

POLICY ON INTELLECTUAL PROPERTY

Effective Date: January 16, 2015

Originating Office: Office of the Vice-President, Research and Graduate Studies

Supersedes/Amends: November 10, 2011

Policy Number: VPRGS-9

PREAMBLE

The University affirms the principles of wide freedom of research and of free publication of the information generated. Intellectual Property, as defined below, is the product of individual or group effort and imagination normally developed within the University's academic activity and making use, in most instances, of space, equipment and resources provided by the University for research and teaching purposes.

To carry on research solely or even primarily in anticipation of profits would be incompatible with the University's mission. However, it must be recognized that Inventions often serve the public interest best when they reach the private sector under appropriate agreements and are protected by patents and/or Copyright.

Even though some Inventions may not be suitable for intellectual property protection, the University and the Inventor(s) have a responsibility to promote the development and utilization of all Inventions in an appropriate manner. The University considers the Inventor(s) and the University to have a shared interest in Inventions and, as such, both parties should be able to benefit financially from such Inventions.

The University has entered into agreements with entities whose functions are to pursue activities related to commercializing the broad scope of research and development at the University.

PURPOSE

This Policy sets forth the University's rules with respect to the ownership, dissemination, and Commercialization of Intellectual Property developed by Members, as defined below.

SCOPE

This Policy does not supersede any provisions of the [CUFA](#) or [CUPFA](#) collective agreements nor the provisions of the *Policy on Postdoctoral Fellows* ([VPRGS-4](#)) dealing with Intellectual Property.

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More specifically, nothing in this Policy shall replace or supersede any provision set out in any collective agreement to which the University is a party nor shall this Policy be applied in such a way as to detract from the rights of unions to defend the interests of their members and to exercise their rights under a collective agreement. In particular, nothing in this Policy shall be construed as detracting from the rights of a Member or a union from contesting any actions taken pursuant to this Policy in accordance with the grievance provisions of the relevant collective agreement. This Policy applies to all Members of the University, as defined below, and supersedes any Faculty, Departmental or Research Unit policy or guidelines with respect to Intellectual Property that may be in existence as of the effective date. Any agreements in respect to Intellectual Property, as defined below, that have not been signed in accordance with the University's *Policy on Contract Review, Signing and Required Approvals* ([BD-1](#)) shall be considered null and void.

DEFINITIONS

For the purposes of this Policy:

Author means the person who has written or created a Work.

Co-Inventor means, where there is more than one Inventor with respect to an Invention, any individual, whether from the University or from outside the University, who has made an inventive contribution to the Invention identified in a Declaration of Invention.

Commercialization means the act of making an Invention or Work available for distribution and sale on the market.

Commissioned Work means any Work that has been so declared in a specific, written agreement between the University and the Author.

Copyright has the meaning assigned to it by the [Copyright Act](#).

Copyright Act means the [Copyright Act](#) of Canada as that Act may be amended from time to time or any successor legislation.

Declaration of Invention means the document signed by the Inventor(s) and third party Inventor(s), as the case may be, by which an Invention is disclosed to the University.

Independent Invention means any Invention or Work made by any Member developed in the course of private research or other activity unconnected with the Member's University duties

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which has not involved the use of University-administered funds and/ or the Substantial Use of University Facilities, as such term is defined below, and/or that has not been supported by any grant or contract administered through the University.

Intellectual Property means any proprietary information that can be the subject of Copyright or patent protection or any similar proprietary protection and which creates in the holder of the rights an interest in property.

Invention means any new and useful art, process, machine, manufacture or composition of matter, living organisms, any technical innovation or discovery, including those related to computer programming, or any new and useful improvement in any art, process, machine, manufacture or composition of matter, any technical innovation or discovery, including, without limiting the foregoing, recombinant or genetic processes, or compositions involving biological materials.

Inventor means any person who makes, discovers, or is directly responsible for an Invention, whether in whole or in part.

Member means:

- all part-time faculty members with respect to the provisions of this Policy that do not conflict with the provisions of the CUPFA collective agreement
- all academic staff not governed by the Intellectual Property provisions of a collective agreement with the University (i.e. visiting professors)
- all administrative, professional and support staff including technicians, teaching and research assistants, and research personnel
- all academic and non-academic senior administrators
- all persons engaged in study or research at the University who, as a condition of being granted access to the University's premises or facilities, have agreed to or who are covered by a policy which deems them to be subject to this Policy

(the above collectively referred to as "*Non-Student Member*")

- all students, including without limitation undergraduate, graduate and visiting students from other institutions (hereinafter referred to as "*Student Member*" or "*Student*")

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Moral Rights has the meaning assigned to it by the [Copyright Act](#).

Net Proceeds means the difference between Specified Revenues and Specified Costs. For purposes of reporting and distribution, Net Proceeds shall be calculated annually.

Qualifying Invention means any Invention, excluding Student Intellectual Property, made by Members, in whole or in part:

- i) in the course of carrying out their duties or research activities at the University; or
- ii) on University premises making Substantial Use of University Facilities; or
- iii) under a Sponsorship Agreement entered into by the University.

Software shall mean programs used to operate computers and related devices.

Specified Costs means all costs associated with the Commercialization of an Invention or a Work including, as appropriate, the costs of applying for and obtaining a patent and associated legal fees and disbursements, and all legal costs associated with defending patent rights or other intellectual property rights against infringement.

Specified Revenues means all annual payments, whether lump sum or in the form of royalties or both, whether in the form of cash, shares, options or any other cash equivalent resulting from the Commercialization of an Invention or Work received by the University or the Inventor.

Sponsorship means any support, whether by means of monetary support, the right to use facilities, personnel, or other resources provided by a third party and includes support from both public and private grants and contracts. Such sponsorships shall be detailed in writing.

Sponsorship Agreement means (i) any research agreement, (ii) any granting organization's guidelines, rules and regulations, and (iii) any other agreement, which governs a Sponsorship.

Student Intellectual Property means any Inventions or Works conceived, developed or first reduced to practice by a Student as work product of a "for credit" course or extra-curricular activity where such activity is not governed by a Sponsorship Agreement and/or does not involve the Substantial Use of University Facilities, and where such Invention or Work was conceived, developed or first reduced to practice without the inventive contribution of a Non-Student Member.

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Substantial Use of University Facilities means extensive use of major University laboratory, studio or computational facilities, or human resources. Use will be considered "extensive" and facilities will be considered "major" if similar use of similar facilities would cost the Member more than \$5000 CDN (five thousand Canadian dollars) in constant 2014 dollars if purchased or leased in the public market. For the avoidance of doubt, the following do not constitute Substantial Use of University Facilities: incidental use of a facility; extensive use of a facility commonly available to Members (such as libraries, computer networks and wireless access, and offices).

Work shall mean any Intellectual Property that is eligible for Copyright protection.

POLICY

Exclusions

1. Three categories of Inventions or Works are excluded from this Policy:
 - i) Inventions or Works made by Members in the course of private research unrelated to their University studies or duties when such activities do not involve the Substantial Use of University Facilities;
 - ii) Inventions or Works made under Sponsorship Agreements. Where Sponsorship Agreements provide partial or complete rights to Inventions or Works to a third party but allow the payment of royalties to the University, the distribution of those fees to the Inventor(s) shall be as set out in Sections 22 and following below;
 - iii) Scholarly writings and productions as well as artwork and other similar creative or research products, whether in traditional or non-traditional physical or electronic forms, unless such Works are Commissioned Works or created as a result of a Sponsorship Agreement.
2. Notwithstanding Section 1 above, the following shall be covered by this Policy:
 - i) Inventions or Works created by a Member as a result of a Sponsorship Agreement where Intellectual Property rights are not determined by specific terms of the Sponsorship Agreement;
 - ii) Works created by a Member as a result of a formal agreement with the University wherein Copyright is determined by specific terms of that agreement;

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- iii) Certain written works which may be patentable;
- iv) Computer Software unrelated to the support of writing and publishing or which does not form part of an artwork;

Disclosure

3. All Members who have produced an Invention shall complete a Declaration of Invention in which the Member states whether the Invention is an Independent Invention, Student Intellectual Property or a Qualifying Invention. It is understood that the University maintains its rights under this Policy should the Member fail to disclose the existence of a Qualifying Invention and the proceeds of its Commercialization.

It is acknowledged that publications or other forms of public disclosure may jeopardize the protection, including patentability, of Inventions. Inventors are encouraged to consult with the Office of the Vice-President, Research and Graduate Studies in the early stages of discovery.

COURSEWORK AND EXTRA-CURRICULAR ACTIVITIES

4. The University does not claim any ownership of or interest in any Student Intellectual Property.
5. When a sponsor wishes to use or otherwise rely on Student Intellectual Property, the sponsor is required to sign the Student Research Sponsorship Acknowledgement appended hereto as [Annex A](#) in which the sponsor: 1) acknowledges that the Student Intellectual Property and any related results are not warranted by the University; 2) indemnifies the University against the use of the Student Intellectual Property and related results; and 3) acknowledges the Student Intellectual Property and related results are not the work of the University.
6. Situations may arise in certain courses or extra-curricular activities where a Student is presented with the opportunity to participate in projects or activities in which the ownership of any resulting Student Intellectual Property must be assigned to a sponsor (such as a company) as a condition of the Student's participation in the project or activity. Students are **never** obligated to participate in projects or activities that require the assignment of the Student Intellectual Property to another entity. Students always have the following options: 1) to participate in projects or activities that do not require the Student to assign his/her rights in the Student Intellectual Property or 2) to

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participate in projects or activities that require the Student to assign his/her right in Student Intellectual Property.

7. A Student's grade and/or evaluation of performance in a course will not be affected by the Student's decision to participate or not to participate in projects or activities requiring the assignment of his/her rights in Student Intellectual Property.
8. If a Student chooses to participate in a project or activity that requires the Student to assign his/her right in Student Intellectual Property or if a Student otherwise chooses to assign his/her right in Student Intellectual Property, the Student acknowledges that the assignment of Intellectual Property is a binding legal obligation. The Student has the right to seek independent legal advice at their own expense prior to signing any agreement with a sponsor.
9. Retention of Rights/Assignment of Rights
 - If a Student wishes to retain ownership of his/her right in Student Intellectual Property and declines to assign such rights to any other entity, no further action is required.
If a Student wishes to assign to a sponsor his/her rights in Student Intellectual Property, he/she may, acting on his/her own behalf as an independent enter into an agreement directly with the sponsor.. For clarity, the Student may not use the name of the University or represent him/herself as a representative of the University.
10. Use of University Name and Limitation of Liability
 - Student(s) may not, without prior written authorization from the University obtained in accordance with the University's *Policy on the Use of Concordia University's Name, Logo and Related Insignia, and the Governance of its Visual Character (SG-4)*, use the University's name, or any trade or service mark(s) owned or controlled by the University (the "**University's Marks**") in connection with any Student Intellectual Property. Additionally, the Student may not use University Marks, or the names of any employee, officer, director, governor, agent or representative of the University, in any advertising, publicity, commercialization activity related to the Student Intellectual Property without the prior written approval of the authorized representative of the University. Any such requests for authorization to use the University's Mark shall be submitted in writing to the Vice President, Research and Graduate Studies.

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- Student(s) shall indemnify, defend and hold harmless the University, its employees, officers, directors, governors, agents, or representatives against all costs, suits, claims resulting from any agreement that may be entered into between the Student and a sponsor or any other third party, and the use by the Student or any third party of any Student Intellectual Property.

PROTECTION AND COMMERCIALIZATION

Independent Inventions and Student Intellectual Property

11. The University has no interest in or claim to any Independent Invention or Student Intellectual Property. Such Inventions and any patents arising from them shall be the sole property of the Inventor. However, a Member and the University may enter into an agreement to Commercialize an Independent Invention or Student Intellectual Property. The sharing of Net Proceeds will be consistent with the distribution set out in Sections 22 and following below.

Qualifying Inventions

12. All Inventor(s) of a Qualifying Inventions, to the exclusion of Co-Inventor(s) governed by the CUFA or CUPFA collective agreements, shall be deemed to have automatically assigned the Intellectual Property of such Invention to the University and they may not otherwise use, improve or exploit such Invention absent a written agreement with the University. This in no way alters the rights of the Inventor(s) to his/her share of the Net Proceeds (see Sections 22 and following below). The Inventor(s) shall be named on all patent applications and related documents, and where appropriate, the University shall credit the Inventor(s) in connection with the use made by the University of the Invention.
13. The University may, at its discretion, elect to assume the financial and management responsibility for obtaining intellectual property protection of a Qualifying Invention, negotiating assignments or licensing and taking whatever other steps are deemed necessary for the Commercialization of the Invention. The University may license or assign the Invention to third parties.
14. The University recognizes the important role of Inventors in the implementation of a successful commercialization plan. Where the University has elected to pursue

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protection and commercialization activities in relation to an Invention, the University and the Inventor(s) shall collaborate fully with each other. The University shall consult with and keep the Inventor(s) informed of all material developments related to the protection and commercialization of his/her Invention. Upon request from the University, the Inventor(s) shall do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the Office of Vice-President, Research and Graduate Studies may reasonably require, from time to time, to proceed with the protection and Commercialization of the Invention.

15. Should the University choose not to proceed with the protection of the Intellectual Property of a Qualifying Invention which does not include the substantive, creative or inventive contribution of an Inventor(s) governed by a collective agreement, the Inventor(s) may pursue such protection and Commercialization at his/her own cost, subject to the prior written approval of the Office of the Vice-President, Research and Graduate Studies. In such event:
 - i) The University shall do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as may reasonably be required, from time to time, to allow the Inventor(s) to proceed with the protection and Commercialization of the Inventions.
 - ii) The Inventor(s) shall be deemed to have granted to the University a non-exclusive, royalty free, irrevocable, indivisible, non-transferable license to use the Invention for its own educational, teaching and research purposes. This right may be suspended only for the duration of the process necessary to protect the Intellectual Property.
 - iii) Licenses and other agreements negotiated by the Inventor(s) shall be on fair market terms and conditions and shall include provisions covering: a) indemnification to benefit the University; b) a disclaimer of warranties; c) a prohibition of the use of the University's Marks without its consent; and (d) confirmation of the license to the University granted pursuant to Section 15 ii) above. All negotiations and commitments made by the Inventor(s) shall be previously approved in writing by the University failing which such negotiations or commitments shall be null and void.
 - iv) Any Net Proceeds shall be divided as set out in Sections 22 and following below.

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General Provisions

16. When the Inventor(s) is managing the Invention, he/she shall report annually on the management of the Invention and no license or assignment may be executed with respect to a Qualifying Invention without the knowledge of the University. Ongoing research sponsored by parties with a financial interest may take place on University premises and/or involve the use of University facilities only if the University and the Inventor(s) develop a memorandum of agreement.
17. When at least one of the Inventors(s) is governed by the [CUFA collective agreement](#), the mechanisms, procedures and supporting Appendices, including the relevant Declaration of Invention, to that collective agreement shall apply to all University Co-Inventors.
18. Invention(s) made without the inventive contribution of a Member governed by the [CUFA collective agreement](#) are subject to the procedures established in the Supporting Procedures for Inventions, including the relevant Declaration of Invention.

Confidentiality

19. The Inventor(s) and the University involved in any Commercialization process shall be bound by the following confidentiality provisions:
 - i) The Member(s) agree not to disclose and to maintain in confidence the Intellectual Property and any improvements. Where the University assumes the responsibility for pursuing intellectual property protection of a Qualifying Invention, the Inventor(s) shall advise the University in writing at least ninety (90) days in advance of any proposed disclosure relating to the Intellectual Property or improvements. If, at its sole discretion, the University determines that such a proposed disclosure may adversely affect the patentability or protection by any other means of the Intellectual Property or improvements, the University reserves the right to require that the Inventor(s) delay such proposed disclosure for a period not to exceed six (6) months.
 - ii) Confidential information includes all of the following: all material, including any text, letter, memorandum, sound recording, videotape, film, photograph, chart, graph, map, survey, diagram, model, sketch, book, technical data, research documentation and generally any information relating to the Intellectual

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Property that is recorded or stored by means of any device (the “**Confidential Information**”).

- iii) The Inventor(s) agree:
 - (a) to maintain the secrecy and confidentiality of the Confidential Information;
 - (b) not to disclose any Confidential Information to a third party, except where the University has entered into a written agreement with such third party which binds the third party to obligations of confidentiality and restricted use which are no less onerous than those imposed hereunder before any such disclosure;
 - (c) not to use any Confidential Information for any purposes other than those agreed to with the University;
 - (d) only to disclose the Confidential information to those (i) who have a need to know the information and (ii) who have been informed of the confidential nature of the Confidential Information.
20. The obligations of confidentiality set out above do not apply to information that:
- i) has been published or has otherwise entered the public domain without a breach of this Policy;
 - ii) is obtained from a third party who has no obligation of confidentiality; or
 - iii) is independently developed or obtained by the receiving party without breach of this Policy.
21. Any request for disclosure of Confidential Information shall be referred to the Office of the Vice-President, Research and Graduate Studies.

Distribution of Revenues Generated by Commercialization

22. The division of Net Proceeds shall be made as follows:
- i) fifty percent (50%) to the Inventor(s), fifty percent (50%) to the University.

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- ii) Notwithstanding Section 22 i) above, where pursuant to Section 15 the University refuses at the outset to Commercialize a Qualifying Invention, the division of the Net Proceeds shall be ninety-five percent (95%) to the Inventor(s) and five percent (5%) to the University.

All amounts owed shall be paid on an annual basis in Canadian funds. Revenue received in a currency other than Canadian dollars shall be converted into Canadian dollars at the rate of exchange in effect on the date such sums were received.

23. All amounts owed in Net Proceeds shall be shared in accordance with the “Distribution of Revenues” proportions detailed in the Declaration of Invention.
24. In the event that either the University or the Inventor(s) directly or indirectly acquires, in any form, including equity, an interest in an enterprise involved in the Commercialization of the Invention as part of an assignment or license, such interest shall be divided between them, barring agreement to the contrary, on the same basis as the division of Net Proceeds outlined above.
25. It is the responsibility of each Inventor to promptly advise, in writing, and no later than May 31st of each calendar year, the Office of the Vice-President, Research and Graduate Studies of any change in their personal contact information, failing which, any Net Proceeds payable to that Inventor will revert to the University to be used at the University’s sole discretion.

Miscellaneous Provisions

26. Where a third party, not a Member of the University, is a Co-Inventor of a Qualifying Invention, the Member-Inventor(s) shall not consent to any plan to Commercialize without the prior written approval of the Office of the Vice-President, Research and Graduate Studies.
27. The University’s Mark, or any reference to the University, whether explicit or implicit, will not be used in connection with the development of an Invention without the express, prior written consent of the University.

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COPYRIGHT

28. Copyright protects the right of expression and the right to publish, reproduce and distribute that expression. More particularly, in relation to a specific Work, Copyright means the sole right to produce or reproduce a Work or any part thereof in any form or in any medium chosen, to perform the Work or any part thereof in public or, if the Work is unpublished, to publish the Work or part thereof.
29. Copyright applies to all original Works as that term is understood by the [Copyright Act](#), including but not limited to: scholarly, scientific, literary, dramatic, musical, artistic and recorded works, in any material or electronic form.
30. Where the Work is a Commissioned Work from the University or the result of a Sponsorship, the right to Copyright and the rights to royalties or other income shall be determined by the terms of that commission or Sponsorship Agreement. In the case of a Work commissioned by the University, unless the terms of the commission state otherwise, the Copyright shall remain with the University.

Except as provided for above, the Member will retain the Copyright of any other Work(s). The University has no interest in or claim in any such Work(s), whether published or not.

31. Notwithstanding Section 30 above, the Member shall be deemed to have granted to the University a non-exclusive, royalty-free, irrevocable, indivisible, non-transferable license to use the Work for research and teaching purposes of the University, provided that the Author is credited in every use and the University is entitled, at its sole discretion, to use, correct, update, modify or replace any Work or any part of any Work without obtaining subsequent approval from the Member.
32. Except as may be provided in a Sponsorship Agreement, it is acknowledged that Members who are financially or otherwise supported by the University have the right to publish such research results, subject to the following:
 - i) The supervising professor shall be provided with copies of any proposed publication at least ninety (90) days in advance of disclosure of such publication.
 - ii) If the supervising professor does not object, in writing, to such disclosure within forty-five (45) days of receipt of such copies, the Member shall be free to proceed

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with the publication. In the event written objection is made, the parties shall work towards an acceptable version of the publication within sixty (60) days of receipt of the original copies.

- iii) Should the parties be unable to reach an agreement with respect to such publication within the sixty (60) day period provided for in Section 32 ii) above, the matter shall be immediately submitted by the supervising professor to the Dean of the relevant faculty for a final decision. Such final decision shall be rendered within thirty (30) days from the date the matter was submitted to the Dean in writing.
- iv) Unless otherwise agreed to in writing with the supervising professor, the supervising professor shall be the corresponding author on all publications and thus the point of contact with a publisher. Authorship rights of the Member will be recognized in publications based on and in proportion to his/her intellectual contribution.

The University reserves the right to demand that the University's Mark and/or the name of any of its Members be removed from any publication.

- 33. Notwithstanding Section 32 above, unless otherwise agreed to in a Sponsorship Agreement, the University retains ownership of the research results. A Member may be granted the right to commercialize or otherwise use, improve or exploit the Intellectual Property associated with such research results, subject to provisions in a Sponsorship Agreement and the prior written agreement of the University.
- 34. Upon submission of a thesis by a graduate student, the graduate student shall be deemed to have granted the University a non-exclusive, royalty free license to reproduce, archive, preserve, conserve, communicate to the public by telecommunication or on the internet, loan, distribute the thesis worldwide for non-commercial purposes, in any format including electronic. In the event of a deferment of a thesis for distribution or publication, it is understood that the University's license to communicate, loan and/or distribute shall only take effect as of the expiry of the agreed upon deferment period.
- 35. Except as may be provided in a Sponsorship Agreement, the Member shall retain Moral Rights to any Work at all times.

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36. In the event that the University or assignee relinquishes its rights in any Work, all rights shall revert back to the Member(s).

General Provisions

37. The use of Intellectual Property belonging, in whole or in part, to a third party is strictly prohibited absent the prior written permission of the rightful owner of such Intellectual Property. The Office of Research shall be immediately informed of such intended use and shall be provided with a copy of the written permission of the rightful owner of the Intellectual Property in question.
38. Where appropriate, the provisions of this Policy shall apply to all Co-Inventors or Co-Authors.
39. In the event of the death of a Member, his/her rights under this Policy shall revert to the estate or succession of the Member.

Responsibility for this Policy and Disputes

40. The Office of the Vice-President, Research and Graduate Studies shall have overall responsibility for this Policy and shall investigate and decide upon matters relating to this Policy and to the disposition of Inventions covered by this Policy.
41. The Office of the Vice-President, Research and Graduate Studies may issue written Guidelines regarding this Policy.
42. Any disputes arising from the application of this Policy shall be brought, in a timely manner, to the attention of the Office of the Vice-President, Research and Graduate Studies for resolution. Where a Non-Student Member asserts rights in any Student Intellectual Property, the University shall have the sole and exclusive right and authority to perform any evaluation, investigation or due diligence it may deem useful and all Members shall cooperate fully with the University in this regard, and shall provide all relevant information and documentation as reasonably requested by the University in conducting its evaluation. Until such time as the University has rendered a decision in this regard, no Member shall disclose the Intellectual Property under dispute to any third party; nor shall any Member transfer, assign, alienate, license or in any way deal with any part of his/her right, title and interest throughout the world in and to the Intellectual Property to any person whatsoever. Where the University determines that a

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Non-Student Member has made an inventive contribution to the Student Intellectual Property under dispute, such Intellectual Property shall be governed in accordance with this Policy.

See [Annex A](#) - Student Project Sponsorship Acknowledgement for Companies

Adopted by Senate at its January 16, 2015 meeting.