

Memorandum of Agreement #145
Between
The College of New Jersey
And
The College of New Jersey Federation of Teachers, Local 2364, AFT
Regarding
Intellectual Property and Scholarly Works

In order to promote amicable employer-employee relations, The College of New Jersey (the "College") and The College of New Jersey Federation of Teachers, Local 2364, AFT (the "Union"), on behalf of all bargaining unit members subject to the State Colleges/Universities Unit and the State Colleges/Universities Adjunct Unit collective negotiation agreements ("Bargaining Unit Members"), intending to be legally bound hereby, do hereby agree to the following:

WHEREAS, the creation of Intellectual Property and Scholarly Works is one of the primary ways the College fulfills its mission of contributing to the body of knowledge for the public good; and

WHEREAS, the College encourages the creation of original works of authorship and the free expression and exchange of ideas; and

WHEREAS, this Memorandum of Agreement is intended to embody the spirit of academic tradition, which provides for ownership by employees for intellectual property and scholarly works and is otherwise consistent with applicable law, which provides for ownership by the College for employment related works;

The College and the Union hereby agree as follows:

I. Definitions

- A. "Incidental Use" means normal academic use of College resources commonly available to similarly situated unit members, such as the use of an employee's office computer, Internet services, library facilities, and/or office and laboratory equipment.
- B. "Intellectual Property" is defined as all forms of technology and expression (not including Scholarly Works) whose ownership is subject to legal protection in the United States and/or internationally, including but not limited to patents, copyrights, mask works, trademarks, tangible research property, and rights in data and other proprietary information.
 - Patentable discoveries and inventions may include any new and useful process, machine, article of manufacture, or composition of matter.
 - Copyrightable works may include written and graphic works, computer software, and photographic, video, and audio works.
 - A mask work is a visual representation of a semiconductor chip.

- A trade or service mark is a word, name, symbol, or device used by an organization to identify its goods or services.
- Tangible research property includes matter such as biological materials, prototype devices, and engineering designs.
- Protectable data includes the recorded factual material as well as supporting materials such as experimental protocols and code written for statistical analyses commonly accepted in the scientific community as necessary to validate research findings.

Some types of Intellectual Property, such as computer software, may be subject to protection under both patent and copyright laws. There may be additional types of work that fall under these categories of intellectual property.

C. “Scholarly Work” is defined as any copyrightable property not otherwise expressly excluded by this Agreement, including, but not limited to, copyrightable property that:

- (a) is embodied in books, textbooks, manuscripts, works of art or design, musical scores and performances, dramatic works and performances, choreographic works, popular fiction and non-fiction, poems, training materials, or other works of the kinds that have historically been deemed in academic communities to be the property of their author, including lectures notes, course outlines, handouts, lab manuals, assignments, exercises, tests, and rubrics developed to support teaching activities, in whatever form, that are created or developed in the regular course of teaching duties or student activity;
- (b) is developed for online and hybrid courses to include produced videos, animations, games, simulations, digital lessons or modules, courseware, and other similar works;
- (c) is embodied in a storage medium such as film, videos, audio recordings, multimedia materials, distance learning materials, courseware;
- (d) has been released by the College to the author or inventor; or
- (e) is created during an alternative assignment or on sabbatical leave with no more than Incidental Use of College resources.

D. “Net Revenue” is defined as that portion of the gross revenue that TCNJ receives, less all costs and out of pocket expenses (including but not limited to attorneys’ fees, accountants’ fees, and/or other consultants’ fees and internal administrative and overhead expenses such as an allocation by the College of the cost of personnel time of the Office of General Counsel and Office of Academic Affairs) TCNJ incurs in connection with administering any contractual obligation of TCNJ or inventor relating to the Work and/or the Application, including but not limited to any applicable grant or contract, and/or any cost sharing or other agreement relating to the Intellectual Property or Scholarly Work to which TCNJ is a party and/or any pre-patent expenses. For purposes of this Agreement, the minimum amount of costs to be applied to Net Revenue (“Minimum Costs”) shall be Five Thousand Dollars (\$5,000) or Twenty Percent (20%) of that portion of the gross revenue that TCNJ receives, whichever amount is greater. In the event that the

actual costs that TCNJ incurs are greater than the Minimum Costs, TCNJ shall be entitled to subtract the amount of the actual costs from gross revenue to calculate the Net Revenue.

II. Ownership of Intellectual Property and Scholarly Works

- A.** Intellectual Property created by a Bargaining Unit Member is presumed to be owned by the Bargaining Unit Member. Intellectual Property created by a Bargaining Unit Member is owned by the College only if it is created:
 - 1.** when the property is embodied in a work that the Bargaining Unit Member is specifically assigned to create or which is the product of a commission by the College pursuant to a signed agreement which expressly stipulates that the property is a “work made for hire” or otherwise provides that intellectual property in the property shall be owned by the College; or
 - 2.** with more than Incidental Use of College resources.

- B.** The allocation of rights in Intellectual Property arising from research or creative work sponsored by government, industry, or other external organizations (collectively, the “sponsor”) will typically be governed by the terms of a written agreement between the College and the sponsor. The College ordinarily will be required by the agreement or by law to grant the sponsor a license, maintain or disseminate data, or grant other rights relating to Intellectual Property arising from the research or work and accordingly will take ownership of such Intellectual Property in order to meet its contractual obligations. Ownership and other provisions of this Memorandum of Agreement are subject to such agreements.

- C.** Intellectual Property created within the scope of employment which does not qualify for ownership by the College pursuant to II.A or II.B above shall be the sole and exclusive property of and wholly owned by the Bargaining Unit Member creating such Intellectual Property. Where Intellectual Property is owned by the Bargaining Unit Member, the Bargaining Unit Member may, at his/her option, offer to assign the rights of ownership in whole or in part to the College, subject to the limitations of section III below.

- D.** The College recognizes and affirms the tradition in higher education that copyrights to Scholarly Works are owned by the employee authoring them rather than the employing educational institution. The College owns the copyright to Scholarly Works only if: (1) there is a signed agreement documenting ownership by the College; (2) the employee was specifically assigned in writing to create the copyrightable work; (3) the copyrightable property is the result of an alternate assignment and the College indicates at time of development in writing that ownership will be claimed; or (4) more than incidental use of College facilities or financial support was used in the creation of the copyrightable work, and the College, with knowledge of such support, indicates in writing at the time of development that ownership will be claimed. The College also reserves the right to use and supplement, but not modify, the copyrightable property without

royalties for educational purposes unless, and only to the extent that, the creator can convincingly demonstrate that the creator's ability to commercialize it is significantly impaired by such use. Employee ownership of such Scholarly Works may be affected by the terms of agreements with third party sponsors, as set forth in section II.B. All Scholarly Works created by a Bargaining Unit Member within the scope of employment shall be owned by the Bargaining Unit Member who created the work ("Originating Unit Member").

- E. Originating Unit Members retain the rights to materials developed for in-person courses, blended courses, and online courses. This includes materials disseminated to students via any learning management system used by the College. The College shall retain a non-exclusive, perpetual, and royalty-free right to use entire frameworks for courses developed by an Originating Unit Member. A course framework contains the basic organizational structure, class sequence and activities of the course. The associated materials, including assessments, handouts, lecture materials, and classroom/lab/studio activities ("Course Content"), remain the Intellectual Property of the Originating Unit Member. The Course Content may be used by the College in perpetuity, provided the Originating Unit member has provided express, written permission for the College to do so, and that proper attribution is given to the original author of the material. If a department or other College organizational unit creates Course Content with contributions from multiple Originating Unit Members, all contributing Members must agree in writing that this material may be used by the College in perpetuity pursuant to this paragraph.
- F. The College reserves the right to pursue a patent on a patentable Intellectual Property pursuant to paragraph II.A.1 or II.A.2 above. All costs related to such efforts to obtain a patent, including but not limited to pre-patent expenses, patent prosecution, licensing, license maintenance, and patent infringement, shall be borne by the College. Such costs shall be reimbursed to the College before any Net Revenue is disbursed to the inventor pursuant to section III below. The inventor of the Intellectual Property shall cooperate with the College in the patent application process. The College reserves the right to assign any right to pursue a patent under this paragraph to the inventor, at which time all costs related to obtaining a patent shall be borne by the inventor.

III. Revenue from Intellectual Property

- A. Where the Bargaining Unit Member owns the Intellectual Property or Scholarly Work, unless the Bargaining Unit Member agrees to the contrary in writing, the College shall not assert rights to any royalties or other benefits from any commercialization of said Intellectual Property or Scholarly Work. However, the College shall have a right to use said Intellectual Property or Scholarly Work pursuant to II.E., above, and free of royalties, unless, and only to the extent that, the Bargaining Unit Member can convincingly demonstrate that such royalty-free

use significantly impairs the creator's ability to commercialize the Intellectual Property or Scholarly Work.

- B.** Where the College owns the Intellectual Property or Scholarly Work, revenue from the Intellectual Property or Scholarly Works shall be distributed in accordance with this section and negotiated by the College with third parties in a manner to encourage the development of inventions within the College. Net Revenues may not include funds received from third parties for research.
1. Net Revenue shall be distributed among the inventor, the inventor's Department and School, the Office of Academic Affairs, and the College in accordance with the schedule shown in Table 1 below.
 2. Net Revenue shall be disbursed in accordance with any applicable license agreement. Inventors shall be permitted to review the College's books and records regarding the calculation and distribution of Net Revenue no more than one time per year, upon reasonable notice to the Provost, and at the conclusion of the College's fiscal year. In the event there is a dispute regarding the calculation of Net Revenue, the dispute shall be resolved between the parties with the assistance of the College's Internal Auditor.
- C.** If there is more than one inventor, the inventors' share shall be divided equally among all inventors, unless the inventors agree in writing to a different distribution in a form acceptable to the College. Distributions are made as described in Table 1 for inventions or patents, unless an alternative distribution plan has already been established for an existing invention or patent.

Table 1:

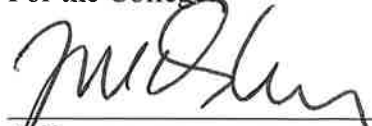
Annual Net Revenue	Inventor's Share	Inventor's Department Share	Inventor's School Share	Academic Affairs Share	College General Fund Share
First \$20,000	100%	0%	0%	0%	0%
\$20,001-\$500,000	50%	10%	15%	12%	13%
\$500,001 + Above	30%	15%	20%	17%	18%

IV. Disputes

The College agrees to work in good faith in the event of any disagreements or disputes on the matter of any terms covered in this Memorandum of Agreement and of the right of any person to their Union representation in the matter.

In witness hereof, the Union and the College have acknowledged their understanding of this Memorandum of Agreement and affix their signatures below.

For the College:




Jeffrey M. Osborn, Provost and
Vice President for Academic Affairs
The College of New Jersey

January 4, 2024

Date

For the Union:



Matthew A. Wund
President
TCNJFT, Local 2364, AFT

January 4, 2024

Date