



**OP 76.01: INTELLECTUAL PROPERTY**

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## I. INTRODUCTION

Mississippi State University (MSU) is dedicated to learning, service, and research. A primary means for implementing these three areas of dedication is the transfer and dissemination of knowledge to the public. MSU personnel recognize as two of their major objectives the development of new knowledge and dissemination of both old and new knowledge to the public. Inherent in these objectives is the need to encourage production of new and useful devices and processes, the publication of scholarly and creative works, and development of computer software. Such activities (a) contribute to the professional growth of the faculty, staff, or students involved, (b) enhance the reputation of the University units concerned, (c) provide additional educational opportunities for participating students, and (d) enhance the general welfare of the public at large.

MSU recognizes the fact that in the community of scholars there are certain indisputable rights to freedom of expression. MSU encourages the search for knowledge and truth and does not abridge the scholar's right to reveal his/her findings, even if in doing so he/she may find variances with students and professional peers, as well as with the lay community.

Patentable inventions and patentable and copyrighted materials, which are defined later as Intellectual Property, often come about because of activities of MSU faculty and other employees through the use of University resources. It becomes significant, therefore, that MSU use all of its available resources to insure utilization of such inventions and materials for the public good and to expedite their development and marketing. Concurrently, the rights and privileges of inventors or creators must be preserved so their initiatives, as well as those of other faculty, staff, or students, may be further encouraged and stimulated.

MSU recognizes and encourages development of new and useful devices and processes, publication of scholarly works, and development of computer software as an integral part of the processes of learning, service, and research. MSU acknowledges that faculty and other employees regularly prepare, usually through individual effort and initiative, articles, pamphlets, books, and other scholarly works that may be subject to the provisions of copyright law and may generate royalty income for the authors, inventors, or creators. Publication, manufacture, or production may also result from work supported either partially or completely by the institution. Given the diversities in knowledge and procedures in a University community, the variety and numbers of works created are continually increasing, thereby causing the ownership of such materials to be an increasingly complex issue.

MSU recognizes the need for increased development and dissemination of software technology as a means of enhancing both old and new knowledge. Inasmuch as MSU is aware of the dynamic nature of software and that the value of intellectual property comes from the ability of its owner to control its use and that such value is directly related to the degree of protection it enjoys under the law,

MSU encourages the protection of such expressions of knowledge by the utilization of appropriate intellectual property laws and the creation of comprehensive software technology transfer and commercialization policies and procedures.

MSU recognizes that as a Land Grant institution with a substantive agricultural research program, development of new and novel plant materials with enhanced performance as food, fiber and fuel are an expected outcome of sponsored research activities conducted either independently or in collaboration with federal agencies and industry partners. Intellectual property protection of plant materials is supported through domestic and international law and policy and preserves the inventor's exclusive rights to sell, reproduce, import, and export the plant variety and its germplasm. MSU encourages the protection of such plant materials by the utilization of appropriate intellectual property laws and technology transfer and commercialization policies and procedures.

MSU actively seeks to engage with industry in supportive and collaborative research and development activities. As a land-grant university, MSU has as a fundamental part of its mission the innovation, growth and economic development of the State of Mississippi. Grants and contract funding from industry are an important element of the research portfolio at MSU. These provide an excellent opportunity for the university to partner with industry in innovation. These partnerships can and should lead to ever deeper and more meaningful relationships between the industry and the university. In most instances, the real and long-term value to both the university and company is through an end-to-end partnership arrangement that spurs collaboration and generation of new ideas and products. As such, the university will take a flexible approach to intellectual property protection and commercialization, recognizing the investment that companies have made in sponsored research. Within the legal limits of state and federal statutes, the university will vest ownership of intellectual property in arrangements that recognize this investment, as appropriate.

The foregoing considered, MSU hereby establishes the following policy with respect to the developmental process, protection, transfer, and commercialization of rights to Intellectual Property, defined below, resulting from the work of its faculty and other employees.

## II. DEFINITIONS

**2.1 “Intellectual Property”** shall mean any patentable materials, Plant Intellectual Property, copyrighted materials, trademarks, software, art and creative endeavors, know-how, and trade secrets, whether or not formal protection is sought.

**2.2 “Patentable Materials”** shall mean items other than software that reasonably appear to qualify for protection under Title 35, Section 101, USC of the United States or other protective statutes, including patentable plants, whether or not patentable thereunder.

**2.3 “Copyrighted Materials”** shall mean the following:

- (a) Books, journal articles, texts, glossaries, bibliographies, class notes, study guides, laboratory manuals, reports, syllabi, tests, and proposals;
- (b) Lectures, musical or dramatic compositions, unpublished script, works of art;
- (c) Films, filmstrips, charts, transparencies, and other visual aids;
- (d) Video and audio tapes or cassettes;

- (e) Live video and audio broadcasts;
- (f) Programmed instructional materials;
- (g) Mask works;
- (h) Other materials or works, other than software, that qualify for protection under the copyright laws of the United States (USC 102), whether or not registration with the US Copyright Office has been applied for.

**2.4 “Software”** shall mean one or more computer programs existing in any form, along with any associated operational procedures, manual, or other documentation, whether or not protectable or protected by patent or copyright. The term “computer program” shall mean a set of instructions and statements of related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

**2.5 “Trademarks”** shall mean all trademarks, service marks, trade names, seals, symbols, designs, slogans, or logotypes associated with Intellectual Property developed as a result of research conducted by MSU personnel.

The trademarks, service marks, symbols, designs, slogans, seals, and logotypes representing MSU and described in Policy and Procedures Index, Trademark Licensing Policy found in Volume I, Presidential Matters, Section 06. General Counsel, MSU Policy 06.03, shall not be subject to the provisions of this Intellectual Property Policy.

**2.6 “Trade Secrets”** shall mean information including, but not limited to, technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers that:

- (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper and legal means by, other persons, who can obtain economic value from its disclosure or use; and
- (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**2.7 “Plant Germplasm and Related Plant Materials”** shall mean plant varieties, germplasm, lines, cultivars, strains, accessions, cells, DNA sequences, and other living plant materials capable of reproduction. Plant Germplasm and Related Plant Materials may be reproduced and propagated sexually by seed [including apomixes] or asexually by vegetative means [cuttings, scions, tissue culture, bulbs, tubers, corms, etc.].

**2.8 “Plant Intellectual Property”** shall mean a form of intellectual property associated with Plant Germplasm and Related Plant Materials that can be protected through plant variety protection (PVP), PVP with TITLE V Protection, plant patent, utility patent, or trade secret.

**2.9 “Mask Work”** shall mean a series of related images, however fixed or encoded: (a) having or

representing a predetermined, three dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (b) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

**2.10 “Scholarly and Creative Works”** shall mean certain copyrightable materials such as traditional academic publications, professional papers published in scholarly journals, research proposals, research articles, newly created texts published in journals or books, class notes, classroom presentations and instruction, research monographs, paintings, drawings, sculpture, musical compositions and performances, dramatic works and performances, poetry, and popular fiction and nonfiction.

**2.11 “Nominal Use of University Resources”** shall mean use that is customary or usual given the employee’s appointment and academic assignments. For example, the use of office, computer, photocopier, telephone, office supplies, secretarial assistance, and other assigned resources in the ordinary support of his or her responsibilities and assigned activities is considered to be nominal. University personnel may make such Nominal Use of University resources and devote office time in carrying out a range of professional activities.

**2.12 “Substantial Use of University Resources”** shall mean use of University facilities, equipment, personnel and an employee’s own time beyond nominal (or customary) as described above. Substantial Use of resources occurs when creation of the work or Intellectual Property in question requires use of University resources beyond those allocated to individuals in support of assigned responsibilities and activities within their respective departments or colleges. Such usage may occur as a result of actions of the personnel involved, may occur when specific assignments are given to personnel, or may occur in situations where contracts or other obligations are involved.

The following examples generally define Substantial Use when they are applied, singly or in combination, in support of a revenue-producing work. It is the responsibility of the dean, director, or equivalent supervisor to evaluate situations and determine whether or not Substantial Use of resources has occurred. Faculty members or other employees also have an obligation to notify their supervisors promptly when they believe their work will involve more than Nominal Use.

The following are examples of Substantial Use:

- (a) Extended use of time and energy by the developer(s) in creation or promotion of a work that results in a reduction in the levels of teaching, scholarship, or other assigned University activities, and the developer’s(s’) anticipated instructional load in these areas is at a level significantly lower than normal;
- (b) Greater than customary or Nominal Use of University facilities such as laboratories, studios, equipment, production facilities, or specialized computing resources in direct support of development of the work in question;
- (c) Extraordinary University funding in support of the work’s creation, publication, manufacture or production;

- (d) Direct assignment or commission from the University to undertake a creative project as a part of the developer's regular appointment;
- (e) Substantial Use of funding from gifts to the University to support creation of the work(s) involved;
- (f) Production of the works under specific terms of a sponsored research grant or contract;
- (g) Use of specifically designated University funds to support media production.

**2.13 “Mississippi State University Research and Technology Corporation”** (hereinafter referred to as “RTC”) is a 501(c)(3) company organized to facilitate the unique and important relationships between MSU and industrial affiliates. The corporation is designed to take advantage of opportunities not otherwise available to state universities (i.e. equity positions in start-up companies).

### **III. INTELLECTUAL PROPERTY ADVISORY COMMITTEE**

An Intellectual Property Advisory Committee will arbitrate and recommend final decisions concerning ownership of Intellectual Property, and assist in mediating and resolving any disputes between the University and developers. This committee shall be an ad hoc committee.

A majority of the committee will be composed of faculty. Members of the ad hoc intellectual property advisory committee will be appointed by the Vice President for Research and Economic Development and the Vice President for the Division of Agriculture, Forestry, and Veterinary Medicine. The committee will include no fewer than four and no more than ten experienced faculty, administrative and professional staff members, one of whom shall be designated by the Vice President for Research and Economic Development to serve as Chair. Care will be taken to include representation from areas with major, constant involvement with intellectual properties. The Chair may add additional non-voting members as necessary. The MSU Director of the Office of Technology Management (hereinafter referred to as “OTM”) and the Associate Vice President for Corporate Engagement and Economic Development will serve as ex officio, non-voting members of this committee.

### **IV. INTELLECTUAL PROPERTY POLICY APPLICABILITY**

This policy shall be applicable to all full or part-time, adjunct, visiting scholars, faculty and other Employees of Mississippi State University and to students as set forth in Section V.

### **V. ASSIGNMENT OF RIGHTS**

If any Intellectual Property is determined, in accordance with this policy, to be owned by MSU, the developer/creator shall execute an assignment of rights, wherein they assign all rights, title and interests to MSU, with exceptions noted in 7.3. Formal execution of this assignment may be accomplished when disclosure is made with the OTM or when a patent application is filed.

In general, students of MSU will be entitled to own their own their Intellectual Property made during their enrollment as a student of MSU and will generally not be required to assign his or her ownership to MSU. By way of example, student financial aid including, but not limited to scholarships, grants, loans, tuition waivers, and educational fee reductions, generally available to MSU students and unrelated to any provision of services by the student to the MSU shall not be interpreted as compensation as an MSU employee.

However, students of MSU shall be required to execute an assignment of rights for Intellectual Property when the Intellectual Property is developed using MSU facilities or equipment not available to the general public; or if they develop the Intellectual Property whenever they:

- (a) are employees of MSU; or
- (b) hold awards such as scholarships or fellowships through MSU under which the funding body has placed restrictions as to Intellectual Property developed during the course of the award; or
- (c) are co-inventors/co-creators with a party or parties required to assign their Intellectual Property rights to MSU; or
- (d) utilize proprietary know-how provided by a party or parties required to assign their Intellectual Property rights to MSU; or
- (e) are assigned, directed, specifically funded, or commissioned by MSU to develop the Intellectual Property. In the event that a student is required to assign his/her rights to MSU pursuant to this paragraph, this policy shall be applicable.

## **VI. DETERMINATION OF RIGHTS IN INTELLECTUAL PROPERTY**

**6.1 Sponsored Research Efforts.** Grants or contracts between external sponsors and MSU, under which Intellectual Property is produced, may contain specific provisions with respect to disposition of rights to such property. The sponsor (a) may specify that the materials be placed in the public domain, (b) may claim reproduction, license-free use, or other rights, or (c) may assign all rights to MSU.

**6.2 University Assigned Efforts.** Ownership of Intellectual Property developed as a result of an assigned University effort or a commission to undertake a creative project (as noted in 2.12.c earlier), shall reside with MSU. With respect to traditional academic publications (including class notes, manuscripts, syllabi, etc.), the general obligation to engage in Scholarly and Creative Works as a part of an employee's core responsibilities in teaching, research, and service does not constitute a specific assigned University effort.

Intellectual Property (other than Scholarly and Creative Works or Mediated Courseware) shall be considered as having been developed as a result of an assigned University effort whenever:

- (a) The general scope of University employment, field of work, or duties include education, research, service, investigation, or the supervision of research or investigation, and the

Intellectual Property is conceived or first reduced to practice as part of, or as a direct result of such activities and relates to the general field of an inquiry to which the person is assigned; or

(b) The Intellectual Property is made or developed through the use of University financing, facilities, resources, or on University time; or

(c) The Intellectual Property involves the use of University information not then available to the public; or

(d) The Intellectual Property is conceived or first reduced to practice as part of, or as a direct result of, any effort normally associated with one's field of work, discipline and position, in education, research and service

**6.3 Scholarly or Creative Works.** Scholarly or Creative Works (traditional academic publications, e.g. monographs, books, refereed papers, articles for publication in scholarly journals, textbooks for publication and sale by commercial publishers) may result from usual activities of faculty and Nominal Use of University resources. Because there is no specific assignment for faculty to develop such Scholarly or Creative Works, although they may be incorporated into the regular recognition and rewards processes of MSU because they are used throughout the academic community as a measure of the quantity and quality of the research and teaching effort, these works are not considered work for hire but professional activities wherein the copyright is vested with the creator who is entitled to royalties or other income derived from such works.

**6.4 Other Copyrighted Materials.** Copyrighted Materials created with Substantial Use of University resources or for research and educational use in the laboratories and classrooms of MSU are considered to result from an assigned University effort, and so copyright of these materials is vested with MSU in accordance with Section 6.2.

### **6.5 Intellectual Property Resulting from Activities Outside the Scope of Employment.**

(a) Intellectual Property developed by University personnel outside their scope of employment or assigned University effort, on their own time, at their own expense will be the exclusive property of the inventor/creator provided that University facilities, equipment, supplies, personnel or other resources have not been used to develop the Intellectual Property.

(b) Intellectual Property derived directly from the private consulting services of University personnel, which consulting is done on their own time and at their own expense will be the exclusive property of the inventor/creator, provided that University facilities, equipment, supplies, personnel or other resources have not been used to develop the Intellectual Property.

(c) Prior to applying for a patent, making a public disclosure or contacting any entity or person outside the university, the inventor/creator must disclose the Intellectual Property to the University. The disclosure is to be filed with the University Patent Officer for review and transmittal to the Vice President for Research and Economic Development who will make a determination as to the respective rights of the University and inventor/creator in



the Intellectual Property after consulting with the appropriate Dean, Director, or other Vice Presidents. To assist in making decisions regarding rights of the inventor/creator and University, the inventor/creator shall provide the following information to the University Patent Officer:

- (i) The circumstances under which the Intellectual Property was discovered and developed.
- (ii) The inventor's/creator's official duties, as given on his or her job description/contract with the University or as assigned at the time of the development of the Intellectual Property.

Any Intellectual Property not so disclosed by an employee while employed by the University is presumed to have been made within the scope of University employment and assigned University effort.

**6.6 Mediated Courseware.** "Mediated Courseware" shall mean on-line course materials (course material distributed through electronic media) that meet all of the following criteria: 1) The courseware enables instructors to rely exclusively or substantially on non-classroom contact hours for instruction; makes extensive use of technology, including but not limited to video conferencing, streaming media, and similar technologies; potentially could permit students from other institutions and citizens from across the state and nation to access courses offered by the University upon payment of a specified fee.

- (a) Self-initiated Mediated Courseware. When employees develop mediated courseware without a specific assigned University effort and with only Nominal Use of University resources, the ownership of the courseware shall remain with the employee and the following provisions shall apply:
  - (i) During the period of employment, the author(s) will not be entitled to charge the University a fee, apart from the salary compensation they otherwise receive, for using author-owned courseware in teaching by the author(s) at the University; and
  - (ii) The mediated courseware shall not be sold, leased, rented or otherwise used in a manner that competes in a substantial way with the for-credit offering of the University unless that transaction has received the approval of the Provost.
  - (iii) If the author(s) leaves the University, the University will have a nonexclusive, royalty free right to use, reproduce, adapt, modify, update, exhibit, display, sell and use in compilations all courseware created during the period of University employment of the author(s).

(b) University Assigned Mediated Courseware. When the University specifically assigns one or more employees to develop Mediated Courseware or it requires Substantial Use of University resources to develop the Mediated Courseware, the resulting courseware belongs to the University and the University shall have the sole right to make derivative works and to decide who will utilize the courseware in instruction. The University, at its sole discretion, will control the right to use, reproduce, adapt, modify, update, exhibit, display,

sell, use in compilations and create derivative works from such courseware. Income derived from the commercialization of Mediated Courseware resulting from an assigned University effort will be distributed to the author(s) based on this Intellectual Property Policy, Section 7.6.

**6.7 Other Efforts.** Ownership rights to Intellectual Property developed under circumstances other than those listed in Sections 6.1 through 6.5 shall be determined on an individual basis by the Intellectual Property Advisory Committee and approved by the President or his or her designee. The inventor's or creator's dean/director or supervisor shall make a recommendation as to ownership of the Intellectual Property to the Intellectual Property Advisory Committee through the appropriate vice president.

## **VII. ADMINISTRATIVE PROCEDURES**

**7.1 Responsibility – Designation of Appropriate Vice President.** The Vice President for Research and Economic Development and the Vice President for Agriculture, Forestry, and Veterinary Medicine, who is signatory for Intellectual Property activities for the Division of Agriculture, Forestry, and Veterinary Medicine, will exercise responsibility for administration of the principles and policies set forth in this policy. That responsibility shall be executed through establishment and utilization of the OTM, the Director of which reports to the Vice President for Research and Economic Development, and the MSU Intellectual Property Advisory Committee, which reports to the Vice President for Research and Economic Development.

**7.2 Intellectual Property Administration Organization.** MSU may utilize either the OTM or the RTC, as its Intellectual Property administration organization. The procedures for utilization of the RTC shall be as follows:

An Intellectual Property Administration Agreement shall be established between MSU and the RTC. This agreement will provide for the assignment of MSU-owned Intellectual Property to the RTC. The RTC shall administer the Intellectual Property.

The OTM, upon instruction from the appropriate vice president, shall transfer responsibility for the administration of the Intellectual Property to the RTC.

The RTC is authorized to seek protection for potential licensing purposes for those Intellectual Properties transferred to it.

The OTM is authorized to seek protection for potential licensing purposes for Intellectual Properties that are not transferred to the RTC.

Should a college, school, laboratory, center, or individual inventor/creator deem Intellectual Property protection necessary for purposes other than potential licensing, that unit must fund such protection.

### **7.3 Disclosure of Intellectual Property.**

**(a) Patentable Materials and Software.** Except as provided in 7.3.b below, disclosure is required for all Patentable Materials, Software, Plant Intellectual Property and other Intellectual Property

categorized as 6.1 (Sponsor Supported Efforts), 6.2 (University Assigned Efforts) or 6.6 (Other Efforts). MSU personnel shall promptly provide the OTM with a disclosure statement describing their inventions, software, new material, devices, and processes using forms provided by the OTM. MSU personnel shall sign all documentation necessary to protect and commercialize the Intellectual Property.

**(b) Copyrighted Materials.** Disclosures are not required for Copyrighted Materials categorized as 6.2 (University Assigned Efforts) or 6.4 (Other Copyrighted Materials) when such works are for public use or for internal use (e.g. instructional or research purposes) even though ownership resides with MSU. When such works may be licensable to third parties, disclosure is required using forms provided by the OTM.

**(c) Scholarly and Creative Works.** Disclosures are not required for Scholarly and Creative Works categorized as 6.3 in which the copyright is vested with the creator, such as articles for publication in scholarly or professional journals.

The University has a responsibility to inform a disclosing employee in a timely manner regarding its decision to pursue protection via patent, or other means, of disclosed materials, devices, processes, or other inventions. The University will notify the employee in writing of its intent to pursue or decline to pursue protection. Such notification will be provided within 90 days of a written request from the disclosing employee. Failure by the University to provide written intent to pursue protection within the 90-day time period will indicate declination of the University to pursue such protection. University failure to secure protection within one year of notifying the disclosing employee of intent to do so will also indicate University declination to pursue such protection. Declination to pursue protection frees the disclosing employee to pursue independently protection of the material, device, process or other invention. When the University declines to pursue protection of the disclosed materials, devices, processes, or other inventions the disclosing employee may request that such Intellectual Property be assigned to the RTC so that the employee may negotiate the terms under which the RTC or the disclosing employee pursues protection.

**7.4 Confidentiality.** Certain contractual obligations and governmental regulations require that information be maintained in confidence. Additionally, some works, such as computer software, may best be protected and licensed as trade secrets. Some inventions must be maintained in confidence for limited periods to avoid the loss of patent rights. Accordingly, the timing of publications and/or presentations is important, and MSU personnel shall use their best efforts to keep the following items confidential:

- (a) All information or material designated as confidential in a contract, grant, or similar document;
- (b) All information or material designated or required to be maintained as confidential under applicable government statutes or regulations; and
- (c) All information relating to Intellectual Property developed by MSU personnel, which may be protected under this policy, until application has been made for protection.

**7.5 Collaboration.** Collaboration between MSU personnel and persons not employed or associated with MSU, including researchers at other universities, federal agencies, or companies, can result in development of Intellectual Property that is jointly owned by MSU and the other persons or their employers. Protection and commercialization of such jointly owned Intellectual Property could be difficult without extensive cooperation and agreement among the owners. Accordingly, MSU personnel involved in collaborative activities that result in development of Intellectual Property shall advise the OTM of such activities.

**7.6 Distribution of Income – MSU Owned Intellectual Property.** Income derived from the commercialization of any MSU-owned Intellectual Property shall be distributed as outlined below.

(a) First, all income will be used to reimburse out-of-pocket expenses incurred by MSU or RTC, as appropriate, during the commercialization process. Such expenses shall be documented incremental costs for: (a) protecting (e.g. patent prosecution and/or copyright registration, patent/copyright maintenance); (b) defending; (c) marketing; and (d) licensing the IP. Such expenses shall also include costs for (e) enhancing the marketability or any other aspect of the IP; and (f) dealing with RTC equity interest associated with the IP. OTM at its discretion may hold the distribution of income to cover anticipated future expenses (i.e. patent prosecution). Specifically excluded are costs associated with generating the IP (i.e. research costs).

(b) After all expenses have been reimbursed; all subsequent income from commercialization of MSU-owned Intellectual Property, exclusive of Plant Intellectual Property, shall be distributed as follows (Table 1):

Table 1. Distribution of income derived from commercialization of MSU owned Intellectual Property, exclusive of Patentable Plants and Plant Varieties.

Subsequent Income <sup>1</sup>	First \$5,000	\$5,000 – \$100,000	Above \$100,000
Inventor(s)/Creator(s) <sup>2,5,6</sup>	100%	50%	40%
Inventor’s(s’)/Creator’s(s’) College, Department, Center, or Unit <sup>3,8</sup>	0%	25%	30%
Development Fund <sup>4</sup>	0%	10%	20%
MSU Office of Technology Management or Research and Technology Corporation <sup>7</sup>	0%	15%	10%

(c) Plant breeding programs at MSU are housed within separately-funded units of the Mississippi Agricultural and Forestry Experiment Station (MAFES) and the Forest and Wildlife Research Center (FWRC), each legislatively-created agencies that independently support plant breeding programs and costs of intellectual property protection and commercialization. This policy applies to all faculty, staff, students, and any other persons receiving funding from MAFES/FWRC. So as to ensure long-term sustainable plant breeding programs/development programs in MAFES/FWRC, after all expenses have been reimbursed all subsequent income derived from commercialization of Plant Intellectual Property, subject to the support identified within this paragraph shall be distributed as follows (Table 2):

Table 2. Distribution of income derived from commercialization of MSU owned Patentable Plants and Plant Varieties.

Subsequent Income <sup>1</sup>	First \$5,000	\$5,000 – \$100,000	Above \$100,000
Inventor(s)/Creator(s) <sup>2,5,6</sup>	100%	40%	35%
Inventor’s(s’)/Creator’s(s’) Center, or Unit <sup>3,8</sup>	0%	25%	30%
Plant Breeding Program	0%	20%	25%
MSU Office of Technology Management or Research and Technology Corporation <sup>7</sup>	0%	15%	10%

(d) MAFES and FWRC independently support plant breeding programs and costs of intellectual property protection for Plant Intellectual Property will be supported by these units.

(e) Plant Intellectual Property not subject to support of MAFES or FWRC shall be subject to the distribution out lined in Table 1.

Notes:

1. As used herein, “Subsequent Income” means the cumulative income received over the life of the patent or other Intellectual Property being licensed after expenses have been reimbursed.

2. In the case of multiple inventors/creators, the inventors’/creators’ share shall be distributed among all inventors/creators in accordance with an agreement signed by all inventors/creators. The agreement, which may be stipulated on the invention or copyright disclosure form, shall be approved by the appropriate vice president prior to the submission of the patent application or final execution of a license agreement. The OTM or the RTC will administer distributions to inventor(s)/creator(s) in accord with this section.

In the case where there are no MSU inventors/creators as a result of a donation or assignment of Intellectual Property by a third party or for any other reason, the College, Department, Center, or Unit that received the donation or supports further research and development on the Intellectual Property shall receive 50% of any subsequent income; the Development Fund shall receive 25%; and the OTM or the RTC shall receive 25%. In the event that no further research is undertaken by a College, Department, Center, or Unit, the Development Fund shall receive 50%; and the OTM or the RTC shall receive 50%, provided, however, that if the donation was received by, or on behalf of, a College, Department, Center, or Unit then that College, Department, Center, or Unit will continue to receive 50% of any Subsequent Income, the Development Fund shall receive 25%; and the OTM or the RTC shall receive 25%.

3. When there are multiple inventors, distributions of Subsequent Income to the College, Department, Center, or Unit, shall be based upon the percent contribution to the Intellectual Property made by inventor(s) from each such College, Department, Center, or Unit. The percent

contribution of the inventors shall be based upon the percent allocated to the inventor(s) under the inventors' royalty sharing agreement. For example, inventor(s) from Unit A receive 70% of the royalty income while inventor(s) from Unit B receive 30% of the Royalty share. In such case, Unit A will receive 70% of the Department/Center/Unit share while Unit B will receive 30%.

Distributions of Subsequent Income within the College, Department, Center or Unit will be recommended to the appropriate vice president, through each unit's appropriate dean/director, by the appropriate department head; provided however, that any distribution in excess of \$1,000,000 per year shall be at the discretion of the President – each unit should establish a standard policy for administering royalty distributions within their unit prior to licensing the technology.

4. The Development Fund may be used for the further development of Intellectual Properties or for research and education purposes. Refer to Section X for procedures.

5. The inventor's(s') share shall continue to be paid to the inventor even if the inventor(s) leaves the University. In the event of the inventor's death the royalty will be paid in accordance with the inventor's testamentary disposition (wills, trusts and similar mechanisms) or, in the absence of such disposition, as provided by law.

Where any amount allocated to an individual inventor/creator cannot be distributed within five years because of inability to locate such individual, or heirs, such amount shall be reallocated proportionately to the remaining inventors or to the Development Fund in the case where no inventors can be located.

When there is a reasonable basis for believing that amounts subject to allocation and distribution under this Policy may be required to be refunded or otherwise expended, or that others may have a claim to such amounts, allocation and distribution may be delayed for a reasonable period required for resolution of the matter.

6. Inventor(s) may arrange for their personal share of royalty income to be retained by MSU or the RTC (e.g., to support their research program).

7. This share (distributed to OTM or RTC) will be used to support the University's Technology Commercialization program. This support includes patenting and licensing expenses.

8. Used in the table, "college" includes the Mississippi Agricultural and Forestry Experiment Station (MAFES), the Mississippi State University Extension Service (MSU/ES), and the Forest and Wildlife Research Center (FWRC). Any distribution allocable to MAFES, MSU/ES or FWRC will be administered by the respective directors of MAFES, MSU/ES, and FWRC.

**7.7 RTC Owned Intellectual Property.** Income derived from the commercialization of any RTC-owned Intellectual Property shall be distributed as outlined in Section 7.6 above or according to a distribution as agreed upon at the time of an assignment of MSU Intellectual Property to the RTC. The RTC may acquire equity interests in a private business entity licensing RTC Intellectual Property when traditional sources of licensing are not available.

## **VIII. APPEALS AND CONFLICTS**

An inventor may appeal a decision or determination made pursuant to this policy by submitting an appeal in writing to the Vice President for Research and Economic Development within 30 days of receiving notice of the decision or determination.

The Vice President for Research and Economic Development shall assemble the Intellectual Property Advisory Committee. The committee will review the appeal and make a recommendation to the Vice President for Research and Economic Development who will render a decision in writing within 30 days of receiving the recommendation from the Committee. The Vice President for Agriculture, Forestry, and Veterinary Medicine will be consulted as appropriate before said decision is rendered.

The inventor may appeal the decision of the Vice President for Research and Economic Development to the President of MSU, who will make the final decision and notify the inventors in writing.

## **IX. CHANGES IN POLICY**

This policy will be reviewed every four (4) years. This policy may be changed by the President on the recommendation of the Vice President for Research and Economic Development and/or the Vice President for Agriculture, Forestry, and Veterinary Medicine and the Intellectual Property Advisory Committee.

In the event of conflict between this policy and the Intellectual Property Policy of the Board of Trustees of State Institutions of Higher Learning, the latter shall prevail.

## **X. DEVELOPMENT FUNDS**

Development Funds may be used for the further development of Intellectual Properties that appear to have significant commercial potential but are not yet at the stage where they can be effectively evaluated by third parties. Expenditure of funds for such further development shall be recommended by the Director of the OTM.

MSU faculty and staff may apply for use of these funds through their respective department and college to the appropriate vice president for submission to the Director of the OTM. The OTM and the RTC will publish detailed instructions for such application at least annually. Applications will consist of short (not to exceed five pages) descriptions of the development to be carried out by the faculty member. Emphasis should be placed on the anticipated commercial viability of the work and why normal extramural funding is not appropriate for this work.

Development Funds may also be used for out-of-pocket expenses incurred by MSU during the commercialization process. Such expenses shall be limited to documented incremental costs for: (a) protecting (e.g. patent prosecution and/or copyright registration, patent/copyright maintenance); (b) defending; (c) marketing; and (d) licensing the IP. Such expenses shall also include costs for (e) enhancing the marketability or any other aspect of the IP; and (f) dealing with RTC equity interest associated with the IP. Development Funds used for these purposes shall be administered by the OTM. Development Funds may also be used for research and education purposes.

**Recommend by:**

/s/ David Shaw  
Vice President for Research and  
Economic Development

07/15/2015  
Date

/s/ Greg Bohach  
Vice President for Agriculture, Forestry and  
Veterinary Medicine

07/16/2015  
Date

**Reviewed by:**

/s/ Timothy N. Chamblee  
Assistant Vice President and Director  
Institutional Research and Effectiveness

07/20/2015  
Date

/s/ Joan L. Lucas  
General Counsel

07/23/2015  
Date

**Approved:**

/s/ Mark Keenum  
President

08/25/2015  
Date