

UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG



Wits Commercialisation Guidelines

An annexure to the Wits IP Policy

V1.10

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Wits Innovation Centre

Preamble

As part of its strategic drive towards innovation, the University of the Witwatersrand, Johannesburg (“Wits” or the “University”) is actively enhancing its innovation ecosystem to maximise its societal impact. A key component of this ecosystem comprises various commercial arrangements, which include but are not limited to the establishment of Spin-outs/Start-up companies which may flow from research and development work conducted under the auspices of Wits or from work with industry partners conducted at Wits.

One of the most significant ways to impact society is to take a formidable idea and support it through a renewable and sustainable business model. This approach is often referred to as “Social Entrepreneurship”. Such ventures have the potential to harness innovative ideas and effect meaningful societal change, thereby enabling the University to realise its Wits “For Good” strategy. This framework also intends to incentivise innovators to continue innovating, and to generate third stream income for the University.

This document provides a comprehensive overview of the commercialisation processes, establishing the framework for standard arrangements where applicable, and clearly defining the parameters for the formation of Spin-out and Start-up companies. It is intended to guide stakeholders through the anticipated steps of the commercialisation journey and should be read in conjunction with the University’s Intellectual Property Policy (the “IP Policy”).

In the event of any inconsistency between the provisions of this document and the IP Policy, the terms of the IP Policy shall take precedence.

It is important to note that this document defines the principles, and deviations from these defaults are permissible if justified by sound reasoning and subsequent consideration by the *Ad-hoc Innovation Committee*, defined below.

Commercialisation may include the licensing of intellectual property, including but not limited to licensing on an arms-length basis to third parties.

In instances where Wits has a shareholding in the Spin-out and retains ownership in the IP relating to that Spin-out and wishes to license such IP, the license may be royalty-bearing (with benefit sharing) or royalty-free or post-revenue and cash-flow positive licensing. This structure aims to support business growth by avoiding the extraction of proceeds at an early and vulnerable stage. This may also be structured to change over time. One example of an enabling royalty license is a license which activate payments only post-revenue.

In instances where Wits has a shareholding in the Spin-out and wishes to cede the IP (as may be the case with “know-how” businesses and otherwise), the University may provide a cession on mutually acceptable terms to the Spin-out at inception or at a later stage.

Wits understands that the journey is just beginning when a Spin-out is formed. There is much work to be done. As such, Wits wishes to enable the establishments of Spin-outs as optimally as possible while recognising the value of the enabling environment which Wits creates for innovation. Therefore, the objective of Wits in this guideline is to encourage the establishment of enabling structures such as Spin-out companies. In considering the parameters of the most appropriate commercial arrangement, Wits aims to take cognisance of the most optimal equity arrangements, which includes avoiding undue distortion of the capital table, which could deter future investors, and to ensuring arrangements that facilitate rapid market entry. In the absence of these critical initial drivers, no stake has worth whatsoever.

Moreover, and as an Institution focussed on research excellence, Wits is committed to ensuring that the commercialisation process does not impede research. Rather, Wits aims to facilitate further research, mitigate risks, and uphold the best interests of the University and relevant stakeholders. The IP Policy and these guidelines aim to achieve this. The commercialisation efforts must align with Wits' core mission of fostering academic excellence and research integrity. All commercial activities should support and not hinder academic pursuits. Efforts will be made to engage the academic community in understanding the benefits of commercialisation. Regular workshops and seminars will be conducted to align stakeholders with the commercialisation strategy.

Should Wits determine that a Spin-out is not impactful, not beneficial to society, or not aligned with Wits' interests, the Ad-Hoc Innovation Committee may decide that Wits will not participate in the Spin-out or related commercialisation activities. It may accordingly recommend that the innovator pursues the opportunity in their capacity, without any Wits affiliation.

All Spin-outs deals must be approved by the Ad-Hoc Innovation Committee prior to the conclusion and/or commencement of such arrangements.

Finally, as with any dynamic start-up ecosystem, this document is subject to periodic revisions as the ecosystem evolves and matures.

Definitions used in this document

Ad-Hoc Innovation Committee: This senior and small committee is responsible for authorising the establishment terms of Spin-outs and addressing any major conflicts of interest that may arise. This committee consists of the DVC Research & Innovation or their delegate, the Head of Legal or their delegate, and the Chief Financial Officer (CFO) or their delegate. It operates under the Office of the Deputy Vice-Chancellor: Research and Innovation and which is responsible for considering, interrogating and approving the commercial arrangements associated with intellectual property (IP) which falls within the remit of the IP Policy and these guidelines.

Conflicts of Interest: These are situations that may arise where a decision taken with one's involvement may stand to directly or indirectly create a financial or other benefit for one through another channel. For example, if you own Shares in a company, and arrange for that company to be appointed to Wits as a vendor, you stand to benefit financially from the decision taken, and could exercise influence over the direction that the decision takes, notwithstanding that there may be aligned interests. To this end, please have regard to the University's Conflict of Interest Policy. All potential conflicts of interest must be disclosed annually and as they arise. Any involvement in decision-making processes related to commercialisation activities where there is a potential conflict must be declared immediately and the conflicted individual should recuse themselves from the decision-making process. Detailed records of such disclosures must be maintained and reviewed regularly by the Ad-Hoc Innovation Committee.

Directorship: Refers to the role of Directors appointed to manage the business and affairs of a company. These individuals have a fiduciary duty to the company and are responsible for representing the interests of its shareholders.

Entities: These are wholly owned subsidiaries of the Wits (100% Wits owned). On the date of approval of this guideline, these include:

- Wits Commercial Enterprise (Pty) Ltd ("WCE");
- Wits Incubator (Pty) Ltd t/a Tshimologong ("Tshimologong"); and
- Wits Health Consortium (Pty) Ltd ("WHC").

Founders: Individuals who establish and set up organisations, institutions, or companies, taking the initial steps and risk to create these. In our context, the academic and/or industrial IP creators, instigators, and developers, and early-stage entrepreneurs (as may be the case) are referred to as the Founders.

Shares: Shares in a company are an owned-asset. They are like part ownership in a house. There are multiple structures and/or ways to own shares. Wits staff are allowed to own shares in private and public companies provided that they act in accordance with the University's policies relating to such transaction (including but not limited to this Guideline, the Conflict of Interest Policy, the Delegation of Authority Policy, the Procurement Policy, and the IP Policy, amongst others).

Spin-outs (or spin-offs): Companies formed following the development of IP within Wits.

Start-up: A generic term for an early-stage business. Referred to as a Spin-out if it leverages resources from the University.

WIC: The Wits Innovation Centre is a centre within the University which co-ordinates innovation activities at Wits. As part of its work, it has initiated and authored these guidelines which are in line with international trends in the IP space.

1. The Benefits that Wits Creates for its Innovator Partners

Wits brings to the fore a number of enabling benefits to innovators:

- Educational programmes (if you are forming a Wits Spin-out, you may be eligible to participate for free – contact the WIC for details);
- Leveraging off Wits’ partnerships with entities in South Africa and abroad;
- A low-stakes environment in which to fail early through experimentation;
- A relatively risk-free opportunity to become a founder;
- An environment in which your idea can be tested;
- A wealth of knowledge and expertise in the academy with whom you may consult and/or partner;
- Laboratories and facilities to prototype and test;
- The expertise of the Innovation Support team in relation to IP and commercialisation;
- The provision of resources and expertise to protect IP;
- A diverse pool of entrepreneurial students with whom innovators may partner;
- The ecosystem that Wits is creating, including access to:
 - Tshimologong where Start-ups can go to be incubated;
 - The Wits Crucible, which offers entrepreneurship training, and where Start-ups can go to be accelerated;
 - WCE and WHC , which provide commercial vehicles to represent Wit’s shareholding, and offer a number of administrative benefits;
 - Access to innovation and/or venture funding where appropriate, including access to the Wits Innovation Fund (“WIF”), Technology Innovation Agency(“TIA”) funding, University Technology Fund (“UTF”) funding, internal funding, and other sources of funding, and
 - Access to industry opportunities;
- Wits’ existing channels and platform to access the market; and
- The world-class Wits Brand.

2. Navigating the Wits Ecosystem

Wits allocates dedicated resources and support staff within the WIC to manage Spin-out formation and support. This includes financial, legal, and administrative assistance to avoid bottlenecks.

a. Research Consulting/External Consulting

WCE, WHC and the WIC work jointly:

- When research consulting opportunities arise, the WIC brings these to WCE
 - The WIC attempts to assist to pair the correct academic
 - As such, the WIC and WCE keeps a shared register of academics who are interested in these opportunities, and academics can subscribe
- The WIC should be consulted in the solving of industry-based problems:
 - To ensure that the IP generated is properly treated;
 - As the WIC has some capacity to solve these problems directly and through industry partners;
 - As the WIC has some capacity to create prototypes, create business models, etc.
- Consulting opportunities should be taken directly to WCE and/or WHC
- Please consider the Policy on Externally Funded Work (EFW) for more detail.

b. Spin-out Formation Process

Licensing, Spin-outs, and business partnerships started at Wits are initiated via the WIC. Idea registration process forms the starting point for the innovation journey. It is at this point that, an idea is registered, and a process around commercialisation can begin.

Idea registration can be done at any point in your innovation journey via the WIC. The Innovation Support team within the WIC can work with you to assist and determine the IP and Spin-out strategy. The IP strategy for your idea may include patenting, trademarking, and registering copyright. The Spin-out strategy may include market analysis, and measuring the readiness of the core idea in various respects, namely in relation to technology; the market; manufacturing; etc.

Wits is moving toward the use of *Standard Terms* to accelerate your route to market. Standard Terms imply that deals are pre-structured.

At the point of spinning out, the WIC works with WCE to enable the establishment of the business. Business establishment is done with WCE and/or WHC and where appropriate. These Entities provide back-office support and secretarial infrastructure going forward. These commercial enterprises are well-g geared to provide ongoing support and access to opportunities. WCE can assist with commercial guidance and structuring, governance, the secretarial and back-office functioning of the business.

In the absence of market potential in terms of customer development and/or discovery to establish customer interest, market viability assessments will be conducted by an independent panel to ensure that Spin-outs have a strong potential for success. This evaluation must be documented and reviewed by the Ad-Hoc Innovation Committee.

Once a business is established, incubation at Tshimologong or acceleration at the Wits Crucible is possible, where appropriate in lieu of either a share (indicative share at $\pm 10\%$) of the entity or for fees. Once the business is established, investment from the WIF may be possible (depending on the independent decision made by the WIF's investment committee). Tshimologong can, in select cases, serve as an incubator. The WIF shall be established to support Spin-outs. Both of these work at arms-length deals and result in dilution for the capital table.

3. Intellectual Property Management

Researchers should consider IP protection prior to publication of papers and of theses. To enable this, consultation with the WIC to ensure IP is protected before any public disclosure, including thesis submissions, conference presentations, and publications is helpful. Provisional patents or appropriate embargoes should be in place to safeguard IP.

Unless, otherwise agreed and as provided for in the IP Policy, the default position is that the University will retain the ownership of IP created by its staff, and students as set out in the IP Policy. The University may accordingly conclude a license agreement under the following circumstances:

- i. Licensing to an external, existing third-party company, in which Wits has no ownership interest; or
- ii. Licensing to a Spin-out of Wits

Notwithstanding the above, the University is aware that cession of IP is sometimes required, in order to attract investment and/or enable the requisite agility to effectively exploit and/or commercialise the IP or instances where the Spin-out is premised largely on IP in the form of know-how (e.g. a software business which will require iteration or a mathematical algorithm which is not patentable).

a. Licensing to an external existing third-party company

Where licensing to an external, existing third-party company arises, the IP policy benefit sharing applies. Please refer to the IP Policy for detail.

Licensing of IP to a third-party company may potentially be advantageous in terms of speed to revenue generation and reduction of risk.

The commercial fee in these cases must be determined on an arm's length basis by the Innovator, the WIC, and/or the Entities.

b. Licensing to a Spin-out of Wits

Where Wits is licensing IP to a Spin-out of Wits, and depending on the context, this may be done on a no licensing fee basis to enable growth and survival. The benefit to the Innovator is therefore through the ownership of equity share and future dividend payments from the Spin-out as determined by Table 1. Under certain circumstances, the University may opt to obtain an equity share in the Spin-out in lieu of the payment of a license fee by the Spin-out.

c. Know-how Business

Where the Spin-out is largely premised on IP in the form of know-how (e.g. a software business which will require iteration or a mathematical algorithm which is not patentable), Wits may cede such IP to the Spin-out for exploitation and investment on acceptable terms. As IP is likely to be incomplete, a work in progress, and likely to change, no buy-back clause is applicable.

d. IP Assignment/Cession

The University may, in certain cases, be willing to cede the ownership of IP to a third party or Spin-out company on acceptable terms and in lieu of an equity share alongside the Inventors.

e. For Spin-outs which have IP registered in the form of a patent

Wits may provide a royalty-free non-exclusive license to entities which have been established to exploit patentable IP.

During the non-exclusive phase, while the entity is being established, Wits may explore commercialisation opportunities with third parties by licensing in other territories (which would therefore not be competitive with the Spin-out). The benefit sharing arrangements for these will be as per the IP policy.

At a specific milestone, Wits may cede its IP to the Spin-out. Examples of milestones:

- A specific investor requires IP ownership in the entity;
- The IP requires continuous improvement, and the Spin-out needs to invest in the enhancement of the IP

If IP is ceded to a Spin-out, in general, the University may retain the right to purchase back the tangible IP at a cost of R1 in the event of the winding up of the business (a "buy-back clause").

In the case of a cession to a Wits-owned Start-up, Wits may negotiate a milestone payment to be considered only once the business is generating revenue. This can take the form of revenue share (with a threshold or time condition) or a lump-sum payment.

3. Setup Costs

For direct costs incurred in:

1. Patenting and patent renewals (e.g. registering a patent);
2. Spin-out Establishment (e.g. CIPC costs, legal costs).

Wits, via WCE and/or WHC, may provide a loan on appropriate terms to be re-paid back at an appropriate rate from net profits following the first year in which profits are generated by the Spin-out.

The Spin-out may cover these costs themselves in which case no loan account will be raised.

4. Buy-outs

Should the Spin-out partners including the innovators and/or the Directors of the Spin-out wish to buy out the University stake (at inception or otherwise), Wits must refer such offers to the Ad-Hoc Innovation Committee for deliberation and determination.

5. Equity

Inventors (as Founders) may be assigned shareholding in the event that their IP leads to a Spin-out.

The Wits shareholding is guided by the following matrix that sets out potential parameters to determine equity contributions. The remainder of the shareholding is to be shared by the inventor(s) in proportion of their contribution. The WIC can help facilitate and/or negotiate shareholding if there is more than one inventor involved, but it is helpful if this is discussed beforehand, and the founding shareholding is decided between the inventors.

If the inventors have decided on their shareholding, they can download the Standard Terms, and generate their agreement with the University by filling in the values decided. Thus, the inventors can work with the WIC and are in control of the process. This process must be submitted to the WIC for approval by the Ad-hoc Innovation Committee

The Wits shareholding is determined by Table 1, in which the equity value is the sum of contributions as set out in the table (for the purposes of clarity, this is cumulative). Note that this is an indicative position, and that Wits and the Inventors may deviate from this position. The Ad-hoc Innovation Committee will approve the Spin-out equity position in each case.

Table 1: Determining Wits Shareholding

Condition (Wits Contribution)	Wits Equity Value (cumulative)
IP Status	
Local IP (such as a provisional patent) registered or planned registration	2,50%
International IP registered or planned registration	5,00%
IP Cession (including know-how businesses)	1,50%
Business Setup	
Wits or Wits Entity Assists	0%
Wits Staff/Postgraduate/Undergraduate Students Involvement in R&D	
Involvement of Wits Staff/Postgraduates/Undergraduates	7,50%
Wits Resources (e.g. computing, indirect financial from School or Faculty, laboratory)	
Wits Resources are not used	0%
Wits Resources are used	5,00%
Wits pre-seed funding (not via Wits Innovation Fund)	
< R100 000	0%
>= R100 000	2,50%

Unless there is a need to split the shareholding with a funder at inception stage, the inventor(s) share in the remainder of the equity at inception (100% - *Cumulative Wits Share %*). Unless otherwise agreed by the Ad-hoc Committee, the minimum Wits share is 9% and the maximum at the founding stage is 24%.

If IP is ceded to a Spin-out, there will be no benefit sharing, as Founder benefits will include equity. If the University implements a license deal with the Spin-out, benefit sharing will accrue as per the IP Policy unless otherwise negotiated. If the University concludes an arms-length deal with an unrelated third party, benefit sharing will be as per the IP policy.

6. Summary: Shareholding Principles

- As a first principal, and unless otherwise agreed, Wits may take a minimum of 9% and a maximum of 24% shareholding in a Spin-out at inception, depending on the contribution of Wits to the development of the IP, with the Innovators taking the remainder of the Shares, unless there is a need to split the shareholding with the a funder at inception stage (refer to Table 1 for details). In determining the most appropriate shareholding arrangement, the University must consider which shareholding arrangement is most likely to enable the growth of the Spin-out going forward and to create a thriving business.
- The broader Wits Ecosystem (including Tshimologong, Wits Crucible and the WIC) may enhance the benefit to the University indirectly by providing additional value, which may be indirectly captured through these vehicles. This occurs as a dilutionary event for the University and Founders. As an example, if Tshimologong incubates, it may take an equity stake in lieu of its services. For example, if Tshimologong takes a 10% stake and the University and Founders agree to this, the University and Founders would dilute their stakes proportionally by 10%.
- In instances where it may be appropriate, for example if the research to commercialise is incomplete, or the research around commercialisation is incomplete, Wits may grant the Spin-out a license to use the IP, and to enter into appropriate arrangements around enhanced IP:

- In this case, the University may take a non-dilutionary share (as ordinarily research and development funding would flow to the University as research funding);
- The Shares become dilutionary (ordinary) post-revenue so as not to adversely impact the ability to raise capital going forward.
- The University may also license IP to the Spin-out, or may cede IP to the Spin-out, as part of its contribution for its shareholding:
 - This must be decided one way or another at inception
 - As general principles:
 - If the viability of the Start-up is uncertain but the potential of the IP is lucrative, it may be best for Wits to retain ownership of the IP and furnish the Spin-out with a non-exclusive royalty-free license to commercialise the IP;
 - If the Spin-out is required to perform considerable development and/or enhancement work to improve the IP once in the market, a cession by the University to the Spin-out may be preferable;
 - If the Spin-out is likely to perform further research for a substantial period of time and receive funding for this R&D, then the University may enter into a licensing agreement with the entity on the basis that enhancements to the IP belongs to the University. This can be revisited at a later stage in the business lifecycle.
 - In this event, the University may ask for a non-dilutionary share, which can be revisited once the business starts operating so as to enable the engagement of fundraisers.
 - If the license arrangement is likely to hinder the business's ability to raise funding (such as in software businesses), and unless otherwise agreed, the University should curtail this and may cede IP to the Spin-out on mutually acceptable terms.
- The University may cover the setup costs associated with the incorporation of the Spin-out (i.e. legal costs) in certain cases and on an appropriate non-recourse loan account basis.
- The University may not always wish to participate in any commercial arrangement relating to the IP in which case the provisions of the IP Policy will apply and in which case NIPMO approval may be required as per the provisions of the IP Policy.
- In cases of disputes over equity distribution, an independent mediator may be appointed by the Ad-Hoc Innovation Committee to try and resolve the issue. This ensures fairness and transparency in equity allocation.

7. Equity Arrangements Subsequent to Spin-out in the Wits Ecosystem

There are various equity-impacting events which may occur during the progression of the Spin-out. All potential changes to the shareholding (such as funding opportunities) must be negotiated by the existing equity shareholders which includes the University.

- If the commercialisation team brings on board industry partners and/or entrepreneurs at the outset, a shareholding allocation can be agreed with that industry partner. Wits may in the ordinary course dilute to accommodate this partner alongside the other shareholders in line with best practise;
- If you bring on board a funding partner, Wits may in the ordinary course dilute to accommodate this funding partner alongside the other shareholders in line with best practise;
- If Wits Innovation Fund brings substantial deals and/or funding to the table, Wits may increase its shareholding;
- If the Spin-out is incubated within Tshimologong, and no fees are paid by the Start-up, the Founders and Wits may decide to bring onboard Tshimologong as a partner (Wits dilutes alongside Founders);

- If an entrepreneur from the Wits ecosystem or otherwise is brought on as management to run the Spin-out, Wits and the Founders may dilute to accommodate this;
- If an Employee Stock Ownership Plan (ESOP) is established in the early phases, Wits and the Founders may dilute to accommodate this.
- To manage dilutions, market-related principles should be considered.

8. Funding and Investment

The University is working on a pipeline of funding and investment partnerships for its Spin-out portfolio (including the WIF).

9. Business Plan and Strategy

In order to motivate for a Spin-out, the WIC may guide you in terms of your innovation readiness level, in particular in relation to:

- market readiness
- technology readiness
- manufacturing readiness
- investment readiness
- intellectual property readiness

In creating a Spin-out, you and/or the WIC needs to motivate that:

- your fellow inventors are appraised of and included in the process;
- you have an entrepreneur who can drive the early phases of the business (this may be one or more of the inventors)
 - Ideally, Wits staff are not intended to become involved at an operational level in the business;
 - Wits staff should not be operationally involved in the day-to-day leadership of the business (i.e. “C-Suite”), but should have representation on the board, especially given that the inventors best understand the invention and/or market opportunity;
 - Research shows that companies are more likely to raise capital if academic inventors are not in the “C-Suite” but rather on the capital table and/or acting as directors
- As a founder, inventors may wish to stay on board as an advisor and/or non-executive board member/consultant
 - These roles may or may not be remunerative;
- We want our innovators to continue innovating-
 - International trends show later-stage researchers generally do not exit their University environment for a Spin-out, while early-stage researchers may exit their University;
 - We wish to encourage and retain staff and/or postgraduates who innovate, who may go on to co-found multiple Spin-outs with the University;
 - As such, we favour the entrepreneurship model with ongoing guidance from the inventor(s);
 - If, however, inventors do need substantial time to set up the business, they must seek the permission of the person to whom they report in the organisation.

Inventors can write a motivation in this regard. The WIC can work with inventors in generating this. Spin-outs must have a business model canvas, and some market validation submitted to the WIC. This plan must be approved by the Ad-Hoc Innovation Committee before Spin-out formation. The motivation may also include market analysis, competitive landscape, revenue models, and growth projections if these are available.

10. Collaboration and Co-investment

The University may provide ongoing support to the Spin-out. The University may direct potential customers to the Spin-out. Additionally, the University may procure the services of the Spin-out provided that this is in line with the relevant procurement policy and that conflicts have been managed and approved by the Ad-Hoc Innovation Committee and/or any other Committee as set out in the University's Policies and procedures.

The business opportunity in which staff engage as a result of their University activity and/or in the scope of their employment cannot be in competition with the University, and Staff should act in fiduciary alignment with the University.

The University and Founders may choose to follow their rights and co-invest during investment rounds.

11. Existing Ventures/Partnership Models

Should an opportunity arise which requires partnership from the University, co-investment models may be possible and negotiated on an ad-hoc basis with the WIC and must be approved by the Ad-Hoc Innovation Committee. If the University is brought to the table as a co-investor or value-added partner, the University will negotiate for itself on an arms-length basis, and once a deal is reached should the deal be favourable to the University, the University will have aligned interests with the venture.

12. Support and Infrastructure

Support and infrastructure are available to the Spin-out company. This may include access to research facilities, laboratories, mentorship, or business development services provided by the University or affiliated organisations.

Once the Spin-out is sustainable, it is expected that it will take on premises at its cost in the ordinary course of a Spin-out lifecycle.

Once the University ceases to be a shareholder (for example on an exit or voluntary divestment by the University), all deals with the S-out must be negotiated on an arms-length basis with the WIC, WCE, WHC and/or the Development and Fundraising Office ("DFO") or other applicable entity in the University ecosystem.

13. Exit Strategy

The University may choose to exit an investment at any time (subject to the Shareholders' agreement). The University may look at acquisition, IPOs, or merger opportunities. Long term, Wits intends to maintain impact and may wish to maintain its shareholding for as long as it is doing so.

14. Renegotiation

Contracts can be renegotiated at any point provided both parties are willing. In the absence of an alternative agreement, the Standard Terms apply.

15. Use of Wits Material

Approved Spin-outs may use the Wits logo within marketing material in line with the University's policies and brand guidelines.

Approved Spin-outs may use the WIC logo within marketing material.

16. Governance

a. Disclosure and Managing Conflicts of Interest

As we embark on new and interesting ways of working on enhancing our impact in society, we need to rethink how we manage situations which may lead to conflicts of interest. It is important to protect the University and its good standing in society, and as such, conflicts of interest and reputation risk need to be managed.

In the event that the University stands to financially gain as a supplier from a relationship, there is generally no conflict of interest, provided that the University charges the client a market-related rate. An example of this: University staff are using a University laboratory to conduct a test and charge consulting fees.

Disclosure of potential conflicts: It is necessary annually, or more frequently, to disclose your involvement in companies (Directorships). You need to disclose any Directorships annually as per the Conflict of Interest Policy. Primarily, it is the duty of the Wits Staff Member to ensure that disclosures are made regularly, and especially so if there is the prospect that the University may enter into a commercial deal with the legal entity.

In addition to annual disclosures, any changes in Directorships or shareholdings should be disclosed within 30 days. The WIC will maintain a comprehensive conflict of interest register and ensure all disclosures are up to date.

Subject to the receiving the requisite approval as per the Conflict of Interest Policy, Wits staff members are allowed to:

- Own Shares in private companies
- Own Shares alongside Wits in private companies
- Act as a director, provided the interests are disclosed through the WIC disclosure portal

If an inventor involved in a decision-making process related to Wits working with a company in which such inventor hold Shares, or if the inventor(s) is and/or are introducing a relationship to Wits with a company in which the inventor hold(s) Shares:

- The inventor needs to at that point disclose their shareholding interest in a private company and recuse themselves from the decision-making process. If the inventor holds a single share, the fact that the inventor is a shareholder must be disclosed.
- If a company is held by another company (a "Holding Company"), and the inventor has effective shareholding, the inventor must disclose the companies below the holding companies.

If a private entity is setup with Wits as a partner and/or shareholder, and Wits wishes to procure its services, this can be considered in a case-by-case basis, with approval from the Ad-hoc Innovation Committee. However, Entities must not be setup for the sole purposes of serving a need at Wits, as this constitutes an unjustified a conflict of interest. It is unlikely that an IP-based business would be providing services only to Wits, so caution must be exercised if this is the case.

In the event that the company stands to financially gain as a supplier to the University from a relationship, a conflict of interest will arise. Once disclosures have been made, it is still possible that the University appoints a company in which an inventor has an interest, provided that this is approved and that the relevant procurement and conflict of interest policies have been complied with and that:

- The introduction, negotiation, and decision does not involve the inventor
- Or, if the introduction does involve the inventor:
 - They must state the conflict upfront to those introduced
 - They must recuse themselves from further engagement in the process from Wits' side
 - All negotiations must be arms-length and must not be with Wits staff members directly or indirectly exerting influence within the University

Please consider the Wits Conflict of Interest Policy for more information.

b. Governance and Management

The Ad-Hoc Innovation Committee will establish clear timelines and procedures for the approval process to avoid delays. The committee will also conduct regular reviews of the governance structures of Spin-outs to ensure compliance with all regulations.

The appointed shareholder representative and the Holding Company become responsible for ongoing governance and management of Spin-out entities. As such, the University may appoint a representative to the board of such entities.

Wits Spin-outs may have a Wits representative as long as Wits remains a shareholder (the memorandum of incorporation should specify that Wits retains the option of a board representative as long as Wits is a shareholder). If a Spin-out does not have a Wits representative, the Spin-out may not make use of any Wits marketing material and may not disclose Wits' involvement in the entity.

Additionally, inventors may choose to be on the board of the company to protect their interests. Inventors must at all times balance their interests and the interests of Wits and must act in good faith to maintain and protect the good name of the University.

The management of the Spin-out company must ensure that the Spin-out company is aware of and compliant with all relevant laws and regulations. This could include intellectual property rights, licensing requirements, data protection, employment laws, and industry-specific regulations, amongst others.

c. University Ownership Structure and Compliance Requirements

If the University owns a controlling stake ($\geq 50\%$) in the company, it is regarded as an "entity". In these cases:

- The entity is required to comply with reporting and audit requirements in the broader University group, including use of the group auditors;
- The entity may be able to obtain a special tax status.

If the University owns between 20% and 50% ($50\% > \text{ownership} \geq 20\%$), the company is regarded as an "affiliate":

- The company does not require the level of audit required by the University and does not need to use the group auditors;
- The company does still require a formal audit and for this to be shared with the University.

If the University owns > 20%, the company is regarded as a “financial asset”:

- The company does not require audit from a Wits perspective (it may still require audit as per the law depending on its size), however
- The company must be valued annually to be recorded as an asset in the University financials.

Under all of the above conditions, the University is a beneficiary of the entity, and:

- May appoint (a) board member(s) or observer
- the company may use its affiliation with the University for marketing subject to the parameters set out above
- the University is aligned with the interests of the company
- The shareholding may be indirect and via one of the Entities (at present WCE, WHC, or Tshimologong)

A foundational principle, given the compliance requirements, is to enable Start-ups, minimally burdening them, while maintaining risk mitigation controls and ensuring governance.

Spin-outs must adhere to the ethical guidelines set forth by the University. Any activity deemed unethical will be subject to review and potential termination of the Spin-out’s affiliation with Wits.

d. Additional Income and/or Dividends

If dividends are ultimately paid, a 10% fee (from the University share) may be allocated to the holding Entity (e.g. WCE) in lieu of their services. Dividends are used in the Wits ecosystem to enable future innovations.

Income received by inventors either by virtue of advisory fees and/or consulting fees and/or dividends may have tax implications. As the University will not have oversight of this, inventors need to ensure tax compliance for additional revenue earned through these arrangements, and the University takes no responsibility regarding tax compliance for supplementation and/or multiple sources of income.

Note that if inventors wish to consult to a Spin-out, this can be facilitated by WCE and/or WHC on a project basis as a normal consulting project, which may be non-remunerative given the inventors equity stake and alignment with the University, or remunerative if the business is established and post-revenue. This can be assessed on a case-by-case basis.

17. Continuity

If an inventor has created a piece of IP and that inventor:

- a) Leaves Wits, or
- b) Becomes deceased,

The inventor (or their estate and/or descendent(s)) is still eligible for proceeds as per the benefit sharing and/or the commercial arrangement concluded with that inventor. This is practically implemented via benefit sharing conducted by Wits and the Holding Company:

- In the event of shareholding, this ordinary ownership is an asset, and so an inventor’s departure from Wits does not impact ownership status; and
- In the event of benefit sharing, this continues post-departure, and can practically be implemented (with the same proportional share) via the Entities.