1. INTRODUCTION AND SCOPE

NewSouth Innovations Pty Ltd (NSi) takes the risk on costs it incurs in supporting and commercialising Intellectual Property (IP) developed by Staff and Students. For IP that is successfully commercialised and generates revenue for NSi, The University has established these guidelines for calculating Net Revenue disbursement to The University and the Creators according to the UNSW Intellectual Property Policy.

2. DEFINITIONS

These Guidelines use the definitions in the UNSW Intellectual Property Policy.

3. DISBURSING OF NET REVENUE FROM COMMERCIALISATION

Net Revenue received by NSi from IP commercialisation will be disbursed 1/3 to the Creators and 1/3 to The University, with NSi retaining 1/3.

3.1 Weighting the contribution of multiple Creators and multiple technologies

There are frequently multiple Creators and multiple patents or technologies commercialised concurrently. By agreement of all of the Creators in writing:

a. the relative contributions of each of the Creators to the development of each IP component will be determined by NSi and defined in the Researcher IP Commercialisation Deed; and
b. if required, a relative weighting will be applied to the commercial value of each IP component in an IP portfolio involving multiple technologies or patents, that is commercialised concurrently under a common licensing, option or assignment agreement.

The Net Revenue entitlements of each Creator will be calculated according to the above weightings and Creator contributions.

If the Creators cannot agree on a) or b) above, then the default position is:

a. that all Creators contributions will be deemed equal and all technologies and IP will be considered equal in value; or

b. NSi may obtain advice and determine the relative value of each IP component or technology contained in a portfolio.

If a patent is excluded from a licence that includes a portfolio of more than one patent, then the Commercialisation Costs attributable to that patent will only be deducted from the Commercialisation Revenue generated from that licence until such time that that particular patent is no longer included. The University or the Creators of the IP associated with that patent will no longer share in Net Revenue generated from the licence, from the time that the patent was excluded from the licence.

The University share of Net Revenue from commercialisation of IP should act as an incentive to the Faculty/School/Unit/Centre in which the IP was developed to encourage further research and technology transfer activity.

The majority of the University share of Net Revenue should be directed as close to the “coal-face” where the activity occurred as possible.

The principles on which the University share of Net Revenue will be received and disbursed are:

a. The University’s share will be received from NSi by the Office of the Deputy Vice-Chancellor (Research), who will be responsible for tracking and monitoring income derived from IP commercialisation and for the allocation of that income;

b. In allocating the Net Revenue disbursed by NSi to the University, in general, ¾ will be directed to the Faculty in which the work was done, and ¼ will be directed to support UNSW Strategic Initiatives and research strengths;

c. Notwithstanding (b) above, the Deputy Vice-Chancellor (Research) has the flexibility to handle the allocation of The University’s share of Net Revenue on a case-by-case basis, taking into account such matters as for e.g. the quantum of Net Revenue received or whether the Net Revenue is encumbered by pre-existing agreements.

4. DISBURSING NET REVENUE FROM IP ASSIGNED TO CREATORS

If NSi decides not to proceed or continue with the commercialisation of specified IP, the Creators may request NSi to assign that IP to them with NSi having the discretionary right to do so, or not.

It is a condition of assignment of the IP to the Creators that The University or NSi receives a future benefit amounting to 20% of the Net Revenue received from the commercialisation and Exploitation of that IP by the Creators after their reasonable Commercialisation Costs have been recovered, unless otherwise agreed by the Deputy Vice-Chancellor (Research).
5. DETERMINING NET REVENUE

5.1 NSi Commercialisation Deed

Under the Researcher IP Commercialisation Deed, the Creators assign their IP to NSi. This Deed also defines the distribution of Net Revenue to Creators under the IP Policy.

5.2 Commercialisation Costs

The Commercialisation Costs deducted by NSi from Commercialisation Revenue to determine Net Revenue include all identifiable out-of-pocket expenses relating to the commercialisation of a particular IP. These expenses do not include NSi staff costs, or the indirect costs of operating NSi. The following are considered reasonable Commercialisation Costs:

5.2.1 The costs of registering, protecting and enforcing IP rights

Associated invoiced patent attorney costs and registration and renewal fees relating to IP, and all patent attorney and external legal costs associated with the assertion of IP rights. Any patent costs recovered from a licensee are offset against the costs incurred.

5.2.2 External IP Management & Review Services

NSi may employ external IP management consultants, or contractors to administer and manage its IP portfolio. These costs associated with IP management and administration and the costs of engaging other external parties to carry out specific reviews of IP and the IP landscape, including assessing the commercial potential or value of IP, are reasonable Commercialisation Costs. Any IP management or review costs recovered from a licensee are offset against the costs incurred.

5.2.3 Research & Development - Creation of prototypes, models and samples

Product and prototype development costs are reasonable Commercialisation Costs. Costs funded by NSi’s Proof-of-Concept Fund, is a recoverable expense. Any product development or prototype costs recovered from a licensee are offset against the costs incurred.

5.2.4 Insurance & legal Costs

When there are specific insurance costs during the commercialisation of a technology in excess of the standard UNSW insurance cover, these are allowable Commercialisation Costs.

External legal service costs for a specific technology including conducting due diligence reviews, preparing contracts or dealing with legal disputes are reasonable Commercialisation Costs allocated to the technology. Commercialisation Costs explicitly exclude legal costs associated with resolving disputes between NSi and Creators.

Defending, prosecuting, or settling actions, or asserting rights arising from legal disputes, or court ordered payments are reasonable Commercialisation Costs allocated to the technology.

5.2.5 Market review and commercialisation consultant costs

External costs incurred through market and technology surveys and preparing business plans or investment proposals are part of developing a case for and progressing commercialisation. These costs are reasonable Commercialisation Costs.
Costs allocated to the technology. If an analysis benefits several technologies or patents, then the costs are shared equally.

5.2.6 Marketing and Travel
When NSi is developing an understanding of the technology or market opportunities and when developing a relationship with potential and actual licensees, investors or industry partners. Reasonable out-of-pocket costs for travel and meetings are Commercialisation Costs allocated to the technology.

Industry specific conference costs for promoting specific technologies and assessing their market potential are Commercialization Costs allocated to the technology.

External consultant and supplier costs specific to developing and promoting technologies for their commercial development are commercialization costs allocated to the technology. These include electronic promotional materials (e.g. videos) and designing, and the production of promotional materials for a specific technology.

Success and other fees associated with appointing agents or independent contractors to promote, secure and manage licensing, capital investment and other commercialisation opportunities are considered reasonable Commercialisation Costs.

5.2.7 Accrued costs
Where patent or other costs have been committed to a technology that has been licensed, and where those costs are recoverable from the licensee, but have not been invoiced at the time of reconciling Commercialisation Income received to date, then those costs will be accrued as Commercialisation Costs against the technology for the purpose determining the Net Revenue in any disbursement period.

5.2.8 Platform technologies
Where a technology is a platform technology with multiple applications, it may have the potential for multiple income streams. All Commercialisation Costs are deductible from any Commercialisation Revenue received, regardless of the market sectors involved.

5.3 Investments in incorporated entities
If NSi or The University takes the risk of making a direct capital investment in a spin-off company, in return for equity, then this is not a Commercialisation Cost and any return generation from that equity holding will not be treated as Commercialisation Revenue.

In the event that NSi converts any Commercialisation Costs into equity in a spin-off company, those costs will be counted as recovered and any income generated from that equity holding will not be treated as Commercialisation Revenue.
## Appendix A: History

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Appendix B – Example of Process for Distributing Net Revenue

$90,000 Net Revenue

1/3rd

$30,000 NSi

1/3rd

$30,000 Inventors

1/3rd

$30,000 UNSW

3/4

$22,500 Faculty

1/4

$7,500 Research Initiatives

School/ Centre/ Research Group

Note: For Illustrative purposes only and the actual allocation of The University portion of Net Revenue is at the discretion of the Deputy Vice-Chancellor (Research)