



UNIVERSITY  
OF  
JOHANNESBURG

## POLICY ON THE PROTECTION, MANAGEMENT AND COMMERCIAL EXPLOITATION OF INTELLECTUAL PROPERTY

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### Related documents

<b>UJ documents</b>	<b>Other</b>
<p>(e.g. Policies, Regulations, Guidelines, Contracts)</p> <ul style="list-style-type: none"> <li>• <b>UJ Statute;</b></li> <li>• <b>UJ Vision, Mission and Values Statement;</b></li> <li>• <b>UJ Strategic Goals;</b></li> <li>• <b>DALRO agreement on copyright;</b></li> <li>• <b>UJ Strategy for Diversifying Income Sources;</b></li> <li>• <b>Conditions of Service for Employees of the University of</b></li> </ul>	<p>(e.g. Legislation, DoE and HEQC directives and guidelines)</p> <ul style="list-style-type: none"> <li>• <b>Intellectual Property Rights from Publicly Financed Research &amp; Development Act 51 of 2008</b></li> <li>• <b>Copyright Act 98 of 1978.</b></li> </ul>

<p><b>Johannesburg;</b></p> <ul style="list-style-type: none"> <li>• <b>UJ Research Policy and Strategy;</b></li> <li>• <b>UJ Research Strategy for the University of Johannesburg.</b></li> </ul>	
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## CONTENTS

1.	PREAMBLE	3
2.	PURPOSE	3
3.	SCOPE	3
4.	GENERAL POLICY STATEMENT	3
5.	PROTECTION OF INTELLECTUAL PROPERTY RIGHTS	4
5.1	Definition of intellectual property	4
5.2	Entitlement to intellectual property rights	4
5.3	Waiver of intellectual property rights	8
5.4	Manner of protection of certain types of intellectual property rights	9
5.5	Confidentiality	11
5.6	Resignation, retirement or death of an inventor or author	12
6.	COMMERCIAL EXPLOITATION OF INTELLECTUAL PROPERTY	12
6.1	Identification of intellectual property for commercial exploitation	12
6.2	Resignation of patent, trademark or model	13
6.3	Licensing	13
6.4	Establishment of a Company	14
6.5	Conflict of Interest	14
7.	COMMERCIALISATION OFFICE PROCEDURES AND SERVICES	15
8.	INCOME DISTRIBUTION	16

# **POLICY ON THE PROTECTION, MANAGEMENT AND COMMERCIAL EXPLOITATION OF INTELLECTUAL PROPERTY**

## **1. PREAMBLE**

This document outlines the University's policy on the entitlement to and the protection, management and commercial exploitation of intellectual property. It applies to intellectual property developed or used in respect of or as a result of all knowledge-creating, knowledge-disseminating and knowledge-application activities at the University. It applies to all temporary, fixed-term contract and permanent employees (henceforth "employees") and to all registered students ("henceforth "students") of the University. Employees and students confirm in writing their acceptance of this Policy respectively as part of their conditions of employment and their conditions of registration. This policy must be read in conjunction with the *Intellectual Property Rights from Publicly Financed Research and Development Act, No 51 of 2008*, to which it is subservient.

## **2. PURPOSE**

The objectives of this policy are to establish and protect the rights and obligations of the University, its employees and students who are initiators and generators of intellectual property and of the sponsors involved. It also determines the principles and processes that regulate the management and commercial exploitation of such intellectual property.

## **3. SCOPE**

This policy has institution-wide application.

## **4. GENERAL POLICY STATEMENT**

4.1 The University wishes to promote an environment conducive to:

- 4.1.1 intellectual innovation, creative design and enterprise as necessary and logical extensions of its academic project;
- 4.1.2 the empowerment of employees and students to manage their intellectual products;
- 4.1.3 cost effective transfer of intellectual property;
- 4.1.4 the development of a vibrant and lucrative diversified income portfolio, that will be invested in resources to further the core academic functions of the

- university, adding significantly to the financial wellbeing of the University and its employees and students; and
- 4.1.5 compliance with the provisions of the *Intellectual Property Rights from Publicly Financed Research and Development Act*.
- 4.2 The University therefore commits itself to the following:
- 4.2.1 Ensuring that its primary obligation in the execution of teaching and learning is the transfer of knowledge to, and the education and training of, students registered with the University;
- 4.2.2 ensuring that its primary obligation in the execution of research is the search for knowledge, where appropriate, for the benefit of and utilisation by the community it serves;
- 4.2.3 stimulating and supporting diversified income initiatives which may lead to inventions, products, services or business ideas that can be exploited commercially;
- 4.2.4 optimal protection of the intellectual property of the University, its employees and its students;
- 4.2.5 undertaking such diversified income activities, where necessary and useful, in collaboration with other organisations on a basis that is to the mutual benefit of the parties concerned.

## **5. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

### **5.1 Definition of intellectual property**

“Intellectual property” is a collective term for immaterial property protected by law. It refers to registrable and non-registrable inventions, expertise, trade marks, trade secrets, copyright, designs and plant breeders’ rights which have come about through the mental efforts, insights, imagination, expertise and creativity of employees and students of the University and which are recognised and protected by law.

### **5.2 Entitlement to intellectual property rights**

- 5.2.1 Intellectual property rights exist in respect of the following activities that put the intellectual capital of the University to work:
- 5.2.1.1 Services rendered by employees or work undertaken by registered students of the University in the normal course and scope of their employment (in the case of employees) or of their University-assisted studies (in the case of registered students).
- 5.2.1.2 Non-subsidised academic programmes (as defined in paragraph 1.2.2 of the document, *Strategy for Diversifying Income Resources*).
- 5.2.1.3 Consultation work (as defined in paragraph 1.2.3 of the document, *Strategy for Diversifying Income Resources*) undertaken by employees or students on behalf of external parties.
- 5.2.2 Intellectual property rights vest in the University and in the following categories of persons in the manner described in 4.2.3-8:

- 5.2.2.1 *Employees, i.e., any person employed by Council on any of the following bases:*
- (i) permanent employees, regardless of whether they work full-time or part-time;
  - (ii) fixed-term contract employees, regardless of whether they work full-time or part-time, appointed for periods of longer than 12 months; and
  - (iii) temporary employees, regardless of whether they work full-time or part-time, appointed for a period of not more than 11½ months.
- 5.2.2.2 *Students registered for a programme of study at the University, whether full-time or part-time.*
- 5.2.2.3 *Bursary donors and sponsors of research at the University.*
- 5.2.3 Services rendered in the normal course and scope of employment
- 5.2.3.1 All intellectual property that arises from services rendered by employees in the normal course and scope of their employment at the University belongs to the University, subject to the exceptions provided for in 4.2.3.(d) below and subject to exceptions provided for in national legislation. The University retains the right to such intellectual property after termination of the employee's employment, unless the University waives such right in accordance with the procedures prescribed in 4.3 below.
- 5.2.3.2 "Normal course and scope of an employee's employment" refers to the activities that he/she is contractually bound to carry out in terms of his/her conditions of service and job specification. These include the teaching and assessment of students as well as the promotion and expansion of knowledge in his/her field of expertise through research and publications as well as the planning and execution of academic and non-academic support services by employees.
- 5.2.3.3 There are no fixed office hours or a specified work environment within which academic and research employees fulfill their conditions of service.
- 5.2.3.4 The following exceptions to the provision contained in (a) above apply:
- (i) Intellectual property that arises from *private work* (i.e., work undertaken by an employee on behalf of a third party for the sole financial benefit of the employee and not of the University), approved in accordance with the relevant policy of the University, does not belong to the University, but to the creator thereof.
  - (ii) An agreement can be reached with a fixed-term contract employee and a temporary employee that the intellectual property arising from her/his employment at the University belongs to her/him in full or in part, or, in the case of a temporary employee in the permanent employment of an

- employer other than the University, that the intellectual property belongs to such employer in full or in part.
- (iii) Copyright in any publications of which the University ceded the copyright to an employee in terms of Part D29, paragraph (h) under the heading "Policy" of the *Conditions of Service for Employees of the University of Johannesburg*, belongs to the employee.
- 5.2.4 Learning undertaken in the normal course and scope of University-assisted studies
- 5.2.4.1 A student has a right to intellectual property that originates directly from the normal course and scope of the student's University-assisted studies, in proportion to the relative contribution – expressed as a percentage - of the student to the creation of the intellectual property, determined in the manner described in 5.2.8 below
- 5.2.4.2 "University-assisted studies" includes studies arising from the teaching and study guidance that such a student receives from an employee whether or not such student is registered for a formal qualification.
- 5.2.5 Non-subsidised academic programmes
- 5.2.5.1 Copyright in the design, curriculum, study material (where such study material is not already subject to copyright) and presentation of non-subsidised academic programmes, and the assessment of students registered for such programmes, belongs to the University. The University retains its copyright after termination of the programme, unless the University waives its right in terms of the procedures described in 4.3 below.
- 5.2.5.2 Written agreement can be reached between the University and a temporary or fixed-term contract employee prior to the commencement of the programme that copyright in respect of any aspect of the programme referred to in 4.2.5 (a) above belongs to him/her in full or in part or, if the employee is in the permanent employ of an employer other than the University, that copyright in respect of any such aspect of the programmes belongs to the employer in full or in part.
- 5.2.6 Consultation work
- 5.2.6.1 Intellectual property that resides in the project design and procedure as well as the project result of consultation work undertaken for external parties by employees or students of the University on behalf of the University and in accordance with a written agreement between the University and such external party/parties, belongs to the University. This is the case even if the consultation work is financially supported in whole or in part by such external parties.
- 5.2.6.2 Written agreement can be reached by the University and the external party prior to the commencement of the consultation work

that intellectual property rights in any aspect of the consultation work referred to in 4.2.6 (a) above belongs to the external party, either in full or in part, or that the University and the external party are co-entitled to the intellectual property rights. Such prior written agreement can also provide for licensing of intellectual property rights or for the granting of preferential rights.

5.2.6.3 If the written agreement in terms of which consultation work is undertaken provides for work to be undertaken by an employee or a student in collaboration with an external party, a prior written agreement must be entered into by the University and such external party/parties to provide for entitlement to intellectual property rights that result from the consultation work. Such agreement may provide for co-entitlement to the intellectual property rights.

5.2.7 Research undertaken with the financial assistance of donors or sponsors

5.2.7.1 Intellectual property rights are determined by the creative contribution thereto and not by the financial support thereof. Therefore, intellectual property arising from the research of an employee or a student supported financially by one or more bursary donors or sponsors belongs to the University.

5.2.7.2 Under appropriate circumstances the University will negotiate an agreement with a bursary donor or a sponsor to provide for the entitlement to intellectual property rights before the student registers or before the employee undertakes the research. Such an agreement may also provide for co-entitlement to intellectual property or for the licensing thereof or for the granting of preferential rights.

5.2.8 Multiple individual contributions to the creation of intellectual property

5.2.8.1 If more than one individual contributes intellectually to the creation of intellectual property, irrespective of the nature and scope of the contribution, recognition is given to every contribution.

5.2.8.2 If more than one individual contributes to the creation of intellectual property, and all the individuals are employees and/or students of the University, they must agree mutually and in writing on the relative scope of every original intellectual contribution. Any dispute in this regard must be referred to the Executive Dean of the relevant faculty (or other appropriate executive-level line manager as circumstances demand) as soon as possible for a resolution and the Executive Dean must provide his/her decision in writing within a further 30 days.

5.2.8.3 If any individual who contributes to the creation of intellectual property is not an employee or student, the decision on who is entitled to the intellectual property and what the relative contribution of every individual is, must be referred to the Executive Dean of the relevant faculty (or other appropriate executive-level line manager)

as soon as possible and the Executive Dean must provide her/his decision within 30 days.

- 5.2.8.4 In determining each individual's relative contribution for the purpose of paragraphs 4.2.8 (b) and 4.2.8 (c), the Executive Dean may receive evidence from the parties involved and must seek advice on the relevant matter from the Deputy Vice-Chancellor (Research, Innovation and Advancement).
- 5.2.8.5 If a party is dissatisfied with the decision of the Executive Dean, he/she may lodge a written appeal against the decision with the University's Commercial Advisory Board. The Board makes a decision on the matter within 30 days of the appeal having been lodged, in the manner it deems appropriate. The decision of the Board is final.

### **5.3 Waiver of intellectual property rights**

- 5.3.1 If the University decides not to retain ownership in its intellectual property, it must comply with the provisions of section 4 of the *Intellectual Property Rights from Publicly Financed Research and Development Act* and must inform the intellectual property creator and the private funders of the research that led to the creation of intellectual property of the provisions of section 4.
- 5.3.2 An employee or a student or a former employee or a student may, subject to the provisions of the *Intellectual Property Rights from Publicly Financed Research and Development Act*, address a written request to the responsible University executive (i.e., the most senior line manager of the employee concerned or the Executive Dean of the faculty in which the student is or was registered) to cede intellectual property developed by him/her to him/her.
- 5.3.3 In considering such an application the responsible University executive seeks advice from the Executive Director: Research and Innovation (the latter acting in consultation with the Director: Commercialisation Office). The following factors are taken into account:
- 5.3.3.1 the financial benefit to the University to pursue the commercialisation of the intellectual property;
- 5.3.3.2 whether the University has the ability and/or inclination to pursue commercialisation of the intellectual property;
- 5.3.3.3 whether the extent of the benefit (financial or otherwise) of the commercialisation of the intellectual property has greater value for the creator than for the University; and
- 5.3.3.4 considerations of fairness, reasonableness and academic integrity, which will depend on special circumstances.
- 5.3.4 If the responsible University executive finds that the request should be granted, the intellectual property is ceded to the creator through a contractual arrangement incorporating, but not limited to, an agreed valuation of the the intellectual property concerned as well as the amount and method of payment concerned.

- 5.3.5 If the responsible University executive denies the request, the person(s) making the request may appeal such decision to the Commercial Advisory Board, in the manner provided for in 4.2.8 (e) above. The decision of the Board is final.
- 5.3.6 Employees and students who commercialise intellectual property that does not belong or no longer belongs to the University may not use the name of the University in such commercialisation without permission.

#### **5.4 Manner of protection of certain types of intellectual property rights**

##### 5.4.1 Patents, models and trademarks

- 5.4.1.1 The decision on whether or not to protect inventions arising from the research activities of employees and students by means of patents and/or model registrations and/or trademarks rests with the University as the owner of the intellectual property. Care will be exercised to ensure that no interested party will suffer either substantive or procedural harm in the execution of the decision.
- 5.4.1.2 The decision is taken on behalf of the University by the Management Executive Committee, acting upon the advice of the Executive Director: Research and Innovation and the Director: Commercialisation Office.
- 5.4.1.3 No employee or student may use own initiative to pursue the provisional or final registration of any patent, trademark, model or any other form of intellectual property on their own or through a representative without the knowledge and written permission of the responsible University executive, acting upon the advice of the Executive Director: Research and Innovation (acting in consultation with the Director: Commercialisation Office).
- 5.4.1.4 Considerations taken into account by the University in deciding whether or not to obtain a *patent or model* registration include the following:
- (i) in the case of inventions, the nature thereof and the possibility of rather protecting them by way of secrecy than as patents (insofar as such secrecy can be reconciled with applicable legislation and the ethos of the University to disseminate information and knowledge to the community);
  - (ii) the envisaged strategy for the significant protection of the invention, design or model;
  - (iii) whether the invention, design or model will comply with the newness, self-evidence and other requirements of the relevant legislation of countries where patent or model applications are considered;
  - (iv) the envisaged strategy for the technical development of the invention, design or model;
  - (v) the financial attractiveness of the invention, design or model, taking the following into account:

- a) the estimated cost of the development work to date, the cost of the envisaged protection and further development;
  - b) subsidies that the University would be able to receive from the patenting of the invention or the registration of the design or model; and
  - c) the income from royalties and/or dividends that the University would expect to receive from the use of the invention, design or model;
- (vi) the envisaged strategy for the commercialisation of the invention, design or model.

5.4.1.5 Considerations taken into account by the University in deciding whether or not to register a *trademark* include the following:

- (i) whether the trademark has already been used and the extent to which it has achieved prominence and distinctiveness;
- (ii) the proposed strategy for the further presentation of the trademark;
- (iii) the proposed strategy for the further use of the trademark, which includes whether or not franchising and/or licensing will be used;
- (iv) the proposed strategy for the protection of the trademark;
- (v) whether the trademark complies with the registration requirements of the relevant legislation of the countries where trademark applications are considered; and
- (vi) the goods and services with which the trademark is used and the classes in which applications for registration must be submitted.

## 5.4.2 Copyright

5.4.2.1 Subject to existing rights and agreements, applicable international or national legislation and/or policy statements, and the provisions of 4.2.3 (d) (iii) above, copyright vested in an author - or if the author is an employee or student of the University, the University - confers the sole right to reproduce her/his original work and to exploit it for commercial profit or otherwise. Copyright in a work arises as soon as a work is in writing, or recorded, or represented in digital data or signals, or otherwise relayed in a concrete form. Works include literary or musical works, artistic works, artworks, performances, movies, sound recordings, digital recordings, broadcasts, computer programmes, programme-bearing signals and published editions as described in the *Copyright Act (98 of 1978)*. Copyright in South Africa does not necessitate registration.

5.4.2.2 In order to confirm the University's claim to copyright arising from the normal course and scope of an employee's employment (subject to the provisions of 4.2.3 (d) (iii) above) or a student's University-supported studies and to facilitate evidence, employees and students are expected to effect the following copyright

entitlement on all works except those subject to the provisions of 4.2.3 (d) (iii) above (unless there are good reasons not to do so and the relevant Executive Dean supports the reasons):

*Copyright reserved: 20XY University of Johannesburg*  
(20XY represents the year in which the work was first published).

5.4.2.3 Photocopying or other forms of copying of copyright-protected works is permissible only in accordance with the provisions of the *Copyright Act (98 of 1978)* and regulations framed thereunder, and in accordance with the terms of the agreement signed between the University of Johannesburg and DALRO in 2009 (lodged with the Registrar).

#### 5.4.3 Copyright in software

5.4.3.1 Subject to existing rights and agreements, applicable international or national legislation and/or policy statements, and the provisions of 4.2.4 (a) above, if an employee or student develops computer software in the normal course and scope of his/her service or University-supported studies, the University has copyright in such software, in terms of section 21(1)(d) of the *Copyright Act*. The University has no copyright in computer software developed by independent contractors for the University. The University will, however, employ its best endeavours to negotiate agreement with such independent contractors to cede such copyright, or licences in respect of the copyright, to the University.

5.4.3.2 Confidentiality requirements, as prescribed in this Policy, apply to employees and students of the University. Employees and students must reveal new software that they are developing at the flowchart phase in order to certify protection of all potential intellectual property rights. The Policy includes specific requirements regarding delivery of source codes and development material to the University.

### 5.5 Confidentiality

5.5.1 Confidentiality is protected by agreement, whether verbal or written and whether explicit or implied.

5.5.2 It is University policy to disseminate without restriction information or knowledge that is the result of research conducted in the University. It is, however, acknowledged that the dissemination of such information or knowledge may be limited under certain exceptional circumstances and for good reason, by means of confidentiality undertakings on the part of the University or the imposition of confidentiality undertakings by the University on an employee or student. Such circumstances are the following:

5.5.2.1 If an invention is published before patent applications for its protection have been submitted, thereby causing the irrevocable destruction of the possibility of patenting.

- 5.5.2.2 Even in cases where the University has decided not to submit a patent application for the protection of an invention, if the publication of the invention might lead to the destruction of the commercial value of the knowledge and information contained in the invention.
- 5.5.2.3 If the commercial interests of specific expertise or secret information (including the franchising of a trademark and/or a style of conducting business) demand the imposition of confidentiality.

## **5.6 Resignation, retirement or death of an inventor or author**

- 5.6.1 If an employee resigns or if a student's registration at the University terminates, he/she forgoes any claim that he/she has on income from the commercialisation of the University's intellectual property, unless a written agreement is entered into between the University and the employee or student providing for alternative arrangements.
- 5.6.2 The provisions of 4.6.1 are not applicable in the case of an employee who retires.
- 5.6.3 If an employee dies, the financial value of the legal claim that the employee would have had is calculated and the University's liability will be finalised by way of a once-off payment to the deceased estate.

## **6. COMMERCIAL EXPLOITATION OF INTELLECTUAL PROPERTY**

It is University policy to exploit its patents, trademarks and designs, preferably by means of licences, whether exclusive or non-exclusive.

### **6.1 Identification of intellectual property for commercial exploitation**

- 6.1.1 Employees and students are obliged to disclose intellectual property with possible commercial value that originates in the University environment to the Executive Director: Research and Innovation. Early disclosure enhances the possibility for maximum commercial exploitation of such intellectual property. To enhance the possible commercial value of such intellectual property, public disclosure of such intellectual property is held back until a decision is made by the University on whether or not to commercially exploit the intellectual property. Such period of non-disclosure to the public should be as brief as possible. No employee or student will be disadvantaged by the institution as a result of such non-disclosure to the public.
- 6.1.2 Upon disclosure, the Executive Director: Research and Innovation (in consultation with the Director: Commercialisation Office) decides whether or not to register a provisional patent or some or other form of protection of the intellectual property.
- 6.1.3 The Director: Commercialisation Office investigates the possible commercial value of intellectual property thus disclosed, in collaboration with the originator(s) thereof. Employees and students who thus disclose intellectual property are obliged to participate in the commercial investigation. The investigation must be concluded as soon as possible, but no later than six months from the date of disclosure, after which a written recommendation is made by the Director: Commercialisation Office

- to the Management Executive Committee whether or not to commercially exploit the intellectual property.
- 6.1.4 The distribution of income between the University generated through the commercial exploitation of the intellectual property between the University and the employee(s) and/or student(s) is determined in accordance with the provisions of paragraph 8 below.
- 6.1.5 If the University decides not to commercially exploit the intellectual property, national legislation determines that such intellectual property rights are ceded to the National Innovation Office. Should the National Innovation Office also decide not to commercially exploit the intellectual property, the relevant individuals may exploit it themselves (should ownership vest in them), or apply for authorisation to proceed with the exploitation (should ownership vest in the University). The Director: Commercialisation Office is able to provide support in both cases, at a market-related charge. The following services are offered by the Commercialisation Office relating to the utilisation of inventions, designs, business concepts and other intellectual property originated by staff members or students of the University:
- 6.1.5.1 A technological investigation to establish the originality or uniqueness of the invention;
  - 6.1.5.2 an estimation of the invention's commercial potential;
  - 6.1.5.3 an investigation into the commercial and licensing possibilities of the invention;
  - 6.1.5.4 application for provisional patenting of an invention;
  - 6.1.5.5 an initial market analysis, business plan and investigation of different exploitation possibilities and business vehicles;
  - 6.1.5.6 an investigation into sources of financing, the development of partnerships and potential consumers; and
  - 6.1.5.7 the protection, supervision and ongoing support of a patent after the transfer to a partner.
- 6.1.6 If the University, in consultation with the developer, makes use of third parties to provide the above services, the costs of such services are mainly covered by the proceeds generated by the commercial exploitation of the intellectual property. The relevant employee or student, assisted by the University, will be responsible for such costs should the University have no share in the said proceeds.

## **6.2 Registration of patent, trademark or model**

The Director: Commercialisation Office recommends to the Deputy Vice-Chancellor (Finance) whether or not to proceed with the patenting process or, where appropriate, to register a trademark or model, of an invention owned by the University. If the recommendation is approved, the Office proceeds to initiate registration. No employer or student may register an invention which originated in the normal course and scope of their employment or studies, without the consent of the University.

## **6.3 Licensing**

- 6.3.1 Exclusive licenses will be granted only if the Management Executive Committee (acting upon the advice of the Director: Commercialisation

- Office) is of the opinion that there are good reasons for the granting of such licenses, and are furthermore of the opinion that the relevant agreements make sufficient provision for the payment of minimum royalties to the University by the licensee.
- 6.3.2 The Management Executive Committee (in collaboration with the inventor) may sell or licence a patent, trademark or model to one or more external parties who are able to and wish to utilise the relevant patent, trademark or model.

#### **6.4 Establishment of a Company**

- 6.4.1 A company, the *UJ Intellectual Property Holding Company (Pty) Ltd* (hereafter "UJIPHC"), exists. It is wholly owned by the University. UJIPHC owns all intellectual property transferred to it by the University for purposes of commercial exploitation. UJIPHC also serves as a medium:
- 6.4.1.1 through which licenses for the utilisation of intellectual property may be channelled;
  - 6.4.1.2 to establish project companies to handle suitable projects;
  - 6.4.1.3 through which financing for some commercialisation projects may be channelled;
  - 6.4.1.4 to establish a clear distinction between funds from traditional sources of financing and funds from the Commercialisation Office; and
  - 6.4.1.5 to facilitate the inclusion of partners in project subsidiaries.
- 6.4.2 If the Management Executive Committee decides not to sell or to licence a patent, trademark or model (as provided for in 5.3.2 above), it establishes a project company to commercially exploit the patent, trademark or model. The University (in collaboration with the inventor(s)) either licenses the intellectual property to the project company or transfers the intellectual property to the project company.
- 6.4.3 The shareholding of the project company, and in particular whether the inventor(s) should have shareholding in the project company and what the extent of the shareholding should be, is determined by the Management Executive Committee on a case-by-case basis, taking cognisance of national legislation. The University reserves the right to develop an exit strategy for any particular project company.
- 6.4.4 The University may establish wholly owned project companies should the University, for strategic reasons, own full control and shareholding in the enterprise through UJIPHC. These ventures are used exclusively for the promotion of strategic University interests.
- 6.4.5 Employees of the University may not be involved in any other private companies, close corporations, other separate entities or enterprises that compete with the University's commercial exploitation of intellectual property.

#### **6.5 Conflict of Interest**

- 6.5.1 The University may insist on a mechanism that will enable it to protect its interests, should it be of the opinion that the activities of a project company have a direct and potentially negative influence on its (the University's) public image, regardless of the genuine shareholder's (or

- member's) interest in the venture. The University has the right to appoint at least one director of the company.
- 6.5.2 No spin-off enterprise will be allowed to carry out its main business on the University's premises for longer than two years, unless otherwise agreed to by the University.
  - 6.5.3 Employees are obliged to disclose their commercial interests in competitor private ventures and entities to the University. This requirement also applies to directorships, shareholdings, members' interests and part-time appointments.
  - 6.5.4 Should an inventor wish to become entrepreneurially involved in the new spin-off venture on a full-time basis or in an executive capacity, she/he must seek permission from the responsible senior executive line manager concerned. If such permission is granted, her/his academic duties and remuneration will be reduced proportionately, in consultation with the relevant Head of Department and Executive Dean. The inventor will be required to leave the employ of the University, should she/he decide to become the managing director of the spin-off company, in order to avoid a potential conflict of commercial interest.

## **7. COMMERCIALISATION OFFICE PROCEDURES AND SERVICES**

- 7.1 The Director: Commercialisation Office investigates the most appropriate vehicle for the commercial exploitation of intellectual property disclosed to the Executive Director: Research and Innovation. The Director: Commercialisation Office determines an appropriate procedure to follow in collaboration with the inventor. This may include services and support such as the following:
  - 7.1.1 Recognising a suitable entrepreneur;
  - 7.1.2 educating the entrepreneur in business values;
  - 7.1.3 assisting in the compiling of a business plan to be approved by the board of directors of UJIPHC;
  - 7.1.4 uncovering strategic partners;
  - 7.1.5 providing start-up capital on a credit basis;
  - 7.1.6 providing incubation space and access to available facilities (based 6.1.7 on an academically-beneficial lease basis);
  - 7.1.7 providing mentors with relevant business background;
  - 7.1.8 providing legal and financial services;
  - 7.1.9 providing for the use of the University's financial system (cost centres); and
  - 7.1.10 providing for the use of the University's human resource functions.
- 7.2 The University may deliver such services and support to the new enterprise in exchange for equity payment for the services provided. The Director: Commercialisation Office will submit a complete business plan for approval to the board of directors of UJIPHC, after which the enterprise becomes a full subsidiary of UJIPHC as a spin-off venture. The Commercialisation Office and UJIPHC are under no obligation to become involved in the enterprise.

- 7.3 The main role of the Commercialisation Office is to act as incubator within the University and it does not guarantee University investment in a venture (although the possibility is not excluded). Investment decisions are made by the UJIPHC board of directors.
- 7.4 Before the Director: Commercialisation Office initiates the process to establish a project company, the relevant parties (inventors) must provide the following:
- 7.4.1 a comprehensive business plan including budgets, projected balance sheets and income statements containing capital requirements and the profitability (or lack thereof) of the project for a five-year period;
  - 7.4.2 a comprehensive strategy for the protection, development and marketing of the relevant intellectual property;
  - 7.4.3 the proposed shareholding of every stakeholder and the contributions of every shareholder to the financing and management (including the direction) of the proposed subsidiary;
  - 7.4.4 the planned way in which the shareholding of the University, and the other role players, will change in time and the reasons for such change;
  - 7.4.5 the strategy for the financing of the project, including the financing of the project from sources other than the shareholders; and
  - 7.4.6 any other consideration deemed important for the establishment of a company.

## **8. INCOME DISTRIBUTION**

This section of the Policy outlines the University's guidelines on the distribution of income that is generated from the commercialisation of its intellectual property. It applies to all employees and students of the University. The University seeks in all cases to ensure a distribution of income to the inventor that serves to encourage innovation and entrepreneurship among UJ employees and students.

- 8.1 The Director: Commercialisation Office keeps a separate account for each product derived from intellectual property. Earnings from the commercialisation of intellectual property are distributed according to paragraph 7.3, unless otherwise agreed to in writing.
- 8.2 The allocation formulae will apply with immediate effect after the approval of this Policy by Council.
- 8.3 Income generated through the commercial exploitation of intellectual property is distributed on the following basis:
- 8.3.1 All the costs and expenses directly incurred for the protection, development and marketing of the relevant intellectual property, such as patenting costs, together with an amount equal to 15% thereof (covering the financing costs of venture capital) are recovered first. Provision may be made for the phased recovery of extensive development costs.

- 8.3.2 After the cost recovery in terms of (a) above has been completed, the remaining net income is distributed by the board of directors of UJIPHC or, where appropriate, the Management Executive Committee, to the University and the inventor(s) on the basis of:
- 8.3.2.1 the relevant contribution of each participant in the commercial venture as determined by the board of directors or, where appropriate, the Management Executive Committee; and
  - 8.3.2.2 national prescriptions as to the minimum net benefit that should accrue to an inventor from the commercialisation of intellectual property.
- 8.3.3 If a developer has shareholding in a project company, distribution of income received by UJIPHC or the University from the project company will not be distributed to the inventor as provided for in (b) above.

APPROVED BY SENATE: 18 NOVEMBER 2009