

**UNIVERSITY COUNCIL
GOVERNANCE COMMITTEE
REQUEST FOR DECISION**

PRESENTED BY: Terry Wotherspoon, Chair, Governance Committee

DATE OF MEETING: November 18, 2021

SUBJECT: **Inventions and Enterprise Creation Policy**

MOTION:

(Wotherspoon/Mousseau): It is recommended that University Council approve the Inventions and Enterprise Creation Policy (pending approval of the Board of Governors), effective January 1, 2022.

PURPOSE:

The purpose of this submission is to seek approval from University Council on the draft *Inventions and Enterprise Creation Policy*. The draft policy was presented to the Governance Committee on May 11, 2021, by Dion Martens, Director, Research Excellence and Innovation. It was presented to Council for input on May 20, 2021. Since then, the policy has been slightly modified in response to feedback which called for a greater emphasis on support for startup companies. The policy has also been adjusted with the addition of clause 2.4, which clarifies that the policy does not supersede, limit, or amend the terms of collective agreements at the University of Saskatchewan. On November 2, 2021, the Governance Committee agreed that the draft policy should go forward to University Council as a request for decision.

DISCUSSION SUMMARY:

Please see attached briefing note.

FURTHER ACTION REQUIRED:

Pending approval of University Council, approval of the Board of Governors will also be requested.

ATTACHMENTS:

- a. Inventions Policy brief
- b. Inventions Policy draft



Briefing Note

Inventions and Enterprise Creation Policy

- In summer 2020, we commenced a review of our intellectual property (IP) policy, because:
 - There was considerable frustration expressed by researchers, industry and investors about the rigidity of the university's IP policy and processes, specifically that we are too slow, risk averse, greedy and opaque;
 - USask had experienced a steady decline in technology licensing, with only half of disclosed inventions commercialized over the last decade; and
 - There was increasing recognition that fulfilling each of the strategic commitments within *University Plan 2025* (courageous curiosity, boundless collaboration and inspired communities) requires uplifting a culture of innovation and entrepreneurship.
- Informed by an advisory group¹, the Partnerships and Commercialization team in Research Excellence and Innovation (REI) prepared a draft policy, entitled *Inventions and Enterprise Creation Policy* to distinguish it from other types of IP.
- Noteworthy changes from the previous policy include:
 - Shifting the default ownership regime from institutional ownership, which is currently applied across the board, to embrace **inventor ownership as the default, with limited exceptions**, as follows:
 - If the invention arises from **Indigenous knowledges and cultural expressions**, the relevant Indigenous communities retain ownership (a scan of other Canadian university policies indicates that the "Respect for Indigenous Knowledges and Cultural Expressions" section of the new policy will put USask at the forefront in this regard);
 - If the invention arises as a result of funding or resources through a university research institute, and if that institute houses its own commercialization services², then ownership remains with the university and the institute is responsible for incubating, aggregating and mobilizing the IP; or
 - If an industry sponsorship or other contract (e.g., inter-institutional agreement) encumbers the IP, then the negotiated contract provisions determine IP ownership and mobilization.

Adopting default inventor ownership aligns our policy with Dalhousie, Queen's, Toronto, Western, Waterloo, Manitoba, Alberta and Calgary. More importantly, it signals a fundamental shift in our approach, which will help provide a much-needed reset of internal and external perceptions.

¹ The advisory group is composed of: Lorne Babiuk (former VPR at UAlberta); Kari Harvey (Innovation Saskatchewan CEO); Jerome Konescni (former CEO of Innovation Saskatchewan); Aaron Genest (SaskTech President); Steve Webb (GIFS CEO); Jane Alcorn (Pharmacy Dean); Terry Fonstad (Engineering ADR); Julian Demkiw (President's Office); Dion Martens (REI Director); Alix Hayden (REI Associate Director); and Christopher Martin (Executive Officer to VPR).

² This currently applies to the Vaccine and Infectious Disease Organization (VIDO) and the Crop Development Centre (CDC), and the Global Institute for Food Security (GIFS).

- Acknowledging that **startups are often the best or only option for commercializing new technologies** and recognizing the need to provide startups with incubation and acceleration programming, mentoring, business-planning supports, and connections with investors, influencers and resources.
- Stating explicitly within the fundamental principles that our **primary motivation is not revenue generation**, though that is undoubtedly helpful to the university, but rather the key driver of our IP mobilization activities is to move discoveries out into the world for the benefit of society, the economy and the environment.
- Identifying **how we want to be perceived** by:
 - Inventors – as actively and meaningfully involving them and supporting them throughout the process;
 - External partners – as transparent, consistent, responsive, timely and motivated to make mutually beneficial deals;
 - Indigenous communities, organizations, entrepreneurs and researchers – as working to strengthen bonds of respect, trust and shared benefit; and
 - Women and BIPOC researchers – as working to advance equity, diversity and inclusion and promote the equitable involvement of underrepresented populations in the innovation ecosystem.
- Identifying **measures of success**, including improved IP literacy, a strengthened culture of innovation and entrepreneurship, and amplified external impact (greater deal flow, more start-ups, and more meaningful partnerships).
- Revising our **revenue-sharing formula** to address situations in which inventors commercialize independently from the university:
 - Specifying a 25% return of the inventor's share of net revenues to the university, which is consistent with nearly all U15 counterparts, and which represents a fair return to the university for the institutional infrastructure, resources and supports that enabled the research activity; and
 - Stating that, for startups, the University is committed to a flexible revenue-sharing approach that best supports the growth of the new venture, including receiving equity.
- Confirming **support for inventors who opt to commercialize independently** of the university (with a helpful commercialization guide and, to the extent that resources allow, by providing advice and facilitating connections).
- **Addressing the conundrum presented by computer code**, which is owned by faculty members under the collective agreement, but which must be consolidated with the rest of the IP when it is integral to an invention. In compliance with the collective agreement, the new policy simply states that inventors will need to voluntarily assign or license the code to the university in order for commercialization activities to proceed.
- The new policy also clearly states that it does not supersede, limit or amend the terms of collective agreements at the University. In particular, it states that it “does not alter the provisions of the USFA collective agreement regarding the members of the USFA bargaining unit entering into individual agreements with the University concerning invention rights, nor the provisions of the Memorandum of Agreement presently in use or amended by agreement between the University and USFA.”

INVENTIONS AND ENTERPRISE CREATION POLICY

For Council Approval – November 2021

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Preamble

The University's Inventions and Enterprise Creation Policy has two **primary objectives**:

- To encourage and support creativity, innovation and entrepreneurship throughout the University community; and,
- To deliver significant, sustainable value for society, the economy and the environment by connecting researchers, industry, investors and communities to turn discoveries into solutions the world needs, primarily through development of intellectual property (IP) into startup companies and licenses for commercial products and processes. (The University values and embraces myriad other approaches to knowledge mobilization, however this policy is focused on commercialization of inventions).

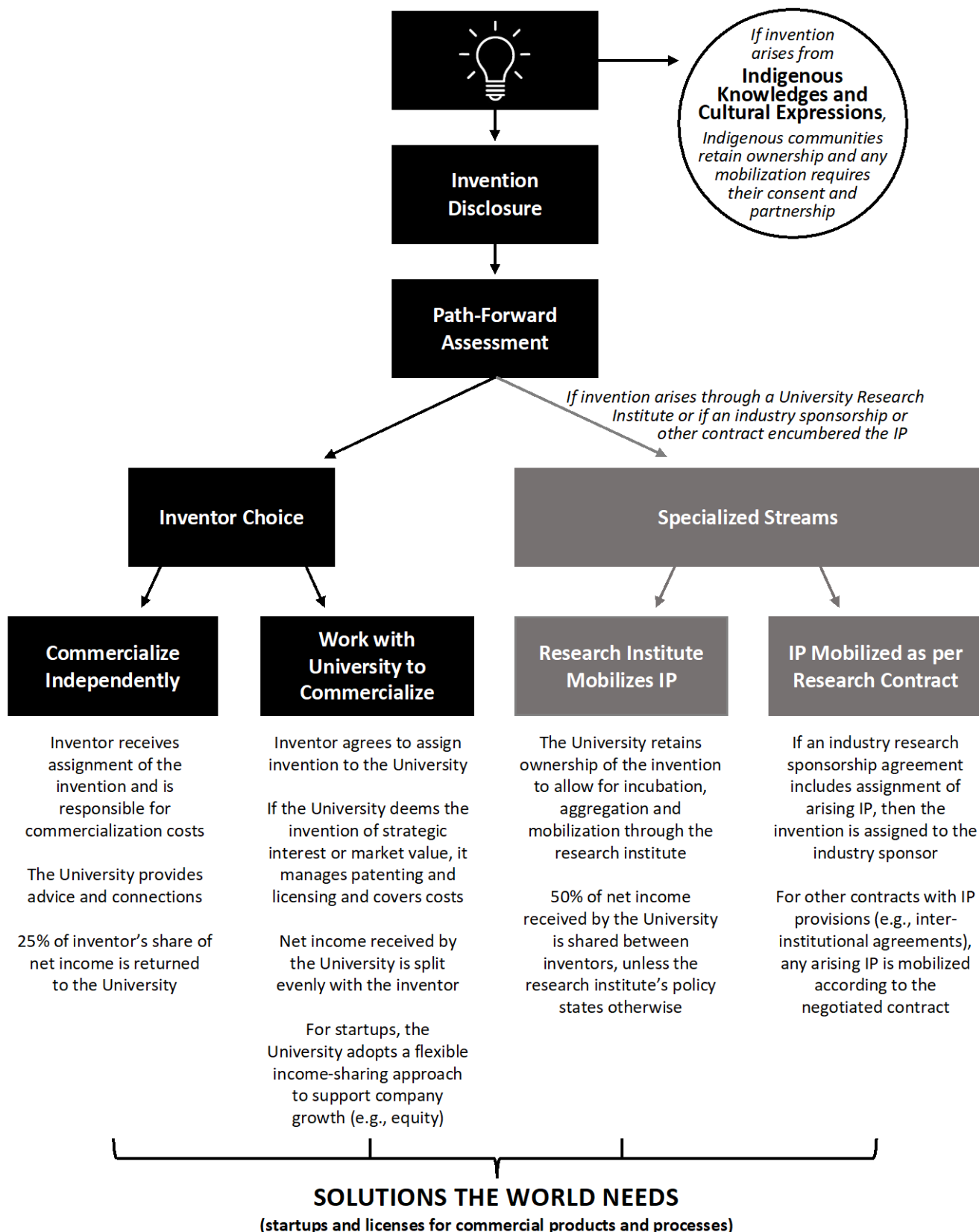
The University's approach to inventions is based on these **fundamental principles**. Specifically, the University intends:

- To be nimble and flexible, giving inventors choices and meaningfully involving and supporting them throughout the technology-commercialization process, and using specialized approaches, where most appropriate, to incubate, aggregate and mobilize discoveries;
- To eagerly promote enterprise creation when inventors are interested in being founders or collaborating with founders, recognizing that startups are often the best or only option for commercializing new technologies;
- To ensure partners experience the University as transparent, consistent, responsive, timely and motivated to make mutually beneficial deals;
- To embrace *manacihitowin*, strengthening bonds of respect, trust and shared benefit through constructive, collaborative processes with Indigenous communities, organizations, entrepreneurs and researchers;
- To advance equity, diversity and inclusion by working for equitable involvement of women and Black, Indigenous and People of Colour (BIPOC) in the innovation ecosystem;
- To recognize that the key driver of the University's technology-commercialization activities is to move discoveries out into the world for the benefit of society, the economy and the environment; and
- While revenue generation is not what motivates technology-commercialization activities, to ensure that commercialization revenues are reinvested to support high-quality research and innovation.

The University **measures the success** of its Inventions and Enterprise Creation Policy through evidence of:

- Improved IP literacy across the University and amongst our partners, including:
 - Increased awareness about technology transfer, licensing, enterprise creation, other IP mobilization options, and the supports and services available through the University;
 - Improved understanding of IP rights; and
 - Greater understanding and respect for Indigenous Knowledges and Cultural Expressions.
- A strengthened culture of innovation and entrepreneurship within the University, including:
 - More researchers – including more women and BIPOC researchers – disclosing inventions and engaging in technology transfer and commercialization activities; and
 - Enhanced involvement of and support for inventors throughout the commercialization process, including the provision of incubation supports for startup companies.
- Amplified value and inspired communities, including:
 - More startup companies launching, growing, creating jobs and delivering solutions the world needs;
 - Greater deal flow, with more investment agreements for industry- and community-sponsored research activities and for technology licenses and options; and
 - More meaningful, reciprocal and equally engaged partnerships with Indigenous communities, organizations, entrepreneurs and researchers that strengthen bonds of respect, trust and shared benefit.

The University has a flexible approach to invention ownership and mobilization, which respects Indigenous Knowledges and Cultural Expressions, gives inventors a choice and uses specialized streams, where most appropriate, to incubate, aggregate and mobilize Inventions. Here is a high-level overview:



1. Definitions

- 1.1 **“Commercialization”** means activities relating to realizing and attempting to realize monetary and/or other value from Inventions, including patenting, marketing, manufacturing, sale, distribution, licensing, sublicensing, transferring, granting of rights or use or leasing.
- 1.2 **“Fast License”** means the publicly available template agreement with simplified terms designed to make accessing university technology faster and easier.
- 1.3 **“Indigenous Knowledges and Cultural Expressions”** includes Indigenous people’s cultural heritage, traditional knowledge and traditional cultural expressions, as well as new ideas or ways of doing things that have been developed by Indigenous peoples which respect their traditions, cultures and practices. This unique body of knowledge is culturally based, context-specific, holistic and differs from nation to nation. It includes the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts.
- 1.4 **“Intellectual Property”** means any result of intellectual or artistic activity, whether or not registerable or registered or protected under the law.
- 1.5 **“Invention”** means “any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter” [Patent Act, R.S. 1985,c.P-4,s.2], including such know-how required to practice it, whether or not patentable and includes all legal and equitable rights relating to such property.
- 1.6 **“Inventor”** means any person, including any member of the academic staff, administrative staff, post-doctoral fellow, visitor, student, or person holding an academic appointment at the University, who participates in the conception or reduction to practice of an Invention using, in any way, facilities owned, operated or administered by the University and/or funds of, or funds administered by, the University.
- 1.7 **“Net Income”** means the royalty, licensing and other income or equivalent financial return, including the proceeds of disposition of share capital or other financial instruments, received from the licensing or assignment of the rights in an Invention, less legal and other fees incurred directly in the process of establishing and maintaining the legal protection of those rights.
- 1.8 **“Patent”** means a type of Intellectual Property that grants its owner the legal right to exclude others from making, using, or selling an Invention for a limited period of time, in exchange for publishing an enabling public disclosure of the invention. For the purpose of this policy, “Patent” also means patent application.
- 1.9 **“Research Institute”** means the Crop Development Centre or a University-level centre (<https://centres.usask.ca/#About>) that houses its own Invention Commercialization services in collaboration with central Office of the Vice-President Research Commercialization services.
- 1.10 **“Traditional Knowledge Keepers”** means the persons responsible for the Indigenous Knowledges and Cultural Expressions, according to their laws and customs.
- 1.11 **“University”** means the University of Saskatchewan, as governed by *The University of Saskatchewan Act, 1995*, and as represented by its duly appointed officers and officials and their designates.

2. Respect for Academic Freedom, Critical Inquiry and Collective Bargaining

- 2.1 The University is an environment in which ideas can flourish through the pursuit of research, scholarly and artistic work. In working with sponsors or licensees, the University seeks to preserve the rights of researchers to determine the extent and timing of the communication and publication of the results of their work. Without the informed consent of researchers, the University does not enter into arrangements which restrict researchers from disseminating results, or from using results for future research or academic purposes.
- 2.2 When premature disclosure of research results may prejudice the interests of a research sponsor or licensee, and only with the informed consent of the affected researchers, the University may agree to delay the release of the results under terms mutually agreed upon in good faith.
- 2.3 The University retains rights to use Intellectual Property for the purposes of further research, teaching and learning throughout all transactions, such as those with Inventors, startups and industry partners, with the exception of service agreements.
- 2.4 This Policy does not supersede, limit or amend the terms of collective agreements at the University:
 - a) As this Policy articulates, the University is following a flexible approach to enhance and support invention ownership and mobilization. The Policy is, therefore, intended to be flexibly applied in a manner that complements existing agreements and that does not diverge from them.
 - b) In the event that any provision of this Policy conflicts with a University collective agreement, the terms of the agreement will prevail to the extent of the conflict.
 - c) In particular, but without limiting the foregoing, this Policy does not alter the provisions of the University of Saskatchewan Faculty Association (USFA) collective agreement regarding the members of the USFA bargaining unit entering into individual agreements with the University concerning invention rights, nor the provisions of the “Memorandum of Agreement” presently in use or amended by agreement between the University and USFA.

3. Respect for Indigenous Knowledges and Cultural Expressions

- 3.1 The University acknowledges that typical forms of Intellectual Property protection and mobilization are based on western worldviews, values, legal systems and concepts that are often incompatible with Indigenous Knowledges and Cultural Expressions.
- 3.2 The University recognizes and respects the rights of Indigenous peoples as set out in Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples: *Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.*
- 3.3 To protect the exercise of the rights outlined in section 3.2, the University makes no claim of ownership of Inventions arising from Indigenous Knowledges and Cultural Expressions and requires researchers to:

- a) Ensure that research involving Indigenous Knowledges and Cultural Expressions is respectful and that all relevant protocols, processes and procedures involved in accessing the Indigenous Knowledges and Cultural Expressions are followed faithfully;
 - b) Ensure that the rights of Indigenous communities to data sovereignty and ownership, control, access and possession (OCAP®) are respected, recognizing that these rights are contextually expressed and asserted according to each Nation's respective world view, traditional knowledge and protocols;
 - c) Ensure that any use of Indigenous Knowledges and Cultural Expressions is agreed to by the Traditional Knowledge Keepers, or appropriate representatives of the community or Nation whose knowledge is being shared and used, with free, prior and informed consent that is regularly reviewed and reconfirmed;
 - d) Ensure that Indigenous peoples benefit reciprocally, and have the right to determine to what extent, how and when they share Indigenous Knowledges and Cultural Expressions, through an equitable relationship that appropriately recognizes all contributions; and
 - e) Ensure that any mobilization of Indigenous Knowledges and Cultural Expressions has the full agreement of Traditional Knowledge Keepers, or appropriate representatives of the community or Nation whose knowledge is being shared and used, before and throughout the process, recognizing that ownership, control, access and possession resides with Indigenous communities or Nations; and
- 3.4 To further protect the exercise of the rights outlined in section 3.2, the University commits to the inclusion and participation of appropriate Indigenous authorities in all substantive matters relating to Indigenous Knowledges and Cultural Expressions. These determinations involve the Vice-Provost Indigenous Engagement and the relevant Indigenous communities or Nations.

4. Requirement for Timely Disclosure of Inventions

- 4.1 Inventors must disclose to the Office of the Vice-President Research any Invention conceived or first reduced to practice in whole or in part by Inventors in the course of their University responsibilities or with more than incidental use of University resources, including: the use of specialized, research-related facilities, equipment or supplies, provided by the University; the use of on-the-job time; reliance on University support personnel or services; and reliance, in part or in whole, on University funds or funds administered by the University.
- 4.2 Disclosure of Inventions is expected to occur in a timely manner, when Inventors have identified that their work may have commercial or external value, whether or not additional research or development may be required to realize that value. The Invention disclosure form is available through the Office of the Vice-President Research.

5. Ownership of Inventions

- 5.1 The University reviews Invention disclosures and completes a path-forward assessment, determining which ownership stream applies, in a timely manner.
- 5.2 The University has a flexible approach to ownership of Inventions, with Inventor ownership as the default. Unless the Invention arises from Indigenous Knowledges and Cultural Expressions, as outlined in Section 3, or the Invention qualifies for a specialized stream of mobilization, as outlined in the remainder of section 5, the University offers rapid assignment of ownership to Inventors:

- a) Inventors may choose to commercialize the Invention on their own, in which case they are responsible for Commercialization costs and the University's role is limited to an advisory capacity, as resources permit; or
 - b) Inventors may choose to work with the University to commercialize the Invention, in which case they agree to assign the Invention to the University.
 - i. The University engages with the Inventors in determining the Invention's scope and commercial or strategic value.
 - ii. If the University deems the Invention of strategic interest or market value, the University manages patenting and the licensing process and is responsible for Commercialization costs.
- 5.3 Where a disclosed Invention has come about as a result of funding or resources provided under the auspices of a University Research Institute which houses its own Invention Commercialization function in collaboration with central Commercialization services, ownership remains with the University and the relevant Research Institute is responsible for incubating, aggregating and mobilizing any such Inventions.
- 5.4 For industry-sponsored research, the University generally agrees to assign arising Intellectual Property to the sponsor, provided there are no compelling reasons why it should not be. This determination is made at the discretion of the University prior to research beginning, with agreement required from the research team.
- 5.5 When any factor prevents assignment of ownership to Inventors, be it industry sponsorship, other contracts, or other factors determined at the discretion of the University, the University advises Inventors in writing of the rationale for retaining institutional ownership of the Invention.

6. Requirement to Unify Computer Code with Other Intellectual Property to Create Value

- 6.1 The University respects the copyrights of faculty, staff and students who create papers, manuscripts, presentations and books. Faculty members also own copyright of computer code. Students also own copyright of computer code when it is created in the course of their studies, however not when it is created as part of an employment relationship with the University, or when a relevant research contract specifies otherwise. The University owns computer code written by all other University employees in the course of their University duties.
- 6.2 The University acknowledges that mobilizing Inventions in which computer code is an integral part of a product or service requires ownership of the Intellectual Property, including the computer code, to be consolidated.
- 6.3 In an approach consistent with the default Inventor-choice model, where creators choose to lead on Commercialization efforts, the University rapidly assigns ownership of any University-owned code to creators, unless the Invention has come about as a result of funding or resources provided under the auspices of a University Research Institute which houses its own Invention Commercialization function.
- 6.4 Where computer code creators choose to work with the University to commercialize a product or service integrating computer code, or the Invention has come about as a result of funding or resources provided under the auspices of a University Research Institute which houses its own Invention Commercialization function in collaboration with central Commercialization services, creators are asked to voluntarily assign or license the code to the University to allow Commercialization activities to proceed.

7. Support for Inventors, Industry Partners and Investors

- 7.1 Inventors are strongly encouraged to pursue Commercialization of Inventions through the University, in which case the University manages patenting, the licensing process, and pays all Commercialization costs. However, given the significant expense of Patent filings, prosecution and maintenance, the University can only consider filing Patents for technologies that meet the following criteria:
- a) A reasonable assessment of market potential and the strength of a Patent position that could allow recouping a multiple of patenting costs; or,
 - b) Strategic importance to the University, through promotion of significant, sustainable societal or academic benefit.

The University provides Inventors with a report setting out the results of the assessment.

- 7.2 For those Inventors who have been assigned ownership of an Invention and opt to commercialize it independent of the University, the University provides a concise guide to assist Inventors with that process. To the extent that resources allow, the University also:
- a) Provides advice to such Inventors and facilitates connections for them; and
 - b) Assists any industry partners and investors wishing to access and mobilize Inventor-owned Intellectual Property.

8. Promotion of Enterprise Creation

- 8.1 The University recognizes that startup companies are often the best or only option for commercializing new technologies and the University is committed to eagerly promoting and supporting such enterprise creation.
- 8.2 Through University resources and engagement with the broader innovation ecosystem, the University provides startups with incubation and acceleration programming, mentoring, business-planning supports, and connections with investors, influencers and resources.
- 8.3 The University is committed to a flexible income-sharing approach, recognizing that there is not a single model that fits every startup. Where a technology license is necessary for a startup, the University seeks agreement on deal structures that best support the growth of the new venture, including the use of startup-friendly versions of the Fast License, which help young companies manage early stage resources through mechanisms such as deferred fee structures or equity positions.

9. Motivation to Make Mutually Beneficial Deals

- 9.1 In all dealings with external partners, the University desires to be transparent, consistent, responsive, timely and motivated to make mutually beneficial deals. This includes:
- a) Offering standardized but flexible templates for sponsored research agreements to serve as a sound and fair foundation for simplified and quick negotiations;
 - b) Using the publicly available simplified terms and template of the Fast License, whenever possible; and

- c) Incubating and aggregating discoveries and supporting product development and deployment through University Research Institutes in ways that are beneficial to the University, Inventors, the economy, industry and investors.

10. Fair Income Sharing

10.1 Subject to section 2.4, the following income-sharing model applies to royalties and other income associated with Inventions:

- a) If the University leads Commercialization, Net Income received by the University is split, with 50 percent returning to the University, and 50 percent evenly shared between Inventors. Any alternative income split between Inventors must be negotiated as between Inventors with the aid of third-party counsel, and Inventors must inform the University in writing of the same;
- b) If Inventors commercialize independently from the University, Inventors are wholly responsible for costs, including Patent costs; 25 percent of the Inventors' share of Net Income returns to the University, in recognition of the institutional infrastructure, resources and services that supported the Invention.

10.2 In the case of startup companies established as part of the mobilization of Inventions, the University is committed to a flexible income-sharing approach as outlined in section 8.3.

11. Management of Conflicts of Interest

11.1 All activities related to mobilization of Inventions are expected to adhere to the University's *Conflict of Interest Policy*.

11.2 The primary conflict of interest that arises with mobilization of Inventions relates to involvement of Inventors in startups:

- a) The University fully supports the efforts of Inventors to participate in mobilization of Inventions through startups.
- b) The University recognizes that Inventor participation in startups may create a conflict of commitment, or actual or perceived conflict of interest (collectively referred to as "conflicts"). The University is committed to identifying and appropriately managing conflicts, while simultaneously supporting the appropriate entrepreneurial participation and external engagement of Inventors. Accordingly, with respect to any negotiations or dealings with an Inventor startup:
 - i. Inventor founders are encouraged to engage third-party support for license and other negotiations. The University does not negotiate license terms directly with any Inventors associated with the University other than in exceptional circumstances; and
 - ii. In addition to any disclosure required of the relevant Inventors, the University may require that any Inventor provide assurances, to the University's satisfaction, with respect to any compensation received or to be received by the Inventors as direct compensation by a company receiving any rights in relation to the commercial mobilization of Intellectual Property.
- c) The University recognizes that technology used as the platform for startups is often at an early stage of development and closely related to Inventors' ongoing research interest. As such, the University understands that further technology development will often be necessary using University facilities

before the technology can be transferred to the new venture. The University works with Inventors to ensure a timely transfer, defined on a case-by-case basis at the University's discretion.

12. Administration and Dispute Resolution

- 12.1 The responsibility for the administration of this policy lies with Partnerships and Commercialization within the Office of the Vice-President Research (OVPR). The OVPR maintains procedures and guidelines in user-friendly language to assist all parties involved in technology Commercialization and mobilization of Intellectual Property.
- 12.2 In cases where one or more Inventors dispute a determination made by the University pursuant to this policy:
- a) The Inventors may, within 60 days after the date on which the disputed determination was made, refer the dispute to the Director of Partnerships and Commercialization and the Dean or Executive Director of the relevant academic unit, centre, or Research Institute to facilitate a resolution to the dispute.
 - b) In the event the dispute cannot be resolved to the satisfaction of the parties within 60 days after the date of referral, the matter is referred to the Vice-President Research, to facilitate a resolution or, if necessary, make a final determination. The Vice-President Research may convene an expert panel to assist in the making of any determination.
 - c) When the dispute relates to an Inventor within the University of Saskatchewan Faculty Association bargaining unit, the dispute resolution processes will be in accordance with the processes set out in the Memorandum of Agreement presently in use or amended by agreement between the University and the University of Saskatchewan Faculty Association.