

UNIVERSITY of the
WESTERN CAPE

POLICY ON RESEARCH POLICY SECTION 10: INTELLECTUAL PROPERTY POLICY

UNIVERSITY OF THE WESTERN CAPE

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UNIVERSITY of the WESTERN CAPE

RESEARCH POLICY

SECTION 10: INTELLECTUAL PROPERTY POLICY

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1. DEFINITIONS

1.1. Usual Meaning

Words and expressions used in this Intellectual Property Policy (the Policy) shall generally keep their usual dictionary definition.

1.2. Other UWC Documents

Words and expressions used in this Intellectual Property Policy that are defined in other UWC documents shall be ascribed the definitions set out therein. Where there is a difference in the definition set out in this Intellectual Property Policy compared to the definitions provided in such UWC documents, the definitions provided in this Intellectual Property Policy shall take preference.

1.3. Applicable Law

Words and expressions used in this Intellectual Property Policy that are defined in any statute, rule or regulation of any South African governmental authority ("Applicable Law") shall be ascribed the definitions set out therein. Where there is a difference in the definition set out in this Intellectual Property Policy compared to the definitions provided in such Applicable Law, the definitions provided in this Intellectual Property Policy shall take preference.

1.4. Specific Definitions

For purposes of this Intellectual Property Policy and unless the context obviously indicates another meaning, the following words and expressions shall have the following meaning:

"BBBEE" shall mean broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003;

"Collaborator" shall mean a person or organisation engaged to undertake work for or with UWC under a joint research or collaboration agreement;

"Commercialisation" shall mean process by which any Intellectual Property emanating from research and development by UWC Employees, Students and Collaborators is or may be adapted or used for any purpose that may provide any benefit to society or commercial use on reasonable terms, and "Commercialise" shall have a corresponding meaning

"Confidential Information" shall mean all tangible and intangible information, in any format or material embodiment and whether proprietary or not, which UWC has an interest in keeping confidential and which by its nature is or ought to be reasonably identifiable as confidential, whether in writing or in electronic form, whether it is created pursuant to or in the course of discussions between UWC and a third party, or which may be obtained by examination, testing, visual inspection or analysis, and which includes, without limitation:

- Scientific, business or financial information, including UWC's Intellectual Property and all information embodied in reports, outcomes or findings of studies, assessments, evaluations or analyses; and
- third party information, including information received in confidence from a third party, such as information disclosed by a collaborative partner of UWC or by a Service Provider;

"Consultant" shall mean any natural person that provides services of any nature to UWC under a consultation agreement;

"Copyright" shall mean the right to prevent third parties from reproducing and/or adapting any Copyrighted Work;

"Copyrighted Work" shall mean work eligible for copyright, as defined in section 2 of the Copyright Act 98 of 1978 (as amended);

"Course and scope of employment" shall mean the duration of contracted employment with the UWC and all the activities undertaken therein, including all academic (teaching) functions, research and development (R&D) activities and ancillary duties linked to the employment contract;

"Course and scope of registration" shall mean the duration of registration for study at the UWC and all the activities emanating from research projects which form part of a student's coursework, undertaken by the students with use of UWC resources (including supervision) and/or research forming part of a larger project falling within the ambit of the IPR Act, but shall exclude research not forming part of the coursework and not utilising UWC resources;

"Design" shall have the meaning as set out in section 1 of the Designs Act 195 of 1993 and includes the right of the design owner to prevent third parties not having the owner's consent from making, importing, using or selling any article included in the class in which the design is registered and embodying the registered design or a design not substantially different from the registered design;

"DVC" shall mean the Deputy Vice Chancellor (Research and Innovation) of UWC;

"Employee" shall mean any person employed by UWC, whatever his/her position in the organisation (academic, research, administrative and support staff or otherwise), and will include persons employed on a permanent, fixed-term or part-time basis;

"Equipment" shall mean all equipment, such as:

- computers (including laptops);
- telephones (including cellular telephones supplied by or used in the course of official UWC business);
- Personal Digital Assistants (PDAs); and
- Photocopiers;

"Full Cost" shall mean the full cost of undertaking research and development as determined in terms of the institution's financial and related policies and in accordance with internationally accepted accounting standards and includes all direct costs, including salaries, bursaries, running and equipment costs) and indirect costs (including rent, services, overheads etc.);

"Full Cost Model" means the UWC Full Cost formula, as approved by NIPMO, to be implemented in determining whether the budget for research and development has been costed on a Full Cost basis;

"Innovation Fund" shall mean a fund established by UWC to support innovation activities;

“Intellectual Property” or “IP” shall mean all outputs that are the result of creative endeavour and include all rights to Patents, Inventions, Copyright and neighbouring and related rights, moral rights, Trade Marks, trade names and service marks, business names and domain names, rights in get-up and trade dress, utility models, goodwill and the right to sue for passing off or unfair competition, rights in Designs, rights in models, Plant Breeders’ Rights, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including Know-How and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;

“Intellectual Property Policy” or “Policy” shall mean the policy set out in this document;

“Invention” shall mean any discovery or technical innovation, whether patentable or not, including but not limited to a new composition, device, or process, or an improvement of a process, machine, or product;

“IP Creator” shall mean the person or group of persons who create, develop, conceive, reduce to practice, author or initiate the creation of IP and includes an ‘inventor’ as defined in the Patent Act 57 of 1978 (as amended), or ‘author’ as defined in the Copyright Act 98 of 1978 (as amended);

“IPR-PFRD Act” shall mean Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008 (IPR-PFRD Act),

“Know-How” shall mean all Confidential Information of whatever nature relating to UWC and its business and/or to the IP of UWC and its exploitation;

“Line Manager” shall mean anyone who exercises supervisory authority in respect of any UWC project, or is the head of any UWC unit, centre, programme, department, school or institute;

“Nett Revenue” shall mean the gross revenue or royalties emanating from the IP and received by UWC, less the expenses incurred by UWC for and in the protection and Commercialisation of IP;

“NIPMO” shall mean the National Intellectual Property Management Office;

“Open Source Software” shall mean software developed, tested, or improved through public collaboration and distributed with the intention of making it available to the public under licence;

“Patent” shall mean a right granted in a particular territory to the patent owner, for any Inventions, products or processes in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application, for a limited period to exclude others from making, exercising, using, importing, disposing of or offering to dispose of the claimed subject matter without the permission of the owner. The patent owner shall have the right to assign, or to transfer by succession, the patent, or to licence the use of the claimed subject matter of the patent to others. The owner of a patent right will only have such rights in each territory in which a patent is registered;

“Person” shall mean any person recognised by law, whether a natural or juristic (legal);

“Public Disclosure” shall mean any oral, visual, or written disclosure of information relating to IP, without being subject to a confidentiality or non-disclosure agreement, to a party external to the IP Creator or owner, including but not limited to internet posting, articles or press releases, interviews, abstracts, posters or conference presentations, emails, notices, advertising, use on a commercial scale, and submission of a thesis for examination or to the library without restriction as to access;

“Research” means the furtherance, accumulation and improvement of knowledge through original and other investigations, inquiries and methods of a scientific nature, and includes acquisition, development and transfer of expertise and technology;

“Revenue” shall mean all income and benefits, including non-monetary benefits emanating from IP transactions and includes all actual, non-refundable royalties, other grant of rights and other payments made to UWC or any other entity owned wholly or in part by UWC as a consideration in respect of an intellectual property transaction, but excludes a donation;

"Service Provider" shall mean any third party (other than a Consultant) that renders any services to UWC pursuant to any type of Service Provider agreement with UWC;

“IPAC” shall mean the Intellectual Property Advisory Committee of UWC, established in accordance with section 6 of this Policy;

“Student” shall mean any person registered with UWC for an under-graduate or post-graduate qualification and any post-doctoral fellow of UWC;

“Trade Mark” shall mean any mark capable of distinguishing the goods or services of one undertaking from those of another undertaking and can include a word, name, symbol, expression, smell, hologram or design, or any combination thereof;

“TTO” shall mean Technology Transfer Office of UWC;

“UWC” shall mean the University of the Western Cape, a juristic person established in terms of *The Statute of the University of the Western Cape* published in Government Gazette No. 47556 on 4 May 2005, in accordance with sections 32 and 33 of the Higher Education Act, 1997 (Act No. 101 of 1997, as amended).

2. INTRODUCTION

2.1. Background

UWC is a national university committed to excellence in teaching, learning and research, to nurturing the cultural diversity of South Africa, and to responding in critical and creative ways to the needs of a society in transition. UWC acknowledges the need to encourage original research, innovation and IP creation or development by Employees, Students and Collaborators.

In terms of the IPR-PFRD Act, IP emanating from publicly financed research and development is required to be identified, protected, utilised and commercialised for the benefit of the people of the Republic of South Africa. As a publicly financed institution, UWC must comply with the provisions of the IPR-PFRD Act.

This policy has been developed to provide a framework of IP management for various stakeholders at UWC in terms of the IPR-PFRD Act.

2.2. Strategy Alignment

2.2.1. Alignment of the Intellectual Property Policy with UWC's vision

It is imperative that the Intellectual Property Policy is underpinned by a proper alignment between the UWC mission statement and vision. When IP issues come to the fore, cognisance shall be taken of the relative importance and value of the particular IP measured against the backdrop of the vision of UWC.

2.2.2. Alignment of the policy with applicable legislation, government initiatives and policies

This Intellectual Property Policy shall not be, and shall not be interpreted, in conflict with government initiatives, legislation or policies dealing with the same subject matter. The Intellectual Property Policy shall be reviewed from time to time to ensure that it remains in harmony with applicable legislation, government initiatives, frameworks and policies, including but not limited to:

- Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008;
- The Patents Act 57 of 1978;
- The Designs Act 195 of 1993;
- The Plant Breeders' Rights Act 15 of 1976;
- The Copyright Act 98 of 1978;
- The Trade Marks Act 194 of 1993;
- The Counterfeit Goods Act 37 of 1997;
- The Competition Act 89 of 1998;
- The Currency and Exchanges Act 9 of 1933;
- The National Environmental Management: Biodiversity Act 10 of 2004;
- Intellectual Property Policy of the Republic of South Africa Phase 1 2018; and
- The Policy Framework for the Protection of Indigenous Traditional Knowledge.

3. OBJECTIVES OF THE INTELLECTUAL PROPERTY POLICY

The objectives of this Intellectual Property Policy are to:

- 3.1.** provide a facilitating environment within UWC to educate and train Students and Employees and to search for and disseminate knowledge, where appropriate, for the benefit of society;
- 3.2.** lay down a regulatory framework regarding the creation, use, protection and Commercialisation of IP created or developed at or in collaboration with UWC;
- 3.3.** ensure that human ingenuity and creativity are acknowledged and rewarded in a fair and equitable manner that recognises the contributions of the IP Creators and UWC;
- 3.4.** protect the rights of researchers to publish their research findings;

- 3.5. create an awareness of IP and the benefits of Commercialisation to Employees and Students;
- 3.6. promote, advance and preserve research and development at UWC;
- 3.7. promote, advance and encourage Commercialisation opportunities for IP developed at UWC, where appropriate, for the benefit of society; and
- 3.8. ensure that UWC complies with all applicable IP legislation.

4. APPLICATION OF THE INTELLECTUAL PROPERTY POLICY

This Intellectual Property Policy shall apply to:

- 4.1. any Employee of UWC, including full-time, part-time or temporary academic, administrative and support staff;
- 4.2. any Employee of UWC who creates, develops, or uses UWC IP in the course of a contract, an exchange of services, a mandate, a training period, a cooperative undertaking or otherwise;
- 4.3. any Student of UWC and any Collaborator or visiting scientist or other person participating in research sponsored or hosted by UWC, or making significant use of UWC Equipment, facilities, funds or other resources ("significant use" is determined, without limitation, by factors such as time spent, type of Equipment, source of funding, space utilised etc.);
- 4.4. any Service Provider, and/or Consultant that creates or develops IP in the course of rendering services to UWC; and
- 4.5. any Employee, Student, Service Provider, Consultant or Collaborator that deals in any way with UWC IP.

5. CREATION AND OWNERSHIP OF INTELLECTUAL PROPERTY

5.1. Employees

All IP created, designed, made, prepared, established, modified, converted, expanded, developed, improved, perfected or translated by an Employee, during the course and scope of his/her employment with UWC, whether or not on UWC's premises, whether or not during regular working hours, alone or with the cooperation of one or more other people, shall belong to UWC.

5.2. Students

All IP created, designed, made, prepared, established, modified, converted, expanded, developed, improved, perfected or translated by a Student during the course and scope of registration at UWC, whether or not on UWC's premises, whether or not during regular working hours, alone or with the cooperation of one or more other people, shall belong to UWC.

5.3. Moral Rights for Employees and Students

UWC recognises the moral rights of the author in Copyrighted Works. Employees and Students shall retain the moral rights to their work. However, in all cases Employees and Students must obtain consent from the relevant Ethics Committee and their Line Managers, before publishing their IP work, subject to clause 5.7.

5.4. Joint Staff and Collaborative Research

Ownership of IP created or developed jointly by UWC staff and an organisation or person outside UWC (“collaborative research”) will be determined in accordance with a written research agreement concluded between UWC and the outside person or organisation, provided that such research agreement shall prior to its conclusion have been approved by the TTO and Legal Services Office, and is in compliance with the Waiver clause below i.e. 5.8.

The research agreement shall include provisions relating to ownership and use of pre-existing or “background” IP. All background IP owned or possessed by the visiting researcher and by UWC that is relevant to the research to be undertaken shall be disclosed and described in the research agreement.

The research agreement shall set out that ownership of IP that is created or developed by visiting researchers or Collaborators, while visiting UWC, shall be owned by UWC unless the requirements for co-ownership of IP as set out in the IPR-PFRD Act are met, or the research and development is funded on a Full Cost basis in terms of the UWC Full Cost Model. In the case of co-ownership or Full Cost funding, ownership of IP shall be agreed upfront in writing by the relevant institutions, provided that such agreement shall prior to its conclusion have been approved by the UWC TTO and Legal Services Office, and is in compliance with the Waiver clause 5.8.

The research agreement shall provide for reporting by each of the entities on all IP arising from the performance of the collaborative research to be undertaken.

In the event that the IP is created or developed through research that received public financing, the research agreement must make provision for the requirements of the IPR-PFRD Act, including for benefit sharing by the IP Creators, as provided for in clause 10 of this Policy.

5.5. Contract Research

Contract research occurs where UWC undertakes research on behalf of a client, company or organisation. Unless the requirements for co-ownership of IP as set out in the IPR-PFRD Act are met, or the research and development is funded on a Full Cost basis, the ownership of any Intellectual Property developed shall vest in UWC, assuming that the persons undertaking the research are UWC Employees or Students acting within the course and scope of their employment or registration. In the case of co-funding, the co-ownership of IP shall be in compliance with the provisions relating to co-ownership as set out in the IPD-PFRD Act and shall be agreed upon upfront in writing by the relevant institutions or entities, provided that such agreement shall prior to its conclusion have been approved by the UWC TTO and Legal Services Offices, and is in compliance with the Waiver clause 5.8.

Line Managers must seek advice from the TTO or Legal Services Office on the appropriate agreements to be used prior to undertaking any contract research in order to ensure that UWC’s rights are protected and to ensure that UWC’s obligations to the client, company or organisation are not in conflict with UWC’s obligations in terms of the IPR-PFRD Act and other relevant legislation.

5.6. Sponsored Research

Where IP is created by Students during the course of research funded through grants or bursaries, the ownership of the IP shall be determined in accordance with a research

agreement between the sponsor and the UWC, provided that such arrangement shall not conflict with the IPR-PFRD Act. Any benefits derived from exploitation of the IP shall be shared proportionately between the parties based on the relative contributions of the parties and shall be set out in the research agreement.

5.7. Right to Publish

Employees and Students are expected to publish and present research findings. However, since public disclosure could preclude protection of certain IP rights, including patenting, research findings which have the potential to yield protectable IP shall first be disclosed by the IP Creator to the TTO for evaluation and protection if deemed appropriate. Employees and Students will not publish any such material without having obtained the prior written consent to do so from the TTO. The TTO shall ensure that the period during which there can be no disclosure of results, is as short as possible. UWC shall not unreasonably delay or refuse a request for the publication of a piece of work by Employees and Students, should upon examination, no IP be identified for protection and Commercialisation.

5.8. Waiver

In the event that the IP is created or developed through research and development that received public financing, UWC can only waive its rights to ownership of IP under circumstances which comply with the IPR-PFRD Act and in terms of a written agreement with the person or company involved. Where a third party has funded research and development on a Full Cost basis, then in terms of the IPR-PFRD Act, the IPR-PFRD Act will not apply, and a third party can negotiate with the University for ownership of the IP.

5.9. Provisions regarding Copyright

UWC holds Copyright in all work created by Employees in the course and scope of their employment and Students in the course and scope of their registration at UWC.

5.10. Provisions regarding Trade Marks

UWC reserves all its rights in respect of any Trade Marks owned by the University, registered, or unregistered, including the name, logo, abbreviations, or similar indications. The use of UWC's Trade Marks for private purposes or for gain by Employees or Students or by any third party is prohibited.

6. MANAGEMENT OF INTELLECTUAL PROPERTY

6.1. Organisational Structures

The UWC TTO has been established as required in terms of the IPR-PFRD Act, and its functions include those set out in section 7 of the IPR-PFRD Act. Such functions include to consider, advise and decide on all matters relating to the appropriate protection and Commercialisation of UWC's IP, under the direction of the DVC.

The TTO will develop and implement, on behalf of UWC, guidelines and processes for the disclosure, identification, protection, development, and Commercialisation of UWC IP and for benefit-sharing arrangements.

The TTO will create the IPAC chaired by the DVC or his/her representative, which shall consist of members as determined by the DVC or his/her representative.

The IPAC shall have the right to co-opt such additional members (such as a sufficiently and relevantly qualified senior law academic from the Law Faculty, or a relevantly qualified senior academic with a particular relevant technical background as required in terms of the circumstances, drawn from the Faculty of Science, or external experts) as can assist it in the discharge of its responsibilities.

The additional members need not be Employees of the University. The members of the IPAC will treat all subject matter disclosed to them as confidential and may be required to sign a Confidentiality Agreement with UWC.

Members of the IPAC and the TTO should possess or have access to the following skills and expertise, including:

- An understanding of how technology is developed (with a Masters Degree or PhD in Science or Engineering);
- Financial skills;
- IP management skills, particularly for Patents and Copyright;
- Business plan development and preferably marketing skills;
- Understanding of institution-industry relations and industry needs;
- Knowledge of the public sector, entities operating therein and various possible funding instruments;
- An understanding and ability to analyse markets to assess opportunities and construct viable marketing strategies in support of Commercialisation;
- An understanding of venture financing sources, including private and government agencies;
- Negotiation and deal structuring skills; and
- Legal and contracting skills, including IP protection, licensing and enforcement expertise.

6.2. Function of the TTO and IPAC

The TTO will, in relation to the creation and protection of IP:

- perform the functions required to be performed by a TTO in terms of the IPR-PFRD Act in respect of publicly financed research and development;
- develop and implement a policy for disclosure of IP created;
- evaluate appropriate creations as regards to their practical and commercial value;
- provide advice regarding the feasibility, operational processes and marketability of an invention or design;
- advise as to the protection and exploitation of an appropriate creation;
- after consulting with the UWC Legal Services Office, assist Employees with formal agreements, including those relating to confidentiality and any arrangements with external parties;
- obtain advice and make recommendations on compliance of the IP created with the necessary criteria for IP protection, including the patentability of inventions generated from UWC activities;
- regulate the publication of IP in order to protect the novelty of patentable inventions;
- recommend the budget to be allocated for IP activities, such as Patent, Design and Trade Mark prosecution costs, renewal fees as well as the costs of dealing with the enforcement of all UWC's IP; and

- obtain appropriate specialised IP legal advice, where required.

The TTO will, in relation to the management and implementation of the Intellectual Property Policy:

- oversee and manage the practical implementation of the Policy;
- advise the DVC of any recommended variations to the Policy;
- advise the DVC on all matters relating to IP administration;
- provide advice and support to all Employees and Students insofar as the Policy is concerned.

The TTO will, in relation to the transfer and Commercialisation of IP:

- identify, manage and mitigate risks associated with the use and Commercialisation of UWC's IP;
- assess the viability of the Commercialisation of UWC's IP in terms of the guidelines provided in the Policy.
- identify and address any potential conflict of interest that may arise with respect to the Commercialisation of UWC's IP;
- negotiate and enter into assignment or license agreements with third parties pertaining to UWC's IP, ensuring compliance with the requirements of the IPR-PFRD Act where the IP emanated from publicly financed research and development;
- advise the DVC on any transfer or license of UWC's IP;
- develop licensing and royalty guidelines for UWC;
- manage benefit sharing arrangements with IP Creators and
- provide the DVC with a quarterly summary report on UWC's IP.

The TTO will, in relation to UWC's interaction with NIPMO:

- refer UWC's IP for which the TTO elects not to obtain statutory IP protection to NIPMO within the prescribed time period and in the prescribed manner;
- report to NIPMO in all matters pertaining to UWC's IP in a manner prescribed by NIPMO and the IPR-PFRD Act;
- recover IP protection costs from the fund administered by NIPMO, when applicable.

The TTO will have the discretion to determine if any novelty or freedom-to-operate searches are to be conducted to determine if any aspect of IP is in fact new and inventive and to determine if any IP utilised by UWC will infringe the IP rights of a third party.

The IPAC will have the discretion to determine whether and/or when UWC's IP portfolio is to be reviewed.

The IPAC will act as a panel for the resolution of disputes arising from the implementation of the Policy.

The IPAC shall advise the TTO on matters relating to the establishment of spin-out companies.

The IPAC shall meet at least twice per calendar year, or on an *ad hoc* basis as required and notified in writing at least **two weeks** to the members.

7. IDENTIFICATION OF INTELLECTUAL PROPERTY

7.1. Awareness of the Policy

UWC's executive management, through the TTO, shall foster a culture of awareness of IP and ensure that Employees and Students as well as visiting researchers, Contractors and Collaborators are familiar with the Intellectual Property Policy. Employees and Students shall receive appropriate training on IP and its protection. The level of training may vary depending on the scope of employment of the individual and the TTO shall have the discretion to decide on the level of training for particular Employees and Students.

7.2. Disclosure of Intellectual Property

7.2.1. New Intellectual Property

All new IP, whether protectable by Statute or not, shall be treated as Confidential Information and shall not be disclosed to any third party without approval of the TTO. All UWC Employees and Students are required to disclose potential protectable IP to the TTO within ninety (90) days of identification of the IP and before Public Disclosure thereof.

The TTO will develop a form for reporting such IP (an IP Disclosure Form) which will be made available to Students and Employees. The IP Disclosure Form shall contain at least the following information:

- IP Creator(s) details;
- details of IP, including technical details of an Invention;
- circumstances leading to the creation of the IP;
- agreements entered into to facilitate the IP being created or developed;
- activities undertaken or planned such as publication or presentation of the IP;
- resources and information used to develop the IP;
- the use of indigenous biological resources, indigenous genetic resources or traditional knowledge; and
- any other useful information to facilitate protection or Commercialisation of the IP.

IP Creators are required to inform their project supervisor or department, school or institute head (the Line Manager) of their disclosure. Employees and Students have a duty to maintain thorough records of any experimental methods and results (constituting Know-How) that is produced in the course and scope of their employment or studies. All IP rights in such Know-How contained in these records vests in the University.

7.3. Evaluation of Intellectual Property

7.3.1. Criteria to consider

The TTO shall, inter alia, consider the following criteria as indicative that IP protection should be sought:

- 7.3.1.1. IP protection is considered advisable to ensure the maximum availability of any IP, and developments / improvements thereon, to the government and its citizens;

7.3.1.2. IP protection is necessary to form partnerships for the carrying out of bridging work, or for trading to gain access to the IP rights of others that is vital to the availability of the IP to the South African government and its citizens; or

7.3.1.3. IP is developed that has potential application in other countries, including developing countries.

8. PROTECTION OF INTELLECTUAL PROPERTY

8.1. Know-How and Confidential Information

This section sets out standards regarding the protection of Confidential Information.

8.1.1. Duty to take Special Care

During the course of performing their duties or conducting their studies, Confidential Information may come to the knowledge of Employees and/or Students. Proper protection of the confidentiality of this information is essential if the interests of not only UWC, but also clients and business partners, are to be preserved.

These interests include maintenance of competitive advantage, trade secret protection, and preservation of personal privacy. All Employees and Students must take special care to prevent disclosure of Confidential Information to unauthorised third parties.

While this policy describes the considerations that Employees and Students should bear in mind before, during, and after disclosure to third parties, it cannot specifically address every possible situation. Questions about the disclosure of specific information must be directed to the TTO. Additionally, Employees and Students are expected to use professional judgment, and ask their TTO for guidance in those instances where the appropriate requirements of handling Confidential Information are unclear.

8.1.2. Labelling of Information

The TTO shall develop guidelines for the labelling of all UWC's Confidential Information and Copyrighted Works. Those guidelines will set out the different types of labels to be affixed to various types of Confidential Information and Copyrighted Works, responsibility for labelling, practical implications of each label, consequences of non-compliance, etc.

8.1.3. Third Parties and the Need To Know

Unless it has specifically been designated as suitable for public dissemination, all UWC's Confidential Information must be protected from unauthorised disclosure to third parties. Third parties may be given access to UWC's Confidential Information only when a demonstrable need to know for advancing UWC's interests, and when such a disclosure has been expressly authorised by the relevant UWC Line Manager acting on the advice of the TTO.

8.1.4. Non-Disclosure Agreements

The disclosure of proprietary creations to Collaborators, visiting researchers, Consultants, Service Providers, temporary Employees, volunteers and other third parties must be preceded by the receipt of a signed Non-Disclosure Agreement (NDA) obtainable from the TTO or Legal Services Office. NDAs provided by third parties are to be sent to TTO and Legal Services Office for review. The NDA must be signed by authorised representatives of the parties, with one copy retained by the research department, school or institute; one copy retained by the recipient of the Confidential Information; and one copy held for safe-keeping by the Registrar of UWC.

8.1.5. Material Transfer Agreements

Where tangible materials such as antibodies, plasmids, genes, probes, cell lines, viruses, seeds, plants, animals etc. are to be provided to a third party, the Employee or Student must first inform their Line Manager. It is the Line Manager's responsibility to ensure that a Material Transfer Agreement (MTA) obtainable from the TTO or Legal Services Office is entered into between the third party and the University. MTAs provided by third parties are to be sent to TTO and Legal Services Office for review. The MTA must be signed by authorised representatives of the parties, with one copy retained by the research department, school or institute; one copy retained by the recipient of the material; and one copy held for safe-keeping by the Registrar of UWC.

In accordance with the Currency and Exchanges guidelines for business entities published by the South African Reserve Bank on 11 October 2018, it is required that any MTA having a value of over R50,000 for transfer of materials to a foreign entity is to be referred by an Authorised Dealer to the Financial Surveillance Department of the South African Reserve Bank for prior approval. Any such MTA must be referred to the TTO in order for the MTA to be referred to the Authorised Dealer.

8.1.6. Disclosing Information Belonging to Third Parties

Employees must not disclose any Confidential Information constituting third party information to other parties unless the third party providing the information has provided prior approval of the disclosure. In the event that such disclosure is permitted in writing, then the new receiving party shall be required to sign the University's standard non-disclosure agreement or the non-disclosure agreement of the third party (the original disclosing party), as the case may be.

8.1.7. Recovery or Destruction

All material embodiments of Confidential Information provided to third parties must be recovered and returned to Line Managers within UWC upon termination of the relationship which resulted in the third party being in possession of the Confidential Information.

8.1.8. Reporting Improper Disclosures

If Confidential Information has been inappropriately disclosed, or is believed to have been inappropriately disclosed, this must be reported immediately to the relevant Line Manager. It is the Line Manager's responsibility to seek advice from the TTO.

8.2. Service Providers and Consultants

This section of the Policy is concerned with the responsibilities/obligations that are specific to Service Providers and Consultants in relation to UWC's IP. It is acknowledged that most of the details pertaining to the relationship between UWC and its Service Providers will be found in the underlying agreements between these parties. This policy seeks to provide a few pointers for the protection of UWC's IP in the context of interaction with Service Providers/Consultants.

8.2.1. Ownership

All IP developed by a Service Provider/Consultant in the course of the contractual relationship with UWC, shall vest in UWC. Any deviation from this policy shall be subject to the prior written authorisation of the TTO. Accordingly, Employees and Students must consult their Line Managers in order to ensure that relevant agreements incorporate appropriate clauses providing for assignment of IP to UWC.

8.2.2. Moral Rights

This refers to an author's right to be identified as the author of a Copyrighted Work as well as the right to object to any distortion or mutilation of the work developed by the author on behalf of UWC. Although UWC recognises and acknowledges an author's moral rights, UWC requires Service Providers and Consultants that are authors of a Copyrighted Work to reasonably waive all moral rights to the work in favour of UWC.

This is necessitated by considerations of efficiency and commercial expediency in order to ensure that UWC is able to make commercial decisions concerning the exploitation of the work as speedily as possible. Requests for exceptions must be directed to the TTO.

8.2.3. Undertaking to Sign All Documents

It is the responsibility of the Line Manager of the department, school or institute engaging the services of a Service Provider or Consultant to ensure that the Service Provider or Consultant signs all documents and provides all authorisations or consents:

- to give full effect to the relevant terms of this Policy; and
- in particular, to ensure that the Service Providers/Consultants allow UWC or its representatives to obtain all rights, title or interests in or to the IP developed by such Service Providers/Consultants in any country whatsoever, failing which, the Service Providers/Consultants shall be deemed to have given an irrevocable mandate to UWC or to any person designated by UWC to provide all such authorisations or consents and to sign all such documents for such purposes.

8.2.4. Authorised Use

With regard to Service Providers/Consultants, the nature of the authorised use of UWC's IP will be set out in the applicable agreements with UWC. As a general rule, this will be used when necessary, to achieve the objectives of the underlying agreements.

8.2.5. *Consequences of Termination*

The consequences of termination of the agreement between UWC and any Service Provider/Consultant in relation to IP shall be addressed in the applicable agreement between the parties. However, as a general rule, upon termination of the agreement, the Service Provider shall assign to UWC all the IP developed under the agreement, and transfer all material embodiments thereof to UWC.

Further, unless otherwise agreed in the relevant contract, the Service Provider shall immediately cease all use of UWC's IP. It is the responsibility of the relevant Line Manager to ensure that the post-termination provisions are adhered to.

8.2.6. *Licences*

Unless otherwise agreed in the underlying agreement between the parties, the Service Providers/Consultants do not have an automatic licence to use any of the IP that they have created for UWC. The terms of such license will be subject to such conditions as the TTO may determine.

8.3. Collaborations

8.3.1. *Publication*

The TTO shall have the discretion to determine whether Public Disclosure of UWC's IP shall be permitted, even where such IP is co-owned with one or more Collaborators.

Should the TTO be of the opinion that publication of UWC's IP will not compromise protection and/or Commercialisation of the IP in question, permission to publish shall not be withheld unreasonably, or delayed.

8.3.2. *Acknowledgement*

In any publication pertaining to UWC's IP, UWC shall endeavour to provide that UWC and its Employees and/or Students are recognised for their contributions to the creation and/or exploitation of the IP.

8.4. Registration of Rights

8.4.1. *Type of Protection*

The TTO shall consider how the relevant IP should be protected, including the following options:

1. Patent;
2. Plant Breeder's Right;
3. Registered Design;
4. Trade Mark;
5. Copyright;
6. Domain name; and
7. Confidential Information (including trade secrets and Know-How).

The TTO shall have the authority to decide whether the IP should be protected, and if so, in which countries and what form such protection should take. UWC shall bear the cost of protection of the IP.

Where UWC decides not to retain ownership in its IP or not to obtain statutory protection for the IP created or developed with the use of public finance, it shall report this decision together with reasons for the decision to NIPMO within the prescribed period provided for in the IPR-PFRD Act, whereupon NIPMO shall then have the option to acquire ownership in the IP.

If NIPMO decides not to acquire ownership in the IP and no third party has a claim to the Intellectual Property, the IP Creator of the IP shall then be offered the option to acquire ownership in the IP rights, the cost of which shall be borne by the IP Creator, provided that where a private entity has also provided financing, this private entity must first be offered such option together with the IP Creator.

No Employee or Student may apply for or obtain any IP right on their own initiative, or through a patent attorney with respect to any IP created or developed during the course and scope of their employment or registration at UWC, as ownership of such IP vests in UWC.

8.5. Software

Although copyright protection applies to software, it is also possible to obtain a patent where the software gives rise to a technical effect. Ownership of all IP rights subsisting in software that is developed by Employees and Students in the course and scope of their employment or registration shall vest in UWC and must therefore be disclosed to the TTO as provided for above. Source codes for such software must be delivered by the Inventor to his or her Line Manager on conclusion of their tenure with the University.

Employees and Students are prohibited from using, distributing, removing or otherwise taking a copy of the software or any accompanying development material, whether in written, electronic or any other format, developed in the course and scope of their employment or registration with them on expiry or termination of their contract or studies at UWC.

8.6. Use of UWC Intellectual Property by Employees and Students

8.6.1. Obligations regarding Intellectual Property by Employees and Students

Employees and Students shall take care to ensure that IP belonging to UWC and/or to third parties shall, at all times, be protected against any accidental, premature, unlawful or unauthorised disclosure, use, reproduction, appropriation or destruction.

Line Managers have an obligation to ensure that the Employees and Students are aware of and adhere to the provisions of this Policy.

Employees and Students have the following obligations regarding UWC's IP:

- as regards any IP created, designed, made, prepared, established, modified, developed, converted, expanded, improved, perfected or translated by an Employee or Student in the course and scope of his/her

employment or registration, whether alone or in cooperation with others, he/she shall disclose, immediately upon the creation of such IP or immediately upon such creation coming to the attention of an Employee or Student, to the his/her Line Manager and to the TTO and sign all documents that may be necessary in order to ensure that ownership of such IP properly vests in UWC;

- every Employee or Student shall use UWC's IP in a prudent and conscientious manner for the purpose of advancing UWC's business and other interests and shall be obliged to inform UWC of prior work relevant to the scope and/or validity of the IP which is within the personal knowledge of the Employee or Student;
- every Employee or Student shall forthwith inform his/her Line Manager of any unauthorised use of UWC's IP;
- every Employee or Student shall protect the integrity of UWC's IP;
- in addition to this Policy, every Employee and Student shall respect the guidelines, standards and methods issued from time to time by UWC;
- every Employee or Student shall abide by the laws, regulations, decrees, judgments and other legal requirements imposed by the authorities with respect to IP;
- every Employee or Student shall abide by the provisions relating to IP which are set forth in any contract to which UWC is a party;
- every Employee or Student shall respect and not infringe the security rules regarding the creation, use or protection of UWC's IP, as such rules are issued from time to time by UWC;
- every Employee or Student shall report forthwith to his/her Line Manager any weaknesses, which the Employee or Student discovers or is aware of as regards the security measures protecting UWC's IP;
- every Employee or Student shall cooperate with his/her Line Manager or any person in charge in order to facilitate the identification and correction of any flaw or problem affecting the creation or use of UWC's IP, or the security measures protecting it;
- every Employee or Student shall report forthwith to his/her Line Manager any violation by anyone of any of the terms of this Policy;
- subject to his/her constitutional rights, an Employee or Student shall provide his/her full cooperation and any evidence required in the course of any investigation carried out by the police, by UWC's insurers or by UWC itself, as regards the creation, use or protection of UWC's Intellectual Property by Employees or Students or by any other person; and
- an Employee, former Employee, Student or former Student shall at UWC's request testify before any court, commission or other tribunal with respect to UWC's IP or the creation, use or protection thereof.

8.6.2. Respect for Intellectual Property

Employees and Students of UWC must receive the Intellectual Property Policy of the university and acknowledge agreement with its provisions, at the commencement of their employment or registration.

Within the scope of their work or studies, Employees and Students shall at all times respect and protect IP rights held by UWC or by a third party, including Copyright, Trade Marks, Designs, Patents, Plant Breeders' Rights, Confidential Information, moral rights, contractual rights and licenses. Under no circumstances shall Employees or Students appropriate or infringe or attempt to appropriate or infringe, all or part of such IP rights, whether directly or indirectly and whether by copying or reproducing same, or otherwise.

If an Employee or Student has any question about whether to incorporate the unlicensed IP of a third party in any work undertaken for UWC, he/she shall first seek advice from his Line Manager. If necessary, the Line Manager shall consult the TTO for guidance.

8.6.3. Termination of Tenure and Surrender of UWC's Intellectual Property

When his/her contract of employment terminates, for any reason whatsoever or when his/her studies are completed or terminated for any reason whatsoever, an Employee or Student shall forthwith surrender to his/her Line Manager, all material embodiments of UWC's IP in his/her possession. In particular, but without limiting the generality of the foregoing, Employees and Students shall surrender to UWC all tools, Equipment, samples, documentation, stationery, business cards, software, diskettes, user guides, product lists, price lists and client lists.

When required to do so, Employees and Students shall attend an exit interview with their respective Line Managers at which they will be required to make full disclosure to UWC of all IP that they may have been working on during the term of their employment or studies with UWC.

Moreover, Employees and Students shall not keep any partial or entire reproduction (copy, photocopy, draft, summary or other), on any medium whatsoever, of all or part of UWC's IP after the date of departure or resignation from UWC, unless this has been agreed to by the Line Manager.

8.7. Open Source Software

UWC recognises that certain software is created through participation in open-source networks. UWC shall own the copyright in any computer program developed under an open source licence and shall observe any obligation it may have to make the computer program available to the public. Employees and Students are required to inform the ICU of their intention to participate in the creation of open-source software.

Employees and Students shall familiarise themselves with the license conditions applicable to such open-source software and shall not take any actions which may frustrate UWC's rights and commercialisation of developed software.

9. EXPLOITATION OF INTELLECTUAL PROPERTY

9.1. Commercialisation Strategy

Commercialisation refers to the process by which UWC obtains some economic benefit from the exploitation of any of UWC's IP. Commercialisation can take various forms, including licensing arrangements, creation of spin-off companies, entering into a joint venture, or similar transaction, enterprise or arrangement. The decision to Commercialise any aspect of UWC's IP shall be made by the TTO. In assessing a suitable Commercialisation strategy for UWCs' IP, the TTO shall take into account the balanced achievement of maximum benefit for the people of the Republic of South Africa as well as UWC, in order to ensure long-term public benefit.

To enable UWC to focus on its main objectives and basic research, UWC shall endeavour, as far as practically possible, to identify, engage and appoint external Commercialisation partners, and to grant rights to such Commercialisation partners through which commercialisation of UWC's IP is to take place.

The appropriate Commercialisation strategy shall be determined by the TTO taking into account:

- the nature and scope of UWC's IP, its scientific and technical validity and stage of development;
- the potential commercial application of UWC's IP and the alignment thereof with the core competencies of UWC;
- related government policies and directives;
- the IPR-PFRD Act;
- the Exchange Control Regulations promulgated in terms of section 9 of the Currency and Exchanges Act;
- the internal capacity of UWC to implement and manage a proposed Commercialisation strategy;
- the expected viability and monetary return on the Commercialisation of the UWC's IP; and
- potential costs, risks, Revenues and benefits of the Commercialisation of the UWC's IP.

The TTO shall, where required, consult and seek advice from the BDO and relevant internal and external sources with relevant experience when identifying a commercial strategy as set out above.

The TTO may, inter alia, consider the following Commercialisation models:

Assignment: ownership of UWC's IP is assigned outright to a third party under appropriate negotiated terms and conditions;

Licence: a right to exploit UWC's IP is granted to a third party under certain conditions and for a pre-determined term, usually with UWC receiving a royalty on the sales turnover of the product, and as UWC retains ownership of the IP, if the third party does not fulfil its contractual obligations, the licence can be cancelled;

UWC Managed Commercialisation: UWC's IP is Commercialised in-house under the guidance of the TTO and BDO, via the sale of a product or service embodying UWC's IP;

Spin-off Company: a company is created and which is partially or wholly owned by UWC, at least initially, and UWC may assign or licence the IP to the company, generally in exchange for dividends issued from the company, or from the sale of shares. UWC may also receive a royalty on turnover depending on the agreement between UWC and the company; or

Joint Venture/Partnership: UWC becomes a party to a joint venture or development and commercialisation partnership in which UWC may either assign the IP to the joint venture company, or may licence the IP to the joint venture company, and where UWC either receives an upfront fee, or income through dividends issued by the company, or through sale of shares, or a royalty on turnover or a combination of the above from the company.

9.2. Principles for Assignment and Licensing

UWC shall conform to the following guidelines regarding the possible assignment of its IP:

- UWC shall only assign the IP emanating from publicly financed research and development to any third party where its decision regarding the assignment is taken in accordance with the regulations to the IPR-PFRD Act and guidelines published by NIPMO;
- Where UWC decides to assign IP emanating from publicly financed research and development to a third party, it shall notify NIPMO of its decision and the reasons for its decision within the time frame prescribed by the IPR-PFRD Act;
- Where UWC assigns any IP to a third party it shall retain its right to use the IP for educational and research purposes;
- Where UWC assigns IP emanating from publicly financed research and development to a third party it must ensure that the State is entitled to obtain from the assignee an irrevocable royalty-free licence authorising it to use (or have the IP used) anywhere in the world for the health, security and also emergency needs of the Republic of South Africa (RSA); and
- All assignments of IP emanating from publicly financed research and development to a third party must include a condition to the effect that should the assignee fail to commercialise the IP to the benefit of the people of South Africa within a given period, the state is entitled to exercise walk-in rights, thereby to obtain a licence under, or assignment of, the IP that is not being commercialised, in accordance with the IPR-PFRD Act.

UWC shall conform to the following guidelines regarding the licensing of its IP:

- NIPMO approval must be obtained for any local or off-shore licensing of IP emanating from publicly financed research and development on a non-exclusive basis in terms of which (a) the consideration payable by a licensee to UWC is not on an arms-length basis; (b) UWC grants a licensee rights to Commercialise its IP

on a royalty free basis; or (c) the licensee falls into categories (a) and (b), and is granted a right to sub-license on an arms-length basis in the case of (a) or for a royalty in the case of (b).

- Where UWC licenses its IP emanating from publicly financed research and development to another party it must ensure that it remains possible for the State to have an irrevocable royalty-free licence in the event that it requires to use the intellectual property (or have the IP used) anywhere in the world for the health, security and emergency needs of the RSA;
- In any contract regulating a licence arrangement relating to IP emanating from publicly financed research and development, UWC shall ensure that an exclusive licensee manufactures, processes and otherwise Commercialises the IP within the RSA, where this is feasible;
- Where, during the term of an exclusive licence relating to IP emanating from publicly financed research and development, the licensee is unable to continue with the commercialisation of the IP within the RSA but UWC wishes the exclusive licence to remain in force, then UWC shall furnish NIPMO with full reasons for retaining exclusivity within the time period prescribed by the IPR-PFRD Act; and
- In all licensing of IP emanating from publicly financed research and development, UWC shall include a condition to the effect that should the licensee fail to commercialise the IP to the benefit of the people of the RSA within a stated period, the State is entitled to exercise walk-in rights, thereby to obtain a licence under, or assignment of, the IP that is not being commercialised.

UWC shall conform to the following guidelines regarding offshore transactions involving its IP:

- Before concluding any arrangement involving any off-shore transaction (including the licensing or assignment of IP emanating from publicly financed research and development to a foreign entity or the sale of shareholding in UWC to a foreign entity) UWC shall inform NIPMO of its intention to do so;
- UWC shall obtain prior written approval from NIPMO where the envisaged transaction relating to IP emanating from publicly financed research and development does not conform to the regulations to the IPR-PFRD Act and NIPMO guidelines for off-shore transactions;
- Where UWC wishes to assign IP emanating from publicly financed research and development offshore or grant an exclusive license to a foreign entity, it shall first satisfy NIPMO that there is insufficient capacity to commercialise the IP locally and that the RSA will benefit from the transaction.

Each intellectual property transaction must 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 requirement 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".

In terms of the Exchange Control Act, transfer of South African owned intellectual property by way of sale, assignment, or cession and/or the waiver of rights in favour of non-residents in whatever form, directly or indirectly, is not allowed without the prior approval of the Financial Surveillance Department of the Reserve Bank.

UWC, through its TTO or Legal Services Office, shall therefore ensure that all agreements entered into for assignment, license or waiver of its rights in IP to a foreign (non-resident) entity are concluded at an arm's length and a fair and market related price for the term of the agreement and shall submit the agreement and an auditor's letter or intellectual property valuation certificate confirming the basis for calculating the sale price or for calculating the royalty or licence fee to an Authorised Dealer for prior approval.

UWC, through its TTO or Legal Services Office, shall ensure that all inward funds, royalties and/or fees emanating from such transactions are repatriated to South Africa within a period of 30 days from the date of becoming entitled thereto.

9.3. Commercialisation Preferences

The TTO shall, as far as reasonably possible, endeavour to adopt a Commercialisation model which is best suited for the benefit of UWC and South Africa.

Should a licensing model be adopted, the following preferences shall be taken into account in identifying a licensee and determining the terms and conditions of such licence:

- There shall be a preference for non-exclusive licensing. In license agreements entered into with commercial partners, non-exclusive licensing shall be a preferred option as it will permit wider access to the actors within the economy and will create, under some circumstances, a performance incentive.
- Exclusive licensing may also be considered in particular circumstances, for instance when developing early stage technologies that require considerable further development work or to ensure that commercial partners are interested in investing time, resources and effort into the Commercialisation of UWC's IP.
- To prevent failures in the Commercialisation of technology, which other potential developers might be better placed to exploit, performance clauses must be included in licence agreements.
- There shall be a preference for licensing a local Commercialisation entity and in particular: a BBEE entity or small enterprise or a party that seeks to use the intellectual property in ways that provide optimal benefits to the economy and quality of life of the people of the RSA, or parties that made material contribution to the research and development giving rise to the intellectual property. Reasonable and demonstrable efforts shall be made to license UWC's IP locally, as local licensing will have a maximum impact on stimulating national and local economic development and providing the RSA business sector with new Commercialisation opportunities.
- Licensing to a foreign Commercialisation entity may be considered in order to increase foreign direct investment and technology partnerships for the RSA when licensing is not reasonably possible in the RSA, or where it could supplement local licensing arrangements. In such a case, the requirements of the IPR-PFRD Act and the Exchange Control Act must be complied with.

- Where local licensees cannot be secured, UWC shall ensure that locally beneficial arrangements (such as for example manufacturing preferred pricing, research and development obligations, etc.) are secured as far as reasonably possible.

9.4. Decision Making

Only the DVC, after consultation with the TTO, and considering appropriate Commercialisation models, shall have the authority to assign UWC's IP to any third party or grant a licence under UWC's IP.

9.5. Conflict of Interest

9.5.1. Involvement in Technology Transfer

Employees are expected to accord UWC their primary professional loyalty and to ensure that outside obligations, financial interests and activities do not conflict with their commitment to UWC. In particular, Employees should not seek to influence UWC's IP Commercialisation decisions in such a way as to promote personal gain or advantage to their associates or that may lead to reduced income for UWC or its affiliates.

Where an Employee is, or may potentially be in a position of conflict of interest in respect to Commercialisation of IP by UWC, the Employee must promptly disclose this situation to the TTO in order for a strategy that resolves the conflict of interest to be negotiated.

An Employee who has an economic interest in a Commercialisation project of UWC shall still be entitled to receive benefits due to them as an Creator of the IP in terms of clause 10.2 of this Intellectual Property Policy.

However, they may not participate in negotiations to transfer technology to any organisation in which they have such interest.

9.5.2. Involvement in Spin-Off, Subsidiary and Emerging Companies

Spin-off, subsidiary and emerging companies are recognised as an important part of the national economy. It may be attractive to Employees and Students to be part of such a company without having to leave the university environment. However, this can lead to a conflict of interests, which must be identified up front and a strategy developed to deal with the situation.

In the case where an Employee wishes to become involved fulltime with a spin-off, subsidiary or emerging company, or is involved in an executive capacity, the Employee's academic duties and remuneration should be reduced accordingly.

No Employee shall be involved in any other private company, close corporation or other separate entity or enterprise that competes with UWC by providing tuition, research or any other service that falls within the ambit of the primary functions of UWC without prior authorisation from UWC.

No Employee who is involved in a spin-off, subsidiary or emerging enterprise, or an enterprise in partnership with UWC, shall compete or be involved with any other entity that competes with such an enterprise without prior authorisation from UWC.

10. FINANCIAL RETURNS

10.1. Beneficiaries

There are a number of possible beneficiaries that may benefit from exploitation of IP, including the IP Creator, the department, school or institute to which the IP Creator belongs, the private co-owners, the TTO and UWC.

In accordance with the IPR-PFRD Act section 10, Revenue that accrues to UWC from Commercialisation of IP emanating from publicly financed research and development shall be shared with the Employee or Student IP Creator/s and their heirs in order to encourage the generation of commercially useful IP by Employees and Students.

10.2. Benefit Sharing

10.2.1. Income Allocation

IP Creators and their heirs are granted a right to a portion of Revenues that accrue to UWC from IP for as long as Revenues are derived from the IP. Via the university, income that accrues to the IP Creators in their personal capacity is taxable. If via the university, the IP Creator elects to retain the funds in their research account, the funds will not be taxable, but shall be subject to the rules governing the use of research account funds.

Benefits granted to the IP Creators will be shared in accordance with their relative contributions to creation or development of the IP, unless otherwise agreed between the IP Creators and UWC in writing. The status of an IP Creator shall not be a factor in determining an IP Creator's share in the Benefits. Any dispute which arises with respect to Benefit sharing shall be adjudicated by the TTO whose decision is final.

The share of revenue which is to be allocated to a department, school or institute shall be allocated to the head of that department, school or institute. The head shall determine the distribution within the department, school or institute. The funds shall be applied in the interest of research and may not be allocated to any individual for personal gain.

The share of revenue that is to be allocated to UWC shall be allocated to the Innovation Fund.

Revenue from Intellectual Property that is co-owned by UWC and an outside organisation shall be divided in accordance with the agreement between the parties. Where the research has been publicly funded, there shall be compliance with the benefit sharing requirements provided in the IPR-PFRD Act.

Any relevant legislation dealing with the identification of IP Creators, calculation of royalties, share of royalties due to each IP Creator, effect of termination of employment on an IP Creator's entitlement to royalties, effect of death on an IP Creator's royalties, non-fiscal recognition of the IP Creator etc. will be complied with.

10.3. Revenue Allocation

10.3.1. Formula of Revenue Allocation for Revenue Generated from Publicly Financed Research and Development

First R1, 000,000 of Revenue

In accordance with the IPR-PFRD Act, twenty percent (20%) of the Gross Revenues accruing to UWC for the first R1,000,000 of Revenue shall be shared between the Employee or Student IP Creator/s.

Thereafter, any direct costs involved with seeking and maintaining IP protection as well as commercialisation of the IP (the “Commercialisation costs”) shall be deducted from the balance, which costs may include:

- legal or other expert advice;
- the cost of obtaining IP protection and maintenance of any registered rights in respect thereof;
- plant/Equipment costs;
- business planning costs; and
- the ongoing cost of commercially exploiting UWC’s IP.

The remainder of the first R1,000,000 of Revenue shall be split between the department, school or institute (40%), UWC (40%) and the Innovation Fund (20%). In the event that the Intellectual Property is co-owned with an outside organisation, and after deduction of the Commercialisation costs, the remainder of the Revenue shall be split in accordance with the agreement between the outside organisation and UWC. The remaining portion of the Revenue for UWC will be split as set out above, with 40% being allocated to the department, school or institute, 40% to UWC and 20% to the Innovation Fund.

Revenue above R1, 000,000

Commercialisation costs will first be deducted from any revenue in excess of R1,000,000 to determine the Nett Revenue. The Nett Revenue shall then be split between the IP Creator/s (30%), the department, school or institute (30%), UWC (30%) and the Innovation Fund (10%).

In the event that the IP is co-owned with an outside organisation, and after deduction of the Commercialisation costs, 30% of the Nett Revenue shall be shared between the IP Creator/s, and the remainder of the Nett Revenue shall be split in accordance with the agreement between the outside organisation and UWC. UWC’s portion of the Nett Revenue will then be split between the department, school or institute (40%), UWC (40%) and the Innovation Fund (20%).

10.3.2. Death of a Beneficiary or Termination of Employment

In the event of the death of an IP Creator, the revenues shall be paid to the estate of the IP Creator, and upon winding up of the estate, to his/her heirs.

This arrangement will be in place, unless such IP Creator and UWC had agreed otherwise. The heirs shall have the responsibility of notifying UWC of any changes in contact details after the death of the IP Creator.

In the event of the termination of employment, with the exception of dismissal of the Employee who is an IP Creator, revenues shall continue to be paid to the IP Creator. It is the duty of the IP Creator to notify UWC of any changes in contact details after termination of employment.

An employee of UWC who is an IP Creator and who is dismissed from employment for misconduct shall only be entitled to 50% of the benefit provided for in terms of this clause of the Policy; the other 50% shall accrue to the Innovation Fund.

10.4. Non-Monetary Benefits

Monetary benefits are the preferred outcome for the Commercialisation of UWC's IP. From time to time, non-monetary benefits are offered, such as, but not limited to, shares or equity in companies, free Equipment or products, free or reduced fee for services. Rewards for the IP Creator shall be negotiated on a case by case basis by the TTO and/or Legal Services Office and may include: capacity development, access to machinery or services, access to further research or development funding.

11. INDIGENOUS BIOLOGICAL RESOURCES

Where a Research project or Invention is based on or makes use of South African indigenous biological resources, UWC will ensure compliance with all relevant legislation.

12. DISPUTE RESOLUTION

Any dispute which arises with respect to this Policy shall be adjudicated by IPAC whose decision shall be final.

13. GENERAL PROVISIONS

Unless otherwise stated in this Policy, the following provisions shall apply.

13.1. Sanctions for Violating the Policy

UWC regards the failure to comply, in whole or in part, with one or more of the provisions of this Policy, to be a serious offence.

The provisions of this clause must be read together with UWC's Disciplinary Policy and Code, which sets out the processes that need to be followed in order to institute disciplinary proceedings.

13.1.1. Employees

Any Employee found guilty of violating this Policy may face various penalties, including:

- Cancellation of access rights to the Equipment/technology and/or UWC's IP contemplated in this Policy;
- Prohibition of access to any location where UWC carries on its operations and/or
- Dismissal.

13.1.2. Students

Any Student found guilty of violating this Policy may face various penalties, including:

- Cancellation of access rights to the Equipment/technology and/or UWC's IP contemplated in this Policy;
- Prohibition of access to any location where UWC carries on its operations and/or
- Expulsion.

13.2. Monitoring and Administration of the Policy

13.2.1. Accountability

The TTO shall be responsible for implementation of this Intellectual Property Policy, and is accountable to the DVC with regard to its duties and obligations set out herein.

13.2.2. Questions, comments and suggestions

Any Employee or Student with questions, comments and suggestions relating to the content of this Intellectual Property Policy shall direct these to his/her Line Manager and/or the TTO.

13.2.3. Interpretation and Review

At least once every two years, the TTO shall:

- Hold a meeting with the IPAC in order to monitor the terms of this Intellectual Property Policy in light of any interpretation problems and in light of any legislative and technological changes that may have occurred; and
- Submit to the Senate Research Committee of UWC a detailed list of the changes suggested to this Intellectual Property Policy, as well as the justification for each such change, if required for review.

13.2.4. Amendment or Cancellation of the Policy

This Intellectual Property Policy may be modified or cancelled at any time and without notice, at UWC's discretion, provided that any modifications/amendments shall be communicated to Employees, Students, and Service Providers/Consultants in such manner as the management of UWC may deem appropriate and in accordance with UWC's duties and obligations as set out in the IPR-PRFD Act.

13.2.5. Number and Gender

Where appropriate, the singular number set forth in this Intellectual Property Policy shall be interpreted as the plural number, and the gender shall be interpreted as masculine, feminine or neuter, as the context dictates.

13.2.6. Other Applicable Policies

This Intellectual Property Policy is in addition to all other UWC policies, and to all guidelines, standards and methods issued by UWC. It is not in any way intended to replace or supersede one or more of such policies, guidelines, standards and methods, unless otherwise specified in this Intellectual Property Policy.

13.2.7. Other Applicable Laws

This Intellectual Property Policy incorporates legislation which may be relevant to UWC's Intellectual Property, including:

- Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008;
- The Patents Act 57 of 1978;
- The Designs Act 195 of 1993;
- The Plant Breeders' Rights Act 15 of 1976;
- The Copyright Act 98 of 1978;
- The Trade Marks Act 194 of 1993;
- The Counterfeit Goods Act 37 of 1997;
- The Competition Act 89 of 1998;
- The Currency and Exchanges Act 9 of 1933;
- The National Environmental Management: Biodiversity Act 10 of 2004;
- Intellectual Property Policy of the Republic of South Africa Phase 1 2018; and
- The Policy Framework for the Protection of Indigenous Traditional Knowledge.

13.3. Effective Date of the Policy

This Intellectual Property Policy shall become effective from the date of Council approval, being.

13.4. Term of the Policy

This Intellectual Property Policy shall remain effective until it is repealed or amended, or replaced by another policy.