

# Jarvis Christian College Intellectual Property Policy

Jarvis Christian College hereby establishes this Intellectual Property ("IP") Policy with respect to the development, protection, and transfer of rights to IP resulting from the work of its Faculty, Employees, Students, and other third parties. This IP Policy is effective this \_\_\_\_\_, 2013.

## Introduction

Jarvis is dedicated to providing an environment that supports the creation and development of Intellectual Property by Faculty, Employees, and Students, which IP includes, but is not limited to, inventions, copyrights (including computer software), trademarks, and tangible research property such as biological materials. Such activities contribute to the academic and professional development of Faculty, Employees, and Students, enhance the reputation of Jarvis, and provide additional educational opportunities for participating Students. While Intellectual Property may, in some cases, be the product of a Creator and that Creator's time and resources, oftentimes, the creation and development of Intellectual Property depends not only on the Creator's ingenuity, time and resources, but also on contributions (both monetary and otherwise) from Jarvis and third parties. It is important, therefore, to stimulate the development of Intellectual Property by protecting the interests of all those involved in the creation and development of Intellectual Property at Jarvis or using Jarvis Resources.

The following policy is applicable to all full and part time faculty, staff, employees, students, and nonemployees who use Jarvis funds, facilities, or other resources, or participate in Jarvis-administered research, including visiting faculty, industrial personnel and directors, regardless of obligations to other companies or institutions. For purposes of this policy, these individuals will be referred to as "covered persons" or "persons covered by this policy".

From time to time, it may be in the best interests of Jarvis to enter into agreements with third parties that are exceptions to the policies reflected in this document and the persons covered by this policy. Exceptions shall be made after consultation with the President or designee and only upon written agreements signed by individuals authorized to grant such exceptions on behalf of Jarvis.

## Section I. Inventions and Patents

A. Definitions. The following terms have the provided meanings for purposes of this policy:

*Inventor*. Shall mean a person covered by this policy who individually or jointly with others makes an Invention and who meets the criteria for inventorship under United States patent laws and regulations.

*Invention*. Shall mean any patentable or potentially patentable idea, discovery or know-how and any associated or supporting technology that is required for development or application of the idea, discovery or know-how.

*Supported Invention*. Shall mean an *Invention* conceived or reduced to practice by a person covered by this policy (whether alone or together with others) if conceived or reduced to practice in whole or in part:

1. Under or subject to an agreement between Jarvis and a third party; or
2. With use of direct or indirect financial support from Jarvis, including support or funding from any outside source awarded to or administered by Jarvis; or
3. With use (other than incidental use) of space, facilities, materials or other resources provided by or through Jarvis.

*Incidental Invention*. Shall mean an *Invention* (other than a *Supported Invention*) that is conceived or reduced to practice by a person covered by this policy making an incidental use of space, facilities, materials or other resources related to the conception or reduction to practice of such *Invention*.

B. Disclosure Obligations. *Covered persons* are required to notify the President or designee of each *Supported Invention* and *Incidental Invention* through a disclosure document as prescribed by the President or designee, except as otherwise provided in Section III regarding *Sponsored Software Inventions*.

C. Ownership Determination. Upon review of the disclosure document, the President or designee will determine whether the *Invention* is a *Supported Invention* or an *Incidental Invention* and, in the case of a *Supported Invention*, shall further determine, with assistance from patent counsel, who are the *Inventor(s)*, consistent with U.S. patent law. Jarvis shall have the right to own and each *Inventor*, at Jarvis' request, shall assign to Jarvis all of his/her/its right, title, and interest in a *Supported Invention*. Ownership of an *Incidental Invention* shall remain with its *Inventor(s)*, subject to any rights that may be granted to Jarvis as required by this policy.

D. Filing of Patent Applications. The President or designee shall be solely responsible for determining whether a patent application shall be filed on a *Supported Invention*. Filing determinations may be made on the basis of commercial potential, obligations to and rights of third parties, or for other reasons which the President or designee, in his/her discretion, deems appropriate. *Inventor(s)* of a *Supported Invention* for which patent applications are filed shall cooperate, without expense to the *Inventor*, in the patenting process in all ways required by Jarvis or its agent or designee.

E. Commercialization. The President or designee shall have the sole discretion with respect to the commercialization of a *Supported Invention*, but shall take into account the public interest. Where a *Supported Invention* is subject to an external agreement with a third party (for example, the federal government or other funding sponsor), the President or designee shall make decisions consistent with that agreement. The President or designee shall make decisions concerning commercialization as he/she deems appropriate and shall make reasonable efforts to keep *Inventor(s)* involved and informed of his/her commercialization efforts.

F. Royalty Sharing. Where royalties are generated by Jarvis as a consequence of commercializing a *Supported Invention*, royalties will be shared with the *Inventor(s)* as described in Section V ("Royalty Sharing") of this policy. Jarvis shall have the right to modify the Royalty Sharing section of this policy in accordance with Section VI.C of this policy.

G. Release of Inventions. Where Jarvis determines that it will not file a patent application on a *Supported Invention*, abandons a patent application on a *Supported Invention* prior to issuance of the patent, or abandons an issued patent on a *Supported Invention*, the *Inventor(s)* may request a release of the *Invention*. Upon determining that releasing the *Invention* to the *Inventor(s)* will not violate the terms of an external funding agreement and is in the best interests of Jarvis and the public, the PRESIDENT OR DESIGNEE may agree to a release and in such case will assign or release all interest which it holds or has the right to hold in the *Invention* to the *Inventor(s)* in equal shares, or such other shares as the *Inventors* may all agree. Release of *Supported Inventions* may be conditioned upon, among other things, agreement by the *Inventor(s)* to the following:

1. To reimburse Jarvis for all out-of-pocket legal expenses and fees incurred by the Jarvis if and when the *Inventor(s)* receive income from the *Invention*.
2. To share with Jarvis 20% of the net income (income remaining from gross income after repayment of Jarvis expenses above and the *Inventor(s)*' legal and licensing expenses) received by the *Inventors* from the *Invention*. Income subject to this revenue sharing provision includes equity received by *Inventors* as consideration for the *Invention* but does not include financing received for purposes of research and development.
3. Upon request, to report to Jarvis regarding efforts to develop the *Invention* for public use and, at Jarvis' request, to reassign those *Inventions* that the *Inventor(s)*, their agents or designees are not developing for the benefit of the public.
4. To fulfill any obligations that may exist to sponsors of the research that led to the *Invention*.
5. To grant back to Jarvis an irrevocable, perpetual, royalty-free, nonexclusive, worldwide right and license to use the *Invention* for its research, education and clinical care purposes and a right to grant the same rights to other non-profit institutions.
6. To agree to such limitations on Jarvis' liability and indemnity provisions as Jarvis may request.

H. Jarvis Rights in Incidental Inventions. In recognition of the contribution the Jarvis community as a whole makes in support of innovation at Jarvis, *Inventor(s)* agree to grant to Jarvis an irrevocable, perpetual, non-exclusive, royalty free, world-wide right to use *Incidental Inventions* in Jarvis' non-profit educational and research activities.

## **Section II. Copyrights**

A. Ownership. Subject to the Exceptions in subsection B below, *Authors* are entitled to own the copyright and retain any revenue derived therefrom in books, films, video cassettes, works of art, musical works and other copyrightable materials of whatever nature or kind and in whatever format developed, except that computer software and databases shall be subject to Section III ("Computer Software") of this policy. It is expected that when entering into agreements for the publication and distribution of copyrighted materials, *Authors* will make arrangements that best serve the public interest. As used in this policy, "*Author*" means any person covered by this policy who creates a work of authorship qualifying for protection under U.S. copyright law.

B. Exceptions.

1. Whenever research or a related activity is subject to an agreement between Jarvis and a third party that contains obligations or restrictions concerning copyright or the use of copyrighted materials, those materials shall be handled in accordance with the agreement. In negotiating with third parties, project directors and Jarvis should strive to protect and advance the public interest as well as obtain the greatest latitude and rights for the individual *Author(s)* and Jarvis consistent with the public interest and this policy.
2. In circumstances where Jarvis involvement in the creation and development of copyrighted materials is more than incidental, including, but not limited to, use of resources such as funds, facilities, equipment or other Jarvis resources, in consideration of making such resources available, ownership and rights to shares of royalties or income or both shall be fairly and equitably apportioned as between Jarvis and the *Author(s)*. This policy encourages, whenever feasible, Jarvis and the *Author(s)* to reach agreement prior to the commencement of a project on the rights that Jarvis and *Author(s)* will have in the resulting copyrighted materials.
3. A copyrightable work created within the scope of employment by non-teaching employees of Jarvis shall be a "work made for hire" under the U.S. Copyright Act of 1976 (17 USC §101 et seq.) and Jarvis shall be deemed the *Author* and shall own the copyright.
4. Jarvis may also commission copyrightable works from Jarvis personnel, including faculty and students. A commissioned work falling within the "work made for hire" definition of the U.S. Copyright Act (17 USC 101 et seq.) shall constitute a work-for-hire and be owned by Jarvis.
5. Jarvis, at any time, may acquire ownership or rights in copyright and copyrighted materials by agreement with the *Author(s)* or other rightsholder(s), on such terms as are agreed.

C. Other Applicable Policy. Sections I.E and I.F of this policy shall apply to *Copyrights* that are assigned to Jarvis under paragraph B.1 above as if they were *Supported Inventions*, except as otherwise provided in the other paragraphs of Section II.B.

D. Classroom Recordings. With consent of a Faculty member, Jarvis may record, in any form now known or later invented, such Faculty member's classroom lectures and may use, copy, reproduce, distribute, prepare derivative works using, perform and display such recordings for the benefit of Jarvis so long as such recordings are used for non-revenue producing purposes. In the event Jarvis desires to use such recordings for revenue producing purposes Jarvis shall reach a separate agreement with the respective faculty member regarding such use or shall contract to produce same as a work for hire under a separate agreement.

## **Section III. Computer Software**

A. Definitions.

*Sponsored Computer Software*. Shall mean any computer program (including, without limitation, microcode, subroutines, and operating systems), regardless of form of expression or object in which it is embodied, together with any users' manuals and other accompanying explanatory materials and any computer database, that is developed:

1. Under or subject to agreement between Jarvis and a third party; or
2. With use of direct or indirect financial support from Jarvis, including support or funding from any outside source awarded to or administered by Jarvis; or
3. With use (other than incidental use) of space, facilities, materials or other resources provided by or through Jarvis.

*Sponsored Software Invention.* Shall mean *Sponsored Computer Software* that is an *Invention* as defined under Section I of this policy.

**B. Disclosure Obligations.**

1. A *Sponsored Software Invention* shall be required to be disclosed to the President or designee as an *Invention* only in cases where:
  - a. The *Sponsored Software Invention* was developed under or subject to agreement between Jarvis and a third party as in paragraph A.1 above; or
  - b. The Inventor(s) and/or Author(s) deem the *Sponsored Software Invention* to have commercial potential and/or favor seeking patent protection for the *Invention*.

All *Sponsored Software Inventions* required to be disclosed to the President or designee as an *Invention*, and any *Sponsored Software Inventions* otherwise identified, shall be treated for all purposes under this policy like other *Inventions*, except as expressly provided otherwise in this Section III.

2. *Sponsored Computer Software* that is not required to be disclosed as an *Invention* under paragraph B.1 above shall be disclosed to the President or designee in accordance with such disclosure procedures as the President or designee may direct.

**C. Ownership.**

1. Jarvis shall own all patents, copyrights and other intellectual property rights in *Sponsored Computer Software*. For the avoidance of doubt, where Jarvis determines that a patent application will not be filed for a *Sponsored Software Invention* or, if filed, a patent does not issue, *Sponsored Computer Software* will remain the property of Jarvis. Where a patent application is filed on a *Sponsored Software Invention*, Jarvis shall have a right of ownership in all associated copyrights as supporting technology. The purpose of this section of the policy is to enable utilization of *Sponsored Computer Software* in the public interest regardless of the potential for a division of ownership due to the patentable and copyrightable nature of computer software.
2. Computer programs and databases that are not included in paragraph C.1 above shall, for all purposes, be treated in accordance with the policies provided under Section II "Copyrights".

**D. Release of Sponsored Computer Software.** Where Jarvis has the right but elects not to commercialize *Sponsored Computer Software*, Jarvis may release its rights, in its sole discretion, subject to a written agreement reserving certain rights to Jarvis and signed by all individuals who have been determined to be *Inventor(s)* and *Author(s)* of the *Sponsored Computer Software*.

**E. Other Applicable Policy.** Sections I.E. and I.F. of this policy apply to *Sponsored Computer Software* and to *Inventors* and *Authors* of *Sponsored Computer Software* as if *Sponsored Computer Software* were a *Supported Invention*.

**Section IV. Unpatented Materials**

**A. Definitions.**

*Unpatented Materials (including biological materials).* Means cell lines, organisms, proteins, plasmids, DNA/RNA, chemical compounds, transgenic animals and other materials useful for research or for commercial purposes for which patent applications are not filed or, if filed, do not issue, where such materials are developed by persons covered by this policy:

1. Under or subject to agreement between Jarvis and a third party; or
2. With use of direct or indirect financial support from Jarvis, including support or funding from any outside source awarded to or administered by Jarvis; or
3. With use (other than incidental use) of space, facilities, materials or other resources provided by or through Jarvis.

*Contributors*. Means those individuals who are determined by the head of the laboratory/department or the principal investigator of a research program, as applicable, to have made a contribution to the development of the *Unpatented Materials*.

B. Ownership and Commercialization. Jarvis shall own all rights in *Unpatented Materials* and may make appropriate distribution in the public interest, including licensing or transferring *Unpatented Materials*, for research and commercial purposes. Individuals named as *Contributors* shall be entitled to a share of licensing revenues in accordance with paragraph B of Section V of this policy.

## **Section V. Royalty Sharing**

A. Distributable Royalties. Jarvis employs a single uniform structure for distribution of royalties to *Inventors*, *Authors*, and *Contributors* (for the purposes of this Section V, collectively, "*Creators*" and each a "*Creator*"). Jarvis will distribute *Net Royalties* received by Jarvis from the licensing or other distribution of its intellectual property or technology covered by this policy, as and to the extent provided in this policy. *Net Royalties* are calculated based on gross receipts consisting of cash and securities or other equity shares in an enterprise received by Jarvis in return for use of its intellectual property, but do not include other non-cash benefits, sponsored research funding, or other financial benefits such as gifts. *Net Royalties* equal those gross receipts that Jarvis is entitled to retain, less: (i) Jarvis' out-of-pocket costs and fees associated with securing, maintaining and enforcing intellectual property protection such as patenting and litigation expenses, (ii) out-of-pocket costs incurred by Jarvis in the licensing of the intellectual property and (iii) any out-of-pocket expenses in making, shipping or otherwise distributing biological or other materials (including, without limitation, *Unpatented Materials*). As used herein, the term "*Creation*" shall mean any *Invention*, *Computer Software*, copyright or *Unpatented Material* as to which *Net Royalties* are to be distributed in accordance with this policy.

B. Standard Distribution Method. Except as otherwise provided in this policy, the following formula will apply to the distribution of *Net Royalties* among *Creators*, their respective research laboratories/departments and Jarvis, based on amounts received by Jarvis:

Administrative fee – 15%  
Of the remainder:  
    *Creator* personal share – 35%  
    *Creator* research share – 15%  
    *Creator* Department/laboratory share – 15%  
    *Jarvis* share – 35%

C. Alternative Distribution Methods. *Net Royalties* earned from licensing of *Creations* with multiple *Creators* will be distributed as follows:

- i. *Among multiple Inventors and/or Authors for a single patented invention or copyright*: Personal shares will be allocated among *Inventors* and/or *Authors* according to a written agreement among them or, if there is no agreement, in equal shares. Research shares, department/laboratory shares will be allocated equally where *Inventors* or *Authors* come from different laboratories/departments, regardless of the number of *Inventors/Authors* from each laboratory/department, unless otherwise agreed among all *Inventors/Authors*.
- ii. *Among multiple Contributors to a single Unpatented Material*: Personal shares will be apportioned among *Contributors* as they mutually agree in writing or, if no agreement is reached among the *Contributors*, according to an administrative determination of apportionment that shall be made by the head of the laboratory/department in which the *Unpatented Material* has been made. Research shares, department/laboratory shares will be allocated as in paragraph C.1 for patented inventions and copyrights.

- iii. *For multiple Creations licensed as a package:* First, *Net Royalties* will be allocated among the licensed *Creations* as agreed in writing among all *Creators* or, if no agreement, in equal shares among such *Creations*. In the alternative, upon request of any of the *Creators*, the President or designee will determine the relative value to the package of each of the *Creations*. The foregoing notwithstanding, where an executed license agreement assigns different values to different *Creations* licensed as a package, that value shall be the value assigned for purposes of allocating *Net Royalties* among such *Creation*. Second, the *Creator* personal share and the research, department/laboratory shares of *Net Royalties* so allocated to each of the *Creations* in the package will be allocated in accordance with paragraph C.1 or C.2, as applicable.

D. Rights of Appeal. Administrative decisions made under paragraphs C.2 and C.3 above may be appealed by the persons affected to the Intellectual Property Committee for final determination provided the appeal is made in writing to the PRESIDENT OR DESIGNEE within 45 days of such persons receiving written notification of the administrative decision.

E. Portability of Royalty Shares. Personal royalty shares will be payable to *Creators* regardless of their employment status at Jarvis or elsewhere. Research shares will not follow individuals leaving Jarvis, but will be payable to the individual's Jarvis laboratory or, if no such laboratory remains, the individual's Jarvis department. Where an individual leaves one department and/or laboratory for another at Jarvis, the departmental and/or research share will move with him or her.

## **Section VI. Intellectual Property Committee; Changes to Policy**

A. Overall Responsibility. Jarvis' Intellectual Property Committee, appointed by the President, shall be responsible for interpreting this policy and resolving questions and disputes concerning it. From time to time, the Committee may suggest changes to this policy on its own initiative or at the request of the President or Board of Trustees.

B. Other Responsibilities. Other responsibilities of the Committee include the hearing of appeals as provided under this policy and such other duties as may be assigned from time to time by the President and Jarvis' Board of Trustees.

C. Changes to Policy. In addition to the right to make changes specifically provided elsewhere in this policy, Jarvis reserves the right to amend or modify any of the terms of this policy as it may determine from time to time. The Board of Trustees and President shall have the power to make such amendments and modifications. Any such modification or amendment shall become effective upon adoption by the Board of Trustees or as of such other time as the Board of Trustees shall specify.

## **Section VII. Miscellaneous**

A. Implementing Procedures and Documentation. The PRESIDENT OR DESIGNEE shall have responsibility for developing procedures and documentation as necessary for implementing this policy. Implementation procedures as recommended by the PRESIDENT OR DESIGNEE shall be subject to the approval of the Intellectual Property Committee.

B. Further Assurances of Covered Persons. By making use of Jarvis' facilities and/or by participating in Jarvis-administered research programs and/or activities of Jarvis that are subject to agreements with third parties, persons covered by this policy agree to assist and cooperate with Jarvis in those actions reasonably undertaken by Jarvis pursuant to this policy. All expenses related to providing assistance and cooperation shall be the responsibility of Jarvis.

C. Applicability of New Policy Provisions. For the avoidance of doubt, except as otherwise specifically provided, this policy does not apply to Inventions, Copyrights, Computer Software and/or Unpatented Materials made or developed prior to the effective date of this policy.