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## PRACTICE NOTE 5.1 OF 2018

### INTELLECTUAL PROPERTY STATUS AND COMMERCIALISATION REPORTS REPORTED TO NIPMO ON AN IP7 FORM

#### 1. OVERVIEW

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 provides that a recipient<sup>1</sup> must **report to NIPMO**<sup>2</sup> 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** and **the state of commercialisation thereof**, in a manner stipulated by NIPMO.

#### 2. OBJECTIVE

This Practice Note sets out:

- a) **Template of cover letter** which must accompany an IP7 form submission;
- b) **How to complete** an IP7 form; and
- c) Consequences of **failure to report IP** to NIPMO.

Please do not hesitate to contact NIPMO ([jetane.charsley@nipmo.org.za](mailto:jetane.charsley@nipmo.org.za) ; 012 844 0228) should you have any questions with regards to any matter in this Practice Note.

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DR KERRY FAUL  
HEAD: NIPMO  
DATE: 9 MARCH 2018

<sup>1</sup> 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

<sup>2</sup> Section 5(1)(h) of the IPR Act: 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.

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

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### 3. 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 of 2012: 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 of 2015: 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

### 4. LIST OF ACRONYMS USED

HEI	Higher Education Institution
IP	Intellectual Property (see IPR Act and Guideline 1.2 of 2018)
IPR	Intellectual Property Rights (see Guideline 1.2 of 2018)
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
PCT	Patent Co-operation Treaty
R&D	Research and Development (see Guideline 1.2 of 2018)

## 5. INTRODUCTION

### 5.1. Management obligations and disclosure duties

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

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

### 5.2. When an IP7 Form MUST be completed and submitted to NIPMO

SECTION OF THE IPR ACT	REQUIREMENT	RESULTANT DOCUMENT
<b>Section 5(1)(h)</b>	A recipient <b>must report to NIPMO twice a year</b> , on all matters pertaining to the IP contemplated in the IPR Act, <b>including all IP from which it elects to obtain statutory protection</b> .	<b>IP7 Form</b>
<b>Regulation 2(2)</b>	Where IP <b>cannot be protected</b> through statutory registration but has potential to: <b>(a)</b> address socio-economic needs; OR <b>(b)</b> be commercialised; OR <b>(c)</b> the recipient elects to retain ownership;  the recipient <b>must</b> report to NIPMO.	<b>IP7 Form</b>

### 5.3. Deadline for submitting an IP7 Form to NIPMO

IP status and commercialisation reports (IP7 Forms) must be reported to NIPMO biannually on or before:

- 30 April of every year (for the previous 6 month reporting period of 1 October to 31 March); and
- 31 October of every year (for the previous 6 month reporting period of 1 April to 30 September).

### 5.4. Multiple IP types in one submission

Recipients are requested to submit all IP types relating to the same subject on one IP7 form. In other words, one IP7 Form may have information relating to a patent and trade mark or other combinations of IP types.

## 6. TEMPLATE FOR COVER LETTER WHICH MUST ACCOMPANY AN IP7 SUBMISSION

A cover letter must accompany an IP7 Form submission providing information in the following categories:

GROUP AND DESCRIPTION	INFORMATION ON COVER LETTER	IP7 FORM REQUIRED
Group 1: Previous IP7 Form submissions for which there was <b>no change</b> during the previous 6 month reporting period.	NIPMO reference number; <b>and</b> Title of IP	<b>No</b>
Group 2: Previous IP7 Form submissions for which there <b>was any change</b> during the previous 6 month reporting period.  An updated IP7 Form must be submitted reflecting one or more of the following possible changes: <ol style="list-style-type: none"> <li>1. Re-filing of IP application and its associated IP number;</li> <li>2. PCT or National Phase application number/s;</li> <li>3. Receiving a granted right in a specific jurisdiction;</li> <li>4. Generating other types of IP for the same subject matter (i.e. filing of a trade mark or design application in addition to a patent application);</li> <li>5. Addition/deletion of an IP creator;</li> <li>6. Addition of a funding agency; and/or</li> <li>7. Entering into any commercialisation venture (including licensing and receiving revenue).</li> </ol>	NIPMO reference number; <b>and</b> Title of IP	Yes

<b>Group 3: New IP7 Form submissions following new disclosures received by an institution's OTT (actionable disclosures).</b>	New IP7 Form to be completed. NIPMO will provide a reference number once the submission has been uploaded onto our database.	Yes
<b>Group 4: Total number of non-actionable disclosures received during the period under review.</b>	Title of IP	No

*Note to reader: Recipients should differentiate between actionable disclosures<sup>3</sup>, which the recipient has elected to act on and which will be reported to NIPMO under Group 3 and disclosures, no matter how comprehensive, received by the OTT and not acted on or not included in the institutional IP portfolio, which are non-actionable disclosures and are reported to NIPMO under Group 4).*

Below are two examples of cover letters which institutions could use.

#### Example 1:

#### Submission of the [institution name] IP7 Forms for reporting period April to September

We hereby wish to submit [institution name] IP7 Forms as at 30 September [year], in accordance with the requirements of the Intellectual Property Rights from Publicly Financed Research and Development Act.

The following documents are submitted:

Title of IP	NIPMO ref no	Institution Ref no (optional)	Group 1: No change	Group 2: With change (IP7 Forms attached)	Group 3: New (IP7 Forms attached)	Group 4: Total disclosure received
<i>HIV medicament</i>	<i>CR2013-506</i>	<i>Inst772</i>	X			
<i>Mine prop</i>	<i>CR2014-708</i>	<i>Inst442</i>		X		
<i>Crystalline form</i>	<i>To be assigned</i>	<i>Inst889</i>			X	
<i>Gastric peptide</i>	<i>To be assigned</i>	<i>Inst890</i>			X	
<i>Wind turbine</i>	<i>Not actionable</i>	<i>Temp002</i>				X
			<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>

<sup>3</sup>Actionable disclosures: Disclosures which the institution act on, for example by filing for statutory IP protection during the twelve months following disclosure, bringing IP rights under institutional management, or which otherwise remains active because future action is expected within one year of receipt of the disclosure.

## Example 2:

### Submission of the [institution name] IP7 Forms for reporting period April to September

This cover letter accompanies the IP7 submissions, covering the period 1 April [year] to 30 September [year].

We have tabulated the IP7s into the four different groups as per Practice Note 5.2 of 2018, namely Group 1 (IP7s with unchanged status), Group 2 (IP7s with changed status), Group 3 (New IP7s) and Group 4 (Total non-actionable disclosures received).

Group 4 includes disclosures that have been made to the office that will be reported to NIPMO on an IP7 Form in due course, if warranted.

#### Group 1: Previous IP7 Forms with unchanged status

NIPMO Ref No	Institution Ref No (optional)	Title of Creation
<i>CR2013-506</i>	<i>Ins772</i>	<i>HIV medicament</i>

#### Group 2: Previous IP7s with changed status (IP7 Form/s attached)

NIPMO Ref No	Institution Ref no	Title of Creation
<i>CR2014-708</i>	<i>Inst442</i>	<i>Mine prop</i>

#### Group 3: New IP7s (IP7 Form/s attached)

NIPMO Ref No	Institution Ref no	Title of Creation
<i>To be assigned</i>	<i>Inst889</i>	<i>Crystalline form</i>
<i>To be assigned</i>	<i>Inst890</i>	<i>Gastric peptide</i>

#### Group 4: Total disclosures received (excluding the new disclosures reported in Group 3)

NIPMO Ref No	Institution Ref no	Title of Creation
<i>Not actionable</i>	<i>Temp002</i>	<i>Wind turbine</i>

## 7. HOW TO COMPLETE AN IP7 FORM

In the section below an IP7 Form is broken down in its various components/sections with NIPMO comments on what information should be provided in the specific components/sections as well as general notices.

<b>Recipient</b>	
<b>NIPMO Comments</b>	<p>The full name of the recipient for e.g. university, science council must be completed.</p> <p><b>Please note</b> that the IP creators are not regarded as the “recipient”. The details of the IP creators should therefore not be included in this section. Please refer to Guideline 4 of 2015: IP Ownership for more clarity.</p> <p><b>Please further note</b> that only IP/disclosures that are owned by the institution should be reported on an IP7 Form.</p>
<b>Contact Details</b>	
<b>NIPMO Comments</b>	<p>The name, email address and telephone number (optional postal address) of the designated person at the OTT/ recipient that undertake the responsibilities of technology transfer must be completed.</p> <p><b>Please note</b> that the name provided in this section will be the person that NIPMO communicates with. Should you want NIPMO to communicate with any additional individual(s), please provide their details here.</p>
<b>Intellectual Property Title</b>	
<b>NIPMO Comments</b>	<p>The title of the IP should be reflected as it appears on the relevant IP application form or registration certificate.</p> <p><b>To avoid duplication by NIPMO in assigning a new IP7 reference number every time the title changes, recipients are required to follow one of the following options:</b></p> <p><i>Option1:</i> In the event of a title change or if the recipient generally refers to a short version of the title in its NIPMO correspondence, <b>all titles</b> must be reported to NIPMO in this section.</p> <p><i>Example:</i> Patent title: A method and apparatus for controlling electric currents under specific conditions Short patent title: Electric Currents Changed patent title: Apparatus for controlling the flow of an electric current between two terminals Trademark title: Ele-cur<sup>TM</sup></p> <p><i>Option2:</i> <b>Alternatively</b> recipients should select a generic IP title which will be reflected on all NIPMO correspondence (including an IP1 submission, invoices for IP Fund review etc). Please note that should the generic IP title change in a future submission the recipient must clearly indicate such in the cover letter.</p>



TYPE OF INTELLECTUAL PROPERTY			
(Please Select one or more)	Undisclosed Information/ Trade Secret	Invention/ Patent	Design/ Registration
	Copyrighted Work	Software/ Computer Programs	New Plant Variety/ Registration
<b>NIPMO Comments</b>	<p>The relevant box relating to the IP that is being referred must be marked with an 'X'.</p> <p><b>Please note</b> that there is no option to refer a <b>trade mark</b>, which was the result of or associated with R&amp;D, as such a recipient must please write out the words "trade mark" in any of the open blocks above.</p> <p><b>Further note</b> that more than one box can be marked for example, when one disclosure has a combination of patent and design and/or trade marks</p>		
<b>Summary of Description of the IP</b>			
<b>NIPMO Comments</b>	<p>A brief description of the IP (as it relates to the IP title) should be provided, typically an abstract of a patent application/ registered patent and/or explanatory statement of a design application/ registration and/or the classification description in respect of a trade mark application/ registration.</p> <p><b>Please note</b> that the title of the IP would not be regarded as a sufficient summary description of the IP. Recipients further must <b>not</b> include in this section all the claims of the patent or the full patent specification.</p>		
<b>Date of disclosure of IP creator(s) to OTT</b>			
<b>NIPMO Comments</b>	<p>This is the date when the IP creator/s disclosed the IP to the OTT/recipient.</p> <p><b>Please note</b> that the date indicated must be the same in all subsequent reporting periods. Should further IP relating to the subject matter be generated and disclosed to the OTT/recipient, then these further dates must be added.</p>		
INTELLECTUAL PROPERTY CREATOR(S)			
<b>First Name</b>	<b>Middle Name(s)</b>	<b>Family Name</b>	
<b>NIPMO Comments</b>	<p>The full names of all of the IP creators should be set out in this section.</p> <p><b>Please ensure</b> that the spelling is accurate and does not change from submission to submission.</p> <p>Please further provide the full middle name of the IP creator, providing an initial only will not be sufficient. NIPMO will allow for the addition of IP creators (from IP7 submission to submission) however should an IP creator be <b>removed</b> the recipient must provide NIPMO with reasoning.</p>		
<b>Intellectual Property Title</b>			
<b>NIPMO Comments</b>	<p><b>Please note</b> that this is a repeat of a previous section in the IP7 Form Recipients are therefore not required to complete this section.</p>		

PATENT APPLICATIONS/PATENTS <sup>4</sup> (where applicable)				
	<i>Provisional Patent Application</i>	<i>PCT Patent Application</i>	<i>Convention Application<sup>5</sup></i>	<i>Non Convention Application</i>
<b>NIPMO Comments</b>	<p>The correct sections stating the stages of the patent application should be completed.</p> <p><b>Please note</b> that a South African complete patent application claiming priority from a South African provisional application or filed through national phase, following a PCT application, must be included under the “Convention Application” section. Please do not manually change the heading of provisional to complete.</p> <p><b>Please further</b> indicate any re-filed application(s) as indicated in the example below.</p>			
<b>Application Number</b>	E.g. ZA2015/00001 ZA2016/0455 (re-filed provisional)	E.g. PCT/IB2017/0 03832	E.g. ZA 2018/00101 JP 2018-500406 IN 201814010101 <sup>6</sup> AE107/2018 BR11/2018/0040034 EU 11701066.2 KP 10/2018/7005005 US 18/808,401	E.g. PITW 1800801
<b>NIPMO Comments</b>	<p>The allocated IP application number/s received from the relevant IP office should be inserted in this section.</p> <p><b>Please note</b> that failure to provide the application numbers and countries in this field will affect the institution’s IP Fund claim</p>			

<sup>4</sup> Application for a patent may be made by way of ([http://www.adamsadams.com/index.php/africa/africaniplaw/south\\_africa/](http://www.adamsadams.com/index.php/africa/africaniplaw/south_africa/)) –

- a **provisional application** (with a provisional specification), where the effective date is the date of filing
- a **complete application** pursuant to a provisional application (with a complete specification), claiming priority of the provisional filing date
- a **non-convention complete application** in the first instance (with a complete specification), where the effective date is the date of filing
- a **convention application** (with a complete specification), claiming priority of the first-filed application in a Paris Convention country
- a **national phase application** based on an international application in terms of PCT (with a complete specification), where the effective date

<sup>5</sup> **Convention application** refers to a patent **application** filed in accordance with the terms of an international patent treaty like the Patent Cooperation Treaty.

<sup>6</sup><http://forums.epo.org/asian-patent-information-services/topic4662.html><http://www.ipindia.nic.in/OfficerCircular/officeOrder-31December2015.pdf>

<b>Publication/ Registration Number</b>	Greyed out	Greyed out	E.g. ZA2018/00101 Pending/Not available Pending/Not available Pending/Not available Pending/Not available Pending/Not available Pending/Not available	E.g. Pending/ Not available
<b>NIPMO Comments</b>	The allocated IP application number/s received from the relevant IP office upon registration (i.e. grant).  <b>Please note</b> that a provisional patent application and PCT application will never be granted. These sections should therefore be greyed out. <b>Please note further</b> that if certain information is not currently available, the recipient must either indicate “Pending” or “Not available”.			
<b>Date of filing</b>				
<b>NIPMO Comments</b>	This is the date when the application was submitted to the relevant IP Office.  <b>Please note</b> that the date of filing and the date of grant must differ.			
<b>Country/ Territory</b>	E.g. South Africa	E.g. All designated countries	E.g. South Africa Japan India UAE Brazil European Union South Korea United States of America	E.g. Taiwan
<b>NIPMO Comments</b>	The place/country/territory where the IP has been filed must be inserted in this section for e.g. South Africa, ARIPO, United States, Russia etc.			
<b>Date of Grant</b>	Greyed out	Greyed out	E.g. 10 March 2018 Pending Pending Pending Pending Pending Pending	E.g. Pending
<b>NIPMO Comments</b>	This is the date when the application has been registered/ granted at the IP office.  <b>Please note</b> that a provisional patent application and PCT application will never be granted. These sections should therefore be greyed out. <b>Please further note</b> that if certain information is not currently available that the recipient must either indicate “pending” or “not currently available”.			

OTHER FORMS OF APPLICATIONS/REGISTRATIONS (WHERE APPLICABLE)			
<b>NIPMO Comments</b>	The details of <b>any other type of IP</b> application filed should be completed below.  <i>Please note patent related information should <b>NOT</b> be completed in this section but in the section above.</i>		
<b>Number</b>	E.g. PBR ZA20125000	E.g. TM 2013/02367 (class 9) TM 2013/02368 (class 40)	E.g. A2014301171 F2013/01112
<b>NIPMO Comments</b>	The allocated application number received from the relevant IP office should be inserted in this section.		
<b>Date of filing</b>	E.g. 1 March 2013	E.g. 1 March 2013 10 April 2013	E.g. 1 March 2013 10 April 2013
<b>NIPMO Comments</b>	This is the date when the application was submitted to the relevant IP office.		
<b>Country/ Territory</b>	E.g. South Africa	E.g. South Africa South Africa	E.g. South Africa South Africa
<b>NIPMO Comments</b>	The place/country/territory where the IP has been filed must be inserted in this section for e.g. South Africa, ARIPO, United States, Russia etc.		
<b>Date of Grant</b>	E.g. 2 July 2012	E.g. 1 March 2015 10 April 2015	E.g. 1 March 2014 10 April 2014
<b>NIPMO Comments</b>	This is the date when the application has been registered /granted.		
<b>Month and year of first reporting of IP to NIPMO (Please attach copy)</b>			
<b>NIPMO Comments</b>	This is the date when the IP7 Form was <b>first submitted</b> to NIPMO (either April or October and the applicable year).  <i>Please note that this section requests a copy of the original IP7 Form to be submitted – <b>this is not required</b>. Furthermore, note that this date should not differ in subsequent IP7 submissions.</i>		
<b>Funding Agency (i.e. the funding agency that funded the conception or development of the IP)</b>			
<b>NIPMO Comments</b>	Section 1 of the IPR Act defines funding agency as the “State or an organ of state or a state agency that funds research and development”.  <i>Please refer to table 2 of Guideline 1.1 of 2018 which sets out examples of the State, organs of state or state agencies which allocate funds for R&amp;D. Please note that if the R&amp;D project was funded using institutional funding recipients must state “institutional funds allocated for this R&amp;D project”.</i>		

PLEASE INDICATE THE LATEST STAGE OF DEVELOPMENT OF ANY PRODUCT ARISING FROM THIS INTELLECTUAL PROPERTY ACCORDING TO THE FOLLOWING CATEGORIES			
Under evaluation (i.e. no protection, pending intellectual Property and market assessment)	Disclosed and Protected (i.e. no decision and agreement made to commercialise)	Licensed (i.e. license agreement signed with a third party to commercialise but pre-revenue)	Commercialised (i.e. revenue generation stage)
<b>NIPMO Comments</b> <i>These are IP applications which have been applied for at the relevant IP office but which have not yet been registered/ granted and which are still pending.</i>  <i>Please note that provisional patent applications and PCT applications are regarded as pending IP and should therefore be indicated in this section.</i>	<b>NIPMO Comments</b> <i>This is IP that has been <b>registered or granted prior</b> to licensing and/or commercialisation</i>  <i>Please note that this can only be ticked when the date of grant is reflected above</i>	<b>NIPMO Comments</b>  <i>This is when an IP transaction has been entered into and signed by the parties (prior to revenue).</i>	<b>NIPMO Comments</b>  <i>This is when <b>revenue</b> has accrued to the institution due to the conclusion of an IP transaction.</i>
In the designated reporting period, what was the total income received as a result of license or option agreements?			
<b>NIPMO Comments</b>	<p><b>Please indicate</b> the total income received for the reporting period <b>1 April to 30 September</b> or <b>1 October to 31 March</b>, as appropriate.</p> <p><b>Alternatively</b>, recipients may report on the annual income received and indicate the year.</p> <p><b>Example:</b> R100 000 (1 April to 30 September); R120 000 (1 October to 31 March) <b>Alternatively:</b> R220 000 (Jan to Dec 2017) or R220 000 (April 2016 to March 2017).</p>		
If any product arising from this invention has reached the market, what was the calendar year of the first commercial sale?			
<b>NIPMO Comments</b>	<p><b>Please indicate</b> the year of the first commercial sale.</p> <p><b>Please note</b> the year of the first commercial sale will remain the same for every subsequent submission</p>		
Please provide the commercial name of any products utilising the intellectual property, that have first reached the market during the designated reporting period.			
<b>NIPMO Comments</b>	<b>Please indicate</b> the commercial name of any product/s.		

In the designated reporting period, how many exclusive licenses and/or options have been awarded? (Please provide details)	
<b>NIPMO Comments</b>	<p><b>Please indicate</b> the number of exclusive licenses and/or options granted for the reporting period <b>1 April to 30 September</b> or <b>1 October to 31 March</b>.</p> <p><i><b>Alternatively</b> recipients may indicate the total number of exclusive licenses and/or options and indicate the year.</i></p> <p><i><b>Alternatively</b> recipients may indicate the total number of exclusive licenses and/or options.</i></p> <p><b>Example:</b>  <i>1 exclusive licence and 2 options (1 April to 30 September 2017);  0 exclusive licences and 0 options (1 October 2016 to 31 March 2017)</i></p> <p><b>Alternatively:</b>  <i>1 exclusive licence and 2 options (2015).</i></p>
In the designated reporting period, how many non- exclusive licenses and/or options have been awarded? (Please provide details)	
<b>NIPMO Comments</b>	<p><b>Please indicate</b> the number of non-exclusive licenses and/or options granted for reporting period 1 April to 30 September or 1 October to 31 March. Alternatively recipients may indicate the total number of non-exclusive licenses and/or options and indicate the year.</p> <p><b>Example:</b>  <i>2 non-exclusive licences and 3 options (1 April to 30 September 2017);  1 non-exclusive licence (1 October 2016 to 31 March 2017)</i></p> <p><b>Alternatively:</b>  <i>2 non-exclusive licences (2016) and 3 non-exclusive licences and 3 options (2017).</i></p>
In the designated reporting period, how many licenses and/or rights were granted to small businesses or BBBEE entities (Please provide details)	
<b>NIPMO Comments</b>	<p><b>Please indicate</b> the number of licenses and/or rights granted to small businesses or BBBEE for reporting period <b>1 April to 30 September</b> or <b>1 October to 31 March</b>.</p> <p><b>Alternatively</b> recipients may indicate the number of licenses and/or rights granted to small businesses or BBBEE and indicate the applicable year.</p> <p><b>Example:</b>  <i>1 non-exclusive licence granted to abc (Pty) Ltd and 0 options (1 April to 30 September 2017); 0 non-exclusive licences and 0 options (1 October 2016 to 31 March 2017)</i></p> <p><b>Alternatively:</b> <i>1 non-exclusive licence granted to xyz (Pty) Ltd and 0 options (2016).</i></p>

## 8. FAILURE TO SUBMIT AN IP7 FORM

### 8.1. Implications in terms of the IPR Act

The IPR Act makes provision, in terms of Section 14(5)<sup>7</sup> and Regulations 14(1)<sup>8</sup> and 14(2)<sup>9</sup>, for NIPMO to demand an assignment and acquire ownership, on behalf of the State, of any IP which a recipient failed to disclose to NIPMO as provided for in Section 5(1)(h).

Section 14(2) of the IPR Act further provides that NIPMO must conduct reviews of non-commercialised IP in consultation with the recipients and that if it comes to the attention of NIPMO that any IP falling under the IPR Act was not disclosed, NIPMO may in accordance with the following procedures demand the assignment of the IP. The procedure is set out in Regulation 14 and summarised as follows:

- (a) Prior to demanding an assignment of the IP, NIPMO must first issue a written notice to the affected recipient and any co-owner(s) and request a written response why such action should not take place.
- (b) If the recipient and any co-owner(s) of the IP do not provide a written response within 30 days, NIPMO may demand that the IP be assigned to NIPMO.
- (c) Upon receipt of a response NIPMO must consider the response and make a determination. Any determination will, upon application by the recipient or any co-owner(s) of the IP be subject to review by the Dispute Panel, in accordance with the Dispute Panel's rules of procedure.

### 8.2. The release/ abandonment of an IP7 Form / IP reported to NIPMO

Should the recipient decide not to retain ownership of an IP disclosure previously reported to NIPMO on an IP7 Form, a submission of an IP1 Form is required. However, should an institution decide to abandon only the applications but **still retain ownership of the technology/ IP** for further developments or for use within the institution, this information can be provided on an IP7 form as an update. This includes the abandonment of the applications in certain countries/territories while maintaining it in other countries/territories.

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<sup>7</sup> Section 14(5) of the IPR Act: NIPMO may, on behalf of the State, demand the assignment of rights to any intellectual property if a recipient fails to make a disclosure to NIPMO as provided for in this Act.

<sup>8</sup> Regulation 14(1) of the IPR Act: It is a specific objective of the Act to ensure that intellectual property governed by the Act is disclosed, appropriately protected and commercialised for the benefit of the Republic. Accordingly -

(a) in terms of Section 5(1)(h) of the Act, a recipient must unless directed otherwise, provide NIPMO with status and commercialisation reports in prescribed Form IP7 twice a year, detailing the intellectual property governed by the Act fully or co-owned by the Recipient or with co-owner(s) as well as the state of commercialisation thereof, in accordance with regulation 3(1); and

(b) NIPMO may on a periodic basis, but no more than once a year, unless reasonably required, conduct reviews, in terms of section 14(2) of the Act.

<sup>9</sup> Regulation 14(2) of the IPR Act: (2) If it comes to the attention of NIPMO that any intellectual property falling under the Act was not disclosed as required in terms of sections 5(1)(c), 5(1)(e), 5(1)(h) of the Act, NIPMO may, in accordance with the following procedures enforce the provisions of section 14(5) of the Act, subject to due notification of any co-owners of the intellectual property –

- a) Prior to demanding an assignment of the IP, NIPMO must first issue a written notice to the affected recipient and any co-owner(s) and request a written response why such action should not take place.
- b) If the recipient and any co-owner(s) of the IP do not provide a written response within 30 days, NIPMO may demand that the IP be assigned to NIPMO.
- c) Upon receipt of a response NIPMO must consider the response and make a determination. Any determination will, upon application by the recipient or any co-owner(s) of the IP be subject to review by the Dispute Panel, in accordance with the Dispute Panel's rules of procedure.
- d) Any determination in terms of paragraph © will, upon application by the recipient or any co-owner(s) of the intellectual property be subject to review by the Dispute panel, in accordance with the Dispute panel's rules of procedure
- e) Should the Dispute Panel rule in favour of the recipient or any co-owner(s) of the intellectual property, the proceedings will be deemed to have been terminated and thereafter NIPMO may not exercise the rights upon which the proceedings were based, unless it issues a new notice based on different fact.

### **8.3. Implications in terms of the IP Fund (Guideline 2.6 of 2018)**

Guideline 2.6 of 2018 provides that all rebate claims must have a **corresponding IP number** as reported on an IP7 Form during the biannual submission dates stipulated above. Failure to submit the **updated** IP7 Forms (with corresponding IP numbers) within the prescribed deadlines; will negatively affect an institution's IP Fund claim.

Furthermore, should the recipient decide to remove an IP disclosure that was previously reported to NIPMO stating that it should not have been reported to NIPMO as it does not fall within the scope of the IPR Act, NIPMO will verify if any IP Fund payment(s) (on a determined percentage) were made towards such IP and recover the amount paid by way of deducting it from the next IP fund amount claimed.