



science & innovation

Department:
Science and Innovation
REPUBLIC OF SOUTH AFRICA



NATIONAL INTELLECTUAL PROPERTY
MANAGEMENT OFFICE
An initiative of the Department of Science and Technology

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PRACTICE NOTE 4.2 OF 2021

REFERRAL OF INTELLECTUAL PROPERTY TO NIPMO ON AN IP1 FORM

Following the implementation of the National Intellectual Property Management Office (NIPMO) Knowledge Information Management (KIM) System, it was deemed necessary to amend this Practice Note to update the process to be followed when referring an IP1 Form to NIPMO. As of date of signature of this updated Practice Note, NIPMO will only accept IP1 Forms which are submitted through the KIM system submission process. Based on the reasons provided for the referral, IB Portal evidence became a requirement to accompany the referral.

The Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act 51 of 2008) (IPR Act) came into effect on 2 August 2010. The object of the IPR Act is to make provision that intellectual property (IP) emanating from publicly financed research and development (R&D) is identified, protected, utilised, and commercialised for the benefit of the people of the Republic, whether it be for a social, economic, military or any other benefit.

The IPR Act also makes provision for recipient¹ that:

- (a) **prefer not to retain ownership of their IP**; or
- (b) **not to obtain statutory protection for the IP**, to obtain **prior approval** from the NIPMO **before** abandoning or releasing such IP into the public domain.

OBJECTIVE

This Practice Note sets out:

- (a) what **factors to consider** when making a choice to refer IP to NIPMO on an IP1 Form (Referral of Intellectual Property and Release Form); using the KIM system,
- (b) what **documentation to submit**;
- (c) **how to complete** an IP1 Form;
- (d) factors that NIPMO consider prior to **acquiring ownership** of the referred IP;
- (e) consequences of **failure to refer IP** to NIPMO; and
- (f) NIPMO's **timeline** for processing an IP1 Form.

Please do not hesitate to contact NIPMO (Naomi Ngoasheng; Naomi.ngoasheng@nipmo.org.za; (012 844 0221)/ IB Portal, (curator@innovationbridge.info) should you have any questions.

Jetane Charsley
Acting Head: NIPMO
Date: 16 April 2021

¹ Section 1 of the IPR Act: "**recipient**" means any person, juristic or non-juristic, that undertakes research and development using funding from a funding agency and includes an institution.

Lefapha la Saense le Theknoloji • uMnyango wezeSayensi neTheknoloji • Muhasho wa Saints na Thekinoodzhi • Departement van Wetenskap en Tegnologie • Kgoro ya Saense le Theknolotši • Ndzawulo ya Sayense na Theknoloji • LiTiko leTesayensi ne Theknoloji • iSebe lezeNzululwazi neTeknoloji • UmNyango wezeSayensi neTheknoloji

Batho Pele - putting people first

1. GLOSSARY OF TERMS

Disclosure	Means the provision of full details of potential intellectual property contemplated in section 5 of the IPR Act (as defined in section 1 of the IPR Act)
Guideline 1	Guideline 1.3 of 2019: Interpretation of the Scope of the Intellectual Property Rights from Publicly Financed Research and Development Act (No. 51 of 2008): Setting the Scene
Guideline 4	Guideline 4.2 of 2019: Intellectual Property Ownership
IP1 Form or Form IP1	Referral of Intellectual Property and Release Form
IP7 Form or Form IP7	Intellectual Property Status and Commercialisation Report
Referral	Formal submission of IP1 Form for the referral and/or release of intellectual property to NIPMO for approval
The Innovation Bridge Portal	An online platform that aims to create linkages and networks between regional, national, and international innovators, industry and public and private technology developers and commercialisation funding partners. Please see link: (www.innovationbridgeportal.info)

2. LIST OF ACRONYMS USED

HEI	Higher Education Institution
IP	Intellectual Property (see IPR Act and Guideline 1)
IPR	Intellectual Property Rights (see Guideline 1)
IPR Act	Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act 51 of 2008)
NIPMO	National Intellectual Property Management Office
OTT	Office of Technology Transfer
R&D	Research and Development (see Guideline 1)
SDG	Sustainable Development Goals

3. INTRODUCTION

3.1 Management obligations and disclosure duties

The IPR Act prescribes certain management obligations and disclosure duties. When dealing with disclosures, sections 5(1)(c) to (e) and (h) of the IPR Act is relevant as set out below:

SECTION OF THE IPR ACT	MANAGEMENT OBLIGATIONS/ DISCLOSURE DUTIES	RESULTANT DOCUMENT
Section 5(1)(c)	A recipient must ensure that personnel involved with R&D make a disclosure to it within 90 days of identification by such personnel of possible IP and before the IP is made public.	Information disclosure Form (<i>internal document of institution</i>) Not submitted to NIPMO
Section 5(1)(d)	A recipient must assess IP to determine whether it merits statutory protection and, where appropriate , apply for and use best efforts to obtain statutory protection in its name .	IPR application document (<i>e.g. provisional patent application</i>) Not submitted to NIPMO
Section 5(1)(e)	A recipient must refer disclosures for which it elects not to retain ownership or not to obtain statutory protection to NIPMO within 30 days of it making such an election.	IP1 Form Must be submitted to NIPMO
Section 5(1)(h)	A recipient must report to NIPMO twice a year , on all matters pertaining to the IP contemplated in the IPR Act, including all IP from which it elects to obtain statutory protection .	IP7 Form Must be submitted to NIPMO

3.2 When an IP1 Form MUST be completed and submitted to NIPMO

SECTION OF THE IPR ACT	REQUIREMENT	RESULTANT DOCUMENT
Section 5(1)(e)	A recipient must refer disclosures for which it elects not to retain ownership or not to obtain statutory protection to NIPMO within 30 days of it making such an election.	IP1 Form using KIM system
Regulation 2(4)	Where the recipient does not wish to obtain statutory protection or retain ownership of IP which can be protected through statutory protection AND: (a) has commercialisation prospects; OR (b) can contribute to socio-economic needs; OR (c) wish to place in the public domain; the recipient must make a referral to NIPMO.	IP1 Form using KIM system

3.3 Reasons for referral on IP1 Form

As part of submitting an IP1 Form to NIPMO, the recipient must select the *"reasons for referral"*. The options available are: 1) Put into the public domain; 2) Not statutorily protectable; 3) Abandonment of IP: Unfavourable Search and/or examination; and 4) Abandonment of IP: Lack of market and commercial potential.

Depending on the selected reasons for referral certain actions are required from the recipient and set out below:

Selected reason for referral	Action required from recipient	NIPMO action
Put into the public domain	IP should be placed or advertised on the Innovation Bridge Portal for the purpose of making it available to any party that might be interested in such IP 45 days prior to submitting an IP1 form on the KIM system.	Advertised on IB portal for 45 days. If no interest is received, NIPMO automatically approves and process application with 15 days.
Not statutorily protectable	IP submitted directly on the KIM system with necessary supporting documentation.	Submitted to NIPMO. NIPMO has 60 days to process.
Abandonment of IP: Unfavourable Search and/or examination	IP submitted directly on the KIM system with necessary supporting documentation.	Submitted to NIPMO. NIPMO has 60 days to process.
Abandonment of IP: Lack of market and commercial potential	IP should be placed or advertised on the Innovation Bridge Portal for the purpose of making it available to any party that might be interested in such IP 45 days prior to submitting an IP1 form on the KIM system.	Advertised on IB portal for 45 days. If no interest is received, NIPMO automatically approves and process application with 15 days.

To note: If a recipient wants to abandon the IP application in a specific jurisdiction or the entire IP application process but still intend on retaining the ownership of the IP, such decision need not be submitted to NIPMO for approval on an IP1 Form. Recipients are requested to submit an updated IP7 form during the reporting of IP7 forms to NIPMO.

3.4 Required action from NIPMO indicated on IP1 Form

As part of submitting an IP1 Form to NIPMO, the recipient must select the *"required action from NIPMO"*. The options available are: 1) Approval to put in the public domain; 2) Approval to abandon IP; or 3) Waiver of rights to IP creators.

In the event that the institution selects to waiver the rights to the IP creators, **NIPMO request that an IP4 Form (local assignment of IP), instead of an IP1 form**, be completed and submitted via the KIM system.

4. ADVERTISING ON THE INNOVATION BRIDGE PORTAL

4.1 What is the Innovation Bridge Portal (IB portal)?

The Innovation Bridge Portal is an online platform that aims to accelerate connections and collaborations within the National System of Innovation and encourage greater interaction between innovators, industry, and government in support of the commercialisation of technologies. The IB portal can be used to acquire more information regarding the innovations and business connections. The users have the ability to choose from the list of opportunities posted on the IB portal which provides access to information and people. It features, at a minimum, built-in content management functionality including document management and search system.

4.2 Why do I place IP on the IB portal?

As mentioned above, in the instance where a recipient selects, as its "*reasons for referral*" - "*Put into the public domain*" or "*Abandonment of IP: Lack of market and commercial potential*" the recipient is required to place that IP/disclosure on the IB Portal **45 days prior** to submitting an IP1 form on the KIM system. Should there be no interest in the IP, the recipient can proceed to submit an IP1 Form on the KIM system. NIPMO will automatically approve and process the submission within a maximum of 15 days (pending evidence of advertisement on IB portal being provided).

4.3 Quick guide on registering on the portal

Step 1: Visit www.innovationbridge.info

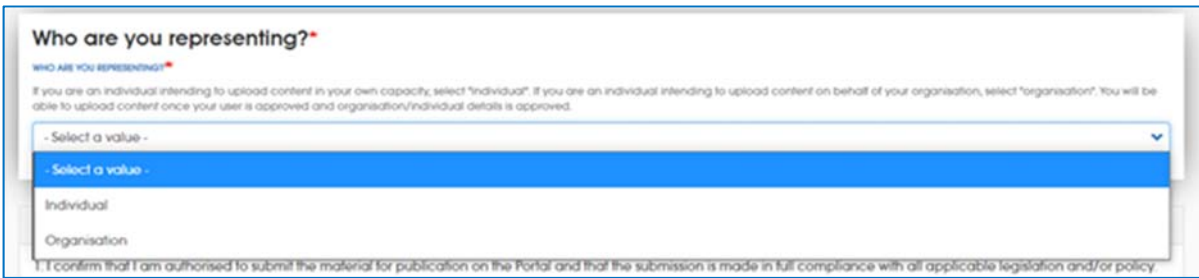


Step 2: Select register

Step 3: Complete the required fields. To note: You can register as either representing an organisation or individual.

The image is a screenshot of the "CREATE NEW ACCOUNT" page on the Innovation Bridge portal. At the top, there are three buttons: "Log in", "Create new account", and "Reset your password". Below these is the heading "CREATE NEW ACCOUNT". The main section is titled "Account Details*" and contains three required fields: "EMAIL ADDRESS*", "USERNAME*", and "IN WHICH COUNTRY ARE YOU LOCATED?". Each field has a text input box. Below the "EMAIL ADDRESS*" field, there is a small note: "A valid email address. All emails from the system will be sent to this address. The email address is not made public and will only be used if you wish to receive a new password or wish to receive certain news or notifications by email." Below the "USERNAME*" field, there is a small note: "Several special characters are allowed, including space, period (.), hyphen (-), apostrophe ('), underscore (_), and the @ sign." Below the "IN WHICH COUNTRY ARE YOU LOCATED?" field, there is a dropdown menu with the text "Choose some options".

Step 4: Select representing individual or organisation



Who are you representing?*

WHO ARE YOU REPRESENTING?*

If you are an individual intending to upload content in your own capacity, select "individual". If you are an individual intending to upload content on behalf of your organisation, select "organisation". You will be able to upload content once your user is approved and organisation/individual details is approved.

- Select a value -

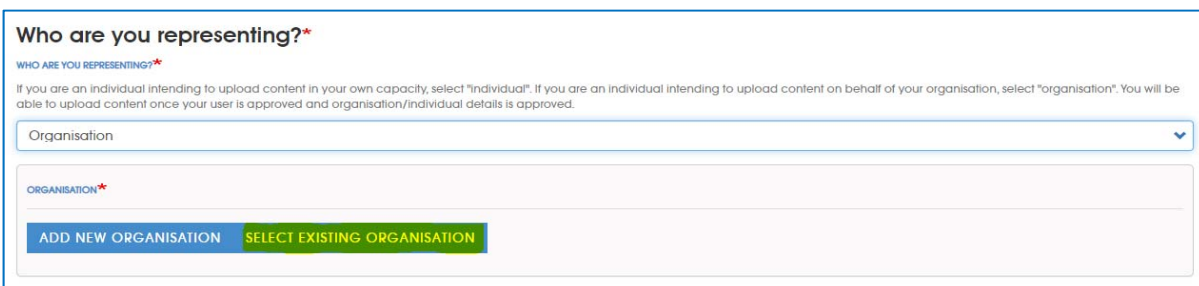
- Select a value -

Individual

Organisation

I confirm that I am authorised to submit the material for publication on the Portal and that the submission is made in full compliance with all applicable legislation and/or policy

Step 4.1: Selecting an existing organisation on the IB Portal



Who are you representing?*

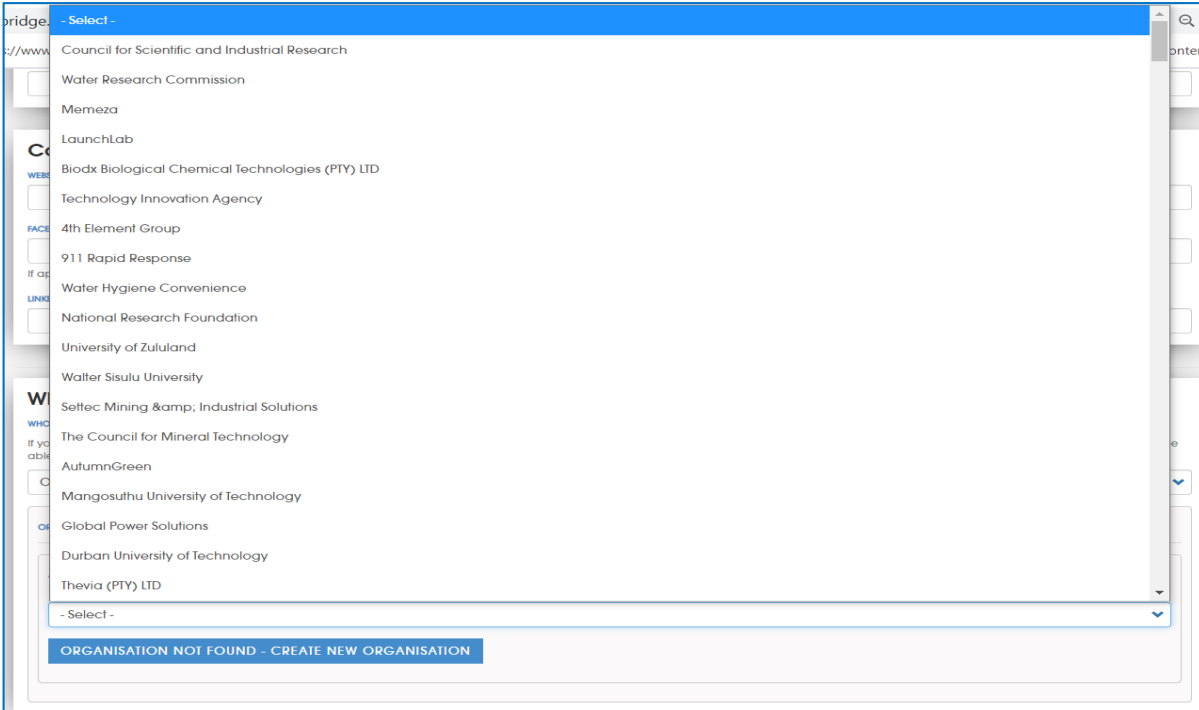
WHO ARE YOU REPRESENTING?*

If you are an individual intending to upload content in your own capacity, select "individual". If you are an individual intending to upload content on behalf of your organisation, select "organisation". You will be able to upload content once your user is approved and organisation/individual details is approved.

Organisation

ORGANISATION*

ADD NEW ORGANISATION SELECT EXISTING ORGANISATION



Who are you representing?*

WHO ARE YOU REPRESENTING?*

If you are an individual intending to upload content in your own capacity, select "individual". If you are an individual intending to upload content on behalf of your organisation, select "organisation". You will be able to upload content once your user is approved and organisation/individual details is approved.

Organisation

ORGANISATION*

ADD NEW ORGANISATION SELECT EXISTING ORGANISATION

- Select -

Council for Scientific and Industrial Research

Water Research Commission

Memeza

LaunchLab

Biodx Biological Chemical Technologies (PTY) LTD

Technology Innovation Agency

4th Element Group

911 Rapid Response

Water Hygiene Convenience

National Research Foundation

University of Zululand

Walter Sisulu University

Settec Mining & Industrial Solutions

The Council for Mineral Technology

AutumnGreen

Mangosuthu University of Technology

Global Power Solutions

Durban University of Technology

Thevia (PTY) LTD

- Select -

ORGANISATION NOT FOUND - CREATE NEW ORGANISATION

Step 4.2: Adding new organisation

Who are you representing?*

WHO ARE YOU REPRESENTING?*

If you are an individual intending to upload content in your own capacity, select "individual". If you are an individual intending to upload content on behalf of your organisation, select "organisation". You will be able to upload content once your user is approved and organisation/individual details is approved.

Organisation

ORGANISATION*

[ADD NEW ORGANISATION](#) [SELECT EXISTING ORGANISATION](#)

Who are you representing?*

WHO ARE YOU REPRESENTING?*

If you are an individual intending to upload content in your own capacity, select "individual". If you are an individual intending to upload content on behalf of your organisation, select "organisation". You will be able to upload content once your user is approved and organisation/individual details is approved.

Organisation

ORGANISATION*

Organisation details

FULL NAME OF YOUR ORGANISATION*

TELL US ABOUT YOUR ORGANISATION

LOGO

Upload your organisations corporate logo (this is extremely important in order to allow you to make use of our brochure functionality)

Upload requirements

[Choose File](#) No file chosen

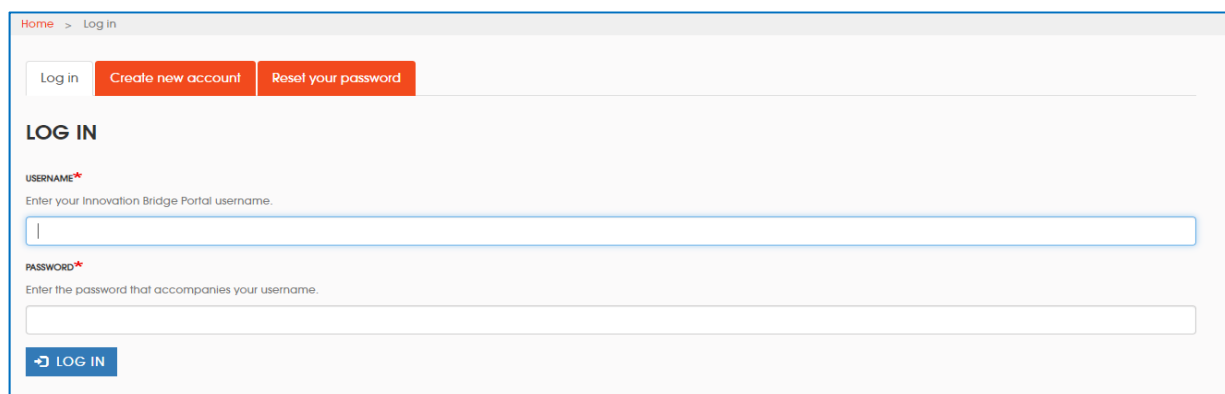
Step 5: Complete the required fields.

Step 6: Agree to the terms of use and create your account.

Step 7: An email informing you that the account has been submitted for approval to the Curator will immediately be sent to your preferred mailbox. It may take up to 24 hours for the Curator to approve your account, upon which you will receive an email confirming the approval.

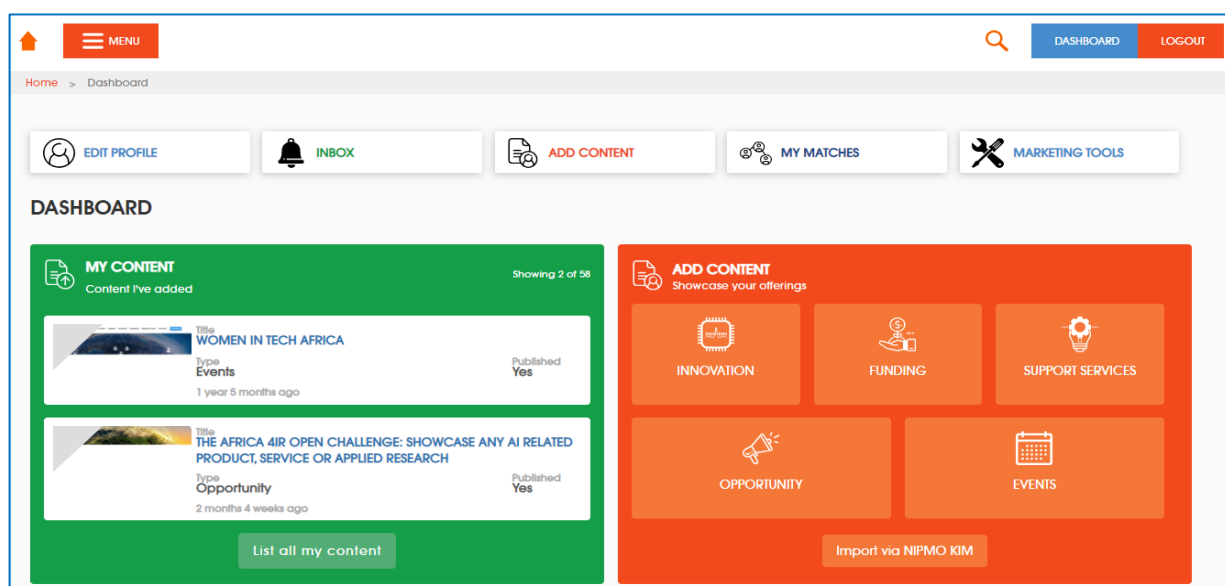
4.4 Quick guide on uploading an innovation

Step 1: Login via www.innovationbridge.info and you will be directed to your user dashboard.



The screenshot shows the login page of the Innovation Bridge Portal. At the top, there is a navigation bar with 'Home' and 'Log in' links. Below this, there are three buttons: 'Log in', 'Create new account', and 'Reset your password'. The main section is titled 'LOG IN'. It contains two input fields: 'USERNAME*' and 'PASSWORD*'. The 'USERNAME*' field has a placeholder text 'Enter your Innovation Bridge Portal username.' and the 'PASSWORD*' field has a placeholder text 'Enter the password that accompanies your username.' Below these fields is a blue button labeled 'LOG IN'.

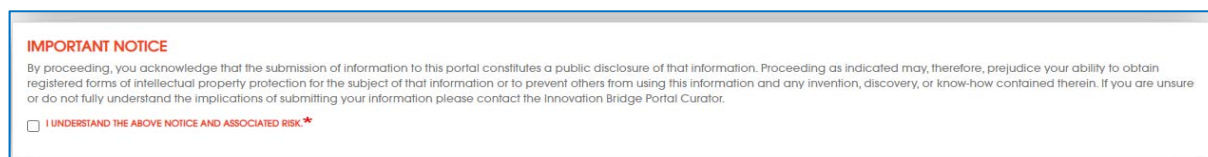
Step 2: Click on Add Content, then select Innovation OR Click on innovation under the orange block.



The screenshot shows the dashboard of the Innovation Bridge Portal. At the top, there is a navigation bar with 'Home' and 'Dashboard' links. Below this, there are five buttons: 'EDIT PROFILE', 'INBOX', 'ADD CONTENT', 'MY MATCHES', and 'MARKETING TOOLS'. The main section is titled 'DASHBOARD'. It contains two main blocks. The left block is titled 'MY CONTENT' and shows a list of content items. The right block is titled 'ADD CONTENT' and shows a grid of options: 'INNOVATION', 'FUNDING', 'SUPPORT SERVICES', 'OPPORTUNITY', and 'EVENTS'. There is also a button 'Import via NIPMO KIM' at the bottom of the 'ADD CONTENT' block.

Step 3: Complete the Innovation details form

Step 4: Read and accept the disclaimer



The screenshot shows a disclaimer box titled 'IMPORTANT NOTICE'. The text inside reads: 'By proceeding, you acknowledge that the submission of information to this portal constitutes a public disclosure of that information. Proceeding as indicated may, therefore, prejudice your ability to obtain registered forms of intellectual property protection for the subject of that information or to prevent others from using this information and any invention, discovery, or know-how contained therein. If you are unsure or do not fully understand the implications of submitting your information please contact the Innovation Bridge Portal Curator.' Below the text is a checkbox labeled 'I UNDERSTAND THE ABOVE NOTICE AND ASSOCIATED RISK.*'.

Step 5: Review the content and submit for curation OR save the content as a draft for later submission.

☒ SAVE FOR LATER ☐ SEND FOR CURATION ☐ PREVIEW

5. SUSTAINABLE DEVELOPMENT GOALS

The Sustainable Development Goals are the blueprint to achieve a better and more sustainable future for all. They address the global challenges we face, including those related to poverty, inequality, climate, environmental degradation, prosperity, and peace and justice. All Goals are interconnected, and it is crucial that each Goal and target are achieved by 2030. These goals are included in the South African National Development Plan to measure the service delivery milestones as tabled by the Government².

In aligning with the 2030 Agenda for Sustainable Development, as part of the motivation to NIPMO, the recipient is requested to include any of the SDG(s) for which the IP seeks to address/solve.

The 2030 Agenda consist of the following 17 Goals:

1. No Poverty. Economic growth must be inclusive to provide sustainable jobs	2. Zero Hunger. The food and agriculture sector
3. Good Health and Well-Being. Ensuring healthy lives	4. Quality Education
5. Gender Equality	6. Clean Water and Sanitation
7. Affordable and Clean Energy	8. Decent Work and Economic Growth
9. Industry, Innovation and Infrastructure	10. Reduced Inequalities
11. Sustainable Cities and Communities	12. Ensure sustainable consumption production patterns
13. Climate action	14. Life below water
15. Life on land	16. Peace, Justice and Strong Institutions
17. Partnerships for the Goals.	

6. HOW TO COMPLETE AN IP1 FORM ON THE KIM SYSTEM

Please follow the following steps to successfully submit an IP1 form on the KIM system:

- 6.1 Log onto KIM system (<https://www.kim.nipmo.org.za>);
- 6.2 Click IP Management (under modules) located on the left side menu;
- 6.3 All NIPMO IP Forms will be displayed, select IP1 then click create new submission;
- 6.4 Select the IP7 reference number associated with the submission. The IP7 Form ref number is mandatory to allow the system to pull up all the information relating to that specific IP7 form;
- 6.5 Reason(s) for referral should be provided. Please select the reason/s for the referral by ticking any box which is relevant to the submission;
- 6.6 Please select the action required from NIPMO. *Reminder:* In the event that the institution selects to waiver the rights to the IP creators, NIPMO request that an IP4 Form (local assignment of IP), instead of an IP1 form, be completed and submitted via the KIM system;
- 6.7 Supporting documentation: Recipients are required to submit a cover/motivation letter (mandatory) and should further upload any other supporting documents that the recipient may deem necessary to submit – please refer to paragraph 7 below for compulsory/optional documentation to submit; and
- 6.8 Proceed to click submit.

² www.statssa.gov.za/MDG/SDGs_Country_Report_2019_South_Africa.pdf

7. DOCUMENTATION TO SUBMIT WHEN REFERRING IP ON AN IP1 FORM

A recipient must³ make a referral to NIPMO on an IP1 Form using the KIM system and additionally set out in its motivation the factors it considered in making the choice to refer the IP to NIPMO (see Annexure A), along with the necessary supporting documentation.

A non-exhaustive list of supporting documentation is provided below:

DOCUMENT	COMPULSORY / OPTIONAL
1. Prior art search report 2. International preliminary examination authority's report 3. International search report and written opinion 4. Report on prior art damaging novelty	Compulsory document(s) if reason for referral as stated on an IP1 Form is " <i>not statutorily protectable</i> " or " <i>unfavourable search/examination</i> "
5. Evidence from the IB Portal (IP was advertised for a minimum of 45 days)	Compulsory document if reason for referral is " <i>lack of market and commercial potential</i> "
6. Funding agreement with partners that have contributed funds 7. Report on the status of the R&D project	Optional document if reason for referral is " <i>put into public domain</i> "
8. Current or pending litigation connected to the referred IP	Optional document if reason for referral is " <i>put into public domain</i> " or required action from NIPMO is " <i>approval to abandon IP</i> ".

8. NIPMO MAY ACQUIRE OWNERSHIP OF THE REFERRED IP

The IPR Act makes provision in terms of Section 4(3)⁴ and Regulation 2(6)⁵ for NIPMO to acquire ownership of the IP referred to it by the recipient. NIPMO in deciding whether or not to acquire ownership of IP and where possible obtain statutory protection must consider the following factors:

- (a) **Any prejudice that may be suffered by the State** if no statutory protection for the IP is obtained;
- (b) the **norms, culture and practices of the technology sectors** in which such IP applies;
- (c) the **development required** to make commercialisation of the IP viable;
- (d) the **ability and appropriateness** of such IP to be protected in any territory; and
- (e) the **interest of any private entity or organisation**⁶ that has provided funding towards the R&D giving rise to the IP.

Should NIPMO decide to acquire ownership of the referred IP, the obligation is on the recipient, as

³ In terms of Section 4(2)(a) and Section 5(1)(e).

⁴ Section 4(3) of the IPR Act: NIPMO may, within the prescribed period, after considering the reasons provided by the recipient in terms of subsection (2)(b) and any prejudice that may be suffered by the State if no statutory protection for the intellectual property is obtained, acquire ownership in the intellectual property and, where applicable, obtain statutory protection for the intellectual property.

⁵ Regulation 2(6) of the IPR Act: ...NIPMO must, in addition to the factors set out in sub-regulation (1), consider the following in deciding whether or not to acquire ownership of the intellectual property and where possible obtain statutory protection in terms of section 4(3) of the Act - (a) the provisions of section 4(3) of the Act; (b) the norms, culture and practices of the technology sector in which such intellectual property applies; (c) the development required to make the commercialisation of the intellectual property viable; (d) the ability and appropriateness of such intellectual property to be protected in any territory; and (e) the interests of any private entity or organisation that has provided some funding towards the research and development giving rise to the intellectual property.

⁶ Section 15(5) of the IPR Act: For the purposes of this section, private entity or organisation includes a private sector company, a public entity, an international research organisation, an educational institution or an international funding or donor organisation.

prescribed in the IPR Act, to transfer the IP to NIPMO⁷. These obligations are also stipulated in regulation 2(12) and are summarised as follows:

- (a) the **rights of IP creators⁸ to benefit sharing** must be maintained;
- (b) ensure that the recipient and any private entity or organisation that contributed to funding the R&D which gave rise to the IP retain an **irrevocable, non-transferable and royalty free licence** to use the IP for research, development and educational purposes;
- (c) any publicly financed organisation in the Republic may be granted with an irrevocable non-transferrable and royalty free licence to use the IP for **research, development, and educational purposes**; and
- (d) NIPMO may without limitation **grant other organisations access to the IP** while not unduly depriving the Republic of benefits from the commercialisation of IP provided such organisations are prepared to grant equivalent access to their IP that may be beneficial to the Republic.

9. TIMELINE FOR PROCESSING AN IP1 FORM

In terms of Regulation 5(4)(b) NIPMO must, within 60 days, consider and furnish a recipient with a written response of its decision in respect of any application or referral. NIPMO will therefore consider the IB Portal placement (of 45 days prior to submission) of the IP as part of the 60 days to respond to the recipient.

A decision by NIPMO not to acquire ownership of IP will irrevocably waive the State's rights to such IP under the IPR Act. To Note: Should NIPMO fail to notify the recipient of its decision within 60 days of referral, NIPMO will be deemed to have decided not to obtain ownership of the IP and the recipient must, subject to section 4(4)(b) of the IPR Act deal with the IP as it deems fit.

10. FAILURE TO SUBMIT AN IP1 FORM

It is important to note that the i) submission of an IP1 Form within a very limited period (i.e. less than 60 or 15 days if advertised on the IB portal without any valid reason), or ii) total non-submission of an IP1 Form, will potentially adversely affect an institution's IP Fund and/or OTT Support Fund applications.

⁷ Regulation 2(9) of the IPR Act: If NIPMO decides to acquire ownership of the intellectual property in terms of section 4(3) of the Act, it must request that the recipient assign the intellectual property within 30 days of receiving such decision.

⁸ Section 1 of the IPR Act: "intellectual property creator" means the person involved in the conception of intellectual property in terms of this Act and identifiable as such for the purposes of obtaining statutory protection and enforcement of intellectual property rights where applicable

ANNEXURE A: FACTORS TO CONSIDER WHEN MAKING A CHOICE TO REFER IP TO NIPMO

Only IP, which was generated after 2 August 2010, and which can be protected through statutory protection and has commercialisation prospects; or can contribute to the socio-economic needs of the Republic; or because the recipient wishes to place the IP in the public domain, must be referred to NIPMO on an IP1 Form⁹.

A recipient that no longer wishes to retain ownership of the IP or does not want to obtain statutory protection of the IP must after due consideration of the relevant factors (mentioned below) refer the IP to NIPMO by submitting an IP1 Form. The factors are stated in Regulation 2(1) of the IPR Act and reads as follows:

“A recipient, when making the choice referred to in section 4(2)(a)¹⁰ of the Act, must consider the following-

- (a) how the intellectual property may **contribute to the socio-economic needs of the Republic and global competitiveness** of the Republic;*
- (b) **Forms** of intellectual property protection, statutory or otherwise, that are most **appropriate** for the intellectual property in question;*
- (c) the extent to which such intellectual property protection is likely to **undermine the socio-economic needs** of the Republic;*
- (d) the extent of **readiness** of the intellectual property for protection, and any further research and development that would still be required before such protection could be obtained, where relevant;*
- (e) the **costs and advantages** of the various possibilities for protection;*
- (f) the **potential for commercialisation** of the intellectual property; and*
- (g) whether the intellectual property **should be placed in the public domain.**”*

Before submitting a referral to NIPMO, the institution must first consider the reasons to refer such IP and briefly set out in its referral application some or all of the factors it considered prior to referring the IP to NIPMO.

⁹ Regulation 2(4) of the IPR Act: Where a recipient does not wish to obtain statutory protection or to retain ownership of intellectual property which can be protected through statutory protection-

- (a) which has commercialisation prospects; or
- (b) which can contribute to the socio-economic needs of the Republic; or
- (c) because it wishes to place the intellectual property in the public domain,

the recipient must make a referral to NIPMO in prescribed Form IP1.

¹⁰Section 4(2) of the IPR Act: A recipient that prefers not to retain ownership in its intellectual property or not to obtain statutory protection for the intellectual property must -

- (a) make the choice in accordance with the regulations and any guidelines published by NIPMO by notice in the Gazette; and
- (b) within the period set out in section 5(1)(e), notify NIPMO of the decision and the reasons therefore.