



**YENEPOYA**

(DEEMED TO BE UNIVERSITY)

Recognized under Sec 3(A) of the UGC Act 1956

Accredited by NAAC with 'A' Grade

# **Intellectual Property Rights Policy**



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University Road, Deralakatte, Mangaluru – 575 018

No.YU/REG/PA/BOM-48/Not/06/2019

Date: 16.12.2019

## **NOTIFICATION**

**Sub: Approval of Yenepoya (Deemed to be University) Intellectual Property Rights Policy.**

**Ref: 48<sup>th</sup> meeting of BoM held on 13.12.2019 – Agenda 12.**

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It was resolved to accept the Intellectual Property Rights Policy of Yenepoya (Deemed to be University) as proposed by Yenepoya Incubation Centre.

*ks Somayaj*

Registrar  
Yenepoya (Deemed to be University)

Registrar  
YENEPOYA

To: (Deemed to be University)

Dy. Director, QAC  
Academics



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## **Intellectual Property Rights Policy**

**Version: May 2019**

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## Foreword

Universities and research institutions have a fundamental role in socio-economic development. Innovation and scientific development are the basis for economic, technological and social mobility as well as for economic growth. Universities and research institutions are a main arena in which scientific development and innovation takes place and the intellectual property Rights (IPR) system is the main mechanism that enables universities and society at large to capture the value of innovation.

It is the IPR system that assists Universities and research institutions to commercialize their knowledge assets and by doing so potentially obtain additional sources of funding, which may be channeled into, amongst other, further research. At the same time, partnerships with the private sector and other organizations can ensure that academic research outcomes have broader impact, including competitiveness of industry and the regions, establishment of new companies, or addressing a variety of socio-economic challenges.

This approach requires support for the entrepreneurial dimension of knowledge transfer, where strategies that leverage IPR assets at the same time place emphasis on how academic research and the resultant IP best provide economic, environmental and social benefits for society at large.

Yenepoya (Deemed to be University) has a very clear vision in creating new knowledge through scientific research which can reach the masses and impact our society. The knowledge is an intellectual asset and needs protection. Hence, Yenepoya (Deemed to be University) has taken the necessary steps to create an Intellectual Property Management (IPM) cell.

This IPR policy is the very foundation of IP management in that it:

- serves as the starting point for a common understanding about IPR, IPR rights and incentives for researchers;
- Establishes the structure for the way the University deals with the ownership and disposition of its IP. As such, it ensures certainty and transparency to reinforce the links between the University and industry; and
- Is also fundamental in helping the University address social commitments, and especially, in ensuring the dissemination of knowledge and technology for the public good.

This **Intellectual Property Rights Policy** aims to provide a compendium of key issues that are essential in an IP policy, including ownership, incentives, confidentiality and publication, IP management and commercialization, recording and maintenance of IPR, and IPR-related conflicts of interest. The aim is to promote reflection and critical thinking; to stimulate certainty in terms of IPR ownership; to encourage responsible IPR commercialization of research results.

## ARTICLE 1-PREFACE

### Context and University Mission

The core mission of the Yenepoya (Deemed to be University)(“University”) is creation of knowledge through scientific research which can reach the masses and impact the society.

The University is committed to ensuring that Intellectual Property Rights (IPR)emanating from its Research activities is used in accordance with its legal obligations, for the benefit of the University, the Inventors and, most importantly, society-at-large.

### Purpose of the IPR Policy

**Promotion of IPR utilization.** The intent of the IPR Policy is to facilitate the widespread use of, through various modalities of access to, the University’s IP.

**IPR management.** The IPR Policy seeks to set the framework for the translation of the IPR arising from the University’s Research into products, services and processes. It encourages Staff Members, Students and Visitors to become Inventors and to identify IP with potential commercial value. It also establishes clear rules and procedures for the management and Commercialization of such IPR generated at the University.

**Balance of interests.** The IPR Policy seeks to ensure the legal protection, where applicable; effective management and Commercialization 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 serving the public interest.

### Overall Principles

The University operates under the following overall principles:

**Responsible Commercialization.** Where IP arises that has commercial potential as a result of Research, the University intends to make such IPR available in a form that will most effectively promote its development and use for economic and social benefit.

**Incentives.** The University wishes to recognize and reward Staff Members, Students and Visitors whose IP generates a demonstrable socio- and/or economic impact.

## ARTICLE 2-DEFINITIONS

Without prejudice to any applicable laws, 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 IPR laws of India.

**Background IPR.** Any pre-existing IP created before the execution of any Research Project, or prior to an Inventor becoming subject to this IPR Policy, by virtue of Appointment in the case of a Visitor, employment contract in the case of a Staff Member, or registration in the case of a Student.

**Commercialization.** Any form of utilization of IP intended to generate value, which may be in the form of a marketable product, process or service, commercial returns, or other benefit to society. **Commercialize** is similarly defined.

**Commercialization Entity.** A company that has access to the IP of the University, through any one or more of the available Commercialization 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.

**Collaborative R&D.** In this category of R&D, would comprise projects that are jointly conceived, planned, and executed by the Institute Personnel, in collaboration and partnership with, the representatives, personnel, and staff of the Sponsor/ Funding Agency/ Industry/ Collaborator, including Inter-University Collaborator(s). Such projects will be characterized by substantial inventive and financial contributions from the Sponsor/ Funding Agency/ Industry/ Collaborator, including Inter-University Collaborator(s). Consequently, the Institute would be amenable to

considering joint ownership of the IP, with the corresponding Sponsor/ Funding Agency/ Industry/ Collaborator, including Inter-University Collaborator(s).

**Contract R&D.** Contract R&D is the kind of R&D performed by Institute Personnel, when a Sponsor/ Funding Agency/ Industry sets out a specific problem/ research agenda/scope of work, and the Institute Personnel work on the same, in a “work for hire” mode.

**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; and all IP in such materials.

**Enabler.** Any assistants, technicians, and other individuals who have indirectly contributed to the creation/commercialization of IP - and as such may not be listed themselves as an author or inventor in terms of statutory IPRs - but without whose practical contribution the Commercialization would not have been possible.

**Gross IP Revenue.** All revenue received by the University on Commercialization of University IP before any deductions for IP Expenses, as defined in Article 10.

**Gross Non-IP Revenue.** All revenue received by the University for Execution of Projects / Scientific or Clinical Work as part of the Research Contract before any cost recovery or deductions for the incurred Expenses, as defined in Article 7.

**University.** Yenepoya (Deemed to be University).

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

**Intellectual Property Rights (IPR).** All outputs of creative endeavor in any field at the University for which legal rights may be obtained or enforced pursuant to the law. IPR may include:

- 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;
- f. designs including layout designs (topographies) of integrated circuits;
- g. plant varieties and related information;
- h. trade secrets;
- i. know-how, information and data associated with the above; and j. any other University-commissioned works not included above.

**Intellectual Property Rights (IPRs).**The proprietary rights that may be granted for an invention, mark, design, plant variety, or other type of IP, should the statutory requirements for protection be met to result in a patent, trade mark, registered design or plant breeders' right, respectively.

**Invention.** Section 2(1)(j) of Indian Patents Act (2005), defines "invention" as a new product or process involving an inventive step capable of industrial application.

The term "industrial application" refers to capable of industrial application in relation to an invention means that the invention is capable of being made or used in an industry. One of the pre-requisite of invention is that it should be new i.e. the invention proposed to be patented has not been in the public domain or that it does not form part of the state of the art.

**Inventor.** 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', 'author' or 'breeder' as generally implied in the IP laws of India.

**Investigator.** Staff Members, Students and Visitors involved in the execution of Project / Scientific or Clinical Work as part of the Research Contract.

**Innovation.** is an Invention that has been implemented, or put to actual, practical use, that results in better products, processes, or services. Such Innovations result in new products, processes, or services that result in better solutions that meet new requirements, unarticulated needs, or existing market needs. The basic difference between an invention and an innovation is that the former is a laboratory creation, whereas an innovation is its actual application in the field.

**IP Disclosure Form.** The form provided in Annexure I to be completed by Inventors and submitted to IPMC to document their creation.

**IP Expenses.** All expenses incurred by the University in the management and

Commercialization of IP for which Gross IP Revenue has been received.

**IP Advisory Committee.** The body within the University, set up in terms of Article 4.1, which is responsible for overseeing the drafting, implementation, monitoring and evolution of the Policy, and for providing strategic oversight of the IPMC.

**IP Management Cell (IPMC).**The administrative unit established in terms of Article 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.

**Policy.** This, Yenepoya (Deemed to be University) Intellectual Property Rights Policy.



**Project Expenses.** All expenses incurred by the University in the management and execution of Research Contract for which Gross non-IPR Revenue has been received.

**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 IPRs, either because the rights have been forfeited or because the rights have been expired, are thereby held by the public at large and available for all to use without permission from the Inventor or owner.

**Research.** 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.

**Research Contract.** Any type of agreement between the University and an external party or research sponsor, concerning Research, which could result in IP being created at the University. This shall include, but is not limited to, all sponsorships, donorships and collaborations with the external party or research sponsor and can also be referred to as Contract R&D and or Contract Research.

**Research Project.** Any project that forms the basis of Research undertaken by the University and includes projects undertaken by a Student, under the supervision of a Staff Member or a Visitor, as part of a research degree program.

**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/her expertise. It does not include Course Materials and computer software and databases.

**Sponsor/ Funding Agency/ Industry.** These terms, used interchangeably in this IP Policy document, refer to the entity that funds the R&D work that is proposed to be carried out by the Institute. In addition, in the case of Collaborative R&D work carried out by the Institute and the Industry, the latter shall also make substantial inventive contributions, in tandem with the financial contributions made by it.

**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 use of the University's resources which include but are not limited to facilities, equipment, human resources or funds. Not included is routine use of libraries and/or office space or the IP has been written or developed in the personal (unpaid) time of the Inventor.

**Trade Secret.** Confidential information not publicly available that has commercial value because of its confidential nature, and which the owner has taken reasonable efforts to keep secret.

**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.

### **ARTICLE 3- SCOPE OF THE POLICY**

**IP.** This Policy applies to all IP generated at the University, in particular by Staff Members, Students and Visitors.

**Background IP.** Upon commencing employment, enrolment or an Appointment, Staff Members, Students and Visitors must declare any existing IP they wish to exclude from the application of this Policy due to creation prior to their employment, enrolment or Appointment at the University.

**Applicability.** This Policy applies to all Staff Members, Students and Visitors who participate in a Research Project or produce Scholarly Works. Rights and obligations under this Policy shall survive any termination of employment, enrolment or Appointment at the University.

**Binding effect of the Policy.** This Policy constitutes an understanding that is binding on the University, Staff Members, Students and Visitors, once adopted by the Board of Management (BOM) of the University, on the following grounds:

**Staff Members.** The University shall ensure that the employment contract or other agreement establishing any type of employment relationship between the University and Staff Members includes a provision placing Staff Members under the scope of this Policy.

**Students participating in a Research Project.** The University shall ensure that Students participating in a Research Project sign an agreement before commencing the project, to the effect that they have read and will comply with the provisions of this Policy, according to Article 5.2.5.

**Visitors.** The University shall ensure that Visitors sign an Appointment agreement before commencing any activity at the University. Such agreement shall place the Visitor under the scope of this Policy and shall make reference to this Policy, a copy of which will be made available to the Visitor.

**Informed consent.** This Policy shall be included on the University's website. In addition, a reference to this Policy shall be made in the academic catalogues or their equivalent. Said reference shall be in sufficient detail to enable the full text of the Policy to be easily accessed.

## ARTICLE 4-GOVERNANCE AND OPERATION

### IP Advisory Committee

**Purpose.** The University shall establish an IP Advisory Committee to oversee the implementation and evolution of this Policy and provide strategic guidance to the IPMC (according to Article 4.2 below).

**Composition.** The IP Advisory Committee shall consist of members as identified by the Registrar and chaired by the Vice Chancellor or their designated other.

**Responsibilities.** The IP Advisory Committee is the ultimate decision making body in the determination of an IP management and Commercialization strategy for a particular IP.

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

### The IP Management Cell (IPMC)

**Purpose.** The University has established an IP Management Cell(IPMC) to assist the University in managing and Commercializing its IP in a form that will most effectively promote its development and use for economic and social benefit.

**Responsibilities.** The responsibilities of the IPMC shall include, but are not limited to:

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

## **ARTICLE 5- OWNERSHIP OF IP AND RIGHTS OF USE**

### **IP Created by Staff Members**

**University ownership.** The University owns all IP created by a Staff Member:

- a. in the course and scope of his/her employment; or
- b. making Substantial Use of the University's resources.

**Staff Member ownership.** Staff Members will own/co-own the IP they have created when such IP:

- a. is outside the course and scope of their employment and without Substantial Use of the University's resources;
- b. Vests in Scholarly Works (see Article 5.5);
- c. Other IPRs, as required by national law, or for which the University cannot or does not wish to claim ownership and the University has communicated such in writing.

**IP emanating from Research Contracts.** Where there is no Substantial Use of the University's resources or if the Contract R&D Project is completely funded by the Sponsor/ Funding Agency/ Industry/ Collaborator, to cover all direct and indirect costs, as well as all operating costs and overheads for the independent(out-sourced) execution of the Contract R&D., the terms of the Research Contract will regulate ownership of IP created by Staff Members in the course of a Research Project that forms part of a Research Contract, as set out in Article 7.

**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 University (Host University) to bring to the attention of the Host University, including its IPMC, his/her obligations in terms of this Policy, prior to the tenure at the Host University. 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 ensure that the Host University negotiates a suitable IP arrangement with the University.

### **IP Created by Students**

**Student ownership.** IP created by a Student in the course of study at the University (including theses, dissertations and other Scholarly Works) will be owned by the Student. This is in contrast to IP created by a Student in a Research Project, as per Article 5.2.3 below.

**Theses or dissertations.**

The Student must submit his/her final thesis or dissertation to the University repository. And the Student must grant a royalty-free license to the University to reproduce his/her thesis or dissertation and to distribute copies thereof to the public.

**University ownership.** IP emanating from a Student's Research Project shall be owned by the University in the following circumstances:

- a. if the IP is created by making Substantial Use of the University's resources (excluding supervision) and there is no re-imbursement agreement concluded between the University and the Student; or
- b. if the Research carried out by the Student forms part of the University's Research Projects.

**IP emanating from Research Contracts.** The terms of the Research Contract shall regulate the ownership of IP created by a Student in the course of such Research Contract, as set out in Article 8.

**University ownership responsibilities.** If the University is the owner of IP created by a Student, in terms of Article 5.2.3 or Article 5.2.4, and hence created in terms of a Research Project or Research Contract, respectively, the University shall:

- a. provide the Student with an explanation of the reasons for the assignment of IP rights to the University;
- b. advise the Student to seek independent advice regarding the assignment;
- c. obtain a deed of assignment from the Student for all IPRs emanating from the Student's Research Contract or Research Project, where relevant, in return for revenue sharing as provided for in Article 10; and
- d. withdraw the Student from the Research Project or Research Contract if a Student elects not to assign the relevant IPRs to the University.

### **IP Created by Visitors**

**University ownership.** Unless otherwise agreed to in writing by the University and the Visitor's home University prior to the tenure at the University, Visitors are required to assign to the University any IP:

- 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.

**University IP.** On departure from the University, a Visitor must sign and submit to IPMC an IP Disclosure form disclosing any IP created, as per Article 5.3.1, whilst at the University.

### **Special Rules for Course Materials**

**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 Article 5.6.1.

**Licensed by the University.** The University grants the Inventors of Course Materials a royalty-free, non-exclusive license to use the Course Materials created by them for teaching and Research purposes at the University.

### **Special Rules for Scholarly Works**

**Publication.** The University recognizes 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 IPMC after having an opportunity to protect such University IP according to Article 8.

**University repository.** Staff Members, Students and Visitors should endeavor to obtain publishers' permission to include published Scholarly Works in the University repository whether as a published edition or in pre-publication form.

**Licensed to the University.** Staff Members, Students and Visitors shall grant to the University a non-exclusive, royalty free license to use their Scholarly Works for the University's administrative, promotional, Research and teaching purposes.

### **Public Domain**

**Public Domain.** University IP forms part of the Public Domain in the following circumstances:

- a. if a Research Contract provides that the Research results be placed into the Public Domain; or
- b. if Staff Members or Visitors made use of resources licensed through Open Source or Creative Commons Licenses and the licensing conditions require release of derivatives into the Public Domain.

**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;
- 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.

## ARTICLE 6-PUBLICATION ,NON-DISCLOSURE AND TRADE SECRETS

- 6.1. **Right of publication.** The University encourages and supports the right of Inventors to decide if and when to publish their Research results, in accordance with Article 5.5 above.

**Non-disclosure for IP protection.** In conjunction with the right of publication, Inventors 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 Article 8, and shall consult IPMC before making any Public Disclosure of potential University IP.

**Trade Secrets.** The University may designate certain confidential information as a Trade Secret, owned by the University. In that event, all Inventors will be obligated to maintain secrecy of the Trade Secret and to follow the direction for management of the Trade Secret by IPMC.

## ARTICLE 7-RESEARCH CONTRACTS

**Authority.** Staff Members, Students and Visitors shall not have the right to enter into a Research Contract with external parties on behalf of the University unless they are authorized to do so by an official representative of the University. Any substantial use of University resources by any external party, which includes but not limited to the use of University infrastructure and manpower, requires a formal Research Contract to be signed.

**Due diligence.** Persons acting for and on behalf of the University shall exercise all due diligence and consult IPMC when negotiating and signing contracts that may affect the University's IPRs.

**Ownership and rights to use.** Subject to any provisions in law to the contrary, ownership and rights to use shall be agreed upon with the external entity, in accordance with the guidelines outlined in the IP Policy of the University.

**Government rules.** Research Contracts shall comply with any applicable law and/or Government regulations and/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.

**Approval.** Proposed Research Contract and other legal statements concerning the University's IPRs shall comply with the provisions of this Policy. Any variance from this Policy must be approved by the Vice Chancellor.

**Basic Principles.** The IP clauses in all Research Contracts shall be governed by the following basic principles:

**Concluded from the outset.** A Research Contract must be executed in writing and signed by the University and the external party(ies)/sponsor(s) prior to the commencement of any Research Project and, as appropriate and without limitation, must contain terms relating to ownership, management and use of IP arising from the Research Project as well as any Background IP.

**Background IP.** All University Background IP must be properly recorded and declared prior to the commencement of a Research Contract and belongs to the University. Similarly, Background IP of the external party/sponsor, belongs to such party or sponsor. Use of such Background IP requires express written permission.

**Foreground IP (IP arising from the Research Contract).** IP generated pursuant to a Research Contract by Staff Members, Students or Visitors shall be governed in terms of the above provisions relating to IP generated by these parties. The general rule is that such IP shall be owned by the University.

**Co-owned Foreground IP.**

- a. **Terms for co-ownership.** Co-ownership of IP generated pursuant to a Research Contract shall be in accordance with national legislative provisions, failing which, or as mutually agreed contractually. The University may consider joint ownership of the IP, with the corresponding Sponsor/ Funding Agency/ Industry in case of Collaborative R&D.
- b. **Costs for protecting and maintaining co-owned IP.** The costs for protecting and maintaining any 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.

**Serendipitous IP.** Any IP created during the course of the Research Contract which falls outside of scope of the Research Contract shall be owned by the University or the external party(ies)/sponsor(s) which developed such IP, unless agreed contractually otherwise in the Research Contract.

**Right of first refusal to the IP.** The Research Contract may include provisions giving the external party(ies)/sponsors, a right of first refusal to Commercialize the IP emanating from the Research Contract, through a license or joint venture arrangement or assignment.

**Publication delay.** It is the strict policy of the University to allow Inventors 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 publication by Inventors.

**Use of the IP for Research and teaching.** In instances, where the University IP is licensed exclusively or assigned as part of the Research Contract, all efforts should be made to secure a royalty-free license for use of the IP for on-going Research and teaching purposes.

**Contract Research Policy.** All Research Contracts must be executed and performed in compliance with the University's regulations and this IP Policy.

**Exceptions to the Policy.** In certain cases, it may be necessary and/or beneficial to the University to enter into a Research Contract that contains exceptions to the provisions of this Policy. Any such exceptions require prior, written approval from the Vice Chancellor.

#### **Sharing of Non-IP Revenue.**

**General.** In case University receives any non-IP related revenue and/or other returns, monetary or otherwise, through the execution of the Research Contracts, the investigator(s) executing such a project/work will be entitled to a portion of the revenue as detailed in 7.9.3. Staff Members, Students and Visitors (investigators) shall not have the right to raise invoices and/or collect revenues for the execution of Research Contracts.

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

**Calculation of Gross Non-IP Revenue.** "Gross Non-IP Revenue" is defined as *all revenue received by the University for Execution of Projects / Scientific or Clinical Work as part of the Research Contract before any cost recovery or deductions for the incurred Expenses* and includes, but is not limited to, consultation and evaluation fees received, and direct sale of products or services.

**Project Expenses.** "Project Expenses" is defined as *all expenses incurred by the University in the management and execution of Research Contract for which Gross non-IP Revenue has been received* and includes, but is not limited to, those expenses that relate to usage charges of the instruments and facilities, purchase of new equipment and consumables specifically for the execution of the particular Research Contract, institutional overheads and general administrative costs.

**Calculation of Net Non-IP Revenue.** The University shall maintain accurate and transparent documentation of Project Expenses incurred for a particular Research Contract and shall be entitled to cover all Project Expenses it has incurred, as set out in 7.9.2.2 above.

The “Net Non-IP Revenue” is calculated as the Gross non-IP Revenue less Project Expenses.

### **Sharing of revenues – Investigator(s)**

#### **Standard Investigator’s share.**

80% of the Net non-IP Revenue will be allocated to the Investigator. Where there is more than one Investigator, the Investigators are entitled to an equal or *pro rata* share, based on contribution (as mutually agreeable between the University and the Investigators), except where there is a prior written agreement between all the Investigators to the contrary.

**Payment.** Payment to the Investigators will be made by the University on a periodic basis as agreed in writing, but no later than twelve months after receipt of the Gross non-IP Revenue by the University.

**Taxes.** The University may, if so obliged by national tax laws, make any applicable tax deductions before making payments to the Investigators.

**Entitlement.** The entitlement to an Investigator’s share of Net non-IP Revenue shall survive any resignation/termination of employment.

**Banking details.** The onus is upon each Investigator to ensure that the University has their current banking details for the purpose of revenue sharing. The University will keep the relevant revenue amounts in reserve for a maximum period of 2 (two) years after which all rights of Investigators 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.

**Sharing of revenues – University.** The University’s share of Net non- IP Revenue is distributed internally as follows:

10% towards development of research infrastructure; 10% towards maintenance of research facilities and equipment.
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## ARTICLE 8-DETERMINATIONS BY THE IPMC

### Responsibility to Disclose IP

**Recording.** Inventors shall keep appropriate records of their Research in accordance with the University's applicable policy procedures 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.

**IP Disclosure.** Where an Inventor identifies potential IP resulting from his/her Research or that of his/her team, he/she shall disclose such potential IP to IPMC promptly by means of an IP Disclosure Form.

**Complete disclosure.** Inventors must provide to IPMC such full, complete and accurate information as IPMC may reasonably require enabling 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 IPMC will share this reference number with the Inventors to signify that the IP Disclosure has been formally received by the University.

### Inventorship and Ownership

**Inventorship.** Inventors shall, upon request, sign the appropriate legal documents provided by IPMC that attest to Inventorship. Where there is more than one Inventor, and there is a dispute as to the contribution to Inventorship, IPMC shall in consultation with the Inventors, assist in the determination of the percentage IP Inventorship, failing which it shall be assumed that there was an equal undivided contribution.

8.2.2 **Ownership.** Once Inventorship has been determined, the Inventors shall be required to formally assign any right, 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 Inventor(s) and the University and the obligations they will have to assist the University with the Commercialization of that IP. Article 9.3 will apply.

### Determination as to IP Protection and Commercialization

**Evaluation and recommendation.** IPMC will analyze the information disclosed in the IP Disclosure within usually 30-60 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, IPMC will prepare a

preliminary report with findings that enable the University to decide if it will proceed with IP protection and Commercialization. IPMC shall share the preliminary report with the Inventor(s) and seek their input.

**Decision to protect/Commercialize.** The University will decide, as soon as reasonably practicable, whether or not it wishes to protect and/or Commercialize the IP. IPMC will use all reasonable efforts to notify the Inventor(s) of the University's decision within usually 60-90 days of formal receipt of the IP Disclosure. IPMC will also make a determination in relation to the validity of any claim made by a Staff Member, a Visitor or a Student that they are the true Inventor(s) of that IP and in relation to their rights under this Policy.

#### **University Elects not to Protect /Commercialize the IP**

**IP abandoned or not Commercialized.** The University reserves the right not to protect or Commercialize IP that it owns if after consultation with the Inventors:

- a. there is no reasonable prospect of commercial success;
- 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 and/or Commercialization, it will take steps to return said IPRs to the Inventor(s), contingent on any other superseding contract rights of external party(ies)/sponsor(s).

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

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

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

**Terms and conditions.** If the University assigns IPRs to the Inventor in terms of this Article

8.4.5, the assignment may be subject to one or more of the following terms and conditions:

- a. that upon Commercialization, the University be compensated for any expenditure it may have incurred in connection with the protection and/or Commercialization of such IP; and/or
- b. that the University be granted a non-exclusive, royalty-free license to use the IP for Research and teaching purposes.

## ARTICLE 9-COMMERCIALIZATION OF IP

**Determination of the Commercialization Strategy.** Within usually 8-12 months of the decision to protect or Commercialize the IP under Article 8.3.2, the University will determine, with input from the Inventors, the most appropriate Commercialization strategy.

**Assistance to IPMC.** Inventors of IP which has been selected for IP protection and Commercialization by the University must provide IPMC 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 Inventorship), and Commercialization of the IP.

**Sovereignty and Cooperation.** The University shall have the sole discretion regarding the Commercialization of IP owned by it. Notwithstanding, the University will ensure that reasonable efforts are made to keep the Inventors informed and, where appropriate, involved in the Commercialization of the IP to which they contributed. The Commercialization of University IP will be planned, executed, and monitored by IPMC.

**Commercialization Pathways.** Modes of IP Commercialization may include:

- a. license, either exclusive or non-exclusive, and variations thereof;
- b. assignment (sale) for lump sum fees or
- c. assignment (sale) to Inventor led company against equity and IP Expenses (as per 10.2.2.2);
- d. formation of a Commercialization Entity/ Startup to which the IP is licensed or assigned in terms of this Policy;
- e. non-profit use or donation;
- f. joint ventures;
- g. royalty free access on humanitarian or other grounds; or
- h. various combinations of the above.

**Guidelines.** Regardless of the mode of IP Commercialization, 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 utilized 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 its use in any illegal or unethical manner.

The University will endeavor to Commercialize IP in a manner that encourages and fosters entrepreneurship by Staff Members and others and which supports Commercialization Entities.

## **ARTICLE 10-INCENTIVES AND DISTRIBUTION OF REVENUES**

### **The University's Incentive Structure**

**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 socio-economic impact; such incentives may be financial or non-financial. An Inventor/Enabler may receive incentives from each IP they created/enabled which is Commercialized.

### **Sharing of Revenues**

**General.** The University will award Inventors/Enablers in the sharing of monetary benefits that may accrue to the University from the Commercialization of University IP.

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

**Calculation of Gross IP Revenue.** "Gross IP Revenue" is defined in Article 2 as "*all revenue received by the University for Commercialization of University IP before any cost recovery or deductions for IP Expenses*" and includes, but is not limited to, outright sale of IP, option payments received, license fees received, evaluation fees received, upfront and milestone payments received, royalty payments received, share of profits received, dividends received, shares/stake received, commissions, income through disposal of equity, and direct sale of products or services.

**IP Expenses.** "IP Expenses" is defined in Article 2 as "*all expenses incurred by the University in the management of IP for which Gross IP Revenue has been received*" and includes, but is not limited to, those 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; but not including staff time or general administrative costs.

**Calculation of Net IP Revenue.** IPMC 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

10.2.2.2 above. The “Net IP Revenue” is calculated as the Gross IP Revenue less IP Expenses.

**Co-owned IP.** Where the IP is co-owned by the University and an outside organization, 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 section 10.2.3.1 and 10.2.3.2 below.

#### **Sharing of revenues – Inventors/Enablers**

##### **Standard Inventor’s share.**

80% of the Net IP Revenue will be allocated to the Inventor. Where there is more than one Inventor, the Inventors are entitled to an equal or *pro rata* share, based on contribution (as mutually agreeable between the University and the Inventors), except where there is a prior written agreement between all the Inventors to the contrary.

##### **Standard Enabler’s share.**

The University may elect to set aside 10% of the Net IP Revenue for an Enabler. Where there is more than one Enabler, the Enablers are entitled to an equal or *pro rata* share, based on practical contribution, except where there is a prior written agreement between the Enablers and the Inventor(s)/University to the contrary. Where there is no identified enabler, this share will belong to the University.

**Disputes.** In the event of a dispute or uncertainty regarding the Inventors’/Enablers’ share of the Gross or Net IP Revenue from a specific IP, the issue shall be brought for resolution to the IP Advisory Committee in which case the decision of the IPMC shall be final and binding.

**Payment.** Payment to the Inventors/Enablers will be made by the University on a periodic basis as agreed in writing, but no later than twelve months after receipt of the Gross IP Revenue by the University.

**Taxes.** The University may, if so obliged by national tax laws, make any applicable tax deductions before making payments to the Inventors/Enablers.

**Entitlement.** Inventors/Enablers and their heirs will be entitled to IP revenue sharing for as long as the University receives Gross IP Revenues from Commercialization of the University IP. The entitlement to a Inventor’s/Enabler’s share of Net IP Revenue shall survive any resignation/termination of employment.

**Banking details.** The onus is upon each Inventor/Enabler to ensure that the University has their current banking details 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 Inventors/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.

**Sharing of revenues – University.** The University's share of Net IP Revenue is distributed internally as follows:

In case of allocation of Enabler's Share  
5% to IPMC;  
5% to University overheads.

In case of no identifiable Enablers  
10% to IPMC;  
10% to University overheads.

#### **Other Incentives**

**General.** As a default position, the University will refrain from accepting non-monetary benefits for the Commercialization of its IP or from offering incentives other than revenue sharing, unless they are in addition to the revenue sharing as per 10.2.3.1 and 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 Inventor/Enabler elects to choose other benefits *in lieu of* revenue sharing, which may only be realized in due course. Other incentives will include, but are not limited to, the incentives described in Article 10.3.2. – 10.3.4.

**Growth, development and acknowledgement.** A framework for growth and development of the Inventor/Enabler in their professional and personal capacity shall be developed including (i) recognition of IP generation and Commercialization 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 their area of interest.

**Research funds.** The University will actively, through its IPMC, promote, source and/or facilitate collaborative arrangements with industry partners to secure funding for further Research for the Inventors/Enablers.



### **Inventor/Enabler receiving shares in a Commercialization Entity or other licensee.**

In the case where an Inventor/Enabler is granted equity in a Commercialization Entity that licenses the University IP which the Inventor/Enabler has created, such Inventor's/Enabler's portion will be adjusted accordingly, taking into account the shares held in the company by the Inventor/ Enabler. All other Inventors/Enablers will be rewarded in accordance with the formula in Article 10.2.3.1 or 10.2.3.2.

Where the University, either directly or indirectly, receives shares in a licensee company, which company may be a Commercialization Entity, as consideration for an IP license, the University,

- may hold, either directly or indirectly, all the shares until liquidation, at which time the income will be considered Gross IP Revenue and the Inventors/Enablers will receive their share according to the revenue sharing formula in Article 10.2.3.1 or 10.2.3.2.
- Or take steps such that the Inventors/Enablers will be issued their licensee company shares in the revenue sharing proportions, at the time the shares are issued to the University by the licensee.

Notwithstanding the benefit sharing in respect of shares in terms of this Article 10.3.4, the Inventors/Enablers will still be entitled to their share of any other revenues under the IP license.

### **Contact Details**

**Contact details.** The onus is upon each Inventor/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 Inventors/Enablers through reasonable efforts, in order to effect payment of the revenue share amount, and a period of two years has passed since an initial attempt, then the portion owed to that Inventor/Enabler or his/her heirs will be paid to the University's central fund to be used to support Research and innovation activities.

## **ARTICLE 11-IP PORTFOLIO MAINTENANCE**

**Recording and monitoring.** IPMC 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.

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

## **ARTICLE 12- DISPUTE**

**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.

### **Dispute Resolution.**

Any internal disputes or questions of interpretation arising under this Policy must in the first instance be referred to IPMC for consideration and mediation by the IP Advisory Committee.

If the matter cannot be resolved by the IPMC and IP Advisory Committee within two months, then the dispute or question of interpretation must be referred to the Vice Chancellor for mediation.

The Vice Chancellor may at their sole discretion refer the matter to University's Executive Committee and/or an independent committee for arbitration as final arbiter of any disputed issues or for final determination.

**Appeal.** Individuals covered by this Policy shall have the right to appeal the application of any aspect of this Policy to the IP Advisory Committee.

## ARTICLE 13- AMENDMENT

**Revision.** This Policy may be amended at any time by a decision of the IP Advisory Committee. In this case:

- a. all IPR disclosed on or *after* the effective date of such amendment shall be governed by the Policy as amended; and
- b. all IPR 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 IPR licensed or otherwise Commercialized on or after the effective date of any such amendment regardless of when the IP is disclosed.