

# Nazareth College

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## Policy on Intellectual Property

Approved by Faculty Senate 9/23/16

Effective Date: \_\_\_\_\_, 2016

NAZARETH COLLEGE  
POLICY ON INTELLECTUAL PROPERTY

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## **I. INTRODUCTION AND GENERAL PROVISIONS**

The purpose of the Nazareth College Policy on Intellectual Property (the “Policy”) is to set forth the terms and conditions for rights in Intellectual Property created by the College, Faculty, Non-Faculty Employees, and Students.

Nothing in this Policy prevents Faculty, Non-Faculty Employees, Students, and/or the College from negotiating and entering into a separate agreement regarding the terms governing or ownership of Intellectual Property. All Intellectual Property rights created by or with independent contractors in connection with work for or with the College shall be determined by the written contract between the College and the independent contractor.

In the event that a person acts in different capacities in relation to the College (Faculty, Non-Faculty Employee, and/or Student), the Policy terms governing Intellectual Property created by such person shall be the terms that apply to the specific capacity in which the person was acting when the Intellectual Property was created.

In addition, the College and its Faculty, Non-Faculty Employees, and Students respect the Intellectual Property rights of others. Therefore, all persons reproducing, distributing, performing, displaying, creating, preparing, inventing, developing, preparing derivative works, and/or using Intellectual Property at, for, or with the College shall obtain all necessary and appropriate rights by permission, consent, assignment, or license before making any use of existing Intellectual Property. If you have questions regarding whether you can use certain Intellectual Property, please consult with the Vice President for Academic Affairs, who will work with the Vice President for Finance and Administration and the Director of Library, as needed.

## **II. EFFECTIVE DATE**

This Policy becomes effective on \_\_\_\_\_, 2016 (the “Effective Date”). The Policy applies to all Intellectual Property created, developed, and/or disclosed on or after the Effective Date. This Policy applies to all persons employed by and Students of the College. All persons subject to this Policy shall execute appropriate documentation, including written assignment and license agreements, as necessary and advisable to fulfill the terms of this Policy.

## **III. DEFINED TERMS**

“Administrative Materials” means Works created by Faculty members in connection with their obligations relating to the daily and long-term operation, administration, and management of the College. Administrative Materials may include, but are not limited to, internet and intranet websites, department and committee reports, evaluation and assessment materials, survey responses, standards and criteria documents, faculty handbook and bylaws materials, institutional policies, institutional grant proposals, promotional, marketing, and recruiting materials, computer code written to serve institutional needs, and other materials created for the operations of the College other than teaching.

“College” means Nazareth College.

“Course Materials” means Works created by a Faculty person in connection with a course taught at the College and shall include, but is not limited to, tests, quizzes, exams, answer keys, lecture notes, lecture materials, syllabi, course outlines, lesson plans, recorded lectures, and records of grades. It is understood that Faculty are required to provide syllabi for individual courses to their departments. This policy does not require Faculty to create any of the other enumerated items for a course, but to the extent that such items are created in connection with a course, such items are considered Course Materials.

“Copyright” means the protection provided by the laws of the United States for original works of authorship, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations fixed in a tangible medium of expression.

“Distance Learning” includes any course where instruction takes place via the Internet, teleconference, videotape, or other technologic means and the physical contact hours account for no more than 20% of the course (*e.g.*, only reviews and testing occur in a face-to-face environment between Faculty and Students). This excludes the time devoted to orientations and/or labs for those courses that have a lab requirement. When the online portion of the course amounts to 80% or more of the instructional interface, with virtually no face-to-face, on-campus time required of the Student, that course’s instructional method for delivery will be considered Distance Learning.

“Faculty” has the meaning ascribed to it in the College’s Faculty Manual.

“Non-Faculty Employee” means any individual employed by the College who is not Faculty.

“Intellectual Property” means a collective term identifying work that may be protected by United States copyright, trademark and/or patent laws.

“Patent” means the exclusive rights granted by the United States government to an inventor to manufacture, use, or sell an invention for a certain number of years.

“Patentable Invention” means a new, non-obvious, and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof, ornamental designs, and new varieties of asexually produced plants.

“Resources” means any support administered by or through the College, including funds, facilities, personnel, equipment, or other resources.

“Significant Support” means Resources that are not nominal or incidental and are material to the development of the applicable Intellectual Property. Examples of Significant Support include, but are not limited to, extraordinary release time to conduct research, additional or expanded access to College Resources and/or facilities, and/or financial investment or support.

“Scholarship Materials” means Works created by Faculty that are the result of scholarship or research created in connection with their employment by the College. Scholarship

Materials typically includes, but is not limited to, research articles, scholarly publications, journal articles, creative books, textbooks, theses, dissertations, blog posts, plays, stories, poems, musical works, choreography works, films, paintings, sculptures, and other works of art. Scholarship Materials expressly excludes Course Materials and Administrative Materials.

“Student” means any individual enrolled in a class or classes at the College.

“Trademark” means a word, phrase, symbol, or design or a combination thereof that identifies and distinguishes the source of goods or services of one party from those of others, whether or not registered with the United States Patent & Trademark Office.

“Works” means original works of authorship, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations fixed in a tangible medium of expression, subject to copyright laws. Typical Works include, but are not limited to, tests, lecture notes and materials, lecture recordings, syllabi, course outlines, lesson plans, and scholarly articles and publications.

#### **IV. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY**

##### **(A) COPYRIGHT**

##### **(1) FACULTY WORKS**

The Faculty person who created Course Materials and Scholarship Materials owns the Copyright in such Works. Notwithstanding the foregoing, the College owns the Copyright in Administrative Materials created by the Faculty.

Each Faculty person hereby grants the College a non-exclusive, royalty-free license to use, copy, distribute, display, and create derivatives of Course Materials in the limited circumstance where the Faculty person becomes unable or unwilling for any reason (*e.g.*, death, illness, incapacity, termination/separation, etc.) to complete an in-process or unfinished course. The duration of this license is the contract year or the summer contract, whichever is shorter, in which said Faculty person is assigned to teach the particular course(s) that the person is no longer willing or able to teach.

Each Faculty person hereby grants to the College and Faculty a non-exclusive, perpetual, irrevocable, royalty-free license to use, copy, distribute, display, and create derivatives of Course Materials and Scholarship Materials for the limited purposes of assessment of teaching and learning and assessment of Faculty at the time of review.

Each Faculty person hereby grants to the College a non-exclusive, perpetual, irrevocable, royalty-free license to use, copy, distribute, display, and create derivatives of Scholarship Materials for the limited purpose of advertising, promotion, and/or marketing of the College.

From time to time, the College may enter into written agreements with Faculty members, Non-Faculty Employees, and/or Students regarding the creation and ownership of specific Works, and such agreements may or may not involve third parties. The ownership of Works

created pursuant to a specific written agreement shall be determined in accordance with such agreement. No third-party agreement regarding the creation and/or ownership of specific Works shall be effective without written approval by the College's Vice President for Finance and Administration or Vice President for Academic Affairs.

## (2) DISTANCE LEARNING WORKS

The College owns the Copyright in Works created by the Faculty with Significant Support from the College for use in connection with Distance Learning. The College hereby grants to the Faculty person who created the Work a non-exclusive, perpetual, irrevocable, royalty-free license to use the specific Work that the Faculty person created to teach future classes. This license does not include the right for the Faculty person to sell or license the Work to other institutions for use in Distance Learning courses.

## (3) NON-FACULTY EMPLOYEE & STUDENT WORKS

The ownership of the Copyright in Works created by Non-Faculty Employees and Students shall be determined under the United States federal copyright law. As a general example, the College owns all Works created by Non-Faculty Employees in connection with their employment and does not own Works created by Students, unless created by the Student in connection with the Student's employment by the College.

To the extent that a Non-Faculty Employee and/or Student acquires a Copyright in Works created while assisting a Faculty person with the Faculty person's project or research, the Non-Faculty Employee or Student hereby assigns the Copyright in such Works to the Faculty person leading the project.

Each Student hereby grants to the College and Faculty a non-exclusive, perpetual, irrevocable, royalty-free license to use, copy, distribute, display, and create derivatives of Works created in connection with the Student's enrollment or education for the limited purposes of advertising, promotion, and/or marketing of the College, the assessment of teaching and learning, and the assessment of Faculty. In order for a Student to receive attribution credit for Works used by the College for the above purposes, the Student creator must sign the FERPA Release attached as **Appendix A**.

In certain classes, Students utilize, build on, and create derivatives of Works created by Students in prior classes. As a requirement of a Student's participation in such classes, each Student will be required to assign all rights, including Copyrights, in Works created in such classes to the College, which will enable the Works to be used freely by Students in future classes. Attached as **Appendix B** is a sample Copyright Assignment. In addition, the Student creator will need to sign a FERPA Release to receive attribution credit for such Work. See Section VIII of this Policy for more information about the FERPA Release.

If any Faculty member requires the use of plagiarism software in connection with any course or assignment, each Student shall comply with such requirement. The Student understands that use of plagiarism software may require that the Student agree that his/her Work

will become part of the software's library and used to compare against Work submitted in the future. Accordingly, each Student shall grant any licenses necessary to use plagiarism software required for any course or assignment.

**(4) OPEN SOURCE**

Should a Faculty person, Non-Faculty Employee, or Student wish to use, display, copy, distribute, and/or create derivatives of Works obtained under an open source or creative commons program in the creation of Works, Course Materials, Scholarship Materials, or Administrative Materials, the person engaging in such activity is responsible for determining whether his/her activity complies with the license and/or terms governing those Works and ensuring compliance with future obligations required by the use of such open source or creative commons programs. The rights created by such activity shall be governed initially by the license and terms regarding use of the Works and secondarily by terms of this Policy.

**(B) PATENTABLE INVENTIONS**

Patentable Inventions shall be the property of the Faculty, Non-Faculty Employee, or Student who created the Patentable Invention.

The College shall own the rights to Patentable Inventions conceived, developed, created, or reduced to practice ("Invented") by a Faculty person, Non-Faculty Employee, or Student if such Patentable Inventions were Invented while performing employment or educational activities at the College and resulted from Significant Support from the College.

Ownership of a Patentable Invention developed in part or entirely through research supported by a third party shall be determined in accordance with the terms of the contract governing the research.

All Patentable Inventions shall be disclosed in accordance with the disclosure obligations (See Section VI, below).

The College, at its sole discretion and at its cost, may apply to patent Patentable Inventions that it owns. If the College monetizes a Patentable Invention, distribution of funds collected through such monetization will occur in the following order: (1) to the College as reimbursement for administrative and legal expenses incurred in connection with the Patentable Invention; and (2) of the remaining funds, 50% will be distributed to the inventor or inventors and 50% will be distributed to the College.

**(C) TRADEMARKS**

**(1) TRADEMARKS OWNED BY THE COLLEGE**

Faculty, Non-Faculty Employees, and Students may use the College's name and Trademarks to refer to the College when identifying their employer or school during the term of their employment or enrollment and all rights derived from such use shall inure to the College.

Notwithstanding the foregoing, the College retains all ownership rights in and to its name and Trademarks. The College's name, logos, and Trademarks shall not be used by individuals, groups, or entities in a manner that falsely implies the College's endorsement or responsibility for particular activities, products, or publications that are not associated with the College without the express written permission of the College's Director of Marketing and Communications.

**(2) TRADEMARKS OWNED BY FACULTY, NON-FACULTY EMPLOYEES, OR STUDENTS OF THE COLLEGE**

Any Trademark rights obtained by a Faculty person, Non-Faculty Employee, or Student by the sale of goods or services under a mark in connection with an activity not associated with the College, shall be owned by the Faculty person, Non-Faculty Employee, or Student responsible for the creation of such Trademark rights.

Any Faculty person, Non-Faculty Employee, or Student who obtains trademark rights through an activity associated with the person's work for or enrollment in the College grants to the College a non-exclusive, royalty-free, perpetual license to use such trademarks for the limited purpose of promoting, advertising, and publicizing achievement in College promotional and marketing materials, including but not limited to brochures, pamphlets, and online materials.

**V. REGISTRATION AND MANAGEMENT OF INTELLECTUAL PROPERTY**

Registration, maintenance, and enforcement obligations for Intellectual Property shall be the responsibility of the owner of the Intellectual Property; the owner will determine, solely, whether to register the Intellectual Property or to enforce the Intellectual Property rights against others, and, solely, will bear the cost of such actions. For example, the Faculty person, Non-Faculty Employee, or Student who owns Copyrights in Works shall determine, solely, whether to register such Works with the United States Copyright Office and shall, solely, bear the cost of such actions.

**VI. DISCLOSURE OF INTELLECTUAL PROPERTY TO THE COLLEGE**

Each Faculty person is expected to make Course Materials available on the College's course management system or in an accessible location in the department, which will allow the College or its designee to complete a course in the event that the Faculty person is unable or willing to complete an in-process or unfinished course.

The College expects that it will enter into a separate agreement with the Faculty person, Non-Faculty Employee, or Student who is receiving Significant Support from the College in connection with the creation or development of a potentially Patentable Invention. However, in the event that the parties have not entered into a separate agreement, the following terms shall apply:

- Disclosure of potentially Patentable Inventions shall be accomplished by completing the Invention Disclosure Notice (the "ID Notice") (**Appendix C**) and sending it via email and separate paper copy to the Vice President for Academic Affairs, or his/her designee (the "College's Designee").



- Each Faculty person, Non-Faculty Employee, or Student who Invented or is working on a potentially Patentable Invention with Significant Support from the College must disclose the Patentable Invention as soon as possible, but not later than thirty (30) days after the idea was conceived or some action was taken to develop, create, reduce to practice, document, or create a prototype of the invention. Premature or inappropriate public disclosure of Patentable Inventions can have serious consequences and may undermine the rights in the Patentable Inventions, therefore, Faculty members, Non-Faculty Employees, or Students creating potentially Patentable Inventions shall submit the ID Notice at least thirty (30) days prior to any public disclosure of the invention and not publicly disclose the invention without the prior written consent of the College.
- The College will respond to the ID Notice within sixty (60) days of receipt regarding whether it will exercise its ownership rights to the invention. If the College does not respond within sixty (60) days, the inventor shall send a notice (“Two-Week Notice”) to the College’s Designee stating that the inventor has not yet received a response to the ID Notice, more than sixty (60) days have passed since the ID Notice was sent, and that the College has fourteen (14) days from receipt of the Two-Week Notice to respond to the ID Notice. If the College does not respond to the ID Notice within fourteen (14) days of receipt of the Two-Week Notice, the College will have waived its ownership rights to the Patentable Invention, the inventor is free to seek Patent protection, and the inventor will grant the College a non-exclusive, perpetual, irrevocable, royalty-free license to use the Patentable Invention.

## **VII. ADMINISTRATION, PROCEDURE & DISPUTE RESOLUTION**

The Vice President for Academic Affairs (or his/her designee) will administer, implement, and make initial interpretations of this Policy. These duties include, but are not limited to: developing processes and guidelines necessary to implement the Policy; receiving and distributing notices under the Policy; and assisting Faculty, Non-Faculty Employees, and Students in understanding and complying with the Policy.

The Vice President for Finance and Administration will account for and distribute revenue under the Patent rules.

The Vice President for Academic Affairs (or his/her designee) will maintain records regarding Intellectual Property rights.

The Intellectual Property Committee (“IPC”) shall be ad hoc, not a standing committee, convened by the Vice President for Finance and Administration, and composed of the following members: the Vice President for Finance and Administration; the Chair of the Faculty Senate; the Director of Library; the Director of Sponsored Programs and Faculty Research; and the Chair of the Faculty Welfare Committee. In the event that any IPC member is involved in the matter pending before the IPC, such member shall select a designee to serve in his or her place on the IPC for that specific matter.

The IPC shall hear and advise as to questions, concerns, and issues regarding the Policy, application of the Policy, ownership of Intellectual Property rights under the Policy (including whether the College will exercise ownership of a Patent), and Intellectual Property ownership not specifically addressed in the Policy. The IPC will also recommend Policy amendments.

In the event of a question, concern, or issue regarding the Policy or application of any Policy provision, the Faculty person, Non-Faculty Employee, or Student will first request interpretation and guidance from the College's Designee. If the Faculty person, Non-Faculty Employee, or Student is not satisfied with the interpretation or guidance provided, the Faculty person, Non-Faculty Employee, or Student will submit to the College's Designee a written statement of that person's position on the issue (the "Position Statement"). Within ten (10) days of receipt of the Position Statement, the College's Designee will submit to the Faculty person, Non-Faculty Employee, or Student and a written response to the Position Statement (the "Response Statement"). The Faculty person, Non-Faculty Employee, or Student and College's Designee will then engage in good faith negotiation to resolve the issue.

If after the exchange of the Position and Response Statements and good faith negotiation to resolve the issue, the Faculty person, Non-Faculty Employee, or Student believes that the position of the College's Designee demonstrates either a failure to follow the Policy or a failure to accurately determine Intellectual Property ownership under the Policy, the Faculty person, Non-Faculty Employee, or Student shall submit the Position and Response Statements to the Vice President for Finance and Administration and request that he/she convene the IPC to consider the issue. The IPC shall consider the Position and Response Statements and hold a testimonial hearing or request other documentation from the parties. The hearing shall be informal, but all parties shall have adequate notice and the opportunity to be heard. The IPC shall prepare a written recommendation with findings of fact and submit it to the President. The President shall issue a final determination of the issue, which shall be final and binding.

All Disclosures of Patentable Inventions (the ID Notice and the Two-Week Notice are collectively referred to as the "Patent Disclosure Notice(s)") shall be sent to the College's Designee. Upon receipt of a Patent Disclosure Notice, the College's Designee shall request that the Vice President for Finance and Administration convene a meeting of the IPC. The IPC will deliberate and determine whether the College will assert ownership rights in potentially Patentable Invention. The Vice President of Finance and Administration will prepare and send the IPC's findings and decision to the College's Designee and the Faculty person, Non-Faculty Employee, or Student who submitted the Patent Disclosure Notice.

### **VIII. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)**

Subject to certain exceptions, FERPA prohibits the College from disclosing personally identifiable information from a Student's education records without obtaining the Student's written consent. Under FERPA, education records are materials directly related to a Student, created as part of coursework and maintained by the College. Education records can include written papers, works of art, photographs, and similar items.

Under the Policy, the College can use certain Student-created Works for various purposes, such as marketing, advertising, and promotion of the College, as the foundation of assignments in future classes, as contributions to Faculty research and scholarship, and/or Intellectual Property subject to third-party agreements. In these situations, the Student creator or contributor must sign a FERPA release to enable the College to attribute the work to the Student. **(See Appendix A)** If, for any reason or no reason, the Student does not wish to receive attribution credit for the material, the Student can decline to sign a FERPA release and the work will be used without attribution.

**Appendix A**  
**FERPA RELEASE**

The Family Educational Rights and Privacy Act (FERPA) establishes certain privacy rights related to student education records, including a right to decline to receive attribution credit for copyrightable works that Nazareth College (the “College”) is authorized to use under the Intellectual Property Policy. Without the student’s consent, the College may not attribute the student’s works to the student. Should the student wish to have the student’s works attributed to the student, please indicate so in following FERPA Release. Alternatively, should the student want the College not to attribute the student’s works to the student, please decline attribution credit in the FERPA Release below.

**Authorization for Release of Education Records to Third Party**

- I, the undersigned student, authorize Nazareth College under FERPA to release my works for the purposes listed in the Intellectual Property Policy and I authorize Nazareth College in its use of the works to attribute such works to me as the creator of all or a portion of the works.
  
- I, the undersigned student, decline to authorize Nazareth College under FERPA to attribute the works to me as the creator of all or a portion of the works.
  
- This authorization expires on \_\_\_\_\_.
  
- This authorization does not expire.

**My signature below acknowledges my release of the above works.**

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Student ID: \_\_\_\_\_

## Appendix B

### COPYRIGHT ASSIGNMENT

In certain classes, students utilize, build on, and create derivatives of works created by students in prior classes. Under the Intellectual Property Policy of Nazareth College (the "College"), students participating in such classes are required to assign all rights, including copyrights, in works created in such classes to the College, which will enable the works to be used freely by students in future classes. In addition, the student creator will need to sign a FERPA release to receive attribution credit for such work (separate document).

I, the undersigned student, created or contributed to the following works and therefore own certain rights, title, and interest, including copyrights, in such works: \_\_\_\_\_

\_\_\_\_\_

(the "Works"). I hereby assign to the College all right, title, and interest in and to the Works, including copyrights, together with the right to recover for damages and profits and all other remedies for infringements thereof; it being my intent to transfer my entire interest in the Works and any portion of the Works to the College with no reservations whatsoever, so that College's rights in the Works and the items that comprise the Works, will be as full and complete as if the College had created such Works. I further waive any moral rights in or associated with the Works.

**My signature below acknowledges my assignment of the above Works.**

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Student ID: \_\_\_\_\_

**Appendix C**

**INVENTION DISCLOSURE NOTICE**  
**CONFIDENTIAL**

Use this form to disclose potentially Patentable Inventions pursuant to Section VI of the Intellectual Property Policy. This form should be fully completed, with attachments, and sent to:

For Faculty and Students - The Vice President for Academic Affairs:

Email: \_\_\_\_\_ (electronic copy)

Office: \_\_\_\_\_ (hard copy)

For Non-Faculty Employees - The Vice President for Finance and Administration:

Email: \_\_\_\_\_ (electronic copy)

Office: \_\_\_\_\_ (hard copy)

1. Inventors - For each Inventor<sup>1</sup>, provide the contact information and describe of each person's contribution (attach additional sheets if necessary):

Name:	
Position/Title:	
Department:	
Phone (Home):	
Phone (Work):	
Address (Home):	
Address (Work):	
Email Address:	
Contribution to the Invention:	

Name:	
Position/Title:	
Department:	
Phone (Home):	
Phone (Work):	
Address (Home):	
Address (Work):	
Email Address:	
Contribution to the Invention:	

\_\_\_\_\_

<sup>1</sup> An Inventor contributed intellectually to the conception of the Invention.

Effective Date: \_\_\_\_\_, 2016

Name:	
Position/Title:	
Department:	
Phone (Home):	
Phone (Work):	
Address (Home):	
Address (Work):	
Email Address:	
Contribution to the Invention:	

2. Title of Invention:

3. Description of Invention - Provide a technical explanation of the invention, the principles involved, and the method of operation. Attach any necessary drawings or images:

4. Explanation of the Commercial Application or Competitive Advantage of the Invention - Include potential commercial companies and industries that could benefit from the invention:

5. Novelty/Usefulness - Describe the existing and related technology, each way in which this invention is different from and an improvement to existing technology, and why this solution would not be obvious to others in the field:

6. Date of Conception, Descriptions, and Prototype/Reduced to Practice:

Date on which Invention was conceived <sup>2</sup> :	
Describe how the Invention was conceived:	
Describe and attach all written materials regarding the Invention:	
Date reduced to practice by a writing or prototype:	
Date Invention was sold:	
Describe any sale:	

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<sup>2</sup> Conception means formulation of the idea of the Invention in the Inventor's mind.

7. Disclosure - Identify and describe all disclosures of the Invention and planned future disclosures, including planned sales of the Invention. If past disclosures were in writing, attach the writings. Also attach governing Non-Disclosure Agreements.

Date of Disclosure:	Method of disclosure:	To whom disclosure made:	Non-Disclosure Agreement?

8. Further Research - Describe further planned research:

9. Third-Party Sponsorships - Identify third-party sponsors of the project and attach existing governing agreements:

Name/Entity:	Contribution:	Does an agreement exist?

10. Inventor Signatures:

Signature:		Signature:	
Name:		Name:	
Position:		Position:	
Date:		Date:	

Signature:	
Name:	
Position:	
Date:	