

Intellectual Property Transfer

Policy 207

1 Introduction

1.1 Appalachian State University (hereinafter also referred to as "the University") encourages participation by faculty, staff and students in scholarly research and creative activities that create knowledge, support and enhance teaching, and are consistent with its public service mission to contribute to the economic development of North Carolina. While research conducted by the University is aimed first at creation, discovery and dissemination of knowledge, rather than profit from commercial application, the University recognizes that public benefit may result from commercial applications of technology developed with University resources. The University seeks through adoption of these policies and procedures to balance the interests of the public, the University and respective inventors, authors, or artists in intellectual property arising from research and creative activities conducted by employees and students.

1.2 Consistent with policies adopted by the Board of Governors of The University of North Carolina, these policies and procedures are intended to:

1. Provide appropriate incentive for creative intellectual effort by faculty, staff, students, and others associated with the constituent institutions of the University;
2. Establish principles for determining the interests of the constituent institutions, inventors, and sponsors in regard to inventions and/or discoveries;
3. Enable University officials to develop procedures by which the significance of inventions and/or discoveries may be determined and brought to the point of commercial utilization;
4. Provide the means for placing in the public realm the results of research, while safeguarding the interests of the University, inventor, and sponsor; and recognize the right of the inventor to financial benefits from the invention or discovery

2 Scope

2.1 This statement of policy and procedures applies to all persons employed by the University, to all students and to any other person or entity using facilities, staff or funds subject to control or supervision by the University, except as otherwise expressly stated herein. This document, as amended from time to time, shall be deemed to constitute part of the conditions of employment of every employee, including student employees, and of the conditions of admission, enrollment and attendance by every student of the University. Unless otherwise excepted by the provisions hereof, this policy shall apply to intellectual property of all types (including any invention, discovery, trade secret, technology, scientific or technological development, computer software, conception, design, creation or other form of expression of an idea) regardless of whether such property is subject to protection under patent, trademark, or copyright laws, or other constitutional, statutory or common law.

2.2 The provisions of this document shall be interpreted and applied in conformity with UNC Policies.

3 Definitions

3.1 Copyright

The exclusive right to make copies, license, and otherwise exploit a literary, musical, or artistic work, whether printed, audio, video, etc. Such rights in a work created on or after January 1, 1978, generally endure for a term consisting of the life of the author and 70 years after the author's death.

3.2 Directed Works

"Directed works" include works that are specifically funded by, or created at the direction of, or created pursuant to contract with, the University (including, but not limited to, works for hire by faculty or other EPA employees).

3.3 Student Work

Any form of paper, computer program, theses, dissertations, artistic and musical works and other tangible or intangible creative works made by students that could be protected via patent, copyright or trade secret. For purposes of this policy, the term "student" shall include undergraduate and graduate students.

3.4 Exceptional Use of Institutional Resources

"Exceptional use of institutional resources" means institutional support of traditional works with resources of a degree or nature not routinely made available to faculty or other EPA employees in a given area. In keeping with academic tradition, the University will not construe the provision of office, laboratory, studio or library facilities as constituting "exceptional use of institutional resources," as that phrase is used in UNC Policies. Exceptional use of institutional resources does include, without limitation, those situations where funds are paid (as salaries, wages or otherwise), atypical reassigned time (more than 3 semester hours per semester) is granted to a faculty member or other resources are provided specifically to support the development of copyrightable materials.

3.5 Patent

The exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years. To be patentable, the invention or discovery must have utility, novelty, and be non-obvious. The US Patent & Trademark Office has determined that software which meets certain technical and legal criteria may be patentable. In the event that software originally disclosed as a Copyrightable Work is subsequently determined to be patentable subject matter, and ASU chooses to seek patent protection for the software, such software shall be managed under this policy as patentable Intellectual Property.

3.6 Research Data; Records and Materials Related to the Intellectual Property

As used herein, the terms "research data" and/or "records and materials related to the intellectual property" includes, but is not limited to, any recorded information, regardless of the form or media on which it may be recorded, writings, films, sound recordings, pictorial reproductions, drawings, designs, or other graphic representations, procedure manuals, forms, diagrams, work flow charts, any tangible product (e.g., equipment, furniture, sculpture or a model thereof) and its description, data files, data processing or computer programs (software), statistical records, laboratory notebooks or worksheets, field notes, edited and categorized observations, interpretations, analyses, derived reagents and vectors, tables, charts and other records, cells and cell lines, cell products, organisms, tissues, animals, synthetic compounds, samples, and any other information or materials that may aid in evaluation, use or commercialization of, or otherwise relate in any way to, such intellectual property.

3.7 Shop Right

The right of an employer to use an employee's invention or other work without compensating the employee for the use, in cases where the invention or other work was made at the place of and during the hours of employment.

3.8 Sponsored or Externally Contracted Works

A "sponsored or externally contracted work" is any type of copyrighted work developed with funds supplied under a contract, grant, or other arrangement between the University and third parties, including sponsored research agreements.

3.9 Traditional Works or Non-Directed Works

A "traditional work or non-directed work" is a pedagogical, scholarly, literary, or aesthetic (artistic) work originated by a faculty or other EPA employee resulting from non-directed effort. (Such works may include textbooks, manuscripts, scholarly works, fixed lecture notes, distance learning materials not falling into one of the other categories of this policy, works of art or design, musical scores, poems, films, videos, audio recordings, or other works of the kind that have historically been deemed in academic communities to be the property of their creator.)

3.10 UNC Policies

Policies adopted by the Board of Governors of The University of North Carolina, including, but not limited to, The University of North Carolina Policy Manual, Section 500.2, and applicable federal and state laws and regulations.

3.11 Work Made for Hire

A "work made for hire" is--

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. See 17 U.S.C. § 101 (definition of "work made for hire")

4 Policy and Procedure Statements

4.1 Students

4.1.1 Ownership of Student Works - Students Works will be owned by the student unless the works fall within one of the exceptions described below:

1. the Student Work is made in the course of the student's University employment;
2. the Student Work is created as part of a Sponsored or Externally Contracted Work; in which case ownership shall be determined in accordance with the sections of this policy related to sponsored or externally contracted works in the same way that those provisions apply to faculty and other University employees;
3. the Student Work was created by the student as a Work for Hire.
4. the Student Work is conceived or reduced to practice with (a) University administered funds, (b) SUBSTANTIAL USE OF UNIVERSITY RESOURCES, or (c) another student, faculty member or other University employee who has a duty to make assignment or has made assignment to the University; or
5. the Student Work is created in a classroom, laboratory or other instructional process with other students or University employees; in which case students will have a limited right to use the materials for personal, educational purposes. However, students shall not have the right to use the work for commercial gain or authorize others to do so.

4.1.2 Royalty Sharing Rights for Student Works

1. In the event that Students assign their rights to the University in accordance with section 4.0.3 below, they shall be entitled to the same royalty sharing rights as provided to Faculty and other University employees under this policy.

4.1.3 Proprietary Projects

1. Occasionally, the University may ask students to agree to University ownership of Student Works due to the access to and/or use of University or third-party propriety information as part of a particular group project. Students will be notified of this condition in advance or at the time of enrollment in the course and will be required to sign a written Assignment Agreement. In any such course, the students enrolled shall have the option of not assigning their Intellectual Property Rights to the University by instead taking part in a different group or individual project in that class where the assignment of the ownership of the Student Work is not required.

4.1.4 Special Program Exemption

1. Conversely, the University may offer courses or programs to promote entrepreneurship, innovation, and economic development. With advance approval of the Intellectual Property Council (IPC) for these courses/programs, participation by students in these activities will not trigger a change in ownership for Student Works either previously conceived by the students or conceived during their participation. Any inventive contribution by an employee of the University is subject to this policy. Requests related to a Special Program Exemption should be made in writing to the Vice Provost of Research at least ninety (90) days in advance of the first class day of the course or the first day of program participation, as the case may be.

4.2 Patents

4.2.1 University Interests in Inventions

1. As provided by the UNC Policies, to which these policies and procedures are expressly subject, the University has an ownership interest in all inventions of University personnel (other than "Inventions made on Own Time") that are conceived or first actually reduced to practice as a part of or as a result of University research or other activities involving the use of University facilities, staff, or funds administered by the University.
2. The University also may have an interest in inventions under the terms of contracts, grants or other agreements. Faculty, staff, and students whose inventions are made on their own time and without University facilities, staff, or other resources and which inventions are, therefore, their exclusive property as specified by UNC Policies, may avail themselves of the opportunity to submit the invention to the University for possible patenting and/or commercial exploitation and management under terms to be agreed between the inventor and the University.

4.2.2 Procedures for Review of Invention Disclosures

4.2.2.1 The Provost shall appoint an Intellectual Property Council (hereinafter "Council") consisting of at least the following voting members:

1. A faculty member from each of the following:
 1. College of Health Sciences
 2. College of Arts & Sciences
 3. Walker College of Business
 4. Reich College of Education
 5. College of Fine & Applied Arts

6. College of Health Sciences
7. Hayes School of Music
8. University College
9. Belk Library and Information Commons
2. A representative appointed by the Faculty Senate
3. A representative of the Office of Research Protections & Sponsored Programs
4. A representative of the Small Business and Technology Development Center

4.2.2.2 The Council shall review, and shall make recommendations to the Vice Provost for Research ("VPR") concerning these policies and procedures, appropriate disposition of invention disclosures, and distribution of invention royalties. The Council shall make such recommendations as are deemed appropriate to encourage disclosures; assure prompt and effective handling, evaluation, and prosecution of invention opportunities; and protect the interests of the University and the public. A representative from the Office of General Counsel will advise the Council upon request.

4.2.2.3 Employees and others who are subject to these policies and procedures by virtue of their employment or use of University services or facilities, either alone or in association with others, shall immediately disclose to the VPR, or such officer's designee, any invention or discovery (including those made under cooperative arrangements); provide complete information thereon; and cooperate with the University in protecting potential patent and know-how rights in accordance with UNC Policies and these policies and procedures.

4.2.2.4 The VPR or that officer's designee will promptly acknowledge receipt of completed disclosure forms and will distribute such forms to the Council for consideration at its next meeting.

4.2.2.5 The Council will review each written disclosure promptly. The inventor or that person's representative shall be allowed to examine all written materials submitted to the Council in connection with the disclosure and to make a written and, where practicable, oral presentation to the Council. The Council will make recommendations to the VPR or that officer's designee on the proper disposition of the invention to secure the interests of the University, the inventor, the sponsor, if any, and the public. Its recommendation may include, but is not limited to, one or a combination of the following:

1. To submit the disclosure for review by a patent or invention management firm;
2. To make inquiries of potential licensees that may have an interest in the invention, including the financing of a patent application, where applicable;
3. To study the practicality of applying for a patent with University resources (an option with limited application because of financial constraints);
4. In proper cases, to release the University's rights to the inventor in accordance with UNC Policies, subject to an agreement to protect the interests of the University, the sponsor, if any, and the public, including an obligation to pay to the University a percentage of any royalties or other income generated through assignment, licensure or other commercial exploitation of the invention; or
5. With concurrence of the inventor(s), to dedicate the University's interest in the invention to the public.

4.2.2.6 Within ninety (90) days of the next regularly scheduled meeting of the Council following the Vice Provost for Research's receipt of the disclosure (or such other time as may be agreed upon by the inventor(s) and the VPR or that officer's designee), the inventor will be notified in writing of the decision by the VPR, or such officer's designee, on (1) whether the University plans to file a patent application, (2) whether the University will accept assignment of the invention for patenting, licensing and/or commercial handling as applicable, and/or (3) the equities involved, including financial participation. If the University chooses neither to file a patent application nor otherwise make an invention available commercially, nor to dedicate to the public an invention in which it asserts its rights, the invention will be released in writing to the inventor, subject to the terms of an applicable sponsored research contract, if any. If no patent application is filed within 8 months following the decision of the VPR, all patent rights revert to the inventor. If, after the University has filed a patent application, it decides to abandon the application, the inventor will be promptly notified in writing, and the University's rights in the invention will be released by written agreement to the inventor, subject to the terms of an applicable sponsored research contract, if any.

4.2.2.7 In those cases in which the University has obtained a patent without obligation to sponsors, if the University has made no arrangement (e.g., a license agreement, search for prospective licensees or other commercially reasonable effort) for commercial development of the invention within one year from the date of the issuance of the patent and each year thereafter, the inventor(s) may request in writing a release of the University's patent rights. The VPR or such officer's designee will promptly either grant the request or advise the inventor(s) of the University's plans for the development of the invention after consultation with the Council.

4.2.3 Publication and Public Use

4.2.3.1 The University strongly encourages scholarly publication of the results of faculty and student research. Though UNC Policies do not limit the right to publish, except for short periods of time necessary to protect patent rights, publication or public use of an invention constitutes a statutory bar to the granting of a United States patent for the invention unless a patent application is filed within one year of the date of such publication or public use. Publication or public use also can be an

immediate bar to patentability in certain foreign countries.

4.2.3.2 In order to preserve rights in unpatented inventions in which the University retains an interest, it shall be the duty of the inventor, or of the inventor's supervisor if the inventor is not available to make such report, to report forthwith to the VPR or that officer's designee any publication, submission of manuscript for publication, sale, public use, or plans for sale or public use, of an invention, if a disclosure has previously been filed. The inventor shall promptly notify the VPR or that officer's designee of the acceptance for publication of any manuscript describing the invention or of any sale or public use made or planned by the inventor. An invention may not be disclosed before the filing of a patent or provisional patent application in the United States Patent and Trademark Office to any person who is not employed by the University or working in cooperation with the University upon that invention, unless the disclosure is made subject to a written Confidential Disclosure and Limited Use Agreement signed by the VPR or that officer's designee and all signatories necessary to bind the other party or parties to the agreement.

4.2.4 Ownership

4.2.4.1 Ownership of inventions and discoveries shall be determined in accordance with UNC Policies.

4.2.5 Sponsored Research

4.2.5.1 In cooperative undertakings sponsored by, or involving, third parties, provisions for the control of patents normally should be consistent with the general policy stated above. However, it is recognized that in some cases the interests of other entities (federal or state agencies, corporations, etc.) will justify modifications of the general policy. In those cases, the provisions with respect to patents shall appear in the applicable memorandum of understanding or agreement for the review and approval of the VPR. It is intended and provided that disclosed inventions will be identified and managed in accordance with patent policy and procedures.

4.2.5.2 Nothing in this policy shall be interpreted as precluding the acceptance of a contract, grant, or agreement which provides for ownership of inventions and patent rights by the cooperating agency or organization; provided, however, due regard shall be given to the interests of the general public and inventors in such instances.

4.2.6 Income from Patents

4.2.6.1 The University shall share technology transfer revenue that it receives from patents or inventions with the inventors. Specific provisions of grants or contracts may govern rights and revenue distribution regarding inventions made in connection with sponsored research; consequently, revenues the University receives from such inventions may be exclusive of payments of royalty shares to sponsors or contractors. Moreover, the University may contract with outside persons or organizations for the obtaining, managing and defending of patents. Any expenses incurred for the services of such persons or organizations, as well as any and all incremental expenses incurred by the University in obtaining and maintaining patents and/or in marketing, licensing and defending patents or licensable inventions, shall be deducted before the University distributes revenues, subject to the provisions of paragraph 2 below.

4.2.6.2 The revenues that the University receives from a patent or invention (net of expenses described in subsection a. above) shall be distributed at least annually as follows:

1. Inventor 50%
2. University (AA) 10%
3. College 10%
4. Department 10%
5. Technology Transfer 20%

4.2.6.3 Applicable laws, regulations or provision of grants or contracts may, however, require that a lesser share be paid to the inventor. In the case of co-inventors, each percentage share described in this section as due a sole inventor shall be subdivided equally among the co-inventors unless all the co-inventors provide the University a written instrument signed by each of them allocating ownership among them other than in equal shares. In no event shall the share payable to the inventor or inventors in the aggregate by the University be less than 15% of the gross royalties received by the University.

4.2.6.4 To the extent practicable and consistent with State and University budget policies, amounts allocated to the University pursuant to the chart in subsection b. will be dedicated to support University research and commercialization activities, including research in the inventor's department or unit, if approved by the VPR or that officer's designee.

4.2.6.5 In the event that a person contributes an invention to the University, a written agreement accepting such contribution shall be executed by the Chancellor or that officer's designee, subject to approval and acceptance of The Board of Trustees of the Endowment Fund of Appalachian State University. In the event that a person otherwise assigns an invention to the University for value, the terms of the agreement shall include a statement governing the division of income between the University and the assignor and a statement making these policies and procedures applicable to any development or refinement of the invention.

4.3 Copyright

4.3.1 Ownership

4.3.1.1 Copyright is the ownership and control of the intellectual property in original works of authorship. Copyright ownership and the rights thereof are defined by federal law; however, UNC Policies effectively grant ownership to certain copyrightable works to individual authors, even though federal law would vest ownership in the University. Those determinations have been made by category of copyrightable work and category of author. See:

1. [The UNC Policy Manual, § 500.2\(XII\)](#)

4.3.2 Traditional Works or Non-Directed Works

4.3.2.1 Ownership: Creator of the work, unless it is a directed work, sponsored work requiring University ownership, or a work made for hire described in a written agreement between the work's creator and the University. (See Definitions, section 3 of this document, for the definition of "work made for hire;" under the Copyright Act the University is deemed the "Author" of a work made for hire.) If the University is to be involved in commercializing a traditional work or non-directed work, the work's creator shall assign the work to the University under an assignment agreement. The assignment agreement shall contain provisions outlining the commercialization responsibilities of the University and a mechanism for the sharing of commercial proceeds with the Author. In cases of ownership by the creator of a traditional work, the University, where practical, shall be granted a non-exclusive, non-transferable, royalty-free license for its own educational or research use (hereinafter referred to as a "Shop Right"). Examples of Traditional or Non-Directed Works include literary works, musical compositions, journal articles and other scholarly works, and instructional materials, unless any such work is specially ordered or commissioned by the University.

4.3.3 Directed Works

4.3.3.1 Ownership: University. The work's creator, where practical, shall be granted a Shop Right. The University may release or transfer its authorship rights to the work's creator under a written agreement negotiated between the creator and the University, usually with the University retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the University if the work produces income for the creator. The parties may also negotiate for joint ownership of such works, with the approval of the VPR.

4.3.4 Traditional Works or Non-Directed Works Involving Exceptional Use of Institutional Resources

4.3.4.1 Ownership: University. However, upon agreement by the official Vice Provost for Research, the University may release or transfer its rights to the work's creator, with the University retaining: (a) a Shop Right; (b) the right to require reimbursement from the creator equal to the value of institutional resources used if the work produces income for the creator; and/or (c) the right to receive royalties in the same proportions as are provided for patent income under these policies if the work produces income for the creator. The parties may also negotiate for joint ownership of such works, with the approval of the VPR.

4.3.5 Sponsored or Externally Contracted Works

4.3.5.1 Ownership:

4.3.5.2 For a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by the University, the creator of the work must disclose the work to the University. Provided there is no conflict with a sponsored agreement, the University may release or transfer its rights to the work's creator under an agreement negotiated between the creator and the University, usually with the University retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the University if the work produces income for the creator; or the parties may also negotiate for joint ownership of such works, with the approval of the VPR.

4.3.5.3 For a sponsored or externally contracted work created under an agreement that does not expressly require copyright ownership by the University or a third party, the creator of the work shall own the work, subject to disclosure to the University where required under institutional policy. In case of ownership by the work's creator, the University, if practical, shall be assigned a Shop Right.

4.3.6 Work Made for Hire

4.3.6.1 Ownership: University, unless it is a Traditional or Non-Directed Work as provided herein.

4.3.7 Income from Copyright

4.3.7.1 Works Not Owned by Appalachian State University

4.3.7.2 Authors and creators of original works in which the University claims no interest may exercise exclusive rights protected by copyright law, register the copyright and receive any revenues which may result therefrom.

4.3.7.3 Works in Which Appalachian State University Has an Ownership or Income Interest

1. Income received by the University through the sale, licensing, leasing or other use of copyrightable material in which the University has an ownership interest will normally be shared with the author. Authorship for this purpose shall be determined by the Vice Provost for Research or such officer's designee. Compensation and division of royalties, if any, will be the same as that provided for patent income under these policies and procedures unless other terms are negotiated by written agreement prior to commencement of work on the project.
2. In the event that an author contributes a copyrighted work to the University, a written agreement accepting such contribution shall be executed by the Chancellor or that officer's designee, subject to approval and acceptance of The Board of Trustees of the Endowment Fund of Appalachian State University. In the event that a person otherwise assigns a copyrighted work to the University for value, the terms of the agreement shall include a statement governing the division of royalties or other income between the University and the assignor.

4.3.8 Revision of Materials

4.3.8.1 Materials owned by the University under the terms of this policy shall not be altered or revised without providing the author a reasonable opportunity to assume the responsibility for the revision. If the author declines the opportunity to revise such material, the assignment of responsibility for the revision will be made by the VPR or such officer's designee in consultation with the appropriate department or office.

4.3.9 Withdrawal of Materials

4.3.9.1 Materials owned by the University under the terms of this policy shall be withdrawn from use when the University deems such use to be obsolete or inappropriate; provided, however, such withdrawal or other discontinuance would not violate the terms of any licensing or other agreement relating to the materials.

4.3.10 Notice of Copyright

4.3.10.1 All material owned by the University under the terms of this policy shall be protected by notice of copyright in the name of the University. The proper form of such notice is as follows:

© 20--, Appalachian State University. All rights reserved.

4.3.10.2 The date should be the year in which the work was completed or in which it was published, whichever is earlier. The name of the University must be spelled out in its entirety. The word "Copyright" may be substituted for the copyright symbol shown above.

4.3.11 Trademarks, Service Marks and Trade Names

4.3.11.1 Trademarks and service marks may be any work, name, symbol, or device, or any combination thereof, adopted and used by the University in the sale or advertising of goods or services to identify and distinguish such goods and services from those sold by others.

4.3.11.2 Trade names include any names used to identify Appalachian State University and its services.

4.3.11.3 The Chancellor or such officer's designee shall be responsible for protection and licensure of trademarks, service marks, and trade names used by or related to Appalachian State University.

4.3.11.4 No licenses shall be granted to commercial entities for use of trademarks or service marks in connection with commercial services or stationery, alcoholic beverages, inherently dangerous products, products of obscene or disparaging characteristics, health related products, products classified as staple foods, meats, and natural agricultural products, and any other uses which, in the opinion of the Chancellor or such officer's designee, would degrade the reputation or goodwill of the University.

4.3.12 Trade Secrets

4.3.12.1 Trade secrets may be comprised, generally, of any formula, pattern, device or compilation of information which gives one an opportunity to obtain an advantage over competitors who do not know or use it in commercial applications. To the extent permitted by UNC Policies, trade secrets in which Appalachian State University maintains an interest shall be protected in accordance with the terms of sponsored research agreements or, if none exist, by any lawful means available to the University as determined by the Chancellor or such officer's designee.

4.3.13 Disclosure of Intellectual Property and Related Records

4.3.13.1 All individuals who are subject to these policies and procedures have a duty to disclose promptly, in writing, and prior to any disclosure either to the public or for commercial purposes, any intellectual property created or discovered by such individual. Disclosure shall be made to the VPR or such officer's designee.

4.3.13.2 The Provost and Executive Vice Chancellor (Provost) or that officer's designee may adopt policies and determine procedures in addition to, but consistent with, those set forth in UNC Policies and in this document for appropriate institutional review of such disclosures. The duty to disclose arises as soon as the individual has reason to believe, on the basis of that person's own knowledge or upon information supplied by others, that the intellectual property may be protectable under patent, trademark, or copyright law, or other applicable law. Certainty about the protections to be afforded such intellectual property is not required before a disclosure should be made.

4.3.13.3 All individuals who disclose intellectual property pursuant to these policies and procedures or UNC Policies have a duty to deliver to the Vice Provost for Research or such officer's designee all research data or other records and materials related to the intellectual property upon request of the VPR or such officer's designee.

4.3.14 Conflicts of Interest

4.3.14.1 Ownership of any equity interest in a business entity that has an agreement with the University relating to research, development, licensing, or exploitation of intellectual property created or discovered by a student or employee shall be disclosed to the VPR or such officer's designee. The VPR shall take any necessary steps to avoid injury to the University as a result of potential conflicts of interest arising out of such equity ownership.

4.3.14.2 No employee or student may serve as a director, officer, or employee of, or consultant to, a business entity that has an agreement with the University relating to research, development, licensing, or exploitation of intellectual property in which the University has an ownership interest except upon request of, or prior approval by, the Provost or such officer's designee. Authorization to serve as a director, officer, or employee of, or consultant to, such a business entity may be subject to one or more conditions established to avoid injury to the University as a result of potential conflicts of interest.

4.3.14.3 The University may accept equity interests as partial or total compensation for rights conveyed in agreements with business entities relating to intellectual property owned by the University. The University may, but shall not be obligated to, negotiate an equity interest on behalf of any employee or student as a part of an agreement between the University and a business entity relating to intellectual property created, discovered, or developed by the employee or student and owned by the University.

4.3.14.4 In addition to compliance with the University's other policies governing conflicts of interest and external professional activities, a person subject to these policies and procedures must consult with appropriate University administrators about any proposed consulting agreement with a third party when such consulting agreement contains provisions on patent rights, trade secrets or the like. Such an agreement may not be entered by an employee or other person subject to these policies and procedures unless (1) it conforms to UNC Policies and these policies and procedures or (2) the University waives its rights in any intellectual property arising from activities to be conducted in performance of the agreement.

4.3.15 Disposition of University Income

4.3.15.1 In the disposition of any net income accruing to the University from patents or trade secrets, preferential consideration shall be given to the promotion of research in accordance with UNC Policies.

4.3.15.2 In the disposition of any net income accruing to the University from licensure or assignment of copyright, preferential consideration shall be given to promotion of creative activities.

4.3.15.3 In the disposition of any net income accruing to the University from licensure of trademarks or service marks incorporating the name of the University, images of campus structures or the University mascot, preferential consideration shall be given to creation or enhancement of scholarships for athletics programs; provided, however, any trademark or service mark created to market or otherwise identify products related to inventions or discoveries arising from research or other academic activities shall be held and used strictly for academic purposes.

4.3.16 Administration of Intellectual Property

4.3.16.1 Unless otherwise expressly provided herein, the Vice Provost for Research or that officer's designee shall, subject to direction by the Chancellor and/or the Provost, have general authority and responsibility for administration of the policies and procedures set forth in this document. Duties encompassed by this responsibility shall include filing appropriate registration forms and supporting documents with the Copyright Office, Library of Congress, or the Patent and Trademark Office, negotiating and drafting licenses and other royalty agreements, drafting necessary agreements for specially commissioned works, determining the applicability of this policy and appropriate law to intellectual property, and adoption of policies and procedures consistent with the provisions of this document and UNC Policies, necessary for determination of ownership or protection of the University's interests in intellectual property. All referrals to the Chancellor, Provost or VPR, or such officers' respective designees, under these policies and procedures, shall follow established procedures and administrative channels of communication.

4.3.16.2 Agreements which grant a third party the right to make, use, or sell a patented invention, invention know-how, or trade secret that has been disclosed and assigned to, or is otherwise owned by, the University, or which grant a third party the right to reproduce, sell or use a copyrighted work, trademark, service mark, or trade name in which the University owns an interest, shall

require written approval by the Chancellor or that officer's designee.

4.3.16.3 Individuals subject to these policies and procedures may not: (a) sign agreements with third parties which may abrogate the University's rights and interests, nor (b) without prior written authorization, use the name of the University or any of its units in connection with any intellectual property in which the University has an interest.

4.3.16.4 As a condition of their respective employment or enrollment and attendance, employees and students shall execute any and all declarations, assignments of all rights in any intellectual property and related research data or other records and materials, or other documents deemed necessary by the University to protect its interests in such property. Notwithstanding this or any other provision of these policies and procedures, an individual who delivers and/or assigns intellectual property or other ownership rights in research data or other records and materials related to the intellectual property disclosed hereunder shall be allowed to continue use of such data, records and materials, or reproductions or derivatives thereof, as part of instruction, research, or creative or scholarly activities, conducted by the individual in fulfillment of employment or student academic responsibilities to the extent that such use does not interfere with the University's ownership, use and commercialization of the intellectual property. A determination of acceptable use shall be made upon request by the Vice Provost for Research or such officer's designee.

4.3.16.5 The responsibility for protection, commercial marketing and licensure of intellectual property other than trademarks and service marks, and for maintenance of appropriate fiscal records, is assigned to the Vice Provost for Research or such officer's designee. The responsibility for protection, commercial marketing and licensure of trademarks and service marks, and for maintenance of appropriate fiscal records, is assigned to the Director of Athletics or such officer's designee. The University recognizes that the evaluation of inventions and discoveries and the administration, development and processing of patents, licensable inventions and other intellectual property involves substantial time and expense and requires talents and experience not ordinarily found in its staff; therefore, in most cases it expects to contract with outsiders for these services. The Chancellor or that officer's designee may enter into a contract or contracts with an outside organization covering specific inventions or discoveries believed to be patentable and patents developed therefrom, or covering all such inventions, discoveries, patents or other intellectual property in which the University has an interest.

4.3.16.6 While the University asserts or retains an ownership interest in intellectual property, all expenses of copyright registration, patenting and other forms of protection sought by the University shall be borne initially by the University and be subject to reimbursement under section 4.1.6, above.

4.3.17 Prohibition of Infringement or Unauthorized Use of Intellectual Property

4.3.17.1 Any infringement or unauthorized use of intellectual property by University employees or students is hereby prohibited. Any employee who engages in such conduct is subject to disciplinary sanctions established for misconduct in applicable personnel policies, including, but not limited to, discharge. Any student who engages in such conduct is subject to disciplinary sanctions established for misconduct in the Code of Student Conduct and/or Academic Integrity Code, including, but not limited to, expulsion.

4.3.18 Use of Intellectual Property by the University

4.3.18.1 If ownership of any intellectual property subject to these policies and procedures is determined to vest in an individual inventor or author, the University nevertheless reserves the perpetual right to use for instructional and research purposes, without obligation to make payment therefor, any such intellectual property made by employees or students during their periods of employment or attendance, as well as any revisions or derivatives of such intellectual property.

4.3.19 Dispute Resolution

4.3.19.1 All disputes concerning interpretation or application of these policies shall be addressed to the Council through the Vice Provost for Research. The Council shall gather information in a manner and to the extent it deems appropriate, and make a recommendation for resolution of any such dispute to the VPR. Any person aggrieved by the VPR's decision may appeal to the Provost. The Provost may direct the Council to conduct a hearing and further advise the Provost on a recommended resolution of any dispute. Except as otherwise provided by UNC Policies, the Provost's decision shall be final.

5 Additional References

[IP ASU Invention and Discovery Disclosure Form](#)

6 Authority

[The University of North Carolina Policy Manual, 500.2](#)

7 Contact Information

8 Original Effective Date

June 2, 2006

9 Revision Dates

March 25, 2011
February 15, 2017