



Southern University System

SU System Intellectual Property Policy

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THE SOUTHERN UNIVERSITY SYSTEM POLICY ON INTELLECTUAL PROPERTY

PREAMBLE

The central mission of the Southern University System (hereafter referred to as the University) is to create, preserve, and disseminate knowledge through teaching, research and service. The community of scholars at Southern has determined and established norms and values for the conduct of scholarly and scientific work that have evolved over the long history of the University. These norms and values are consistent with those recommended by the American Association of University Professors (AAUP) and those applicable to higher educational institutions throughout the United States of America.

Faculty at the University must be free to choose and pursue areas of study and concentration without interference, to share the results of their intellectual efforts with colleagues and students, to use and disseminate their own creations, and to take their created works with them should they leave the University.

This Intellectual Property Policy is intended to maintain those traditional norms and values that foster, in various ways, the open and free exchange of ideas and opinions. In this regard the policy formulated here follows a basic tenet of the 1940 Statement of Principles on Academic Freedom and Tenure of the American Association of University Professors:

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free expression.

The ongoing revolution in the use of information technology for the production and dissemination of knowledge enables members of the University community to create new forms or types of scholarly works, to communicate with current audiences with new types of materials, and to reach new audiences. The dramatic changes in information technologies and the ways in which they are employed provide an occasion to examine and clarify Intellectual Property policy of works of scholarship produced at the University. This Intellectual Property Policy statement delineates the rights and responsibilities of the University and its faculty, employees, students, and other members of the community.

By longstanding custom, faculty members hold copyright for lecture notes, class-notes, books, monographs, articles, and similar works as delineated in the policy statement, whether distributed in print or electronically. This pattern will not change. This copyright policy retains and reasserts those rights.

The use of new media technologies has changed the process of creation of intellectual works. Some of the resources (physical, financial, and human) needed to employ the new technologies are shared resources, provided by the University for the common benefit of all members of the University community. But, in many cases, the use of new media technologies requires increased involvement by the University in the form of financial support, expert services, equipment, and other facilities beyond the base level of support and common resources provided to faculty.

Consistent with this changed environment in which Intellectual Property is created, the Southern University System, herein referred to as the "University," will have interest in copyright to works of authorship that are created at the University by faculty, research staff, and others that, a) are supported by a direct allocation of University funds, b) are commissioned by the University, c) made substantial use of financial or logistical support from the University beyond the level of common resources provided to faculty, and d) are otherwise subject to contractual obligations.

In those instances in which the University has determined that it holds rights, faculty members can use the works involved for noncommercial purposes.

This policy recognizes that ownership of Intellectual Property and the sharing of economic returns from the licensing or commercialization of that property are two related yet distinct matters. Even when Intellectual Property rights are held by the University, revenues from new digital media and other property should be shared among its creators, including individual faculty, researchers, departments, schools, and University System. A description of the precise mechanism for distribution of revenues received from the Intellectual Property is included in the policy statement and follows guidelines that have worked effectively for the sharing of revenues from patents.

Any beneficial returns to the University should be used for the common good in furtherance of its mission. Any share of revenues from Intellectual Property returned to the University must be invested visibly in the teaching and research enterprise of the University to seed new initiatives, enhance quality, and support quality academic programs including those that are not capable of reaping significant returns from their own created works.

This policy also is intended to strengthen current protection of the reputation of the names "Southern University," "Southern University System" and their variations and appendages. As a general principle, the name of the University is not the property of any individual, department, or School. When the University's name is associated with a work of scholarship or other educational materials such as courses, the interests of the University are affected. For these reasons, the University must exercise the highest standards of integrity and accountability with respect to the use of its name. This is particularly true when Intellectual Property is created for use by other educational institutions or by for-profit organizations, including development of extension courses to be offered on-line. Faculty members, deans, and other members of the University community who create courses or digitized content for other universities or for profit-making entities should be certain that all new collaborative agreements with outside

entities receive approval of the appropriate university officers, System President and Board of Supervisors.

I. Introduction

Southern University comprises five (5) campuses: Southern University and A&M College at Baton Rouge (SUBR); Southern University at New Orleans (SUNO); Southern University at Shreveport, Louisiana (SUSLA); Southern University Law Center(SULC); and the Southern University Agricultural Research and Extension Center(SUAREC).

Intellectual Property Defined

This policy covers all types of Intellectual Property, including, but not limited to, the following: creative and scholarly works and inventions, with commercial potential; patentable inventions; copyrightable works; trade secrets; trademarks; mask works; and novel plant varieties.

Other definitions and key terms in this policy are provided in Appendix A for common use by the University. Many of these definitions do not necessarily conform to customary usage, but are defined in legal and technical language for the purposes of this policy.

Purpose of the Intellectual Property Policy

The University recognizes that commercially valuable intellectual properties may arise in the course of research and other activities conducted by employees, students, and other associated individuals using *University* resources. Therefore, the reason we have this Intellectual Property Policy is to define the conditions of ownership, legal protection, development, and licensing of intellectual properties conceived or first reduced to practice by individuals who use resources and facilities at one or more of the five campuses listed above. Under this policy, intellectual properties can be managed so as to further the *University's* mission, enhance the value of such properties, and maximize benefits to the university originators (creators, inventors, and authors), and the public.

This policy applies to all employees and students of the University and to any individuals using University resources under the supervision of University personnel, including, but not limited to, visiting and adjunct faculty. No exception to the policy shall be valid unless negotiated in advance and agreed to in writing by the Board of Supervisors or its designee.

II. Copyright Ownership; Assertion of Rights

A. Traditional Faculty & Employee Authorship Rights

Consistent with established academic custom, the University recognizes faculty and employee ownership of copyright in traditional works of authorship created by faculty such as textbooks, class notes, journal articles, lectures, research and other works of fiction, non-fiction such as theses, dissertations papers, poems, musical compositions and visual works of art, whether or not such works are disseminated in print or electronically. Use of resources such as the libraries, office, desktop computer and University computer infrastructure, secretarial staff and supplies, is not considered to be substantial use of such resources for the purposes of vesting the University with copyright ownership in such works.

The University shall not have ownership to Intellectual Property when the creator is a student, professional, faculty, or non-faculty researcher and the Intellectual Property is a traditional academic copyrightable work in the creator's field of experience. Even though such a work may be within the scope of employment, it is the property of the creator unless it is a scholarly work a) created by someone who was specifically hired or required to create it or b) commissioned by the institution. In either of those cases, the University, not the creator, will own the Intellectual Property.

B. University Rights

The University asserts copyright ownership in any work of authorship that is: a) created with substantial use of University resources (*over and above that referenced in "A" above*), financial support or the support of non-faculty University personnel beyond the level of common resources provided to faculty; b) created or commissioned for use by the University; or c) created under the terms of a sponsored project where the terms of the sponsored project require that copyright be in the name of the University. Additionally, any work created by an officer of administration (*including a faculty member or officer of research when acting in his or her capacity as an officer of administration*), or by a support staff member acting within the scope of his or her employment generally constitutes a "work for hire" as defined by federal law. The Board and System asserts copyright ownership of such works. Through predetermined agreements and provisions, creators of works that constitute works for hire may share in revenues arising from their creation.

C. Stipulations Pertaining to the Assertion of Rights and Ownership

Faculty and researchers having rights to discoveries/inventions prior to employment by the University should notify the hiring administrator who shall in turn notify the university attorney of such Intellectual Property so that ownership to any further development of that same Intellectual Property at the university may be established by written agreement.

1. Title to discoveries or inventions shall remain with the inventor, provided the University attorney and the University Intellectual Property Committee confirm that the discovery or invention was made under at least one of the following purported conditions:
 - a. Outside the course of, and or, scope of employment;
 - b. Without the use of common resources such as the libraries, office desktop computer and University computer infrastructure, secretarial staff and supplies;
 - c. Created without the use of substantial University resources over and above that provided routinely for faculty or employee use; and
 - d. Cases where the University received reimbursement for the use of substantial resources in accordance with University policy.
2. An inventor shall submit an *Invention Statement* to the University's designated representative or designee and to the Intellectual Property Committee. This statement shall contain sufficient information to enable the representative and committee to make a determination. If confidential information is required, the involved campus will sign a nondisclosure agreement for purposes of this review.
3. Should the university attorney determine that the university does have a proprietary interest, a complete technical description of the invention may be required before making a decision in regard to title. If it is determined that the university has an interest, the provisions of the University policy shall then be applicable. Appeals of such determinations may be made to the President of the university.
4. Rights in and to discoveries and inventions described in (II. A. "Traditional Faculty & Employee Authorship Rights,") shall be disclosed to the university when the author or creator commences work on a similar or related work in the same or allied field.
5. Each unit of the university agrees to act in good faith with respect to the determination of ownership. The university may, at its discretion, waive rights in favour of the inventor. If the university retains rights, the university will execute an agreement with the inventor(s), according to the formula stipulated in Section VI of this document, that provides for distribution of *Net Income* derived from the Intellectual Property. If there

is more than one inventor, each receives an equal share unless the inventors agree among themselves on another distribution in written and signed declaration.

D. Sponsored Efforts

1. Sponsored project agreements often contain specific provisions with respect to ownership of Intellectual Property developed during the course of such work, in which case the terms of the sponsored project agreement shall establish ownership.

2. The University may enter into a contract or contracts with an external sponsor covering specific inventions or discoveries believed to be patentable and patents developed therefrom or covering all such inventions/discoveries in which the University has an interest.

E. Individual Efforts

Ownership of Intellectual Property developed by faculty, staff, or students of the University as a result of their individual efforts shall reside with the creator and inventor of such Intellectual Property provided that:

1. Use of resources is limited to use of common resources such as the libraries, office, desktop computer and University computer infrastructure, secretarial staff and supplies, afforded to other faculty or employees of equal rank;
2. The Intellectual Property was not developed in accordance with the terms of a sponsored project agreement; and
3. Faculty, staff or students did not develop the Intellectual Property using substantial resources not commonly available to others of equal rank.

It shall be the responsibility of the originator of the Intellectual Property to demonstrate that this ownership classification applies as outlined in (IV B. "Invention (Confidential Technical Description) Statement of Intellectual Property".

F. Consulting

1. An employee who anticipates engaging in off-campus consulting shall inform the appropriate dean and department chair prior in writing to commencing the endeavors. The employee must communicate the scope of such off-campus endeavors to the dean and chair from whom the approval is requested. These activities include: independent off-

campus research, or consultation and other related activities in which a third party may claim an ownership interest.

2. Employees of the University engaging in consulting agreements or otherwise employed by an external company shall ensure that the company is either anticipating or has executed a license agreement with the University. The consulting or other agreement shall be submitted to the university president, Chancellor, Vice Chancellor for Academic Affairs, Dean and Chair of the unit to which the consultant reports routinely.
3. The University does not ordinarily assert ownership to Intellectual Property produced by those involved with consulting. In cases where use of *University* resources occurs to support the consulting activity, there should be negotiation between the consultant and the university Chancellor, Vice Chancellor for Academic Affairs, Dean and Chair of the unit or units wherein the resources are housed to determine disposition of the intellectual property.

G. Ownership of Copyrighted Works

In keeping with academic tradition, except to the extent required by the terms of any grant or sponsored research agreement, the University does not claim ownership to pedagogical, scholarly or artistic works, regardless of their form of expression.

H. Student Works

1. Ownership of copyrights to works produced by enrolled students that are produced outside any University employment and are not sponsored or commissioned works, shall reside with the student creator(s). In all cases a student's graduate thesis or dissertation shall be deemed a student work under this policy, but as a condition of enrollment and awarding a degree, the University reserves an irrevocable, non-exclusive, free-of-cost and world-wide right to reproduce in any media and distribute to the public, on a non-commercial basis, copies of said theses and dissertations, unless to do so would impair the ability of the creator to commercially or professionally exploit the work.
2. If a use of the work by the University is reasonably determined by the originator to impair the exercise of such rights, the University shall discontinue the impeding use but otherwise shall remain free to use the work.

I. Jointly Originated Works

Collaboration between University employees or students and persons not employed or associated with the University, including researchers at other universities or companies, can result in the development of Intellectual Property jointly owned by the University and other persons or their employers. Protection and commercialization of such joint Intellectual Property can be difficult without extensive cooperation and agreement among the owners. University employees involved in or contemplating collaborative activities that may result in the development of Intellectual Property will advise the University of such activities. Ownership of jointly originated works shall be determined by separately assessing the category and level of work of each originator as provided for in this policy and Intellectual Property laws.

J. Software

1. Software is a form of Intellectual Property covered by this policy. It differs considerably from inventions due to the fact that software may be copyrighted. Some software can also be the subject of a patent. This option may provide broader protection for the Intellectual Property, but at a greater expense.

Any software should be treated as an invention, and handled by its inventor and the University as described in Section V. on the management of Intellectual Property.

K. Other Intellectual Property

1. The University owns all other forms of Intellectual Property arising from University research, including trademarks, and know-how (except those listed in II. A. and unless the know-how is related to Intellectual Property otherwise not owned by the University).

2. Other Intellectual Property may exist in the form of material that is not patentable, but which by its nature can be protected. An example of this would be anything produced from a biological material harvested from a unique continually growing culture. This type of Intellectual Property may be protected and licensing agreements with parties interested in commercial production may generate revenue. This type of Intellectual Property is to be treated by its originator and the University in the same fashion as described for the management of Intellectual Property as contained in this policy.

Inventions – For purposes of this policy, an invention is any new or useful process or discovery, art, method, technique, machine, device manufacture, software, composition of matter, or improvement thereof.

L. Modifications, Extensions, or Translations of Intellectual Property.

The University owns and retains an interest in Intellectual Property acquired consistent with the stipulations governing ownership in (Section II. A.) this policy. Nonetheless, any changes, modifications, translations of an original work, invention or creation shall have the creator's, author's or inventor's permission and, where reasonable, his/her participation.

III. Types of Intellectual Property

For the purposes of this policy, *Intellectual Properties* are divided into two categories: Technical Works and Academic Works.

A. Technical Works include intellectual properties that are generally of a scientific, engineering, or technical nature such as patentable or unpatentable inventions, devices, machines, processes, methods, and compositions; and institutional collections. All computer software is included in technical works except that which is clearly developed for entertainment or for instructional purposes, e.g., electronic textbooks and textbook supplements, classroom and self study tutorials, notes and the like.

A.1. Academic Works include all intellectual properties not covered in *Technical Works* that are of an artistic, scholarly, instructional, or entertainment nature. Examples might include creative productions, such as works of art or design; musical scores; books, poems, and other types of scholarly or creative writings; films; video and audio recordings; and instructional materials, such as textbooks and multimedia programs.

B. Software Consistent with this Policy, the campus has an interest in inventions or discoveries, including computer software "that are or may be patentable as well as to the technology associated with them." If the software is not covered by the Intellectual Property Policy, the campus or University will not claim copyright ownership unless there is an independent basis for asserting such rights.

C. Use of course content and courseware Independent of copyright ownership. A faculty member has the right to use all course content and courseware he or she develops or creates in the normal course of teaching or research. This right includes the right to make changes to the works and the right to distribute such works to the University faculty and other University personnel for teaching, research and other noncommercial institutional purposes.

- D. Videotapes and recordings** The University has an interest in videotapes or other recordings of courses, and the parts thereof, that are made at University expense. Ownership of the videotape or recording itself does not mean that the University claims rights in the intellectual content presented on the tape or recording. Interest in the content shall be governed by the principles set forth above.

IV. Responsibilities Under This Policy

A. The Intellectual Property Committee (IPC)

Composition and Duties.

1. Each campus shall establish an Intellectual Property Committee of which no less than one-third (1/3) shall be appointed by the Faculty Senate.

This Intellectual Property Committee shall comprise members of constituents groups such as the faculty, students and administration deemed acceptable and appropriate by the campus whose credentials are germane to the committee's purposes. This committee shall be charged by the Chancellor to address any issues concerning the proper interpretation of this Policy and to resolve any disputes between creators and the University concerning ownership of works and what constitutes substantial use of University resources. Members of the University community may obtain advice from this Committee. The creator of a work may appeal the decision of the Committee to the Board of Supervisors through the University President. The decision of the Board of Supervisors shall be final. Decisions of the Committee and the President will be publicly available.

2. In order to ensure continuity of the activities of all Intellectual Property Committees of the five campuses, individual members thereof shall be appointed initially for varying terms of service, provided that any member may be re-appointed upon the expiration of his or her term of service. Vacancies occurring on the committees, whether by reason of expiration of a term of service, resignation, death, retirement, or otherwise, shall be filled by appointments made by the Chancellor, and faculty senate.

3. The Intellectual Property Committee for a given campus shall, in addition to the functions herein before described, consider and make recommendations to the Chancellor concerning the following:
 - a. The review, establishment, interpretation and modification of *University* policies and procedures affecting research, inventions, and intellectual property.
 - b. Whether or not an application for Intellectual Property should be made on any particular invention, and whether such invention should be submitted for licensing by the campus, dedicated to the public, or whether the rights therein be relinquished to the sponsor or inventor.

Matters submitted to the Committee by any interested employee or student, may include, when appropriate, the conduct of a hearing where the issue may be an invention ownership, an alleged improper distribution of rights or compensation between an inventor and the campus, or a sponsor, when applicable.

B. The University Attorney

1. The university's attorney may review the determination of the IPC upon the written appeal of the author, creator of the intellectual work at issue. If this review finds that the determination of the IPC is in contradiction to written policy, or is otherwise unsubstantiated, the matter may be referred for a judicial hearing before the Chancellor, legal counsel of the University, chairperson of the IPC, the campus research officer, the aggrieved individual and his/her legal representative and any other person who can offer "expert testimony" or contribute significantly to the procedure. The results of the hearing shall be forwarded through the System President to the Board of Supervisors for a final, conclusive and binding decision or dismissal.
2. The University attorney may review the determination of the IPC committee, at the request of an interested person with a justifiable claim. The attorney may affirm, modify, or reject the determination of the Committee, based on legal merit. If the Committee recommends in any particular case, the campus should have an interest different from that stated as the general policy for Intellectual Property belonging to the University, the recommendation shall be referred to the university attorney. The results of this review shall be forwarded through the System President to the Board of Supervisors for a final, conclusive and binding decision or dismissal.

C. The Chancellor

The Chancellor's role includes charging the Intellectual Property Committee to address any issues concerning the proper interpretation of this Policy and to resolve any disputes between creators and the University concerning ownership of works and what constitutes substantial use of University resources. The Chancellor shall work with the faculty senate to fill vacancies on the Intellectual Property Committee. Other roles for the chancellor shall include reviewing recommendations made by the IPC and general oversight of the processing and assignments of intellectual property.

D. The System President

The System president has general overarching responsibility for the actions of campus based IPCs and the work of the campus chancellors. Other responsibilities include making judgments about matters to be referred to the Board of Supervisors for approval.

E. Board of Supervisors

The Board of Supervisors is the final cognizant authority over all Intellectual Property matters and makes the final determination and ruling about matters referred to them by the System president. The Board is the only authority authorized to make and approve policies that govern the disposition of intellectual property.

V. Management of Intellectual Property

A. Responsibility and Organization

The administration of the principles and policies set forth in this document is the responsibility of the duly designated representative or designee of a campus, and with the advice of the Intellectual Property Committee and a University Legal Advisor.

B. Disclosure and Appeals

1. The originator/s of Intellectual Property shall file an Invention Statement with the Intellectual Property Committee and Vice Chancellor for Research (each member of these positions or groups shall be sworn to keep the process confidential, under penalty of law). Within ten (10) days of such disclosure, the Vice Chancellor or designee shall transmit the statement to the technology transfer officer, with non confidential information copy to the originator's chair, dean of the college, or other

administrative officer. The technology transfer officer shall append to the invention statement or confidential technical description, a statement setting forth his or her opinion concerning the scientific, technical and economic merit of such Intellectual Property; the likelihood and desirability of obtaining a patent, trademark, copyright or trade secret protection; an estimate of the commercial potential; and a general description of the University facilities or resources used in the development of the Intellectual Property.

C. Invention Statement or Confidential Disclosure Processing

1. Only after receiving a completed *Invention Statement*, will the university attorney review, evaluate, and make a confidential disposition of the invention statement. Upon making a disposition, the representative will promptly notify the originator(s) as to whether or not the University should seek patent protection for the invention. The evaluation and disposition will be completed as soon as possible, but for inventions (and computer software) ordinarily no later than ninety (90) days, and for copyrightable works (other than software) ordinarily no later than thirty days (30) after the university attorney receives a complete, accurate confidential invention statement and any other information that he or she requests in order to make an informed evaluation.

2. The determination whether or not the campus shall seek patent protection depends upon the availability of funds and the patentability and commercial value. A determination by the university attorney not to seek patent protection is reviewable by the Chancellor at the request of the originator. The campus personnel involved shall be entitled to appear before the Chancellor and present evidence with respect to the report. The Chancellor's determination shall be made in writing and shall contain a statement of findings and grounds of decision.

3. When there is a failure to obtain a patent based solely upon lack of University funds, the originator, and or, any other party may commit discretionary funds to patent an Intellectual Property. Should it be licensed, the sponsor/s may only recover out-of pocket costs out of gross royalties. The commitment of such funds must have prior approval by the University attorney. However, under no circumstance is the use of non-University funds considered a relinquishment of interest in the Intellectual Property by the University.

4. Intellectual Property determined not to be of merit or use to the University may be released to the employee under the guidelines of the research sponsor, where applicable. A campus will ordinarily waive its ownership rights in favor of the originator of an Intellectual Property if the employee has made complete and accurate confidential disclosure of such

Intellectual Property in accordance with this policy and if the research sponsor also waives its rights.

5. In cases where the University's claim to Intellectual Property is in accordance with the stipulations of this policy (Section II. B. "University Rights") the University may commercialize the property rights using its own resources. However, if the University elects not to exploit an interest through commercialization, the work should be released to the creator as allowed by law. In this instance, the creator is free to obtain a patent or other applicable Intellectual Property protection and retain any derivative income rights.

D. Assignment and Protection of Intellectual Property

1. To protect and preserve the Intellectual Property rights defined in this policy and to comply with federal regulations, the originator shall furnish such additional information and execute such documents from time to time as may be reasonably requested.

2. The University shall have the sole right to determine the disposition of Intellectual Property over which it asserts ownership. As such, creators may not assign, or license rights in Intellectual Property to third parties without the prior written consent of the University.

3. Originators of Intellectual Property shall assist as reasonably necessary for the University to obtain statutory protection for the Intellectual Property and to perform all obligations to which it may be subject concerning the Intellectual Property, including the exercise of prudent, intellectual stewardship of his or her Intellectual Property.

4. The campus representative shall inform the originator on a regular basis of the progress of protection efforts and commercialization of Intellectual Property disclosed by that originator.

E. Licensing Intellectual Property

1. The individual campuses do not sponsor product manufacturing, company support functions, customer service, or technology maintenance. In general, it is not appropriate for academic units to produce, market or sell products, or to establish organizations or companies to do so. Instead, the designated university authority has the responsibility to license or sell university developed products (products which were developed with substantial use of University resources as delineated in II. B. "University Rights"). These may be sold to end-users when sales and support do not interfere with the normal activities of campus personnel, and when the sale is consistent with the educational mission of the campus.

2. The designated university authority will work with the originator to identify and pursue licensing opportunities. The originator is often aware of, familiar with, or in direct contact with the companies most likely to have an interest in the Intellectual Property.

3. Initial communication with potential licensees normally is based on a non-confidential summary of the Intellectual Property. Interested companies are then requested to sign a *Confidentiality Agreement* before receiving confidential information, such as the patent application and access to the originator for discussion of confidential information.

4. The involvement of the originator is encouraged and supported, and is usually essential to successful licensing. However, originators should limit their communication with a company until a *Confidentiality Agreement* has been signed.

VI. Distribution of Income

A. Financial Responsibility and Costs

1. The University, through each campus, assumes financial responsibility for Intellectual Property to which it takes ownership. This responsibility may include, for example, the costs of assessing patentability and commercial potential, filing and maintaining patents, registering copyrights, marketing and licensing inventions, and copyrighted works, and sharing of net income. The campuses are not, however, obligated to protect or commercialize any particular invention or copyrighted work unless it has made an explicit contractual commitment to do so. Activities related to the protection and marketing of University Intellectual Properties are intended to be self-supporting. Thus, each campus representative is charged with the responsibility of using the University's resources carefully, with a view to promoting the fiduciary interest of the University as a whole.

2. Income earned from the licensing, or other transfer of Intellectual Property of a campus shall be received solely by the campus and shall, except where a grant or Sponsored Research Agreement specifies otherwise, be distributed successively as follows:

- From gross royalties, reimburse all direct expenses related to prosecuting and maintaining Intellectual Property protection and securing licenses, such as fees for outside legal counsel and other experts, if required, from gross royalties.

- From net royalties distribute:

Forty percent (40%) to the originator for personal use.

Sixty (60%) to The Intellectual Property Fund for academic and research use.

Each campus shall develop an implementation plan for the use of these funds and submit an annual accountability report to the SU System for the use and expenditure of such funds.

For inventions disclosed prior to the effective date of this policy, royalties shall be distributed in accordance with the agreement made as a result of negotiations between the originator and the University.

3. When more than one originator is listed, the allocation will be determined by the percentage of ownership listed in the original invention statement. That allocation may only be altered for future *Net Income* distribution by written request signed by all inventors listed on the original invention statement. In the event an agreement cannot be reached, the distribution shall be prorated according to *Section VII, Dispute Resolution*.

4. *Net Income* is payable only upon actual receipt by the University. In the case of the death of an originator, all *Net Income* distributions which would have been due, such person shall be paid to his or her estate.

5. In rare and exceptional circumstances, a non-inventor student may make an important inventive contribution to the development of an Intellectual Property. In such cases, the faculty inventor or conceiver of the invention may share a portion of the *Net Income* with the student.

VII. Dispute Resolution

A. The designated campus representative or designee shall attempt to resolve any claim, dispute or controversy involving the rights to any type of Intellectual Property originating at that campus. Any dispute that cannot be settled through informal discussion shall be submitted to the Intellectual Property Committee which will investigate the dispute and make a determination as to the rights of the parties.

B. Following a determination by the Intellectual Property Committee, a party interested in the assignment of rights may seek a review by submitting a written notification of appeal which is forwarded to the university attorney. The university attorney shall review the determination of the IPC to establish whether the determination of the IPC is in contradiction to written policy, or is otherwise flawed or unsubstantiated.

If this review finds that the determination of the IPC is in contradiction to written policy, or is otherwise flawed or unsubstantiated, the matter may be referred for a judicial hearing before the Chancellor, legal counsel of the University, chairperson of the IPC, university research officer, the aggrieved individual and his/her legal representative and any other person who can offer "expert testimony" or contribute significantly to the procedure. The aggrieved individual and his/her legal representative may appeal the decision of the Committee to the Board of Supervisors through the University President. The decision of the Board of Supervisors shall be final and binding upon all parties.

C. Committee members or administrators who are directly involved with the Intellectual Property in question must withdraw from the committee at such times as necessary to avoid conflicts of interest.

VIII. Policy Administration

The university attorney shall be charged by the Chancellor with the responsibility of working with the Intellectual Property Committee (See Section III) in making a formal Intellectual Property review of disclosed inventions and the administration of Intellectual Property agreements in conformance with the University's policies and contractual obligations. The university attorney and support staff shall have the responsibility to:

- A. Maintain the official records of invention statements, patents, copyright registrations, licenses, and compliance with regulations and terms of grant awards by research sponsors.
- B. Evaluate the Intellectual Property commercial potential of inventions and copyrighted works.
- C. Negotiate and sign confidentiality licenses and option agreements with companies and employees.
- D. Help create programs that build new relationships between research faculty and companies.
- E. Advise and counsel academic and administrative units regarding Intellectual Property.
- F. Assist schools, colleges, programs and administrative units to develop new sources of revenue.
- G. Engage outside consultants and other service providers as necessary to perform licensing activities, including marketing; negotiating agreements, drafting licenses and other legal

instruments, and performing any other services required to effectuate the commercialization of University Intellectual Property.

- H. Advise the Chancellor on Intellectual Property policy.
- I. Serve as an *ex officio* member of the Intellectual Property Committee.

IX. Official Acceptance of the Southern University Intellectual Property by the University Community

All Southern University faculty, staff, and students are expected to adhere to the provisions of this policy. Students and others working on research projects, and all other persons associated with the University who use University resources shall be required to agree to this *Statement of Policy* and the procedures to be promulgated pursuant hereto.

Appendix A: Definitions-Types of IP and Related Terms

Copyright - Works of Authorship - The Copyright Law of the United States protects original works of authorship that are fixed in any tangible medium of expression. Originality, in the context of copyright law, means simply that the work has not been copied, i.e., it is an independent creation. A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonograph record is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

Copyrighted Materials - Creative and scholarly works such as the following: (1) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals; (2) lectures, musical or dramatic compositions, unpublished scripts; (3) films, filmstrips, charts, transparencies, and other visual aids; (4) video and audio tapes or cassettes; (5) live video and audio broadcasts; (6) programmed instructional materials; (7) mask works; (8) research notes, research data reports, and research notebooks; and (9) other materials or works other than software which qualify for protection under the copyright laws of the United States (see 17 U.S.C. Section 102 et. seq.) or other protective statutes whether or not registered thereunder.

Subject Matter of Copyright - The categories of copyrightable works of authorship include:

Literary works

Musical works, including any accompanying words.

Dramatic works, including any accompanying music.

Pantomimes and choreographic works.

Pictorial, graphic and sculptural works.

Motion pictures and other audiovisual works.

Sound recordings.

Architectural works.

Literary works are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, computer programs, tapes, disks, or cards in which they are embodied.

Key terms in this policy are defined for common use by the Southern University System. These definitions do not necessarily conform to customary usage.

Assignment - The transfer of rights and title in real, personal or Intellectual Property by a written instrument with the result that the assignee is vested with rights of ownership. Federal law requires that the University obtain *Assignment of Inventions* that have been conceived or created in a project supported by federal funds. Other intellectual property may be assigned to the University, or to other parties pursuant to a Research or License Agreement.

Confidentiality Agreement - An Agreement that outlines the terms under which proprietary information will be exchanged between two parties. Since the University has a legitimate interest in protecting proprietary information generated by faculty, staff, and students during the course of their duties at a given campus, such agreements, when associated with intellectual property are frequently negotiated by a duly designated representative(s) on behalf of the University.

A signed confidentiality agreement should be in place before an inventor, or University representative discusses his proprietary technology with anyone other than the University's officially designated representatives. The *University* will insist on such an agreement in order to protect its proprietary technology. Confidentiality agreements simply spell out what is to be disclosed and under what conditions. Authorized representatives of the Southern University System *shall not* disclose to a potential licensee the claims of any patent unless there is a signed confidentiality agreement. Neither shall they discuss any ongoing research which may impact on a pending patent application without such an agreement. These campus representatives shall also negotiate confidentiality agreements.

Conflict of Interest - A *conflict* that occurs whenever two or more goals or ends might not be advanced simultaneously, placing them in potential competition with each other. Productive interchange between the University, its faculty, or other employees and the non-academic world may sometimes engender *conflicts of interest*, in which legitimate but disparate goals of the institution, or of an individual employee may present difficult choices. If *conflicts of interest* cannot be avoided, they may be minimized, in accordance with the University's policies and procedures for such management.

Contract - A legally binding mutual agreement between two or more parties in which an exchange of value (consideration) occurs, and which obligates each party to certain duties covering this exchange. Those signing such an agreement must be authorized to bind the entity that they represent.

Creators - Originators or discoverers of any kind of Intellectual Property. Generally these are faculty, staff, and other persons employed by the University, whether full- or part-time; visiting faculty and researchers; and any other persons, including students, who create or discover Intellectual Property using University resources.

Direct Expenses - Costs associated with the protection and licensing of Intellectual Property.

Disclosure - An action that makes an individual's invention known to others. In general, the following are the types of disclosure:

Confidential Disclosure - Any disclosure made for the purpose of testing, research, and development of the invention under an understanding or expectation of confidentiality. These disclosures are mostly made under a written or express agreement of confidentiality and non-disclosure.

Public Disclosure - Any publication or public utterance anywhere in the world describing the invention. It may be further defined as any public use of the invention or distribution of articles by, resulting from, or derived from the invention, or any offer for sale of the invention.

Enabling Disclosure - A description of an invention, in a patent application or in a publication or presentation that could allow a person skilled in the art to replicate the invention.

Employee - Employees include, but are not limited to, faculty as defined in this policy, full-time and part-time classified and unclassified staff, student employees, appointed personnel, graduate assistants and associates, persons with "no salary" appointments. An employee shall also include visiting faculty, persons on leave, and academic professionals, such as post-doctoral persons, who develop Intellectual Property using University resources and facilities unless there is an agreement providing otherwise. Persons who are not otherwise University employees and who come to the University as guest lecturers, or to teach colloquia, seminars or short courses are not University employees for purposes of this policy to the extent of their teaching and classroom activities.

Exempted Scholarly Works - Creative and scholarly results that fall within certain copyrightable categories which the University will waive any ownership in favor of the author, includes, works created by faculty such as textbooks, class notes, journal articles, lectures, research and other works of non-fiction such as theses, dissertations papers, poems, musical compositions and visual works of art, whether such works are disseminated in print or electronically.

Faculty - Employees of the *University* as defined in the University's Faculty Handbook. This designation also includes instructors and special faculty appointments such as joint faculty members, and part-time faculty.

Federal Ownership Rights - Rights that cover both data and software and arise from certain federal grants, contracts, and cooperative agreements. They require that Intellectual Property developed under these funding sources be owned by the federal government. When such funding sources are in force, the

University requires faculty and employees working under such funding to assign ownership of the Intellectual Property (e.g., software or data) to the *University* for conveyance to the federal government. The regulations covering such Intellectual Property are not uniform across federal agencies, and sometimes waivers may be sought in advance, or a petition for greater rights may be entertained.

Gross Income - Funds obtained from commercialization of technology under a License Agreement. Gross Income may include License Fees, milestone payments, minimum annual royalties, earned or running royalties, equity, equipment, or reimbursement of patent expenses and fees. It does not include research support in a mixed purpose Research Contract/License Agreement.

Income - Funds received by the *University* under a License Agreement.

Invention Statement (Disclosure) - A term typically used to describe a formal (written) description of an *invention* that is confidentially made by the creator or inventor to his or her employer. Within the *University*, an *Invention Statement* is an enabling disclosure, that includes details as to co-inventors and funding sources and should be submitted in the manner set forth herein. Such a statement is the "first alert" to the *University* that an invention has been made.

Inventor - Any employee or individual associated with the *University* who is the originator(s) of an Intellectual Property.

Inventions - An invention is any new or useful process or discovery, art, method, technique, machine, device manufacture, software, composition of matter, or improvement thereof.

Intellectual Property - including, but not limited to, the following: textbooks, class notes, journal articles, lectures, research and other works of non-fiction such as theses, dissertations papers, poems, musical compositions and visual works of art, whether such works are disseminated in print or electronically. Creative and scholarly works and inventions, with commercial potential; patentable inventions; copyrightable works; trade secrets; trademarks; mask works; and novel plant varieties.

Know-how- The knowledge, innovations, practices, expertise, processes or procedures, and secrets of individuals regarding the use of a material, product or resource, or the practice of a method, for a particular purpose.

"Know-how" usually refers to one of two situations: (1) "*confidential know-how*" which is equivalent to "trade secrets," and (2) "*non-confidential know-how*," which is readily discoverable by reverse engineering, or is information generally known in the trade. A third definition of "know-how" is any information needed to run a business such as how to market a product. Because of these varying

definitions, "*know-how*" should be specifically defined either in a licensing agreement or by implication through the manner in which it is used.

License - A contract which awards to a party other than the owner(s) of the Intellectual Property the right to make, use, sell or import products or services based on the owner's Intellectual Property. Licenses may be awarded on an exclusive or non-exclusive basis and may provide for payment of ***license fees, milestone fees, royalties, equity***, or other income to the owner(s) of the Intellectual Property.

License Option - A contract between the University and another party which conveys to that party the right to negotiate for a *license* to certain Intellectual Property, generally on terms within certain specified parameters. If the option is exclusive, the University agrees to refrain from granting a License to a third party during the option period. Exclusive options on future inventions are often offered in return for the agreement of the unrelated party to pay for patent costs and/or to support research. License options are not to be confused with stock options, which are agreements that require conveyance of equity.

Mask Work - A series of related images, however fixed or encoded, having or representing the predetermined, three dimensional pattern of metallic, insulating, or semiconductor material present or removed from layers of a semiconductor chip product; and in which series the relation of the images to each other has the pattern of the surface of one form of the semiconductor chip product. (See 17 U.S.C. Section 901 et. seq.)

Net Income - Gross income less non-reimbursed University expenses and other direct expenses for ***patent prosecution, litigation and licensing expenses*** associated with a particular License Agreement (e.g., travel made expressly to **market an invention or negotiate** a particular License Agreement). *Net Income* may be subject to sharing with inventors and creators and is distributed in accordance with University policy.

Novel Plant Variety- A novel variety of a sexually reproduced plant. (See 7 U.S.C. Section 2321 et. seq.)

Originator - An inventor, creator, author, or the like of an Intellectual Property.

Patentable Materials - Kinds of Intellectual Property deemed to refer to items other than software which reasonably appear to qualify for protection under the patent laws of the United States (see 35 U.S.C. Section 101 et. seq.) or other protective statutes, including *novel plant varieties* and *patentable plants*, whether or not patentable thereunder.

Patentable Plant - An asexually reproduced distinct and new variety of plant. (See 35 U.S.C. Section 161.)

Software - One or more **computer programs** existing in any form, or any associated operational procedures, manuals or other documentation, whether or not protected by patent or copyright. The term "computer program" shall mean a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

Trademarks - All trademarks, service marks, trade names, seals, symbols, designs, slogans, or logotypes developed by or associated with the *University*. (See 17 U.S.C. Section 1127.)

Trade Secrets - Information including, but not limited to, technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which: derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Patent - A grant issued by the U.S. or a foreign patent office that gives an inventor the right to exclude others from making, using, or selling the invention within the United States or other geographic territories for a period of years from the date of filing of the patent application.

Royalties - All compensation of whatever kind received from the sale, license, or other transfer of Intellectual Property rights by the *University* to a third party. This includes, but is not limited to, percentage payments, up-front fees, milestone fees, shares of stock, and any other financial or in-kind consideration.

Sponsored Research Agreement- A contract, grant, cooperative agreement, or other funded research instruments between the University and a sponsoring organization that set the terms and conditions for the conduct of a faculty or student research or training project. A Sponsored Research Agreement typically includes a description of the work to be performed, the terms of payment, ownership of Intellectual Property, publication rights, and other legal assurances.

Staff - Any employee of the *University* other than students and faculty as defined within this document. If a student is also a part-time University employee, he or she is considered as staff with regard to Intellectual Property developed as a result of his or her employment, and as a student with regard to other Intellectual Property. A full-time non-faculty employee who is also taking one or more courses is considered to be staff. Visitors to the University,

Including post-doctoral persons, are considered as staff with respect to any Intellectual Property arising from University activities.

Student- Any full-time or part-time graduate or undergraduate student, regardless of whether the student receives financial aid from the University or from external sources. It is the responsibility of the students who are also employees of other outside entities to resolve any conflicts between this policy and provisions of agreements with their employers prior to beginning any undertaking at the University that will involve the development of Intellectual Property.

Tangible Research Property - Research results in their physical form, and includes, but is not limited to, data, notes, workbooks, software, biological organisms, chemicals, materials, compositions of matter, instruments, machines or devices, drawings, and other property that can be physically distributed. *Tangible Research Property* may also be Intellectual Property.

Use of Institutional Resources - The extent to which the creator or inventor directly or indirectly benefited from university materials, equipment, facilities, staff, funding, material support, and other, as defined by the university attorney and by the Intellectual Property Committee. However, the mere use of an University office does not constitute "use of University resources."

University - Refers to the Southern University System which includes the following *campuses*: Southern University and A&M College at Baton Rouge (SUBR); Southern University at New Orleans (SUNO); Southern University at Shreveport, Louisiana (SUSLA); Southern University Law Center (SULC); and the Southern University Agricultural Research and Extension Center (SUAREC).

University Resources - All tangible resources, including facilities, provided by the *University* to authors, creators, and inventors, (originators) including, but not limited to, office, laboratory, and studio space and equipment; computer hardware, software, and support; secretarial service; research, teaching, and laboratory assistants; supplies; utilities; funding for research and teaching activities, travel; and other funding or reimbursement. "*University Resources*" do not include salary, insurance, or retirement plan contributions paid to, or for the benefit of the author, creator, or inventor.