**Intellectual Property Policy **

Contents

[**1.** **Policy Statement** 2](#_Toc522536148)

[**1.1.** **Purpose** 2](#_Toc522536149)

[**1.2.** **Principles** 2](#_Toc522536150)

[**1.3.** **Guidelines Associated with the Intellectual Property Policy** 2](#_Toc522536151)

[**1.4.** **Policies Associated with the Intellectual Property Policy** 2](#_Toc522536152)

[**2.** **Definitions** 3](#_Toc522536153)

[**3.** **Procedure** 4](#_Toc522536154)

[**3.1.** **Ownership** 4](#_Toc522536155)

[**3.1.1.** **By Staff Members** 4](#_Toc522536156)

[**3.1.2.** **By Students** 4](#_Toc522536157)

[**3.1.3.** **Indigenous Knowledge** 4](#_Toc522536158)

[**3.1.4.** **Specifically Commissioned Work** 5](#_Toc522536159)

[**3.1.5.** **Collaborative Research** 5](#_Toc522536160)

[**3.1.6.** **Previous Policy** 5](#_Toc522536161)

[**3.2.** **Contribution and Recognition** 6](#_Toc522536162)

[**3.3.** **Obligations to Others** 6](#_Toc522536163)

[**3.4.** **Intellectual Property Commercialisation** 6](#_Toc522536164)

[**3.5.** **Dispute Resolution** 7](#_Toc522536165)

[**3.6.** **Information and Education** 7](#_Toc522536166)

[**REFERENCE DOCUMENTS** 8](#_Toc522536167)

[**DOCUMENT DETAILS** 8](#_Toc522536168)

# **Policy StatementPolicy Statement(s)**

* 1. **Purpose**

This Policy sets out Unitec’s approach to the management of intellectual property created by Staff Members and Students in the course of their employment or enrolment (as relevant) at Unitec.

Unitec wishes to encourage an academic environment in which learning, teaching, scholarship, research and innovation flourish. Unitec is committed to the principle that knowledge and ideas generated at Unitec should, in general, be made available for the benefit of the entire community. One of Unitec’s objectives is to serve New Zealand’s social, economic and cultural development needs by facilitating the creation of valuable intellectual property in innovative products, processes and services. Unitec seeks to achieve this objective through fostering a vibrant research and development culture that encourages and incentivises staff and students to create ideas and intellectual property that can be utilised in ways that are consistent with Unitec’s mission, strategies and goals.

* 1. **Principles**

Where Intellectual Property (as defined below) is created by its Staff Members or Students in the course of their employment or enrolment (as relevant) at Unitec, Unitec will:

* + 1. Honour the principles of [*Te Noho Kotahitanga*,](https://thenest.unitec.ac.nz/TheNestWP/our-unitec/te-noho-kotahitanga/) Unitec’s declaration of its commitment to the Treaty of Waitangi
		2. Promote the idea that the fundamental objectives and purpose of Unitec are to teach, conduct research and advance knowledge, both for their own sakes and for the value that these contribute to the communities that Unitec serves;
		3. Protect and enhance the rights of all stakeholders of Intellectual Property, including the originators and inventors and indigenous knowledge holders;
		4. Provide a flexible and responsive framework to encourage innovation in a spirit of partnership;
		5. Play an effective role as enabler, facilitator and supporter of research, scholarly activity and intellectual property creation.
	1. **Guidelines Associated with the Intellectual Property Policy**

The following documents provide further information as to the operation and implementation of this Policy:

* Intellectual Property Guidelines
* Documenting Research Outputs Guidelines
* Research Ethics Guidelines

	1. **Policies Associated with the Intellectual Property Policy**
* Conduct of Research Policy
* *Te Noho Kotahitanga* – The Partnership
* Research Ethics Policy

# **Definitions**

For the purpose of this Policy:

Copyright means copyright as defined in the Copyright Act 1994, as amended from time to time.

Commercialisation means the process of turning IP into a business venture with the sole, or chief, emphasis on saleability or profit.

Commissioning party has the meaning set out in clause 3.1.4.1 below.

Designated Intellectual

Property Advisor means the person within *Tuapapa Rangahau* to whom the responsibility is assigned, for operating and monitoring the application of the Policy and for assisting Unitec’s decision makers in understanding the potential commercial and non-commercial utilisation by Unitec of Intellectual Property that falls within scope of this Policy.

Effective date has the meaning set out in clause 3.1.6 below.

Intellectual Property (or IP) means any proprietary right arising in connection with technical innovations, inventions, designs (whether registered or otherwise), *Matauranga Maori*, improvements, brands, trademarks, creative works (including educational materials, works of art, industrial or artistic designs, audio, music, video, film), and/or discoveries, information and software, whether or not patentable or otherwise susceptible to IP protection, including technology and materials in their tangible form.

Matauranga Maori means Māori knowledge - the body of knowledge originating from Māori; *whānau*, *hapū*, *iwi* and *tupuna*, including the contemporary Māori world view and perspectives, Māori creativity, innovation and cultural practices.

Originator means an author, creator or inventor of IP, being one or more Staff Members and/or Students, or any alternative structure into which the Staff Members and/or Students have transferred their IP rights.

Softwaremeans source code and/or compiled code designed for use by a computer, device or appliance to accomplish technical and/or business outcomes and/or operations.

SPECIFICALLY COMMISSIONED

WORK has the meaning set out in clause 3.1.4.1 below and includes all IP created during the course of any project that is externally funded where that external party gives the funding on the basis that it will own all (or a pre-agreed ownership stake) in the resulting IP.

Staff member means a person who is a member of the staff of Unitec, whether full-time or part-time, unlimited or fixed term, and, for the purposes of this Policy, includes a contractor or casual worker engaged by Unitec, together with former staff members of Unitec where the relevant Intellectual Property was created during the course of their employment, or contract, with Unitec.

Student means a person who is enrolled at Unitec for one or more courses of study, or former students where the relevant Intellectual Property was created during the course of their enrolment with Unitec.

TEACHING MATERIALS means materials, whether in paper, electronic or other form, developed for the purposes of teaching and training students at Unitec.

Te noho kotahitanga means Unitec’s partnership document, created in 2001, to express Unitec's commitment to the Treaty of Waitangi, in particular the five principles intended to infuse all Unitec's goals.

USE means to copy, amend, add to, distribute, publish, sell, sub-licence or otherwise deal with.

# **Procedure**

* 1. **Ownership**
		1. **By Staff Members**
			1. Unitec acknowledges that Intellectual Property created by a Staff Member is owned by that Staff Member, unless Unitec and the Staff Member have entered into a written agreement to the contrary or the work is Specifically Commissioned Work. For the avoidance of doubt, Unitec confirms that to the extent the staff member’s contract of employment was a standard form Unitec contract of employment **(Employment Contract)** at the time it was entered into and that Employment Contract is inconsistent with this policy, Unitec will honour this policy.
			2. Notwithstanding the above, Unitec shall retain a royalty-free, irrevocable, non-exclusive, perpetual right to Use, for research and teaching purposes, all research outputs and Teaching Materials developed in the course of a Staff Member fulfilling his or her obligations of employment at Unitec.
			3. Where the Use of a Staff Member’s research outputs creates opportunities for Commercialisation, Unitec will assess the opportunity (if requested to do so by the Staff Member) and determine whether Unitec should enter into a Commercialisation agreement with the Originator. Any such agreement must expressly set out the basis on which costs are to be borne and profits are to be distributed.
		2. **By Students**
			1. Unitec acknowledges that Intellectual Property created by a Student in pursuit of his/her studies at Unitec is owned by that Student, unless Unitec and the Student have entered into a written agreement to the contrary, or the IP has been created in particular circumstances that create an exception to this. Circumstances in which an exception arises include where a Student uses IP to which he/she is not entitled to claim ownership, such as where the Student IP includes IP owned by a third party or the Student IP uses open source software.
		3. **Indigenous Knowledge**
			1. Unitec acknowledges that indigenous people are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge.
			2. An Originator, or Unitec, may never be the ‘owner’ of indigenous knowledge, but will act in the role of protector. They may act according to the agreed rules of copyright, access and use in consultation with people who are guardians of that indigenous knowledge.
			3. The Originator must acknowledge the source of any indigenous knowledge and, where a significant amount of indigenous knowledge has been included in the Originator’s IP, the Originator will acknowledge the indigenous source using the usual protocols of citation or co-authorship, as appropriate.
		4. **Specifically Commissioned Work**
			1. IP may also be created by being specifically commissioned by Unitec or an outside party (**Commissioning Party**) for their own use (**Specifically Commissioned Work**). Specifically, Commissioned Work includes programme or course development documentation, marketing materials, timetables, minutes, brochures, handbooks, websites, administrative reports and analysis, and teaching or business process evaluations or other similar materials. Other examples include funded research contracts, work arising from assigned projects, committees or task forces, or work requested of a Staff Member by their manager or commissioned by an external party. The IP in a Specifically Commissioned Work extends to any IP created for the purpose of the Specifically Commissioned Work and title to it will vest in the Commissioning Party. Every agreement in relation to Specifically Commissioned Work should include a clause confirming that the IP and improvements vest in the Commissioning Party as it comes, has come, or may come into existence. The Staff Member or Student should be advised of the need to take all actions as may be reasonably required to perfect the Commissioning Party’s title to the IP, which includes executing and delivering any document required to perfect or enforce such title.
		5. **Collaborative Research**

			1. Where Staff Members or Students intend to work collaboratively on a matter, it is the responsibility of the relevant Staff Member(s) and/or Student(s) to specify in writing (and in advance of the research being carried out) how the IP rights arising out of the collaboration are to be allocated between them. The allocation of those rights should be based on the extent and nature of the relevant Staff Member(s) or Student(s) actual contribution, and not on their level of authority. Any waiver or modification of the allocation of IP rights requires informed consent on the part of the party whose share in the IP is reduced as a consequence of the waiver or modification. *Tuapapa Rangahau* can assist the relevant Staff Member(s) and/or Student(s) in understanding the process for obtaining informed consent.
		6. **Previous Policy revoked from Effective Date**
			1. This Policy represents a significant change from previous Unitec Intellectual Property policies. This is because ownership of Intellectual Property that falls within scope of clause 3.1.1.1 above now vests in Staff Members and Students rather than in Unitec. (Refer to Clause 3.1.1.1 if this is inconsistent with your Employment Contract). This Policy takes effect from the date of its approval (**Effective Date**). This Policy does not apply retrospectively to ideas disclosed prior to the Effective Date or to agreements concluded before the Effective Date. The previous Intellectual Property Policy will continue to apply up to close of business of the day immediately preceding the Effective Date.
	2. **Contribution and Recognition**
		1. It is the responsibility of Staff Members and Students intending to engage in licensing and distribution activities to ensure that they have the right to undertake such activities, and that there are no competing claims of authorship, copyright ownership or other intellectual property rights. Unitec may provide assistance in this if asked. Unitec highly recommends that before engaging in any such activities, the relevant Staff Member(s) or Student(s) obtain independent legal advice.
		2. Where more than one Originator has been involved in the creation of IP (and the IP is created otherwise than in accordance with clause 3.1.5.1), the Originators must agree amongst themselves in writing how ownership of that IP and associated rights should be apportioned.
		3. All contributors to scholarly works should be recognised in accordance with the conventions of the relevant discipline and Unitec’s Conduct of Research Policy.
		4. In reporting, disseminating or commercialising their work, Staff Members and Students should acknowledge Unitec as being the place in which the work was done and Originators should, where appropriate, acknowledge Unitec’s direct or indirect support (such as time, computing infrastructure resources, library resources, or other resources).
	3. **Obligations to Others**
		1. Staff Members and Students are required to comply with third-party IP rights, including existing Copyright and other IP protections.
	4. **Intellectual Property** **Commercialisation**
		1. Any Originator who has developed and owns IP in accordance with this Policy has the right to pursue commercialisation of that Intellectual Property, either in association with Unitec or independently.

*Without Unitec Assistance*

* + 1. If an Originator wishes to develop and commercialise the IP without Unitec’s assistance, they must inform the Designated Intellectual Property Advisor and complete a disclosure form - independent (which can be located under Forms on the Nest ([here](https://thenest.unitec.ac.nz/TheNestWP/wp-content/uploads/2018/09/Intellectual-Property-Disclosure-Form-Independent.pdf)) so that Unitec can respond appropriately to any enquiries.
		2. The Designated Intellectual Property Advisor will ensure that all information disclosed by the Originator regarding the IP will be treated as confidential (subject to any necessary restricted disclosures to Unitec’s technical, commercial or legal advisors on a need-to-know basis).
		3. Originators who are involved in developing IP independently of Unitec must ensure that the relevant Staff Member(s) and Student(s) involved in the development do so in their own time, and using their own facilities and equipment, in accordance with the [Outside Work Policy](https://thenest.unitec.ac.nz/TheNestWP/wp-content/uploads/2018/08/Outside-Work-Policy.pdf)

*With Unitec Assistance*

* + 1. If an Originator wishes to approach Unitec for assistance they must inform the Designated Intellectual Property Advisor and complete the disclosure form – seeking support which can be found on the Nest ([here](https://thenest.unitec.ac.nz/TheNestWP/wp-content/uploads/2018/09/Intellectual-Property-Disclosure-Form-Seeking-Support.pdf)).
		2. As stated at clause 3.4.3, the Designated Intellectual Property Advisor will ensure that all information disclosed by the Originator regarding the IP will be treated as confidential (subject to any necessary restricted disclosures to Unitec’s technical, commercial or legal advisors on a need-to-know basis).
		3. The Designated Intellectual Property Advisor will evaluate the idea or recreation with respect to its potential benefit for Unitec, and to gain an understanding of the options available.
		4. Unitec will decide the extent of Unitec’s involvement in the proposed Commercialisation. If the IP is jointly owned with a third party, the Designated Intellectual Property Advisor will work with that third party and the Originator to agree the best option.
		5. If Unitec wishes to become involved in further development, Commercialisation, or knowledge transfer with respect to the IP (and the Originator agrees to that involvement), an intellectual property/knowledge transfer strategy will be formulated in consultation with the Originator.
		6. Unitec will lead the Commercialisation only if there is an opportunity to generate significant revenue. If this potential is assessed by Unitec, and agreed with the Originator, then either:
			1. the Designated Intellectual Property Advisor will determine the Commercialisation process; or
			2. Unitec will engage external expertise to lead the Commercialisation process and Unitec will act in a supporting / facilitating role in partnership with the Originator.
		7. If Unitec decides not to become involved in the Commercialisation, the Originator will be advised in writing and the Originator will thereupon be free to explore alternative options without recourse to Unitec.
	1. **Dispute Resolution**
		1. If a dispute arises as to the operation of this Policy, or as to any matter on which the operation of this Policy depends, then the parties must use reasonable endeavours to resolve the dispute by negotiation. If the parties cannot resolve the dispute by negotiation, then either party may, by written notice to the other party (*Dispute Notice*), request that the dispute be dealt with by an independent mediator. The mediator shall be appointed by agreement between the parties.
		2. If the parties cannot agree on a mediator within 14 days of the Dispute Notice, the President of the New Zealand Law Society shall appoint a person as mediator on the application of one of the parties to the dispute.
		3. The costs of the mediation (excluding each disputing party’s own legal and preparation costs) shall be borne equally by the parties unless otherwise agreed.
		4. If the dispute is settled at mediation, the settlement shall be recorded in writing and signed by the disputing parties, whereupon it shall become final and binding on the disputing parties.
		5. No party may initiate or commence court proceedings relating to a dispute unless it has complied with this clause 3.5, provided that application may still be made to the courts:
			+ 1. for interlocutory relief;
				2. to recover a debt payable; or
				3. to enforce settlement agreed to by the disputing parties under clause 3.5.4.
	2. **Information and Education**
		1. Unitec will periodically facilitate and advise on professional development opportunities in relation to Intellectual Property as required and appropriate.
		2. *Tuapapa Rangahau* is required to:
			1. Be responsible for the implementation of this Policy, especially the requirements as to information and education set out in this clause 3.6;
			2. Conduct a review of this Policy at periodic intervals, or as circumstances demand, and make recommendations as to appropriate changes.

# **REFERENCE DOCUMENTS**

1. [Intellectual Property](http://docushare.unitec.ac.nz/dsweb/Get/Document-595/2010-04-28_Intellectual%20Property%20and%20Commercialisation_Internal%20Procedure_v1.pdf) Guidelines
 (includes access to forms and agreements referred to in this Policy)
2. [Patents Act 1953](http://www.legislation.govt.nz/act/public/1953/0064/latest/DLM280031.html)
3. [Copyright Act 1994](http://www.legislation.govt.nz/act/public/1994/0143/latest/DLM345634.html)
4. [Copyright (New Technologies) Amendment Act 2008](http://www.legislation.govt.nz/act/public/2008/0027/latest/DLM1122502.html?search=ts_act%40bill%40regulation%40deemedreg_copyright+(infringing+file+sharing)_resel_25_a&p=1)
5. [Trade Marks Act 2002](http://www.legislation.govt.nz/act/public/2002/0049/latest/DLM164240.html)
6. [Designs Act 1953](http://www.legislation.govt.nz/act/public/1953/0065/latest/DLM281071.html?search=ts_act_Designs+Act_resel&sr=1)
7. [Plant Variety Rights Act 1987](http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes)
8. [Layout Designs Act 1994](http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes)

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