

\_\_\_\_\_  
Name

Please **print** your name here  
and sign where indicated below

\_\_\_\_\_  
Unit Number

## THE MGH INSTITUTE OF HEALTH PROFESSIONS INTELLECTUAL PROPERTY ACKNOWLEDGEMENT AND LICENSE AGREEMENT

### Definitions:

“Copyrightable Work” means any original work of authorship that is fixed in any tangible medium of expression, including Course and Curriculum Materials, Courseware, and Software.

“Course and Curriculum Materials” means educational works created for the purpose of instruction. Examples of Course and Curriculum Materials include, but are not limited to, textbooks and accompanying materials, notes, overheads, slides, case studies and course syllabi.

“Courseware” means Inventions, Software and other Copyrightable Works that organize, structure, promote, display, deliver, transmit, reproduce, enhance, support, present or enable interaction with course or other educational material for use in learning programs. Examples of Courseware include, but are not limited to, multimedia productions, story boards, audio elements, hypertext modules, simulation software, listservs, web architecture, user interfaces and manuals, databases and any combination of the foregoing. Courseware does not include commercially available software applications that are widely used, both within and outside the educational arena, e.g. PowerPoint, Excel, etc.

“Course and Curriculum Materials” and “Courseware” are mutually exclusive terms; however, it is recognized that the line between the two is not always self-evident. In general, “Course and Curriculum Materials” is intended to cover **content** while “Courseware” is intended to cover the technology or advanced media (and attendant explanatory materials) through which the content is organized, conveyed and/or enhanced. Faculty seeking a definitive determination in a given specific context may make such a request to the Provost.

“Faculty” means regular and adjunct faculty, visiting faculty and lecturers.

“Institute” or “the Institute ” means The MGH Institute of Health Professions.

“Institute Activities” means any activities that received direct or indirect financial support from the Institute, including Institute salary support or funding from any outside source awarded to or administered by the Institute; made substantial use of any space, facilities, materials or other resources of the Institute including resources provided in-kind by outside sources (the use of office space and word processors alone is not be considered a “substantial use” of resources); or were otherwise subject to any grant, contract or other arrangement between the Institute and a third party, such as the federal government, a foundation or corporate research sponsor.

“Invention” is any patentable invention as defined by patent law, or any other idea or its embodiment that is potentially patentable or, even if not patentable, may have charitable or commercial value. Examples of Inventions include but are not limited to new and improved devices, systems, chemical compounds; novel biological materials; new uses of known articles or substances; new methods of producing or manufacturing any articles or substances; algorithms; Courseware; Software and any other tangible research property.

“Policy” shall mean the Institute’s policy pertaining to intellectual property, entitled “Intellectual Property Policy for Brigham and Women’s Hospital, Inc., The Massachusetts General Hospital, The Spaulding Rehabilitation Hospital, Inc., and Their Affiliated Institutions.”

“Software” means computer or computer-based materials in the broadest sense, including but not limited to, computer programs, user interfaces, users’ manuals and other accompanying explanatory materials or documentation, mask works, firmware and computerized databases. Software will in many cases be treated as an Invention as well as a Copyrightable Work.

Acknowledgement and License Agreement:

I acknowledge that as a condition of my appointment as a Faculty member at the Institute , or other employment by the Institute, or my opportunity to otherwise participate in any Institute Activities, I have assumed the following rights and obligations:

1. My Ownership of Course and Curriculum Materials, other Academic Works, and Other Intellectual Property. I shall own and shall not be required to assign to the Institute ownership of:

- a. (i) Course and Curriculum Materials; and
- (ii) Courseware

that I create prior to the time when I have an Institute Faculty appointment (“Pre-existing Course and Curriculum Materials ” and “Pre-existing Courseware”)

- b. (i) Course and Curriculum Materials that I create during the time when I have an Institute Faculty appointment (“Faculty Course and Curriculum Materials”); and
- (ii) Courseware (but not including patentable Inventions or Software), that is integral to said Course and Curriculum Materials and that I create:
  - during the time when I have an Institute Faculty appointment;
  - without use of Inventions or Copyrightable Works (notably Courseware) that are created by the Institute, or by third parties on behalf of the Institute, or are otherwise provided to me by the Institute; and
  - without substantial assistance by Institute Faculty, employees or third parties acting on behalf of the Institute (e.g. information technology personnel). (“Faculty Courseware”)

I understand that the Faculty Course and Curriculum Materials and Faculty Courseware described in b(i) and (ii) above shall be considered “Academic Works”

under the Policy<sup>1</sup> and that while owned by me, will be subject to the Institute's license to use those materials as described in 3(b) below.

All references to Faculty Course and Curriculum Materials in the remainder of this Agreement shall mean Faculty Course and Curriculum Materials alone or in combination with the Faculty Courseware described in 1(b)(ii) above.

- c. Any other "Academic Work," as that term is defined under Section 8.1.4 of the Policy, I create during the time I have an Institute Faculty appointment. If there is any reasonable question whether a given Copyrightable Work constitutes an "Academic Work" I agree that I will discuss it with the Provost.
  - d. Other intellectual property I create during the time when I have an Institute Faculty appointment at or am employed by the Institute or an affiliated organization of the Institute that is not described in Section 2. below.
2. The Institute's Ownership of Other Intellectual Property, and My Obligation to Assign. I also acknowledge that the Institute owns, and that I am obligated under the Policy to assign to the Institute, Copyrightable Works that are not owned by me pursuant to 1(a) and 1(b), above, and Inventions, as follows, and that I will comply with all such assignment obligations:
- a. I will assign to the Institute every Copyrightable Work (that is not owned by me pursuant to paragraph 1(a) and (b) above) which I shall create, individually or jointly with others, during the time when I have a Faculty appointment at, am employed by the Institute or an affiliated organization of the Institute, or otherwise am involved in Institute Activities, that (i) was authored or created in performing Institute Activities; (ii) if I am an Institute Faculty member, is created at the request of the Institute or as part of a Institute undertaking; (iii) if I am not an Institute Faculty member, is created in the scope of my employment or affiliation with the Institute; or (iv) is Software or Courseware that arises out of or relates to my clinical, research, educational or other activities at the Institute. I also understand that my obligation to assign a Copyrightable Work to the Institute is necessary only to the extent that the Copyrightable Work is not otherwise owned by the Institute as a "work made for hire" under the Copyright Law of the United States.
  - b. I will assign to the Institute every Invention which I shall conceive or reduce to practice, individually or jointly with others, during the time when I have an Institute Faculty appointment, am employed by the Institute or an affiliated organization of the Institute, or otherwise am involved in Institute Activities, that was conceived or reduced to practice by me (i) in performing Institute Activities; or (ii) that arise out of or relate to my clinical, research, educational or other activities at the Institute.

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<sup>1</sup> This shall be true even with respect to Course and Curriculum Materials the creation of which made substantial use of Institutional resources, and/or which were prepared not at the Faculty Member's own initiative but rather at the request or under the auspices of an Institution; but not including any Materials that were made with resources provided under or otherwise subject to a grant, contract or other arrangement between the Institute and a third party.

3. Institute's Right with Respect to Pre-Existing Course and Curriculum Materials and Pre-Existing Courseware; License to Institute of Faculty Course and Curriculum Materials and Faculty Courseware; My Rights with Respect to Course and Curriculum Materials Produced by the Institute or by Me with Institute Courseware.
- a. I represent that I have the right to use at the Institute any Pre-Existing Course and Curriculum Materials and Pre-Existing Courseware which I intend to or which I do use at the Institute, and such use will not violate any third party rights. I further grant the Institute the same license with respect to such Pre-Existing Course and Curriculum Materials and Pre-Existing Courseware that I grant the Institute to Faculty Course and Curriculum Materials under Section 3 (b)(i-iv) below, unless, prior to my use of said Pre-Existing Course and Curriculum Materials or Pre-Existing Courseware at the Institute, I have notified the Institute on Attachment A hereto that either (i) I am prevented from granting the Institute those rights due to the rights I have previously granting to a third party, or (ii) I do not wish to grant the Institute those rights.
- b. In accordance with the Institute's rights under Section 8.1.4 of the Policy, the Institute has required that I grant, and I do hereby grant to the Institute, a non-exclusive, irrevocable, perpetual, transferable, assignable, royalty-free license, with the right to sublicense, to use, perform, display, exhibit, transmit, publish, televise, copy, reproduce, distribute, broadcast, modify, edit and/or create derivative works of (including without limitation, for the purpose of making Courseware) all, or any part of, my Faculty Course and Curriculum Materials, for any and all Institute purposes, except that this license shall not apply to Faculty Course and Curriculum Materials which are subject to third party rights as described in 3(b) (iv) below.
- (i) I understand that I will be listed as the author of any portion of said derivative work created by the Institute that is solely or significantly based on said Faculty Course and Curriculum Materials, but shall have no right to any proceeds received by the Institute from its license, sale, or other use of such Course and Curriculum Materials.
- (ii) I further understand that I may, in my sole discretion, require the Institute to remove my name as an author of said derivative work.
- (iii) I represent that all my Faculty Course and Curriculum Materials are authored solely by me and, except as disclosed otherwise in accordance with 3(b)(iv) or (v) below, are not restricted by any previous license or grant of rights to a third party. I further represent that the Institute's use under the license granted above will not violate any third party rights. I understand that I am free to grant a nonexclusive license or other rights to a third party for my Faculty Course and Curriculum Materials as long as (aa) I am in compliance with the provisions of 3(e) below; and (bb) that license does not prevent the Institute from fully exercising the license granted above.
- (iv) In the event I wish to publish an Academic Work in a traditional academic publication, and the Academic Work includes Faculty Course and Curriculum Materials that I intend to use or have used in Institute courses, I shall be obligated to make my best efforts to get the publisher to agree that the Institute may retain the non-exclusive rights that I grant to the Institute in 3(b) above. If I

am unable to secure from the publisher the rights needed to grant said non-exclusive license, I will not assign or otherwise grant to the publisher rights that undermine the Institute's retained license rights under 3(b) above until I obtain the Institute's permission for such assignment, or I provide appropriate replacement materials, or until the Institute course in which such materials are incorporated is completed, or six months, whichever shall first occur.

- (v) [For Faculty whose appointment to the Institute predates the date on which they sign this Agreement: In the event that, as of the date hereunder, my Faculty Course and Curriculum Materials are subject to a prior conflicting grant of license or ownership, then:
  - (aa) I have disclosed such restrictions on Attachment B to this Acknowledgement;
  - (bb) I represent to the Institute that notwithstanding said prior grant of license or ownership, my use of said Faculty Course and Curriculum Materials does not violate any third party rights;
  - (cc) I further agree that I will use my best efforts to obtain from the current licensee or owner of said Faculty Course and Curriculum Materials permission for me to grant to the Institute the non-exclusive rights described above in 3(b)(i)-(iii) above; and if I am unable to secure said permission, I will so notify the Institute and, the Institute may, in its sole discretion, require that I cease using said Faculty Course or Curriculum Materials.]
  
- (vi) I consent to the Institute making or having made audio, video or other multimedia recordings or photographs of me in connection with my participation in Institute Activities and agree that the Institute shall have the right to use those recordings and photographs in accordance with the rights I have granted to the Institute in this Section 3. I am the author and owner of all materials I may incorporate in any such Institute Activities unless I have otherwise notified the Institute in advance.
  
- (vii) I grant the Institute the right to use my name, likeness, and biographical information in conjunction with its use of any such Course and Curriculum Materials (other than derivative works with respect to which I have requested that my name be removed in accordance with 3(a)(ii) above) and of any audio, video or other multimedia recordings or photographs of me made in connection with my participation in Institute Activities.
  
- c. I understand that if the Institute makes subsequent Course and Curriculum Materials or Courseware that incorporate my Faculty Course and Curriculum Materials (and/or Pre-Existing Course and Curriculum Materials to which I have granted the Institute a license pursuant to 3(a) and 3(b)(i-iv) above), either (aa) on its own or (bb) with my assistance but using Courseware created in whole or in part by, or on behalf of, the Institute, then
  - (i) I shall retain my ownership rights the Faculty Courseware and Curriculum Materials and/or Pre-Existing Course and Curriculum Materials that are so incorporated;

- (ii) but I shall obtain no additional or further ownership interest in the subsequently-developed Course and Curriculum Materials; and
  - (iii) I shall have no right to any proceeds received by the Institute from its license, sale, or other use of such subsequent Course and Curriculum Materials.
  - d. I agree that I will not use any Courseware other than Courseware provided by, or approved by, the Institute in connection with my Course and Curriculum Materials which I use at the Institute or in connection with courses offered under the auspices of the Institute.
  - e. During the time that I am on the Institute Faculty or otherwise engaged in Institute Activities, I acknowledge that I am subject to the Institute Faculty Manual and the Partners HealthCare System Code of Conduct, and in compliance therewith, shall not engage in activities which are competitive with the Institute. I understand that among the activities which this precludes absent a prior written waiver from the Provost, is any work with a third party to produce
    - (i) learning materials or courses that are based in whole or in part on Course and Curriculum Materials that are licensed to the Institute hereunder; and
    - (ii) any learning materials or courses that are similar to or competitive with any learning materials offered by the Institute, or which I have been informed the Institute contemplates offering.
4. My Disclosure Obligations. I acknowledge that, among my obligations under the IP Policy, I must, and therefore affirm that I will, promptly disclose to the Provost, by completing the Institute's Disclosure Form:
- a. every Copyrightable Work, including Courseware and Software, as well as Course and Curriculum Materials which are used in Institute Activities, but not including other Academic Works, which I shall create, individually or jointly with others, during the time when I have a Faculty appointment, am employed by the Institute or an affiliated organization of the Institute, or otherwise am involved in Institute Activities, (i) that I wish to make or permit use of for commercial purposes, wish to have the Institute commercialize, or believe potentially may have commercial or charitable value; (ii) that I otherwise wish to make available (including without limitation via distance learning) to the public or third parties; (iii) that is subject to any grant, contract or other arrangement between the Institute and a third party; or (iv) that I am otherwise requested by the Provost to disclose. I understand that in the event that Software or Courseware is patentable I also have an obligation to disclose it in accordance with 4.b. below. I understand that my disclosure obligation applies even to some Copyrightable Works that I believe are not owned by the Institute.
  - b. every Invention which I shall conceive or reduce to practice, individually or jointly with others during the time when I have a Faculty appointment at the Institute or am employed by the Institute or an affiliated organization of the Institute or otherwise am involved in Institute Activities
    - (i) which is or may be patentable and which is (A) conceived or reduced to practice in performing Institute Activities or (B), that arises out of or relates to my clinical, research, educational or other activities at the Institute; or

- (ii) whether or not patentable (A) that I wish to make or permit use of for commercial purposes, wish to have the Institute commercialize, or believe potentially may have commercial or charitable value; (B) that I otherwise wish to make available to the public or any third party who is reasonably likely to use it for commercial use or broad distribution; (C) that is subject to any grant, contract or other arrangement between the Institute and a third party; or (D) that I am otherwise requested by the Provost to disclose.

I understand that my disclosure obligation applies even to Inventions that I believe are not owned by the Institute.

- 5. My Additional Obligations to Disclose and Obtain Approval of Consulting and other Agreements. I acknowledge that pursuant to the Partners HealthCare System Policy on Consulting Agreements, I must, and hereby affirm that I will, file with the Provost, within thirty (30) days of the date hereof, a complete and true copy of every agreement to which I am a party on the date hereof and in which I have agreed to provide consulting or other services to anyone, including but not limited to any agreement to serve as Faculty at another institution; and to submit any future agreement to the Provost for review and approval prior to my signing it.
- 6. General Compliance With Policies. I acknowledge that I must, and confirm that I will, comply fully with the "Intellectual Property Policy for Brigham and Women's Hospital, Inc., The Massachusetts General Hospital, The Spaulding Rehabilitation Hospital, Inc., and Their Affiliated Institutions", Partners HealthCare System Policy on Consulting Agreements" and "Partners HealthCare System Code of Conduct (including Conflicts of Interest Policy)," a copy of each of which is attached hereto, as these policies may be revised from time to time. I understand that any revision of the attached policies will either be publicized in the Institute community or mailed to me at my Institute address.
- 7. My Obligations Under Institute Grants and Agreements. I acknowledge that I must, and confirm that I will comply fully with every obligation of the Institute which shall apply to me under any grant or agreement providing support for research or education.
- 8. My Agreement Not to Sign Documents. I understand and agree:
  - a. that I am not authorized to sign, and I will not sign, any agreement or document on behalf of the Institute that may commit, restrict, or otherwise affect Inventions or Copyrightable Works that I create, including license agreements and confidentiality agreements;
  - b. that I will not sign individually any document or agreement described in (a) (other than one solely involving an Academic Work) unless specifically approved or requested to do so by a representative of the Institute; and
  - c. that all such documents must be submitted to the Provost.

Signature : \_\_\_\_\_

Date: \_\_\_\_ \_\_\_\_\_