

Foreword

In the course of conducting their University-administered activities, the faculty, staff, and students often create intellectual property that may be protectable by patent, copyright, or other means. The University wants a policy that encourages the treatment of such property in ways beneficial to the creators of such works, as well as to the University and to the public. To these ends, the University and the creators should assist each other in identifying, evaluating, protecting, and exploiting such property. Such efforts will also help in recognizing the creation of intellectual property as a significant academic achievement.

Accordingly, this Policy seeks to recognize such achievements; to provide advice and assistance to faculty, staff, and students; to promote a clear understanding of legal relationships; and to realize and optimize the benefits of potentially valuable intellectual property to the creators as well as to the University ~~and the public.~~ A feature of this Policy is to encourage creators to perform key roles in the utilization of intellectual property.

This Policy governs the ownership, protection, and transfer of Scholarly/Artistic Works (as defined in Section 2.2) and Technological Works (as defined in Section 2.3) created by University faculty, staff, and students. Inventors and authors are referred to in this Policy as creators. It is the purpose of this Policy to encourage, support, and reward scientific research and scholarship, and to recognize the rights and interests of creators, the University, and the public.

However, the University's commitment to teaching and research is primary and this Policy does not diminish the right and obligation of faculty, staff, and students to disseminate research results for scholarly purposes. The latter is considered by the University to take precedence over the commercialization of Scholarly/Artistic and Technological Works.

Summary

This summary of the Intellectual Property Policy is intended only as an aid to reading the Policy. Wording in the summary should not be relied upon as a substitute for the Policy.

1. The Policy applies to all University faculty, staff, and students, hereafter referred to as creators. (See Article 1.)
2. The University's commitment to teaching and research is primary, and the right and obligation of creators to disseminate research results for scholarly purposes takes precedence over the commercialization of Scholarly/Artistic and Technological Works.

3. Faculty members working with students on research projects must inform students in advance of the terms of this Policy and of any obligations of nondisclosure or confidentiality.

4. All inventions, tangible research results, and artistic and literary works are subject to this Policy and to federal and state laws and regulations governing intellectual property. (See Sections 2.2 and 2.3.)

5. All Scholarly/Artistic Works are owned by creators unless they were created with substantial directed investment of University facilities or funds or capitalize on affiliation with the University. (See Section 2.2.)

6. Technological Works (inventions and tangible research results) that are owned by the University under this Policy are:

- * those created using University facilities or funds;
- * and those created without University facilities or funds but within the scope of the creators' employment (determined by the creators' recent teaching, research, or other University activities).

Exception is made for inventions and tangible research results that were assigned by creators to an outside entity pursuant to a consulting agreement that is consistent with other University policies (including conflict of interest) and that has received prior approval by the creators' department Chair and Dean or Unit Director. (See Sections 2.3, 2.4, and 2.5.)

7. The Policy is administered by the Provost or the Executive Vice President for Health Sciences for their, respective, reporting units. (See Article 3.)

8. Royalties from commercialization by STC.UNM (formerly known as Science & Technology Corporation @ UNM) (the main commercialization arm of the University) of inventions, tangible research results, and other types of intellectual property are allocated (see Section 2.6):

40% equally among the creators

40% to STC.UNM.

20% to the University.

9. Standard procedures for review are described in Article 4.

10. Redress Appeal of disputes University Ownership is covered in Article 5.

1 Scope

This Policy applies to all University faculty, staff, and students (hereafter referred to as creators). Reference to this Policy should be made in the *University's Business Policies and Procedures Manual* as well as in the University's *Pathfinder*. Faculty members working with students on research projects must inform students in advance of the terms of this Policy and of any obligations of nondisclosure or confidentiality.

2 Rights in Scholarly/Artistic and Technological Works

2.1 Commercialization

The term Commercialization shall mean the entire process of gaining commercial value for intellectual property, from seeking intellectual property protection to licensure of, granting of access to, or sale of said intellectual property.

2.2 Scholarly/Artistic Works

2.2.1

Scholarly, artistic, literary, and musical works in any medium are collectively referred to as Scholarly/Artistic Works. This category includes all materials developed by faculty and other personnel directly involved in instruction.

2.2.2

All rights in Scholarly/Artistic Works are owned by the creators, with three exceptions:

- 1) Works created by pre-arranged contractual obligation with substantial directed investment of University facilities or funds (exclusive of creators' salary) or in the performance of a written university work assignment or commission to create such a work. All rights in such works are owned by the University.
- 2) Works that capitalize on an affiliation with the University by explicit labeling of the work to gain a market advantage, beyond the noting of the creator's affiliation. Such uses of the University's name, seal, or logo are regulated by Section 1010 of the University Business Policies and Procedures Manual (see also Section 2.5). All rights in such works are owned by the University.
- 3) Works created under a sponsored agreement that requires rights to be relinquished to the sponsor.

2.3 Technological Works and Technical Information

2.3.1

The term Technological Works means all inventions, discoveries, and other innovations that are protectable by patents, copyrights, mask works, or other means. Innovations include, for example, computer programs, integrated circuit designs, databases, and other technical creations.

2.3.2

The term Technical Information means all tangible and intangible research results, including data, graphs, charts, lab notebooks, technical drawings, biogenic materials, and samples.

2.3.3

All rights in Technological Works and Technical Information created by University creators with the use of University facilities or funds administered by the University are owned by the University, with income from commercialization of Technological Works distributed in accordance with this Policy.

2.3.4

All rights in Technological Works and Technical Information created by creators without the use of University facilities (with the exception of the University libraries) or funds administered by the University, but that fall within the creators' scope of employment (see Section 2.3.5) at the University are owned by the University. However, the University ordinarily will assert no ownership rights or interests in the following two instances:

1) Technological Works and Technical Information created pursuant to outside employment (see the Faculty Handbook) under a consulting agreement between a faculty member and an outside entity in which Technological Works and Technical Information are assigned to said entity. The consulting agreement must be consistent with University policies, including conflict of interest policies, and must be disclosed in writing and agreed to by the creators' Chair and Dean or Unit Director in advance of execution of the consulting agreement. (Contracts in existence at the time of adoption of this Policy must be disclosed within sixty (60) calendar days.)

2) Technological Works and Technical Information created pursuant to independent research or other outside activity that is consistent with University policies, including conflict of interest policies, and that was disclosed in writing and agreed to by the creators' Chair and Dean or Unit Director at the beginning phase of this research activity.

2.3.5

For purposes of this Policy, factors considered in determining the scope of a creator's employment normally shall include the relationship of the Technological Works and Technical Information to that creator's recent teaching, research, and other University activities, as well as activities stipulated in any appointment contract.

2.3.6

Disagreements concerning ownership can be appealed ~~to the Intellectual Property Committee.~~ (See as described below in Article 5).

2.4 UNM Intellectual Property (UNM IP)

For purposes of this Policy, UNM IP means Scholarly/Artistic Works, Technological Works, or Technical Information deemed to be owned by the University. (See Sections 2.2 and 2.3.)

2.5 Use of UNM Name, Logos, or Trademarks

Commercial use of the University's name, seal, logos, or trademarks requires prior written approval from the Office of the Vice President for Institutional Advancement or (for the logo) the Director of Marketing and Licensing in the Athletic Department. (See Section 1010 in the University Business Policies and Procedures Manual.)

2.6 Costs, Royalties, and Other Commercialization Income

2.6.1

In the case of collaborations between the University and outside entities, the provisions of Section 2.6 are applicable only to the ownership interests of the University.

2.6.2

The University and/or the STC.UNM shall normally bear the costs they have elected to incur in securing protection for intellectual property (including evaluation, prior art searches, preparation, filing, and prosecution of any patent application, and issuance and maintenance of patents issuing therefrom) and commercializing said property, until said property is licensed, assigned, or otherwise commercialized.

2.6.3

Prior to distribution of royalties (which, for purposes of this policy, are deemed to mean all income received by the University or the STC.UNM for a license of UNM IP, but

does not include payments for research, development, or reimbursement of patent costs), the STC.UNM shall be reimbursed for all unreimbursed or non-contractually reimbursable costs incurred in securing intellectual property protection and any litigation costs.

2.6.4

Royalties received by the University from commercialization of UNM IP by the STC.UNM shall be divided as follows:

Forty percent (40%) to be divided equally (unless otherwise unanimously agreed to and represented on the submitted invention disclosure form) among the creators;
Forty percent (40%) to the STC.UNM; and
Twenty percent (20%) to the University to be invested and administered by the Vice President for Research (on main campus) or the Vice-President for Translational Research (at the Health Sciences Center (HSC)), generally, in amounts consistent with the source(s) of the UNM IP. Accrued revenues will be used, in consultation with faculty, to support University units involved in ongoing research and educational pursuits relevant to commercialization efforts or will otherwise be administered as required by sponsor(s).

2.6.5

In any case where royalties shall be represented by shares of stock or other intangible assets, these assets shall be held in the name of the University or the STC.UNM and managed by them. At the discretion of the managing unit (the University or the STC.UNM), such stock or other intangible assets may be divided prior to liquidation and distributed in the proportions specified in Section 2.6.4.

2.7 Duties of Creators

2.7.1

All provisions of Section 2.7 apply to individual efforts of creators and to collaborative efforts with outside entities.

2.7.2

The University's commitment to teaching and research is primary, and the right and obligation of creators to disseminate research results for scholarly purposes take precedence over the commercialization of Scholarly/Artistic and Technological Works.

2.7.3 Disclosure Requirements Imposed by Sponsored Research Agreements

Sponsored research agreements often carry requirements that any inventions or other intellectual property created in the performance of the agreement must be disclosed to the sponsor. Such agreements often also impose other requirements pertaining to commercialization of such intellectual property. Upon execution of any sponsored research agreement, the Office of Research Services, or the HSC Pre-Award Office, as appropriate, shall inform the principal investigator of any such requirements pertaining to intellectual property resulting from the work. In addition to sponsored research agreements from industry and government, other agreements facilitating research may impose intellectual property disclosure requirements, such as grants, equipment loan and transfer agreements, and material transfer agreements.

When UNM IP results from work under an agreement creating disclosure obligations to sponsors or other third parties, then the Principal Investigator shall be responsible for ensuring disclosure of the UNM IP to the ~~Office of University Counsel (OUC)~~ ~~or University~~ specifying such reporting requirements on the Copyright or Invention Disclosure Form submitted to STC.UNM. Such disclosures shall be made to the ~~OUC~~ ~~University~~ or STC.UNM as soon as possible and at least within one month of creation. The disclosure shall be made by completing forms generated by the OUC.

The ~~OUC~~ ~~University~~ shall in turn make such disclosures as required by federal and state laws and regulations, and by third party agreements of which it has been made aware.

2.7.4. Voluntary Disclosure

If the invention is not subject to third party disclosure obligations, then the creators have the choice as to whether to disclose the UNM IP ~~to the University or to STC.UNM~~. Any disclosures shall be made on forms provided by the ~~OUC, University or STC.UNM~~. Creators may consult with either ~~the~~ OUC or STC.UNM as to the advisability of disclosure. Creators who choose not to disclose their UNM IP have no obligation to participate in the commercialization process outlined herein. Creators who chose to disclose thereby agree to participate in the commercialization process outlined herein.

Creators may not commercialize UNM IP created by them except by ~~disclosing to OUC or STC.UNM and~~ following the procedures outlined herein.

2.7.5

During as well as after their association with the University, creators of UNM IP shall assist and cooperate with ~~the OUC's and the STC.UNM's~~ efforts by the University and STC.UNM to secure intellectual property protection and to pursue commercialization of disclosed UNM IP by executing all appropriate legal documents, including assignments, to perfect the University's legal rights.

2.7.5.1 Creators shall make available to the ~~OUC~~University and ~~the~~ STC.UNM all Technical Information necessary to support intellectual property protection.

2.7.5.2 Creators may, at their discretion, retain a copy of any Technical Information to use in scholarly pursuits.

2.7.6

In the event the University or the STC.UNM takes legal action against a creator who refuses to execute necessary documents pertaining to disclosed UNM IP or otherwise fails to act in accordance with this Policy, any costs reasonably and necessarily incurred by the University and/or the STC.UNM as a direct result thereof shall be deducted from that creator's share of royalties.

3 Administration of the Intellectual Property Policy

3.1 Provost of the University and Executive Vice President for Health Sciences

The Provost, or designee, shall be responsible for the interpretation, implementation, and enforcement of this Policy on main campus; the Executive Vice President for Health Sciences, or designee, shall be responsible for the interpretation, implementation and enforcement of this Policy on the Health Sciences Center campus. The Provost and/or Executive VP for Health Sciences shall be responsible for University relations in areas where this Policy affects the University community, governmental authorities, private research sponsors, industry, and the public.

3.2_ Office of University Counsel (OUC)

3.2.1 The OUC shall provide legal advice to the University on issues related to UNM IP.

The OUC shall provide legal advice to the University on issues related to UNM IP. In order to ensure that the intellectual property provisions of sponsored research agreements are consistent with this Policy, the OUC shall support faculty, staff, students and administration in the areas of copyright, trademark, patent, material transfer agreements, federal statutory compliance and any other UNM IP matters; and assist the University's sponsored research services office. Consistent with its University role, the OUC may also assist the STC.UNM with other matters from time to time.

3.2.2

The member of the OUC charged with patent administration duties, hereafter the Patent Administrator, OUC is authorized with the prior approval of the Provost, Executive Vice President for Health Sciences and the RPC, to promulgate and publish information and procedures to implement this policy.

3.3 STC.UNM (formerly known as Science & Technology Corporation @ UNM)
(STC.UNM)

~~The~~

~~3.3.1~~ STC.UNM was granted by the University a right to take assignment of UNM IP pursuant to a Memorandum of Agreement (MOA) between the University and the STC.UNM, for the purpose of active support by the STC.UNM for commercialization of UNM IP. The mission of the STC.UNM is to serve the University of New Mexico by facilitating University inventors' commercialization of UNM IP, increasing the University's non-governmental sponsored research, and contributing to economic development in New Mexico.

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~~3.3.2~~ STC.UNM, among other duties as described in the MOA, ~~shall pursue~~pursues the licensing

of UNM IP by assessing the market for ~~same~~the IP, selecting the best means ~~by which they~~

~~shall be commercialized~~to commercialize the IP, negotiating commercialization agreements, overseeing

commercialization activity, and receiving and distributing royalties to creators and the University in accordance with this Policy.

~~3.3.4~~

~~The mission of the STC.UNM is to serve the University of New Mexico by facilitating University inventors, increasing the University's non-governmental sponsored research, and contributing to economic development in New Mexico.~~

~~3.3.2~~

~~The full text of the MOA can be obtained from the STC.UNM or the OUC.~~

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~~3.4 Intellectual Property Committee (IPC)~~

~~3.4.1~~

~~The IPC serves as an *ad hoc* committee whose purpose is to arbitrate any intellectual property rights disputes arising under this policy. (See Article 5)~~

~~3.4.2~~

~~The IPC shall comprise three members appointed by the Provost or Executive Vice President for Health Sciences (based on the department of the creator(s)), and three members appointed by the chair of the Research Policy Committee in consultation with~~

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~~the President of the Faculty Senate. Each appointing party shall designate a co-chair for the IPC. The Senior Associate Counsel for Research & Technology Law, and the President of the STC.UNM, or their designees respectively, are nonvoting members ex officio.~~

4. Review of Disclosures and Commercialization

The University and the STC.UNM shall expedite processing of reviews of disclosures and commercialization decisions.

4.1 Review of Disclosures

The specific implementation of the items under Article 4 will be determined under written regulations agreed upon by STC.UNM and the OUCUniversity.

4.1.1

The University or STC.UNM may require creators to consult with STC.UNM prior to publishing for a reasonable period not to exceed ninety (90) calendar days from the date of disclosure, in order to enable a sponsor or the University or STC.UNM to evaluate a UNM IP and determine whether to pursue any form of intellectual property protection. In some cases, STC.UNM may require creators to refrain from publishing certain materials within the said 90-day period. The University and the STC.UNM shall cooperate in accelerating commercialization review to enable creators to publish their work in theses and dissertations or to pursue patent protection in cases of statutory bars.

4.1.2

When the OUC has accepted an appropriately completed disclosure as specified in Section 2.7.3, the OUC shall forward a copy to the STC.UNM within one (1) week. The creators may submit disclosures directly to STC.UNM, in which case STC.UNM shall forward a copy to the OUC within one (1) week of receipt.

4.1.3

STC.UNM shall make a written determination as to whether or not commercialization is to be pursued within 120 calendar days from the date of disclosure of the IP to STC.UNM.

~~(a) If STC.UNM determines to pursue commercialization, it will make a decision about intellectual property protection within the 120 days from the date of disclosure delineated above.~~

(b) The STC.UNM may find the work described in the disclosure to be of significant interest, but insufficiently developed or documented for commercialization. In that case, the STC.UNM may recommend that the disclosure be

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returned to the creator(s), with suggestions for further development or requests for additional documentation. The creator(s) may then submit a new disclosure on the more fully developed or documented work.

6

(3) In certain cases, the STC.UNM may determine that a disclosure should be held in abeyance because further similar inventions are anticipated within nine (9) months. In such cases, the STC.UNM may delay processing the disclosure for up to nine (9) months, or even longer with the consent of the creator(s).

4.1.3.2

4. If no determination is made by the STC.UNM within the deadline, the creator(s) shall have the option of extending the deadline or of sending a written letter to the STC.UNM requesting a determination within ten (10) UNM business days. If the STC.UNM does not respond within this period or responds that it will not pursue commercialization the University shall release the intellectual property to the creator pursuant to Section 4.4.2.

4.1.4

Once the STC.UNM has determined to pursue commercialization, it will make a decision about intellectual property protection within 90 days from the date of disclosure.

4.1.5

If, at any step during the process, both ~~either~~ the ~~OUC~~ University and the STC.UNM determine not to pursue the commercialization of a particular UNM IP, the University shall release the intellectual property to the creator, subject to sponsor approval.

4.1.5.1

6. If the University or the STC.UNM shall have expended funds for prior art search and patent prosecution, reimbursement shall be in the manner described in Section 2.6.2 and 2.6.3 .

4.2 Reporting

Within twelve (12) months of a complete disclosure, and at 18 months and 24 months, respectively thereafter, the STC.UNM shall provide to the ~~OUC~~ University and to each creator whose disclosure is in the hands of the STC.UNM a report detailing the current state of commercialization of the disclosure, including patenting, marketing, and licensing efforts. Any UNM creator may request from STC.UNM access creator may request and obtain from STC. UNM access to STC.UNM's current activity related to the disclosures for which he or she is the creator or co-creator to STC.UNM's on-line "My

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~~Technologies” section to view current activity of those disclosures for which he or she is the creator or co-creator.~~

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~~disclosure, including patenting, marketing, and licensing efforts. The OUC and creators are encouraged to obtain up-to-date information on any disclosures by accessing STC.UNM’s on-line “My Technologies” section. Any UNM creator may request on-line access from STC.UNM to view current activity of those disclosures for which he or she is the creator or co-creator.~~

4.3 Commercialization

In the event the STC.UNM has not made a reasonable effort to commercialize the UNM IP within two (2) years of its decision to commercialize (as per Section 4.1.3), the University or the creator(s) may request the STC.UNM to return the UNM IP to the University. If the UNM IP is returned to the University, the University and the creator(s) will attempt to commercialize the UNM IP within a mutually agreeable period; if these efforts are unsuccessful, the creator(s) may require that the UNM IP be released to them, subject to sponsor approval.

4.4 Filing Deadlines

4.4.1

At least 90 calendar days in advance, STC.UNM shall advise the ~~OUC~~University and the creator(s) of Technological Works of the following three deadlines:

- A statutory bar to filing a U. S. patent application or provisional application;
- Initiation of filing for foreign patent rights under the Patent Cooperation Treaty(PCT); and
- (PCT); and Entry into national status under the PCT. Any exceptions in meeting the 90-day deadline shall be promptly communicated by STC.UNM to OUC and the creators.

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4.4.2

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In the event STC.UNM does not intend to continue commercialization efforts and does not commit itself to meeting the above deadlines, the University shall release the intellectual property rights to the creator(s), subject to sponsor approval, within 30 days of STC.UNM’s notification to the University.

5 Appeal of University Ownership ~~Determination~~

5.1

In the event a creator does not believe the University is entitled to the rights in a Work, the creator may seek a determination or a waiver of the University's interests in said Work. The OUC will provide the creator with a Determination of Rights Form which must then be completed and returned to the OUC, with all documents supporting the creator's claim. The OUC will forward a copy of the Form and supporting documentation to the STC.UNM for comments.

~~5.1.2~~

~~The OUC shall forward the Determination of Rights Form with attachments and the OUC's and the STC.UNM's written comments (the "Record") to the IPC.~~

5.1.3

~~The IPC shall~~5.1.2 The OUC shall forward the Determination of Rights Form with attachments and the OUC's and the STC.UNM's written comments (the "Record") to the Vice President for Research or Vice President for Translational Research, as appropriate, who will form a three person advisory committee in consultation with the President of the Faculty Senate, or his/her designee. At least two advisory committee members shall be tenured faculty. One of the tenured faculty members shall chair the committee. Committee members should be selected on the basis of relevant research background and experience. The creator shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Vice President for Research or Vice President for Translational Research, as appropriate, in consultation with the President of the Faculty Senate, or his/her designee will determine whether the objection has merit, and, if so, will make appropriate substitution(s). In the case of disagreement regarding appointments, the Vice President for Research or Vice President for Translational Research, as appropriate, will make a final decision on the matter.

5.1.3 The advisory committee will endeavor to review the Record and hear all evidence within thirty (30) calendar days of receipt of the Record and ~~shall will~~ issue a written ~~decision~~ recommendation to the Vice President for Research or Vice President for Translational Research, as appropriate, within thirty (30) calendar days of hearing the last evidence. The ~~IPC shall~~committee will keep written minutes of all its meetings.

5.1.4 The Vice President for Research or Vice President for Translational Research will issue his/her ownership determination within thirty (30) calendar days of receiving the advisory committee's recommendation.

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5.1.5 Participation in an appeal ~~to the IPC~~ of ownership as described herein does not ~~close off~~ prevent the creator from pursuing other ~~available~~ remedies. ~~The IPC shall keep written minutes of all its meetings, and its final decision shall be in writing.~~

5.1.4

6 The creator ~~or the OUC~~ may appeal the ~~IPC's~~ ownership determination made by the VP for Research or the VP for Translational Research to the Provost or Executive Vice President for Health Sciences (based on the department of the creator(s)) by written request to the Provost or Executive Vice President for Health Sciences within ten (10) UNM business days of receiving notice of the ~~IPC's~~ ownership determination. The Provost/EVP HSC ~~shall notify the RPC, and will~~ meet with all interested persons. Within sixty (60) calendar days of receiving the ~~appealing party's~~ creator's written request, the Provost/EVP HSC ~~shall~~ will make a final decision.

5.1.4.1

7 If the dispute involves rights in Works being claimed by the Provost/~~EVP HSC~~ EVP HSC, only the President shall have authority to review the ~~IPC's~~ ownership determination and make a final decision.

5.1.4.28 If the dispute involves rights in Works being claimed by the President, only a designee of the Board of Regents shall have authority to review the ~~IPC's~~ ownership determination and make a final decision.

5.1.4.3

8 Nothing in this section is in derogation of the Regents' discretionary right of review.

5.1.5

9 All materials produced by the creator and the University under this section shall be retained as a permanent University record. This record shall be made available by the OUC to any party upon consent of the owners of the intellectual property.

5.2 Determination of Inventorship or Authorship among Creators

In the event individuals believe they are creators of UNM IP, and have not been adequately acknowledged as such at any point in the protection and commercialization process, they may petition the ~~OUC~~ University or STC.UNM to assess their claim. The OUC will provide the petitioners with a Determination of Inventorship/Authorship Form which must be completed and returned with any relevant attachments for review. The ~~OUC~~ University or STC.UNM will seek the opinion of outside patent counsel for

determination. Any further inventorship or authorship dispute among creators shall fall outside the scope of this policy.

6. Related Provisions

6.1 Flexibility

The University may accept, on terms beneficial to the University, a voluntary assignment of a Scholarly/Artistic or Technological Work. It may waive, assign or grant (subject to the MOA with the STC.UNM) all or part of its rights in any Scholarly/Artistic or Technological Work under terms and conditions deemed appropriate and beneficial for the University.

6.2 Legal Actions

The University or STC.UNM may take such action as it deems appropriate to defend or enforce any patent, copyright, or other intellectual property right. In the case of claims against the University, settlement of a claim or conduct of litigation shall be within the exclusive control of the University.