



<b>INTELLECTUAL PROPERTY POLICY</b>	
<b>Policy owner</b>	<b>Executive Director: Research and Innovation</b>
<b>Division/Unit/Department</b>	<b>Technology Transfer Office</b>
<b>Date of initial approval</b>	<b>22 September 2021</b>
<b>Approved by</b>	<b>Council</b>
<b>Approval dates of revision/amendments</b>	
<b>Platform published on</b>	<b>UJ Website</b>

## **1. PREAMBLE**

- 1.1. In pursuit of its vision of being an international university of choice, anchored in Africa, dynamically shaping the future, and carrying out its mission of inspiring its community to transform and serve humanity through innovation and the collaborative pursuit and dissemination of knowledge, the University, as a higher education institution, creates IP.
- 1.2. The Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008 was promulgated in order to provide for more effective utilisation of IP emanating from publicly financed research and development.
- 1.3. The University strives to exploit its IP for the benefit of society with a view to creating value and achieving positive impact, to promote sustainability, grow the South African economy, improve quality of life and offer the opportunity for better livelihoods.

## **2. PURPOSE**

The purposes of this Policy are to:

- 2.1. Encourage and incentivise the development by University IP Creators of IP capable of creating value and making an impact in society;
- 2.2. Govern the ownership, management and exploitation of University IP in the best interests of the University, IP Creators and society; and
- 2.3. Ensure compliance with the statutory requirements of the Act.

## **3. SCOPE**

- 3.1. This Policy applies to IP developed by:
  - 3.1.1. University employees in the course and scope of their employment;
  - 3.1.2. Students and post-doctoral fellows in the course and scope of research carried out under supervision of a University employee and/or making use of University resources; and
  - 3.1.3. Others Bound by this Policy in the course and scope of work carried out at or on behalf of the University.
- 3.2. As an exception to section 3.1 above, copyrighted works which are associated with conventional academic work, such as articles, publications and books, and creative works (including literary, artistic and musical works), are excluded from the scope of this Policy. This exception will not apply, however, to works commissioned by the University or to works created with substantial use of University resources.

#### 4. DEFINITIONS AND ABBREVIATIONS

Unless the context indicates otherwise, words and abbreviations used in the Policy have the following meanings:

4.1	Act	The Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008 and includes any Regulations made in terms thereof.
4.2	BBBEE	Broad-based Black Economic Empowerment as defined in Section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003.
4.3	Commercialisation	The process by which IP is utilised to create value for the University, society and/or industry by means of an IP Transaction, and “Commercialise” has a corresponding meaning.
4.4	Full Cost	Means the full cost of undertaking research and development as determined in accordance with the Full Cost model for the University approved by NIPMO, and includes all applicable direct and indirect costs.
4.5	Intellectual Property	Any creation of the mind that is capable of being protected by law from use by any other person, whether in terms of South African law or foreign intellectual property law, and includes any rights in such creation.
4.6	IP	Intellectual Property.
4.7	IP Creator	A University employee, student, postdoctoral fellow or Others Bound by this Policy involved in the conception of IP and identifiable as such for the purposes of obtaining statutory protection and enforcement of IP rights, where applicable.
4.8	IP Transaction	Any agreement in terms of which IP rights are transferred to a third party, and includes (without limitation) licensing and assignment.
4.9	MEC	Management Executive Committee
4.10	MECCC	Management Executive Committee Commercialisation Committee.
4.11	NIPMO	The National Intellectual Property Management Office.
4.12	Others Bound by this Policy	Those who carry out work at or on behalf of the University who are not employees, students or post-doctoral fellows of the University, appointed under ‘Further Categories of Professor’ and ‘Additional Categories of Academic Appointment’ according to the Policy on Academic Categories, Appointment and Promotion

		Criteria and Processes).
4.13	Policy	This Intellectual Property Policy.
4.14	Revenues	All income and non-monetary benefits emanating from IP Transactions, including (without limitation) all actual, non-refundable royalties, dividends, income from sale of shares, other grant of rights and other payments made to the University or any other entity owned wholly or in part by the University as a consideration in respect of an IP Transaction, but excludes a donation and funding received by the University to be used for the purposes of a research project or for services to be provided by the University.
4.15	Small Enterprise	A small enterprise as defined in Section 1 of the National Small Enterprise Act 102 of 1996.
4.16	TTO	The University's Technology Transfer Office.
4.17	University	The University of Johannesburg.

## **5. OWNERSHIP OF IP**

- 5.1. IP will be owned by the University if developed as set out in section 3.1.
- 5.2. Where the University chooses not to retain ownership of any such IP:
  - 5.2.1. If the IP is governed by the Act, the University will offer the IP concerned to NIPMO, and if NIPMO elects not to take assignment of the IP, it will be offered to any party that may have funded its development, and thereafter to the IP Creator/s, on terms and conditions to be agreed between the University and the IP Creator/s and/or other party concerned, and subject to any existing agreements relating to such IP
  - 5.2.2. If the IP is not governed by the Act, the IP concerned may be released to the IP Creator/s or another party, on terms and conditions to be agreed between the University and the IP Creator/s and/or other party concerned, and subject to any existing agreements relating to such IP.

## **6. OBLIGATIONS OF IP CREATORS**

- 6.1. IP Creators must disclose IP to the TTO, in the format and according to any process that may be prescribed from time to time, as soon as is reasonably possible, but in any case within 90 days of creating it, and in all cases, before it is published or made public in any other way or form, which could render it being incapable of being legally protected.
- 6.2. IP Creators undertake to provide their full co-operation to the TTO (and, where applicable, other representatives of the University) to enable it to carry out on behalf of the University the obligations of the University under this Policy and in terms of the Act.

## **7. EVALUATION OF IP DISCLOSURES**

- 7.1. The TTO is responsible for evaluating IP disclosures in order to assess the potential for Commercialisation, develop an appropriate IP protection strategy and determine how best to create value from the IP concerned.
- 7.2. If the TTO decides to apply for protection of University IP, applications will be filed in the name of the University.

## **8. COMMERCIALISATION**

- 8.1. The University will Commercialise IP for the benefit of the University, the IP Creators, and society at large by way of any appropriate legal mechanism and lawful IP Transaction.
- 8.2. Decisions regarding Commercialisation are made by structures of the University and its officials in accordance with a Council-approved Delegation of Authority and in terms of institutional instruments, giving due consideration to actively advancing social benefits, maximising the positive impact of the IP concerned and avoiding any potentially harmful consequences on individuals, communities or the environment.
- 8.3. The University will select Commercialisation partners who carry out business responsibly and ethically.
- 8.4. In seeking Commercialisation partners, the University will strive to give preference to parties which meet the following criteria:
  - 8.4.1. BBBEE-compliant entities and Small Enterprises;
  - 8.4.2. Parties that seek to use the IP in ways that provide optimal benefits to South Africa;
  - 8.4.3. Parties capable of serving the needs of the African continent and the international community more broadly;
  - 8.4.4. Parties willing to make the benefits of the IP available to underserved and/or vulnerable communities in need of the benefits of the IP concerned, at an affordable price and on favourable terms;
  - 8.4.5. Parties that will utilise the IP to advance fundamental rights; and/or
  - 8.4.6. Parties that made a material contribution to the research and development giving rise to the resulting IP.
- 8.5. IP Creators are encouraged to participate in the Commercialisation process.

## **9. RIGHTS OF IP CREATORS AND THEIR HEIRS TO BENEFIT-SHARING**

- 9.1. IP Creators and their heirs are entitled to share in the Revenues that accrue to the University from exploitation of their IP.
- 9.2. IP Creators are entitled to the following minimum share of Revenues:
  - 9.2.1. At least 20% of the Revenues accruing to the University from the Commercialisation of such IP for the first one million rand of Revenues; and

- 9.2.2. Thereafter, at least 30% of the nett Revenues accruing to the University from Commercialisation of such IP (after deduction of expenses incurred for protection and Commercialisation of the IP concerned).
- 9.3. The University will distribute the balance of the Revenues to support (without limitation) the following:
- 9.3.1. Research and development;
  - 9.3.2. The operations of the TTO; and
  - 9.3.3. Statutory protection of IP.
- 9.4. The IP Creator's Faculty and Department will each be entitled to share in the balance of the Revenues referred to in section 9.3 above.
- 9.5. Where IP is developed by more than one IP Creator, the default position is that the joint IP Creators will share equally in Benefits, unless agreed otherwise between them in writing.
- 9.6. The University will make benefit sharing payments to IP Creators no later than 12 months from the date of the receipt of the Revenues by the University.
- 9.7. Where the University is to receive any non-monetary benefit as consideration in an IP Transaction, the value of such benefit will be determined and the share due to the IP Creator/s will be agreed with the IP Creator/s, prior to finalising the IP Transaction.
- 9.8. As a default, where an IP Creator takes equity in a company which commercialises University IP developed by the IP Creator concerned, the IP Creator's right to share benefits will be waived, unless otherwise agreed in writing between the University and such IP Creator.

## **10. CONTRACTS INVOLVING IP**

- 10.1. The University will negotiate in advance the inclusion of appropriate contractual terms, which are in compliance with the provisions of the Act, for all agreements in terms of which there is the potential for IP to be created, and/or for an IP Transaction to take place.
- 10.2. As a default, where IP is developed or paid for by the University, the University will own (or – where IP is co-developed with one or more other parties - co-own) such IP, but alternative arrangements may be negotiated where justified and in compliance with the provisions of the Act and other legislation (including, without limitation, when research is paid at Full Cost by a third party).
- 10.3. If IP is licensed exclusively or assigned to another party, the University will strive to obtain rights to continue to use the IP concerned for the purposes of teaching and research.
- 10.4. Where applicable and feasible, the University will strive in its IP Transactions to ensure that the IP is made accessible and affordable to all who can benefit from it.

## **11. IMPLEMENTATION**

This Policy may be supplemented from time to time with procedures and/or guidelines, to provide further guidance on implementation of the Policy.

## **12. COMPLIANCE**

The TTO is responsible for ensuring the University's compliance with the Act. University employees and students will co-operate with and/or support the TTO where required.

## **13. INTERPRETATION AND DISPUTE RESOLUTION**

Any question or dispute arising out of the operation or interpretation of this Policy will be referred in the first instance to the TTO. Should the TTO be unable to resolve the issue in question, it will be referred to the MECCC, who will make a final decision, for recommendation to the MEC for approval.

## **14. POLICY REVIEW**

14.1. This Policy will be reviewed every five years.

14.2. Where applicable, amendments of this Policy will be submitted to NIPMO for approval.