

POLICY DEVELOPMENT FRAMEWORK

INTELLECTUAL PROPERTY AND TECHNOLOGY INNOVATIONS

POLICY

Policy Number	Version 1.0
Date of Approval	November 2023
Policy Sponsor	DVC: Research, Technology Innovation & Partnerships
Next Review Date	November 2026
Approver	Council
Department/Unit	Technology Transfer and Industry Linkages

Contents:

1. Purpose.....	3
2. Scope.....	3
3. Objectives.....	3
4. Policy Principles.....	4
4.1. Technology Transfer Office.....	4
4.2. IP, Commercialisation and Enterprise Development (ICE) Committee.....	6
4.3. IP Ownership.....	6
4.4. Undergraduate Research.....	8
4.5. Copyright Protection Works and Course Materials.....	9
4.6. Open-Source Materials.....	9
4.7. Creative Commons.....	10
4.8. Public Domain.....	10
4.9. Trademarks.....	11
4.10. Contract research for outside organisations.....	11
4.11. Consulting undertaken by staff.....	11
4.12. Bursaries.....	11
4.13. Student commissions.....	12
5. Distributions of income deprived from exploitation of IP.....	12
5.1. Division of Revenues.....	12
5.2. Situation where Creators cannot be defined.....	13
5.3. Non-monetary benefits.....	14
6. National Intellectual Property Management Office (NIMPO).....	15
6.1. NIMPO Acknowledgement.....	15
6.2. Offshore transactions.....	15
6.3. NIMPO Approval for certain licensing agreements.....	15
6.4. NIMPO Approval for assignment of IP.....	15
6.5. Exclusive licenses.....	16
6.6. March in Rights.....	16
6.7. Dispute Resolution.....	16
7. Common Terms, Definitions and Acronyms.....	16
8. Responsibility.....	17

1. PURPOSE

- 1.1. The primary intent of this policy is to encourage research and technology innovation at the University and to reward all stakeholders and especially Creators of intellectual property, whilst fulfilling the main function of the University as an institution of learning and research with a philosophy of sharing information with others.
- 1.2. It is a secondary intent of this policy to comply fully with the provisions of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008) (herein referred to as the “IP Act of 2008” and to develop and implement policies and procedures regarding the disclosure, protection, management, and exploitation of intellectual property developed during or consequent to publicly funded research and development carried out on behalf of the University.

2. SCOPE

2.1. **Institutional Scope**

- 2.1.1. All CPUT Staff and Students.

2.2. **Individual Scope**

- 2.2.1. All employees and Students who conceive or first reduce to practice, actually or constructively, any invention.
- 2.2.2. Visitors, in the absence of any written agreement to the contrary, and who make use of CPUT resources and who, through their use of CPUT resources, conceive or first reduce to practice, actually or constructively, any innovation.
- 2.2.3. Intellectual Property developed in terms of an agreement between CPUT and a third party.
- 2.2.4. This Policy does not apply to Intellectual Property developed solely in terms of a private contract, outside of the course and scope of employment or contract of service or study with CPUT, by an employee and a third party, approved in compliance with the CPUT Private Work policy, provided that in the case of any potential conflict of interest (real or perceived), the employee must notify the Technology Transfer Office (TTO) of the innovation or the possible creation of an innovation.

3. OBJECTIVE(S)

3.1. **The objectives of this policy are to:**

- 3.1.1. Establish an enabling environment within which quality and innovative research, entrepreneurship, technology transfer and the forging of efficient partnerships with industrial partners can take place;
- 3.1.2. Provide for the effective creation, identification, protection, utilisation, management and commercialisation of intellectual property emanating from the innovative and creative mental efforts of staff or students of CPUT;

- 3.1.3. Create an environment that encourages and expedites the dissemination of inventions, new creations and new knowledge generated by researchers for the benefit of the people of South Africa;
- 3.1.4. Ensure that the revenues that accrues to CPUT from intellectual property are distributed in a fair and equitable manner that recognises the respective contributions of the Creators, the University and all other stake-holders;
- 3.1.5. Ensure that both intellectual property and other products of research are disseminated and made available to the public through an efficient and timely process of technology transfer;
- 3.1.6. Promote, preserve, encourage and assist scientific investigation and research;
- 3.1.7. Ensure that any conflict of interest arising during the commercialisation of intellectual property is identified and dealt with fairly; and
- 3.1.8. Ensure the University complies with the IP Act of 2008 where research is partly or wholly publicly financed.

4. POLICY PRINCIPLE

4.1. Technology Transfer Office

- 4.1.1. The responsibilities of the TTO include but are not limited to the following:
- 4.1.2. Receive disclosure of potential invention through the submission of an IP Disclosure Form by a Creator;
- 4.1.3. Analyse the disclosures within 30 days of receipt and consider:
 - a) how the innovation may be of benefit and contribute to the socio-economic needs and competitiveness of South Africa;
 - b) forms of IP protection, statutory or otherwise, that are most appropriate for the innovation in question;
 - c) the extent to which failure to seek such IP protection will undermine the socio-economic needs of South Africa;
 - d) the extent of readiness of the innovation for protection and whether any additional research and development needs to be undertaken before IP protection can be obtained;
 - e) the costs and advantages of the various possibilities for protection;
 - f) the potential for commercialisation of the innovation; and
 - g) whether the innovation should be placed in the Public Domain;
- 4.1.4. After analysis in clause 4.1.1.2, elect to proceed on an appropriate course of action, which may include:

- a) proceeding with an application for statutory protection of the innovation, such as via the filing of a provisional patent application or the registration of a design;
 - b) delaying the application envisaged in (a) for strategic reasons, but ensure that confidentiality is maintained until the application has been made;
 - c) requesting that the IP Creator conduct additional work to enable an application envisaged in (a) to be made, whilst confidentiality is maintained;
 - d) making referral to NIPMO and assigning the invention and innovation as in clause 4.1.1.9.
 - e) where the innovation is found to have no prospects of addressing the socio-economic needs of South Africa or prospects of being commercialised:
 - i) not proceeding with statutory protection;
 - ii) advising the IP Creator that they are free to publish the work; and
 - iii) assigning the IP as outlined in clause 4.1.1.10 if desired by the assignee.
 - iv) Determine any rights of a third party, such as a funder or collaborator, to the innovation or a share in the innovation and whether the IP Act of 2008 or any other legislation is applicable;
- 4.1.5. Decide whether CPUT wishes to retain the IP and, if necessary, attend to all aspects of statutory protection of the IP, including the appointment of a patent attorney;
- 4.1.6. For innovation which falls within the ambit of the IP Act of 2008, where necessary, report to NIPMO on IP disclosures and refer IP to NIPMO where CPUT elects not to own the IP;
- 4.1.7. Attend to all aspects of IP transactions associated with the commercialisation of the IP, including the negotiation of licenses to, or assignment of CPUT IP. The DVC: RTIP shall make the final decision on the terms of any commercialisation agreement, with due consideration being taken of the Creator's opinion;
- 4.1.8. Administer the distribution of the revenues arising from the commercialisation of the IP, where such revenues accrue;
- 4.1.9. Assign rights to any IP that CPUT elects not to retain ownership of where the IP falls within the ambit of the IP Act of 2008:
- a) in the first instance to NIPMO; or
 - b) where NIPMO declines assignment of the IP, to a funder of the work that led to the IP; or
 - c) where the funder declines the assignment of the IP, to the Creator;
- 4.1.10. Assign rights to any IP that CPUT elects not to retain ownership of, where the IP falls outside the ambit of the IP Act of 2008 and where there are rights:
- a) in the first instance, to the funder; or
 - b) where the funder declines the assignment of the IP, to the Creator.

- 4.1.11. Conduct evaluations of the scope of the statutory protection of the IP in all geographic territories subject to the commercialisation potential of the IP.
- 4.1.12. Negotiate the IP clauses of sponsored research agreements in accordance with the objectives of this Policy and the IP Act of 2008 and any other applicable legislation after consultation with the employee leading the research project concerned.

4.2. **IP, Commercialisation and Enterprise Development (ICE) Committee**

- 4.2.1. An ICE Committee shall be established, which shall comprise members selected as follows:
 - 4.2.2. The DVC: RTIP
 - 4.2.3. The Director of the TTO
 - 4.2.4. Technology Transfer Managers
 - 4.2.5. The Executive Director of Finance or a nominee
 - 4.2.6. Four external experts serving a three-year term, which is renewable
 - 4.2.7. Any such person(s) the members above may wish to co-opt, such as faculty members drawn from the faculties or external expert(s).
 - 4.2.8. The responsibilities of the ICE Committee in relation to protection of technology innovations and the distribution of benefits arising from the commercialisation thereof shall be to advise the TTO on matters relating to:
 - 4.2.9. Ownership of IP and innovations;
 - 4.2.10. Distribution of income derived from exploitation of IP and innovations;
 - 4.2.11. Protection of IP and innovations;
 - 4.2.12. Such other matters as the TTO may deem appropriate.
 - 4.2.13. The ICE Committee shall meet at least quarterly.

4.3. **IP Ownership**

- 4.3.1. In terms of Section 4(1) of the IP Act of 2008, all IP emanating from publicly financed research is owned by the University, which is a publicly financed institution, subject only to the provisions of this policy and to Sub-sections 4(2) to 4(4) of the IP Act of 2008; and to Section 15 of the IP Act of 2008. This is so, irrespective of the extent to which the research was publicly financed.
- 4.3.2. The result of this is that the University owns all IP developed during or consequent to research conducted by either utilising the facilities of the University and / or by any personnel of the University in the conduct of their responsibilities or obligations to the

University. This will be the case, irrespective of whether a Creator is a full-time or part-time staff member, a student or a contractor of the University or a joint staff member, visiting educator, researcher, or student typically, but not necessarily, from another educational institution, and depending on the valid and effective contractual terms applicable to their position at the University. As regards a joint staff member, student, a visiting educator, researcher or student, the IP concerned is limited to that developed during the relevant visit or activities at the University and does not extend to any previously developed IP.

- 4.3.3. A private entity or organisation may become a co-owner, together with the University, in respect of IP emanating from publicly financed research, provided that the private entity or organisation has made a suitable contribution, including the provision of background IP or joint creatorship to the research as provided for in Section 15(2) of the IP Act of 2008. In such an instance it is the policy of the University to ensure that, in any contract with such a co-owner, provision is made for a license to the University. This is to allow for the use of the invention at the instance of the University acting alone because the co-owner does not satisfy the needs of the public in South Africa reasonably, or in the event that the co-owner fails to exploit the invention adequately.
- 4.3.4. As regards IP generally, it is the policy of the University to adopt the attitude that anything developed by a staff member or student within one year of leaving the University was actually developed whilst that staff member or student was at the University, unless proved otherwise.
- 4.3.5. In the event of a staff member or student developing any IP without the use of the University's facilities but within the course and scope of employment or study, then the University shall be the owner of such IP, except for the following provisions and the provisions of Section 6:
 - 4.3.5.1. A Creator of any IP shall be the owner or part-owner in respect of IP that is privately developed outside of the course and scope of employment or contract of service or study with the University, provided that the IP was developed without any significant use being made of facilities of the University. It will be the responsibility of the Creator or Creators to show that facilities other than those of the University were used in relation to any relevant research should the University so require.
- 4.3.6. Where IP emanates from a collaborative research and development agreement, involving one or more donor organisations, research institutions or organisations, CPUT will:
 - 4.3.6.1. Retain ownership of IP developed by CPUT's employees or students, or co-own it where the IP is jointly developed with the collaborators;
 - 4.3.6.2. Use reasonable endeavours to ensure the commercialisation of the IP;
 - 4.3.6.3. Provide reasonable access to collaborators in accordance with international agreements and norms and/or in accordance with NIPMO guidelines;
 - 4.3.6.4. Seek approval from NIPMO prior to the commencement of work, where the collaborative research agreement requires the IP to be made available for commercialisation on a royalty-free basis, or that it should not be commercialised.

4.4. **Undergraduate Research**

- 4.4.1. Where an undergraduate student has made significant use of university resources that results in the creation of innovations or patentable IP, the University claims an ownership right and will require assignment of the IP.
- 4.4.2. Significant use of university resources means the use of university facilities, equipment, funds, personnel and other resources that exceeds what is customarily and currently provided to similarly situated colleagues of the Creator in the Creator's Department or to similarly situated students enrolled in the University. The following examples are intended for guidance purposes only and do not exclude other uses that may be considered significant:
- 4.4.2.1. Use of specialised services or facilities such as equipment, production facilities, service laboratories, studios, specialised computing resources or facilities, wherein fees normally required for access or use are waived;
- 4.4.2.2. Use of University personnel (including secretarial, clerical and administrative staff) and research assistants beyond the level customarily and currently provided to similarly situated colleagues of the Creator in the Creator's Department or to similarly situated students enrolled in the University;
- 4.4.2.3. Use of University background IP that serves as a significant basis for the resulting innovation, regardless of whether the Creator produced such proprietary property;
- 4.4.2.4. The University shall not consider use of facilities, equipment, funds, personnel and other resources to be significant if the University makes them generally available either to the general public or the University community, provided that in the case of the University community, such use is not in excess of the amount normally provided.
- 4.4.3. For clarity, the University does not consider the following to be a significant use of university resources:
- 4.4.3.1. Use of publicly available facilities such as libraries and other resources;
- 4.4.3.2. Use of routinely available office or laboratory space, furnishings, supplies, photocopy equipment, telephones, fax machines, desktop or laptop computers and the commercially available software utilised on such computers;
- 4.4.3.3. Where the Creator has paid for or reimbursed the University for access and/or use of resources. Creators wishing to directly reimburse the University for the use of facilities must make arrangements to do so before the level of facilities usage for a particular invention/work becomes significant;
- 4.4.3.4. Use of routine secretarial, administrative or clerical services;
- 4.4.3.5. Use of unrestricted or specifically allocated funds allocated for student use in a specific course which is made available to all students enrolled therein; or,
- 4.4.3.6. Use of student supported services covered by student tuition and fees.

4.5. **Copyright Protected Works and Course Materials**

4.5.1. CPUT holds copyright in:

4.5.1.1. Banks of multiple choice test and examination questions;

4.5.1.2. Syllabuses and curricula;

4.5.1.3. Computer software developed at, or commissioned by CPUT to support academic or research administrative processes or the general operational management of CPUT;

4.5.1.4. All CPUT produced literary publications including electronic media and content on the CPUT websites;

4.5.1.5. Creative outputs;

4.5.1.6. CPUT specifically commissioned works and course materials that fall outside the scope of normal academic work; and

4.5.1.7. Computer software developed as part of a research project, unless assigned by research agreement to another party.

4.5.2. CPUT automatically assigns to the author(s) the copyright, unless CPUT has assigned ownership to a third party in terms of a research contract, in:

4.5.2.1. Scholarly publications, excluding textbooks; and

4.5.2.2. Course materials, with the provision that CPUT retains a perpetual, royalty-free, non-exclusive licence to use, copy and adapt such materials within CPUT for the purposes of teaching and/or research.

4.5.3. CPUT assigns the copyright in a student's thesis, to the student author (or in the case of a work of art that is submitted for examination purposes to the IP Creator of the work of art), subject to CPUT retaining a royalty-free right to publish a thesis in any form. Whilst the student has the right to enter into agreements with publishers who may wish to publish the thesis in whole or in part, the student shall ensure that CPUT's rights are acknowledged by the third party and maintained and shall, with the consent of their supervisor(s), ensure that such publication is not in conflict with any past or planned future assignment of rights to another publisher, e.g. of a journal article or other literary publication.

4.5.4. Notwithstanding 4.5.3, where the student thesis is subject to a confidentiality agreement, the assignment in the student's thesis will occur at the termination of the confidentiality period.

4.6. **Open-Source Materials**

4.6.1. Notwithstanding CPUT's claim to ownership of software that is created by its staff, CPUT supports and promotes the creation and participation in the creation of open - source software.

- 4.6.2. CPUT usually permits publication of open - source software on open-source systems, provided the staff member complies with the process described herein.
- 4.6.3. It is required that staff members disclose to the TTO their intention to create or to participate in the development of open - source software prior to doing so.
- 4.6.4. The TTO shall evaluate the disclosure and undertakes to endeavour to discuss within four weeks after the disclosure with the staff member whether or not alternative means of utilisation of the envisaged software exists and whether and, on what terms, the software may be made available on an open - source basis.
- 4.6.5. In the event where such staff member fails to disclose his/her intention, the TTO may take any such steps as it may deem necessary to protect the IP in the software.
- 4.6.6. Staff members must familiarise themselves with the licence conditions applicable to the use of the relevant open - source software and disclose them in a timely manner to the TTO and shall comply with such licence conditions and such terms that the TTO may prescribe in connection with the particular development.
- 4.6.7. Where necessary, the TTO shall refer agreements to NIPMO to seek approval for their use.
- 4.6.8. Where necessary and required, the TTO shall in writing authorise staff members to enter into the open-source license agreements in their personal capacity.

4.7. **Creative Commons**

- 4.7.1. Author(s) of copyright materials that are listed in clause 4.5.1 should seek permission from the DVC: T&L, who, on behalf of CPUT, may grant permission for the material to be distributed under a creative commons licence.

4.8. **Public Domain**

- 4.8.1. IP developed at CPUT will form part of the Public Domain if:
 - 4.8.1.1. A contractual agreement between the University and a third-party requires that the results of the research be placed in the Public Domain; and/or
 - 4.8.1.2. The IP is a work of development that has utilised an open licensing method for materials or software including, but not limited to Open Educational Resources, Creative Commons, Open Source or GNU GPL licensed software, and where the licensing conditions of the same require that derivatives are released into the Public Domain.
- 4.8.2. The University may decide to release IP into the Public Domain under one or more of the following circumstances:
 - 4.8.2.1. Where it is deemed by the TTO to be in the public interest; or
 - 4.8.2.2. Where the IP has sufficiently low commercial or developmental value; or

4.8.2.3. Where the TTO deems it either necessary or desirable for other reasons.

4.8.3. For release of IP into the Public Domain as envisaged in clause 4.8.2., the TTO will seek approval from NIPMO prior to release of the IP into the Public Domain.

4.9. **Trademarks**

4.9.1. The TTO shall take responsibility for trademark registration and maintenance, where the trademark is directly related to IP that may be commercialised, e.g., the name of a product, process or device. Costs will be funded by the TTO and as such, the trademark may form part of a license or assignment agreement.

4.9.2. The University reserves the right to license its name or registered trademarks to commercial partners.

4.10. **Contract research for outside organisations**

4.10.1. The ownership of IP resulting from research funded by an outside organisation shall be agreed to in writing between the University and the outside organisation. In the absence of any written agreement, the University shall be entitled to ownership of the IP concerned.

4.10.2. Where a staff member or student of the University is commissioned by an outside organisation to conduct a study in which existing IP, which belongs to such outside organisation, has to be further developed, or where a problem relating to it has to be solved, the University's rights shall be limited to the incrementally added intellectual value of the investigation or research and any patents, designs and copyrights that may originate on account of such research.

4.10.3. Staff members who are approached by outside organisations to conduct contract research for such bodies, regardless of the place where the contract research is done, must ensure that appropriate agreements regarding IP rights are in place. Unless otherwise agreed, such contract research shall be deemed to fall within the normal course and scope of the staff member's employment, and the IP that may be created as a result of such contract research shall therefore vest in the University.

4.11. **Consulting undertaken by staff**

4.11.1. As knowledge/expertise is applied when consulting, but new knowledge and inventions are not normally created, the University does not lay claim to the products of consultation work, except in the case of serendipitous knowledge. Serendipitous knowledge shall be deemed to have originated within the normal course and scope of the staff member's employment at the University.

4.11.2. The product of consultation work, whether a report, an opinion or any other form of product or service, may be delivered by a staff member of the University to an outside organisation, inclusive of the copyright on the product.

4.12. **Bursaries**

4.12.1. Outside organisations that provide bursaries to students must agree contractually in advance with the University about the ownership of IP. It is the Principal Investigator's responsibility to assist in establishing such an agreement.

4.13. **Student commissions**

4.13.1. Where a student intends to submit a thesis or dissertation that corresponds to a commission of his/her employer, the student must disclose his/her intention to the University and his/her employer on registration or as soon as possible after he/she has become aware of the employer's commission.

4.13.2. The University and the student's employer shall then negotiate ownership and confidentiality related to the student's thesis or dissertation within the provisions of the applicable IP Act of 2008.

4.13.3. The University will not keep the thesis or dissertation confidential for a period of longer than two years, and it reserves the right to publish the thesis or dissertation in electronic format, of which the University shall be the copyright owner in terms of this Policy.

4.13.4. In the absence of any written agreement, the University shall be entitled to ownership of the IP concerned.

5. Distributions of income derived from exploitation of IP

5.1. **Division of Revenues**

5.1.1. A Creator and their heir(s) are granted a right to a portion of the revenues that accrue to CPUT from the commercialisation of the IP they created for as long as revenues are derived from such IP. This revenue is taxable and, where a Creator is on the CPUT payroll, tax will automatically be deducted, and payment made through the payroll system. An heir will have no claim to portions of revenue other than to the portion that is allocated to the specific Creator in terms of clause 5.1.5 and taking clause 5.1.2. into consideration.

5.1.2. If there is more than one Creator in respect of any particular IP, the allocation will be shared equally between them unless another arrangement has been reached and reduced to writing in the approved CPUT Invention Disclosure document.

5.1.3. A Creator may, at their sole discretion, elect and make provision for an Enabler(s) to receive a share of the Creator portion of the revenue. This arrangement will be agreed to by all Creators, should there be more than one, reduced to writing, signed and lodged with the TTO.

5.1.4. Disbursements to a Creator and, if appointed, to Enablers will be made within one year of receipt of the revenue by the TTO.

5.1.5. Revenue from commercialisation activities will be distributed as follows:

- 5.1.5.1. Amounts due to third parties who may be either co-owners of IP or beneficiaries in terms of benefit share agreements entered into by CPUT, if received by CPUT, will be paid to those third parties prior to any internal distribution within CPUT.
- 5.1.5.2. Where there is more than one Creator, the Creators will share the amount that would have accrued if there had only been one Creator on a pro rata basis as determined by the Creator's share in the creation of the IP as per clause 5.1.2.
- 5.1.5.3. Where there is more than one Creator, portions of revenue accruing to research groups will be apportioned to them on a pro rata basis as determined by the Creator within (or previously within) a research group's share in the creation of the IP as per clause 5.1.2. Where there is uncertainty in terms of membership of a research group, matters will be referred to the ICE Committee for a decision on apportionment.
- 5.1.5.4. For all revenues received by CPUT up to the first R1 million, 20% of gross revenue will be paid to the Creator; 50% of gross revenue will be paid to the Creator's research group (e.g., Research Grouping, Unit or Centre) to be used for research; and the balance will be paid to the TTO.
- 5.1.5.5. For all revenues received by CPUT after the first R1 million referred to in clause 5.1.5.4, 30% of net revenue will be paid to the Creator; 40% of net revenue will be paid to the Creator's group to be used for research; and the balance will be paid to the TTO.
- 5.1.5.6. The portion of revenue going to the TTO IP fund is preferably to be used for further research, to support the TTO activities, patenting and IP protection costs, innovation and commercialisation, training in entrepreneurship and IP management.
- 5.1.5.7. If a Creator, who is an employee, moves within CPUT or if the Creator's group is dissolved, then the matter will be referred to the ICE Committee for a recommendation on which entity should be allocated the Creator group's portion. The final decision on the allocation remains with the DVC: RTIP.
- 5.1.5.8. If a Creator, who is a student, moves within CPUT, the Creator group's portion of the revenue will remain with the original group.

5.2. **Situation where Creators cannot be defined**

- 5.2.1. There may be instances where Creators cannot be specifically defined due to specific circumstances such as where IP is continuously developed.
- 5.2.2. In instances provided for by 5.2.1, the IP7 submission to NIPMO will indicate that the Creators cannot be specifically defined; however, benefit share will still occur using the approach defined in 5.2.7.
- 5.2.3. In instances provided for by 5.2.1, the deemed relative contribution of the individual Creators within the research group towards IP creation will be essentially proportional to the seniority of the individual and the time employed within the research group during the period when the IP was created.
- 5.2.4. The approach as provided in 5.2.7 is specifically directed at benefit share.

5.2.5. In instances provided for by 5.2.1, the deemed relative contribution of the individual team members, within the research group, towards IP creation will be essentially proportional to their seniority and their length of employment during the period when the IP was created.

5.2.6. As a consequence, the calculation will produce a snap-shot IP contribution determination at every instance where benefit share is calculated.

5.2.7. This formula for determining contribution is:

Total relative contribution per group member = $W_0 + W_1 + W_2 + W_3 + W_4 + W_5$

Relative annual contribution = $W_n = S \times P \times I \times M \times Y$

where,

W = Annual contribution of individual team member (for example W_0 = current year; W_1 = previous year, etc.)

n = Current year minus year of contribution

S = Seniority (grade level of employment; Peromnes) as per 5.4.6 below

P = Project involvement in % (to account for part-time employment)

I = IP dilution due to evolution of IP over time of development

M = Miscellaneous weighting to account for enablers

Y = Months employed at group as evidenced by HC and group records.

5.2.8. The seniority matrix is as follows:

Level 5 or lower = 10; 6 = 8.5; 7 = 6.5; 8 = 5.5; 9 = 5; 10 = 4; 11 = 3.5; 12 = 3; 13 = 2; 14 = 1; 15 or higher = 0.5.

5.2.9. Project involvement for a full-time employee will be deemed to be 100%, 50% for a half-day employee, 20% for an employee who works one day a week, and so on.

5.2.10. IP dilution is as follows: 100% for n = 0; 80% for n = 1; 60% for n = 2; 40% for n = 3; 20% for n = 4; and 0% for n = 5.

5.2.11. Miscellaneous weighting will be provided as follows: 100% for team members who contribute to strategy and direction; 50% for team members who contribute to technical development; 25% for team members who contribute to administrative aspect. Where a team member falls within more than one category, the category with the highest percentage is selected.

5.2.12. Where the IP is deemed to have been completely created and or development has been terminated, the snapshot at the completion or termination date will be the final benefit share matrix for the commercial life of the IP.

5.3. **Non-monetary benefits**

- 5.3.1. It is possible that non-monetary benefits may accrue through the commercialisation of IP, for example, but not limited to, receipt of free or reduced rate services or free products or equipment being received by CPUT instead of a monetary amount.
- 5.3.2. All non-monetary benefits shall be disbursed in terms of clause 5.1. following their disposal and conversion to monetary value.

6. National Intellectual Property Management Office (NIPMO)

6.1. **NIPMO Acknowledgement**

- 6.1.1. It is required by the IP Act of 2008, to include the following prescribed statements in all IP transactions that involve:
 - (i) local IP transactions in terms of Regulation 11(4); or
 - (ii) off-Shore IP transactions in terms of Regulation 12(4).
- 6.1.2. “The intellectual property under this transaction was created with the support from the South African Government (under contract number, where applicable), awarded by (identify the funding agency or relevant government department, where applicable) and is subject to the requirements of the South African Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 and its regulations (Act 51 of 2008). The South African Government has certain rights to the intellectual property in terms of sections 11(1)(e), 11(2) and 14 of Act 51 of 2008.”

6.2. **Offshore Transactions**

- 6.2.1. It is a requirement of the IP Act of 2008 that CPUT must inform NIPMO (and where applicable, obtain permission) of its intention to conclude an IP transaction offshore. Any such transaction (or those involving non-South African entities and persons) must be in accordance with the regulations and guidelines provided by NIPMO.

6.3. **NIPMO approval for certain licensing agreements**

- 6.3.1. NIPMO approval must be obtained for any licence in terms of which:
 - 6.3.1.1. The consideration payable by a licensee to CPUT is not determined on an arms-length basis;
 - 6.3.1.2. CPUT grants a licensee right to commercialise its IP on a royalty-free basis; or;
 - 6.3.1.3. The licensee falls into the categories referred to in clauses 6.3.2. and 6.3.3 and is granted a right to sub-licence on a consideration determined on an arms-length basis in the case of clause 6.3.2. or for a royalty in the case of clause 6.3.3.

6.4. **NIMPO approval for assignment of IP**

- 6.4.1. In all such cases where CPUT wishes to assign IP governed by the IP Act of 2008 to an entity in the RSA, CPUT must obtain the prior approval of NIPMO, using Form IP4, as prescribed in the Regulations of the IP Act of 2008. In such application for approval, CPUT must:
 - 6.4.2. Demonstrate that such assignment is in the public interest, or
 - 6.4.3. Provide reasons as to why the IP cannot be commercialised through other means, such as an exclusive licence.

6.5. **Exclusive licences**

- 6.5.1. The following conditions shall apply in the event where CPUT intends to grant an exclusive licence:
 - 6.5.1.1. The prospective licensee must be capable of developing the IP further, where required, and of undertaking the commercialisation thereof;
 - 6.5.1.2. The commercialisation of the IP by the prospective licensee must be used for the benefit of South Africa;
 - 6.5.1.3. The irrevocable and royalty-free right of the State to use or have the IP used on behalf of the Republic, for health, security and emergency needs of the Republic, in terms of the IP Act of 2008, is entrenched in the licence agreement.

6.6. **March in Rights**

- 6.6.1. In addition to the Government's march in rights, as mentioned in paragraph 6.5(c) above, for exclusive licences, the Government also retains march in rights for local licensing agreements (Regulation 11(6)(b) and off-shore transactions (Regulation 12(6)(c)).

6.7. **Dispute Resolution**

- 6.7.1. Any internal disputes or questions of interpretations arising from this Policy must, in the first instance, be referred to the ICE Committee, at the request of any interested party, for advisory purposes.
- 6.7.2. If the matter cannot be resolved following the advice provided by the ICE Committee, then the dispute or question of interpretation must be referred to the Vice Chancellor or his/her nominee for referral to an appropriate authority or panel for mediation or arbitration.
- 6.7.3. In the event of an inventorship or creatorship dispute arising with an external third party, the matter must be referred to the DVC: RTIP for referral to an attorney with suitable expertise.


7. COMMON TERMS, DEFINITIONS & ACRONYMS

- 7.1.1. **Creator:** Creator means a person or thing that brings intellectual property or an innovation into existence.
- 7.1.2. **Enabler:** Enabler means those individuals who do not meet established legal standards of inventorship (and thus may not be named on a patent application) but who have contributed by skill or effort (but not creatively or intellectually) with the validation of an invention or advancement of patentable Intellectual Property.
- 7.1.3. **Full Cost:** Full Cost means the full cost of undertaking research and development as determined in accordance with international financial reporting standards and includes all applicable direct and indirect costs as may be prescribed.
- 7.1.4. **Serendipitous knowledge:** Serendipitous knowledge means intellectual property that could not reasonably have been foreseen by the principal or the staff member involved in the commissioned work, be it consultation or research. A typical example is where a staff member is commissioned to conduct clinical trials on a new compound and then discovers, coincidentally and outside the course and scope of the commissioned assignment, that the active compound can also cure another disease.
- 7.1.5. **IP** – Intellectual Property
- 7.1.6. **ICE Committee** – IP, Commercialisation and Enterprise Development Committee
- 7.1.7. **IP Act of 2008** – Intellectual Property Rights from Publicly Financed Research and Development Act, No. 51 of 2008 and its Regulations
- 7.1.8. **TTO** – Technology Transfer Office (in terms of the IP Act of 2008)
- 7.1.9. **DST** – Department of Science and Technology
- 7.1.10. **NIPMO** – National Intellectual Property Management Office (in terms of the IP Act of 2008)

8. RESPONSIBILITY

Accountability and Authority:	
Implementation:	DVC: Research, Technology Innovation & Partnerships
Compliance:	All departments and units
Monitoring and Evaluation:	DVC: Research, Technology Innovation & Partnerships
Development/Review:	DVC: Research, Technology Innovation & Partnerships
Approval Authority:	Council
Interpretation and Advice:	DVC: Research, Technology Innovation & Partnerships

Policy Development Framework				
Policy Type(s):	A. Institutional Policy			
Type:	Policy	✓	Guideline	Manual
Tick document category	Procedure		Regulation	Plan
CPUT Statute and/or Regulation Reference no. and date:	CPUT Statute, Government Gazette No. 46059, Notice No. 1906 of 18 March 2022.			
Relevant Legislation and/or Policy, Codes of practice, Professional authorities:	<ul style="list-style-type: none"> Intellectual Property Rights from Publicly Financed Research and Development Act, No. 51 of 2008 (hereinafter the IP Act of 2008), Regulations (GG 33433 of 2/8/2009) Copyright Act, No. 98 of 1978, Regulations (GG 6252 of 22/12/1978) Patents Act, No. 57 of 1978, Regulations (GG 6247 of 15/01/1978) Plant Breeders' Rights Act, No. 15 of 1976, Regulations (No. R1186 of 12/09/1997) Trade Marks Act, No. 194 of 1993, Regulations (No. R578 of April 1995) Designs Act, No. 195 of 1993, Regulations (GG 20256 of 2/07/1999) National Environmental Management: Biodiversity Act, No. 10 of 2004, Regulations (GG No. 40876, of 30/05/2017) Technology Innovation Agency Act, No. 26 of 2008 			

Relevant Institutional Policies/ documents/manuals/ handbooks	<ul style="list-style-type: none"> • Cape Peninsula University of Technology Strategic Plan: Vision 2030. • Research Policy. • Policy on Research Pricing. • Private Work Policy. • Research Data Management (RDM) Policy. • Open Access (OA) Policy. 				
Policy Reference and Version no.:					
Consultation Process To be verified and signed off before approval	<p>Request to initiate the review process was submitted to ManCom. Approval for commencement was provided via ManCom resolution dated 19 July 2023.</p> <p>Dr Revel Iyer was appointed as Policy Delegate. The Policy Working Group (PWG) was assembled and comprised Dr Iyer, Prof. Opperman, Mr Royi, Prof. Davidson, Mr Fransman, Mr Sablay, Mr Matasane, Dr Makaula, Mr Ayanda Libala, Dr Bester, Dr Lilly and Prof. Mohammed. The PWG convened on 27 July 2023 to manage the Research and Analysis aspect of the review and to create the draft Green Paper. The draft Green Paper was tabled at ICE Com on 8 August 2023 for inputs.</p> <p>The PWG convened on 10 August 2023 to finalise the Blue Paper. The public participation phase was publicised via Newsflash and involved two separate periods (16-25 August 2023 and 4-8 September 2023). Comments were received from 4 individuals. The PWG convened on 28 August 2023 to discuss the first set of comments. The second set of comments were managed via a round robin assessment ending on 20 September 2023. The comments and resolutions are included as Annexure A.</p>				
Policy Owner/Sponsor					
Compliance Officers	Compliance Owners				
Certification of Due process: To be verified and signed once approved by the relevant authority	<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  Vice Chancellor </div> <div style="text-align: right;"> 06.12.2023 Date </div> </div>				
Approval Date		Commencement Date		Review Date	

REVISION HISTORY: Only applicable to amended or reviewed Policies. Record details of amendments/revision.

Version No.	Approved/ Rescinded	Date	Approving Authority	Resolution Number/ (Minute number)	Date for next review (start date for review process)
01			Council		

<i>For office use only</i>	
Policy Group (Broad Policy field)	F: Technology, Partnerships, Research and Planning
Subject (Policy sub-field)	Policies
Reference Number	
Version Number	
Key Words:	Policy, Policy template, Policy framework, Policy approval, Policy review

