

ACADEMIC COUNCIL REPORT

SESSION:

Public

ACTION REQUESTED:

Decision
Discussion/Direction
Information

TO: Academic Council

DATE: November 1, 2023

PRESENTED BY: Les Jacobs, Vice-President, Research and Innovation

SUBJECT: Revised – IP Policy

ACADEMIC COUNCIL MANDATE:

In accordance with Article 1.3(b) of By-law No. 2, and the Policy Framework, Academic Council will be consulted on the establishment of any research policies that are organizational in nature, or those implemented to fulfil legal compliance obligations. The Intellectual Property Policy falls within the Legal, Compliance and Governance category of the Policy Framework.

The Office of the Vice-President, Research and Innovation (VPRI) presents the draft amendments to the Intellectual Property Policy to Academic Council (AC) for consultation.

BACKGROUND/CONTEXT & RATIONALE:

The University's Intellectual Property Policy (Current IP Policy) was originally approved by the Board of Governors in 2003.

In 2016, the Intellectual Property Policy Committee (IPPC) was struck to review and update the IP Policy. The IPPC produced a draft for consultation in 2018 (the 2018 Policy Draft). A change of leadership in 2018- 19 (new President and VPRI), along with the Ontario Government's renewed focus on IP with the establishment of an Expert Panel on IP in May 2019, brought a new strategic focus for IP, which altered the policy direction. In response to these changes in the landscape, the USGC developed a plan for a new Innovation Framework and drafted new policy instruments in Winter 2021. These were reviewed with stakeholders over the Spring/Summer of 2021.

With the COVID pandemic and a strategic direction from University Board and leadership to consolidate the University's policy library, the VPRI determined it was appropriate to revert back to the 2018 Policy Draft for review with the IPPC, to ensure that the 2018 Policy Draft was current and internally consistent with University practices and law in the area.

The IPPC met between November 2022 and May 2023 and arrived at an updated IP Policy draft for recommendation to Academic Council (the Revised Policy). This Revised Policy is now before the Academic Council for consultation.

CONSULTATION:

The consultation and approval process is anticipated to be as follows:

| Body | Purpose |
|---|--|
| Research Committee | Information / Consultation |
| Policy Advisory Committee | Information / Consultation |
| Administrative Leadership Team | Information / Consultation |
| Online Consultation | Information / Consultation |
| Faculty Association | Information / Consultation |
| Academic Council | Consultation |
| Audit & Finance | Consultation |
| Intellectual Property Policy Committee (IPPC) | Comments and recommendations provided by any consultative or deliberative body will be brought forward to the IPPC for consideration, and incorporation as deemed appropriate by the membership of the IPPC. |
| Academic Council | Recommendation for approval. |
| Faculty Association | Consultation required by Letter of Understanding. |
| Academic Council | Recommendation for approval. |
| Audit & Finance Committee | Recommendation for approval. |
| Board of Governors | Approval |

COMPARISON OF MAJOR CHANGES IN THE CURRENT IP POLICY VERSUS THE REVISED IP POLICY:

Definitions: clarified and refined, to align with industry standards (i.e. other post-secondaries), ex:

- **“Independent Efforts” vs. “University Resources”:** These definitions determine when the IP policy applies based on the context in which they were created. Independent Efforts occurs when intellectual property is outside of scope of the Creator’s responsibilities, work or employment at the University. University Resources has been added to include specific examples.

| | Current Definition | Revised Definition |
|----------------------|---|---|
| Independent Efforts | “Independent Efforts” with regard to intellectual property means that the ideas for the intellectual property came from the creator, the intellectual property was not made with the use of university support, and is not related to the creator’s responsibilities, work or employment at the university. | “Independent Efforts” means that the ideas for the Intellectual Property came from the Creator, the Intellectual Property was not made with the use of University Resources, and is not related to the Creator’s responsibilities, work or employment at the University. Independent Efforts include but are not limited to, demonstrably private research outside of normal institutional duties or in the course of activities as a consultant to outside persons when such consulting activities otherwise comply with applicable institutional policies on such activities and have been properly reported as required by those policies. |
| University Resources | Not in current version. | “University Resources” means University funds, assigned space, materials, supplies, technical facilities and services, equipment, academic or teaching time relief, staff support and administrative services, Computer Programs that are subject to University licensing, or other University resources, but does not include the use of common spaces that are open to the public (i.e. cafes, lounges, common meeting areas) and in the case of Academic Personnel, use of personal computers, laptops, tablets and mobile devices. |

- **“Teaching Materials” vs. “Scholarly Work” vs. “Assigned Task Materials”:** These definitions determine ownership of IP based on the purpose for which they were created. Teaching Materials has been expanded to more clearly indicate that they are developed in connection with or related to conveying the content of a particular course offered through the University and are owned by the Creator. Scholarly Work has been added to encompass IP produced as a result of a Creator’s research activities and are owned by the Creator. Assigned Task Materials has been added to indicate IP that is

commissioned by the University or created to support the University's ongoing operations and are owned by the University.

| | Current Definition | Revised Definition |
|-------------------------|---|--|
| Teaching Materials | " Teaching Materials " shall include all printed and digital products created by academic personnel, the presentation of which may or may not be influenced by non-academic personnel, including course notes, course outlines, teaching notes, presentations, and examinations, and including materials used for distance and continuing education. | <p>"Teaching Materials" means Works created in whole or in part by a University Member in connection with or related to conveying the content of a particular course offered through the University that is delivered to Students registered at the University or to Students registered in an academic program jointly administered by the University.</p> <p>Teaching Materials includes but is not limited to course notes, teaching notes, custom books, tutorials, evaluation tools, presentations, non-final examinations. For clarity, "Teaching Materials" does not include any Works that are "Assigned Task Materials".</p> |
| Scholarly Work | Not in current version. | <p>"Scholarly Work" means Work produced as a result of an Academic Member's research activities at the University. "Scholarly Work" includes, but is not limited to, grant and other funding applications, research Data and academic databases, books, textbooks, monographs, articles papers, studies, and reports prepared for publication, the content of which is of academic concern, but does not include any Works that are "Teaching Materials" or "Assigned Task Materials" as defined herein.</p> |
| Assigned Task Materials | Not in current version. | <p>"Assigned Task Materials" means Intellectual Property created in whole or in part by an Academic or Non-Academic Member that is commissioned by the University or created in whole or in part in the course of supporting the University's ongoing operations, including University facilities and equipment, administration, and/or management, including academic course accreditation and/or quality assurance, and in meeting the administrative requirements of that Member's position with the University, but does not include "Teaching Materials" or "Scholarly Work," unless</p> |

| | | |
|--|--|---|
| | | <p>specifically commissioned by the University. Examples of Assigned Task Materials include, but are not limited to, memoranda, letters and reports, meeting minutes, course outlines, syllabi, assignments and examinations, administrative Computer Programs written to support the University's on-going operations, and promotional, marketing and/or advertising copy and materials.</p> |
|--|--|---|

- a. **Ownership & License Granted to University:** The revised IP Policy remains a creator owned IP policy, subject to the exceptions that exist in the current IP Policy. In both versions of the IP Policy, a license to creator owned IP is automatically granted to the University for the University's administrative, research or academic purposes (but does not confer an automatic right to commercialize).

In the current IP Policy, this license could be extinguished upon the Creator's request after **5 years**. In the revised IP Policy, the Creator has the right to request that the license be revoked **at any time**, upon written approval of the VPRI and the Provost.

- b. **Moral Rights:** There is **no automatic waiver of the Creator's moral rights** in the revised IP Policy as there is in the current IP Policy.
- c. **Commercialization:** The revenue split when the University is the commercialization lead has been revised to **50% to University and 50% to the Creator(s)** as opposed to **75% to University and 25% to the Creator(s)** under the current IP Policy.
- d. **Dispute Resolution:** In general, the pathway for dispute resolution has been made clearer in revised IP Policy.

NEXT STEPS:

Comments received through consultation will be considered by the IPPC.

SUPPORTING REFERENCE MATERIALS:

- Intellectual Property Policy



| | |
|-----------------------|---|
| Classification Number | LCG 1123 |
| Item | X.XX |
| Framework Category | Legal, Compliance and Governance |
| Approving Authority | Board of Governors |
| Policy Owner | Vice-President, Research and Innovation |
| Approval Date | DRAFT FOR REVIEW (May 11, 2023) |
| Review Date | |
| Supersedes | |

INTELLECTUAL PROPERTY POLICY

~~1.~~ PURPOSE

1. As an academic community, the University values the development and free flow of knowledge above all else. One of the main goals of a scholarly institution is to foster the development of knowledge and the creation of Intellectual Property. To support this goal the University must establish an environment of open communication and the free exchange of ideas. To facilitate this, the University has created this ~~policy~~[Policy](#) to encourage the creation of Intellectual Property, clearly ~~outlines~~[set out](#) the principles ~~and procedures~~ for how rights in Intellectual Property shall be conferred, and to facilitate the development and Commercialization of Intellectual Property, while ensuring that the academic freedom and interests of University Members, and of the University, are safeguarded.

~~2.~~

DEFINITIONS

2. For the purposes of this ~~policy~~[Policy](#) the following definitions apply:

"Academic Members" means all tenured and tenure track faculty, teaching faculty, limited term faculty, adjunct professors, visiting scholars, sessional lecturers, teaching assistants, research assistants, post-doctoral fellows, and Students [engaged in academic studies](#) at the University.

"Assigned Task Materials" means Intellectual Property created in whole or in part by an Academic or Non-Academic Member that is commissioned by the University or created in whole or in part in the course of supporting the University's ongoing operations, including University facilities and equipment, administration, and/or management, including academic course accreditation and/or quality assurance, and in meeting the administrative requirements of that Member's position with the University, but does not include "Teaching Materials" or "Scholarly Work," unless specifically commissioned by the University. Examples of Assigned Task Materials include, but are not limited to, memoranda, letters and reports, meeting minutes, course outlines, syllabi, assignments, and examinations, administrative Computer

Programs written to support the University's on-going operations, and promotional, marketing and/or advertising copy and materials.

"Commercialization" or **"Commercialize"** means the process by which Intellectual Property is made available for distribution and sale on the market.

"Computer Program" means a set of instructions or statements, expressed, fixed, embodied or stored in any manner that is to be used directly or indirectly in a computer in order to bring about a specific result.

"Contractor" means a party that is not an Academic Member contracted by the University to perform work or services for or on behalf of the University.

"Copyright" means the sole rights granted for specified periods pursuant to the Copyright Act, and any equivalent copyright legislation or legal regime in any foreign jurisdiction, including the sole right to produce or reproduce an original literary, dramatic, musical ~~and~~or artistic work in any material form.

"Copyright Act" means the Copyright Act, RSC 1985, c. C-42 as may be amended or re-enacted from time to time, or any successor legislation.

"Creator" means an individual that makes an Intellectual Contribution to Intellectual Property.

"Data" means any databases, data sets, transcripts, participant information and results, results of scientific measurements, results of surveys, and the results of computational or experimental simulations, together with a documented description of the format or structure of the data set(s) and, where appropriate (e.g., in scientific experimental measurements), estimates of experimental uncertainties which would allow a non-originator to use them.

"Development Expenses" means all monies paid to protect, develop, and/or enhance the marketability or any other aspect of Intellectual Property, including, but not limited to, the drafting, filing, prosecution, maintenance and enforcement of patent or other registrations, consulting fees, expenses incurred in dealing with equity interests, travel, legal fees, and including but not limited to other agreed upon expenses. For further clarity, Development Expenses do not typically include salaries and general operating expenses of ~~administrative personnel~~Academic and Non-Academic Members, nor sponsored external funding administered by the University.

"Gross Revenue" means the proceeds from the sale, lease, transfer, assignment, license, grant of right of access, or other conveyance or grant of rights or interest in respect of Intellectual Property, including without limitation, any license issue fees, option fees, royalties, and equity interests, except that any equity interests, or portion thereof, received by the University or a Creator shall not be included in "Gross Revenue" unless and until such time as the equity interests, or portion thereof, are sold by the University or Creator, respectively.

"Independent Efforts" means that the ideas for the Intellectual Property came from the Creator, the Intellectual Property was not made with the use of University Resources, and is not related to the Creator's responsibilities, work or employment at the University. Independent Efforts include but are not limited to, demonstrably private research outside of normal institutional duties or in the course of activities as a consultant to outside persons when such consulting activities otherwise comply with applicable institutional policies on such activities and have been properly reported as required by those policies.

"Intellectual Contribution" means an exercise of skill and judgment that results in the expression of a work in material form or a contribution of ingenuity to Intellectual Property.

"Intellectual Property" means any result of intellectual or artistic activity, that may include, but is not limited to, Works, Data, Inventions, industrial designs, trademarks, trade names, service marks, domain names and similar online indicia, integrated circuit topographies, plant varieties, Computer Programs, circuits, biological material, chemical or other compositions of matter, know-how, and trade secrets, in which a person has rights, such as Patents, Copyright, industrial design/design patent, or trademark rights, which can be registered or otherwise protected in any country.

"Invention" means any new and useful art, discovery, process, machine, system, ~~websites~~[website](#), computer code, ~~algorithms~~[algorithm](#), composition of matter, article of manufacture, design, model, technological development, biological material, strain, variety, culture of any organism, Computer Program, or research ~~data~~[Data](#) and tools that is capable of being protected as Intellectual Property.

"License" means a permission granted by the owner (the "Licensor") of Intellectual Property to another party (the "Licensee"), conferring the right to use and/or otherwise exploit its Intellectual Property under agreed conditions, in exchange for some form of consideration, usually a royalty payment or other compensation.

"Moral Rights" means a Creator's rights to claim and to protect the association and integrity of a Work under the Copyright Act.

"Net Revenue" means Gross Revenue less Development Expenses.

"Non-Academic Members" means all full-time and part-time administrative, professional, support staff, Contractors, and other persons paid by or through the University and anyone working under University auspices, excluding Academic Members ~~other than post-graduate students performing paid work for the University.~~



"Patent" A government grant giving the right to exclude others from making, using or selling an invention as set out in the Patent Act.

"Patent Act" means the Patent Act, RSC 1985, C. P-4 as may be amended or re-enacted from time to time, or any successor legislation.

"Principal Investigator" means the lead Academic Member who has overall responsibility for activities listed in Section 4(ii) .

"Senior Administrator" means [an individual appointed under the Senior Academic Administrative Appointments Policy and](#) the ~~Provost, Associate Provost, Dean or Associate Dean of the University~~[President](#), when not acting in their capacity as Academic Members.

"Scholarly Work" means Work produced as a result of an Academic Member's research activities at the University. "Scholarly Work" includes, but is not limited to, grant and other funding applications, research Data and academic databases, books, textbooks, monographs, articles papers, studies, and reports prepared for publication, the content of which is of academic concern, but does not include any Works that are "Teaching Materials" or "Assigned Task Materials" as defined herein.

"Student" means an Undergraduate Student or graduate student currently registered or previously enrolled at the University in accordance with the academic regulations of the University.

"Teaching Materials" means Works created in whole or in part by a University Member in connection with or related to conveying the content of a particular ~~academic~~ course offered through the University, ~~including long distance and continuing education courses~~, that is delivered to Students registered at the University or to Students registered in an academic program jointly administered by the University. Teaching Materials includes but is not limited to ~~microcredentials~~, course notes, teaching notes, custom books, tutorials, evaluation tools, presentations, non-final examinations. For clarity, "Teaching Materials" does not include any Works that are "Assigned Task Materials".

"Undergraduate Student" means a student who is registered as an undergraduate student at the University in accordance with the academic regulations of the University.

"University" means the University of Ontario Institute of Technology.

"University Members" means an Academic Member, Non-Academic Member, Senior Administrator, Student, ~~Contractor~~ or Volunteer.

"University Resources" means University funds, assigned space, materials, supplies, technical facilities and services, equipment, academic or teaching time relief, staff support and administrative services, Computer Programs that are subject to University licensing, or other University resources, but does not include the use of common spaces that are open to the public (i.e. cafes, lounges, common meeting areas) and in the case of Academic Personnel, use of personal computers, laptops, tablets and mobile devices.

"Volunteer" means an individual who performs unpaid work or services outside of the scope of ~~its~~their employment duties or educational requirements at the University.

"Work" means any artistic, dramatic, literary or musical work capable of being protected by ~~copyright~~Copyright, including but not limited to: student theses, all printed material, qualitative/quantitative instruments, Computer Programs, Data, audio and visual material, circuit diagrams, architectural and engineering drawings, prototypes, system, protocols, lectures, musical or dramatic compositions, choreographic works, and pictorial or graphic works.

3. SCOPE AND AUTHORITY

- 3.** This ~~policy~~Policy applies to all University Members, and to Intellectual Property created or developed by University Members while studying, volunteering, employed or otherwise engaged at or by the University. This policy does not apply to Intellectual Property created or developed by University Members through Independent Efforts.
The Vice President Research & Innovation (VPRI), or successor thereof, is the Policy Owner and is responsible for overseeing the implementation, administration and interpretation of this Policy.

POLICY

4. ~~4.~~ POLICY ON OWNERSHIP OF INTELLECTUAL PROPERTY

4.1. Academic Member(s) own rights in and to Intellectual Property in Teaching Materials, Scholarly Works and Inventions for which they are a Creator and the University owns rights in and to Intellectual Property in Assigned Task Materials and Intellectual Property created by [Students engaged in work that is not part of their academic studies \(e.g. work study\)](#), Non-Academic Members, ~~Contractors~~, Volunteers and Senior Administrators. The foregoing University and Academic Member ownership rights are subject to the following exceptions:

- i. ~~(i)~~ Where there is a written agreement with the University to the contrary; or
- ii. ~~(ii)~~ For externally sponsored activities, collaborative activities, or contract research, ownership of Intellectual Property rights may be determined in whole or in part by regulations of the sponsor or the terms of the contract. It is the responsibility of the Principal Investigator to make any and all University Members participating in their research activities aware of any such third party or contract terms.

4.2. For clarity, the foregoing does not alter the rights of co-Creators where the Academic Member owns the Intellectual Property in question. By way of example, rights in and to Intellectual Property owned by Academic Members may be jointly owned with any co-Creators and as applicable, with ownership interest and arrangements between co-Creators to be determined by mutual written agreement(s) by such co-Creators. In the event that any disputes arise as between co-Creators then such disputes may be resolved in accordance with ~~Article~~[Section 15](#) of this ~~policy~~[Policy](#).

5. ~~5.~~ NON-EXCLUSIVE UNIVERSITY LICENSE

5.1. Subject to the exceptions in Section 4, the University is automatically granted by an Academic Member a non-exclusive, royalty-free, irrevocable right and license to use [and modify](#) Intellectual Property owned by such Academic Member under this Policy that has been produced or developed by such Academic Member while studying, volunteering, employed or otherwise engaged at or by the University or using University Resources. This license grants the University the right to use [and modify, except where such modification would affect pedagogical validity](#), such Intellectual Property for the University's ~~internal~~ administrative, research or academic purposes and, except for academic course instruction, does not confer the right to Commercialize the Intellectual Property unless the Academic Member provides their prior written consent to the University. In respect of Teaching Materials and Scholarly Works owned by Academic Members under this Policy, this license is limited to Teaching Materials and Scholarly Works that are electronic and/or printed and distributed, or have been made or are being made publicly available to Students, in connection with an academic course, and for which the Academic Member is a Creator. Academic Members agree to take necessary steps to facilitate the University's exercising the licensed rights (e.g., by providing a copy of each such Work to the University in the requested format).

5.2. An Academic Member, or their authorized representative, who owns Intellectual Property that is subject to the foregoing license may submit a written request to the Vice President, Research & Innovation, to revoke such license. The license shall be revoked upon written approval of the Vice President, Research & Innovation [and](#)

[the Provost & Vice President, Academic](#), with such approval not to be unreasonably withheld.

6. ~~6.~~ MORAL RIGHTS

6.1. Academic Members that own Copyright in a Work shall retain all Moral Rights in such a Work pursuant to the Copyright Act. ~~Nothing and nothing~~ in this ~~policy~~[Policy](#) constitutes a waiver of Moral Rights, unless the waiver is made in writing by the Academic Member in favour of the University or other Licensee or except as provided under Section 5.1. In the event that any disputes arise in regards to Moral Rights then such disputes ~~may~~ be resolved in accordance with ~~Article~~[Section](#) 12 of this Policy.

7. ~~7.~~ CONTRIBUTIONS

7.1. All Creator(s) of Intellectual Property should receive appropriate recognition for their contributions. Depending on the nature of a contribution, appropriate recognition can be, but is not limited to, one or more of the following forms: verbal or written acknowledgement, citation, naming rights or such other consideration as may be agreed from time to time.

7.2. The University, as a facilitator or supporter of teaching, research, publication, and other scholarly activities shall be acknowledged on all Intellectual Property created by Academic Members.

8. ~~8.~~ THIRD-PARTY RIGHTS

8.1. University Members must respect all third-party rights to Intellectual Property. This obligation precludes the unauthorized use, reproduction, modification, translation or adaptation of third ~~party~~ Intellectual Property, and the like, unless written permission has been obtained from the Intellectual Property owner or such use is otherwise legally permitted or authorized.

9. ~~9.~~ COMMERCIALIZATION OF INTELLECTUAL PROPERTY

9.1. ~~9.1~~ DISCLOSURE OF INTELLECTUAL PROPERTY CONTRIBUTION(S)

Subject to Sections 9.2 and 9.3, University Members who are Creators that have developed Intellectual Property using University Resources, in a timely manner in advance of any Commercialization activities, are obligated to inform the Office of Research Services of their intentions in writing. Such disclosure shall include an acknowledgement that is signed by each of the Creator(s) of the Intellectual Property, and which dictates the percentage of Intellectual Contribution by each Creator(s). In the event revenue results from the Commercialization of the Intellectual Property, the percentage of Intellectual Contribution shall be utilized to determine the Creator(s) share of Net Revenue owed in accordance with Section 9.4.

9.2. ~~9.2.~~ BY THE CREATORS

Except as contemplated in Section 9.3, the Creator(s), subject to the Intellectual Property ownership provisions in ~~Article~~[Section](#) 4, shall retain full legal responsibility for the protection and Commercialization of any unencumbered Intellectual Property they have developed. In the event the Creator(s) wish to retain the legal responsibility for the protection and Commercialization of Intellectual Property, the Creator(s) shall provide the University with a written letter of notification of their intent in accordance with ~~Article~~[Section](#) 9.1. Such written notification shall include a representation and warranty by the Creator(s)

that the University shall not be liable for any acts and/or omissions by the Creator(s) in respect of the legal protection and/or Commercialization of the Intellectual Property, and the Creator(s) shall agree to hold the University harmless for any and all risks and liabilities associated with the legal protection and/or Commercialization of the Intellectual Property. The Creator(s) shall further agree to take such further actions and execute such further documentation as may be necessary or desirable for the Creator(s) to assume all risk and liability associated with the legal protection and/or Commercialization of the Intellectual Property and hold the University harmless for the same. The University disclaims any and all responsibility for and liability associated with the legal protection and Commercialization of such Intellectual Property.

Commercialization of Intellectual Property by the Creator(s) is subject to the obligations as set forth below:

- a) ~~a)~~ The University's right to use the Intellectual Property for research, teaching and administrative purposes, without cost and in perpetuity (subject to [ArticleSection 5](#))
- b) ~~b)~~ All third -party rights ([ArticleSection 8](#))

All Creator(s) who Commercialize Intellectual Property shall provide to the University, copies of all agreements and Intellectual Property applications/filings on an annual basis, as well as, copies of any and all business transactions and revenue generated in respect to the Intellectual Property.

9.3. ~~9.3~~ BY THE UNIVERSITY

The Creator(s), subject to the Intellectual Property ownership provisions in [ArticleSection 4](#), may offer their Intellectual Property to the University to take full legal responsibility for the legal protection and Commercialization of the Intellectual Property. The University is under no obligation to take on legal responsibility for any Intellectual Property developed by the Creator(s). Further, the University may complete an Intellectual Property assessment, which may include: patentability, technical, and market assessments before accepting any responsibility for Creator's Intellectual Property.

Upon the University accepting responsibility for Commercialization of a Creator's Intellectual Property, the University and Creator(s) will enter into an appropriate agreement to include, at a minimum that:

- a) ~~a)~~ The Creator(s) shall assign ownership in the Intellectual Property to the University for the purposes of Commercialization;
- b) ~~b)~~ The Creator(s) shall make available all documentation, data, technical documents, prototypes, etc. to University as needed;
- c) ~~c)~~ The Creator(s) shall work with the University as needed to facilitate Commercialization and any transfer of the Intellectual Property rights; and
- d) ~~d)~~ In the event the University has not Commercialized the technology within two (2) years of the assignment of ownership date (or other reasonable time frame mutually agreed upon by the parties), the University, in its sole discretion, may offer to assign, or Creator(s) may

request reassignment of, their Intellectual Property in order to take full legal responsibility for the ongoing protection and Commercialization of the Intellectual Property. If found so, the University shall assign ownership of the Intellectual Property back to the Creator(s).

For clarity, notwithstanding the University's ownership of any Intellectual Property, including as a result of the University agreeing to assume full legal responsibility for Intellectual Property, it is at the University's sole and absolute discretion to pursue legal protection or Commercialization of Intellectual Property.

9.4. ~~9.4~~ **NET REVENUE FROM COMMERCIALIZATION ACTIVITIES**

Net Revenue resulting from the Commercialization of Scholarly Works, except for Computer Programs, by an Academic Member shall fall outside of this Policy, unless governed by a third party agreement where the University is a party. All other Net Revenues resulting from the Commercialization of Intellectual Property shall be allocated to Creator(s) and University in accordance with this Section 9.4. Any conflicts or disputes arising with respect to the calculation or distribution of Net Revenue will be handled in accordance with ~~Article~~Section 12.

In the event a Creator and University mutually agree to modify the rights and obligations set out in this Section 9.4, including but not limited to i) adjusting Net Revenues percentages, ii) waiving entitlement to Net Revenues or iii) allocating a portion of Net Revenues to a third party, such modifications or exceptions to the Policy must be made in writing and signed by the Creator and University.

a) ~~a)~~ **Commercialization of Intellectual Property by the University:**

Where the Intellectual Property is assigned by Creator to the University for the purpose of Commercialization in accordance with Section 9.3, the University will comply with the following reporting and financial obligations.

The University will provide an annual report to Creator(s) summarizing the actions taken to protect and/or Commercialize the Intellectual Property and all revenues and expenditures relating to the protection and Commercialization of such Intellectual Property.

Unless otherwise agreed in writing by the University and Creator(s), the University will distribute Net Revenues to Creator(s) on an annual basis, no later than June 30 each calendar year, in the proportions set out in the table below:

| Participant | Percentage of Revenue |
|-------------|-----------------------|
| Creator(s) | 50%* |
| University | 50% |

*Where there is more than one Creator, and in the absence of an agreement between the Creator(s) to the contrary, the Creators' share of Net Revenue will be distributed to each Creator in proportion to their respective Intellectual Contribution, as disclosed to the University.

b) ~~b)~~ **Commercialization of Intellectual Property by the Creator(s):**

Where the Intellectual Property is retained by the Creator(s) and the Creator(s) take active steps to protect and/or Commercialize its Intellectual

Property, the Creator(s) will comply with the following reporting and financial obligations.

The Creator(s) will provide an annual report to University summarizing the actions taken to protect and/or Commercialize the Intellectual Property and all revenues and expenditures relating to the protection and Commercialization of such Intellectual Property.

Unless otherwise agreed in writing by the University and Creator(s), the Creator(s) will distribute Net Revenues to the University on an annual basis, no later than June 30 each calendar year, in the proportions set out in the table below:


| Participant | Percentage of Revenue |
|-------------|-----------------------|
| Creator(s) | 75%* |
| University | 25% |

*Where there is more than one Creator, and in the absence of an agreement between the Creator(s) to the contrary, the Creators' share of Net Revenue will be distributed to each Creator in proportion to their respective Intellectual Contribution, as disclosed to the University.

10. ~~10.~~ **COMPANY CREATION**

10.1. From time to time, a new legal entity may be formed by the University and/or the Creator(s) to assist in the further development and/or Commercialization of Intellectual Property. In the event such a legal entity is created by the Creator(s) and/or the University, any required agreement will be negotiated with the new legal entity and the University and/or Creator(s), as applicable, in order to address among other things, the appropriate revenue sharing for the University and/or the Creator(s).

11. ~~11.~~ **ADMINISTRATION AND AMENDMENTS**

~~Subject to the dispute resolution provision set out in Article 12, the VPRI, or successor thereof, is responsible for the administration of this Policy.~~ 

11.1. The VPRI is ~~further~~ responsible for making determinations regarding various matters referred to in this Policy, including determining time periods, limitations on ownership rights, what constitutes private research, and ownership rights of Academic Members conducting externally sponsored or research activities.

12. ~~12.~~ **CONFLICTS AND DISPUTE RESOLUTION**

12.1. The University recognizes that conflicts may arise due to an inability to reach an agreement with respect to the determination of rights to Intellectual Property, including those pursuant to this Policy. For example, disputes related to the ownership and licensing of Intellectual Property may arise from time to time. In general, conflicts are best dealt with at an informal level. It is advisable for persons in conflict to seek mediation or other forms of informal dispute resolution.

12.2. If a conflict cannot be resolved informally, the dispute will be managed in the following manner:

~~a. Disputes involving Academic Member and University:~~

~~i.~~

a) Disputes for which the parties are solely the University and an Academic Member, with collective agreements that address Intellectual Property Disputes will be resolved in accordance with ~~the~~such Intellectual Property dispute mechanism put forth within the ~~current~~ collective agreement ~~that is associated with that Academic Member's employment status.~~

b) ~~b.~~ Disputes ~~involving all other University Members and University:~~ ~~Disputes~~ for which the parties are solely the University and ~~all~~any other University Members not covered in Section 12(a), or among University Members, for matters falling within the scope of this Policy will ~~be~~ resolved as follows:

~~1.~~ ~~When an agreement cannot~~ be resolved informally, by submitting the matter ~~will be submitted~~ in writing to the Vice-President, Research & Innovation (or delegate) who will consult with others as appropriate, and will issue a written decision to the Creator(s).

12.3. Disputes that may arise with respect to the outcome of the application of the Policy, ~~that involve Academic Members and all other University Members~~ which cannot be settled amicably among the parties in accordance with Section 12.2, will be submitted to arbitration by a panel composed of one member nominated by the University, one member nominated by the Creator(s) and one member selected by the first two arbitrators. The panel's decision will be made by a majority of the three panel members within thirty (30) days of its appointment. The decision shall be final and binding on the parties. If the nominees cannot agree on the identity of the third panel member, an application will be made to the court for the appointment of a third arbitrator.

~~Disputes that may arise with respect to the outcome of the application of the Policy that involve Students will be administered in accordance with University policies.~~

~~13-~~

MONITORING AND REVIEW

13. This Policy will be reviewed as necessary and at least every three years. The Vice-President, Research & Innovation, their delegate, or successor thereof, is responsible to monitor and review this Policy.

~~14~~ RELEVANT LEGISLATION

14. Copyright Act RSC 1985, c. C-42
Patent Act, RSC 1985, c. P-4

~~15~~ RELATED POLICIES, PROCEDURES & DOCUMENTS

15. Intellectual Property Assessment and Dissemination Procedures
Intellectual Property Disclosure Form

Software/Copyright Disclosure Form
Intellectual Property Assignment Agreement
Notice of IP Retention by Inventor
Conflict of Interest in Research Policy
Collective Agreements (list)

[Policy on the Responsible ~~conduct~~Conduct of ~~research~~Research and Scholarship](#)
[Procedure on the Responsible Conduct of Research and Scholarship](#)
[Ethical Conduct](#) Policy

~~Tenured and Tenured Track Collective Agreement~~

~~UOIT Faculty Association Collective Agreement~~

[Conflict of Interest Procedure](#)

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