



NORTH-WEST UNIVERSITY[®]
YUNIBESITI YA BOKONE-BOPHIRIMA
NOORDWES-UNIVERSITEIT
INSTITUTIONAL OFFICE

Policy for the Management of Research and Innovation Contracts and External Investment / Stakeholding

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Accountable executive manager	Deputy Vice-Chancellor: Research, Innovation and Technology
Policy owner	Director: Technology Transfer and Innovation Support
Responsible division	Technology Transfer and Innovation Support
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Approved by	Council
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Amendments	<p>This policy was reviewed in May 2010 with only editorial changes being made.</p> <p>This policy was reviewed in 2011 and re-approved.</p> <p>This policy was reviewed in 2012 with corporate image risks explicitly addressed.</p>
Date of amendments	November 2012
Review date	2014
Procedures in terms of this policy	<ul style="list-style-type: none">• Rules and Process for the Approval and Management of Research, Innovation and Community Engagement Contracts and External Investment / Stakeholding.• Contract Process for Research, Innovation and Community Engagement Contracts and External Investment / Stakeholding. <p>The above is included as Appendix A and B of the Policy.</p>
Web address of this policy	http://www.nwu.ac.za/content/policy_rules
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Policy for the Management of Research and Innovation Contracts and External Investment / Stakeholding

1 Preamble

As a pre-eminent University in Africa, driven by the pursuit of knowledge and innovation, with a unique institutional culture based upon the values the University espouses, the North-West University ("NWU" or "University") has adopted this Policy on the Management of Research and Innovation Contracts and External Investment / Stakeholding on 23 November 2012.

2 Scope of application

This policy applies to all research, innovation and community engagement contracts and investor/stakeholder agreements relating thereto, entered into by the NWU, and binds all members of staff of the University, howsoever appointed, as appropriate for the requirements of the University. All contracts, including those regarding subscription to shares/ debentures or other interests in external and related entities, as defined below, are covered by this policy.

3 Definitions

3.1 Intellectual Property ("IP")

All intellectual property rights (including rights to require information be kept confidential), whether registered or not in respect of inventions, copyright, trade marks, designs, patents, plant breeders' rights, circuit layouts, know-how, trade secrets, any rights in respect of applications for the foregoing and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

3.2 Conflict of Interest

A divergence between employees' private interests and their professional obligation to the University in such a way that an independent observer might reasonably question whether the employees' professional actions or decisions may be determined or influenced by considerations of personal gain, financial or otherwise. It includes an action, omission or situation which may or may not appear to compromise the objectivity of an employee's design, conduct or reporting of a project.

3.3 Conflict of Commitment

Employees are expected to satisfy all the requirements of their employment, and should not permit outside activities to interfere with the performance of their NWU obligations. Conflict of Commitment is usually easily identified and recognized, since it involves a perceptible reduction of the employee's time and energy devoted to NWU activities. Time allocated to external activities should be recognized and defined in the employee's task performance agreement with the University.

3.4 Research

Research entails the creation of new knowledge or the expansion or further development of existing knowledge. Research includes basic or fundamental research, research in application as well as applied research. Research overlaps with innovation as far as idea generation and demonstration is concerned.

3.5 Innovation

Innovation is the creation or improvement of methods, solutions or technology (which may include products or processes). Innovation encapsulates the entire process from the creation of an idea, the embodiment of an idea in a solution, such as know-how, technology or a product or process up to the deployment thereof in the market place. Innovation is generally performed on a commercial basis and is typically multi-disciplinary.

3.6 Community Engagement

This includes activities performed by University staff and students, typically at no charge, to uplift, engage and develop the community. These may include training, consultation and management activities as well as social upliftment.

3.7 Contract / Agreement / Interest

Means any legal relationship, whether in writing or not, in terms of which rights and obligations relating to Research, Innovation, Community Engagement and External Investment / Stakeholding in respect thereof, are created by the University or its External or Related Entities.

3.8 External or Related Entities

External and/or related entities are for the purposes of this policy described as, *inter alia*, companies as defined by the Companies Act, 71 of 2008 that was formed or established by the NWU and / or employees of the NWU in the normal course and scope of their employ on behalf of and for the benefit of the NWU or interests,

- subsidiaries (100% ownership) by the NWU; and also
- subsidiary companies (>50% interest or control of the board);
- related companies (<50% interest or board members);
- Non Profit Companies (NPC), previously known as “Section 21 Companies”;
- Trusts; and either vested or otherwise, in partnerships, joint ventures or trusts.

It applies to wholly owned Companies at arm’s length (contractual interest such as licensees).

4 Policy statements

- General contractual principles and the *objectives* and *guiding principles* (appendix A), be observed and relevant requirements are adhered to in the contracts management process involving its research, innovation, community engagement activities and investments / stakeholding in the like;
- University resources, including the intellectual property rights of the University are protected and appropriately utilised in accordance with all statutory and regulatory requirements, including requirements related to the protection of Intellectual Property, requirements of the Reserve Bank and the Institutional Plan of the University;
- Risks related to its corporate image are properly identified, duly considered and effectively dealt with;
- This policy is applied in accordance with the relevant guidelines, *rules* and *procedures* and Schedule of Authorisations made and amended from time to time. (See Appendix A and B.)

APPENDIX A

Rules and Process for the Approval and Management of Research, Innovation, Community Engagement Contracts and investments / stakeholding in respect thereof.

1 Objectives

These guidelines, rules and procedures are meant to:

- 1.1 Protect the University's core business, objectives and assets, such as, not limited to, the freedom and right to publish and to commercialize its innovation and IP;
- 1.2 Ensure an independent cost/quality appraisal through appropriate institutional support functions and through line authority;
- 1.3 Ensure the maintenance of proper communication between all parties involved;
- 1.4 Enable the capturing of relevant data in relation to contracts management;
- 1.5 Ensure that suitably qualified staff is engaged in contracts and that contracts are executed within the capabilities and capacity of the University and within the time and budgetary constraints associated with contracts;
- 1.6 Ensure that all project risks are identified and provided for in terms of management structures and risk abatement strategies;
- 1.7 Ensure that risks regarding the University's reputation and corporate image are identified, duly considered and effectively dealt with by ensuring a vetting of external relationships, especially concerning donations and external investments.
- 1.8 Ensure that contract milestones are met and customer satisfaction standards are achieved in the most cost-efficient manner possible;
- 1.9 Ensure that the University's legal interests and relationships are managed and protected through the effective recordal of rights and obligations expected from the parties involved, taking the nature and extend of the agreement into consideration;
- 1.10 Provide a guideline/framework to staff members to exercise their entrepreneurial and creative initiatives to benefit the NWU, industry and the community at large.

2 Guiding Principles

- 2.1 Employees involved in the negotiation and approval of research and innovation contracts must ensure that all contracts are without prejudice, with a view to obtain the best sustainable value for the University and its related entities while ensuring compliance with the strategic management objectives and primary objectives in respect of research and innovation as well as the University's corporate values;
- 2.2 All contracts concerning the management of research, innovation and community projects have to comply with the objectives;
- 2.3 All contracts are consulted with relevant role players in the University, as described in the procedure and rules for the approval of research, innovation and community engagement contracts;
- 2.4 The relevant managers ensure that the University has sufficient resources to fulfil its obligations in terms of contracts it enters into;
- 2.5 That due consideration be given by all employees and line management to the potential legal pitfalls, benefits, risks (including, but not limited to corporate reputational risks) and obligations involved with the envisaged contracts and that further consideration be given to which manner and format the contract should be recorded in, i.e. on an invoice basis or formal written agreement (abridged or comprehensive) through the intervention of the NWU Legal Services Office, based on the nature and extend of the contract;
- 2.6 That the conclusion and signature of the contracts are finally authorised by the NWU procurement policy relating to tender procedure and signatory powers in accordance with the Schedule of Authorisation Levels – North-West University, updated from time to time; and
- 2.6 The risks as contemplated in 2.5, rights and obligations associated with the contracts are identified and managed.

3 Application

These guidelines, rules and procedures are applicable to all contracts/ agreements in terms of the policy, including (but not limited to) the following types of contracts:

- a. Confidentiality Agreement (NDA);

- b. Memorandum of Agreement (MOU);
- c. Material Transfer Agreement (MTA);
- d. Lease agreement;
- e. Purchase and Sale agreement;
- f. Research collaboration agreement;
- g. Service level agreement (SLA);
- h. Distribution, agency or representation agreements;
- i. License agreement;
- j. Donations and Grants;
- k. Subscription and Shareholder's agreement; and
- l. Any interest in external entities or related entities where no shareholding agreements exist.

4 Contract Development Support

4.1 IM Legal Services:

- a. Ensures that all contracts comply with the legal standards and requirements set by the NWU; advises line management on whether formal written contracts are necessary, is involved in all contract disputes or contractual breach, litigation or arbitration; captures the relevant data in relation to contracts in an electronic database; keeps the original signed version of contracts in appropriate security; advises line management regarding the envisaged contract in terms of associated contract risks; ensures that proposed agreements are not in conflict of existing agreements.

4.2 The Deputy Vice-Chancellor: Research, Innovation and Technology

- a. Ensures appropriate input from line managers and shared resource departments (financial, legal, innovation, research);
- b. Ensures, in consultation with line management, that the scientific and ethical, techno-economic, project and corporate reputational risks are identified, duly considered and effectively dealt with.
- c. In order to achieve the above, the DVC ensures that through the offices of the Director: Research Support, the Director: Technology Transfer and Innovation Support (TT&IS) and/or the Director: Financial Support, as appropriate,
 - i. the policy and procedures for contract negotiations and approval are executed;
 - ii. the contract negotiation, development and approval process is facilitated;
 - iii. line management are advised regarding the envisaged contracts in terms of:
 - 1. associated contract risks;
 - 2. required resource capacity and capability;
 - 3. techno-or socio-economic viability; and
 - 4. alignment with NWU mission, objectives and corporate values.

4.3 The *Contract Development Support* and consultation processes are simplified in the case of:

- a. Confidentiality Agreements, Memoranda of Agreement, Material Transfer Agreements which do not expose the University and for which a template is used which had been approved in terms of this policy; and
- b. Contracts which had been approved in the past, but for which contract data is renewed. In these cases, the consultation process is not needed and the contract can be signed by line management in line with the Schedule of Authorisation Levels – North-West University and prior approval by Legal Services.

5. Contract Execution

5.1 Staff responsible for the execution of the contract:

- a. are responsible for adhering to University policies and procedures as well as the specific guidelines in this policy, are responsible for obtaining the terms of reference between the relevant parties as input to the contracting process,
- b. consult the appropriate structures of the University according to this policy, including line management, the legal office, the innovation office and/or research support office, the office of the Director: Finance,
- c. obtain NWU approval for contracts according to the *Schedule of Authorisation Levels – North-West University*,
- d. arrange contract approval by external parties and ensure each party to the contract receives one final signed original copy of contracts,
- e. sends the original signed version of contracts to the Legal Office for filing and safe keeping, and
- f. are responsible for the execution of the contract, including communication with contract parties, planning, deliverables, financial management, etc.

- 5.2 The relevant line manager(s):
- a. ensures that all external work is being properly negotiated and contained in an appropriate contract
 - d. ensures that the scientific and ethical, techno-economic, project and corporate reputational risks are identified, duly considered and effectively dealt with.
 - b. ensures that staff entering into contracts are equipped with the necessary skills and resources to execute contracts and that their responsibilities are clearly understood.
 - c. is responsible for monitoring the execution of contracts,
 - d. ensures performance under and compliance with all contractual obligations,
 - e. ensures no staff member is
 - (i) involved in the negotiations of contracts has a conflict of interest with NWU or
 - (ii) involved in the performance under or compliance with a contract has a conflict of commitment or conflict of interest with NWU as regards the contract or any activity to be performed in relation thereto and
 - f. makes optimal use of NWU shared resources and management support structures.

5.3 TECHNOLOGY TRANSFER AND INNOVATION SUPPORT OFFICE

- a. Ensure that a register of all external or related entities is governed and maintained;
- b. All statutory compliance measures are brought under the directors' attention, including but not limited to the appointment of auditors, directors, annual returns and annual general meetings in line with institutional guidelines and directives; and
- a. Advise NWU directors about their fiduciary duties.

The TT&IS office must be involved in all processes relating to shareholders and licensing contracts.

- 5.4 The *Contract Execution* rules apply to all types of contracts.

APPENDIX B:

Contract Process for Research, Innovation and Community Engagement Contracts¹

1. Initiator² obtains initial approval for proposed initiative from line management i.e Dean/VR Research and Planning.
2. Initiator starts exploratory discussions with potential partner.
4. Initiator schedules joint consultation/drafting meeting for terms of reference³.
5. Initiator refers to Legal office for drafting of concept document.
6. Following recommendations by Legal office, initiator refers document to:
TTIS office
Financial office
Line manager
Dean/Vice Rector
for their comment/input.
7. Initiator obtains further input from other contracting parties.
9. Initiator refers all input back to Legal office for preparing of final draft.
10. Initiator (after initial approval by the Dean and/or relevant Vice-Rector) refers to and obtains signature approval for contract from:
Legal office
TTIS office
Financial office
Line manager
Dean/Vice Rector
11. Initiator arranges for signing of contract by both parties. Signing must be in accordance with the Policy on Delegations and Schedule of Authorisation Levels of the North- West University, as amended from time to time and available on the internet⁴.
12. Original document filed at Legal office and a copy at TTIS office.

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¹ The procedure does not apply to shareholder agreements and/or license agreements which is the responsibility of the Technology Transfer & Innovation Support Office.

² The initiator is defined as the individual that starts a process that requires these type of contracts and may also be any person designated to manage a specific contract process or a designated project manager.

³ The nature and scope of the meeting may require the attendance of not only the initiator and potential partner but also a representative of line management and the Legal office and/or the TT&IS office

⁴ http://www.nwu.ac.za/content/policy_rules