ARTICLE XX.
INTELLECTUAL PROPERTY RIGHTS

Section A. Employees shall have rights to authorship, including the ability to decline authorship, in keeping with professional norms, on any original works, such as publications or presentations, for which they have provided substantial contributions including but not limited to study concept and design; acquisition, analysis, technology and code development; interpretation of data critical for the study; drafting the article or revising its content critically; and/or approving the final version to be published.

Section B. Intellectual property created, made, or originated by an Employee, including open source software or any other type of software, shall be subject to the same rights as stated in the Statement of Policy in Regard to Intellectual Property as amended as of June 11, 2019, except as modified by this Article.

Section C. The Employer retains the right to make any changes to the Statement of Policy in Regard to Intellectual Property so long Employees retain all rights guaranteed by this Article. Any change that shall impact Employee rights as guaranteed by this Article are subject to bargaining.

Section D. No agreement made in reference to Section V of Statement of Policy in Regard to Intellectual Property as amended as of June 11, 2019 shall result in an Employee receiving a personal share less than what they would receive if the personal share was divided evenly among the Authors, Inventors, or Contributors.

Section E. Contract Specific Modifications to the Statement of Policy in Regard to Intellectual Property.

The below language shall supersede the language in Statement of Policy in Regard to Intellectual Property as amended as of June 11, 2019 for all Intellectual Property for which an Employee is either an Inventor, Author, or Contributor as defined in the Statement. The language in this section is subject to the definitions within the Statement of Policy in Regard to Intellectual Property.

1. Section II.G. <u>Release of Inventions</u>. Where the University 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 Harvard and the public, OTD shall ~~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 the University for all out-of-pocket legal expenses and fees incurred by the University if and when the *Inventor(s)* receive income from the *Invention*.~~

1~~2~~. To share with the University ~~20~~ 5% of the net income (income remaining from gross income after repayment of ~~University 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.

2~~3~~. Upon request, to report to the University regarding efforts to develop the Invention for public use and, at the University's request, to reassign those *Inventions* which the *Inventor(s)*, their agents or designees are not developing for the benefit of the public.

3~~4~~. To fulfill any obligations that may exist to sponsors of the research that led to the Invention.

4~~5~~. To grant back to Harvard 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.

5~~6~~. To agree to such limitations on the University's liability and indemnity provisions as the University may request.

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

3. Section IV.A.
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 Harvard and a third party; or

2. With use of direct or indirect financial support from Harvard, including support or funding from any outside source awarded to or administered by Harvard; or

3. With use (other than incidental use) of space, facilities, materials or other resources provided by or through the University.

Contributors. Means those individuals who have made a contribution to the development of the Unpatented Materials per the Contributor Role Taxonomy (CRediT) in one or more of the following roles: Conceptualization, Funding acquisition, Investigation, Methodology, Project administration. ~~are determined by the head of the laboratory or the principal investigator of a research program, as applicable, to have made a contribution to the development of the Unpatented Materials.~~

Section F. Any Employee that qualifies as an Author, Inventor, or Contributor per Statement of Policy in Regard to Intellectual Property as amended as of June 11, 2019 and as modified in Section E shall retain the rights to launch a startup company without approval of the other Inventors.

Section G. For any intellectual property for which an Employee qualifies as an Author, Inventor, or Contributor per Statement of Policy in Regard to Intellectual Property as amended as of June 11, 2019 and as modified in Section E:

1. The technology transfer shall be non-exclusive licensing, whereby as many licensees as possible are actively sought out, except where an Author, Inventor, or Contributor chooses to launch a startup company within one (1) calendar year of filing the Intellectual Property with the Office of Technology Development.
    a. In instances where non-exclusive licensing is not possible one or more of the following strategies should be employed:
        i. Non-exclusive licensing of the technology, without active seeking of multiple licensees
        ii. Limit exclusive licenses to high-income countries, as defined in the World Bank's List of Economies, and grant non-exclusive licenses in low- and middle-income countries.

2. Licensing agreements shall include ‘reach through’ clauses, that require the following:

    a. Any future technology developed from the original licensed technology is subject to the same access protections conveyed by the original transfer agreements.

    b. Any further sub-licenses related to the original licensed technologies are subject to the same access protections conveyed by the original transfer agreements.

3. Potential licensees shall be required to submit a plan of how they will achieve affordable access for the licensed product(s) in low- and middle-income countries, including strategies and timelines. Upon licensing, the licensees’ plans shall be made publicly and readily available on the Office of Technology Development website.

Section H. The Employer shall provide open access publication fees for scholarly works produced by an Employee’s research or scholarly activities.

Section I. Employees shall retain the same authorship and intellectual property rights as outlined in this Article ad infinitum irrespective of changing positions or leaving employment with the Employer.

Section J. Employees who create instructional materials as a part of their instructional role shall retain exclusive rights to these materials. While the Employer may request such materials in the course of evaluating an Employee’s work, the Employer shall not keep or distribute these materials outside of the evaluation process for any reason without the express written consent of the Employee (even when the Employee no longer works at Harvard).

1. If the Employer provides an Employee with funding for the express purpose of curricular development, the Employer may retain some intellectual property rights over the instructional materials produced during the funded development period. In such cases, the Employer must notify the Employee of the Employer’s intellectual property rights upon notification of the award. When no such notification is issued, the Employee shall retain exclusive rights as provided for in this Article.