

INTELLECTUAL PROPERTY POLICY

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Part 1 - Introduction

1 Introduction

This document sets out the Policy framework for ensuring the University captures and harnesses the value of its intellectual assets for the ultimate benefit of the Australian community.

1.1 The Policy recognises that:

- 1.1.1 the University's ability to attract research funding from industry, business and government depends on its effectiveness in managing its intellectual property;
- 1.1.2 protection, management and commercialisation of intellectual property created within the University should be within the context of and consistent with the primary objectives of the University;
- 1.1.3 the University's contribution to the advancement of knowledge and innovative development should be applied to benefit the community including economic development through the growth of knowledge based industries;
- 1.1.4 the dissemination of research findings among researchers should be balanced with the need to protect commercially valuable outputs of research activity; and
- 1.1.5 changes in contractual relationships with research funding agencies have an impact on the use and control of research outcomes.

1.2 This Policy aims to:

- 1.2.1 recognise the creative contribution of staff members and students to the development of intellectual property;
- 1.2.2 reward the significant contribution and commitment by staff members and students that is required to achieve successful commercialisation;
- 1.2.3 increase awareness and understanding of intellectual property issues among staff members and students and equip them to interact easily with the community through a clear understanding of their respective rights and obligations;
- 1.2.4 protect the interests of staff members, students and the University arising from the creation, protection and commercialisation of intellectual property; and
- 1.2.5 maximise the national benefits arising from research.

1.3 This Policy forms part of the terms and conditions of appointment of *staff members*.

2 Definitions

academic activity means teaching, research, scholarship and/or the exercise of creative performance and/or professional skills;

ARI means Adelaide Research & Innovation Pty Ltd or such other administrative unit or commercial entity that may replace ***ARI***;

commercialisation means any process to transfer technology, sell, assign, license, sub-license, or otherwise trade in or deal with IP to gain or attempt to gain financial or other benefit, and ***commercialise*** and ***commercialising*** have corresponding meanings;

commercialisation costs means all costs relating to commercial development (including legal costs) , IP protection (including registration costs and attorney fees) and marketing.

faculty IP leader means the person appointed by the Executive Dean pursuant to paragraph 8.1;

faculty IP plan means the plan developed by the **faculty IP leader** in conjunction with **ARI**;

IPC means the Intellectual Property Committee;

line manager means a person having direct line management responsibility for a member of the general staff;

Level 1 Commercialisation means licensing and assignment;

Level 2 Commercialisation means any transaction that involves the University (and/or staff members and/or students) taking equity or options to equity or investing capital or loan funds, whether in a spin-out company or another entity;

net revenue means cash revenue from **commercialisation** of IP (including royalties, licence fees, lump sums and milestone payments) less **commercialisation costs**, but before tax;

originator includes inventor, author, composer, sculptor, designer, compiler, film-maker, programmer, photographer or any other person who originates in any way IP the subject of this Policy, and **originate** has a corresponding meaning. References to a singular **originator** should be interpreted to include each one of multiple **originators** of IP. (See paragraph 16: Multiple originators);

scholarly work means journal articles, conference papers and proceedings, books, recorded performances or radio scripts produced during the course of an academic **staff member's** employment;

staff member means any employed member of the staff of the University whether academic or general staff, whether full-time or part-time, fixed-term or casual, within all disciplines, schools, institutes, centres or other research groups including **staff members** who are on secondment or visiting at another institution;

student means any person enrolled as a candidate for a degree, diploma, or certificate or for any course of study offered by the University including non-award students;

student or **staff member** includes a reference to that person's executors, administrators, successors and assignees;

teaching materials means any curriculum outlines, course or program material, syllabuses, or any material prepared for the purpose of teaching any award or non-award academic program of the University, whether that material is actually used for teaching or not;

visitors means the categories of people specified in paragraph 26.1.

3 What is intellectual property?

3.1 Intellectual property (IP) is the collective name for a group of legal rights, which may be claimed for certain intellectual creations. Specifically, it includes:

3.1.1 copyright (which protects computer software, teaching materials, scholarly works and other written, artistic, dramatic and musical works, film and sound recordings amongst other things). See the *Copyright Act 1968*;

- 3.1.2 patents (these protect new inventions of all sorts, including software, biotechnological and engineering advances and, to an increasing degree, business methods.) See the *Patents Act* 1990;
 - 3.1.3 confidential information, know-how and trade secrets (this can protect all types of information). This is protected under the common law;
 - 3.1.4 plant breeder's rights (protecting distinct, uniform and stable new plant varieties that have been bred). See the *Plant Breeder's Rights Act* 1994;
 - 3.1.5 registered designs (these protect the "eye appeal" of an object and must be original). See the *Designs Act* 2003;
 - 3.1.6 registered and unregistered trademarks (these protect the signs and trading identities of businesses). See the *Trade Marks Act* 1995 for registered marks (other laws protect unregistered marks); and
 - 3.1.7 circuit layouts for computer chips. See the *Circuit Layouts Act* 1989.
- 3.2 Some of these rights require registration (eg patents, designs, plant breeder's rights). Some arise automatically as soon as the work is created (eg copyright, circuit layout rights). Others may require practical steps to keep them protected (eg confidential information – which must be kept confidential and not disclosed to a third party unless under a confidentiality agreement). Some creations may be capable of protection by more than one legal right.
- 3.3 Moral rights are not economic rights and are not classified as IP in this Policy, but they are capable of legal protection (see paragraph 30: Moral rights).

Part 2 – Ownership of IP created by *staff members*

4 The general rule

Under Australian law, the University is entitled to, and it asserts, ownership of any IP created, devised, or contributed to by all *staff members* during the course of their employment with the University.

5 Exceptions in respect of *scholarly works*

- 5.1 Subject to paragraph 5.2 the University is willing to forego its claim to ownership of IP in respect of a *scholarly work* and hereby assigns to the *originator* the copyright in any *scholarly work* (not including a *scholarly work* specifically commissioned by the University) created in the course of the *originator's* employment with the University, on condition that:
- 5.1.1 the *originator* agrees to distribute any *net revenue* received from the commercial exploitation of each such work in accordance with the provisions of Schedule A of this Policy;
 - 5.1.2 the University is indemnified by the *originator* against any loss or damage suffered by the University arising from the *originator's* use of the *scholarly work*; and
 - 5.1.3 the *originator* will, if requested by the University, use his/her best endeavours to obtain permission from the publisher for the University to copy the *scholarly work* free of royalty or other payment for use in its teaching and research activities.
- 5.2 Paragraph 5.1 is subject to paragraph 11 (Disclosure by staff members), paragraph 17 (Confidentiality and publication) and Part 8 (Obligations imposed or requested by external agencies). In particular, the University does not forego its claim to copyright in *scholarly works* where confidentiality in respect of the work is necessary to preserve the value of related IP. In such a situation, *staff members* must complete a Copyright Creation Disclosure Form (Annexure 1) or an Innovation Disclosure Form (Annexure 2) before any publication arrangement is made.

5.3 Where copyright is assigned by the University to a *staff member* under this Policy, the *staff member* will be responsible for arrangements made with a third party, such as a publisher.

5.4 Where requested by a *staff member*, and in order to give effect to this paragraph, formal assignments of copyright will be executed on behalf of the University by Vice-Chancellor and President or his/her sub-delegate.

6 Copyright in teaching materials

6.1 The University asserts its ownership of copyright in *teaching materials* produced by *staff members* in the course of their employment.

6.2 Subject to paragraph 6.3, the University allows *staff members* to use *teaching materials* which they created while employed at the University in subsequent employment with another employer, and to allow *staff members* and former *staff members* to use *teaching materials* for publication and other academic purposes.

6.3 *Staff members* and former *staff members* must apply to the relevant Executive Dean for permission to use *teaching materials* in accordance with paragraph 6.2. If permission is not granted, the *staff member* may seek a review of the decision by the Deputy Vice-Chancellor and Vice-President (Academic).

6.4 Unless otherwise agreed, the provisions regarding sharing of benefits under paragraph 14 (Sharing of benefits) will not apply to the use of *teaching materials* by the University for teaching and research purposes notwithstanding that the University may receive revenue in connection with the use of the *teaching materials*.

7 Work done outside the University

7.1 Unless otherwise agreed in writing, the University will not claim ownership of IP derived from work performed outside the course of a *staff member's* employment.

7.2 Work which involves an exercise of the skills or expertise for which a *staff member* was employed will be presumed to be work done in the course of the *staff member's* employment, unless the work:

7.2.1 is undertaken outside and independently of the University;

7.2.2 does not form part of the *staff member's* prescribed duties;

7.2.3 does not involve significant use of University resources or facilities including University funding, *staff members*, *students*, apparatus or supervision;

7.2.4 does not include any use of University-owned IP; and

7.2.5 is undertaken with the permission of the Executive Dean.

Staff members should note that even if such work falls outside the course of their employment, it may still be subject to other University policies (including the *Policy on Outside Research Grants, Contracts and Consultancies*), which must in all cases be observed.

7.3 Where the position is unclear, *staff members* are required to seek clarification in writing from the relevant *faculty IP leader* and *ARI*, to avoid possible disputes.

Part 3 - Responsibilities for IP policy implementation

8 Faculty IP leaders and faculty IP plans

- 8.1 Each faculty must have at least one *faculty IP leader* to be appointed by the Executive Dean. The *faculty IP leader* may designate an "Assistant IP Officer (or Deputy IP Leader)" if required. The role of a *faculty IP leader* is to:
- 8.1.1 establish processes to ensure that IP ownership issues are identified before research projects are commenced;
 - 8.1.2 implement the *faculty's IP Plan*; and
 - 8.1.3 fulfil any other duties assigned to *faculty IP leaders* under this Policy.
- 8.2 Each *faculty IP leader* is responsible for identifying and facilitating development and *commercialisation* of IP generated within that faculty (including by keeping IP confidential where necessary).
- 8.3 Each *faculty IP leader* is required to develop a *faculty IP plan* in conjunction with *ARI* and in consultation with the Executive Dean, advancing paragraph 8.2 which is consistent with the University's mission, reflecting the faculty's particular needs, strengths, and framework required to achieve the objectives of this Policy.
- 8.4 Each *faculty IP plan* must define roles for each school and discipline within the faculty (in consultation with *ARI*), and contain procedures to:
- 8.4.1 identify IP for possible protection and development;
 - 8.4.2 oversee the development of IP from the point of initial creation, to a point where it can be *commercialised* pursuant to agreed strategies;
 - 8.4.3 identify external funding and commercialisation opportunities (from public and private sources);
 - 8.4.4 make clear to *staff members* and *students* their responsibilities in relation to IP protection including, where appropriate, the maintenance of research laboratory records and the prevention of premature public disclosure of research results prior to obtaining IP protection;
 - 8.4.5 manage all IP issues associated with the involvement of *students* in research projects;
 - 8.4.6 guide researchers in assessing the existing IP in the field that is likely to affect their research;
 - 8.4.7 increase awareness of IP and commercialisation issues and responsibilities amongst *staff members* and *students*; and
 - 8.4.8 co-ordinate and conduct IP reviews in order to regularly review the faculty's IP portfolio.

9 Adelaide Research & Innovation Pty Ltd

- 9.1 *ARI* is responsible for providing IP, *commercialisation* and risk management services to the University including:
- 9.1.1 identification of strategies for development of IP with commercial potential;
 - 9.1.2 development and execution of IP protection and commercialisation strategies in consultation with *faculty IP leaders* and *originators*;
 - 9.1.3 identification and pursuit of external funding for *commercialisation* opportunities (from public and private sources) in consultation with the *faculty IP leader* and *originators*;
 - 9.1.4 assignments of IP as required under paragraph 15.2;
 - 9.1.5 management of the University's IP portfolio, and regular reports, including statistics, to the Deputy Vice-Chancellor and Vice-President (Research) as required; and

- 9.1.6 regular updates to *faculty IP leaders* and the Deputy Vice-Chancellor and Vice-President (Research) on *commercialisation* activity on a faculty basis.
- 9.2 Any agreement with a third party, which relates to University IP including funding, development, or *commercialisation* must be negotiated and processed through *ARI*, unless:
 - 9.2.1 the relevant IP falls exclusively into the exception in paragraph 5.1 of this Policy;
 - 9.2.3 the agreement falls exclusively into an exception covered in the University's *Policy on Outside Research Grants, Contracts and Consultancies*; or
 - 9.2.4 otherwise determined by the Vice-Chancellor and President.
- 9.3 Only the Vice-Chancellor and President or his/her sub-delegate, is authorised to act and to execute documents for and on behalf of the University in dealings relating to any right or interest in the University's IP or equity holdings (subject to Council's approval) related to University owned IP.
- 10 **Staff members**
 - 10.1 *Staff members* have responsibilities, which include:
 - 10.1.1 disclosing IP to *ARI* which they have generated or helped to generate which the *staff member* believes has commercial or other value (See paragraph 11: Disclosure by staff members);
 - 10.1.2 keeping IP confidential when required by the University or under a contract with another party (See paragraph 17: Confidentiality and publication);
 - 10.1.3 obtaining the University's approval for use of University IP for private purposes from the Deputy Vice-Chancellor and Vice-President (Research);
 - 10.1.4 obtaining the Faculty's approval for use of facilities for external or private purposes (See paragraph 7: Work done outside the University);
 - 10.1.5 declaring any income over a threshold amount from any *commercialisation* of *scholarly works*, (See paragraph 5: Exceptions in respect of scholarly works) or IP assigned to a *staff member* (see paragraph 15: Where the University chooses not to commercialise) and where required, paying royalties to the University;
 - 10.1.6 providing assistance to the University when it seeks to *commercialise* IP of which a *staff member* is an *originator* (See paragraph 14: Sharing of benefits);
 - 10.1.7 abiding by the University's other policies, such as the *Guidelines and Rules for Responsible Practice in Research*, and any policies or codes dealing with conflict of interest ; and
 - 10.1.8 complying with the terms and conditions of research grant agreements and other agreements in regard to IP including disclosure of information, publication and ownership under such agreements (paragraph 28: Legal agreements).
 - 10.2 In the case of a *staff member* who is not part of or attached to any faculty (and, therefore, has no *faculty IP leader* to provide assistance), the role and responsibilities ascribed to the *faculty IP leader* under this Policy will be undertaken by the *line manager* or such other person nominated by the Deputy Vice-Chancellor and Vice-President (Research).

Part 4 – Reporting and developing intellectual property

11 Disclosure by *staff members*

11.1 If a *staff member* generates IP in the course of employment with the University:

11.1.1 which the *staff member* reasonably believes has value; and/or

11.1.2 over which any other party may assert or dispute ownership or a legal interest,

then the *staff member* must promptly disclose its creation to *ARI* (who will provide a copy of the disclosure to the relevant *faculty IP leader*) in order to protect the *staff member's* legal interests and their rights to benefit under this Policy, as well as the University's interests. Disclosure provides the opportunity to assess the commercial value of the IP and ensure that protection is provided before public disclosure.

11.2 A *staff member* is required to use either the Innovation Disclosure Form, or the Copyright Creation Disclosure Form, as appropriate. These forms are located at the end of this Policy.

11.3 On receipt of a Disclosure Form, *ARI* in consultation with the *faculty IP leader* will evaluate whether the University wishes to proceed with protecting and *commercialising* the IP disclosed. *ARI* will notify the discloser within six months of receipt of the Disclosure Form of its decision. This period may be extended either by mutual consent or by *ARI* in writing to the *originator* setting out the reasons for the extension.

11.4 In determining whether to protect and *commercialise* the IP, the *faculty IP leader* and *ARI* must consult with the *originator/s* and other relevant parties.

11.5 When a disclosure is made under this paragraph 11, the discloser is responsible for keeping the IP confidential, while the *faculty IP leader* and *ARI* make an evaluation.

11.6 Where a *staff member* brings IP to the University generated in the course of previous employment, and in respect of which that previous employer or the *staff member* have a claim of ownership, then this must be disclosed to the University so all issues of ownership are clarified and settled, before the *staff member* uses that IP in the course of his or her employment at the University.

12 Commercialisation

12.1 The University reserves the right to use its IP in both commercial and non-commercial ways.

12.2 *Commercialisation* of University IP can result in benefits extending beyond the potential for financial return and can be achieved in a number of ways including *Level 1 Commercialisation* and *Level 2 Commercialisation*. Subject to paragraph 13: "Equity or investment related transactions", *ARI* will determine the best method by which IP (other than *scholarly works* which are dealt with in paragraph 12.3) is *commercialised* on a case-by-case basis. In providing this advice, *ARI* must consult with the *originator/s*, *faculty IP leaders* and relevant third parties.

12.3 Matters relating to *scholarly works* under this policy will be referred to the Deputy Vice-Chancellor and Vice-President (Academic) in the first instance.

12.4 Where University IP is to be patented, *ARI* will pay relevant *commercialisation costs*, provided that *ARI* shall have the right at any time to determine not to incur further expenditure with regard to protecting University IP. In such case, *ARI* will advise the *originator* and the relevant *faculty IP leader* of this decision and the provisions of paragraph 15: Where the University chooses not to commercialise will apply.

13 Equity or investment related transactions

- 13.1 The Council of the University must approve all *Level 2 Commercialisation* proposals in order to exercise responsible management over the University's intellectual assets, equity and investment arrangements, to manage risk exposure and to ensure compliance with regulatory requirements. Prior to submission to Council such proposals will be referred to the University of Adelaide Council's Finance Committee
- 13.2 Proposals for *Level 2 Commercialisation* will first be examined by ARI in consultation with the relevant faculty IP leader and the originator. ARI will advise the Vice-Chancellor and President whether good business and legal reasons exist to support such an approach after appropriate due diligence.
- 13.3 Where a commercialisation proposal involves *Level 2 Commercialisation* then distribution of any benefit to the originator/s will be negotiated and agreed in writing on a case-by-case basis.

14 Sharing of benefits

- 14.1 Subject to paragraph 13.3, when the University receives *net revenue* from *commercialisation* of IP under this Policy, distribution of a portion of that *net revenue* to the *originator* will be made according to the provisions in Schedule B (provided that this distribution obligation does not apply to any revenue received by the University from a staff member in accordance with Schedule A).
- 14.2 Obtaining taxation advice and fulfilling taxation obligations associated with a portion of net revenue flowing to *originator/s* of IP are the responsibility of the individuals involved.
- 14.3 A *staff member* who is an *originator* of IP that is to be *commercialised*, is required to provide all reasonable assistance, by providing information promptly, attending meetings and executing appropriate documents without delay. Where the commitment from the *staff member* is significant or is likely to impinge upon the *staff member's* other University duties the approval of the Head of School will be sought so that appropriate arrangements can be made.
- 14.4 Distribution of a portion of *net revenue* to the *originator* is contingent on the *originator* fulfilling their responsibilities as listed in paragraphs 10 and 14.3. If the University or ARI incur additional costs as a result of a failure by an *originator* to promptly fulfill those responsibilities then those costs may be deducted from that originator's portion. If there is a significant breach of the *originator's* responsibilities then the Deputy Vice-Chancellor and Vice-President (Research) may at his or her discretion, and after consultation with the *IPC*, reduce the *originator's* portion in proportion to the severity of the breach.
- 14.5 Overriding paragraph: The Vice-Chancellor and President may by written agreement signed by the *staff member* and the University enter into an arrangement with any *staff member* which varies the proportionate distribution of *net revenue* referred to in this paragraph 14. Proposals for variation will first be referred to the University of Adelaide Council's Finance Committee for advice.
- 14.6 Distributions to *originators* under this paragraph 14 will continue regardless of whether they remain employed by the University. If the University, after making reasonable enquiry, is unable to locate an *originator* after that person ceases employment with the University, then it will continue to hold moneys that would otherwise be distributed to that person in trust for a period of 4 years, after which point that money and any further notional allocations to that *originator* may be applied by the University as it sees fit with no further obligation to that *originator*.

15 Where the University chooses not to *commercialise*

- 15.1 If the decision is made not to proceed with *commercialisation* of IP and *ARI* has advised the *staff member* of this decision in writing pursuant to paragraph 11.3 or at any subsequent time pursuant to paragraph 12.4 then (subject to this sub-paragraph and any prior agreement the University may have with other parties) the *staff member* may request an assignment of the IP to the *staff member* and, upon such assignment having been executed, is able to protect and *commercialise* or otherwise use the IP in their own right and at their own expense. The University retains the right not to assign IP to the *staff member*.
- 15.2 If the University approves an assignment of the IP to the *staff member* then *ARI* will arrange for an agreement to be executed assigning the University's interest in the IP to the *staff member*, on the conditions that:
- 15.2.1 the *staff member* will be responsible for stamp duty, GST or any other taxation obligations arising from the assignment;
 - 15.2.2 the *staff member* accepts that no warranties or representations are made concerning the value of the IP to be assigned nor the status or validity of any IP protection filed by the University prior to the time of assignment;
 - 15.2.3 the *staff member's* private use of the IP must be at no cost or risk to the University, the *staff member* must insure him or herself and the *staff member* must indemnify the University against any costs and expenses arising from the *staff member's* private use of the IP;
 - 15.2.4 while the *staff member* remains an employee, the *staff member's* private use of the IP must be consistent with the University's other Policies (e.g. on conflict of interest, and the *Policy on Outside Research Grants, Contracts and Consultancies*, as amended from time to time);
 - 15.2.5 if *net revenue* from *commercialisation* exceeds the given threshold, the *staff member* will pay to the University a portion of the *net revenue*, in accordance with Schedule A of this Policy; and
 - 15.2.6 the University retains a royalty free perpetual licence to use the IP for teaching and research purposes.
- 15.3 The assignment of University IP in the case of multiple *originator/s*, will be to all *originator/s* without determination of ownership or proportion of contribution and the *staff member/s* will be required to indemnify the University against any liability arising from a dispute regarding inventorship or proportion of ownership of IP.
- 15.4 It is strongly recommended that *staff members* obtain their own independent legal, accounting and taxation advice before commencing independent *commercialisation* of IP.
- 15.5 Where neither the University nor the *originator/s* wish to use or *commercialise* the IP the University may in consultation with the *originator/s* transfer the IP to another public or commercial entity for its own use to ensure it is applied for the public benefit.

16 Multiple originators

- 16.1 If a staff member is one of a team of multiple *originators*, then he or she has all the responsibilities and obligations of an *originator* and a pro-rata share of the rights and benefits conferred on an *originator* under this Policy.
- 16.2 *Originator's* benefits under this Policy will be shared between the co-*originators* involved on an equal basis, unless there is significant divergence in the contribution from the different *originators*.

Where such a divergence is claimed, the *co-originators* are required to agree between themselves an equitable apportionment of their respective shares in the IP. If an agreement cannot be reached, the provisions of Part 5: Dispute Resolution apply.

17 Confidentiality and publication

- 17.1 IP with potential for *commercialisation* must be protected before it is published or publicly disclosed (eg at a conference or other presentation) or communicated to another person or organisation.
- 17.2 *ARI* must be consulted if there are concerns that a publication may put a patent application at risk.
- 17.3 Reporting the creation of IP may be a key requirement of contracts with external bodies including under Material Transfer Agreements (e.g. public sector funding bodies, CRCs, companies and others). (See Part 8: Obligations imposed or Requested by external agencies.) *Staff members* are required to comply with these obligations.
- 17.4 *Staff members* must not sign any confidentiality agreement or an agreement dealing with the transfer of materials, such as a Material Transfer Agreement, with another party. Only the Vice-Chancellor and President or his/her sub-delegate may execute a Confidentiality Agreement or Material Transfer Agreement for and on behalf of the University.

Part 5 – Dispute Resolution

18 Procedure

- 18.1 If a dispute arises under this Policy, the parties must use their best endeavours to resolve the dispute amicably between themselves.
- 18.2 If the dispute cannot be resolved in this way, then the *IPC* must appoint a mediator who can assist the parties in resolving their dispute.
- 18.3 If such a dispute cannot be resolved through the assistance of a mediator, then the *IPC* must appoint an arbitrator to investigate and decide the matters in dispute. The arbitrator may adopt whatever procedure they see fit, provided each party is given a fair hearing.
- 18.4 In selecting a mediator or arbitrator, the *IPC* must, as far as is reasonably practicable, choose a person who is acceptable to all parties.
- 18.5 A mediator appointed under this Policy who facilitates an agreement between the parties must record the terms of the agreement in writing. An arbitrator who makes a decision in a dispute under this Policy must provide the parties with written reasons for the decision.
- 18.6 The cost of mediation and arbitration, other than in relation to disputes arising under paragraph 16.2, will be paid by the University.
- 18.7 The decision of the arbitrator will be final and binding on the parties.

Part 6 - Application of this policy to *students*

19 Ownership of IP: the general rule

- 19.1 *Students* own the IP in their work:
 - 19.1.1 unless they have signed an agreement varying their ownership rights; and

- 19.1.2 to the extent that their work does not incorporate IP belonging to the University, or another entity.
- 19.2 Where a person is both a *student* and an employee of the University, any IP created in his or her capacity as an employee of the University will belong to the University and the person will be subject to the terms of this Policy.
- 19.3 Subject to the other provisions of this Part, the *student* grants to the University a non-exclusive, royalty free, irrevocable and perpetual licence to use IP created by the *student* during the course of his or her studies for teaching and research purposes.

20 Disclosure

Students who have generated IP in their capacity as a *student*, and who have assigned their rights to the University under paragraph 21, are required to promptly disclose the IP to *ARI*. Such disclosure is a mechanism to protect *students'* legal interests and opportunities to benefit under this Policy. The Innovation Disclosure Form or Copyright Creation Disclosure Form may be used for this purpose. *Students* are required to provide to the *faculty IP leader* prior to their ceasing to be a *student* of the University, a copy of the IP in an agreed format.

21 Agreements varying ownership

21.1 A *student* must not be permitted to work on a project that:

21.1.1 is a University project where:

- a. the IP is likely to have or has commercial potential; or
- b. is a project which builds upon pre-existing University IP; or

21.1.2 is being carried out for or in conjunction with a third party (eg a CRC, company, funding body),

unless the *student* has entered into a written agreement with the University which covers both the ownership of the IP, and any requirement for confidentiality arising out of the work (a Student Project Participation Agreement can be found at www.adelaide.edu.au/graduatecentre/poladmin.html)

- 21.2 Signing such an agreement must be an act of free will by the *student*, after disclosure by the University of the consequences, and will not be a condition for enrolment in the University. If a *student* needs independent legal advice, especially if the *student* is potentially in dispute with the University, the *student* should contact the Law Society of South Australia or the Postgraduate Students Association for referral to independent legal service providers. The University will use its best endeavours to provide *students* who prefer not to sign such an agreement with the option of a different research topic.
- 21.3 Dealing with IP ownership implications in selecting a research topic, and the responsibilities of both the supervisor and the *student*, are outlined more fully in the AVCC's *Code of Practice for Maintaining and Monitoring Academic Quality and Standards in Higher Degrees*.

22 Outside employers

A *student* who is an employee of another organisation, (which is not itself party to a joint research project with the University) must advise their *faculty IP leader* and their supervisor that they are in the employ of another organisation before their research or thesis topic is approved, so that suitable arrangements can be made with the employer, if necessary. These arrangements might include obtaining a disclaimer from the employer of any interest in the research, or negotiating a sharing of rights to any IP arising from the research.

23 Commercialisation of student IP

- 23.1 Subject to paragraphs 19.3 and 21 and provided that no other person has any claim on the *student's* IP, the *student* is able to *commercialise* or otherwise use the IP as the *student* sees fit, provided the *student* has complied with this Policy.
- 23.2 If a *student* chooses to assign ownership of his or her IP rights to the University under a specific agreement, then his or her rights and obligations arising from such an assignment will be the same as those of *staff members* under paragraph 14: Sharing of benefits, of this Policy.
- 23.3 If a *student* has a query about IP rights the *student* can contact the relevant *faculty IP leader* or *ARI* for further information. However, a *student* may need independent legal advice, especially if the *student* is potentially in dispute with the University. In such a situation the *student* may want to contact the Law Society of South Australia or the Postgraduate Students Association for referral to independent legal service providers.

24 Confidentiality and publication

- 24.1 *Students* have a right to have their work examined. They also have the right to submit their work for publication. These rights may be subject to confidentiality limitations in the case of team research, or research conducted for or in conjunction with outside bodies. In such cases, the University may require a *student* to sign a confidentiality agreement whereby the *student* undertakes to keep confidential information about the project (subject to the *student's* need to discuss aspects of the project with the supervisor and other people involved in the project).
- 24.2 Signing a confidentiality agreement must be an act of free will, after disclosure by the University of the consequences of what the *student* is doing, and cannot be a condition of enrolment at the University.
- 24.3 In order to preserve the *student's* rights to publish their thesis and at the same time enable the University to meet commitments to external third parties, the University may require the use of confidential appendices, and/or limiting access to the thesis for a certain period, and/or entering confidentiality arrangements with examiners.
- 24.4 The University will endeavour to limit the time during which the thesis or confidential appendices must be kept confidential to no longer than 12 months, but the period may be extended by mutual agreement. The University must review with the *student* (at least annually) any continuing requirement for confidentiality.
- 24.5 The University will not agree to conditions which would permit any external organisation to require alterations to a *student's* thesis before submission for examination, other than to require the maintenance of confidentiality of their own IP. (See also the University's *Code of Practice for Maintaining and Monitoring Academic Quality and Standards in Higher Degrees*.)

25 Dispute resolution

- 25.1 Subject to paragraph 16.2, disputes under this Policy involving *students* will be handled according to the University's *Student Complaints Policy*.

Part 7 - Visitors

26 Application of Policy to non-salaried titleholders and visitors

- 26.1 This paragraph applies to non-employee titleholders within the University, including research

associates, affiliates, adjunct academic appointees, Emeritus Professors and Visiting Fellows.

- 26.2 Where a *visitor* will contribute to *academic activity* in respect of which the University has contractual obligations to a third party or which will build on existing University IP, the *visitor* will be required to assign any future IP created by the *visitor* arising from participation in that *academic activity* to the University.
- 26.3 The *visitor* will be required to keep any IP assigned to the University pursuant to paragraph 26.2 confidential and will not disclose it to a third party without the prior written consent of the University.
- 26.4 Where the *visitor* has assigned his/her IP to the University the *visitor* will be treated as a *staff member* for the purpose of sharing in any benefits from the *commercialisation* of such IP in accordance with this Policy.
- 26.5 Where paragraph 26.2 does not apply and where the *visitor* will:
- 26.5.1 be working on a project which has the potential to produce IP; or
 - 26.5.2 the *visitor* raises an issue of equitable apportionment of rights in the light of another appointment or obligation that the *visitor* might have to another organisation; or
 - 26.5.3 a *visitor* makes or proposes to make significant use of University resources or facilities
- then the relevant *faculty IP leader* must ensure that ownership of IP and related issues including the right to participate in financial returns from commercialisation of IP are agreed in writing with the *visitor* at the outset and where appropriate, are incorporated into the terms and conditions of appointment.
- 26.6 The *visitor* is required to promptly report the creation of any IP arising from *academic activity* at the University to the Head of School.
- 26.7 Where the *visitor* retains ownership of any IP created during the course of his/her participation in *academic activity* at the University under paragraph 26.5, the *visitor* hereby grants a non-exclusive license to the University to use IP created by the *visitor* in making his or her contribution so it can be used within the University for teaching and research purposes.
- 26.8 In the case of adjunct academic appointees and Visiting Fellows who also hold a substantive appointment at another institution, the University through the *faculty IP leader* must seek agreement with the other institution on the basis that each organisation will retain IP rights in IP developed by such staff at its own facilities and will not claim ownership of IP developed by such staff whilst working at the other institution.

Part 8 - Obligations imposed or requested by external agencies

27 Staff responsibilities

- 27.1 *Staff members* engaged in research under an agreement with another body including competitive research granting bodies such as ARC, NH&MRC and other research and development corporations such as GRDC must comply with the terms and conditions of the agreement, particularly in so far as it deals with matters of:
- 27.1.1 ownership of and rights to use IP;
 - 27.1.2 confidentiality and other restrictions affecting rights to publish materials; and
 - 27.1.3 constraints on the right to engage in similar research for other parties.

27.2 Any *staff member* who is uncertain about the impact of such an agreement must seek help from the relevant *faculty IP leader* and/or *line manager* or *ARI*.

28 Legal agreements

28.1 Any agreement with an external agency must include provisions regarding the legal rights to IP which is created under the agreement.

28.2 Wherever possible the University seeks to retain ownership of IP even when the research or part of the research is externally funded. It does so in order to ensure that University academic activities are not detrimentally affected, i.e. to ensure that academic staff and *student* rights to publish research, engage in academic discourse and conduct future research are protected and to ensure maximum flexibility in *commercialisation* of IP.

28.3 With respect to IP generated by research conducted in collaboration with another university, or some other institution, the University will seek an equitable share of the IP.

29 Traditional indigenous knowledge

The University recognises that commercial development of products resulting from use of the 'traditional knowledge' of indigenous peoples should be subject to benefit-sharing negotiations with the providers of such knowledge, consistent with Australia's National Strategy for the Conservation of Biological Diversity and international commitments.

Part 9 - Miscellaneous

30 Moral rights

30.1 Moral rights are special types of "non-economic" rights that are connected to works in which copyright exists and include the right to be identified as the author of a work, the right to take action against false attribution and the right to object to derogatory treatment of a work which is detrimental to the author's honour or reputation.

30.2 Moral rights are consistent with longstanding general academic codes of practice (including the University's *Guidelines and Rules for Responsible Practice in Research*) in relation to attribution and use of work. The University recognises the moral rights of *staff members*, *students* and *visitors* and will use its reasonable endeavours to ensure that those rights are observed by the University and by any third party under contract with the University. The University retains the right to appropriately modify materials subject to such rights for teaching, research, commercial or other purposes. If you are concerned about a possible breach of your moral rights, contact your immediate supervisor or *faculty IP leader*. If your concerns cannot be resolved at that level, or within the School the *staff member* may seek a review of the position by the Deputy Vice-Chancellor and Vice-President (Academic).

31 Intellectual Property Committee

31.1 The *IPC* commences operation from the date this Policy comes into effect .

31.2 The *IPC* consists of:

- 31.2.1 the Deputy Vice-Chancellor and Vice-President (Research) (Chair);
- 31.2.2 the Executive Dean of each Faculty;
- 31.2.3 the Dean of Graduate Studies;
- 31.2.4 the *ARI*/Managing Director;
- 31.2.5 the Vice-President (Services and Resources)

- 31.2.6 two *staff members* nominated by the Academic Board, and
 - 31.2.7 one *student* of the University nominated by the President of the Postgraduate Students Association.
- 31.3 The *IPC*'s functions are to:
- 31.3.1 monitor the implementation of this Policy;
 - 31.3.2 ensure that this Policy is communicated and explained to *staff members* and *students*;
 - 31.3.3 review the effectiveness of the University's *commercialisation* and technology transfer activities consistent with the objectives of this Policy;
 - 31.3.4 appoint neutral mediators and arbitrators to resolve disputes where necessary under paragraphs 18.2, 18.3 and 18.4;
 - 31.3.5 consider and advise the Vice-Chancellor and President on strategic issues relating to IP and *commercialisation*; and
 - 31.3.6 recommend to the Vice-Chancellor and President appropriate changes to this or any related University Policy.
- 31.4 The *IPC* must meet at least twice each year. Twelve months after the commencement of this Policy, and annually thereafter, the *IPC* must receive a report from the Deputy Vice-Chancellor and Vice-President (Research) on the operation of this Policy during the preceding twelve months.
- 31.5 The *IPC* reports to the Vice-Chancellor and President.

SCHEDULES

Schedule A

University's share of benefits from IP assigned to staff

(Refer to paragraphs 5.1.1 and 15.2.5) The threshold of *net revenue* above which the University will claim royalty payments from *scholarly works* and other forms of IP which are independently *commercialised* by *staff members* and the formula for distribution of net revenue when this threshold has been reached.

Where the *net revenue* to a *staff member* from exploitation of a single *scholarly work* or other item of IP that has been assigned to the staff member (after costs of protection, development and *commercialisation* but before tax) exceeds a threshold of \$50,000 (fifty thousand dollars) in any one financial year, the University will claim a royalty of ten percent from that proportion of the *staff member's net revenue* which exceeds the threshold.

Of the royalties claimed and received by the University under this formula, the University shall allocate one-half to the Discipline(s)/School in which the *originator/s* of the work was/were based at the time the work was created. The remaining one-half of the royalties will be applied toward strategic investment in research.

Schedule B

Distribution of benefits to staff and students from *commercialisation* of University IP

(Refer to paragraph 14: *Sharing of benefits*) The formula to be applied for distribution of proceeds when the University elects to pursue *commercialisation* of IP (this is the default distribution in relation to "Level 1 Commercialisation" (licensing and assignment)– "Level 2 Commercialisation" (equity related transactions) will be subject to case by case determination)

Unless otherwise agreed, the *net revenue* from *commercialisation* of University IP will be shared as follows:

- (a) one-third to the *originators* of the IP and if more than one, equally among all *originators* unless a written agreement is reached to the contrary by the *originators* varying this apportionment as required under paragraph 16.2;
- (b) one-third to the Discipline/s, School/s, and Faculty/s in which the *originator/s* of the work was/were based at the time the work was created to be disbursed in line with the distribution agreed among *originators* under paragraph (a) above or as agreed by the Executive Dean/s of the Faculty/s following consultation with the relevant School/s and/or Discipline/s or in the case of general staff as determined by the Line Manager in consultation with the Deputy Vice-Chancellor and Vice-President (Research); and
- (c) one-third to the Deputy Vice-Chancellor and Vice-President (Research) for strategic investment in research, or as otherwise determined by the Vice-Chancellor and President.



THE UNIVERSITY
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AUSTRALIA

Staff Copyright Creation Disclosure Form

The purpose of this form is to enable both staff and the University to benefit from valuable copyright creation and to head off any potential disputes over its future use. It should be completed whenever staff have created a copyright work (as defined in the University's "Intellectual Property Policy") which may have **significant commercial value (i.e. the potential to earn over \$50,000 p.a.)** or over which the University or another party may assert or dispute ownership or a legal interest either under a contract or under this Policy.

Under Australian law, an employer is entitled to claim ownership of all intellectual property developed by staff in the course of employment. The IP Policy provides that though the University claims ownership of copyright creations developed by staff in the course of employment, in the case of *scholarly works* the University assigns ownership to the staff member, unless such creations were specifically commissioned by the University. However, the assignment to the staff member is conditional. It is subject to the University retaining three (3) rights:

1. a right to receive a minor share of royalties if and when specific creations generate revenue to you of more than \$50,000 p.a.;
2. a right to be indemnified by you, in relation to your private commercialisation of such creations, but only when we consider it necessary for legal reasons; and
3. the right to request that you use your best endeavours to obtain permission from the publisher for the University to reprint the *scholarly work* free of any royalties or other payments for use in its teaching and research activities.

This form can also be used if you want advice, assistance or explanation of your options, rights or duties under the Intellectual Property Policy, in respect of a particular copyright creation.

This disclosure will be treated as confidential and the University will not disclose this information to others without your consent, except as required by law. You should also keep this information confidential. After you return this form, a member of *ARI* will visit you, to discuss the matters raised. They may seek more information, (on a confidential basis) if required to properly advise you, or to properly protect the intellectual property.

Staff Creation

1. **Type of creation:** (eg software/book/teaching materials/video/journal article)
.....
.....
2. **Description:** (Title of creation, and description of content. If possible, attach a copy)
.....
.....
3. **What is your best estimate as to the economic potential of this creation?**
.....
4. **Who else contributed to the making of this creation?** (List names or attach details)
.....
.....
5. **Are you (or is a publisher) seeking a waiver of one or more of the University's rights over this creation?** If so, please attach the separate *Copyright Waiver Request Form*
.....
6. **What funding or grants were received towards this creation?**
.....
7. **Do you need advice, assistance, or explanation of staff and/or student's options, rights, or duties under the University's IP Policy?**
☐ Yes ☐ No

Creator's Signature:

If there is more than one creator, each co-creator must sign a separate Disclosure Form)

Date:.....

Staff Details

- | | |
|--|----------------------------------|
| 1. Name: | 5. Work Phone:
..... |
| 2. School:
..... | 6. Mobile Phone:
..... |
| 3. Job Title and Classification:
..... | 7. Email:
..... |
| 4. Private Address:
..... | |

Return one copy of the completed form to:
Adelaide Research & Innovation Pty Ltd, PO Box 149 Rundle Mall, Adelaide SA 5000.
Ph: +61 8 8303 5020 **Fax:** +61 8 8303 4355 **Email:** ARI@adelaide.edu.au



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Innovation Disclosure Form

This Disclosure Form is for use by The University of Adelaide staff members and students. It should be completed whenever something new and useful has been conceived or developed. Use this form to disclose any idea, application or invention arising from your work in the University, if it has potential commercial value, or over which the University or another party may assert or dispute ownership or a legal interest either under a contract or under this Policy.

Staff can also use this form if they want advice, assistance or explanation of their rights or duties under the University's IP Policy, in respect of a particular innovation.

Under Australian law, an employer is entitled to claim ownership of all intellectual property developed by staff during the course of employment. Despite this, the IP Policy provides that originators will be recognised with a proportion of any net proceeds, which may arise from the commercialisation of University IP. Therefore, the disclosure of IP is a pre-requisite for protecting the legal interests and right to benefit under the Policy.

In the case of students, the general rule is that students own the IP in their work unless they have signed an Agreement varying their ownership rights (such as an SPPA), or to the extent that the work incorporates IP belonging to the University or other people.

A student who has assigned their IP to the University will be treated as a member of staff for the purpose of sharing in the benefits of commercialisation of IP (see paragraph 23.2).

The disclosure will be treated as confidential information. Staff and/or students should also treat the disclosure as confidential. On receipt of this form, a member of ARI will visit, to discuss the matters raised. ARI may seek more information, (on a confidential basis) if required, in order to provide appropriate advice, or to protect the intellectual property.

If space on this form is insufficient, attach papers where necessary.

Staff/Student Details

1. Name:
2. School:
.....
3. Job Title & Classification/Status:
4. Private Address:
5. Work Phone:
6. Mobile Phone:
7. Email:

Details of Innovation

8. Title of innovation/invention:
.....
9. Description: (If possible, attach draft specifications/paper drawings/etc)
.....
.....
10. Who else was involved in making this innovation?
(List names or attach details)
.....
.....
11. How did this innovation originate? Indicate some of the earlier work, if any, on which your invention relies.
.....
.....
12. How far advanced is your development of the innovation?
What stage of development has it reached?
.....
.....
13. What is the potential future for this innovation? If commercial development proceeds, what are the possible applications/uses?
.....
.....
14. What is your best estimate as to the economic potential of this innovation?
.....
15. What funding or grants did you receive towards this innovation?
.....
16. Who do you consider has rights to, or may claim the intellectual property in this innovation? (May be more than one person or body)
.....
.....

Signature:

Date: