

WATER RESEARCH COMMISSION

POLICIES AND PROCEDURES			
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ABSTRACT

The aim of the WRC Intellectual Property Policy is to encourage research and innovation, clarify ownership of Intellectual Property rights, create opportunities for public use of WRC-funded innovations, and to provide for the equitable distribution of financial rewards and other benefits derived from Intellectual Property associated with the WRC-funded Projects.

The WRC established this Intellectual Property Policy ("This Policy") for the management of Intellectual Property and scholarly disclosures created within the scope of WRC-funded Projects to:

- Provide certainty and clarity as regards Intellectual Property emanating from WRC-funded Projects;
- Promote, preserve, encourage and aid scientific investigation and research;
- Provide organizational structure and procedure through which inventions and research results made in the scope of WRC-funded projects may be freely placed in the public domain, either through the channels of commerce, or by other means;
- Establish standards for determining the rights and obligations of the WRC, WRC Employees, and Contractors with respect to Intellectual Property and scholarly disclosures made or created in the course of WRC-funded Projects;
- Encourage, assist and provide mutually beneficial rewards to the WRC and its Contractors for the assignment of Intellectual Property rights under this policy;
- Ensure compliance with applicable laws, regulations and public policy; and
- Enable the WRC to record and keep records of all intellectual property and scholarly disclosures emanating from WRC-funded Projects.

This Policy also serves to regulate the Intellectual property ownership of all Intellectual Property created by the WRC Employees within the course and scope of their employment.

1. DEFINITIONS

- 1.1 Certain terms are used in this Policy with a specific meaning, as defined in this paragraph. These definitions do not necessarily conform to customary usage.
- 1.2 As used in this policy, the feminine gender includes the masculine gender, singular or plural, wherever appropriate.
- 1.3 In this Policy, unless the context indicates otherwise:

"BBBEE" means broad-based black economic empowerment as defined in Section 1 of the Broad-based Economic Empowerment Act, 2003 (Act No. 53 of 2003).

"Background Intellectual Property" means Intellectual Property rights belonging to the Contractor, a Researcher and/or a third party associated with The Project, which existed prior to commencement of the Project.

"Benefits" means contribution to the socio economic needs of the Republic and includes capacity development,

technology transfer, job creation, enterprise development, social upliftment and products, or processes or services that embody or use the Intellectual Property.

“Contractors” means all recipients that undertake research and development using funds allocated by the WRC. These are divided, for the purposes of this policy, into Institutions and private sector companies.

“Commercialisation” means the process by which Intellectual Property emanating from WRC-funded Project is or may be adapted or used for any purpose that may provide any benefit to society or for the purpose of commercial use on reasonable terms, and “commercialise” shall have a corresponding meaning.

“Disclosure” means the provision of full details of potential Intellectual Property contemplated in section 5 of the IPR Act.

“Exclusive licence” means any agreement in terms of which a third party is granted exclusive rights in a licensed territory or field of use to Intellectual Property under the Act subject to Government’s rights to such Intellectual Property in terms of the IPR Act.

“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 cost as may be prescribed.

“Institution” means any higher education institution contemplated in the definition of the “Higher Education Institution” contained in section 1 of the Higher Education Act, 1997 (Act No.101 of 1997) and any statutory institution listed in schedule 1 of the IPR Act.

“Intellectual Property” means 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, but excludes copyrighted works such as thesis, dissertation, article, handbook or any other publication which, in the ordinary course of business, is associated with conventional academic work;

“IP Creator” an inventor, co-inventor, creator or co-creator of Intellectual Property.

“Intellectual Property transaction” means any agreement in respect of Intellectual Property emanating from WRC funded project and includes licensing, assignment and any arrangement in which Intellectual Property rights are transferred to a third party;

“IPR Act” means Intellectual Property Rights from Publicly Financed Research and Development Act No. 51 of 2008.

“Nett Revenue” means the revenue less the expenses incurred for Intellectual Property protection and commercialization of the Intellectual Property, as may be prescribed.

“NIPMO” means the National Intellectual Property Management Office established by Section 8 of the IPR Act;

“Proper Disclosure” means the disclosure, by Institutions of full, clear and exact description of scholarly work emanating from WRC-funded Projects, to the WRC.

“Publicly funded research and development” means research and development using funds from the WRC but excludes scholarships and bursaries;

“Regulations” means any regulation made in terms of section 17 of the IPR Act.

“Researcher” means faculty, staff, and other persons employed or contracted by the Contractor, whether full- or part-time; and/or any other persons, including a student, a student employee, a graduate student, a post-doctoral fellow, and a non-employee (including visiting faculty, affiliate and adjunct faculty, industrial personnel)

“Resources” means any contribution to research and development, and includes contribution in the form of financial or human resources, materials and infrastructure to undertake research and development, relevant background Intellectual Property, equipment and facilities;

“Revenue” means all income and benefits, including non-monetary benefits, emanating from Intellectual Property transaction, and includes all actual, non-refundable royalties, other grant of rights and other payments made to the institution or any other entity owned wholly or in part by an institution as a consideration in respect of an Intellectual Property transaction, but excludes a donation.

“Scholarly disclosures” means copyrighted works such as theses, dissertations, journal articles, handbooks or any other publications which, in the ordinary course of business, are associated with conventional academic work.

“This Policy” means the WRC Intellectual Property policy.

“WRC Employee” means, all persons who are subject to an employment contract with the WRC including contract staff other than in the capacity of a WRC Research Manager responsible for the management of a particular WRC-funded Project where Intellectual Property is generated.

“WRC-funded Projects” means projects with well-defined outcomes related to research, development and are investments in water –centered innovation which are funded and awarded by the WRC and duly completed by the Contractor.

“WRC Research Manager” means WRC personnel responsible for the management of particular WRC-funded Projects.

2. BACKGROUND

2.1 The mandate of the WRC (Water Research Act, Act No. 34 of 1971) highlights the following functions to be carried out by the organisation:

- Promote co-ordination, co-operation and communication in the area of water research and development
- Establish water research needs and priorities
- Stimulate and funding water research according to priority
- Promote the effective transfer of information and technology
- Enhance knowledge and capacity building within the water sector

In fulfilling this mandate, research results, scientific advances and new creations should be disseminated to the public and may be subject to, or eligible for, Intellectual Property protection.

- 2.2 It is the policy of the WRC to give recognition to individual Researchers, to encourage the prompt and open dissemination of research outcomes through the publication of research results and to foster the use of Intellectual Property made or created within the scope of WRC-funded Projects for the common good.
- 2.3 The WRC strives to serve the common good by taking formal steps necessary to secure protection of the WRC's Intellectual Property. Industry, and other partners are encouraged to invest their resources to commercialise products and processes for public use or to enter into Intellectual Property transactions in respect of such Intellectual Property rights.
- 2.4 The stewardship of such Intellectual Property is consistent with the provisions of the IPR Act and the mandate of the WRC.
- 2.5 This document sets forth the WRC Policy concerning the assignment, protection and exploitation of intellectual property that emanates from WRC-funded Projects.
- 2.6 This document also sets forth the WRC Policy concerning scholarly disclosures emanating from WRC-funded Projects.
- 2.7 The aim of this Policy is to give recognition to Intellectual Property creators, to encourage the prompt and open dissemination of research results emanating from WRC-funded Projects, and to serve the public good by making the WRC technology available to industry and others for commercial exploitation.

3. GOALS

- 3.1 This Policy reflects the following goals:
 - 3.1.1 To create an environment that encourages the generation and dissemination of new knowledge by Researchers;
 - 3.1.2 To motivate Researchers to develop, record and report Intellectual Property and scholarly disclosures by providing appropriate recognition and administrative assistance to them.

4. APPLICATION

- 4.1 This Policy applies to all WRC Employees.
- 4.2 This Policy applies to all Contractors and Researchers who participate in WRC-funded Projects.
- 4.3 This Policy applies to Intellectual Property generated by public funding in terms of Section 14 of the IPR Act subject to state walk-in rights, upon failure by a recipient of such funding to commercialise or utilise the said Intellectual Property.

5. OWNERSHIP OF INTELLECTUAL PROPERTY

5.1 Ownership of Intellectual Property shall:

5.1.1 Shall vest in the WRC where Intellectual Property emanates from,

- 5.1.1.1** WRC-funded Projects where the Contractor is a private sector company, as in such cases, the funding is deemed to be on a Full Cost basis unless otherwise specified;
- 5.1.1.2** WRC-funded Projects where the Contractor is an Institution and the project is funded on a Full Cost basis; and
- 5.1.1.3** All activities within the course and scope of employment by WRC Employees.
- 5.1.1.4** Where another institution cedes or sells its intellectual property to the WRC.

5.1.2 Shall vest in the Contractor where,

- 5.1.2.1** The Contractor is an Institution and the project is not funded on a Full Cost basis; and
- 5.1.2.2** The Contractor is a private sector company with co-funding or co-contribution by the private company, and the contract specifically stipulates that the funding is not on a Full Cost basis.

5.2 Ownership of copyrighted works emanating from WRC-funded Projects shall:

- 5.2.1** Vest in the Institution for conventional academic work such as academic publications, academic theses and dissertations.
- 5.2.2** Vest in the WRC for all WRC publications including, but not limited to research and technology transfer reports.

5.3 The WRC may assign its Intellectual Property rights to Contractors that are private sector companies and/or third parties only if the assignment of such Intellectual Property:

- 5.3.1** Would enhance the transfer of the knowledge into useful applications for the public benefit;
- 5.3.2** Would assist the development of South African innovation and competitiveness;
- 5.3.3** Does not result in a conflict of interest;
- 5.3.4** Is consistent with the mandate of the WRC;
- 5.3.5** Is not in conflict with the WRC's obligations to third parties; and,
- 5.3.6** Is in accordance with the IPR Act and Regulations.

5.4 An assignment shall be subject to a separately negotiated written benefit sharing agreement between the assignee and the WRC.

6. RIGHTS AND OBLIGATIONS OF THE PARTIES

6.1 Rights and Obligations of the Contractor:

6.1.1 Contractors whose projects are funded on a Full Cost Basis shall:

- a. Disclose all background Intellectual Property relevant to the specific WRC-funded Projects vesting in itself, in Researchers or any other third party, as well as any pre-emptive or other existing rights, which may be relevant to the specific WRC-funded Projects;
- b. Identify and record all Intellectual Property created and/or made within the scope of WRC-funded Projects and notify the WRC within 90 days of such creation in writing;
- c. Execute all documents necessary for the assignment of the title and ownership of such Intellectual Property to the WRC and not disclose such information to any third party without the permission of the WRC; and
- d. Deposit computer data and/or a complete-readable source code of computer programs that vest in the WRC, at reasonable expense of the WRC and in accordance with written agreement between the parties.

6.1.1.1 Researchers are encouraged to provide the WRC with assistance as necessary throughout any commercialisation or Intellectual Property transaction processes.

6.1.1.2 Private sector company contractors shall retain the right to pursue related research and creative activities, to determine methodologies, draw conclusions, and to disseminate information, except to the extent that the private sector company contractor is required to do otherwise by considerations affecting the effective and proper protection of the WRC's Intellectual Property.

6.1.1.3 In the event that a WRC Employee is a co-creator/inventor of the Intellectual Property emanating from WRC-funded Projects, the Contractor must acknowledge the WRC Employee as an IP Creator and must provide for revenue/benefit sharing as contemplated in section 8.3 below.

6.1.2 Contractors whose projects are not funded on a Full Cost basis shall:

- a. Identify, record and disclose any potential Intellectual Property created within the scope of WRC-funded Projects in accordance with its obligations in terms of the IPR Act and Regulations. The Contractor shall, in relation to the generated Intellectual Property, furnish the WRC with copies of all relevant correspondence between itself and NIPMO;
- b. Subject to the IPR Act, apply for statutory protection before public dissemination of any information, in respect of Intellectual Property emanating from WRC-funded Projects, and notify the WRC. It shall furnish the WRC with a copy of such application. The Contractor shall continue to update the WRC of the progress of the application throughout the process;
- c. The WRC may, subject to provisions of the IPR Act and Regulations, assist a Contractor in commercialising the Intellectual Property;
- d. In the event that any Intellectual Property created and /or made within the scope of WRC-funded Projects is commercialised by the Contractor, the contractor shall furnish the WRC with a report on the status of the commercialisation; and
- e. The Contractor shall grant the WRC a non-exclusive and royalty free license to use the Intellectual Property for research, development and educational purposes including public dissemination of knowledge or for the health, security or emergency needs related to water security, provided that such use does not compromise the commercialisation of the IP by the recipient, and unless otherwise agreed between the WRC and the Contractor.

6.1.2.1 All Contractors shall, upon request provide the WRC with their defined Full Cost model as approved by NIPMO.

- 6.1.2.2 In the event that a WRC Employee is a co-creator/inventor of Intellectual Property emanating from the WRC-funded Projects, the Contractor must acknowledge the WRC Employee as an IP Creator and provide for revenue/benefit-sharing as contemplated in section 8.3 below.

6.2 Rights and Obligations of the WRC Employee:

- 6.2.1 The WRC Employee must disclose all Intellectual Property created by themselves in the course and scope of employment to the WRC within 90 days of such creation, including specific assistance in WRC-funded Projects.
- 6.2.2 The WRC Employee shall have the right to a benefit sharing arrangement as agreed (see clause 8.3 below) with the technologies commercialised in which the WRC Employee is an IP Creator.
- 6.2.3 In the event that a WRC Research Manager is a co-creator/inventor of Intellectual Property emanating from a WRC-funded Project managed by said WRC Research Manager, the WRC Research Manager shall cede his/her role as Research Manager for that WRC-funded Project.

6.3 Rights and Obligations of the WRC:

- 6.3.1 The WRC shall have the obligation to facilitate the effective utilisation of Intellectual Property rights emanating from WRC-funded Projects.
- 6.3.2 The WRC shall at all times have the rights to:
- a. Assess any and all information disclosed by private sector company contractors with a view to seek patent and any other protection to the Intellectual Property; and,
 - b. Call for any other information and/or documentation required by it for the assessment.
- 6.3.3 The WRC shall have the obligation to negotiate benefit sharing arrangements in respect of the WRC-funded Projects wherein a WRC Employee is an IP co-creator.

7. TECHNOLOGY TRANSFER & COMMERCIAL EXPLOITATION OF INTELLECTUAL PROPERTY EMANATING FROM WRC-FUNDED PROJECTS

- 7.1 The WRC encourages Intellectual Property transactions and the commercialisation of Intellectual Property created within the scope of WRC-funded Projects.
- 7.2 Such commercial exploitation shall aim to facilitate the widest possible dissemination of research results and enhance South African innovation and competitiveness subject to provisions of Section 9 below.
- 7.3 The WRC may collaborate with the Contractor in the commercial exploitation or further development of such Intellectual Property. The parties may enter into a separately negotiated written agreement defining their relationship, roles and responsibilities for such collaboration.
- 7.4 Researchers must provide assistance as necessary throughout the commercialisation process.
- 7.5 The WRC shall ensure that all offshore transactions of Intellectual Property are concluded in accordance with

provisions of the IPR Act and Regulations.

- 7.6 Any agreement to commercially exploit Intellectual Property created within the scope of WRC Funded-Projects shall be subject to this Policy and shall be in conformity with the IPR Act and the Regulations.

8. REVENUE DISTRIBUTION

- 8.1 The revenue distribution in cases where the WRC owns the Intellectual Property emanating from WRC-funded Projects by Contractors upon successful commercialisation of the Intellectual Property shall be decided upon on a case-by-case basis after due consideration of all the relevant factors.

- 8.2 Relevant factors which may determine the distribution of Nett Revenue to private sector company contractors include:

8.2.1 The background Intellectual Property contributed by the WRC and/or the private sector company contractor;

8.2.2 Any Intellectual Property rights of third parties;

8.2.3 The complexities of a specific technology;

8.2.4 The obligations undertaken by Researcher(s) in the commercialisation agreement; and,

8.2.5 Any other relevant considerations.

- 8.3 All WRC Employees who are acknowledged as IP creators in WRC-funded Projects are entitled to:

8.3.1 An equal share as all other IP creators of the WRC-funded Projects as in the case of WRC-funded Projects; and

8.3.2 A benefit sharing arrangement which may be monetary or non-monetary, the terms of which must be agreed between the WRC and the WRC Employee upon creation of the Intellectual Property.

9. DISCLOSURE AND DISSEMINATION OF SCHOLARLY DISCLOSURES

- 9.1 In terms of proper disclosure procedures, prior permission must be obtained for the presentation, publication or release of research results by:

9.1.1 The Contractor from the WRC in the case of funding on a Full Cost basis; and

9.1.2 In the case where protection of Intellectual Property is required, the owner thereof must inform the WRC of when it is appropriate to publish research results emanating from WRC- funded projects.

- 9.2 Contractors shall provide the WRC with an auditable list of the following outputs emanating directly or indirectly from WRC-funded Projects:

- 9.2.1 All Department of Higher Education and Training accredited research outputs;
- 9.2.2 Non-accredited research outputs such as articles, books or chapters in books; and,
- 9.2.3 Published conference proceedings.

9.3 Contractors shall provide the WRC with an auditable list of all students:

- 9.3.1 Involved in a WRC funded or co-funded project; and,
- 9.3.2 Who graduated with a post-graduate qualification from a South African institution whose research emanated from, or was funded or co-funded by, the WRC.

9.4 This information referred to under sections 9.2 and 9.3 shall be in a format stipulated by the WRC annually for the duration of the project and for a period of 2 years after the completion of the project.

9.5 Nothing in this Policy shall be construed as affecting the right to publish research results, except that a delay in publication must be observed by the relevant party if such a delay is necessary to permit the effective and proper protection of the Intellectual Property and in the case of research and development conducted on a Full Cost basis, with permission in writing from the WRC.

9.6 A refusal to grant permission for the presentation, publication or release of research results shall, as a general rule, not exceed six (6) months from the date of the initial request for the disclosure of the Intellectual Property and after proper statutory protection measures are put in place if there is a need.

9.7 All disclosed material and research reports provided to the WRC will be placed in the WRC library and made available to the public at large.

9.8 The WRC will also provide the general public with copies of such research reports on a cost-recovery basis.

10. IMPLEMENTATION

10.1 The responsibility for interpreting this Policy and for resolving disputes concerning the interpretation and implementation of this Policy resides with the WRC executive, subject to other policies adopted by the WRC.

10.2 Primary responsibility for the protection, commercialisation and management of Intellectual Property resides with the Business Development division of the WRC in terms of this Policy.

10.3 The WRC will develop and review procedures as required to implement and manage the content of this policy.

10.4 This Policy may be implemented or supplemented in any way consistent with its terms and those of other WRC policies.

10.5 Contractors and Researchers have a responsibility to:

- 10.5.1 Adhere to the principles embodied in this Policy;
- 10.5.2 Sign, when so requested by the WRC, the WRC's Intellectual Property Policy Acknowledgement Form;

- 10.5.3 Create, protect, and use Intellectual Property according to the applicable South African Intellectual Property laws and WRC policies; and
- 10.5.4 Where applicable, co-operate with the WRC in securing and protecting Intellectual Property, including cooperation in obtaining patent, copyright, or other suitable protection for such Intellectual Property and in legal actions taken in response to infringement.
- 10.6 It is the responsibility of the Contractor to inform Researchers and all other relevant parties whose rights in Intellectual Property may be limited by this Policy of such limitations in writing and in advance of the commencement of a WRC-funded Project.
- 10.7 Contractors have the responsibility to properly consider, disclose and manage any possible conflicts of interest arising from and/or related agreements for WRC-funded Projects. Contractors should promptly disclose such conflict of interest in full to the parties concerned and resolve such conflicts before entering into an agreement with the WRC to undertake a WRC-funded Project.
- 10.8 In the event that exceptional circumstances require any exception to the terms of this Policy, such exceptions shall require the written consent of the CEO of the WRC.