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Intellectual Property: Protection and Commercialisation



Intellectual Property: Protection and Commercialisation

Type of document:	Policy
Purpose:	To regulate and provide for the identification, protection and commercialisation of Intellectual Property by Stellenbosch University, and in particular as may arise in the course of teaching and learning and/or research and development activities conducted at Stellenbosch University, and in compliance with the applicable regulatory and legislative framework.
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Validity:	The English version of this policy is operative version, and the Afrikaans version is the translation.

¹ Policy Owner: Head(s) of Responsibility Centre(s) in which the policy functions

² Policy Curator: Administrative head of the division responsible for the implementation and maintenance of the policy



**PROTECTION AND COMMERCIALISATION OF
INTELLECTUAL PROPERTY POLICY OF STELLENBOSCH
UNIVERSITY**

EFFECTIVE DATE: 1 JANUARY 2023

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Intellectual Property Policy of Stellenbosch University

Reference number of this document	
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PART 1: DEFINITIONS

The following terms must be understood to have the meanings ascribed to below them when used in this document:

STELLENBOSCH UNIVERSITY OR SU

Stellenbosch University or SU encompasses all academic and non-academic faculties, departments and divisions of the university, as well as all units, bureaus, institutes, centres of excellence and other similar groupings established under the auspices of the university.

INTELLECTUAL PROPERTY (IP)

Intellectual Property ("IP") encompasses any creation of the mind that is capable of being protected by statutory or common law from use by another party, including any discovery, invention, plant variety, design, technique, trade secret, concept, data, know-how, methodology, manual, material, composition, model, database, computer program, system, code, artwork, text, music, document, diagram, flowchart, algorithm, formula, table, compilation, calculation, spreadsheet, schematic, plan, drawing, pattern, process and/or other research result, and includes any rights in such creation whether under patent, confidential information, trade secrets, copyrights, design rights or plant breeders' rights or any other similar rights, whether registered or unregistered, but for the purposes of this IPP shall not include any trade mark, domain name, business name, brand, logo or other similar device or mark, whether registered or unregistered.

INTELLECTUAL PROPERTY POLICY (IPP)

Intellectual Property Policy ("IPP") means this policy of SU that governs the disclosure, protection and commercialisation of IP by SU, and in particular as may arise in the course of teaching and learning, SU Consultation and/or R&D activities conducted at SU.

RESEARCH AND DEVELOPMENT (R&D)

Research and Development ("R&D") means creative and systematic work conducted to increase the stock of knowledge, including knowledge of humankind, culture and society, or to devise new applications of available knowledge.

INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY FINANCED RESEARCH AND DEVELOPMENT ACT (IPR ACT)

The Intellectual Property Rights from Publicly Financed Research and Development Act, Act 2008 of 2010 ("IPR Act") is legislation that governs IP created at South African institutions that use public funds for its R&D and, as such, also applies to SU as a higher education and training institution that receives and uses public funds for much of its R&D.

NATIONAL INTELLECTUAL PROPERTY MANAGEMENT OFFICE (NIPMO)

The National Intellectual Property Management Office ("NIPMO") is an office of the Department of Science and Innovation established under the IPR Act and that has oversight over the protection and commercialisation of IP that arises pursuant to publicly financed R&D. SU must report to NIPMO on these activities in compliance with the IPR Act and Regulations.

REGULATIONS

The Regulations encompasses the binding regulations, directives, guidelines and practice notes issued under the IPR Act, whether by the relevant Minister or NIPMO.

INNOVUS TTO

Innovus TTO is the Technology Transfer Office of Innovus, the division of SU responsible for managing, protecting and commercialising SU's IP, liaising with NIPMO and fulfilling the functions and duties of SU in compliance with the IPR Act and Regulations.

STAFF AND STAFF MEMBERS

SU staff and staff members include all individuals contracted to render services to SU, whether academic or non-academic in nature, including all temporary and permanent employees of SU, contract workers of SU, persons seconded to work at SU by other entities, lecturers, research assistants, research chairs and extraordinary and visiting researchers/lecturers of SU as well as all administrative and support personnel of SU.

STUDENTS

SU students include all individuals registered for a qualification or course of study, including on a full time or part time basis, and includes short course participants and exchange students, but does not include students that are co-supervised by SU staff but are not registered at SU for any course of study or qualification.

POST-DOCTORAL FELLOWS (OR POSTDOCS)

Postdoctoral fellows are PhD graduates who receive a grant or stipend to assist them in establishing their academic research careers. They are neither students nor employees of SU but are formally registered and affiliated with SU. They primarily conduct research at SU but can also undertake other academic activities such as lecturing and co-supervision of students under the supervision of a staff member of SU.

IP CONTRIBUTORS

IP Contributors encompass all staff members, post-doctoral fellows and students of SU that have materially contributed to the establishment of IP through creative contribution, including inventors, authors and other creators of such IP, as well as enablers (persons who made no creative contribution to the innovation, but made some other material contribution to enable the innovation and who, by agreement, must share in the benefits derived from it) and other contributors to the development of such IP as may be recognised by the Innovus TTO and agreed to by the creators of the IP. IP Contributors will be expected to agree on their respective contributions and their proportional value for establishing the IP.

FULL COST

Full Cost means that R&D is fully funded from private funds as per the IPR Act and Regulations. The IPR Act does not apply to IP that is created on Full Cost basis as defined in the Regulations to the IPR Act. The precise method for determination of Full Costs is outlined in the *SU Policy for the Costing and Pricing of Research and Research Related Contracts* which policy has been established by SU in order to ensure compliance with the Regulations.

CONSULTATION

During consultation, knowledge is applied creatively and problem solving may take place. The intent of consultation must, however, not be to create substantial new knowledge, but rather to apply existing knowledge. There are two types of consultation, namely SU consultation and private consultation. SU consultation takes place

when a staff member provides consultation services to a third party under a contract concluded between SU and such third party. Private consultation takes place when a staff member who has obtained permission from SU to do private work makes his/her knowledge available to a third party on commission, in exchange for compensation without any use being made of SU's facilities, infrastructure, other staff or students. Private consultation, as opposed to SU consultation, is therefore not done under the auspices of SU, but is contracted for and performed by the staff member in his/her private capacity.

CONTRACT RESEARCH

The intent of contract research is typically to establish new knowledge. Contract research is commissioned by an outside organisation and use of SU's infrastructure may be involved. Other staff and/or students of SU may also be involved in Contract research. Contract research is contracted for and occurs under the auspices of SU and not by the staff member in his/her private capacity.

BACKGROUND IP

Background IP refers to IP that is pre-existing at the commencement of R&D or other creative work and that is used by a Staff Member or Student for the purposes of such R&D or creative work. Consent from the owner of such IP is likely to be required to permit such use, and to enable the commercialisation of any R&D outcomes or work results that incorporate or depend upon the use of such Background IP.

EFFECTIVE DATE

The Effective Date is the date on which this IPP is to take effect, being 1 January 2023 as indicated on the cover page of this IPP.

KNOW-HOW

Knowledge or information that is valuable and not generally known and enables the achievement of a particular commercial, practical or technical result. Know-how is often supplementary to other IP in that it may be required to ensure the successful implementation, use and/or maintenance of such IP. Know-how may be in the form of a methodology, process, practice, technique, model, sequence, specification, architecture, design, protocol, procedure, rule, routine, logic, coherence, method of operation, unpatented invention or business concept.

PART 2: SU POLICY IN RESPECT OF INTELLECTUAL PROPERTY

2.1 INTRODUCTION TO THE POLICY

Stellenbosch University has developed this Intellectual Property Policy in support of SU's core activities in the interest of achieving its vision and strategic goals as defined in its institutional *Vision 2040* and *Strategic Framework 2019-2024*, and its mission to create and sustain, in commitment to the academic ideal of excellent scholarly and scientific practice, an environment within which knowledge can be discovered, can be shared, and can be applied to the benefit of the community. SU is committed to research which may lead to new knowledge, inventions and products, and to unlock the value of its knowledge base to the benefit of SU, IP contributors, and the broader community. The commercialisation of the knowledge base and technology transfer are regarded as an integral part of SU's obligation to use knowledge for the common good. This IPP does not apply to the use or exploitation of SU brands, trade marks, business names, logos or domain names, which is regulated by the *Policy in Respect of the Use and Licensing of Stellenbosch University Trade Marks* and *SU's Brand Identity Manual*.

At SU all internal and external stakeholders are expected to familiarise themselves with this IPP and to ensure that all research and other activities occurring at SU that may give rise to IP are conducted in compliance with this IPP. This IPP is applicable to all campuses of SU, to all its temporary and permanent employees on its payroll, to contract workers, to all registered students, to postdoctoral fellows, and to extraordinary and visiting researchers/lecturers of SU. This policy also has implications for the research clients and research partners of SU.

SU is a higher education and training institution that receives and uses public funds for much of its R&D. Most IP arising from publicly financed R&D is governed by the IPR Act and Regulations and due cognisance was therefore taken of the IPR Act and Regulations in compiling this IPP. SU is required by the IPR Act and Regulations to develop and implement policies for disclosure, identification, protection, development, commercialisation and benefit-sharing arrangements in respect of IP emanating from publicly financed R&D that are to be submitted to NIPMO established under the IPR Act for its approval. This IPP provides for such policies and will, accordingly, be submitted to NIPMO for its approval.

Tertiary institutions are required to maintain an office of technology transfer to fulfil certain functions and duties on behalf of the institution in compliance with the IPR Act. Innovus TTO is the office of technology transfer at SU. Innovus TTO is therefore charged with the responsibility to perform the allocated tasks as office of technology transfer on behalf of SU under the Act, including the ongoing development and management of this IPP and its submission to NIPMO for its approval, to protect the rightful IP interests of SU, its IP contributors and partners, and to make the results of R&D available to the community by means of technology transfer. Innovus TTO has been duly empowered by SU to perform this function. Therefore, the primary goal of Innovus TTO is to implement this IPP in a mutually beneficial partnership with the academic community of SU and to function in compliance with the applicable regulatory and legislative framework.

2.2 APPLICATION OF THE POLICY

2.2.1 GENERAL

This IPP is incorporated into and forms part of the agreements concluded between SU and its staff, post-doctoral fellows and students, including all employment contracts and contracts for services concluded with SU staff and the agreements concluded with post-doctoral fellows and students that register to study at SU. This IPP will take effect on the Effective Date as defined in Part 1 of this IPP. This revised IPP will not have retroactive effect and will therefore not apply to any actions taken or transactions concluded prior to such Effective Date, which will remain subject to the version of this IPP in force at such date.

This IPP is not intended to be comprehensive in all respects, but forms part of SU's integrated management model and must be read in conjunction with the University's other policies including the SU Policy on

Research, the SU Policy on Full Cost and the SU Policy on Short Courses. Specifically, this IPP is intended to stipulate the way in which IP that originates in the SU environment shall be dealt with, and specifically:

- (a) deals with ownership of IP and the commercialisation thereof in Parts 2, 3 and 4 of this IPP; and
- (b) sets out in Parts 5 and 6 of this IPP the way in which SU endeavours to ensure that IP Contributors who are staff, students, postdoctoral fellows and extraordinary and visiting researchers/lecturers of SU obtain a fair share of the income derived from the commercialisation of such IP.

2.2.2 NEW IP

SU maintains procedures, in accordance with Part 3 of its IPP, regarding new IP developed by staff, students, post-doctoral fellows and extraordinary and visiting researchers/lecturers of SU, which would help to ensure that:

- (a) it can be factually established who the IP Contributors are and, if applicable, the proportionate contribution of each such contributor;
- (b) IP is sufficiently developed so as to be ready to qualify for protection under patent or other IP rights;
- (c) due care is taken that the new IP is suitably protected prior to any publication of the results of R&D work;
- (d) due care is taken during the process of protecting the IP, including when registering an invention, and that the academic aim to publish scholarly findings is given thorough consideration;
- (e) in each case a fair division of royalties and of any other income from the invention is made between SU and the inventor(s) in accordance with Part 6 of this IPP; and in compliance with the IPR Act and the Regulations;
- (f) the viability and business potential of IP can be properly evaluated.

2.2.3 CONCEPTS WITH BUSINESS POTENTIAL

SU maintains procedures, in accordance with Part 4 of this IPP, regarding concepts, plans and ideas with business potential that may be brought to the attention of SU by staff, students, postdoctoral fellows and extraordinary and visiting researchers/lecturers which would help to ensure that:

- (a) the viability and commercial potential of such ideas can be properly evaluated;
- (b) due care is taken to keep the contents of such concepts, plans and/or ideas confidential in so far as it is necessary;
- (c) due care is taken that the promotor of an idea is given support, which, among other things, may take the form of training, assistance, advice, mentoring and incubation space, in order to ensure that the knowledge and space exist to develop the enterprise successfully; and
- (d) in each case a fair division of equity, royalties and/or other income from the enterprise is made between SU and the promotor of an idea in accordance with Part 6 of this IPP, taking into account any costs incurred by the relevant parties in respect of the establishment of the enterprise, including a loan account.

2.2.4 RESEARCH AND CONTRACT RESEARCH

In the case of R&D undertaken in collaboration with other organisations, SU requires:

- (a) that the IP of SU and the interests of its staff, students, postdoctoral fellows and extraordinary and visiting researchers/lecturers are fully protected when contracts are concluded with such other organisations; and
- (b) that, in consideration of the above, a written agreement is concluded prior to the commencement of the contract research with such other organisations concerning:

- the rights and obligations of all the parties involved in respect of IP that may emanate from the R&D,
- the utilisation of such IP, including the granting of licences and commercialisation rights, and
- claims to and payment of royalties, as well as any other income derived from such IP.

2.2.5 SHORT COURSES

The *Policy in Respect of the Presentation of Short Courses at Stellenbosch University* deals with the co-ordination and management of, and the distribution of revenue generated in connection with such short courses. The use of SU's trade marks in the promotion or presentation of short courses is also dealt with in this IPP. However, it must be noted that in terms of Paragraph 3.1.2 of this IPP, SU lays claim to the copyright in the course material of short courses and that participants attending SU short courses are considered to be students of SU for the purposes of this IPP and that any IP created by them in the course and scope of attending such short courses will therefore be treated in accordance with paragraph 3.2 of this IPP.

2.2.6 TRADE MARKS

The trade marks of SU (including its logos) have been, and are, registered with the aim of distinguishing, in the course of trade, the services or products of SU from the services or products of its competitors. The use of SU trade marks is briefly addressed in Paragraph 3.6 of this IPP and more comprehensively in the *Policy in Respect of the Use and Licensing of Stellenbosch University Trade Marks*. It must be noted that, other than for Paragraph 3.6, this IPP does not apply to SU trade marks.

2.3 PURPOSE AND AIMS OF THE POLICY

SU recognises that its IP must be used for the benefit of SU, its staff and students and for the broader community. In establishing this IPP, SU, in striving to be a knowledge partner for government, the private sector and society, recognises that its staff must be free to choose and pursue areas of study and research, to share the results of their intellectual efforts with colleagues and peers and to retain the traditional freedom for the conduct of scholarly and scientific work. In addition, it is intended that application of this IPP will take into consideration the principles of open and full disclosure, fairness to the IP Contributors and to SU, and the need for understanding and goodwill among the parties who have an interest in such IP. Finally, this IPP is required for, and seeks to, ensure compliance by SU with the IPR Act and Regulations (including all NIPMO guidelines and practice notes that are issued from time to time) in so far as it pertains to IP emanating from the publicly financed R&D conducted at SU. This IPP therefore has the following specific aims:

- Provide for policy and procedures as required by the IPR Act with respect to IP emanating from publicly financed R&D conducted at SU
- Provide for the duties and functions of Innovus TTO as office of technology transfer for SU in compliance with the IPR Act and Regulations (including any NIPMO guidelines and practice notes)
- Clarify the rights and interests of SU, and its staff, students, the rights of the South African government and NIPMO and other collaborators to IP that arise at SU, including from teaching and learning, SU Short Courses, SU Consultation and R&D activities
- Provide prescripts and procedures for identification, disclosure, protection and maintenance of SU IP
- Provide for prescripts and procedures to protect core academic activities such as teaching, academic publication and further R&D and, where appropriate, facilitate non-commercial and public good use of SU IP
- Provide for prescripts and procedures for commercial negotiation and exploitation of SU IP, whether through assignment, licensing, or spin-out companies
- Provide for arrangements between SU, its staff, post-doctoral fellows, students and other collaborators regarding the sharing of revenue and other benefits arising from the commercial exploitation of SU IP.

2.4 POLICY PRINCIPLES

This IPP seeks to adhere to the following core principles:

1. This IPP must address and ensure compliance with the applicable regulatory and legislative framework set by law, including by the IPR Act and Regulations.
2. This IPP must protect SU's academic activities, including teaching, research and academic publication.
3. This IPP must support and encourage the creation, disclosure, protection and commercial use and exploitation of IP at SU for the benefit of all stakeholders.

2.5 CONFLICT SETTLEMENT

Any dispute regarding the interpretation or application of this IPP must in the first place be notified to the Director: Technology Transfer of Innovus TTO. If such dispute is not resolved within 30 (thirty) days of such notification, such dispute may be referred to the Chief Director: Innovation and Commercialisation of Innovus TTO for resolution, who will notify, the relevant line manager(s) and/or supervisor(s) of the person(s) involved of such referral. If the dispute is not resolved within 30 (thirty) days of such referral, the dispute may be referred to the executive in SU's management that oversees the Innovus TTO who is the Chief Operating Officer of SU and who may involve other officials at SU as he or she may deem appropriate. The Chief Director: Innovation and Commercialisation of the Innovus TTO shall consult and inform the relevant Dean or Responsibility Centre head of the person involved prior to referring such dispute to the Chief Operating Officer of SU.

2.6 CUSTODIANSHIP OF POLICY

Innovus TTO is the custodian of this IPP, and accordingly -

- Innovus TTO is responsible for the formulation, approval, reviewing, communication and monitoring of the IPP, which shall include obtaining the approval thereof by NIPMO to the extent required by the IPR Act.
- Innovus TTO has a delegated responsibility for the implementation and general management of the IPP and for liaising with and reporting to NIPMO to the extent required by the IPR Act and Regulations.
- Any breaches of or non-compliance with the IPP must be reported to Innovus TTO and SU's Audit and Risk Committee.
- Instances of non-compliance with the IPP will be addressed in consultation with Innovus TTO within the normal lines of management in terms of the disciplinary policies and procedures applicable to SU's staff and/or students.

2.7 FORMS AND OTHER SUPPORTING DOCUMENTS

Supporting documents referred to in this IPP are listed in the Schedule to this IPP and may be obtained from the website of the Innovus TTO at www.innovus.co.za or by sending an email to forms@sun.ac.za.

PART 3: OWNERSHIP OF INTELLECTUAL PROPERTY

3.1 STAFF

3.1.1 GENERAL

All staff must note that ownership of IP created by them in the course and scope of their duties and obligations, vests in SU. Parts 3, 4 and 5 of this IPP describe the process through which SU ensures that its staff members may participate in the commercialisation of such IP and that they obtain a fair share of the proceeds derived from the commercial use of such IP.

3.1.2 PROVISIONS IN RESPECT OF COPYRIGHT.

Copyright works that arise in the context of SU's publicly financed R&D will vest in SU in terms of the IPR Act. The ownership of all copyright of employees of SU in respect of other works created by them in the course and scope of their duties vests in SU in terms of Section 21(1) (d) of the Copyright Act. To the extent that such rights cannot be transferred to SU, employees will not assert and will waive all of their own rights (including all moral rights) in favour of SU. In accordance with paragraph 3.1.8 of this IPP, contract workers are also obliged to assign and transfer to SU their copyright in any other works that may originate during the execution of their contractual obligations.

3.1.2.1 Identification of copyright works

To the extent practically possible, all course material, cinematograph films, sound recordings, published editions and computer programs (software)) created by staff of SU in the execution of their duties must be identified as follows:

Copyright © [insert year], Stellenbosch University
All rights reserved

or

Kopiereg © [vul jaartal in], Universiteit Stellenbosch
Alle regte voorbehou

The year included in the declaration is the year in which copies of the work are first made available to students or members of the public, or the work is otherwise published, for the first time. If a substantially newer version or edition of the work is subsequently published, the date of first publication of any previous editions also must be reflected.

3.1.2.2 Course material

All course-related materials created by staff of SU in the normal course and scope of their duties, including their tuition, research and community-interaction functions, shall, unless otherwise agreed, be deemed to be works originating within the scope of the staff members' employment obligations. These include works that are created in the performance of a staff member's normal duties, or in the execution of specific tuition, research or community-interaction projects assigned to the staff member by SU. Such works shall include, *inter alia*, the following: all course material, material placed on electronic Learner Management Systems and SU's secure cloud-based storage, class notes, test and examination papers, short course materials and all other material for use in contact, blended and fully online education and informal and non-formal tuition functions, e.g. community education, as well as software, databases, and video and multimedia material developed by the staff member for tuition purposes.

A staff member who leaves the employ of SU must, prior to his or her departure, provide a copy of all tuition material developed by him/her in the course of his/her employment to his/her Departmental Chairperson or such other designated person in the faculty as may be designated for such purpose by the vice-dean (teaching and learning). Provided that all references to SU are removed, a former staff member shall not be prevented by SU from using tuition material created by him/her for normal tuition purposes at other institutions.

Staff members may also include course material prepared by themselves into other works they may create such as textbooks. However, if a staff member wants to prescribe such works (e.g. text books) to SU students for purchase in respect of courses provided at SU, such staff member must obtain the prior approval thereto from his/her Dean.

Staff members that propose to include non-SU copyright materials into course-related materials must do so in compliance with the *SU General Copyright Guidelines under the provisions of SU's Blanket Licence Agreement* issued and administered by the Innovus: Copyright; Trade Marks and Short Courses Division. Staff members may approach the Innovus: Copyright; Trade Marks and Short Courses Division to assist them to obtain the necessary licenses to enable the use of such copyright materials.

3.1.2.3 Software and Multimedia

Copyright in computer programs, databases, films and videos, sound recordings, broadcasts and multimedia material developed by staff members in the performance of their duties will vest in SU, but SU may agree to alternative arrangements in appropriate circumstances. A staff member who leaves the employ of SU must, prior to his or her departure, provide a copy of all such material developed by him/her in the performance of his duties to his/her Departmental Chairperson.

Personnel are also expected to retain copies of all design and reference materials pertaining to the development of software. Copyright in such materials will vest in SU, but SU may agree to alternative arrangements in appropriate circumstances. Personnel must treat such materials as well as the code of the programs that may arise in the course of their research as confidential, and must make such materials and code available only to duly authorised personnel of SU upon request. Reference materials and program code that are developed solely for the purposes of demonstration to students may, however, be made available freely to such students. Such material and code will form part of course material which is dealt with above.

Applications for alternative arrangements regarding the copyright works mentioned hereunder must be made in writing to Innovus TTO.

Personnel must also be aware that although computer programs are protected by copyright and are usually not patentable, this does not necessarily apply if the computer program has a novel technical application, in which case the computer program may also be patentable.

3.1.2.4 Open Source Software

Notwithstanding the SU's claim to ownership of software that is created by its staff, SU supports and promotes the creation and participation in the creation of open-source software.

Staff members may, accordingly, elect to publish software created by them or under their supervision under open-source licenses with the exception of the following types of software:

- Category 1: Software for which NIPMO approval is required prior to publication,

- Category 2: Software that discloses a patentable invention or other form of protectable IP referred to in paragraph 4.2 below, and
- Category 3: Software that has significant commercial value or commercialisation potential,

With respect to Category 1: NIPMO approval is required for public disclosure of software that arises pursuant to fundamental research in the form of systematic investigative or experimental development activity where the result of such activity is unknown or uncertain such as:

- The development of a new operating system or language
- The design and implementation of a new search engine based on original technologies
- The resolution of a conflict within hardware or software based on the process of re-engineering a system or network
- The creation of a new or more efficient algorithm based on a new technique (i.e. a previously unknown and unpublished technique)
- The creation of a new and original encryption or security technique

Staff members are required to assess software developed by them or under their supervision prior to public disclosure thereof to determine whether such software falls within Categories 1, 2 or 3 set out above. SU accepts that minor changes made using standard existing programming techniques to publicly available code obtained from an open source platform will in all likelihood not fall within any of these Categories.

Software that does fall within such a Category must be disclosed to Innovus TTO in the prescribed manner prior to public disclosure and the Staff member must agree with Innovus TTO the manner and terms for public disclosure thereof. Innovus TTO shall be responsible to apply for any regulatory approvals as may be required for such public disclosure and for taking the necessary steps, in the discretion of the Innovus TTO, to protect the underlying IP in the software involved prior to such public disclosure.

Public disclosure of source code for the purposes of demonstration to students in the course of conventional academic teaching activities need not be notified to the Innovus TTO. Such source code will form part of course material which is dealt with above.

If and to the extent that Staff members make use of any existing open-source software for development activity they must familiarise themselves with the licence conditions applicable to the use of such open-source software and comply with such conditions. Innovus TTO may publish a list of open-source licences that pose a risk to software development and Staff members that propose to use source code obtained under such high-risk open source licences to develop software that falls within one of the restricted categories set out above must contact Innovus TTO in advance before incorporating such source code into the software.

3.1.2.5 Scholarly Works and Artworks

Income from the categories of work listed below is usually not claimed by SU, even if the creation of the work in question falls within the scope of a staff member's duties.

- Artistic works of a purely aesthetic nature (e.g. paintings) but excluding artistic works of a functional nature such as design materials (e.g. flow charts, circuit diagrams and design drawings)
- Literary works (e.g. volumes of poetry, articles or books), but excluding course material and literary works of a predominantly functional nature such as databases and design material
- Musical works (compositions), performances of musical works and recordings thereof

Such works (e.g. textbooks) may, however, only be prescribed to SU students for purchase in respect of courses provided at SU by a staff member if approved by his/her Dean, or the appropriate faculty committee to which the Dean has delegated this responsibility.

Copyright in academic textbooks and academic articles written by SU staff will remain vested in such staff, provided that SU is suitably acknowledged in the publication thereof. The form of such acknowledgements may be prescribed by SU.

For the other works described above, staff members must contact the Innovus: Copyright; Trade Marks and Short Courses Division and make sure that their intended publications would be dealt with in this way before they proceed with the publishing of any such work. Provided that it is legally capable thereto, and unless otherwise notified by SU, staff members will be granted the copyright ownership or usage rights of and be entitled to the income from these types of works (except for the excluded works described above in respect of which SU does claim the copyright). In this regard, staff members must note that only copyright works associated with conventional academic work are excluded from the provisions of the IPR Act, which requires that NIPMO be given first option to acquire the IP in works emanating from publicly financed R&D if such IP is not claimed by SU.

All transactions by staff members in respect of copyright works owned by them (e.g. with publishers) must be concluded in their own name and will be for the account and responsibility of such staff members only unless otherwise agreed with SU. Staff members may use duly allocated funds available to them via SU cost points for this purpose.

If SU staff wish to include copyright materials owned by SU in such copyright works (e.g. in an academic publication), it must obtain prior written approval from SU for such inclusion. Staff may engage with the Division of Research Development to obtain approval for the publication of academic articles that involve copyright materials owned by SU.

With respect to all other types of works, including academic textbooks, staff may engage with the Innovus: Copyright; Trade Marks and Short Courses Division to obtain approval for the inclusion of copyright materials owned by SU. If and to the extent that SU agrees, at the request of a staff member, to become directly involved in any transaction for the publication of a copyright work that is not wholly owned by SU, such staff member must be able to provide and agrees to provide and grant to SU all the necessary rights to enable SU to fulfil its obligations with respect to such transaction.

3.1.3 PROVISIONS IN RESPECT OF INVENTIONS, DESIGNS, PLANT BREEDER'S RIGHTS AND KNOW-HOW

The staff of SU (including employees and contract workers) must note that all rights, interest and title in any invention, plant breeder's right, design, trade secret and related Know-how, whether registerable or not, created by such staff members of SU in the normal scope and course of their duties and obligations to SU, vest in SU, and in so far as these do not vest by law, staff members assign and shall assign and transfer such rights and interests to SU. Unless otherwise agreed, this shall include all rights, title and interest in inventions, plant varieties, designs, trade secrets and related Know-how developed by the staff members in the field of specialisation in which the said staff members have been appointed at SU.

The above assignment and transfer shall include all rights, title and interest in any inventions, designs or plant varieties developed by the staff member during the fulfilment of his/her duties and obligations notwithstanding that an application for registration of a patent, design or plant breeder's right is only filed after termination of the staff member's relationship with SU.

All inventions, plant breeder's rights, designs, trade secrets and related Know-how developed by a staff member during the period that he/she renders services for SU and that relate to the field of specialisation

in which the staff member has been appointed at SU, shall be deemed (i) to have emanated from SU's publicly financed R&D, unless the staff member can demonstrate that such IP arose pursuant to non-publicly financed R&D that was contracted for and conducted on a Full Cost basis as per paragraph 3.1.4 below, and (ii) to have been developed in the course and scope of his/her duties for SU, unless the staff member can prove the contrary on the basis of an agreement, logbook or suchlike evidential material. Any such invention, plant breeder's right, design, trade secret and related Know-how that is disclosed within 12 months of his/her leaving SU's employ shall also be deemed to have emanated from SU's publicly financed R&D and to have been developed in the course and scope of his/her duties for SU, unless the staff member can prove the contrary on the basis of an agreement, logbook or suchlike evidential material.

3.1.4 RESEARCH, CONTRACT RESEARCH AND SU CONSULTATION

Research is highly valued as one of the key functions of the academic staff members of SU. The nature of the research may be either very fundamental or else of a more applied nature. In case of fundamental research, the potential commercial value may not be evident at the early stages of the investigations. Therefore, all researchers need to be mindful of the potential value of their IP in interaction with fellow researchers or business associates. The intention is not to inhibit scholarly academic contact and collaboration or participation in conferences and meetings, but to sensitise researchers to the fact that premature and unprotected disclosures of research results may lead to the loss of recognition, IP protection and the exploitation of opportunities.

Staff of SU who visit other educational institutions or other organisations with a view to discussing research ideas with them that may lead to the creation of IP, or who conduct research elsewhere during research leave, must ensure that appropriate agreements regarding IP rights are concluded prior to the visit. Staff must contact the Division of Research Development to assist in this regard.

In a similar manner, staff members who are approached by outside organisations to conduct research or consultation work for such bodies under the auspices of SU or utilising SU resources, regardless of the place where the work is done, must ensure that appropriate contracts with SU are put in place. Such agreements must be approved by SU in advance, and in accordance with the procedures prescribed by the *SU Contract Research Policy* or *SU Consultation Work Policy* and this IPP. The Division for Research Development: Research Contracts will assist staff members in this process. Innovus TTO, in conjunction with the Division for Research Development, is available to assist staff negotiating the intellectual property and commercialisation clauses of such contracts. Contract Research and SU Consultation shall be deemed to be part of SU's publicly financed R&D and to fall within the normal execution of the staff member's duties for SU, and the IP that may be created as a result of such contract research shall therefore vest in SU, except to the extent otherwise agreed with the outside organisations, subject to the applicable law.

IP rights – Full Cost

SU shall give reasonable consideration to any requests from the outside organisation regarding ownership of IP rights emanating from R&D or SU Consultation work, provided that the R&D or SU Consultation is conducted on a Full Cost basis as prescribed by the *SU Policy for the Costing and Pricing of Research and Research Related Contracts*. The extent of the contributions of the outside organisation to the R&D will be determinative, including its financing of the R&D, its provision of facilities or equipment, its contribution of background IP, its participation in the actual R&D efforts and in the commercialisation thereof. In the case of Full Cost projects, the IPR Act does not apply, but this IPP remains applicable and the licensing of any SU Background IP to an outside organisation in connection with such Full Cost project, in particular, must be approved by Innovus TTO, working in conjunction with the Division for Research Development. Innovus TTO in consultation with the Division for Research Development may establish procedures and guidelines to facilitate and streamline such approval processes.

IP rights – not Full Cost

When research contracts are not concluded on a Full Cost basis, SU must take into account the applicable regulatory and legislative framework, including as it may pertain to SU's publicly financed R&D. In addition, any assignment to, or sharing with, the outside organisation of IP rights that may emanate from such Contract Research that are not concluded on a Full Cost basis or jointly developed, must be approved by Innovus TTO, working in conjunction with the Division for Research Development, and NIPMO beforehand and signed by the designated person from SU. Innovus TTO in consultation with the Division for Research Development may establish procedures and guidelines to facilitate and streamline such approval processes.

Background IP

Where a staff member of SU is requested by an outside organisation to conduct a study in which Background IP (as defined in Part 1 of this IPP), which does not belong to SU, has to be further developed or where a problem relating to it has to be solved, SU's ownership rights shall be limited to the IP in the improvements, enhancements and alterations to the Background IP arising during the investigation or R&D and any patents, plant breeder's rights, designs and copyrights that may arise regarding such improvements, enhancements and alterations. In all such cases, the relevant staff member is required to notify Innovus TTO promptly of the use of and dependency on the relevant Background IP in order to ensure the parties' respective rights in and to the IP arising from the R&D can be clarified in the applicable written contract.

3.1.5 GOVERNMENT RIGHTS

Staff must also note the rights of the South African government in respect of IP emanating from all publicly financed R&D that is contained in the IPR Act and Regulations. SU must comply with this regulatory and legislative framework. This regulatory and legislative framework does not apply to copyright works associated with conventional academic work or IP emanating from R&D if the Full Cost (as defined in the *SU Policy for the Costing and Pricing of Research and Research Related Contracts*) of the R&D is funded by an outside person or entity. Innovus TTO will assist staff in determining whether or not the regulatory and legislative framework is applicable to R&D, but staff members must generally assume that it will be until the R&D project has been certified by the designated person from SU to be in compliance with the *SU Policy for the Costing and Pricing of Research and Research Related Contracts*.

SU must regularly report to NIPMO in respect of IP created and commercialised from publicly financed R&D by SU and staff members. Failing this NIPMO may demand the transfer of undisclosed IP to it. Staff members and outside organisations involved in research contracts will be required to consent to such disclosures. NIPMO is under statutory obligation to hold such disclosed information in confidence.

Generally, NIPMO also has the first option to step in and acquire ownership of IP emanating from publicly financed R&D if SU declines to retain such ownership or to seek statutory protection in respect thereof. It is only if NIPMO declines to acquire ownership of such IP that SU will be able to offer, firstly, any relevant outside organisation and, secondly, the relevant staff member the opportunity to acquire the IP. Again, this does not apply to R&D in respect of which the outside organisation carried the Full Cost or to copyright works associated with conventional academic work.

3.1.6 PRIVATE CONSULTATION WORK

In order to interpret paragraphs 3.1.4, 3.1.5, and 3.1.6 correctly, a distinction is made between Private Consultation and SU Consultation, and Contract Research, as defined in Part 1 of this IPP. SU Consultation and Contract Research are both done at the behest of SU under a contract between SU and a third party, whereas Private Consultation work is done by a staff member in his/her private capacity without the involvement of SU. Private Consultation work must be conducted in accordance with SU's *General Procedure for Private Work* of November 2006 and SU's *Consultation Work Policy* and in collaboration with the Conflicts of Interest Committee and Policy, as the case may be.

The product of Private Consultation work, whether a report, an opinion, or any other form of product or service, may be delivered by a staff member of SU to an outside organisation inclusive of the copyright on the product, subject thereto that no confidential information of SU may be disclosed without SU's prior written consent. SU's confidential information would include the R&D results obtained by staff during the execution of their duties for SU. The reason for this requirement is that SU would like to prevent the rights to academic publication of SU and its staff from being prejudiced and SU may take any reasonable steps to prevent such prejudice. SU, however, typically retains the copyright on the raw data created during R&D in order to, *inter alia*, encourage further research. Staff members of SU therefore assign to SU the copyright and any other rights that may vest in such raw data, unless otherwise agreed with SU.

Other forms of private work that do not fall within the definition of Private Consultation shall be deemed to be Contract Research, unless otherwise agreed beforehand, and shall be dealt with in terms of paragraph 3.1.4.

3.1.7 IP THAT VESTS IN EMPLOYED STAFF OF SU

Any staff member claiming that ownership of IP vests in him- or herself, must reasonably prove to SU that such IP has not emanated in any way from publicly financed R&D and has been created outside the normal course and scope of his or her duties. SU shall take into account whether or not the IP originated in the course of Private Consultation work, whether, or not, use was made of SU's infrastructure, the staff member's academic title or rank, and/or his or her employment relationship with SU. If staff members wish to utilise commercially the IP that vests in them, InnovUS may assist them in this regard, at a market-related rate.

3.1.8 CONTRACT WORKERS

Persons who are appointed on a contract basis by SU are included under the terms "staff" and "staff members" as used in this IPP, and are therefore subject to the same conditions regarding IP rights that apply to the employees of SU, unless the contrary has been explicitly agreed. To the extent that IP created by contract workers in the execution of their duties for SU does not vest in SU by law, such contract worker must assign and transfers and assigns his/her full rights, title and interest in respect of such IP hereunder, including in and to inventions, designs, plant breeder's rights, knowledge and copyright works to SU, and to the extent that such rights cannot be transferred to SU, contract workers will grant SU unlimited exclusive rights to use and enforce the IP as if owner thereof and will not assert and will waive all of its own rights in favour of SU. For the avoidance of doubt, a provision to this effect will be included in all written contracts concluded with contract workers.

Unless otherwise agreed with contract workers, the relationship between SU and such contract workers shall be governed by a written contract that shall provide for, amongst others, the following:

- Undertaking to assign and assignment to SU of IP rights that do not by law vest in SU
- and confirmation that SU shall be solely and exclusively entitled to use, exploit and enforce such IP without any limitation or restriction;
- Waiver of moral rights in respect of copyright works;
- Undertaking to re-assign and re-assigning copyright to the extent that initial or any subsequent assignment of copyright may be time-limited under applicable law.

Each contract worker must complete a Innovus TTO disclosure form in respect of any such IP developed in the course of his or her contract work.

SU shall compensate contract workers in respect of revenue earned from IP rights on the same basis as applicable to employees of SU, in accordance with Part 5 of this Policy.

3.1.9 JOINT STAFF ESTABLISHMENT

The ownership of IP of staff who are on a joint staff establishment of SU and an outside organisation shall be determined in accordance with the agreement between SU and that outside organisation, subject to applicable laws, including as they may apply to publicly financed R&D work. Unless otherwise stipulated in such agreement, all IP created by a staff member in the course of the performance of its duties for SU will vest in SU and shall be subject to this IPP.

3.2 STUDENTS

3.2.1 GENERAL

Students of SU make use of its infrastructure, do their work in the course of their studies to obtain a qualification, and their work is supported and guided by staff of SU. All IP that may emanate from work conducted by students in the course of their studies, irrespective of whether it is submitted to SU or not, will thus be deemed to arise in the context of SU's publicly financed R&D and as such will vest in SU. This will include copyright, patent rights, plant breeder's rights, design rights and all related Know-how. To the extent that such IP does not vest in SU by law, students assign such IP to SU. Such assignment takes place pursuant to and as part of the registration process. The aforesaid allocation of IP may in certain circumstances be changed by written agreement between the student and SU. Such agreement will be subject to all applicable laws, including as they may apply to SU's publicly financed R&D. Students may approach Innovus TTO to discuss such alternative terms.

3.2.2 PROVISIONS IN RESPECT OF COPYRIGHT

- **Study Related Materials**

Students agree to assign and assign to SU their copyrights in all works that may be created in the course of the execution of their study obligations (including all research conducted as part of such studies) and to the extent that such rights cannot be transferred to SU, SU shall be solely and exclusively entitled to use, exploit and enforce such rights without any limitation or restriction as if owner thereof. Students also agree to re-assign and again assign such copyright hereunder to the extent that the initial or any subsequent assignment of copyright may be time-limited under applicable law. Students also waive their moral rights in such works in favour of SU. These include, *inter alia*, all presentations, assignments, test and examination scripts, class notes, summaries, posters, papers, dissertations, theses, sound recordings, video recordings, software, databases, designs and models developed by students in the course of their studies. In this regard, the requirements of the SU yearbook regarding the insertion of copyright notices and authorship declarations into academic materials, such as dissertations and theses, must be complied with. SU may decide in certain cases to assign ownership of the whole or part of the copyright to the student, or may authorise him or her otherwise to utilise the work commercially or otherwise. Students may approach the Innovus: Copyright, Trade Marks and Short Courses Division to request such authorisation.

SU students are encouraged to share and discuss their class notes and summaries, test and exam papers and other similar study materials with each other. However, students must note that SU does not permit the distribution by students of SU study materials outside of his/her SU learning environment, whether via electronic platform or otherwise, and irrespective of whether such distribution is done for commercial gain or not. Unauthorised distribution and use of SU study materials by students is strictly prohibited.

- **Artworks**

Income from the categories of work listed below is usually not claimed by SU, even if the creation of the work in question is created pursuant to a student's studies.

- Artistic works of a purely aesthetic nature (e.g. paintings) but excluding artistic works of a predominantly functional nature such as design materials (e.g. flow charts, circuit diagrams and design drawings)

- Literary works (e.g. volumes of poetry, articles or books), but excluding course material and literary works of a predominantly functional nature such as databases and design material
- Musical works (compositions), performances of musical works and recordings thereof

Students must contact the Innovus: Copyright, Trade Marks and Short Courses Division (or in the case of academic articles, the SU Division of Research and Development) to make sure that their intended publications would be dealt with in this way before they proceed with the publishing of any such work. Provided that it is legally capable thereto, and save to the extent otherwise notified by SU, students will be granted the copyright ownership or usage rights of and be entitled to the income from these types of works (except for the excluded works described above in respect of which SU does claim the copyright). In this regard, students must note that only copyright works associated with conventional academic work are excluded from the provisions of the IPR Act, which requires that NIPMO be given first option to acquire the IP in works emanating from publicly financed R&D if such IP is not claimed by SU. All transactions by students in respect of copyright works owned by them (e.g. with publishers) must be concluded in their own name and will be for the account and responsibility of such students only, unless otherwise agreed with SU. If and to the extent that SU agrees to become involved in the publication of such a copyright work, such student must be able to provide and agrees to provide and grant to SU all the necessary rights to enable SU to fulfil its obligations with respect to such publication.

- **Software**

Students are expected to retain copies of all design and reference materials pertaining to the development of software that may arise in the course of their studies at SU. Students must treat such materials as well as the code of the program as confidential, and must make such materials available only to duly authorised personnel of SU upon request. Reference materials and program code that are developed by such students during their participation in conventional academic teaching activities may, however, also be made available freely to their lecturers and other participating students.

Students must also be aware that although computer programs are protected by copyright and are usually not patentable, this does not necessarily apply if the computer program has a novel technical application, in which case a computer program may also be patentable. If the student is unsure hereof, he/she must contact Innovus TTO in this regard.

Notwithstanding SU's claim to ownership of software that is created by its students, SU supports and promotes the creation and participation in the creation of open-source software.

In this regard students must note that SU requires regulatory approval for the open-source public disclosure of certain types of software created at SU. Students that develop software during research conducted at SU are accordingly required to consult their supervisor prior to the public disclosure thereof and provide such information as may be required to assess the proposed public disclosure. Students developing source code in the course of conventional academic activities will not be required to consult with their supervisor prior to the public disclosure thereof.

If and to the extent that students make use of any existing open-source software in the course of their studies or research at SU they must familiarise themselves with the licence conditions applicable to the use of such open-source software and comply with such conditions. Innovus TTO may publish a list of the open-source licences that poses a risk to software development at SU and students proposing to use source code obtained under such licences for research activities at SU must obtain approval from their supervisor before using such source code.

3.2.3 PROVISIONS IN RESPECT OF INVENTIONS, DESIGNS, PLANT BREEDER'S RIGHTS AND KNOW-HOW

It is brought to the notice of students of SU that all rights, interest and title in any invention, plant breeder's right, design, trade secret and related Know-how, whether registerable or not, created by such student in the course of his/her studies and/or research at or for SU, vest in SU by law under the IPR Act and in so far as these do not so vest by law, students assign such rights, title and interest to SU. Unless otherwise agreed, this shall include all rights, title and interest to inventions, plant varieties, designs, trade secrets and related Know-how developed by the student in the field of specialisation in which the said student has been studying at SU during the term of such studies.

The above assignments shall include all rights, title and interest in any inventions, designs or plant varieties developed by the student during his/her studies and for which an application for registration of a patent, design or plant breeder's right is filed after termination of his/her relationship with SU.

All inventions, plant varieties, designs, trade secrets and related Know-how developed by a student during the period that he/she studies at SU and that relate to the field of specialisation in which the student studies at SU, shall be deemed (i) to have emanated from SU's publicly financed R&D, unless the student can demonstrate that such IP arose pursuant to privately funded R&D contracted for by SU and conducted on a Full Cost basis; and (ii) to have been developed in the execution of his/her duties for SU, unless the student can prove the contrary on the basis of an agreement, logbook or suchlike evidential material. Any such invention, plant variety, design, trade secret and related Know-how that is disclosed within 12 months of his/her leaving SU shall also be deemed to have emanated from SU's publicly financed R&D and to have been developed in the course and scope of his/her studies at SU, unless the student can prove the contrary on the basis of an agreement, logbook or suchlike evidential material.

3.2.4 OUTSIDE ORGANISATIONS THAT PROVIDE BURSARIES

Where outside organisations provide scholarships or bursaries to students to attend SU, and require rights in respect of the IP emanating from the studies or research undertaken by the relevant students, such organisation must approach the Division for Research Development (acting in consultation with Innovus TTO) to discuss the granting of such rights. Students may not grant such rights directly to any outside organisation. The outside organisation will be required to agree contractually in advance with SU about the ownership and exploitation of IP that may emanate from the student's studies or research at or for SU. Such agreements will be subject to any applicable regulatory and legislative framework, including as it may pertain to SU's publicly financed R&D. It is the student's responsibility to assist in establishing such an agreement.

In particular, it must be noted by students and sponsoring organisations that a scholarship or bursary paid to a student or to SU on behalf of a student to cover the student's fees to attend SU (such as accommodation and tuition fees) does not cover the Full Cost of the student's studies or research. Such studies and research will also be subsidised from public funds and, consequently, the IP emanating in the context of such studies and research will vest in SU by law. Any independent transfer or grant of IP rights by the student in respect of such IP will thus be invalid and unenforceable.

Students shall share in the financial rewards resulting from the commercial application of IP created by them in the same way as staff of SU, as set out in Part 5 of this Policy unless otherwise agreed in writing between SU and such student.

3.2.5 IP THAT VESTS IN STUDENTS

If a student claims that ownership of IP vests in him- or herself, he/she must reasonably prove to the Chief Director: Innovation and Commercialisation at Innovus TTO that such IP has not been created in the course

and scope of his or her studies or pursuant to research conducted at or for SU. If students wish to commercially utilise any such IP vested in them, it is strongly recommended that they contact the Innovus TTO for advice and assistance.

3.2.6 PROVISION FOR BACKGROUND IP

In the event where a student intends to submit an assignment or thesis (e.g. for an honour's or master's degree) or a dissertation (for a doctorate) that contains Background IP in respect of which an outside entity holds rights (notwithstanding that it may have been developed by him/ her), such as IP previously developed by him/her under contract with an outside organisation (including as an employee or consultant), such student must disclose this to SU prior to registration or as soon as possible after he/she has become aware thereof. SU will not be obliged in any way to accept such inclusion. In this regard, see also paragraph 3.2.1 above.

The student will be required to disclose the extent of the rights of the outside organisation in the Background IP and will be required to obtain such consent as may be required by SU to include such Background IP into the materials being submitted to SU. SU may elect to negotiate an agreement pertaining to the Background IP disclosed in or related to the student's assignment/thesis/dissertation with the relevant outside organisation. In this regard it must be noted that SU will be the sole owner of the copyright in the assignment/thesis/dissertation that is submitted to it notwithstanding the inclusion of Background IP therein. Furthermore, SU will be the sole owner of the IP in any improvement, enhancement or alteration to the Background IP emanating from the student's work.

Furthermore, SU will require the right to publish the content of the submitted materials as soon as reasonably possible. SU may in exceptional circumstances agree to delay such publication, but it is University policy not to keep any assignment/thesis/dissertation confidential for a period of longer than three years. Unless otherwise agreed in writing, SU thus reserves the right to publish any assignment/thesis/dissertation submitted to it in any way it deems fit.

3.2.7 ASSIGNMENTS, DISSERTATIONS AND THESES

According to paragraph 3.2.2, SU holds the copyright of the assignment/thesis/dissertation and may publish the assignment/thesis/dissertation as it deems fit, including in paper or electronic format. Students, and in particular post-graduate students, must treat their assignments, dissertations and theses as confidential prior to their publication. Students are encouraged to publish the assignment/thesis/ dissertation or a derivative version thereof or to have it published in a journal or as part of a book, provided he/she complies with the remainder of the terms of this policy prior to making such publication, including in particular paragraph 4.3 hereof, as it applies to the disclosures of inventions, designs and new plant varieties to the Innovus TTO. Students must obtain prior written approval from SU prior to making such publications. Students must obtain prior written approval from their supervisor for purposes of publication of articles in accredited academic journals, chapters in peer reviewed books or as part of the proceedings of an academic conference. With respect to all other types of publications, including academic textbooks, students must engage with the Innovus: Copyright; Trade Marks and Short Courses Division to obtain such prior written approval. Students and their supervisors must ensure that disclosures of all inventions, novel designs and new plant varieties are made prior to publication to enable the Innovus TTO to apply for registerable rights with respect thereto as mandated by the IPR Act.

In such articles in accredited academic journals or proceedings of an academic conference recognised for this purpose by SU, students must acknowledge that the research contained therein was performed at SU. The form of such acknowledgements may be prescribed by SU.

SU may, in accordance with Sections 5 and 6 of this IPP, commercially exploit patents, plant breeders' rights and designs and related Know-how emanating from a student's assignment/ thesis/dissertation.

3.2.8 GOVERNMENT RIGHTS

Students must also note the rights of the South African Government in respect of IP emanating from all publicly financed R&D that is contained in the IPR Act and Regulations. This regulatory and legislative framework do not apply to copyright works associated with conventional academic work or IP emanating from research if the Full Cost (as defined in Part 1 of this IPP) of the research is funded by an outside person or entity. Innovus TTO will assist students in determining whether or not the regulatory and legislative framework is applicable to the specific research, but a student must generally assume that it will be until Innovus TTO notifies him/her to the contrary.

SU must regularly report to NIPMO in respect of IP created by SU staff members and students, failing which NIPMO may demand the transfer of undisclosed IP to it. Students and outside organisations involved in research contracts are required to consent to such disclosures. NIPMO is under statutory obligation to hold such disclosed information in confidence.

Generally, NIPMO also has the first option to step in and acquire ownership of IP emanating from publicly financed research if SU declines to retain such ownership or to seek statutory protection in respect thereof. It is only if NIPMO declines to acquire ownership of such IP that SU will be able to offer, firstly, any relevant outside organisation and, secondly, the relevant student the opportunity to acquire the IP. Again, this does not apply to research in respect of which the outside organisation carried the Full Cost.

3.3 EXTRAORDINARY RESEARCHERS AND LECTURERS AND POST-DOCTORAL FELLOWS

The terms of paragraph 3.1 of this Policy pertaining to University staff will apply *mutatis mutandis* to post-doctoral fellows and extraordinary researchers and lecturers who attend SU regarding the IP created in the course and scope of their attendance at SU unless otherwise agreed. Post-doctoral fellows and extraordinary researchers and lecturers will be required to comply with the terms of this policy. They acknowledge that, if they, during their stay at SU, become involved in any research project of SU that may result in the creation of IP, such IP will vest in SU must the IP have emanated from SU's publicly financed R&D. To the extent that such IP does not vest in SU by law, the post-doctoral fellows and extraordinary researchers and lecturers agree to transfer and assign, and assign such IP to SU hereunder and, to the extent that such rights cannot be transferred to SU, they will not assert and will waive all of their own rights (including moral rights) in favour of SU and SU shall be solely and exclusively entitled to use, exploit and enforce such rights without any limitation or restriction as if owner thereof. Post-doctoral fellows and extraordinary researchers and lecturers also agree to re-assign and again assign any copyright involved in such IP hereunder to the extent that the initial or any subsequent assignment thereof may be time-limited under applicable law.

SU only claims IP of post-doctoral fellows and extraordinary researchers and lecturers that originated or was created in the course and scope of fulfilling their duties for SU during their attendance at SU or that was derived at a later stage from such IP or from IP made available to them by SU during such visit. SU shall compensate post-doctoral fellows and extraordinary researchers and lecturers in respect of income earned from IP rights on the same basis as applicable to staff of SU, in accordance with Part 5 of this Policy.

3.4 VISITING RESEARCHERS AND LECTURERS

Visiting researchers and lecturers may be required, prior to their visit, to undertake to keep confidential any confidential information which may come to their attention during their visit to SU, and not to use it otherwise than as may be permitted by SU.

Visiting lecturers must accept that all tuition materials made available by them to SU students, including any course material, class notes, and test and examination papers, may be reproduced and distributed by SU to all staff members and students involved in the relevant course of study and to all persons involved in the

administration, accreditation or oversight of such course of study. Visiting lecturers may be required to provide a copy of all such tuition material to the staff member of SU responsible for overseeing such course of study.

Visiting researchers accept that all IP developed in course of research conducted at SU vest in SU. If a visiting researcher elect to become involved in a research project of SU, such visiting researcher accepts that he or she may be required to assign IP contributed by them in the course of such research project to SU.

SU shall compensate visiting researchers in respect of income earned from IP contributed by them on the same basis as applicable to staff of SU, in accordance with Part 5 of this Policy.

3.5 OUTSIDE ORGANISATIONS

The granting of a scholarship or bursary to students or the provision of financial support for research by an outside organisation does not imply that the relevant organisation has any claim to the IP rights that may emanate from such funding. The IP rights emanating from all SU's publicly financed R&D, as well as research that is partly funded by outside organisations will vest in SU, save in the event where the IP is jointly developed with an outside organisation's researchers, in which event the IP will typically be co-owned with such outside organisation.

If an outside organisation wishes to acquire rights in or share in the commercial exploitation of IP created at or for SU, it must enter into a research contract with SU and shall be dealt with in accordance with paragraph 3.1.4. All contracts pertaining to such IP, including research contracts, must be concluded in writing between the relevant outside organisation and SU, and must be officially approved by the designated authorised persons according to the policies of SU. In such an agreement the allocation of ownership and the rights to exploitation of the relevant IP and the division of revenue generated thereby will typically be addressed. All such agreements will be subject to the applicable regulatory and legislative framework, including as may apply to publicly financed R&D conducted at SU such as the provisions of the IPR Act and the Regulations. The extent of the contributions of the outside organisation to the research will largely determine the ability of SU to grant rights to such outside organisation in respect of the resultant IP. Such contributions may include its financing of the research, its provision of facilities or equipment, its contribution of background IP, its participation in the actual research efforts and in the commercialisation thereof. Outside organisations must note the rights of the South African government in respect of IP emanating from all publicly financed research that is contained in the IPR Act and Regulations. SU must comply with such regulatory and legislative framework. This regulatory and legislative framework does not apply to copyright works that emanate from conventional academic work or IP emanating from research if the Full Cost of the research is funded by an outside person or entity. Innovus TTO or the Division for Research Development will assist an outside organisation in determining whether or not the regulatory and legislative framework is applicable to research, but they must generally assume that it will be, until the research project has been certified by the designated person at the Division for Research Development to be in compliance with the *SU Policy for the Costing and Pricing of Research and Research Related Contracts*.

In terms of the aforesaid regulatory and legislative framework, SU must regularly report to NIPMO in respect of IP created from publicly financed R&D by its staff and students. Failing this NIPMO may demand the transfer of undisclosed IP to it. Outside organisations involved in research contracts will be required to consent to such disclosures. NIPMO is under statutory obligation to hold such disclosed information in confidence.

Generally, NIPMO also has the first option to step in and acquire ownership of IP emanating from publicly financed research if SU declines to retain such ownership or to seek statutory protection in respect thereof. It is only if NIPMO declines to acquire ownership of such IP that SU will be able to offer, the relevant outside organisation the opportunity to acquire the IP. Again, this does not apply to research in respect of which the outside organisation carried the Full Cost.

3.6 TRADE MARKS

SU is the owner of various registered and unregistered trade marks and reserves all its rights in respect of any such trade marks including any logos, its name, coat of arms, abbreviation or similar indications, or that otherwise suggest an association with SU. These include, *inter alia*, the names Matie, Matieland and Coetzenburg, corporate colours, names and logos that have been or will be developed by departments, institutes, bureaux or units and SU and its environments' respective internet domain names. The slogan *Forward together / Sonke siya phambili / Saam vorentoe* is also a trade mark of SU in respect of which all rights are reserved.

This IPP does not apply to the use or exploitation of SU trade marks. The use of such trade marks is regulated by the *Policy in Respect of the Use and Licensing of Stellenbosch University Trade Marks* and SU's *Brand Identity Manual*. The use of such trade marks by staff, or students, post-doctoral researchers and/or extraordinary and visiting researchers/lecturers in the course of their duties or studies must comply with the applicable guidelines (e.g. in respect of letterheads) as laid down by the *Policy in Respect of the Use and Licensing of Stellenbosch University Trade Marks* and SU's *Brand Identity Manual*. The use of SU's trade marks for private purposes or gain by staff, students, post-doctoral fellows or extraordinary or visiting researchers/lecturers or members of the public is strictly prohibited.

SU may license its name or registered trade marks to commercial partners. However, if a staff member, student, post-doctoral fellow or extraordinary or visiting researcher/lecturer wishes to use SU's trade marks outside of the provisions of the *Policy in Respect of the Use and Licensing of Stellenbosch University Trade Marks*, an application must be directed to Innovus: Copyright; Trade Marks and Short Courses Division to request authorisation. Use thereof by the person concerned shall be subject to any conditions that SU may attach to such authorisation.

PART 4: PROCEDURES FOR THE PROTECTION AND COMMERCIALISATION OF INTELLECTUAL PROPERTY

4.1 IDENTIFICATION OF IP

The protection of the IP of SU is the responsibility of Innovus TTO. To enable Innovus TTO to perform this function, all relevant managers, in conjunction with staff and students, are required to work with and assist Innovus TTO in identifying and protecting the IP created within the SU environment. The exploitation thereof through Innovus TTO occurs in partnership with the IP Contributor(s) to the benefit of SU, its staff and its students. Innovus TTO is responsible for the following services in respect of the utilisation of inventions, plant varieties, designs, business concepts and other IP developed by staff and students:

- a technological investigation to establish whether the IP is protectable
- estimating its commercial potential
- investigating the commercial and licensing possibilities
- undertaking the steps for registration where appropriate
- a preliminary market analysis, assisting with the establishment of a business plan, investigation of exploitation routes (whether through licensing, sale of rights, or the establishment of spin-out companies)
- investigating sources of financing, the formation of partnerships and the finding of buyers
- negotiating business contracts with commercial partners
- protection, monitoring and providing ongoing support for IP after contract conclusion with a partner.
- managing relationships with commercial partners and the flow of revenue arising from commercial exploitation
- liaising with and reporting to the NIPMO and obtaining NIPMO approvals where required
- obtaining approvals from the Reserve Bank, Financial Surveillance Department and/or International Trade Administration Commission where required.

In certain cases Innovus TTO may need to make use of third parties to assist with the abovementioned responsibilities. Some of the costs attached to this may be recovered from proceeds generated from the exploitation of the IP on the basis as set out in paragraph 6.1 of this IPP or, where appropriate, from the Intellectual Property Support Fund established under the IPR Act to the extent approved by NIPMO. If SU does not share in the said proceeds, the relevant staff member and/or student shall be solely responsible for such costs.

It is normally expected of the staff members and/or students concerned to become involved in the commercialisation process if and to the extent requested thereto by Innovus TTO. Staff members and students agree to such involvement and will reasonably cooperate with SU and Innovus TTO in this regard, including travel to and onsite visits at third party premises in order to resolve issues arising in respect of the IP and/or the further development thereof for commercialisation purposes.

If a staff member or student approaches Innovus TTO with a proposal for the commercial exploitation of a business concept or IP that has been developed by him/her and that vests in him/her, Innovus TTO shall investigate the possibilities for such exploitation in partnership with the person. If SU acting through Innovus TTO decides not to become involved in the proposed commercial exploitation thereof, the relevant person is naturally at liberty to proceed with such exploitation of the concept or IP for his or her own account (profit and loss). Innovus TTO may, however, assist such person with this at a market-related rate.

If a staff member or student approaches Innovus TTO with a proposal for the exploitation of IP that has been developed by him or her or otherwise discloses to Innovus TTO IP of which the ownership vests in SU, Innovus TTO shall likewise, and in consultation with the relevant staff member or student, investigate the possibilities for the proposed commercial exploitation thereof. Innovus TTO shall endeavour to complete such investigation

within a period of six months, in ongoing consultation with the staff member or student, after which Innovus TTO shall inform the relevant staff member or student in writing whether or not it will continue with the proposed exploitation thereof.

Decisions to exploit IP vesting in SU shall be taken in accordance with the applicable regulatory and legislative framework, including any relevant guidelines published by NIPMO from time to time, and shall be communicated to the relevant person. If Innovus TTO decides not to pursue the commercial exploitation of publicly financed IP it will be required to inform NIPMO of such decision and NIPMO may then take assignment of such IP. SU and the relevant creator(s) will in such event be entitled to use the IP for further research and teaching purposes.

In the event of Innovus TTO electing not to become involved with the commercial exploitation of IP of which the ownership vests in SU, the relevant student or staff member may then to apply to Innovus TTO for authorisation to continue with the proposed exploitation him- or herself. Innovus TTO may assist such person with this at a market-related rate. Staff and students must note that Innovus TTO will be obliged to follow the applicable regulatory and legislative framework in deciding whether or not to grant such authorisation and, specifically, may be required to offer such IP for assignment to NIPMO and/or any entity involved in the funding of the R&D giving rise to the relevant IP before offering the IP to the relevant staff member or student. If such authorisation is given, it will be subject to the government's rights in respect of the IP emanating from publicly financed R&D, including its rights to use such IP for health, security and emergency needs of South Africa and to terminate exclusivity and/or procure the granting of compulsory licences pertaining to such IP that is not properly commercialised as may be granted to NIPMO in terms of applicable law.

4.2 REGISTERABLE INVENTIONS, DESIGNS AND PLANT BREEDERS' RIGHTS

The novelty requirement is of particular importance for patents, designs and plant breeders' rights and any IP creator must in disclosing the intellectual property to the Innovus TTO consider what is known in the field of technology related to the invention, design and plant breeders' right (prior art). Prior art includes any disclosure, in whichever form or format of non-confidential nature, which, for inventions, include all publications on and uses of similar products, processes and methods, and especially in the relevant field of application. Before an invention, design or plant breeders' right disclosure is submitted, a recommendation by the Departmental Chairperson and/or Dean concerned regarding the merits thereof is required at the time of disclosure to Innovus TTO. Students and staff must ensure at all times that new inventions, plant varieties and designs are kept confidential, as early publication or public use can destroy SU's ability to obtain a patent, and to a lesser extent for design registration or protection for a new plant variety. If anyone must become aware of such an untimely disclosure, Innovus TTO must be informed immediately.

Different forms of IP protection may be available and the Innovus TTO shall consider the disclosure and advise on the most appropriate means of protection.

4.3 DISCLOSURE OF IP

In order to optimise the identification and commercialisation of new IP, disclosure must be made to Innovus TTO as soon as possible (and in any event within 90 days of establishment) that IP has been conceptualised or developed or a business concept or idea, which has the potential of being commercially viable, is devised. Such disclosures must be made by completing the prescribed Innovation Disclosure Form available from the Innovus TTO.

IP created using public funds which is not disclosed to NIPMO may be claimed by NIPMO pursuant to the terms of the IPR Act. It is thus imperative that any IP created at SU must be disclosed to Innovus TTO so as to enable Innovus TTO to report and consider the IP for commercial feasibility and reporting to NIPMO. At SU, research contracts are managed by its Division of Research and Development, who will liaise and obtain the necessary input when appropriate from the Innovus TTO. After disclosure, Innovus TTO will be responsible for taking appropriate steps to assess the potential, protect and exploit the disclosed IP on the basis as set out in paragraph 4.1 above.

All researchers must keep a complete and accurate records in support of the innovation as supporting evidence is required to prepare applications for formal IP protection. Materials to be kept securely would include all research materials and results, design materials and the source code of any newly developed software.

New IP must be treated confidentially and must not be disclosed publicly until suitable protection for such IP has been obtained. In some instances it may be necessary to obtain approval from NIPMO prior to authorising the public disclosure of IP. Innovus TTO shall endeavour to ensure that the period of non-disclosure is as short as possible. Researchers in partnership with Innovus TTO must take all reasonable steps to prevent unauthorised disclosures of data and materials pertaining to any new IP (including any new invention, design and/or plant variety).

4.4 REGISTRATION OF PATENTS, DESIGNS AND PLANT BREEDERS' RIGHTS

Innovus TTO decides on the appropriate IP protection and the prosecution and maintenance thereof, subject to the provisions of the IPR Act and Regulations (including any NIPMO practice notes that may issue from time to time). The costs of application, prosecution and maintenance of registered IP shall be borne by SU, save to the extent otherwise agreed with any licensee or IP Contributor.

In cases where Innovus TTO decides not to seek formal IP protection for registerable IP resulting from publicly financed R&D, the Innovus TTO is required by law to notify NIPMO of such decision and provide reasons for the decision at which point NIPMO may elect to acquire ownership of the IP or require that the IP be offered to third parties for acquisition. If ownership of the IP is not so acquired, Innovus TTO will, where a private organisation contributed funding towards the development of the IP, give such an organisation the option to acquire the IP and to obtain statutory protection for such rights. Should there be no such private organisation, or if such organisation elects not to acquire the IP, the IP contributor(s) will be given an option to acquire ownership of the IP and to proceed with the application, prosecution, maintenance and commercialisation of such IP for its own account.

Without authorisation from SU, acting through Innovus TTO, no staff member or student may proceed, on their own initiative or independently *via* a patent attorney, with the application for a registerable IP right arising in the course and scope of his/her duties or studies, as ownership thereof vest in SU.

Innovus TTO will determine the geographical area in which registrable IP right will be protected. If the IP Contributor(s) are of the opinion that registrable IP right must also be registered in other countries, this shall only be done with the approval of Innovus TTO. It is understood that IP Contributor(s) may be requested to carry some or all of the costs associated with such further applications. If the IP Contributor(s) are prepared to assume costs for such further registrations, they may negotiate with the Innovus TTO for a greater share in the proceeds from the relevant additional geographical areas which will then be shared on the basis so negotiated and not in terms of the provisions as set out in Part 6 of this IPP.

4.5 SOFTWARE

Copyright protection applies to software, but patenting is also applicable in certain cases where the protection is not for the software as such, which may include the application of, or methods of use of software. Patentable inventions involving software will be dealt with in accordance with the preceding paragraphs of this Part 4.

The vesting of copyright in software is explained in Part 3, paragraphs 3.1.2 and 3.2.2. Contract workers in particular have to exercise caution in respect of software developed in the course of their work. Employees and contract workers, on the expiry or termination of their contract or employment at SU, are prohibited from using, distributing, reproducing, removing or otherwise taking a copy, of any software developed by them in the normal course and scope of their duties at SU, including all accompanying development material, whether written, electronic or in any other format, unless such use has been explicitly authorised by SU and will provide a copy of

such software and accompanying development material to such person at SU as he/she may report to prior to his/her departure. Furthermore, the staff member must keep the contents, structure and methodology of the software confidential at all times while in the employ of SU and thereafter, unless disclosure thereof has explicitly been authorised by SU.

Staff members and students may elect to publicly disclose the contents, structure and methodology of software developed by them with the exception of the following types of software.

- Category 1: Software for which NIPMO approval is required prior to public disclosure,
- Category 2: Software that discloses a patentable invention or other form of protectable IP referred to in paragraph 4.2 above, and
- Category 3: Software that has significant commercial value or commercialisation potential,

With respect to Category 1: NIPMO approval is required for public disclosure of software that arises pursuant to fundamental research that constitute systematic investigative or experimental development activity where the result of such activity is unknown or uncertain such as:

- The development of a new operating system or language
- The design and implementation of a new search engine based on original technologies
- The resolution of a conflict within hardware or software based on the process of re-engineering a system or network
- The creation of a new or more efficient algorithm based on a new technique (i.e. a previously unknown and unpublished technique)
- The creation of a new and original encryption or security technique

Software that falls within Categories 1,2 or 3 must be disclosed to Innovus TTO in the prescribed manner prior to any public disclosure and the Staff member must agree with Innovus TTO the manner and terms for public disclosure thereof. The said disclosure must be made to Innovus TTO, using the prescribed Invention Disclosure Form. Software developed for the purposes of participation or demonstration in conventional academic teaching activities does not have to be disclosed to Innovus TTO unless such software can also potentially be used for other purposes. Note that ownership of IP in such software will remain vested in SU irrespective of such non-disclosure.

The source code of software developed at SU must be deposited with SU in compliance with the instructions of the supervisor of the students or staff members responsible for the development thereof and the SU Research Data Management Regulations on completion of the development of the software, and in the event of ongoing development, on completion of each version thereof. In all cases, all development material and all existing versions of the source code that is licensed out by SU must on conclusion of the duties or termination of employment of a staff member or of studies by a student be delivered to Innovus TTO or such other person as may be designated for such receipt by Innovus TTO.

4.6 ASSIGNMENT AND LICENSING OF IP

SU, through Innovus TTO, may conclude agreements with business partners in order to commercially exploit the IP developed by its staff and students. Such agreements may include the assignment or licensing of such IP to business partners. Such agreements must comply with the regulatory and legislative framework applicable to IP emanating from publicly financed R&D, unless all IP involved emanated from R&D funded by an outside organisation at Full Cost or the IP involves a copyright work associated with conventional academic work only. The regulatory and legislative framework applicable to IP emanating from publicly financed R&D includes the IPR Act and the Regulations issued pursuant thereto and it requires that transactions pertaining to such IP take the following into account:

- preference must be given to non-exclusive licensing;

- preference must be given to BBBEE entities and small enterprises;
- preference must be given to parties that seek to use the IP in ways that provide optimal benefits to the economy and quality of life of the people of South Africa;
- preference must be given to parties that made material contribution to the R&D giving rise to the IP;
- each IP transaction must provide the South African government with an irrevocable and royalty-free licence to use the IP throughout the world for the health, security and emergency needs of South Africa;
- each IP transaction must contain a condition to the effect that, must a party fail to commercialise the IP to the benefit of the people of South Africa, the State is entitled to procure the granting of compulsory licences after following the legislated procedure;
- a private entity or organisation may become an exclusive licensee of IP emanating from publicly financed R&D if it has the capacity to manage and commercialise the IP in a manner that benefits South Africa;
- exclusive licensees must undertake, where feasible, to manufacture, process and otherwise commercialise the IP within South Africa;
- if a holder of an exclusive licence is unable to continue with the commercialisation of the IP within South Africa during the term of the licence, SU is required to provide NIPMO with full reasons for retaining any exclusivity within 30 days of becoming aware of such inability, and failing the provision of adequate reasons NIPMO may terminate the exclusive rights of the licensee;
- each assignment of IP by SU to a small enterprise in return for shareholding as a consideration must contain a condition providing that in the event of the liquidation of that small enterprise, the IP shall revert to SU.
- IP transactions involving assignment of IP by SU require, where applicable, NIPMO approval, and in some cases the Reserve Bank, Financial Surveillance Department, approval;
- offshore IP transactions must, where applicable, be notified to NIPMO in advance and must comply with all applicable regulations and guidelines issued by NIPMO or otherwise be approved by NIPMO and, where necessary, the Reserve Bank, Financial Surveillance Department;
- in the event of an offshore IP transaction in the form of an assignment or exclusive licence NIPMO must be satisfied that there is insufficient capacity in South Africa to develop or commercialise the IP locally and that South Africans will benefit from such offshore transaction;
- NIPMO approval must be obtained for all royalty free licences and licences in respect of which the consideration is not on an arms-length basis, if this is offshore, also to the Reserve Bank, Financial Surveillance Department
- SU is obliged by law to establish in advance that any prospective exclusive licensee is capable of developing and commercialising the relevant IP in the licensed territories

PART 5: PROCEDURES FOR THE COMMERCIALISATION OF INTELLECTUAL PROPERTY THROUGH SPIN-OUT COMPANIES

In its commitment to the commercialisation of its IP, SU supports the establishment of spin-out companies for the commercialisation of its IP, where appropriate and commercially feasible, and in which its staff members and students may be involved. All such spin-out companies are to be established and incorporated by Innovus TTO and all involvement by staff and students must be duly authorised. Staff members and students of SU may not have an interest or be involved in private companies, close corporations or other separate entities or enterprises that exploit IP created at or for SU without the prior written authorisation from the Chief Director: Innovation and Commercialisation. Any such involvement must comply with SU's other policies applicable to its students or staff, which for staff members shall include having the necessary authorisation to perform private work obtained in accordance with SU's *General Procedure for Private Work*.

5.1 COMPANY STRUCTURES

In cases where Innovus TTO should decide, after consultation with the IP Contributor(s) or the promotor of a business idea, to exploit such IP or business idea by means of the establishment of a spin-out enterprise, it shall be done by Innovus TTO establishing a separate enterprise in which SU, or an SU nominated subsidiary or associate company (e.g. University of Stellenbosch Enterprises (Pty) Ltd), IP Contributors, and other possible partners may obtain shares or members' interests depending on the arrangements that may be agreed with the Innovus TTO beforehand.

The employees of SU shall not be involved in any other private companies, close corporations or other separate entities or enterprises that compete with SU including with respect to tuition, research or other primary functions of SU. In this regard, it must be noted that all staff members are expected to ensure that research funding obtained by them for research to be conducted at SU is paid directly to SU. Staff members will not be permitted to have an interest in any private entity that procures research funding for research to be conducted at SU except with (i) the approval of his/her line manager and Dean obtained in terms of the SU Conflict of Interest Policy and (ii) the prior written authorisation from the Chief Director: Innovation and Commercialisation.

No staff member who is involved in a spin-out enterprise or other enterprise in partnership with SU shall compete with such enterprise or be involved in any other entity that competes with such enterprise by providing similar goods or services, without prior written authorisation from the Chief Director: Innovation and Commercialisation.

SU may refuse to establish more than one spin-out enterprise in the same sector. Private enterprises or spin-out enterprises that conduct business in competition with these enterprises can therefore not be allowed and all employees are thus prohibited from being involved in such competitive enterprises save with the prior written authorisation from the Chief Director: Innovation and Commercialisation.

SU reserves the right to develop and to implement an exit strategy for spin-out companies with the understanding that each and every IP transaction involving an assignment of IP to an enterprise as contemplated in this Part 5, is required by the IPR Act to contain a condition providing that in the event of the liquidation of the enterprise, the IP shall revert to SU.

5.2 STEPS TO ESTABLISH SPIN-OUT COMPANIES

The commercial viability of establishing a spin-out enterprise shall be investigated by Innovus TTO after the prescribed Business Disclosure form has been completed and submitted to Innovus TTO. If the Director: Technology Transfer in collaboration with the Chief Director: Innovation and Commercialisation determine that a spin-out enterprise is feasible, a process, as determined by Innovus TTO, shall be followed to establish such an enterprise which may include:

- Identifying and engaging with suitable executives and key personnel to be involved in the business;
- Supporting and, where necessary, providing training for staff including through appropriate mentorship;
- Assisting with the development of a business plan;
- Identifying strategic partners for the business including funding and industry partners;
- Assisting with procuring start-up capital;
- Procuring incubation space and access to critical infrastructure and facilities; including communications facilities;
- Providing or assisting in procuring critical services, such as administrative, IT, legal and financial services to the business.

The *Innovus Spin-Out Company Terms* document is regularly updated to reflect a comprehensive list of services offered by Innovus TTO, as well as the regulatory and legislative framework, governance expectations and process of setting up a spin-out company at SU. This document is available from Innovus TTO. Innovus TTO may render the services and support as described herein to the new enterprise in exchange for either equity or payment for services rendered. Innovus TTO may require that a written agreement be concluded in this regard.

No spin-out enterprise shall be allowed to use an SU premises as its principal place of business unless it is approved by the Chief Director: Innovation and Commercialisation of SU. This shall not apply to separate incubation facilities specifically provided by SU for start-up companies. In the case of SU office space or laboratory equipment being utilised, a lease agreement must first be concluded with the spin-out enterprise in respect thereof. Such lease agreement shall at all times put the academic interests of SU first. SunCom, a division of Innovus, is responsible for concluding and managing such lease agreements.

5.3 CONFLICT OF INTEREST

Staff members must comply with SU's *Conflicts of Interest Policy* becoming involved in spin-out companies. Staff members are obliged to disclose to their Departmental Chairperson and/or Dean their interests in private enterprises and entities, regardless of whether it is an SU enterprise or not. This applies to directorships, shareholding, members' interests and part-time appointments.

Staff members must make specific written disclosure to the Chief Director: Innovation and Commercialisation of SU and the relevant Dean or Responsibility Centre Head of any direct or indirect interest in any entity that seeks to license or exploit SU's IP and of any other financial or non-financial benefit or advantage which has been or may be received by the staff member (or any family member, relative, personal friend or business associate of the staff member) from any proposed arrangement or dealings involving SU IP before such arrangement or dealings are entered into. Failure by a staff member to make full disclosure of all such interests will be regarded as a serious breach of his/her service contract and may result in disciplinary action or dismissal.

As a rule, SU staff members are not permitted to be involved in an executive capacity or role, including as Chief Executive Officer, in any spin-out enterprise. Any such involvement will require staff members to have the necessary approval to perform private work obtained in accordance with SU's *General Procedure for Private Work* and, in addition, the approval of the relevant Dean or Responsibility Centre Head, based on a comprehensive declaration of conflict of interest. If no such approval is given for a staff member's proposed involvement in a spin-out enterprise and the staff member wishes to pursue such involvement irrespective, such staff member will have to leave the permanent employ of SU in order to do so.

PART 6: DIVISION OF INCOME DERIVED FROM THE COMMERCIALISATION OF INTELLECTUAL PROPERTY

Innovus TTO shall keep a record for each commercial IP transaction and the benefits and revenue generated in respect thereof. Unless otherwise agreed in writing between SU and its staff members or students, earnings derived from the commercialisation of IP shall be divided in accordance with paragraph 6.1. Only income and benefits received to compensate for the granting by SU of rights with respect to IP will be subject to division hereunder. Income derived from the sale or licensing of SU trade marks shall be excluded. Income, equity and other benefits received by SU or its associated companies as compensation for procuring or providing facilities, services or funding (whether in the form of investments or loans) to any person or entity, notwithstanding that rights to SU IP may also be granted to such person or entity, are excluded from division under this IPP. It must be noted that although the allocation formulae specified hereunder apply to earnings derived by SU from IP arising from research conducted at SU, they do not apply to research grants or other monetary and non-monetary contributions which are provided to support such research. Furthermore, the allocation formulae also do not apply to income from IP that is agreed pursuant to this policy to accrue solely to SU's staff and/or students.

6.1 ALLOCATION OF INCOME DERIVED FROM COMMERCIALISATION OF IP

Unless otherwise agreed in writing between SU and the relevant staff member(s) or student(s), and subject to paragraph 6.2, income derived from the commercial exploitation of IP that has been created by a staff member or student, but the ownership of which vests in SU, shall be allocated as set out in this paragraph. The income to be so divided includes all forms of revenue or benefits derived from the exploitation of such IP as defined in the IPR Act, including in the form of non-refundable royalties, equity (including shareholding), dividends, fees and commissions and other payments received and the value of non-monetary rights and benefits received from such exploitation, but excluding donations.

Multiple IP Contributors may be involved in the establishment of SU IP. Revenue shares payable hereunder to such IP Contributors are to be allocated amongst them in proportion to their pro-rata contribution to the creation and/or development of the IP.

IP Contributors are required upon completing the Invention Disclosure Form to indicate and agree their proportional contributions to the IP and their corresponding proportional shares in the revenue to be divided hereunder. If at any time the contribution ratio changes and is different as disclosed in the invention disclosure form, either due to earlier error, or further development of the IP, a written application must be made to Innovus TTO to confirm the relative contribution changes for each of the IP contributors. Such application must be signed off by contributors and submitted to Innovus TTO at the time of disclosure of the IP and shall be a binding agreement between the IP Contributors. If a dispute arises between IP contributors regarding their proportionate contributions, all contributors may be required, upon written request, to make written submissions to the Director: Technology Transfer regarding such dispute and the determination of the Director: Technology Transfer in this regard shall be final and binding on all IP Contributors.

In the case of IP that undergoes ongoing development (e.g. software), an updated Invention Disclosure Form with regards to IP contribution share may be submitted to Innovus TTO with respect to each materially changed or improved version of the IP that is to be used for commercialisation purposes. Before proceeding with any commercialisation opportunity with respect to IP, Innovus TTO may also require that Invention Disclosure Form be signed and submitted to it by all IP Contributors to finally confirm relative contributions and revenue proportions. Innovus TTO will be entitled to divide all revenue due to IP Contributors in accordance with the final agreement form received by it that has been duly signed off by all IP Contributors. It is the responsibility of IP Contributors to ensure that such agreement form accurately reflect their respective contributions and revenue proportions. IP Contributors must also note that any such agreement with respect to revenue proportions may differ from the proportions prescribed by the IPR Act and such agreement form will constitute a waiver of claims to be compensated under the IPR Act.

Although revenue to be distributed to an IP Contributor often comprise of shares in income such as royalties or dividends, an IP Contributor may also hold or take up equity (whether in his/her own name, through a trust or otherwise) in an entity that is involved in exploiting the IP, such as a spin-out company established under Part 5 of this IPP. If the staff member or student holds or receives equity or other interest in any such entity (e.g. shareholding), his/her claims for shares in SU revenue payable under this IPP will, unless otherwise agreed in writing, be reduced in proportion to the benefits accruing from the contributor's separate interest in the relevant entity and he/she waives any and all claims under the IPR Act to the amounts so deducted. All such benefits directly accruing to an IP Contributor from such separate interests in the entity involved in exploiting the IP will for the purposes of the calculations under this Paragraph 6.1 be deemed payments that have already been made to the relevant IP contributor as part of his/her revenue shares hereunder and will be deducted from payments due to such IP contributor hereunder. SU may require that an IP Contributor sign a Waiver Form in which he or she agrees to a specific reduction in and/or waiver of benefits under this IPP before SU grants rights to exploit the IP involved to the spin-out company in which such IP Contributor holds an interest and SU may apply such reduction and waiver to all shares of SU revenue that may become payable to such IP Contributor under this IPP with respect to such IP.

If an IP Contributor holds a direct interest in an entity that is involved in exploiting the IP, Innovus TTO may require such IP Contributor to agree in writing to a variation in his/her share of revenue under this IPP and may prescribe a standard form agreement which are to be signed off by such IP Contributor and submitted to Innovus Technology Transfer prior to the granting of rights to the IP to the relevant entity. Variations to the revenue shares of an individual IP Contributor agreed between Innovus TTO and such IP Contributor shall not accrue to or otherwise affect the liability to any other IP contributor but shall impact the overall liability of SU to share revenue under this IPP.

If a non-monetary right or benefit is received as part of the consideration for the exploitation of IP, SU will procure the valuation of such rights and benefits using internationally accepted valuation principles.

Save to the extent that it may not be legally permitted, the direct costs to be deducted for the purposes of distribution of revenue ("**Direct Costs**") will include all out-of-pocket costs, fees and expenses that SU incurs and pays to independent third parties in connection with any of the following activities:

- (i) filing, prosecution, development and maintenance of any statutory protection for IP excluding any amounts recovered by SU from any third party in this regard.
- (ii) auditing, recovery or collection of revenues, including bank fees, charges and other expenses of any kind paid by SU in order to collect, receive or account for amounts payable to it for the commercialisation of the IP;
- (iii) defence, validation and enforcement of IP in any IP office, court or tribunal;
- (iv) legal advice and services in respect of the above activities or issuance or conveyance of any securities or other consideration constituting revenues, or in respect of any proposed, threatened or actual litigation involving the IP; and
- (v) costs directly incurred in respect of market research, business development, marketing, advertising, promotion or sales activities or services, and administrative expenses, irrespective of whether such costs were paid to a third party or incurred internally by SU.

The funds allocated to the IP contributor(s)'s environment must be applied in the interest of research and may not be allocated to any individual for personal gain. SU manages these allocations strictly in accordance with the IPR Act and the requirements of the SA Revenue Service regarding such income, and SU reserves the right to implement the necessary systems and structures in this regard.

First Tier Income: Gross income up to R1,000,000 (one million Rand):

Step 1:

25% of the gross income is allocated to the individual SU staff/student IP contributors or their heirs in their personal capacity. Such allocation will be shared pro rata to their contribution to the creation and/or development of the IP as may be stipulated in the Invention Disclosure Form unless otherwise agreed in writing ("**First Tier Contributors Share**").

Step 2:

All Direct Costs relating to the process of protection and the process of commercialisation and other costs agreed to be recoverable may be recovered by the parties who incurred such Direct Costs from the gross income on a pro rata basis to the amount of the costs incurred by each before any allocation of the balance of the income can take place.

Step 3:

The balance of the income (if any), after the execution of steps 1 and 2 above (hereinafter, referred to as "**the First Tier Net Income**"), shall be allocated as follows:

- 50% of the First Tier Net Income is allocated to SU's internal innovation fund.
- 50% of the First Tier Net Income is allocated as follows:
 - 30% of the First Tier Net Income is allocated to the SU research account(s) of the IP contributor(s) for use in their research work pro rata to their contribution to the creation and/or development of the IP, until termination of their employment with SU, following which it will be allocated to the department(s)/institute(s)/unit(s)/centre(s) where the inventor(s)/creator(s)/author(s) resided;
 - 10% of the First Tier Net Income is allocated to the department(s)/institute(s)/unit(s)/centre(s) where the IP contributor(s) reside pro rata to their contribution to the creation and/or development of the IP;
 - 10% of the First Tier Net Income is allocated to the faculties where the contributor(s) reside, pro rata to their contribution to the creation and/or development of the IP, to be administered by the Dean in consultation with the Head of Department.

Second Tier Income: Gross income in excess of R1,000,000 (one million Rand)

Step 1:

All Direct Costs relating to the process of protection and the process of commercialisation and other costs agreed to be recoverable may be recovered by the parties who incurred such Direct Costs from the gross income on a pro rata basis to the amount of the costs incurred by each before any allocation of the balance of the income can take place.

Step 2:

The balance of the income (if any), after the execution of step 1 above (hereinafter, referred to as "**the Second Tier Net Income**"), shall be allocated as follows:

- 35% of the Second Tier Net Income is allocated to the IP contributor(s) or their heirs in their personal capacity. Such allocation will be shared pro rata to their contribution to the creation and/or development of the IP, unless otherwise agreed in writing ("**Second Tier Contributors Share**").
- 35% of the Second Tier Net Income is allocated to SU's internal innovation fund.
- 30% of the Second Tier Net Income is allocated as follows:
 - 10% of the Second Tier Net Income is allocated to the SU research account(s) of the IP contributor(s) pro rata to their contribution to the creation and/or development of the IP for use in their research work until termination of their employment with SU, following which it will be allocated to the department(s)/institute(s)/unit(s)/ centre(s) where the IP contributor(s) resided;
 - 10% of the Second Tier Net Income is allocated to the department(s)/institute(s)/unit(s)/centre(s) where the IP contributor(s) reside, pro rata to their contribution to the creation and/or development of the IP;
 - 10% of the Second Tier Net Income is allocated to the faculties where the IP contributor(s) reside, pro rata to their contribution to the creation and/or development of the IP, to be administered by the Dean in consultation with the Head of Department.

REVENUE SHARING EXAMPLES

If two IP Contributors (A & B) each contributed 50% to the development of IP, then each IP Contributor would be entitled to 50% of the First Tier Contributors Share and Second Tier Contributors Share (as described above).

- Since the First Tier Contributor Share is 25% of First Tier Income, that would mean that each IP Contributor would be entitled to 12.5% of First Tier Income; and
- Since the Second Tier Contributor Share is 35% of Second Tier Net Income, that would mean each IP Contributor would be entitled to 17.5% of such Second Tier Net Income

If IP Contributor A now elects to take up equity in the entity authorised by SU to commercialise the IP, his/her entitlement to share in the First Tier Contributors Share and the Second Tier Contributors Share will be reduced in proportion to the benefits directly derived by him/her from holding such equity unless otherwise agreed. IP Contributor B will be unaffected by such election.

To determine the further amounts due to IP Contributor A hereunder, all benefits directly received by IP Contributor A from such equity (including from dividends and from sales thereof) will be deemed to be payments that have already been made to IP Contributor A as part of the First Tier Contributors Share and Second Tier Contributors Share.

Accordingly, the following will then apply, unless otherwise agreed with SU in writing*:

- IP Contributor B (who received no equity) will remain entitled to payments of 12.5% of the First Tier Income and 17.5% of the Second Tier Net Income of SU (whether from dividends or from the sale of shares or royalties).
- IP Contributor A (who received equity) will be entitled only to further payments if and to the extent that his/her rights to receive 12.5% of the First Tier Income and 17.5% of the Second Tier Net Income from SU exceeds the benefits that already accrued to IP Contributor A directly from his/her equity (whether in the form of dividends or the sale or potential sale thereof). If SU sells its shares, but IP Contributor A does not, the deemed benefit accruing to IP Contributor A will be the value of its unsold shares calculated at the sales price of the SU shares.

*It must be noted that if an IP Contributor signs a Waiver Form in which he or she agreed with SU to a specific reduction in and/or waiver of benefits under this IPP, such reduction and waiver may be applied by SU nonetheless.

6.2 ALLOCATION OF INCOME DERIVED FROM COMMERCIAL EXPLOITATION OF IP WHERE SHARED OWNERSHIP APPLIES

Where the IP is co-owned by SU and an outside organisation, the division of revenue between SU and such co-owner from such IP shall first occur according to a formula that has been agreed on with the co-owner. Thereafter, SU's share shall be allocated in accordance with paragraph 6.1. In cases where the IP is vested in the staff member or student who approaches SU to assist in exploiting it, the division of income shall also be agreed on beforehand

between the parties. Likewise, the division of income shall also be agreed on beforehand in cases where SU authorises the staff member or student to exploit IP commercially otherwise than in partnership with SU.

6.3 MONETARY AND NON-MONETARY BENEFITS

SU's policy with respect to the commercial exploitation of IP is to obtain monetary benefits whenever possible. Benefits are usually in the form of royalties and/or proceeds from shareholding, which will be divided in accordance with this Part 6 of the IPP, unless otherwise agreed.

If a benefit is in the form of an asset that SU determines cannot reasonably be divided (e.g. equipment), SU will be entitled to elect to hold such asset in co-ownership with the IP Contributor(s), or, at SU's option and at any time, purchase the undivided share(s) of the IP contributor(s) in the asset.

SU will be solely entitled to determine possession, use and commercial exploitation of all such co-owned assets. In the event that a co-owned asset is sold, rented out or otherwise commercially exploited by SU, the earnings arising in respect thereof will be divided pursuant to the allocation formulae specified herein.

If SU elects to purchase the undivided share(s) of the IP Contributor(s) in a co-owned asset, SU will seek to agree the purchase price of the undivided share with the IP Contributor(s), but failing such agreement within 30 (thirty) days of request therefore, SU may have the undivided share valued by independent auditors, whose valuation will be final and binding on the contributor(s). The auditors will value the undivided share by determining the monetary value of the asset and by then applying the allocation formulae specified herein thereto. SU may purchase the undivided shares within 60 (sixty) days of receipt of the value of the undivided shares being agreed or notified to SU by the auditors. In event of such purchase of an undivided share, no money will be paid into the research account of the relevant IP contributor(s) or to the departments, institutes or faculties of the relevant IP contributor(s).

If other clearly identified non-monetary benefits are to form part of the consideration for IP exploitation, SU will seek to agree fair and equitable compensation for IP Contributor(s) prior to accepting such benefits, and failing such agreement SU may have the benefits valued by independent auditors, whose valuation will be final and binding on the IP contributor(s) and may then be used by SU as basis on which to compensate IP contributor(s) hereunder using the allocation formulae specified herein.

6.4 PAYMENTS TO IP CONTRIBUTORS

SU wants to pay its IP Contributor(s) promptly after receiving IP related earnings and by law is required to do so within 12 (twelve) months of receipt. It is the responsibility of all IP Contributor(s) to ensure that SU is in possession of up to date and accurate banking details so as to facilitate such payments. All payments will be made by way of electronic transfer in South African rand and to South African bank accounts unless otherwise agreed in advance. The costs of effecting such payments to contributor(s) will be for the account of such IP Contributor(s), including any costs incurred in tracing them. If SU is unable to affect payment because of incorrect or inadequate banking details, SU will keep the relevant amounts in trust for a maximum period of 3 (three) years after which all rights of IP contributor(s) to receive such payments will be forfeited and the money will be taken out of trust. If SU pays an amount into an incorrect account as a result of information supplied to it being outdated or incorrect, SU will not have any further obligation or liability in respect of such payment, which will be deemed to have been duly and properly made.

SCHEDULE OF SUPPORTING DOCUMENTS

Name	Status	Document Owner
Policy for the Costing and Pricing of Research and Research Related Contracts	Approved	Deputy Vice Chancellor: Research, Innovation and Postgraduate Studies
Policy in Respect of the Use and Licensing of Stellenbosch University Trade Marks	Approved	Chief Operating Officer
Brand Manual	Approval pending	Deputy Vice Chancellor: Strategy, Global and Corporate Affairs
Policy in Respect of the Presentation of Short Courses at Stellenbosch University	Approved	Chief Operating Officer
General Copyright Guidelines under the provisions of SU's Blanket Licence Agreement	Last updated 2020	Innovation & Commercialisation
Contract Research Policy	Approved	Deputy Vice Chancellor: Research, Innovation and Postgraduate Studies
Consultation Work Policy	Approval pending	Deputy Vice Chancellor: Research, Innovation and Postgraduate Studies
Conflict of Interest Policy	Approved	Deputy Vice Chancellor: Social Impact, Transformation & Personnel