



**INTELLECTUAL PROPERTY AND
COMMERCIALISATION
POLICY
UNIVERSITI SAINS MALAYSIA**

INTRODUCTION

THIS INTELLECTUAL PROPERTY AND COMMERCIALISATION POLICY (hereinafter referred to as the “ IP and Commercialisation Policy of USM”) shall be applicable to all Employee, Academician, Postdoctoral Fellow, Trainee of the Academic Staff Training Scheme, Visitor and Student of Universiti Sains Malaysia (hereinafter referred to as “University”) as hereinafter defined and or stated in the University’s Constitution, statute, rules and regulations. The IP and Commercialisation Policy of USM shall also be applicable to those who have beneficial, legal or contractual binding relationship with the University.

1.0 POLICY STATEMENT

The IP and Commercialisation Policy of USM sets out the University’s policies in relation to Intellectual Property as hereinafter defined in Section 2.0, rights and assets arising from research, innovation, invention and creative output as well as the management, creation, protection, commercialization, exploitation and expansion of such rights.

1.1 Preamble

- a. The University aims to create an environment in which Intellectual Property activities such as learning, teaching, innovating, scholarship, commercialization, research and development flourish. The University adheres to the principle that knowledge and ideas should be made available for the benefit of the entire community. Where this principle conflicts with commercial considerations, the University will seek to resolve the conflict to ensure publication and intellectual dissemination shall prevail without undue delay, having regard to the wishes of the Originator as hereinafter defined in Section 2.0.
- b. A natural consequence of the University’s endeavours in the IP and Commercialisation Policy of USM is the creation, development, protection, exploitation and expansion of IP created and innovated by all those persons to whom the IP and Commercialisation Policy of USM shall apply. The University recognizes and acknowledges that the Originators are entitled to an equitable share of any financial returns from such commercialization.
- c. This IP and Commercialisation Policy of USM aims to facilitate, where appropriate, the management, creation, protection, commercialization, exploitation and expansion of IP created and innovated by all those persons to whom the IP and Commercialisation Policy of USM shall apply. The University recognizes and acknowledges that the Originators are entitled to an equitable share of any financial returns from such commercialization.

- d. IP protection may be sought for non-commercial reasons and in such an event; it is the policy of the University to reserve the absolute right to seek IP protection.
- e. This IP and Commercialisation Policy of USM shall define the ownership of IP, sharing of IP rights accrued to the Originators, commercialization rights associated with the technology and also detail the procedures which govern the distribution of the technology in its tangible form.

1.2 Objectives

The University's objectives with respect to the IP is to establish a framework of research, innovation, invention, creative works and technology transfer as well as licensing and among alia are to:

- a) Promote the fundamental objective and purpose of the University in teaching, research, innovation and furthering knowledge for its own sake;
- b) Protect the University's integrity, sustainability and interest while fostering free and creative expression, innovation and exchange of ideas and knowledge;
- c) Foster corporate, entrepreneur and business atmosphere within the University;
- d) Provide incentives to those persons to whom the IP and Commercialisation Policy of USM shall apply in developing and applying intellectual activity in the fields of industry, science, commerce, literature and arts;
- e) Provide those persons to whom the IP and Commercialisation Policy of USM shall apply with fair and reasonable recognition, award and remuneration;
- f) Encourage, stimulate and promote University growth, progress and success through ventures, technology transfer and commercialization with private and public sectors;
- g) Obtain appropriate return for facilities, resources and services by the University outside the mainstream activities of teaching and research activities;
- h) Create a secure environment where the original work can be protected;
- i) Provide a framework to those persons to whom the IP and Commercialisation Policy of USM shall apply, of their rights, responsibilities and opportunities in relation to the IP;
- j) Generate a better understanding of IP issues in general;
- k) Create the climate for innovation, invention and creative work;
- l) Create a better understanding of the various rights which the law provides for the protection of innovative effort and stimulate proper IP protection;
- m) Allow for various forms of commercial exploitation of IP created by those persons to whom the IP and Commercialisation Policy of USM shall apply;
- n) Promote inventiveness and entrepreneurship in the University; and

- o) Satisfy its objectives and aims as a Research and APEX University as well as achieving its goals towards the nation building.

2.0 DEFINITION

For the purpose of this IP and Commercialisation Policy of USM, the following words and expressions, unless the context otherwise requires, shall have the following meanings respectively ascribed to them:

“Academician” means a person appointed to be a teacher or researcher under the University’s Constitution, and includes a professor, associate professor, research fellow, fellow, assistant professor, reader, senior lecturer, lecturer, assistant lecturer, language teacher and tutor.

“Arbitrator” means a person registered with the Arbitration Committee under the Malaysian Arbitration Act 2005 appointed to settle legal dispute.

“Commercialisation and Licensing Committee” means a committee responsible for general supervision and management of IP commercialisation in the University. The Commercialisation and Licensing Committee may establish the Commercialisation evaluation panel responsible for advising the University in the appropriate vehicle for commercialising the University’s IPs, assessment of risks, and investigating and assisting in internal and external dispute and settlement relating to commercialisation of University’s IPs.

“Constitution” means the constitution of Universiti Sains Malaysia and shall include any amendment therein.

“Employee” means any person employed by the University under the University’s Constitution and any Statute thereof.

“Founder” means a person and/or a team of persons who created a new company to commercially exploit idea and/or IP that has business potential.

“Gross Income” means the total income and/or revenue received from commercial exploitation of the University’s IP.

“Intellectual Property Management Committee” means a committee responsible for general supervision, management and administration of the IP and Commercialisation Policy of USM. The Intellectual Property Management Committee may establish the IP evaluation panel responsible for advising the University in the IP protection, providing technical inputs, contract negotiations, management, patent and trademark’s filing and infringement, passing off of trademarks and copyright; investigating and assisting in internal and external IP

dispute and settlement, selecting the University's technologies and products for commercialization and providing advisory on all University's IP legal matters, maintenance and policing.

'IP' means Intellectual Property and shall include any proprietary right that arises under, or could be obtained as follows:

- i. Patents granted under the Malaysian Patents Act 1983;
- ii. Information communicated in a way to cause a duty of confidentiality;
- iii. Information that is subject to an employee's duty of fidelity to the employer;
- iv. Copyright vesting by virtue of the Copyright Act 1987 in literary (including computer programs), dramatic musical and artistic works, films, sound recordings, broadcasts and published editions;
- v. Trade marks and service marks registered under the Trade Marks Act 1976;
- vi. Unregistered trade marks used or intended for use in businesses;
- vii. Industrial Designs registered under the Industrial Designs Act 1996;
- viii. Layout-designs of integrated circuit registered under the Layout-Designs of Integrated Circuits Act 2000;
- ix. Geographical indication registered under the Geographical Indications Act 2000;
- x. Plant varieties as provided for under the protection of Plant Varieties Act 2004;
- xi. Trade secrets; and
- xii. Other rights resulting from intellectual activity in the industrial, commercial, scientific, literary and artistic fields.

'IP Cost' means all the cost that are associated with, but not limited to, the search, drafting, filing, registering, examination and maintenance of IP.

"Mediator" means a qualified person under Malaysian Law who mediates to produce an agreement or reconciliation between two disputing parties.

"Nett Income" means the final amount of income or revenue resulting from the deduction of IP cost from the Gross Income

"Originator" means a person and/or a team of persons who actually contribute(s) intellectually to an IP and shall include to author, creator, designer or inventor of an IP.

"Post-doctoral Fellow" means a person under contract for service with the University to perform such research functions as may be prescribed by the University's Constitution.

"Resources" means the University Administered Fund, facilities, specimen materials, equipment, laboratory spaces and its ancillaries, equipment and shall also include the University's teaching Employee and non-teaching Employee as well as Students.

"Student" means a student defined in accordance to the University's Constitution.

“Tangible Research Property” refers to those research results which are in a tangible form as distinct from intangible IP. Examples of tangible property include integrated circuit chips, biological organisms, materials from biodiversity and products derived there from, engineering prototypes, engineering drawings, and other property which can be physically distributed.

“Trainee of the Academic Staff Training Scheme” means a person under contract for service with the University to undertake graduate studies for future service as an Academician of the University in accordance with the contract above mentioned.

“University” means the Universiti Sains Malaysia.

“University Administered Fund” means fund(s) obtained from the University or fund(s) obtained from a sponsor, government or government related entity and/or industry through the University.

“Visitor” means any person, other than an Employee, Trainee of the Academic Staff Training Scheme, Post-doctoral Fellow or Student, officially invited by the University for such academic or research purposes and duration as may be agreed upon by the University.

3.0 INTELLECTUAL PROPERTY PROTECTION

3.1 Patents

- a. The University will seek patent protection for inventions which are commercially attractive, viable and intellectually meritorious and/or to comply with the terms of sponsored research agreement.
- b. Notice of “Patent Pending” or “Granted Patent No.” may be affixed to an invention patented by the University.

3.2 Copyright

- a. Copyright is the protection granted under the Copyright Act 1987 and is conferred automatically without any need for registration or other formalities provided the work is original and is written, recorded or reduced to some material form.
- b. Notice of copyright must be affixed to the copyrightable material.

3.3 Trade Marks and Service Marks

- a. A trademark or a service may be used to protect those names and symbols associated with the University's offices, activities, events, products and technology developments.
- b. Prior to registration for trademark protection, the symbol "TM" for a trademark or "SM" for a service mark will give an adequate notice of a claim of ownership. The symbol ® or R.T.M. for a trademark may only be used after registration has taken place.

3.4 Industrial Designs

- a. The University shall have absolute discretion to seek industrial design protection for new designs either in two or more dimensions wherever appropriate, especially if the design is commercially attractive.
- b. To be registered under the Industrial Designs Act 1996, a design must be new and not been made available or disclosed to any public anywhere in Malaysia before the filing date of the industrial design application.

3.5 Layout-designs or Integrated

- a. The University will seek protection for any layout-designs and integrated circuits under the Layout-Designs of Integrated Circuits Act 2000. The Act protects all independently created layout-designs even if they are identical.
- b. Protection is not dependant on registration and is available for a period of ten (10) years from the date the layout-design is first commercially exploited in Malaysia or elsewhere.

3.6 Geographical Indications

- a. The University will seek protection of geographical indications regardless whether or not the geographical indication is registered elsewhere and which can be used on natural or agricultural product or any product or handicraft or industry.

3.7 Plant Varieties

- a. The University will seek protection for any new varieties of plants which satisfy the sets of criteria as contained in the Plant Varieties Act 2004.

3.8 Trade Secret

- a. The University adheres to the principles that trade secrets must be protected. In order to maintain protection while a trade secret is in use, it is the policy of the University to bind any third party having access to the secret by contractual agreement.

3.9 Tangible Research Property

- a. Tangible Research Property is frequently patented and/or automatically copyrighted where appropriate and then licensed for commercial purposes.
- b. Tangible Research Property may often have IP rights associated with it and which may be IP protected. However tangible property may be distributed for research and non-commercial purposes, without securing IP protection by using some form of contractual agreement.
- c. Where Tangible Research Property are developed in the course of research projects which are subject to the terms and conditions of sponsored research or other agreements, control over its development, storage, distribution and use it's the responsibility of the project leader or the Originator. The responsibility for control includes determining if and when distribution of Tangible Research Property is to be made beyond the laboratory for scientific use by others in accordance with the terms of this IP and Commercialisation Policy of USM.
- d. When distributing Tangible Research Property for research purposes outside the laboratory, the expenses for handling, transportation and other costs may be recovered from the recipient.
- e. If there are possibility of risks associated with the transport, storage, handling and use of tangible property, there must be contractual disclaimers of liabilities and indemnities to safeguard the University's interests.
- f. Each item of Tangible Research Property should have an unambiguous identification code and name sufficient to distinguish it.

3.10 Confidential Information

- a. Confidential Information is information of a confidential nature which has not been made public. It covers all information such as business secret, personal secret, literary, scientific or artistic secrets, and public and government secrets.

- b. Where such information is imparted or disclosed in confidence, there is an obligation on the recipient not to reveal or use the information. Such obligation arises regardless of whether or not the disclosure was made pursuant to a non-disclosure or confidentiality agreement.

4.0 OWNERSHIP OF IP

4.1 The University claims full ownership and worldwide right, title and interest to or in all IP in all works, inventions, designs and other subject matter as follows:

- a. Created by the Academician, Employee, Trainee of the Academic Staff Training Scheme and Post-doctoral Fellow of the University:
 - i. In the course of and as a result of their employment or contract with the University, or
 - ii. at the expressed request or direction of the University, or
 - iii. Pursuant to any agreement with a third party to which the University is a party.
- b. Created and developed, generated or otherwise brought into existence by Academician, Employee, Trainee of the Academic Staff Training Scheme and Post-doctoral Fellow of the University with the use or the support of any facilities, material, funds or other resources provided or obtained by or through the University; or
- c. Commissioned by or on behalf of the University for any purpose whatsoever.

4.2 Despite any contrary provision in this IP and Commercialisation Policy of USM, all contracts and arrangements existing at the same time of the adoption of this IP and Commercialisation Policy of USM which are between the University and governments, corporations and other external organizations, and which relate to IP in which the University has an interest shall remain in full force and effect, including those where the ownership of IP is vested in a third party.

4.3 The University reserves the right to decide in which countries it will seek IP protection.

4.4 The University shall seek to protect the rights of the Originator by :

- a. offering a "fair share" in the commercial exploitation of the IP as set out in Section 10 hereof;
- b. due to acknowledgement; and
- c. offering an input in the development of the IP.

- 4.5 Subject to the decision of Senate on the thesis ownership, the University shall have full ownership of all right, title, interest to or in any IP generated or created by Students where :
- a. Generation of the IP has required use or support of Academician, Employee, Trainee of the Academic Staff Training Scheme and Post-doctoral Fellow of the University, facilities, materials, funds or other resources provided or obtained by or through the University;
 - b. Generation of the IP has resulted from the use of pre-existing IP owned by the University;
 - c. The IP belongs to a set of IP generated by a team which the Student is a member; or
 - d. Generation of the IP in the course of and as a result of contract or employment with the University.
- 4.6 The University may at its own discretion accord certain IP rights to the Students arising from the said IP.
- 4.7 The University shall claim ownership of all right, title or interest to or in any IP created by Visitors at the University unless provided otherwise in a written agreement.
- 4.8 In the case of wholly owned subsidiaries/companies of the University the provisions of this IP and Commercialisation Policy of USM shall apply without limitation.
- 4.9 Where the University is the owner of the IP created by an Originator, the University shall assign its rights to the Originator in the event the Intellectual Property Management Committee decides that the University will not become involved in the seeking protection of patent and commercialization of the IP.
- 4.10 The Originator may then make a written request to the Intellectual Property Management Committee for the IP to be assigned back to the Originator; the IP assigned must be exactly as disclosed in writing to the University. Notwithstanding the University shall automatically retain a non-exclusive, non-transferable, irrevocable, royalty-free, worldwide license on the IP for research and educational purposes.
- 4.11 Alternatively, the University may retain the ownership of the IP but grant a license to the Originator to exploit the IP, if it considers it advantageous to do so.
- 4.12 For a project in collaboration with other agencies, ownership of the IP shall belong to the University unless the contrary is provided in the contract agreement.

- 4.13 The Intellectual Property Management Committee shall have the sole right to determine the disposition of the University IP, subject to any prior contractual obligations to external sponsors.

5.0 AGREEMENT WITH THIRD PARTIES

- 5.1 The University, at its absolute discretion, may enter into an agreement with another party that controls the ownership and exploitation of an IP. In negotiating such an agreement, the University shall, as far as practicable, ensure that the terms of the agreement are consistent with the principles set out in this IP and Commercialisation Policy of USM.
- 5.2 In the case where the University is the owner of the IP, the University may also conclude an agreement with a third party to exploit the IP. In negotiating such an agreement, the University must, as far as practicable, though not necessarily bound, to ensure that the terms of the agreement are consistent with the principles set out in this IP and Commercialisation Policy of USM.
- 5.3 The Academician, Employee, Trainee of the Academic Staff Training Scheme, Post-doctoral Fellow, Visitor and Student shall not, whether directly or indirectly, make available to any third party, who is not a member of the University, any University facilities, materials or other resources for the purpose of creating IP except with the prior written approval from the University.

6.0 PUBLICATION

In order to safeguard the University's proprietary interests, when an IP is an invention or a design in the opinion of the Originator, the Originator shall notify the Intellectual Property Management Committee in writing, to decide whether or not to exploit the relevant IP.

7.0 DISCLOSURE

- 7.1 The Originator, governed and ascribed under this IP and Commercialisation Policy of USM is expected to apply reasonable judgement as to whether the outcome of the research, innovation and creative activities of the University has potential for commercialization and business marketing prospect. If such potential exists, the outcome and reasonable decisions should be considered for IP protection and

exploitation, the Originator must endeavour to promptly disclosed to the Intellectual Property Management Committee all reasonable disclosures.

- 7.2 The disclosures and write up must be done through document(s) prepared by the Originator and the Originator shall provide the information and details of the Originator and the team, if any and whenever possible the invention details, circumstances leading to the invention and facts concerning subsequent activities such as commercialization potential, business analyses and/or model, possible in-house use of the technology and cost benefit analyses.
- 7.3 The University, wherever possible, will assists the Originator as to the matters mentioned in Section 7.2 above.

8.0 COMMERCIALISATION

- 8.1 In the event that the Originators of the IP take steps or seek to finalise with a third party for the commercial collaboration and exploitation of the IP, the matter must be notified in writing to the Commercialisation and Licensing Committee and/or its proxy. Failing to do this, the Commercialisation and Licensing Committee is empowered to use its discretionary power to render the contract derived from such negotiation null and void.
- 8.2 Once the Commercialisation and Licensing Committee or its proxy, is notified that the Originator is seeking to exploit the IP commercially, the University and/or the Commercialisation and Licensing Committee or its proxy shall then decide whether or not the University wishes to become involved in the process of the commercial exploitation.
- 8.3 In making a decision under Section 8.2, the Commercialisation and Licensing Committee or its proxy shall at its own discretion, consult in confidence with the Originators and any other relevant parties.
- 8.4 Notwithstanding the above, the Commercialisation and Licensing Committee or its proxy shall take into account:
 - a. The nature of the IP and the extent of the patent or other protection desirable;
 - b. Whether securing of the patent or other protection will assists in the development and subsequent commercial exploitation of an invention;
 - c. Determine the appropriate commercialisation vehicle to exploit the IP;

- d. Whether it would be desirable for the University to maintain an interest in the quality and technical efficiency of production through the licensing and technology transfer of patents; and
 - e. The probable commercial returns to the University.
- 8.5 In the event that the Commercialisation and Licensing Committee or its proxy is advised or believes that the confidentiality of certain information must be maintained in order for the IP to be protected or successfully exploited, Intellectual Property Management Committee or its proxy shall :
- a. consult in confidence with the Originator and any other relevant parties and;
 - b. determine a time when publication of the information may take place, taking into account the policy statements as set out in Section 1.1 above.
- 8.6 The Originator shall provide all reasonable assistance, e.g. provide information promptly on request, attend meetings and provide technical advice, to the University

9.0 METHODS OF COMMERCIALISATION OF INTELLECTUAL PROPERTY

9.1 License

Licensing can be in the form of exclusive license, non-exclusive license, sole license and cross license. All licensing arrangement can be contractually limited by geographical locations, time, industry and fields of application.

- a. Exclusive license – University transfers certain rights of exploitation of the IP exclusively to the licensee. This means that the University relinquishes the rights to that exploitation of the IP or to grant any additional, subsequent license(s) to another party. The University may retain the rights to use, conduct further research and development, and exploit the IP for non-commercial use.
- b. Non-exclusive License – University may grant the rights of exploitation of the IP to one or more party(ies), including the right to exploit the IP itself. In a non-exclusive license, the University may grant the licensee sub-licensing rights.
- c. Sole License – University transfers certain rights of exploitation of the IP to the licensee but retains its rights to exploit the IP itself.
- d. Cross-License – This option allows two or more IP owners to contractually authorise each other to use their respective IP for commercial and non-

commercial purposes. In a cross-licensing arrangement, the consideration for the rights conferred by one party is a reciprocal grant of rights by the other. Cross-licensing terms may include the payment of a license fee or royalty if the rights conveyed by the parties are not equal in value.

- 9.2 **Outright Sale of IP** – In an outright sale of IP arrangement, the University assign complete ownership to another party (assignee). However, partial assignments are allowed, for example, an assignment may be restricted by geographical location, or specific field of use.
- 9.3 **Start-Up Company** - Founder establishes a company for the purpose of exploiting potential business ideas and/or services, where Founder(s), and the University or its subsidiaries, may own equity in the company together with any third party, in proportions to be negotiated.
- 9.4 **Spin-Off Company** – University establishes a company for the purpose of commercialisation of the IP and the provision of related services, where Originator(s), and the University or its subsidiaries, may own equity in the company together with any third party, in proportions to be negotiated. Exploitation of University’s IP by the spin-off company will only be effective through a Licensing Agreement between the University or its subsidiaries and the company.
- 9.5 **Joint-Venture Company** – University or its subsidiaries establishes an entity together with a third party for the purpose of commercialisation of the IP, where University or its subsidiaries and the third party are shareholders of the said joint-venture company.
- 9.6 Any other legal means, which the University deems fit and appropriate.
- 9.7 The Commercialisation and Licensing Committee shall decide which commercialisation method(s) will be explored, bearing all these factors in mind:
 - a. The commercial risks to the University or subsidiaries;
 - b. Impact upon the University’s or its subsidiaries’ reputation and standing;
 - c. Extent to which the activity may depart from the University’s or its subsidiaries core business;
 - d. Any legal liabilities and exposures to which the University or its subsidiaries may be subject;
 - e. The University’s or its subsidiaries’ insurance cover; and
 - f. All other matters to which the University considers are relevant.

10.0 DISTRIBUTION AND DISBURSEMENT OF FINANCIAL RETURNS

- 10.1 It is the intention of the University to encourage and reward innovation and creative activity within the University through fair sharing of royalties and other incomes, among all entities either in form of one lump sum or periodic payment, from the commercial exploitation of the IP rights of the Originator.
- 10.2 Subject always to Section 17.0.0, the Originators may opt for distribution and disbursement of financial returns based on either Gross Income or Nett Income.
- 10.3 The distribution and disbursement of Gross Income may be shared among the following entities in the ratio as follows :-
- 30 % - Originator
 - 70 % - University

- 10.4 The distribution and disbursement of Nett Income (Gross Income minus IP Cost) may be shared among the following entities in the ratio as follows:-

No	Nett Income	Researchers	University
1	First RM100,000.00	70%	30%
2	From RM100,001 to RM1,000,000	65%	35%
3	From RM1,000,001 to RM2,500,000	60%	40%
4	From RM2,500,000 and above	50%	50%

- 10.5 In a circumstance where two or more Originators developed an IP rights, the disbursement shall be according to the express written agreement among the Originators. Such agreement should clearly state in terms of percentages each Originator has contributed to the IP. This agreement should be transmitted as a written agreement signed by the Originators to the Intellectual Property Management Committee. Where the Originators fail to arrive at a consensus, the matter shall be decided by the Intellectual Property Management Committee. The decision of the Intellectual Property Management Committee shall be final and binding.
- 10.6 The Academician, Employee, Trainee of the Academic Staff Training Scheme, Post-doctoral Fellow and Students who leaves the University's employment/ studies while on probation/studies as well as the contract Academician, Employee, Trainee of the Academic Staff Training Scheme and Post-doctoral Fellow who are terminated or dismissed due to disciplinary action or for other reasons, shall not be entitled to any distribution and disbursement of financial returns as provided for under this IP and Commercialisation Policy of USM.

The above proviso does not apply to an Academician or Employee who has retired from the University, who shall continue to receive such income on periodic payment, as the case may, as may be due and payable to him.

11.0 EQUITY HOLDING IN A NEWLY FORMED COMPANY

- 11.1 The University or its subsidiaries may or may not opt to own equity in the newly formed company. In the event that the University or its subsidiaries decide to share the returns of the company through equity holding, the following will be considered in the equity structure:
- a. The value of the IP;
 - b. The strength of the Patent;
 - c. Commitment of the Originator(s) towards the company;
 - d. The length of service of Originator(s) at the University;
 - e. Degree of business potential derived from the IP;
 - f. The degree of the University involvement in the company; and
 - g. The sustainability of the IP and its pipeline IP
 - h. Financial injection by the University or its subsidiaries.
- 11.2 University may appoint a representative to be a member of the Board of Directors in the newly formed company.
- 11.3 In the event that the University decides to set up a spin-off company, a joint venture company or a subsidiary company, the Originator(s) may upon the written approval from the Vice-Chancellor hold equity in the company. However, distribution of equity will be on a case-by-case basis and shall be the sole discretion of the Vice-Chancellor upon advice by the Commercialisation and Licensing Committee or its proxy.
- 11.4 Spouse and or family members may only hold equity in the company, subject to the written approval from the Vice-Chancellor of the University and shall not contravene Section 23 of the MACC Act 2010.
- 11.5 Originator(s) will be responsible for any taxation impact, if any, upon holding equity in the newly formed company. The detailed terms and conditions of share equity are to be stipulated in the shareholders' agreement.
- 11.6 Possible exit strategy include but not limited to trade sale, merger, redemption of shares, initial public offering and winding-up.

12.0 INVOLVEMENT OF UNIVERSITY STAFF OR STUDENT IN A NEWLY FORMED COMPANY

- 12.1 To ensure success of the company, any employee who participates as a partner in the company's activities have to respect the following:
- a. Will not give up the participation, for a minimum of three years;

- b. Will not carry out any activities in competition with the consulting and research that the newly formed company offers to public and private organisations;
 - c. Will safeguard the reputation, good name and the interests of the University and offer adequate information for the University on the activity of the newly formed company; and
 - d. Will not neglect his/her main duties at the University.
- 12.2 Any employee who proposes the creation of a new company or is a partner, shall be authorised and attained consent by the Vice-Chancellor, to carry out activity for the company, while continuing his/her main duties at the University. They can be remunerated with the authorisation of the Registrar's office so as their responsibilities are not affected.
- 12.3 Students who is involved in the new company as a partner or employee, shall be authorised and attained consent by the Deputy Vice-Chancellor (Student Affairs and Alumni), to carry out activity for the company, while continuing his/her studies at the University. Students can carry out remunerated or not remunerated activity for the new company if they meet the condition that it is not in opposition with the regular and diligent fulfilment of their studies.

13.0 APPLICATION OF THE IP AND COMMERCIALISATION POLICY OF USM

- 13.1 It is the policy of the University that individuals through their employment and/or studies at the University or by participating in a sponsored research project, or as recipients of University Administered Funds, Resources and/or facilities, thereby accept the principles of the ownership of IP as stated under this IP and Commercialisation Policy of USM.
- 13.2 The students and the Visitors shall, upon request by the University sign a Non-Disclosure/ Confidential Agreements as per the University's requirement. The Manager/Director/Dean of the University's Laboratory/ Department/ School concerned shall be responsible for ensuring that all the Students and Visitors comply with this requirement.
- 13.3 The Human Resource Department of the University shall, where applicable ensure that all the Academicians, Employee, Trainee of the Academic Staff Training Scheme, Post-doctoral Fellow and Visitors, on acceptance and confirmation of their designated posts, to sign the said Non-Disclosure/ Confidential Agreement prepared by the University.
- 13.4 The Academic Services Department shall ensure that all students sign the Non-Disclosure/ Confidential Agreement.

- 13.5 On termination of the employment/studies, the respective University staff and Student shall surrender all proprietary information, material and the Confidential Information to the University and shall be prohibited from using, disclosing and transferring the proprietary information and know how gained during their term of employment/studies to any third parties, without the written consent from the University.

14.0 ADMINISTRATION AND IMPLEMENTATION

- 14.1 The Vice-Chancellor is the custodian of this IP and Commercialisation Policy of USM
- 14.2 The Vice-Chancellor shall appoint the Intellectual Property Management Committee to administer and implement the IP and Commercialisation Policy of USM.
- 14.3 The Centre for Innovation and Consultation of the University shall be the secretariat for the Intellectual Property Management Committee as identified in Section 11.2 above.

15.0 CONFLICT OF INTEREST AND COMMITMENT IN COMMERCIALISATION

- 15.1 The University is committed to values of transparency, ethical, integrity and independence as it pursues its mission to create, preserve and disseminate knowledge through teaching, research, technology transfer, and public service.
- 15.2 Given that the University allows and encourages outside activities and relationships that enhance the mission of the University, potential conflict of interest and commitment are inevitable. Outside activities, which include but not limited to sponsored or collaborative research and IP commercialisation, shall not however, interfere with the Originator(s) main duties in the University.
- 15.3 Originator(s) and employees must not use their official positions or influence in the university to further gain or advancement for themselves, parents, siblings, spouse or partner, children, dependent relatives or other personal associates.
- 15.4 There are various conflicts of interest that can emerge in relation to Originator(s) receiving financial returns from commercialisation activities. These include potential conflict associated with
- a. The conduct and reporting of research

- b. The Originator(s)' involvement in decision making on grants, sponsorship, recruitment, practises and resource allocation; and
 - c. The Originator(s)' involvement in expert, advisory or regulatory capacities, both within or outside their course of employment at the University of engagement in commercialisation through the University and/or its subsidiaries
- 15.5 Originator(s) and all employees involved in commercialisation activities shall observe conflict of interest. All actual and potential conflict of interest or commitment must be disclosed to the University or its proxy to be evaluated. If such conflicts are found to be significant, they will be eliminated.

16.0 DISPUTE RESOLUTION

- 16.1 If a dispute arises as to the implementation of this IP and Commercialisation Policy of USM, or as to any matter on which the implementation of this IP and Commercialisation Policy of USM hinges, the Vice-Chancellor must appoint a Mediator who can assist the parties in resolving their dispute.
- 16.2 If such a dispute cannot be resolved through the assistance of a Mediator, the Vice-Chancellor shall appoint an Arbitrator to investigate and decide the matters.

17.0 WAIVER

Waiver of the provisions of this IP and Commercialisation Policy of USM may be granted by the Vice-Chancellor on a case-by-case basis.

18.0 BREACH

Any breach of the provisions of this IP and Commercialisation Policy of USM will result in appropriate action being taken by the University against the violator.

19.0 SAVING PROVISIONS

- 19.1 For the purpose of this section “replaced IP and Commercialisation Policy of USM” means the Intellectual Property Policy at the Universiti Sains Malaysia which was approved vide [Min.834.1.1].
- 19.2 Validity of actions by the University
- Any instrument , deed, title, document, bond, agreement and working arrangement executed by the University and the Intellectual Property Management Committee or its proxy shall, on the appointed date be deemed to have been made under this IP and Commercialisation Policy of USM and continue to be in force and have effect.
- 19.3 Rights, etc. of University not affected
- All rights, privileges, liabilities, duties and obligations of the University under the replaced IP and Commercialisation Policy of USM shall, on the appointed date, devolve upon and be deemed to be the rights, privileges, liabilities, duties and obligations of the University under the IP and Commercialisation Policy of USM.
- 19.4 All undertaking given by, and matters pending before the University and Intellectual Property Management Committee or its proxy under the replaced IP and Commercialisation Policy of USM shall, on the appointed date, be undertaken by or continued before, as the case may be, by the University and Intellectual Property Management Committee or its proxy under this IP and Commercialisation Policy of USM.
- 19.5 All existing liabilities incurred by or on behalf of or for the purposes of the University under the replaced IP and Commercialisation Policy of USM shall, on the appointed date, be enforced against the University under this IP and Commercialisation Policy of USM.
- 19.6 All rules, regulations, declaration, order, notices forms and circulars issued or made by the University shall remain in force, in so far as all the rules, regulations, declaration, order, notices, forms and circulars issued are consistent with, or until replaced or revoked by, the provisions of this IP and Commercialisation Policy of USM.