



UNIVERSITI BRUNEI DARUSSALAM

**Intellectual Property Policy
2019**

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PARAGRAPH 1 – PREFACE

1.1. Context and University Mission

- 1.1.1. The core mission of the Universiti Brunei Darussalam (“University”) is to empower future-ready leaders through innovative education and enterprising research, driven by national aspirations and guided by the values of Malay Islamic Monarchy (MIB).
- 1.1.2. The University is committed to ensuring that Intellectual Property (IP) emanating from its Academic and Research activities is used for the benefit of the University, the Creators and, most importantly, society-at-large.

1.2. Purpose of the IP Policy

- 1.2.1. **Promotion of IP utilization.** The IP Policy intends to facilitate the widespread use of the University's IP through various modalities of access.
- 1.2.2. **IP management.** The IP Policy seeks to set the framework for the translation of the IP arising from the University's Research into products, services and processes. It encourages Staff Members, Students and Visitors to become Creators and to identify IP with potential commercial value. It also establishes clear rules and procedures for the management and Commercialisation of such IP generated at the University.
- 1.2.3. **Balance of interests.** The IP Policy seeks to ensure the legal protection, where applicable; effective management and Commercialisation of University IP; while at the same time not impeding with the traditions of education and scholarship, academic freedom, open and timely publications, University sovereignty, and the University's mission of serving the public interest.

1.3. Overall Principles

The University operates under the following overall principles:

- 1.3.1. **Responsible Commercialisation.** Where IP arises that has commercial potential as a result of Research, the University intends to make such IP available in a form that will most effectively promote its development and use for economic and social benefit.
- 1.3.2. **Incentives.** The University wishes to recognize and reward Staff Members, Students and Visitors whose IP generates a demonstrable socio and/or economic impact.
- 1.3.3. **Local development.** The University encourages Research that responds to the local, regional and national needs. In its efforts to Commercialise University IP, the University shall seek to optimize the economic and societal benefits for industry.

PARAGRAPH 2 – DEFINITIONS

In this Policy, the definitions set out below shall apply:

Appointment. A formal agreement for a Visitor at the University, which is a prerequisite to participate in or conduct Research, scholarship, creative work, or teaching at the University.

Author. Any person to whom this Policy is applicable, who individually or jointly with others makes a design, a mark or copyrightable work and who meets the criteria for authorship under the IP Law.

Assistant Vice Chancellor Innovation and Enterprise (AVCIE). Assistant Vice Chancellor Innovation and Enterprise (AVCIE) means the University's Assistant Vice Chancellor for Office of Assistant Vice Chancellor Innovation and Enterprise as appointed by the Vice-Chancellor of the University.

Background IP. Any pre-existing IP created before the execution of any University Project, or before a Creator becoming subject to this IP Policy, by Appointment in the case of a Visitor, employment contract in the case of a Staff Member, or registration in the case of a Student.

Commercialisation. Any form of utilisation of IP intended to generate value, which may be in the form of a marketable product, process or service, commercial returns, or other benefits to society. **Commercialise** is similarly defined.

Commercialisation Entity. A company that has access to the IP of the University, through any one or more of the available Commercialisation modes, to produce new products, processes or services. This can be a spin-off or start-up.

Conflict of Commitment (COC). Any situation in which an individual Staff Member's or Visitor's primary professional loyalty is not to the University because the time devoted to outside activities adversely affects their capacity to meet their responsibilities as set out in their employment contract of Appointment, respectively.

Conflict of Interest (COI). Any situation in which real or perceived interests of an individual Staff Member, Visitor or Student may run counter to the interests of the University or negatively affect their employment or duties.

Course Materials. All materials used in, or in connection with, and for the purpose of, teaching an education course through the provision of lectures, tutorials, seminars, workshops, field or laboratory classes, assessments, practicum and other teaching activities conducted by the University.

Creator. Any person to whom this Policy is applicable, who creates, conceives, reduces to practice, authors, or otherwise makes a substantive intellectual contribution to the creation of IP and who meets the definition of 'inventor' or 'author'.

Discovery Year Project. Any project undertaken by a Student during Discovery Year.

Discovery Year Sponsor. Discovery Year Sponsor is an external party that allows a student to do an internship during the Discovery Year.

Enabler. Any assistants, technicians, and other individuals who have indirectly contributed to the creation of IP by Creators - and as such may not be listed themselves as an author or inventor in terms of statutory IPRs - mainly through the execution of standard tasks or following through on specific instructions, but without whose practical contribution the Commercialisation would not have been possible.

Gross IP Revenue. All revenue received by the University on Commercialisation of University IP before any deductions for IP Expenses.

University. Universiti Brunei Darussalam.

University IP. IP owned or co-owned by the University.

Intellectual Property (IP). All outputs of creative endeavour in any field at the University for which legal rights may be obtained or enforced according to the IP Law. IP includes:

- a) literary works, including publications in respect of Research results, and associated materials, including drafts, data sets and laboratory notebooks;
- b) teaching and learning materials;
- c) other original literary, dramatic, musical or artistic works, sound recordings, films, broadcasts, and typographical arrangements, multimedia works, photographs, drawings, and other works created with the aid of University resources or facilities;
- d) databases, tables or compilations, computer software, preparatory design material for a computer program, firmware, courseware, and related material;
- e) patentable and non-patentable technical information;
- g) designs including layout designs (topographies) of integrated circuits;
- h) plant varieties and related information;
- i) trade secrets;
- j) know-how, information and data associated with the above;
- k) traditional knowledge and genetic resources; and
l) any other University-commissioned works not included above.

Intellectual Property Laws (IP Law). Intellectual Property Laws means any legislation related to IP under the laws of Brunei Darussalam.

Intellectual Property Rights (IPRs). The proprietary rights that may be granted for an invention, mark, design, plant variety, copyright, industrial design, Scholarly Works or other types of IP, when the statutory requirements for protection are met to result in a patent, trademark, registered design or plant breeders' right, copyright, industrial design respectively.

Inventor. Any person to whom this Policy is applicable, who individually or jointly with others makes an Invention and who meets the criteria as defined in the IP Law.

IP Disclosure Form. The IP Disclosure Form is a form to be completed by a Creator or an Inventor and submitted to the Office of Assistant Vice Chancellor Innovation and Enterprise to document their creation (<http://innovation.ubd.edu.bn/forms>).

IP Expenses. All expenses incurred by the University in the management and Commercialisation of IP for which Gross IP Revenue has been received.

IP Committee. The body within the University, set up in terms of [Paragraph 4.1](#), which is responsible for overseeing the drafting, implementation, monitoring and evolution of the Policy, and for providing strategic oversight of the OAVCIE.

Office of Assistant Vice Chancellor Innovation and Enterprise (OAVCIE). The administrative unit established in terms of [Paragraph 4.2](#), responsible for day-to-day management of all IP-related activities of the University.

Net IP Revenue. Gross IP Revenue less IP Expenses.

Open Educational Resources (OER). Teaching, learning and Research materials that reside in the Public Domain and that have been released under an open license that permits their free use or modification by others.

Policy. This Intellectual Property Policy for Universiti Brunei Darussalam.

Principal Counsel. Principal Counsel means the University's Principal Counsel for Office of Legal Affairs as appointed by the Vice-Chancellor of the University.

Public Disclosure. The communication of information, relating to IP, to external parties. Public Disclosure includes, but is not limited to, disclosure in written or oral form; communication by email; posting on a web blog; disclosure in a news report, press release or interview; publication in a journal, abstract, poster, or report; presentation at a conference; examination of a thesis; demonstration of an Invention at a trade show; or the industrial application of an Invention.

Public Domain. The freely accessible public realm in which works that are not protected by IP Laws, either because the rights have been forfeited or because the rights have been expired, are thereby available to the public at large and available for all to use without permission from the Creator or owner.

Research.¹ Any creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications. It comprises three activities: basic research, applied research and experimental development.

Scholarly Works. All copyright works which are the outputs of academic Staff Members, Students or Visitors, including Research, creative and other outputs in area(s) of his or her expertise. It does not include [Course Materials](#).

¹ Definition from the [Frascati Manual](#).

Sponsored Project. Sponsored Project is a project that is partially or fully funded either by an external party or the University. It includes a consultancy or a collaborative project but excludes Discovery Year Projects.

Sponsored Project Contract. Agreement between the University and the external party or sponsor regulating Sponsored Project, including IP terms.

Staff Member. Any person who is under a contract of employment with the University including academic, Research, technical, administrative and adjunct staff, whether full-time or part-time or on a temporary basis.

Student. Any student registered for an approved course at the University.

Substantial Use. Extensive unreimbursed use of the University's resources which include but are not limited to facilities, equipment, Background IP that is not publicly available, human resources or funds. Use will be deemed not substantial for routine use of library, office space, or laptop, desktop computer.

Trade Secret. As defined under the IP Law or confidential information not publicly available that has commercial value because of its confidential nature which the University has taken reasonable efforts to keep confidential

University Study Project. A project undertaken by a Student or a Staff Member or both whether funded or not by the University. It does not include Sponsored Project.

Vice-Chancellor (VC). Vice-Chancellor means the Vice-Chancellor of Universiti Brunei Darussalam.

Visitor. Any person who is neither a Staff Member nor a Student of the University who engages in work at the University, including visiting professors, adjunct and conjoint professors, teachers, researchers, scholars and volunteers; and who concludes an appointment agreement with the University.

PARAGRAPH 3 – SCOPE OF THE POLICY

- 3.1. **IP.** This Policy applies to all IP generated at the University, in particular by Staff Members, Students and Visitors.
- 3.2. **Background IP.** In case of any conflict with IP generated during their association with the University, Staff Members, Students and Visitors must submit proof that Background IP was developed before the association with the University for valid claims.
- 3.3. **Applicability.** This Policy applies to all Staff Members, Students and Visitors who participate in a University Project or produce Scholarly Works. Rights and obligations under this Policy shall survive any termination of employment, enrolment or Appointment at the University.
- 3.4. **Binding effect of the Policy.** This Policy constitutes an understanding that is binding on the University, Staff Members, Students and Visitors on the following grounds:
 - 3.4.1. **Staff Members.** The University shall ensure that the employment contract or other agreement establishing any employment relationship between the University and Staff Members include a provision placing Staff Members under the scope of this Policy.
 - 3.4.2. **Students.** The University shall ensure that the admission offer letter to a Student includes information related to this Policy and the Student's obligations under it.
 - 3.4.3. **Visitors.** The University shall ensure that Visitors sign an appointment agreement before commencing any activity at the University. Such agreement shall include information of the responsibilities of the Visitor under this Policy and shall make reference to this Policy, a copy of which will be made available to the Visitor. (<http://innovation.ubd.edu.bn/forms>).
 - 3.4.4. **Informed consent.** This Policy shall be included on the University's website. In addition, a reference to this Policy shall be made in the terms and conditions of enrolment of Students, Appointment of Visitors, and employment agreement of Staff, academic catalogues or their equivalent. Such reference shall be in sufficient detail to ensure that they are aware of this Policy and has access to the full text.

PARAGRAPH 4 – GOVERNANCE AND OPERATION

4.1. IP Committee

4.1.1 **Purpose.** The University IP Committee that may include one or more subcommittees shall oversee the implementation and evolution of this Policy and provide advice to the VC through AVCIE (according to Paragraph 4.2 below).

4.1.2. **Composition.** The Chair of the IP Committee is AVCIE who shall be appointed by the VC.

4.1.3. **Responsibilities.** The IP Committee is the advisory body in the determination of IP management and Commercialisation strategy for University IP.

4.1.4. **Meetings.** The IP Committee shall establish regular meetings and also be available for *ad hoc* meetings.

4.2. Office of Assistant Vice Chancellor Innovation and Enterprise (OAVCIE)

4.2.1. **Purpose.** The Office of Assistant Vice-Chancellor (Innovation and Enterprise) will assist the IP Committee in managing and Commercialising its IP in a form that will most effectively promote its development and use for economic and social benefit. It will also be the Secretariat to the IP Committee.

4.2.2. **Responsibilities.** The responsibilities of the OAVCIE will include, but not limited to:

- a. Outreach/awareness to Creators;
- b. Relationship management with Creators;
- c. IP management;
- d. Technology marketing and IP contract negotiation;
- e. IP contract management; and
- f. IP costs and revenue distribution.

PARAGRAPH 5 – OWNERSHIP OF IP AND RIGHTS OF USE

5.1. IP Created by Staff Members

- 5.1.1. **University ownership.** The University owns all IP emanating from any University study project created by a Staff Member:
- in the course of and within the scope of his other employment; or
 - making Substantial Use of the University's resources.

Different terms may be applicable for Sponsored Project as defined in the [Paragraph 5.1.3](#).

- 5.1.2. **Staff Member ownership.** Staff Members will either own or co-own the IP they have created when such IP:
- is created outside the course and scope of their employment and without Substantial Use of the University's resources;
 - vests in Scholarly Works (see [Paragraph 5.5](#)); or
 - for which the University does not wish to claim ownership and the University has communicated as such in writing.

- 5.1.3. **IP emanating from Sponsored Project.** Terms of the Sponsored Project Contract will regulate ownership of IP created by Staff Members as set out in [Paragraph 7](#). In the absence of IP terms in a Sponsored Project Contract or in the absence of a Project Contract, the University owns the IP created under Sponsored Project.

- 5.1.4. **Appointment of Staff Members at another University.** It is the responsibility of each Staff Member that holds an honorary or other academic or research appointment at another institution (Host University) to negotiate a suitable IP arrangement with the Host University prior to the tenure at the Host University so that the University owns the IP fully or partially based on intellectual contribution of the Staff Member. To the extent that the Host University's IP Policy makes a claim on IP created by the Staff Member pursuant to such appointment, the Staff Member shall bring to the attention to the AVCIE to get a waiver of applicability of this Policy by VC.

5.2. IP Created by Students

- 5.2.1. **University ownership.** The University owns all IP emanating from University Study Project created by a Student when:
- in the course and scope of his/her study; or
 - making Substantial Use of the University's resources.

- 5.2.2. **Student ownership.** Student will own or co-own the IP they have created when such IP:
- is outside the course and scope of their course or study and without Substantial Use of the University's resources;
 - vests in Scholarly Works (see [Paragraph 5.5](#)); or

- c. for which the University does not wish to claim ownership and the University has communicated as such in writing.
- 5.2.3. **IP emanating from Sponsored Project.** Terms of the Sponsored Project Contract will regulate ownership of IP created by Students as set out in Paragraph 7. In the absence of IP terms in a Sponsored Project Contract or in the absence of a Project Contract, the University owns the IP created under Sponsored Project.
- 5.2.4. **Theses or dissertations.**
The Student must submit his or her final thesis or dissertation to the University repository. The Student also grants a royalty-free license to the University to reproduce his or her thesis or dissertation and to distribute copies thereof to the public. Any IP derived from Theses or dissertations shall be owned by the University as set out in Paragraph 5.2.1.
- 5.2.5. **IP emanating from Discovery Year Project.** IP emanating from a Student's Discovery Year Project shall be owned by Discovery Year Sponsor.
- 5.2.6. **Bursaries/scholarships.** An external party that grants a bursary or scholarship to a Student may elect to own the IP created by that Student in the course of his/her study at the University provided the student, and the University have consented to the assignment of IP ownership in writing.
- 5.3. IP Created by Visitors**
 - 5.3.1. **University ownership.** Unless otherwise agreed to in writing by the University and the Visitor prior to the tenure at the University, the University owns IP created by Visitors when:
 - a. created in the course and scope of their appointment at the University; or
 - b. created by making Substantial Use of the University's resources.
 - 5.3.2. **University IP.** On departure from the University, a Visitor must sign and submit an IP Disclosure Form to AVCIE disclosing any IP created, as per Paragraph 5.3.1, whilst at the University.
- 5.4. Special Rules for Course Materials**
 - 5.4.1. **University ownership.** The University will own the IP in Course Materials created by a Staff Member or a Visitor, with the exclusion of Course Material that is created from or for Open Educational Resources, in accordance with Paragraph 5.7.1.
 - 5.4.2. **Licensed by the University.** The University grants the Creators of Course Materials a royalty-free, non-exclusive license to use the Course Materials created by them.

5.5. Special Rules for Scholarly Works

- 5.5.1. **Publication.** The University recognises and endorses the rights of Staff Members, Students and Visitors to publish their Scholarly Works, provided that any Scholarly Work which may disclose any possible University IP shall first be cleared by OAVCIE after having an opportunity to protect such University IP according to Paragraph 8.
- 5.5.2. **Licensed to the University.** Staff Members, Students and Visitors grant to the University non-exclusive, royalty-free license to use their Scholarly Works for the University's administrative, promotional, Research and teaching purposes.

5.6. Moral Rights

- 5.6.1. **Recognition.** The University undertakes to respect and protect the moral rights which copyright law confers on Authors of copyright works.
- 5.6.2. **Rights granted.** The University acknowledges that moral rights vest in Authors of copyright works irrespective of the copyright ownership thereof and include:
- a. the right of attribution of authorship in respect of the copyright works;
 - b. the right not to have authorship of the copyright works falsely attributed; and
 - c. the right of integrity of authorship in respect of the copyright works.
- 5.6.3. **No waiver.** The University will not require Staff Members, Students or Visitors to waive their moral rights as a condition of employment, enrolment, Appointment or funding.

5.7. Public Domain

- 5.7.1. **Public Domain.** University IP forms part of the Public Domain in the following circumstances:
- a. if a Sponsored Project Contract provides that the Research results be placed into the Public Domain; or
 - b. if Staff Members or Visitors made use of OERs or resources licensed through Open Source or Creative Commons Licences and the licensing conditions require the release of derivatives into the Public Domain.
- 5.7.2. **Release into the public domain.** The University will release IP into the Public Domain in the following circumstances:
- a. where it is deemed to be in the public interest; or
 - b. if the IP has low commercial or other development potential and low prospects of fostering the development of new products or services; or
 - c. if deemed necessary by the University.

PARAGRAPH 6 – PUBLICATION, NON-DISCLOSURE AND TRADE SECRETS

- 6.1. **Right of publication.** The University encourages and supports the right of Creators to decide if and when to publish their Research results, in accordance with Paragraph 5.5 above.
- 6.2. **Non-disclosure for IP protection.** In conjunction with the right of publication, Creators should be aware that premature Public Disclosure may result in loss of IP protection rights. Therefore, they are strongly encouraged to make all reasonable efforts to identify any protectable IP as early as possible, according to Paragraph 8, and shall consult OAVCIE by completing IP Disclosure Form when required before making any Public Disclosure of potential University IP.
- 6.3. **Trade Secrets.** The University may designate certain confidential information as a Trade Secret, owned by the University. In that event, all Creators will be obligated to maintain the confidentiality of the Trade Secret and to follow the direction for management of the Trade Secret by OAVCIE.

PARAGRAPH 7 – SPONSORED PROJECT CONTRACT

- 7.1. **Authority.** Staff Members, Students and Visitors shall not have the right to enter into a Sponsored Project Contract with external parties on behalf of the University unless they are authorised to do so by the VC.
- 7.2. **Due diligence.** Persons acting for and on behalf of the University as defined in Paragraph 7.1 shall exercise all due diligence and consult OAVCIE and Principal Counsel when negotiating and signing sponsored project contract that may affect the University's IPRs.
- 7.3. **Ownership and rights to use.** Subject to any provisions in the law to the contrary, ownership and rights to use shall be agreed upon with the external entity.
- 7.4. **Government rules.** Sponsored Project Contract shall comply with any applicable law or Government regulations or rules, which may be applicable to Research undertaken by the University, in particular, as far as it relates to the ownership of IP resulting from such Research. Principal Counsel shall be consulted in this respect before the signature of any Sponsored Project Contract.
- 7.5. **Approval.** Before signing, the full copy of the proposed Sponsored Project Contract and other legal statements concerning the University's IPRs shall be submitted to AVCIE and Principal Counsel for advice and approval by the VC.
- 7.6. **Basic Principles.** The IP clauses in all Sponsored Project Contracts shall be governed by the following basic principles:

- 7.6.1. **Concluded from the outset.** A Sponsored Project Contract must be executed in writing and signed by the University and the external party(ies)/sponsor(s) prior to the commencement of the Project and, as appropriate and without limitation, must contain terms relating to ownership, management and commercialised use of IP arising from the Sponsored Project as well as any Background IP.
- 7.6.2. **Background IP.** Background IP of the University belongs to the University and use of such Background IP requires expressed written permission in the contract. Similarly, Background IP of the external party or sponsor belongs to such party or sponsor. Use of such Background IP requires expressed written permission.
- 7.6.3. **Foreground IP (IP arising from the Project Contract).** IP generated pursuant to a Sponsored Project Contract shall be co-owned by the University and external party(ies)/sponsor(s) as mutually agreed contractually. The costs for protecting and maintaining any co-owned IPRs shall be shared between the University and the external party(ies)/sponsor(s) in accordance with the percentage of IP ownership or as mutually agreed contractually.
- 7.6.4. **Serendipitous IP².** Any IP created during the course of the Project Contract which falls outside of the scope of the Project Contract shall be owned by the University or the external party(ies)/sponsor(s) which developed such IP unless agreed contractually otherwise in the Project Contract.
- 7.6.5. **Right of first refusal to the IP.** The Sponsored Project Contract may include provisions giving the external party(ies)/sponsors, a right of first refusal to Commercialise the IP emanating from the Sponsored Project Contract, through a license or joint venture arrangement or assignment.
- 7.6.6. **Publication delay.** It is the strict policy of the University to allow Creators freedom to publish their work. However, the University acknowledges that delays in publication for the purpose of initiating statutory protection of the IP is often necessary. In this regard, the University will agree, on a case-by-case basis, to a contractual delay in the publication by Creators. Such delay will not exceed 90 calendar days from the date AVCIE is notified of the intent to publish unless authorised by the AVCIE.
- 7.6.7. **Use of IP for Research and teaching.** In instances, where the University IP is licensed exclusively or assigned as part of the Sponsored Project Contract, all efforts should be made to secure a royalty-free license for the use of the IP for on-going Research and teaching purposes.

- 7.7. **Exceptions to the Policy.** In certain cases, it may be necessary and beneficial to the University to enter into a Sponsored Project Contract that

² Results are serendipitous when research that was originally funded for one purpose turns out to be useful for another purpose.

contains exceptions to the provisions of this Policy. Any such exceptions require prior written approval from the VC.

PARAGRAPH 8 – DETERMINATIONS BY THE OAVCIE

8.1. Responsibility to Disclose IP

- 8.1.1. **Recording.** Creators shall keep appropriate records of their Research and make reasonable efforts to ensure that only those individuals within the University who have a need to have access to such records for the performance of their duties are granted such access.
- 8.1.2. **IP Disclosure.** Where a Creator identifies potential IP resulting from his/her Research, he/she shall disclose such potential IP to AVCIE promptly by means of an IP Disclosure Form.
- 8.1.3. **Complete disclosure.** Creators must provide to AVCIE such full, complete and accurate information as AVCIE may reasonably require to enable it to sufficiently assess the technical and related features and functions, ownership, commercial potential and IP protection that might be applicable to such IP. Upon complete disclosure, the IP Disclosure will be registered and assigned a reference number, and OAVCIE will share this reference number with the Creators to signify that the IP Disclosure has been formally received by the University.

8.2. Creatorship and Ownership

- 8.2.1. **Creatorship.** Creators shall, upon request, sign the appropriate legal documents provided by OAVCIE that attest to creatorship. Where there is more than one Creator, and there is a dispute as to the contribution to creatorship, OAVCIE shall consult Principal Counsel with the Creators to assist in the determination of the percentage IP creatorship, failing which it shall be assumed that there was an equal, undivided contribution.
- 8.2.2. **Ownership.** Once creatorship has been determined, the Creators shall be required to assign any right formally, title or interest they may have in that IP to the University in the form of a contract that specifies the rights that will accrue to the Creator(s) and the University and the obligations they will have to assist the University with the Commercialisation of that IP. Paragraph 9.3 will apply.

8.3. Determination as to IP Protection and Commercialisation

- 8.3.1. **Evaluation and recommendation.** OAVCIE will analyse the information disclosed in the IP Disclosure within 90 days of formal receipt. The analysis will include: whether or not the subject matter is protectable as IP; an assessment of economic viability or marketability; and determination of any rights of external parties, such as a funder or collaborator. After evaluation,

OAVCIE will prepare a preliminary report with findings that enable the University to decide if it will proceed with IP protection and Commercialisation. OAVCIE shall share the preliminary report with the Creator(s), and seek their input.

8.3.2. **Decision to protect/Commercialise.** The University will decide, as soon as reasonably practicable, whether or not it wishes to protect or Commercialise the IP. OAVCIE will use all reasonable efforts to notify the Creator(s) of the University's decision within 90 days of formal receipt of the IP Disclosure Form. OAVCIE will also decide on validity of any claim made by a Staff Member, a Visitor or a Student that they are the true Creator(s) of that IP and in relation to their rights under this Policy.

8.3.3. **University's obligation to notify Creators of its decision.** Within no more than 90 days, OAVCIE will notify the Creator(s) of the decision of whether the University will or will not pursue IP protection and Commercialisation of their IP Disclosure.

8.4. University Elects not to Protect /Commercialise the IP

8.4.1. **IP abandoned or not Commercialised.** The University reserves the right not to protect or Commercialise IP that it owns if after consultation with the Creators:

- a. there is no reasonable prospect of commercial success; or
- b. it is not deemed to be in the best interest of the University; or
- c. it is not deemed to be in the public interest.

8.4.2. **Transfer of Ownership.** In the event the University decides not to pursue IP protection or Commercialisation, it will take steps to return said IPRs to the Creator(s), contingent on any other superseding contract rights of the external party(ies) or sponsor(s).

8.4.3. **Written notification.** If the University is unable to or decides not to protect or Commercialise the University IP, it should notify the relevant Creator(s) of its decision in writing and in a timely manner.

8.4.4. **No prejudice to IP protection.** The Creator(s) should receive the written notification in a timely manner that enables the relevant Creator(s) to take any formal steps to ensure the protection of IP, should they so desire.

8.4.5. **Assignment.** If the Creator elects to take an assignment of the IP, the University shall ensure that a deed of assignment is executed without delay.

8.4.6. **Terms and conditions.** If the University assigns IPRs to the Creator in terms of this [Paragraph 8.4.5](#), the assignment may be subject to one or more of the following terms and conditions:

- a. that upon Commercialisation, the University be compensated for any expenditure it may have incurred in connection with the protection and Commercialisation of such IP;

- b. that the University be granted a non-exclusive, royalty-free licence to use the IP for Research and teaching purposes.

PARAGRAPH 9 – COMMERCIALISATION OF IP

- 9.1. **Determination of the Commercialisation Strategy.** Within 9 months of the decision to protect or Commercialise the IP under Paragraph 8.3.2, the University will determine, with input from the Creators, the most appropriate Commercialisation strategy.
- 9.2. **Assistance to OAVCIE.** Creators of IP which has been selected for IP protection and Commercialisation by the University must provide OAVCIE with all reasonable support in the assessment, protection (including preventing premature disclosure and execution of any documents including deeds of assignment and deeds attesting to creatorship), and Commercialisation of the IP.
- 9.3. **University's Discretion.** The University shall have the sole discretion regarding the Commercialisation of IP owned by it. Notwithstanding, the University will ensure that reasonable efforts are made to keep the Creators informed and, where appropriate, involved in the Commercialisation of the IP to which they contributed. The Commercialisation of University IP will be planned, executed, and monitored by OAVCIE.
- 9.4. **Commercialisation Pathways.** Modes of IP Commercialisation may include:
 - a. exclusive or non-exclusive license, and variations thereof, with preference for licensing to start-ups, small and medium-sized companies or businesses;
 - b. assignment or sale;
 - c. formation of a Commercialisation Entity to which the IP is licensed or assigned in terms of this Policy;
 - d. non-profit use or donation;
 - e. joint ventures;
 - f. royalty-free access on humanitarian or other grounds; or
 - g. various combinations of the above.
- 9.5. **Guidelines.** Regardless of the mode of IP Commercialisation, the transaction will be executed in a contract which:
 - a. protects the interests of the University, its Staff Members, Students and Visitors;
 - b. retains rights for the University to use the IP for educational and Research purposes;
 - c. assures that the IP will be utilised in a manner which will serve the public good;
 - d. assures that the IP will be developed and brought to the marketplace as useful goods and services; and

- e. prohibits the “shelving” or “mothballing”³ of the IP or its use in any illegal or unethical manner.
- 9.6. The University will endeavour to Commercialise IP in a manner that enhances local, regional, and national economic development.
- 9.7. The University will endeavour to Commercialise IP in a manner that encourages and fosters entrepreneurship by Students and others and which supports Commercialisation Entities.

PARAGRAPH 10 – INCENTIVES AND DISTRIBUTION OF REVENUES

10.1. The University’s Incentive Structure

- 10.1.1. **Purpose and scope.** The University, in the interest of promoting knowledge transfer, will give due consideration to incentives to researchers to foster Research that has a socio-economic impact; such incentives may be financial or non-financial. A Creator or Enabler may receive incentives from each IP they created or enabled, which is Commercialised.

10.2. Sharing of Revenues

- 10.2.1. **General.** The University will award Creators or Enablers in the sharing of monetary benefits that may accrue to the University from the Commercialisation of University IP.

- 10.2.2. **Calculation of revenues for distribution.** Calculation of Gross IP Revenue, IP Expenses, and Net IP Revenue shall be in accordance with the following rules:

10.2.2.1. **Calculation of Gross IP Revenue.** “Gross IP Revenue” as defined in Paragraph 2 includes revenue received from, outright sale of IP, option payments received, licence fees received, evaluation fees received, upfront and milestone payments received, royalty payments received, share of profits received, dividends received, commissions, income through disposal of equity, and direct sale of products or services.

10.2.2.2. **IP Expenses.** “IP Expenses” as defined in Paragraph 2 includes expenses that relate to (i) the University’s expenses incurred by payment to external entities for securing, maintaining and enforcing IP protection, such as patenting and litigation expenses; (ii) costs incurred by the University in the licensing/assignment of IP, including marketing costs, contract negotiation and drafting costs; and (iii) costs in making, shipping or otherwise distributing products,

³ Shelving or mothballing of academic IP refers to IP and invention disclosure bundles that remain unexplored, unlicensed or unused.

processes or services that embody the particular IP, but not including staff time or general administrative costs.

10.2.2.3. **Calculation of Net IP Revenue.** OAVCIE shall maintain accurate and transparent documentation of IP Expenses incurred for a particular IP and shall be entitled to cover all IP Expenses it has incurred, as set out in Paragraph 10.2.2.2 above. The “Net IP Revenue” is calculated as the Gross IP Revenue less IP Expenses and Enabler’s share.

10.2.2.4. **Co-owned IP.** Where the IP is co-owned by the University and an outside organisation, the Gross IP Revenue received by the University will be shared in accordance with a pre-determined formula as per a contractual arrangement. Thereafter, the Gross IP Revenue received by the University and the Net IP Revenue will be determined, and revenues will be shared in accordance with Paragraph 10.2.3.1 and Paragraph 10.2.3.2 below.

10.2.3. Sharing of revenues – Creators/Enablers

10.2.3.1. **Standard Creator’s share.**

Forty-five percent (45%) of the Net IP Revenue received from commercialisation of University-owned IP will be allocated to the Creator. Where there is more than one Creator, the Creators are entitled to an equal or *pro-rata* share, based on contribution, of forty-five percent (45%) of the Net IP Revenue, except where there is a prior written agreement between all the Creators to the contrary.

10.2.3.2. **Standard Enabler’s share.**

The University may elect to set aside predetermined percentage of the Gross IP Revenue for an Enabler. An Enabler can be non-creator that can help to commercialise the University IP with the help of a start-up. Where there is more than one Enabler, the Enablers are entitled to an equal or *pro-rata* share, based on practical contribution, of the predetermined percentage of the Gross Revenue, except where there is a prior written agreement between all the Enablers to the contrary.

10.2.3.3. **Disputes.** In the event of a dispute or uncertainty regarding the Creators' or Enablers' share of the Gross IP Revenue from a specific IP, the issue shall be brought for a resolution to an independent body.

10.2.3.4. **Payment.** Payment to the Creators or Enablers will be made by the University on a periodic basis as agreed in writing, after receipt of the Gross IP Revenue by the University.

10.2.3.5. **Taxes.** Payments made as per Paragraph 10.2.3.4 are subject to personal tax if applicable. The University may, if so obliged by

national tax laws, make any applicable tax deductions before making payments to the Creators or Enablers.

10.2.3.6. **Entitlement.** Creators or Enablers and their heirs will be entitled to IP revenue sharing for as long as the University receives Gross IP Revenues from Commercialisation of the University IP. The entitlement to a Creator's or Enabler's share of Gross IP Revenue will survive any resignation or termination of employment or death of the creator.

10.2.3.7. **Banking details.** The onus is upon each Creator or Enabler to ensure that the University has the current banking details of the Creator or Enabler for the purpose of revenue sharing. The University will keep the relevant IP revenue amounts in reserve for a maximum period of 3 (three) years after which all rights of Creators or Enablers to receive such payments will be forfeited. If the University pays an amount into an incorrect account as a result of information supplied to it being outdated or incorrect, the University will not have any further obligation or liability in respect of such payment, which will be deemed to have been duly and properly made.

10.2.4. **Sharing of revenues – University.** The University's share of Net IP Revenue is fifty-five percent (55%).

10.3. Other Incentives

10.3.1. **General.** As a default position, the University will refrain from accepting non-monetary benefits for the Commercialisation of its IP or from offering incentives other than revenue sharing, unless they are in addition to the revenue sharing as per Paragraph 10.2.3.1 and Paragraph 10.2.3.2, as appropriate. The University will thus give consideration, on a case-by-case basis, to the provision of other incentives, where monetary benefits (revenues) are not available or where the Creator or Enabler elects to choose other benefits *in lieu of* revenue sharing, which may only be realised in due course. Other incentives will include but are not limited to, the incentives described in Paragraph 10.3.2, Paragraph 10.3.3, and Paragraph 10.3.4.

10.3.2. **Growth, development and acknowledgement.** A framework for growth and development of the Creator or Enabler in their professional and personal capacity shall be developed including (i) recognition of IP generation and Commercialisation performance in appraisal procedures; and (ii) opportunities for enterprise development or capacity development through, for example, specific training opportunities, sabbaticals, and local and international exchanges in their relevant Research field or in the field of IP management and knowledge transfer.

10.3.3. **Research funds.** The University will actively, through OAVCIE, promote, source and facilitate collaborative arrangements with industry partners to secure funding for further Research for the Creators or Enablers.

10.3.4. **Creator or Enabler receiving shares in a Commercialisation Entity or other licensee.**

10.3.4.1. In the case where a Creator or Enabler is granted equity in a Commercialisation Entity that licences the University IP which the Creator or Enabler has created,⁴ such Creator's or Enabler's portion in the standard revenue sharing formula of Paragraph 10.2.3.1 or Paragraph 10.2.3.2 will be unaffected.

10.3.4.2. Where the University receives shares in a licensee company, which company may be a Commercialisation Entity, as consideration for an IP license, the University will hold all the shares until liquidation, at which time the income will be considered Gross IP Revenue and the Creators or Enablers will receive their share according to the revenue sharing formula in Paragraph 10.2.3.1 or Paragraph 10.2.3.2.

10.3.4.3. Notwithstanding the benefit sharing in respect of shares in terms of this Paragraph 10.3.4, the Creators or Enablers will still be entitled to their share of any other revenues under the IP license.

10.4. **Contact Details**

10.4.1. **Contact details.** The onus is upon each Creator or Enabler to ensure that the University is in receipt of their current address details for the purpose of revenue sharing. Unless contrary to law, should the University be unable to locate the Creators or Enablers through reasonable efforts, in order to effect payment of the revenue share amount, and a period of five(5) years has passed since an initial attempt, then the portion owed to that Creator or Enabler or his or her heirs or assigns will be paid to the University's central fund to be used to support Research and innovation activities.

PARAGRAPH 11 – IP PORTFOLIO MAINTENANCE

11.1. **Recording and monitoring.** OAVCIE shall maintain records of the University's IP in an appropriate form and in sufficient detail. It shall monitor the deadlines for the payment obligations related to the maintenance or annuity fees of protected IP, and shall, within a reasonable time, inform the person or department designated to make such payments.

11.2. **Accounting.** OAVCIE shall maintain income and expense accounting records on each IP so that revenue sharing allocations can be calculated.

⁴ The institutional policy regulating Conflict of Interests must be consulted to assess additional measures that should be put in place especially when the researcher outsources research to the spin-off or start-up company, in which the researcher has a material interest.

PARAGRAPH 12 – CONFLICTS OF INTEREST AND CONFLICTS OF COMMITMENT

- 12.1. **Commitment to the University.** Staff Members' and Visitors' primary commitment of time and intellectual contributions should be to the education, Research and academic programs of the University.
- 12.2. **Best Interests of the University.** Staff Members and Visitors have a primary professional obligation to act in the best interests of the University; they should avoid situations where external interests could significantly prejudice their work ethic and Research integrity.
- 12.3. **Agreements with External Parties.** It is the responsibility of all Staff Members and Visitors to ensure that their agreements with external parties do not conflict with their duties and responsibilities in terms of this Policy. This provision shall apply in particular to private consultancy and other research service agreements concluded with external parties. Each individual should make his or her duties and responsibilities clear to those with whom such agreements may be made and should ensure that they are provided with a copy of this Policy.
- 12.4. **Disclosure of External Activities and Financial Interests.** Staff Members and Visitors shall promptly report all potential and existing conflict of interest to OAVCIE. OAVCIE will be responsible for resolving the conflict or reaching a solution satisfactory to all parties concerned.

PARAGRAPH 13 – DISPUTE

- 13.1. **Violation.** Breach of the provisions of this Policy shall be dealt with under the normal procedures of the University, and in accordance with the relevant provisions of laws and regulations in force.
- 13.2. **Dispute Resolution.**
 - 13.2.1. Any internal disputes or questions of interpretation or application of this Policy will be referred to OAVCIE first for consideration and mediation by the IP Committee.
 - 13.2.2. If the matter cannot be resolved by the IP Committee within six months, then the dispute or question of interpretation must be referred to the VC.
 - 13.2.3. The VC may at their sole discretion refer the matter to University's Senior Management Team or an independent committee for resolution of any dispute for final determination.
- 13.3. **Appeal.** Individuals covered by this Policy shall have the right to appeal the application of any aspect of this Policy to the VC.

PARAGRAPH 14 – AMENDMENT

- 14.1. **Revision.** This Policy may be amended at any time. In this case:
- a. all IP disclosed on or *after* the effective date of such amendment shall be governed by the Policy as amended; and
 - b. all IP disclosed *prior* to the effective date of the amendment shall be governed by the Policy prior to such amendment, provided that the provisions of the Policy (as amended) shall apply to all IP licensed or otherwise Commercialised on or after the effective date of any such amendment regardless of when the IP is disclosed.

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