



**INTELLECTUAL PROPERTY
COMMERCIALISATION POLICY FOR
RESEARCH & DEVELOPMENT (R&D) PROJECTS
FUNDED BY THE GOVERNMENT OF MALAYSIA**

MINISTRY OF SCIENCE, TECHNOLOGY AND INNOVATION
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1.0 INTRODUCTION

The aim of the Government of Malaysia is to encourage an environment where research and innovation will flourish. Innovation is of key importance in spurring economic growth in a developing country like Malaysia. The Government of Malaysia adheres to the principle that knowledge and ideas should be harnessed for wealth creation and societal well being. The traditional resource based economy is fast being replaced by knowledge based economy. Thus, Intellectual Property will become a key factor in driving this knowledge based economy into the future.

Under these circumstances, it is crucial that researchers in the respective industries continuously create new innovations. To encourage and facilitate such innovations, the Government of Malaysia has put in place various funding schemes for the necessary research and development to be conducted. For this purpose, it is also imperative to provide a conducive environment, a secure mechanism and platform within which such innovations can be protected and exploited to the benefit of both the Fund provider and the Recipient.

- a) Currently there is no national policy governing the ownership and Commercialisation of Intellectual Property of Government funded projects. Thus, there is a need to formulate a single policy which would encompass as widely as possible the various situations for the common application by the Government, Government Agency and Research Institution; (collectively referred to as Relevant Body) providing funding for research, development and Commercialisation purposes. This

Intellectual Property Commercialisation Policy seeks to address these problems.

2.0 OBJECTIVES

The objectives of the Policy are:

- a) to establish a common framework to regulate the ownership and management of Intellectual Property from the creation, protection, innovation, exploitation and technology transfer activities carried out by the Relevant Body;
- b) to promote and facilitate the protection of Intellectual Property in line with the National Intellectual Property Policy; and
- c) to promote and facilitate the exploitation and commercialisation of Intellectual Property generated from projects funded by the Government of Malaysia.

3.0 DEFINITIONS

In this Policy, the following definitions shall apply:

“Agency” means Government Agency as defined below;

“Assignment” means the transfer of ownership of Intellectual Property;

“Commercialisation” means taking an idea to an outcome – whether a product, service, process or organisational system to market by way of licensing, Assignment, spin-off, or joint ventures;

“Confidential Information” means any Confidential Information or business/ scientific data including all oral and visual information or data recorded in writing or in any other medium or by any other means;

“Copyright” means Copyright under the Copyright Act 1987 as currently in force;

“Derivative Intellectual Property” means new Intellectual Property created by using the original Intellectual Property;

“Design” means a Design protected under the Industrial Designs Act 1996 as currently in force;

“Employee” means any Employee under a contract of service;

“Expenses” means all necessary and reasonable Expenses incurred in the Commercialisation stages of that Intellectual Property, including Patent and other Intellectual Property filing, registration and legal fees, Intellectual Property insurance premium, maintenance fees, marketing and licensing costs, administrative Expenses and fixed overhead costs and any other incidental Expenses incurred for commercialising of the Intellectual Property;

“Fund” means any Fund provided by the Government of Malaysia for research and development, acquisition, pre-commercialisation and Commercialisation of Intellectual Property;

“Government” means the Federal Government of Malaysia;

“Government Agency” means any entity which is controlled directly or indirectly by the Federal Government of Malaysia and shall include Government Linked Company;

“Government owned Intellectual Property” means all the Intellectual Property that belongs to the Federal Government of Malaysia;

“Innovation and Commercialisation Centre” means for the purpose of this Policy, any centre or department of a Ministry, Government Agency or Research Institution responsible for the exploitation and Commercialisation of any Intellectual Property owned by it;

“Intellectual Property” means any Intellectual Property protected by the laws of Malaysia, and includes patentable Invention, Know-how, Copyright of Works, Design, Layout Design of Integrated Circuits and trademarks;

“Intellectual Property Acquisition” means the acquisition by way of Assignment, Licence (exclusive or non-exclusive or sole), or by any other legal means through funding (in whole, or in part) by the Relevant Body;

“Invention” means an idea of an Inventor which permits in practice the solution to a specific problem in the field of technology, and may be, or may relate to, a product or process;

“Inventor” means the person who is the actual creator of the Invention or who has made an intellectual contribution to the

conception of the Invention, and where the context so requires, means the author or designer;

“Know-how” means any method, technique, process, discovery, invention, innovation, specification, recipe, formula, Design, plan, documentation, drawing, data and/ or other technical information;

“Layout Design of Integrated Circuits” means a work protected under the Layout Designs of Integrated Circuits Act 2000;

“Lead Agency” means the Agency entrusted;

“Licence” means the right to exploit any Intellectual Property rights granted by the owner, the licensor, to another person, the licensee, and includes a sub-licence;

“Manual” means the Intellectual Property Commercialisation Manual established to implement this Policy;

“Ministry” means any Ministry of the Government of Malaysia;

“Net Proceeds” means the gross proceeds (including all royalties, fees and other benefits) received from the Commercialisation of the Intellectual Property less Expenses;

“Off-Set Programme” means a programme agreed upon as part of a procurement agreement between the Government of Malaysia and a foreign entity under which the foreign entity agrees to provide, *inter alia*, training, technical assistance, technology transfer, equipment, infrastructure development or research and development programme to Malaysia;

“Patent” means Patents protected under the Patents Act 1983, as currently in force;

“Policy” means the Intellectual Property Commercialisation Policy for Research & Development (R&D) Projects funded by the Government of Malaysia;

“Recipient” means any person(s) who receives Fund from the Relevant Body;

“Registered Trademark” means a Registered Trademark as defined in the Trade Marks Act 1976 as currently in force;

“Relevant Body” means the collective reference to the Ministry, Government Agency and Research Institution;

“Research Institution” means Public funded Universities and Institutions of Higher Learning, Government Institutions and Government Agency, including Non-Governmental Organisations, private universities, and companies which are funded by the Government to conduct specific research;

“Technology Acquisition” means Intellectual Property Acquisition as defined above;

“Unregistered Trademark” means any trade signifier which is protected under the law of passing off; and

“Works” means literary Works, musical Works, artistic Works, films, sound recordings, broadcasts, derivative Works, and educational course materials and academic papers or any other Works protected under the Copyright Act 1987.

4.0 OWNERSHIP OF INTELLECTUAL PROPERTY

4.1. Intellectual Property ownership shall vest as follows:

Scenario 1 (Ownership of Intellectual Property shall vest in the Recipient)

Where the funding comes from the Government of Malaysia disbursing the Fund to a Recipient, and the Recipient creates Intellectual Property, the ownership of the Intellectual Property shall vest in the Recipient.

Scenario 2 (Ownership of the Intellectual Property shall vest in the Relevant Body)

Where the Relevant Body commissions a third party to undertake research either through consultancy or commission agreement, and the third party creates the Intellectual Property, the ownership of the Intellectual Property shall vest in the Relevant Body.

Scenario 3 (Ownership of the Intellectual Property shall vest in the Recipient (individual or third party))

Where the Government of Malaysia disburses Fund to a Government Agency which in turn disburses the Fund to the Recipient (individual or third party), the ownership of the Intellectual Property shall vest in the Recipient (individual or third party).

Scenario 4 (Ownership of the Intellectual Property shall vest jointly in the third party and Research Institution)

Where the Government of Malaysia disburses Fund to a Government Agency which in turn disburses the Fund to a third party which collaborates with a Research Institution and when Intellectual Property is created together, the ownership of the Intellectual Property shall vest jointly in the third party and Research Institution.

Scenario 5 (Ownership of the Intellectual Property shall vest jointly in the Recipient)

Where the funding comes from the Government of Malaysia disbursing the Fund to a project involving several Recipient, the ownership of the Intellectual Property shall vest jointly in the Recipients.

Scenario 6 (Ownership of the Intellectual Property shall vest jointly in the Research Institution and the third party)

Where the Government of Malaysia disburses Fund to a Research Institution which under the funding agreement has to collaborate with a third party, and when Intellectual Property is created together, the ownership of the Intellectual Property shall vest jointly in the Research Institution and the third party.

Scenario 7 (Ownership of the Intellectual Property shall vest jointly in the Government of Malaysia and the third party)

Where the funding comes in the form of a joint funding between Government of Malaysia with a third party, and Intellectual Property is created, the ownership of the Intellectual Property shall vest jointly in the Government of Malaysia and the third party.

4.2. Employee Invention

Where an Employee of a Relevant Body creates Intellectual Property, the ownership shall vest as follows:

- 4.2.1. Where an Employee of a Relevant Body creates Intellectual Property in the course of his employment, the ownership of the Intellectual Property shall vest in the Relevant Body;
- 4.2.2. Where an Employee of a Relevant Body, whose contract of employment does not require him to engage in any inventive activity, makes, in the field of activities of his employer, an Invention using data or means placed at his disposal by his employer, the ownership of the Invention shall vest in the employer; and
- 4.2.3. The Relevant Body will not assert any rights or claim of ownership of any Intellectual Property in relation to scholarly books, articles, audiovisual lectures or other such scholarly work or subject

matter generated by researchers or academic staff except where such Works have been specifically commissioned by the Relevant Body.

- 4.3. The Relevant Body reserves the right to decide the countries in which it will seek Intellectual Property protection.
- 4.4. The Relevant Body shall be responsible to maintain, and to bear maintenance and other costs associated with obtaining or maintaining such protection. However, the decision whether to apply for, and to maintain, such protection shall be at the sole discretion of Relevant Body concerned.

5.0 TECHNOLOGY ACQUISITION AND INTELLECTUAL PROPERTY ACQUISITION

- 5.1. Technology or Intellectual Property Acquisition is the process of acquiring Intellectual Property rights for purpose of using or exploiting a particular technology or Intellectual Property. It shall also include the process of technology transfer under which a foreign expertise is engaged to develop a particular technology locally.
- 5.2. The Technology or Intellectual Property may be acquired through outright purchase or by licensing (exclusive or non-exclusive or sole), or any other legal means.

- 5.3. Intellectual Property that is acquired under this section by the Recipient by funding that is provided in whole or in part by the Relevant Body shall become the property of the Recipient.
- 5.4. All Derivative Intellectual Property developed from the use of the acquired technology or Intellectual Property shall belong to the acquirer. The acquirer shall take all necessary steps to protect the derived Intellectual Property through registration or other means.
- 5.5. In the event the end product has been commercialised, the Recipient shall pay royalty to the Relevant Body in accordance with the acquisition funding agreement. In the absence of terms specifying the royalty, the Recipient shall pay the Relevant Body an equitable royalty.
- 5.6. Notwithstanding anything contained in this Policy, where there is a national emergency or where there is a public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the Government of Malaysia so requires; or where a judicial or relevant authority has determined that the manner of the exploitation by the owner of the Intellectual Property or his licensee is anti-competitive, the Government of Malaysia may decide that, even without the agreement of the owner of the Intellectual Property, the Government of Malaysia may exploit the Intellectual Property royalty free.

6.0 RESEARCH COLLABORATIONS WITH EXTERNAL PARTIES

- 6.1. It is envisaged that the Relevant Body will collaborate with the industry. Such collaboration is encouraged as interaction with industries ensures that research at the Relevant Body remains important and it also provides exposure to researchers. The industry will also benefit as it obtains access to the Relevant Body's expertise, facilities and resources.

Ownership of Intellectual Property

- 6.2. Ownership of Intellectual Property created in the course of such collaboration shall be determined as follows:

6.2.1. The default position for all such research collaborations shall be that the Relevant Body shall solely own the Intellectual Property. The third party will have a first right to negotiate either a non-exclusive or exclusive Licence based on commercial terms with the Relevant Body;

6.2.2. Notwithstanding para 6.2.1 above, in a situation where a third party has made substantial contributions to a collaborative effort that resulted in the creation of Intellectual Property, for example, by providing funding and by engaging in a scientific or technical collaboration with the Relevant Body, the Relevant Body may, by contract, agree that the resulting Intellectual Property will be jointly owned:

- 6.2.2.1. All such collaboration agreements shall also contain terms pre-determining the rights of the parties to commercialise any Intellectual Property that may be subsequently jointly owned by them;
- 6.2.3. Notwithstanding para 6.2.2 above, sole ownership may be granted to the third party on a case to case basis provided the following criteria are met:
 - 6.2.3.1. The project is focused mainly on product development or improvements to the third party's existing products or services and where only the third party's existing Intellectual Property is involved;
 - 6.2.3.2. The Relevant Body must benefit from the project by acquiring relevant industry experience through the exposure provided by working with the third party; and
 - 6.2.3.3. The third party must bear the full project costs, including costs of manpower, equipment and facilities.

7.0 OFF-SET PROGRAMME

- 7.1. In negotiating a contract for procurement, the Ministry concerned shall at all times act in the best interests of Malaysia and ensure that any agreement entered into between Malaysia and a foreign entity shall contain provisions for the meaningful transfer of technology, training, human capital development, technical assistance, infrastructure development or research and development programmes for the benefit of Malaysia.
- 7.2. The ownership of any Intellectual Property and other interests arising out of such Off-Set Programme(s) shall depend on the terms negotiated, but every effort should be made to secure ownership and maximum benefits to Malaysia.

8.0 EXPLOITATION OF INTELLECTUAL PROPERTY

- 8.1. Where an Inventor or creator creates Intellectual Property he shall notify the Innovation and Commercialisation Centre in writing.
- 8.2. The Innovation and Commercialisation Centre shall determine the party in whom the Intellectual Property should vest in accordance with this Policy.
- 8.3. If the Innovation and Commercialisation Centre determines that the Intellectual Property ownership belongs to the Relevant Body, it shall be responsible for any

Commercialisation of the Intellectual Property, including, but not limited to, one or more of the following:

- a) taking the appropriate measures to protect the Intellectual Property and the Relevant Body;
- b) obtaining an independent valuation of the Intellectual Property;
- c) identifying potential licensee(s);
- d) assigning the rights to a third party(s); and
- e) determining an appropriate vehicle to exploit the Intellectual Property.

8.4. In the event the Innovation and Commercialisation Centre decides to commercialise the Intellectual Property, the Inventor(s) shall provide all reasonable assistance in furtherance of this goal, for example, by providing information promptly on request, attending meetings with potential licensee(s) and providing technical advice regarding further development.

8.5. Should the Innovation and Commercialisation Centre not be interested in seeking Patent protection or to commercialise the Intellectual Property, it shall inform the Inventor in writing. The Inventor may then make a written request to the Innovation and Commercialisation Centre for the Intellectual Property to be assigned to him. The Innovation and Commercialisation

Centre shall write to the funding Agency to obtain leave. If leave is granted, the Innovation and Commercialisation Centre will retain a non-exclusive, non-transferable, irrevocable, royalty-free, worldwide Licence on the Intellectual Property for research and educational purposes. In the event the Inventor does not commercialise the Intellectual Property within five years without any reasonable grounds, the Innovation and Commercialisation Centre may exercise any Commercialisation rights in relation to the Intellectual Property.

- 8.6. The Innovation and Commercialisation Centre may retain the ownership of the Invention but grant a Licence to the Inventor to exploit the Intellectual Property, if it considers it advantageous to do so.
- 8.7. In the event the Innovation and Commercialisation Centre determines that the Intellectual Property does not belong to a Relevant Body, it shall inform the Inventor in writing of its decision, whereupon the Inventor shall be free to exploit it in any way he chooses.
- 8.8. In all cases where the Intellectual Property is to be jointly owned, the parties shall ensure that any rights to commercialise the Intellectual Property and share in the profits is pre-determined by written contract among themselves.

9.0 DISCLOSURE AND EVALUATION OF INVENTION

- 9.1. Inventor(s) is obliged to disclose and notify all newly created Inventions to Innovation and Commercialisation Centre and to cooperate with the Innovation and Commercialisation Centre in all matters, including providing full technical details of the Invention, relevant market information (if any), prior art documents and names of all Inventors who have contributed intellectually to the creation of the Invention.
- 9.2. Notification of all newly created Inventions shall be made in writing to the relevant Innovation and Commercialisation Centre.
- 9.3. Upon receipt of the notice, the Innovation and Commercialisation Centre will evaluate the commercial potential and conduct a patentability assessment on the Invention using specialists in the relevant technology areas.
- 9.4. The Innovation and Commercialisation Centre shall, within 30 days from the date of receipt of the notice, inform the Relevant Body the details of such Invention.
- 9.5. Following the evaluation of the Invention, the Innovation and Commercialisation Centre shall, within six (6) months from the date of receipt of the notice, confirm in writing to the Inventor whether the Innovation and Commercialisation Centre will pursue the patenting of the Invention subject to any obligation that may be owed to external parties.

- 9.6. Where the patentability assessment shows that the Invention is new, inventive, and of industrial application, and has commercial potential, the Innovation and Commercialisation Centre will seek to protect the Invention.
- 9.7. If there is an obligation owed to an external party under the terms of a funding or research agreement in respect of the Invention, the Innovation and Commercialisation Centre will contact the external party and proceed with the management of the Invention in accordance with the terms of the agreement with the third party.
- 9.8. The Inventor shall maintain the confidentiality of the details of the Invention until the Patent application is filed or until a decision is made by the Innovation and Commercialisation Centre to allow disclosure.
- 9.9. The Inventor shall assist registered Patent agents or registered Intellectual Property consultants recommended by the Relevant Body, to prepare, file and prosecute a Patent application.
- 9.10. Where the Inventor promotes the Invention for Commercialisation to a potential Commercialisation party before the filing of the Patent application, a non-disclosure agreement must be signed with such potential Commercialisation party, before any information on the Invention is disclosed so as to ensure that the interest of the Relevant Body is protected.

9.11. All Inventors shall disclose to the Innovation and Commercialisation Centre the identity of any party interested in the commercial exploitation of the Invention in sufficient detail and as soon as practicable after the relevant facts have come to their knowledge. All inventors are required to disclose any conflict of interest to the Innovation and Commercialisation Centre.

10.0 COMMERCIALISATION

Commercialisation means taking an idea to an outcome in a form of a product, service, process or organisational system to market by way of licensing, Assignment, spin-off, or joint ventures. However before Commercialisation can take place, party(s) should be engaged in pre-negotiation.

Pre-Negotiation

10.1. Recipient, Inventor(s) and Commercialisation party(s) are required to disclose the particulars of any Intellectual Property rights and other relevant information which would be relied upon during the negotiation. Before disclosing any Confidential Information, a Non-Disclosure Agreement (NDA) must be executed.

10.2. In contract negotiation, the Recipient may appoint the negotiating team from the Innovation and Commercialisation Centre, external experts, and internal resources, as deemed

necessary. The negotiating team representing the Recipient should have the following attributes:

- a) technical expertise and firm understanding of the technology that is at issue;
- b) good understanding of relevant laws, regulations, Government policies and of any policies or requirements adopted by the Recipient; and
- c) sufficient commercial expertise.

10.3. The party representing the Recipient shall be responsible for all activities relating to Intellectual Property Commercialisation, such as the following:

- a) researching the market;
- b) identifying parties that have the business or technical expertise to effectively commercialise the Invention;
- c) enter into discussions with interested parties and potential licensee(s);
- d) develop a business plan; and
- e) negotiate agreements.

Commercialisation Options

- 10.4. The negotiating team should consider all options and weigh the advantages and disadvantages of each of the following options before entering into any agreement.

Licensing

- 10.5. Licensing can be in the form of exclusive Licence, non-exclusive Licence, sole Licence and cross Licence, subject to para 10.9. All licensing arrangements can be contractually limited by geographical locations, time, industry and fields of application.

Exclusive Licence - the Recipient transfers all rights of exploitation of the Intellectual Property to the licensee. This means the Recipient relinquishes the rights to exploit the Intellectual Property himself or to grant any additional, subsequent Licence(s) to another party. Recipient should retain the rights to use, conduct further research and development and exploit the Intellectual Property for non-commercial use.

Non-Exclusive Licence - the Recipient may grant the rights of exploitation of the Intellectual Property to one or more party(s), including the right to exploit the Intellectual Property himself. In a non-exclusive Licence, the Recipient may grant the licensee sub-licensing rights.

Sole Licence - the Recipient transfers all rights of exploitation of the Intellectual Property to the licensee but retains his rights to exploit the Intellectual Property himself.

Cross-Licence - This option allows two or more Intellectual Property owners to contractually authorise each other to use their Intellectual Property for commercial and non-commercial purposes. In a cross-licensing arrangement, the consideration for the rights conferred by one party is a reciprocal grant of rights by the other. Cross-licensing terms may include the payment of a licensee fee or royalty if the rights conveyed by the parties are not equal in value.

- 10.6. **Assignment** - The Recipient transfers complete ownership to another party (assignee). Assignment involves an outright sale of Intellectual Property rights to the assignee. However, partial Assignments are allowed, subject to para 10.5. For example, an Assignment may be restricted by geographical locations.
- 10.7. **Spin-Off Company** - The Recipient establishes a company for the purpose of Commercialisation of the Intellectual Property, where Inventor(s) and Recipient may own equity in the company together with any third party, in proportions to be negotiated.
- 10.8. **Joint Venture Company** - The Recipient establishes an entity together with a third party for the purpose of Commercialisation of the Intellectual Property, where the Recipient and the third party are shareholders of the said company.

Special Condition

- 10.9. Notwithstanding any other provision of this Policy, no Recipient shall grant to any person the exclusive right to use or sell any Invention in Malaysia unless such person agrees that any products embodying the Invention or produced through the use of the Invention will be manufactured substantially in Malaysia. However, in individual cases, the requirement for such an agreement may be waived by the Relevant Body under whose funding agreement the Invention was made where the Recipient, or assignee shows that:
- a) reasonable but unsuccessful efforts have been made to grant licence on similar terms to potential licensee(s) who would be likely to manufacture substantially in Malaysia; or
 - b) under the circumstances, domestic manufacture is not commercially feasible.

On-going Obligation of an Inventor

- 10.10. In a situation where on-going involvement by the Inventor may be required and if there is a need for the Inventor and/ or Recipient to provide on-going technical assistance or to be involved in further joint research and development activities, the extent, manner and duration of the Inventor(s) and/ or Recipient's obligation to provide such assistance must be specified in detail in the agreement.

10.11. The Inventor(s) shall provide all information and render all assistance to the Recipient in all phases of the Patent application and/ or commercial exploitation of the Intellectual Property as the Recipient may from time to time require, including, but not limited to, assessment of the Intellectual Property, making amendments to the specification and claims of the Patent application, and participating in any proceedings concerning Intellectual Property and Licence infringement.

11.0 WEALTH SHARING GUIDELINES

11.1. It is the intention of the Government of Malaysia to encourage and reward innovation and creative activity within Malaysia. Therefore Recipient is required to encourage and motivate researchers, Employee(s) and others associated with funded research and development projects and to administer Intellectual Property rights in a manner that is equitable to all parties involved and for the public benefit.

11.2. It shall be the Policy of the Relevant Body to encourage and reward innovation and creative activity through sharing of revenues and other income generated from commercial exploitation of Intellectual Property rights.

11.3. Where the Recipient/ Relevant Body derive any financial return from the commercial exploitation of the Intellectual Property, such net revenues shall be divided between the Recipient and the Inventor(s). In arriving at the figure that is available for

sharing between the Recipient and the Inventor(s), the Recipient shall deduct all reasonable Expenses.

- 11.4. Upon deduction of these reasonable Expenses, the Recipient shall distribute the disburseable amount on the closing of the financial year in which the income revenue is derived according to the Policy in Table 1 below:

	Disburseable Amount	Inventors	Recipients
1.	First RM250,000.00	100%	0%
2.	Next RM250,001.00 to RM1,000,000.00	80%	20%
3.	Next RM1,000,001.00 to RM2,500,000.00	60%	40%
4.	Next RM2,500,001.00 to RM5,000,000.00	50%	50%
5.	RM5,000,001.00 and above	40%	60%

Table 1: Distribution Guidelines

- 11.5. In a situation where two or more Inventors develop an Intellectual Property, disbursement of the net revenue shall be according to a written agreement between the respective Inventors. In the absence of such a written agreement, each

co-inventor shall be entitled to an equal portion of that net revenue. In the event there is a change in the composition of the team of Inventors the terms of such written agreement shall be re-negotiated among the old and new members of the team. In the absence of such agreement, the matter shall be resolved in accordance with para 16.0.

- 11.6. This Policy shall also apply in respect of any revenue generated from the Commercialisation of Derivative Intellectual Property unless the parties have otherwise agreed in writing among themselves.
- 11.7. Where an Employee creates an Invention in situations covered by para 4.2 above and revenue derived from such Invention, the Inventor(s) shall be entitled to be paid in accordance with Table 1.
- 11.8. In the event Intellectual Property is derived from any Off-Set Programme, the ownership of the said Intellectual Property and its derivatives shall belong to the designated Off-Set Programme Recipient. The distribution of revenue derived from the Intellectual Property of the Off-Set Programme shall be in accordance with Table 1 above.

12.0 INCENTIVES FOR INVENTION

- 12.1. The Government, in recognition of creative idea generation and innovative research, shall provide incentive schemes for Inventor(s). Payment of such incentive shall be on a one off basis as below:
- a) Upon Disclosure of Invention : RM500.00
 - b) Upon Filing of Patent : RM5,000.00
 - c) Upon Grant of Patent : RM10,000.00
- 12.2. The Recipient, in any application for Fund, shall make appropriate provisions for the above incentives.
- 12.3. The Recipient in the case of Research Institution shall establish an Intellectual Property evaluation committee for assessing the merit of the Intellectual Property disclosure.
- 12.4. Where the Recipient is an individual, the evaluation of the Intellectual Property disclosure and the disbursement of the incentives shall be carried out by the Fund provider.
- 12.5. In a circumstance where there are one or more Inventors, the incentives will be distributed in accordance to the express written agreement of the Inventors or based on the Inventors named in the Invention disclosure form.

13.0 GOVERNMENT AND RELATED AGENCY OWNED INTELLECTUAL PROPERTY

The Ministry of Science, Technology and Innovation shall be the focal point of all Government owned Intellectual Property. The Minister of Science, Technology and Innovation shall be authorised to make regulations specifying the terms and conditions upon which any Government-owned Invention may be commercialised.

13.1. For Domestic and Foreign Protection of Government owned Intellectual Property, Ministry of Science, Technology and Innovation being the focal point of all Government owned Intellectual Property shall:

- a) apply for, obtain, and maintain Patent or other forms of protection in Malaysia and in foreign countries on Invention(s) in which the Government owns a right, title, or interest;
- b) grant possible Licence(s), including non-exclusive, sole or exclusive Licence(s), in respect of Government owned Intellectual Property. Such Licence(s) may be granted royalty-free or for royalties or other consideration, and on such terms and conditions as it deems fit;
- c) undertake all other suitable and necessary steps to protect and administer rights to Government owned Intellectual Property including rights to royalties; and

- d) where the circumstances so require, transfer custody and administration, in whole or in part, of the right, title, or interest in any Government owned Intellectual Property to another Government Agency.
- 13.2. For the purpose of assuring the effective management of Government owned Intellectual Property, Ministry of Science, Technology and Innovation shall be authorised to:
- a) assist Government efforts to promote the licensing and utilisation of Government owned Intellectual Property;
 - b) assist the Government in seeking protection and maintaining Intellectual Property rights in foreign countries, including the payment of fees and costs connected therewith; and
 - c) consult with and advise the Government as to areas of research and development with potential for Commercialisation.
- 13.3. In the event a Relevant Body does not have the expertise or it is otherwise not viable to set up the Innovation and Commercialisation Centre any Intellectual Property created or owned by the Relevant Body shall be entrusted to and managed by Ministry of Science, Technology and Innovation.

13.4. Ministry of Science, Technology and Innovation may grant a Licence in respect of a Government owned Intellectual Property only if:

13.4.1. Granting the Licence is reasonable and necessary to:

- a) raise the investment capital needed to commercialise the Intellectual Property;
- b) promote the utilization of the Intellectual Property by the public; and
- c) spur the economy;

13.4.2. The applicant makes a commitment to commercialise the Intellectual Property within a reasonable time, which time may be extended by Ministry of Science, Technology and Innovation upon the applicant's request if deemed necessary; and

13.4.3. In the case of an Intellectual Property protected outside Malaysia, the interests of the Government in foreign commerce will be enhanced.

14.0 GOVERNMENT RIGHTS (MARCH-IN RIGHTS)

With respect to an Invention in which a Recipient has acquired title as a result of Government funding, the Government shall have the right to require the Recipient, an assignee or exclusive licensee of the said Invention to grant a royalty free, a non-exclusive, sole or exclusive Licence to a responsible third party who has submitted an application to obtain such rights, upon terms that are reasonable under the circumstances. The exercise of rights set out in this para shall be governed by procedures set out below. The rights set out in this para shall only be exercised if the Recipient, assignee or exclusive licensee refuses such a request. The Government shall have the right to grant such a Licence itself, if the Government determines that such:

- 14.1. action is necessary because the Recipient has not taken, or are not expected to take effective steps to achieve Commercialisation of the subject Invention in any field of use within a reasonable time;
- 14.2. action is necessary to alleviate public health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensee(s); and
- 14.3. because the agreement required by para 10.5 has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject Invention in Malaysia is in breach of its agreement obtained pursuant to para 10.5.

15.0 FRAUDULENT ACQUISITION OF FUND AND INTELLECTUAL PROPERTY RIGHTS

Where it is subsequently discovered and proven that the Recipient had obtained the funding through misrepresentation, falsification of documents or other fraudulent means, the ownership of the Intellectual Property, if any, vested in the Recipient shall revert to the Fund provider.

16.0 DISPUTE RESOLUTION

16.1. In the event of a dispute, controversy, claim or difference of whatever nature arising out of the implementation or operation of this Policy, among the Inventors themselves, or between the Inventor(s) and the Recipient, or Inventor(s) and/ or Recipient and the Innovation and Commercialisation Centre, the Innovation and Commercialisation Centre shall try to resolve the dispute, claim or difference, failing which it shall refer the matter to the Intellectual Property Commercialisation Steering Committee of the Ministry of Science, Technology and Innovation for resolution.

16.2. The Intellectual Property Commercialisation Steering Committee shall adopt the procedures stated in the Commercialisation Manual.

16.3. The costs of such dispute resolution, if any, shall be borne equally by all parties to the dispute.

17.0 MORAL RIGHTS AND ETHICAL ISSUES

The Recipient recognises the moral rights of the author(s) or Inventor(s) of Intellectual Property. They shall take reasonable steps to ensure that the author(s) or Inventor(s) is acknowledged as the author(s) or Inventor(s) of the Intellectual Property. They shall also take reasonable steps to ensure that any alteration or modification of a work does not harm the reputation or honour of the author(s) or Inventor(s). All Employees of the Recipient shall ensure that in the creation, development and generation of any Intellectual Property, all reasonable care is taken to ensure that there is no breach of any ethics or the moral rights of the author(s) or Inventor(s) of Intellectual Property.

18.0 IMPLEMENTATION OF POLICY

The implementation of this Policy shall be in accordance with the Intellectual Property Commercialisation Manual.