



# UNIVERSITY OF WESTERN CAPE (UWC)

## RESEARCH POLICY SECTION 10: INTELLECTUAL PROPERTY POLICY

DATE OF LAST APPROVAL: C2009/4

Approved at Council C2009/4 on 26<sup>th</sup> November 2009



UNIVERSITY of the  
WESTERN CAPE

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**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 (e.g. Copyright and Private Work Policies) shall be ascribed the definitions set out therein.

### **1.3. 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;

“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 (unnecessary phrase deleted);

“Design” shall mean the monopoly right granted for the protection of an independently created design that is new and original and such protection shall extend to designs dictated essentially by aesthetic or functional considerations as well as topographies of integrated circuits, and the owner of a protected design shall have the right to prevent third parties not having the owner’s consent from making, selling, using or importing any article bearing or embodying the design or which is a copy, or substantially a copy, of the protected design;

“DVC” shall mean the Deputy Vice Chancellor (Academic) 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 sum of all direct costs, including salaries, bursaries, running and equipment costs) and indirect costs (including rent, services, overheads etc.) for research;

"Intellectual Property" or "IP" shall mean the result of UWC's creative endeavour expended for and on behalf of or for the benefit of or in the service of UWC that is recognised and protected by law, including Patents, Designs, Know-How, Copyright and Trade Marks;

"IPFRD Act" shall mean Intellectual Property from Publicly Financed Research and Development Act 51 of 2008 (IPFRD Act),

"Inventor" shall mean the originator of any new intellectual property, and specifically includes a breeder of a new plant variety and a software developer;

"Invention" shall mean any creation in respect of which intellectual property rights subsist and includes, but shall not be limited to, any new patentable invention, plant variety, plant breeders' right, registrable aesthetic and function design, trade mark, copyrighted work, compilation of known information and Know-How in the form of trade secrets and research findings.

"ICU" shall mean the Innovation Centre of the University that is responsible for intellectual property management, technology transfer, commercialization and enterprise development.

"ICU Fund" shall mean the research and development account of the Innovation Centre of the University.

"TTO" shall mean Technology Transfer Office within the ICU.

"EDO" shall mean Enterprise Development Office within the ICU.

"SIPMC" shall mean the Senate Intellectual Property Management Committee of UWC, established in accordance with section 6 of this Policy;

"Know-How" shall mean all Confidential Information of whatever nature relating to UWC and its business and/or to the Patents, Designs, Trade Marks or Copyrighted Works or their 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;

"Net revenue" shall mean the gross revenue or royalties received by UWC less the expenses incurred by UWC for and in the protection and commercialisation of IP;

"NIPMO" shall mean the anticipated National Intellectual Property Management Office to be managed by the Department of Science and Technology, or a similar body established in terms of applicable legislation;

"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, 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, to an inventor, for a limited period to exclude others from making, using, importing, disposing of or offering to dispose of the invention without the permission of the inventor and where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering to dispose of, disposing of or importing for these purposes at least the produce obtained directly from the process. Patent holders shall have the right to assign, to transfer by succession, the Patent and to conclude license contracts. The holder of a Patent right will only have rights in the territories in which the Patent is registered.

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

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

"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 intellectual property 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;

"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 sign, or combination of signs capable of distinguishing the goods or services of one undertaking from those of another undertaking; and

"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**

The University of the Western Cape (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 intellectual property creation by employees, students and collaborators.

In terms of the Intellectual Property from Publicly Financed Research and Development Act 51 of 2008 (IPFRD Act), intellectual property 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 IPFRD Act.

This policy has been developed to provide a framework of intellectual property management for various parties at UWC in terms of the IPFRD 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 Intellectual Property issues come to the fore, cognisance shall be taken of the relative importance and value of the particular Intellectual Property 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 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 National Environmental Management: Biodiversity Act 10 of 2004; 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 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 Intellectual Property developed at 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 creators of the Intellectual Property and UWC;
- 3.4. protect the rights of researchers to publish their research findings;
- 3.5. promote, advance and preserve research and development at UWC;
- 3.6. promote, advance and encourage commercialisation opportunities for Intellectual Property developed at UWC, where appropriate, for the benefit of society; and
- 3.7. ensure that UWC complies with all applicable Intellectual Property 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 or uses UWC Intellectual Property 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 visiting scientist and 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 Intellectual Property in the course of rendering services to UWC; and
- 4.5. any Employee, Student, Service Provider or Consultant that deals in any way with UWC Intellectual Property.

### **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 Intellectual Property created, designed, made, prepared, established, modified, converted, expanded, developed, improved, perfected or translated by a Student during the course and scope of conducting research 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**

UWC recognises the moral rights of Intellectual Property creators and inventors in copyrighted works. Employees shall retain the moral rights to their work. However, in all cases Employees and Students must obtain consent from the Innovation Centre of the University (ICU) through the Senate Intellectual Property Management Committee (SIPMC) and their Line Managers, before publishing their work. 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 Intellectual Property be identified for protection and commercialisation.

## **5.4. Joint staff and Collaborative Research**

Ownership of Intellectual Property developed jointly by UWC staff and an organisation or person outside UWC will be determined in accordance with the written agreement concluded between UWC and the outside person or organisation, provided that such agreement shall prior to its conclusion have been approved by the ICU.

Ownership of Intellectual Property that is created by visiting researchers, while visiting UWC, shall be owned by UWC unless otherwise agreed to in terms of a written agreement concluded between the visiting researcher and UWC prior to the visit. Any visiting researcher shall be entitled to benefit sharing in terms of revenue received by UWC in respect of the IP as provided for in this Policy.

Ownership of IP that is created or started during collaborative research shall be owned in accordance with a Collaborative Research Agreement entered into between UWC and the collaborator prior to the start of the collaboration. All Collaborative Research Agreements shall set out the ownership of IP developed during the collaboration as well as ownership of pre-existing or "background" IP.

In the event that the IP is created through research that received public financing, the agreement must make provision for the requirements of the IPPFRD Act, including for benefit sharing by the IP creators.

## **5.5. Contract Research**

Contract research occurs where UWC undertakes research on behalf of a client, company or organisation. Unless the parties agree otherwise in writing, with the approval of the ICU, 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 studies.

Line Managers must seek advice from the ICU through the SIPMC on the appropriate agreements to be used prior to undertaking any contract research in order to ensure that UWCs' rights are protected and to ensure that UWCs' obligations to the client, company or organisation are not in conflict with UWC's obligations in terms of the IPPFRD 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 IPPFRD 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 ICU via the SIPMC 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 ICU via the SIPMC. The ICU through the SIPMC shall ensure that the period during which there can be no disclosure of results, is as short as possible.

## **5.8. Waiver**

UWC can only waive its rights to ownership of IP under circumstances which comply with the IPPFRD Act and in terms of a written agreement with the person or company involved. In terms of the IPPFRD Act a third party can only own the IP developed by a University if the Full Cost (including direct and indirect costs) of the research was paid by the third party.

## **5.9. Provisions regarding copyright**

Ownership of copyright will be determined in accordance with UWC copyright policy (CHEC 06/04/03) and as set out in paragraphs 5.1 and 5.2 above. In brief, 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 studies.

## **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**

An Innovation Centre of the University (ICU) shall be established whose role will be 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. To operate effectively, the ICU will be structured to include a Technology Transfer Office (TTO) and an Enterprise Development Office (EDO).

The ICU will work through Senate, which will create a Senate Intellectual Property Management Committee (SIPMC) chaired by the DVC or his/her representative, and shall consist of members as determined by UWC. The SIPMC shall have the right to co-opt such additional members as can assist it in the discharge of its responsibilities.

The additional members need not be Employees of the University. The members of the SIPMC will treat all subject matter disclosed to them as confidential.

Members of the SIPMC 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 Intellectual Property protection, licensing and enforcement expertise.

## **6.2. Function of the SIPMC**

The SIPMC will, in relation to the creation and protection of Intellectual Property:

- develop and implement a policy for disclosure of Intellectual Property 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 Contracts Department, assist Employees with formal agreements, including those relating to confidentiality and any arrangements with external parties;
- obtain advice and make recommendations on the patentability of inventions generated from UWC activities;
- regulate the publication of Intellectual Property in order to protect the novelty of patentable inventions;
- recommend the budget to be allocated for Intellectual Property 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 Intellectual Property; and
- procure appropriate specialised intellectual property legal advice, where required.

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

- oversee and manage the practical implementation of the Policy;
- identify Line Managers for the purpose of implementing the Policy and notify all Employees of the identity of their Line Managers;
- advise the DVC of any recommended variations to the Policy;
- act as a panel for the resolution of disputes arising from the implementation of the Policy;
- advise the DVC on all matters relating to Intellectual Property administration;
- provide advice and support to all Employees insofar as the Policy is concerned.

The SIPMC will, in relation to the creation and protection of Intellectual Property:

- identify, manage and mitigate risks associated with the use and commercialisation of UWC's Intellectual Property;
- assess the viability of the commercialisation of UWC's Intellectual Property 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 Intellectual Property;
- negotiate and enter into license agreements with third parties pertaining to UWC's Intellectual Property;
- advise the DVC on any transfer of UWC's Intellectual Property;
- develop licensing and royalty policies for UWC;
- manage benefit sharing arrangements with Employee inventors; and
- provide the DVC with a quarterly summary report on UWC's Intellectual Property.

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

- refer UWC's Intellectual Property for which the SIPMC elects not to obtain statutory Intellectual Property protection to NIPMO within the prescribed time period;
- report to NIPMO on an annual basis in all matters pertaining to UWC's Intellectual Property in a manner prescribed by NIPMO;
- recover Intellectual Property protection costs from the fund administered by NIPMO, when applicable.

The SIPMC will have the discretion to determine if any novelty or freedom-to-operate searches are to be conducted to determine if any aspect of Intellectual Property is in fact new and to determine if any technology or Trade Marks utilised by UWC will infringe the Intellectual Property rights of a third party.

The SIPMC will further have the discretion to determine whether and/or when UWC's Intellectual Property portfolio is to be reviewed.

## **7. IDENTIFICATION OF INTELLECTUAL PROPERTY**

### **7.1. Awareness of the Policy**

UWC's executive management, through the ICU, shall foster a culture of awareness of Intellectual Property and ensure that Employees and Students as well as visiting researchers 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 ICU 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 Intellectual Property, 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 ICU. All UWC Employees and Students are required to disclose potential protectable Intellectual Property to the ICU within 90 days of identification of the Intellectual Property and before public disclosure thereof.

Through the ICU, the SIPMC will develop a form for reporting such Intellectual Property (an Invention Disclosure form) which will be made available to Students and Employees. The Invention Disclosure form shall contain at least the following information:

- inventor(s) details;
- technical details of invention;
- circumstances leading to the invention;
- agreements entered into to facilitate the invention being made;
- activities undertaken or planned such as publication or presentation of the invention;
- resources and information used to develop the invention; and
- any other useful information to facilitate protection of the invention.

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. Ownership of the Know-How contained in these records vests in the University.

### **7.3. Evaluation of Intellectual Property**

#### *7.3.1. Criteria to Consider*

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

- 7.3.1.1. Intellectual Property protection is considered advisable to ensure the maximum availability of any invention, and developments / improvements thereon, to the government and its citizens;
- 7.3.1.2. Intellectual Property protection is necessary to form partnerships for the carrying out of bridging work, or for trading to gain access to the Intellectual Property rights of others that is vital to the availability of the invention to the South African government and its citizens; or
- 7.3.1.3. An invention 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 information owner. Additionally, Employees and Students are expected to use

professional judgment, and ask their Line Manager for guidance in those instances where the appropriate requirements of handling Confidential Information are unclear.

#### *8.1.2. Labelling of Information*

The SIPMC shall develop guidelines for the labelling of all UWC's Confidential Information and Copyrighted Works. That policy 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 unauthorized 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 SIPMC.

#### *8.1.4. Non-Disclosure Agreements*

The disclosure of proprietary creations to 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 IOU. 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 ICU. Employees must not sign NDA's provided by third parties without the advance authorisation of ICU.

#### *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 ICU is entered into between the third party and the University. 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 ICU. Employees must not sign MTA's provided by third parties without the prior authorisation of the ICU.

#### *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. Even when this disclosure has been approved in advance, the receiving party must sign a Non-Disclosure Agreement.

#### *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 ICU.

## 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 Intellectual Property 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 ICU. Accordingly, Employees 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 the author 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 ICU.

### 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 to ensure that the Service Provider signs all documents and provides all authorizations or consents:

- to give full effect to the relevant terms of this Policy; and
- in particular, the Service Providers/Consultants shall 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 authorizations 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 Intellectual Property 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 Intellectual Property 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 Intellectual Property 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 Intellectual Property. 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 Intellectual Property that they have created for UWC. The terms of such license will be subject to such conditions as the ICU may determine.

### **8.3. Collaborations**

#### 8.3.1. *Publication*

The ICU shall have the discretion to determine whether public disclosure of UWC's IP shall be permitted, even where such Intellectual Property is co-owned with one or more Collaborators. "Public disclosure" shall include, inter alia, disclosures at seminars and disclosures in academic and/or research papers.

Should the ICU 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 UWCs' 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 ICU 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. Trade Secret (Know-how and confidential information).

The ICU 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 register or patent an invention 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 IPPFRD Act, whereupon NIPMO shall then have the option to obtain the Intellectual Property rights in respect of the invention.

If NIPMO decides not to acquire the rights and no third party has a claim to the Intellectual Property, the Inventor shall then be offered the Intellectual Property rights and can proceed with application for a patent, design or plant breeders' right, the cost of which shall be borne by the inventor, provided that where a private entity has also provided financing, this private entity must first be offered such option together with the Inventor.

No Employee or Student may obtain any patent, design, or plant breeders' right on their own initiative, or through a patent attorney with respect to any invention created during the course and scope of their employment or studies, as ownership of such inventions 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 Intellectual Property rights subsisting in Software that is developed by Employees and Students in the course and scope of their employment or studies shall vest in UWC and must therefore be disclosed to the ICU 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 studies 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. Use of UWC 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 unauthorized 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 studies, 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 ICU 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 unauthorized use of UWC's IP;
- every Employee or Student shall protect the integrity of UWC's IP;
- in addition to this Policy, every Employee 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 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 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 IP policy of the university and acknowledge agreement with its provisions, at the commencement of their employment or studies.

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, Know-how, 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 Intellectual Property 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 Intellectual Property 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 ICU 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***

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 entity, enterprise or arrangement. The decision to commercialise any aspect of UWC's IP shall be made by the ICU. In assessing a suitable commercialisation strategy for UWCs' IP, the ICU shall take into account the balanced achievement of maximum benefit for the public 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 ICU 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 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 ICU shall, where required, consult and seek advice from relevant external sources with relevant experience when identifying a commercial strategy as set out above.

The ICU 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 ICU, via the sale of a product or service embodying UWC's IP;

**Spin-off Company:** a company is created and which is 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 combination of the above from the company.

## 9.2. Financial Returns

Financial returns from commercialisation of UWC's IP shall in the first instance be applied to recover any direct costs involved with seeking and maintaining IP protection as well as commercialisation of the IP, 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 net returns, being the remainder of the returns once direct costs have been accounted for, shall be shared with inventors in order to encourage the generation of commercially useful inventions by Employees and Students. The net returns shall be shared with Employee or Student inventor/s according to principles set out in the relevant legislation, dealing with the identification of inventors, calculation of royalties, share of royalties due to each beneficiary/inventor, effect of termination of employment on inventor's entitlement to royalties, effect of death on inventor's royalties, non-fiscal recognition of the inventor etc.

### **9.3. Principles for Assignment and Licensing**

The ICU shall, when considering appropriate commercialisation models, have the authority to grant the assignment or licensing of UWC's IP rights, provided that:

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

- UWC shall only assign the IP to any third party where its decision regarding the assignment is taken in accordance with the regulations to the IPPFRD Act and guidelines published by NIPMO;
- Where UWC decides to assign IP to a third party, it shall notify NIPMO of its decision and the reasons for its decision within the time frame prescribed by the IPPFRD Act;
- Where UWC assigns IP to a third party it shall retain its right to use the IP for educational and research purposes;
- Where UWC assigns IP to another 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 RSA; and
- All assignments of IP 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 IPPFRD Act.

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

- Where UWC licenses its IP 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, 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, 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 IPPFRD Act; and
- In all licensing of IP, 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 to a foreign entity or the sale of shareholding in the recipient 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 does not conform to the regulations to the IPPFRD Act and NIPMO guidelines for off-shore transactions;
- Where UWC wishes to assign IP 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.

#### **9.4. Commercialisation Preferences**

The ICU shall, as far as reasonably possible, endeavour to adopt a commercialisation model in which UWC's IP rights are retained.

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. 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 a foreign commercialisation entity can be considered 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.
- Where local licensees cannot be secured, UWC shall ensure that locally beneficial arrangements (such as for example manufacturing preferred pricing, R&D obligations, etc.) are secured as far as reasonably possible.

## **9.5. Decision Making**

Only the DVC, after consultation with the ICU, shall have the authority to assign UWC's IP to any third party or grant an exclusive licence under UWC's IP.

## **9.6. Conflict of Interest**

### *9.6.1. 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 ICU 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 inventor/creator of the IP. However, they may not participate in negotiations to transfer technology to any organisation in which they have such interest.

### *9.6.2. 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.

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. BENEFIT SHARING**

### **10.1. Beneficiaries**

There are a number of possible beneficiaries from exploitation of IP, including the creator/inventor of the IP, the department, school or institute to which the creator belongs, the private co-owners, the ICU and UWC.

### **10.2. Income Allocation**

Intellectual Property 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 creator in their personal capacity is taxable. If via the university, the 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 unless otherwise agreed between the creators and UWC in writing. The status of a creator shall not be a factor in determining a creator's share in the benefits. Any dispute which arises with respect to benefit sharing shall be adjudicated by the ICU, 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 ICU Fund for the promotion and development of research.

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 IPPFRD Act.

#### *10.2.1. Formula of Income Allocation*

The following formula for income allocation is an example that the University may consider:

#### First R1, 000,000 of revenue

Twenty percent of the gross revenues accruing to UWC for the first R1, 000,000 of revenue shall be shared between the IP creator(s).

Commercialisation costs will then be deducted from the balance to determine the net revenue, which shall be split between the department, school or institute (40%), UWC (40%) and the ICU 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.



### Revenue above R1, 000,000

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

In the event that the IP is co-owned with an outside organisation, and after deduction of the commercialisation costs and 30% for payment of the IP creator(s), the remainder of the revenue shall be split in accordance with the agreement between the outside organisation and UWC.

#### *10.3. Death of a Beneficiary or Termination of Employment*

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

This arrangement will be in place, unless such beneficiary 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 beneficiary.

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

An employee of UWC who is an IP beneficiary 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 ICU Fund.

## **11. INDIGENOUS KNOWLEDGE AND RESOURCES**

Where a research project is based on more than incidental use of knowledge and/or resources that can be related directly to a particular community or locale, UWC will undertake all best efforts to ensure that the prior informed consent of the relevant community, or residents of the locale, is obtained. Where a research project is based on more than incidental use of knowledge and/or resources that are found in a community or locale that is either not subject to clear delineation or that is so large that it is not feasible to obtain prior informed consent, UWC will undertake all best efforts to obtain the prior informed consent of any relevant community-based organisations and government authorities as provided for in terms of the Convention on Biodiversity.

Where an invention is developed that makes more than incidental use of knowledge and/or resources that can be related directly to a particular community or locale, UWC will undertake all best efforts to ensure the applicability and availability of such invention to the relevant community or locale, including but not limited to the following:

- ensuring that any transfer or licensing of intellectual property rights by UWC includes an allowance for the relevant community or locale's access to the invention on preferential terms; and
- establishing systems for any necessary training, distribution or other bridging mechanisms that may be required for the relevant community or locale to make full use of the invention.

Where an invention that makes more than incidental use of knowledge and/or resources that can be related directly to a particular community or locale is developed to the point that it has market application, UWC will undertake all best efforts to:

- reach agreement with the relevant community, or residents of the locale, as to future activities, and/or actions, regarding the invention; and
- ensure that the relevant community, or residents of the locale, are involved in any production and/or marketing of products relating to the invention. Any income that may be derived by the community or locale from such participation shall not be considered part of any royalties due under the terms of Section 10.

The distribution of benefits accruing to local communities under Section 10 shall be undertaken according to the following guidelines:

- Where feasible, benefits shall be distributed equally between individuals and/or projects and/or organizations that benefit the community or locale as a whole. As far as possible individuals shall be assigned benefits on the basis of their relative contributions towards the provision of the knowledge and/or resources to UWC. Projects and organizations shall be determined in collaboration with representatives of the said community or locale.
- Where distribution of benefits according to the above paragraph is either not feasible or is considered to be financially counter-productive all benefits shall be forwarded to projects or organizations that are of general benefit to the community or locale as determined in collaboration with the community, local and regional governmental structures.
- Where distribution of benefits according to either of the above paragraphs is either not feasible or is considered to be financially counter-productive, all benefits shall be forwarded to a regional then national level organization with aims and objectives of relevance to the community or locale, or a government trust administered on behalf of South Africa to benefit communities.

For the purposes of this policy, where knowledge and resources are to be found in a wide range of communities and/or geographical areas, UWC shall:

- consider the origin of the knowledge or resource to be the community or geographical area that physically supplies such to UWC; or
- where such knowledge and/or resources are so widespread as to be within the public domain, any benefits accruing under Section 10 shall be forwarded to a regional or national organization which is created for the purposes of collection and distribution of the benefits to the community from similar projects and resources.

## **12. DISPUTE RESOLUTION**

Any dispute which arises with respect to this Policy shall be adjudicated by the ICU whose decision shall be final, provided that where such dispute involves the SIPMC, the dispute shall be referred to the DVC, 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**

#### *13.1.1. Employees*

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. Accordingly, 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.

The provisions of this paragraph 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.

### **13.2. Monitoring and Administration of the Policy**

#### *13.2.1. Accountability*

The ICU and SIPMC shall be accountable for the implementation of this Policy.

#### *13.2.2. Questions, comments and suggestions*

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

#### *13.2.3. Interpretation and Review*

At least once a year, the ICU through the SIPMC shall:

- hold a meeting in order to review the terms of this 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 of UWC a detailed list of the changes suggested to this Policy, as well as the justification for each such change, if required.

#### *13.2.4. Amendment or Cancellation of the Policy*

This 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.

13.2.5. *Number and Gender*

Where appropriate, the singular number set forth in this 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 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 Policy.

13.2.7. *Other Applicable Laws*

This Policy in addition to incorporating legislation regarding Patents, Designs, Copyright and Trade Marks incorporates legislation which may be relevant to UWC's Intellectual Property, such as the Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008.

**13.3. Effective Date of the Policy**

This Policy shall become effective from \_\_\_\_\_

**13.4. Term of the Policy**

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