

INTELLECTUAL PROPERTY POLICY¹

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¹ Policy was not developed in accordance with the Policy: Policy/Rule Formulation

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LIST OF ABBREVIATIONS

DITT	Directorate: Innovation and Technology Transfer
IP	Intellectual property
NIPMO	National Intellectual Property Management Office
R&D	Research and development

1. FULL TITLE

The full title of this Policy shall be the "UNISA INTELLECTUAL PROPERTY POLICY" (hereinafter referred to as the "Policy").²

2. BACKGROUND

2.1 UNISA acknowledges the need to stimulate innovation and to manage IP emanating from publicly financed research and development.

2.2 In pursuit of these objectives, UNISA hereby adopts the following Policy on all matters relating to the management of IP.

3. SUMMARY OF THE POLICY

This Policy regulates the creation, exploitation, use, protection, commercialisation and management of IP falling within its ambit.

4. OBJECTIVES OF THE POLICY

The objectives of UNISA in establishing this Policy are to:

4.1 provide the framework for the identification, protection, commercialisation and management of publicly financed IP in accordance with the provisions of the Act, and

4.2 create and promote awareness of IP and the benefits of the commercialisation of IP, so that publicly financed research outcomes are harnessed in a manner consistent with UNISA's mission to be an innovation forerunner.

5. DEFINITIONS OF WORDS AND EXPRESSIONS USED IN THE POLICY

5.1 Usual meaning

Words and expressions used in this Policy shall generally keep their usual dictionary definition.

5.2 Specific definitions

For purposes of this Policy and unless the context obviously indicates another meaning, the following words and expressions shall have the following meaning:

Act means the Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008 and the associated regulations;

Collaborator means a person or organisation engaged to undertake work for or with UNISA under a joint research or collaboration agreement;

Commercialisation means the process by which UNISA's IP is or may be adapted or used for any purpose that may provide any benefit to society and/or commercial use on reasonable terms³;

Full costs mean the full costs of research and development as defined in the Costing Model for UNISA Commissioned/Contract Research;

² This policy will be amended further once the policy amendment process of other related policies are finalised

³ Commercialisation can take various forms, including licensing arrangements, strategic alliances, joint ventures, co-branding arrangements with business partners, etc.

Innovation	means the creation and successful implementation of new ideas and/or inventions through the generation of tangible outcomes that benefits society;
Intellectual Property (IP)	means a patentable invention, any copyrightable subject matter, a trade mark, a design, a traditional work and a trade secret or know-how that is created through publicly financed research and development and that is capable of protection by law from use by any other person but excludes copyrighted works such as a thesis, dissertation article, handbook or any other publication which, in the ordinary course of business is associated with conventional academic work;
IP Steering Committee	means a committee established under paragraph 7.2 of the Policy;
IP creator	means a researcher or a student who was involved in the conception of IP in terms of the Act and identifiable as such for the purposes of obtaining statutory protection and enforcement of IP rights, where applicable;
Member of staff	means any employee of UNISA;
NIPMO	means the National Intellectual Property Management Office established in terms of the Act;
Net proceeds	mean all proceeds received by UNISA on IP commercialisation, minus any costs directly attributable to the protection, maintenance and exploitation of the IP;
Policy	means the policy set out in this document;
Public disclosure	means the provision of full details of potential IP to a third party without a fetter on further disclosure ⁴ ;
Publicly financed research and development	means research and development undertaken using any funds allocated by the state or an organ of State but excludes funds allocated for scholarships and bursaries;
Research entity	means one of the following recognised entities: <ul style="list-style-type: none"> a) College of Education; b) College of Graduate Studies; c) College of Agriculture and Environmental Sciences; d) College of Economic and Management Sciences; e) College of Human Sciences; f) College of Law; g) College of Science, Engineering and Technology; h) Professional and Administrative Research Group (PARG), comprising professional and administrative employees who have been designated to do research;

⁴ This will inter alia include making available such details at a workshop, a seminar, in a research paper, or in a journal or magazine article.

	i)	Graduate School of Business Leadership; and
	j)	Any other entity recognised by SENRIC as a research entity;
Researcher		means a member of staff or an academic associate;
Student		means any person registered at UNISA;
Third party		means any party that is not a student or a researcher;
UNISA's IP		means IP that falls within the scope of this Policy; and
Vice Principal		means UNISA's Vice Principal: Research and Innovation.

6. OWNERSHIP OF INTELLECTUAL PROPERTY

6.1 IP created within scope of employment

UNISA is the owner of all IP created by members of staff within the normal courses and scope of their employment.

6.2 IP created by academic associates

UNISA is the owner of all IP created by academic associates emanating from research funded by UNISA on a full-cost basis.

6.3 IP created by students

UNISA is the owner of all IP created by students during their postgraduate studies.

6.4 IP created through collaborative research projects

6.4.1 UNISA and the collaborator shall be joint owners of IP emanating from a collaborative research project.

6.4.2 The IP ownership must be addressed in the collaboration agreement.

6.5 Contact research

Contract research refers to the situation where UNISA undertakes research for and on behalf of a third party, usually in exchange for some form of consideration.

6.5.1 Not full costs

Where the full costs of the research are not paid by the third party contracting UNISA to conduct research, the IP created in the course and scope of carrying out the research is governed by the Act and UNISA shall be the owner of all IP resulting from such an engagement.

6.5.2 Full costs

Where the full costs of the research are paid by the third party contracting UNISA to conduct the research, the IP created in the course and scope of carrying out the research will not be governed by the Act and the ownership of IP may be determined contractually.

6.6 Outside work

IP created by members of staff in the course of doing outside work are owned by the outside firm and/or the member of staff as specified by the terms of the agreement between them.

6.7 Public domain

The DITT and the creator of any IP may jointly decide to forfeit ownership of IP and place the IP in the public domain under suitable license conditions subject to the approval by the IP Steering Committee and NIPMO.

6.8 Exceptions

Any request for exceptions or deviations to the above provisions relating to ownership of IP must be approved in writing by the IP Steering Committee.

7. IP MANAGEMENT

7.1 Corporate structures

7.1.1 UNISA shall establish technology transfer functions through the DITT.

7.1.2 UNISA shall establish an IP Steering Committee, whose roles shall be to consider, advise and decide on all matters relating to the appropriate protection, use and commercialisation of UNISA's IP as set out in more detail in paragraph 7.2 hereunder.

7.1.3 The DITT shall be a directorate within the Department of Research and Innovation and it shall be staffed with appropriately qualified personnel whom, when considered collectively, have interdisciplinary knowledge, qualifications and expertise in the identification, protection, management and commercialisation of IP and in IP transactions.

7.1.4 IP Steering Committee shall be constituted by:

- a) the Executive Director: Research (Chairperson);
- b) the Director: DITT;
- c) at least one member of the Senate Library Committee
- d) at least one member of the Senate Research and Innovation Committee; and
- e) at least one member of the Senate Higher Degrees Committee;
- f) shall have the right to co-opt such additional members as can assist it in the discharge of its responsibilities.

The IP Steering Committee will report to the Vice Principal: Research and Innovation.

7.2 Functions of the DITT and the IP Steering Committee

7.2.1 The DITT will, in relation to the creation and protection of IP:

- a) receive invention disclosure forms from line managers;
- b) evaluate appropriate creations with regard to their practical and commercial value;

- c) conduct novelty searches to determine if any aspect of IP is in fact new and possibly patentable;
- d) provide advice regarding the feasibility, operational processes and marketability of an invention or design;
- e) advise as to the protection and exploitation of an appropriate creation;
- f) refers researchers to Legal Services Department if formal agreements, including those relating to confidentiality and any arrangements with third parties, should be entered into;
- g) regulate the publication of IP in order to protect the novelty of patentable inventions;
- h) be responsible for developing guidelines for the labelling of confidential information; and
- i) procure appropriate specialised intellectual property legal advice for any of the above functions, where required.

7.2.2 The IP Steering Committee shall, in relation to the creation and protection of IP:

- a) decide on the budget to be allocated for IP activities, such as patent and design prosecution costs, renewal fees as well as the costs of dealing with the enforcement of UNISA's IP;
- b) decide on any other matter referred to it by the DITT for decision; and
- c) provide the Vice Principal: Research and Innovation with an annual summary report on the IP generated by UNISA.

7.2.3 The DITT will, in relation to the management and implementation of the Policy:

- a) update the IP Management Manual as often as is necessary in order to ensure that it is relevant and reflect current best practice;
- b) educate students and researchers on the importance of protecting publicly financed IP and general IP Management principles;
- c) provide advice and support to all researchers and students insofar as interpretation and implementation of the Policy and IP Management Manual are concerned.

7.2.4 The IP Steering Committee will, in relation to the management and implementation of the Policy:

- a) approve an IP management manual (the "IP Management Manual") prescribing guidelines and procedures on how UNISA, on a practical level, is to implement the principles set out in the Policy and any amendment thereto;
- b) approve/reject any request for exceptions or deviations to the provisions of this Policy;
- c) act as a panel for the resolution of disputes arising from the interpretation of the Policy;

- d) advise the Vice Principal: Research and Innovation on all matters relating to IP management and administration.

7.2.5 The DITT will, in relation to the use and commercialisation of UNISA's IP:

- a) identify, manage and mitigate risks associated with the use and commercialisation of UNISA's IP;
- b) assess the viability of the commercialisation of UNISA's IP;
- c) identify and address any potential conflict of interest that may arise with respect to the commercialisation of UNISA's IP;
- d) participate in the negotiation of agreements with third parties pertaining to the commercialisation of UNISA's IP;
- e) ensure that all contracts involving UNISA's IP that are signed off through UNISA's Legal Services Department contain the statement stipulated by the Act;
- f) refer to the IP Steering Committee for decision, any contemplated assignment of UNISA's IP;
- g) develop licensing and royalty models for UNISA's IP;
- h) conduct freedom-to-operate searches to determine if any technology utilised by UNISA will infringe the intellectual property rights of a third party;
- i) manage the sharing of benefits with students and researchers that are creators; and
- j) monitor the use of IP outside of UNISA, follow market trends and identify opportunities for commercialisation of UNISA's IP.

7.2.6 The IP Steering Committee will, in relation to the use and commercialisation of IP:

- a) reject/approve a request for proposed assignment of IP to a third party (subject to NIPMO's approval);
- b) determine whether and/or when UNISA's IP portfolio is to be reviewed; and
- c) provide the Vice Principal: Research and Innovation with an annual summary report on the outcomes of commercialisation endeavours involving UNISA's IP and any related issues.

7.2.7 The DITT will, in relation to UNISA's interaction with NIPMO:

- a) refer UNISA's IP for which UNISA elects not to obtain or retain statutory IP protection to NIPMO within the prescribed time period;
- b) apply to NIPMO for approvals required by the Act, such as:
 - i) prior approval for the assignment of UNISA IP ; or
 - ii) off-shore licensing of UNISA's IP.
- c) formulate a methodology for calculating the full costs of research and submit it to NIPMO for approval;

- d) submit the Policy and Management Manual to NIPMO for approval;
- e) report to NIPMO on a bi-annual basis (unless otherwise prescribed by NIPMO) in all matters pertaining to UNISA's IP in a manner prescribed by NIPMO;
- f) recover IP protection costs from a fund administered by NIPMO, when applicable; and
- g) motivate and apply to NIPMO for financing for capacity-building and activities of the DITT.

8. DISCLOSURE OF INTELLECTUAL PROPERTY

8.1 Disclosure by researcher

A researcher is required to notify the DITT of any invention he/she has made and/or other forms of innovation he/she has created falling within the ambit of this Policy.

8.2 Disclosure by supervisor

A supervisor is required to notify the DITT if his/her student has made any invention and/or created other forms of innovation falling within the ambit of this Policy.

8.3 Timely disclosure

This disclosure to the DITT should be made on the Disclosure Form at the time when the researcher or supervisor becomes aware of the potential IP vesting in the invention or the innovation and it must be made before the IP is disclosed to the public.

8.4 Novelty searches

The DITT shall advise on the appropriate steps to take to maintain the novelty or confidentiality of the IP after conducting the necessary novelty searches on the IP Report Form.

8.5 Research record keeping

Researchers are encouraged to keep regular lab notebooks and records in accordance with accepted industry standards or accepted laboratory record keeping practices.

9. IP PROTECTION

9.1 Legal requirements

The DITT shall take all the necessary steps to determine if the invention or the innovation meets the legal requirements for IP protection and/or if freedom to operate exists.

9.2 Steps to protect

If the innovation or invention meets the legal requirements the DITT shall upon the advice of the IP Steering Committee take all the necessary steps to protect the IP.

9.3 Execution of documents

The researcher or student must also execute any document deemed necessary to enable the DITT to protect the IP rights where appropriate.

10. PROTECTING CONFIDENTIAL INFORMATION / KNOW-HOW

This section sets out standards regarding the protection of the novelty of inventions or the confidentiality of innovations..

10.1 The proper protection of the confidentiality of inventions or innovations is essential for:

- 10.1.1 the registrability of an invention or a design through the maintenance of the novelty of that invention or design; and/or
- 10.1.2 the protection of personal or sensitive information.

10.2 Publication

- 10.2.1 Before making a public disclosure of an invention or innovation disclosed in terms of section 8 above, the researcher or student shall submit to the DITT, a request for authorisation thereto (even where such innovation or invention is co-owned with one or more collaborators).
- 10.2.2 The DITT shall determine whether public disclosure of UNISA's Intellectual Property shall be permitted, having regard to the provisions of the Act.
- 10.2.3 Should the DITT be of the opinion that publication of the confidential information will not compromise protection and/or commercialisation of the IP in question and provided that the necessary NIPMO approval has been obtained, the authorisation to publish will not be unreasonably withheld or delayed.
- 10.2.4 In any publication pertaining to UNISA's IP, UNISA shall endeavour to provide due acknowledgement to the contributions the creators made to the creation and/or exploitation of the IP.
- 10.2.5 A copy of all publications emanating from UNISA IP shall be deposited in the UNISA Institutional Repository for archiving.

10.3 Labelling of information

The DITT shall insofar as it is practical, develop guidelines for the labelling or categorisation of all UNISA's confidential information. The guidelines will set out the different types of levels of confidentiality, labelling practices, consequences of non-compliance and any other matter of policy that may be relevant.

10.4 Non-disclosure agreements

The disclosure of confidential information to third parties must be preceded by the execution of a non-disclosure agreement (NDA) through UNISA's Legal Services Department.

10.5 Improper or inadvertent disclosures

Improper or inadvertent disclosures must be reported to the DITT through line management as soon as a member of staff or student becomes aware of it.

11. COMMERCIALISATION OF UNISA'S INTELLECTUAL PROPERTY

11.1 Commercialisation strategy

- 11.1.1 The decision to commercialise any aspect of UNISA's IP shall be made by the DITT on recommendation by the IP Steering Committee.
- 11.1.2 In assessing a suitable commercialisation strategy for UNISA's IP, the DITT and the IP Steering Committee shall take into account the balanced achievement of maximum benefit for the public as well as UNISA, in order to ensure long-term public benefit.
- 11.1.3 To enable UNISA to focus on its main objectives and basic research, UNISA shall endeavour, as far as practically possible, to identify, engage and appoint external commercialisation partners, and to grant rights to such commercialisation partners through which commercialisation of UNISA's IP is to take place.
- 11.1.4 The appropriate commercialisation strategy shall be determined by the IP Steering Committee taking into account:
- a) the nature and scope of UNISA's IP, its scientific and technical validity and stage of development;
 - b) the potential commercial application of UNISA's IP and the alignment thereof with the primary functions and core competencies of UNISA;
 - c) related government policies and directives;
 - d) the internal capacity of UNISA to implement and manage a proposed commercialisation strategy;
 - e) the expected viability and return on the commercialisation of UNISA's IP;
 - f) potential costs, risks, revenues and benefits of the commercialisation of UNISA's IP;
- 11.1.5 The DITT shall, where required, consult and seek advice from relevant external sources with relevant experience when identifying a commercial strategy as set out above.
- 11.1.6 The DITT may, *inter alia*, consider the following commercialisation models:
- a) Assignment
Ownership of UNISA's IP is assigned outright to a third party under appropriate negotiated terms and conditions;
 - b) Licence
A right to exploit UNISA's IP is granted to a third party under certain conditions and for a predetermined term;
 - c) Managed commercialisation;
UNISA's IP is commercialised in-house under the guidance of the DITT, through the sale of a product or service embodying the IP;
 - d) Joint venture/partnership
UNISA becomes a party to a joint venture development or commercialisation partnership.

11.2 Financial returns from commercialisation

- 11.2.1 Subject to paragraph 12.2.2 financial returns from commercialisation of UNISA's IP shall in the first instance be applied to recover any direct costs involved with seeking and maintaining IP protection as well as commercialisation of the IP, which costs may include:
- a) legal or other expert advice;
 - b) the cost of obtaining IP protection and maintenance of any registered rights in respect thereof;
 - c) plant/equipment costs;
 - d) business planning costs; and
 - e) the ongoing cost of commercially exploiting the IP.
- 11.2.2 The net returns, being the remainder of the returns once direct costs have been accounted for shall be shared with IP creators and research entities in terms of paragraph 12 below.

11.3 Commercialisation rules and preferences

- 11.3.1 Generally, UNISA shall determine the terms and conditions for any non-exclusive licence in the Republic to UNISA's IP, on an arms-length basis. Where the IP is co-owned with one or more co-owners, the consent of the co-owners will be obtained before entering into any transaction.
- 11.3.2 UNISA will obtain NIPMO approval before entering into any licence under UNISA's IP in the Republic in terms of which:
- a) the consideration payable by a licensee to UNISA is not determined on an arms-length basis;
 - b) UNISA intends to grant a licensee rights to commercialise UNISA IP on a royalty-free basis; or
 - c) the licensee falls into the categories referred to in paragraph 11.3.2(a) and 11.3.2(b) and is granted a right to sub-licence on a consideration determined on an arms-length basis in the case of section 11.3.2(a) or for a royalty in the case of section 11.3.2(b).
- 11.3.3 Before granting an exclusive licence under UNISA IP in the Republic, UNISA shall ensure that the prospective licensee is capable of developing the IP further where required and of undertaking the commercialisation thereof and in the case of co-owned IP, UNISA will do so in consultation with the co-owner(s).
- 11.3.4 An exclusive licence agreement under UNISA IP in the Republic shall include appropriate terms and conditions and in particular terms and conditions that provide:
- a) that the prospective licensee must ensure that the IP is used for the benefit of the Republic;

- b) for the irrevocable and royalty-free right of the State to use or have the IP used on behalf of the Republic, for the health, security and emergency needs of the Republic in terms of the Act; and
 - c) that NIPMO has walk-in rights in terms of section 14(4) of the Act, if the IP is not commercialised within the reasonable period set out in the exclusive licence agreement ('State walk-in rights')
- 11.3.5 The DITT shall as far as reasonably possible endeavour to adopt a commercialisation model in which UNISA's ownership of IP is retained. In the event that UNISA wishes to assign UNISA IP to an entity in the Republic, UNISA will submit to NIPMO an application for approval of such an assignment in the prescribed form and in the case of co-owned IP, will do so in consultation with the co-owners. In this application:
- a) UNISA shall demonstrate to NIPMO that such assignment is in the public interest, or
 - b) provide reasons as to why the IP cannot be commercialised through other means such as an exclusive licence.
- 11.3.6 Generally, UNISA shall determine the terms and conditions for any non-exclusive licence outside the Republic or to an off-shore entity under UNISA IP on an arms-length basis or for the purposes of promoting or facilitating UNISA's research and development activities. Where the IP is co-owned with one or more co-owners, the consent of the co-owners will be obtained before entering into any transaction.
- 11.3.7 UNISA will obtain NIPMO approval before entering into any licence under UNISA IP outside the Republic or to an off-shore entity in terms of which:
- a) the consideration payable by a licensee to UNISA is not determined on an arms-length basis;
 - b) UNISA intends to grant a licensee rights to commercialise UNISA IP on a royalty-free basis; or
 - c) the licensee falls into the categories referred to in paragraphs 11.3.7(a) or 11.3.7(b) and is granted a right to sub-licence on a consideration determined on an arms-length basis in the case of paragraph 11.3.7(a) or for a royalty in the case of section 11.3.7(b).
- 11.3.8 UNISA will ensure that before granting an exclusive licence outside the Republic or to an off-shore entity or person, it is satisfied that the prospective licensee is capable of developing the intellectual property further where required and of undertaking commercialisation thereof and in the case of co-owned IP, UNISA will do so in consultation with the co-owners.
- 11.3.9 An exclusive licence agreement outside the Republic or to an off-shore entity or person will:
- a) require that commercialisation of the IP by a prospective licensee must ensure that the benefits of the IP are accessible to the Republic on reasonable terms;
 - b) provide for an irrevocable and royalty-free right of the State to use or have the IP used on behalf of the Republic for the health, security and emergency needs of the Republic in terms of the Act; and

- c) provide for NIPMO's rights in terms of section 14(4) of the Act, if the IP is not commercialised within the reasonable period set out in the exclusive licence agreement.
- 11.3.10 UNISA shall lodge an application in the prescribed form with NIPMO for approval of an assignment of intellectual property offshore or grant of an exclusive licence, in terms of which it clearly articulates the benefits of the IP to the Republic. This application shall be lodged prior to initiating or concurrently with, where permitted, any application for final approval in terms of any other applicable regulatory approval in respect of off-shore intellectual property transactions.
- 11.3.11 Each intellectual property transaction will include the following statement: 'The intellectual property under this transaction was created with support from the South African Government (under the contract number where applicable) awarded by (identify the Funding Agency or relevant government department, where applicable) and is subject to the requirements of the South African Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 and its regulations (Act 51 of 2008). The South African Government has certain rights to the intellectual property in terms of sections 11(1)(e), 11(2) and 14 of Act 51 of 2008'.
- 11.3.12 Should a licensing model be adopted, the following preferences shall be taken into account in identifying a licensee and determining the terms and conditions of such licence:
- a) There shall be a preference against royalty-free licensing;
 - b) There shall be a preference for entities having Broad Based Black Economic empowerment credentials;
 - c) There shall be a preference for small to medium enterprises;
 - d) Where manufacture is involved, there shall be a preference for entities having local manufacturing capabilities;
 - e) There shall be a preference for parties that seek to use the IP in ways that provide optimal benefits to the Republic; and
 - f) There shall be a preference to parties that made material contribution to the research and development giving rise to the IP
 - g) There shall be a preference for non-exclusive licensing. In license agreements entered into with commercial partners, non-exclusive licensing shall be a preferred option as it will permit wider access to the actors within the economy and will create, under some circumstances, a performance incentive.
 - h) Exclusive licensing may also be considered in particular circumstances, for instance when developing early stage technologies that require considerable further development work or to ensure that commercial partners are interested in investing time, resources and effort into the commercialisation of UNISA's IP.
 - i) To prevent failures in the commercialisation of technology which other potential developers might be better placed to exploit, performance clauses must be included in licence agreements.
 - j) There shall be a preference for licensing a local commercialisation entity.

Reasonable and demonstrable efforts shall be made to license UNISA's IP locally, as local licensing will have a maximum impact on stimulating national and local economic development and providing the South African business sector with new commercialisation opportunities.

- k) Licensing a foreign commercialisation entity can be considered to increase foreign direct investment and technology partnerships for South Africa when licensing is not reasonably possible in South Africa, or where it could supplement local licensing arrangements.
- l) Where local licensees cannot be secured, UNISA shall ensure that locally beneficial arrangements (such as for example manufacturing preferred pricing, R&D obligations) are secured as far as reasonably possible.

11.3.13 UNISA shall participate with NIPMO in any review to establish whether IP in question can be commercialised. If certain IP is not being commercialised despite UNISA's best efforts thereto and if directed thereto by NIPMO after consultation with UNISA, UNISA shall:

- a) grant a licence in any field of use to any person on reasonable terms, or
- b) assign the IP in question to the State or its nominee.

11.4 Decision making

Any decision regarding the sale, assignment or the granting of exclusive rights to any of UNISA's IP shall require the prior approval of the IP Steering Committee.

11.5 Involvement in technology transfer

All members of staff that are involved in commercialisation of UNISA's IP must declare all private and/or conflicting interests.

12. BENEFIT SHARING

12.1 Beneficiaries

There are a number of possible beneficiaries of monetary and non-monetary benefits from exploitation of IP, including the IP creators, the research entity within UNISA to which the creator belongs, UNISA itself and private co-owners of a spin-off, subsidiary or emerging company.

12.2 Monetary benefits

12.2.1 Income allocation

- a) IP creators, and their heirs are granted a right to a portion of revenues that accrue to UNISA from the commercialisation of the IP for as long as revenues are derived from such IP.
- b) Income that accrues to the IP creator in his/her personal capacity is taxable. If the IP creator elects to retain the funds in their research account (if applicable), the funds will not be taxable, but shall be subject to the rules governing the use of research account funds.

- c) Benefits granted to the IP creators will be shared in accordance with their relative contributions unless otherwise agreed between the IP creators in writing.
- d) The status of the IP creators shall not be a factor in determining a creator's share in the benefits.
- e) Any dispute which arises with respect to benefit sharing shall be adjudicated by the IP Steering Committee, whose decision shall be final.
- f) The share of revenue which is to be allocated to a research entity of UNISA shall be allocated to the head of the research entity. The head of the research entity shall determine the distribution within the research entity. The funds shall be applied in the interest of research and may not be allocated to any individual for personal gain.
- g) The share of revenue that is to be allocated to UNISA shall be allocated to the Vice Principal: Research and Innovation for the promotion and development generally, of research and innovation.
- h) Revenue from IP that is co-owned by UNISA and an outside organisation shall be divided in accordance with the agreement between the parties.

12.2.2 Formula of income allocation

- a) First R1,000,000 of revenue
 - i) Twenty percent of the gross revenues accruing to UNISA in respect of the first R1,000,000 of gross revenue generates shall be shared between the IP creator(s).
 - ii) Commercialisation costs will then be deducted from the balance to determine the net revenue, which shall be split between the relevant research entity (40%) and UNISA (60%). In the event that the IP is co-owned with an outside organisation, after deduction of the commercialisation costs, the remainder of the revenue shall be split in accordance with the agreement between the outside organisation and UNISA.
- b) Revenue above R1,000,000
 - i) Commercialisation costs will first be deducted from any revenue in excess of R1,000,000 to determine the net revenue. The net revenue shall then be split between the IP creator(s) (30%), the relevant research entity (30%) and UNISA (40%).
 - ii) In the event that the IP is co-owned with an outside organisation, after deduction of the commercialisation costs and 30% or the remainder for payment of the IP creator(s), the remainder of the revenue shall be split in accordance with the agreement between the outside organisation and UNISA.
- c) Death of an IP creator or termination of engagement with UNISA
 - i) In the event of the death of an IP creator of UNISA IP that is generating revenue through commercialisation, the revenues due to the IP creator shall be paid to the estate of the IP creator, and upon winding up of the estate, to his/her heirs. The heirs shall have the responsibility of notifying UNISA of any changes in contact details after death of the IP creator.

- ii) In the event of the termination of engagement, with the exception of dismissal of an employee, of an IP creator that is generating revenue through commercialisation, revenues shall continue to be paid to the IP creator. It is the duty of the IP creator to notify the DITT of any changes in contact details after termination of his/her engagement with UNISA.

12.3 Non-monetary benefits

- 12.3.1 It is possible that non-monetary benefits may also accrue to IP creators through the commercialisation of UNISA's IP for example, but not limited to shareholding or equity in companies, receipt of free or reduced-rate services or free products or equipment being received by UNISA instead of a monetary amount.
- 12.3.2 Shareholding in a company will typically be held by an entity mandated by UNISA for this purpose, in trust on behalf of any IP creator who is not directly participating in the company. Dividends and proceeds from the disposal of shares in the company will be distributed according to the principles set out in paragraph 12.2
- 12.3.3 The decision as to the timing and value of the disposal of shares in a company will be made by the DITT having duly considered input from the IP creator(s) and the IP Steering Committee.
- 12.3.4 Whenever possible, the DITT will strive not to include any non-monetary benefits in any transaction for the commercialisation of UNISA IP.
- 12.3.5 Other non-monetary benefits for IP creator(s) will be negotiated with the IP creator(s) on a case-by-case basis by the DITT and approved by the IP Steering Committee prior to the conclusion of any agreements regulating the transaction that may include non-monetary benefits for IP creator(s).

13. REQUESTS FOR EXCEPTIONS FROM POLICY

Subject to any other applicable provision, any request for an exemption from this Policy shall be made in writing and shall be sent to the IP Steering Committee, which shall have full authority to grant such request, in whole or in part, or to refuse same. Notwithstanding the aforementioned, the IP Steering Committee shall not be authorised to grant a request for deviation from the Policy where such deviation would result in UNISA being in non-compliance with the Act.

14. MONITORING AND ADMINISTRATION OF THE POLICY

14.1 Accountability

The Vice Principal: Research and Innovation shall be accountable for the implementation of this Policy.

14.2 Questions, comments and suggestions

Any employee, student or researcher with questions, comments or suggestions relating to the content or interpretation of this Policy shall direct these to his/her line manager and/or the DITT.

14.3 Interpretation and disputes

- 14.3.1 This Policy should be read in conjunction with the Policy on Research Ethics, the Research and Development Leave Policy, the Policy on Grants from the Research Funds of the University of South Africa and other relevant policies.
- 14.3.2 Any dispute relating to the interpretation of one or more of the provisions of this Policy shall be resolved by the IP Steering Committee.
- 14.3.3 Furthermore, at least once a year, the IP Steering Committee shall:
- a) hold a meeting in order to review this Policy in light of any interpretation problems and in light of any technological or legislative changes that may have occurred; and
 - b) submit to the Vice Principal: Research and Innovation a detailed list of the changes approved to this Policy, as well as the justification for each such change.

