



## INTELLECTUAL PROPERTY POLICY

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## INTELLECTUAL PROPERTY POLICY

### 1. INTRODUCTION

- 1.1 Botswana Open University (BOU) promotes and encourages research, technology and innovation. Therefore, BOU aspires to build a culture of research and innovation to actively respond to the needs of the people of the Republic of Botswana, whilst also contributing to the global research community. In particular, the University seeks to play a significant role in the realisation of a knowledge- based economy as envisioned by the Government of Botswana (Vision 2036). The BOU *Research and Innovation Policy* of 2018 guides the governance of all research and innovation initiatives of the University.
- 1.2 This Intellectual Property Policy recognises that Employees, Students and Affiliates of the University may contribute creative solutions which are economically viable. Therefore, in order to serve the interests of all the stakeholders better, that is, the public, University staff and students, and individuals, legal protection will be obtained for creative solutions, innovations and creative works. The objective for legal protection by the University will be for monopoly over the commercialization of the processes, products and services created. The monopoly over the Intellectual Property (IP) gives the University an opportunity to create additional revenue streams and reduce dependency on the Government subvention.
- 1.3 This Policy is developed in accordance with and is subject to Botswana laws including the Industrial Property Act of 2010, the Copyright and Neighbouring Act of 2000 (amended in 2006) and the National Intellectual Property Policy of 2020. In addition, this Policy is built upon other national and institutional policies like Vision 2036, the National Policy on Research Science Technology and Innovation of 2011, and the University's *Research and Innovation Policy*, *Research Ethics Policy* and *Business Development Strategy*.
- 1.4 The University affirms the tradition in higher education that academic publications such as books and articles created by BOU staff are owned by their authors and as such are outside the scope of this Policy.

### 2. DEFINITIONS

Certain terms are used in this document with specific meanings, as defined in this section.

- 2.1 BENEFIT** means the technical, monetary, reputational and other advantages accruing to the University and the contribution to national socio-economic needs, including capacity development, technology transfer, job creation, enterprise development, social upliftment and products or processes or services that embody or use the Intellectual Property.
- 2.2 COMMERCIALISATION** means any form of exploitation of intellectual property emanating from research and development and innovations by any Employees, Students, Visiting Researchers, including assignment, licensing, internal exploitation within the University, commercialisation via a spin-off enterprise/entity, donation or selling of Intellectual Property rights.
- 2.3 COMPUTER SOFTWARE** means any computer program (including, without limitation, microcode, subroutines and operating systems), regardless of form of expression or object in which it is embodied, together with any user manuals and other accompanying explanatory materials, and any computer database (Copyright and Neighbouring Rights Act, 2000, amended in 2006).
- 2.4 COPYRIGHT** is a form of Intellectual Property (IP) that deals with exclusive right, by virtue and subject to the provisions of the Copyright and Neighbouring Rights Act of Botswana, 2000 (amended in 2006), to do, and authorise other persons to do, certain acts in relation to their creative work in Botswana or in any other country to which the relevant provisions of the Act extend.
- 2.5 CREATOR/INVENTOR** means any person or persons to whom this Policy is applicable, who creates, conceives, reduces to practice, authors or otherwise makes a substantive intellectual contribution to the creation of Intellectual Property and who meets the definition of “inventor” as implied in the Industrial Property Act of 2010 or the definition of an “author” as generally implied in the Copyright and Neighbouring Rights Act of Botswana, 2000 (amended in 2006).
- 2.6 EMPLOYEE** means a person who has entered into an employment relationship with the University, whether research or professional, administrative and support staff, paid or unpaid, full time or part time, full appointment or joint appointment.
- 2.7 EXPENSES** means those expenses assignable to the management of a specific Intellectual Property case, including costs for achieving and maintaining patent or other Intellectual Property protection, financing costs, loans, marketing, licensing and other legal actions related to the

enforcement of Intellectual Property and contract rights, which do not include staff time or general administrative expenses.

- 2.8 FULL COST** of research means the full cost of undertaking the research and development as determined in accordance with International Financial Reporting Standards, and includes all direct costs (including staff salaries, bursaries, equipment and other running costs) and indirect costs (costs that cannot be specifically attributed to an individual project e.g. space usage, rent, services e.g. financial services and other overheads, etc.).
- 2.9 GEOGRAPHICAL INDICATION** means an indication or sign which identifies goods as originating in the territory of a country or a region or locality in a country where the quality, reputation or other characteristic of the goods is essentially attributable to that geographical origin (Industrial Property Act, 2010).
- 2.10 GROSS REVENUE** means revenue received by the University on the IP that it assigns, sells or licenses, minus any application, litigation, interference, or marketing costs directly attributable to the intellectual property being licensed. Deducted costs shall be reasonable and fair, and shall be properly disclosed. The sources and amounts of compensation shall also be properly disclosed.
- 2.11 INDUSTRIAL DESIGN** means any composition of lines or colours or any three dimensional form, whether or not associated with lines or colours, which gives a special appearance to a product of industry or handicraft (Industrial Property Act, 2010).
- 2.12 INDUSTRIAL PROPERTY** is another component of Intellectual Property and includes patents for inventions, trademarks, industrial designs, geographical indications, traditional knowledge and handicrafts (Industrial Property Act, 2010).
- 2.13 INNOVATION** means the implementation of a new or significantly improved product (good or service), or process, a new marketing method, or a new organizational method in business practices, workplace organization or external relations (OECD, 2005).
- 2.14 UNIVERSITY** means the Botswana Open University (BOU).
- 2.15 INTELLECTUAL PROPERTY (IP)** refers to the creations of the mind: inventions; literary and artistic works; and symbols, names and images used in business or commerce. (World Intellectual Property Organisation, 2004). It includes industrial property and copyright.

- 2.16 INTELLECTUAL PROPERTY DISCLOSURE FORM** means the form which needs to be completed by a Creator(s) to document their Invention and provide key information regarding the Creator(s), funding used to develop the Intellectual Property and the rights of third parties, for submission to the University for assessment of the Intellectual Property.
- 2.17 INTELLECTUAL PROPERTY RIGHTS** (IP Rights) means ownership and associated rights relating to Intellectual Property, including patents, rights in utility model, plant breeders' rights, rights in designs, trademarks, geographical indications, topography rights, know-how, trade secrets and all other intellectual or industrial property rights as well as copyrights, either registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world.
- 2.18 OPEN SOURCE** in the context of software means software whose source code is published and made available to the public, enabling anyone to copy, modify and redistribute the source code in accordance with the specific conditions that are imposed.
- 2.19 PATENT** means Intellectual Property that is novel (i.e. that has not been publicly disclosed), involves an inventive step (not obvious to a person skilled in the technical discipline) and is useful (can be applied in trade or industry or agriculture) and meets the criteria for patenting.
- 2.20 PUBLIC DISCLOSURE** means, in the absence of a non-disclosure or confidentiality undertaking, the oral or written communication of information relating to Intellectual Property to a person, or people, that are external to BOU, but not limited to, communication by email, web blog, news report, press release or interview, abstract, poster, conference presentation and through the submission of a report placed in the library.
- 2.21 PUBLIC DOMAIN** means works that do not qualify for IP protection, either because the rights have expired or the rights have been forfeited; and as such are held by the public at large and are available for anybody to use without permission from the creator or the original rights owner.
- 2.22 RESEARCHER** means persons employed by BOU who uses the resources and who performs any research task or otherwise participates in any research project administered by BOU, including those funded by external sponsors.

- 2.23 SPIN-OFF** means a company established by the University for the purpose of exploiting a specific Intellectual Property Right originating from the University.
- 2.24 STUDENT** means any graduate or undergraduate student that is supervised by a BOU lecturer/researcher and whose research forms part of a BOU funded project. It is the responsibility of students who are also employees of other outside entities to resolve any conflicts between this Policy and provisions of agreements with their employers prior to beginning any undertaking at BOU that will involve the development of Intellectual Property.
- 2.25 TANGIBLE RESEARCH PROPERTY (TRP)** is defined for purposes of this Policy as tangible items produced in the course of research projects supported by BOU or by external sponsors. TRP includes such items as: biological materials, engineering drawings, computer software, integrated circuit chips, computer databases, prototype devices, circuit diagrams, equipment. TRP may not have been initially protected as IP and fall in the public domain and can still be commercially exploited.
- 2.26 TRADEMARK** means any visible sign that distinguishes goods or services of an enterprise (Industrial Property Act, 2010).
- 2.27 TRADITIONAL KNOWLEDGE** means an idea, knowledge, practice, use or invention, written or unwritten which, may be associated to biological diversity, is a cultural, traditional or spiritual belief or value of a group of people.
- 2.28 TRADE SECRET** means undisclosed information.
- 2.29 UNIVERSITY RESEARCH AND INNOVATION COMMITTEE (URIC)** refers to the standing committee of Senate which is responsible for oversight of research and innovation issues and attainment of the University's strategic research and innovation goals as per the BOU Statutes. The Centre for Research and Innovation shall act as the secretariat of the Committee.
- 2.30 UTILITY MODEL** means a technical creation that consists of a new shape or configuration of an object or of a component of an object that increases its functionality or utility. It is essentially a lesser patent (Industrial Property Act, 2010).
- 2.31 VISITING RESEARCHER** means a person who is not an employee of the University but engages in work at BOU, and includes adjunct researchers and volunteers. Visiting Researchers to BOU who make substantial use of BOU resources are considered as researchers of BOU with respect to any Intellectual Property arising from such use.



### **3. THE PURPOSE OF THE POLICY**

- 3.1** The purpose of this Intellectual Property Policy is to protect research, innovation and creative work outputs of the University through the IP system in order to derive economic, social and moral benefits through commercialisation. The Policy further seeks to promote beneficiation and protect the rights and privileges that Employees and Students traditionally would enjoy in the pursuit of creating useful knowledge for the development of the community and country.
- 3.2** The intention of this Policy is therefore to make research outputs, inventions and creations available in a form that would most effectively promote their development and their use for economic and social benefit. It provides a framework for governing the rights and responsibilities of all stakeholders in relation to inventions and other creative products arising from their activities. This Policy also provides for the recognition and provision of incentives for the innovative contributions of individual employees, researchers and students and to provide for more effective utilization of Intellectual Property.

### **4. SCOPE**

- 4.1** This Policy applies to the following:
- 4.1.1** All Intellectual Property created before or after approval of this Policy as the case may be, and all other Intellectual Property associated with them.
  - 4.1.2** All BOU 's Creators who are under employment contract with the University.
  - 4.1.3** All the IP created by the University's students in the course of their studies, research projects and dissertations.
  - 4.1.4** Visiting Researchers, in the absence of any written agreement to the contrary, who through their use of BOU's resources create patentable inventions or other works protectable under other intellectual property titles; a copyright protected work; contribute substantially to the existence of any Tangible Research Property; or otherwise create an item of Intellectual Property. The Centre for Research and Innovation that has oversight of visiting Researchers and their access to BOU's resources shall ensure that the Visiting Researcher has been notified of this Policy and obtain written acknowledgement and consent from the Visiting Researcher that they are aware that

they are bound by this Policy in the absence of any written agreement to the contrary.

- 4.1.5** Intellectual Property developed in terms of an agreement between BOU and a third party unless there is an express agreement to the contrary.

#### **4.2** Exceptions to this Policy include:

- 4.2.1** Intellectual Property developed solely in terms of a private contract, outside of the course and scope of employment or contract of service with the University, by an Employee and a third party, approved in compliance with the University's *Private Work and Consultancy Policy*, provided that in the case of any potential conflict of interest (real or perceived), the Employee must notify the University of the Intellectual Property, or possible creation of Intellectual Property.
- 4.2.2** Academic publications such as books and articles which remain the property of their author(s) along with associated copyright.

## **5. POLICY IMPLEMENTATION**

This Policy shall be implemented through the following provisions:

### **5.1 IP Disclosure Process**

Under this Intellectual Property Policy, BOU owns the Intellectual Property created by Employees in the execution of their contract of employment. Employees are obliged to disclose to the Deputy Vice Chancellor responsible for research and innovation the IP using the IP Disclosure Form. The University may choose to commercialise the IP and reserves the right to determine at its sole discretion if it wishes to pursue commercialization or assign the rights to the employee.

### **5.2 Obligations**

#### **5.2.1 University Obligations**

The Centre for Research and Innovation (CRI) shall have the responsibility for ensuring implementation of this Policy. The responsibilities of the Centre shall include, but are not limited to the following:



- 5.2.1.1** Receipt of participation forms, IP Disclosure Forms and supporting documentation from employees, students and researchers, and submission to the appropriate structures for consideration and input if necessary.
- 5.2.1.2** Receipt of disclosure of potential Intellectual Property through the submission of an IP Disclosure Form by a Researcher/Employee/Student.
- 5.2.1.3** Analysis of the disclosures within 30 days of receipt and consideration of:
  - 5.2.1.3.1** How the IP meets the objectives of the University;
  - 5.2.1.3.2** How the IP may be of benefit and contribute to the socio-economic needs and competitiveness of Botswana.
  - 5.2.1.3.3** The extent to which failure to seek such IP protection will compromise the achievement of BOU's objectives.
  - 5.2.1.3.4** The extent of readiness of the IP for protection and whether any additional research and development needs to be undertaken before IP protection can be obtained.
  - 5.2.1.3.5** The forms of IP protection that are most appropriate for the IP in question.
  - 5.2.1.3.6** The costs and advantages of the various possibilities for protection.
  - 5.2.1.3.7** The potential for Commercialisation of the IP through licensing, selling or franchising.
  - 5.2.1.3.8** Whether the University assigns the rights to the employee/researcher/student.
  - 5.2.1.3.9** Whether the IP should be placed in the Public Domain.
- 5.2.1.4** After analysis, provide a recommendation for consideration by the University Research and

Innovation Committee to proceed on an appropriate course of action which may include:

- 5.2.1.4.1** Proceeding with an application for protection of the Intellectual Property through filing of a provisional patent application or the registration of a design or other IP title as it may be deemed fit.
- 5.2.1.4.2** Delay the IP protection application for strategic reasons, but ensure that confidentiality is maintained until the application has been made.
- 5.2.1.4.3** Where necessary, requesting that the IP Creator carries out additional work to enable an IP protection application to be made, whilst confidentiality is maintained.
- 5.2.1.4.4** Where the IP is found to have no prospects of addressing BOU's objectives or of being commercialised:
  - 5.2.1.4.4.1** Not proceeding with protection.
  - 5.2.1.4.4.2** Advising the IP Creator that they are free to publish the work or commercialise.
  - 5.2.1.4.4.3** Determine any rights of a third party, such as a funder or collaborator, to the IP or a share in the IP.
  - 5.2.1.4.4.4** Assigning rights to the IP in the first instance to the funder; or where the funder declines the assignment of the IP, to the Creator.

- 5.2.1.4.4.5** Attend to all aspects of protection of the Intellectual Property, including the appointment of a patent attorney.
- 5.2.1.4.4.6** Attend to all aspects of Intellectual Property transactions associated with the commercialisation of the Intellectual Property, including the negotiation of licenses to, or assignment of BOU's Intellectual Property.
- 5.2.1.4.4.7** Recommend to the University Research and Innovation Committee the final decision on the terms of any commercialisation agreement, with due consideration being taken of the Creator's opinion.
- 5.2.1.4.4.8** Administer the distribution of the Net Revenues arising from the Commercialisation of the IP, where such revenues accrue.
- 5.2.1.4.4.9** Assign rights to any IP that BOU elects not to retain ownership of, in the first instance to a funder of the work that led to the IP or where the funder declines the assignment of the IP, to the Creator.
- 5.2.1.4.4.10** Attend to all aspects of Intellectual Property

transactions associated with the commercialisation of the Intellectual Property, including the negotiation of licenses to, or assignment of BOU's Intellectual Property.

**5.2.1.4.4.11** Conduct evaluations of the scope of the protection of the Intellectual Property in all national territories subject to the commercialisation potential of the Intellectual Property.

**5.2.1.4.4.12** Conclude in a timely manner, all assignments of Intellectual Property necessary to give effect to the ownership provisions set out below and to allow for the use and commercialisation of the Intellectual Property by BOU in accordance with this Policy.

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

## **5.2.2 Intellectual Property (IP) Advisory Committee Obligations**

- 5.2.2.1** An Intellectual Property (IP) Advisory Committee shall be established as a sub-committee of the University Research and Innovation Committee (URIC). The Committee shall comprise members of management, staff and co-opted external experts.
- 5.2.2.2** The responsibilities of the IP Advisory Committee shall be to advise the URIC on all issues related to the implementation of the Policy, including:
  - 5.2.2.2.1** Establishment of spin-off companies and the share in equity of the founders of such companies.
  - 5.2.2.2.2** Hearing and advising on any disputes arising from this Policy.
  - 5.2.2.2.3** Recommendation on endorsements and branding.
  - 5.2.2.2.4** Any other matters that the University Research and Innovation Committee may deem appropriate.
- 5.2.2.3** The IP Advisory Committee shall meet according to a schedule determined by the University Research and Innovation Committee.
- 5.2.2.4** The Centre for Research and Innovation shall serve as the secretariat of the Committee.

## **5.2.3 Employees' Obligations**

- 5.2.3.1** Employees (as defined in Clause 2.6) who conduct research are required to retain appropriate records of their research, such as through the use of laboratory notebooks, and the records of Inventions in the form of original research data.
- 5.2.3.2** Employees must disclose the development of any Intellectual Property to the Deputy Vice Chancellor responsible for research and innovation as early as possible, but within 30 days of the creation through the IP Disclosure Form.
- 5.2.3.3** Employees/researchers/students must consult the Centre for Research and Innovation to assess and review their work prior to any public disclosure to assess whether it contains any potentially

protectable IP, in particular a Patentable Invention, and if so fill in the IP Disclosure Form. They are also encouraged to consult the Centre for Research and Innovation at the early stages of their research.

- 5.2.3.4** Employees must take steps to maintain confidentiality of protectable IP until protection has been obtained.
- 5.2.3.5** Employees are expected to co-operate with the Centre for Research and Innovation and assist in preparing, reviewing, signing, and abiding by the terms of all documents necessary for the protection and exploitation of an Invention or other IP work (including but not limited to preparation of patent specifications and technical descriptions).
- 5.2.3.6** An Employee must ensure that the IP rights relating to their work have been clarified in writing prior to long term leave such as exchange visits etc., and that any contractual arrangements are approved and authorised by the Deputy Vice Chancellor responsible for research and innovation.
- 5.2.3.7** On leaving BOU, an Employee must contact the Deputy Vice Chancellor responsible for research and innovation to negotiate terms for continued access to the IP and Tangible Research Property which they created.
- 5.2.3.8** Whilst the Centre for Research and Innovation will endeavour to keep up-to-date contact information, ultimately the onus is upon the Creator, or their heirs, to ensure that University is in receipt of their current address details for the purpose of revenue sharing.
- 5.2.3.9** The background IP of Employees/researchers (and/or previous employers' right thereto) must be declared to the Deputy Vice Chancellor responsible for research and innovation within 3 (Three) months of arrival at BOU.



## **5.2.4 Visiting Researchers' Obligations**

- 5.2.4.1** In the absence of an agreement to the contrary, the clauses above for Employees will apply to Visiting Researchers.
- 5.2.4.2** Prior to or on arrival at BOU, a Visiting Researcher must declare to the Deputy Vice Chancellor responsible for research and innovation, their background IP relating to work that will be undertaken whilst visiting BOU.
- 5.2.4.3** On departure from BOU, a Visiting Researcher must again declare to the Deputy Vice Chancellor responsible for research and innovation any Intellectual Property created whilst at BOU.

## **5.2.5 Students' Obligations**

- 5.2.5.1** Where Students are supervised by staff of BOU and are involved in BOU's research activities that could lead to the development of Intellectual Property over which BOU or a third party may claim ownership, the following conditions shall apply:
  - 5.2.5.1.1** The Student's rights in Intellectual Property in any theses or publications arising from the research will be protected and/or acknowledged.
  - 5.2.5.1.2** It will be made clear to Students what the nature of the work is before they undertake the activity that leads to the claimable Intellectual Property.
  - 5.2.5.1.3** Any confidentiality and ownership of Intellectual Property agreement will only be signed by Students after they have been properly advised by the principal investigator or their supervisor on the contents of the agreement.
  - 5.2.5.1.4** Any delays in the publication of a thesis that arises from a confidentiality agreement, will be subject to the approval of the Board of Graduate Studies, for

periods of 6 months, up to a maximum of two years.

**5.2.5.1.5** The supervisors electing to supervise a Student in an area likely to lead to the creation of Intellectual Property to which a funder has been granted rights in terms of a funded research agreement, must ensure that a confidentiality and Intellectual Property Assignment Agreement, which may form part of a Student-Supervisor Memorandum of Understanding, is completed with the Student before the work commences. This scenario may result in some projects not being available to Students who choose not to sign a confidentiality and Intellectual Property Assignment Agreement.

### **5.3 Ownership of Intellectual Property**

#### **5.3.1 Employees of the University**

**5.3.1.1** All rights in Intellectual Property made or created by an Employee/Researcher of BOU (as defined in Clause 2.6) in the course of his or her duties and activities of employment shall generally belong automatically to BOU.

**5.3.1.2** If an Employee of BOU creates Intellectual Property outside the normal course of his or her duties of employment, with the significant use of BOU's resources, he or she will be deemed to have agreed to transfer the IP Rights in such Intellectual Property to BOU as consideration for the use of BOU's Resources.

**5.3.1.3** Intellectual Property as defined in Paragraph 2.2.1.1, created in the course of, or pursuant to a sponsored research or other type of agreement with a third party, shall initially belong to BOU and then ownership shall be determined according to the terms of any agreements of the parties.

**5.3.1.4** If an Employee of BOU creates Intellectual Property without the use any BOU resources, including but not limited to time, funds, personnel, facilities and equipment, he or she shall have full ownership of their Intellectual Property

### **5.3.2 Employees pursuing research activities at other Universities**

Rights related to Intellectual Property that is created during an exchange visit by the Employee of BOU to another institute shall be governed by an agreement between BOU and the other institute. If the BOU's IP Rights are not affected, the IP created during the visit shall belong to the other institute unless otherwise provided in an agreement.

### **5.3.3 Non-employees**

Visiting Researchers are required to transfer to BOU any Intellectual Property they create in the course of their activities arising from their association with BOU. Such individuals will be treated as if they were BOU's employees for the purposes of this Policy.

### **5.3.4 Students**

**5.3.4.1** Students who are not employed by BOU and are supervised by BOU's researchers shall own all Intellectual Property and associated IP Rights they create in the normal course of their studies. However, the following exceptions shall apply:

**5.3.4.1.1** If a student is offered a scholarship sponsored by a third party under a separate agreement, under which the third party has a claim on Intellectual Property arising from the scholarship, the student must agree that the Intellectual Property shall initially belong to BOU and ownership will then be determined in accordance with the terms of the agreement concluded with the third party.

**5.3.4.1.2** Intellectual Property created by students in the course of, or pursuant to, a sponsored research or other agreement with a third party shall initially belong to BOU and ownership will then be determined in accordance with the terms of the agreement concluded with the third party.



## 5.4 Copyright Protected Works

### 5.4.1 BOU holds copyright in:

- 5.4.1.1** Computer software developed at or commissioned by BOU to support research or administrative processes or the general operational management of BOU.
- 5.4.1.2** All the University's publications including electronic media and content on BOU's website, including the learning portal.
- 5.4.1.3** Photographs and digital images taken by Employees and Students for BOU's media or publicity or specifically commissioned by BOU.
- 5.4.1.4** Specifically, commissioned works that fall outside the scope of normal research work.
- 5.4.1.5** Computer Software developed as part of a research project, unless assigned by research agreement to another party.
- 5.4.1.6** BOU automatically assigns to the author(s) the copyright, unless BOU has assigned ownership to a third party in terms of a research contract, in the following:
  - 5.4.1.6.1.1** Scholarly publications;
  - 5.4.1.6.1.2** Designs, graphics and photographs produced as an art form;
  - 5.4.1.6.1.3** Film.
- 5.4.1.7** With respect to theses and dissertations, the Student has the right to enter into agreements with publishers who may wish to publish the thesis or dissertation in whole or in part. The Student shall ensure that BOU's rights are acknowledged by the third party and shall with the consent of their supervisor(s) ensure that such publication is not in conflict with any past, or planned future, assignment of rights to another publisher, e.g. of a journal article, or other literary publication.

## 5.5 Public Domain

Where it is deemed appropriate to release any IP to which this Policy applies into the Public Domain, the University Research and Innovation Committee (URIC) will seek guidance from the IP Advisory Committee, which shall make recommendations to URIC which shall approve the release of such IP into the Public Domain.

## **5.6 Trade Marks**

- 5.6.1** All BOU's trademarks will be used solely to denote BOU's ownership or involvement in an activity in its official capacity. No trade-mark associated with BOU may be used outside of BOU's official context without obtaining the prior written permission of the Vice Chancellor.
- 5.6.2** The Deputy Vice Chancellor responsible for research and innovation shall take responsibility for trade mark registrations and maintenance, where the trade mark is directly related to Intellectual Property that may be commercialised, e.g. the name of a product, process or device. Costs will be funded by BOU and, as such, the trade mark may form part of a license or assignment agreement.

## **5.7 Commercialisation Options**

- 5.7.1** BOU will generally adopt an IP commercialisation strategy that will involve one of the following three routes, as deemed appropriate:
- 5.7.1.1** Selling or assigning ownership of the IP to an existing company;
  - 5.7.1.2** Licensing the IP to a third party/another entity;
  - 5.7.1.3** Starting a spin-off company to commercialise the IP.
- 5.7.2** Preference will be given to:
- 5.7.2.1** Non-exclusive licensing;
  - 5.7.2.2** Citizen owned entities and small and medium enterprises;
  - 5.7.2.3** Parties that seek to use the Intellectual Property in ways that provide optimal benefits to the economy and quality of life of the people of Botswana;
  - 5.7.2.4** Creators who can demonstrate that they have assembled a team with the necessary skills to operate a spin-off business, have submitted a business plan that is acceptable to the IP Advisory Committee and who have appropriate funding in place.

## **5.8 Distribution of Revenue**

- 5.8.1** BOU will provide an incentive to Employees and Students for generating protectable creations/inventions and commercialisation of IP.



- 5.8.2** A once-off payment will be made to a Creator for coming up with a creation/invention that has been protected. Incentives for commercialisation will be tied to revenues generated.
- 5.8.3** A Creator will be granted a right to a portion of the net revenues that accrue to BOU from the Commercialisation of their Intellectual Property for as long as revenues are derived from such Intellectual Property. This revenue is taxable and where a Creator is on BOU payroll, tax will automatically be deducted by the Department of Financial Services and payment made through the payroll system.
- 5.8.4** If there is more than one Creator in respect of any particular Intellectual Property, the allocation will be shared equally between the creators unless another arrangement has been reached by written agreement.
- 5.8.5** A Creator may at their sole discretion elect and make provision for an Enabler(s) to receive a share of the Creator's portion of the revenue. This arrangement will be agreed to by all Creators should there be more than one, reduced to writing, signed and lodged with the Deputy Vice Chancellor responsible for research and innovation.
- 5.8.6** Disbursements to a Creator and, if appointed, to Enablers, will be made within one year of receipt of the revenue by BOU.
- 5.8.7** The net revenue (Gross Revenue minus BOU costs for such activities as IP protection and registration, legal fees etc.) from Commercialisation activities will be distributed as follows:
- 5.8.7.1** Amounts due to third parties who may be either co-owners of IP or beneficiaries in terms of benefit share agreements entered into by BOU, if received by BOU, will be paid to those third parties prior to any internal distribution within BOU;
  - 5.8.7.2** Where there is more than one Creator, the Creators will share the amount that would have accrued if there had only been one Creator on a pro rata basis as determined by the Creator's share in the creation of the IP;
  - 5.8.7.3** Where there is more than one Creator, portions of revenue accruing to the divisions will be apportioned to them on a pro rata basis as determined by the Creator within a division's share in the creation of the IP. Where there is uncertainty in terms of membership of a division, matters will be referred to the IP Advisory Committee for a decision on apportionment.
- 5.8.8** The portion of net revenue going to the:

- 5.8.8.1** The University Research and Innovation Fund will be used for further research and innovation, IP protection, registration and commercialisation costs, inventions incentive payments, equipment purchase as well as capacity-building including entrepreneurship, IP and technology transfer, and proposal writing.
- 5.8.8.2** Academic unit(s) (such as Schools and Departments, Research Centres and Research Institutes) which constitute the intellectual home and research support base of the Creator(s) will be used for research and innovation projects and capacity building.
- 5.8.9** If a Creator cannot be located using reasonable efforts by BOU, then the portion accrued to that Creator or his/her heirs will after a period of 5 years from the time when the amount became due to the Creator, be paid to the University Research and Innovation Fund to be used to support research and innovation activities.
- 5.8.10 Special royalty cases**
- 5.8.10.1 Impractical or inappropriate royalties.** In some cases, distribution of royalties to individuals will be impractical or inappropriate, for example, where the material was developed as a University project or where the creators/inventors are not easily identifiable. The IP Advisory Committee, in consultation with the principal investigator (or head of academic unit if not under a sponsored agreement) will review the circumstances of development when such situations have been identified. Generally, in such cases, royalties will be paid to the University Research and Innovation Fund. In any situation when royalty distribution to individuals is not recommended, distribution of income is subject to the approval of the IP Advisory Committee.
- 5.8.10.2 Distribution of Equity.** If a Creator holds equity in a spin-off company, such Creator will not share in the BOU's receipts, whether dividends and/or royalties and/or sale of equity, from such company. All other Creators will be rewarded in accordance with the standard formula as described above.
- 5.8.10.3 Non-monetary benefits.** It is possible that non-monetary benefits may accrue through the Commercialisation of Intellectual Property, for example, but not limited to, shares or equity in companies, receipt of free or reduced rate

services or free products or equipment being received by BOU instead of a monetary amount.

- 5.8.10.4** Equity will typically be held by BOU on behalf of any Creator who is not directly participating in a company. Dividends and proceeds from the disposal of equity will be distributed according to the principles of Clause 5.8.10.
- 5.8.10.5** The decision as to the timing of any equity disposal will be made by the IP Advisory Committee, taking due consideration of the Creator's opinion.
- 5.8.10.6** Wherever possible, the University will strive not to include any non-monetary benefits in any Commercialisation agreement.
- 5.8.10.7** Reward to a Creator from other non-monetary benefits will be negotiated with a Creator on a case by case basis by the IP Advisory Committee and approved by URIC, prior to the conclusion of any Commercialisation agreement that may include non-monetary benefits.

## **5.9 Distribution of Tangible Research Property**

- 5.9.1** BOU encourages the distribution of Tangible Research Property that it owns that arises from research (just as it encourages the publication of all research for peer scrutiny) on appropriate terms, and provided that this distribution does not conflict with existing obligations.
- 5.9.2** A Researcher or Creator wishing to make such distribution must seek authorisation from URIC in advance and ensure that an appropriate materials transfer agreement is put in place and that this complies with the requirements of relevant Government regulations.
- 5.9.3** Whilst scientific exchanges should not be inhibited by potential commercial considerations, Tangible Research Property may have potential commercial value and a Researcher or Creator may elect to make it available to a third party through a commercial license agreement that will be approved by the University Research and Innovation Committee on the advice of the IP Advisory Committee.
- 5.9.4** Where Tangible Research Property is distributed under commercial terms:
  - 5.9.4.1** Each Tangible Research Property item should have an unambiguous identification code or name;

**5.9.4.2** The principal investigator shall identify the Employees responsible for creating the Tangible Research Property, i.e. the Creator(s), and they will agree in writing to their relative contributions;

**5.9.4.3** URIC will maintain a record of this Tangible Research Property and distribute any revenue according to the principles of Clause 5.11 below.

## **5.10 Dispute Resolution**

**5.10.1** Any internal disputes or questions of interpretation arising under this Policy must in the first instance be referred to the University Research and Innovation Committee (URIC) for resolution, at the request of any interested party. URIC will seek advice from the IP Advisory Committee.

**5.10.2** If the matter cannot be resolved by URIC, then the dispute or question of interpretation must be referred to the Deputy Vice Chancellor responsible for research and innovation for referral to an appropriate authority or panel for mediation or arbitration.

**5.10.3** In the event of a creatorship dispute arising with an external third party, the matter must be referred to the Deputy Vice Chancellor responsible for research and innovation for referral for mediation, failing which to an attorney with suitable expertise.

## **5.11 Distribution of Net Revenue**

**5.11.1** 30% of net revenue will be paid to the Creator(s).

**5.11.2** 40% of net revenue will be paid to the University Research and Innovation Fund.

**5.11.3** 30% of net revenue will be paid to the academic unit (School and Department, Research Institute or Research Centre) which provides the intellectual home and research base of the Creator(s). In the case of a School, 10% will be paid to the School and 20% to the relevant Department.

## **6. POLICY REVIEW**

This policy shall be reviewed every 3 years or earlier as necessary.