



NORTHERN ARIZONA UNIVERSITY

NORTHERN ARIZONA UNIVERSITY INTELLECTUAL PROPERTY POLICY

A. PURPOSE

B. GENERAL STATEMENT

C. DEFINITIONS

- 1 IP Official
- 2 Employee
- 3 Intellectual Property
- 4 Intellectual Property Committee
- 5 Discovery and Invention
- 6 Net Income
- 7 Works and Printed Works
- 8 Software and Electronic/Digital Works
- 9 Tangible Research Property
- 10 Trademarks and other Identifiers
- 11 Commissioned Works
- 12 Examples

D. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY

- 1 Board-Owned Intellectual Property
- 2 Individual-Owned Intellectual Property
- 3 Sponsor-Supported Projects
- 4 Student-Owned Intellectual Property
- 5 Visiting Faculty, Researchers, and Scientists
- 6 Employee-Excluded Works
- 7 Employee Use of Software and Electronic/Digital Works
- 8 Employee Consulting

E. PROCEDURES

- 1 Disclosure of Intellectual Property and Duties of Disclosers
- 2 Ownership Determination
- 3 Dispute Resolution
- 4 Intellectual Property Net Income Distribution
- 5 Patent, Trademark, Copyright Application
- 6 Assignment of Title to Research Sponsor in Sponsor-supported Projects
- 7 Employee Conflict of Interest and Employee Financial Interest in Private Organization

EXHIBIT A: IP Net Income Distribution Policy

EXHIBIT B: Supplemental Definitions

A. PURPOSE

This Policy supplements the Intellectual Property Policy of the Arizona Board of Regents (Board) as applied to Northern Arizona University (University), and guides the management of Intellectual Property at the University. In the event of any inconsistency between this Policy and Board Intellectual Property Policy (Board IP Policy) or applicable State or federal laws, the provisions of the Board Policy and of the laws prevail.

B. GENERAL STATEMENT

The Arizona Board of Regents encourages University faculty and staff members to undertake creative and scholarly works and to develop new and useful materials, devices, processes, and other intellectual property, some of which may have potential commercial value. These activities contribute to the public welfare, provide educational opportunities for students, contribute to the professional development of the individuals involved, and enhance the reputation of the University. Although Intellectual Property developed by Employees in the course and scope of their employment is presumed to belong to the Board, this Policy provides for the close participation by the Employee in protecting and enhancing the value of the intellectual property, and in sharing in its dissemination and rewards. The IP Official will have the necessary discretion in implementing this Policy, consistent with the terms and provisions of the Board Intellectual Property Policy (Board IP Policy), for the greatest benefit of the public, the University and its creative Employees.

C. DEFINITIONS

- 1. IP Official:** The IP Official is the Director of Technology Transfer who is appointed by the Vice President for Research (as the senior university administrator with primary responsibility for research) to be in charge of Intellectual Property matters. Certain Intellectual Property management responsibilities may be delegated by the IP Official under this Policy.
- 2. Employee:** For purposes of this Policy, the term Employee includes all University faculty; classified staff; academic, administrative, and service professionals (both part-time and full-time); student employees, graduate assistants and associates. Persons with adjunct, emeritus or "no salary" appointments; visiting faculty, scholars, artists, and engineers (see Section D.5 for exceptions); and other individuals not normally considered employees, academic or otherwise, will be considered Employees for the purposes of this Policy if, as a condition of access to University resources, they are obligated to contractually agree to this Policy and the Board IP Policy.
- 3. Intellectual Property:** Intellectual Property for the purposes of this Policy includes data, technical and other information, identifiers, works of authorship, inventions and discoveries subject to protection by any or all forms of patents, copyrights, trademarks, and trade secrets whether or not they were, are or will be so protected under state or federal statutory and common law, or corresponding international law. For purposes of this Policy, Tangible Research Property (defined below) is included in the definition of Intellectual Property. As defined here, Intellectual Property also includes any new forms of Intellectual Property

receiving legal protection that may be added to the above categories during the time this Policy is in effect.

- 4. Intellectual Property Committee (IP Committee):** The IP Committee is a University committee of not fewer than five persons and composed of faculty and staff. The IP Official recommends appointees to the Vice President for Research. The Committee hears appeals by Employees as outlined in ABOR IP Policy . The Committee also considers changes in Intellectual Property Policy proposed by the Faculty Senate and makes recommendations to the President through the IP official.
- 5. Discovery and Invention:** A discovery is the result of conceiving and reducing to practice some innovation that can be described, defined, and reproduced. Not all discoveries are patentable; some may be obvious, some may be unintentional copies of others' inventions or discoveries, and some may be intentionally withheld from the patent system to prevent the required publication of the discovery that constitutes an invention that necessarily accompanies the prosecution or the issuance of a patent. An Invention is a discovery meeting the requirements of the United States Patent and Trademark Office derived from Title 35 U.S. Code or the corresponding requirements of a foreign patent office.
- 6. Net Income:** Net Income means the net revenue remaining from gross revenues, including fees and royalties, received from the commercialization of given Intellectual Property less a 15% administrative fee and then less all unreimbursed costs incurred by the University in engaging in the technology transfer leading to commercialization including obtaining, licensing, protecting or maintaining Intellectual Property protection, domestic or foreign.
- 7. Works and Printed Works:** Works means all works of authorship as defined by the U.S. Copyright Act of 1978 Title 17 U.S. Code. Printed Works includes all Works, in all media of expression, other than Software and Electronic/ Digital Works and Commissioned Works defined below.
- 8. Software and Electronic/Digital Works:** Are Works that include software and other technologies used to support the capture, storage, retrieval, transformation, and presentation of electronic or digital data and information or to interface between electronic or digital forms and other communications and information media. Examples include, but are not limited to, software; course lecture video or audiotapes; electronic publications; electronic textbooks and interactive textbook supplements; Internet-based and on-line courses; web pages; multimedia works; and distance learning materials. As used herein, software means a set of statements or instructions -lines of code -- used directly or indirectly in a computer to bring about a certain result.
- 9. Tangible Research Property:** Tangible Research Property (TRP) means tangible materials including but not limited to research tools, prototypes, and records used or produced in the course of University research projects, examples of which include (1) hybridoma or clonal cell lines that produce monoclonal antibodies or recombinant proteins, (2) plants protected by the Plant Variety Protection Act, (3) non-patented drugs protected by the Orphan Drug Act, (4) prototype instrumentation or devices and (5) research records and documentation, regardless

of form or media used to capture or create such records. Certain types of TRP may be licensed by the University in a fashion similar to Intellectual Property or as part of an Intellectual Property licensing transaction. For purposes of this Policy, TRP is included in the definition of Intellectual Property and is subject to the provisions of this Policy. Whether TRP is to be treated under this Policy similar to a Commissioned Work or an Employee-created discovery will be determined by the IP Official, or their designee, taking into account the nature and purpose of the licensing or assignment, and in consultation the unit head and the Dean. The same TRP may be treated differently if the nature and purpose of the licensing or assignment differs in different cases.

10. Trademarks and other Identifiers: An Identifier is a word, phrase, logo or other marking used to uniquely identify the origin of any Intellectual Property, artifacts or services, programs or other activities. Trademarks are specific types of Identifiers perfected and/or used in accordance with the requirements of state or federal statutory and common law or corresponding international law.

11. Commissioned Works: Commissioned Works are Works made by University Employees or independent contractors within the scope of their employment or work responsibilities and whose creation was specifically directed or authorized by a University administrator and where University funds or University administered funds were provided for their development. Commissioned Works, and any other Intellectual Property associated or arising from their creation, are owned by the Board and managed by the University. For the purpose of this Policy, the creator of the work is the University unit that authorized or directed the Commissioned Works.

12. Examples: Examples throughout this Policy are to be read as examples only and not to be construed as limiting or amending the operative content of this policy.

D. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY

1. Board-Owned Intellectual Property: In accordance with the Board IP Policy, Northern Arizona University manages all Board-owned Intellectual Property developed at the University or by its Employees (as defined herein). Board-owned Intellectual Property includes the following categories:

- a. Intellectual Property resulting from research carried on by or under direction of any Employee and having all or part of the attendant costs paid from University funds or from funds under the control of or administered by the University or the Board, including Sponsor-Supported Projects (see Board IP Policy, Paragraph C.1); or
- b. Intellectual Property made by any Employee as a direct result of his or her duties with the University or in the course and scope of employment (see Board IP Policy, Paragraph C.2); or
- c. Intellectual Property developed in whole or in part by an Employee through an effort that makes significant use of University resources or facilities unless such resources or facilities are available without charge to the public or the applicable use fee (not including tuition) has been paid. The University does not consider the ordinary use of

University resources such as the libraries, one's office, or desktop computer, to be significant use of University resources for purposes of vesting the Board with ownership in Intellectual Property (see Board IP Policy, Paragraph C.3). Significant use of university resources includes but is not limited to: use of research funding; use of funding allocated for asynchronous or distance learning programs; use of university-paid time within the employment period; assistance of support staff; use of telecommunication services; use of university central computing resources; use of instructional design or media production services; access to and use of research equipment and facilities, or production facilities.

Discussion: Determining initial ownership of Intellectual Property does not depend on the person's physical location rather it depends upon the scope of one's employment and contractual relations.

Example: an Employee in the School of Music and Dance who develops software to track little league players and document their capability/performance would own the copyrights to those materials. In contrast, if the Employee had been instructed to create software to recruit music students the property belongs to the Board.

Example: if a chemist is working on a new chemical structure and a related idea comes to him/her while showering at home, the Intellectual Property is owned by the Board. But a chemist working in a home workshop, creating a new wooden toy, is the owner of that Intellectual Property, although such Intellectual Property should be disclosed to the IP Official for the purpose of establishing that the Board is not the owner of the rights.

Simply stated, if the Employee's discovery or Work was made outside the scope of employment or contract at the University, without significant use of, or special access to, University resources, then ownership is the Employee's; otherwise, it is owned by the Board.

- 2. Individual-Owned Intellectual Property:** The University acknowledges that the Board releases to the Employee ownership of Intellectual Property that is not within the scope of Paragraph D.1 above. Individual-Owned Intellectual Property in general may not be used in activities involving the University and when allowed must conform to the University Policy on Conflict-of-Interest and Commitment, Board Policy and may require prior written agreement with the University signed by the IP Official.
- 3. Sponsor-Supported Projects:** Intellectual property produced by Employees as a result of work supported partially or fully by an external agency and for which a contract is on file with the Vice President for Research is owned by the Board in accordance to Paragraph D.1a. and the further disposition of those rights in Intellectual Property will be determined by the terms of the specific contract. If no contract is on file, rights to Intellectual Property created as a result of sponsored research will reside in the Board.
- 4. Student-Owned Intellectual Property:** Students own the Intellectual Property they develop as a result of class work provided such work is not otherwise within the scope of Paragraph

D.1 above. Students own the copyrights for their theses and dissertations, but ownership of other Intellectual Property described in these publications, including software and patentable Discoveries, will be determined according to this Policy and the Board IP Policy. Students may be requested to grant rights in Student-Owned Intellectual Property to the Board or others, as a condition of access to certain class projects, independent research projects or other programs in the University in accordance to Paragraph D.1.

5. Visiting Faculty, Researchers and Scientists: As a condition of access to the resources of the University and on-going projects within it, the Board owns Intellectual Property created by visiting faculty, researchers, and scientists, including scholars, artists and engineers, and requires written agreement with them or their employers to abide by this Policy and the Board IP Policy prior to access to the University. The IP Official may, however, make exceptions on a case-by-case basis consistent with this Policy (see Paragraph E.2 below) and the Board IP Policy. The IP Official shall act expeditiously in deciding these cases.

6. Employee excluded works: Under Policy, the Board is considered the owner of Works and Inventions created by Employees within the course of their employment, in Sponsor-Supported Projects, or with significant use of university resources. However, it is not necessarily in the interests of the University's academic mission for the Board to own the intellectual property in all such Works. For that reason the Board IP Policy provides for the release to the individual creator certain intellectual property rights in the following categories of "Scholarly works" as defined in Board IP policy, subject in all cases to Sponsors' contractual rights and the Board's retention of a non-exclusive, paid-up license to use the intellectual property in the University's educational, research and public service mission.

It is the intention of this policy to clarify employees' rights with respect to the following categories of Scholarly works, and to establish procedures for confirming the employees' rights therein.

- a. Printed Works: The Board shall release to the individual creator(s) print publication rights for scholarly works in academia, including without limitation, course notes, textbooks and other Scholarly works authored by the Employee. Upon request by the individual creator(s) of Printed Works, the IP Official shall confirm in writing expeditiously (not later than thirty [30] days after such request), the Employee(s)'s scholarly, print publication rights in her/his Printed Works. In the absence of written confirmation, the scholarly, print publication rights shall be deemed to have vested in the Employee upon creation of his/her Scholarly work.
- b. Artistic Works. The Board shall release to the individual creator(s) copyright ownership of Artistic Works other than Commissioned Works (as used herein, "**Artistic Works**" means Works of visual arts and performing arts as defined in the U.S. Copyright Act 17 U.S.C. § 102(a), including musical works, dramatic works, pantomimes and choreographic works, motion picture and other audiovisual works, pictorial, graphic, sculptural and architectural works, in any medium of expression other than Software and Electronic/Digital Works (which will be handled as set forth

in section D.6.c below). Upon request by the individual creator(s) of Artistic Works, the IP Official shall confirm in writing expeditiously (not later than thirty [30] days after such request), the Employee(s)'s copyright interest in his/her Artistic Works, *provided that* in the absence of written confirmation, the copyright in an Artistic Work shall be deemed to have vested in the individual creator(s) immediately upon the Work's expression in a tangible medium.

c. Software and Electronic/Digital Works.

i. Electronic Publication of Scholarly Works: Where an Employee's Work would qualify for release under section D.6.a. of this Policy but for the Work's electronic or digital format, the Board shall release to the individual creator(s) the right to publish his/her scholarly Work in electronic or digital format, *provided that* such publication shall be restricted to non-profit, scholarly publications in academia, and the released rights shall not include the rights to use or license the Software or Electronic/Digital Works for Commercial Applications (as defined in section 6.c.(2) below). The Employee may seek written confirmation of the reversion of the non-profit, scholarly electronic publication rights from the IP Official. After receipt of such request accompanied by the information required under section D.6.e below, the IP Official shall issue such confirmation expeditiously (not later than thirty [30] days after such request).

ii. Commercial Applications of Software and Electronic/Digital Works. Commercial Applications of the Intellectual Property rights in Software and Electronic/Digital Works are managed by the University in accordance with this Policy and Board IP Policy. As used in this Policy, a "**Commercial Application**" means that the Employee intends to obtain, or is likely to receive, personal economic gain from the use or disposition of the Software or Electronic/Digital Work (other than through traditional fees, royalties or other compensation typically received by an author in connection with the publication of a non-profit, scholarly work in academia), or to use her/his unique knowledge of, or other preferential position with respect to the availability of, the Software or Electronic/Digital Work for personal economic gain.

The IP Official shall be the official responsible for the determination of whether or not proposed uses or disposition of Software and Electronic / Digital Works is likely to involve "Commercial Applications."

If an Employee takes steps toward Commercial Applications of Software or Electronic/Digital Works without the prior written approval of the University's IP Official, the Board shall be entitled to obtain injunctive relief and to take any other actions reasonably required to confirm the Board's ownership of intellectual property rights in the Software and Digital/Electronic Works (including but not limited to notification of third parties, and other legal and equitable remedies).

- d. Limitations on Reversion of Rights. Any reversion of rights to the individual creators of Employee Excluded Works shall in all cases be subject to the contractual rights of research sponsors, and to the Board's retention of a paid-up, non-exclusive license to use the intellectual property rights that are the subject of such reversion for the University's education, research and public service mission. Commissioned Works are not eligible for reversion of rights to the individual creator(s) pursuant to this section.
- e. Procedures for Confirming Reversion of Rights. The rest of this clause describes the procedure for confirming the reversion of certain intellectual property rights in Employee Excluded Works from the Board to Employee creators as contemplated by this Section D.6.:
- i. An Employee may, at any time, apply to the IP Official for a written confirmation of the Employee's print publication rights or other copyright interests in Scholarly works as contemplated by this Section D.6. Such an application may be made before beginning to create a Work. In the application, the Employee shall fully describe the Scholarly work and the nature of the intended use, and shall provide information about the following:
 - (a) any university facilities or resources significantly involved in the creation of the Scholarly work;
 - (b) the interest, if any, of any other party in the Scholarly work, such as co-authors, research sponsors and commissioning parties;
 - (c) how the creation of the Scholarly work was, or will be, funded;
 - (d) the nature of the Scholarly work and the contemplated use by the individual creator; and
 - (e) any other information reasonably relevant to the University's interest in the ownership or the Employee's intended use or disposition of the Scholarly work, including additional information that may be requested by the IP Official after receipt of the application.
 - ii. Within 30 days of receiving an application accompanied by all additional information reasonably required for such determination, the IP Official shall either:
 - (a) confirm that the Board transfers the rights in Scholarly work to the Employee as contemplated by this Section D.6, and expeditiously execute or arrange to have executed all instruments required to effect the transfer of the applicable rights to the employee (subject to sponsors' and Board rights); or
 - (b) decline to transfer to the Employee the requested rights and provide the Employee with written reasons, specific to the Work that is the subject of the application.

- iii. If the IP Official does not act in accordance with this clause or if an Employee objects to the IP Official's determination, an Employee may within 90 days of making an application described in clause D.6 e. apply to the IP Committee for review of the IP Official's actions.

7. Employee Use of Software and Electronic/Digital Works Excluding Commissioned

Works: Employees may make limited use of Software and Electronic/Digital Works excluding Commissioned Works, independent of copyright ownership determination, as follows:

- a. Use at the University - An Employee may use Software and Electronic/Digital Works he or she develops or creates in the normal course of employment at the University, including the right to make changes to the Software and Electronic/Digital Works and to distribute the Software and Electronic/Digital Works to students, faculty, and other personnel at the University for teaching, research and other noncommercial University purposes.
- b. Academic use outside the University - Subject to receiving any necessary approval, an Employee may use Software and Electronic/Digital Works at other academic or not-for-profit research institutions for noncommercial purposes as part of ordinary scholarly exchanges, including visiting professorships and guest lectures, as long as the activities comply with University and Board policies on conflict of interest and conflict of commitment (including provisions requiring approval by the appropriate dean or department head), and as long as the activities do not include or allow commercializing the Software and Electronic/Digital Work.

The appropriate department head or dean must approve in advance the use of any Board-owned Software and Electronic/Digital Works by an Employee teaching or creating any course or courseware outside the University. For Software and Electronic/Digital Works released to the Employee by the University, the University's name may not be used in connection with such Software and Electronic/Digital Works other than to identify the Employee as an Employee at the University.

- c. Commercial use outside the University For Board-owned Software and Electronic/Digital Works not released to the Employee - the Employee must obtain prior approval from the appropriate department head or dean before teaching or creating any course or courseware using the Software and Electronic/Digital Works for any commercial enterprise, and must obtain prior approval from the IP Official before commercializing Software and Electronic/Digital Works created or used at the University. Any such use must be consistent with University and Board policies on conflict of interest, conflict of commitment, and use of the University's name. For Software and Electronic/Digital Works released to an Employee, that Employee may commercialize the works outside the University without permission of the University as long as the University's name is not used in connection with the works other than to identify the Employee as an Employee at the University and the release included permission from the University for such commercial use. The University will not

commercialize Software and Electronic/Digital Works without the knowledge and input of the Employee(s) who created the Software and Electronic/Digital Works in question so long as they remain at the University.

- d. Use after departing the University -An Employee who leaves the University may use any Software and Electronic/Digital Works that he or she created while at the University as long as the use is at another academic or not-for-profit research institution, and limited to teaching, research, and other noncommercial purposes. With respect to Software and Electronic/Digital Works released to a former Employee, that Employee may make commercial use of and create new works based the Software and Electronic/Digital Works as long as the Employee does not use the University's name in connection with the works other than to identify himself or herself as a former Employee.

8. Employee Consulting: The Board will not claim ownership to Intellectual Property that is the product of Employee consulting where the consulting was performed:

- a. In accordance with college and University consulting policies that have been pre-approved by the IP Official and in accordance with this Policy and the Conflict of Interest and Commitment Policy;
- b. Within the scope of the consulting activity documented to the University for which the Employee sought, and was granted, permission by the University to engage in; and
- c. Does not overlap or conflict with other contractual obligations of the University including but not limited to Sponsor-supported Projects in which the Employee is involved or has access to.

If the Employee's obligations with respect to Intellectual Property under this Policy or the Board IP Policy conflict with an Employee's obligations to the consulting entity, the obligations under University and Board Policies shall take Precedence. (See Board IP Policy and, Board Conflict of Interest Policy .)

E. PROCEDURES

1. Disclosure of Intellectual Property and Duties of Disclosers:

- a. Employees who create Intellectual Property falling within Section D above. shall promptly disclose any Invention or Copyrightable Work in which the Board or a Sponsor may have an interest. Scholarly works in which the Board or a Sponsor does not claim an interest need not be disclosed. Disclosure must occur:
 - i. Upon request by the IP Official or their designee;
 - ii. Prior to any discussions or actions involving commercialization activity; or
 - iii. Prior to any non confidential presentation or other public release of Intellectual

- Property resulting from sponsor-supported projects; or
- iv. As required by any sponsored research contract applicable to such Intellectual Property.

The creator(s) will submit an Invention Disclosure to NAU *Innovations* (available at nau.edu/nauinnovations) .

- b. The principal investigator is responsible for notifying all persons who may be involved in creating and developing Intellectual Property in advance of their participation in a project when the terms of a contract grants a sponsor the rights to technology resulting from the sponsored-supported effort. When an individual is not a paid employee of the University, such as a Visiting Faculty member, a written agreement between the IP official (on behalf of the University) and the individual is required prior to participation in the Sponsor-Supported Project.
- c. The Employee who submits a disclosure is responsible for including all persons involved in creating and developing the Intellectual Property in a disclosure and of notifying them of the disclosure and ensuing events, especially those events related to further development (i.e., the protection and subsequent licensing or sale of the property).
- d. Each Employee involved in creating and developing Intellectual Property subject to disclosure under this Policy, Board IP Policy or law will cooperate with the University and execute any and all documents necessary to assign ownership and/or secure protection of Intellectual Property owned by the Board, in all countries designated by the IP Official or their designee.

2. Ownership Determination: The IP Official will determine the ownership of Intellectual Property within 10 days of receiving a complete disclosure. If the Board is deemed to own the property, NAU *Innovations* will have 90 days to decide whether to attempt to commercialize the disclosed Intellectual Property and an additional 10 days thereafter to inform the creator of the property of this decision.

- a. At the request of the Employee, if the Board is not deemed to own the Intellectual Property, NAU *Innovations* will acknowledge in writing that the Board holds no interest in the Intellectual Property determined to be Individual-Owned Intellectual Property. On mutually agreed upon terms, the Employee may assign Individual-Owned Intellectual Property to the University for commercialization.
- b. At the request of the Employee and the concurrence of the unit head and dean, the IP Official may (but is not obligated to) release to the Employee Intellectual Property determined not to merit or warrant exploitation by the University at that time, with certain rights retained by the University and certain restrictions on further development imposed on the Employee (see e.g., Board IP Policy).
- c. Intellectual property obligated to a sponsor pursuant to the terms of the research contract will be made available to the sponsor in accordance with that contract.
- d. Intellectual Property owned by the Board may be patented, copyrighted or otherwise

- legally protected by the University in all countries designated by the IP Official and/or NAU *Innovations*. The University may commercialize Intellectual Property rights using its own resources or it may make an agreement with one or more outside entities or Intellectual Property management organizations to undertake such activities. If the University has not taken steps to commercialize the Intellectual Property within two years of the determination of ownership, an Employee who created the intellectual property, with the concurrence of the unit head and dean, as well as other Employees involved in the disclosure, may thereafter request a release or license agreement for such Intellectual Property with certain rights retained by the University and certain restrictions on further development imposed on the Employee (see Board IP Policy).
- e. NAU *Innovations* will inform the creators on a regular basis of the progress of protection efforts and commercialization of Intellectual Property disclosed by them.

- 3. Dispute Resolution:** When disputes arise under this IP Policy and its implementation involving University Employees or individuals accepting and receiving benefit under the IP Policy, the IP Committee shall be the authority delegated to review such disputes and make recommendations to the IP Official or the President as appropriate to the nature of the dispute. Any employee involved in the dispute, or the CEO of a third party intellectual property management organization (as authorized via Board policy), or the IP Official, or the President may bring a disputed matter before the IP Committee under this IP Policy. If requested, the IP Committee will review the interpretation or decision of the IP Official as required by the Board Policy or review the matter brought before it in accordance with Board Policy Technology Transfer Policy 6-909.10.
- 4. Intellectual Property Net Income Distribution:** Net Income earned from the licensing of Commissioned Works and associated Intellectual Property, or University Trademarks or Identifiers that are not licensed by or on behalf of the university, are not subject to Net Income Distribution under this Policy.

Employees who create Intellectual Property that is disclosed pursuant to this Policy and that is determined to be owned by the Board are entitled to share in the Net Income earned from the commercialization of that Intellectual Property according to the Income Distribution Policy, attached hereto as Exhibit A, unless provided otherwise by contract with that Employee.

If multiple Employees are entitled to share in the distribution, the IP Official will not release any Employee distribution income until all entitled Employees have provided the IP Official with a written agreement signed by all such Employees, indicating the distribution shares for each Employee. Such agreements may include Employees contributing to the research or the technology transfer surrounding the Intellectual Property, but must contain the signature of all Employees who would be rights holders in the licensed or assigned Intellectual Property but for their employment status or their duty to assign to the Board.

Where the University assigns its Intellectual Property to a research sponsor or outside organization (see Paragraph E6), the assignee will pay the University the fully burdened overhead expenses related to the assigned intellectual property. The Office of Vice President for Research receives that portion of the overhead rate normally associated with agreements

that do not assign Intellectual Property for distribution according to the handling of indirect costs received from sponsored projects while the remainder distributed pursuant to the Invention Income Distribution Policy attached hereto as Exhibit A. If the University assigns its Intellectual Property to an Arizona state agency, the assignee will pay the University 50% of their Net Income after direct expenses related to the assigned intellectual property, with the payment to the University to be distributed pursuant Exhibit A.

- 5. Patent, Trademark, Copyright Application:** The Employee who creates Intellectual Property owned by the Board is required to cooperate fully with the University in the application for legal protection of Intellectual Property when requested to do so by NAU *Innovations* or the IP Official. All direct costs involved in obtaining and maintaining legal protection, domestic and foreign, will be borne by the University, a sponsor or licensee, or a contracted management agent.

- 6. Assignment of Title to Research Sponsor in Sponsor-Supported Projects:** The University may accept a grant or contract from an organization with title to resulting Intellectual Property assigned to the sponsor or that gives the sponsor an exclusive option for a limited period of time in which to negotiate a license. The terms and conditions of such a license must be consistent with the Board IP Policy. The IP Official will negotiate the license on behalf of the University and must approve any such agreement in advance. The IP Official will use his or her best efforts to consult with the creator and principal investigator in the negotiation process, including, among other things, providing a copy of the negotiated agreement before its final execution. The principal investigators are responsible for notifying everyone involved in work supported by the grant or contract of the terms of any such agreement prior to their involvement.

- 7. Employee Conflict of Interest and Employee Financial Interest in Private Organization:** Employees are subject to and will abide by the Board Conflict of Interest Policy 3-901. Notwithstanding any other provisions of this section, a grant, contract or any other form of agreement between the University and any organization containing a provision assigning title is subject to final approvals as required by the Board Conflict of Interest Policy if the Employee has any substantial proprietary or financial interest in the contracting organization or any entity engaged in a business relationship with the contracting organization as set forth in the Board Conflict of Interest Policy . In addition to complying with the Board Conflict of Interest Policy, any time an Employee establishes or maintains a proprietary or financial interest in a private entity that contracts with the University for research or that desires to obtain a license from the University for University technology, that Employee must (prior to that entity entering into a contract or license with the University) submit a Conflict of Interest and Commitment disclosure form to the Intellectual Property Committee (for review and to make a recommendation to the President through the IP Official) and submit an Enabling Disclosure form to NAU *Innovations* (for review, recommendation of approval to the President, and submission to the Board for Board approval). Approval by the Board for the creation of any organization or any substantial interest in an organization under applicable Arizona law does not exempt any agreement between the University and that organization from the provisions of this paragraph, nor from other applicable conflict of interest or commitment rules or policies. In the

event of any inconsistency with the provisions of this Policy, the Board Conflict of Interest Policy shall control with respect to rules and procedures applicable to conflicts of interest and commitment.

In those cases where the Employee holds a financial interest in a company that licenses from the University technology developed by that Employee, that Employee will not receive a creator's share of the licensing income received by the University from that company for that technology, but that Employee's share will instead be distributed among the other University accounts designated in the Income Distribution Policy.

Policies Cited:

Arizona Board of Regents' Policy Manual, Chapter VI, 6-908 Intellectual Property Policy, revised 08/2010 and 6-909.10 Technology Transfer Policy, revised 01/2010.

Arizona Board of Regents' Policy Manual, Chapter III, 3-901 Conflict of Interest Policy, 2011.

EXHIBIT A: IP NET INCOME DISTRIBUTION POLICY

Northern Arizona University Intellectual Property Net Income Distribution Policy

Revised: September 1, 2011

Under Arizona Board of Regents (ABOR) Intellectual Property Policy 6-908 (“the Policy”), employees, students or other individuals who conceive and/or develop Intellectual Property subject to the Policy must disclose that Intellectual Property to the university. If the University (on behalf of the Board) retains title to such Intellectual Property, and if income is generated by license, transfer or assignment of the Intellectual Property, the Policy provides that the employee and/or student creator(s) are entitled to receive a minimum of 25 percent (25%) of the Net Income to the University.

Northern Arizona University (NAU) has established an Intellectual Property Net Income Distribution Policy that exceeds the ABOR minimums. Specifically, NAU shall share equally with the employee and/or student creator(s) the Net Income resulting from the license or assignment of all Board-owned Intellectual Property originating at NAU. After deducting all fees and unreimbursed costs incurred by the university in protecting, licensing, maintaining and litigating rights in the Intellectual Property, fifty percent (50%) of the remaining revenue, or Net Income, will be distributed to the employee and/or student creator of the Intellectual Property, and fifty percent (50%) of the Net Income will be retained by NAU. If there is more than one university creator of Intellectual Property, fifty percent (50%) of the Net Income shall be divided equally among the creators unless they agree in writing to a different distribution.

The University’s share of Net Income shall be used in support of research, fellowships or other activities relevant to the generation of intellectual property at NAU.

EXHIBIT B TO NORTHERN ARIZONA UNIVERSITY INTELLECTUAL PROPERTY POLICY: SUPPLEMENTAL DEFINITIONS

This supplement provides additional definitions to aid in the understanding and use of the University's Intellectual Property Policy. The information below is a generalized summary for information purposes only and does not create new legal rights or responsibilities nor does it supercede any provisions of this Policy or that of the Board of Regents.

1. Copyright: See 17 USC § 101, et seq. For general information on US copyright laws and treaties, see the Copyright Office Information Page, <www.loc.gov/copyright> Consistent with 17 U.S. Code, copyright protects an original work of authorship fixed in any tangible medium of expression from reproduction, distribution, display, performance or the creation of derivative works without the permission of the owner. Copyrighted material may include, but is not limited to, website content and format, lecture and class notes, exams, computer software, mask works, artwork, music, technical articles, books and other literary works. Copyright protects the expression of an idea, but not the idea itself. For example, a copyrighted set of plans for building a solar device provides exclusionary rights regarding the reproduction and sale of the plans, but the purchaser of the plans may build and sell the solar device, assuming that the device is not protected by a patent and is not subject to contract restrictions. In addition, copyright does not protect raw data or facts, though it may protect the creative presentation of data and facts.
2. Data: Data includes, but is not limited to, lab notes, results of analyses, research notes, research data reports, and research notebooks.
3. Mask Work: A type of Intellectual Property protected under federal law that consists of a series of related images representing the three-dimensional pattern of metallic, insulating, and semiconductor materials in a semiconductor chip product. Mask works are protected under the Semi-Conductor Chip Protection Act of 1984, which is incorporated into the U.S. copyright law, 17 U.S.C. § 901 et seq.
4. Patent: Consistent with 35 U.S. Code, a U.S. patent is an instructional document obtained through application to the U.S. Patent and Trademark Office, and provides negative exclusionary rights in the United States. The owner of a patent can prevent others, for a period of years, from making, using or selling the Invention. An issued patent must teach one who is familiar with the field the best means for producing, constructing or using the patented product or process. Requirements for obtaining patents in other countries vary with each country, see www.uspto.gov for further information.
5. Trade Secret: Consistent with the Uniform Trade Secrets Act, codified in Arizona at A.R.S. §. 44-401, certain technology, information, formulas, patterns, methods, techniques, etc., may be protected as trade secrets, provided that reasonable efforts are undertaken to maintain secrecy. The University's records are considered to be public records, and open to inspection by any person at all times: A.R.S. § 39-121. The University is authorized to maintain trade secret protection only to the extent permitted under Arizona law

(A.R.S. § 15-1640) for example, if the trade secret belongs to and is disclosed by an outside sponsor (see Board IP Policy, Paragraph B.4). When public disclosure would inhibit a company's willingness to invest the necessary funds for product development and commercialization, the Employee and the IP Official, may license Intellectual Property as a trade secret, to the extent permitted under State law. Knowledge formalized as a trade secret cannot be disclosed in any open forum as long as it is intended to be maintained as a trade secret. For purposes of this Policy, trade secrets will be treated as patented and copyrighted technologies with respect to licensing and royalty distribution.

6. Trademark: Consistent with federal and state statutory and common law, trademarks and service marks identify an organization as the source of a product or service. The University name, symbols, and logos of the University are trademarks and service marks belonging to the Board, for example, and may not be used by third parties without a proper license and specific approval of the IP Official and other appropriate university officials, and in a manner consistent with applicable University and Board of Regents policies.