



UNIVERSITY OF CAPE TOWN

INTELLECTUAL PROPERTY POLICY



Approved by Council on 27 July 2011

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SECTION I : INTRODUCTION

The core mission of the University of Cape Town (“UCT”) is the education and training of students and the advancement, preservation and dissemination of knowledge. UCT encourages research and development and social outreach by creating a research culture that actively responds to the needs of the people of the Republic of South Africa, whilst also contributing to the global research community. In doing so, UCT seeks to protect the rights and privileges which members of the UCT community traditionally enjoy in the pursuit of knowledge, whilst at the same time balancing this with the philosophy of sharing information with others.

This Intellectual property policy, hereinafter referred to as the “Policy”, recognises that UCT Employees, Visitors’ and Students’ activities may result in creative outputs. In certain instances it may best serve the public interest to obtain legal protection for these innovations and creative works, to make them commercially attractive and/or to support the development of useful processes and/or products. The intention of this Policy is therefore to make research outputs available in a form that will most effectively promote their development and use for economic and social benefit. It provides a framework for governing the rights and responsibilities of all stakeholders in relation to Inventions and other creative processes arising from their activities.

This Policy also provides for the recognition and provision of incentives for the innovative contributions of individual researchers and to provide for more effective utilization of Intellectual Property.

Recent developments in national legislation such as the promulgation on 2 August 2010 of the Intellectual Property Rights from Publicly Financed Research and Development Act (Act 51 of 2008) (hereinafter referred to as the “IPR Act”), the National Environmental Management: Biodiversity Act, (Act 10 of 2004) and exchange control regulations (as promulgated by Government Notice R.1111 of 1 December 1961 and amended up to Government Notice No. R.999 in Government Gazette No. 33717 of 1 November 2010) have required amendments to the previous Intellectual Property policy, dated 24 October 2004. This Policy thus supersedes the previous Intellectual Property policy as of the date of approval by Council as recorded above and governs all future UCT Intellectual Property transactions. Any distributions which were regulated in terms of the previous policy, however, shall continue to be regulated by the provisions of that policy.

SECTION II : DEFINITIONS

2. In this Policy, unless clearly inconsistent with or otherwise indicated by the context, the definitions set out below shall apply:
 - 2.1 “**Benefit(s)**” means the contribution to the socio-economic needs of the Republic and includes capacity development, technology transfer, job creation, enterprise

development, social upliftment and products, or processes or services that embody or use the Intellectual Property;

- 2.2 “**Commercialisation**” means the process by which any Intellectual Property emanating from research and development by UCT’s Employees, Students and Visitors is or may be adapted or used for any purpose that may provide any Benefit and “**commercialise**” shall have a corresponding meaning;
- 2.3 “**Computer Software**” means any computer program (including, without limitation, microcode, subroutines and operating systems), regardless of form of expression or object in which it is embodied, together with any user manuals and other accompanying explanatory materials and any computer database;
- 2.4 “**Course Materials**” means all materials produced in the course of or for use in teaching in any form (including digital, print, video and visual material) and all Intellectual Property in such materials and will include lectures, lecture notes and material, study guides, images, multi-media presentations, web content and course software;
- 2.5 “**Creative Commons**” means a non-profit organisation which is committed to facilitating the legal sharing of creative works through a range of licenses which allow creators to stipulate which rights they reserve, and which rights they waive for the benefit of other creators. Creative Commons licenses follow a "some rights reserved" model in contrast to traditional copyright which follows an "all rights reserved" model. Creative Commons therefore provides a continuum of rights between "all rights reserved" on the one end of the continuum and "no rights reserved" (public domain) on the other;
- 2.6 “**Creator**” means an individual or group of individuals to whom this Policy is applicable, who create, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of Intellectual Property and who meets the definition of ‘inventor’ as generally defined in patent acts and/or the definition of ‘author’ as generally defined in copyright acts;
- 2.7 “**Employee**” means a person who has entered into an employment relationship with UCT, whether academic or professional, administrative and support staff, paid or unpaid, full time or part time, full appointment or joint appointment, affiliation appointments or assistantships;
- 2.8 “**Enabler**” means those individuals who do not meet established legal standards of inventorship and thus may not be named on a patent application, but who have assisted with the validation of an invention, discovery or advancement of patentable Intellectual Property;
- 2.9 “**Expenses**” means those expenses assignable to the management of a specific UCT Intellectual Property case including costs for achieving and maintaining patent or other Intellectual Property protection, financing costs, loans, marketing, licensing and other

legal actions related to the enforcement of Intellectual Property and contract rights, which does not include staff time or general administrative expenses;

- 2.10 **“Full Cost(s)”** of research means the full cost of undertaking the research and development as determined in accordance with international financial reporting standards, and includes all direct costs (including staff salaries, bursaries, equipment and other running costs) and indirect costs (costs that cannot be specifically attributed to an individual project e.g. space usage, rent, services e.g. financial services and other overheads, etc.);
- 2.11 **“Full Cost Model”** means the standard UCT methodology, as approved by NIPMO, which is implemented in determining whether a research budget has been costed on a Full Cost basis;
- 2.12 **“Gross Revenue”** means income from Commercialisation of Intellectual Property that includes option payments, upfront and milestone payments, royalties, share of profits, dividends and through disposal of equity;
- 2.13 **“Intellectual Property”** (IP) means all outputs of creative endeavour in any field that can be protected either statutorily or not, within any jurisdiction, including but not limited to all forms of copyright, design right, whether registered or unregistered, patent, patentable material, trademarks, know-how, trade secrets, rights in databases, information, data, discoveries, mathematical formulae, specifications, diagrams, expertise, techniques, research results, inventions, computer software and programs, algorithms, laboratory notebooks, business and research methods, actual and potential teaching and distance learning material, UCT’s name, badge and other trade marks associated with the operations of UCT, Tangible Research Property, and such other items as UCT may from time to time specify in writing;
- 2.14 The **“IPR Act”** means the Intellectual Property Rights from Publicly Financed Research and Development Act (Act No. 51, 2008) and includes its **“Regulations”** which are the regulations associated with the IPR Act;
- 2.15 **“Invention”** includes any discovery, invention or other development of a technical nature, whether or not patentable;
- 2.16 **“Intellectual Property Disclosure Form”** means the form which needs to be completed by a Creator(s) to document their Invention and provide key information regarding the Creator(s), funding used to develop the IP and the rights of third parties, for submission to RCIPS for assessment of the Intellectual Property, which can be downloaded from www.rcips.uct.ac.za;
- 2.17 **“Nett Revenues”** means Gross Revenue received by UCT in consideration for a commercial transaction less Expenses;
- 2.18 **“NIPMO”** means the National Intellectual Property Management Office established in terms of section 8 of the IPR Act;

- 2.19 **"Open Source"** in the context of software means software whose source code is published and made available to the public, enabling anyone to copy, modify and redistribute the source code in accordance with the specific conditions that are imposed.
- 2.20 **"Patentable Invention"** means Intellectual Property that involves an inventive step and in terms of a patent act is deemed to be patentable and is regarded as novel (i.e. that has not been Publicly Disclosed), inventive (not obvious to a person skilled in the technical discipline and useful (can be applied in trade or industry or agriculture);
- 2.21 **"Public Disclosure"** means, in the absence of a non disclosure or confidentiality undertaking, the oral or written communication of information relating to Intellectual Property to a person, or people, that are external to UCT, for example, but not limited to, by email, web blog, news report, press release or interview, journal article, abstract, poster, conference presentation and through the submission of a thesis for examination. A thesis placed in the library constitutes public disclosure;
- 2.22 **"Public Domain"** means works that are not covered by intellectual property rights at all, either because the rights have expired or the rights have been forfeited; and as such are held by the public at large and are available for anybody to use freely and without reference to the original creator or permission from a third party;
- 2.23 **"Publicly Financed"** means research and development undertaken using any funds allocated by the South African State, organ of state or state agency as defined in the IPR Act, excluding scholarships and bursaries. Research and development that is undertaken by UCT at below Full Cost is deemed to be inherently subsidised by the state and is regarded as being Publicly Financed;
- 2.24 **"RCIPS"** means the Research Contracts and Intellectual Property Services office, which falls under the Department of Research & Innovation;
- 2.25 **"RCIPS Evergreen Fund"** means a fund established by UCT and administered by RCIPS to support innovation activities through the provision of seed investment linked to some future return on the investment from successful Commercialisation;
- 2.26 **"Student(s)"** means a full-time or part-time student(s) of UCT from undergraduate to post-graduate level, including students in training and post-doctoral fellows;
- 2.27 **"Tangible Research Property"** means tangible results arising from research activities, such as but not limited to: prototypes, drawings and diagrams, biological organisms and material, reagents, integrated circuit chips, software and data;
- 2.28 **"Technology Transfer Office"** means the Research Contracts and Intellectual Property Services office;
- 2.29 **"UCT Resources"** includes, without limitation, UCT facilities, office space, funds, financial or other administrative support, equipment, personnel, tangible research materials, information that is not freely available to the public, contract or other type of award or gift to UCT;

- 2.30 **“Visitor(s)”** means all persons who are neither Employees nor Students of UCT who engage in work at UCT and includes visiting professors, adjunct professors, teachers, researchers and volunteers.

SECTION III: APPLICABILITY

- 3.1 This Policy applies to:

- 3.1.1 All Employees and Students who:

3.1.1.1 Conceive or first reduce to practice, actually or constructively, any Patentable Invention;

3.1.1.2 Prepare a copyright protected work;

3.1.1.3 Contribute substantially to the existence of any Tangible Research Property; or

3.1.1.4 otherwise create an item of Intellectual Property.

- 3.1.2 Visitors, in the absence of any written agreement to the contrary, and who make use of UCT Resources and who through their use of UCT Resources:

3.1.2.1 conceive or first reduce to practice, actually or constructively, any Patentable Invention;

3.1.2.2 prepare a copyright protected work;

3.1.2.3 contribute substantially to the existence of any Tangible Research Property; or

3.1.2.4 otherwise create an item of Intellectual Property.

Employees who permit Visitors access to UCT Resources shall ensure that the Visitor has been notified of this Policy and obtain written acknowledgement from the Visitor that they are aware that they are bound by this Policy in the absence of any written agreement to the contrary.

- 3.1.3 Intellectual Property developed in terms of an agreement between UCT and a third party.

- 3.2 This Policy does not apply to Intellectual Property developed solely in terms of a private contract, outside of the course and scope of employment or contract of service or study with UCT, by an Employee and a third party, approved in compliance with the relevant UCT Private and Professional Work policies, provided that in the case of any potential conflict of interest (real or perceived), the Employee must notify UCT of the Intellectual Property, or possible creation of Intellectual Property.

In particular, should any Intellectual Property be created as part of a private contract, or private and professional work that falls within the technical scope of the Creator's employment at UCT, the Creator is bound to disclose this IP to RCIPS. In the absence of an agreement signed by UCT to the contrary, the Intellectual Property will be deemed to be owned by UCT.

SECTION IV: RESPONSIBILITIES

4. Technology Transfer Office

- 4.1 RCIPS has been designated by UCT to fulfill the role commonly referred to as a Technology Transfer Office.
- 4.2 The responsibilities of RCIPS include, but are not limited to the following:
 - 4.2.1 receive disclosure of potential Intellectual Property through the submission of an IP Disclosure Form by a Creator;
 - 4.2.2 analyse the disclosures within 30 days of receipt and consider:
 - a) How the IP may be of Benefit and contribute to the socio-economic needs and competitiveness of South Africa;
 - b) Forms of IP protection¹, statutory or otherwise, that are most appropriate for the IP in question;
 - c) the extent to which failure to seek such IP protection will undermine the socio-economic needs of South Africa;
 - d) the extent of readiness of the IP for protection and whether any additional research and development needs to be undertaken before IP protection can be obtained;
 - e) the costs and advantages of the various possibilities for protection;
 - f) the potential for Commercialisation of the IP; and
 - g) whether the IP should be placed in the Public Domain;
 - 4.2.3 After analysis in clause 4.2.2, elect to proceed on an appropriate course of action which may include:
 - a) proceeding with an application for statutory protection of the Intellectual Property, such as via the filing of a provisional patent application or the registration of a design;

¹ Registrable IP may include patents, plant variety rights, marks (including trade marks), technical and aesthetic designs, databases, business methods, surgical methods and geographical indications. A major form of IP, copyright, is not registered but comes into being automatically once a copyrightable work is reduced to material form (e.g. published). The IP right is protected only in a designated jurisdiction and for a limited time (except for geographical indications and trade-marks).

- b) delaying the application envisaged in (a) for strategic reasons, but ensure that confidentiality is maintained until the application has been made;
- c) requesting that the IP Creator conduct additional work to enable an application envisaged in (a) to be made; whilst confidentiality is maintained;
- d) making referral to NIPMO and assigning the IP as in clause 4.2.9;
- e) where the IP is found to have no prospects of addressing the socio-economic needs of South Africa or prospects of being commercialised:
 - not proceeding with statutory protection;
 - advising the IP Creator that they are free to publish the work; and
 - assigning the IP as outlined in clause 4.2.10 if desired by the assignee.

- 4.2.4 determine any rights of a third party, such as a funder or collaborator, to the IP or a share in the IP and whether the IPR Act or any other legislation is applicable;
- 4.2.5 decide whether UCT wishes to retain the IP and if necessary attend to all aspects of statutory protection of the Intellectual Property, including the appointment of a patent attorney;
- 4.2.6 for IP which falls within the ambit of the IPR Act, where necessary, report to NIPMO on IP disclosures and refer IP to NIPMO where UCT elects not to own the IP;
- 4.2.7 attend to all aspects of Intellectual Property transactions associated with the Commercialisation of the Intellectual Property, including the negotiation of licenses to, or assignment of UCT Intellectual Property. RCIPS shall make the final decision on the terms of any Commercialisation agreement, with due consideration being taken of the Creator's opinion;
- 4.2.8 administer the distribution of the Gross Revenues arising from the Commercialisation of the IP, where such revenues accrue;
- 4.2.9 assign rights to any IP that UCT elects not to retain ownership of where the IP falls within the ambit of the IPR Act:
 - 4.2.9.1 in the first instance to NIPMO; or
 - 4.2.9.2 where NIPMO declines assignment of the IP, to a funder of the work that led to the IP; or
 - 4.2.9.3 where the funder declines the assignment of the IP, to the Creator;
- 4.2.10 assign rights to any IP that UCT elects not to retain ownership of where the IP falls outside the ambit of the IPR Act and where there are rights:

4.2.10.1 in the first instance to the funder; or
4.2.10.2 where the funder declines the assignment of the IP, to the Creator.

4.2.11 conduct evaluations of the scope of the statutory protection of the Intellectual Property in all geographic territories subject to the Commercialisation potential of the Intellectual Property.

4.3 Negotiate the Intellectual Property clauses of sponsored research agreements in accordance with the objectives of this Policy and the IPR Act and any other applicable legislation after consultation with the Employee leading the research project concerned.

5. Intellectual Property (IP) Advisory Committee

5.1 An Intellectual Property Advisory Committee shall be established on commencement of this Policy, which shall comprise members selected as follows:

5.1.1 Deputy Vice-Chancellor responsible for research

5.1.2 The Registrar

5.1.3 The Executive Director of Finance

5.1.4 Any such person(s) the members above may wish to co-opt, such as a Professor of Law from the Law Faculty, or a Professor with a technical background, drawn from the faculties of Engineering and Built Environment, Health Sciences or Science, or external expert.

5.2 The responsibilities of the IP Advisory Committee shall be to advise RCIPS on matters relating to:

5.2.1 the establishment of spin-out companies and the share in equity of the founders of such companies;

5.2.2 preside over any disputes arising from this Policy;

5.2.3 decide on endorsements and branding, in accordance with the endorsement policy;

5.2.4 decide on the appropriate distribution of revenue received from Commercialisation activities that exceeds R10 million;

5.2.5 such other matters as RCIPS may deem appropriate.

5.3 The IP Advisory Committee shall meet at least quarterly.

6. Employees, Students and Visitors

- 6.1 Employees and Students conducting research are required to retain appropriate records of their research, such as through the use of laboratory notebooks and the records of Inventions in the form of original research data.
- 6.2 Employees and Students must disclose the development of any Intellectual Property to RCIPS as early as possible, but within 90 days of the discovery, by means of an IP Disclosure Form.
- 6.3 Employees and Students must review their work prior to any Public Disclosure to assess whether it contains any potentially protectable IP, in particular a Patenable Invention, and if so to timeously disclose it to RCIPS on an IP Disclosure Form ahead of the planned Public Disclosure so that if warranted the IP can be protected.
- 6.4 Employees and Students must take steps to maintain confidentiality of protectable IP until protection has been obtained. Guidelines as to how confidentiality can be maintained are available on the RCIPS website.
- 6.5 Employees and Students must conclude in a timely manner, all assignments of Intellectual Property necessary to give effect to the ownership provisions set out below and to allow for the use and Commercialisation of the Intellectual Property by UCT in accordance with this Policy.
- 6.6 Employees and Students are expected to co-operate with RCIPS and assist in preparing, reviewing, signing, and abiding by the terms of all documents necessary for the protection and exploitation of an Invention (including but not limited to patent specifications, official forms, marketing material, technical descriptions, confidentiality agreements and licence agreements).
- 6.7 An Employee or Student must ensure that the IP rights relating to their work have been clarified in writing prior to any sabbatical visit or exchange programme and that any contractual arrangements are approved and authorised by RCIPS.
- 6.8 On leaving UCT an Employee or Student must contact RCIPS to negotiate terms for continued access to IP and Tangible Research Property even if they are a Creator of it.
- 6.9 The onus is upon the Creator, or their heirs, to ensure that RCIPS is in receipt of their current address details for the purpose of revenue sharing.
- 6.10 Background IP of Employees (and/or previous employers' right thereto) and Students must be declared to RCIPS within 3 (Three) months of arrival at UCT.

Students

- 6.10 Where Students are involved in activities that could lead to the development of Intellectual Property over which UCT or a third party may claim ownership, the following conditions will apply:
- 6.10.1 The Student's rights in Intellectual Property in any theses or publications arising from the research will be protected;
 - 6.10.2 The Student's future career choices will not be closed by the choice to work in a confidential area of research;
 - 6.10.3 It will be made clear to Students what the nature of the work is before they undertake the activity that leads to the claimable Intellectual Property;
 - 6.10.4 Any confidentiality and ownership of Intellectual Property agreement will only be signed by Students after they have been properly advised by the principal investigator or their supervisor on the contents of the agreement;
 - 6.10.5 Any delays in the publication of the thesis that arise from a confidentiality agreement, will be subject to the approval of the Doctoral Degrees Board for PhD theses, or the Faculty and DVC for MSc theses, for periods of 6 months, up to a maximum of two years.
- 6.11 Where Students of UCT may be involved in research at institutions which are affiliated with UCT or at institutions other than UCT, agreement should be reached with the institution regarding the rights of the Student to Intellectual Property with a view to ensuring that the Student's rights under this Policy are maintained as far as practicable.
- 6.12 Supervisors electing to supervise a Student in an area likely to lead to the creation of Intellectual Property to which a funder has been granted rights in terms of a funded research agreement, must ensure that a confidentiality and Intellectual Property assignment agreement, which may form part of a Student-Supervisor Memorandum of Understanding is completed with the Student before the work is commenced. This may result in some projects not being available to Students who choose not to sign a confidentiality and Intellectual Property assignment agreement.

Visitors

- 6.13 In the absence of an agreement to the contrary clauses 6.1 to 6.10 will apply to Visitors.
- 6.14 Prior to or on arrival at UCT, a Visitor must declare their Background IP relating to work that will be undertaken whilst visiting UCT to RCIPS.
- 6.15 On departure from UCT, a Visitor must declare any Intellectual Property created whilst at UCT to RCIPS.

SECTION V: OWNERSHIP OF INTELLECTUAL PROPERTY

7. Intellectual Property Other than Copyright

- 7.1 UCT asserts legal and beneficial ownership of Intellectual Property arising from work by Employees and Students except as otherwise agreed in writing by an authorised officer of UCT, or unless stated otherwise in this Policy in relation to Intellectual Property created by Employees, Students or Visitors, with the following exceptions:
- 7.1.1 the Student conducts their work entirely outside of UCT at their employer's facility, does not make use of UCT Resources and input from their supervisor can be regarded as notional. In this instance UCT will enter into an agreement with the Student's employer regarding IP rights and will make provision for a separate agreement to be entered into should the supervisor make an inventive contribution to the IP;
 - 7.1.2 emanating from an undergraduate Student's studies, except for final year engineering student projects or any other undergraduate student project that is directly linked, or part of, the research activities of a postgraduate student or Employee of UCT.
- 7.2 UCT is guided by statutory legislation in relation to ownership of Intellectual Property, in particular by the IPR Act, in terms of which research conducted below Full Cost as calculated using the prevailing UCT Full Cost Model is owned, or partly owned by UCT.
- 7.3 If work is not Publicly Financed a funder may negotiate rights to IP arising from research that they fund with UCT.
- 7.4 Where research which is Publicly Financed is conducted below Full Cost, any private entity or organization involved in that research can co-own the Intellectual Property arising from that research with UCT, if the following criteria have been fulfilled:
- 7.4.1 There has been a contribution of resources, which may include relevant background intellectual property by the private entity or organization;
 - 7.4.2 There is joint Intellectual Property creatorship, i.e. that members of the team employed by the private entity or organisation make an inventive contribution to the creation of the IP arising from the research;
 - 7.4.3 Appropriate arrangements are made for benefit-sharing for Intellectual Property Creators at UCT; and

- 7.4.4 UCT and the private entity or organisation conclude an agreement for the Commercialization of the Intellectual Property.
- 7.5 Where research is conducted at below Full Cost and is subject to the IPR Act, NIPMO may approve IP rights or Commercialisation terms that are exceptions to the provisions of the IPR Act and Regulations to be granted by UCT to a private entity or organisation, should UCT consent to these arrangements.
- 7.6 Wherever possible, UCT shall attempt to secure residual rights to any IP created at UCT for continued use at UCT for research and teaching purposes on a royalty-free basis in perpetuity.
- 7.7 Where Intellectual Property emanates from a collaborative research and development agreement involving one or more donor organisations, research institutions or organizations, UCT will:
- 7.7.1 retain ownership of IP developed by UCT's Employees or Students, or co-own where the IP is jointly developed with the collaborators;
- 7.7.2 use reasonable endeavours to ensure the commercialisation of the IP;
- 7.7.3 provide reasonable access to collaborators in accordance with international agreements and norms and/or in accordance with NIPMO guidelines;
- 7.7.4 seek approval from NIPMO prior to the commencement of work, where the collaborative research agreement requires the IP to be made available for commercialisation on a royalty-free basis, or that it should not be commercialised.

8. Copyright Protected Works and Course Materials

- 8.1 UCT holds copyright in:
- Banks of multiple choice test and examination questions
 - Syllabuses and curricula
 - Computer software developed at, or commissioned by UCT to support academic or research administrative processes or the general operational management of UCT
 - All UCT produced publications (e.g. but not limited to The Monday Paper, Varsity, Research Report, etc.) including electronic media and content on the UCT websites
 - Photographs and digital images taken by Employees for UCT media or publicity or specifically commissioned by UCT
 - Specifically commissioned works and course materials that fall outside the scope of normal academic work

- Computer Software developed as part of a research project, unless assigned by research agreement to another party.
- 8.2 UCT automatically assigns to the author(s) the copyright, unless UCT has assigned ownership to a third party in terms of a research contract, in:
- Scholarly and literary publications
 - Paintings, sculptures, drawings, graphics and photographs produced as an art form
 - Recordings of musical performances and musical compositions
 - Course materials, with the provision that UCT retains a perpetual, royalty-free, non-exclusive licence to use, copy and adapt such materials within UCT for the purposes of teaching and or research
 - Film.
- 8.3 UCT assigns the copyright in a Student's thesis, to the Student author (or in the case of a work of art that is submitted for examination purposes to the IP Creator of the work of art), subject to UCT retaining a royalty-free right to publish a thesis in any form. Whilst the Student has the right to enter into agreements with the publishers who may wish to publish the thesis in whole or in part, the Student shall ensure that UCT's rights are acknowledged by the third party and maintained and shall with the consent of their supervisor(s) ensure that such publication is not in conflict with any past, or planned future, assignment of rights to another publisher, e.g. of a journal article, or other literary publication.

9. Open Source and Creative Commons Materials

Open Source and Creative Commons licences are mechanisms for exploiting material that is automatically protected (copyright) or where other forms of Intellectual Property Protection have been sought.

- 9.1 **Open Source.** UCT has adopted Open Source as the default for research and teaching related to software development at the university. At the outset of a project involving Open Source licensing, an Employee or Student should submit the Open Source license agreement that is intended to be used to govern the licensing of the project outputs to RCIPS for review, to ensure compliance with the requirements of the IPR Act and policies and guidelines of NIPMO.
- 9.1.1 Where necessary RCIPS shall refer agreements to NIPMO to seek approval for their use.
- 9.1.2 Where necessary and required, RCIPS shall in writing authorise investigators to enter into the Open Source license agreements in their personal capacity.
- 9.2 **Creative Commons.** UCT supports the publication of materials under Creative Commons licences to promote the sharing of knowledge and the creation of Open Education Resources. UCT undertakes certain research projects that seek to publish the research output in terms of a Creative Commons licence.
- 9.2.1 Author(s) of Copyright protected materials that are listed in clauses 8.2 and 8.3 is free to distribute their material under a Creative Commons licence.

9.2.2 Author(s) of Copyright materials that are listed in clause 8.1 should seek permission from RCIPS, who on behalf of UCT, may grant permission for the material to be distributed under a Creative Commons licence.

10. Public Domain

10.1 Where it is the desire of the IP Creator or a funder of research at below Full Cost to place Intellectual Property in the Public Domain and this desire is supported by RCIPS, and:

- IP is governed by the IPR Act;
- IP has Commercialisation prospects, or can contribute to the socio-economic needs of South Africa; and
- UCT does not wish to obtain statutory protection, where this is available, or to retain ownership of the IP; and
- UCT wishes to place the IP in the Public Domain,

RCIPS will seek approval from NIPMO to release the IP into the Public Domain.

11. Trade Marks

11.1 No trade mark associated with UCT or any UCT activity may be registered without obtaining the prior permission of the Registrar and all such trade marks will be owned by UCT.

11.2 Where the trade mark has university-wide significance, as determined by the Registrar, the Office of the Registrar shall take responsibility for the registration of the trade mark and its maintenance and bear the associated costs.

11.3 Where the trade mark is associated with a functional entity within the university (e.g. the name of a research unit), the Office of the Registrar shall take responsibility for the registration of the trade mark and its maintenance but all associated costs will be borne by the entity seeking the trade mark.

11.4 Internal functional units and entities within UCT have no legal persona, so in all applications of the trade marks in clause 11.3 affiliation to UCT should be clear and branding may not be used in a manner that would confuse or deceive a third party into believing that the entity is independent of UCT.

11.5 RCIPS shall take responsibility for trade mark registration and maintenance, where the trade mark is directly related to Intellectual Property that may be Commercialised, e.g. the name of a product, process or device. Costs will be funded by RCIPS and as such, the trade mark may form part of a license or assignment agreement.

12. Domain Names

- 12.1 Domain Names associated with UCT or any UCT activity are governed by the Domain Name Policy and are owned by UCT.
- 12.2 No Domain Names associated with the Commercialisation of Intellectual Property emanating from UCT may be registered without the written permission of RCIPS. Where appropriate, RCIPS will be responsible for the registration and maintenance of the domain name, which shall be owned in the first instance by UCT, but may be licensed or transferred to a third party in terms of a license or assignment agreement.

SECTION VI: COMMERCIALISATION WHERE THERE IS A FINANCIAL COMPONENT

13. Commercialisation Options

- 13.1 UCT will generally adopt a Commercialisation strategy that will involve one of the following three routes, as deemed appropriate:
 - 13.1.1 Selling or assigning ownership of the technology to an existing company;
 - 13.1.2 Licensing the technology to an existing company;
 - 13.1.3 Starting a new company.
- 13.2 Preference will be given to:
 - 13.2.1 non-exclusive licensing;
 - 13.2.2 BBBEE entities and small enterprises;
 - 13.2.3 parties that seek to use the Intellectual Property in ways that provide optimal benefits to the economy and quality of life of the people of the Republic;
 - 13.2.4 Creators who can demonstrate that they have assembled a team with the necessary skills to operate a spin-off business, have submitted a business plan that is acceptable to the IP Advisory Committee and who have appropriate funding in place.

14. Distribution of Revenue

- 14.1 A Creator and their heir(s) are granted a right to a portion of the revenues that accrue to UCT from the Commercialisation of their Intellectual Property for as long as revenues are derived from such Intellectual Property. This revenue is taxable and where a Creator is on the UCT payroll, tax will automatically be deducted by Human Resources and payment made through the payroll system. An heir will have no claim to portions of revenue other than to the portion which is allocated to the specific Creator in terms of clause 14.5 and taking clause 14.2 into consideration.
- 14.2 If there is more than one Creator in respect of any particular Intellectual Property, the allocation will be shared equally between them unless another arrangement has been reached by written agreement.
- 14.3 A Creator may at their sole discretion elect and make provision for an Enabler(s) to receive a share of the Creator portion of the revenue. This arrangement will be agreed to by all Creators should there be more than one, reduced to writing, signed and lodged with RCIPS.
- 14.4 Disbursements to a Creator, and if appointed to Enablers, will be made within one year of receipt of the revenue by UCT.
- 14.5 Revenue from Commercialisation activities will be distributed as follows:
- 14.5.1 Amounts due to third parties who may be either co-owners of IP or beneficiaries in terms of benefit share agreements entered into by UCT, if received by UCT, will be paid to those third parties prior to any internal distribution within UCT;
- 14.5.2 Where there is more than one Creator, the Creators will share the amount that would have accrued if there had only been one Creator on a *pro rata* basis as determined by the Creator's share in the creation of the IP as per clause 13.2.
- 14.5.3 Where there is more than one Creator, portions of revenue accruing to departments or faculties will be apportioned to them on a *pro rata* basis as determined by the Creator within (or previously within) a department or faculty's share in the creation of the IP as per clause 14.2. Where there is uncertainty in terms of membership of a department or faculty, matters will be referred to the IP Advisory Committee for a decision on apportionment.
- 14.5.4 For amounts of Gross Revenue received by UCT **up to R250,000:**
- 20% of Gross Revenue or 50% of Nett Revenue, whichever is higher, will be paid to the Creator; and
- the difference, for research purposes to the Creator's group (e.g. Research Grouping, Unit or Centre)
- 14.5.5 For amounts of Gross Revenue received by UCT **above R250,000 and below R1 million:**

- 20% of Gross Revenue or 33.3% of Nett Revenue, whichever is higher, will be paid to the Creator; and
- 16.7% of Nett Revenue to the Creator's group (e.g. Research Grouping, Unit or Centre); and
- 33.3% of Nett Revenue to the UCT central fund;

14.5.6 For amounts of Gross Revenue received by UCT **above R1 million and below R5 million:**

- 33.3% of Nett Revenue will be paid to the Creator; and
- 16.7% of Nett Revenue to the Creator's group (e.g. Research Grouping, Unit or Centre); and
- 16.7% of Nett Revenue to the Creator's Department; and
- 33.3% of Nett Revenue to UCT central fund;

14.5.7 For amounts of Gross Revenue received by UCT **above R5 million and below R10 million:**

- 33.3% of Nett Revenue will be paid to the Creator; and
- 10.0% of Nett Revenue to the Creator's group (e.g. Research Grouping, Unit or Centre); and
- 13.4% of Nett Revenue to the Creator's Department; and
- 10% of Nett Revenue to the Creator's Faculty; and
- 28.3% of Nett Revenue to the UCT central fund; and
- 5.0% of Nett Revenue to RCIPS Evergreen Fund;

14.5.8 For amounts of Gross Revenue received by UCT that **exceed R 10 million:**

- 33.3% of Nett Revenue will be paid to the Creator; and
- the apportionment of the remainder of the Nett Revenue will be determined by the IP Advisory Committee.

- 14.6 A portion of revenue going to the UCT central fund is preferably to be used for further research, to support RCIPS's activities, patenting and IP protection costs, innovation and Commercialisation, training in entrepreneurship and IP management.
- 14.7 If a Creator, who is an Employee, moves within UCT or if the Creator's group is dissolved, then the IP Advisory Committee shall determine to which entity the Creator group's portion will be allocated.
- 14.8 If a Creator, who is a Student, moves within UCT, the Creator group's portion of the revenue will remain with the original group.
- 14.9 If a Creator leaves UCT, then the Creator group's portion of the revenue and any residual research funds will be dealt with according to UCT Finance Policies and Procedures (GEN001 - Funds deposited with or held by UCT or in UCT's name) in consultation with the IP Advisory Committee.

- 14.10 Nett Revenues apportioned to the Creator's group research fund, a department or faculty should be used to support further research activities.
- 14.11 If a Creator cannot be located using reasonable efforts by RCIPS, then the portion accrued to that Creator or his/her heirs will after a period of 5 years from the time when the amount became due to the Creator, be paid to an RCIPS fund to be used to support RCIPS's activities.
- 14.12 Special royalty cases
- 14.12.1 Impractical or inappropriate royalties In some cases distribution of royalties to individuals will be impractical or inappropriate; for example, where the material was developed as a center project or where the inventors are not easily identifiable. The Director of RCIPS, in consultation with the principal investigator (or Centre/Department head if not under a sponsored agreement) will review the circumstances of development when such situations have been identified. Generally in such cases, royalties will be split equally between the Department or Center and UCT. In any situation when royalty distribution to individuals is not recommended, distribution of income is subject to the approval of the IP Committee.
- 14.12.2 Distribution of Equity If a Creator holds equity in a UCT spin-out company, such Creator will not share in UCT's receipts, whether dividends and/or royalties and/or sale of equity, from such company. All other Creators will be rewarded in accordance with the standard formula as described above.
- 14.13 Non-monetary benefits. It is possible that non-monetary benefits may accrue through the Commercialisation of Intellectual Property, for example, but not limited to, shares or equity in companies, receipt of free or reduced rate services or free products or equipment being received by UCT instead of a monetary amount.
- 14.13.1 Equity will typically be held by UCT on behalf of any Creator who is not directly participating in a company. Dividends and proceeds from the disposal of equity will be distributed according to the principles of this Clause 14.
- 14.13.2 The decision as to the timing of any equity disposal will be made by RCIPS, taking due consideration of the Creator's opinion.
- 14.13.3 Wherever possible, RCIPS will strive not to include any non-monetary benefits in any Commercialisation agreement.
- 14.13.3 Reward to a Creator from other non-monetary benefits will be negotiated with a Creator on a case by case basis by RCIPS and approved by the IP Advisory Committee, prior to the conclusion of any Commercialisation agreement that may include non-monetary benefits.

Summary of UCT Revenue Distribution

Income	Creator	Creator's Group	Creator's Department	Creator's Faculty	UCT Central Fund	RCIPS Evergreen Fund
< R250,000	20% of Gross Revenue or 50% of Nett Revenue, whichever is the higher	50% of nett	0	0	0	0
> R250,000 < R1 million	20% of Gross Revenue or 33.3% of Nett Revenue, whichever is the higher	16.7% of nett	16.7% of nett	0	33.3% of nett	0
> R1 million < R5 million	33.3% of Nett Revenue	16.7% of nett	16.7% of nett	0	33.3% of nett	0
> R5 million < R10 million	33.3% of Nett Revenue	10% of nett	13.4% of nett	10 % of nett	28.3% of nett	5% of nett
> R 10 million	33.3% of Nett Revenue	To be determined by IP Advisory Committee				

15. Distribution of Tangible Research Property

- 15.1 UCT encourages the distribution of Tangible Research Property that it owns that arises from research (just as it encourages the publication of all research for peer scrutiny) on appropriate terms, and provided that this distribution does not conflict with existing obligations.
- 15.2 An Employee wishing to make such distribution must inform RCIPS in advance and ensure that an appropriate materials transfer agreement is put in place and that this complies with the requirements of the National Environmental Management: Biodiversity Act, Act 10 of 2004.
- 15.3 Whilst scientific exchanges should not be inhibited by potential commercial considerations, Tangible Research Property may have potential commercial value and an Employee may elect to make it available to a third party through a commercial license agreement that will be put in place by RCIPS.
- 15.4 Where Tangible Research Property is distributed under commercial terms such as those envisaged in clause 15.3:
- 15.4.1 each Tangible Research Property item should have an unambiguous identification code or name;
- 15.4.2 the principal investigator shall identify the Students and Employees responsible for creating the Tangible Research Property, i.e. the Creator, and they will agree in writing to their relative contributions;

- 15.4.3 RCIPS will maintain a record of this Tangible Research Property and distribute any revenue according to the principles of Clause 14.

SECTION VII DISPUTE RESOLUTION

16. Dispute Resolution

- 16.1 Any internal disputes or questions of interpretation arising under this Policy must in the first instance be referred to the IP Advisory Committee for resolution, at the request of any interested party.
- 16.2 If the matter cannot be resolved by the IP Advisory Committee, then the dispute or question of interpretation must be referred to the Vice Chancellor or his/her nominee for referral to an appropriate authority or panel for mediation or arbitration.
- 16.3 In the event of an authorship or creatorship dispute arising with an external third party, the matter must be referred to the Deputy Vice-Chancellor of Research for referral to an attorney with suitable expertise.

17. Related Policies

- 17.1 Private and Professional Work Policies
- 17.2 Conflict of Interest: Principles, Policy and Rules
- 17.3 Policy on the Endorsement of Products and Services by UCT; and on Licensing the use of the Name, Trademarks and other Insignia of UCT
- 17.4 Funds deposited with or held by UCT or in UCT's name (GEN001)
- 17.5 Domain Name Policy