecting its computer environment from viruses; and, (3) maintaining compliance with the U.S. copyright laws and software license agreements and discouraging copyright infringement. This policy applies to all Component computer users, including faculty, staff, and students. Employees and students, who illegally duplicate software and/or its documentation or otherwise fail to comply with Component third party software license agreements, will be subject to disciplinary action up to and including termination of employment or expulsion from school.

- 11.71 The use of Component-owned or leased hardware or software is limited to Component business or instruction-related activities. Software that has not been purchased or licensed by the Component or for which the individual user cannot demonstrate or certify purchase or license for business or instructional use may not be loaded onto Component-owned or leased computers.
- 11.72 Copyright Compliance. Users of licensed software must read and comply with the license agreement. When a Component has contracted for a site or enterprise license, copying of the software media up to the number of licenses may be allowed, depending on the license agreement. The software user generally may:
 - (1) Make only one backup copy of the software for archival purposes. If the underlying license is discontinued, this copy must be destroyed.

- (2) Make a copy if it is required as an essential step (and NOT AS A MERE CONVENIENCE) in installing the software on the computing equipment.

11.73 Federal law requires compliance with the following restrictions when using software acquired by the Component:

- (1) A user shall not install software on more than one computer, unless written evidence exists that the Component has purchased the software and the license gives the purchaser the right to install it. Should a user find such software, the user should immediately uninstall the software, remove the files from the computer, and destroy any media copies.
- (2) Manuals, and other copyrighted materials, shall not be copied without specific, written permission of the publisher.
- (3) Upgrading a software package does not release the software user from the terms of the original agreement, unless the software developer changes the license agreement. The old version of the software may not continue to be used on a different computer or be distributed for use to others.
- (4) When concurrent use is allowed by the license agreement, the number of concurrent users of a local area network (LAN) version of purchased software may not exceed the number of licensed users.

11.74 License Agreements. Each manufacturer includes a license agreement package with its software that details any restrictions on its use. Component users must comply with the vendor's license provisions regarding the use of the software, even though the individual user has not personally signed the license agreement. License agreements differ among the various software vendors and some may grant additional rights, such as allowing use on a portable or home computer. The Component shall hold the user responsible for reading, understanding and complying with provisions of the license agreement for each software package.

11.75 Component Responsibility. Each Component shall publish software copyright policies and operating procedures that articulate specific steps implementing this *Subparagraph 11.7* and covering, at a minimum, the following topics:

- (1) Guidelines for use of Component computer hardware and software;
- (2) Computer and Software Use—User Education;

- (3) Software Selection, Budgeting & Acquisition;
- (4) Software Inventory, Audit & Copyright Compliance.

12. PATENT POLICY.

- 12.1 Purpose. The Components within The Texas State University System are dedicated to instruction, research, and public service. It is the policy of the Board of Regents of the System that each Component carry out its scholarly work in an open and free atmosphere and publish results obtained therefrom freely. The Board recognizes that patentable inventions and discoveries may arise on occasion in the course of scholarly work conducted by the employees and students of its Component. It is the purpose of this policy to insure that such inventions and discoveries are used and controlled in a fashion that maximizes their benefit to the public, the inventor, and the System.
- 12.2 Applicability. This policy shall apply to all persons employed by a Component of The Texas State University System and to anyone using facilities owned or under the supervision of a Component in connection with the development of a patentable product.
- 12.3 Condition of Employment and Enrollment. The patent policy of the Board of Regents, as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee of each Component, including student employees, and of the conditions of enrollment and attendance by every student at each Component.
- 12.4 Ownership. Except as otherwise described in this policy, every invention or discovery or part thereof that results from research or other activities carried out at a Component, or that is developed with the aid of the Component's facilities, staff, or through funds administered by the Component, shall be the property of the Component.
- 12.5 Inventions Made on Own Time. Inventions or discoveries made by Component employees or students in their personal time and not involving the use of Component facilities are the property of the inventor except in case of conflict with any other applicable agreement.
 - 12.51 For purposes of this policy, an individual's "personal time" shall mean time other than that devoted to normal or assigned functions in teaching, extension, Component service, or direction or conduct of research on Component premises or utilizing "Component facilities".
 - 12.52 The term "Component facilities" shall mean any facility, including equipment and material, available to the inventor as a direct result of the inventor's affiliation with the Component, and which would not be available to a non-Component individual on the same basis.

- 12.53 Persons who claim that inventions or discoveries are made on personal time and without the use of Component facilities have the responsibility to disclose all such inventions to the Component in accordance with the disclosure procedures applicable to inventions made on Component time or with the use of Component facilities. It shall be the responsibility of the inventor to demonstrate the basis of the inventor's claim that only personal time and no Component facilities were utilized.
- 12.54 If the inventor so desires, inventions or discoveries made on personal time and without the use of Component facilities may be assigned to the Component. Under this arrangement, the procedures will be the same as for inventions or discoveries made by Component personnel on Component time or with the use of Component facilities and materials.
- 12.6 Patents Arising From Government Sponsored Research. Patents on inventions or discoveries arising from research financed by federal, state, or local government may be controlled by the terms of the grants and contracts specified by the government agency sponsoring the research, or by applicable law. In some cases, the sponsoring government agency may claim rights to patents resulting from the sponsored research.
- 12.61 Except as provided by law or by government-supported grants or contracts, or when no patent rights are claimed by the government agency, or when such rights are waived by the government, patents arising from government sponsored research are controlled by this Patent Policy.
- 12.62 When a patent arising out of research supported under government grants or contracts is owned by a Component that Component will, if requested, agree to a non-exclusive royalty-free license for use of such patent by the sponsoring government agency.
- 12.63 If such a patent is owned by the sponsoring government agency, the Component shall be free to use the invention so covered for its own scientific and educational purposes without payment of royalty or other charge, consistent with applicable law.
- 12.7 Patents Arising From Research Sponsored by Non-Governmental Entities. Each Component must ensure that its facilities and the results of the work of its employees are applied in a manner which best serves the interests of the public. Likewise, the legitimate interests of a private sponsor who provides financial or other support to research carried out through the Component must be considered.
- 12.71 Components should normally reserve the right to ownership of patents on inventions or discoveries arising out of research supported in whole or in part by grants or contracts with non-governmental organizations or firms. Contracts or agreements which are entered into between a Component and such

organizations or firms should contain clauses setting forth such a reservation unless deviations therefrom are requested by the sponsor and approved by the Component consistent with the public interest.

- 12.72 In the interest of fair treatment to the non-governmental sponsors of research, upon request special provisions may be negotiated which grant ownership of patents arising out of research sponsored by a non-governmental organization or firm to the sponsor of such research. In such cases, the Component should: (1) retain the right to use the invention or discovery for its own research, educational, and service purposes without the payment of royalty fees, (2) require the sponsor to use due diligence in the commercial use of the invention, and (3) retain the right to freely publish the results of its research after a reasonable period necessary to protect the rights of the parties and to allow for the filing of a patent application.
- 12.8 Component Patent Committee. The President of each Component shall appoint a Component Patent Committee, consisting of no less than three members, one of whom shall be designated by the President to serve as chairman of the Committee. Such Committee shall perform the duties delineated in this policy and such other duties as may be assigned to it by the President.
- 12.9 Duty to Disclose Discoveries and Inventions. All individuals covered by this policy have a duty to disclose in writing their inventions and discoveries promptly to the pertinent Component Patent Committee.
- 12.91 The duty to disclose arises as soon as the individual has reason to believe, based on his or her own knowledge or upon information supplied by others, that the invention or discovery may be patentable.
- 12.92 Certainty about patentability is not required before a disclosure should be made.
- 12.93 Individuals shall execute such declarations, assignments, or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of patent rights, to insure that title in such inventions shall be held by the Component, where this policy indicates the Component shall hold title, or by such other parties as may be appropriate under the circumstances.
- 12.(10) Review By Patent Committee. The Component Patent Committee, after receiving disclosure of an invention, shall forward a recommendation to the Component President concerning such discovery. Such recommendation shall include: (1) the committee's opinion whether the Component has an ownership interest in the invention in question, or whether such invention was one developed on personal time and without use of Component facilities, and (2)

whether and how the Component should assert and exploit its ownership interest in any invention or discovery.

12.(11) Waiver of Component Interests.

12.(11)1 If the Component President, after reviewing the recommendation of the Component Patent Committee, concludes that an invention or discovery is one developed on personal time and without the use of Component facilities, the President shall advise the inventor that the Component asserts no ownership interest in the invention or discovery.

12.(11)2 If the Component President, after reviewing the recommendation of the Component Patent Committee, concludes that a Component should not assert and exploit its interest in an invention developed on Component time or with the use of Component facilities, the inventor shall be notified that he is free to obtain and exploit a patent in his own right, and the Component shall not have any further rights, obligations or duties thereto except as it may specifically reserve.

12.(12) Patent Management. The President of each Component, or any person designated by him, is authorized to negotiate with reputable agencies or firms to secure for each Component arrangements for the management of inventions and discoveries in which the Component decides to assert and exploit its ownership interest.

12.(12)1 Such management may include, but is not limited to, competent evaluation of invention and discovery disclosures, expeditious filing of applications for patents, and licensing and administration of patents.

12.(12)2 A Component is authorized to administer its own patent management and licensing program without the use of a patent management agent, if it determines that such arrangement may better serve Component and public interests.

12.(13) Licenses. The President of each Component may grant licenses for the use of inventions and discoveries in which the Component has an ownership interest.

12.(13)1 It is recognized under some circumstances the granting of an exclusive license may be appropriate because in the absence of such a condition some inventions or discoveries may not reach the market place for the public benefit.

12.(13)2 Normally, an exclusive license may be granted for a period not to exceed five years, although the President may grant a longer period of exclusive license when he deems it advisable.

12.(14) Royalties.

12.(14)1 In consideration of the disclosure and assignment of invention rights, the inventor, or the inventor's heirs, successors, and assigns, normally shall receive fifty percent (50%) of the net royalties or other net income arising from an invention or discovery, after a deduction for administrative and patent management costs. Administrative and patent management costs include, but are not limited to, the costs associated with the patenting, licensing, and protection of patent rights. The remaining fifty percent (50%) of net royalties shall accrue to the Component responsible for the invention or discovery. Special facts concerning an invention or discovery may warrant a different distribution of royalties.

12.(14)2 Agreements with respect to royalties shall be in writing and signed by the inventor and the President of the Component.

12.(14)3 Any agreement which grants the inventor more than fifty percent (50%) of the net royalties shall require approval of the Board of Regents.

12.(15) Disposition of Income. In the disposition of any net income accruing to a Component from patents, first consideration will be given to the promotion of research.

12.(16) Avoidance of Conflicts.

12.(16)1 Any employee covered by *Sections 12.(17)2, 12.(18)1, or 12.(18)2* of this *Chapter* shall report in writing to the Component President, or his designee, the name of any business entity as referred to therein in which the person has an interest or for which the person serves as a director, officer, or employee and shall be responsible for submitting a revised written report upon any change in the interest or position held by such person in such business entity. These reports shall be accumulated in the office of the President (or designee), who shall immediately thereafter file his report with the System Administration. Upon approval by the Board of Regents, the report shall be submitted to the Governor and Legislature as required by the *Texas Education Code, Section 51.912*).

12.(16)2 Prior to signing any consulting agreement that deals with patent rights, trade secrets, or the like, where any Component time, facilities, materials, or other resources are involved, Component personnel and students must bring the proposed agreement to the attention of the appropriate administrators of the Component and either obtain a waiver of Component rights or otherwise modify the consulting

agreement to conform with this policy, as is determined by the Component in its discretion.

12.(17) Equity Interests.

- 12.(17)1 Owned by the Component. In agreements with business entities relating to rights in inventions and discoveries owned by a Component, the Component may receive equity interests as partial or total compensation for the rights conveyed.
- 12.(17)2 Owned by an Employee. In accordance with *Texas Education Code, Section 51.912*, and subject to review and approval by the President of a Component, employees of a Component who conceive, create, discover, invent, or develop inventions or discoveries may hold an equity interest in a business entity that has an agreement with the Component relating to the research, development, licensing or exploration of those discoveries or inventions.
- 12.(17)3 The Component may negotiate, but shall not be obligated to negotiate, an equity interest on behalf of any employee as a part of an agreement between the Component and a business entity relating to inventions and discoveries conceived, created, discovered, invented, or developed by the employee and owned by the Component.
- 12.(17)4 Dividend income and income from the sale or disposition of equity interests held by a Component pursuant to agreements relating to inventions and discoveries shall belong to the Component and shall be distributed in accordance with the provisions of this policy. Dividend income and income from the sale or disposition of an equity interest held by a Component employee pursuant to an agreement between the Component and a business entity relating to rights in inventions and discoveries conceived, created, discovered, invented, or developed by such employee shall belong to the employee.

12.(18) Business/Management Participation.

- 12.(18)1 By Employees. Any Component employee who conceives, creates, discovers, invents, or develops an invention or discovery shall not serve as a member of the board of directors or other governing board, or as an officer or an employee (other than as a consultant in accordance with Component and Regent policies and regulations) of a business entity that has an agreement with the Component relating to the research, development, licensing, or exploitation of that invention or discovery without prior review and approval by the President of the Component.