

Regulations for securing and management of work results

Translated version of UiTs IPR policy. In cases of inconsistencies applies the Norwegian original.

(translated version)

REGULATIONS FOR SECURING AND MANAGEMENT OF WORK RESULTS AT UiT THE ARCTIC UNIVERSITY OF NORWAY

Approved by:	The Board of the University of Tromsø
Effective from:	19.11.2009, last amended 22.06.2022
Pursuant to:	Adopted pursuant to the Act respecting the right to employees' inventions of 17.04.70 no. 21, the Joint Intellectual Property Rights policy for Norway's universities (S 08-08) and the employer's managerial prerogative.
Archive ref.:	2022/4217

1. Background and purpose

The purpose of these regulations is to clarify the conditions concerning work results and rights in accordance with UiT the Arctic University of Norway (UiT) IPR policy adopted by the University Board in S 08-08.

These regulations shall form part of the employment contract between UiT (hereafter the employer) and the individual employee (hereafter the employee).

2. Right to work results and rights

2.1 Main rule

The employer has the right to acquire the rights or to right or use to all work results of any nature that the employee creates or develops in connection with his/her position at UiT if the university's legitimate requirement warrants this, and this is not hindered by the employees' right to academic freedom. This also includes patentable inventions, work results and rights of which may be protected by copyright and other work results and rights which are not protected or may not be individually protected, and regardless of whether the work results may be commercially exploited or not. Such work results and rights include (but are not limited to):

- patentable inventions,
- non-patentable technology,
- databases,
- computer programs,
- algorithms,
- every material product (organic, non organic and biological material), including substances, organisms and crops, as well as materials – hereafter termed physical items,
- work results that can form the basis for trademark and design registration,
- maps and photographs, and
- standardised teaching material

2.2. Exceptions to the main rule

Unless otherwise agreed, the employer does not acquire rights to

- scientific publications,
- artistic works or

- teaching material of a clearly personal character. Such teaching material may include oral lectures and presentations with personal support material.

In exceptional cases, where UiT does not own the rights to results developed with the university's resources, UiT may reach an agreement to secure the right to use these results for teaching and research purposes.

For digital teaching materials, «Principles and guidelines for production and use of digital teaching materials at UiT the Arctic University of Norway” apply.

2.3 Work results and rights created in collaboration between employees at UiT and other institutions

If the work results or rights are produced in collaboration between employees at UiT and other institutions, this contract applies to the portion of the work result produced by employees at UiT.

2.4 Work results or rights not connected to a position at UiT

Work results and rights which in their entirety are produced in connection with the employee's other position or independent business enterprises do not belong to UiT on the assumption that:

- the employee documents that the development of the results has taken place outside of the employee's working hours and without the use of UiT's resources, and
- the employee has reported the work or commission relationship in the prescribed way and, where necessary, gained approval (cf. Guidelines for the employee's access to undertake additional work)

3. Relationship to the legislation

These regulations prevail subject to the mandatory rules as a consequence of the legislation, with reference to

- the Act respecting the right to employees' inventions of 17 April 1970 no. 21: Section 7, subsection 1 (the employee's right to reasonable remuneration), Section 9 (disposal of an invention more than one year after termination of the employee's employment), Section 10 (entitlement to revise fixed remuneration), and
- the Act relating to copyright in literary, scientific and artistic works, etc of 12 May 1961 no. 2 (The Copyright Act): Section 3 (the author's right to have his/her name stated and the right of respect).

The Act respecting the right to employees' inventions and other legislation supplement these regulations in cases where these regulations do not determine other than the provisions of the legislation.

4. Obligations under other agreements

If the employer has entered into agreements with a third party regarding research collaboration or research funding, including supported or commissioned research (BOA) as well as other forms of collaboration, the employee is obliged to familiarise himself/herself with and comply with these agreements and contribute to the employer being able to fulfil its obligations to the third party.

An employee who shall participate in work where the employer has entered into agreements with a third party regarding research collaboration is obliged to enter into a separate written supplementary agreement, "Changing of duties", with the employer, in cases where this is deemed necessary.

The employer is obliged to inform the employee about the agreement with the third party or the relevant provisions therein. Employees participating in such collaboration as that outlined above, and who have not received information about the terms of agreement with the third party, have an independent responsibility to seek information about the terms of the agreement.

The employee is obliged to protect the secrecy of data and information he/she acquires through participation in the research collaboration with the third party, such as personal data, trade secrets or other confidential information resulting from the agreement with the third party.

Both the employee and employer are obliged to ensure that the researcher's right to publish pursuant to subsection 6 of Section 1-5 of the Act relating to universities and university colleges is taken care of in collaboration agreements with third parties, cf. Section 6 of these regulations. Publication of the research results may be delayed for a short period to the extent necessary to fulfil UiT's obligations under agreements with third parties regarding research collaboration.

5. Notification requirement

5.1 What the notification requirement includes

When an employee, alone or in collaboration with others, has achieved work results or rights for which rights protection may be secured by registration in public registers and/or that the work results may be commercially exploited, he/she is obliged to report this in writing without delay to the employer on the prescribed form, cf. Section 5.2 of these regulations.

If the employee is in doubt about whether rights protection of the work results may be secured in full or part by registration in public registers and/or that the work results may be commercially exploited, he/she should raise the question with the employer.

5.2 Notification must be in writing

Notification in accordance with Section 5.1 of these regulations must be in writing and on the prescribed form, Disclosure of Invention (DOFI), in accordance with the procedures outlined on uit.no/dofi. When filling in this form, the employee shall provide details about what the work result or right comprises, as well as information about the other conditions covered on the form. The University Director may stipulate other procedures in individual projects.

In cases where it is necessary in order to assess whether a work result has the potential for commercial exploitation, the employee is obliged on request from the employer or the person designated by the employer to handle the task, to obtain further information.

5.3 When written notification is regarded as having been received and the notification requirement is fulfilled

The notification is regarded as having been received when DOFI is completed in full and confirmation of receipt is sent by the University Director on behalf of the employer.

If the employer has requested further information that is necessary in order to determine whether the work results or rights can be exploited by the employer, the notification is not regarded as having been received before such information is provided to the employer.

Verbal or other written briefing to the employer or its representative, including by e-mail, is not regarded as received written notification.

5.4 Consequences of failure to submit written notification on the DOFI form

If the employee fails in his/her obligation to submit written notification of the work results to the employer on the DOFI form, and instead exploits the work results himself/herself or through others, the employer shall have the right to 2/3 of the net earnings that are created, either directly or indirectly, by commercial exploitation of the work result.

6. Publication of work results and rights

The term publication means publishing of the work result or making it public in another way, verbally or in writing, e.g. a lecture, seminar, scientific articles, journalistic coverage, viewing or exhibition.

6.1 Delay of publication for a four-month period

The employee may not make public the work results or rights without prior written consent from the employer before a period of four months has passed from the time the employer received the written notification, in accordance with Section 5 of these regulations. The employer should aim to make the

period during which the work result or right may not be made available to others as short as possible, and should to the extent possible endeavour to notify the employee about whether the employer will exploit the work result or right.

Since work results and rights may only secure rights protection upon registration in public registers before they are made public, the employee must not publish the work results or rights before the necessary application for such registration has been received by the Norwegian Industrial Property Office.

However, teachers and academic staff at the university have the right to publish providing the employer is notified of this in the disclosure of invention (DOFI), and this is not hindered by the third party's rights, cf. the last sub-section of Section 4 of these regulations, and the third sub-section (clause 1) of Section 6 of the Act respecting the right to employees' inventions of 17 April 1970 no. 21.

6.2 Right to apply for patent protection or other rights protection during the four-month period

The employee may, with the employer's written consent, apply for patent protection or other rights protection for the invention during the four-month period, in accordance with Section 6.1 of these regulations if this is necessary to secure priority in relation to other applications.

6.3 Other actions that may limit UiT's right to the work results

Before four months have passed from the date the employer received notification, in accordance with Section 5 of these regulations, the employee shall not – without the employer's written consent – perform actions that might reduce the possibility of exploiting the work results or rights. Moreover, the employee may not enter into agreements with others regarding the exploitation of work results without the employer having the right to 2/3 of the net earnings that are created, either directly or indirectly, by commercial exploitation of the work result.

6.4 Publication in the event that UiT does not provide a response

If the employer does not provide the employee with a written response about whether steps will be taken to secure rights protection of the work results or rights in the public register before the four-month period expires, the employee is free to publish the work results to the extent that this is not in conflict with the obligations to the third party, cf. the final sub-section of Section 4 of these regulations or in conflict with the employee's other obligations to the employer.

7. Remuneration

7.1 Main rule about remuneration

The employer acquires the right to the work results and rights by virtue of these regulations without the employee being due remuneration other than his/her agreed salary.

7.2 The employee's entitlement to separate remuneration over and above the agreed salary

When the employer chooses to exploit the work results or rights commercially, the employee is entitled to reasonable remuneration. This remuneration is calculated as a proportion of the net earnings that are created by the commercial exploitation of the idea. Net income is defined as income generated after the deduction of any expenses for commercial exploitation, including expenses associated with securing the rights and commercialisation. Net income up to NOK 100,000 shall be paid to the employee / employees. Net income over 100,000 shall be normally distributed as follows:

- 1/3 to the employee(s)
- 1/3 to department/academic environment (to be determined in consultation with the employee(s))
- 1/3 to university/technology transfer unit (to be agreed for each individual project)

This also applies to non-patentable work results. The employee should have access to information concerning the basis for calculation of the remuneration.

In certain cases, it is possible to enter into an agreement concerning a different distribution of earnings, e.g. in cases where UiT's technology transfer unit is part owner of a company established on the basis of the work result or in cases where a right is transferred to another legal entity and the employee receives an agreed compensation in other ways. Unless otherwise specifically agreed, the distribution of earnings will occur in accordance with the one-third model as mentioned above.

7.3 Work result produced by several employees

If the work result has been produced in collaboration between several employers/partners, the guidelines apply to UiT's share of these.

If a work result has been produced by several employees, and the employer chooses to exploit it commercially, those who have produced the work result should reach agreement on the apportionment of the remuneration between them, and report this to the employer.

If no such agreement is reached, the employer may deposit the remuneration in Norges Bank pursuant to the provisions of the Act relating to the right to deposit an item of debt of 17 February 1939 no. 2, until agreement concerning the apportionment of the remuneration has been reached.

7.4 Responsibility for financial consequences

The remuneration may be agreed as a lump sum payment or current payments. The employee is responsible for the tax consequences of the chosen remuneration form and for seeking competent advice in this context.

8. The employee's obligation and right to contribute during the commercialisation process

If the employer chooses to exploit the work results or rights commercially and this is not hindered by the employee's right of publication, in accordance with the final sub-section of Section 6.1 of these regulations, the employee is obliged to provide the necessary assistance to secure such exploitation. This includes the signing of any documents in connection with patenting and registration. The employee has the right to participate in the commercialisation process and, in this connection, be updated on a regular basis about the employer's actions.

9. Reassignment of rights to the employee

The work results or rights the employer has acquired may, after a specific evaluation, be reassigned back to the employee.

After such reassignment, the employee is free to exploit the work results himself/herself or through others, to the extent that this does not conflict with obligations of third parties or the employee's other obligations to the employer. In such cases, the employer is entitled to 15 % of the net earnings that are created, either directly or indirectly, through commercial exploitation of the work results. The employee should have access to information concerning the basis for calculation of the remuneration.

In all cases, the employer retains the right to use these work results for teaching and research purposes free of charge.

10. Choice of law and dispute resolution

10.1 Applicable laws

These regulations are regulated by Norwegian law.

10.2 Dispute resolution

The parties should seek to resolve any disputes between them through negotiation.

If the parties are unable to reach agreement, each of the parties may bring disputes regarding inventions before the Conciliation Board for Employees' Inventions ("Meklingsnemda for arbeidstakeroppfinnelser").

The parties may agree that this board functions as a court of arbitration pursuant to Section 13 of the Act respecting the right to employees' inventions.

The Nord-Troms District Court is the legal venue for disputes pertaining to the interpretation of these regulations and the employment contract.

The regulations can be accessed at uit.no/ipr-reglement