

## COLLECTION OF DECISIONS AND ORDINANCES OF THE UNIVERSITY OF SOUTH BOHEMIA IN ČESKÉ BUDĚJOVICE

No: R 493

Date: 13 January 2022

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### **Rector's ordinance on the handling of intellectual property and confidential information protection at the University of South Bohemia in České Budějovice**

#### **1. Introductory provisions**

**1.1** This ordinance regulates the relations and establishes a uniform procedure for ensuring the protection of rights to intellectual property objects created at the University of South Bohemia in České Budějovice (hereinafter referred to as 'USB'), as well as regulates the rights and obligations of USB employees and other persons related to the creation, protection and use of the results of creative activities in science and research at USB. The intention of this regulation is to promote the creative potential of USB, its employees and collaborating entities and the benefits of this activity for both USB employees and USB itself, as well as for society, including the commercial sphere.

**1.2** This ordinance is an expression of support for USB knowledge transfer as a tool capable of overcoming technological and other barriers to progress in science, technology, and other areas of knowledge and effectively helping to fulfil the so-called third role of the University.

**1.3** The area of relations, rights, and obligations in the context of the creation, protection, and use of the results of creative activity in science and research at USB, regulated by this ordinance, is strictly governed by international treaties to which the Czech Republic is bound, the applicable legal order of the Czech Republic, the Charter for Researchers, the European Code of Conduct for Research Integrity, as well as other directly applicable standards and regulations.

**1.4** This ordinance also regulates the registration of activities related to the implementation of intellectual property rights at USB that fall under the competence of the USB Technology Transfer Office (hereinafter referred to as 'TTO'), without prejudice to the obligations of other persons and entities as set out in the USB standards and internal regulations.

**1.5** Definitions of the terms relating to intellectual property used in this ordinance are set out in Annexe 1 to this ordinance.

#### **2. General principles for the protection and disposal of intellectual property**

**2.1 Persons in an employment or other labour-related relationship with USB** ('Employees') and USB students shall protect all USB intellectual property and rights related thereto, including appropriate measures to keep confidential facts and knowledge that constitute USB trade secrets, confidential information, and know-how.

**2.2 Both USB Employees and USB students** shall refrain from any conduct that may be contrary to the legitimate interests of USB with respect to USB's intellectual property and conduct that may jeopardize or damage the USB's intellectual property.

**2.3 Both USB Employees and USB students** are required to take all steps, in cooperation with the TTO, that may justly be required of them to avoid infringing or compromising the USB's intellectual property rights.

**2.4 Rights of third parties.** USB Employees and students are obliged to respect the intellectual property rights of other employees and students, as well as third parties, and to take care that the intellectual property rights of third parties are not infringed upon in the performance of their duties arising from their employment or other relationship with USB.

**2.5 General obligations for publishing results.** USB Employees and students are obligated to act in a manner when publishing the results of research or development that does not unreasonably jeopardize USB's right as an employer to legal protection of the object of intellectual property, in particular, not to disclose such results before a USB decision has been made on whether or not to protect the object of the intellectual property, to assert a right in relation to the object of the intellectual property, etc.

After termination of employment at USB or any other labour-related relationship with USB, Employees and students are obliged to preserve the intellectual property rights, including trade secrets, confidential information, and know-how belonging to USB, and particularly not to use, disclose, or make them available to others.

USB, as an employer, is obliged to protect and respect all intellectual property rights that may arise in connection with the performance of Employee's duties in accordance with generally binding legal regulations, and in particular to allow employees to assert the relevant rights to the object of the intellectual property in their own name and at their own expense in the event of USB's failure to assert a right to the object of the intellectual property, without disclosure of such knowledge by USB.

USB students are required to coordinate their study, research, and publication activities to protect USB intellectual property when engaged in a USB research and development project.

**2.6 Creating a result with another employer.** Employees must inform the TTO in writing about the creation of an object of intellectual property with another employer, or independently outside of the employment relationship with USB or another employer, within 5 business days of notification of such object to the other employer, or no later than 5 business days after filing an application to secure protection of such object.

This obligation does not apply in cases where contact by the employee with USB intellectual property that might be eligible for protection and transfer is completely precluded, as well as in cases where compliance with this obligation is manifestly disproportionate to the circumstances.

**2.7 Contact point for cooperation.** USB Employees or students who are approached by a third party with a request to collaborate with USB on the licensing of USB intellectual property, the provision of USB services in the nature of contract research, USB participation in a collaborative research project with a commercial partner, which does not constitute participation in a research, development, and innovation support programme, is encouraged to consult with the TTO on aspects of intellectual property protection, as well as on potential commercial issues, and to mutually agree on a binding process and responsibilities.

**2.8 Public support.** USB intellectual property must be treated in such a way as to prevent the unlawful preferential treatment of businesses contrary to the rules on public support within the meaning of Article 107 et seq. of the Treaty on the Functioning of the EU.

**2.9 Managing staff members** are obliged to monitor in an appropriate manner and within the scope of their competence and in cooperation with the TTO to record (see Annexe 2) the creation of intellectual property objects at the facilities under their management and to ensure that property and personal rights are properly exercised in relation to them.

**2.10 The rights and obligations of the originator or author** under the provisions of this ordinance shall remain unaffected upon termination of employment or similar employment relationship with USB or upon termination of studies at USB.

### 3. Industrial property

**3.1 Industrial property rights.** If an object of intellectual property eligible for industrial law protection is created by the originator in the course of employment or other similar relationship with USB, unless otherwise agreed, the rights to such intellectual property shall belong to USB within the limits of applicable and effective legislation.

In the case of other similar relationships outside the employment relationship, the managing staff member is responsible for negotiating the contracts in those relationships and for reflecting the rules arising from this ordinance in the contracts governing those relationships. The right to authorship is not affected by this.

**3.2 Management of industrial property objects.** A flowchart of the possible procedure for the management of intellectual property objects is contained in Annexe 3 and, where appropriate, Annexe 4 to this ordinance.

**3.3 Information obligation.** If USB Employees create an invention or other similar result (hereinafter referred to as the 'affected result') in the course of performing a task arising from the employment relationship or other labour-related relationship with USB, which can be objectively assumed to meet the statutory conditions for industrial law protection, he/she shall immediately inform his/her immediate superior.

USB employees who created the invention or other similar result in collaboration, their immediate supervisors, the relevant technology scout, or other interested parties (e.g. the project investigator from which the research is funded) shall jointly assess whether they have an interest in securing legal protection for the result in question.

If the conclusion is positive, the principal originator, in collaboration with the relevant technology scout or other authorised representative of the TTO, will prepare an 'Originator Disclosure' which will then be submitted to the TTO. The 'Originator Disclosure' form (hereinafter referred to as the 'Disclosure') is attached to this ordinance as Annexe 2. TTO staff shall provide the necessary cooperation, and assistance to the originator in completing the form and shall promptly acknowledge receipt of the Disclosure in writing. The date of receipt shall be the date from which the statutory period for exercising the right under the relevant generally binding legislation begins. The TTO employee shall receive the Disclosure in electronic or paper form duly signed.

The Disclosure shall include a statement by the Dean of the faculty of the principal originator as to whether USB is to claim the affected result against the originator and whether the faculty of the principal originator will secure legal protection of the result in question itself or whether it will use the services of the TTO to do so. If the co-originators of the affected result concerned are also from other faculties, it is assumed that the Dean of the faculty of the principal originator has secured the agreement of the Deans of the other faculties concerned to their statements and their future actions in this matter.

**3.4 Procedure concerning Disclosure.** The TTO monitors and coordinates follow-up steps and ensures that the deadlines established by the Act and this ordinance are met as agreed with the Dean of the faculty of the principal originator (hereinafter referred to as the 'affected Dean').

The TTO shall maintain a separate file for each Disclosure in which it shall keep all original or copies of documents relating to the Disclosure and shall properly record and file such documents in the established online USB IP protection tracking software system.

**The TTO** shall, without undue delay and no later than 14 days from the date of receipt and confirmation of the notification of the creation of the result, prepare a statement on the possibility of securing industrial law protection for the result and the recommended form of protection, a preliminary statement on the commercial potential, or a general preliminary plan for the commercialisation of the reported result in the light of the analysis of the funding of legal protection, which is also part of the TTO's opinion. Within this period, the TTO will forward its opinion to the affected Dean.

**The affected Dean** shall prepare a recommendation for further action on behalf of the faculty concerned, which shall be forwarded to the TTO without undue delay, and no later than 14 calendar days after the TTO's statement on the produced result has been forwarded. Subsequently, the TTO shall, after checking the form for accuracy and correctness, forward the form with the recommendation for action of the affected Dean to the Rector. In the event that the affected Dean agrees in the Disclosure that USB should claim the result in question against the originator, the issues of protection and commercialisation will be dealt with within an additional period.

**The Rector** shall decide without undue delay, taking into account the statement of the affected Dean in the Disclosure, the statements of the affected Dean and the TTO, if any, and any more detailed statement of the TTO which the Rector has the right to request, whether USB should claim the result against the originator. In the event of a decision to assert the outcome against the originator, the Rector shall at the same time sign the 'Assertion of Result Against the Originator' form which forms part of Annexe 2 to this ordinance.

The TTO will ensure delivery of this form to the principal originator and the affected Dean no later than one week from the date of signature by the USB Rector. This condition is also met if a scan of the form is delivered to the email inbox of the principal originator and the affected Dean.

Based on the decision of the affected Dean on whether the Faculty or the TTO will provide legal protection for the result in question, the faculty or the TTO shall immediately take the appropriate steps to provide legal protection for the affected result, either alone or in cooperation with the patent attorney. Pending other forms of legal protection, the result concerned shall be confidential information protected under this ordinance. In the event that the faculty secures legal protection for the result, it shall keep the TTO informed of any important milestones in the process.

Once the right to the object of the Disclosure has been exercised, the faculty or TTO (as per the aforementioned decision of the affected Dean) shall be entitled to negotiate with the patent attorneys for the industrial protection of the object of the Disclosure and to negotiate directly with the Industrial Property Office and to provide any information regarding the possibilities or conditions of commercialization of the individual objects of the Disclosure. A flowchart of the procedure for managing objects of intellectual property is contained in Annexe 3 and, where appropriate, Annexe 4 to this ordinance.

The TTO is then responsible for maintaining the protection of the results of research and development at USB.

**3.5 Termination of legal protection.** Where it becomes apparent that the total cost of securing and maintaining legal protection exceeds the total USB income associated with the outcome (including income from institutional support), and where no other specific reason for maintaining legal protection of the outcome is given (for example, further exclusive research), the TTO will propose to the Dean and subsequently the Rector the termination of the maintenance of legal protection of the outcome. Following the Rector's decision to terminate the legal protection of the result, the TTO shall immediately take steps to terminate the legal protection of the result or to transfer the rights of the result. The originator may protect the result in his/her own right and dispose of it as he/she sees fit.

**3.6 Transfer of rights.** Except as otherwise provided in an agreement between USB and a third party or in this ordinance, title to the object of the Disclosure shall pass to USB. The right of authorship is not affected by this.

**3.7 Confidentiality.** The relevant employees of the TTO and the employees of USB who are the originators of specific objects under the Disclosure, or who possess any information about the subject of the Disclosure, are bound by a confidentiality obligation regarding all facts and circumstances related to the Disclosure and its object from the date of receipt of the Disclosure until the relevant industrial property protection measures are utilized by USB. If USB chooses not to make use of the relevant industrial property protection measures for the object of the Disclosure, although it has exercised its right to the object of the Disclosure and chooses to keep the object of the Disclosure confidential, the obligation of confidentiality under the preceding sentence shall continue indefinitely.

**3.8 Procedure for non-exercise of the right.** In the event of USB's express non-exercise of its right to the object of the Disclosure, and likewise in the event of the lapse of the time limit for reporting the Employee's work and its acceptance by the employer, the right to the object shall pass to the respective USB employee (originator and co-inventor). USB shall allow such employee to ensure the filing of the corresponding application for industrial property protection in his/her name and at his/her expense, including by taking the necessary steps to prevent premature publication of the object of the Disclosure for a period of at least three months from the expiration of the deadline for filing the USB Disclosure.

In the event that the three-month time limit pursuant to Section 9(3) of Act No 527/1990, on Inventions improvements is missed, the situation may be remedied in favour of USB on the basis of a contract between the originator and USB.

**3.9 Co-applicants.** In the case of the object of the Disclosure which has been created with the participation of the creative activity of other persons who are not in an employment or other labour-related relationship with USB, or in collaboration with another legal entity, it shall be contractually agreed in writing, prior to securing industrial law protection, which person becomes a potential co-applicant of USB if USB asserts a right concerning the object of the Disclosure. The agreement must address the creative contribution to the solution of the object of the Disclosure, the co-investment of industrial protection, decision-making and exploitation, licensing, transfer or other disposal of the object of the Disclosure created. In addition, before filing the Application for the Object of the Industrial Property, differently from Section 16(2) of Act No 527/1990 (or other applicable legislation), it must be agreed in writing that any of the co-owners may only exploit the right in question with the consent of the remaining parties. The relevant TTO officer shall be responsible for negotiating the individual provisions of such an agreement.

#### 4. Copyrighted works

**4.1 The exercise of rights to school and employee works** is the responsibility of faculties and other non-faculty USB constituent parts. Unless otherwise specified in the internal regulations of the faculties, the regulations in Article 4 shall apply.

USB is entitled to publish, adapt, adapt, translate, combine with another work or include in a collective work, and to make it available to the public under its own name. Further, USB is entitled to complete the unfinished employee work in accordance with USB's needs, to use it or to grant a third party the right to use it.

The head of the relevant facility is obliged to take measures to ensure that the USB is authorised to exercise copyright ownership (for employee works) or to grant sub-licences to a third party (for school works or works created by authors outside the employment or other labour-related relationship with USB) in all cases where a legal regulation, grant provider or contract between USB and a third party stipulates that the copyright in the results (copyrighted works) is to 'belong' to USB or that the copyright concerning the results (copyrighted works) is to be exercised by USB.

The personal rights of USB Employees as authors of the employee work remain unaffected.

**4.2 Exercise of property rights to employee works by USB employees.** USB shall retain the exercise of copyright ownership by its employees concerning employee works created for the purpose of publication as articles in professional journals or conference proceedings, books, monographs, chapters in publications, popularisation articles, etc., (hereinafter as 'employee works with the retained exercise of property rights').

Authors of employee works are required to comply with the restrictions set by the funder or by the contract between USB and the external entity (e.g. a contract for contract research, a contract

for a work, a cooperation agreement), in particular limitations on the exercise of copyright in respect of the material, territorial, temporal, quantitative scope, exclusivity or the possibility of granting sub-licences.

This provision does not apply if the work with the retained exercise of property rights is to be used for USB purposes, in particular for publication in journals and conference proceedings published by USB.

A USB regulation may provide that employees may not exercise copyright ownership concerning certain copyrighted works at all, may exercise copyright ownership in a limited manner, or may provide that in specified cases employees may exercise copyright ownership in a full or limited manner concerning employee works other than employee works with the retained exercise of property rights.

**4.3 Grant of a copyright license upon request of the author of an employee's work.** If the author believes that USB is not exercising the property rights concerning his/her employee work sufficiently or at all, he/she has the right to request a licence for such work.

The Rector decides on the granting of the licence and concludes the licence agreement on behalf of USB in this case but may delegate this authority to the Dean of the relevant faculty where the work was created.

**4.4 Assignment of the right to exercise copyright property rights.** USB may assign the right to exercise the property rights concerning an employee's work to a third party only with the prior written consent of the author. The head of the facility in question is obliged to ensure that the author's consent (permission) has been given for the assignment of the copyright property rights concerning the employee's work to a third party before concluding an agreement on the assignment of the copyright property rights in the employee's work.

The written consent of the author under the preceding paragraph is not required if USB enters into a license agreement granting the right to exercise the right to use the employee work, since in this case there is no assignment of the right to exercise property rights.

**4.5 Original works with knowledge transfer potential.** In sufficient advance of submitting a copyrighted work for publication, the author is required to consider whether the work or part of the work has the potential for industrial law protection or the potential for technology/knowledge transfer. In case of doubt, he/she shall submit the work for consideration to his/her immediate superior, who shall be authorised to submit the work to the TTO without undue delay for consultation on the possible negative consequences of publication of the copyrighted work in question. In the case of the creation of copyrighted works (e.g. artistic or industrial design, design, or software) that are not eligible for industrial law protection but have the potential for technology or knowledge transfer, the procedure is similar to that in Article 3, including the Disclosure of such work.

**4.6** In relation to the Disclosure of Copyrighted Work pursuant to the preceding paragraph, the procedure under Article 3 is similar, except that the parties involved may propose an appropriate form of protection and USB as an employer does not normally exercise property rights against the employee, as these are exercised by law by the very nature of the legal relationship between USB as an employer and the affected USB Employees or students. Instead of exercising rights, the existence of the result as an object of intellectual property rights is merely confirmed, where the property rights belong to USB. In case of doubt, the notification of the copyrighted work according to this paragraph by the employee (Annexe 2) and its confirmation by USB shall be deemed to constitute a valid contract confirming the creation of the work in question and the existence of USB's property rights concerning the result.

**4.7** USB exercises the property rights concerning copyrighted works that are employee works in its own name and on its own account. The author shall publish the employee work, indicating USB as his/her place of work or, where appropriate, the source of funding, by giving a copy of the relevant publication to his/her supervisor or other authorised person at USB.



**4.8** In their capacity as managing staff members, employees are required to monitor the creation of employee copyrighted works and to ensure that it is undisputed on a case-by-case basis whether a work created by an employee is an employee work and, if the employee is employed by more than one employer at the same time, in relation to which employer the employee work is to be claimed. Furthermore, managing staff members are required to ensure that the exercise of copyright concerning employee works by both USB and employees does not unintentionally frustrate industrial law protection.

**4.9** The USB is entitled to use school works (especially qualification and similar works) only for its internal needs. For other purposes, USB shall be entitled to enter into a licence agreement for use under normal conditions. Senior employees are obliged to take measures within their area of competence to ensure that the publication of school works (for example, by means of a public defence) does not inadvertently frustrate industrial protection or jeopardise know-how, trade secrets, confidential information (for example, by assigning USB Employees responsible for the processing of a particular school work to be responsible for checking these facts). This does not affect specific legal or internal regulations regarding the publication of student and scholarly works.

**4.10** Commercialisation of employee and school works is handled by the TTO or the given USB facility as mutually agreed.

**4.11** The publication of software under free licenses (freeware, shareware and open-source licenses) on the USB website or its constituent parts is similar to the publication of industrial property results. The condition for this form of publication is that it has been verified that the software has no potential for commercial exploitation.

## **5. Intellectual property protected by secrecy**

**5.1** Unless otherwise agreed, USB shall own the rights to the intangible assets protected by secrecy created by the originators/authors in the context of employment or other similar relationship with USB.

**5.2 Results with technology transfer potential.** In the case of the creation of results which do not display the character of copyrighted works or are not results according to Articles 6 and 7 below, but which have the potential for technology transfer, the procedure is similar to that under Article 3, including the Disclosure of such results.

**5.3** Following the Disclosure of Results under the preceding paragraph, the procedure under Article 3 is similar, except that stakeholders may propose an appropriate form of protection and the USB as the employer does not normally exercise property rights against the employee, as these are exercised by law by the very nature of the legal relationship between USB as the employer and the affected USB Employees or students. Instead of exercising rights, the existence of the result as an object of intellectual property rights is merely confirmed, where the property rights belong to USB. In case of doubt, the notification under this paragraph by the employee (Annexe 2) and its confirmation by USB shall be deemed to constitute a valid contract confirming the creation of the work in question and the existence of USB's property rights concerning the result.

**5.4** Within the scope of his/her authority, the managing staff member is required to monitor the existence of existing or the creation of new intellectual property protected by secrecy in ongoing projects, to inform the affected USB Employees and collaborating persons concerning the scope of such intellectual property and how it is to be kept confidential and to ensure that USB's proprietary rights in such intellectual property are properly exercised and that USB is not harmed by any information leaks or other loss or dilution of its intellectual property rights. In addition, the senior employee shall, within the scope of his or her authority, take

measures to ensure that, in relationships which are not employment relationships, but which are similar in nature, the provisions of this ordinance are reflected in the contracts governing those relationships.

**5.5** Employees are obliged to notify the Dean of the relevant faculty and the TTO of any detected infringements of rights to unregistered (unprotected) designations. The TTO will draw up a report on such notification and, in cooperation with the management of the relevant faculty, take the necessary steps to effectively arrange for a remedy.

**5.6** Commercialisation of subjects of intellectual property protected by secrecy is carried out by the TTO or the affected USB facility, as mutually agreed.

## **6. Trade secrets**

**6.1** USB Employees and students are obliged to maintain the confidentiality of facts and information that meet the conditions of a trade secret belonging to USB or a third party. This includes, in particular, research and development results, computer programs, databases, test and measurement results, technical or technological documentation, production or measurement instructions, recipes, projects, business and technical descriptions, licensing policies, and facts of a similar nature.

**6.2** Any conduct that may compromise or limit the trade secrets belonging to USB is prohibited.

**6.3** Facts and information of this nature may only be disclosed to third parties if the third parties have signed a confidentiality agreement.

**6.4** The duty of confidentiality also includes the prohibition on the disclosure of trade secrets within a literary or scientific work, whether or not the USB Employees or students authored the work or whether or not it is an employee or school copyrighted work.

**6.5** A senior employee is obliged, within his/her sphere of competence, to:

- determine the scope of the facts that constitute trade secrets and make those facts known to the relevant employees;
- define the rights and obligations of employees in protecting them;
- define the rights of access to and use of items that are trade secrets;
- take such other measures as may be necessary to ensure the confidentiality of trade secrets. The provisions of this Article shall apply until the issuance of a specific USB regulation.

## **7. Know-how**

**7.1** The date on which the know-how is recorded in an objectively perceptible form (text, graphical record, tables, etc.) is the date on which the know-how is intended to be used.

**7.2** The use of know-how is made on the basis of transfer agreements, licence agreements, work contracts, mandate agreements or unnamed contracts. Prior to the conclusion of a contract for the exploitation of know-how, the know-how must be recorded in an objectively perceptible form and the record of such know-how shall form an annexe to the contract.

**7.3** The Rector decides on the use of know-how related to industrial property and concludes contracts for the use of such know-how on behalf of USB.

**7.4** The Rector decides on the use of know-how unrelated to industrial property and concludes contracts on behalf of USB on the use of such know-how. Prior to the conclusion of such an agreement, the relevant faculty shall ensure the execution of the 'Disclosure of the Originator of the R&D Result' (Annexe 2), which shall subsequently be forwarded to the TTO.



## **8. Commercialisation of R&D results at USB**

The exercise of rights to USB's employee intellectual property object shall mean, in particular, the actual performance, operation, granting of exploitation rights (licence) to another entity or transfer of ownership rights to the employee intellectual property. The commercialisation of the results of the USB R&D is secured by the TTO. The results of R&D may only be offered to third parties or commercialised with the prior approval of the deans of all faculties where the intellectual property originated.

The TTO is required to maintain an ongoing file/contract list for the purpose of offering subjects of industrial law protection to USB employees for application by USB.

The rules for the establishment and participation of USB in spin-off entities are addressed in a separate Rector's ordinance.

### **8.1. Monitoring intellectual property protection and commercialisation**

The TTO conducts regular follow-up monitoring of intellectual property protection and commercialisation activities. It also provides comprehensive management of the USB portfolio of industrial protection instruments (patents, utility and industrial designs, etc.), licensing agreements and the management of joint ownership agreements of intellectual property rights.

The TTO comments on the economic aspects of maintaining protection, the economic aspects of transactions, and provides oversight of the performance of contracts, the recovery of claims under those contracts, and the distribution of proceeds from those contracts in accordance with applicable USB regulations.

### **8.2. Originator remuneration and distribution of net commercialisation proceeds**

#### **8.2.1 General provisions on the remuneration of originators**

**8.2.1.1** An originator who has created, in the course of the performance of his/her work tasks, an item of intellectual property rights to which USB has asserted a right shall be entitled to remuneration in accordance with this Article. This remuneration shall be without prejudice to other remuneration under other internal regulations of the USB or its faculties, as the case may be, or to the amount of the salary of the employee concerned.

**8.2.1.2** According to this ordinance, the originator is always entitled to:

- a one-off reward to the originator and
- a proportionate share of the proceeds from the commercialisation of the results.

**8.2.1.3** Where the object of the intellectual property right has been created by a collective of originators, the collective shall be considered the originator for the purposes of calculating the remuneration. Within the collective, the remuneration shall then be divided at the discretion of the head of the collective on the basis of the extent to which each of the co-originators contributed to the creation of the object of the intellectual property right or, if the proportion cannot be determined according to that criterion, it shall be divided equally among the originators.

**8.2.1.4** A Remuneration Agreement shall be concluded with the originator(s) on the method of payment and the amount of the remuneration

#### **8.2.2 One-off reward to the originator**

**8.2.2.1** An originator who, after 1 July 2013, has duly notified the TTO of the creation of an intellectual property object to which the USB has subsequently asserted a right against the originator, will be granted a one-off payment according to the type of result. The right of the originator to additional compensation under the conditions provided for by law shall not be affected.

**8.2.2.2** The determination of the rate of one-off remuneration according to the legislation in force is the responsibility of the USB constituent parts.

**8.2.2.3** A reasonable one-off fee to the originator for exercising the right to the subject of the Disclosure is payable within two months of the Rector's decision to exercise the right and the relevant USB constituent part is responsible for the administrative arrangements for payment.

### **8.2.3 Distribution of proceeds from the commercialisation of results**

**8.2.3.1** The amount of the additional settlement depends on the net revenue from the achieved benefit. The net revenue is the amount representing the difference between the amount of money received by USB and the direct commercialisation costs recorded by the TTO. These direct costs include amounts used to provide legal protection for the object of the Disclosure, legal services directly related to the actual additional benefit (for example, advice in connection with a licence or assignment agreement for the object of the Disclosure), costs of external services, business and marketing analysis and directly related research. The calculation of the amount of the additional settlement is set out in the table below.

All statutory deductions (income tax, social security insurance, and contributions to the state employment policy, as well as general health insurance) will be made from the above-mentioned originator's remuneration before it is accounted for and paid to the originator in accordance with applicable legislation.

The rights and obligations arising from this ordinance and the Contract for the provision of remuneration for the creation and commercialisation of the subject of industrial property shall remain unaffected after the termination of the employment or other legal relationship of the originator with USB.

**8.2.3.2** The distribution of revenues from the commercialisation of knowledge is determined as a percentage of net revenues according to the criteria set out below:

Net USB proceeds	Remuneration amount for the originator	Faculty/const. part	Share of TTO*	Share in licensing Fund
up to CZK 1m	70%	10%	10%	10%
over CZK 1m	60%	10%	10%	20%

\* Unspent TTO contributions are transferred to the USB licence fund at the end of the year.

**8.2.3.3** Licensing income within the meaning of paragraph 8.2 shall not be deemed to be institutional support or other public support.

**8.2.3.4** Remuneration is paid annually within 4 months of the end of the relevant accounting period. The amount of the remuneration shall be determined on the total amount of the net proceeds of the result paid to the originator since the first income from licensing or other exploitation of the result. The amounts of the licensing or other exploitation income and other results of the same originator which represent an improvement or addition to the original result shall be aggregated for the purpose of calculating the remuneration.

Knowledge transfer is generally recorded at USB as a non-economic activity within the meaning of the European state aid rules under Article 107 TFEU. Where it is recorded as such within USB, it must be ensured that any profits from the transfer are reinvested in the primary activities of USB in a demonstrable manner in accordance with these rules. In the event that the reinvestment is not ensured in this way, as well as in the event that another person without an equity interest in USB or their partner research organisations, the transfer must be reported as an economic activity for reasons of legal certainty.

**8.2.3.5** The pooling of funds for the USB licensing policy, the rules governing it, the use of resources, and the management of these funds are governed by the Rector's ordinance on the pooling of funds for the licensing policy of the University of South Bohemia in České Budějovice.

## **9. Measures against the influence of foreign powers**

**9.1** Contractual relationships and, in particular, research cooperation with legal entities and institutions based in countries with different political and ethical values may be vulnerable to abuse by foreign powers. The following measures are therefore provided.

**9.2** Measures against the influence of foreign powers are a set of rules and procedures aimed at securing:

- a) intellectual property protection, research projects and grants, their content and progress;
- b) protecting the reputation of USB, its academics, partners, and other stakeholders;
- c) mitigating risks from partners and external (off-budget) funding in areas related to this ordinance.

### **9.3 Identification of risks**

**9.3.1** If USB Employees or students suspect that foreign influence is being exerted or attempted in the area of intellectual property, commercialisation or the establishment of start-up or spin-off entities, they shall report these facts without undue delay to the Vice-Rector for Research or the Vice-Dean for Research at the relevant faculty, who shall forward the information to the Head of the TTO without undue delay.

**9.3.2** The report referred to in the preceding paragraph shall indicate who makes it and what it concerns.

**9.3.3** The Head of the TTO will evaluate the report, provide feedback to the whistleblower and, if appropriate, recommend further action within a timeframe appropriate to the circumstances and the seriousness of the content of the report. Where necessary or appropriate, in agreement with the Vice-Rector for Research, he/she shall report the findings to the authorities or security services or consult with them.

### **9.4 Agreements and cooperation with other entities in the field of intellectual property**

**9.4.1** Prior to entering into a contractual relationship with an external partner that involves the protection of intellectual property (in particular a partnership agreement, research agreement, licensing agreement or memorandum and declaration of cooperation), USB staff responsible for the preparation of such an agreement, memorandum or other similar document are required to effectively assess the risks of cooperation with the other party.

**9.4.2** In the event that the conclusion of such a contractual relationship involves a risk of damage to the reputation of USB or its employees or students involved, the exercise of foreign influence, violation of restrictions arising from international control and sanctions regimes, or theft of intellectual property, the employee responsible for the preparation of the contract, memorandum or other similar document is obliged to contact the Vice-Rector for Research or the Vice-Dean with the research remit at the relevant faculty, who will assess the situation. The Rector decides on the further course of action, normally after discussion in his/her College, but may delegate this authority to the Dean of the faculty concerned.

**9.4.3** As the risk of foreign influence can also evolve and change over time, long-term partnerships with other entities need to be evaluated. A check should be performed once every one to two years, or whenever there is a significant change in the conditions of cooperation and new information is discovered.

## 10. Common, transitional and final provisions

**10.1** Control over compliance with the individual provisions of this ordinance is provided by the Vice-Rector for Research.

**10.2** Failure to comply with the obligations arising from this ordinance will be considered a breach of the obligations arising from the employment relationship between USB and USB employees, including the possible consequences arising from the breach of these obligations (possible termination, compensation for damages, obligation to repay unjust enrichment, etc.). **Failure by a student to comply with the obligations arising from this ordinance may be considered a disciplinary offence within the meaning of Section 64 of Act No 111/1998, on Higher Education Institutions, as amended and in effect.**

**10.3** This ordinance shall enter into force and effect on the date of its issuance. Proceedings on the objects of intellectual property rights commenced but not yet terminated before the entry of this ordinance into force shall continue in accordance with this ordinance, unless otherwise expressly provided.

**10.4** This ordinance repeals and replaces Rector's Ordinance R 274 of 28 February 2014. Furthermore, Rector's Ordinance 38 of 29 June 2000, Rector's Ordinance R 51 of 3 March 2006, and Rector's Ordinance R 224 of 19 December 2012 are repealed.

prof. PhDr. Bohumil Jiroušek, Dr., v. r.  
Rector

Prepared by: USB Technology Transfer Office

Distribution list: Members of USB management, Deans of USB faculties

Annexes:

- Annexe No 1 Definition of terms
- Annexe No 2 Disclosure of the originator/co-originator of the R&D result
- Annexe No 3 Diagram for ensuring intellectual property protection
- Annexe No 4 Diagram of the possible procedure for managing intellectual property