



# MANGAUNG

AT THE HEART OF IT ALL

## INTELLECTUAL PROPERTY POLICY

### MANGAUNG METROPOLITAN MUNICIPALITY

POLICY TITLE:

**INTELLECTUAL PROPERTY POLY**

COUNCIL ITEM:

DIRECTORATE: CORPORATE SERVICES

DATE APPROVED:

SUB-DIRECTORATE:

EFFECTIVE DATE:

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## **DEFINITIONS AND INTERPRETATIONS**

In this Policy, unless the context indicates otherwise –

- “City or Municipality”** Means Mangaung Metropolitan Municipality, duly established by Provincial Notice No. 155 of 2016 as published in the Provincial Gazette, Free State Province of 22 July 2016, issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and with its entities.
- “Commercialisation”** Means the gaining of a financial, economic and/or a social benefit from the Intellectual Property generated by or for Mangaung Metropolitan Municipality, which includes the Protection, Managing, Development and Licensing of the IP
- “Delegated Authority”** Means a person to whom authority has been delegated, in terms of the delegations of powers policy of Mangaung Metropolitan Municipality, for purposes that relate to executing a function specified in this policy framework and in accordance to the provisions of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)
- “Employee”** This shall mean permanent, fixed term or temporary employee of Mangaung Metropolitan Municipality.
- “Intellectual Property (IP)”** Means patents, designs, works of copyright (Including software and literary works), trademarks, brands, logos, proprietary information, know-how, trade secrets, databases, goodwill and domain names

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## **1 INTRODUCTION**

- 1.1 This document sets out the City's Policy relating to IP, and includes its approach to the development, protection, and management of the City's IP and advantages that can be gained from such IP.
- 1.2 The City should manage and enforce its IP rights in order to control legal risks.
- 1.3 The purpose of this Policy is to create an awareness of the legal risks associated with the City's IP, and to set out a policy for the City in managing, protecting and licensing its IP on a uniform basis. It also provides guidelines for dealing with the IP parties other than the City in order to avoid the risk of infringing such IP.

## **2 PROBLEM STATEMENT**

- 2.1 The City recognises that the development, protection and management of its IP in all its forms is critical to its continued development and brand. It wishes to take a proactive approach to such development, protection and management.
- 2.2 A policy is required in order to achieve clarity regarding the IP that is owned by the City and to provide guidelines for the managing of the City's existing IP. The creation of IP for the City by Employees, service providers and third parties needs to be regulated as well. Furthermore, the City wishes to set out its approach towards the use of third parties' IP.
- 2.3 The City recognises that, due to the nature of this public institution, there are wide scale operations in place with a significant base of human capital contributing to the development of the City's IP. The contribution to the development of the IP of the City includes and involves employees, Service Providers and other persons and entities. It is therefore relevant that the whole organisation's value chain is considered and governed by this IP Policy in order to protect all aspects of the City's IP and its rights therein.

## **3 PURPOSE**

The purposes of this IP Policy are as follows:

- 3.1 **Awareness:** The City must foster awareness regarding IP as well as the associated benefits and risks and ensure that the City's IP is identified. The policy will assist in managing, protecting and licensing the City's intellectual property on a uniform basis. It also provides guidelines for dealing with the intellectual property of parties other than the City in order to avoid the risk of infringing such intellectual property.

- 3.2 Protection: Once identified, IP must be assessed and, if appropriate, protection should be obtained by way of registration in terms of the relevant legislation.
- 3.3 Ownership: Where possible, the City must seek to own IP created by or for the City.
- 3.4 Management: The City must maintain and manage its IP.
- 3.5 Commercialisation: The City must strive to obtain commercial and societal benefit from its IP, subject to the provisions of applicable law as set out in clause 13 below.
- 3.6 Valuation: Valuations of the City's IP must be obtained, where deemed appropriate by the Delegated Authority.
- 3.7 Enforcement: The City must be vigilant and protect its IP.
- 3.8 Respect: The City must ensure that the IP rights of third parties are respected and that infringement is prevented and prohibited.
- 3.9 Innovation: By offering an IP Policy the City intends to encourage and promote a spirit of creation and innovation among its staff and citizens.

#### **4 DESIRED OUTCOMES**

The desired outcomes of this IP Policy are to ensure that there is:

- 4.1 creation of an environment that encourages and expedites awareness of and dissemination of knowledge regarding IP created by the staff of the City;
- 4.2 protection, conservation and leverage for the benefit of the City of each instance of IP created by the City administration and its collective professional capacity;
- 4.3 creation of a framework that would enable and help to facilitate access to IP within the innovation framework pursued by the City;
- 4.4 recognition of the City's ownership of its IP;
- 4.5 a system of ensuring that both IP and other products of research and innovation efforts at the City are, where applicable, made available to the public through an efficient, fair and timely process of technology transfer and within a properly governed innovation framework;
- 4.6 promotion, preservation, encouragement of and assistance to research and development, in order to foster the creation of new IP within the City;

- 4.7 an establishment of standards for determining the rights and obligations of the creators of IP, with respect to IP created at the City;
- 4.8 a means of ensuring compliance with relevant law;
- 4.9 a document which encourages innovation and the development of IP;
- 4.10 a method for ensuring that all stakeholders of the City are aware of the various manifestations of IP together with their legal and regulatory implications;
- 4.11 a term of reference for the creation of an IP Committee and maintenance of standard operating procedures in order to ensure the transparency of IP management and associated practices and the accessibility thereto by all interested parties.

## 5 STRATEGIC ALIGNMENT

- 5.1 This Policy aligns with the following strategy documents that inform the City's priorities:

- 5.1.1 National Development Plan (NDP), 2013

The National Development Plan (NDP) emphasises the need for innovation to drive the knowledge economy. IP plays an integral role in advancing innovation, research and development

- 5.1.2 Organisational Development and Transformation Plan (ODTP), (2016) - Priority 6: Leveraging technology for progress;

- 5.1.3 Integrated Development Plan

This Policy is aligned to the strategic focus area of the well managed and an Opportunity City as is articulated in the IDP. To use innovation and IP to grow an inclusive economy.

- 5.2 Regulatory context pertaining to IP specifically:

- 5.2.1 Trademarks Act, 1993 (Act 194 of 1993);

- 5.2.2 Patents Act, 1978 (Act 57 of 1978);

- 5.2.3 Designs Act, 1993 (Act 195 of 1993);

- 5.2.4 Copyright Act, 1978 (Act 98 of 1978);

- 5.2.5 Intellectual Property from Publicly Financed Research and Development Act, 2008 (Act 51 of 2008).

- 5.2.6 Protection of Private Information Act. 2013

## 6 POLICY PARAMETERS

- 6.1 This Policy applies to all City's employees, councillors, where applicable service providers and general public within the jurisdiction of the City. It regulates the development, protection, management, use and commercialisation of the City's IP (subject to compliance with applicable laws) as well as the City's use of third parties' IP.
- 6.2 This Policy is a binding policy and strategy for the effective protection and orderly management of the City's IP from a legal risk perspective and the ongoing use of such IP. However, it is not intended to prescribe the use of the City's corporate imagery, including its brands, trade names, logos or slogans for purposes of marketing, advertisement, sponsorships or public relations, which is regulated by way of a separate policy.

## 7 POLICY DIRECTIVES

### 7.1 General approach

- 7.1.1 The City must, where relevant or necessary, seek to protect its IP by way of registration and enforcing its rights in such. The City may adopt standard operating procedures to provide guidance in this regard.
- 7.1.2 The Delegated Authority will be responsible for exercising control over the implementation of this Policy.
- 7.1.3 Prior written approval must be obtained from the Delegated Authority in matters where IP registration is sought.
- 7.1.4 The City will adhere to all applicable laws, policies, procedures and/or contracts in relation to IP.
- 7.1.5 The City shall ensure that:
- 7.1.5.1 the City's agreements with Employees and Service Providers contain IP clauses that give effect to the purpose of this Policy;
  - 7.1.5.2 contracts between the City and Service Providers contain appropriate IP clauses that protect the City and its data, where relevant;
  - 7.1.5.3 an IP Committee is established and responsible for reporting requirements as determined by the City from time to time.

### 7.2 Ownership of the City's IP

- 7.2.1 As far as possible, all logo, coat of arms, templates, innovations, city data, documents, designs and reports created for or by the City by Service Providers or employees are IPs that should be registered in

the name of the City and all rights related to such IP must vest in the City.

- 7.2.2 The rights in any IP created by the employees and service providers in the course of their services to the City will be subject to the laws of South Africa and the provisions of the relevant employment contracts and services agreements, as the case may be. As such, the ownership of IP rights must be addressed in contracts of employment and agreements relating to the procurement of services that may result in the creation of IP and such agreements should always be in writing.
- 7.2.3 The City will ensure that its human resources policies, employment contracts, supply chain management and service agreements are aligned to this Policy.
- 7.2.4 Employees and service providers of the City are responsible for reporting and disclosing any significant IP developed in the course of their services, in order for the City to evaluate such IP and consider protecting it. Such reporting and disclosure must take place in accordance with the usual, applicable reporting procedures within the City and as may be documented in standard operating procedures.
- 7.2.5 In some instances, Service Providers may wish to retain the rights in IP used or created by them in the course of providing services to the City. The Delegated Authority's guidance should be sought in such situations in order to determine the most suitable approach to be followed.
- 7.2.6 Where research is fully or partially funded by the City:
- 7.2.6.1 the City's standard operating procedures in this regard must be followed;
  - 7.2.6.2 the relevant agreement should provide that the City will own the IP, where appropriate;
  - 7.2.6.3 the Delegated Authority should be consulted for guidance if it is intended that the City will not own the relevant IP;
  - 7.2.6.4 recognition should be given to the City in the manner prescribed in the City's standard operating procedures.
- 7.2.7 The City's copyright notices must be used in relation to the City's works of copyright in order to notify the public of the City's ownership of the relevant copyright and in order to act as a deterrent against unlawful copying. The notices will be available from the City's Communications Office.
- 7.2.8 Academic research by employees is encouraged, however all information obtained by employees during their research remains IP of the municipality should be used for academic research only and be treated confidentially

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### 7.3 IP from Publicly Funded Research and Development

- 7.3.1 The City has certain responsibilities in terms of the provisions of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (the “IPR Act”). These responsibilities relate to IP emanating from publicly funded research and development (“R&D”), and include the duty to:
  - 7.3.2 identify IP emanating from publicly funded R&D and deciding whether or not the City should retain ownership in or obtain statutory protection for the IP;
  - 7.3.3 in compliance with all applicable laws, identify, protect, develop, manage and commercialise IP arising from publicly funded R&D;
  - 7.3.4 provide measures and procedures for the disclosure of know-how and to ensure that know-how is appropriately protected before it is published or publicly disclosed;
  - 7.3.5 negotiate and enter into IP transactions with third parties, with a view to commercialising the City’s IP (subject to and in compliance with the provisions of all applicable laws); and
  - 7.3.6 put in place mechanisms to assess, record and report to the National Intellectual Property Management Office on the benefits for society of publicly financed research conducted in by the City.
  - 7.3.7 To the extent that the IPR Act applies to any IP created by the City, the City will comply with the provisions of the IPR Act. Consequently, the City will provide training and information to Employees in order to make them aware of the IPR Act’s requirements and bear them in mind during IP development and any related transactions.

### 7.4 Confidentiality

- 7.4.1 The City’s trade secrets, know how, proprietary information and confidential information must be protected with utmost care. If such information is disclosed to Service Providers or persons who are not Employees, such disclosure must be regulated by appropriate confidentiality agreements. Confidentiality notices must be displayed on all documents that contain such information.
- 7.4.2 The City should ensure that any third-party confidential information is not disclosed to unauthorised parties, whether through negligence or wilful conduct.
- 7.4.3 The City will take disciplinary steps against employees who disclose the City’s confidentiality information without authorisation. If a Service



Provider disclose confidential information without authorisation, the City may enforce its contractual rights against the Service Provider.

## **8 ROLEPLAYERS AND STAKEHOLDERS**

- 8.1 The development of IP may entail inflows and outflows of knowledge across departmental and organisational boundaries in order to accelerate internal innovation for the City and its stakeholders. The City recognises the role played by Employees, individual inventors, innovators as well as public and private institutions in the development of IP.
- 8.2 Executive management, with the support of the City's Council, will play a key role in providing leadership in relation to the implementation and enforcement of this IP Policy. Further role players will include all parties forming part of the City's supply chain which extends to educational institutions with research and development capacity, entrepreneurial entities and individual inventors/innovators. All of them constitute important role players and have a stake in the fostering of an IP culture in the City.
- 8.3 The most important group of stakeholders will extend to the citizens, visitors and investors of the City who contribute to the conception (invention) and value-adding (innovation) of ideas which are relevant (involves immediacy of need and utility value), appropriate (involves fitness for purpose), and functional (involves outcomes with efficiency gains).
- 8.4 In certain instances, the City may collaborate with outside stakeholders. IP may be created in the course of such collaboration. Appropriate agreements should be concluded with the stakeholders to regulate the ownership of any resultant IP.

## **9 IP COMMITTEE**

- 9.1 Due to the inherent risks involved in the management of IP, an IP Committee will be formed. The Delegated Authority will, from time to time, determine the membership of the IP Committee.
- 9.2 The IP Committee shall:
  - 9.2.1 coordinate the management and protection of the City's IP as contemplated in this Policy;
  - 9.2.2 meet quarterly and additional meetings may be held as determined by the IP Committee from time to time;
  - 9.2.3 determine its own agenda and shall ensure the effective management of IP within such framework;

- 9.2.4 shall oversee management of the City's IP;
- 9.2.5 monitor the implementation of and the ongoing adherence to this IP Policy; and
- 9.2.6 delegate roles and responsibilities in relation to the City's IP.

## **10. IP DATABASE**

The City will create and maintain a central IP database, which shall be accessible by the IP Committee. The IP database shall include:

- 10.1 a list of the City's trade mark applications and registrations, their current status and any applicable renewal dates;
- 10.2 all patents and other statutory IP, their current status and any applicable renewal dates.
- 10.3 The IP database will be updated on a continuous basis, in accordance with such procedures as may be prescribed by the IP Committee.

## **11. DOCUMENT MANAGEMENT**

All contracts, policies and documents relating to the City's IP should be stored and managed appropriately in order to protect the City's interests, monitor the performance of obligations and manage risks.

## **12. CONTRACTUAL RELATIONSHIPS**

The City will ensure that IP is considered in all contracts and related negotiations, and that principles such as the following will be considered in this regard:

- 12.1 Confidentiality;
- 12.2 IP ownership – the City should retain ownership of IP developed by or for the City, where appropriate.
- 12.3 The Delegated Authority should be consulted in situations where it is intended that the City will not retain ownership of such IP;
- 12.4 The terms and conditions relating to use of the City's IP and all applicable restrictions;
- 12.5 Enforcement and protection of the City's IP.

## **13. COMMERCIALISATION AND COMPLIANCE WITH LAWS**

- 13.1 The City recognises that value should be derived from its IP, including through commercialisation. However, IP should be commercialised

only in compliance with and to the extent permitted by the provisions of applicable law, including:

- 13.1.1 Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (“MFMA”);
  - 13.1.2 Municipal Public Private Partnership Regulations;
  - 13.1.3 Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);
  - 13.1.4 the National Treasury’s Municipal Service Delivery and PPP Guidelines;
  - 3.1.5 the Asset Transfer Regulations, 2008 published pursuant to the MFMA.
  - 3.1.6 Protection of Personal Information Act, 2013.
- 13.2 The City shall formulate operational guidelines in order to ensure that IP commercialisation takes place in compliance with the provisions of the law mentioned above, including the provisions of section 164 of the MFMA. This process will be steered by the Delegated Authority. For purposes of formulating the guidelines within the parameters of the legislative framework, the fundamental premise must be that the core functions of the City should remain unaffected while commercialisation may be pursued as a by-product thereof.
- 13.3 When licensing its IP to third parties, the City may wish to do so on a commercial or royalty free basis, but always only to the extent permitted by the law referred to in paragraph 13.1 as well as the City’s guidelines and the conclusion of agreements in this regard.
- 13.4 The licensing of the City’s IP should be regulated by written terms and conditions. The IP Committee may issue standard templates in this regard from time to time.
- 13.5 The City should be recognised as the developer or owner of the IP that is commercialised or licensed.
- 13.6 Where IP is licensed to third parties, the City should seek to limit its liability relating to use of such IP.
- 13.7 In the course of licensing or commercialisation, the relevant IP may be improved, adapted or developed further. The City should maintain ownership of the developments or improvements, where appropriate.
- 13.8 The Delegated Authority should be consulted in situations where it is intended that the City will not retain ownership of such IP.

- 13.9 The Delegated Authority may develop guidelines in relation to the valuation of the City's IP, in order for such IP to be recorded as a strategic asset in the City's financial accounts.

## **14 THIRD PARTY IP**

14.1.1 The City wishes to ensure that third party's IP rights are respected in order to prevent disputes, litigation, claims, reputational harm and other undesirable consequences.

14.1.2 Accordingly, it must be ensured that the City always uses third party's IP in a lawful manner. Unauthorised copying of works is prohibited, and appropriate licences should be in place if third party IP is used. Special care should be taken to ensure that software is used lawfully.

## **15 TRAINING**

Training and educational campaigns will be conducted from time to time in order to create awareness regarding IP and to foster an IP sensitive culture within the City. This will focus on issues such as the identification, value and protection of IP as well as the use of third parties' IP. Employees should be skilled trained by service providers in all services that require the transfer and use of IP to the ownership of the City.

## **16 EXTENSION OF THIS POLICY'S PRINCIPLES**

The City is involved in other entities or may own an interest in them. As far as possible, the City will seek to ensure that such entities implement policies that are aligned with applicable principles contained in this Policy and that their IP is managed accordingly.

## **17. IMPLEMENTATIONS BY DEPARTMENTS**

The Corporate Services directorate may adopt standard operating procedures in order to implement this Policy and provide more detailed direction within the context of their operations.

## **18. MONITORING, EVALUATION AND REVIEW**

18.1 The City shall ensure that:

18.1.1 standard controls are in place to monitor an overall compliance and adherence to the processes contained in this IP Policy and to monitor the City's IP portfolio;

- 18.1.2 the City's use of third-party IP is lawful and complies with all applicable terms and conditions.
- 18.2 The City shall take a proactive approach to ensure that its IP rights are not infringed. The IP rights of the City shall be enforced in appropriate forums, where the infringement of said rights is detected and further steps are deemed appropriate.
- 18.3 The IP Committee will submit bi-annual reports to the relevant committee established in terms of section 79 of the Municipal Structures Act, 1998.
- 18.4 The policy will be reviewed as is required.

## **19. UNIFORMS FOR EMPLOYEES**

- 19.1 All employee uniforms given and with logo are the property of the Municipality. No new uniform should be provided to an employee who has not produced and given back the old uniform.
- 19.2 The employee of the Municipality may not give or donate any uniform given to him/her and bearing the logo of the any other third (3<sup>rd</sup>) parties and should an employee do so he/she will have breached this Policy and may be charged for misconduct.
- 19.3 No third parties are allowed to wear or give or donate any uniform of the Municipality that will have been given to the employee of the Municipality. If such a third party wears or gives the uniform to any other person, the Municipality may recover the uniform and hold such person liable for loss or damages and the legal action may further be taken against that person for potentially exposing or bringing the name of the Municipality into disrepute.

## **20. DOMAIN NAME**

The City should register its website and exchange system in the government domain. Transitional Measures should be introduced to move the City towards the government domain.

## **21. REVIEW**

This policy will be reviewed from time to time when there is a need.

## **22. POLICY OWNERSHIP**

The directorate of Corporate Services is the owner of this policy.

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**23. BY-LAWS TO EFFECT TO POLICY**

The Municipality must adopt a By-law that will give effect to the provisions of this Policy.

**24. COMMENCEMENT**

This Policy comes into operation on the date of approval by the Municipal Council.