

## Intellectual Property Regulation of the University of Porto

### Preamble

The University of Porto, hereinafter also referred to as UP, believes that the protection and valorisation of the R&D results and of other activities carried out within UP are an incentive to productivity and innovation, particularly to all those whose activities within the University are strongly connected to the business sector.

On the other hand, the success achieved in the protection of these results is also a strong contribution to strengthening UP's internal and external image and to its recognition as an innovative and entrepreneurial university.

The protection and valorisation of these results can also be a source of income and a way to constitute assets for UP. They can also be the recognition of the activity carried out by some of UP's academic community members, through the financial incentives from which they may benefit following the protection and valorisation of the results of their activity within UP.

In view of the importance that the protection and valorisation of such results have to UP, it is essential that there are rules ensuring this protection and valorisation whenever results are generated and that the interests of UP, as a whole and also of its entities, and of the members of its academic community are safeguarded.

The Intellectual Property Regulation of UP is therefore drawn up, governed by the following clauses:

### TITLE I

#### Industrial property rights

### PART I

#### Object and extent of application

### Article 1

#### Object and extent of application

1. Industrial property seeks to legally protect the creations in the industrial, commercial and services areas, as well as brands and other distinctive commercial signs.
2. For the purposes of interpreting and applying this regulation, Industrial Property Rights are, as provided for in the general law, patents for invention, utility models, drawings or models, new varieties of plants and topographies of semiconductor products, hereinafter referred to as inventions or creations.
3. The principles drawn up in this Regulation are also applicable to inventions that contain computer programmes with implied technical content and industrial applicability, i.e. which contribute or could contribute in the future to solve technical problems.
4. This regulation shall also be applicable to new objects of Industrial Property Rights that may become object of juridical tutelage in the future.

## PART II

### Ownership of rights

#### Article 2

##### General rule

1. Except as otherwise provided in Article 5, the University of Porto establishes, as a general principle, its right to the ownership of the Industrial Property Rights regarding inventions or other creations designed and made by its faculty, researchers and other employees or agents who work at the University of Porto.
2. The same principle applies to the inventions or creations designed and made by all other non-permanent staff, whenever these result from activities carried out under the work contract.
3. The principles laid out in paragraphs 1 and 2 of this article are applicable until the end of the calendar year that follows the resolution of the contract with UP with regard to the inventions or creations disclosed during that period, and which result from work carried out while the work contract with UP was still in force.
4. Should the activity that originated the invention or creation be carried out under a contract or protocol signed between the University of Porto and a third party, the provisions contained in Article 5 of this regulation shall apply.

**Article 3****Use of University means and resources**

1. Notwithstanding the provisions that impose a different regime, the University of Porto shall own the industrial property rights regarding the inventions or other creations designed and made, wholly or in part, using its means and resources by people with or without a work contract with the University, including any students, regardless of the funding institution.
2. The participation of any person that does not have a contract with the University of Porto which foresees the realisation of inventive or research activities in projects or other activities that imply the use of University means and/or resources requires a previously signed statement, in accordance with Model 1 attached herein, and which is an integral part of this regulation, under the terms of which the inventor or creator recognises that his/her participation is subject to the application of this regulation.

**Article 4****Career researchers**

1. The general regime of industrial property rights ownership presented in articles 2 and 3 of this regulation also applies to the researchers hired by UP and covered by the Scientific Research Career Statute.
2. The researchers referred to in paragraph 1 of this article may opt, by means of a petition addressed to the Rector of UP, for the regime of joint ownership in equal parts, for the University and the researcher, according to the provision of Decree-law No. 124/99, of 20 April. In this regime of joint ownership, the costs related to the process and management of the legal protection of the research results, as well as the net financial benefits obtained through the economic exploitation of these results, shall be split between the University and the inventor in equal parts.

**Article 5****Contract with third parties**

1. The contracts signed between the University of Porto and other institutions, of any nature and regardless of their financial agreements, shall include the rules on the industrial property ownership.

2. During the establishment of the contract all parties may stipulate another entity for the rights inherent to the profits, other than the University of Porto, by negotiation or understanding between the parties involved.
3. The participation of any person, namely staff members, researchers and other contracted staff, researchers with grants or scholarships and students, in the activities of the contract should be preceded by a written contract with the University in which it must be recognised that the ownership of the industrial property rights belongs to the University or to an institution designated by the University in the contract.
4. The contract may include an item according to which the participants must sign a confidentiality agreement related to the information and knowledge shared during the execution of the project.

#### Article 6

#### **Moral rights of the inventor**

Notwithstanding the provisions in the previous articles on the ownership of Industrial Property Rights, the inventor or creator has the right to be mentioned as the creator or inventor in the Title Form of the Patent (or other title document), unless otherwise requested in writing.

#### PART III

#### **Legal Protection**

#### Article 7

#### **Legal protection**

1. In the situations included in articles paragraphs 2 and 3, the University of Porto shall decide on the extent of legal protection of the invention or creation and of its maintenance, being responsible for the payment of costs inherent to the legal protection process and maintenance of the rights granted.
2. In the case where the University of Porto, within the power of administration and management of its Industrial Property Rights, decides to give up the maintenance and subsequent legal protection of a property industrial right previously to such action, it shall inform the inventors of this fact and provide them the opportunity of assuming the ownership of those rights.

3. The information referred to in paragraph 2 should be given no later than 90 days prior to any deadline of ownership maintenance.
4. If the inventors wish to assume the ownership of those rights, a right ownership transfer contract should be established transmitting the right to the inventors.

#### **PART IV**

#### **Exploitation of the rights**

##### **Article 8**

##### **Competence**

1. In the situations previously foreseen in articles 2 and 3 of this Regulation, the University of Porto shall conduct all the procedures leading to the adequate exploitation of the Industrial Property Rights.
2. The inventor and the Organic Unit (School) to which he belongs shall be informed of all steps related to the exploitation process of Industrial Property Rights, as well as on the exact conditions/terms of the contractual proposals made to the University.
3. The inventor must collaborate with the University in the process of valorising the research results.

##### **Article 9**

##### **Sharing of profits**

1. The net financial profits resulting from the economic exploitation of the research results shall be split according to the following percentages:
  - a) 10% for the University of Porto (UP);
  - b) 30% for the Organic Unit (FEUP or other) or another institution of the U.P. in which the inventor has carried out the activity leading to an invention;
  - c) 60% for the Inventor.
2. These benefits refer to the actual amounts less the legal protection costs of results and any other costs incurred during the commercialisation process of those protected results.

**Article 10**  
**Joint Beneficiaries**

1. Whenever there are several inventors or creators, the benefits to which they may qualify shall, according to article 9, be split in equal parts, except when there is an agreement between the inventors splitting them otherwise and if this agreement is known by the University.
2. If there are several Organics Units (Schools) and/or other institutions of the U.P. involved in the research project that gave rise to the profits, these shall be split into equal parts, except as otherwise stipulated in an agreement.

**Part V**  
**Organization**

**Article 11**  
**UP responsibilities**

It is the specific responsibility of UP:

1. To implement this Regulation and other procedures necessary to its correct implementation.
2. To decide on and legally protect the results of the research, namely the application for a patent.
3. To administrate and exploit the Industrial Property Rights that it owns exclusively or not.
4. To celebrate contracts related to the exploitation of Industrial Property Rights that it owns.

**PART VI**  
**Procedures**

**Article 12**  
**Duty of information and confidentiality**

1. As a general rule, the inventor or creator shall disclose an invention to UPIN - University of Porto, within no more than three months from the date on which the invention is considered to be concluded.

2. In the case of FEUP (our School), where there is a structure responsible for the management of intellectual property issues, the inventor shall disclose the invention to FEUP within no more than three months from the date on which the invention is considered to be finished. FEUP must inform UPIN within 10 working days from the date of the reception of disclosure so that UPIN may start the process for an eventual protection of existing rights.
3. In any case, UPIN shall inform FEUP's Cooperation Office, within no more than 10 working days, of the reception of disclosure of any invention, when the inventor belongs to FEUP.
4. Notwithstanding the provisions laid out in paragraphs 1 and 2, during its activity, the inventor shall inform FEUP or UPIN, as applicable, of the results obtained and of potential final results of the project, so as to enable the timely assessment of protection and valorisation opportunities.
5. The inventor shall provide all information related to the invention that is necessary or relevant to the decision processes related to its legal protection and economic exploitation.
6. The information referred to in the preceding paragraphs shall be in writing, signed by the inventor or creator, specifying the technical elements related to the object and field of application of the invention.
7. The information shall be sent to FEUP (Organic Unit from the University) or UPIN, as applicable, in a closed envelope containing the word "Confidential" and shall be treated during the process in a confidential manner so as not to hinder the possibility of legal protection, thus binding all stakeholders in the process, especially those representing UP, the inventor and third parties who, by any means, shall be involved in the process.
8. The inventor shall refrain from publishing or disseminating any kind of data or information about the invention before he fulfils the duty of providing the information referred to in the preceding paragraphs and of subsequent notification by UP of the decision referred to in the subsequent article.
9. Should there be more than one inventor, a responsible entity for the invention shall be appointed, having the obligation of ensuring compliance with the duties established in preceding paragraphs.

**Article 13****Decision process**

1. UPIN shall give its justified opinion on the patent request or other legal title within no more than 30 working days after receiving the information referred to in paragraph 6 of the preceding article. This information shall be given to the Rector or to a person appointed by the Rector.
2. The Rector, or the person appointed by the Rector, relying on the consultants which it may consider appropriate, shall decide on the interest or not to apply for a patent or other legal title and shall inform the inventor in writing within no more than 30 working days after receiving the statement referred to in paragraph 1 of this article.
3. The period referred to in paragraph 2 of this article may be exceptionally extended by 30 working days whenever the circumstances justify it.
4. The request for legal protection for the invention on behalf of UP, within the periods referred to in paragraphs 1 and 3 of this article, constitutes an irrebuttable presumption of the expression of interest by UP in assuming the ownership of the invention.
5. In the case defined in the preceding paragraph, UPIN shall inform the inventor within 5 working days that the application for legal protection has been filed, also informing FEUP (Organic Unit from UP) of that fact.
6. If UP decides to transfer the rights to the inventor, or in the absence of the expression of intent by UP in assuming the ownership of the invention formulated in terms defined in preceding articles, the inventor shall immediately acquire the rights of the invention, including the right of exploitation, having the possibility to apply, in his name and at his own expense, for the protection of the invention.
7. In the case referred to in the preceding paragraph, the activity of research and development, at a technical level, of the invention may be carried out in UP if authorised previously.
8. In the case where there is some activity of research and development being carried out in UP, the latter shall have the right to receive 20% of the net financial benefits obtained from the economic exploitation of results.



**TITLE II****Copyrights and related rights****PART I****Object and extent of application****Article 14****Object and extent of application**

1. For the purpose of this regulation, and as provided for in the general law, the creations liable to protection through copyrights or related rights include intellectual creations in the literary, scientific and artistic fields, regardless of nature or form of expression, namely works related to literature, art, audiovisual, multimedia and computer programmes that do not conform to paragraph 3 of article 1, or any other creation that may be considered as work.
2. The provisions drawn up in this regulation are also applicable to new objects of copyright or related rights which may become object of legal tutelage in the future.

**PART II****Ownership****Article 15****General rule**

The University acknowledges and establishes as a basic principle the right to ownership of the work regarding inventions or creations designed and produced by its faculty, researchers, other employees and students of any cycle, as a result of their activities or of services done in the University, unless otherwise stated in writing under the terms foreseen and allowed in the General Law.

**Article 16****Special cases**

1. The University of Porto may assume the ownership of copyrights and related rights by means of a previous written agreement with the author or creator in one the following situations:

- a) The work carried out stems from the enforcement of a contract signed between the University and another entity, stating explicitly that the ownership of Copyrights belongs to the University;
  - b) The realisation or conclusion of the work implies a significant use of University means or provisions.
2. In any case, the creator shall preserve the moral rights foreseen in the legislation in force, and shall always be designated as such.

#### **Article 17**

##### **Relevant use of University means**

1. In the case foreseen in paragraph 1(b), of the preceding article, whenever relevant use of University means and provisions is foreseen to take place in the preparation of intellectual work or creation liable to protection by Copyrights and Related Rights, then prior authorisation must be obtained from the University.
2. The University authorisation shall depend on a written agreement signed between the University and the author(s), according to the formal requirements enforced by the General Law, laying out the rules regarding ownership and exploitation of respective copyrights.

#### **Article 18**

##### **Contracts**

1. The contracts signed between the University of Porto and other entities, with the main or additional object involving directly or indirectly the creation of works, shall necessarily include the rules on ownership and exploitation of the respective copyrights or related rights.
2. The contracts referred to in the preceding paragraph may stipulate another holder of inherent rights other than the University of Porto, by negotiation or understanding between the parties involved.
3. The contracts referred to in paragraph 1 include those aimed at providing funding for the works to be carried out by the University.

#### **Article 19**

##### **Benefits**

1. The net financial profits obtained by the University relating to the exploitation of rights owned by the University shall be split as follows:
  - a) 10% for the University of Porto (UP);
  - b) 30% for the Organic Unit or another institution of the U.P. in which the work was developed;
  - c) 60% for the creator.
  
2. Should there be more than one creator, the benefits shall be split into equal parts, except as otherwise stipulated in an agreement between the creators, and if this agreement is known by the University.

**Part III  
Organisation**

**Article 20  
Responsibilities of the University of Porto**

It is the specific responsibility of UP:

1. To implement this Regulation and other procedures necessary to its correct application;
2. Decide on the legal protection of the results of the creation that it owns;
3. To administrate and exploit the copyrights and related rights that it owns exclusively or not.

**Title III  
Final and transitional provisions**

**Article 21  
Interpretation and omissions**

The interpretation and integration of this Regulation, namely the issues beyond those foreseen in this Regulation, shall be done according to the General Law and with the general principles of law.

**Article 22  
Entry into effect**

This Regulation shall enter into effect immediately after approval by the University of Porto Senate and publication in the *Diário da República*<sup>1</sup>.

**Article 23**  
**Revoking rules**

1. This Regulation revokes the Industrial Property Regulation approved in the plenary session held by the University of Porto Senate on 10 July 2002, notwithstanding the Intellectual Property Rights existing prior to the entry into force of this Regulation.
2. This Regulation revokes and supersedes all existing and effective regulatory diplomas in the University of Porto and its Organic Units with respect to the regulation of Intellectual Property Rights.

**Article 24**  
**Revision**

Whenever deemed necessary, this regulation may be revised by the Senate.

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<sup>1</sup> Official Journal