



## Procedure

Procedure Name	<b><i>Intellectual Property in Research</i></b>		
Procedure #	RI 5.01	Parent Policy	RI 5.0: Intellectual Property in Research Policy
Policy Owner	VP Academic, Neil Fassina	Effective Date	December 16, 2015
Procedure Owner	AVP Research & Innovation, Chris Dambrowitz	Review Date	December 2018
Approved by	AVP Research & Innovation	Approval Date	December 16, 2015

### 1. Purpose/ Background

The purpose of this document is to provide definitions and establish necessary procedures for the administration of NAIT's Intellectual Property Policy RI 5.0.

### 2. General Principles

NAIT's Intellectual Property Policy and Procedures are based on the following general principles:

- 2.1 To satisfy the need to comply with the law, and with licenses and agreements to which the Institute is a signatory.
- 2.2 To promote the development of fruitful and productive partnerships and recognize the unique contribution each partner brings to the partnership and the need for each partner to benefit from the relationship and have their interests protected as appropriate.
- 2.3 To ensure that insofar as is possible, intellectual property that is generated in the context of or as a result of a collaborative interaction between the Institute and industrial collaborators or other external stakeholders remains in the ownership of the industrial partner, in order to support accrual of economic and societal benefits for Alberta. The NAIT Board of Governors supports a knowledge mobilization model for NAIT that shares and mobilizes new knowledge, and the IP derived from its development, toward real-world implementation, as a strategy to achieve the outcomes and expectations of NAIT's vision and mandate.
- 2.4 To incorporate flexibility in knowledge mobilization, acknowledging that external sponsors may have their own requirements related to IP as a condition of funding. As an example, NSERC encourages the utilization of research results, developed wholly or in part using NSERC funds, in Canada for the benefit of Canadians. Corporate sponsors supporting research grants and contracts may desire to protect their business interest through usage

rights. Public bodies funding health-related research may have requirements related to dissemination of results.

- 2.5 To recognize contributions of the Institute’s industrial collaborators and external stakeholders, of the Institute’s employees in the course of their duties or employment with the Institute, and any and all other Creator(s) of IP affiliated with the Institute. A key determinant of these contributions would be the circumstances in which the IP was developed. IP developed by Student(s) as part of their education at the Institute, for which they do not receive any consideration, is owned by the Student(s).
- 2.6 To support the publication of research results in the open literature reasonable freedom must exist for scholarly publication and presentations by students and employees as part of their academic mission.
- 2.7 To ensure that a student’s education, graduation, and their success are not impeded by IP issues.
- 2.8 To support the Institution’s and the Creator’s right to use his/her research results for non-profit purposes in future research and in teaching.
- 2.9 To encourage the commercialization of IP produced by the Institute’s external collaborators through their interaction with the Institute, and by employees in the course of their duties with the Institute for the purpose of generating economic and societal benefit for Alberta.
- 2.10 Net Revenues from any commercialization of IP will be shared equitably, and in line with successful practices at other post-secondary institutions. In the specific case of Inventions, emphasis will be placed on allowing Creators to maintain control over the commercialization of Inventions that they have created and on ensuring that Creators receive most of the Net Revenue generated in connection with the Invention, while also providing a nominal royalty to the Institute in recognition of the Institute’s contributions.

### 3. Definitions

Term	Definition
Assignment	Assignment is the complete legal transfer of all or part of the intellectual property rights from the lawful owner (called Owner) to another party (called Assignee).
Background Intellectual Property	Background IP means all IP first conceived and reduced (actually or constructively) to practice outside of the scope of the project activity and know-how, such as intellectual property owned, directly or indirectly, or licensed by a party prior to the commencement of the project.
Board	The Board of Governors of the Northern Alberta Institute of Technology.
Categories of Intellectual Property	The Canadian Intellectual Property Office recognizes six categories of IP rights, namely, patent, trademark, copyright, industrial design, integrated circuit topography, and plant breeders’ rights.

Intellectual Property Right	Description
Copyright	<p>The right to “reproduce a work, or a substantial part thereof ...”<sup>[1]</sup> with <i>work</i> spanning literary, dramatic, artistic and musical expressions, provided the conditions for protection are met:</p> <ul style="list-style-type: none"> <li>i. Ideas are not protected, only the expression thereof. Facts are not protectable material either.</li> <li>ii. The expressions must be original to earn the grant of copyright and (by convention) be fixed in a tangible form.</li> <li>iii. The author must be a resident or citizen of Canada or another treaty-country.</li> </ul> <p>While <i>substantial</i> is not defined, it necessarily follows that an insubstantial amount of a copyright-protected work is not eligible for copyright protection.</p>
Industrial Design	<p>Features of shape, configuration, pattern, or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye (i.e. shape of a table, decoration on a plate).</p>
Integrated Circuit Topography	<p>A product that is intended to perform an electronic function. Integrated circuits, referred to as "chips", are tiny electronic devices found in everything from common appliances to robots.</p>
Patent	<p>A patent is a government grant giving the right to exclude others from making, using, or selling an invention. A patent is a document issued by the government that describes an invention. A patent is granted only for the physical embodiment of an idea, or for a process that produces something saleable or tangible. In Canada, patents are granted only for products or processes that meet the three criteria of novelty, utility, and ingenuity.</p>
Plant Breeders' Rights	<p>Exclusive rights to new varieties of some plant species.</p>
Trade-Mark	<p>A word, symbol, or design (or any combination of these features) used to distinguish the wares and services of one person or organization from those of others in the marketplace.</p>

<sup>[1]</sup> Section 3.1 of the *Copyright Act*, (R.S.C., 1985, c. C-42), as amended following passage of the *Copyright Modernization Act*, Bill C-11, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament (60 Elizabeth II, 2011). Last accessed 22 July 2015 from <http://laws-lois.justice.gc.ca/eng/acts/c-42/>.

Commercialization Cost	Includes both direct (such as initial and recurring appraisal costs, initial and recurring legal expenses, initial patent filing and approval expenses, recurring IP maintenance expenses, and ongoing business development expenses) and administrative costs (such as administrative support, office expenses, technology transfer personnel time) applicable to commercialization of Intellectual Property.
Contract Research Project	For the purpose of the intellectual property policy framework, this refers to a research project for which the Institute is contracted by an external party, to be completed within a specific timeframe (typically independent of the semester cycle) on a fee-for-service basis.
Copyleft	Copyleft is a vernacular term (unlike copyright, it is not a legal term) and refers to forms of (permissive) licensing used to modify copyrights for works such as computer software, documents, music, and art. In general, copyright law allows an author to prohibit others from reproducing, adapting, or distributing copies of the author's work. Copyleft is a play on the word copyright to describe the practice of using copyright law to remove restrictions on distributing copies and modified versions of a work for others and requiring that the same freedoms be preserved in modified versions. Examples of copyleft licenses include various Creative Commons licenses and the GNU General Public License. Examples of creative works available under copyleft licenses include Wikipedia, MIT's Open Courseware, and open-source software such as Linux.
Creator	The Creator is the person who creates Intellectual Property through his or her creative endeavor. Other synonyms (depending on the context and the type of Intellectual Property) may be Inventor, Artist, Author, Innovator, Scientist, or Researcher.
Employee	<p>For the purpose of the intellectual property policy framework, this refers to any person employed by the Board who is one of the following:</p> <ul style="list-style-type: none"> <li>(a) Covered under the terms and conditions of the collective agreement between NAIT and NAIT Academic Staff Association (NASA)</li> <li>(b) Covered under the terms and conditions of the collective agreement between NAIT and Alberta Union of Provincial Employees (AUPE)</li> <li>(c) Not covered by any collective agreement, and referred to as 'Management' and 'Excluded';</li> <li>(d) Providing their services on a salaried or hourly basis, whether for continuing education or any other purpose;</li> </ul> <p>For the purpose of this policy framework, Post-doctoral Fellows are considered Employees of NAIT. A Student will be treated as an Employee for the purpose of this policy if he or she was employed and paid by NAIT in the course of developing the said IP.</p>

Foreground Intellectual Property	Foreground Intellectual Property means all IP first conceived or first reduced to practice (actually or constructively) under the project activity.
Institute/ Institution	Northern Alberta Institute of Technology (NAIT).
Intellectual Property (IP)	Very broadly, means the legal rights that result from intellectual activity in the industrial, scientific, literary, and artistic fields (Source: Canadian Intellectual Property Office).
Internet Domain Names	While not falling within the six traditional forms of IP recognized in Canada, Internet Domain Names are analogous in many ways to Trade-Marks.
Invention	For the purpose of the intellectual property policy framework, this refers to all IP arising from: (a) an invention or discovery, including any invention or discovery which is subject to Patent, Integrated Circuit Topography, or Plant Breeders' Rights; or (b) the results of any industrial or scientific research.
Invention Disclosure (Report of Invention)	An Invention Disclosure is usually made when something new and useful has been conceived or developed, or when unusual, unexpected, or unobvious research results have been achieved that may have commercial value. The disclosure is normally made via an Invention Disclosure Form.
Licensing	The transfer of a portion of the IP rights from the owner or an authorized party (called Licensor) to another party (called Licensee). It is not a complete transfer of IP rights as in the case of an assignment. Licensing is subject to a variety of terms and conditions specified in the Licensing Agreement.
Licensing Agreement	An agreement between the Licensor and a Licensee that usually permits the latter party to practice the invention or benefit from rights. A Licensing Agreement usually involves some compensation from the Licensee to the Licensor.
Material Transfer Agreement (MTA)	A MTA is a contract that governs the transfer of one or more materials from the owner or authorized licensee to another institution for research purposes. Materials may include cultures, cell lines, plasmids, nucleotides, proteins, bacteria, transgenic animals, pharmaceuticals, and other chemicals. MTAs are used to transfer materials between institutions from all sectors of the scientific community. An MTA governs such issues as ownership of the transferred materials and of modifications and derivatives made by the recipient; limits on the use of the materials by the recipient institution; confidentiality of information related to the materials; and rights to inventions and research results.

Moral Rights (Copyright Act)	Under the Canadian <i>Copyright Act</i> , Moral Rights refers to the rights that the author of a work has, (a) to the integrity of the work and, (b) where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous. Copyright can be defined as an economic right, whereas moral rights are to protect the honour and reputation of an author. While copyright in a work may be assigned, the moral rights remain with the author, and cannot be assigned, but only waived.
Net Revenue	Revenues remaining after direct and indirect costs attributed to commercialization are recovered.
Non-Disclosure Agreement	Non-disclosure agreements, known also as confidentiality agreements, are contracts in which the parties agree not to disclose the secret information they share and not to make unauthorized use of such information.
Non-Invention IP	For the purpose of the intellectual property policy framework, this refers to all IP relating to a Trade-mark, Industrial Design, Internet Trade Name, creative work (including any work that is subject Copyright), and any other type of IP other than Inventions.
NSERC	Natural Sciences and Engineering Research Council of Canada.
Open Literature	Literature that is available to the public in exchange for money or otherwise. These include books, journals, magazines, and newspapers, whether in print or electronic means.
Public Disclosure or Publicly Disclosed	Any written or oral disclosure of an invention or copyrightable work to any person not under a contractual or fiduciary obligation of confidentiality to the Institution.
Public Domain	The Public Domain refers to IP that is not owned or controlled by anyone. Materials in the Public Domain are available for anyone to use for any purpose. Public Domain may be subject matter specifically excluded under existing laws, or IP that has lost legal protection (due to expiration or otherwise).
Revenue	Compensation received by the IP Owner/Licensor from Assignee/Licensee.
Student	A person who is registered to attend a course or group of courses, which have been approved by the administration of the Institute, and which are offered at any campus or location approved by the Institute. Student status continues during the approved academic period for the course or group of courses and ceases upon the earlier of the date of termination for any reason or the last day of the approved academic period for the course or group of courses (Source: Academic Regulations and Procedures: Full-time, Continuing Education, Part-Time and Apprenticeship Programs).
Trade Secret and Confidential Information	A formally legislated definition of Trade Secret does not exist in Alberta, nor is this covered under the six established federal statutes on IP. However, as proposed by the 1986 draft legislation by the Alberta Institute of Law Research and Reform, a Trade Secret means information including but not limited to a formula, pattern, compilation, program,

	<p>method, technique, or process, or information contained or embodied in a product device or mechanism which (i) is, or may be used in a trade or business, (ii) is not generally known in the trade or business, (iii) has economic value from not being known generally, and (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.</p> <p>The terms 'Trade Secret' and 'Confidential Information' have often been used interchangeably. Confidential Information relates more to non-technical knowledge such as business plans or financial information. Trade Secret generally relates more to technical knowledge such as formulas or recipes.</p>
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#### **4.0 General Principles for Invention Intellectual Property**

##### **4.1 SOURCE OF INVENTION**

Ownership of an Invention that is created, developed, discovered, or otherwise acquired by an Employee of the Institute will depend upon the circumstances of the Invention's creation, development, discovery, or acquisition. Subject to Section 7.2 of NAIT Intellectual Property Procedure RI 5.1:

- (a) Inventions generated through a Contract Research Project are subject to Section 4.2 of this NAIT Procedure ;
- (b) Inventions generated jointly through collaboration between Employees of the Institute and third party researchers (but not through a Contract Research Project) are subject to Section 4.3 of this NAIT Procedure; and
- (c) Inventions generated by Employees of the Institute other than through a Contract Research Project or collaboration with third party researchers are subject to Section 4.4 of this NAIT Procedure.

##### **4.2 INVENTIONS GENERATED THROUGH CONTRACT RESEARCH PROJECTS**

Ownership of any Invention generated through a Contract Research Project will vest according to the terms of the contract which forms the basis of the Contract Research Project in question. The terms of the contract will also govern the allocation of any revenues or other compensation arising from or in connection with the Invention. Typically, the contracting parties will assign ownership of any Inventions generated during the course of the Contract Research Project to the external party that retained the Institute or its Employees to carry out the project.

##### **4.3 INVENTIONS GENERATED JOINTLY THROUGH COLLABORATION WITH THIRD PARTY RESEARCHERS**

When an Invention is generated jointly through collaboration between Employees of the Institute and third party researchers (such as researchers employed by an industry partner)

other than in the context of a Contract Research Project, the Institution will take no ownership interest in the Invention. In the event of commercial exploitation of the Invention, all intellectual contributors to the Invention should be entitled to share in the proceeds in proportion to their contributions, unless the entitlement to share has been voluntarily waived through informed consent. The intellectual contributors may also grant a share of the proceeds to other parties such as the Institute or financial sponsors, at the discretion of the intellectual contributors.

#### **4.4 INVENTIONS GENERATED OTHER THAN THROUGH A CONTRACT RESEARCH PROJECT OR COLLABORATION WITH THIRD PARTY RESEARCHERS**

4.4.1 Unless otherwise agreed to by the Institution, and subject to Section 7.2 of NAIT Intellectual Property Procedure RI 5.1, the ownership of any Invention that is acquired or produced by an Employee that results from or is connected with that person's duties or employment, and any Invention acquired or produced by an Employee using Institute resources without payment to the Institute of fair market compensation for use of those resources, vests in the Institution, unless the Invention is generated through a Contract Research Project (in which case it would be subject to Section 4.2 of this NAIT Procedure) or generated jointly through collaboration between Employees of the Institute and third party researchers (in which case it would be subject to Section 4.3 of this NAIT Procedure). Subject to the foregoing, this section applies to all forms of Inventions, whether created on the Employee's own initiative or at the Institute's direction.

Acquisition of an Invention in the above paragraph refers to acquisition of title or ownership.

4.4.2 When an Invention is disclosed to the Institute pursuant to Section 7.0 of this NAIT Intellectual Property Procedure, the Institute will review the disclosure and, unless otherwise decided by the Institution, enter into an Assignment agreement with the Creator(s) of the Invention on the following terms:

4.4.2.1 ownership of the Invention shall be transferred from the Institution to the Creator(s);

4.4.2.2 the Creator(s) shall pay to the Institute an ongoing royalty in the amount of 5% of all Net Revenue received by the Creator(s) in connection with the commercialization of the Invention;

4.4.2.3 the Institute shall be granted a perpetual license to use the Invention pursuant to Section 7.5 of NAIT Intellectual Property Procedure; and

4.4.2.4 such other terms and conditions as the Institution may require.

4.4.3 If the Institution elects not to enter into an Assignment agreement with the Creator(s) pursuant to Section 4.4.2 of this NAIT Procedure, the Institution may instead, in its discretion, do any or all of the following, as appropriate:

- 4.4.3.1 maintain ownership of the Invention for such period of time as the Institution may deem appropriate;
  - 4.4.3.2 take such steps to commercialize, protect, keep confidential, or develop the Invention as the Institution may deem appropriate;
  - 4.4.3.3 assign ownership of the Invention to the Creator(s) at such later time and on such terms as the Institution may deem appropriate.
- 4.4.4 In any instance where the Institute takes steps to commercialize an Invention or assign it to the Creator(s) pursuant to Section 4.4.3 of this NAIT Procedure:
- 4.4.4.1 Net Revenue accruing from the commercialization of the Invention will be shared fairly and proportionately between the Creator(s) and the Institute in relation to the contributions of the parties in the commercialization and development of the Invention;
  - 4.4.4.2 All accrued Commercialization Costs (both direct and administrative) will be deducted first, any time commercialization Revenue is received. The administrative costs of commercialization will be calculated as 15% of the direct costs;
  - 4.4.4.3 Upon the discretion of the Associate Vice-President – Research & Innovation, up to 50% of the value of the Commercialization Costs currently accrued may be carried forward, to be recovered against future revenue receipts; and
  - 4.4.4.4 Wherever possible, it is preferred that Revenues be collected on a quarterly or bi-annual basis so that earlier disbursements can be made.
- 4.4.5 The Institute’s portion of any Net Revenue or royalties received pursuant to this Section 4.4 will be distributed as follows:
- 4.4.5.1 34% to general revenues;
  - 4.4.5.2 33% to the School(s)/Division(s) to which the Creator(s) belong; and
  - 4.4.5.3 33% to the Office of Research & Innovation.
- 4.4.6 In the case where neither the Institute nor the Creator(s) decide to commercialize the Invention, the Institute may make the Invention available to external parties on such terms as the Institute may agree.

## **5.0 General Principles for Non-Invention Intellectual Property**

### **5.1 DETERMINATION OF OWNERSHIP**

Unless otherwise agreed to by the Board, and subject to Section 7.2 of this NAIT Intellectual Property Procedure, the ownership of any Non-Invention IP, including Trade-

marks, Industrial Designs, Internet Domain Names, creative works (including works subject to Copyright), and all other types of IP other than Inventions that is acquired or produced by an Employee that results from or is connected with that person's duties or employment, and any Non-Invention IP acquired or produced by an Employee using Institute resources without payment to the Institute of fair market compensation for use of those resources, vests in the Board. This applies to all forms of Non-Invention IP, whether created on the Employee's own initiative or at the Institute's direction.

Acquisition of Non-Invention IP in the above paragraph refers to acquisition of title or ownership.

## **5.2 BENEFITS TO CREATOR AND INSTITUTE**

The Institute will, in its discretion, collaboratively pursue commercialization of Non-Invention IP for the benefit of the Institute, the Creator(s), and industry. Non-Invention IP will be disseminated to industry in an efficient and effective manner to facilitate unencumbered access to the marketplace, where appropriate. Net Revenue arising from Non-Invention IP may, in the Institute's discretion, be shared between the Institute and the Creator where appropriate.

In the case where neither the Institute nor the Creator(s) decide to commercialize the Non-Invention IP, they may decide to make the Non-Invention IP available to external parties.

## **5.3 TRADE-MARKS**

Protection, maintenance, granting of usage rights, and disposition of NAIT-owned Trade-Marks (includes logos, symbols, and other forms of corporate identity) and Internet Domain Names will take place in accordance with NAIT Policy ER.3.0 and its associated Guideline on Corporate Image.

## **5.4 CREATIVE WORKS**

Pursuant to the terms of the Canadian *Copyright Act*, copyright protection is automatic for eligible creative works in Canada. Eligible creative works are literary, dramatic, musical, and artistic works and also includes computer software. Under the *Copyright Act*, three other subject matter: performance, sound recording, and communication signal are also covered.

To obtain maximum international protection under the Berne Convention and the Universal Copyright Conventions, the Institute requires that any copyrightable creative work created by its Employees be marked with the international copyright symbol ©, the date of first publication (or date of creation for an unpublished work) and the name of the copyright owner, thus:

“© Northern Alberta Institute of Technology (NAIT) 2015. All rights reserved.”

Should the Institute choose to register any copyrightable creative work that it owns with the Canadian Intellectual Property Office, the Institute will be responsible for all costs of registration and maintenance.

The Institute may also impose other requirements on creative works developed by its Employees. This includes archival through logging, addition to its libraries, or any of the Institute's other collections.

## **5.5 COPYRIGHT ASSIGNMENT AND RELEASE FOR SCHOLARLY ACTIVITY**

To further its academic mission, the Institute encourages Scholarly Activity by its Students and Employees. To support such activities, the Institute encourages authorship of books (including textbooks), articles, posters, presentations, and media that may be subsequently publicly disclosed. The Institute recognizes that IP may also be released into the public domain, or available through non-remunerative copyleft licenses. The Institute shall not unreasonably deny any requests for release of copyright or any assignment to third-parties that may be required to support such activity. A Copyright Release Form signed by their Dean/Director will suffice to document such approval. The Institute may also choose to waive any royalties or honoraria arising from the production of such scholarly works.

In all instances, it will be the responsibility and requirement of the Institute's Employees and Students to protect confidential information belonging to third parties, such as corporate research sponsors, respecting the terms of the respective contract, and other agreements in place, such as Non-Disclosure Agreements. They are also required to protect personal information, respecting the requirements of Alberta's *Freedom of Information and Protection of Privacy Act*.

For sponsored research, the Institute's Employees and Students are required to secure written approval of the research sponsors and other owners of confidential information prior to submission or any other form of public disclosure.

## **5.6 LICENSING AND ASSIGNMENTS**

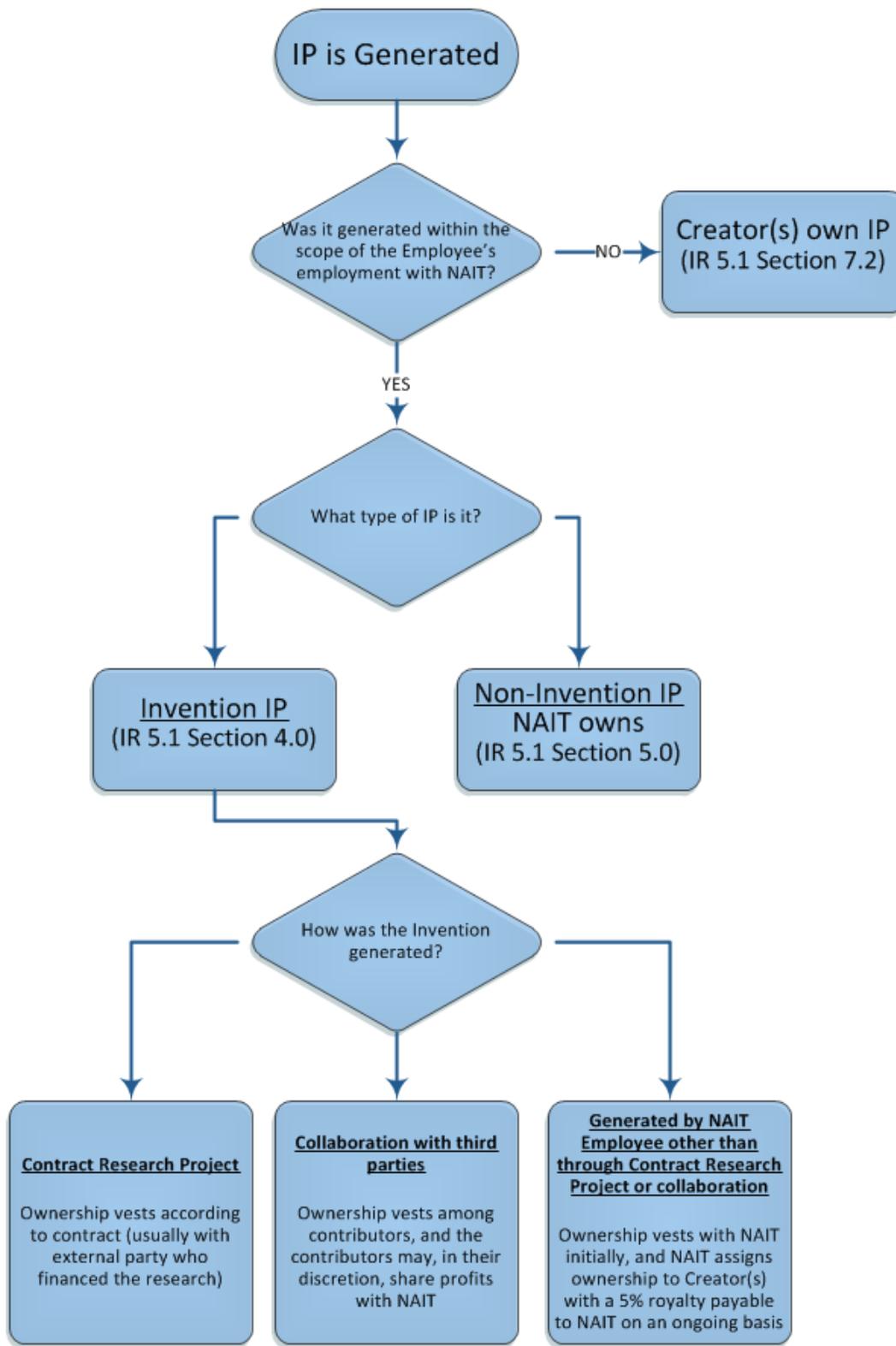
External parties may gain usage rights to Institute-owned Non-Invention IP through Licensing or Assignment Agreements, or Publishing Agreements which usually involve limited rights of use of copyrightable material.

Licensing is a common route to grant usage rights. Licensing allows the granted usage rights to be tailored through a variety of terms and options, thereby maximizing value of the created IP. Depending on the specific circumstances, the Institute may also choose to commercialize Institute-owned Non-Invention IP through an Assignment Agreement.

The Provost and Vice President Academic or the Vice President External Relations and Chief Development Officer will be responsible for and approve all Licensing and Assignment of Institute-owned training materials within their respective portfolios. These officers may enter into agreements with Creator(s) and Licensees/Assignees respecting the provisions within this IP Policy and Procedures.

## **6.0 Decision Framework**

The purpose of this framework is to assist in the selection of the decision path for the management of Intellectual Property Procedures.



## **7.0 NAIT Intellectual Property Policy Operational Processes and Procedures**

The purpose of this section is to identify operational processes and procedures towards the implementation of NAIT Intellectual Property Policy RI 5.0 and NAIT Intellectual Property Procedure RI 5.01.

This section applies to all forms of Intellectual Property (IP), whether Invention or Non-Invention IP.

### **General Principles and Processes**

#### **7.1 DISCLOSURE**

7.1.1 It is the obligation of all Employees and Students to whom this policy applies, to disclose any form of IP in a timely manner to the Institute. Timely disclosure will help protect rights of all parties involved, and allow for due diligence by the Institute.

7.1.2 The Institute will review all disclosures of IP in a timely manner. All submitted disclosures will be kept confidential.

7.1.3 For the specific case of Inventions, the disclosure will occur after the physical embodiment of the idea has been realized or when a discovery is confirmed. Disclosures of Inventions must be made prior to any Public Disclosure, and must be made on the NAIT Invention Disclosure Form to the Manager – Research Supports, Office of Research & Innovation.

7.1.4 The outcome of the disclosure will depend upon the nature of the Intellectual Property disclosed. Specifically:

7.1.4.1 Inventions are subject to NAIT Intellectual Property Procedure Section 4.0 – General Principles for Invention Intellectual Property and

7.1.4.2 Non-Invention IP is subject to NAIT Intellectual Property Procedure Section 5.0 – General Principles for Non-Invention Intellectual Property.

#### **7.2 IP OUTSIDE THE SCOPE OF EMPLOYMENT OR ENROLLMENT AT THE INSTITUTE**

7.2.1 The Institute does not make any claim to ownership of IP developed by its Employees if it was created under at least one of the following circumstances:

7.2.1.1 before they were employed by the Institution; or

7.2.1.2 using only their personal time and their own resources or resources of the Institute for which the Institute has been paid an agreed upon fair market compensation, and is unrelated to their employment at the Institution.

7.2.2 The Institute does not make any claim to ownership of IP developed by its Students if it was created under at least one of the following circumstances:

- 7.2.2.1 before they were enrolled at the Institute;
- 7.2.2.2 on their personal time and using their own resources or resources of the Institute for which the Institute has been paid an agreed upon fair market compensation; or
- 7.2.2.3 created during their term at the Institute (whether as part of an enrolled course or not), and for which they did not receive any monetary consideration and did not use resources of the Institute for which the Institute has not been paid an agreed upon fair market compensation.

7.2.3 The Student(s) (or their legal guardians as the case may be) may choose to enter into agreements with any third party to license or assign IP that they own. The Institute encourages its Students to use any NAIT services available to assist in the commercialization of any IP that they own.

### **7.3 ACKNOWLEDGEMENT**

7.3.1 The Institute respects that various contributors to IP (e.g. Creators, sponsors) receive due recognition and acknowledgement. This will take place in accordance with NAIT Policy (RI 2.0) on Academic Integrity and Responsibility in Research.

### **7.4 DISPUTES REGARDING OWNERSHIP OR CREATORSHIP**

7.4.1 In case there is any dispute regarding ownership or creatorship (e.g. inventorship, authorship), the decision of the Vice-President – Academic & Provost or delegate is final.

### **7.5 RETENTION OF RIGHTS**

7.5.1 Unless otherwise agreed to by the Institute, in all instances of Assignment or Licensing of any Institute-owned IP, the Institute will retain a non-exclusive, irrevocable right to use the IP for educational, clinical care, and research purposes (including but not limited to research in collaboration with third parties), free of charge and unlimited in time or place.

### **7.6 BACKGROUND IP**

7.6.1 Any Background IP that belongs to external entities must be promptly disclosed, and usage rights must be legally obtained. For the specific case of copyrights, the “fair dealing” provision under the *Copyright Act* affords some usage rights. In any case, the user is responsible for ensuring authorization for use of IP. Responsibility for infringement resides with the individual who made, or cause to be made, such infringement. Usage rights may be lawfully obtained through Assignment or Licensing Agreements.

- 7.6.2 The Institute recognizes that its Students and Employees may seek written permissions to use third party IP (usually scholarly works) for specific educational purposes. Such “permissions” do not constitute a formal license, and usually take place without payment of any consideration. All such permissions must be documented and duly acknowledged. For permission to use copyright material, the Institute recommends contacting the Copyright Office.

## **7.7 IP DEVELOPED UNDER A CONTRACT FOR SERVICES**

- 7.7.1 For IP developed under a contract for services whereby an independent contractor/vendor is to provide services for the Institute, the Employee retaining the services of the independent contractor/vendor for the Institute should ensure that an appropriate provision is included within the contract regarding Institutional ownership of the IP created, and must ensure that the Copyright Acknowledgement and Moral Rights Waiver Agreement is signed by the independent contractor(s)/vendor(s) providing the service.

## **7.8 MATERIAL TRANSFER AGREEMENTS**

- 7.8.1 Employees that wish to share research materials with external parties should do so under the terms of an approved MTA. The MTA defines the rights of the provider and the recipient with respect to the materials and any derivatives. Biological materials, such as reagents, cell lines, plasmids, and vectors, are the most frequently transferred materials, but MTAs may also be used for other types of materials, such as chemical compounds and even some types of software. Materials may also be further protected under the terms of a Non-Disclosure Agreement.

## **8.0 Exceptions to the Procedure**

- 8.1 Exceptions to this procedure must be documented and formally approved by the Policy Lead.

Procedure exceptions must include:

- The nature of the exception
- A reasonable explanation for why the procedure exception is required
- Confirmation that the exception aligns with the general principles
- Any risks created by the procedure exception and how they will be managed.

## **10.0 Related Documentation**

### **Related Policies:**

RI 5.0 Intellectual Property in Research  
OA 2.0 Conflict of Interest Policy  
AR 3.0 Scholarly Activity Policy  
ER 3.0 Corporate Image Policy

**Document History**

<i>Date</i>	<i>Action/ Change</i>
Feb 18, 2016	Edited copyright info in definition, 5.4 and 7.6.2
December 2015	Procedure Update – Replaces RI 5.1, 5.2, 5.3.
Apr/05/2007	Original Procedure Approval