ARTICLE TWENTY-SEVEN
INTELLECTUAL PROPERTY

27.1 The University encourages the creative efforts of the Faculty in the development and protection of intellectual property. This Article governs the respective rights of the University and Faculty relating to the ownership and revenues derived from such rights. Nothing herein shall be construed to change or alter the normal curriculum development and instruction responsibilities of the Faculty.

27.2 Exempted Scholarly Works. The University specifically waives ownership rights to scholarly works to which academic institutions have traditionally waived such rights, except as restricted elsewhere in the article. Such works include, but are not limited to: (a) Textbooks, (b) Class notes, (c) Research proposals, (d) Course outlines, (e) classroom presentations, and (f) instructional materials.

27.2.1 "Course outline" is the version of the official syllabus developed for use by the Faculty member in the classroom.

27.2.2 "Instructional materials" may include innovative products or procedures (which may appear in a variety of forms, such as printed matter, slides, web-based productions or multimedia presentations) resulting from or enhancing the teaching/learning process.

27.3 As an incentive to encourage scholarly growth, the University shall not claim any ownership or share of the proceeds in Intellectual Property created without Substantial Use of the University’s resources/support/facilities.

27.3.1 In keeping with academic tradition, the University will not claim any ownership, interest, or share of the proceeds in the following types of Intellectual Property, which are used or created for instructional purposes or as a result of scholarly activities: (a) publications, (b) textbooks, (c) educational courseware, (d) lectures, (e) recordings [video or audio], (f) original works of art, (g) fiction, including popular fiction, novels, poems, dramatic works, (h) motion pictures and other similar audio-visual works, (i) musical compositions, or (j) computer software.

27.3.2 The University will not claim ownership, interest, or share of the proceeds in Intellectual Property created while on sabbatical leave unless there was Substantial Use of University resources/support/facilities as defined herein.

27.3.3 This Article also applies to any Intellectual Property in which the University has an interest under the terms of grants or other agreements.

27.3.4 The provisions of this Article are subject to any applicable laws, regulations or provisions of grants or contracts, which affect the rights of Intellectual Property, made in connection with the activity.
27.3.5 All Intellectual Property developed by Faculty Members with support from a sponsor outside the University shall be governed by the provisions regarding ownership in the sponsorship agreement, grant or contract, unless the University has provided Substantial Use, including compensation, in which case the shared ownership provisions of this Article shall prevail. In the absence of such terms, the ownership of such Intellectual Property shall be determined by this Article.

27.3.6 Intellectual Property that is the subject of a specific agreement between the University and the Creator(s) thereof shall be owned as provided in such agreement.

27.3.6.1 Ownership and creative control of works made for hire will be governed by an agreement to be made prior to commencement of work between the University and the Creator. The Creator is one who receives payment from the University for the particular work.

27.4 For the purposes of this Agreement, the following definitions shall apply:

27.4.1 Intellectual Property: includes any invention, whether patentable or not, materials, data, software, information, works, whether copyrightable or not, subject matter, any trademarks, trade secrets, creations, publications, compositions, discoveries, inventions, improvements, developments and all other results of work performed by Faculty Member(s)/Creator(s) during the course of his/her employment with the University, as well as all intellectual property therein, including patents, trademarks and copyright registrations and trade protections. These include, but are not limited to: inventions (including new and useful processes, or any new and useful improvements) works of authorship, dramatic works, pictorial, graphic and sculptural works, musical works, choreographed works, multimedia works, film, sound recording, architectural works, industrial designs, domain names, trademarks, service marks, and trade names.

27.4.2 Materials: Any tangible or electronic item (whether written or recorded) which contains or embodies material which is the subject of Intellectual Property Rights. These may include, but not by way of limitation, printed works, choreographed works, musical works, computer programs and multimedia products.

27.4.3 Creator: Any Faculty Member creating an item of Intellectual Property.

27.4.4 Substantial Use: Use of the University’s resources/support/facilities will be considered substantial if the use of such resources/support/facilities is important to the creation of Intellectual Property and University aid exceeds a cumulative total of $30,000 per project, for any combination of
the items listed below over a three-year period. Examples of such support items include but are not limited to the following:

27.4.4.1 Alternate assignment, and/or special assignment for a specific project or task, including the value of course releases.

27.4.4.2 Use of University funds designated for a specific project or task.

27.4.4.3 Use of University-owned, administered, leased equipment, facilities, materials or technological information.

27.4.4.4 Support provided by other public, governmental or private organizations, when it is arranged, administered, or controlled by the University.

27.4.4.5 Assistance of one or more University employees or students, or others who are assigned to a project or task.

27.4.4.6 Cash investments or cash purchases.

27.4.5 The following types of institutional support are not considered Substantial Use:

27.4.5.1 Mere incidental use of University resources/support/facilities.

27.4.5.2 Normal academic use of facilities commonly available to Faculty Members, staff, or the public, such as libraries, offices, office equipment, or Internet services.

27.4.5.3 Use of sabbatical leave, unless Article 27.3.2 is applicable.

27.4.6 University Directed or Commissioned: Separate agreement between the University and Faculty member that falls outside of issues covered by this Agreement.

27.4.7 Independent Works: Intellectual property created or developed by a Faculty member without the use or support of any of the University’s resources.

27.5 Ownership of Intellectual Property shall be determined by the following sections of 27.5 unless a specific agreement between the Faculty member and the University President or Designee is signed before development begins, in which case the provisions of the agreement would prevail:

27.5.1 University Directed or Commissioned Works. When the University directs or commissions projects under a works-made-for-hire agreement, the allocation of property rights shall be: University 100%, Faculty 0%.
27.5.1.1 Works-made-for-hire are works specifically contracted for by the University. When work qualifies as a works-made-for-hire, the University is the sole owner of the property.

27.5.2 Works Supported with Substantial Use and Faculty Compensation. University provides significant resources, that meet the threshold of substantial use, and compensation to the Faculty member for development. No royalties paid to the Faculty member for internal use. Allocation of property rights shall be: University 50%, Faculty 50%.

27.5.2.1 Compensation may be release time, overload pay, stipend or honorarium.

27.5.3 Works Supported with Substantial Use. University provides significant resources, that meet the threshold of substantial use, but no Faculty compensation, for development. No royalties paid to the Faculty member for internal use. Allocation of property rights shall be: University 50%, Faculty 50%.

27.5.4 Works Supported with Faculty Compensation. University provides Faculty compensation, but no significant resources, that meet the threshold of substantial use, for development. No royalties paid to the Faculty member for internal use. Allocation of property rights shall be: University 50%, Faculty 50%.

27.5.5 University-assisted Works. University provides neither significant resources, that meet the threshold of substantial use, or Faculty compensation for development. University assistance will be limited to resources routinely made available to other Faculty for creation or development of intellectual property or for the performance of routine responsibilities of employment. No royalties paid to Faculty member for internal use. Allocation of property rights shall be: University 0%, Faculty 100%.

27.5.6 Independent Works. University provides no resources or Faculty compensation for development. Allocation of property rights and internal royalties shall be: University 0%, Faculty 100%.

27.6 Considering modification of Intellectual Property materials, the following policies are in effect:

27.6.1 Only the Faculty developer shall modify Intellectual Property Materials prepared as "Independent Works" and “University-assisted Works.”

27.6.2 The University shall have the unlimited right to use and to modify Intellectual Property Materials that are “University directed or
commissioned works” unless otherwise agreed to between the University and the developer.

27.6.3 In the case of Works Supported with Substantial Use and Faculty Compensation, both parties shall have the right to use and to independently modify the Intellectual Property Materials, provided they inform one another.

27.6.4 In the case of Works Supported with Substantial Use, and Works Supported with Faculty Compensation that are not otherwise covered by 27.6.3, the modification of such works may be made by the Faculty member without prior approval of the University and may be modified by the University only with the Faculty member’s consent.

27.7 Considering use of Intellectual Property materials, the following policies are in effect:

27.7.1 Internal Use. The University shall expect a Faculty member to create materials for the record-keeping, evaluation of, and/or presentation to students in the Faculty member's classes (i.e., syllabi, assignments, exams, audiovisual aids, exercises, instructional materials). In such cases the University shall have the right to expect the Faculty member to use such materials in his or her classrooms without the University paying royalties. Except as otherwise provided in this Article, intellectual Property created for the fulfillment of the Faculty member's normal duties and responsibilities are presumed to belong to the Faculty member. Notwithstanding anything to the contrary in this Article, the University has a perpetual, nonexclusive right to use and modify for noncommercial educational uses materials that are owned solely or jointly by the University. The University shall have access to such properties for internal or external review, including regulating and accrediting agencies, governmental authorities, or administrative or judicial proceedings.

27.7.2 External Use. The University has the right to enter into agreements with third parties for the sale, licensing or other use of Intellectual Property only for those materials defined in this Article as solely owned by the University. The Faculty Member has the exclusive right to enter into agreements with third parties for the sale, licensing or other use of Independent Works and University-assisted Works. All other intellectual property owned may be sold, licensed or used upon written agreement between the University and the Faculty member.

27.7.3 Separation Use. The terms of this Article 27 shall survive the separation of each Faculty member from the University.

27.7.3.1 Except as otherwise agreed by the Faculty member and the University, should a Faculty member leave the employment of the
University, such member shall have the right to use property
developed, except University Directed or Commissioned Works
without paying royalties to the University at subsequent places of
employment.

27.7.3.2 Except as otherwise agreed by the Faculty member and the
University, Should a Faculty member leave the employment of the
University, the University shall continue to retain all rights granted
to it to own, use, modify, and receive revenue as provided
elsewhere under this Article for intellectual property created at the
University.

27.8 Except where limited by other sections of this Article, the Creator of any Intellectual
Property may, with the written permission of the University, choose to place
Intellectual Property in the public domain. In such cases, both the Creator and the
University waive all ownership rights to said Intellectual Property. Creators wishing to
place Intellectual Property in the public domain are responsible for ascertaining that
the right to public dedication of that Intellectual Property is not limited by any
sponsorship agreement, grant, contract, term of employment, or specific agreement
between the Creator and the University as described herein.

27.9 Any dispute regarding the interpretation and application of the provisions of this
Article shall be subject to the grievance and arbitration provisions of Article 17 of this
Agreement.

27.9.1 Upon submission of a timely request for arbitration by either party, the
University or the RFF shall submit the dispute to the American Arbitration
Association for the appointment of an arbitrator pursuant to the provisions
of Article 17 of this Agreement, with the exception that the arbitrators
suggested by the American Arbitration Association shall be required to
have had experience with and be knowledgeable about issues involving
the resolution of Intellectual Property disputes.