

# OND.AU Intellectual Property Policy

## Section 1 – Purpose and Context.

(1) The purpose of this policy is to protect the Intellectual Property rights of OND.AU and is considered a legal document. OND.AU IP policy provides a clear explanation that OND.AU is the creator of it's IP and retains ownership of it's IP rights. This policy can be improved and updated by OND.AU.

(2) This policy reflects the law relating to Intellectual Property at the time this policy is published in Sydney Australia.

(3) Intellectual Property law may briefly be described as the law relating to ownership rights in human invention or creativity. Specific Intellectual Property laws create and protect rights in things such as: inventions; works of literature, drama, art, music, software, source code; brands; circuit layouts; designs and plant varieties. The law also recognises certain rights and obligations in Confidential Information or trade secrets. All title, copyright, and other intellectual property rights in the Software remain with the Vendor. You acknowledge and agree that you acquire no ownership rights, only a license to use the software.

(4) The law generally provides that where someone creates new Intellectual Property in the course of or incidental to their employment, such Intellectual Property belongs to the employer rather than the employee, however OND.AU retains rights over all Background and existing IP, and all IP that a company or employer intends to own, or modify should be settled officially with OND.AU for an agreed payment.

(5) OND.AU pursues the development of Intellectual Property through software development, technological innovation and creative endeavours and retains all rights to these original works unless clearly stated otherwise. Commercialisation of IP created by OND.AU is allowed only by OND.AU unless agreed upon in a legally binding document such as: SLA, MSA, SOW.

(6) The following are the principal categories and laws that have been created to define Intellectual Property rights:

- a. patents, protected in Australia under the **Patents Act 1990**;
- b. trade marks, protected in Australia under the **Trade Marks Act 1995**;
- c. designs, protected in Australia under the **Designs Act 2003**;
- d. copyright works, protected in Australia under the **Copyright Act 1968 (Cth)**, including literary works, dramatic works, musical works, artistic works, film, sound recordings, radio and TV broadcasts, published editions of works, and computer programs, processes, course material;
- e. traditional and indigenous knowledge;
- f. circuit layouts, protected in Australia under the **Circuit Layouts Act 1989**;
- g. plant varieties, protected in Australia under the **Plant Breeder's Rights Act 1994**;
- h. biological material;
- i. confidential information, including trade secrets and know how, protected in Australia under the common law;

j.all similar intellectual and industrial property, which may be protected under law elsewhere in the world; and

k. All other rights with respect to Intellectual Property as defined in Article 2 of the July 1967 Convention Establishing the World Intellectual Property Organisation.

## Section 2- Definitions

For the purposes of this policy:

Intellectual Property means:

- i.statutory and proprietary rights in relation to Copyright and neighbouring rights including, literary works, dramatic works, musical works, artistic works, film, sound recordings, radio and TV broadcasts, published editions of works, and computer programs;
  - ii.all rights in relation to inventions, patents, plant varieties, registered and unregistered trade marks, registered and unregistered designs, circuit layouts;
  - iii.all other rights with respect to Intellectual Property as defined in Article 2 of the July 1967 Convention Establishing the World Intellectual Property Organisation;
  - iv.all rights in relation to traditional and indigenous knowledge;
  - v.biological material;
  - vi.Confidential Information, including trade secrets and know how, protected in Australia under the common law and equity; and
  - vii.all similar intellectual and industrial property.
- b.Commissioned Work: means a specific work which OND.AU has directed or requested the creation of. A Commissioned Work may include Creative Works or Scholarly Works.
- c.Commercialisation - means the process of developing and applying science, technology, research or an invention into a

product, service or process which may also include the exploitation of, or dealing in, Intellectual Property, for the purpose of generating a commercial return or benefit.

d. Confidential Information - includes commercially valuable information and trade secrets but it may also extend to personal information as well as secret or sacred information usually communicated by indigenous people.

e. Copyright - means all rights in the nature of Copyright pursuant to the Copyright Act, including literary works, Course Materials, dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances. This policy should be read in conjunction with the Copyright Policy.

f. Course Materials: means materials used in a course for the provision of lectures, tutorials, seminars, workshops, field or laboratory classes, and other teaching activities conducted by the OND.AU, and includes overhead transparencies, slides, photographs, maps, diagrams, handbooks, manuals, course outlines, exercises, computer programs and multimedia works that serve a teaching function.

g. Course of Employment - includes any work undertaken by an employee within the scope of duties described in the applicable employee's Agreements, contract of employment, duty statement, position description, workload agreement, external consultancy or other work carried out on behalf of OND.AU, work arising from directives or approvals by OND.AU on behalf of OND.AU, work which may be inferred as in the Course of Employment by reason of use of OND.AU titles or resources or by involvement of other OND.AU employees or by direct derivation from activities or positions within OND.AU

h. Creative Work - means works of a purely artistic or aesthetic nature (such as paintings and sculpture), and which are not

otherwise included in the definition of 'Scholarly Works' under this policy.

i.Scholarly Works - means works, such a scholarly books, articles, musical and dramatic works, but does not include works which are Course Materials.

### Section 3: Policy Statement

When OND.AU becomes aware of Intellectual Property developed by themselves, their team or an AI agent under their supervision, which may be suitable for registration or Commercialisation, they retain commercialisation revenue generated by such Intellectual Property.

### Part B: Employees

Unless otherwise agreed in writing, OND.AU will own all Intellectual Property developed by employees in the Course of Employment with OND.AU. An employee shall not, without the prior written permission of OND.AU, apply for registration of Intellectual Property in the name of the employee if that Intellectual Property is created in the Course of Employment.

Moral rights are conferred on individual authors under the Copyright Act. These rights include, in relation to an author:

- a.a right of attribution of authorship; or
- b.a right not to have authorship falsely attributed; or
- c.a right of integrity of authorship.

Moral rights are not transferred and can only be exercised by an individual author (or co-authors) of a Copyright work.

Employees who work on personal projects and external private work outside of their Course of Employment with OND.AU should

declare this activity to OND.AU. Such activities are also covered by the OND.AU: [Code of Conduct](#), [External Work Policy](#), [Additional Work Policy](#), and the Additional Work provisions in the current employee's Agreements. Employees should make such declaration to OND.AU before they commence the personal project.

(16) Employees must avoid premature disclosure of inventions, material or information which may constitute Intellectual Property. The consequences of such a disclosure may prevent OND.AU from obtaining protection or registration of Intellectual Property and may result in loss of commercial opportunity.

(17) Intellectual Property may constitute a valuable and useful asset of OND.AU. For instance, a trademark such as the OND.AU brand is an important business asset. Inventions from discovery by research may warrant protection to allow effective Commercialisation. Course Materials created by lecturers are Copyright protected and industrial designs, business methods or new plant breeds arising from research and development in different parts of the OND.AU, may all give rise to Intellectual Property which should be retained for the benefit of OND.AU.

#### Scholarly works and Creative works

Subject to clause (20) of this policy, OND.AU does not grant ownership of Copyright in Scholarly Works or Creative Works created by an employee in the Course of Employment to the employee.

#### Commissioned works

Intellectual Property in Commissioned Works, pursuant to the contract or arrangement by which the work is commissioned, will be owned by OND.AU.

## Part C: Contractors

Sometimes, OND.AU will use contractors for particular projects such as, coding and software development. It is standard practice for Intellectual Property in material created for the purpose of the contract to be assigned to OND.AU by the contractor.

(33)OND.AU will request all contractors to assign to it the Intellectual Property in material created for the purposes of the contract and to provide appropriate Moral Rights consents to ensure that OND.AU can use created works as envisaged under the contract. Employees responsible for developing contracts should seek to ensure that contract provisions reflect this clause.

(34)Contractors should not be entitled to distribution of profits from Intellectual Property created by them for OND.AU.

## Part D: Intellectual Property Rights

### Moral Rights:

OND.AU recognises it's moral rights in regards to being an author, as such rights are defined under the Copyright Act. On occasion third parties negotiating agreements with OND.AU may seek the consent to waive moral rights. While OND.AU will seek to preserve such moral rights, in these instances and other occasions where Commercialisation may occur, it may be required to seek consent to waive such moral rights.

### Third Party Rights

The rights of Intellectual Property owners external to OND.AU must be respected. To ensure that OND.AU is not in violation of another party's rights through inadvertent infringement of their Intellectual Property, OND.AU employees should undertake reasonable

investigation for potential Third Party Intellectual Property rights (including Copyright, patents and other rights) required for their research and/ or development prior to any use of the Intellectual Property. If an employee is aware of Third Party rights which may be infringed by activities in which he or she is involved, this should be disclosed to OND.AU.

### Pre-Existing Intellectual Property (Background IP)

Any Intellectual Property that has relevance to OND.AU that was developed by the OND.AU before the date of this contract; and

a. Whether that Intellectual Property is subject to any Third Party rights, for example the rights of OND.AU.

b. The terms of any agreement or arrangement (including but not limited to research and funding agreements) which may restrict the work, or the development or use of Intellectual Property arising out of such work of OND.AU

(41) Where any pre-existing Intellectual Property of OND.AU is likely to be relevant to any present or future work of OND.AU or is subject to an agreement with a third party negotiated through the OND.AU, the business will assume that any such Intellectual Property can be freely used by OND.AU, unless there is documentary evidence to the contrary.

(42) An employee should not purport to include Intellectual Property Rights (whether or not pre-existing) that are subject to Third Party rights in work produced for OND.AU, without first ensuring OND.AU is notified and that written consent of those third parties is obtained.



## Unauthorised use of OND.AU Intellectual Property

If An employee or contractor becomes aware of any unauthorised use or dealing OND.AU Intellectual Property by a Third Party, they must report the unauthorised use or dealing to OND.AU.

## Part F: Commercialisation of Intellectual property

### Exploitation and dealing with OND.AU Intellectual property

Exploitation and dealing in OND.AU Intellectual Property is managed by OND.AU. Any exploitation and dealing in Intellectual Property by employees or contractors should be endorsed by OND.AU prior to negotiations being commenced with third parties.

(45) Overall management of Commercialisation projects will rest with OND.AU unless otherwise determined by OND.AU. Contractual provisions in respect to the Intellectual Property of OND.AU should not be negotiated or agreed to with a Third Party without the advice of OND.AU.

(46) OND.AU will conduct a review of requests for investments in, or financial support of the protection of Intellectual Property developed by employees or contractors, through applications for patents and other available protections of Intellectual Property with the intention of making a decision in relation to such request.

(47) OND.AU will consider employee(s) and contractor(s) are given the opportunity to have a role in any further research associated with the Commercialisation of the Intellectual Property.

## Distribution of Profits

OND.AU, as the creator and inventor of Intellectual Property retains all profits from the Commercialisation of any OND.AU owned Intellectual Property arising out of creations including, but not limited to: software, databases, creative works, user interfaces, designs and music.

## Part G: Record Storage and Retention

In accordance with legislation and OND.AU [Records and Archives Management Policy](#) and other relevant data management policies, employees and contractors must ensure that full and accurate records are made and kept of all their activities associated with the development of Intellectual Property arising from software code, software development, business assets, development materials and Commercialisation activities.

(52) Employees and contractors must assist OND.AU to ensure that these records are managed in accordance with the OND.AU [Records and Archives Management Policy](#) and related legislation.

(53) Ownership of all records outlined in Clause 52 will vest with OND.AU.

## Part H: Dispute Resolution

Any disputes or complaints arising in relation to the implementation of this Policy or a decision by the OND.AU should be addressed to OND.AU in the first instance. OND.AU may seek internal or external expert advice in dealing with the matter and he or she may at their sole discretion:

- a. decide the matter;
- b. refer the matter to internal grievance resolution mechanisms or external mediation for resolution;
- c. refer the matter for binding external arbitration; or
- d. decide the matter in the light of the outcomes of the internal grievance resolution or mediation.

## Section 4: Procedures

### Evaluation of Intellectual Property Disclosures Procedures

OND.AU will evaluate inventions and other Intellectual Property for possible protection and Commercialisation. This initial evaluation procedure should have regard to:

- a. OND.AU ownership of Intellectual Property;
- b. inventor-ship;
- c. Commercialisation rights;
- d. the existence of Third Party Intellectual Property or Background Intellectual Property not owned by the OND.AU;
- e. Intellectual Property protection strategy including patent-ability (including prior art, publications and prior use); and
- f. preliminary market assessment.

(57)The above assessment should be undertaken within a period of three months from the date of receipt of a properly completed invention disclosure form.

(58)During the notification, disclosure and evaluation periods there is an obligation of confidentiality placed upon relevant employees, contractors and visitors in respect of the Intellectual Property. This provision is consistent with the OND.AU [Code of Conduct](#).

(59)Employees, contractors and visitors must inform OND.AU at the time the Invention Disclosure is submitted if any publications or disclosures are scheduled to occur during or after the evaluation period. This obligation of confidentiality may only be lifted on advice from OND.AU or when the OND.AU determines not to proceed with Commercialisation and on the basis that no Third Party rights are affected.

## Part J: Commercialisation and Exploitation of Intellectual Property Procedures

If, following the recommendation of OND.AU or delegate(s) it is determined that the Intellectual Property is suitable for registration and/or Commercialisation, then:

- a.inventors who are employees or contractors whose Intellectual Property is owned by, or conveyed by contract to the OND.AU, will be required to execute a Deed or similar instrument confirming assignment of the Intellectual Property to the OND.AU;
- b.inventors who are employees and contractors where the employment or consultancy contract does not provide for OND.AU to hold the Intellectual Property, will be requested to grant OND.AU an assignment of the Intellectual Property and may also subsequently be required to further confirm such assignment in writing to allow for registration and/or Commercialisation by OND.AU.

(61)Employee(s) providing assistance to the Commercialisation project may be eligible to seek recognition of their contribution in their workload agreement. This is subject to the endorsement of OND.AU and the relevant employment agreement.

(62) OND.AU will inform the inventors at six month intervals of the Commercialisation activities undertaken in respect of the Intellectual Property.

(63)OND.AU will decide whether employee(s) and contractor(s) have a role in any further research associated with the Commercialisation of the Intellectual Property.

## Distribution of Profits

Prior to and during Commercialisation, agreement must be reached between OND.AU and investors, creators, employees and contractors regarding the distribution of profits. If there is no written agreement between OND.AU and the investors, creators, employees and contractors in relation to the distribution of profits arising from the Commercialisation of the Intellectual Property, the investors, employees, contractors and creators will prima facie not be entitled to any such distribution.

(65)Subject to a contrary agreement in writing between the OND.AU and investors, net profit distribution will be as follows:

a.95% to the inventor, owner and founder of OND.AU and therefore of the Intellectual Property.

b.5% to Richard Nock who supported development of the Intellectual Property with the sum of \$3600 AUD.

c. OND.AU reserves the right to make a discretionary distribution of a proportion of funds to the owner/founder and investors. This decision will be made by OND.AU.

d. Subject to a contrary agreement in writing between OND.AU and the investors, net profits from the Commercialisation are calculated and agreed upon with OND.AU officially.

- e. OND.AU costs of registering and maintaining the Intellectual Property;
  - a. OND.AU costs relating to the development and creation of the Intellectual Property (which will be deemed to include the salaries, wages and expenses paid by OND.AU to or on behalf of employees or contractors and the cost of any equipment, material and resources used in the development and creation of such Intellectual Property) and
  - b. costs of the Commercialisation project.
- (67) Net profits are profits derived by the OND.AU

## Protection and Registration of Intellectual Property

(68) If OND.AU decides to undertake Commercialisation of Intellectual Property, OND.AU will be responsible for making, and bearing the costs (or finding a commercial partner or other external funding to bear the costs) of any application for registration of Intellectual Property Rights until such time as OND.AU determines that it will discontinue the Commercialisation of specific IP.

## Section 5: Guidelines

### Intellectual Property Created Jointly by Employees and Contractors

There has not been any Intellectual Property Created Jointly by Employees, Contractors for OND.AU. Any IP created Jointly with employees or contractors will need clear contractual agreements to establish ownership rights of the IP in advance of the IP's creation.

