

*[Approved by the Board of Trustees on March 5, 2016; effective March 5, 2016,  
revised on November 1, 2019 by the Provost.  
This policy replaces the College's Patent Policy dated April 24, 1978, as revised, and the College's  
Copyright Policy dated September 27, 1994.]*

## **Dartmouth College**

### **Policy on Patents, Copyrights and Other Intellectual Property Rights**

#### **A. Introduction**

This policy is intended to further education, research, and the creation, preservation and dissemination of knowledge for the benefit of society. Inherent in these objectives is the development of new and useful ideas and inventions, scholarly works and other intellectual property.

The specific aims of this policy are as follows:

- to encourage creativity among College faculty, students and staff;
- to attract and retain outstanding instructors, researchers and students;
- to increase the likelihood that intellectual property produced at the College is used to benefit the public;
- to protect the traditional rights of College scholars with respect to ownership of the products of their intellectual endeavors;
- to assure compliance with law and the provisions of contracts with external sponsors and other third parties; and
- to provide that, when intellectual property is introduced for commercial development, the inventor(s), the author(s), the creator(s), and the College share on an equitable basis in any remuneration received.

#### **B. Definitions**

"Associated Materials" means, with respect to any Invention, lab notebooks, records, drawings, sketches, photographs, radiographs or other images, models, biological specimens, chemical samples, or other materials needed to support the preparation, submission, prosecution, defense, or enforcement of a patent in the United States or any other jurisdiction.

"Author" means the creator of a Work of Authorship, as defined under the Copyright Law of the United States.

"College" means Trustees of Dartmouth College, including all of its schools, institutes, and centers.

"Commercial Venture" means a corporation, a limited liability company or other entity that is not wholly-owned by the College.

"Computer Software" means the source code and the object code, and related documentation, of computer programs, and designs of computer circuitry and microprocessor chips.

"Covered Person" means (i) any individual holding a College academic appointment, including without limitation a Faculty Member, a Distinguished Fellow and a Postdoctoral Scholar, (ii) a Staff Member, (iii) a Research Visitor, or (iv) a Student.

"Creator" means an individual who is responsible for, or who makes a significant intellectual contribution toward, the conception, i.e., mental picture, of Tangible Research Materials or any Trademark.

"DEN" means the Dartmouth Entrepreneurial Network or any successor organizational unit.

"Designated Research Funds" means any College funds other than Restricted Research Funds the use of which is limited to a specified research or other academic purpose by the College, including without limitation any Faculty Member start-up funds or other funds distributed pursuant to an internal College funding program, but excluding funds for Faculty Member salaries that are derived from endowed professorships or comparable College gift funds.

"Direct Expenses" means expenses incurred by the College and specifically allocable to the review, assessment or protection of an Invention, Work of Authorship or other Intellectual Property, the enforcement of Intellectual Property Rights therein, or the generation of income therefrom, including without limitation outside legal and patent agent fees, search fees, government filing and maintenance fees, license audit fees, third party settlement payments, travel and other expenses incurred in connection with negotiations with third parties, and direct costs and expenses attributable to or allocated to the generation of Tangible Research Materials used to generate any Revenues. Direct Expenses do not include (i) any expenses of the type described in the preceding sentence that are payable under a license or other agreement by a third party licensee or assignee that is not an Inventor Company and (ii) OETT staff time or OETT general administrative expenses.

"Distinguished Fellow" has the meaning given to it in the Faculty Handbook.

"Effective Date" means March 5, 2016.

"Equity" means shares of stock, partnership or limited liability company interests, or any other instrument conveying any ownership interest in a corporation, a limited liability company, or other entity.

"Equity Equivalent" means as to any Equity, any security or obligation that by its terms is, directly or indirectly, convertible into or exchangeable or exercisable for, such Equity, or any option, warrant or other right to subscribe for, purchase, or acquire, such Equity.

"Faculty Handbook" means the Handbook of the Faculty of Arts and Sciences, the Faculty Appointments, Promotions and Titles at the Geisel School of Medicine at Dartmouth and the Tuck Faculty Handbook, or any successor to any of these documents, as in effect from time to time.

"Faculty Member" means an individual who holds a College faculty appointment, including without limitation an individual holding a tenured or tenure-track appointment, an emeritus faculty member, an adjunct faculty member, a research faculty member, or any other individual holding a title that is designated in the Faculty Handbook as faculty, including without limitation a Resident Scholar or a Visiting Scholar.

"Fully-Diluted Basis" means, as of any date of determination, with respect to all Equity of any entity, all issued and outstanding shares or other units or interests of Equity of such entity and all Equity issuable upon the exercise or conversion of any outstanding Equity Equivalent as of such date, whether or not such Equity Equivalent is at the time exercisable or convertible.

"Improvement" means, with respect to any Transferred Invention, any other Invention (i) for which (A) the College has filed a patent application, including a provisional application, or (B) a patent has been issued to the College in any jurisdiction, (ii) as to which the patent application or the patent described in clause (i) lists one or more of the Inventors of such Transferred Invention as an Inventor, (iii) as to which the patent application or the patent described in clause (i) includes claims that would be dominated by claims in any patent or patent application that has been assigned to an Inventor Company with respect to such Transferred Invention, and (iv) that are required for the development, production, application or operation of any product or service by the Inventor Company.

"Intellectual Property" means Inventions, Works of Authorship, Tangible Research Materials, and Trademarks.

"Intellectual Property Rights" means all of the rights in any Intellectual Property worldwide arising under statutory, common or civil law, whether or not registered or perfected, including without limitation (i) title or other indicia of ownership, (ii) all patents and patent applications relating to such Intellectual Property, (iii) all copyrights, copyright applications and copyright registrations relating to such Intellectual Property, (iv) all goodwill symbolized by any Trademark, (v) all rights relating to the protection of Tangible Research Materials, and (v) renewals and extensions or any of the foregoing, whether now existing or hereafter filed, issued or acquired.

"Invention" has the meaning given to it under 35 United States Code §101 as in effect from time to time.

"Inventor" means a person who individually or jointly creates, first conceives, or reduces to practice, an Invention and who satisfies the criteria for inventorship under United States patent laws and regulations.

"Inventor Company" means a Commercial Venture of which 80% or more of the Equity on a Fully-Diluted Basis is owned by one or more of the Inventors seeking to make an election under Section D.6 and which is controlled by the Inventors and which (i) has been in existence for less than 12 months prior to the date of an election made under Section D.6, or (ii) has net assets (as determined in accordance with United States generally accepted accounting principles consistently applied) of less than \$1 million as of the date of an election made under Section D.6. For purposes of this definition, "control" means the power to direct the policies and management of such Commercial Venture.

"Material Transfer Agreement" means any license, assignment, or other agreement which solely relates to the transfer of Tangible Research Materials from the College to a third party recipient of such materials.

"Net Revenues" means with respect to Revenues received by the College on any date pursuant to any license or other agreement entered into with third parties, the amount of such Revenues, if any, remaining after deduction of the following amounts in the following order of priority: (A) 15% of the amount of such Revenues, which constitutes an administrative fee retained by OETT, (B) all previously unreimbursed applicable Direct Expenses, and (C) any portion of such Revenues which the College is required to pay a third party, such as pursuant to an inter-institution affiliation agreement or a collaboration agreement.

"OETT" means the Dartmouth College Office of Entrepreneurship and Technology Transfer.

"OGC" means the Dartmouth College Office of General Counsel.

"OSP" means the Dartmouth College Office of Sponsored Projects.

"Postdoctoral Scholar" has the meaning given to it in the Faculty Handbook.

"Related Intellectual Property" means, with respect to any Invention, (i) any Intellectual Property, other than a Trademark or a Scholarly Work, that is owned, or licensed with the ability to assign or sublicense without restriction, by a Covered Person and has not been disclosed by the Inventor(s) of such Invention as being part of such Invention and that is necessary for the practice or promotion of such Invention or (ii) a Trademark that is owned, or licensed with the ability to assign or sublicense without restriction, by a Covered Person and is associated with a good or service related to such Invention. Examples of Related Intellectual Property are non-commercial Computer Software on which an Invention operates, business processes, databases, and Tangible Research Materials normally used for Invention-related purposes.

"Related Person" means, with respect to any Inventor, Author or Creator, (i) the spouse, domestic partner, parents, parents-in-law, children, children-in-law, grandchildren, grandchildren-in-laws, siblings, and sibling in-laws of such Inventor, Author or Creator, and (ii) any non-publicly traded corporation, limited liability company or other entity in which any person described in clause (i) holds any Equity or Equity Equivalent.

"Research Visitor" means an individual, other than a Faculty Member, another employee of the College or a Student, conducting research under the auspices of the College, including without limitation such an individual on sabbatical from another university or research facility.

"Restricted Research Funds" means any College funds the use of which is earmarked for specified research projects by a third party, including without limitation pursuant to the terms of a sponsored research, gift or other agreement, or any law or regulation.

"Revenues" means any payments received by the College in consideration for licensing, transferring title to, or granting any other rights in, an Invention, a Work of Authorship or any other Intellectual Property, including without limitation running royalties, advances against running royalties, up-front license fees, license maintenance fees, milestone payments in respect of licenses or sublicenses, fees or royalties payable in respect of sublicenses, and success or similar fees payable in respect of transactions, but excluding (i) amounts received with respect to Equity (which are governed by Section D.6.f or Section J), and (ii) amounts received by the College from any person or entity for the conduct of research or for the provision of goods or services, such as testing or manufacturing of compounds for third party researchers or training or education.

"Scholarly Work" means dissertations, theses, academic papers, journal articles, books (including textbooks), films, musical compositions, and other literary and artistic works.

"Significant Use of College Resources" means, with respect to the creation, conception, or reduction to practice, of any Intellectual Property without the support of Restricted Research Funds or Designated Research Funds, (i) the use by an Author, Inventor or Creator of College facilities, equipment, databases, supplies, or other resources in excess of the typical use of such resources in the College community, or (ii) more than incidental use of the services of College employees while such employees are working within the scope of their employment, in each case unless such Author,

Inventor or Creator is obligated to pay the College fair market value consideration for such use pursuant to arrangements made with the College in advance of such use. Use of an Inventor's, Creator's or Author's office or College email, or any desktop computers, laptops, networks, or storage servers, or the College libraries, machine shop facilities, wood shop facilities, or DEN facilities, shall not constitute "Significant Use of College Resources." From time to time, OETT may publish on its website additional guidelines regarding this definition.

"Staff Member" means any employee of the College other than a Faculty Member, a Distinguished Fellow, or a Postdoctoral Scholar. For purposes of this policy, a Staff Member includes without limitation (i) a Research Engineer, a Senior Research Scientist, a Senior Research Analyst and a Senior Research Engineer (as such terms are defined in the Faculty Handbook), and (ii) a Student who is employed by the College with respect to the activities conducted by him or her in such capacity.

"Student" means (i) a matriculated College student, or (ii) a non-matriculated student participating in a College exchange or internship program or taking College courses pursuant to a non-degree or other special status at the College.

"Tangible Research Materials" means unique research products or tools, such as biological materials or chemical moieties, whether or not patentable or otherwise protectable under intellectual property laws. Categories of biological material include organisms, cells, viruses, cell products, cloned DNA, as well as DNA sequences, mapping information and crystallographic coordinates. Examples of biological materials are specialized or genetically defined cells, including without limitation normal and diseased human cells; monoclonal cell line; hybridoma cell lines; microbial cells and products; viruses and viral products; recombinant nucleic acid molecules; DNA probes; nucleic acid and protein sequences; and transgenic mice or other animals. Categories of chemical moieties or engineered products include sample compounds, reagents, intermediates, models, sensors, devices, equipment, computer hardware or firmware, diagrams, computer media and databases.

"Trademark" means a symbol, word or words legally registered or established by use as representing the identity of the source of a good or service.

"Transferred Invention" means an Invention that has been transferred to an Inventor Company pursuant to Section D.6. An Invention that satisfies the criteria under the definition of "Improvement" shall be considered to be a Transferred Invention following its transfer to an Inventor Company pursuant to Section D.6.

"Work of Authorship" means an original product of creative expression fixed in any tangible medium (including without limitation electronic media) and that is protectable under copyright law. Examples of Works of Authorship are literary works such as books and articles, musical compositions, dramatic works, audiovisual works, sound recordings, and Computer Software.

### **C. Applicability and Administration**

This policy applies to all Covered Persons and shall be administered by OETT. Interpretation of this policy and dispute resolution are covered under Section K.10.

## D. Inventions and Patents

### 1. Ownership of Inventions and Related Intellectual Property

Any Invention, including all Intellectual Property Rights therein, that is created, first conceived, or reduced to practice, by one or more Covered Persons who is an Inventor shall be owned by such Covered Person(s) except those Inventions which are created, first conceived, or reduced to practice:

- i. in connection with the conduct of activities within the scope of such Covered Person's employment with the College;
- ii. with the support, in whole or in part, of Restricted Research Funds, unless the agreement underlying such Restricted Research Funds provides otherwise;
- iii. with the support, in whole or in part, of any Designated Research Funds, unless the College (as represented by the Provost or his or her designee) provides otherwise;
- iv. with Significant Use of College Resources; or
- v. where an agreement between the Inventor and the College provides that the College will own the Invention.

Inventions described in any of clauses (i) through (v) of the preceding sentence, as well as all Associated Materials and Related Intellectual Property related to any such Inventions, and all Intellectual Property Rights in any of the foregoing, shall be owned by the College.

For clarity, the College will not have any ownership interest with respect to an Invention that is created, first conceived, or reduced to practice by a Student in connection with his or her academic work unless the Invention has been created, first conceived, or reduced to practice in such circumstances as described in clauses (i) through (v) of the first sentence of this Section D.1.

### 2. Assignment of Rights to the College

See Section H.1 below.

### 3. Disclosure of Inventions and Related Intellectual Property

See Section H.2 below.

Guidance is available from OETT about steps that should be taken to protect Inventors and the College from premature disclosures or other actions that could adversely affect the patentability of any Invention or Related Intellectual Property or any other rights in them. Each Covered Person must give OETT at least 30 days' advance notice of any publication, presentation or other public dissemination of information relating to any Invention or Related Intellectual Property and must provide OETT with copies of the materials intended to be included in the publication, presentation or other public dissemination reasonably in advance of the expected publication, presentation or other public dissemination.

#### 4. Development

The College reserves the right not to patent or commercialize any College-owned Invention. If the College decides to patent or commercialize a College-owned Invention, OETT will seek to enter into licensing or other arrangements as it determines in its sole discretion.

#### 5. Distribution of Net Revenues

Net Revenues with respect to Inventions, Related Intellectual Property and Intellectual Property Rights owned by the College under Section D.1 shall be distributed 50% to the College and 50% to the Inventor(s), Author(s) and Creator(s), except that in the case of any Material Transfer Agreement, Net Revenues derived therefrom shall be distributed in accordance with the determination of the OETT.

The College's portion of the distribution shall be allocated as follows:

- i. 20% to the Office of the Provost ( the "Provost's Portion");
- ii. 40% to the Office of the Dean of the school at which the Inventor, Author or Creator is employed, appointed or enrolled, as applicable (the "Dean's Portion");
- iii. 25% to the department, institute or center at which the Inventor, Author or Creator is employed, or appointed or enrolled, as applicable (the" Department's Portion"); and
- iv. 15% to the laboratory (if any) of the Inventor, Author or Creator or for the benefit of the research group (if any) of the Inventor, Author or Creator (the "Laboratory's/Research Group's Portion"). If the Inventor, Author or Creator does not have a laboratory or is not a member of a research group, this portion shall be allocated as determined by the Provost or his or her designee;

provided, that if the Provost determines, after consultation with the Dean or other persons affiliated with any affected school or administrative unit and such other persons as he or she deems appropriate, that it is in the best interest of the College to reallocate all or any part of the College's portion of any distribution, either among the portions described above or for other institutional needs, such portion shall be distributed as determined by the Provost.

Where multiple Inventions, and other Intellectual Property are licensed under a single license agreement, the allocation of Net Revenues among such Inventions, Works of Authorship and other Intellectual Property shall be determined in accordance with guidelines established by the OETT.

Where there are (i) multiple Inventors, Authors and Creators or (ii) Inventors, Authors and Creators with joint appointments in two or more schools, departments, institutes or centers, the Dean's Portion, the Department's Portion and the Laboratory's/Research Group's Portion shall be divided among the applicable Dean's offices, departments/institutes/centers, and laboratories or research groups of such individuals as described in Section K.3.

If, at the time Net Revenues are to be distributed, the Inventor, Author or Creator is no longer an employee or appointee of the College,

- i. the Laboratory's/Research Group's Portion for this individual shall be redirected as determined by the Provost or his or her designee; and
- ii. the Inventor, Author or Creator (or his or her estate or heirs, if applicable) shall remain entitled to receive distributions of Net Revenues in accordance with this Section D.5.

6. Inventor Rights to Elect Ownership of Inventions and Related Intellectual Property

a. *Applicable Conditions:* One or more Inventors, Authors and Creators of any Invention and its Related Intellectual Property to which Section D.1 applies shall be entitled to require the College to transfer ownership of the Invention and Related Intellectual Property, and the Intellectual Property Rights in them, to an Inventor Company, if the following conditions are met:

- i. At the time of the submission of an Invention disclosure with respect to such Invention, all of the Inventors, Authors and Creators notify OETT in writing of their election to have the College transfer the Invention, Related Intellectual Property and Intellectual Property Rights to a specified Inventor Company and request the College to file a provisional patent application for such Invention.
- ii. No later than 9 months following the filing by Dartmouth of a provisional patent application for such Invention, (A) the Inventor Company and the Inventors, Authors and Creators affirm the election to the College and release the College from any and all obligations to them with respect to such Invention, Related Intellectual Property and Intellectual Property Rights (such release to be in form and substance satisfactory to OGC) and (B) the Inventor Company provides the College with evidence that it has raised at least \$250,000 in cash financing or that it has received a grant under the Small Business Innovation Program or the Small Business Technology Transfer Program or an equivalent program from one of the agencies participating in such program for the development of such Invention.
- iii. If the Bayh-Dole Act applies to such Invention, the relevant government agency approves the transfer of the Invention, Related Intellectual Property and Intellectual Property Rights, subject to any rights of the agency under the Bayh-Dole Act. The College will inform the agency that it is releasing its rights and will cooperate with the Inventor, Authors and Creators in obtaining agency approval. (At the option of the College, this condition may be satisfied following the transfer, with a requirement that the transfer must be unwound if approval of the transfer is denied.)
- iv. No other legal (including contractual) restriction prohibits the College from making the transfer. The decision of OGC concerning the existence of such a restriction shall be final.



- v. The College is satisfied that the rights of any other person or entity, including any Intellectual Property Rights, will not be violated by the transfer. The decision of OGC concerning this condition shall be final.
- vi. At the time of the transfer, the Inventor Company issues to the College shares or other units of Equity constituting 4% of its total Equity on a Fully-Diluted Basis;
- vii. The Inventor Company agrees that (A) for a period of 4 years following the issuance of Equity to the College, the Equity shall not otherwise be subject to dilution as a result of the issuance of any Equity to the Inventors, Authors or Creators, or any of Related Persons, (B) the College shall have anti-dilution rights, co-sale rights, preemptive rights, rights of first refusal, and piggyback registration rights that are no less favorable as those afforded to the Inventors, Authors and Creators, or any of their Related Persons who hold Equity in the Inventor Company, (C) without the prior written consent of the College, the Inventor Company will not enter into any agreement, transaction or other arrangement with a Related Person, and (D) the Inventor Company shall not redeem any Equity of the Inventors, Authors and Creators, or any of their Related Persons who hold Equity in the Inventor Company unless it redeems a pro rata portion of the Equity held by the College.
- viii. The Inventor Company agrees to give the College the right to receive annual and quarterly financial statements on a regular basis and the right to receive such other financial and other information that the Inventor Company is required to provide to any other Equity holder, in each case unless prohibited from doing so under applicable law.
- ix. At the time of the transfer, the Inventor Company reimburses the College for all Direct Expenses paid by the College with respect to the Invention, Related Intellectual Property and Intellectual Property Rights to be transferred and agrees to reimburse the College for such Direct Expenses payable by the College after the transfer.
- x. The Inventor Company agrees that the Invention and Related Intellectual Property is being transferred “as is, where is” and subject to any and all rights of any funding agency. The Inventor Company agrees to indemnify and defend the College for all third party claims arising out of resulting from or in connection with the ownership, development, commercialization or use of the Invention and Related Intellectual Property, including without limitation relating to infringement of Intellectual Property Rights.
- xi. At the time of the transfer, the Inventor Company grants the College a royalty free, non-exclusive, irrevocable, worldwide right to practice the Transferred Invention, Related Intellectual Property and Intellectual Property Rights solely for non-commercial research, education and clinical care purposes, including use by its Faculty Members, Staff, and Students.

- xii. At the time of the transfer, the Inventor Company agrees to other customary and reasonable terms and conditions requested by the College, including terms regarding insurance coverage to be maintained by the Inventor Company.
  - xiii. The closing of the transaction between the College and the Inventor Company takes place on a mutually agreeable date that is no later than the expiration of the tenth (10<sup>th</sup>) month following the date on which the College has filed the application for a provisional patent for such Invention.
- b. *Filing of Provisional Patent Application:* Within a reasonable time following receipt by the College of a notice of election and request to file an application for a provisional patent as described in clause i. of subsection a. above, the College shall file such application in accordance with requirements issued by OETT. The Inventors, Authors or Creators shall assist the College with the preparation of such application.
  - c. *Associated Materials:* Simultaneously with the transfer of ownership of any Invention and Related Intellectual Property under this Section D.6, the College shall grant the Inventor Company a non-exclusive, perpetual, worldwide, sublicensable, royalty-free license to use the Associated Materials pertaining to the Invention, and shall agree that the College shall use, and shall permit its Faculty Members, Staff and Students to use, the Associated Materials solely in connection with internal College administration, including as necessary to comply with applicable law, and for non-commercial research, education and clinical purposes. For purposes of the foregoing, the rights of Faculty Members shall continue following the termination of their appointments or employment by the College.
  - d. *Termination of College Obligations:* Following any transaction between the College and an Inventor Company under this Section D.6, the College shall have no further obligations with respect to the transferred Invention, Related Intellectual Property, or Intellectual Property Rights except as may be otherwise agreed by the College and the Inventor Company.
  - e. *Transfer of Improvements:* Upon request by all the Inventors, Authors and Creators of any Improvement and its Related Intellectual Property and satisfaction of all the conditions in subsection a. (except for subclause (B) of clause ii and for clauses vi. through viii.) with respect to such Improvement and Related Intellectual Property, the College shall transfer such Improvement and Related Intellectual Property, and the Intellectual Property Rights in them and in any related Associated Materials, to the Inventor Company, provided that the Inventor Company is then in compliance with all its obligations to the College. The College shall not be entitled to receive any additional Equity in the Inventor Company in connection with such transfer.
  - f. *Distributions in respect of Inventor Company Equity:* Dividends and other distributions made with respect to the College's Equity in an Inventor Company shall be distributed as follows:
    - i. 27.75% to OETT;
    - ii. 17% to the Office of the Provost (the "Provost's Equity Portion");

- iii. 34% to the Office of the Dean of the school at which the Inventor, Author or Creator is employed or appointed (the "Dean's Equity Portion"); and
- iv. 21.25% to the department, institute or center at which the Inventor, Author or Creator is employed or appointed (the "Department's Equity Portion");

provided, that if the Provost determines, after consultation with the Executive Vice President, the Dean or other persons affiliated with any affected school or administrative unit, and such other persons as he or she deems appropriate, that it is in the best interest of the College to reallocate all or any part of any distribution, either among the portions described above or for other institutional needs, such portion shall be distributed as determined by the Provost.

Where there are (i) multiple Inventors, Authors and Creators or (ii) Inventors, Authors and Creators with joint appointments in two or more schools, departments, institutes or centers, the Dean's Equity Portion and the Department's Equity Portion shall be divided among the applicable Dean's offices and departments/institutes/centers of such individuals as described in Section K.3.

No Inventor, Author or Creator shall be entitled to any portion of such dividends or distributions.

- g. *Application of College Policy on Acceptance of Equity:* The issuance of Equity under this Section D.6 shall also be subject to the College Policy on Acceptance of Equity.

## **E. Works of Authorship**

### **1. Treatment of Computer Software**

Any Computer Software that is patentable as an "Invention" under the laws of the United States shall be treated as an Invention and be governed by the provisions of Section D and shall be treated as a Work of Authorship for purposes of clause (iv) of Section E.2.b, and Section E.6. Any other Computer Software shall be governed by the provisions of this Section E as a Work of Authorship, but the Authors thereof shall also be afforded the same rights with respect thereto that are granted to Inventors under Section D.6.

### **2. Ownership of Copyright in Works of Authorship**

- a. *Works of Authorship Created by Staff Members:* Under the principle of "work made for hire," except as otherwise provided in an agreement between the College and a Staff Member, the College shall own the copyright in any Work of Authorship created by Staff Members in connection with the conduct of activities within the scope of their employment with the College. In addition, the College shall own the copyright in any Work of Authorship created by Staff Members with Significant Use of College Resources and any Work of Authorship that constitutes Related Intellectual Property.

- b. *Works of Authorship Created by Faculty Members, Distinguished Fellows, or Postdoctoral Scholars*: In accordance with academic tradition, Faculty Members, Distinguished Fellows, and Postdoctoral Scholars shall retain ownership of the copyright in all Works of Authorship created by them, except in the following circumstances:
- i. where the creation of the Work of Authorship was supported by (A) Restricted Research Funds, unless the agreement underlying such Restricted Research Funds provides otherwise, or (B) Designated Research Funds, unless the College (as represented by the Provost or his or her designee) provides otherwise;
  - ii. where the Work of Authorship was created with Significant Use of College Resources;
  - iii. where the Work of Authorship constitutes Related Intellectual Property;
  - iv. where the creation of the Work of Authorship was specially commissioned by or on behalf of the College or resulted from an assigned institutional effort (by way of example, the general responsibility of teaching and research faculty to produce scholarly works such as books, journal articles, lecture notes and other instructional materials (such as syllabi, readings lists, assignments, lab exercises, simulations, web pages, and recorded discussions), and other Works of Authorship based on their own initiative does not constitute a special commission or an assigned institutional effort; in contrast, (A) an essay written by a Faculty Member at the request of the College for a proposed College publication in celebration of a College event, case studies or other curricular material to be used by a members of a department other than or in addition to such Faculty Member, and works created in the course of an administrative assignment, e.g., committee reports and course descriptions written for the course catalog, would constitute specially commissioned Works of Authorship, and (B) the creation by a Faculty Member of Computer Software at the request of the College Department of Computing Services to be used in connection with the operation of a shared College resource would constitute an assigned institutional effort); or
  - v. where an agreement between any such person and the College provides that the College shall own the copyright.

The copyright in Works of Authorship described in any of clauses (i) through (v) of the preceding sentence shall be owned by the College.

- c. *Works of Authorship Authored by Students*: Students shall retain ownership of the copyright in Works of Authorship created in the course of their non-employee academic work, except in the following circumstances:
- i. where the creation of the Work of Authorship was supported by (A) Restricted Research Funds, unless the agreement underlying such Restricted Research Funds provides otherwise, or (B) Designated Research Funds, unless the College (as represented by the Provost or his or her designee) provides otherwise;

- ii. where the Work of Authorship was created with Significant Use of College Resources;
- iii. where the Work of Authorship constitutes Related Intellectual Property; or
- iv. where an agreement between a Student and the College provides that the College shall own the copyright.

The copyright in Works of Authorship described in any of clauses (i) through (iv) of the preceding sentence shall be owned by the College.

- d. *Assignment by the College:* Works of Authorship that constitute Related Intellectual Property shall be assigned to Inventor Companies as provided in Section D.6 if all the conditions to such assignment have been satisfied.

### 3. Assignment of Rights to the College

See Section H.1 below.

### 4. Disclosure of Works of Authorship

See Section H.2 below.

### 5. Distribution of Net Revenues Derived from Works of Authorship

Net Revenues received by the College in respect of Works of Authorship for which the copyright is owned by the College under Section E.2 shall be distributed as provided in Section D.5.

### 6. Reservation of Rights for Authors

Where the College owns the copyright in a Work of Authorship under this policy, unless prohibited by the College under an agreement with a third party, the Author may continue to use the Work of Authorship, without charge, solely for his or her own non-commercial educational, research and clinical purposes.

### 7. Copyright Notice and Registration

- a. *Copyright Notice:* Although use of a copyright notice is no longer legally required for copyright protection, inclusion of a notice is advisable as notification to readers that the work is protected by copyright. Accordingly, Covered Persons publishing Works of Authorship for which copyright is owned by the College are requested to include a notice in the following form:

- i. “[Copyright or © ] [year of first publication] Trustees of Dartmouth College. All Rights Reserved.”

Example for a work first published in 2014:

“Copyright 2014 Trustees of Dartmouth College. All Rights Reserved”.

- ii. Where a Work of Authorship has been revised, the date of publication of the latest revision should be used.
- iii. “Trustees of Dartmouth College” or “Dartmouth College” should always be used in the notice as the name of the copyright holder. However, where individual schools or administrative units have been delegated responsibility for administering copyrights, contact information for the school or unit may also be included.  
Example:

“Requests for permission to reproduce this work for nonprofit, educational purposes should be directed to the Department of \_\_\_\_\_ at \_\_\_\_\_. All other inquiries should be directed to the Dartmouth College Office of Entrepreneurship and Technology Transfer.”

- b. *Copyright Registration:* Registration with the Copyright Office is not required for copyright protection. However, departments and other units that wish to register Works of Authorship for which the copyright is owned by the College should contact OGC.

#### **F. Tangible Research Materials**

Tangible Research Materials, including all Intellectual Property Rights therein, purchased, licensed or otherwise acquired or developed by one or more Covered Persons who is a Creator shall be owned by such Covered Person(s) except those Tangible Research Materials that:

- i. are purchased, licensed or otherwise acquired or developed with (a) Restricted Research Funds, unless the agreement underlying such Restricted Research Funds provides otherwise, (b) Designated Research Funds, unless the College (as represented by the Provost or his or her designee) provides otherwise, or (c) Significant Use of College Resources; or
- ii. constitute (a) Related Intellectual Property or (b) Associated Materials.

Tangible Research Materials described in clause (i) or (ii) of the preceding sentence, including all Intellectual Property Rights therein, shall be owned, or deemed licensed, as applicable, by the College.

Tangible Research Materials that constitute Related Intellectual Property shall be assigned to Inventor Companies as provided in Section D.6 if all the conditions to such assignment have been satisfied. Tangible Research Materials that constitute Associated Materials shall be licensed to Inventor Companies as provided in Section D.6 if all the conditions to the assignment of an Invention to which such Associated Materials are related have been satisfied.

#### **G. Trademarks**

Trademarks purchased, licensed or otherwise acquired or developed by one or more Covered Persons who is a Creator shall be owned by such Covered Person(s) except those Trademarks that:

- i. are purchased, licensed or otherwise acquired or developed with (a) Restricted Research Funds, unless the agreement underlying such Restricted Research Funds provides otherwise, (b) Designated Research Funds, unless the College (as represented by the Provost or his or her designee) provides otherwise, or (c) Significant Use of College Resources;
- ii. constitute Related Intellectual Property; or
- iii. contain the name “Dartmouth” or the name of any of Dartmouth’s schools or other constituent units.

Trademarks described in any of clauses (i), (ii) or (iii) of the preceding sentence, including all Intellectual Property Rights therein, shall be owned, or deemed licensed, as applicable, by the College.

Trademarks (other than Trademarks that contain the name “Dartmouth” or the name of any of Dartmouth’s schools or other constituent units) that constitute Related Intellectual Property shall be assigned to Inventor Companies as provided in Section D.6 if all the conditions to such assignment have been satisfied.

#### **H. Assignment and Disclosure**

1. Assignment of Rights to the College. OETT will establish and publish procedures whereby all Covered Persons will assign to the College the ownership and Intellectual Property Rights to which the College is entitled under this policy.

Each Covered Person acknowledges that he or she is bound by this policy by accepting or continuing College employment or a College appointment or by using College resources or facilities, and acknowledges that he or she irrevocably assigns to the College, effective as of his or her first date of employment, appointment, matriculation, participation in research, or use of any College resource or facility, all right, title and interest in and to all Intellectual Property and Intellectual Property Rights, including without limitation the copyright, which the College is entitled to own as specified in this policy, regardless of whether he or she executes or executed a specific assignment.

2. Disclosure Obligations. All Inventions (including all Computer Software treated as Inventions), all Works of Authorship for which the copyright is owned by the College under Section E. 2, and all Related Intellectual Property, including without limitation all Intellectual Property that could constitute Improvements of any Invention that has been transferred to an Inventor Company, must be disclosed to OETT promptly following their creation, first conception, or reduction to practice. Disclosure forms are available in OETT and online via OETT’s website.

#### **I. Waiver or Return of Rights**

Upon the request of one or more Inventors, Authors or Creators, the College may, in its sole discretion, transfer, license or grant to such individuals or any of their designees rights with respect to any Intellectual Property owned by the College under such circumstances and upon such terms as it shall decide is desirable, appropriate, and in compliance with applicable law and agreements.

## **J. Equity**

This Section applies to Equity issued by Commercial Ventures other than Inventor Companies.

The College may accept Equity in a Commercial Venture as compensation for the transfer or license of, or grant of any other rights in, Intellectual Property. Acceptance of such Equity shall be subject to the College's Policy on Acceptance of Equity. Equity received by the College shall be distributed as follows:

- i. 50% of the aggregate number of shares or other units issued shall be distributed to the Inventor(s), Author(s) or Creator(s), as applicable, in the proportions provided in Section K.3; and
- ii. 50% of the aggregate number of shares or other units issued shall be distributed to the College.

Dividends and other distributions made with respect to the College's Equity in a Commercial Venture shall be allocated in the same proportions set forth in Section D.6.f.

## **K. Miscellaneous**

### **1. Protection by Both Patent and Copyright; Works of Authorship Which Constitute Related Intellectual Property**

In those instances where Intellectual Property may be protected by both patent and copyright, the provisions of Section D shall take precedence. Works of Authorship which constitute Related Intellectual Property shall be governed by Section D.

### **2. Cooperation of Inventors, Authors and Creators**

Inventors, Authors and Creators are required to cooperate in the patenting of Intellectual Property and in any licensing or other arrangements made with third parties, whether requested by the College, the licensee(s) or an agent or assignee of the College.

### **3. Multiple Inventors, Authors or Creators; Joint Appointments**

In the case of multiple Inventors, Authors or Creators, these individuals will be expected to agree among themselves on the fractional distribution of the "Inventor," "Author" or "Creator" share of any Net Revenues derived from the intellectual property rights in an Invention or a Work of Authorship. A written agreement must be signed by all the individuals and delivered to OETT at the time of the filing of the disclosure form described in Section H.2. If no written agreement has been delivered to OETT at the time of a distribution of Net Revenues, the Inventors', Authors' or Creators' share of such distribution shall be divided equally among the Inventors, the Authors or the Creators in accordance with guidelines established by OETT. Inventors, Authors and Creators may modify their agreement from time to time by executing and delivering to OETT an amendment to their existing agreement or a new agreement designated as replacing the prior agreement. Distributions of Net Revenues received following receipt of such amendment or new agreement shall be made in accordance therewith.

In the case of multiple Inventors, Authors or Creators or Inventors, the Dean's Portion, the Department's Portion and the Laboratory's/Research Group's Portion shall be divided among the



respective Dean's offices, departments/institutes/centers, and laboratories or research groups of such individuals in the proportions attributable to each Inventor, Author or Creator pursuant to the preceding paragraph, subject to further adjustment as provided in the following paragraph. For example, in the case of three Inventors who have agreed to an allocation of 40% to Inventor A, 35% to Inventor B and 25% to Inventor C, each of Inventor A's Dean's office, department/institute/center and laboratory or research group will be entitled to 40% of the Dean's Portion, the Department's Portion and the Laboratory's/Research Group's Portion, each of Inventor B's Dean's office, department/institute/center and laboratory or research group will be entitled to 35% of such portions, and each of Inventor C's Dean's office, department/institute/center and laboratory or research group will be entitled to 25% of such portions, subject to further adjustment as provided in the following paragraph.

In the case of any Inventor, Author or Creator with joint appointments in two or more schools or departments, institutes or centers, the Dean's Portion, the Department's Portion and the Laboratory's/Research Group's Portion shall be allocated among the schools, the department, the institute and center and their corresponding subunits as determined by the Provost or his or her delegatee.

#### 4. Claims of Multiple Organizations

If more than one organization claims rights to Intellectual Property created or made by a Covered Person (e.g., a visiting scholar at the College, a College scholar on sabbatical at another institution or a research collaboration between the College and another institution), the College will consult with the organization to arrive at a mutually satisfactory division of rights and responsibilities.

#### 5. Other Arrangements with Covered Persons

Should the College and a Covered Person desire to undertake an arrangement regarding Intellectual Property that is not covered by this policy, the arrangement shall be governed solely by the provisions of any agreement between the College and the Covered Person and shall not be subject to this policy.

#### 6. Consultants

Arrangements between the College and persons or entities who are neither Covered Persons nor entities not described in Section K.4 in connection with research or the creation, invention or development of any Intellectual Property shall be governed solely by the provisions of any agreement between the College and such persons or entities and shall not be subject to this policy.

#### 7. No Authority by Individual Covered Persons to Grant Rights in Intellectual Property

Only the College is authorized to license or assign to third parties rights in Intellectual Property owned by the College. All Covered Persons must ensure that no language purporting to license or assign rights in Intellectual Property owned by the College is included in any agreements they sign in their individual capacities. Covered Persons who use research facilities at another institution or a company (including without limitation when on sabbatical from the College or as visiting faculty or visiting researchers) must contact OETT prior to commencing these activities, for assistance in evaluating the policies of the host institution or company.

#### 8. Survival of Terms

All licenses and rights granted to the College will survive any termination of the employment or other relationship (including the end of enrollment of a Student) between the College and a Covered Person.

#### 9. Associated Materials

The College shall retain possession of all Associated Materials which are related to any Invention owned by the College. Faculty Members and Students shall be entitled to retain a copy of any Associated Materials relating to their academic work upon the termination of their employment or appointment by, or enrollment at, the College solely for non-commercial educational, research and clinical purposes unless otherwise specifically permitted by the College in writing.

#### 10. Interpretation and Dispute Resolution

Questions or disputes regarding the application, interpretation or implementation of this policy shall be resolved by the Provost (or his or her designee) in consultation with the Vice Provost for Research, OSP, OETT and OGC. The Provost's decision on the matter shall be binding on the College and all Covered Persons.

#### 11. Effectiveness of Policy; Amendment or Revocation

This policy is effective as to all Intellectual Property created, first conceived, or reduced to practice, as applicable, by any Covered Person on or after the Effective Date, except that with respect to any Inventions and Related Intellectual Property created, first conceived, or reduced to practice, as applicable, prior to the Effective Date that are not subject to a license or other agreement between the College or a Covered Person and any person or entity (including for this purpose any license or other agreement between the College and a Covered Person), Authors, Inventors or Creators are entitled to make an election under Section D.6 by providing written notice to OETT on or prior to September 1, 2016.

This policy replaces as of the Effective Date the College's Patent Policy dated April 24, 1978, as revised, and the College's Copyright Ownership Policy dated September 27, 1994.

This policy is subject to revocation or amendment by the College, in whole or in part, from time to time. The Board of Trustees of the College, the President of the College, and the Provost of the College each acting alone shall have the power to make revocations or amendments. Any such revocation or amendment shall become effective upon adoption by the Board or Trustees, the President or the Provost, as the case may be, or as of such other time as the Board of Trustees, the President or the Provost, as the case may be, shall specify.

During fiscal year 2022, the College shall undertake a review of the provisions of Section D.6 for the purpose of assessing its impact on the encouragement of entrepreneurial activities on the part of Covered Persons, the recruitment of faculty, other personnel and students, and other relevant matters.