ORDINANCE NO. 18
INTELLECTUAL PROPERTY

The Council of the University of Tasmania makes this Ordinance under the University of Tasmania Act 1992.

1 Commencement
1.1 This Ordinance takes effect on 17 August 2012.

2 Purpose
2.1 To establish a clear and sound framework for the encouragement of invention, creative work and technology development.

3 Interpretation
3.1 In this Ordinance, unless the contrary intention appears-

<table>
<thead>
<tr>
<th>Commercialisation Costs</th>
<th>means any costs, expenses or fees incurred either directly or indirectly by the University in its discretion (including costs paid to third party commercialisation consultants, patent attorneys and other advisers) to Commercially Exploit Intellectual Property.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercially Exploit</td>
<td>means to exploit, publish, assign, license (including sub-license) or otherwise use Intellectual Property for the purpose of economic return or commercial gain.</td>
</tr>
<tr>
<td>Deputy Vice-Chancellor (Research)</td>
<td>includes a person nominated in writing by the Deputy Vice-Chancellor (Research) to carry out any of the functions of the Deputy Vice-Chancellor (Research) under this Ordinance that are specified in the nomination.</td>
</tr>
<tr>
<td>Employee</td>
<td>means an employee of the University.</td>
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</tbody>
</table>
| Intellectual Property   | includes any existing or future rights in relation to-  
  a) copyright  
  b) patents or patentable inventions  
  c) designs  
  d) trade marks  
  e) new plant varieties |
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learning Material</td>
<td>means printed or web-based course material, including lecture notes, manuals and readers, that are developed for the purposes of fulfilling the University’s teaching function or the assessment of Students.</td>
</tr>
<tr>
<td>Moral Rights</td>
<td>has the same meaning as in the <em>Copyright Act 1968 (Cth)</em> and includes an author’s right of attribution of authorship, a right not to have authorship falsely attributed, and a right to integrity of authorship being maintained.</td>
</tr>
<tr>
<td>Net Income</td>
<td>means the net income received by the University from Commercially Exploiting Intellectual Property, being the amount received by the University after Commercialisation Costs and any applicable taxes have been deducted.</td>
</tr>
<tr>
<td>Non-employee</td>
<td>means a person other than an Employee who (whether for payment or not) provides academic or professional services to the University and includes: a) a person on whom an honorary or voluntary position title is conferred by the University (including visiting, adjunct, clinical and associate titles) b) a secondee c) an independent contractor.</td>
</tr>
<tr>
<td>Scholarly Work</td>
<td>has its natural meaning and includes for example a) scholarly books b) chapters of books c) journal articles d) conference papers e) textbooks f) artistic works g) other academic works authored by an Employee but excludes Learning Material and works that are developed for, or specifically commissioned by, the University or a third party.</td>
</tr>
<tr>
<td>Student</td>
<td>has the same meaning as in the <em>University of Tasmania Act 1992</em> including a candidate undertaking a higher degree by research.</td>
</tr>
<tr>
<td>University</td>
<td>means the University of Tasmania.</td>
</tr>
<tr>
<td>University Resources</td>
<td>means a) University infrastructure, facilities, equipment and services b) Intellectual Property developed by, at, or through the University.</td>
</tr>
</tbody>
</table>

f) circuit layouts
g) trade secrets and commercially sensitive information.
c) research funding arranged by or through the University.

4 Ownership and Assignment

Employees

4.1 The University owns all Intellectual Property created by an Employee (excluding copyright in Scholarly Works) where there is a legal basis on which that Intellectual Property vests in, or is assigned to, the University including where:

a) ownership of the relevant Intellectual Property vests in, or is assigned to, the University by operation of law; or
b) the relevant Intellectual Property vests in the University further to an agreement between the Employee and the University.

4.2 The University may request that an Employee assign or licence any interest which they may have in particular Intellectual Property to the University or a third party (as the case may be) where the University considers it appropriate do so, including where:

a) the University proposes to Commercially Exploit the relevant Intellectual Property; or
b) a third party requires or requests that the University arrange for the Employee to do so as a condition of the University’s receipt of research or other funding.

Students

4.3 Intellectual Property created by a Student (except in new plant varieties) is owned by the Student, subject to any agreement by the Student to assign that Intellectual Property.

4.4 The University will request that a Student assign or licence their Intellectual Property to the University or a third party (as the case may be) where:

a) the University proposes to Commercially Exploit the particular Intellectual Property;
b) it is a requirement of a third party, which is funding or facilitating the research project in which the Student is or will become involved, that the Student assign or licence the Intellectual Property to either the University or the third party;
c) it is a requirement of a scholarship which the Student is granted or is to be granted that the Student assign or licence the Intellectual Property to either the University or the person or body granting the scholarship; or

d) the University will contribute, or has contributed, existing Intellectual Property to a project in which the Student proposes to participate.

4.5 Where a Student does not agree to sign a deed of assignment further to clause 4.4(b), the University may not be able to guarantee that the Student is able to be involved in the relevant research project.

4.6 Where a Student does not agree to sign a deed of assignment further to clause 4.4(c), the University may not be able to guarantee that the Student is able to receive or continue to receive the scholarship grant.

Non-employees

4.7 Intellectual Property created by a Non-employee is owned by the Non-employee except where there is a legal basis for the University’s ownership of the relevant Intellectual Property including where:

a) ownership of the relevant Intellectual Property vests in or is assigned to the University by operation of law; or

b) Intellectual Property vests in the University further to an agreement between the Non-employee and the University.

4.8 The University will request that a Non-employee assign or licence their Intellectual Property to the University or a third party (as the case may be) where:

a) the University proposes to Commercially Exploit the particular Intellectual Property;

b) it is a requirement of a third party which is funding or facilitating the research or consultancy in which the Non-employee is, or will become, involved that the Non-employee assign or licence the Intellectual Property to either the University or the third party; or

c) the University will contribute, or has contributed, existing Intellectual Property to a project in which the Non-employee proposes to participate.

5 Obligation to Report Intellectual Property

5.1 Where an Employee believes that a third party (including another research institution or former employer) may own, or have some other legal interest in, Intellectual Property which the Employee proposes to use in the course of their employment at the University, the Employee must disclose this to the Deputy Vice-Chancellor (Research) at the earlier of:
5.2 Where an Employee creates (whether individually or jointly) Intellectual Property using University Resources that:

a) may have commercial potential; or
b) is required to be reported under an agreement between the University and a third party (such as a research agreement);

the Employee must notify the Deputy Vice-Chancellor (Research) immediately irrespective of whether the Employee considers they may have rights in the Intellectual Property.

5.3 A Head of Budget Centre who becomes aware, or has reason to believe, that Intellectual Property of the kind described in clause 5.2 has been created using University Resources must notify the Deputy Vice-Chancellor (Research) immediately.

5.4 An Employee or a Head of Budget Centre who is unsure as to whether particular Intellectual Property is of the kind described in clause 5.2 will inform a manager at the Office of Research Services or a lawyer from the Legal Office within Governance and Legal.

5.5 An Employee must provide all reasonable information and assistance requested by the Deputy Vice-Chancellor (Research) to enable the assessment of a disclosure under clause 5.2 or 5.3.

5.6 Information disclosed under clauses 5.2, 5.3 and 5.5 must be kept confidential for a period which the Deputy Vice-Chancellor (Research) considers reasonable, to enable the University to protect the Intellectual Property.

5.7 Following a disclosure in accordance with clause 5.2 or 5.3, the Deputy Vice-Chancellor (Research) must advise any Employee identified as a creator of the disclosed Intellectual Property whether or not the University proposes to Commercially Exploit the Intellectual Property.

5.8 The rights of the University in relation to Commercially Exploiting Intellectual Property may only be waived, assigned or licensed by the University by an express written waiver or agreement by the Deputy Vice-Chancellor (Research).

5.9 If the University does not wish to be involved in the Commercial Exploitation of Intellectual Property disclosed under clause 5.2 or 5.3, it may agree to
assign or licence it to the person(s) who created it upon commercial terms or other terms approved by the Deputy-Vice-Chancellor (Research).

5.10 Any Commercial Exploitation of Intellectual Property by an Employee after it is assigned or licensed to them by the University will not be at the University’s risk.

6 Commercial Exploitation of Intellectual Property

6.1 An Employee, Student or Non-employee who is involved in the creation of Intellectual Property must comply with all reasonable directions from the University and provide all reasonable assistance in the Commercial Exploitation process, including:

a) maintaining the confidence of information incorporating the Intellectual Property in accordance with clause 5.6;
b) providing information promptly on request;
c) attending meetings with potential commercial collaborators, licensees or investors; and
d) advising on further development.

6.2 The Deputy Vice-Chancellor (Research) will distribute Net Income in these proportions:

a) 50% to the Employee, Student or Non-employee who created the Intellectual Property;
b) 20% to the University budget centre in which the Employee, Student or Non-employee is based; and
c) 30% to the University, to be used at the discretion of the Deputy Vice-Chancellor (Research).

6.3 Where more than one Employee, Student or Non-employee validly claims an entitlement to the 50% proportion of Net Income under clause 6.2 in relation to the creation of Intellectual Property, the Deputy Vice-Chancellor (Research) will apportion the 50% in accordance with each creator’s contribution to the creation of the Intellectual Property as agreed between the creators. Where no agreement is reached, the Deputy Vice-Chancellor (Research) may attempt to determine the appropriate proportions.

7 Moral Rights

7.1 The University recognises the Moral Rights of authors and performers in accordance with the Copyright Act 1968 (Cth).
7.2 The University may request that authors or performers consent to infringement of their Moral Rights but will only do so in circumstances where the University is required to obtain that consent by third parties who are funding the authors’ research.

8 Non-compliance

8.1 The failure of an Employee to comply with the terms of this Ordinance may result in disciplinary action being taken against them.

9 Dispute Resolution

9.1 A dispute arising under this Ordinance that does not relate to a decision of the Deputy Vice-Chancellor (Research) will in the first instance be referred to the Deputy Vice-Chancellor (Research) for determination.

9.2 A dispute arising under this Ordinance that does relate to a decision of the Deputy Vice-Chancellor (Research) will be referred to the Vice-Chancellor who will determine the matter.

9.3 A determination by the Vice-Chancellor is final.

10 Application of Ordinance

10.1 Intellectual Property created before 17 August 2012 is not governed by this Ordinance.

10.2 The creator of Intellectual Property who claims that this Ordinance does not apply because of clause 10.1 will bear the onus of proving that the Intellectual Property was created before 17 August 2012.
Made by Council on 17 August 2012.

Sealed with the seal of the University of Tasmania on September 2012.

Professor David Rich
Acting Vice-Chancellor

Ms Belinda Webster
General Counsel & University Secretary