

 Cape Peninsula University of Technology		POLICY ON INTELLECTUAL PROPERTY			
Policy group(s):		F: Technology, Partnerships, Research and Planning			
Type:		Policy	√	Guideline	
		Procedure		Regulation	
CPUT statute and/or regulation reference no. and date:		To be inserted by the Registrar			
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 51 of 2008 (hereinafter the IPR Act), as well as its Regulations that came into effect in 2010 (GG 33433 of 2/8/2009) • Copyright Act 98 of 1978 • Patents Act 57 of 1978 • Plant Breeders' Rights Act 15 of 1976 • Trade Marks Act 194 of 1993 • Designs Act 195 of 1993 • Counterfeit Goods Act 37 of 1997 • Competition Act 89 of 1998 • Biodiversity Act 10 of 2004 • Technology Innovation Agency Act 26 of 2008 			
Relevant institutional policies / documents / manuals / handbooks		<ul style="list-style-type: none"> • Research Policy • Contract Research Policy • Community Engagement Policy • Policy on Short Courses • Institutional Operation Plan (IOP) • Research Management Plan • Research and Innovation Plan 			
Policy reference and version no: 2					
Certification of due process:		<div style="display: flex; justify-content: space-between;"> <div>_____</div> <div>_____</div> </div> <div style="display: flex; justify-content: space-between;"> Vice Chancellor Date </div>			
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REVISION HISTORY: Only applicable to amended policies. Record details of amendments.

Revision ref no.	Approved / rescinded	Date	Authority	Resolution number or minutes reference
2.0				

POLICY STATEMENT

1.0 Context and intent	<p>Firstly, the development of research at CPUT has been identified as one of six strategic thrust areas for the university. The protection, management and commercialisation of intellectual property emanating from this research effort are considered to be part of this strategic thrust area.</p> <p>Secondly, the Department of Science and Technology has developed legislation for the utilisation of intellectual property emanating from publicly financed research, which obliges universities to manage their intellectual property within the requirements of the IPR Act of 2008 and to ensure that the country, the university and the inventors/creators alike benefit from the proceeds from the intellectual property developed by its staff or students.</p> <p>Also, according to the IPR Act, the establishment of technology transfer offices at publicly funded institutions has now become mandatory. (As part of the implementation of the objectives of the IPR Act, institutions must, within 12 months of the IPR Act coming into effect, establish and maintain a TTO). The IPR Act also sets out to provide for more effective utilisation and management of intellectual property emanating from publicly financed research and development, to establish the National Fund and to provide for matters connected therewith.</p> <p>The purpose or intent of this policy is to provide a strategic and operational framework for the protection, management and commercialisation of intellectual property developed by staff, students and other parties at CPUT. This will ensure that the rights and obligations of all stakeholders are clearly outlined, in order to comply with the provisions of the applicable legislation and to reduce any potential for conflict between stakeholders.</p>
2.0 Scope	<p>In general, this Policy applies to all staff and students of CPUT involved in knowledge generation such as research, entrepreneurship and partnerships for technology transfer.</p>

	<p>More specifically, the Policy is applicable to all campuses of the University, to all temporary and permanent employees on the payroll of the University, to contract workers of the University, and to all registered students of the University. Employees and contract workers of the University are referred to collectively as “staff” or individually as “staff member” of the University in this document.</p> <p>The intellectual property covered by this Policy includes registerable and non-registerable inventions, trademarks, natural resources and products of biodiversity, trade secrets, copyrights (including software), designs and plant breeders’ rights as more fully set out below.</p>
3.0 Objectives	<p>The objectives of this policy are to:</p> <ul style="list-style-type: none">• Establish an enabling environment within which quality and innovative research, entrepreneurship, the forging of efficient partnerships with industrial partners, and technology transfer can take place.• 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;• 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;• ensure that the revenue that accrues to CPUT from intellectual property, are distributed in a fair and equitable manner that recognises the respective contributions of the inventors / creators, the university and all other stake-holders;• 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;• promote, preserve, encourage and assist scientific investigation and research;• ensure that any conflict of interest arising during the commercialisation of intellectual property is identified and dealt with fairly;• ensure the university complies with the IPR Act of 2008 where research is partly or wholly publicly financed.

DEFINITIONS	
4.0 Definitions and Acronyms	<p>“Author” means the creator of copyright protectable material in the first instance (the author MAY be the copyright holder, but this cannot be assumed).</p> <p>“BBBEE” means Broad-based black economic empowerment and the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies (as defined in section 1 of the Broad-Based Black Economic Empowerment Act, No 53 of 2003).</p> <p>“Biological materials” means any matter, or construct that interacts with biological systems, e.g. tissue, biomass, reagents, cell lines, plasmids, vectors, but not limited hereto.</p> <p>“Commercialisation” means the process by which any intellectual property is used, or may be adapted to be used for any purpose that may provide any benefit to society or commercial use.</p> <p>“Copyright” means the right in and to original works of authorship, such as books, text, articles, designs, monographs, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests and work papers, lectures, musical compositions, dramatic compositions, unpublished scripts, films, filmstrips, charts, transparencies, visual aids of any type, videotapes, audiotapes, cassettes, computer hardware, computer software, computer programmes, live video broadcasts, live audio broadcasts, programmed instruction materials, drawings, paintings, sculptures, photographs and other works of art.</p> <p>“Course and scope of employment” means the duties performed by an employee in order to fulfil the requirements of his or her job description.</p> <p>Creator of intellectual property is generally referred to as such if an invention is not registerable. Otherwise the term “inventor” is used. Inventor/creator is used when referring to the person who has invented or</p>

	<p>created are registerable or non-registerable piece of intellectual property</p> <p>“Employee” means a staff member whose services were obtained through a permanent or contractual agreement of employment, irrespective of such employee being employed on a part time or full time basis.</p> <p>“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.</p> <p>“Intellectual property” means to any work or creation that emanates from the mental efforts of staff or students that is capable of being protected by law from the use by any other party. It includes trademarkable, copyrightable, patentable, registerable or unregistrable creations or work.</p> <p>Intellectual property rights apply to intellectual property as defined above, of which the exclusive right of ownership, with the attendant rights and obligations, belongs by law to a natural or legal person.</p> <p>“Material transfer agreement” (MTA) means an agreement that governs the transfer of tangible research materials between two parties. Usually the recipient intends to use it for his or her own research purposes, but the material may also be transferred for commercial purposes. MTAs define the rights of the provider and the recipient with respect to the materials and any derivatives thereof.”</p> <p>“Nett revenues” means the revenue less the expenses incurred for intellectual property protection and commercialisation of the intellectual property</p> <p>“Ownership of copyright” means the copyright holder (owner), which may be the author in the first instance, or the owner of the copyrighted material in terms of section 21 of the Copyright Act.</p> <p>CPUT Non-Monetary Resource/s includes the deployment of CPUT</p>
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	<p>personnel, facilities, financial assistance, reassigned time, equipment, buildings, real property, tangible or intangible personal property, and all the use or consumption thereof. This definition is intended to be construed in the broadest possible sense.</p> <p>“Open-source software” means a programme in which the source code is available to the general public for use and /or modification from its original design free of charge, i.e. open. Open-source code is typically created as a collaborative effort in which programmers systematically improve upon the code over the course of time.</p> <p>“Patent” means any new product, process, appliance or composition that involves an inventive step and has application in trade industry (this includes any improvements made to such innovations).</p> <p>“Revenue” means all income and benefits, including non-monetary benefits emanating from intellectual property transactions, and includes all actual, non-refundable royalties, other grant of rights and other payments made to the CPUT or any other entity owned wholly or in part by it as a consideration in respect of an intellectual property transaction, but excludes a donation and "gross revenues" shall have a corresponding meaning.</p> <p>“Serendipitous knowledge” means intellectual property which 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.</p> <p>“Trademark” means any mark that distinguishes products or services from the same kind of products or services connected in the course of trade with any other party. Such marks are signs, designs, names, symbols or devices, or combinations thereof, adopted and used by a party to identify its goods or services and distinguish them from those goods or services made, manufactured, rendered or sold by others.</p>
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“CPUT trademark/s” means its logo and the name in its various forms as per corporate image guidelines (including abbreviations) or indications that suggest an association with CPUT. These trademarks are *inter alia* used on CPUT stationery, its web site, staff and student identification documents, electronic material, vehicles, etc.

ACRONYMS

IPR Act - Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008 **and its Regulations**

TTO – Technology Transfer Office (in terms of the IPR Act)

DST – Department of Science and Technology

NIPMO – National Intellectual Property Management Office (in terms of the IPR Act)

5.0 IP POLICY / PROCEDURE / PRINCIPLE

5.1 OWNERSHIP, RIGHTS, TITLES AND INTERESTS IN INTELLECTUAL PROPERTY:

5.1.1 Statement of ownership

The University claims ownership of all intellectual property devised, made, or created:

- by staff employed by the University in the normal course of their employment, whether appointed on a permanent or contract basis;
- by students in the course of their studies;
- by other persons engaged in study or research in the University who, as a condition of their being granted access to the University's premises or facilities, have agreed in writing that this shall apply to them; and
- by persons engaged by the University under contracts for services during the course of or incidentally to that engagement.

In addition:

- All inventions, expertise and trade secrets developed by a staff member during the period that he/she is in an employment relationship with the University and that relate to the field of specialisation in which the staff member has been appointed at the University, shall be deemed to have been developed in the normal course and scope of his/her employment at the University, unless the staff member can prove the contrary on the basis of an agreement, logbook or other evidential material.
- The University claims the rights, title and interest in any inventions developed by the staff member during the fulfilment of his/her employment obligations and for which an application for registration of a patent, model or plant breeder's right is filed within one year after termination of the staff member's employment relationship with the University.

The University's rights in relation to any particular piece of intellectual property may be waived or modified by agreement in writing with the third parties concerned (persons, companies, sponsors, government, funders,

grantors), within the provisions of the Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008. This Act, *inter alia*, allows for a third party to own intellectual property developed by the University only if the full cost of the research was paid for by the third party.

5.1.2 Ownership of Copyright

5.1.2.1 Ownership

Where work is covered by the Copyrights Act (Act 98 of 1978), the copyright normally resides with the author in the first instance, that is, the individual who has created the work.

Ownership of copyright is governed by section 21 of the Copyright Act, i.e. an employer can become the owner of works on which copyright exists in certain cases:

- “where a person commissions the making of ... and pays or agrees to pay for it in money or money’s worth, and the work is made in pursuance of that commission, such person shall be... the owner of any copyright” (section 21(1)(c);
- the work “is made in the course of the author’s employment by another person under a contract of service or apprenticeship, that other person shall be the owner of any copyright...” (section 21(1)(d).

It follows that work created by an employee shall be the sole and exclusive property of such employee, and the employee shall retain all rights, titles, and interests in the property, unless CPUT has expressly engaged the employee to create specified Intellectual Property within the employee’s employment contract, and which is currently the case.

5.1.2.2 Course content:

Course content shall include, *inter alia*, the following:

- all course material, including web-based modules, class notes, transparencies, test and examination papers and scripts;
- all other material for use in contact and distance education, and informal and non-formal tuition functions, e.g. community education;
- software, databases, and video and multimedia material developed by the staff member, whether for tuition purposes or not.

When staff members of CPUT (including academic, administrative or support staff, or any outside contractor) have been given a specific commission from CPUT (i.e. re-assigned time, faculty development grants, special project money, or other time or money granted specifically for development purposes) to create or enhance specific course content, the latter shall routinely require that all participants in the project waive in writing financial interest of and any financial interest in the product that might accrue.

The University is the copyright owner of all course content.

CPUT retains the right to make backup copies of this specific electronic course content in order to protect against accidental or other deletion or corruption.

All academic staff members are required to submit, on an annual basis, an electronic and hard copy of the course content for which they are responsible.

Course content may not be sold to students as prescribed text books (i.e. commercial publications), unless the Council has approved such prescribed material. The staff member may in such case not derive any royalties from the prescribed material.

5.1.2.3 Identification of copyrighted works

All copyrighted works (literary works, musical works (compositions), artistic works, cinematograph films, sound recordings, broadcasts, programme-carrying signals, published issues and computer programs (software) created by staff of the University in the execution of their employment

	<p>duties must be identified as follows:</p> <p>Copyright © [year] CPUT</p> <p>All rights reserved</p> <p>The year included in the declaration is the year in which copies of the work are made available to students or members of the public, or the work is otherwise published, for the first time.</p> <p>5.1.2.4 Artistic works (e.g. paintings), literary works (e.g. volumes of poetry), handbooks and musical works (compositions)</p> <p>The University does not lay claim to the rights (including moral rights) and income pertaining to these three categories of copyrights, even if the work in question should fall within the scope of a staff member's duties.</p> <p>Where material falling under these categories of copyrights becomes part of a text book or popular book that is prescribed to students, the University does not lay claim to income derived from copyrights in the work in question, provided that the existing academic structures of the University have authorised the prescribing of the book.</p> <p>5.1.2.5 Copyright created by students</p> <p>Students assign to the University their copyrights in all works that may be created in the normal scope and course of their study obligations. These include, <i>inter alia</i>, all presentations, assignments, test and examination scripts, papers, dissertations, theses, sound recordings and video recordings.</p> <p>5.1.3 Ownership of patents, plant breeders' rights and designs</p> <p>CPUT has contractual claim to the ownership of the patent if the work was produced in the normal course and scope of the employee's services. These rights, however, do not automatically reside with CPUT, as is the case with copyright, but the CPUT can rightfully stipulate in the employment contract that the ownership of patents be transferred to it (as the employer) as long as the work involved was created in the normal "course and scope" of employment.</p> <p>Section 59(2) of the Patents Act, (Act 57 of 1978) protects the employee's</p>
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rights in certain cases and reads as follows:

“(2) Any condition in a contract of employment which:

- (a) requires an employee to assign to his employer an invention made by him otherwise than within the course and scope of his employment; or
- (b) restricts the right of an employee in an invention made by him more than one year after termination of his employment, shall be null and void”.

The right of an employee to claim protection under the Act therefore depends upon whether the invention was made in the normal course and scope of his/her duties; if so, CPUT has a right to claim ownership.

Students are to be referred to the rules of the institution – acceptance of which they sign for upon registration – that regulate the relationship between themselves and the institution in this regard. Rule 4.8 of the General Code of Conduct for Students states that CPUT owns all work that is done, or contributed to, by a registered student in the course of his or her studies or research, should such work lead to the registration of a patent.

5.1.4 Joint staff and visiting researchers and contract workers

The ownership of intellectual property of staff members who are on a joint staff establishment of the University and an outside organisation shall be determined in accordance with the agreement between the University and that outside organisation.

The University claims intellectual property of visiting lecturers or researchers that is created or started during their visit to the University. Any other division of such intellectual property rights must be agreed beforehand in writing with the University. In return, the University shall compensate visiting lecturers and researchers in respect of income earned from intellectual property rights on the same basis as applicable to staff members of the University.

Upon expiration of their contracts, contract workers are explicitly prohibited from removing or taking with them any material, whether written, stored on computer disk, or in any other format which can be reduced to a recognisable form, unless such use is for private purposes only and has been authorised by CPUT.

5.1.5 Provisions regarding contract research, consulting, bursaries and student commissions

(a) Contract research for outside organisations

The ownership of intellectual property 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 intellectual property concerned.

Where a staff member or student of the University is commissioned by an outside organisation to conduct a study in which existing intellectual property, 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.

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 intellectual property 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 intellectual property that may be created as a result of such contract research shall therefore likewise vest in the University.

(b) Consulting undertaken by staff

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.

- 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.
- The University will, where possible, retain the copyright on the raw data created during research for such consultation work in order to, *inter alia*, encourage further research.

(c) Bursaries

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

(d) Student commissions

Where a student intends to submit an assignment or thesis or dissertation that corresponds to a commission of his or 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. The University and the student's employer shall then negotiate ownership and confidentiality related to the student's assignment/thesis/dissertation within the provisions of the applicable legislation listed in Section 3.

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

5.1.6 Ownership of CPUT proprietary trade marks

CPUT is the owner of any mark that carries its name, logo, abbreviation or similar indication that is associated with CPUT (including the name of the institution and logo). The use thereof by employees or students in the course of their activities or studies must comply with the prescribed rules and regulations (e.g. in respect of letterheads). The use of it for private purposes or gain by employees, students or members of the public is not permitted. The University reserves the right to license its name or registered trademarks to commercial partners.

5.1.7 Claims of ownership by staff or students

If a staff member claims that ownership of intellectual property vests in him- or herself, and can reasonably prove to the DVC: Research, Technology Innovation & Partnerships that such intellectual property has not been created in the normal course and scope of his/her employment, the University shall accept that the staff member is entitled to the ownership thereof. The University shall take into account whether or not the intellectual property originated in the course of consultation work, and if use was made of the University's infrastructure, the staff member's academic title or rank, and/or his/her employment relationship with the University.

If a student claims that ownership of intellectual property vests in him- or herself, and can reasonably prove to the DVC: Research, Technology Innovation & Partnerships that such intellectual property has not been created in the normal course and scope of his/her studies, the University shall accept that the student is entitled to the ownership thereof.

5.2 DEVELOPMENT OF INTELLECTUAL PROPERTY

5.2.1 Process

CPUT has a structured approach towards the development of IP, starting with the compulsory disclosure phase, whereafter a due diligence is conducted. If the due diligence report is positive the protection and commercialisation of IP will follow.

See **Schedule 1** for a schematic representation of the process.

The following paragraphs describe the process:

5.2.2 Identification of Intellectual Property and Disclosure

Compulsory identification and disclosure of IP must be made to the DVC: Research, Technology, Innovation & Partnerships within 90 days after a new and potentially useful product or process is conceptualised or when an unusual, unexpected or non-obvious research result, which is commercially viable, is obtained. An Invention Disclosure Form is available at the Office of the Director Technology Transfer and Industrial Linkages and must be used for this purpose. NIPMO to be advised.

5.2.2.1 IP emanating from Full Cost research projects

Where IP arises from a Full Cost research project, the process followed will be subject to the provisions of the applicable research or grant contract, however the identification and disclosure requirements remain compulsory.

5.2.3 Due Diligence

It is a function of all academic and research managers to identify intellectual property emanating within CPUT with a view to eventually protecting and exploiting it. TTO of CPUT undertakes to render the following services in this regard:

- a technological/creativity investigation to establish whether the IP/invention is original/unique/novel, using the invention disclosure form

	<p>as a basis/guideline;</p> <ul style="list-style-type: none">• evaluation of the team/researcher(s);• an estimate of its commercial potential;• a decision on registration of type(s) of IP;• an undertaking of the preliminary and eventually the final registration of the patent, design, trade mark or plant breeders right, as the case may be;• a market analysis, business plan, methods of exploitation (be it through licensing, sale of rights, establishing of partnerships, spin-off company), sources of financing, the search for partners, buyers, protecting and monitoring, and continuous support of the intellectual property after transfer;• any such services as may be prescribed by the NIPMO in terms of the IPR Act;• the putting in place mechanisms for identification, protection, development and management of intellectual property and process as undertaken here above. <p>Academic inventors and explorers who participate in the process of exploitation will be consulted continuously.</p> <p>5.2.4 Statutory protection of inventions</p> <p>The DVC: Research, Technology Innovation & Partnerships has the final say over the decision to obtain statutory protection for a particular invention.</p> <p>CPUT can, at its own discretion, decide to assign ownership of the intellectual property back to the inventor, for utilisation and application as he/she deems fit, in cases where the university decides not to proceed with the patenting of the invention.</p> <p>No employee or student may on his/her own initiative or via a third party or patent attorney, proceed with the preliminary or final registration of any</p>
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invention discovered in the normal course of his/her services or studies.

In all such cases where CPUT elects not to obtain statutory protection for the intellectual property, notify NIPMO of such decision. NIPMO may then in terms of Section 4(3) of the IPR Act acquire ownership in the intellectual property and, where applicable, obtain statutory protection for the intellectual property.

In the event where NIPMO also elects not to obtain statutory protection for the intellectual property, NIPMO may then in terms of Section 4(4)(b) of the IPR Act give the inventors the option to acquire ownership in the intellectual property and, where applicable, obtain statutory protection for the intellectual property.

5.2.5 Commercialisation

In all such cases where the IPR Act applies:

The commercialisation strategy for new intellectual property will be project specific. Commercialisation is a process by which any IP may be adapted or used for any propose that may provide any benefit to society or commercial use. CPUT may elect to make, sell, copy, adapt, apply, publish, develop, use, assign, license, sub-license, franchise, establish a start-up company or otherwise utilise the intellectual property for the purpose of generating financial or other commercial gains.

The commercialisation strategy will include confidentiality requirements, options for commercialisation pathways as set out below, risk assessment and management strategies, consideration of ethical issues, due diligence reports on potential or actual commercialisation partners, and, as appropriate, a business plan so as to minimise liability in the marketplace.

5.2.5.1 Licensing

All licensing deals must comply with the NIPMO's requirements, as fully described in paragraphs 7.2 to 7.6 of this Policy.

Furthermore, all license agreements shall comply with the following conditions, as also contained in section 11 of the IPR Act.

- a) Preference must be given to non-exclusive licensing;
- b) preference must be given to BBBEE entities and small enterprises;
- c) preference must be given to parties that seek to use the intellectual property in ways that provide optimal benefits to the economy and quality of life of the people of SA;
- d) exclusive licence holders must undertake, where feasible, to manufacture, process and otherwise commercialise within SA;
- e) each intellectual property transaction must provide the State with an irrevocable and royalty-free licence authorising the State to use or have the intellectual property used throughout the world for the health, security and emergency needs of SA;
- f) if a holder of an exclusive licence is unable to continue with the commercialisation of the intellectual property within the Republic during the duration of the licence and the recipient wishes to retain the exclusive licence, the recipient must furnish NIPMO with full reasons for retaining exclusivity;
- g) CPUT must supply the reasons contemplated in paragraph (f) above within 30 days of it becoming aware that the holder of the licence is unable to continue commercialising the intellectual property, or such extended time as may be agreed upon with NIPMO and;
- h) NIPMO may request that the exclusive licence contemplated in paragraph (f) be converted to a non-exclusive licence if the CPUT fails to furnish the reasons within the period contemplated in paragraph (g), or if NIPMO is not satisfied with such reasons, and
- i) Parties that made material contribution to the research and development giving rise to the intellectual property.

5.2.5.2 Start-up companies

CPUT is not obliged to establish start-up companies as part of its commercialisation strategy.

Star-up companies shall be established on a case by case basis if there is no logic licensing partner interested in the technology. Both inventors and CPUT shall share in non-monetary benefits.

	<p>The Technology Transfer & Innovation Support Office shall at least follow a process of consultation with the inventors to jointly develop a suitable strategy, failing which the parties shall revert to a licensing strategy.</p> <p>5.2.6 Commercialisation where the IPR Act DOES NOT APPLY</p> <p>In all such cases where the IPR Act does not apply, the intellectual property would have emanated from contract or grant research on a Full Cost basis. The provisions of the research or grant contract will then be used to develop a commercialisation strategy (see §5.2.2.1).</p>
6.0 DISTRIBUTION OF NETT INCOME DERIVED FROM EXPLOITATION OF IP	
	<p>6.1 Separate account</p> <p>A separate account will be kept for each intellectual property product commercialised by CPUT.</p> <p>6.2 Division of Revenues</p> <p>Revenues derived from the commercialisation of intellectual property are distributed as follows:</p> <p>6.2.1 Intellectual property product emanating from publicly financed research and development</p> <p>Revenues that accrue to the CPUT shall be distributed in accordance with section 10 of the IPR Act of 2008.</p> <p>Section 10(2) of the Act provides that inventors and their heirs are entitled to the following benefit sharing:</p> <ul style="list-style-type: none"> (a) at least 20% of the Revenues accruing to CPUT from such IP for the first million Rand of revenues, or such higher amount as the Minister may prescribe, and; (b) thereafter, at least 30% of the Nett Revenues accruing to CPUT from such IP.

6.2.2 Intellectual property product emanating from private funding on a Full Cost basis

CPUT undertakes to firstly ascertain that the project was indeed conducted on a Full Cost basis and that article 15(4) of the IPR Act apply, in which case the following benefit sharing principles shall apply, unless otherwise agreed to on a project-by-project basis, also taking into account;

- a) the non-monetary benefits that the parties may accrue or contribute, and;
- b) the specific provisions of the research agreement with the research partner, where applicable.

Step 1:

20% of the gross Revenue is allocated to CPUT for indirect expenses and services rendered by the TTO.

Step 2:

All direct costs relating to the process of protection are recovered (legal costs for registering a patent, etc.).

The balance of the income, after execution of steps 1 and 2 above, constitutes the Nett Revenue.

Step 3:

33.3% of the Nett Revenue is allocated to the inventor(s)/author(s) as personal income.

Step 4:

A further 33.3% of the Nett Revenue is allocated to the environment(s) where the inventor(s) resides, as follows:

- 15% of the nett Revenue is allocated to the researcher's research account for use by the inventor(s) in his/her research work;
- 10% of the nett Revenue is allocated to the department/centre in which the inventor(s)/author(s) resides;
- 8.3% of the nett Revenue is allocated to the dean/departmental head of the faculty/department in which the inventor(s)/author(s) resides.

	<p>These funds must be applied in the interest of research and may not be allocated to any individual for personal gain.</p> <p>Step 5: 33.3% of the nett Revenue is allocated to CPUT's Institutional Fund.</p> <p>Where there is any <i>bona fide</i> justification for a deviation from this formula (e.g. non-monetary benefits), a suitable agreement will be concluded beforehand by the relevant parties.</p> <p>6.2.3 Multi-media products and educational material in electronic format</p> <p>Step 1: As in 6.2.2 above</p> <p>Step 2: As in 6.2.2 above (the direct costs include, amongst others, the cost relating to special multi-media software and payment to authorise the use of audio-video clips).</p> <p>Step 3: The nett Revenue is allocated as follows:</p> <p>70% of the net income accrues to the developer in his/her personal capacity; the balance (30%) is divided as follows:</p> <ul style="list-style-type: none">• 1/3 to CPUT's Institutional Fund;• 1/3 to the dean/departmental head of the faculty/department in which the inventor(s)/author(s) resides (funds are to be earmarked for academic and/or research purposes);• 1/3 to the department in which the inventor(s)/author(s) resides.
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6.3 Continuation of right to Nett Revenue

The personal share of earnings awarded to an inventor for intellectual property continues to be allocated to him/her when he/she leaves the employ of CPUT or completes his/her studies. In the case of death, the earnings will continue to accrue to the estate of the relevant individual.

6.4 Waiver of income derived from copyrights

CPUT will not lay any claim to income that staff derives from copyrights (e.g. royalties) in the case of the publishing, printing or development of academic/aesthetic works such as textbooks, paintings or other copyrighted material.

6.5 Waiver of royalties for copyrighted material

The University does not lay claim to income derived from copyrights in the case of scientific or popular books, articles and other publications in journals, or other works of a scholarly or aesthetic nature created by a staff member.

6.6 Non-monetary contributions and benefits

There is thus no pre-determined formula that can be made applicable to non-monetary contributions and benefits. CPUT and its staff (the creators/inventors) may be involved in value adding processes during the commercialisation of IP. By means of the listed non-limiting examples, CPUT recognises the following contributions that may result in an expectation to share in non-monetary benefits:

- Access to R&D development funding;
- Access to machinery or services that are acquired or result from the R&D;
- Capacity development;
- Enterprise development;
- Equity in spin off companies;
- Facilities (e.g. the availing of UFS lab space, equipment etc);
- Job creation;

	<ul style="list-style-type: none"> • Participation in technology transfer processes; • Training; • Technology transfer <p>CPUT undertakes to reward IP creators from non-monetary benefits. The following principles shall apply:</p> <ol style="list-style-type: none"> a) Non-monetary benefits shall be negotiated on a case by case basis. b) CPUT shall, where so required, consult with auditors, patent attorneys and other suitable professional service providers to assess and determine the commercial value of the non-monetary benefits. c) All information shall be shared and disseminated amongst stakeholders (subject to confidentiality) in a fair and equitable manner to ensure that CPUT and inventors are negotiating as equal partners.
7	NIPMO
	<p>7.1 NIPMO Acknowledgement</p> <p>It is required by the IPR Act to include the prescribed statements in all intellectual property transactions that involve:</p> <ol style="list-style-type: none"> i) <u>local IP transactions in terms of Regulation 11 (4),or</u> ii) <u>Off-Shore IP transactions in terms of Regulation 12(4).</u> <p><i>“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.”</i></p> <p>7.2 Offshore Transactions</p> <p>It is a requirement of the IPR Act that CPUT must inform (and where applicable, obtain permission) NIPMO of its intention to conclude an IP</p>

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.

7.3 NIPMO approval for certain licensing agreements

NIPMO approval must be obtained for any licence in terms of which:

- a) The consideration payable by a licensee to CPUT is not determined on an arms-length basis,
- b) CPUT grants a licensee rights to commercialise its intellectual property on a royalty-free basis, or;
- c) The licensee falls into the categories referred to in paragraphs (a) and (b), and is granted a right to sub-licence on a consideration determined on an arms-length basis in the case of paragraph (a) or for a royalty in the case of paragraph (b).

7.4 NIPMO approval for assignment of IP

In all such cases where CPUT wishes to assign intellectual property governed by the IPR Act to an entity in the RSA, CPUT must obtain the prior approval of NIPMO, using Form IP4, as prescribed in the Regulations of the IPR Act.

In such application for approval the CPUT must:

- a) Demonstrate that such assignment is in the public interest, or
- b) Provide reasons as to why the intellectual property cannot be commercialised through other means such as an exclusive licence.

7.5 Exclusive licences

The following conditions shall apply in the event where the CPUT intends to grant an exclusive licence:

- a) The prospective licensee must be capable of developing intellectual property further where required and of undertaking the commercialisation thereof,
- b) The commercialisation of the intellectual property by the prospective licensee must be used for the benefit of South Africa,
- c) The irrevocable and royalty-free right of the State to use or have the

	<p>intellectual property used on behalf of the Republic, for health, security and emergency needs of the Republic in terms of the IPR Act is entrenched in the licence agreement, and;</p> <p>d) NIPMO's rights in terms of section 14 (4) of the IPR Act, if the intellectual property is not commercialised within reasonable period set out in the exclusive licence agreement.</p> <p>7.6 March in Rights</p> <p>In addition to the Government's march in rights as mentioned in paragraph 7.5 (c) above for exclusive licences, the Government also retain march in rights for local licensing agreements (Regulation 11(5)(b) and off-shore transactions (Regulation 12(6)(c).</p>
8	MATERIAL TRANSFER AGREEMENTS
	<p>Biological materials, are the most frequently transferred materials. Other types of materials, such as chemical compounds and even some types of software or data can also be transferred.</p> <p>MTAs can be used for any type of material, but with biological materials there are usually additional requirements, such as ethics clearance, or permits as prescribed by the Biodiversity Act of 2004. More specifically, MTAs for live animals or custom antibodies; human tissue; hazardous materials and/or select agents must, in addition to complying with this IP Policy, follow compliancy rules and procedures as prescribed by the CPUT's Research Ethics Committee, where applicable.</p> <p>In terms of this Policy <u>materials may only be transfer for research</u> and evaluation purposes. In all such cases where material is transferred for commercial purposes such transfer shall be in accordance with the provisions of this Policy, with the additional requirement that the envisaged licence agreement must contain appropriate material transfer provisions. Appropriate material transfer provisions include, but are not limited to the requirements as prescribed by the Biodiversity Act.</p>
	9.0 OFFICE RESPONSIBLE FOR IMPLEMENTATION
	<ul style="list-style-type: none"> • DVC: Research, Technology Innovation & Partnerships – Business plan

	<ul style="list-style-type: none"> • Director: Technology Transfer & Innovation Support – Implementation • Research & Innovation Community – Application • All line function management

10.0 ACCOUNTABILITY AND AUTHORITY:

Implementation:	<ul style="list-style-type: none"> • DVC: Research, Technology Innovation & Partnerships
Compliance:	<ul style="list-style-type: none"> • All Departments and units
Monitoring and evaluation:	<ul style="list-style-type: none"> • DVC: Research, Technology Innovation & Partnerships • Quality Management Directorate
Development/review:	<ul style="list-style-type: none"> • DVC: Research, Technology Innovation & Partnerships
Review and recommendation by Committee of Council	<ul style="list-style-type: none"> • DVC : Research, Technology Innovation & Partnerships • Quality Management Directorate • Council Committee
Approval authority:	<ul style="list-style-type: none"> • Council
Interpretation and advice:	<ul style="list-style-type: none"> • DVC : Research, Technology Innovation & Partnerships • Quality Management Directorate

11.0 WHO SHOULD KNOW ABOUT THIS POLICY?

All staff and students at CPUT should be made aware of this policy.

12.0 Policy/procedure implementation plan	To be developed by the TTO, in consultation with the NIPMO, as prescribed by the IPR Act of 2008.
13.0 Resources required	A Technology Transfer Office (TTO) must be set up.

14.0 Answers to FAQ	
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EFFECTIVENESS OF THE POLICY	
Performance Indicator(s):	

SCHEDULE 1

