1. Introduction

The purpose of this Intellectual Property Policy is to encourage creativity and scholarly communication in the Averett University (Averett) community while guarding the rights of authors of intellectual property and the rights and appropriate interests of Averett in the use of its facilities and resources. Subject to the provisions of this policy, this policy applies to faculty, staff, students and visitors to the campus as appropriate.

2. Ownership of Intellectual Property

The ownership of intellectual property depends upon the facts and circumstances surrounding the creation which may be through traditional academic work, work for hire, joint works, or voluntary transfer as follows:

2.1. Traditional Academic Work – Author Owns Intellectual Property

The American Association of University Professors (AAUP) has adopted a policy Statement on Copyright (1999) that states “It has been the prevailing academic practice to treat the faculty member as the copyright owner of works that are created independently and at the faculty member’s own initiative for traditional academic purposes.” Averett agrees with this AAUP policy. Averett historically has not, and does not now, assert any claim or ownership interest in the categories of traditional work including but not limited to independent preparation of both classroom-based and online course materials and works that have been fixed in tangible media, for example, manuscripts, publications (including contributions to Averett publications, such as the
Ember, Chanticleer, and Averett Journal), art, music, film, choreography, computer disks, and technical drawings.

Intellectual property of reproduction, adaptation, publication, performance, and display, known as “copyrights,” are protected under Title 17 of the U.S. Code, the Copyright Act of 1976, as amended. Intellectual property to inventors and discoverers of new and useful processes, machines, manufactures, and composition of matter, including biological cultivars, known as “patents”, are protected under Title 35 of the U.S. Code, Patents.

The rights to intellectual property created by a faculty member on sabbatical are the same had the faculty member not been on sabbatical, that is the intellectual property belongs to the faculty member who created the work unless the intellectual property falls within sections 2.2 or 2.3 of this policy. If the work is to be jointly owned, any agreements should be in writing prior to the sabbatical period.

2.2. Work for Hire – Averett Owns Intellectual Property

Intellectual property created by an employee within the scope of their employment such as being engaged by Averett specifically to write, create, produce or otherwise generate such material or to conduct the research or other activity which produced anything included in the material; or was released from other Averett responsibilities in order to write, create, produce or otherwise generate materials at the initiative of Averett constitute works for hire and are the exclusive intellectual property of Averett.

Examples of “work for hire” include but are not limited to:
a. A course content developed under contract with the explicit understanding that it may be taught by other faculty designated by the institution (i.e., a faculty member enters into a contract with Averett to develop a course module for a nontraditional program. The course is subsequently taught in person or online by other instructors appointed by the institution).

b. A work created as a condition of employment and referenced in a position description or employment agreement (i.e., the Averett Art Director creates logos and banners for Averett’s web site and print publications); or

c. A work developed under the direction of a supervisor (i.e., the Vice President for Academic Affairs asks the Library Director to develop an education program for new students and faculty).

2.3. Joint Works – Author and Averett Co-own Intellectual Property

Intellectual property created by an employee where there is significant use of Averett resources and/or there is an outside sponsor (not under the control of Averett but under the auspices of an Averett grant) that contractually shares intellectual property constitute joint works whereby Averett may assert co-authorship and thus co-ownership of the intellectual property.

Significant use of Averett resources excludes facilities, equipment, and/or other resources routinely used in the regular performance of academic duties or specialized facilities or equipment used for brief periods of time or limited use, e.g. for exploratory tests. Significant use includes Averett specialized facilities and equipment outside of the expected use deriving from regular teaching and professional activities, dedicated assistance from Averett employees, special financing, and/or extensive use of shared facilities.
An outside sponsor providing resources under conditions of a grant, contract, or agreement shall be entitled to co-ownership of the intellectual property pursuant to said grant, contract, or agreement. In addition, Averett shall be given the right to review said grant, contract, or agreement and assess whether Averett has an interest in asserting co-ownership of the intellectual property. This is especially the case when ownership of intellectual property by an outside sponsor would remove the knowledge created from general distribution, such as in development of proprietary information. Where no obligation to convey rights to the outside sponsor exists, all rights revert to the author or creator of the work, subject to the terms of this policy.

If intellectual property is to be shared by Averett, such an arrangement must be agreed to in writing and in advance. In the case of an outside sponsor, the intellectual property is to be shared pursuant to said grant, contract, or agreement. In the case of an outside sponsor which is a government grant or contract, the government may secure the right to reproduce and use works for government purposes.

Examples of “joint works” include but are not limited to:

a. **Outside sponsor with asserted claim:** A nontraditional business student authors an integration project in partial fulfillment of the Averett bachelor degree requirements. The student’s project addresses trade secrets or “proprietary” information of potential value to his employer. The employer awards funds for travel and specialized software, which the student uses in consultation with an Averett professor. Both student and professor are barred by terms of the award from disclosing or publishing research results without permission of the student’s employer. Averett has reviewed the terms of the
award and, finding that no interests of the university or the general public will be compromised, has approved this arrangement. The intellectual property is co-owned by the outside sponsor and author.

b. *Outside sponsor without assert claim:* Averett’s Education Department receives a grant from a regional foundation to develop teaching methodologies in special education. The conditions of the grant do not assert any intellectual property of the regional foundation. Averett has reviewed the terms of the award and, finding that no interests of the university or the general public will be compromised, has approved this arrangement. The research is successful and demonstrates significant benefits for children in Danville and Pittsylvania County. A professor in the Education Department, a grant participant, subsequently authors curriculum materials utilizing the research outcomes and crediting the sponsoring organization. As publication rights were not negotiated under terms of the grant and as knowledge cannot be copyrighted, the intellectual property for publications emanating from the research is owned by the author.

c. *Outside sponsor is government agency:* The department of Biological and Physical Sciences receives a federal grant to promote ecological restoration of the Dan River Basin. Averett students and faculty gather field data and author pamphlets and educational materials intended for secondary school students and the general public. Publications authored under terms of the grant are distributed by government agencies and cannot be copyrighted. Students and
faculty are however free to use the knowledge gained from their research to publish subsequent, copyrighted materials.

2.4. Transfer of Intellectual Property

Intellectual property voluntarily transferred from author/owner to Averett, in whole or in part; shall be documented in writing and executed by author/owner and by the President of Averett.

3. Use of Intellectual Property

Materials created for ordinary teaching use in the classroom and in department programs, such as syllabi, assignments, and tests, shall remain the property of the author, but Averett shall be permitted to use such material without charge for internal instructional, educational, and administrative purposes, including satisfying requests of accreditation agencies and soliciting contributions from university sponsors.

When submitting work for publication, members of the Averett community are encouraged to assign rights to Averett for educational and administrative use of their work, thereby ensuring without charge educational benefits to Averett students through courseware and library reserves, and facilitating compliance documentation for accreditation.

Averett further encourages authors to consider publishing their work in open access and open data repositories, promoting scholarly communication through cost effective access by scholars and libraries.

4. Notification of Intellectual Property

It is the obligation of the author/owner of intellectual property to notify the Vice President for Academic Affairs if Section 2 of this policy may be applicable. Averett will
determine on a timely basis if the intellectual property is a joint work and whether Averett will assert a claim of co-ownership.

It is the obligation of Averett employees entering into contractual arrangements for the production of intellectual property that may be governed by Section 2 and assign or may assign rights to an outside sponsor or third part to notify Averett and permit Averett to review the contract and its terms.

5. **Distribution of Funds Generated from Intellectual Property**

   Funds received by author/inventor from the sale of intellectual property owned by the author/inventor shall be allocated and expended as determined solely by the author/inventor.

   Funds received by Averett from the sale of intellectual property owned by Averett shall be allocated and expended as determined solely by Averett.

   Funds received by author/inventor and by Averett from the sale of intellectual property owned jointly by the author/inventor and Averett shall be allocated and expended in accordance with a written agreement specified in advance.

   Funds received by multiple joint owners from the sale of intellectual property owned jointly by multiple owners shall be allocated and expended in accordance with a written agreement specified in advance.

6. **Resolution of Emerging Issues and Disputes of Intellectual Property**

   As future legislation, technological advances, and/or individual disputes between author and Averett over ownership of intellectual property rights arise, such issues shall be addressed by an ad hoc committee convened for such purpose, made up of four (4) persons named by Averett
Academic Policies Committee, four (4) persons named by Averett administration, and one (1) person named by eight (8) members previously selected to serve as chair.

In the case of a dispute, the ad hoc committee will take the form of findings of fact, conclusions, and a recommend resolution. The findings of fact, conclusions, and recommendations must be based solely on the hearing record, pertinent Averett policies and procedures, and the law. The committee’s recommended resolution shall be made to the President of Averett who will make a decision on ownership of the intellectual property. Any appeals will be addressed per the Averett grievance procedures.