



UNIVERSITY OF ZULULAND

POLICY AND PROCEDURES

ON

INTELLECTUAL PROPERTY

POLICY NUMBER	RI P6	POLICY OWNER	DVC: Research and Innovation
OVERSEEING COMMITTEE(S)	University Research Committee → Senate → Council		
APPROVAL DATE	07 June 2013	REVISION DATE	07 June 2016

POLICY STATEMENT

This policy provides guidelines and direction to the University regarding the rules and procedures to be followed in ensuring that the University and persons conducting research at the University comply with the requirements of the IPR Act, 2008, which provides for the protection and commercialization of intellectual property.

REVISION HISTORY

CURRENT APPROVAL CYCLE			
POLICY NUMBER:	RI P6	SENATE NUMBER(S):	S1056/12
DATE OF APPROVAL BY THE UNIVERSITY OF ZULULAND RESEARCH ETHICS COMMITTEE:			
DATE OF SENATE APPROVAL:		23 November 2012	
DATE OF COUNCIL APPROVAL:		07 June 2013	
EFFECTIVE DATE FOR IMPLEMENTATION:		07 June 2013	
NEXT REVISION DATE:		07 June 2016	

APPROVAL HISTORY			
DATE OF FIRST APPROVAL:		07 June 2013	
POLICY NUMBER	SENATE NUMBER(S)	SENATE / MANCO REVISION DATE	COUNCIL APPROVAL DATE

RELATED POLICIES	
POLICY NUMBER	NAME OF POLICY
	Research Policy
	Ethics Policy
	Research Fellows, Visiting Professors and Honorary Professors
	Postdoctoral Fellowship Policy
	Higher Degrees Policy

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SECTION A: POLICY

1 PREAMBLE

The University of Zululand (“the University”) has been designated to serve as the only comprehensive tertiary educational institution north of the uThukela River in KwaZulu-Natal, with the vision of establishing itself as one of the leading comprehensive universities providing quality education in South Africa. The University is underpinned by values of innovation, teamwork, efficiency, accountability, and mutual trust.

As part of its mission to become a unique comprehensive university that provides quality career-focused programs as well as exciting research opportunities, the University recognises the need to manage, protect and commercialize our research outcomes and intellectual property effectively. The University’s Intellectual Property Policy (“the Policy”) provides a framework for governing the rights and responsibilities of all stakeholders, and for arrangements for sharing any financial returns from commercialization of intellectual property resulting from innovative contributions of the University’s researchers in the form of inventions and other creations of the mind emanating from the University’s research and development.

This Policy is subject to any applicable laws and regulations of the Republic of South Africa, and takes into consideration the provisions and regulations of the Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008 (“the IPR Act”), which provides for the protection, commercialization and benefit sharing in respect of intellectual property emanating from publicly-financed research.

This Policy incorporates and supersedes earlier University policy which relates to the management and administration of intellectual property.

2 PURPOSE AND OBJECTIVES

The purpose and objectives of this policy are:

- 2.1 To set out the principles that will enable the University to comply with statutory requirements in respect of innovating and commercializing research.
- 2.2 To provide a framework for governing the rights and responsibilities of all stakeholders involved in innovating and commercializing research.
- 2.3 To set out arrangements for sharing any financial returns from commercialization of intellectual property.

- 2.4 To set out processes and procedures to be followed in implementing the provisions of this policy.

3 SCOPE

This Policy applies to:

- 3.1 All stakeholders of the University, including but not limited to employees and students.
- 3.2 All persons paid by, or under independent contract for services with the University unless expressly exempted by contract, including any full-time and part-time staff members, visiting faculty members and researchers, contractors and working for or under the auspices of the University.
- 3.3 Any visitor to the University, in the absence of any written agreement to the contrary, who makes use of University resources and who through use of University resources conceives or first reduces to practice, actually or constructively, any Invention.
- 3.4 Students working on sponsored projects and/or who use the University resources.
- 3.5 Any person in a teaching, research, technical or administrative position or role at the University, even if not employed by it.
- 3.6 Any persons using the facilities or University resources, or the facilities of any entity affiliated with the University.
- 3.7 Any person outside the University who deals with intellectual property owned by the University.

4 DEFINITIONS

Administrative Position

A position whose holder is entrusted with responsibility for management of resources, personnel and executing the mandate of the University.

BBBEE

Broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

Commercializable

Ready to undergo commercialization.

Commercialization

Necessary activities undertaken in order to exploit and/or derive revenues or benefits in cash or kind from intellectual property, and may include assignment and licensing of intellectual property, manufacturing or production of items embodied in created intellectual property, as well as the protection of intellectual property including, but not limited to obtaining patent or design registration or any other equivalent forms of protection in foreign territories.

Contractor

An individual who is subject to the control and direction of self or another individual other than the University and who is engaged by the University only in respect of specific work and the results of such work. The contractor shall not be subject to the University's control as to the method and direction for accomplishing such work. An appropriate agreement shall have been entered into between the contractor and the University as to the specific details and times for completing the contracted work.

Creator

A person who is an inventor, as defined in this Policy.

DVC, Research and Innovation

The University's Deputy Vice-Chancellor, Research and Innovation or, irrespective of the person's title, a Deputy Vice-Chancellor with oversight of the University's innovation and commercialization portfolio.

Employee

Any person who has entered into an employment relationship with the University, whether academic or professional, administrative or support, paid or unpaid, full-time or part-time, full appointment or joint appointment, affiliation appointments or assistantships.

Full-Cost Model

The standard methodology approved by NIPMO for determining whether research conducted by the University has been financially evaluated on full cost basis.

Intellectual Property

The outcomes of intellectual activity and creative effort for which various rights and protections may be conferred by statute, contract or common law. It includes any invention, discovery, or creation, which may be protected by way of trademark, patent, design, copyright, knowhow trade secret, permit, and plant variety right (whether registerable or not registerable) and all applications, drafts and workings relating to these rights.

Inventor

An individual or a group of individuals working collaboratively and/or cooperatively to make, conceive, reduce to practice, or otherwise make substantive intellectual contribution to the creation of intellectual property. The inventor may include any employee or student who creates intellectual property in pursuit of his or her employment or course of study with the University.

IPR Act

The Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008.

NIPMO

The National Intellectual Property Management Office.

Normal Course of Employment

Areas of activity and associated outputs for which the University staff member has been employed and which are described in any contract, agreement, position description, position title, directive or other pertinent document related to the employment relationship.

Professor Emeritus

A person upon whom the University has bestowed such title.

Publicly-Financed Research and Development

Research and development undertaken using any funds allocated by a funding agency but excludes funds allocated for scholarships and bursaries.

Republic

The Republic of South Africa.

Research Committee

The University committee entrusted, amongst others, with the responsibility to evaluate intellectual property disclosures and reports thereof and making decisions pertaining research and development related issues in the University.

Research Fellow

A person upon whom the University has bestowed such title.

Research Office

The Office which provides support services in relation to research funding, innovation and research business development.

Research Results

Results arising from research including details of any intellectual property, interim results, data, and tangible research materials.

Revenue

All income and benefits, including non-monetary benefits, emanating from intellectual property transactions, and includes all actual, non-refundable royalties, other grant of rights and other payments made to the institution or any other entity owned wholly or in part by an institution as a consideration in respect of an intellectual property transaction, but excludes a donation.

Sponsor

A person, corporation or organization, whether a private or public entity, who enters into an agreement with the University to contribute resources, funds or other valuable resources to the University as part of a collaboration or to promote and develop research in a specific subject to be carried out in the University or employing University resources.

Stakeholders

Persons, natural or juristic, who have a role or interest in the University and its operations, including but not limited to government, staff members, academics, students, employers, trade unions, sponsors, industrial and privately owned-organizations, funding agencies, other educational organizations and society in general.

Student

A person enrolled in a course of study offered by or on behalf of the University, full-time or part-time, graduate or undergraduate, or a person who is currently studying at the University under an agreement with another institution.

Teaching Materials

Any materials created by University employees in the course of their employment that are primarily intended (whether by the University or by some third party) to be used or accessed by students at any level, for the purposes of any course of study which those students are following, including: course guides, handouts, on-line materials (including annotated scores and manuscripts); presentation materials (including lecture notes, slides, animations, graphics, interactive software and other audio-visual materials); virtual learning environments; instruction manuals; artifacts (including models and apparatus for practical demonstration and experimental work); and assessment and examination questions. Such materials can be in any format including hard copy and electronic.

Third Parties

Parties external to the University with whom there is a relationship separate to the relationship existing between the University, and its staff, research students and undergraduate students.

Visiting Faculty Members

Academic visitors who are not employees of the University but with whom the University has a third party relationship. Such visitors include those on sabbatical and other forms of research and study leave.

University

The University of Zululand.

University Resources

Any funds, facilities or resources including equipment and consumables, use or supply of heat, light or power of the University or a University subsidiary; and/or an employee of the University, or a University subsidiary outside that individual's personal, unpaid time; and/or the University's name in the promotion of the work.

University Materials

Any item in any medium which is produced for administrative purposes (including promotion and marketing of University courses, curricula, student and staff recruitment, papers prepared for any internal committee or similar body, material included in any University handbook for employees or Students) or any other University purpose and any item created by an employee of the University whose job description specifically includes the creation of printed or electronic materials.

5 OWNERSHIP OF INTELLECTUAL PROPERTY**5.1 Introduction**

The ownership of intellectual property generated using University resources or by any employee, student or contractor is guided by the IPR Act, which provides for ownership of intellectual property emanating from publicly-financed research and development.

5.2 Ownership by the University

- 5.2.1 With the exception of intellectual property consisting of copyright in a book, article or other written scholarly literary work as indicated in clause 5.2.9 below, the University shall own the intellectual property in anything an employee, student or contractor of the University creates in the course of employment by or association with the University, including during periods of leave, or through using University

- resources, provided that such intellectual property emanates from publicly-financed research and development within the scope of the IPR Act.
- 5.2.2 In the event that the University elects not to own intellectual property emanating from publicly-financed research, or obtain protection of the intellectual property, it shall adhere to the procedure set out in section 4 of the IPR Act., and regulations and guidelines published by NIPMO.
- 5.2.3 The University must, within the period of 30 days of it making such an election, or such longer period as may be prescribed, notify NIPMO, with reasons, of a decision not to retain ownership of intellectual property.
- 5.2.4 NIPMO may then, within 30 days of such notification, and after considering the University's reasons for not retaining the intellectual property as well as any prejudice that may be suffered by the State, acquire ownership of the intellectual property in question.
- 5.2.5 Should NIPMO decide not to acquire ownership in the intellectual property, it must notify the University of its decision in writing within 60 days of the original notification, failing which a presumption arises that NIPMO does not wish to attain ownership of such intellectual property.
- 5.2.6 Depending upon the University's reasons for not retaining the intellectual property, and subject to NIPMO furnishing a decision in writing not to acquire the intellectual property, the University may give the creators of such intellectual property the option to acquire ownership.
- 5.2.7 In instances where a sponsor has provided funding towards generating intellectual property, such sponsor shall have priority to acquire the intellectual property rights before the creator(s); provided that the creator(s) and any heirs shall be entitled to a percentage in benefit sharing of such intellectual property as provided by section 10 of the IPR Act.
- 5.2.8 Ownership of intellectual property consisting of copyright in books, articles or other written scholarly literary works, or in creative work that has a literary, artistic, musical or dramatic character such as a novel, painting, sculpture, drawing, engraving, musical composition or script for a show, or work involving a performance (not being computer programs, teaching or learning materials or material whose creation or performance has been specifically commissioned by the University), shall vest in their authors, creators or performers unless otherwise agreed in a specific instance.
- 5.2.9 Where work is not publicly financed but is instead financed by a private sponsor, the sponsor and the University may agree to joint or exclusive ownership of rights to such intellectual property on mutually-acceptable terms.

5.3 Ownership by a Sponsor

- 5.3.1 Ownership of intellectual property (including exempted scholarly works) that is made, discovered, or created in the course of research funded by a sponsor pursuant to a grant or research agreement, or which is subject to a materials transfer agreement, confidentiality disclosure agreement or other legal obligation affecting ownership, will be governed by the terms of the grant or agreement, provided that such agreement complies with the provisions of the IPR Act.
- 5.3.2 Where an employee of the University is a joint creator with one or more individuals from other institutions or business entities and effort and/or expenditure in creating the intellectual property is shared between the participating entities, the patents shall be jointly owned by the participating institutions, and the rights to use the invention and the distribution of royalties among the institutions shall be negotiated after confidential disclosure of the invention, but before the patent application is filed.

5.4 Ownership by Employees

- 5.4.1 A University employee or contractor shall own intellectual property created outside the scope of the normal course of employment, or outside the scope for which the contractor is commissioned or hired, and which was generated without the use of University resources.
- 5.4.2 Any intellectual property created by an employee or contractor within the scope of the normal course of employment, or within the scope of the activity for which the contractor is commissioned or hired, or with the use of University resources shall be owned by the University.
- 5.4.3 Notwithstanding clause 5.4.1 above, in the event of commercialization of any intellectual property, a University employee shall be entitled to a share of revenue from the intellectual property generated by his or her research and development, as prescribed by the University from time to time
- 5.4.4 Share apportionment agreements shall be negotiated in good faith between the University and the employee, taking into consideration all relevant factors including:
 - (a) The full cost of the research, including direct and indirect costs.
 - (b) The University's approach to incentives and rewards in respect of innovation and commercialization of research outcomes.
 - (c) The resources that the University would be required to provide for commercializing such intellectual property.
 - (d) The benefit sharing provisions in section 10 of the IPR Act.
- 5.4.5 Each academic employee or contractor shall own copyright in any original scholarly work that is of a literary, dramatic, musical or artistic

nature produced by that academic staff member. This would include all personal lecture notes, research materials, software (except for that which can be identified as having commercial potential) and the drafts or published results of research; but shall not extend to materials produced for the administrative work of the University, examination and assessment materials, and teaching materials published by the University. Works in which copyright requires assignment to the publisher, like books and journals shall, after such assignment, belong to the publisher.

5.5 Ownership by Students

- 5.5.1 The University shall require students to sign an agreement in which intellectual property generated during their research studies is assigned to the University.
- 5.5.2 Students shall own the copyright in works produced by them in the course of their studies such as their thesis, dissertation or report documents. The University shall have rights to use, reproduce and publish such works, but shall, in so doing, duly notify and acknowledge the student and take into consideration the students' moral rights to such work.
- 5.5.3 External students visiting the University, who are registered with or who work for third parties, shall be required to sign an agreement with the University and such third parties which provides for the ownership of intellectual property generated while conducting research at the University or with the use of University resources. Such ownership agreement shall clearly define background intellectual property and comply with the provisions of the IPR Act in respect of ownership of intellectual property and the University's full-cost financing model.
- 5.5.4 University's students on external placements with third parties shall be required to sign an agreement with the University and those third parties which will determine the ownership of any intellectual property created during their placement, and in which the background intellectual property prior such placement shall be clearly defined.

5.6 Ownership by Persons who are not Employees of the University

- 5.6.1 This Policy shall bind persons who are neither employees nor students of the University, but who may have an honorary or any other form of association with the University, including but not limited to research fellows, visiting academics, individuals with honorary appointments, professors emeritus and persons teaching and/or conducting research at the University or using University resources, while being paid by a third party. For the purposes of this policy, such individuals shall have

the, where appropriate, the same rights and obligations as employees and shall, in particular, be required to transfer to the University any intellectual property they create in the course of their activities for the University and shall be entitled to share in the revenue generated by such intellectual property that they created or helped to create.

- 5.6.2 Persons contemplated in clause 5.6.2 above shall be required prior to the commencement of any teaching or research activity at the University, to enter into an agreement with the University and the outside body employing or otherwise assisting such individual in which the intellectual property issues are regulated. Such individual shall further be obliged to keep confidential any confidential information to which he or she has access and only use it for the purpose for which it was supplied or acquired.
- 5.6.3 In instances where a University student is externally supervised or co-supervised by an individual who is not an employee or contractor of the University, all parties, the candidate, the supervisor(s) and the University shall conclude an external supervisor appointment and supervision agreement in which the issues regarding rights to intellectual property that arise from the candidate's work are clearly set out. Without limiting the content of such an agreement, the following matters should be included:
- (a) Ownership of intellectual property from research outcomes, taking into consideration the ownership provisions of the IPR Act, the Policy, and the costs to be incurred by the University and the external supervisor's institution during the candidate's research.
 - (b) Benefit sharing of intellectual property from research outcomes in the instance of commercialization, taking into consideration the ownership provisions of the IPR Act, the Policy, and the costs to be incurred by the University and the external supervisor's institution during the candidate's research.
 - (c) Any obligations on confidentiality regarding the proposed work;
 - (d) Lack of warranties as to outcome or delivery by the student or external supervisor.
 - (e) The terms under which the parties, particularly the external supervisor, may use project outcomes.

5.7 Ownership of Intellectual Property Derived from Third Party Sources

- 5.7.1 Where intellectual property has been created by a third party and is copied, reproduced or used by persons to whom this Policy applies, such use must be lawful or within the terms of any applicable licence. If any such person is unsure as to what use can be made of any particular intellectual property, he or she should seek advice from the Research Office.

- 5.7.2 In instances where an employee of the University creates foreground intellectual property that includes background intellectual property derived from third party sources, the ownership of that foreground intellectual property will be determined in accordance with the terms of the agreement entered into by the University with such third party, which agreement shall have provided for the ownership of intellectual property in compliance with the ownership of intellectual property according to the IPR Act.
- 5.7.3 Subject to the approval of the DVC, Research and Innovation, which shall not be unreasonably withheld, and any contractually-imposed restrictions or temporary restrictions imposed to protect intellectual property that may be the subject of an application for intellectual property protection, employees, contractors, students, and others may contract with third parties to publish their own research results and other scholarly information.

6 EXTERNAL CONSULTING

- 6.1 Negotiations in respect of any consulting agreement are normally the responsibility of the employee, contractor or student wishing to engage in any such agreement.
- 6.2 In instances where the consultancy activity forms part of a person's normal contractual duties to the University, or fall within the scope of the University's business, the responsibility of negotiating and entering agreements lies with the appropriate University executive official, which responsibility may, where appropriate, be delegated to an employee, contractor or student.
- 6.3 Persons who negotiate and enter into consulting agreements are responsible for ensuring that the terms of any consulting agreement that they enter into with a third party do not conflict with their or any other person's commitments to the University under this Policy or any other policy or agreement.
- 6.4 Where it appears that a proposed or existing consulting agreement might conflict with an individual's responsibilities and obligations to the University, the individual should disclose those obligations to all parties in writing and receive written confirmation from them acknowledging the individual's obligations to the University. Where appropriate, the parties may renegotiate the terms of the agreement.
- 6.5 Should the University suffer any harm of whatever nature as a result of a breach of an employee, contractor or student's obligations to it, the University may take steps, including disciplinary action, necessary to vindicate the infringement of its rights.

7 DISCLOSURE OF INVENTIONS

- 7.1 Intellectual property that has been created in the course of employment, a contract or commission by the University; in the course of or pursuant to a sponsored research or other agreement for an outside body or sponsor; and/or with more than incidental use of University resources is or might be owned by the University.
- 7.2 The creator of such intellectual property, which may or may not have the potential to be commercialized, shall be required to make reasonably prompt written disclosure of the work to the Research Office in a prescribed disclosure form. The creator shall then execute any document deemed necessary to transfer legal rights to the University and enable the University to file patent applications and/or any other appropriate forms of intellectual property protection.
- 7.3 Each student shall disclose to the University all intellectual property other than that comprised solely in teaching materials which may have the potential to be commercialized, and any associated materials, including research results, which they create:
- 7.3.1 In the course of their studies at the University, supervised or conducted under the supervision of an employee of the University or a contractor doing work for the University.
 - 7.3.2 In the course of a sponsored studentship under which the sponsor has a claim to intellectual property arising from such sponsorship.
 - 7.3.3 In the course of or pursuant to a sponsored research or other agreement for an outside body; using equipment or facilities provided to the University under conditions that impose copyright restrictions.
 - 7.3.4 Outside the course of their University course work but with more than incidental use of University resources.
- 7.4 Research results created by any individual who is not registered with the University, but whose work is supervised by or conducted under the supervisor or moderator who is an employee of the University or a contractor doing work for the University, shall be subject to obligations for disclosure to the University of intellectual property that he or she generates.
- 7.5 The disclosure to the University of work and its results shall be to the Research Office, and shall be made at the time when legal protection for the created work is contemplated, and before the intellectual property is sold, used for profit, or disclosed to the public. Whenever legal protection for intellectual property is

anticipated all persons engaged in such creative activity are encouraged to keep regular notebooks and records.

- 7.6 Whenever an employee, contactor or student of the University is unsure whether intellectual property falls within the scope of clause 7.1 of this Policy, and such intellectual property is being prepared or envisaged for publication, such employee, contactor or student shall consult with the Research Office before any publication of such intellectual property is effected.
- 7.7 Employees of the University, contractors and students shall be required to follow good laboratory practice in order to ensure that clear records of the development of any intellectual property generated are kept, including regularly completing and countersigning of laboratory notebooks by an appropriate academic.
- 7.8 Research results created by any individual who is not registered with the University, but whose work is supervised by or conducted under the supervisor or moderator who is an employee of the University or a contractor doing work for the University shall be subject to obligations for disclosure of intellectual property they generate to the University.
- 7.9 Each student who assumes any responsibilities of teaching or assisting in teaching or giving tutorials shall disclose to his or her course supervisor or coordinator all teaching materials and/or other University materials which they create.

8 MOTIVATION FOR COMMERCIALIZATION

The University shall promote and ensure that the commercialization of its intellectual property and research outcomes:

- (a) Benefits the creators of the intellectual property.
- (b) Contributes to the betterment of the quality of lives for communities surrounding the University, and ultimately for the entire Republic.
- (c) Promotes development, empowerment and the creation of employment opportunities in the local community.
- (d) Contributes to the University's community engagement programmes.
- (e) Improves social recognition of the University.
- (f) Strikes a balance between technology transfer, knowledge creation and dissemination and technology transfer.

9 BENEFIT SHARING

9.1 Monetary Benefits

- 9.1.1 Revenues from the commercialization of the University's intellectual property shall accrue to the University, either directly or indirectly via entities created specifically for its commercialization.
- 9.1.2 The University shall ensure that intellectual property creators at the University and, where relevant, their heirs, are granted rights to share in the revenues that are generated the commercialized intellectual property in terms of the IPR Act until such right expires. In particular, the creator(s) of intellectual property shall be allotted a percentage shareholding in any spin-out company created for the purposes of manufacturing, selling or licensing of the commercialized intellectual property.
- 9.1.3 Should the commercialization of intellectual property take place through a spin-out company created for purposes of manufacturing, selling or licensing of such intellectual property, the University shall normally have majority shareholding in such spin-out company initially; provided that an appropriate percentage shareholding shall thereafter be determined through negotiation with relevant parties, as envisaged in clause 9.1.5 below.
- 9.1.4 Unless the parties agree to a specific arrangement in the circumstances of a particular case, the intellectual property creators at the University and, where relevant, their heirs, shall normally be entitled to the following benefit-sharing:
- (a) At least 20 per cent of the net revenues generated by the intellectual property for the first one million rand of revenue, or such higher amount as the Minister may prescribe.
 - (b) Thereafter, at least 30 per cent of the net revenues generated by such intellectual property.
- 9.1.5 In the event of intellectual property being jointly funded by public funds and through a Sponsor, the DVC Research and Innovation, via Research Office, shall be responsible for negotiating the rights to and the share of revenue that accrues, taking into account, amongst others, the project's business plan, sources of finance and projected revenue and expenditure figures.

9.2 Use of Proceeds

- 9.2.1 The University's share of any proceeds generated from commercialization of intellectual property must in the first instance be used to off-set expenses incurred in the development of technology transfer and commercialization of intellectual property at the University

and to finance future development, not only in respect of the specific project that generated the revenue, but also in respect of other projects. The balance must be used to further the University's research, research development, and innovation operations, including statutory protection of intellectual property, and improving the Research Office's administrative support services.

- 9.2.2 In effecting the financial support for research and innovation development as stated in clause 9.2.1 above, the University may in appropriate circumstances where such need is demonstrated, give preferential developmental support to creator's department and/or research group to support further research and development. Such support may include the provision of equipment and other resources necessary to research and develop the area of the invention and related areas, support for students and postdoctoral fellows in the creator's research group, employment of staff and support for training and capacitating such students and personnel with skills necessary to promote innovation.
- 9.2.3 In effecting the financial support for research and innovation development as stated in clause 9.2.1 above, the University may allot funds to the administration of technology transfer operations in the University, including protection of intellectual property, human capacity, training, and resources necessary for efficient technology transfer.
- 9.2.4 Machinery equipment or resources obtained out of the proceeds of commercialization of intellectual property shall be generally accessible to researchers within the University as well as counterparts elsewhere, on terms determined by the University.
- 9.2.5 In line with the objectives articulated in clause 8 above, the University will ensure that technology transfer contributes towards addressing the socio-economic challenges of the Republic, including, where possible, the creation of employment, promotion of innovation and improving enterprise development.

10 AGREEMENTS

10.1 Participation Agreements

- 10.1.1 The University shall develop and adopt a participation agreement, in which employees, students, contractors and any other persons to whom this Policy applies confirm their acceptance of the Policy's terms.
- 10.1.2 The participation agreement shall normally be signed before or on their engagement by the University and the University shall ensure that a valid participation agreement is on file before any of its resources are made available to such persons.

10.2 Confidentiality Agreements

- 10.2.1 All information and intellectual property of the University must be treated confidentially and every person to whom this Policy applies, and every person associated with the Policy's administration, shall ensure that any valuable, potentially valuable, and/or confidential information is protected from being in the public domain by a suitable agreement or clause in an agreement.
- 10.2.2 Persons to whom this policy applies must seek advice from the Research Office before any such agreements are signed with third parties, and shall ensure that the DVC, Research and Innovation co-signs such agreement or understanding and that the Research Office is furnished with the copy of such agreement or understanding.
- 10.2.3 Persons to whom this Policy applies shall alert the Research Office if they are concerned that a third party, which has received University information through a confidential disclosure arrangement, may be about to break, or appear to have broken, an agreement or understanding.

10.3 Service Agreements

- 10.3.1 The University may, from time to time, be engaged to perform certain tasks, such as evaluation, field testing or clinical trials for third parties, which might involve using protocols either directly specified by such persons or developed by the University to meet specific criteria and data requirements set by such persons. The University shall, in such cases, enter into a contract of service with such parties in order to set out the terms of required service.
- 10.3.2 Clause 10.3.1, with the necessary changes, also applies to instances in which the University similar services to be rendered to it by other persons.

10.4 Collaboration Agreements

- 10.4.1 Should an employee, contractor or student wish to undertake collaborative research activities with an institution or third party for the purpose of achieving a mutually-agreed and defined purpose, he or she shall enter into a collaborative agreement with such third-party institution, entity or person.
- 10.4.2 The collaboration agreement shall clearly set out the work to be undertaken, the division of work, outcomes expected from each party and how the processes and the results, in particular the intellectual property resulting from the work, would be treated, published, protected, commercialized or owned for a defined scope in the project of collaboration.

10.5 Material Transfer Agreements

- 10.5.1 The University shall be required to enter into a material transfer agreement with third parties regarding transfer of proprietary tangible property (e.g. research samples and materials) and biological material to such third parties.
- 10.5.2 Negotiated terms of such agreements may cover the use of the original materials, progeny materials produced by self-replication of the original sample, and modifications of the original materials.
- 10.5.3 The terms of material transfer agreements shall cover publication rights, ownership, apportionment of liability arising from hazardous materials and ownership of new inventions arising from the use of such materials.
- 10.5.4 Material transfer agreements as envisaged in clause 10.5.1 may, with the necessary changes, also cover materials coming to the University from third party industrial and other sources, or the reverse.

10.6 Agreements for External Supervision of Postgraduate Candidates

Where the University engages an external supervisor for a postgraduate degree candidate, the parties shall enter into a supervision agreement which clearly states that this Policy applies to the external supervisor and that it covers all activities that the external supervisor might undertake while supervising the candidate.

SECTION B: PROCEDURES

11 VISITORS

- 11.1 Any employee, student or any person affiliated with the University, including a contractor, who permits visitors access to University resources shall ensure that the visitor has been notified of this Policy and obtain written acknowledgement from the visitor that he or she is aware that visitors are bound by this Policy in the absence of any written agreement to the contrary.
- 11.2 Any University employee or contractor under whom a new employee is hired by the University to work shall be responsible for furnishing such new employee or contractor with the copy of this Policy upon assuming duty with the University, and such new employee or contractor shall sign a written acknowledgement that he or she is aware of, and bound by, the provisions of this Policy, in the absence of any written agreement to the contrary.

12 EVALUATION OF DISCLOSED INTELLECTUAL PROPERTY

- 12.1 The intellectual property disclosed to the University as contained in the disclosure form shall be subject review and preliminary evaluation of its potential by the Research Office.
- 12.2 The Research Office has a duty promptly to evaluate and provide final disposition of the rights to the intellectual property disclosed to it, after which it shall compile a report to be presented to the Research Committee for further review and approval.
- 12.3 The Research Office shall engage with the creator(s) to prepare an initial intellectual property and market evaluation report with recommendations by conducting intellectual property due diligence and commercial due diligence to inform what approach should be adopted with regard to commercialization as well as patent protection (if applicable) in respect of the disclosed intellectual property.
- 12.4 Where the preliminary evaluation process highlights issues that commercially compromise the intellectual property or significantly affect the exploitation of such intellectual property, the report by the Research Office to the Research Committee will recommend that the venture does not proceed to full evaluation and advise the creator of the following or alternative procedures regarding such intellectual property.
- 12.5 In the event that the report of the Research Office highlights positive findings in terms of the viability of the disclosed intellectual property or invention, the chairperson of the Research Committee shall convene a subcommittee to recommend a preliminary course of action based on the commercial potential of the invention. After reviewing the relevant materials and conducting discussions with the creator(s), the subcommittee may recommend to the Research Committee that additional information be gathered to determine the ownership, legal, competitive, and market issues that have bearing on the patenting, copyrighting, or trademark decision. After that information is collected and evaluated, the subcommittee will recommend to the Research Committee which course of action to follow.
- 12.6 The Research Committee shall evaluate the disclosed invention in a meeting, taking into consideration all reports and recommendations presented to it, the risks and opportunities involved, and shall thereafter communicate its decision to the Research Office.

- 12.7 The decisions reached by the Research Committee shall be presented to the creator(s) in writing and where no further action will be taken the creator(s) shall be accordingly advised on the appropriate cause of action.
- 12.8 Where the decision of the Research Committee does not concur with the recommendations from the Research Office, the DVC, Research and Innovation shall attempt to mediate a mutually-agreeable solution. Where this is not possible, the proposal will be declined.
- 12.9 If the University pursues a patent, design or trademark application, the Research Office shall manage the interactions and timelines with relevant attorneys but will rely on the creator(s) to provide sufficient technical details and insight so that attorneys will be able to craft the best possible protection.

13 COMMERCIALIZATION PROCEDURES

13.1 Procedure

- 13.1.1 Whenever the University undertakes commercial development of intellectual property it shall do so, if possible, in a manner that provides for the widest possible dissemination, avoiding suppression of inventions from which the public might otherwise benefit, providing for non-exclusive licensing (in the case of licensing) at reasonable royalties, and giving consideration to more favourable or royalty-free licensing to:
- (a) Non-profit charitable institutions.
 - (b) Minority businesses or enterprises.
 - (c) BBBEE entities, or 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) Parties that made material contribution to the research and development giving rise to the commercialized intellectual property.
- 13.1.2 Provisions of this section of the Policy shall be subject to approval by NIPMO for compliance with provisions referred to in section 11 and especially section 11 (7) of the IPR Act.
- 13.1.3 Where the University decides to commercialize the disclosed intellectual property, the Research Office shall, with assistance of the creator:
- (a) Pursue the commercialization process by carrying out research on the market potential of the intellectual property.
 - (b) Enter into discussions with potential licensees, collaborators, business partners, sponsors, or investors.
 - (c) Develop a business plan.

- (d) Help to secure commercialization funding with potential investors.
 - (e) Negotiate appropriate licensing or other arrangements.
- 13.1.4 The Research Office shall, with the assistance of the creator, the DVC Research and Innovation and any other person designated by the University determine a suitable strategy for the commercialization of the intellectual property and/or the proposed technology, taking into consideration the cost efficiency, risks involved, and potential returns in each model of the strategy.

13.2 General Licensing

- 13.2.1 In the event that the University elects to commercialize the new technology through licensing, such licence shall normally be non-exclusive, and the provisions of such licence agreement shall be governed by the IPR Act and be subject to approval by NIPMO if:
- (a) The consideration payable by a licensee to the University is not determined on an arm's-length basis.
 - (b) The University grants a licensee rights to commercialize the intellectual property on a royalty-free basis.
 - (c) The licensee falls into the categories referred to in clauses (a) and (b) above, and is granted a right to sub-licence on a consideration determined.
- 13.2.2 Each intellectual property transaction the University enters into regarding intellectual property emanating from publicly-financed research shall include the following statement:

*"The intellectual property under this transaction was created with support from the South African Government ((**under the contract number where applicable**) awarded by (**identify the Funding Agency or relevant government department where applicable**) and is subject to the requirements of the South African Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 and its regulations ("Act 51 of 2008"). The South African Government has certain rights to the intellectual property in terms of sections 11(1)(e), 11(2) and 14 of Act 51 of 2008."*

13.3 Offshore Licensing and Transactions

- 13.3.1 In the event that where the University elects to commercialize the new technology through licensing to an off-shore entity or person, or on an arms-length basis, or for the purposes of promoting or facilitating the University's research and development activities, such licence shall normally be non-exclusive, and the provisions of such licence

agreement shall be governed by the IPR Act. NIPMO's approval must be obtained for any licence in terms of which:

- (a) The consideration payable by a licensee to the University is not on an arm's-length basis.
 - (b) The University grants a licensee rights to commercialize its intellectual property on a royalty-free basis.
 - (c) The licensee falls into the categories referred to in clauses 13.3.1(a) and 13.3.1(b) above, and is granted a right to sub-license on an arm's-length basis in the case of clause 13.3.1(a) or for a royalty in the case of clause 13.3.1(b).
- 13.3.2 Regarding offshore intellectual property transactions the University is obliged to advise NIPMO of its intention to conclude an intellectual property transaction offshore, and guidance shall be sought from NIPMO to determine if such offshore intellectual property transaction complies with the IPR Act and its regulations, and any guidelines contemplated in section 9(4)(e) of the IPR Act, and any regulations prescribed by NIPMO.
- 13.3.3 The University shall undertake intellectual property transactions offshore in the form of an assignment or exclusive licence only if:
- (a) There is insufficient capacity within the Republic to develop or commercialize the intellectual property locally.
 - (b) The Republic will benefit from such offshore transaction.
- 13.3.4 The University shall provide reasons for the transactions contemplated in clause 13.3.3 to NIPMO's satisfaction.
- 13.3.5 Before granting an exclusive licence outside the Republic or to an off-shore entity or person, the University, and where the intellectual property is co-owned, the University in consultation with the co-owner(s), must be satisfied that the prospective licensee is able to commercialize and where required, capable of developing the intellectual property further.
- 13.3.6 Where an off-shore intellectual property transaction emanates from publicly-financed research the following statement shall be included:

*"The intellectual property under this transaction was created with support from the South African Government (**under the contract number where applicable**) awarded by (**identify the Funding Agency or relevant government department**) where applicable and is subject to the requirements of the South African Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 and its regulations ("Act 51 of 2008"). The South African Government has certain rights to the intellectual property in terms of sections 11(1)(e), 11(2) and 14 of Act 51 of 2008."*

- 13.3.7 In respect of an off-shore intellectual property transaction, the University shall lodge an application with NIPMO in the prescribed form for approval of an assignment of intellectual property offshore (Form IP5) or the grant of an exclusive licence (Form IP6), in terms of section 12(2) and regulation 12.6 of the IPR Act. The application must:
- (a) Detail compliance with section 12(2) and regulation 12(6) of the IPR Act.
 - (b) Clearly articulate the benefits of the intellectual property transaction to the Republic.
- 13.3.8 The application referred to in regulation 12(6) of the IPR Act as outlined in clause 13.3.7 above shall be lodged prior to, or where permitted concurrently with initiating any application for final approval in terms of any other regulatory provision pertaining to off-shore intellectual property transactions.

13.4 Other Intellectual Property Transactions

- 13.4.1 The University shall determine the nature and conditions of intellectual property transactions relating to any intellectual property owned by it, but must take into account that:
- (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 commercialize the intellectual property 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 commercialization of the intellectual property within the Republic during the duration of the licence and the University wishes to retain the exclusive licence, the University must furnish NIPMO with full reasons for retaining exclusivity.
 - (g) The University must supply the reasons contemplated in clause 13.4.1(f) within 30 days of it becoming aware that the holder of the licence is unable to continue commercializing the intellectual property, or such extended time as may be agreed upon with NIPMO.

- (h) NIPMO may request that the exclusive licence contemplated in clause 13.4.1(f) be converted to a non-exclusive licence if the University fails to furnish the reasons within the period contemplated in clause 13.4.1(g), or if NIPMO is not satisfied with such reasons.
- 13.4.2 An exclusive licence agreement must in addition to the statement in regulation 12(4) include appropriate terms and conditions, in particular:
- (a) A requirement that commercialization of the intellectual property by a prospective licensee must ensure that the benefits of the intellectual property are accessible to the Republic on reasonable terms.
 - (b) A provision for an irrevocable and royalty-free right of the State to use, or have the intellectual property used on behalf of the Republic, for the health, security and emergency needs of the Republic in terms of the Act.
 - (c) Confirm that NIPMO's rights in terms of section 14(4) of the IPR Act apply if the intellectual property is not commercialized within the reasonable period set out in the exclusive licence agreement.
- 13.4.3 Each intellectual property transaction must contain a condition to the effect that should a party fail to commercialize the intellectual property to the benefit of the people of the Republic, the State is entitled to exercise the rights contemplated in section 14 of the IPR Act.
- 13.4.4 Each intellectual property transaction involving assignment of intellectual property by the University to a small enterprise in return for shareholding as a consideration must contain a condition providing that in the event of the liquidation of that small enterprise, the intellectual property shall revert to the University.
- 13.4.5 Should the University wish to assign intellectual property emanating from publicly-financed research which is thus governed by the IPR Act, to any entity in the Republic, the University must submit to NIPMO an application for approval of such assignment, in prescribed Form IP4, and in the case of co-owned intellectual property the University will do so in consultation with the co-owner(s). In such application the University shall demonstrate that such assignment is in the public interest; or provide reasons as to why the intellectual property cannot be commercialized through other means such as an exclusive licence.

14 IMPLEMENTATION AND OVERSIGHT RESPONSIBILITIES

- 14.1 The project owner of this policy is the Deputy Vice-Chancellor, Research and Innovation, who shall ensure that the policy provisions are implemented and that it is presented for revision and review at the appropriate time.

- 14.2 The various Faculty Research Committees and the Research Committee shall oversee compliance in respect of the matters that fall within their jurisdictions.
- 14.3 Senate has overarching oversight responsibility.
- 14.4 Management and administration of this Policy and rests with the Office of the Deputy Vice-Chancellor, Research and Innovation and the Research Office.

15 POLICY REVIEW

- 15.1 Council shall review the policy on a three-yearly cycle.
- 15.2 On recommendation of the Research Committee, Senate may review and amend Section B at any time, in which event the amendments take effect on the date of the Senate approval.
- 15.3 All persons affected by the Policy must be notified of any amendments.
- 15.4 Nothing in this clause shall prevent Council from reviewing this policy at any time prior to the stipulated three-year cycle, in which event a new cycle shall commence from the date of such review.