



ZCAS UNIVERSITY

INTELLECTUAL PROPERTY POLICY

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GENERAL POLICY INFORMATION

<i>Policy Name</i>	<i>Intellectual Property Policy</i>
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<i>Owner</i>	<i>Deputy Vice Chancellor - Research and Innovation</i>

1.0 DEFINITION OF TERMS

1.1 The following definitions apply in the context of this Policy unless otherwise explained:

1.1.1 **Commercialisation** - means any utilisation or exploitation of IP intended to generate value of any kind (except in the delivery of courses by the University). “commercialise”, “commercialising” and “commercialised” shall be construed accordingly;

1.1.2 **Commissioned Work or “Work for Hire”** - means work where the University specifically commissions or hires an employee or any third party to create a work for a fee and which the University on one hand and the creator on the other expressly agree in a written instrument that it be considered as such.

1.1.3 **Confidential Information** - includes commercially valuable information and trade secrets but it may also extend to personal information.

1.1.4 **Creator** - means a person responsible (either individually or jointly with others) for the creation of IP, including (but not limited to) any:

- a) inventor of an invention;
- b) creator of a copyright work or design which qualifies for registered or unregistered design rights (including topography rights);
- c) person who obtains, verifies or presents the contents of a database (or seeks to do so);
- d) breeder, discoverer and/or developer of a plant variety; and/or

- e) developer of know-how which is of standalone importance, separate from other IP (excluding copyright in works which describe such know-how), who is a student or an employee at the time of such creation;
- 1.1.5 **During the course of their employment** - any work performed in relation to an employee's role, duties arising under their contract of employment and/or job description;
- 1.1.6 **Employee** - means any employee of the University (whether paid or unpaid) and includes for the purposes of this Policy:
- a) any person with a professional or honorary appointment to the University;
 - b) any visiting or emeritus member of employee of another higher education institution who is engaged in research or study at the University;
 - c) any secondee from a third party; and/or
 - d) any individual who has signed a contract for services or consultancy agreement with the University.
- 1.1.7 **Open Licence** - means a licence which grants relevant permission for any person to access, re-use and redistribute a copyright work in accordance with section 6.2.3. "openly license", "openly licensing" and "openly licensed" shall be construed accordingly;
- 1.1.8 **Scholarly Materials** - means all copyright works created, made and/or developed by students and/or employees in their area of expertise in the furtherance of an academic career and/or the dissemination of knowledge, but excluding teaching materials or computer software. Scholarly materials include, for example:
- a) books or e-books (including, contributions thereto);
 - b) academic journal articles;
 - c) research grant applications;
 - d) conference papers and related presentations;
 - e) notes created, made and/or developed for an Employee's personal use;
 - f) theses and dissertations;
 - g) non-fiction, novels and poems;
 - h) video or film material; and
 - i) works of fine art.
- 1.1.9 **Student** - means any person registered or studying on any programme of study at the University (whether undergraduate or postgraduate, whether on a full-time, part-time or

distance learning basis and irrespective of the mode of study), and includes those who have interrupted their studies;

1.1.10 **Substantial/ not substantial use of University's resources** – the meaning is as explained under 6.1.2.3

1.1.11 **Teaching Materials** - means any materials (in any format) that are primarily intended to be used or accessed by students at any level for the purpose of any course of study including:

- a) course guides, handouts, on-line materials (including annotated scores and manuscripts);
- b) presentation materials (including lecture notes, slides, animations, graphics, interactive software and other audio-visual materials);
- c) instruction manuals;
- d) artefacts (including models and apparatus for practical demonstration and experimental work); and
- e) assessment and examination questions.

1.1.12 **Trademark** - means a distinctive word, design, symbol, logo or any combination of word and design that identifies and distinguishes the goods or services of one from that of another.

1.1.13 **Patent** - means a statutory monopoly which protects the owner against unlicensed use of the patented product or process or any improvement thereof.

1.1.14 **Third Party** - means any person who is not a student, an employee or the University;

1.1.15 **University** - means ZCAS University;

1.1.16 **Work/s** - means any kind of intellectual property.

2.0 POLICY STATEMENT

In the effort to fulfil its mandate of carrying out teaching, research and consultancy, ZCAS University shall build and maintain an environment which promotes a spirit of intellectual inquiry among its employees and students. It is expected that with the undertaking of intellectual inquiry activities, Intellectual Property (IP), which is the development of creative and scholarly research, works and inventions, will inevitably arise at the University. Since the development of such creative and scholarly research, works and inventions may create rights and interests on behalf of

the stakeholders such as employees, students, sponsors and the University, it is imperative for ZCAS University to have a clear policy.

This Intellectual Property Policy has therefore been developed to support and reward scientific research and scholarship at the University, and will help the University, employees, students and other stakeholders understand how IP involving the University is identified, owned, used, protected and administered. The Policy also defines the rights and responsibilities of the parties involved in IP, and shall be read in conjunction with other applicable policies and legislations.

3.0 PURPOSE AND OBJECTIVES

This Policy aims to provide a framework for the identification, ownership, usage, protection and commercialisation of IP created by all classifications of students and employees. The objectives of the Policy are to:

- a) raise IP awareness and use at the University;
- b) clarify ownership and right of use of IP at the University;
- c) identify, protect and commercialise IP involving the University;
- d) recognise creators of IP and share with them the rewards derived from its successful commercialisation; and
- e) strike a balance between the interests of IP creators, the University and other parties including the wider public.

4.0 SCOPE

The Policy applies to works created by all classifications of students and employees of the University as defined in sections 1.1.6 and 1.1.9 respectively. The Policy does not however apply where a written agreement exists to the contrary.

5.0 PRINCIPLES OF THE POLICY

5.1 The following principles guide this Policy:

5.1.1 The University owns IP created by its employees, except to the extent this Policy provides otherwise.

- 5.1.2 The University must obtain good value for any investment it makes in creating IP (in terms of its funds, facilities, employee or other resources) that is commercially exploited. Where, however, the use of those resources is insignificant in the creation of IP, the University may waive its ownership rights.
- 5.1.3 Creators of IP that is commercially exploited and that generates income should receive a fair share of that benefit, as should the University and the relevant school(s) or departments in accordance with this Policy, the University's policy on Contract Research and Consultancy or any other.
- 5.1.4 In respect of IP which the University determines not to exploit, commercially or otherwise, the University has the right to use that IP for its own purposes and to receive a share of any benefits of exploitation, but should not unreasonably refuse to license or assign IP to the creator.

6.0 RESPONSIBILITIES

6.1 University Council

This Policy shall be approved by the University Council

6.2 Audit and Risk Committee of Council

6.2.1 The Committee shall review the Policy and recommend it to the Council for approval

6.2.2 The Committee shall oversee the implementation of the Policy

6.3 Vice Chancellor

6.3.1 The Vice Chancellor shall monitor and guide the implementation of this Policy

6.3.2 The Vice Chancellor shall receive appeals related to the Policy and guide decision making

6.4 Deputy Vice Chancellor for Research and Innovation

This Policy shall be administered by the Deputy Vice Chancellor for Research, who shall determine and interpret its terms and provisions.

6.5 IP Review Committee

- 6.2.1 To support implementation of this Policy, there shall be a standing IP Review Committee whose functions shall include:
- a) reviewing policy provisions from time to time, as needed, with recommendations for change or amendments to the DVCRI;
 - b) serving as a non-binding advisory body in the case of any dispute relating to this Policy; and
 - c) reviewing other issues as requested by the DVCRI.
- 6.2.1 The Committee shall consist of three (3) faculty members, DVCRI, Chief Librarian and Chief Finance Officer.

7.0 PROCEDURES AND GUIDELINES

7.1 OWNERSHIP, IDENTIFICATION AND USE OF IP

7.1.1 University

- 7.1.1.1 Rights to Patent shall belong to the University if any one of the following circumstances exists:
- a) the work was developed as part of the regularly-assigned duties of the creator or in the course of their employment;
 - b) the work was developed using funds provided or administered by or through the University;
 - c) the work was developed making substantial use of the University's resources;
 - d) commissioned work by the University or "Work for Hire";
 - e) the ownership of the work was assigned to the University by the creator;
 - f) In case of students, the work was developed when he/she received financial support from the University in the form of tuition waiver, scholarship, stipend or allowance regardless of the amount; and
 - g) Works whose creators cannot be determined.

7.1.2 Employees

7.1.2.1 The law generally provides that where an employee creates new IP in the course of their employment, such IP belongs to the employer rather than the employee. So, unless otherwise agreed in writing, the University will, in its capacity as an employer, own all IP developed by employees in the course of employment with the University.

7.1.2.2 Where an employee creates IP outside the course of their employment and does not make substantial use of the University's resources, IP shall belong to the Employee. Where an Employee creates IP outside the course of their employment, but makes substantial use of the University's resources, IP shall belong to the University.

7.1.2.3 IP shall not generally be considered to have been created with substantial use of the University's resources where:

- a) only an insignificant amount of University funds has been used;
- b) only an insignificant amount of employee time has been used;
- c) only insignificant University resources have been used (e.g. office space, library and other general information sources, computers and/or office equipment); and
- d) the IP was created during the personal, unpaid time of the creator.

7.1.3 Students

7.1.3.1 Students are not employees of the University, and will therefore generally own IP they create, subject to any written agreement to the contrary entered into by the student.

7.1.3.2 Any IP created by a student as part of, or in connection with, their programme of study will belong to the student, subject to the exceptions set out below:

- a) Where IP is created or arises from a project funded by the University (including where the University has received a grant for any such project).
- b) Where the student assigns IP to the University;
- c) Where a student creates IP outside their programme of study with substantial use of the University's resources;
- d) Where a student creates IP in the course of, or pursuant to, a sponsored studentship, research contract, project, placement or secondment with a third party;
- e) Where there is any other relevant agreement which has been made with the University's consent; and/or

- f) Where any IP created by a student includes content belonging to another party (including the University or a third party).

7.1.3.3 Students who are also employees of the University shall be treated for the purposes of this Policy as employees in connection with any IP which they create during the course of their employment.

7.1.3.4 Students may be asked to assign their interest in the IP they create to the University. This assignment will usually be a condition of student participation in projects.

7.1.4 Third Parties

7.1.4.1 If the patentable work arose or was related to an undertaking covered by distinct agreement of the creator and a third party using funds not administered by or through the University or where the University has no claim of ownership, the terms of the agreement will prevail over this Policy.

7.1.4.2 In the absence of any contrary provision in the agreement (stated in 6.1.4.1 above), this Policy shall apply to externally funded or sponsored research.

7.1.5 Contractors

7.1.5.1 The University shall retain contractors for particular projects such as architects, executive search firms, business people or consultants. It is standard practice for IP in material created for the purpose of the contract to be assigned to the University by the contractor.

7.1.5.1 The University shall request all contractors to assign to it IP in material created for the purposes of the contract and to provide appropriate moral rights consents to ensure that the University can use created works as envisaged under the contract. Employees responsible for developing contracts should seek to ensure that contract provisions reflect this clause.

7.1.5.1 Contractors shall not be entitled to distribution of profits arising from IP created by them for the University.

7.1.6 Visiting Academics and Honorary Appointments

7.1.6.1 Visiting academics and honorary appointments (such as Adjunct and Visiting Appointments, Conjoint and Emeritus Professor) working in the University shall disclose their pre-existing IP to the Vice Chancellor for Research and Innovation and Innovation (DVCRI) or Assignee prior to commencement of their appointment or visitation rights.

7.1.6.2 In certain circumstances the visiting academics and honorary appointees may be asked to sign a confidentiality agreement or assign to the University the IP they create while on appointment or visiting the University

7.1.7 The University's Right to Use IP

7.1.7.1 Where IP belongs to the University:

- a) the University may control the use, management or/and commercialisation of IP, or perform any other action consistent with the ownership of such IP (subject to any wider legal constraints);
- b) the University grants to the creators of such IP, a non-exclusive, royalty-free licence to retain, use, copy, modify, broadcast and make available such IP for the purpose, and during the course, of their programme of study or employment at the University only, but not for any commercial purpose (unless with the University's prior written consent).

7.1.7.2 Where IP belongs to a creator, the University may perform any act consistent with the licence granted by the creator.

7.1.7 Creator's Right to Use IP

7.1.7.1 Where IP belongs to a creator:

- a) the creator control the use, management or/and commercialisation of IP, or perform any other action consistent with the ownership of such IP (subject to any wider legal constraints);
- b) the creator grants to the University an irrevocable, non-exclusive, royalty-free licence to retain, use, copy, modify, broadcast and make available for academic, research, teaching, publicity, national service, charitable and/or administrative purposes, such IP

and any associated materials created by them during the course of their programme of study or employment, with effect from the date of creation.

7.1.7.4 Where IP belongs to the University, the creator may perform any act consistent with the licence granted by the University.

7.1.9 Teaching Materials

7.1.9.1 The University owns copyright in course materials created by employees of the University in the course of their employment. The University may however license the use of such copyrighted materials by employees in forums and external workplaces at its sole discretion.

7.1.9.2 This principle does not prevent an employee from:

- a) using the skills they have developed during the course of their employment, in any future employment;
- b) receiving from the University at the end of the employee's employment, on request, a royalty-free, non-exclusive personal licence (in writing executed by an authorised officer of the University) to use conventional course materials, such as lecture notes, solely for teaching and scholarly purposes.

7.1.9.3 The licence issued under section 6.1.9.2 part b above will not allow commercialisation of the course materials or transfer of any rights in the materials by the employee to any third party.

7.1.9.4 With regard to non-conventional course materials, such as multimedia materials or course packs developed by a team, the University will consider, at its complete discretion, whether it is appropriate to grant a licence to an employee in the particular case.

7.1.9.5 The creator of course materials made under a University research project and commercialised by the University will be entitled to a distribution of profits as outlined in this Policy.

7.1.10 Scholarly Materials

7.1.10.1 Subject to clause 6.1.2.3 of this Policy, the University grants ownership of copyright in scholarly works created by an employee in the course of employment to the employee. The exception is where the scholarly works have been created pursuant to legally binding agreements with external funding bodies or commercial partners which otherwise vest ownership in the scholarly works.

7.1.10.2 The grant of ownership of copyright in scholarly works or creative works is subject to the reservation to the University of an irrevocable, non-exclusive, royalty free licence to use the scholarly works for its teaching and research purposes.

7.1.10.3 Creators shall within one month of the creation of any scholarly materials, archive a full text version in the University's repository.

7.1.11 Commissioned Works

IP in commissioned works, pursuant to the contract or arrangement by which the work is commissioned, will be owned by the University.

7.1.12 Student Theses and Dissertations

A student will own copyright subsisting in the student's thesis. The University will not claim ownership of copyright in a student thesis except where there is an agreement.

7.1.13 Trademarks

7.1.13.1 The University exclusively owns the trademarks, service marks, emblems, logos, symbols and other marks that it uses and distributes in relation to its goods or services.

7.1.13.2 Employees and students may use the University's names, logos, and other marks where necessary to identify themselves on matters of official University business.

7.1.13.3 The University's names, logos, and other marks shall not however be used for commercial purposes or by individuals or entities in a manner that implies University endorsement or responsibility for particular activities, products, or publications, or by any individual or group promoting itself, without the express written permission of the Vice Chancellor.

7.2 COMMERCIALISATION OF IP

7.2.1 Exploitation and Dealing in University IP

7.2.1.1 Exploitation and dealing in University IP shall be managed by the DVCRI office (or assignee). Any exploitation and dealing in IP by employees or students should be endorsed by the DVCRI office prior to negotiations being commenced with third parties.

7.2.1.3 Contractual provisions in respect to the University's IP should not be negotiated or agreed to with a third party without the advice of the University's Legal Counsel.

7.2.1.4 The University through DVCRI office will conduct a review of requests for investments in, or financial support of the protection of IP developed by employees or students, through applications for patents and other available registrable protections of IP with the intention of making a decision in relation to such request.

7.2.1.5 If, following the recommendation of the DVCRI office it is determined that the IP is suitable for registration and/or commercialisation, then:

- a) Creators who are employees whose IP is owned by the University, will be required to confirm assignment of the IP to the University;
- b) Creators who are students (where IP is not owned by the University) will be requested to grant the University an assignment of the IP and may also subsequently be required to further confirm such assignment in writing to allow for registration and/or commercialisation by the University.

7.2.1.5 The DVCRI office will inform creators at six month intervals of the commercialisation activities undertaken in respect of the IP.

7.2.1.5 The University will make efforts to ensure the creators are given the opportunity to have a role in any further research associated with the commercialisation of the IP.

7.2.2 Transfer of IP by the University

7.2.2.1 If the University determines that the IP is not suitable for registration and commercialisation or if the commercialisation process has been terminated, unless the

University requires such IP, then the creators of the IP may request the University to transfer ownership of the IP to them. This request must be made in writing to the DVCRI.

7.2.2.2 In response to a request under 6.2.2.1 above the DVCRI may execute an agreement assigning the IP to the creators and, subject to the University's discretion to determine otherwise where it is reasonable to do so. The terms of the assignment will usually provide for:

- a) the recovery of any direct costs incurred by the University in relation to the creation, protection and commercialisation of the IP created within the University;
- b) a reasonable return to the University (such as a percentage of profits) arising from any commercialisation of the IP by the parties to whom the IP is assigned; and
- c) the retention by the University of a perpetual licence to use the IP for its research and teaching purposes.

7.2.3 Open Licencing

7.2.3.1 The University recognises that protection and commercialisation of IP may not always be appropriate and that in some circumstances it is normal academic practice to openly licence IP.

7.2.3.1 If, having regard to all the circumstances, a creator considers that any copyright work which they have created should be openly licenced, the creator may openly licence that copyright work using a recognised open licencing resource (e.g. Creative Commons), selecting the appropriate permissible uses.

7.3 REVENUE SHARING

7.3.1 Profit sharing

7.3.1.1 The University is committed to sharing with creators of IP the rewards that may arise from the commercialisation of any University owned IP.

7.3.1.2 Prior to commercialisation, agreement must be reached between the University and the creators regarding the distribution of profits. If there is no written agreement between the University and the creators in relation to the distribution of profits arising

from the commercialisation of the IP, the creators will not be entitled to any such distribution.

7.3.1.3 Subject to a contrary agreement in writing between the University and the creators, net profit distribution will be as follows:

- a) **40% to the Creator** of the IP. If there is more than one creator, the amount is to be divided equally between all parties, unless there is a written agreement to the contrary.
- b) **30% to the School and unit** which supported development of the IP. The University reserves the right to make a discretionary distribution of a proportion of these funds to the creator(s) research unit(s).
- c) **30% to the University.**

7.3.2 Calculation of Net Profit

7.3.2.1 Subject to a contrary agreement in writing between the University and the creators, net profits from the commercialisation are calculated after deducting:

- a) the University's costs of registering and maintaining the IP;
- b) the University's costs relating to the development and creation of the IP (which will be deemed to include the salaries, wages and expenses paid by the University to or on behalf of an employee or student and the cost of any equipment, material and resources used in the development and creation of such IP) and
- c) costs of the commercialisation project.

7.3.2.2 Net profits include only profits derived by the University, and do not include profits derived by any third party which is involved in commercialising the IP.

7.3.2.2 Commercialisation of University IP not directly arising from academic activities such as teaching and research is otherwise not subject to these distribution principles and such revenue will be retained solely by the University.

7.4 MANAGEMENT OF IP

7.4.1 IP Disclosure and Evaluation

7.4.1.1 When employees become aware of IP developed by themselves, their team or a student under their supervision, which may be suitable for registration or commercialisation, they shall advise their unit head and DVCRI office.

7.4.1.2 Notification to the DVCRI of any development of IP is a pre-condition to any employees being able to have a share in any commercialisation revenue generated by such IP.

7.4.1.3 The IP Disclosure Form shall be completed and returned to the DVCRI as soon as practicable but within one month. The DVCRI shall in turn ensure response is provided within one month.

7.4.1.4 The DVCRI will evaluate works and other IP for possible protection and commercialisation. This initial evaluation procedure should have regard to:

- a) University ownership of IP;
- b) inventorship;
- c) Commercialisation rights;
- d) the existence of third party IP or background IP not owned by the University;
- e) IP protection strategy including patentability (including prior art, publications and prior use); and
- f) preliminary market assessment.

7.4.1.5 The above assessment should be undertaken within a period of three months from the date of receipt of a properly completed invention disclosure form.

7.4.1.6 During the notification, disclosure and evaluation periods there is an obligation of confidentiality placed upon relevant employees and students in respect of the IP.

7.4.1.7 Employees and students must inform the DVCRI at the time the invention disclosure is submitted if any publications or disclosures are scheduled to occur during or after the evaluation period. This obligation of confidentiality may only be lifted on advice from the University or when the University determines not to proceed with commercialisation and on the basis that no third party rights are affected.

7.4.2 Protection and Registration of IP

7.4.2.1 If the University, as advised by DVCRI office, decides to undertake commercialisation of IP, the University shall be responsible for making, and bearing the costs (or finding a commercial partner or other external funding to bear the costs) of any application for registration of IP Rights until such time as the University determines that it will discontinue commercialisation.

7.4.2.2 A creator shall not, without the prior written permission of the University, apply for registration of IP in his/her name if that IP was created in the course of employment or study.

7.4.3 IP Information

7.4.3.1 All persons covered by this Policy shall not divulge any information arising from research, patentable device or technology, trade secrets or other related information which are necessary for the protection the IP rights of the University.

7.4.3.1 In case of doubt as to the nature of the University information, the party concerned should secure a clearance from the DVCRI before divulging any information.

7.4.4 Dispute Resolution

7.4.4.1 Any disputes or complaints arising in relation to the implementation of this Policy or a decision by the University should be addressed to the DVCRI.

7.4.4.1 The DVCRI may seek internal or external expert advice in dealing with the matter and he or she may at their sole discretion:

- a) decide the matter;
- b) refer the matter to internal grievance resolution mechanisms or external mediation for resolution; or
- c) decide the matter in the light of the outcomes of the internal grievance resolution or mediation.

7.4.4.2 A decision of the DVCRI may be appealed to the Vice Chancellor if the process has not been followed correctly or new information becomes available which may influence the decision. The final determination for all disputes or complaints under this Policy rests with the Vice Chancellor and will be binding on all parties.

7.4.5 IP Offenses

The University recognises the rights of creators over their IP creations. For this reason, it shall protect the rights of the owners of IP over various forms of infringements.

7.4.6 Penalties

Any violation of the provisions of this Policy shall be dealt with in accordance with the provisions of the regulations and policies of the University applicable to employees and students.

7.4.7 Waiver of IP Policy

7.4.6.1 The Vice Chancellor, in his own initiative or through the recommendation of the University Committee on IP, shall have the sole discretion to waive or vary any or all of the provisions of this Policy on a case-to-case basis if a strict application of the Policy shall not result in fairness and equity in a particular case.

7.4.6.1 A waiver or variance of the IP Policy made in one case shall not serve as a precedent to any future or subsequent case.

8.0 REVIEW

The Policy shall be reviewed every three years or as soon as practical should there be a material change in any provisions of this Policy.

9.0 RELATED POLICIES AND APPLICABLE LEGISLATION

The Policy shall be read with the following related policies of the University:

1. Research and Innovation Policy
2. Quality Assurance Policy
3. Code of Conduct and Grievance Procedure

The University is required to manage its Policy documentation within a legislative framework.

The legislation directing this Policy is the:

1. The Companies Act Cap. 388;
2. The Registration of Business Names Act No 16 of 2011;
3. Patents Act Cap. 400;

4. Trade Marks Act Cap. 401; and
5. Registered Designs Act Cap. 402



25th November 2022

**Prof. Douglas Kunda
VICE CHANCELLOR**

Date



25th November 2022

**Dr. Hapenga Monty Kabeta
COUNCIL CHAIRPERSON**

Date