

UNIVERSITY OF THE FREE STATE



**POLICY ON THE PROTECTION, EXPLOITATION AND
COMMERCIALISATION OF INTELLECTUAL PROPERTY**

**POLICY ON THE PROTECTION, EXPLOITATION AND COMMERCIALISATION OF
INTELLECTUAL PROPERTY**

Status	
Approved by	The UFS Council
Date of Approval	
Application	The Policy applies to all full-time and part-time staff, including temporary and part time employees and other appointees, and to all students. The Policy applies to consultants, conjoint appointees and other persons generating IP in collaboration with UFS staff or students, or engaged by the UFS to undertake a specific activity, and it may also apply from time to time to other persons by agreement.
Implementation of Policy	The procedures for implementation of this Policy will be devised, communicated, managed and monitored by the Office for Innovation and Business Development. They will be modified as required to ensure they are efficient and effective, but fall within the provisions of this Policy and all applicable legislation.
Implementation Office	Director: Innovation and Business Development
Related documents	<p>UFS documents</p> <ul style="list-style-type: none"> • UFS Strategic Plan • Strategic Framework for Research Development at UFS • General conditions of service for academic staff • Private Work Policy. <u>All the IP provisions of this Policy shall take precedence over the Private Work Policy.</u> <p>Legislation</p> <ul style="list-style-type: none"> • Intellectual Property Rights from Publicly Financed Research and Development Act, No 51 of 2008 • Technology Innovation Agency Act, No 26 of 2008 • Copyright Act, No 98 of 1978 • Trade Marks Act, No 194 of 1993 • Patents Act, No 57 of 1978 • Designs Act, No 195 of 1993 • Competition Act, No 89 of 1998 • Plant Breeders' Rights Act, No 15 of 1976 • Biodiversity Act, No 10 of 2004
Amendments	n/a
Dates of Amendments	n/a
Scheduled for review	n/a

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ACRONYMS

BEE	Black Economic Enterprise/Empowerment	NRF	National Research Foundation
CEO	Chief Executive Officer	R&D	Research and Development
CIPC	Companies and Intellectual Property Commission	SAIPL	South African Institute for Intellectual Property Law
DST	Department of Science and Technology	SARIMA	Southern African Research and Innovation Management Association
dti	Department of Trade and Industry	SARS	South African Revenue Services
DoE	Department of Education	SAVCA	South African Venture Capital Association
GMO	Genetically modified organism	SM(M)E	Small Medium (Micro) Enterprise
HEI	Higher Education Institution	THRIP	Technology and Human Resources for Industry Programme
IPR Act	Intellectual Property Rights from Publicly Financed Research and Development Act, No 51 of 2008	TIA	Technology Innovation Agency
IP	Intellectual Property	TTO	Technology Transfer Office
PCT	Patent Cooperation Treaty	VAT	Value Added Tax
NGO	Non-Governmental Organisation	WIPO	World Intellectual Property Organisation
NIPMO	National Intellectual Property Management Office		

DEFINITIONS

Academic Works means copyrighted works such as theses, dissertations, articles, publications, posters or any other literary works, which in the ordinary course and scope of employment is associated with conventional academic work.

Author means, according to the Copyright Act, in relation to

- a. a literary, musical or artistic work, means the person who first makes or creates the work;
- b. a photograph, means the person who is responsible for the composition of the photograph;
- c. a sound recording, means the person by whom the arrangements for the making of the sound recording were made;
- d. a cinematograph film, means the person by whom the arrangements for the making of the film were made;
- e. a broadcast, means the first broadcaster;
- f. a programme-carrying signal, means the first person who sent the signal to a satellite;
- g. a published edition, means the publisher of the edition;
- h. a literary, dramatic, musical or artistic work or computer program which is computer-generated, means the person by whom the arrangements necessary for the creation of the work were undertaken;
- i. a computer program, the person who exercised control over the making of the computer program.

BBBEE means Broad-based black economic empowerment and the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies (as defined in section 1 of the Broad-Based Black Economic Empowerment Act, No 53 of 2003).

Business Idea means a business plan or similar document that sets out the establishment of a new business enterprise. Such enterprise may rely

on intellectual property disclosed in terms of this policy.

Commercialise/Commercialisation means the process by which any IP may be adapted or used for any propose that may provide any benefit to society or commercial use and reasonable terms. It thus means to make, sell, copy, adapt, apply, publish, develop, use, assign, license, sub-license, franchise or otherwise utilise the intellectual property for the purpose of generating financial or other commercial gains.

Commercialisation revenues are revenue, net of costs, available for distribution to inventors, and may include royalties upon sales by a licensee; royalties from sub-license fees received from a licensee; lump sum licence fees; proceeds of assignment or sale of the intellectual property; signing fees; milestone payments; minimum annual payments; patent prosecution and maintenance expenses which are reimbursed to the UFS; dividends upon shares owned by the UFS in a start-up company to which it grants a licence; and damages from infringement proceedings.

Consultant/Consultation takes place when an employee who has obtained permission from the University to do private work makes her/his expertise available to a third party on commission, in exchange for compensation. During consultation, expertise is normally applied creatively and problem solving may take place. This consultation also normally occurs without use being made of the UFS infrastructure or other UFS staff or students. New knowledge and inventions are not normally created in consultation, but rather knowledge/expertise is applied.

Contract research is commissioned by an outside organisation and the UFS infrastructure is normally used and other UFS staff and/or students are usually actively involved. In contract research, new knowledge is created.

Copyright means all rights conferred by the Copyright Act in relation to, without limitation,

literary works, dramatic works, musical works, artistic works, films, sound recordings, broadcasts, published editions and certain types of performances.

Course and education materials mean materials used in or in conjunction with an education course offered by the UFS for the provision of lectures, tutorials, seminars, workshops, field or laboratory classes, assessments, teaching material, lesson plans, tutorials, test and examination questions, assignments, learning modules practical's and other teaching activities conducted by the University. The use of course and educational materials by the University for the purposes of teaching and research in its programmes (whether in South Africa or elsewhere) does not constitute commercialisation of the intellectual property.

Course and scope of employment means all acts reasonably necessary to the performance of work, including matters that do not conflict with specific instructions.

Creation means an innovation, design, or other form of protectable or un-protectable intellectual property, or a business idea.

Creator/Inventor means the person involved in the conception of intellectual property and identifiable as such for the purposes of enforcement of intellectual property rights, where applicable.

Design means, according to the Design Act, a functional or aesthetical design.

Aesthetical design means any design applied to any article, whether for the pattern, shape, configuration or ornamentation, or for any two or more of those purposes, and by whatever means it is applied, having features which appeal to and are judged solely by the eye, irrespective of its aesthetic quality.

Functional design means any design applied to any article, whether for the pattern, shape or configuration, or for any two or more of those purposes, and by whatever means it is applied, having features which are necessitated by the function which the article to which the design

is applied, is to perform, and includes an integrated circuit topography, a mask work and a series of mask works.

Employee means a person who is permanently or temporarily, part time or full time employed by the UFS or who is in terms of common law or labour law regarded as employed by the UFS.

Full Cost means, as defined by the IPR Act, the full cost of undertaking research and development as determined in accordance with international financial reporting standards, and includes all applicable direct and indirect costs as may be prescribed.

Honorary appointee means any person other than a member of academic staff who hold an honorary or other academic appointment at the UFS, irrespective of the date of commencement of that appointment and who has access to University facilities for teaching, research or other scholarly activity.

Independent contractor(s) means persons contracting with the UFS on an independent contractual basis for the performance of certain tasks, projects, duties etc, as determined in the agreement with the contractor, with due understanding that such contracts between the independent contractor and the UFS as contemplated in this definition, do not refer to an agreement that falls within the scope of a contract of employment between an employee and the UFS.

Intellectual Property (IP) means, as defined by the IPR Act, any creation of the mind that is capable of being protected by law from use by any other person, whether in terms of South African law or foreign law, and includes any rights in such creation, but EXCLUDES copyright in a thesis, dissertation, article, handbook or any other publication which, in the ordinary course of business, is associated with conventional academic work.

In general, Intellectual Property is seen to include all outputs of creative endeavour in literary,

artistic, scientific and engineering fields that are capable of being protected by law from use by any other person, whether in terms of South African law or foreign law. It includes, but is not limited to:

- All forms of copyright;
- Patents, patentable and non-patentable material (but not discoveries);
- Inventions (registered or non-registered);
- Field and laboratory notebooks;
- Registered and unregistered designs (Circuit layouts and topographies);
- Plant varieties;
- Registered and unregistered trademarks, service marks and commercial names and designations;
- Trade secrets and confidential material; and
- Know-how and other proprietary information associated with any of the other designated items of intellectual property.

Intellectual property transaction means any agreement in respect of intellectual property, including licensing, assignment and any arrangement in which the IP rights are transferred to a third party.

Invention means, in order to qualify for patent protection, an invention of a technical character, that is novel and inventive and is able to find application in trade, industry or agriculture. A registered innovation or invention can be any product, process, method, appliance or composition. The term “invention” also includes all inventions to the extent where they have not been patented or registered, but rather acquire protection as confidential knowledge. A discovery is not an invention.

Know-How means in essence a fund of expertise which a party has built up in respect of a field of technology in which it is working. It is embodied in practice in drawings, notes, calculations, reports and various other types of written and drawn documentation.

Literary Work means, as defined in the Copyright Act, irrespective of literary quality and in whatever mode or form expressed—

- a. novels, stories and poetical works;

- b. dramatic works, stage directions, cinematograph film scenarios and broadcasting scripts;
- c. textbooks, treatises, histories, biographies, essays and articles;
- d. encyclopaedias and dictionaries;
- e. letters, reports and memoranda;
- f. lectures, speeches and sermons;
- g. tables and compilations, including tables and compilations of data stored or embodied in a computer or a medium used in conjunction with a computer, but shall not include a computer program;

NIPMO means the National Intellectual Property Management Office, a function managed within the Department of Science and Technology (DST) or any of its instruments or entities, as established in terms of the IPR Act.

Patent means a certificate in the prescribed form to the effect that a patent for an invention, as defined, has been granted in terms of the Patent Act in South Africa.

Postgraduate student means a person who is registered at the UFS as a postgraduate student in terms of and as contemplated in the “General regulations for postgraduate qualifications”.

Publicly financed research and development means research and development undertaken using funds issued by the State or an organ of state or a state agency or component established for the purposes of funding research and development.

Recipient means, according to the IPR Act, the entity, whether corporate or incorporate, that receives funding from a funding agency to undertake research and development.

Research means research and development.

Scholarly Works of the UFS means articles, books, artistic works, musical compositions, creative writing or like publications in any format, including digital or electronic versions of these works.

Scope of employment means the performing of services by an employee for the UFS in terms of or pursuant to a contract of employment between such employee and the UFS and reference to intellectual property created within the scope of employment of an employee will, for purposes of this Policy, be interpreted to include all intellectual property developed by or under supervision of such employee within the subject field in which such employee lectures and/or assesses students and/or expands her/his knowledge through further study and/or research (including without limitation publications published pursuant thereto), all intellectual property created and/or further developed in the course of which facilities and/or infrastructure of the UFS has been used or partly used and all intellectual property developed while performing activities at the request of or as required by the UFS, whether or not (in all the above instances) the intellectual property has been created within or not within or outside a specific service environment or location.

Staff member means an employee as defined.

Student means all undergraduate and postgraduate students who are enrolled as a student at the UFS, as well as post doctoral fellows.

THRIP means the Technology and Human Resources for Industry Programme that is managed by the National Research Foundation (NRF) on behalf of the Department of Trade and Industry (the dti).

TIA means the Technology Innovation Agency, established in terms of the Technology Innovation Agency Act 26 of 2008. The Act established a juristic person known as the Technology Innovation Agency (TIA) that is capable of performing, subject to this Act, such acts as are necessary for or incidental to the carrying out of its objectives. The objective of the Agency is to support the State in stimulating and intensifying technological innovation in order to improve economic growth and the quality of life of all South Africans by developing and exploiting technological innovations.

Trade mark means, according to the Trade Mark Act, other than a certification trade mark or a collective trade mark, a mark used or proposed to be used by a person in relation to goods or services for the purpose of distinguishing the goods or services in relation to which the mark is used or proposed to be used from the same kind of goods or services connected in the course of trade with any other person.

A trademark is a mark used or proposed to be used by a person in relation to goods or services for the purpose of distinguishing those goods or services from the same kind of goods or services connected in the course of trade with any other person.

Trade Secrets are, according to case law, applicable in trade and industry, the information must be secret/confidential, and the information must be of economic/business value.

UFS / University means the University of the Free State, an institution of higher education as contemplated in the Higher Education Act, No 101 of 1997.

Undergraduate student means a student who is registered at the UFS as an undergraduate student in terms of and as contemplated in the "General regulations for first qualifications".

Visitor means any person located at the University other than a staff member, honorary appointee, fellow or student of the UFS who takes part in any research project or scholarly activity which is conducted by any staff member, honorary appointee, fellow or student of the University, or who visits any part of the University in which research or scholarship or any related activity is conducted at the time that person creates intellectual property.

POLICY STATEMENT

1. UFS POLICY ON PROTECTION, EXPLOITATION AND COMMERCIALISATION OF INTELLECTUAL PROPERTY

1.1. PREAMBLE

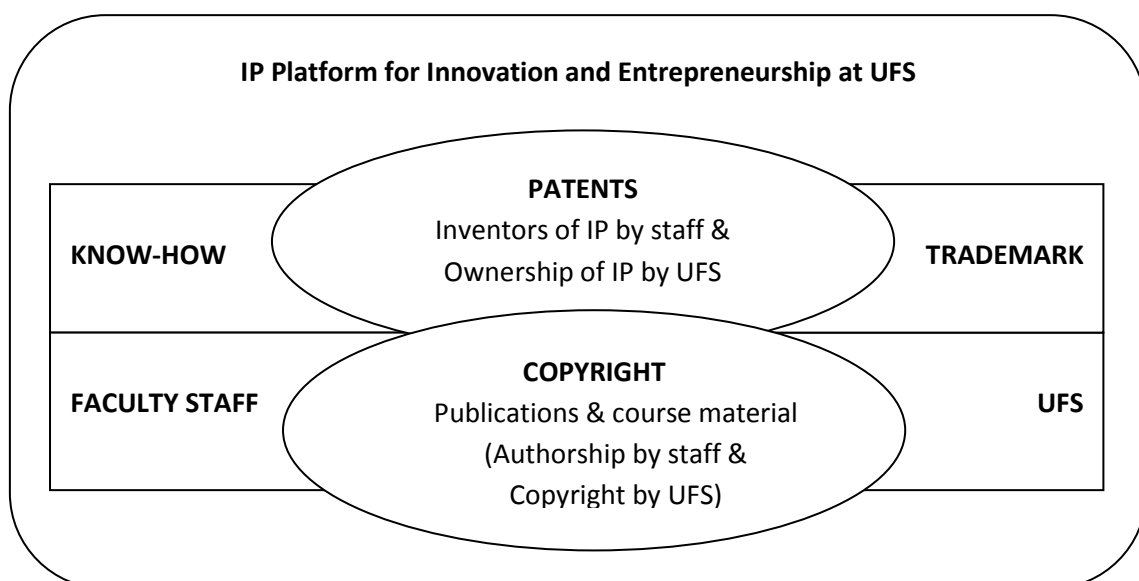
The University of the Free State (UFS) is committed to creating an environment where scholarship, research, academic excellence and innovation can flourish and seeks to foster a culture which supports knowledge creation, knowledge transfer and entrepreneurial endeavour in the community that it serves.

An environment where academic excellence, entrepreneurship and innovation flourish is best created when the UFS and its faculty staff, in the spirit of partnership, have a mutual understanding of, and respect for their respective contributions to intellectual property.

In this respect it is important to recognise that

- faculty staff in general contribute know-how (fund of expertise), whilst
- the UFS's main contribution is its trademark (established reputation).
- These two forms of intellectual property are woven together by means of copyright and patent protection.

Innovative research can only be commercialised if the protection of intellectual property is based on this premises. As a major public institution, the UFS has a responsibility to manage IP created as a result of its various activities in a manner that furthers its mission and benefits the wider community. This is not only as it is a requirement of the Act but also because proper management of IP by the UFS helps attract research investment and research collaborators; encourages the use of innovative teaching and learning materials and technologies; promotes linkages with industry; helps attract, reward and retain outstanding staff and students; facilitates the increased transfer of knowledge across all sectors of the economy; and generates financial returns for the UFS and for the creators of IP.



1.2. PURPOSE AND SCOPE OF THE POLICY

The UFS Policy on the Exploitation and Commercialisation of Intellectual Property (hereafter referred to as the 'Policy') sets out the principles for ownership, management, commercialisation, rights and responsibilities in relation to UFS intellectual property generated by UFS staff, students and others connected to the UFS. The objectives of the Policy are:

- To stimulate and create an innovative and entrepreneurial culture which fosters the creation of Intellectual Property (IP) and provides a framework for considering its commercial potential;
- To ensure that the UFS's IP is identified, disclosed, protected, developed and managed appropriately within the UFS management framework;
- To confirm the rights and responsibilities of the UFS, its staff, other appointees and its students;
- To protect the rights and interests of the UFS as prescribed by law;
- To provide a framework for the management of jointly-owned IP, whether it be between the UFS and another institution, individual or funding body;
- To provide guidance on the circumstances in which the UFS may waive its rights to its IP;
- To regulate the sharing of the benefits of the ownership of this IP and the distribution of any income arising from commercialisation with staff, students and other persons who may be brought within its ambit from time to time; and
- To ensure that the UFS complies with national legislation and policies as promulgated from time to time, in particular the Intellectual Property Rights from Publicly Financed Research and Development Act, No 51 of 2008 (The IPR Act).

1.3. THE OFFICE FOR INNOVATION AND BUSINESS DEVELOPMENT

The Office for Innovation and Business Development has been established in order to give effect to the objectives of this Policy, to make the results of research and development available to the community by means of technology transfer, and for the protection of the rightful interests of the staff, students, the UFS and its partners in respect of intellectual property. It is the responsibility of the Office for Innovation and Business Development to implement and support this Policy.

1.4. GUIDING PRINCIPLES OF THE POLICY

The five guiding principles of this Policy are:

- i. Fostering academic excellence and research outputs (publications);
- ii. Ownership of IP;
- iii. Conducive environment for the Disclosure of IP;
- iv. Exploitation of IP; and
- v. Benefit sharing

1.4.1. UFS commitment to academic excellence and research outputs

In this respect the UFS commits itself to:

- Ensure that its primary obligation in the execution of research is the search for knowledge, where appropriate, for the benefit of and utilisation by the community;
- Support and encourage research and development by staff and students with or without an explicit profit-seeking motive;
- Stimulate and support, in partnership with its staff and by means of the necessary recognition and encouragement, research and development which may lead to inventions, products, services or business ideas that can be exploited commercially;
- Unlock the value of the knowledge base (intellectual property and expertise that vest in persons) of the UFS to the benefit of both the inventors and/or entrepreneurs and the UFS by means of effective support in a spirit of partnership;
- The optimal protection and utilisation of the intellectual property of the UFS, its employees and its students; and
- To enable the UFS to fulfil these commitments for the optimal protection and the mutual benefit of all parties, this Policy stipulates the way in which intellectual property that originates in the UFS environment will be disclosed, protected and commercialised.

1.4.2. Managing potential conflicting publication and commercialisation objectives

The UFS encourages its researchers and students to publish their research outcomes. The UFS also has the objective of commercialisation which may sometimes require certain IP to be kept and maintained in confidence, so as not to adversely affect its commercialisation prospects or publication opportunities. However the objective to commercialise IP is not to operate to the exclusion of the objective to publish and the two objectives need to be reconciled and accommodated.

Where both the UFS's publication and commercialisation objectives coincide, publications will proceed, in a managed way that allows both the objective of publication to be achieved and the objective of commercialisation to be realised and without jeopardising the UFS's ability to earn subsidies from the DoE.

1.4.3. Ownership of IP

(also refer to §3-8 of this policy)

The UFS asserts ownership of IP created by employees of the UFS in the normal course and scope of their duties. IP creators at the UFS and their heirs have a specific right to a portion of the revenues that accrue to the UFS from their IP for as long as revenues are derived from such IP, provided that they are South African citizens or ordinarily resident in the Republic, until such rights expire.

This approach provides clarity and security of ownership rights, thereby promoting the commercialisation of research and the transfer of knowledge to the wider community.

In pursuit of its objectives, the UFS strives to deal expeditiously, expertly and thoroughly with opportunities to commercialise the IP in which it asserts rights, and in so doing seeks to realise its full value for creators, the UFS and the wider community. The UFS will administer this Policy and the intellectual property principles in a manner that ensures that proper regard is given to the interests of creators, including their sharing in the financial and other benefits of what is created and that any assignment of IP owned by the UFS is not inconsistent with these guiding principles.

1.4.4. Disclosure of Innovations and Inventions

(also refer to §9 of this policy)

Invention disclosure is mandatory for staff (including honorary appointees and visitors) and students where:

- (i) such disclosure is a requirement specified in a third party agreement;
- (ii) the invention disclosed has the potential to be developed for commercial application; or
- (iii) in all such cases where the IPR Act applies.

1.4.5. Exploitation of IP

(also refer to §10-16 of this policy)

The UFS undertakes to establish procedures regarding, entrepreneurial plans and ideas with business potential that may be brought to the attention of the UFS by staff members or students. These procedures will ensure that such plans/ideas are properly evaluated whilst confidentiality is maintained and commercialised.

These entrepreneurial ideas could be any one, or combination of:

- Inventions;
- Business ideas;
- Inventions emanating from contract research; or
- Short courses, but not limited hereto.

Each of these ideas requires a different exploitation strategy.

1.4.6. Inventions

Inventions (new products or processes) are normally better commercialised by means of royalty bearing licensing agreements.

1.4.7. Business ideas

Business ideas normally entail the selling of a new product or service and the disclosure of such ideas is accompanied with a comprehensive business plan.

1.4.8. Contract and grant research

In the case of research and development undertaken in collaboration with another organisation, the UFS undertakes to establish procedures aimed at ensuring that the interests, rights and obligations of all parties with regard to IP are fully protected. Contract research is normally conducted in accordance with a duly signed research

agreement which may also regulate commercialisation aspects pertaining to the research.

1.4.9. Short courses

One form of commercialisation of the UFS's knowledge base is through the presentation of short courses. In terms of this Policy, the UFS will lay claim to the copyright of the course material of short courses. The UFS reserves the right to put in place quality assurance procedures to protect its trade mark and reputation.

1.4.10. Benefit sharing

(also refer to §17-19 of this policy)

The UFS will administer this Policy in a manner that ensures that proper regard is given to the interests of creators, including benefit sharing of the proceeds of intellectual property that is created and assigned to the UFS.

IPR ACT

2. INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY FINANCED RESEARCH AND DEVELOPMENT ACT

2.1. OBJECT OF IPR ACT

(Note: this paragraph is a direct quotation of section 2 of the IPR Act)

The object of this Act is to make provision that intellectual property emanating from publicly financed research and development is identified, protected, utilised and commercialised for the benefit of the people of the Republic, whether it be for a social, economic, military or any other benefit.

This Act furthermore seeks to ensure that:

- (a) a recipient of funding from a funding agency assesses, records and reports on the benefit for society of publicly financed research and development;
- (b) a recipient protects intellectual property emanating from publicly financed research and development from appropriation and ensures that it is available to the people of the Republic;
- (c) a recipient identifies commercialisation opportunities for intellectual property emanating from publicly financed research and development;
- (d) human ingenuity and creativity are acknowledged and rewarded;
- (e) the people of the Republic, particularly small enterprises and BBBEE entities, have preferential access to opportunities arising from the production of knowledge from publicly financed research and development and the attendant intellectual property;
- (f) following the evaluation of a disclosure, researchers may publish their research findings for the public good; and
- (g) where necessary, the State may use the results of publicly financed research and development and the attendant intellectual property in the interest of the people of the Republic.

2.2. UFS'S COMMITMENT TO THE VALUES AND OBJECTIVES OF THE IPR ACT

The UFS, as a responsible corporate citizen of South Africa and creator of knowledge, places a high premium on the effective utilisation of intellectual property emanating from publicly financed research and development for the benefit of the people of South Africa. In this respect the UFS is committed to applying this Policy in such a manner that the values and objectives of the Act are at all times promoted.

2.3. FULL COST AND INDUSTRY ENGAGEMENT

The UFS acknowledges that section 15(4) (a) of the IPR Act provides that any research and development undertaken at an institution and funded by a private entity or organisation on a full cost basis shall not be deemed to be publicly financed research and development and the provisions of the Act shall not apply thereto. The UFS will, where industry partners so request, engage on a full cost basis with such industry partners. Engagement on a full cost basis does not negate the UFS's right to own or exploit intellectual property.

IP OWNERSHIP

3. OWNERSHIP OF INTELLECTUAL PROPERTY CREATED BY STAFF

3.1. IP OWNERSHIP AND UNIVERSITY STAFF

In accordance with relevant legislation and subject to certain exclusions as fully described in this Policy, the UFS asserts ownership of IP as defined with regards the creation by staff members (i.e. permanent employees, fixed-term contract employees and temporary and part time employees and includes academic and administrative staff and management).

3.2. COPYRIGHT

According to the Copyright Act, 98 of 1978 (Section 21(1)(d)) the ownership of all copyrights of staff of the UFS in respect of works created by them in the normal course and scope of their duties (including tuition, research and community service) or on the specific instruction of the UFS, vests in the UFS.

The following exception applies: Copyright of any secondary publication of which the UFS ceded the copyright in writing to an employee (e.g. a text book that consist of previously published academic articles and where the UFS has had the opportunity to obtain subsidy credits).

3.3. INVENTIONS, EXPERTISE, TRADE SECRETS AND KNOW-HOW

All inventions, expertise and trade secrets developed by an employee (including contract workers) during the period that (s)he is an employee with the UFS and that relate to the field of specialisation in which the employee has been appointed at the UFS, shall be considered to have been developed in the normal course and scope of her/his employment at the UFS, unless the employee can prove the contrary on the basis of an agreement or evidential material.

Thus all rights, interest and title in any invention, trade secret, whether patentable or registered as a model or plant breeders' right or not, created by an employee or contract worker of the UFS in the normal course and scope of her/his duties at the UFS, vest by law in the UFS; in so far as these do not vest by law, employees assign such rights and interests to the UFS. Know-how and expertise can only be owned by an individual and cannot be assigned or ceded.

3.4. CONTRACT AND GRANT RESEARCH WITH PRIVATE ENTITIES OR ORGANISATIONS

3.4.1. IPR Act not applies

Although it is not compulsory, staff are encouraged to negotiate research contracts with a private entity/organisation on a "Full Cost" basis to enable the UFS to negotiate in an unrestricted manner. The UFS reserves the right to negotiate research or grant contracts with outside organisations which may include the assignment of IP, provided that the IPR Act does not apply.

Staff members, who conduct contract or grant research for industry or outside organisations, must ensure that appropriate agreements regarding IP rights are in place prior to the start of the contract. Unless otherwise agreed beforehand, such contract research shall be deemed to fall within the normal course and scope of the

staff member's employment and the IP that may be created as a result of such contract or grant research shall reside with the UFS.

UFS employees who visit other educational institutions or research organisations or conduct research elsewhere during sabbatical/research leave, must ensure that appropriate agreements regarding IP rights are in place prior to the visit.

3.4.2. IPR Act applies

The provisions of the IPR Act apply in such cases where contract or grant research is not conducted on a full cost basis.

In the event where an industry partner does **not pay full cost** for the research or grant contract, such a private entity/organisation may:

- a) become an exclusive licensee of IP if such a private entity/organisation has the capacity to manage and commercialise the intellectual property in a manner that benefits South Africa; or
- b) become a co-owner of the intellectual property if:
 - i. there has been a contribution of resources, which may include relevant background intellectual property by the private entity or organisation;
 - ii. there is joint intellectual property creatorship;
 - iii. appropriate arrangements are made for benefit-sharing for intellectual property creators at the UFS; and
 - iv. the UFS and the private entity or organisation conclude an agreement for the commercialisation of the intellectual property

3.5. CONSULTATION/PRIVATE WORK

Consultation work should only be entered into with permission of the UFS. Only the product of consultation work undertaken by a staff member of the UFS for an outside organisation (i.e. the copyright of the reports) may be delivered to said organisation and staff may not assign background IP (e.g. proprietary data and methodologies).

Staff members entering into such arrangements are obliged to ensure that the rights to academic publication are not prejudiced. Furthermore the UFS retains the copyright on the raw data created during research undertaken for such consultation work. Staff members of the UFS therefore assign to the UFS the copyright and any other rights that may vest in such raw data, unless otherwise agreed with the UFS.

Some consultation work cannot be performed without access to and use of the UFS's infrastructure; in such cases the relevant staff members must conclude an agreement with the relevant Dean, including the way in which the UFS is to be compensated for use of infrastructure (e.g. laboratories, reagents and laboratory assistants). Alternatively the UFS may enter into the contract with the client instead.

3.6. PUBLICLY FINANCED RESEARCH PURSUANT TO THE IPR ACT

The ownership of IP emanating from research using funds allocated by a funding agency or government department for such purpose, vests in the UFS. The provisions of the IPR Act shall in all such cases prevail.

3.7. SOFTWARE

According to the Copyright Act, 98 of 1978, software is subject to copyright protection; however, in certain jurisdictions software may also be patented.

Software developed by employees, independent contractors and students of the UFS is subject to the provisions of this Policy. This also applies to documents supporting the development and operation of developed software packages and new software, e.g. source codes. However, the UFS will not lay claim to ownership of open-source software, but those involved in such development should inform the UFS of their involvement.

Documents supporting the development and operation of software developed by employees, independent contractors and students shall be retained by developers and surrendered to the UFS on request, and new software development and progress therewith shall be disclosed to the UFS. Independent contractors in particular should exercise caution in respect of software developed in the course of their contract work.

Employees and independent contractors are prohibited from using, distributing, reproducing, removing or otherwise taking a copy with them on the expiry or termination of their contract or employment at the UFS, unless explicitly authorised by the UFS. Furthermore, the employee or independent contractor must keep the contents, structure and methodology of the software confidential at all times while in the employ or under contract to the UFS, and for a period of at least six months thereafter, unless disclosure thereof has been authorised.

In order to identify and protect all the possible intellectual property rights that may emanate from software being developed, employees and independent contractors must disclose new software being developed to the UFS at the flowchart stage.

The development material and all existing versions of the source code of software must be delivered to the Director: Innovation and Business Development at the UFS on completion of the development of the software, and in the event of ongoing development, on completion of each version thereof, and/or on conclusion of the job responsibilities or termination of employment of an employee or independent contractor.

3.8. MULTIPLE INDIVIDUAL CONTRIBUTIONS

If more than one individual contributes intellectually to the creation of intellectual property, irrespective of the nature and scope of the contribution, recognition shall be given to each contribution in accordance with the rules of inventorship.

If more than one individual contributes to the creation of intellectual property, and all the individuals are employees and/or students of the UFS, they must agree mutually and in writing

on their respective claims to inventorship of every original intellectual contribution made by them. The same applies to any individual who contributes to the creation of intellectual property that is not an employee or student of the UFS.

4. IP OWNERSHIP CREATED BY UFS STUDENTS

Unless otherwise agreed beforehand between the student and the Office for Innovation and Business Development in consultation with the student's supervisor, all students (including post doctoral fellows) are required to assign any intellectual property that may vest in them as a result of their studies, to the UFS. This assignment is undertaken during the registration process. As such all relevant aspects of IP ownership as outlined in this Policy that relate to UFS staff members also apply to UFS students.

4.1. BURSARIES FROM OUTSIDE ORGANISATIONS

Outside organisations that provide bursaries to students must agree contractually in advance with the UFS about the ownership of intellectual property that may arise from the student's studies at the UFS. In the event where there was no prior agreement the IP shall be owned by the UFS.

4.2. STUDENTS COMMISSIONED BY EMPLOYERS

Should a student intend to submit an assignment, thesis or dissertation that corresponds to a commission of her/his employer, (s)he must disclose her/his intention to the UFS and her/his employer on registration or as soon as possible after (s)he becomes aware of the commission. The UFS and the employer shall then negotiate copyright ownership and confidentiality related to the student's assignment/thesis/dissertation. The copyright in the thesis and publications shall, however, be owned by the UFS.

4.3. OWNERSHIP OF STUDENTS' THESIS AND SECONDARY RIGHTS THERETO

The Policy establishes the right of the UFS to hold the copyright of the student's assignment/thesis/dissertation and may publish it. This does not prevent the student from publishing a popular version of the assignment/thesis/dissertation after publication for academic purposes has taken place.

The UFS may commercially exploit patents, plant breeders' rights and models emanating from a student's assignment/thesis/dissertation.

5. IP OWNERSHIP AND VISITING LECTURERS, RESEARCHERS AND POSTDOCTORAL FELLOWS

Prior to their visit (or engagement), visiting lecturers, researchers, honorary appointees and postdoctoral fellows are required to sign a confidentiality agreement in terms of which they undertake to keep confidential all confidential information that may come to their attention during their visit to the UFS and not use it for personal gain. In addition, a declaration of relevant background IP must be made on commencement of the visit.

An agreement must be entered into which assigns the rights of any intellectual property created as a result of involvement by a visitor, honorary appointee or fellow on a research project at the UFS, to the UFS. The UFS will only claim intellectual property of visitors, honorary appointees and fellows that was created or started during their visit to the UFS. Any other division of such IP rights must be agreed beforehand in writing with the UFS.

All other relevant aspects of IP ownership as outlined in this Policy that relate to UFS staff members also apply to visitors.

6. INCREMENTAL CONTRIBUTIONS TO INTELLECTUAL PROPERTY

In cases where a UFS staff member or student is commissioned by an outside organisation to conduct a study in which existing IP, which belongs to the outside organisation, has to be further developed or used, the UFS's rights to the intellectual property shall be limited to the incrementally added intellectual value of the investigation or research, and any patents, designs and copyrights that may originate on account of such research. A written contract outlining all parties' respective rights to the IP must be entered into.

7. UNIVERSITY TRADEMARKS

The UFS is the owner of various registered and unregistered trade marks and thus reserves all its rights in respect of any marks that include its name, coat of arms, abbreviations or similar indications, or that otherwise suggest an association with the UFS. The use of such trade marks (i.e. the use of UFS' logo's on letterheads and certificates) must comply with the applicable policies and regulations of the UFS.

UFS employees and students who commercialise intellectual property that does not belong or no longer belongs to the UFS may not use the name of the UFS in such commercialisation without permission.

8. WAIVER OF RIGHTS TO OWNERSHIP IN INTELLECTUAL PROPERTY

The UFS may waive its rights to ownership in its IP.

8.1. IPR ACT DOES NOT APPLY (FULL COST)

The UFS reserves the right to negotiate research or grant contracts with outside organisations which may include the assignment of IP, in accordance with paragraph 3.4 of this Policy.

8.2. IPR ACT APPLIES

In those cases where such IP has derived from publicly financed research, the choice must be made in accordance with the guidelines published by NIPMO, within the set period, and must notify NIPMO by informing them of the reasons for the decision. NIPMO may, within the prescribed period, after considering the reasons provided by the recipient and any prejudice that may be suffered by the State if no statutory protection for the IP is obtained, acquire ownership in the IP and, where applicable, obtain statutory protection of it. Should NIPMO decide not to acquire ownership in the IP it must, in writing, notify the UFS of its decision.

EXPLOITATION AND COMMERCIALISATION OF INTELLECTUAL PROPERTY

9. DISCLOSURE

Invention disclosures provide confidential information of something new and useful that has been conceived or developed which has potential commercial application. Such disclosures are used to help determine whether the IP may require some form of protection and/or the invention is commercialised. For UFS staff and students, lodging an invention disclosure is a vital step toward protecting 'inventions' and sharing the benefits from commercialisation.

The Vice-Rector: Institutional Affairs and the Director: Innovation and Business Development will jointly approve and publish from time to time procedures for the collection and management of invention disclosures.

The UFS will use reasonable endeavours to commercialise IP that is considered suitable for commercialisation. The process of commercialisation will be undertaken in a spirit of partnership with the creator(s)/inventor(s) and in accordance with the UFS's policies. It will be the UFS's decision whether to proceed with, continue, or exit from commercialisation activities.

10. IDENTIFICATION OF INTELLECTUAL PROPERTY

It is a function of the Office for Innovation and Business Development to identify and evaluate, together with staff and students, intellectual property that has been created within the UFS environment, with a view to the exploitation thereof.

Employees, other appointees and students must identify and disclose in writing (according to processes stipulated by the Office for Innovation and Business Development) any intellectual property which has been created in the course of her/his employment, appointment or studies prior to public disclosure, including all relevant details of that intellectual property. This must be done within 90 days of the identification of possible IP and before the IP is made public. In addition identification of new intellectual property will be done by means of regular surveys and annual reports.

The UFS, in consultation with the creator(s)/inventor(s) will, inter alia, undertake a technological investigation and due diligence to establish whether the invention/innovation is original/unique and to estimate its commercial potential and possibilities.

Where the decision is made to proceed with the protection or commercialisation of IP, creators (including students) will have the opportunity to participate in processes associated with the protection and commercial exploitation of IP that they have helped to create. As required, preliminary or PCT patenting, market analysis, the development of a business plan and investigation of exploitation routes will be undertaken, as well as investigating sources of financing and the formation of partnership.

Should the UFS decide at its sole discretion not to participate in the commercial exploitation of the business concept or intellectual property, the procedures outlined by NIPMO must be adhered to in the case of publicly financed research.

11. REGISTRABLE INVENTIONS

For patents, models and plant breeders' rights, the requirement of 'novelty' is particularly important; any creator(s)/inventor(s) must therefore first determine this against current state of the art – including all publication on and uses of similar products and processes. In this respect a novelty search is normally required.

The creator(s)/inventor(s) is obliged to ensure that the invention is kept confidential in order to protect its novelty. All researchers must keep a complete and accurate record and apply a proper system of laboratory management and lab log books in order to claim the uniqueness and date of an invention.

In order to ensure maximal utilisation of new intellectual property, identification and disclosure thereof **must e made** as soon as possible (at least within 90 days) after a new and potentially useful product/process has been conceptualised, or a new plant variety has been developed, or when an unusual or non-obvious research result is obtained. The recommendation of the departmental Head and/or faculty Dean is required at the time of disclosure. Since disclosure affects the possibilities of patenting, model registration and protection of plant breeders' rights, public disclosure of such research results (inter alia in scientific journals) must be held back until such time as the UFS has made a decision together with the creator/inventor about the possible patenting or registration of the invention. The UFS will do everything in its power to ensure that the period of non-disclosure is as short as possible. Certain inventions can be protected by means of patenting and copyright.

12. REGISTRATION OF PATENTS, DESIGNS AND PLANT BREEDERS' RIGHTS

The final decision to register a patent, plant breeders' right or model for a particular invention, of which the ownership vests in the UFS, will be taken by the Office for Innovation and Business Development within nine months of disclosure of the invention.

Costs of registration will be borne by the UFS and this entitles the UFS to decide on the country/countries in which the patent, plant breeders' right or model is to be registered. Without official written authorisation from the UFS, no UFS employee or student may proceed on their own initiative or via third party assistance with the preliminary or final registration of a patent, plant breeders' right or model in respect of any invention made in the normal course and scope of her/his employment or studies, as ownership of such inventions vests in the UFS.

13. REGISTRATION OF SOFTWARE

Copyright protection applies to software, but patenting is also a possibility if such software complies with certain conditions.

In order to identify and protect all the possible intellectual property rights that may emanate from software being developed, employees must disclose new software being developed to the UFS at the flowchart stage.

14. COMMERCIALISATION

14.1. IPR ACT APPLIES

In accordance with the IPR Act, if the UFS decides not to retain ownership of any particular IP or not to obtain statutory protection for the IP, the UFS must make this choice in accordance with the guidelines set by the National Intellectual Property Management Office (NIPMO) and inform NIPMO accordingly. If in national interest, NIPMO may, within a prescribed period, choose to acquire ownership of the IP and, where applicable, obtain statutory protection for the IP. Should NIPMO decide not to acquire ownership of the IP, it must inform the UFS in writing of its decision. This being the case, in accordance with the provisions of the Act, the UFS must give the IP creator(s)/inventor(s) the option to acquire ownership in the IP and to obtain statutory protection for it, provided that in the case where a private entity or organisation had provided some funding, such private entity or organisation will first be offered the option before the IP creator(s)/inventor(s).

The UFS reserves the right and under the Policy asserts that right to prohibit the commercialisation by creators/inventors of IP which, in the reasonable judgement of the UFS, is incompatible with the mission and best interests of the UFS.

Commercialisation is a complex and often lengthy process and requires commitment and diligence from those involved. There are a variety of pathways to commercialisation and numerous steps involved in the process which will be unique in almost every case. Creator(s)/Inventor(s) are expected to use their best endeavours in the commercialisation of IP.

The UFS will at all times seek to deal expeditiously and competently with IP protection and commercialisation opportunities so as to maximise the potential benefits for all interested parties, and also to keep creators informed of progress in pursuing commercialisation opportunities.

The Director: Innovation and Business Development will, in consultation with the creator(s)/inventor(s) and the Vice Rector: Institutional Affairs determine a commercialisation strategy for intellectual property owned by the UFS.

14.1.1. Section 11 of the IPR Act

In accordance with the Act, the UFS will determine the nature and conditions of IP transactions relating to any IP held by it, but the following conditions, as prescribed in section 11 of the IPR Act, will be taken into account:

- a) Preference must be given to non-exclusive licensing;
- b) preference must be given to BBBEE entities and small enterprises;
- c) preference must be given to parties that seek to use the intellectual property in ways that provide optimal benefits to the economy and quality of life of the people of the Republic;

- d) exclusive licence holders must undertake, where feasible, to manufacture, process and otherwise commercialise within the Republic;
- e) each intellectual property transaction must provide the State with an irrevocable and royalty-free licence authorising the State to use or have the intellectual property used throughout the world for the health, security and emergency needs of the Republic;
- f) if a holder of an exclusive licence is unable to continue with the commercialisation of the intellectual property within the Republic during the duration of the licence and the recipient wishes to retain the exclusive licence, the recipient must furnish NIPMO with full reasons for retaining exclusivity;
- g) the UFS must supply the reasons contemplated in (f) above within 30 days of it becoming aware that the holder of the licence is unable to continue commercialising the intellectual property, or such extended time as may be agreed upon with NIPMO; and
- h) NIPMO may request that the exclusive licence contemplated in paragraph (f) be converted to a non-exclusive licence if the UFS fails to furnish the reasons within the period contemplated in paragraph (g), or if NIPMO is not satisfied with such reasons.

14.1.2. Commercialisation Strategy

The commercialisation strategy will generally involve one of the following two routes, but is not limited hereto and specific requirements may lead to different strategies:

Licensing intellectual property to a company or companies

A license gives a company the right to use the intellectual property to make a product and, in return, the UFS usually gets a royalty on the sales turnover of the product. The UFS retains ownership of the intellectual property and if the company does not fulfil its contractual obligations, the license can be cancelled. A license may be exclusive (i.e. Only one company gets the right) or non-exclusive. A license may also be restricted to a particular geographic area.

Creation of a spin-out company

The UFS may assign (i.e. transfer) the intellectual property to the spin-out company or may license the intellectual property to the spin-out company. The UFS will generally get income from dividends issued by the spin-out company or from sale of shares, but may also get a royalty on turnover depending on the agreement between the UFS and the spin-out company.

14.2. IPR ACT DOES NOT APPLY

In most cases where the IPR Act does not apply the intellectual property would most likely have emanated from contract or grant research pursuant to paragraph 3.4 of this Policy. The provisions of the research or grant contract will then be used to develop a commercialisation strategy.

15. EXPLOITATION OF IP THROUGH SPIN-OUT COMPANIES

In cases where the UFS decides, in consultation with the creator(s)/inventor(s) or entrepreneur(s), to exploit intellectual property by means of the establishment of a spin-out company, it shall be done by establishing a separate enterprise. The UFS, the creator(s)/inventor(s) or entrepreneur(s), and other possible partners shall own shares or members' interests in such an enterprise according to a division that is agreed upon beforehand.

In the setting up of such spin-out companies, special attention should be given to broad-based black economic empowerment (BBBEE), as defined in section 1 of the Broad-Based Black Economic Empowerment Act, No 53 of 2003.

A staff member of the UFS shall not be involved in any other private companies, close corporations or other separate entities or enterprises that compete with the UFS by including any of the primary functions of the UFS in their activities. No UFS employee or student who is involved in a spin-out company or other enterprise in partnership with the UFS shall compete with such company/enterprise or be involved in any other entity that competes with such company/enterprise by providing similar goods or services, without prior authorisation from the UFS.

The commercial viability of spin-out companies shall be investigated by the Office for Innovation and Business Development after the prescribed documentation with regard to disclosure has been completed. Thereafter a process, as determined by the above mentioned Office, shall be followed. This process will culminate in the submission of a Business Plan.

16. OFFSHORE TRANSACTIONS

The UFS must inform NIPMO of its intention to conclude an IP transaction offshore; any such transaction (or those involving non-South African entities and persons) must be in accordance with the regulations and guidelines provided by NIPMO. If such a transaction does not comply with these regulations and guidelines, prior approval of NIPMO must be obtained.

BENEFIT SHARING

17. UFS REVENUE SHARING

UFS policy aims to foster a culture that supports knowledge creation, knowledge transfer and entrepreneurial endeavour, including through commercial revenue sharing with creators/inventors. Where the UFS deals with IP for the purposes of profit or gain, it will share any net revenue of commercialisation with the creator/inventor of that IP.

17.1. COPYRIGHT – WAIVER OF INCOME

The UFS does not lay claim to income derived from copyrights in the case of scientific or popular books, articles and other publications, and other works of a scholarly or aesthetic nature created by an employee. However, Government subsidies that the UFS earns on the grounds of research outputs accrue to the UFS in full.

The UFS may lay claim to ownership or any rights and income pertaining to artistic works, literary works, textbooks and musical works, if the work in question should fall within the scope of an employee's duties.

18. FORMULA FOR INCOME ALLOCATION

The allocation formulae shall apply with immediate effect after approval of the Policy by Council. However, unless it has been otherwise agreed, these allocation formulae shall not apply to existing agreements with UFS staff or students, but the existing allocation formula for each agreement shall apply until the date on which the contract expires.

If circumstances so allow and as far as it is consistent with the IPR Act, the UFS strives to apply the income allocation formula for the gross income derived from the IP earmarked for the creator(s)/inventor(s) or their heirs in terms of paragraph 18.1. In this respect the UFS shall at least meet the minimum requirements prescribed by the IPR Act.

18.1. INCOME ALLOCATION WHEN THE IPR ACT APPLIES

Note1: This paragraph is consistent with section 10 of the IPR Act.

Intellectual property creators at UFS and their heirs are entitled to the following benefit-sharing:

a) at least 20% of the revenues accruing to the institution from such intellectual property for the first one million Rand of revenues, or such higher amount as the Minister may prescribe; and

b) thereafter, at least 30% of the net revenues accruing to the UFS from such intellectual property.

The benefits contemplated in above must be shared in equal proportions between the qualifying intellectual property creators or their heirs unless otherwise agreed between those creators and the recipient.

The benefits to intellectual property creators and their heirs contemplated above must be a first call on the applicable revenue ahead of any institutional distribution.

The UFS may distribute the balance of the revenues generated by intellectual property as it deems fit, but must apportion part of it for funding, among other things:

- more research and development;
- the operations of the office dealing with technology transfer; and
- Statutory protection of intellectual property.

18.2. INCOME ALLOCATION WHEN THE IPR ACT DOES NOT APPLY

Unless otherwise agreed, earnings derived from the commercialisation of intellectual property that has been created by a UFS staff member or student, but the ownership of which vests in the UFS, shall be allocated as follows:

Direct costs of and reasonable charges related to protecting, maintaining protection, marketing, administering and commercialising an item of IP shall be paid. These costs will be recoverable by the relevant parties who incurred those costs from the gross income on a *pro rata* basis to the amount of the costs incurred by each.

Thereafter, the portion of the gross income derived from the IP earmarked for the **creator(s)/inventor(s)** or their heirs shall be a first charge against revenues received. This amount will constitute 40% of the gross income. Where there is more than one creator/inventor of an item of intellectual property, the creator(s)/inventor(s) share will be distributed among them in such shares as they may mutually agree. The creator(s)/inventor(s) may elect to either retain the income that (s)he receives in their research account and use the funds for research purposes (in which case it is not taxable), or for personal remuneration, in which case income tax shall be deducted in accordance with SARS directives.

The balance of the income (after the above deductions) constitutes the **Net income**. Net income received by the UFS in respect of each commercialisation of IP shall be distributed as follows:

Beneficiary	Percentage
Relevant Faculty/Department/Institute/Entity	50% of net income
UFS Central Budget	10% of net income
UFS Innovation (to further Innovation and Business Development)	40% of net income

The UFS's share of any such revenue will be allocated to the Strategic Innovation Fund for the promotion and development of research and innovation.

The Faculty/Institute's share of any revenue forthcoming from the commercialisation of IP will be allocated to the Faculty Research Committee, which in consultation with the Dean of the faculty, must determine the distribution between faculty, department or other entities as appropriate. These funds must be applied in the interest of research and may not be allocated to any individual for personal gain.

19. OTHER SOURCES OF THIRD STREAM INCOME

19.1. VALUE ADDED DURING COMMERCIALISATION

Intellectual property (mostly patents or copyright) is mainly licensed to third parties and the royalties earned on this are divided in accordance with the principles and formula outlined above.

In order to turn intellectual property into a marketable product, a process of product development normally takes place; the client/licensee usually pays for this. This process has nothing to do with the potential income (royalties) that can eventually be earned from the licensing agreement, and UFS employees may be involved in the value adding process in the form of:

- CONSULTATION (paid for consultation work on an hourly basis);
- PRODUCT DEVELOPMENT (paid for services rendered as a service provider);
- MARKETING (as an agent for which commission is paid); or
- DISTRIBUTION (for which fees are paid for product distribution services rendered).

In addition, taking up equity in a spin-out company does not negate any party's right to income as set out above. Consequently a creator/inventor may receive royalties on account of a patent licensed to a third party (which may be a spin-off company), (s)he may at the same time also act as consultant, and (s)he may also receive dividends as a shareholder. The same person may also act as an agent, earning a commission. There is thus no pre-determined formula that can be made applicable to spin-out companies.

Intellectual property creators at the UFS and their heirs have a specific right to a portion of the revenues that accrue to the UFS from their IP for as long as revenues are derived from such IP, provided that they are South African citizens or ordinarily resident in the Republic until such rights expire.

GENERAL PROVISIONS

20. BIODIVERSITY, BIO-PROSPECTING AND BIO-PIRACY

The UFS undertakes to have regard for the protection of South Africa's indigenous biodiversity in accordance with the Biodiversity Act, 2004 as well as international treaties (e.g. Budapest Treaty), during negotiations where biodiversity pertains to the UFS's IP.

21. DISPUTES

Where a dispute arises between the UFS and a creator/inventor or student about the ownership of IP, parties will attempt to resolve the matter in accordance with the UFS policies, guidelines and procedures.

22. DURATION OF RIGHTS

Any intellectual property which shall become the property of the UFS under this Policy shall remain the property of the UFS for as long as it is permitted by law (i.e. patents: 20 years; copyright: normally 50 years) whether the creator/inventor remains part of the UFS as an employee or student or otherwise or not.

Intellectual property creators at the UFS and their heirs are granted a specific right to a portion of the revenues that accrue to the institution from the IP for as long as revenues are derived from such IP, until such rights expire.

23. CONFLICT OF INTEREST

Conflict of interest can arise naturally from an employee's engagement with the world outside and the mere existence of a conflict of interest does not necessarily imply wrongdoing on anyone's part. When a conflict of interest does arise however, it must be recognised, disclosed, and either eliminated or properly managed.

Employees of the UFS are expected to accord the UFS their primary professional loyalty, and to arrange outside obligations, financial interests, and activities so as not to conflict with this overriding commitment. In particular, members of the UFS should not seek to influence the UFS's commercialisation decisions in ways that could lead to personal gain or give improper advantage to their associates or themselves.

UFS employees should not be in a position to influence the commercial decisions of the UFS or its associated or subsidiary companies in such a way that it may lead to reduced income for the UFS or its affiliates.

UFS employees or students who may be, or may potentially be, in a position of conflict of interest with regard to commercialisation projects, should promptly disclose any such situation

to the Director: Innovation and Business Development who will engage in negotiations with the staff member and agree on a strategy for resolving the conflict of interest.

Employees and students of the UFS who have economic interests in commercialisation projects of the UFS are still entitled to any benefit due to them as creator(s)/inventor(s), e.g. royalties or being paid for consulting services rendered. In this respect employees may be asked to recuse themselves from board meetings. The board may also put in place disclosure mechanisms for such cases where potential conflict of interest may arise.

In the case where UFS office/laboratory space and/or facilities are utilised, a proper lease agreement shall be concluded with the spin-out company. Such a lease agreement shall at all times put the academic interests of the UFS first.

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