



# THE UNIVERSITY OF TRINIDAD AND TOBAGO

## CORPORATE/FISCAL POLICIES

Policy Ref. No. CORP 12

Policy: INTELLECTUAL PROPERTY

### 1.0 POLICY STATEMENT

As an institution of higher learning, the University recognizes the importance of intellectual property to the social, cultural and economic development of Trinidad and Tobago and supports the creation, protection and exploitation of, and encourages respect for, intellectual property.

### 2.0 PURPOSE

The University has determined that the establishment of this Policy is an essential pillar in the achievement of its Mission to be an entrepreneurial university designed to discover and develop entrepreneurs, commercialize research and development, and spawn companies for wealth generation and sustainable job creation towards the equitable enhancement of the quality of life of all individuals, families and communities of the Republic of Trinidad and Tobago and the Caribbean.

### 3.0 SCOPE

This Policy recognizes all forms of intellectual property acknowledged as such by law. While the Policy seeks to make specific provisions for the treatment of intellectual property rights likely to arise out of the activities of in which the University is engaged, any intellectual property right in respect of which no specific provision is made will be governed by the *default* provisions established in legislation.

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## INTELLECTUAL PROPERTY POLICY (Continued)

### 3.1 Subject matter specifically covered

#### 3.1.1 Copyright

Copyright is a proprietary right subsisting in original literary and artistic creations including, but not limited to articles, lectures, books, computer programs, dramatic works, musical works, stage productions, works of drawing, painting, photography, architecture and illustrations, maps, sketches and three-dimensional works relative to geography, topography, architecture or science.

Copyright comes into existence by reason of original creation and no form of registration is required. The holder of copyright enjoys certain economic rights, including the right to do, authorize or prohibit the reproduction, adaptation or the first public distribution of the work and the public display or public performance of the work. Copyright also confers upon the holder thereof the moral right to be identified as the creator or performer of the work and, among other things, to object to any derogatory treatment of the work.

The University does not condone the use by staff or students of materials subject to copyright where such use is without the permission of the copyright holder or otherwise contrary to the provisions of the Copyright Act.


#### 3.1.2 Industrial Designs

An Industrial Design is defined as any:

- (i) combination of lines or colours;
- (ii) three-dimensional form; or
- (iii) material whether or not associated with lines or colours,

which gives a special appearance to a product of industry or handicraft, can serve as a pattern for a product of industry or handicraft and appeals to and is judged by the eye.

Protection for an Industrial Design derives from the aesthetic quality of the design rather than its technical application. For an Industrial Design to be registered and thus, acquire protection, it must not have been disclosed to the public anywhere in the world by publication in tangible form or by use in any other way prior to the application for registration.

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### 3.1.3 Layout-Designs of Integrated Circuits

An Integrated Circuit is a product in its final form, or an intermediate form in which the elements (at least one of which is an active element) and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

A Layout-Design is the three-dimensional disposition, however expressed, of the elements (at least one of which is an active element) and some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.


A Layout-Design shall be registered and attract protection if it is original and has not yet been commercially exploited or has not been commercially exploited for more than two years anywhere in the world prior to the application for registration.

### 3.1.4 New Plant Varieties

The law recognizes Plant Breeder's Rights in respect of specific genera and species of plants. To obtain protection, the plant variety must be capable of being categorized as new, distinct, homogeneous and stable. The proposed denomination of the plant variety must enable it to be identified without being misleading or offensive.

A plant variety is **new** where the variety itself has not been offered for sale or marketed with the approval of the breeder or his successors in title, if in Trinidad and Tobago, for longer than one year before the application for protection and if abroad for longer than four years before the filing date. In the case of vines, forest trees, fruit trees and ornamental trees the time allowed is up to six years before the application for protection.

A plant variety is **distinct** if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application for protection or at the applicable priority date. Common knowledge may be established by reference to various factors such as the exploitation of the variety already in progress, grant of breeders rights in the variety, entry of the variety in a catalogue of varieties admitted to trade or entry in the register of varieties kept by a recognized professional association, or inclusion of the variety in a reference collection.

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The variety is considered **homogeneous** if its plants are the same expression of the characteristics subject to the variation which may be expected in view of the particular features of its sexual reproduction, or vegetative propagation.

A plant variety is **stable** if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation at, the end of each cycle.

### 3.1.5 Patents


A patent is a title granted to protect an invention that is new, involves an inventive step and is capable of industrial application. An invention is an idea which permits, in practice, a solution to a specific problem in the field of technology. An invention is deemed to be new if it does not form part of the state of the art, that is to say, any product, process or information regarding a product or process that has been made available to the public prior to the application for patent registration. Accordingly, subject to certain limited conditions, the test of novelty will not be satisfied if disclosure of information or matter constituting an invention is made prior to the filing of a patent application.

It should be noted that there are certain exclusions to patentability. Among these are: a discovery, scientific theory or mathematical method, a scheme, rule or method for performing a mental act, playing a game or doing business and the presentation of information.

### 3.2 Persons to whom the Policy applies

This Policy shall apply to all stakeholders of the University including:

- (i) staff;
- (ii) students;
- (iii) Research Fellows;
- (iv) Contractors / Consultants;
- (v) Alliance Partners; and
- (vi) Donors / Sponsors / Benefactors;

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### 4.0 OBJECTIVES

The objectives of UTT's IP policy are as follows:


- (i) To foster an awareness of and appreciation for intellectual property and the rights associated therewith among all stakeholders in the University Community;
- (ii) To encourage the development of novel ideas, new technologies, inventions and other intellectual creations leading to entrepreneurship and enterprise development, thereby promoting the cycle of progress of science and technology and the growth of national innovative and knowledge-based industries;
- (iii) To facilitate the commercialisation of innovative technologies and inventions;
- (iv) To ensure that UTT-developed discoveries, new technologies and inventions and creations are utilised in ways most likely to benefit the public;
- (v) To recognise and preserve the traditional and legal rights of academics to own their scholarly works; and
- (vi) To ensure that the commercial results of intellectual property, financial or otherwise, are distributed in a fair and equitable manner that recognises all contributions of inventors, sponsors, third parties and the University.

### 5.0 POLICY DETAILS

#### 5.1 Ownership

5.1.1 Subject to the exceptions set out in this Policy, and unless otherwise agreed in writing, the University claims ownership of all intellectual property, regardless of where or when conceived, which is devised, made or created:

- (a) by persons employed by the University in the course of their employment (including full and part-time faculty, visiting faculty members and researchers, and student employees);

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- (b) by persons engaged in sponsored research projects at the University;
- (c) by persons engaged by the University under research contracts for services during the course of or incidentally to that engagement; and
- (d) by persons specifically commissioned by the University to create or produce the specified IP or innovative technology.

5.1.2 Exempted Scholarly Works – In accordance with academic tradition, the University claims no ownership of copyright in normal academic forms of any publication including books, journal articles, and lectures, or other similar works generated by staff, unless those works have been commissioned by a sponsor or by the University.


Employees who own intellectual property rights in any scholarly works created in the course of teaching and research activities shall grant the University a full non-exclusive, free, irrevocable licence to copy and/or use such works for university purposes including teaching and research activities.

5.1.3 Intellectual Property created by a student shall remain vested in the student unless:

- (a) it is created in the course of the student's engagement by UTT as a Research Assistant (whether paid by stipend or salary); or
- (b) it is created in the execution of any research work, which is fully sponsored by UTT or by any third party, governed by a research agreement.

UTT shall be entitled to and students shall grant a royalty-free, fully paid up, perpetual licence to use for non-commercial purposes copies of theses, dissertations and other scholarly publications.

5.1.4 Sponsored Research – Ownership of intellectual property developed in the course of or pursuant to a sponsored research contract or agreement shall be subject to the applicable terms and conditions of any existing sponsorship contract.

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### 5.2 Disclosure

- 5.2.1 Where any person subject to this Policy creates intellectual property which is capable of commercial exploitation, he or she shall report its existence to his Head of Department (or equivalent) and to the Technology Transfer Unit (TTU) or designated Intellectual Property Officer as soon as practicable, but no later than 60 days after full conception/development.
- 5.2.2 Inventors should be aware that any publication (or even verbal disclosure) which describes an invention prior to filing for a legal patent may preclude the patenting process in some countries.

Some Sponsored Research Agreements also expressly prohibit any “premature disclosure” of inventions or novel creations that may jeopardize the patentability and commercial exploitation of an invention. The implications of any disclosure or publication upon patent and other intellectual property rights should therefore be fully discussed with the TTU or the designated Intellectual Property Officer, before any publication of research results. Such publication may include conference presentations, public discussion, commercial demonstrations as well as journal articles


### 5.3 Revenue Sharing

- 5.3.1 Where the University claims ownership of works created by employees in the course of their employment and proceeds to the commercialization of such works, any net revenues earned will be shared between the University and the inventor(s)/creator(s) in the ratio of 65% to 35%.

All monies retained by the University in accordance with the above formula shall be deposited in an Innovation Fund. The Innovation Fund shall be managed by a committee appointed by the Board of Governors. Monies in the Innovation Fund shall be disbursed in a manner consistent with the furtherance of the objectives of this Policy, including, but not limited to:

- (a) applying for and maintaining intellectual property protection;
- (b) commercializing research and development; and
- (c) hosting/funding events geared towards the promotion of intellectual property awareness and training within the University community.

- 5.3.2 “Net revenues” are defined as full gross annual revenue, less any directly assignable expenses to each specific case, such as patent filing fees, prosecution and maintenance fees and specific marketing costs.

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5.3.3 Where there is more than one inventor / creator, the distribution of their share of the net revenues shall be a matter for them to determine in a legally binding agreement to be signed by them, a copy of which is to be delivered to the TTU/ORS. Where the inventors / creators fail to agree, net revenues shall be paid in equal shares.

### 5.4 Policy Waiver

5.4.1 In exceptional cases, waiver of specific provisions of this Policy may be granted by the President and reported to the Board of Governors, on a case by case basis, giving consideration among other things to the University's obligations to sponsors, whether the waiver would be in the best interest of the technology transfer process, whether the waiver would be in the best interest of the University and whether the waiver would result in a conflict of interest.


## 6.0 ROLES AND RESPONSIBILITIES

6.1 For the purposes of this policy, a Technology Transfer Unit (TTU) or an Office for Research Services (ORS) may be established within the University.

The TTU will be generally responsible for facilitating the commercializing of University-owned intellectual property.

Specific responsibilities of the TTU may include, but are not limited to, the following:

- (a) Determining whether a work is susceptible of intellectual property protection;
- (b) Advising on the most appropriate strategies for leveraging the intellectual property generated by the University;
- (c) Applying for and maintaining appropriate intellectual property protection;
- (d) Evaluating the commercial potential of intellectual property;
- (e) Fostering links with industry and other suitable commercial development partners;

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- (f) Negotiating and managing intellectual property agreements, licences, and royalties;
- (g) Negotiating and advising on the intellectual property terms of sponsored research agreements;
- (h) Maintaining a database of all University-owned intellectual property and participation agreements.
- (i) Advising and educating the University community about intellectual property issues; and
- (j) Keeping under review and advising on the effectiveness of all aspects of this Policy.


The TTU will have the discretion, subject to the overriding authority of the President or his delegate, to decide on the most appropriate option for carrying out its responsibilities, including the following options:

- a) Integration – whereby the University manages all steps required to develop and take the product from Idea to Market.
- b) Orchestration – whereby the University leads the process of commercialization but focuses on certain parts of the patenting/commercialization process and collaborates with external partners on the balance.
- c) Licensing – whereby the University sells or licences new products or intellectual property to another third party that can handle the entire commercialization process.

The TTU may consult with appropriate Technology marketing experts to assist with the assessment of an innovation or its commercial potential.

The TTU shall coordinate with the Legal Unit on all legal matters relating to intellectual property and technology commercialization and management process.

**Until the establishment of a full TTU, the University may designate an appropriate individual, committee or third party agent to carry out the responsibilities of the TTU in the interim.**

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### 7.0 PROCEDURES

The TTU or such other body as may be designated by the President or the Board shall be responsible for producing the relevant procedures and regulations to ensure that this policy is workable.

### 8.0 GENERAL

#### 8.1 Use of University Resources for Non-University Purposes

Although UTT has chosen not to assert any proprietary rights in all intellectual property on the basis of “substantial use” of UTT resources, members of the University may not use any UTT resources (including facilities, personnel, equipment or confidential information) for non-University purposes, except with the explicit approval of the University and usually in a purely incidental way.


#### 8.2 Works that Use the University Name or Logo

Any use of the University name or logo (other than to identify the creator by his or her title at UTT) in connection with any work created by a faculty member, researcher or other employee must be fully approved in advance by the President, based on the recommendation of the Provost.

#### 8.3 Participation Agreements

The University may require formal and legal Participation Agreements to implement the Policy as appropriate, but the absence of such executed Agreements shall not invalidate the applicability of the Policy.

All members of the UTT community – including visiting scientists and fellows, and students – who participate in sponsored research should agree in writing to the terms of any sponsored research agreement as a condition of participation in the sponsored research project.

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When works are commissioned to an individual who is not an employee of the University, or when the commissioned individual is an employee but the work to be created falls outside that person's scope of employment, it is advised that the University proceed with a fully written legal Participation Agreement, signed by the University and the individual stating that the resulting intellectual property is owned by the University, and assigning to the University all intellectual property rights to the work held by the individual.

### 8.4 Sponsored Research Agreements

In negotiating with third party sponsors, representatives of the University should strive to advance and protect the rights of, as well as to obtain the greatest latitude for, the University consistent with the public interest.

The intellectual property terms of each sponsored research agreement should be negotiated and approved by the TTU or its representative, upon consultation with the Project Director.

Whenever research or any related activity is subject to a legal binding agreement between a sponsor and the University that contains restrictions concerning intellectual property or confidentiality, all matters shall be handled in accordance with such agreement.

### 8.5 Release of Intellectual Property Rights

There shall be no obligation on the University to seek any protection for inventions. If the University cannot, or decides not to proceed to apply for or utilize a patent or license an invention, it may assign full ownership to the inventors subject to the retention of the right to use same for non-commercial purposes.

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### 8.6 Dispute Resolution

It is the intention that all reasonable efforts will be made to ensure that all conflicts are resolved internally. It is expected that parties will discuss and negotiate issues with professionalism and in good faith. Non-ownership conflicts (including royalty distribution) should be resolved internally by the University.

In the event of an unresolved dispute between the inventor/creator and the University regarding ownership of intellectual property, the matter shall be referred initially to an independent expert to be agreed between the parties. If agreement on the identity of the independent mitigation expert is not reached, the expert shall be an attorney-at-law specializing in intellectual property law, who shall be either selected by mutual agreement or nominated for the purpose by the IP Office of Trinidad and Tobago.

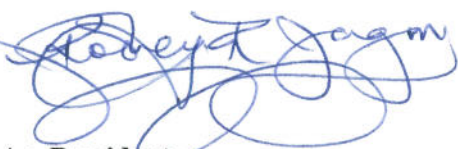
Until a final decision is given by the independent mitigation expert, no action shall be brought by the inventor against the University, or by the University against an Inventor, in any court of law on any matter arising out of this Policy, with final arbitration stage considered and accepted by all parties.

### 9.0 EFFECTIVE DATE

This Policy is effective from the date of approval by the Board of Governors with respect to works created after that date and shall remain in effect until amended or revoked.

### 10.0 MONITORING, EVALUATION AND REVIEW

This Policy is subject to review, amendment and/or revocation by the University at any time with the approval of the Board of Governors.

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