Appendix to

HSE Order # 6.18.1-01/0506-03

as of 05.06.2013

Approved by HSE Academic Council

Minutes # 45 as of 26.04.2013

**REGULATIONS**

**on Financial Incentives within Intellectual Property Rights Policy**

**in National Research University Higher School of Economics**

Moscow

2013

# Part 1. GENERAL REGULATIONS

**1. Legal Framework and Scope of the Regulations**

* 1. These Regulations are complied with the Civil Code of the Russian Federation.
	2. These Regulations define financial incentives concerning development and commercialization of the results of intellectual activity created by National Research University Higher School of Economics (hereinafter referred to as University), the basis, and the procedure for applying them as well.
	3. Objectives of these Regulations are the following:
		1. boost of creative process of the University staff;
		2. equitable distribution of the income generated by University as the result of using the rights to results of intellectual activity;
		3. raising authors’ interest in practical application (introduction and commercialization) of the results of intellectual activity created by them.
	4. The aim of these Regulations is building efficient incentive mechanisms to make authors create the results of intellectual activity and be involved in practical use of the property created.

**2. Types of Financial Incentives within the rights to results of intellectual activity**

* 1. These Regulations define two types of financial incentives within the rights to results of intellectual activity policy:
		1. a lump sum payment for research and technological work (hereinafter referred to as **Lump Sum Incentive**), the basis and the procedure of this incentive is set by Part 2 of these Regulations;
		2. payment of a share in the University income from exercising an exclusive the results of intellectual activity right or a right to obtain a patent (hereinafter referred to as **Share in Income**), the basis and the procedure of this incentive is set by Part 3 of these Regulations;
	2. Other types of payment connected to the rights to results of intellectual activity and not stipulated in these Regulations may be defined by University local acts and civil law contracts between University and its employees.
1. **Persons Entitled to Financial Incentives**
	1. Subject to the terms set by Part 2 of these Regulations the right to receive Lump Sum Incentive is granted to those authors of the results of intellectual activity who are at the moment of occurrence of the said grounds acting as
* full-time teachers working in University;
* full-time research fellows working in University;
* other full-time University employees in case such employees work as teachers or research fellows in University for not less than one fourth pay.
	1. Subject to the terms set by Part 3 of these Regulations the right to receive Share in Income is granted to those authors of the results of intellectual activity who are at the moment of occurrence of the said grounds acting as University employees.
	2. Unit for Intellectual Property Issues of HSE Innovation and Enterprise Office

(hereinafter referred to as Authorized Unit) is authorized to administer measures concerning financial incentives.

* 1. University Vice-rector who coordinates intellectual property management (hereinafter referred to as Coordinating Vice-rector) is authorized to make decisions on financial incentives concerning intellectual property rights.

**Part 2. LUMP SUM INCENTIVE**

1. **Grounds for Granting Lump Sum Incentive**
	1. The grounds for granting Lump Sum Incentive shall be the following legal facts existing as a whole:
		1. creating the results of intellectual activity by a person (persons) mentioned in Article 3.1 of these Regulations (hereinafter referred to as Author(s) of Scientific and Technological Property) including co-authors as well with such property being protected or protectable legally as computer programs, databases, topographies of integrated circuit, inventions, utility models, industrial designs, know-hows;
		2. a written notice sent by Author(s) of Scientific and Technological Property to Authorized Unit to prove the fact of creating a piece of the results of intellectual activity with such notice being signed by the head of the structural subdivision where Author(s) of Scientific and Technological Property work(s);
		3. reservation of the exclusive right to the results of intellectual activity for

- University solely;

- University jointly with the third person(s);

- the third person(s) – University contractors to fulfill obligations stipulated by the relevant research, development or technological work agreement, or by any other agreement between University and third person(s).

* 1. The documents to confirm reservation of the exclusive right to the results of intellectual activity for the persons mentioned in Article 4.1.3 of these Regulations shall be the following: certificates and patents issued according to the established procedures by a federal executive body for intellectual property, patent authorities of foreign states; and a University trade secret order.
	2. If necessary Authorized Unit may perform assessment of the results of intellectual activity and the documents submitted by Author(s) of Scientific and Technological Property to prove the grounds for Lump Sum Incentive.
1. **Amount and Source of Lump Sum Incentive**
2. The amount of Lump Sum Incentive shall be defined on the basis of the type of the results of intellectual activity created by Author(s) of Scientific and Technological Property and shall make:
	* 1. ten thousand (10 000) rubles for computer program;
		2. ten thousand (10 000) rubles for a database;
		3. ten thousand (10 000) rubles for a topography of integrated circuit;
		4. twenty thousand (20 000) rubles for a utility model;
		5. twenty thousand (20 000) rubles for a industrial design;
		6. thirty thousand (30 000) rubles for an invention with the patent thereon obtained solely in the Russian Federation;
		7. forty thousand (40 000) rubles for an invention with the patent thereon obtained in one or more foreign states;
		8. twenty thousand (20 000) rubles for a trade secrets (know-how).
3. The number of pieces of the results of intellectual activity offered by Author(s) of Scientific and Technological Property to obtain Lump Sum Incentive within one calendar year is not limited excluding computer programs.

The number of computer programs programs offered by Author(s) of Scientific and Technological Property to obtain Lump Sum Incentive within one calendar year may not exceed two programs.

1. If the results of intellectual activity is of special scientific and technological value which is proved by documents, Coordinating Vice-Rector on the basis of submission by Authorized Unit may take a decision to increase the amount of Lump Sum Incentive with no maximum limit.
2. In case two or more Authors of Scientific and Technological Property create the results of intellectual activity and with no agreement on sharing funds obtained as a financial incentive and signed by them, Lump Sum Incentive shall be distributed equally.

In case some relative volume of the input of every Author of Scientific and Technological Property into the mentioned the results of intellectual activity is defined in the submitted notices on creating protectable the results of intellectual activity, these incentive sums shall be distributed among Authors of Scientific and Technological Property in proportion to the said volume of their input.

In case a person (persons) not conforming to the Article 3.1 of these Regulations has (have) been involved in creating the results of intellectual activity along with the person(s) recognized as Author(s) of Scientific and Technological Property subject to these Regulations, Lump Sum Incentive shall be paid to Author(s) of Scientific and Technological Property in shares defined according to the mentioned Article.

1. In case complicated and/or complex pieces of the results of intellectual activity are created with participation of a significant number (over 10 persons) of employees, or in case functioning of such the results of intellectual activity requires constant updating, Lump Sum Incentive shall be directed totally to the structural subdivision where the Authors of Scientific and Technological Property work.

In case employees from a number of structural subdivisions have been involved in creating complicated and/or complex pieces of the results of intellectual activity, Lump Sum Incentive shall be distributed subject to agreement among heads of structural subdivisions, and with no agreement reached − in equal shares. On application of a head of any structural subdivision, which provided employees for creating complicated and/or complex pieces of the results of intellectual activity the proportion of the shares mentioned may be altered according to the amount of the input made by employees from the structural subdivisions into the results of intellectual activity. Coordinating Vice-Rector shall make a decision on alteration of the share proportion given the opinion of the heads of all structural subdivisions, which provided employees for creating complicated and/or complex pieces of the results of intellectual activity.

In case an employee (employees) involved in creating complicated and/or complex pieces of the results of intellectual activity work(s) as a joint employee (joint employees) for a number of University structural subdivisions, Lump Sum Incentive or an appropriate part thereof shall be directed to that structural subdivision which the created the results of intellectual activity is mostly connected to. Authorized Unit shall verify such connection given the area of the research conducted by the relevant structural subdivision, terms of civil law contracts, University regulatory and other documents, which define the structural subdivision responsible for doing appropriate works, and given other circumstances as well related to to creation of the results of intellectual activity.

A head (heads) of a structural subdivision (structural subdivisions) may at their own discretion distribute Lump Sum Incentive among employees involved in creating/updating the results of intellectual activity depending on the level of their creative involvement in creating/updating the property mentioned. In case there is no opportunity to define the level of the creative involvement of the appropriate employees, Lump Sum Incentive is distributed equally among them.

1. In execution of the terms stipulated by Articles 5.4, 5.5 of these Regulations Authorized Unit may require Author(s) of Scientific and Technological Property and heads of the appropriate structural subdivisions to submit an agreement (agreements) on sharing funds obtained as a financial incentive within the results of intellectual activity policy.

The recommended form of such agreement is presented in Appendix 1 to these Regulations.

1. Lump Sum Incentive shall be paid out of University central funds.
2. **Lump Sum Incentive Payment Procedure**
	1. When the grounds stipulated by Article 4 of these Regulations occur, Authorized Unit shall within not later than one month from the date of occurrence of these grounds initiate preparation of a draft Lump Sum Incentive paymentorder.

For this purpose Authorized Unit shall prepare an inter-office memorandum on Lump Sum Incentive payment and send it to Coordinating Vice-Rector with the University draft order related to the appropriate Author(s) of Scientific and Technological Property.

* 1. Lump Sum Incentive is assigned once related to one piece of the results of intellectual activity; Lump Sum Incentive is not taken into account in calculating average wage.
	2. Coordinating Vice-Rector may take a decision not to pay Lump Sum Incentive:
		1. in case of termination of employment relations between University and Author(s) of Scientific and Technological Property at the date of occurrence of the grounds stipulated by Article 4 of these Regulations;
		2. in case of failure to observe other provisions set by University local acts within the intellectual property rights policy.
	3. In case a decision not to assign Lump Sum Incentive subject to the provision set by Article 6.3.2. of these Regulations is taken, Authorized Unit shall in writing notify thereof Author(s) of the relevant piece of the results of intellectual activity within one month from the date of such decision with the reasons for such refusal being mentioned.
	4. In case Lump Sum Incentive is assigned to Author(s) of Scientific and Technological Property as a result of their illegal actions including submission of information which does not reflect reality and their receipt of the payment for the one and the same piece of the results of intellectual activity twice as well, University shall make deductions from the wage of Author(s) of Scientific and Technological Property in the amount no more than twenty per cent of the whole amount of the wage of the appropriate Author of Scientific and Technological Property subject to the labour law of the Russian Federation.

**Part 3. SHARE IN INCOME**

1. **Grounds for Emergence of the Right to the Share in Income**
	1. The grounds for emergence of the right of the persons mentioned in Article 3.2 of these Regulations (hereinafter referred to as Author(s)) to the Share in Income subject to University local acts shall be conclusion of a license agreement, agreement on transfer of exclusive right or on transfer of right to obtain a patent related to any piece of the results of intellectual activity including works of science, literature, and art, with University holding the exclusive right to obtain this patent; and receipt of funds by University subject to the mentioned agreement.
	2. The right to Share in Income may not emerge, while the emerged right shall be forfeited:
		1. if the right to use the results of intellectual activity is granted; if the exclusive right or the right to obtain a patent subject to an agreement (contract) is transferred with creation of the appropriate piece of the results of intellectual activity when executing such agreement, including research, development or technological work agreement, contractor agreement, etc;
		2. if labour relations between Author(s) and University are terminated;
		3. upon expiration of a ten-year period from the date University concluded the agreement mentioned in Article 7.1 of these Regulations with payments being made in the form of regular payments (royalty) subject to this agreement regardless of the effective period of the mentioned agreement if a longer term for Author(s) to obtain a Share in Income is not set by a separate contractor agreement between University and Author(s).
2. **Amount of Share in Income**
	1. The amount of the due and payable Share in Income is defined on the basis of University net income, i.e. the sum of money both one time or from time to time obtained by University subject to agreements mentioned in Article 7.1 of these Regulations after deduction of University’s expenditures on:
		1. University’s acquisition of rights to the results of intellectual activity held by third parties and required to create the results of intellectual activity in respect of which the appropriate agreement is concluded;
		2. attachment of University’s exclusive right including expenditures related to the state registration and/or deposit in case it is possible subject to the law of the Russian Federation;
		3. payment of fees, duties, and other similar compulsory payments for the protection the results of intellectual activity documents to be kept in force;
		4. independent assessment of the price of the exclusive right and the right to use the results of intellectual activity;
		5. University’s fulfillment of the tax obligations and other obligatory payments in connection with execution of the agreements related to the results of intellectual activity.
	2. University’s net income shall be distributed as follows:
		1. University’s share shall make fifty (50) per cent;
		2. the share of the structural subdivision where the appropriate the results of intellectual activity has been created shall make twenty (20) per cent;
		3. the share of Author(s) shall make thirty (30) per cent.
	3. Author’s(s’) Share in Income defined in Article 8.2.3 of these Regulations may be increased jointly by ten (10) per cent out of University’s and the structural subdivision’s Shares in equal parts respectively when Author(s) has (have) independently found and attracted contractors subject to agreements set by Article 7.1 of these Regulations with this fact being documented (in the form of the commercial offer on the contractor’s part particularly).
	4. In case two or more Authors create the results of intellectual activity with no agreement on sharing funds obtained as a financial incentive and signed by them, their due and payable Share in Income shall be distributed equally.

 In case some relative volume of every Author’s input into the appropriate the results of intellectual activity is defined in the submitted notices on creating protectable the results of intellectual activity, the Share in Income is distributed in proportion to the said volume of their input.

* 1. In case Author(s) work(s) as a joint employee (joint employees) for a number of University structural subdivisions, the Share set by Article 8.2.2 of these Regulations shall be directed to that structural subdivision which the created the results of intellectual activity is mostly connected to. The fact of such connection shall be established as prescribed by Article 5.5 of these Regulations.
	2. In case two or more Authors − employees from University different structural subdivisions have created the results of intellectual activity, Share in Income set by Article 8.2.2 shall be distributed subject to agreement among heads of the said structural subdivisions, and with no agreement reached − in equal shares. On application of a head of any structural subdivision where the Authors are employed the proportion of the shares mentioned may be altered according to the volume of the input made by Authors into the results of intellectual activity. Coordinating Vice-Rector shall make a decision on alteration of the share proportion given the opinion of the heads of all structural subdivisions where the Authors are employed.
	3. When using the exclusive right to complicated and/or complex pieces of the results of intellectual activity as they defined by Article 5.5 of these Regulations the Share set by Article 8.2.3 shall be directed to that structural subdivision where Authors are employed. The head of the structural subdivision may at their own discretion distribute Share in Income among employees involved in creating/updating the results of intellectual activity depending on the level of their creative involvement in creating/updating the property mentioned. In case there is no opportunity to define the level of the creative involvement of the appropriate employees, the Share set by Article 8.2.3 of these Regulations is distributed equally among them.

 In case complicated and/or complex pieces of the results of intellectual activity are created by employees from different structural subdivisions, Share in Income set by Article 8.2.2 shall be distributed among the mentioned subdivisions subject to Article 8.6 of these Regulations.

* 1. The Share set by Article 8.2.2 of these Regulations shall in full or given Article 8.6 of these Regulations in the appropriate amount be directed to University in case:
		1. a piece of the results of intellectual activity has been created beyond the field of work of any University structural subdivision (for example, by University employees on the project basis, by participants of design study groups, temporary creative teams, etc.);
		2. the appropriate structural subdivision is wound up by the time the right to the Share in Income emerges or by the time of receipt of this Share.
	2. In case the appropriate structural subdivision has been restructured by the time the right to the Share in Income emerged, this Share set in Article 8.2.2 shall be distributed by Coordinating Vice-Rector’s decision taken with regard to opinions of a head (heads) of a structural subdivision (subdivisions) – assignees.
	3. In execution of the terms stipulated by Articles 8.4 − 8.6 of these Regulations Authorized Unit may require Author(s) and heads of the appropriate structural subdivisions to submit an agreement (agreements) on sharing funds obtained as a financial incentive within the results of intellectual activity policy.

The recommended form of such agreement is presented in Appendix 1 to these Regulations.

1. **Procedure of Payment of Share in Income**
	1. University may conclude an agreement on distribution of income from using the exclusive right to the results of intellectual activity with Author(s) of the results of intellectual activity in terms of whom agreements set by Article 7.1 are planned. In case such agreements have not been concluded, income shall be distributed according to these Regulations.
	2. When the grounds set by Article 7 of these Regulations emerge, Authorized Unit shall initiate the procedure of Lump Sum Incentive payment.

For this purpose Authorized Unit shall prepare and direct an inter-office memorandum on distribution of income obtained by University subject to agreements set by Articles 7.1 of these Regulations to Coordinating Vice-rector. The inter-office memorandum must be accompanied by University draft order in respect of the appropriate Author(s). This draft order must be agreed on with University Accounting Office and with Planning & Financial Office.

* 1. Share in Income is not taken into account when calculating an average wage.
	2. Share in Income shall be paid to Author(s) on the basis of the funds obtained subject to the appropriate agreement set by Article 7.1 of these Regulations as far as the appropriate funds are actually received by University but within three (3) months after the end of every calendar year within which such funds were really received by University.
	3. Authorized Unit may direct enquiries to University Accounting Office to obtain information about funds received subject to agreements set by Article 7.1. of these Regulations.
	4. Author(s) of the results of intellectual activity concluded the appropriate agreement thereon set in Article 7.1 of these Regulations may not oftener than once a calendar year require the information to confirm actual receipt of the funds by University subject to the said agreement having sent an enquiry to University Accounting Office.

# Part 4. FINAL PROVISIONS

* 1. Receipt of payments defined by these Regulations cannot deprive University employees of their right to receipt academic incentives subject to requirements and terms specified by appropriate local acts of University.
	2. These Regulations and amendments thereto shall be approved by University Academic Council and become effective since they have been implemented by the order of University Rector.
	3. These Regulations shall be applied in the context of the following aspects in terms of the results of intellectual activity the proper notice to inform about creation thereof has been sent to Authorized Unit within four months from the effective date of these Regulations:
		1. Article 8.2 shall be applied as follows:

“8.2. University net income shall be applied in the following way:

* + 1. University share shall make thirty (30) per cent;
		2. share of the structural subdivision where the appropriate the results of intellectual activity has been created shall make forty (40) per cent;
		3. Author’s (Authors’) share shall make thirty (30) per cent.
		4. Article 8.3 shall not be applied.
	1. These Regulations shall be subject to compulsory implementation by all University employees.

Appendix 1 to Regulations on

Financial Incentives in Intellectual Property Rights Policy

**AGREEMENT**

**on Sharing Funds Obtained as a Financial Incentive**

**within Intellectual Property Rights Policy**

Moscow date:\_\_\_\_\_\_\_\_\_\_\_

We, undersigned, being co-authors of the result of intellectual activity \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (type of the result of intellectual activity), the exclusive right to which (right to obtain a patent) is owned by National Research University Higher School of Economics hereby agree that the incentive due to us for creation and use of the result of intellectual activity shall be distributed as follows:

|  |  |  |
| --- | --- | --- |
| **Name of Author** | **Title, Structural Subdivision** | **Author’s Share** |
|  |  |  |
|  |  |  |
|  |  |  |
| Total | 100% |
| We hereby confirm that * the result of intellectual activity is free from third party rights;
* there are no obligations to distribute incentives for use of the results of intellectual activity among third parties.

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | *(name)* |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | *(name)* |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | *(name)* |

 |
| Structural subdivision where the result of intellectual activity was created  |
| **Structural Subdivision** | **Share of** **Structural Subdivision**  |
|  |  |
|  |  |
|  |  |
|  |  |
| Total | 100 % |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | *(name of structural subdivision head)* |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | *(name of structural subdivision head)* |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | *(name of structural subdivision head)* |