

**Intellectual Property Policy
Northern Caribbean University**

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I. POLICY FRAMEWORK

1. Guiding Principles

Northern Caribbean University (hereinafter “NCU” or “the University”) is an accredited tertiary institution founded on Christian Principles as articulated by the Seventh Day Adventist Church.

As a centre of thought, ideas and creativity NCU encourages research, innovation and the publication of research results and other material generated by members of the University Community while seeking to inspire their intellectual excellence, creativity and independent thought. Members of the University Community in the course of study and research generate various forms of original intellectual property and use intellectual property owned by third parties.

The treatment and management of Intellectual Property Rights has become a critical aspect of the NCU mandate as it develops its research and publication centres and encourages the creation of more technologically-ready enterprises and entrepreneurs. The University considers respect for intellectual property as one of its core values.

The University considers intellectual property assets generated by the University Community as being of significant economic potential and wishes to use intellectual property as a source of wealth creation and development. NCU generated intellectual property should be not only for the benefit of the University community but also through structured dissemination and commercialization for the common good of the larger society.

In the context of University supported research and teaching, the types of intellectual property of greatest relevance generally relate to patents, copyright and know-how. Of these, patents in respect of inventions and copyright in teaching materials have the greatest potential for generating commercial income. University know-how will often constitute the basis of patents and other forms of intellectual property protection.

The University recognizes that the protection and proper management of intellectual property rights is essential to attracting outside funding to enable further research and the commercialization of intellectual property generated in the University.

The University will streamline its existing practices and adopt best practices in relation to the treatment of intellectual property generated within and/or used by the University.

NCU through this Framework document seeks to articulate clear policies governing the ownership and management of intellectual property rights to ensure among other things that:

- (i) intellectual property assets owned or held by the University are protected and managed in a prudent fashion
- (ii) creators within the University Community are rewarded for their creative inputs which result in commercially viable intellectual property and
- (iii) intellectual property rights of third parties are respected.

Critical to the attainment of these objectives is the implementation of an Intellectual Property Policy that institutes systematic procedures for protecting and managing Intellectual Property Rights, ensures recognition of Intellectual Property Rights throughout the institution and promotes best practices in relation to Intellectual Property Rights.

2. Purpose

NCU hereby establishes an internal policy on Intellectual Property Rights for the primary purpose of:

- (i) Promoting and encouraging creativity and research and the application of same for the benefit of the University Community and the society.
- (ii) Encouraging the development and dissemination of intellectual property by providing appropriate financial rewards to creators and the University.
- (iii) Providing consistency and uniformity in procedures for protection, management and use of Intellectual Property material.
- (iv) Establishing guidelines on the reporting of inventions and discoveries made in the course of University research
- (v) Creating certainty concerning ownership of Intellectual Property Rights created by Faculty, Staff and Students of the University.
- (vi) Clarifying the right and responsibilities of Faculty, Staff, and Students of the University.
- (vii) Institutionalizing procedures in respect of the commercialization of Intellectual Property and the sharing of any benefits accruing from the commercialization of such intellectual property.
- (viii) Fostering institutional compliance with, and respect for, applicable Intellectual Property Laws.
- (ix) Increasing awareness and appreciation of the value of the University's intellectual property.
- (x) Safeguarding the University's interest in intellectual property in its arrangements with other institutions and partners.
- (xi) Guiding the University Community in its use of intellectual property owned by third parties in accordance with relevant laws and agreements.
- (xii) Enhancing the University's ability to earn revenue from the effective and efficient management of intellectual property.

- (xiii) Ensuring that the financial return from the development of intellectual property does not distort decisions and operations of the University in a manner contrary to the mission of the University.

3. Application of Policy

This Policy covers Intellectual Property as defined in section 4 of Part I hereof and applies to Faculty, Staff and Students of the University as well as to Visitors. The definition of these terms is contained in Section 4 of Part I hereof.

This Policy extends to specified agreements also defined in section 4 of Part I hereof which includes special contracts entered into by NCU with third parties or members of the University Community, whether in the form of joint venture agreements, sponsored research, projects and other arrangements, which impact on the use, ownership, management or exercise of intellectual property rights.

This Policy operates in the context of the laws on Intellectual Property applicable in Jamaica and accordingly any interpretation of the terms of the Policy will be governed by the Laws of Jamaica.

This Policy supersedes all policies, practices or guidelines operating in any department or other arm of NCU. Accordingly, such practices or guidelines shall cease to have effect to the extent that they are inconsistent with this Policy.

This Policy shall be applied in conjunction with all other policies of NCU and, in particular, with the University's Working Policy and those policies concerning, Publication, Marketing, the Internet, and Discipline and Ethics in undertaking research and scholarship and polices outlined in the Student Guide.

4. Definition of Terms used in the Policy

In this Policy, the following terms and expressions shall have the following respective meanings:

Commissioning Contract	An agreement whereby the University funds and specifically commissions a person to create intellectual property or to perform such tasks or services which result in the creation of intellectual property.
Confidential Information	any information which is not known by third parties or in the public domain, that is regarded by the University as being of a confidential nature and which is only disclosed by the University to a recipient under circumstances which create a duty of confidence.
Copyright	the exclusive set of rights granted by Statute to creators or copyright owners to do or to authorize the copying, publication, broadcast, communication, modification or adaptation, translation and other acts of exploitation in relation to copyright works. Copyright includes moral rights.
Copyright works	materials in which copyright or related rights subsists including original literary, artistic, musical and dramatic works; field and laboratory notebooks; cinematographic and multimedia works, performances of performing artists, sound recordings, broadcasts and computer software
Create	to bring into existence or discover
Creator	any member of Faculty, Staff or any Student or Visitor who creates any intellectual property whether or not in conjunction with other persons.
Disclosure Procedures	the University's procedures requiring mandatory disclosure as outlined in this Policy.
Faculty	any member of the Faculty of the University as defined in the University's Working Policy and for the purposes of this Policy shall include Professional staff, whether, regular, adjunct or contract and irrespective of the date of commencement of employment and whether or not that

member is on any form of sabbatical or study leave or is full time or part time.

**Geographical
Indications
Protection**

rights granted by Statute to producers of food and other consumable items to use the place of origin or an indication of source to brand a product according to the specific qualities of the location from where the product is derived.

**Industrial Designs
Protection**

the exclusive rights granted by Statute to designers of original aesthetic designs produced for commercial manufacture.

**Intellectual Property
Rights (IPRs)**

the legal protection granted in respect of Intellectual Property through laws on copyright, Trademarks, Patents, petty Patents/utility models, new plant varieties, industrial designs, layout (topographies) designs, geographical indications, trade secrets, confidential information and suppression of unfair competition.

**Intellectual
Property (IP)**

includes:

- copyright works
- patentable and non-patentable inventions, scientific discoveries and new plant varieties
- industrial designs, unregistered designs, layout-designs or topographies of integrated circuits
- registered and unregistered Trademarks and geographical indications
- databases and computer-related material not otherwise coming within any of the other designated items of “intellectual property”; and
- trade secrets, know-how and other proprietary information associated with any of the other designated items of “intellectual property”, confidential information and any background knowledge that attracts an obligation of confidentiality

JAMCOPY

the Jamaican Copyright Licensing Agency - the reprographic reproduction rights organization formed in accordance with the Copyright Act to administer the reprographic reproduction rights belonging to authors and publishers of printed works

**Layout-Designs
(Topographies)
Protection**

the exclusive rights granted by Statute to designers of integrated circuitry embodied in semi-conductor chips for the manufacture, sale, distribution and copying of the layout-designs.

Moral rights

the right of a creator of original copyright works to be recognised as the creator of those works (right of attribution or paternity) and the right to object to the derogatory treatment of those works (right of integrity) as granted by the Copyright Act

**Net Proceeds of
Commercialization**

the total of net proceeds received by the University from the commercialization of the IP following deduction of expenses incurred by or on behalf of the University in respect of the development, protection and commercialization of the IP. Examples of such expenses include, but are not limited to, patent attorney fees and other IP registration costs, external legal fees incurred in the commercialization of the IP, and insurance relating to the maintenance and enforcement of IP rights.

**Patentable
Invention**

an invention which is new, in that it did not exist before; it is inventive or non-obvious, in that it is a step above the state of the art; and useful, in that it can be applied and utilized in industry.

Patents

the monopoly rights granted by Statute to an inventor or patent applicant to exploit, make, sell, distribute and otherwise market the invention for a specific period of time, namely, fourteen (14) years the Patent Act and upwards of 20 years under several foreign Patent laws.

President

the President of the University

Scholarly works

any copyright work that contains material written by any Faculty member or a Visitor or a Student based on that person's scholarship learning or research, such as theses and dissertations, but does not include work that is teaching material or any work that comes within the terms of the University's Invention Disclosure Procedure.

Specified Agreement

an agreement or deed between the University and any party which relates to the ownership or use of intellectual property that may arise out of an activity, including research, which is identified in the agreement or deed. Unless specifically stated otherwise in this Policy a Commissioning Contract will not be considered a Specified Agreement.

Staff

any employee of the University as defined in the University's Working Policy, other than Students and Faculty as defined above in this Policy, irrespective of the date of commencement of employment and whether or not that member of staff is on any form of sabbatical or other leave or is full time or part time. If a Student is also a part-time university employee, he is considered as staff with regard to intellectual property developed as a result of his 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.

Student

any person enrolled or designated as a Student of the University, typically relevant at the time he or she creates Intellectual Property, regardless of whether the Student receives financial aid from the University or from outside sources. It is the responsibility of 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.

Substantial Use of University Resources

extensive un-reimbursed use of a university facility or human resources. The use of these facilities must be important to the creation of the intellectual property; extensive use of a facility commonly available to all Faculty members (such as libraries and offices) or extensive use of a specialized facility for routine tasks do not, without more, constitute substantial use.

Teaching material

all versions, whether digital or otherwise, of information, documents and materials created or used for the purpose of instruction, teaching and education at the University, including the permitted adaptation or incorporation of the scholarship, learning or research of the relevant Faculty

member, Visitor or Student for that primary purpose, and without limiting the generality of the foregoing, includes lecture notes that are made available to Students, computer-generated presentations, course guides, overhead projector notes, examination scripts, examination marking guides, course databases, websites and multimedia-based courseware.

**The Policy
(or This Policy)**

the Intellectual Property Policy of NCU

Trademark

includes a service mark, collective mark, and certification mark, and means a sign, comprising or including any word, symbol, image, device, design, slogan, colour or a combination of any of these, which can distinguish a specific product or service from other competing products or services in the market place.

**Trademark
Protection**

the exclusive rights granted by Statute to a registered proprietor to use or license a Trademark for product or service identity in order to distinguish the products or services of the registered Trademark owner from the products or services of another. Registered Trademarks are identified by the symbol ®™ or SM. Unregistered Marks are protected at common law against passing off.

Trade Secret

a form of confidential information, including but not limited to formulae, patterns, compilations, computer programs, data, methods, devices, processes, technical application or “know how” which gives the proprietor an opportunity to obtain an advantage over others who do not know or use it

University

Northern Caribbean University

**University
Community**

All persons, including Faculty, Staff, Students and Visitors who attend or are employed by or who work at or for the University and/or hold a position in the University’s organizational structure

University Marks

registered and unregistered Trademarks of the University including the name **Northern Caribbean University** and the **NCU** logo, **the Circle of Knowledge** and **the Crest and Maise**

University Working Policy	the Working Policy of the NCU published by the University's Human Resource Department
Utility models or petty patents	rights similar to Patents which are granted by Statute to an inventor in respect of an invention that is new and industrially applicable but lacking the inventiveness required for it to be a patentable invention.
Visitor	any person at the University other than a Faculty member or member of Staff or Student of the University who takes part in any research project or scholarly activity which is conducted by any Faculty member or member of Staff or Student of the University, or who visits any part of the University in which research or scholarship, or any related activity, is conducted at the time that person creates Intellectual Property. Visitor shall for the purpose of this Policy include any person other than a Faculty member or member of Staff or Student of the University who holds an honorary or other academic appointment at the University, irrespective of the date of commencement of that appointment, and who has access to University facilities for teaching, research or other scholarly activity.

References in this Policy to any statute is a reference to Acts in force in Jamaica and references to any such law, regulation or statutory provision include references to such law or regulation or provision as modified, codified or re-enacted from time to time.

II. POLICY ADMINISTRATION

1. The Intellectual Property Management Committee

1.1 Establishment

NCU hereby establishes a standing committee called the Intellectual Property Management Committee (IPMC), to administer this Policy and to carry out such functions as outlined by the Policy.

The IPMC shall be governed by the generalities applicable to Standing Committees as outlined in the University's Working Policy.

1.2 Functions

The IPMC shall be responsible for the administration of this Policy and for its periodic review and revision and shall be accountable to the President in this connection.

The IPMC shall carry out all the functions outlined throughout this Policy as being the responsibility of the IPMC, including the following:

- (i) Monitoring the implementation of the Policy by the various departments of NCU.
- (ii) Clarifying the application of the Policy in various circumstances
- (iii) Assessing the operability of institutional procedures put in place to implement the Policy.
- (iv) Reviewing General Intellectual Property Disclosures and Invention Disclosures from Creators on the development of intellectual property and, subject to legal advice, making a determination on protection and commercialization.

- (v) Resolving conflicts or disputes arising in the application of the Policy in accordance with the Dispute Procedure outlined in Part IV section 1 of this Policy. **For the avoidance of doubt, the IPMC will not adjudicate intellectual property disputes between any Creator and the University.**
- (vi) Subject to legal advice, reviewing contracts, agreements and licensing arrangements entered into by NCU, which are submitted for its review to ensure that the Policy is being properly implemented.
- (vii) Ensuring that employment contracts for Faculty and Staff and the terms of enrolment/admission for Students are consistent with this Policy.
- (viii) Reviewing applications by Creators to the University in respect of the assignment or commercialization of intellectual property in accordance with the terms of the Policy.
- (ix) Reviewing any proposals from Department Heads on the modes of exploitation (including licensing and commercialization strategies) in respect of Intellectual Property.

1.3 Members

The IPMC shall comprise the following members or as otherwise determined by the President from time to time:

- (i) Vice President for Academic Administration
- (ii) Vice President for Finance and Industries
- (iii) Vice President with responsibility for Legal Affairs
- (iv) Director of the University Press
- (v) Director of Corporate Communications, Marketing and Public Relations
- (vi) University Editor
- (vii) Human Resource Director
- (viii) Head Librarian
- (ix) Faculty and Staff Senate Presidents

The Chair shall be selected from the membership of the IPMC by the President and shall serve for a period of two (2) years. A person appointed Chair of the IPMC shall be eligible for re-appointment.

Members do not serve in their personal capacity and will serve for as long as they hold the relevant position in the University.

1.4 Procedures

The IPMC shall schedule monthly meetings, or more regularly as it deems fit to monitor the implementation of this Policy and to attend to any matters relating thereto.

The IPMC may convene outside of its regular schedule whenever a matter is referred for its urgent assessment, review, determination or decision in accordance with the Policy.

1.5 Reporting

In addition to its general reporting obligation under the Working Policy, the IPMC shall report to the President or to whomever the President may direct and shall submit to the President a written report on the administration of the Policy at least once per quarter or otherwise as directed.

1.6 General Conduct

Members of the IPMC are bound by the Code of Ethics and Conflict of Interest guidelines outlined in the University's Working Policy.

1.7 Confidentiality

Members of the IPMC shall maintain the confidentiality of information disclosed to them in respect of intellectual property and in particular, information relating to patentable and non-patentable inventions, scientific discoveries, new plant varieties, trade secrets, know how and other confidential information.

1.8 Conflict of Interest

Members of the IPMC are required to make full and prompt disclosure of any potential conflicts of interest in order to safeguard the interest of the University and to allow for an objective evaluation of the benefits of prospective commercial involvement with a third party.

Where a conflict of interest is found to exist in relation to a particular Member, that Member will not be qualified to participate in any of the meetings or the decision making process on the matter in respect of which the conflict has been found to exist.

1.9 Reliance on Legal Advice

As decisions relating to the protection, management, commercial exploitation and ownership of Intellectual Property oftentimes require the input of specialist Legal Counsel, the IPMC, in carrying out its functions, shall rely on legal advice wherever the situation warrants and shall not purport to provide legal advice.

2. Responsibility of Heads of Departments

Heads of Departments (including College Deans) will share responsibility for the implementation of the Policy in their respective colleges/departments, including ensuring that any forms, agreements or contracts attendant to this Policy are completed and signed by Creators in their colleges/departments.

In relation to the IPMC the Heads of Departments will be responsible for the following:

1. Accounting to the IPMC on the implementation of the Policy whenever called upon to do so.
2. Referring to the IPMC plans, strategies and proposals affecting the management and protection of the University's Intellectual Property

including licensing and marketing and other commercialization strategies.

3. Referring or reporting to the IPMC any matters which appear, based on the functions of the IPMC, to require the IPMC's review, assessment or determination, including but not limited to:
 - (i) The identification of research activities in its operations, which could result in the creation of Intellectual Property (in addition to what may be disclosed under the University's Disclosure Procedures outlined in this Policy.)
 - (ii) The processing of complicated or unusual requests for permission/rights clearance for use of the University's Intellectual Property by third parties.
 - (iii) The finalization of proposed licensing arrangements, contracts and agreements which have Intellectual Property Rights as a component or which affect the University's Intellectual Property in any way.
 - (iv) Addressing complaints about piracy of the University's Intellectual Property.
 - (v) Dealing with any incidents of piracy by members of the University Community.
 - (vi) The resolution of Intellectual Property ownership disputes amongst Faculty members, Staff members, Students and Visitors.

III. THE POLICY

1. Ownership of Intellectual Property

1.1. General Rules

Scholarly works created by Faculty, Students or Visitors are owned by them, unless they were created under a Commissioning Contract.

In respect of scholarly works owned by Creators the University has a non-exclusive licence to use such works freely for teaching and research, subject to preservation of the rights of the Creator.

Teaching materials are not scholarly works and are owned by the University, subject to any Specified Agreement stating otherwise.

The University's assertion of ownership of the IP and the tangible property in respect of teaching materials is necessary to ensure that the University has access to teaching materials for its own proper use, including where the Creator of the teaching materials ceases to be a member of Faculty, Staff, a Student or a Visitor. It safeguards the legitimate operations of the University without imposing unnecessary or unwarranted restrictions on Creators. To the extent that any teaching materials are commercialised, the Creator will share in the proceeds of commercialization as provided in this Policy.

The University shall by virtue of this Policy be deemed the first owner of the rights to all intellectual property created by Faculty and Staff in the course of or incidental to their employment by the University, except in the case of scholarly

works created by Faculty. In respect of first ownership of copyright in particular, this Policy shall be deemed to be an agreement to the contrary under the provisions of the Copyright Act.

Scholarly works and all other intellectual property created by Faculty, Students and Visitors under a Commissioning Contract are owned by the University.

All intellectual property created by Staff under a Commissioning Contract is owned by the University.

Where deemed necessary by law, a Creator will, as required by the University, execute all documents including assignments, consents or waivers and do all acts as may be necessary or desirable to give full effect to the provisions of this Policy.

Where the University owns the intellectual property by virtue of this Policy, moral rights in original copyright works, where exercisable under the Copyright Act, shall be waived by the Creator in favour of the University. Notwithstanding any waiver of moral rights the University may elect to credit the Creator as author of the copyright work in question.

The University may assign any intellectual property owned by the University to third parties, including Creators, on such terms as it thinks fit or as otherwise provided in any specified agreement to which the University is a party.

The University may also acquire any intellectual property from third parties, including Creators, on such terms as it thinks fit or as otherwise provided in any specified agreement to which the University is a party.

Unless intellectual property has already been assigned or is otherwise the subject of an existing dealing by the University, including under the terms of a

specified agreement, a Creator may by notice in writing apply to the University for Intellectual Property created by that Creator to be assigned to that person or a designated third party. Any assignment by the University will only take place if agreement is reached between the University and the applicant, and the applicant or the designated third party, as the case may be, acquires any rights to the intellectual property only by these means.

Nothing in this Policy shall preclude the University from coming to a Specified Agreement with a Creator in relation to the creation of a particular item of intellectual property, in which event the ownership of the rights, use of that intellectual property and any benefits to be derived from same will be governed by the Specified Agreement.

1.2. Intellectual Property Created by Faculty Members

The University owns the rights to all intellectual property created by Faculty in the course of or incidental to their employment, except in the case of scholarly works.

The rights to scholarly works are owned by the member or members of the Faculty who created such works unless they were created under a Commissioning Contract, in which case the University owns the rights.

A member of Faculty who is a Creator of, and owns the rights to, a scholarly work shall be deemed to have granted to the University, unless otherwise agreed by the University, a non-exclusive, royalty-free, worldwide and irrevocable licence to use for educational, teaching and research purposes only, those scholarly works for the duration of the period in which the intellectual property rights subsist in the scholarly works, whether or not the relevant member of Faculty is still employed or engaged by the University.

In exercising its rights under the licence granted to the University pursuant to this section, the University recognises that any use is for the University's benefit only and not for the personal exploitation or gain of any third parties. In the event that moral rights in respect of original copyright works are exercisable by the Creator by virtue of the Copyright Act, such rights are under the licence deemed to be waived by the Creator in favour of the University, but notwithstanding such waiver, the University will in accordance with its traditions, endeavour to credit the Creator as author of the copyright work in question and will only in cases where it is warranted not credit the Creator as author of the said work.

Faculty members shall be obliged to comply with the terms of the University's Disclosure Procedures where the relevant activity giving rise to intellectual property comes within the terms of the Policy.

1.3. Intellectual Property Created by Staff

The University owns the rights to all intellectual property created by members of Staff in the course of or incidental to their employment.

The University owns the rights to all other intellectual property created by members of Staff under a Commissioning Contract.

Staff shall be obliged to comply with the terms of the University's Disclosure Procedures where the relevant activity giving rise to the intellectual property comes within the terms of the Policy.

1.4. Intellectual Property Created by Students

All rights in relation to teaching material created by a Student are owned by the University.

All rights in relation to intellectual property created by any Student whilst engaged in an activity which is the subject of a Specified Agreement are owned by the University, unless otherwise stated in the Specified Agreement.

The University owns the rights to all other intellectual property created by Students under a Commissioning Contract.

Where the Student owns the rights to any intellectual property, including in relation to scholarly works not specifically commissioned and funded by the University, the rights are owned by the Student to the extent to which that person created such works.

A Student of the University who is a Creator of, and owns the rights to, a scholarly work shall be deemed to have granted to the University, unless otherwise agreed by the University, a non-exclusive, royalty-free, worldwide and irrevocable licence to use for educational, teaching and research purposes only, those scholarly works for the duration of the period in which the intellectual property rights subsist in the scholarly works, whether or not the Student is still enrolled at the University.

In exercising its rights under the licence granted to the University pursuant to this section, the University recognises that any use is for the University's benefit only and not for the personal exploitation or gain of any third parties. In the event that moral rights in respect of original copyright works are exercisable by the Creator by virtue of the Copyright Act, such rights are under the licence deemed to be waived by the Creator in favour of the University, but notwithstanding such waiver, the University will in accordance with its traditions, endeavour to credit the Creator as author of the copyright work in question and will only in cases where it is warranted not credit the Creator as author of the said work.

Students shall be obliged to comply with the terms of the University's Disclosure procedures where the relevant activity giving rise to the intellectual property comes within the terms of the Policy.

Students working on team-based projects, on collaborative projects with their supervisors or on ongoing programs in research centres also need to be cognizant of the IP rights and responsibilities of all those involved. In many cases, considerable intellectual input from others (e.g. the supervisor) has already been contributed in developing a grant application or contract proposal before a research project commences. Although the University has no employment-based right to ownership of the work of a Student, it does not necessarily follow that a Student is the owner of all work relating to a research project when there has also been contribution from others to the project. In such cases, the rights associated with joint contribution need to be respected, and Faculty, Visitors and Students should ensure that intellectual property matters are discussed, defined, agreed and documented, subject to the terms of this Policy. Where the relevant parties are unable to agree on the determination the matter should be referred to the IPMC for advice and mediation.

Where Students have created intellectual property whilst engaged in an activity which is the subject of a specified agreement as defined in the Policy or where the activity giving rise to the intellectual property otherwise comes within the terms of the University's Disclosure procedures, those Students are entitled to be treated in the same way as Faculty for the purpose of sharing in commercial benefits, including financial returns, from the commercialization of the IP.

In determining financial returns, the University will take the following into account:

- (i) the requirement that student Creators be treated equitably and fairly in relation to sharing the benefits of commercialization of IP;
- (ii) the degree of intellectual input from Faculty, Staff and third parties;

- (iii) the nature and extent of any University or third party IP accessed or used by the Student; and
- (iv) the nature and extent of any use a Student makes of University facilities.

Where the relevant parties are unable to agree on the determination of the financial returns to be made to Students, the matter should be referred to the IPMC for resolution. In the absence of agreement, the IPMC will determine the matter, ensuring that the interests of student Creators are properly and fairly taken into account.

1.5. Intellectual Property Created by Visitors

The University owns the rights to all intellectual property in teaching materials created by a Visitor and all intellectual property created by a Visitor whilst engaged in an activity which is the subject of a Specified Agreement, unless otherwise stated in the Specified Agreement.

The University owns the rights to all other intellectual property created by a Visitor under a Commissioning Contract.

Where the University owns the rights, the moral rights, where exercisable under the Copyright Act, shall be waived by the Creator of original copyright works but notwithstanding any such waiver the University will endeavour to credit the Creator as author of the copyright work in question and will only in cases where it is warranted not credit the Creator as author of the said work.

Except in the case of teaching materials, intellectual property created pursuant to activities governed by a Specified Agreement and intellectual property created under a Commissioning Contract, the University only has rights to IP developed by Visitors where the Visitor has made Substantial Use of University's resources in which event the Visitor will be considered as Faculty with respect to any

intellectual property arising from such use. Creators wishing to directly reimburse the University for the use of its facilities must make arrangements to do so before the level of facilities usage for a particular intellectual property becomes substantial.

Visitors have an obligation to comply with the terms of the University's Disclosure Procedures where the relevant activity giving rise to the IP comes within the terms of the Policy.

1.6. Intellectual Property Created by Third Parties

For the avoidance of doubt in this Policy the terms "**third party**" and "**third parties**" mean and refer to any person or persons not being a Faculty member, Staff, Student or Visitor.

The University owns the rights to all intellectual property created by third parties under a Commissioning Contract.

The interest of the University and a third party in intellectual property created under a Specified Agreement shall be determined in accordance with the terms of the said agreement.

As a general rule agreements with third parties including joint venture arrangements, sponsored research and projects entered into by the University, should afford the University the opportunity to benefit from the end products or results of such projects whether by way of a total or partial ownership of any intellectual property rights subsisting therein or by an exclusive or non-exclusive licence, which gives the University the right to use the end product in a meaningful way.

There may be instances where it is not the intention of the University to claim any benefit in terms of Intellectual Property under such a contract or arrangement. In this regard the following shall apply:

- (i) All agreements with third parties must be entered into with careful attention to, and consideration of, provisions regarding intellectual property rights.
- (ii) Where it is the University's intention, such provisions should include the University as a beneficiary of the IP rights, which enables the University to exploit the end product as it so wishes. This may be done through a licence or assignment of rights.
- (iii) Such agreements shall be considered on a case-by-case basis having regard to the intention of the University in the circumstances and may be referred to the IPMC for its consideration and further referred to the University's Legal Counsel.

It shall be the responsibility of the person negotiating with, or engaging, the third party, on behalf of the University to ensure that the University's interest is properly reflected in a Specified Agreement or a Commissioning Contract.

2. Identification of Intellectual Property

2.1. General

The protection, management and commercial exploitation of IP, the rights to which are owned by the University, depend on the early identification and protection of that IP.

It is therefore critical that persons involved in scholarly endeavours and the development of teaching materials, especially educational courseware and multimedia products and research projects carefully monitor their progress and ensure that their outcomes are reviewed by the relevant Department Head and are referred to the IPMC for determination.

In some cases, IP developed may be of a kind that requires formal legal procedures to be taken by the University in order to obtain the legal rights of ownership, such as in the case of Patents and industrial designs.

Disclosure of an invention or an industrial design prior to filing the application would, under applicable Patents and Designs Laws, defeat the novelty criterion for patentability of the invention or registration of the industrial design, as the case may be. It is therefore ill-advised to disclose the invention before filing for a Patent or an industrial design before applying for registration without a non-disclosure agreement signed by the party to whom the matter is to be disclosed.

As limited disclosure is necessary in the process of determining protection and commercialization prospects in the context of the University, all disclosure relating to IP must strictly comply with the Disclosure Procedures outlined below.

2.2. Disclosure Procedures

2.2.1. Responsibility of Creators

Faculty, Staff, Visitors and Students (whether in the case of specified agreements or otherwise) must:

- (i) review their research and scholarly activities regularly
- (ii) keep detailed project and research records, and records of IP developed, IP accessed from other parties and creative contributions

- (iii) fully disclose in a timely fashion to the chair of the IPMC and in accordance with University Disclosure Procedures the creation of new IP with potential commercial value to the University
- (iv) Cooperate and assist the University in securing the appropriate form of IPRs protection thereon, and execute all related documents
- (v) Keep all IP matters confidential and not disclose information without written permission from the IPMC.

Where any Faculty, Student, Staff or Visitor creates intellectual property which he/she believes is capable of commercial exploitation or which he/she believes to be an invention (whether patentable or non-patentable), improvement, discovery or new plant variety he/she shall:

- (a) Promptly report its existence to the Department Head (or equivalent) or in the case of research to the Head of Research (or equivalent) and
- (b) Provide all necessary information concerning the provenance of the intellectual property and the circumstances in which it was created.

In the case of an invention, improvement, discovery or new plant variety, he/she shall comply with the following additional procedures:

- (i) Timeously complete and sign the **Invention Disclosure Form** which is available at the office of the Chair of the IPMC
- (ii) Lodge in the office of the Chair of the IPMC the completed form together with supporting documents in a sealed envelop marked **HIGHLY CONFIDENTIAL** addressed to the Chair of the IPMC
- (iii) Take no steps to otherwise disclose the invention or to publicize it or place it in the public domain by any means (whether through lecture,

publication or otherwise) and await the determination by the IPMC before taking further steps.

In respect of all other Intellectual Property which he/she believes is capable of commercial exploitation he/she shall complete the **General Disclosure Form** available from the office of the Chair of the IPMC and shall submit the completed form to the Department Head or Head of Research, as the case may be.

2.2.2. Responsibility of Department Heads

The Department Head or Head of Research or other person being a member of Faculty of the University to whom a report or disclosure of intellectual property has been made in accordance with the University's Disclosure Procedures shall immediately bring it to the attention of the Chair of the IPMC and shall keep the information in the strictest of confidence.

2.2.3. Responsibility of the IPMC

Invention Disclosures

After a disclosure has been made, subject to full details having been provided to the IPMC as part of the Invention Disclosure Form pursuant to section 2.2.1., hereof, the IPMC will diligently consider the disclosure and within three (3) months, make a determination on whether the subject matter disclosed is an invention (or an improvement, discovery or new plant variety) within the meaning of this Policy. Where the IPMC determines that the subject matter is not an invention it shall immediately inform the Creator of its determination.

Where in accordance with the guidelines and procedures outlined in section 3.6.2., of Part III hereof in relation to protection of intellectual property, the IPMC determines that the subject matter disclosed is an invention (or an improvement,

discovery or new plant variety), it shall, within three (3) months of such determination, make a determination:

- (i) as regards whether the subject matter meets the patentability criteria
- (ii) and, if it determines that the patentability criteria are met, whether to proceed with applying for Patent or other appropriate form of intellectual property protection.

and the IPMC shall inform the Creator of its determination.

Where it is not practicable to reach a determination within the three (3) month period, the IPMC will advise the Creator of the reasons why it has been unable to reach a decision and may specify a further period of not more than three (3) months within which it expects to reach a decision. Any further period of extension beyond the six (6) months so provided for is only available through agreement between the University and the Creator.

A Creator who has made an Invention disclosure pursuant to section 2.2.1., hereof, should not normally be restricted for more than a period of twelve (12) months from the date when the Invention Disclosure Form was received by the IPMC, from publishing any information so disclosed.

General Disclosures

After a disclosure has been made subject to full details having been provided as part of the General Disclosure Form pursuant to section 2.2.1., hereof, the IPMC will diligently consider the disclosure with the object of reaching a decision within three (3) months.

The IPMC has the power to determine without consultation with the Creator and subject to any legal advice, whether or not to the subject matter disclosed is intellectual property and is capable of commercial exploitation. Where the IPMC

determines that the subject matter is not worth pursuing it shall inform the Creator of its decision.

Where it is not practicable to reach a decision within three (3) months the IPMC will advise the Creator of the reasons why it has been unable to reach a decision and may specify a further period of not more than three (3) months within which it expects to reach a decision. Any further period of extension beyond the six (6) months so provided for is only available through agreement between the University and the Creator.

3. Protection of Intellectual Property

3.1. General

The University will undertake best efforts to secure intellectual property rights protection for the material it generates.

With respect to Copyright Works the University will employ the internationally recognized methods of practice in asserting and exercising ownership of copyright since the Copyright Act requires no legal procedure as a condition for securing protection.

With respect to Patentable Inventions and Industrial Designs the University will seek to legally acquire such protection when the IPMC determines that the invention or design in question if properly protected by intellectual property laws will be of benefit to the University.

With respect to Trademarks the University will seek to register a Trademark where it intends to market a product or service under the mark in question or where it is otherwise advisable for the University to exercise exclusive rights over the mark.

3.2. Copyright Works

3.2.1. General Protocol

By virtue of the Berne Convention and most national copyright laws, including the Copyright Act, copyright is based on the principle of automatic protection. As soon as a work is created it is automatically protected as long as the legal criteria, including originality, tangibility and qualification of author are met. Registration is therefore not a pre-condition for copyright protection. It is a practical form of evidence which can be useful in resolving disputes about authorship and ownership of copyright. Copyright owners can choose to register their works where such a facility is available.

The copyright in respect of literary works including software/ computer programmes and other information technology products as well as musical, artistic or audiovisual works, may, subject to the decision of the IPMC, be registered at a facility for registration and deposit such as the National Library of Jamaica provided by the Intellectual Property Service Centre and the US Library of Congress, so as to establish an independent record of its claim in the work.

Where the University intends to market these works in the USA, the copyright may also, subject to the decision of the IPMC, be registered in the facility for registration and deposit at the US Library of Congress. Registration involves a minimal cost.

All University copyright works shall bear the Copyright Notice, indicating the year the work was produced or published and the University's name e.g. © **2010 Northern Caribbean University**. The name of the department from which the work originated, *e.g. prepared by the Business & Hospitality Management College* should also be stated on the work. If the work has been produced in conjunction with another department, this should be stated on the work.

The use of copyright notices on the work or the registration of copyright (where available) is critical though not mandatory, as it cuts off defenses to copyright infringement by so-called “innocent infringers” and otherwise can provide valuable evidence of copyright ownership.

All documents should outline the desired terms and conditions of use of material e.g.

“This material is protected by Copyright. Copying this material or any part of it by any means, including digital or in any form is prohibited unless prior written permission is obtained from NCU or under a Licence with JAMCOPY.”

Or

“This material is protected by Copyright. Copying a part of this material is permitted for private study and research and other educational or training purposes. All other uses are prohibited unless prior written permission is obtained from NCU or under a Licence with JAMCOPY.”

3.2.2. Computer Software

Where it is the intention of the University to sell or share computer software with the public or with a third party, the sale of the software should be treated as a non-exclusive license to the end user.

The software itself should include the technical mechanism for registration of the licensed user. The software package should contain the licence.

The University will be guided by legal advice in regard to the terms and conditions of the licence.

3.3. Trademarks

Although unregistered Trademarks are afforded some protection through the law of Passing Off, Trademark protection is optimized through the legal process of registration and the payment of fees as outlined in the Trade Marks Act.

The University shall apply to register a Trademark where:

- (a) the mark is of significance to the University and is being used or intended to be used by the University in the course of its operations (e.g. its logo)

- (b) it is determined that a particular product or a particular service offered by the University is valuable in terms of commercial significance and the University intends to trade in the product or service whether directly or through arrangements with a third party.

Once there is a decision to market a product or offer a service under a Trademark or to otherwise use a Trademark outside of Jamaica, applications for registered Trademarks will be made in the respective foreign country or countries, subject to available funding and specific legal advice.

The University, through the IPMC, will undertake the determination as regards the commercial significance of a particular product or service in the context of Trademark protection in accordance with the terms of the Policy.

The decision to proceed with an application for Trademark registration should be undertaken in accordance with the normal procedures to be followed in respect of matters requiring budgetary expenditure.

Similar considerations shall apply in respect of Geographical Indications.

3.4. Industrial Designs

The term “industrial design” generally refers to an article which is created for mass-production. Industrial designs protection relates specifically to the

ornamental or aesthetic aspects of the article i.e. the visual elements that appeal to consumers, as distinct from its functional features. An industrial design as defined by the Designs Act is any design that can be applied to an article of manufacture or any natural or artificial substance, whether the design is applicable for the pattern, or the ornament thereof.

Industrial Designs are protected through the legal process of registration and the payment of fees as outlined in the Designs Act. The Designs Act protects designs which are novel in Jamaica.

Prior disclosure (or publication) of an industrial design disqualifies it from registration.

Where it is disclosed that an industrial design has been created and it has been determined through the Disclosure Procedures that it is original and not merely a duplication or replica of an already existing design and where the IPMC has determined that the design could be commercialized, the University shall apply to register the design through the legal process outlined under the Designs Act subject to available funding and specific legal advice.

The decision to proceed with an application for registration of a design should also be undertaken through the IPMC in accordance with the normal procedures to be followed in respect of matters requiring budgetary expenditure.

Under the Designs Act there is a compulsory requirement that before delivery on sale of any articles to which a registered design has been applied the proprietor must mark each article with the prescribed mark or word ® or figures denoting that the design is registered. Upon failure to do so copyright in the design will cease unless the proprietor can show that he took all proper steps to ensure the marking of the article.

If the design has already been published, prior to an application for registration having been made, the University may seek to register the artistic element of the design as a copyright through the facility of the Intellectual Property Service Centre and/or the US Library of Congress as the case may be, and the general protocol for copyright protection shall apply.

Purely artistic designs which are not intended for commercialization should be treated in accordance with the general protocol for copyright protection.

3.5. Layout Designs

Layout-design refers to the layout or topography (three-dimensional disposition) of semi-conduct chips/integrated circuits. A layout-design is afforded intellectual property protection separate and apart from industrial designs. Rights in a layout-design are vested in the designer of an original layout or topography of an integrated circuit. A layout design is protectable if it is original. The Layout Designs Act does not require any formal registration.

Where it is disclosed that a layout design has been created and it has been determined through the Disclosure Procedures that it is original and where the University has determined that the layout design could be commercialized, the University shall seek legal advice on appropriate modes of protection.

3.6. Patents and Utility Models/Petty Patents

3.6.1. General

Patents are granted through a legal application process and the payment of fees as outlined in the Patent Act. Currently no protection is granted in Jamaica in the form of Utility Models or Petty Patents. No special protection is afforded to new plant varieties in Jamaica, however, protection may be available under the Patent

Act and patent and other forms of protection may be available for new plant varieties in other jurisdictions.

Publication of an invention prior to filing a Patent application would defeat the patentability criterion that the invention must be novel. No publication grace periods are applicable under the Patent Act. Disclosure must therefore strictly comply with the Invention Disclosure Procedures outlined in section 2.2 of Part III hereof.

3.6.2. Invention Disclosures

Where the creation of an invention (or an improvement, discovery or new plant variety), has been disclosed through the Invention Disclosure Procedures outlined in section 2.2 of Part III hereof the IPMC shall make a determination as to whether or not the subject matter disclosed is an invention or an improvement, discovery or new plant variety and whether it meets the criteria for patentability namely, novelty, inventiveness and usefulness.

The IPMC has the power to determine without consultation with the Creator and subject to legal advice, whether or not the subject matter disclosed is an invention, an improvement, discovery or new plant variety. Where the IPMC determines that the subject matter does not meet any such description it shall seek legal advice as to whether any other form of protection can be pursued. The IPMC shall inform the Creator of its determination and any decision taken in respect of protecting the subject matter.

Where the IPMC determines that the subject matter meets such description it shall proceed with determining whether the subject matter meets the criteria for patentability. As part of determining the novelty of the invention, if no search was done or no search results were submitted with the Invention Disclosure Form, the IPMC should require that the Creator carry out an extensive prior art search both

locally and internationally. There are several databases and search engines that can be employed in this process.

The assessment as to patentability and the Patent application process require specialist legal advice and can be costly and protracted. A Patent application should therefore only be pursued where there is a very good likelihood of success for the grant of Patent. It should also be undertaken in accordance with the normal procedures to be followed in respect of matters requiring budgetary expenditure.

Once it is determined based on the full details provided as part of the Invention Disclosure, the results of the prior art search results and legal advice, that the invention *prima facie* meets the patentability criteria, the IPMC should decide whether to proceed with an application for a Patent and should communicate its decision to the Creator.

Given that the first to file an application has priority over all other similar applications in the world, where the University decides to proceed with a Patent application it shall, in cooperation with the Creator, proceed diligently to apply for the Patent and should secure from the Creator any and all relevant assignments or other documentation necessary to complete the application process.

As with other forms of registrable intellectual property, each Patent is limited to the territory in which the domestic Patent Law is applicable. One would therefore have to file a separate and independent application in the respective foreign territories in order to acquire a Patent in those territories. Where the University intends to market the invention outside of Jamaica, applications for a grant of Patent shall be made in respect of the particular foreign country or countries.

Where an application for a Patent has been filed in Jamaica and the University intends to file in other countries which are members of the Paris Convention on

Industrial Property, it must do so within twelve (12) months of Jamaican filing date and thereby benefit from the first filing date. Foreign filings outside of the 12 month period from when the first application is filed could be disqualified on the basis of lack of novelty.

Where the University decides not to proceed with a Patent application it shall promptly advise the Creator of its decision and shall give the Creator the option to pursue Patent protection directly at the Creator's expense. In this event, the University shall offer the Creator its cooperation in terms of any necessary assignments. However, this shall not affect the University's right to seek full recuperation of its costs or its rights to a perpetual royalty free non-exclusive licence to use the invention for non-commercial purposes.

3.7. Trade Secrets/Confidential Information

Where any data or information generated by the University which is not in the public domain is regarded as valuable know-how or a trade secret, steps should be taken to maintain the secrecy or confidentiality of the data or information.

In this regard, where the University has a need to disclose this information it shall require the recipient to sign a separate confidentiality/non-disclosure agreement.

Faculty and Staff handling trade secrets or confidential information are bound by this Policy to treat the information as confidential.

Students and Visitors are required to strictly observe confidentiality obligations with respect to any information discovered by or shared with them in circumstances which create an obligation of confidence.

All Creators involved in the process of an Invention Disclosure, ownership determination, or the commercialization and assessment of patentability, shall be obliged to maintain the confidentiality of the subject matter and all discussions

and information pertaining to same, until a Patent application has been filed in the relevant territories or other appropriate form of protection has been secured. Where appropriate, the IPMC will use confidentiality agreements to ensure confidentiality in relation to third parties.

4. Commercialization of University Intellectual Property

4.1. General

Commercialization can be a complex and lengthy process and requires commitment and diligence from those involved. The University has the absolute discretion to decide whether or not to pursue commercialization of any Intellectual Property which it owns by virtue of this Policy.

The University shall determine which materials have commercial significance, which IP rights must be secured and the extent to which the actual Creator should share in the benefits of any commercialization.

Commercial significance shall be determined and evaluated based on the following guidelines:

- (i) The intellectual property should be suitable for application in a known market(s)
- (ii) The intellectual property should be capable of maintaining consistency of quality upon reproduction or manufacture
- (iii) The University should be able to (whether directly or indirectly) reproduce or manufacture the intellectual property in sufficient quantities so as to adequately supply the known market(s)

Not all intellectual property as defined in this Policy shall be eligible for commercialization. In the context of the operations of the University, for the avoidance of doubt, the following types of intellectual property are considered eligible for commercialization:

1. patentable and non-patentable inventions, technology and scientific discoveries and new plant varieties
2. industrial designs and layout-designs
3. databases and computer programmes
4. literary works (including Teaching Materials)

Scholarly works and other intellectual property which are not owned by the University in accordance with this Policy are not considered eligible for commercialization. However nothing shall preclude the University from coming to a specified agreement with a Creator in relation to the commercialization of a Scholarly Work.

The Head of the relevant Department where the IP is generated shall be responsible for making an initial assessment of the commercial significance of the IP in question and for communicating this assessment to the IPMC.

The IPMC shall make a determination as to whether to secure IP rights for material and how to proceed to commercialization. In this regard, the IPMC must determine, subject to legal advice and in accordance with the guidelines on Protecting Intellectual Property outlined herein, whether the product qualifies for IP protection and which IPRs should be acquired or secured. The next step shall depend upon the source of funding.

The development, publication and or dissemination of intellectual property solely for the use of the University Community shall not constitute commercialization.

Where NCU decides not to pursue commercialization it shall give the Creator the option to pursue commercialization directly at the Creator's expense or to seek external funding for commercialization.

The University shall offer the Creator its cooperation in terms of any necessary assignments to third parties. However, this shall not affect the University's right to seek full recuperation of its costs, a share of proceeds from any such commercialization, its ownership of the IP rights, or its rights to a perpetual royalty free non-exclusive licence for non-commercial purposes.

4.2. Sharing of Benefits from Commercialization

The University aims to reward outstanding creativity, innovation and inventiveness so as to provide the Creator with an incentive for continued creative endeavour.

Where eligible intellectual property is commercialized by the University any Faculty member, Staff, Student or Visitor who created such IP should be eligible for reward in accordance with the reward scheme outlined herein.

The scheme of rewards is developed on the basis that the University is to be compensated for the support it has given to the Creators in the development, protection and commercialization of the IP and the department to which the Creator is assigned or which was involved in the creation of the IP, receives a share of the financial rewards in acknowledgement of the role it has played in the development of the successful IP.

In recognizing that several Creators may contribute to the creation of the commercialized IP all such Creators should share equitably in the returns in accordance with the contribution they have made to the IP.

As a general rule, in respect of IP created by Faculty, Staff and Students the University will ensure that the Net Proceeds of Commercialization are distributed as follows:

- to the Creator 35%
- to the Creator's department 35%
- to the University's central administration 30%

Where more than one department contributed to the creation of the successful IP, the share of the Net Proceeds of Commercialization shall be allocated in accordance with the relative contribution made by each department towards the development of IP.

Where exceptional circumstances can be shown to warrant an alternative distribution, the IPMC shall determine the distribution on a case by case basis.

In relation to the commercialization of IP created by a Visitor, a share of the Net Proceeds of Commercialization will be allocated to the Visitor in the same manner as in the case of Faculty, Staff and Students and an alternative distribution shall only be applied where the circumstances can be shown to warrant an alternative distribution, in which case the IPMC, the Visitor and, where applicable, the Visitor's employer, shall determine the distribution.

Where IP generated under a Specified Agreement or a Commissioning Contract is commercialized by the University or where IP is commercialized by the University pursuant to a specified agreement, any benefit and interest shall be subject to the terms and conditions of that agreement or contract which shall override the provisions of this section.

5. Guidelines on Management and Use of Intellectual Property

5.1. Management of University Intellectual Property

The University undertakes to properly manage its intellectual property portfolio and prudently manage any financial returns from the commercial exploitation of its intellectual property.

It shall be the duty of the IPMC to ensure that the University's intellectual property rights are maintained in good standing and that registrations are renewed where renewal is required for the maintenance of the rights, such as in the case of Patents and Trademarks.

It shall be the duty of Department Heads (or equivalent) to report any intellectual property infringements or incidents of piracy of intellectual property to the IPMC and for the IPMC, subject to legal advice, to recommend to the President what action, if any, to take in relation to the enforcement of the University's IPRs.

5.2. Use of University Intellectual Property

5.2.1. Copyright Works

The University does not desire to restrict access to or use of its Copyright Works and it is not a policy of the University to profit from every use. On the contrary, in accordance with its mandate, the University is desirous of sharing the results of research and other products of intellectual property for legitimate use.

Where copyright works are being used for the purposes of study and research such works may be made available through sale for cost recovery purposes and are not be subject to any licensing arrangements, SAVE AND EXCEPT for computer software and databases and any particular copyright work which has been commercialized by the University.

Outside of the uses mentioned above, persons wishing to use such intellectual property should seek permission and clearance for such use by directing to the relevant Department of the University a written request for permission or clearance.

The Heads of Departments (or equivalent) will grant clearance for the use of the University's copyright works as long as the use for which the material is to be put is non-commercial in nature and will not prejudice the legitimate interests of the University. It is in the discretion of the Head of the Department whether or not to charge a cost-recovery fee for such use.

Where persons or organizations wish to use the University's copyright works for commercial purposes, the Head of the Department to which the request has been made should refer the request to the IPMC for its determination in relation to whether or not permission should be granted and the attendant terms and conditions. In this regard the University may consider the option of licensing the use on such terms and conditions, as it deems fit.

Multiple copying of the University's copyright works is not permissible as it restricts the circulation of legitimate printed or published copies, which have been produced at a cost. As it is very difficult to control or monitor multiple copying, the University as a major publisher intends to become a publisher member of JAMCOPY so as to collectively license users to carry out photocopying and other forms of reprographic photocopying for a fee.

Where the University posts material on the Internet, the content should be accompanied by information which instructs users regarding the copyright owner, outlines the permitted uses and directs how permission may be obtained from the University for other purposes. Generally, users should be expressly permitted to

download at least one copy of the content on the Internet for individual use and should be required to indicate the source and copyright owner.

Where a third party intends to adapt or modify the University's copyright works for their own purposes, such material should be made available under a licence outlining the terms on which such a modification or adaptation may be done, including the payment of licensing fees.

The digitization of material or posting of the University's material on the World Wide Web if being done by a third party for its own purposes should also be subject to a license from the University.

5.2.2. Trademarks

In order to protect its name and reputation, the University has registered the "NCU logo" and other marks including "AERION" in respect of its student information system.

As proprietor of these registered Trademarks the University has exclusive rights to use or authorize the use of the Trademarks and use of any identical or similar mark, without the University's authorization, will be considered an infringement of the University's rights under the Trade Marks Act. "Use" includes affixing the Trademark to goods or associating it with services, exposing such goods for sale, putting them on the market or offering such services and advertising such good or services.

Use by any third party of the University's Marks must be subject to a licence from the University.

Faculty, Staff, Students and Visitors should strictly observe the terms of this Policy in relation to use of University Marks.

Where IP is owned exclusively by a member of Faculty or Staff or by a Student or a Visitor, as in the case of scholarly works, the name of the University shall not be used in connection with any publication, production, documentation, promotion or exploitation of the IP, except in such form as may be approved by the relevant Department Head who should in turn notify the IPMC of the approval.

5.2.3. Patents

As the owner of a Patent and in accordance with the Patent Act, the University is granted the sole right and privilege of making, using, exercising and vending the patented invention in Jamaica so that during the fourteen (14) year term of the Patent, no other person shall, directly or indirectly, construct, make use of or put in practice the invention without a licence or written consent from the University. Under foreign Patent Laws, the University is granted equivalent exclusive rights for upwards of twenty (20) years in most countries.

Use by any third party of patented subject matter owned by the University will be subject to a licence from the University.

5.3. Observance of Third Party Intellectual Property Rights

5.3.1. General

The University respects the intellectual property rights of all Creators and rights owners and respects those rights in its treatment of material protected by intellectual property laws.

The University aims to foster institution-wide compliance with Intellectual Property laws applicable in Jamaica and to instill in the University Community

best practices in the recognition and proper treatment of intellectual property rights.

5.3.2. Public Domain Material

All material subject to intellectual property protection is to be utilized by Faculty, Staff and Students in a manner which does not knowingly infringe the intellectual property rights of third parties.

Faculty members, Staff, Students and Visitors can freely use material that is in the public domain and therefore no longer protected by copyright. Works in respect of which the author has been deceased for at least fifty (50) years are treated as public domain. Note however, that this period is likely to be extended in the future to upwards of 70 years. Public records open to public inspection by the Keeper of Records under the Records Act are also freely accessible to the University.

5.3.3. Fair Dealing

Faculty, Staff, Students and Visitors can use a copyright work on the basis of “fair dealing” for the purpose of private study, research, criticism or review as this does not amount to infringement.

Some of the factors to be considered in determining fair dealing are as follows:

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

Use of a substantial part of a work or the entire work is not considered fair dealing.

5.3.4. Seeking Clearance

Intellectual Property credited to third party owners should be used by permission where Faculty members, Staff, Students and Visitors seek to use same in material being developed by them or to copy same for distribution within or outside of the University.

Faculty, Staff, Students and Visitors must take all reasonable steps to seek the licence, permission or clearance from such third party intellectual property owners prior to using the work particularly where the use involves a modification, adaptation and reproduction of a substantial portion of the work.

Permission or clearance can be sought through direct or indirect contact with authors, publishers or other copyright owners or representative associations including collecting societies. **Permission should be obtained in writing.**

5.3.5. Acknowledging Sources

Where intellectual property is used Faculty members, Staff, Students and Visitors should acknowledge the source of the material and credit the respective authors and/or intellectual property rights owner.

5.3.6. Multiple Copying (Downloading & photocopying)

Faculty members, Staff, Students and Visitors should not reproduce or copy IP material in multiple quantities or download copies of content from the Internet without express permission to do so.

5.4. Library Operations

The NCU Library should operate in accordance with the Copyright Act and the Copyright Regulations relating to Librarians and Archivists, which outline the circumstances under which librarians can make available material for copying as well as circumstances under which Libraries can make a copy of the material for internal storage, preservation and other purposes.

The Chief Librarian will be responsible for giving effect to these Regulations throughout the University Community.

IV. GENERAL PROVISIONS

1. Dispute Resolution

Any complaints about the operation of the Policy are to be referred in the first instance to the IPMC.

If, other than as specifically provided for elsewhere in this Policy, a dispute arises that cannot be resolved to the satisfaction of the Parties within thirty (30) days of a reference to the IPMC, the University shall refer the dispute to the Dispute Resolution Foundation of Jamaica for mediation. The Parties shall agree three (3) mediators from the approved roster of mediators held by the Dispute Resolution Foundation. Any agreement reached between the Parties at the mediation shall be binding on the Parties.

Where the University is a party to any dispute with a Creator on any matter arising out of the interpretation or application of this Policy the following shall apply:

- (i) The Parties will try in good faith to settle the dispute through conciliation administered by a panel of three (3) facilitators appointed by the University President.
- (ii) If the Parties fail to resolve the dispute within thirty days (30) after starting conciliation, then, the University shall refer the dispute to the Dispute Resolution Foundation for mediation. The Parties shall agree three (3) mediators from the approved roster of mediators held by the Dispute Resolution Foundation.
- (iii) Any agreement reached between the Parties at the mediation shall be binding on the Parties.
- (iv) Where the dispute is referred by the Creator to the IPMC, the IPMC shall immediately refer the matter to the University President who will follow the procedures noted above at (i) to (iii).

2. Amendment

This Policy is issued with the approval of the University's Board of Directors and may only be waived or modified with the agreement of the Board.

3. Review

The Policy shall be reviewed at the end of its first year of implementation and periodically thereafter as determined by the President.

In reviewing the Policy the IPMC shall, among other things:

- (a) Take account of the use by NCU of Intellectual Property belonging to third parties to ensure compliance with the Policy, for example, ensuring that in the normal course of NCU's activities rights are cleared prior to use and proper permissions are granted.
- (b) Consider whether the internal procedures for rights clearance for use of NCU's Intellectual Property enable persons or organizations wishing to use the material to obtain permission without unnecessary hassle.

- (c) Consider whether the procedures to identify inventive and innovative activities in the various departments of NCU are effective in that they ensure that potentially valuable IP material is not overlooked.
- (d) Ensure that decisions as to whether or not it is necessary to secure IP rights protection in respect of NCU's IP are taken in a timely fashion.

4. *Retroactive Operation of the Policy*

All intellectual property created under a Specified Agreement or Commissioning Contract before the date of this Policy will continue to be governed by the terms of that agreement or contract.

All intellectual property created by Faculty and Staff in the course of or incidental to their employment before the date of this Policy shall be governed by this Policy.

All intellectual property in teaching materials created by Students while enrolled at the University shall be governed by this Policy.

All intellectual property in teaching materials created by Visitors while participating in any research project or scholarly activity conducted by any Faculty member, member of Staff or Student or while visiting any part of the University in which research or scholarship, or any related activity, giving rise to the intellectual property, has been conducted, shall be governed by this Policy.

Any other intellectual property created by a Visitor who has made Substantial Use of University's resources in the creation of the said intellectual property and in respect of which the Visitor has not at the date of this Policy reimbursed the University shall be governed by this Policy.

All other intellectual property created before the date of this Policy is to be governed by the terms of the policy in operation at the time the IP was created. The obligation rests with Creators to show when the IP was created. Where Creators are unable to establish that the IP was created before the operative date of the Policy, the IP is to be governed by the terms of this Policy.

5. *Binding Effect*

This Policy shall be binding on Faculty, Staff and Students of the University and Visitors as defined in this Policy.

Faculty, Staff and Students will be subject to disciplinary action for knowingly disregarding the policies herein. Disciplinary action will be determined consistent with other disciplinary actions under the University's Working Policy and the Student Guide.

Subject to any agreement to the contrary specifically approved by the President in writing, this Policy and all the embodied principles shall form part of the terms of employment of University Faculty and Staff and the terms of appointment of Visitors, and in the case of Students, the terms of their enrolment and/or admission as Students of the University.

The University will use its best endeavours to ensure that existing University Faculty and Staff, Visitors and Students are made aware of the application of the Policy and that new Faculty and Staff, Visitors and Students are made aware of the of the Policy at the time of commencement of employment, appointment or enrolment/admission, as the case may be.

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