



## **ECU Joondalup Lakers Hockey Club**

### **Interpretation**

(1) In these regulations, unless the contrary intention applies -

*Intellectual property (IP)* means, without limitation, all rights in relation to any:

- confidential information: which means information of any kind which, because of its confidential character, is capable of protection by contractual or equitable means, and includes information of a valuable commercial or technical character.
- copyright work: which means any work or thing in which copyright may subsist including, without limitation, "artistic work", "literary work", "dramatic work", "musical work", "sound recording", "cinematograph film", "television broadcast", "sound broadcast", "published edition of work" or "photograph", as those terms are defined by the Copyright Act 1968 as amended or replaced from time to time.
- design: which means a design as defined by the Designs Act 1906 as amended or replaced from time to time.
- invention: which means an invention (including both products and processes) which may be patentable under the Patents Act 1990 as amended or replaced from time to time.
- patent: which means a patent within the meaning of the Patents Act 1990 as amended or replaced from time to time, and includes a standard patent, provisional patent application, patent application, or a petty patent.
- trade mark: which means a trade mark as defined by the Trade Marks Act 1995 as amended or replaced from time to time, whether or not registered under that Act.

and includes rights of a related nature.

*Net revenue* means revenue less all external costs to the ECU Lakers Hockey Club directly attributable to the patenting and defence of patents, and other charges authorised by the Intellectual Property Committee in the commercialisation of the ECU Lakers Hockey Club's IP within a calendar year: in determining net revenue, the ECU Lakers Hockey Club may carry forward net losses from one calendar year into the next, but in making such determination, the ECU Lakers Hockey Club shall have regard to the interests of the originator.

*Originator* means any person who creates, whether or not in conjunction with another person, any IP.

*Patent* refer to IP.

*Resources* includes administrative support and other human resources.

*Revenue* means the sum of any lump sum, royalty or other payments received within each calendar year as a result of the commercialisation of the University's intellectual property.

*Member* means, a person who is a member of ECU Lakers Hockey Club that has created intellectual property in the course of the person's activities for the ECU Lakers Hockey Club and who was not in that capacity employed by the ECU Lakers Hockey Club.

(2) Headings in these regulations are inserted for guidance only and for the purposes of interpretation are deemed not to be part of these regulations.

### **Intellectual Property Governed By Agreements With Sponsors**

Where -

- (a) a person sponsors the ECU Lakers Hockey Club by providing funding; and
- (b) an agreement has been made between that person and the ECU Lakers Hockey Club governing ownership of intellectual property which would otherwise by virtue of these regulations be owned by the ECU Lakers Hockey Club, the provisions of the agreement prevail to the extent of any inconsistency between that agreement and these regulations.

### **Other Agreements**

*Agreement With An Originator or Other Person*

(1) The ECU Lakers Hockey Club may enter into an agreement with an originator or other person in relation to the creation, ownership, licensing, use or commercialisation of intellectual property.

*Provisions of Other Agreements Prevail*

(2) Where the ownership, licensing or exploitation of any intellectual property is governed by any agreement between the ECU Lakers Hockey Club and a member or any other person, the provisions of the agreement prevail to the extent of any inconsistency between that agreement and these regulations.

*ECU Lakers Hockey Club to Consult Where Practicable*

(3) In circumstances in which the ECU Lakers Hockey Club wishes to enter into agreements as contemplated in Sub-regulations (1) and (2) -

- (a) the ECU Lakers Hockey Club shall consult as far as practicable with the members who will be affected by that agreement; and
- (b) the ECU Lakers Hockey Club shall strive to negotiate agreements on terms which reflect the terms and intent of this policy as much as is reasonable in each case.

*Assignments and Confidentiality Undertakings*

- (4) Where an agreement has been entered into by the ECU Lakers Hockey Club under Regulation 2 or 3, and -
- (a) that agreement contains obligations about intellectual property or confidential information; and
  - (b) members or other persons are engaged in activities on behalf of the ECU Lakers Hockey Club and carrying out the ECU Lakers Hockey Club's obligations under that agreement; and
  - (c) intellectual property or confidential information is (or may be) created or disclosed as a result of those activities,

then each such member or other person shall assign the intellectual property to the ECU Lakers Hockey Club or sign licence or confidentiality undertakings, upon the request of the ECU Lakers Hockey Club.

### **Ownership of Intellectual Property Regulations**

#### *Originator to Own Copyright*

(1) An originator shall own the copyright in all copyright works created by the originator, subject to the other provisions in these Regulations.

#### *Members to Own Intellectual Property Which They Create*

(2) Members shall own intellectual property which they create and shall always own the copyright in their theses.

#### *Members Covered By Policy And Separate Agreements*

- (3) In circumstances in which members do not own intellectual property which they have created -
- (a) the members shall be treated as members for the purposes of this policy, including but not limited to receiving returns from the proceeds of commercialisation;
  - (b) the ECU Lakers Hockey Club shall enter into a separate agreement with the members to confirm the arrangements made with regard to the intellectual property; and
  - (c) the ECU Lakers Hockey Club shall take all practicable steps to ensure that the activities of members is not hindered by the provisions of these Regulations.

#### *ECU Lakers Hockey Club Ownership of Intellectual Property*

(4) In respect of intellectual property created by an originator in the course of the originator's affiliation with the ECU Lakers Hockey Club, the ECU Lakers Hockey Club shall own copyright in computer programs, but no other copyright, and own all other intellectual property.

#### *ECU Lakers Hockey Club Has Licence for Originator's Works*

(5) Where an originator owns copyright in a copyright work, the ECU Lakers Hockey Club is by operation of these regulations granted a non-exclusive, royalty free and irrevocable licence to reproduce, publish, perform, broadcast, disseminate and otherwise use the work for the ECU Lakers Hockey Club's own purposes.

#### *Originator Has Licence for Own Works*

(6) Subject to Regulations where the ECU Lakers Hockey Club owns copyright in a copyright work, the originator is granted by operation of these regulations a non-exclusive, royalty free and irrevocable licence to use the work for the originator's teaching and research purposes.

#### *Restrictions Regarding Computer Programs*

(7) Subject to Regulations 2 and 3, where the ECU Lakers Hockey Club owns copyright in a computer program, the originator of the program may not disclose it or information about it, other than reasonable disclosure to persons employed by or contracted to the ECU Lakers Hockey Club, without the prior approval of the Management Committee who, in deciding whether to give approval, shall ascribe primary importance to the need to preserve appropriate interchange and discourse.

#### *Originator Required to Execute Further Documents*

(8) An originator shall, if required by the Management Committee, execute any document or do anything reasonably required by the ECU Lakers Hockey Club in relation to intellectual property created in whole or in part by the originator to demonstrate or prove ownership to third parties or secure intellectual property protection, or assist the ECU Lakers Hockey Club to commercialise the IP.

#### *Certain Use or Disclosure of Intellectual Property to be Disclosed*

- (9) Subject to Regulations 2 and 3, an originator shall not disclose the details of or use intellectual property if the disclosure or use -
- (a) involves computer programs or related information not approved under Sub-regulation (6); or
  - (b) is currently determined by the Management Committee to be a disclosure or use which would prejudice the protection, enforcement or commercialisation of that intellectual property which is owned wholly or in part by the ECU Lakers Hockey Club, or by another person under an agreement made pursuant to Sub-regulation 3 or would be contrary to any Government or legislative requirement.

#### *Consultation and Publication of Determinations*

(10) The Management Committee shall consult with relevant members before making a determination under Sub-regulation (8) and shall cause to be published and have readily available the current determinations which prohibit disclosure or use of IP.

#### *Originator Not to Act Contrary to ECU Lakers Hockey Club's Rights*

(11) An originator shall not apply for any form of protection for, or commercially exploit or otherwise deal with any intellectual property, or do any act or thing in a manner inconsistent with the ECU Lakers Hockey Club's rights under these regulations or otherwise.

#### *Inventorship to be Acknowledged*

(12) Where the ECU Lakers Hockey Club owns IP, other than copyright, it shall ensure if practicable that the originator is acknowledged as the inventor or co-inventor, as the case requires, in any relevant patent application or other documentation.

#### *Applications Shall Be in the Name of the ECU Lakers Hockey Club*

(13) Subject to Regulations 2 and 3, all applications (whether in Australia or overseas) for registration of any IP to which these regulations apply shall be in the name of the ECU Lakers Hockey Club, unless expressly otherwise determined by the Management Committee.

#### *Specific Contribution to Members and Others*

(14) Where a specific contribution of funds, resources, facilities or apparatus, which is designated for the purpose of creating intellectual property is made available to members or others, then agreement shall be reached with the recipient of those resources as to the ownership of any resulting intellectual property and that agreement shall be in writing.

### **Moral Rights**

#### *Acknowledgment of Authorship*

(1) In the case of a copyright work owned by the Management Committee pursuant to these Regulations which the Management Committee publishes or causes to be published -

- (a) without adaptation or other modification, the ECU Lakers Hockey Club shall ensure that the authorship of the work is acknowledged in the publication; or
- (b) with adaptation or other modification, the ECU Lakers Hockey Club shall consult with and obtain the agreement of the originator and the adaptor of the work on whether the authorship of the work is to be acknowledged and if so the form of the acknowledgment.

#### *ECU Lakers Hockey Club to Bind Others to Acknowledge Authorship*

(2) Where the ECU Lakers Hockey Club proposes to assign or license a copyright work, the ECU Lakers Hockey Club shall consult with the originator of the work as to whether the ECU Lakers Hockey Club shall ensure that a term of the assignment or licensing agreement requires the purchaser or licensee to acknowledge authorship of the work and if so, the form of the acknowledgment.

#### *Withdrawal of Attribution*

(3) Where an originator wishes not to be acknowledged as the creator of intellectual property which has been modified or adapted, the ECU Lakers Hockey Club shall take reasonable steps to respect that wish, and to ensure that others respect it.

#### *Modification of Copyright Works*

(4) Where the ECU Lakers Hockey Club uses intellectual property created by an originator, it shall take reasonable steps to consult with the originator before modifying or adapting that intellectual property.

### **Duty to Report**

#### *General Obligation to Report Intellectual Property*

(1) Where any intellectual property to be owned by the ECU Lakers Hockey Club, which is likely to be commercially significant is created, any member who becomes aware of the creation, commercialisation or unauthorised use or infringement of that intellectual property shall promptly inform the Management Committee in writing of all relevant details of the intellectual property, such as -

- (a) the date upon which the intellectual property was created;
- (b) the identity of any person or persons who contributed to the creation of the intellectual property;
- (c) the details of any pre-existing intellectual property which was used in creating the intellectual property;
- (d) whether any person other than the originator claims any entitlement or interest in the intellectual property;
- (e) the details of any ECU Lakers Hockey Club facilities or resources used to create the IP
- (f) the details of any known existing or partial use or commercial exploitation of the intellectual property; and
- (g) the details of any provisional patent application that may have been filed with regard to the intellectual property.

#### *Duty Not to Act Contrary to ECU Lakers Hockey Club's Rights*

(2) A member shall not apply for any form of protection for or commercialise or otherwise deal with any intellectual property, or do any act or thing in a manner inconsistent with the ECU Lakers Hockey Club's rights under these regulations or otherwise.

### **Protection of Intellectual Property**

#### *Originator to Consult with Management Committee*

(1) Where action is to be, or has been, taken to protect intellectual property which is likely to be commercially significant, the originator shall consult with the Management Committee with regard to undertaking in a timely fashion the work necessary to complete the relevant formalities and facilitating the commercialisation of the intellectual property.

#### *Decision Within Ninety (90) Days*

(2) A decision on the action to be taken arising out of the consultation described in Sub-regulation (1) shall normally be made within ninety (90) days of the consultation taking place.

#### *Filing of a Complete Patent Application is Conditional*

(3) The ECU Lakers Hockey Club shall not normally file a complete patent application unless during the currency of the provisional application a third party undertakes to meet the expected costs of completion of the Australian application and/or overseas filings, or the Management Committee determines a strategy for further development leading to the commercialisation of the intellectual property, including how the costs of patent protection will be met.

#### *ECU Lakers Hockey Club May Assign Rights to Originator*

(4) (a) In the event that the originator wishes at his/her own expense to apply for, or continue, protection of intellectual property in which the ECU Lakers Hockey Club has no further interest, then the originator shall have the option to do so.

(b) If this option is exercised, the ECU Lakers Hockey Club, where appropriate, shall assign to the originator within ninety (90) days, rights to the intellectual property on fair terms.

#### *Availability of ECU Lakers Hockey Club Facilities*

(5) ECU Lakers Hockey Club facilities may be made available for the originator to develop further the intellectual property described in Sub-regulation (4) with the approval of the Management Committee and with appropriate cost recovery.

### **Intellectual Property Committee**

#### *Intellectual Property Manager to report to Management Committee*

(1) The Intellectual Property Manager shall be an advisory committee to the Management Committee on matters relating to intellectual property.

#### *Reporting Guidelines May Be Set Down*

(2) The Intellectual Property Manager may set down guidelines, procedures and criteria for reporting to the Management Committee the creation, commercialisation, unauthorised use or infringement of intellectual property to which these regulations apply.

### **Management Committee**

(1) The Management Committee may do all or any of the following on behalf of the ECU Lakers Hockey Club for the purposes of these regulations -

(a) consult with the originator and the relevant members and make such enquiries as the Management Committee considers appropriate concerning the commercial exploitation of any intellectual property to which these regulations apply;

(b) apply for protection or registration of, or take any other steps necessary or desirable for securing, maintaining and protecting in Australia or elsewhere throughout the world any intellectual property owned by or licensed to the University under these regulations or otherwise;

(c) commercialise any intellectual property owned by or licensed to the ECU Lakers Hockey Club under these regulations or otherwise (whether by itself or in conjunction with or through an authorised third party) upon such terms and conditions as the Management Committee considers appropriate;

(d) grant to the originator an assignment or a licence of intellectual property owned by or licensed to the University under these regulations or otherwise on such terms and conditions as the Management Committee considers appropriate;

(e) apportion the net proceeds of the commercialisation of any intellectual property owned by or licensed to the ECU Lakers Hockey Club under these regulations or otherwise having regard to -

(i) the costs incurred by the ECU Lakers Hockey Club, the originator and any other person in providing facilities, apparatus, services and resources for the creation, registration, protection and commercialisation of the intellectual property. (These costs include, but are not limited to, any registration fees, legal or patent attorneys' fees, the cost of secretarial, word processing, printing, binding, publishing, distribution, administrative services provided or incurred by or on behalf of the ECU Lakers Hockey Club, the originator and any other person.);

(ii) the extent to which the ECU Lakers Hockey Club, the originator and any other person has contributed (whether by intellectual input, provision of finance, time, pre-existing intellectual property, know-how, research facilities and data) to the creation, registration, protection and commercialisation of the intellectual property;

(iii) the ECU Lakers Hockey Club's policy on earnings from outside work;

(iv) any submissions by the originator or any other person who claims an entitlement or interest in the intellectual property;

(v) the desire of the ECU Lakers Hockey Club to encourage and reward the creation of IP by persons within the Club; and

(vi) the provisions of Regulation 10.

#### *Some Intellectual Property Not Covered By Discretions*

(2) A reference to intellectual property licensed to the ECU Lakers Hockey Club appearing in Sub-regulation 9(1) does not include a reference to intellectual property licensed to the ECU Lakers Hockey Club pursuant to Sub-regulation 4(5).

#### *Discretions Subject to Regulation 10*

(3) Nothing in Sub-regulation 9(1) allows the Management Committee to override the entitlements of an originator under Regulation 10, without the consent of the originator.

### **Apportionment of the Net Revenue**

#### *Net Revenue to be Distributed*

- (1) (a) Net revenue received by the ECU Lakers Hockey Club from the commercialisation of the ECU Lakers Hockey Club's intellectual property will be distributed in accordance with the following guidelines, provided that any individual contractual arrangements will prevail over the general provisions.
- (b) In negotiating arrangements, the University shall give due consideration to the originator being paid in reasonable time.

#### *Net Revenue to be Shared Between Originators*

- (2) (a) Where there is more than one originator, the share of net revenue shall be apportioned equitably between them by the Management Committee after taking into account Regulation 9.
- (b) The share of net revenue shall be distributed within thirty (30) days of its receipt by the University.

#### *Share of Net Revenue Determined by Schedule*

- (3) Normally, the distribution of cumulative net revenue for the entire life of the IP shall be according to the following schedule:

Cumulative Net Revenue Originators Retained by the ECU Lakers Hockey Club		
<u>&lt;\$50,000</u>	<u>Next \$100,000</u>	Further amounts
85%	65%	50%
15%	35%	50%

#### *ECU Lakers Hockey Club to Use Share of Net Revenue*

- (4) A significant portion of net revenue retained by the ECU Lakers Hockey Club after distribution according to Regulation 10 shall be returned to the originator's faculty, and the remainder shall be set aside for other activities.

#### *Cumulative Net Revenue Thresholds to Vary*

- (5) An inflationary correction factor shall be applied according to the Consumer Price Index, Perth prices.

### **Dispute Resolution**

#### *Appointment of Mediator*

- (1) If a dispute arises as to the operation of this policy, or as to any matter on which the operation of this policy hinges, the Intellectual Property Manager shall appoint a mediator to assist the parties in resolving their dispute.

#### *Appointment of Arbitrator*

- (2) If such a dispute cannot be resolved through the assistance of a mediator, the Intellectual Property Manager shall appoint an arbitrator to investigate and decide the matters in dispute.

#### *Arbitrator To Give Fair Hearing*

- (3) The arbitrator may adopt whatever procedure they see fit, provided each party is given a fair hearing.

#### *Appointment Should Be Acceptable To All Parties*

- (4) In selecting an arbitrator, the Intellectual Property Manager shall, as far as is reasonably practicable, choose a person who is acceptable to all parties.

### **Information and Education**

#### *Policy to be Communicated*

- (1) The ECU Lakers Hockey Club shall take reasonable steps to ensure that this policy is communicated and explained to members.

#### *Education Programmes to be Arranged*

- (2) The ECU Lakers Hockey Club shall arrange intellectual property education programmes from time to time with the following objectives:
- (a) to alert new members as to their rights, responsibilities and opportunities in relation to intellectual property;
  - (b) to alert members of any changes to policy; and
  - (c) to generate a better understanding of intellectual property issues in general.