

# INTELLECTUAL PROPERTY POLICY OF NOVA UNIVERSITY LISBON

*Disclaimer: This translation is provided for information purposes only. In the event of discrepancies between this and the original Portuguese version, the latter will prevail.*



# NOVA UNIVERSITY LISBON

Rectorate

## Regulation No. 1104/2020

### INTELLECTUAL PROPERTY POLICY OF NOVA UNIVERSITY LISBON.

NOVA University Lisbon (*Universidade Nova de Lisboa*), hereinafter referred to as NOVA or University, has the mission of serving society by advancing and disseminating knowledge, through research involving excellence which is guided towards solving problems that affect society. Its duties are also to promote the dissemination of research results and the social and economic valorisation of knowledge, namely the transfer of technology, as well as support for innovation and entrepreneurship and the establishment of partnerships with business, non-governmental and public and private entities and associations.

Given this, it is essential to undertake appropriate and efficient management of the intellectual property at NOVA, including its protection and enhancement, which makes it possible to maximize the socio-economic impact of the knowledge generated at the University. It is also crucial to project NOVA as a partner of excellence in creating value for the country, the region, its companies and other development stakeholders, sensitizing its researchers and students to the importance of this theme and encouraging them to participate in protection processes and the enhancement of research results.

In compliance with the provisions of legislation in force, particularly with regard to industrial property, copyright and computer programs, respectively the Industrial Property Code, the Authors Rights and Related Rights Code and Decree-Law No. 252/94, of 20 October, this document regulates the management of the intellectual property of NOVA, based on principles of transparency, equity, sustainability and efficiency to carry out the corresponding technology and knowledge transfer process. This Policy identifies which individuals are covered by its provisions, clarifies the circumstances under which NOVA will assume ownership of intellectual property rights and defines those responsible for legal protection expenses, in addition to establishing the main duties of inventors, creators or authors at the University. In addition, it regulates the decision-making process, the forms of protection and leveraging of intellectual property rights, including the incentive for licensing processes and the creation of spin-offs, as well as the allocation of revenue resulting from the economic valorisation of these same rights, among other provisions necessary for the effective regulation of the issue in question, which were omitted in the previous regulation.

Thus, with the approving of this Intellectual Property Policy, the main rules and procedures are herein established that must be followed for the protection and enhancement of intellectual assets generated within NOVA or obtained through the use of its resources. NOVA's strategy of supporting knowledge transfer is also evident, through a clear recognition of its inventors, creators and authors, through the generous sharing of the benefits resulting from the valorisation of intellectual property rights with them and their research groups and the respective Organic Units.

Public consultation was undertaken for a period of 30 working days, pursuant to article 101 of the Code of Administrative Procedure and paragraph 3 of Article 110 of the Legal Regime for Higher Educational Institutions.

Having obtained a favourable opinion from the College of Directors, and through the exercise of the powers provided for in subparagraph c) of paragraph 1 of article 21 of the Statutes of NOVA, published as an annex to Legislative Order no. 3/2020, of 22 January, I hereby approve the following Policy.

22 October 2020. — Rector, *Professor Doutor João Sàágua*.



## NOVA'S INTELLECTUAL PROPERTY POLICY

### PART I

#### General Provisions

##### Article 1 Purpose

This Policy defines the legal and procedural aspects related to intellectual property, including industrial property rights and copyright (together known as intellectual property rights), non-patented technical information (trade secrets), as well as research materials, resulting from research and development activities (henceforth, R&D) carried out under the scope of NOVA.

##### Article 2 Scope of Application

1. This Policy applies to the individuals listed in Article 4.
2. For the purposes of interpreting and applying this Policy, all inventions and creations that are subject to protection by industrial law are subject to industrial property rights, namely patents, utility models, drawings or models, and topography of semiconductor products, hereinafter referred to as inventions or creations.
3. For the purposes of interpreting and applying this Policy, intellectual creations in the literary, scientific and artistic domain are subject to copyright ("Direitos de Autor" in Portuguese), whatever the genre or form of expression, namely literary works, plastic or applied art works, audiovisual works, multimedia works, computer programs that do not fall under the previous paragraph, or any other creation that can be considered as a work.
4. The provisions of this Policy also apply to technical information with economic value or trade secrets, hereinafter referred to as trade secrets, and research material as defined in paragraph 1 of article 19, as well as to new objects of intellectual property rights that may be legally protected.

##### Article 3 Resources

For the purposes of interpreting and applying this Policy, unless otherwise stipulated, NOVA resources are understood to be all tangible and intangible assets that are the property of, owned, held, made available, managed or in any way used within the scope of NOVA and/or its own Organic Units, Departments and Research Units including, but not limited to, infrastructures, equipment, materials, laboratories, libraries, computers and intellectual property.

##### Article 4 Individuals

The following are considered to be covered by the provisions of this Policy:

- a) Teaching and non-teaching staff, researchers, employees, students and scholarship holders of NOVA and Organic Units identified in the NOVA Statutes, as well as the Research Units associated with them;
- b) Workers from other teaching and research entities that carry out activities for any reason at NOVA and/or use NOVA resources, without prejudice to any legal provision that determines a different regime or stipulation to the contrary;



- c) Other individuals whose activity involves the use of NOVA resources, without prejudice to any legal provision that determines a different regime or stipulation to the contrary.

## **PART II**

### **Ownership of Rights**

#### **Article 5**

##### **Industrial Property Ownership Rights**

1. As a general principle, NOVA enshrines that it owns all industrial property rights, as well as trade secrets, which affect or will affect inventions, other industrial creations or materials designed and realized, in whole or in part, by the aforementioned individuals in Article 4, with full or partial utilization of resources as defined in Article 3 of this Policy, except as regards the moral rights, as specified in the following article; in the case of the individuals referred to in Article 4 who have a tenured relationship with NOVA, the provisions of this article operate independently of the use of resources as provided for in Article 3.
2. Involvement of personnel not affiliated to NOVA, including students doing their dissertations or other research work, as part of unpaid research activities involving the use of NOVA's facilities and resources, as provided for in Article 3, is hereby dependent on their acceptance of this Policy and the assumption of the obligation to transfer, in favour of NOVA, in accordance with the provisions of part IV of this Policy, the industrial property rights and trade secrets arising from the use of these resources, through a declaration signed by them.
3. It is the responsibility of the individual in charge of the NOVA's Organic Unit or the respective Research Unit with which the individuals referred to in the previous paragraph collaborate, to collect the declarations referred to in the final part of the previous paragraph.

#### **Article 6**

##### **Moral Right of the Inventor or Creator**

Without prejudice to the provisions of the previous Articles regarding the ownership of Industrial Property Rights, pursuant to Article 60 of the Industrial Property Code, the inventor or creator has the right to be mentioned as such in the application for and ownership of the right, except when the opposite is requested in writing.

#### **Article 7**

##### **Copyright Ownership**

1. In general, NOVA recognizes and enshrines, as a general principle, that the copyright ownership over literary, scientific or artistic works, conceived or carried out within the scope of any research, teaching and/or studying activity undertaken at the University belongs to the respective creators or authors.
2. The following are considered to be exceptions to this general principle:
  - a) Work undertaken as a result of carrying out a contract entered into with the University, or Organic Unit, which provides for a different regime;
  - b) The carrying out or completion of the work has implied a significant use of resources or appropriations from the University or associated Organic Unit, in which case the Rector makes a reasoned decision on the ownership of copyright by NOVA.
3. If the copyright ownership belongs to NOVA, the rules regarding the attribution or allocation of any financial benefits and revenue resulting from the leveraging of the rights to the asset will follow the provisions of part IV of this Policy.
4. In any event, the creator of the work will keep the moral rights provided for in the applicable legislation.

#### **Article 8**

##### **Ownership of Computer-implemented Inventions and Computer Programs**

1. The provisions of Articles 5 and 6 of this Policy fully apply to computer-implemented inventions which can be registered



and protected as industrial property.

2. The provisions of Article 7 of this Policy apply to computer programs that are protected by copyright, except in cases where the author is hired by NOVA or NOVA is the donor of the work under the provisions of paragraph 3 of article 3 of Decree-Law no. 252/94, of 20 October, a situation in which ownership is fully assigned to NOVA.

3. Article 7 of this Policy applies to the intellectual property on databases and the special right to protection of the database manufacturer, under the provisions of Articles 4 and 12 of Decree-Law No 122/2000, of 4 July.

## **PART III**

### **Procedures, Contracts and Protocols**

#### **Article 9**

##### **Duties of Inventors or Creators**

1. Inventors or creators from NOVA, whether or not linked to the University, are obliged to inform the NOVA of the existence of an invention or creation as described in paragraph 1 of Articles 5 or 8, in which they have participated in the respective design or realization.

2. The communication referred to in the previous paragraph should be made to the Organic Unit or directly to the responsible service in the Rectorate, in cases where the Organic Units do not have specialized support services for the protection of intellectual property, within a maximum period of three months from the date in which this is considered as having been completed.

3. Inventors or creators must refrain from any disclosure or publication of data or information about the invention or creation, before being authorized in writing by NOVA, so as not to prejudice the possibility of protecting the invention or creation.

4. Inventors or creators will be able to provide information from the outset concerning the interest of third parties in the economic leveraging of the invention or creation being communicated, including the conditions that they are willing to offer NOVA for its transfer or licensing.

5. Without prejudice to the provisions of the preceding paragraph, all documentation and technical information requested or considered relevant by the competent NOVA services must be provided, in order to allow for a considered and timely analysis of issues related to the protection, promotion and economic valorisation of the invention or creation being communicated.

6. The inventors or creators of NOVA or its Organic Units, as well as researchers not linked to the University, who do not comply with the provisions of the previous paragraphs, will be denied access to and use of NOVA resources, as stipulated in Article 3, and may also be subject to civil and disciplinary liability, under general terms.

7. In the case of multiple NOVA inventors or creators, they must appoint a person responsible for communicating with the competent services of the University and for complying with the provisions of this article.

8. The specific formalities and procedures to be observed by the inventor or creator in fulfilling the information and communication duties concerning the invention or creation provided for in this article will be stipulated by the Rectorate of NOVA together with its Organic Units.

#### **Article 10**

##### **Duties of Authors**

1. Whenever a subject covered by this Policy produces a work, the copyright ownership of which must be considered, under legal or contractual terms, as belonging to NOVA, in accordance with the provisions of paragraph 2 of Articles 7 or 8, he or she should communicate this fact to the University, pursuant to paragraph 2 of the previous article.

2. In other cases and with the necessary adaptations, the provisions of the previous article regarding the assessment of the conditions for the protection and economic valorisation of the communicated work apply, as well as the duty to appoint a representative in the event of several authors.



## **Article 11**

### **Duty of Confidentiality**

All stakeholders involved in the process of protecting and economically valorising the intellectual property, trade secrets and research material of NOVA, as stipulated in this Policy, are bound by the duty of confidentiality, and in certain cases specific confidentiality agreements may be drawn up.

## **Article 12**

### **Decision-making Process**

1. The competent services of the Rectorate, in conjunction with the Organic Units, must, within 45 days, prepare a reasoned opinion on their position on the merits of NOVA assuming ownership of intellectual property rights or trade secrets concerning the invention, creation or work, and may resort to a third party for this purpose.
2. If the opinion is negative, the process also requires an opinion from the University's Value Creation Council.
3. The opinion or opinions should be delivered to the Rector or to whomever he/she so delegates.
4. The Rector or the person to whom he/she delegates this must issue their decision within a maximum period of 15 days, counting from the date of delivery of the opinion or opinions.
5. The inventor, creator or author must be informed within 15 days of the decision referred to in the previous paragraph.
6. In the event that the NOVA decides that it does not intend to assume ownership of the intellectual property rights or trade secrets concerning the invention, creation, or work, the inventor, creator or author will acquire the full rights relating to the invention, creation or work realised, including leveraging rights, and may request on their behalf, and at their own expense, the respective legal protection.
7. In the cases provided for in the preceding paragraph, NOVA will always be entitled to compensation which suitably reflects its contribution to the invention, creation or work, corresponding to a percentage, agreed in writing, of the revenues that the inventor, creator or author will earn from the respective economic valorisation, after deducting all expenses incurred through the promotion and defence of the intellectual property right or trade secret.

## **Article 13**

### **Contracts and Protocols**

1. Contracts and protocols or other similar collaboration instruments entered into between NOVA and public or private external entities, when submitting applications for financing or at the beginning of projects, the main or accessory object of which involves an inventive step, must include provisions for possible intellectual property rights or trade secrets during the course of the project, expressly and mandatorily regulating:
  - a) Ownership of the invention, creation or work and, when applicable, the identification of each of the co-owners;
  - b) The benefits that will result for NOVA when it is not the holder of the rights;
  - c) Confidentiality and conditions regarding the publication and disclosure of the results obtained.
2. The terms and conditions of the contracts and protocols with external entities or other similar collaboration instruments referred to in the previous paragraph will be proposed and negotiated by the services of the respective Organic Unit and approved by the Director.
3. When the contracts, protocols or other similar collaborative instruments referred to in paragraph 1 immediately indicate the percentage of benefits to be attributed to each co-holder or do not provide for the ownership of intellectual property rights or trade secrets by NOVA, such options must be duly justified and require approval by the Rector, who has 15 days to issue an opinion on them after receiving them.
4. Contracts and protocols or other similar collaboration instruments entered into between NOVA and public or private external entities that regulate intellectual property rights related to inventions, creations or works that have emerged from research projects carried out with the collaboration of those entities have to be approved by the Rector, who has 15 days to issue an opinion on them after receiving them, and must expressly and mandatorily determine:
  - a) The ownership of the invention, creation or work and, when applicable, the identification of each of the co-owners and, where applicable, the said percentages;
  - b) Responsibility for charges related to the protection, management, maintenance, defence and exploitation of rights



- and, whenever applicable, the said percentages;
- c) The benefits that will result for NOVA when it is not the holder of the rights;
  - d) Confidentiality and conditions regarding the publication and disclosure of the results obtained.
5. The terms and conditions of the contracts and protocols or other similar collaboration instruments with external entities referred to in the previous two paragraphs will be proposed and negotiated by the specialized support services for the protection of the intellectual property of the respective Organic Unit or from the Rectorate, in cases where Organic Units do not have these specialized support services.
  6. The moral rights of inventors or creators must always be safeguarded.
  7. In the event that the contract or protocol entered into so determines, the participants involved in the activities underlying it are bound by the duty of confidentiality regarding the confidential information and knowledge to which they have access, and the participants may be required, for this purpose, to sign a written agreement.
  8. The NOVA employee responsible for entering into the contract or protocol must ensure compliance with the provisions of this article.

#### **Article 14**

##### **Ownership of Rights in Joint Projects with Entities within NOVA's Consolidation Perimeter**

1. In the case of joint projects with entities within the NOVA's consolidation perimeter in which the University's resources are used, including human resources, the ownership of rights, as a general rule, will be on a co-ownership basis, with the sharing of benefits always being agreed in writing, without prejudice to the provisions of the following paragraph.
2. In cases where the consolidation perimeter entity is only responsible for the management of the research project that gave rise to the invention, creation or work and for the subsequent management of the respective rights, without there being an effective allocation of research resources by that entity, the percentage of benefits allocated to that entity cannot exceed 10%.
3. In cases where there is an effective allocation of research resources by the consolidation perimeter entity, the latter is subject to the distribution of the respective benefits with the inventors, creators or authors who, while having a contractual relationship with the consolidation perimeter entity, have some type of affiliation with NOVA.

#### **PART IV**

##### **Protection, Exploitation and Valorisation of IP Rights**

#### **Article 15**

##### **Legal Protection and Related Charges**

1. It is up to the Rectorate or the Organic Units that have specialized intellectual property support, in collaboration with the Rectorate, to define the best form of protection for inventions, creations, computer programs or other works, the ownership of which belongs to it.
2. The Research Units or research groups responsible for R&D projects or contracts, as the case may be, shall provide, whenever possible and applicable, the allocation of funds, whether based on a candidacy or contractual negotiations, aimed at protecting and maintaining intellectual property rights resulting from the activities carried out in those same projects.
3. In specific cases in which there is no money available in the Research Units for carrying out legal protection and/or maintaining the intellectual property rights granted to the University, the Organic Units or the Rectorate of NOVA may bear the corresponding charges.
4. The Rectorate, the Organic Units, the Research Units or research groups will be reimbursed for any charges referred to in the previous paragraphs when the economic valorisation of the invention or the creation is carried out.
5. The decision could involve not legally protecting the communicated R&D results through industrial property rights as pursuant to Article 9, if it is understood that the economic valorisation of the results will be maximized by the exploitation of trade secrets.



## **Article 16**

### **Choice of the Form of Exploitation**

1. It is incumbent upon the Rectorate or the Organic Units that have specialized support in intellectual property, in collaboration with the Rectorate, to undertake all acts that lead to the appropriate exploitation of assets with intellectual property rights and trade secrets, namely through contractual transfer or license mechanisms, and undertaking this may involve third parties.
2. The acts referred to in the previous paragraph require approval from the Rector.
3. The terms and conditions of the contract to be established with market agents, with a view to the economic valorisation of NOVA's intellectual property rights and trade secrets, will have as its guiding principles:
  - a) The benefit for society and the country;
  - b) Maximizing the economic value of the NOVA's intellectual property and trade secrets;
  - c) The sustainability of the transfer process of the NOVA's knowledge and technology.
4. NOVA is responsible for the publication and promotion of the literary and artistic works over which it holds copyright.
5. NOVA, in liaison with the respective author, will decide on the best way of valorising the computer programs over which it holds copyright, including the type of license that best enables it to comply with the principles of maximizing the social and economic impact.

## **Article 17**

### **Creation of Spin-offs**

1. Under the terms of the previous article, the University will encourage the creation of spin-offs as a way of economically enhancing their intellectual property rights and trade secrets, provided that this is considered the best valorisation route.
2. Thus, NOVA's inventors, authors or creators can express their desire to set up a spin-off, which is responsible for the economic leveraging of the invention or creation communicated to NOVA, on the grounds that this is the best valorisation route.
3. The assignment of the NOVA spin-off seal follows the requirements and the procedure laid down in Regulation No. 157/2018, published in the Official Gazette (Diário da República), 2nd series, No. 52, of 14 March 2018.
4. NOVA guarantees, when granting the status of NOVA spin-off, a grace period during which there is an exemption from the payment of any benefits related to the exploitation of the invention or creation until the commercialization phase, as stipulated in the Regulation mentioned in the previous paragraph.

## **Article 18**

### **Revenue Sharing**

1. The net financial benefits obtained through the exploitation of NOVA's intellectual property, including inventions, creations, trade secrets, computer programs or various works, the ownership of which, according to the provisions of Part II of this Policy, belongs to the University, will be subject to the following distribution:
  - a) 50% for the inventors, creators or authors;
  - b) 20% for the Organic Unit to which the inventors, creators or authors belong, for reinvestment in R&D and innovation activities and support for technology and knowledge transfer activities;
  - c) 20% for the research group or Research Unit which gave rise to the invention, for reinvestment in R&D and innovation activities or for the Organic Unit or Rectorate, in cases where they have assumed the burden of protecting and maintaining the intellectual property rights;
  - d) 10% to the Rectorate of NOVA, for support and investment in technology and knowledge transfer activities.
2. If specialized support for the protection of intellectual property rights is provided by the Organic Unit's own service, the sharing of benefits provided for in points b) and d) of the previous paragraph will be 25% for the Organic Unit and 5% for the Rectorate.
3. In the case of joint ownership of intellectual property rights and trade secrets with public or private external entities, the





benefits referred to in the previous paragraph refer to the amount earned by NOVA after the distribution of benefits with the other co-owners.

4. The benefits to be shared correspond to the amounts obtained after the deduction of fees or taxes due, as well as the charges incurred through the protection and maintenance of intellectual property rights and the costs resulting from the formalities of the request, or any other consultancy, and the exploitation of the results, provided these are duly justified.
5. If there are two or more inventors, creators or authors, the percentage of the benefits stipulated in subparagraph a) of paragraph 1, will be shared equally among them, without prejudice to the fact that they agree on a different distribution, which suitably reflects the contribution of each one to the industrial property right or trade secret generated.
6. The right of inventors, creators or authors to receive benefits derived from the leveraging of intellectual property rights or trade secrets as provided for in paragraph 1, remains even after the termination of the employment relationship or collaboration with NOVA.
7. Whenever the research activities leading to the result to be protected have been developed using resources belonging to more than one NOVA Organic Unit, it will be up to the aforementioned Organic Units to agree with each other, ideally prior to the beginning of the research project, their respective shares in the ownership of the R&D results and related rights.
8. Inventors, creators or authors from NOVA may definitively assign to the NOVA's Rectorate or to the Organic Unit or Research Unit with which they are associated, all or part of the remuneration to which they are entitled in payment for the rights provided for in paragraph 1, and to do so they must declare this intention in writing.
9. The declarations or agreements entered into under this Article must be formally communicated to the University.

## **PART V**

### **Research Materials**

#### **Article 19**

#### **General Principles**

1. Research materials include:
  - a) Biological materials, including DNA (deoxyribonucleic acid);
  - b) Other non-biological materials or products;
  - c) Engineering projects;
  - d) Database Content;
  - e) Prototypes;
  - f) Associated research equipment and data;
  - g) Other elements associated with the previous points.
2. The person in charge of each NOVA research group is responsible for controlling the development, storage, use and distribution of research materials produced by them during the course of the research activities, subject to the clauses of any agreements that regulate the research in question.
3. The provisions of this Policy regarding confidentiality, contracts and valorisation apply, with appropriate adaptations, to the research materials.
4. Scientific collaboration that involves transferring research materials from NOVA to other entities, and from these to NOVA, must be agreed in writing and approved by the Rectorate or by the Organic Units, when they have specialized services, upon presentation of a reasoned request.
5. The rules regarding intellectual property rights that may arise from research carried out on research materials should be included in the transfer agreements.
6. If any payment is made for the research material by an outside entity, other than payment related to the exploitation of the intellectual property relating to the research material, the net profit is attributed to the research group that produced the research material.
7. DNA banks and biological materials of human origin and health and genetic databases are subject to the regime



provided for in the Law on Personal Genetic Information and Health Information and the legislation which regulates the protection of personal data.

8. The exploitation of other materials, prototypes or data generated at NOVA must be embodied in a contract, which will define the distribution of any revenue that may result from this.

## **PART VI**

### **Final and Transitional Provisions**

#### **Article 20**

##### **Interpretation and Omitted Cases**

1. The interpretation of this Policy, as well as the inclusion of cases omitted therein, will always be undertaken in the light of the general principles of the Law, with respect to the applicable legislation, namely the Industrial Property Code, the Authors Rights and Associated Rights Code and the legislation applicable to the legal protection of computer programs and the legal protection of new varieties of plants.
2. The Rector of NOVA may, by order, clarify specific questions regarding the application of this Policy.

#### **Article 21**

##### **Arbitration**

In contracts resulting from the application of this Policy, disputes arising from the execution of the same may be committed by the parties to the decision of arbitrators, under the terms of the Voluntary Arbitration Law, approved by Law No. 63/2011, of 14 December.

#### **Article 22**

##### **Revocation Norm**

This Policy revokes the Intellectual Property Policy of NOVA University of Lisbon approved by Order No. 15 542/2005, published in the Official Gazette (*Diário da República*), 2nd series, no. 136 of 18 July.

#### **Article 23**

##### **Temporal scope**

1. This Policy does not apply to situations prior to its entry into force, in which, in some way, intellectual property ownership has been assigned over any creations, inventions or works, independently of the individuals or the form of participation or involvement of the University or the Organic Unit.
2. This Policy is also not applicable to agreements, protocols or contracts entered into between NOVA and third parties before its entry into force and which, regardless of their nature, provide for forms of exploitation and revenue allocation derived from intellectual property rights.

#### **Article 24**

##### **Entry into force**

This Policy shall come into force on the day following their publication in the Official Gazette (*Diário da República*).

(Portuguese version published on Official Gazette (*Diário da República*), 2<sup>nd</sup> Series, No. 247, pp 295-307 of 22<sup>nd</sup> December 2020.)

