

MEMORANDUM OF AGREEMENT

Between: Grant MacEwan University Board of Governors

And: The Grant MacEwan University Faculty Association

ARTICLE 31.0 INTELLECTUAL PROPERTY

A. Copyright

31.1 Principles and Definitions

- 31.1.1 The University's role is to create, disseminate and ensure public access to knowledge and information. The core nature of the faculty profession is to carry out this role.
- 31.1.2 "Copyright" and "moral rights" will have the same meaning as in the Copyright Act (Canada), R.S.C. 1985, c. C42, as amended, and as interpreted by the applicable courts, and the University and faculty members remain subject to all other applicable laws. For clarity, this Article does not derogate from any user rights, including fair dealing rights that the University or any Member may have with respect to any work.
- 31.1.3 "Work" is any original form of expression fixed in any tangible medium now known or later developed, and includes a Teaching Work.
- 31.1.4 "University Curriculum and Student Records" means course titles; calendar descriptions; course grades; the required elements of a course outline; and other student records related to instruction and student evaluation, placement and assessment.
- 31.1.5 "Teaching Work" will mean the original course content and teaching methodologies created by a Member for the purpose of providing instruction to students enrolled in academic courses within Ministry-approved programs at the University.
- 31.1.6 "Student" means a person who is registered as a student within any category of registration at the University.
- 31.1.7 "Agreement" will mean a written contract between a member or members and the University or between two members.
- 31.1.8 "Third Party Agreement" will mean a written contract between a member or members and an external entity or a member, members, the University and an external entity.

31.2 Scholarship, Research and Teaching Works

- 31.2.1 Faculty members own the copyright and retain the moral rights in and to all Works they create, including Teaching Works, and Works related to research and scholarship, subject only to the exceptions and limitations listed in this Article, under the sections

“Commissioned and Administrative Works”, “Third Party Agreements”, and “Collaborative/Iterative Teaching Works and E-courses”.

- 31.2.2 Where a Member has co-authored a Work with one or more other Members, the co-authors will be joint and equal owners of the Work, subject to any Agreement among the Members or the University to the contrary. Members are encouraged to include a dispute resolution article in their Agreements with other Members.
- 31.2.3 As owner or joint owner of the copyright in the Works created by the Member, or jointly with other Members, the Member will be wholly responsible for ensuring such Works do not violate the rights of third parties, and will be solely liable for any claims brought against the Member or against the University in relation to any part of the Work constituting an infringement or other violation of the rights of any third party. Where the University is owner of the copyright of a Work under the provisions of this Article, the University will be liable for any such claims. Where the University and the Member enter into an Agreement dealing with the ownership or licensing of Works as contemplated in this Article, liability for such claims will be as determined by such Agreement. The Member is responsible in all cases to obtain in advance any necessary clearances from third parties for any Work created by or contributed by the Member.
- 31.2.4 The University will not interfere with a Member’s freedom to use or publish the Member’s Works for the purposes of scholarship, research or teaching, except for limitations imposed by duly constituted University research ethics boards.
- 31.2.5 No Member will be obliged to engage in the commercial exploitation of his or her scholarship, nor to provide commercial justification for it.

31.3 Interim License of Teaching Works for in-progress courses

- 31.3.1 Where a Member is unable to complete his or her assigned duties in regard to instruction of an academic course within a Ministry-approved program at the University which includes use of a Teaching Work created by the Member, the Member will grant to the University a royalty free, irrevocable license to use the applicable created Teaching Work(s) that are required to deliver the course in its original intended delivery mode, and only for the scheduled course at risk. Members are not required to provide the University with any such Teaching Work(s) at the beginning of a course.

31.4 Commissioned and Administrative Works

- 31.4.1 The University owns the copyright in all University Curriculum and Student Records, and all administrative materials created by University employees that do not constitute Teaching Works.
- 31.4.2 Where the University wishes to specifically commission a Member to create a Work in which the University will have rights of ownership or license beyond the rights provided otherwise in this Article, and the Member is agreeable to doing so, that commission will be recorded in a written Agreement, which will, at minimum, define allocation of liability, and copyright ownership and/or license terms. The Member will

be at liberty to consult with the Faculty Association prior to signing such an Agreement. The University will provide the Faculty Association with a copy of any such Agreement at least five working days prior to its signing.

31.5 Third Party Agreements

- 31.5.1 The University and a Member may jointly agree to enter into Third Party Agreements with third parties which relate to intellectual property rights of the Member, the University, and the third party, or any of them. Copyright ownership and licensing of Works specified in such agreement, and dispute resolution among the parties, will be governed by the terms of that agreement. A Member may not enter into an Agreement with a third party which uses the name of, or places obligations on, the University, or has the effect of interfering with a Member's obligations to the University, without the written consent of the University. The University will not enter into any agreement with a third party which alters or abridges, or has the effect of altering or abridging, the intellectual property rights of a Member without the Member's written consent.

31.6 Collaborative/Iterative Teaching Works and E-courses

- 31.6.1 Where collaborative and iterative development of Works is the normal or agreed upon practice in an academic unit, all members in that unit will be advised of this practice before a Member engages in the creation of any such collaborative or iterative Work. In such a case the copyright in any collaborative or iterative Work created will be owned by the University.
- 31.6.2 For the purposes of this Article 31.6, an e-course is defined as the parts which form the online content, software, interface, delivery, and technical aspects of a partly or wholly online educational course and includes the online content of blended learning courses. The copyright in all online content of e-courses will be owned by the Member unless alternate terms are agreed to by the Member and the University in writing. Any such agreement will be formalized using the University's standard form agreement.
- 31.6.3 Subject to any agreement reached by the parties in accordance with Article 31.6.2, for the contribution to collaborative/iterative works or the creation of online content for e-courses, where a Member uses or adapts material in which the Member already holds copyright, such as previous course materials or other Works, the University will own only copyright of the collaborative/iterative work or online content of the e-course, and will advance no claim to the source material from which the work was adapted. The Member hereby provides to the University a non-exclusive, non-transferrable, perpetual, royalty-free licence to use and reproduce the source material for its own non-commercial internal use and benefit, and for the purposes of providing the associated e-course to Students.
- 31.6.4 A Member contributing to any such collaborative/iterative Work or contributing online content for an e-course agrees to waive his or her moral rights in such Works in favour of the University and any licensees of the University and agrees to allow the University or the applicable academic unit to amend, adapt or modify the Work as needed.

31.7 Dispute Resolution Process

- 31.7.1 If a dispute arises between a Member and the University regarding the ownership or use of any Work or other intellectual property, the Association and the University will first attempt to resolve the dispute through informal discussion.
- 31.7.2 If either party concludes that such discussion fails to resolve the dispute, within five working days of notice being provided by one party to the other party, the matter will be referred to an ad hoc Intellectual Property Committee comprised of three people, one representative appointed by the President of the University or the President's designate (on behalf of the University), one representative appointed by the Association, and a Chair. Within ten working days of providing notice to the other party, each party will appoint and inform the other party and the Provost and Vice-President Academic ("PVPA") in writing of the names of its representative. The two representatives will, within five days of the communication of the names of the representatives, meet to jointly select a third person as Chair. The Chair will have equal voting rights. If the two representatives are unable to agree on a Chair, resolution of the dispute will be subject to the regular grievance process (Article 4.0 Disputes and Grievances).
- 31.7.3 The Intellectual Property Committee members will not have had prior involvement with the matter, nor will they have had a professional or personal relationship with the responding Member involved with the dispute. Intellectual Property Committee members must hold Continuing appointments as associate professors or professors at the University. Quorum is the entire Intellectual Property Committee.
- 31.7.4 Each party will, within five days of the selection of the Chair, submit a written summary of the nature and scope of the dispute, all relevant materials, and the resolution proposed by it to the other party and to the Chair of the Intellectual Property Committee.
- 31.7.5 The Intellectual Property Committee will review material submitted, and may seek independent expertise during the deliberation process. The Intellectual Property Committee will, within 30 working days of receiving the parties' submissions, determine by majority vote what its recommended course of action to resolve the dispute will be, and provide a report to the parties and the PVPA of its recommended course of action to resolve the dispute.
- 31.7.6 If the Intellectual Property Committee is unable to resolve the dispute to the satisfaction of both parties either party may, within 30 working days of receiving the Intellectual Property Committee's recommended course of action, proceed to Step 2 of the Grievance process, Article 4.2.3.

31.8 Successor and Other Rights

- 31.8.1 When a Member leaves the University, ownership, license rights and obligations in any works created by the Member while employed by the University will continue and survive as defined here, including in regard to any Third Party Agreement.

B. Patents and Related Intellectual Property

- 31.9.1 “Patents and Related Intellectual Property” or “PRIP” means inventions, integrated circuits, computer software capable of patent protection, plant cultivars, trademarks and industrial designs, and excludes data, and works to which copyright alone attaches.
- 31.9.2 For the purposes of this article, “net revenue” means any money received as a result of the development or commercial exploitation of PRIP, less any expenses incurred to register, develop, exploit or administer the PRIP.
- 31.9.3 Faculty members own the intellectual property rights in PRIP that they create in the course of their employment even if it was produced with the University’s facilities and resources, subject to any written agreement to the contrary.
- 31.9.4 Where a Member has co-created PRIP with one or more others, the co-creators will be joint and equal owners of the Work, subject to any agreement among the members, third parties, or the University to the contrary.
- 31.9.5 Reference to “Member” in this article will include multiple creators where applicable.
- 31.9.6 The discovery of PRIP is not a basic purpose of University research, nor is it a condition of support of such research. A Member will have no obligation to seek patent protection or to modify research to enhance patentability but will nonetheless be welcome to consider, and where appropriate, undertake commercialization of the results of their research, and in accordance with this Article.
- 31.9.7 Where a Member chooses to pursue commercialization of PRIP, the University may approve or not approve any use of the University's name, facilities, or resources in any proposed commercial arrangement. The University has the sole discretion to decide if it will or will not be a party to commercialization agreements involving a Member and/or one or more third parties.
- 31.9.8 Where a Member chooses to pursue commercialization of PRIP, the Member may agree to any delay in publication of the research or scholarly work of the Member for the purposes of commercialization.
- 31.9.9 Although the Member is the owner of PRIP created by the Member, the Member and the University will share in the net revenues resulting from the commercialization of PRIP under any of the following conditions:
- 31.9.9.1 the costs of the activities giving rise to the PRIP were specifically funded by third-party contracts with the University;
- 31.9.9.2 the costs of the activities giving rise to the PRIP were specifically funded by grants from the University's endowments, special purpose funds, or specific budget allocations;

- 31.9.9.3 the PRIP was created using the specialized research facilities and services of the University, including the University's research laboratories, capital equipment, and technical facilities and services. "Specialized facilities and services" do not include the use of offices and office equipment, limited office services, personal computers, the library, or other services commonly available to members;
- 31.9.9.4 the University or the University's agent actively participates in protection or commercialization of the PRIP, including the development, financing, manufacture, license, and sale of the PRIP.
- 31.9.10 A Member may choose to commercialize the PRIP on their own, with the University, or with a third party. In the event a Member chooses to pursue commercialization of PRIP, the Member will disclose to the University any PRIP that is within the above revenue sharing categories prior to taking any steps toward commercialization. The disclosure will be made to the Office of Research Services and copied to the Association. Such disclosure will be kept confidential by all parties.
- 31.9.11 The University will notify the Member in writing of its decision to participate or not in the commercialization of the PRIP within three months of disclosure. Where the University agrees to participate, as a precondition to that participation, the Member and the University must enter into a written agreement acceptable to each party that details the rights and obligations of each party to effect commercialization of the PRIP. Proceeding with commercialization of the PRIP will also be subject to the University and Member entering into a written agreement acceptable to each of them with any third party that may have rights or interest in the PRIP. Where the University decides not to participate, the Member may pursue commercialization on his or her own.
- 31.9.12 If a Member does not disclose a potential PRIP subject to the revenue sharing guidelines above, the University will nonetheless maintain its rights to revenue sharing under this Article.
- 31.9.13 The University's share of revenue from PRIP that is subject to the above revenue sharing guidelines will be determined by the following applicable category:
- 31.9.13.1 Commercialization by the Member: the University will have a share of 25 percent of net revenues over \$75,000;
- 31.9.13.2 Commercialization by the University: the University and the Member will each have a 50 percent share of net revenues;
- 31.9.13.3 Commercialization by a Third Party: The University and the Member will have a negotiated share subject to the terms of the agreement with the third party, and the relative shares of the University and the Member will be commensurate with the past and expected costs and efforts of each of them in participating in commercialization by the third party.
- 31.9.14 The University's share of any revenue received under the above revenue sharing system will be distributed as follows:

- 31.9.14.1 1/3 of net revenue will go to a university-level fund to support research and scholarly activity;
- 31.9.14.2 1/3 of net revenue will go to support research and scholarly activity in the Member's faculty;
- 31.9.14.3 1/3 of net revenue will go to support general university activity; and
- 31.9.14.4 the amount and distribution of such funds will be reported to the Association annually.
- 31.9.15 The University will in all cases have a royalty-free, perpetual non-exclusive right to use and re-use for academic purposes the subject matter of PRIP which is subject to the revenue sharing guidelines in this Article.
- 31.9.16 As owner or joint owner of the PRIP created by the Member, or jointly with other Members, the Member will be wholly responsible for ensuring such PRIP do not violate the rights of third parties, and will be solely liable for any claims brought against the Member or against the University in relation to any part of the PRIP constituting an infringement or other violation of the rights of any third party. Where the University and the Member enter into an agreement dealing with the ownership or licensing of the PRIP as contemplated in this Article, liability for such claims will be as determined by such agreement. The Member is responsible in all cases to obtain in advance any necessary clearances from third parties for any PRIP created by or contributed to by the Member.
- 31.9.17 If a dispute arises between a Member and the University regarding the ownership and use of a PRIP, the parties will follow the procedure set out under Article 31.7 (Dispute Resolution Process).

Dated at Edmonton, Alberta this 23rd day of March, 2016.

For the Board

For the Association




