Intellectual Property Policy

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Version 1.0

Ollscoil Teicneolaíochta an Oirdheiscirt

South East Technological University

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V0.1	Amendments to titles, roles and functions to align with SETU structures	V0.2
V0.2	Clarification on Commercialisation Committee role and President functions	V0.3

Consultation History

This document has been prepared in consultation with the following bodies:

Name	Date	Details of consultation
Joint Executive	25 August 2022	Overview of amendments to V0.3
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Approvals

This document requires the following approvals (in order where applicable)

Name	Date	Details of consultation
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Governing Body	6 September 2022	Approval of V1

Contents

1. INTRODUCTION 5
2. DEFINITION 5
3. AIMS OF THE POLICY 6
4. TECHNOLOGY TRANSFER STRUCTURES 6
5. ROLE OF THE COMMERCIALISATION COMMITTEE 10
6. GENERAL PROVISIONS OF THE UNIVERSITY INTELLECTUAL PROPERTY POLICY 10
7. CONSULTANCY 13
8. INTELLECTUAL PROPERTY ASSIGNMENTS AND PATENT ASSIGNMENTS 14
9. RESEARCH FINANCED BY THIRD PARTIES 14
10. ADMINSTRATION OF THE INTELLECTUAL PROPERTY POLICY 15
11. DISCLOSURE 15
12. LICENSING AND DIVISION OF INCOME 18
13. INTELLECTUAL PROPERTY CREATED OUTSIDE OF EMPLOYMENT 19
14. PUBLICATION OF RESEARCH RESULTS 20
15. ARBITRATION 20
16. CONFLICT OF INTEREST RELATING SPECIFICALLY TO TECHNOLOGY TRANSFER AGREEMENTS 20
17. MONITORING AND EVALUATION OF POLICY 22

ANNEX I 25

ANNEX II 29

1. INTRODUCTION

Intellectual Property is an area of substantial importance in the academic environment of South East Technological University. The purpose of defining an Intellectual Property Policy is to provide guidance to staff, students[1] and other relevant parties regarding issues such as ownership, income from intellectual property and the use of University facilities to ensure that the development of intellectual property is mutually beneficial. The University recognises and encourages the principle that Intellectual Property should be used for the greatest public benefit. Commercialisation is often the most efficient means of promoting the widest possible dissemination and use of Intellectual Property. In such circumstances, it is appropriate and desirable for South East Technological University and the originator to benefit from the commercial exploitation of Intellectual Property produced at the University.

This document sets out the University Intellectual Property Policy and the rules that govern the creation, ownership, management, protection and exploitation of intellectual property developed by the University staff, students, and others participating in programmes carried out using the University facilities, know how, confidential information or intellectual property. This is the Intellectual Property Policy referenced in the contract of employment or registration form or acceptance form or intellectual property assignment which is signed by staff. This Intellectual Property Policy also forms part of the regulations of the University which govern the conduct of registered students and University staff members.

2. DEFINITION

The University defines intellectual property as the tangible or intangible results of research, development, teaching, or other intellectual activity. Such intellectual property may be created by academic, research and other University staff (full time or part time or contract), undergraduate and post-graduate students and other third parties involved in University research, development, teaching and other intellectual activity (collectively referred to as "University personnel" in this Intellectual Property policy).

Intellectual property allows creativity and innovation to be captured and owned in the same way as physical property can be owned. Intellectual Property includes individually and collectively all technical innovations, inventions, improvements, and/or discoveries, information, writings and software, whether or not patentable or otherwise susceptible to intellectual property protection, including technology and materials in their tangible form and includes intellectual property generated from University Assets. *See definition of intellectual property in Annex 1*.

[1] 'Students' refers at all times to undergraduate and postgraduate students.

3. AIMS OF THE POLICY

The objective of this policy document is to provide a consistent framework within which University Intellectual Property is developed and managed for the benefit of the University, the originator and the public good.

The specific aims of the Policy are as follows:

- To create an environment that encourages the generation of new knowledge by the University departments, staff and students
- To ensure the University is compliant with the National Intellectual Property Protocol and national policies for the management, protection and exploitation of intellectual property
- To encourage the recognition and identification of Intellectual Property within the University and promote an entrepreneurial culture among the University staff and students that fosters the development of potentially commercial Intellectual Property arising from their research at the University
- To provide an efficient process by which the commercial potential of Intellectual Property can be assessed by the University and its advisors
- To motivate the development and exploitation of Intellectual Property by providing appropriate rewards to creators and the University and administrative assistance to creators
- To provide support and supervision for the creation of economic structures through which the University Intellectual Property is developed and used commercially
- To maximise the earnings potential from commercialisation and utilising the financial and other returns to advance and encourage research in the University
- To encourage public use and commercialisation of the University IP by facilitating its transfer from the University to industry and business
- To continue to recognise the traditional University practices with respect to publication and scholarly works
- To ensure that the financial return from the development of intellectual property does not distort decisions and operations of the University in a manner contrary to the mission of the University

4. TECHNOLOGY TRANSFER STRUCTURES

The administration of this Policy is the responsibility of the TTO and the TTO will manage, in consultation with members of the Commercialisation Committee as required, decisions related to the approval of licensing agreements, spin-outs and other arrangements or agreements for the exploitation of Intellectual Property and on an ongoing basis for modifications (e.g. disposal of shareholdings) to such agreements or the exercise of rights associated with such agreements (e.g. voting shares, appointment of directors).

Any disposal of assets including IP must comply with the 'Code of Practice for the Governance of State Bodies'.

Technology Transfer Office

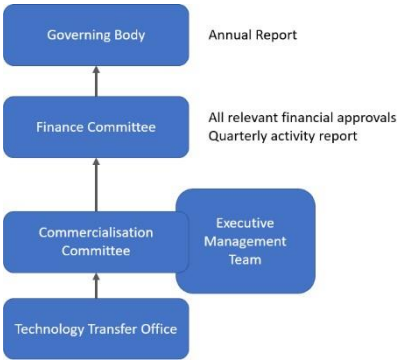
The Technology Transfer Office (TTO) is the office within the University charged with day-to-day matters relating to the identification of Intellectual Property, securing and maintaining Intellectual Property rights where appropriate and facilitating the exploitation of Intellectual Property in a fashion consistent with the University's values and mission. In furtherance of this role, the TTO shall:

- Provide training and support on Intellectual Property matters;
- Assist in identifying Creator[2](s), formulating invention disclosures, and processing patent applications;
- Evaluate, in co-operation with other University staff and outside experts as appropriate:
    - The commercial potential of Intellectual Property;
    - The appropriate form(s) of Intellectual Property protection to be pursued;
- Develop and undertake an appropriate Commercialisation strategy for University-owned Intellectual Property;
- Negotiate on behalf of the University any and all contracts and agreements relating to the generation, ownership, protection and exploitation of Intellectual Property;
- Deal with Intellectual Property issues that may arise in the administration of such agreements or contracts.
- Maintain document management as it relates to Technology Transfer including invention disclosures (research outcomes), contract, licences and agreements.

[2] Creator and Inventors are used interchangeably in the policy – the distinction relates to inclusion on patents.

Commercialisation Committee

The Commercialisation Committee is a sub-committee of the Executive Management Team. The Commercialisation Committee will require approval from the Finance Committee for all relevant financial decisions including those which may deviate from the Intellectual Property policy or standard operating procedures. A quarterly report will be brought to the Finance Committee and an annual report on commercialisation activities to Governing Body.



The Commercialisation Committee will consist of the following:

- Vice President for Corporate Affairs and Finance (Chair);
- Vice President for Research, Innovation and Graduate Studies;
- An external representative with the requisite intellectual property expertise; and
- Additional members as appointed from time to time by the President.
- TTO (in attendance)

On a case-by-case basis, the President may invite other University staff or outside experts to participate in the activities of the Commercialisation Committee. In making such additional appointments, the President shall consider the need to have expertise appropriate to the specific matters facing the Committee, the desire to have representation from across the University's community and the necessity for the Commercialisation Committee to operate as an oversight and advisory body. Recognising the fact that personal information may be involved in matters before the Commercialisation Committee, all members of the Commercialisation Committee shall be required to sign a Confidentiality Agreement with respect to all matters before it.

Members of the Commercialisation Committee who are, or could reasonably be perceived to be, in a conflict of interest situation with respect to any matter before the Committee shall excuse themselves from all involvement with the Committee on such matters. Any individual who is related to, reports to, or is a business partner of, someone who would be considered to have a conflict of interest with respect to a specific matter may themselves have a conflict of interest with respect to that matter and should also excuse themselves from all involvement with the Commercialisation

Committee on such matters. "Reports to" in the context of potential conflict of interest should be interpreted as directly or indirectly reporting.

The Commercialisation Committee will provide such oversight and guidance as may be required from time to time by the TTO to enable the TTO to consider, review and approve any and all licenses, agreements or other contracts howsoever arising or related to the University IP and/or the Commercialisation of University IP, including those associated with spin-out companies, in which the University is involved.

The role of the TTO is to prepare and agree licensing proposals and terms identifying the benefits and potential risks and, to consult with or present to members of the Commercialisation Committee on such matters. In the case of spin-out proposals, the TTO will assist the promoter(s) of the spin-out company in preparing and presenting a proposal to the Commercialisation Committee, if required. In cases where the promoter(s) does not include all the Creator(s), those Creators not sponsoring the submission will be notified and have the opportunity to meet with the TTO and/or members of the Commercialisation Committee prior to any decision being made.

Commercial terms will be decided on a case by case basis taking into account multiple factors such as the potential impact on the regional and national economy, the investment into the development of the intellectual property, future investment requirements, state aid rules, the status of the intellectual property, the financial standing of the commercial partner, the National Intellectual Property Protocol, the impact on existing research and other commercial activities.

Members of the Commercialisation Committee will assist in advising, where necessary, the TTO on licensing or assignment of Intellectual Property in whatsoever form and for approving all decisions related to the prosecution or defence of patents and other forms of Intellectual Property. Once approved, licenses, contracts and other such documents as necessary which effect the exploitation will be signed by the authorised signatory: either the Chair of the Commercialisation Committee or the Vice President for Research, Innovation and Graduate Studies or other such party as may be nominated by the President, or as may be required to bring into full effect such licenses, contracts or other documents.

All licenses and assignments the subject of SETU Intellectual Property will be notified to the Governing Body. Creators of Intellectual Property that is the subject of such a license or assignment may if they so wish make a presentation to the TTO and/or, where appropriate, to the Commercialisation Committee during the same meeting at which the TTO presents the licence or assignment.

The processes and procedures adopted by the Commercialisation Committee shall take into account the University's obligations, and general guidance, as may from time to time be addressed in guidance from funding agencies and other relevant State bodies.

5. ROLE OF THE COMMERCIALISATION COMMITTEE

The Commercialisation Committee will meet as required but at least on a quarterly basis to

- Review the activity of the Technology Transfer Office;
- Assess the commercial benefits from Intellectual Property generated by the University activities that may accrue to individuals or entities, internal or external to the University and to make recommendations relating to same to the Senior Executive for approval or noting as required by Governing Body,
- Review the current status of the University's compliance with the National Intellectual Property management requirements.

Where matters arise, the committee will make recommendations as to how these can be resolved and will have the responsibility to ensure the remedy is implemented. The Commercialisation Committee through the TTO shall provide an annual report to the Governing Body. The committee's report will be made available publicly on the University website.

6. GENERAL PROVISIONS OF THE UNIVERSITY INTELLECTUAL PROPERTY POLICY

6.1 As a general rule (and subject to the exceptions set out in this Intellectual Property policy) any Intellectual property rights in any material/works, created by University personnel, in the course of their employment in relation to work carried out for the University is the property of and vests solely and absolutely in the University or such companies or organisations as the University may nominate for such purposes. Such material/works include, but are not limited to any:

- copyright (including rights in computer software and moral rights)
- patent
- design right
- trademark rights
- brand rights
- database rights
- know how
- trade secrets
- confidential information rights in design

- semiconductor topography rights
- or other intellectual property rights or other property rights, (whether vested, contingent or future anywhere in the world).

This applies to any intellectual property rights in materials which are developed by University personnel, which they cause to come into existence:

- during the working or teaching hours of the University; or
- when using the University's equipment, supplies, facilities or the University Assets: or
- using the University's confidential information, trade secrets, know how or any of the intellectual property of the University's; or
- in relation to any work performed for the University (including pursuant to any third party funded research programs).

For the avoidance of doubt, Intellectual Property created by a registered student of the University belongs to the student unless:

- it was created while the student was participating in a Funded Research programme; and/or
- other than Incidental Use of the University's Resources were made in its creation.

In either of the above-mentioned cases, the Intellectual Property is owned by the University as may be required by the Funding Research programme, grant or stipend. In the case of student-created Intellectual Property owned by the University, the student of the University would participate in any commercial benefits as described in Section 12 in the same way as would a staff member of the University.

6.2 At the University's reasonable cost, the University's personnel will also agree at any later time to execute any documentation or otherwise provide assistance to the University to secure, protect, perfect or enforce any of the University's rights, title and interests in its intellectual property.

6.3 The Intellectual Property Policy is applicable to Intellectual Property that is owned by the University in any of the reasons outlined below:

- It is developed by the University personnel in the course of their normal or specifically assigned duties either when intellectual property could be reasonably expected to result from the carrying out of those duties and/or, at the time the intellectual property was developed, there was a special obligation on the relevant University personnel to further the interest of The University.
- Literary Works – the University makes no claim of ownership to Literary Works, the University reserves for itself and shall maintain a non-exclusive, royalty-free, irrevocable and perpetual license to use such Literary Works in

its teaching and research activities wherever conducted. Except to the extent expressly provided herein or as may otherwise be agreed in writing between the University and the Creator, the Creators of Literary Works may use their Literary Works in other contexts and the University will not seek to benefit commercially from such use. In such situations, however:

  - the University should be appropriately acknowledged and no other usage of the University's name or Marks may be made without the prior written approval of the University;
  - the University provides neither warranty, representation nor indemnity of any form regarding the content, suitability, reliability, completeness, accuracy, use or otherwise of the Literary Works; and
  - the Creators who use their Literary Works in such other contexts do so at their own risk and it is solely the responsibility of the Creators to ensure that any such usage (i) does not infringe the Intellectual Property or other proprietary rights of any third party and (ii) complies with all applicable laws and regulations

- The intellectual property arises out of funded or non-funded research where such research has, in the opinion of the University, made use of the equipment, facilities, the University assets and other resources of the University unless such action was precluded by prior agreement between the University and third parties.
- If it is a condition of a research contract with a third party that the University shall have ownership of the intellectual property arising from the contract.

6.4 Intellectual Property arising from research or other work sponsored by an external organisation (e.g. Enterprise Ireland) shall be subject to the Intellectual Property provisions that are stipulated in the related agreement between the University and the external organisation ("External Agreement"). In the case of doubt, the provisions of the External Agreement will necessarily prevail. Where any External Agreement requires all Intellectual Property rights to be assigned to private industry, the entry-level knowledge of the University personnel shall be defined. Any External Agreement shall be reviewed by the TTO.

6.5 The Intellectual Property Policy also extends to non-employees who participate in research projects at the University including visiting academics, industrial personnel etc. unless a specific waiver has been approved. Visiting lecturers and other personnel at the University who have a prior existing and conflicting intellectual property agreement or arrangement with another employer or third party must enter into an agreement with the University (and their employer or relevant third party) (see Annex III) to abide by the conditions of this Intellectual Property Policy in the course of their activities in the University.

6.6 Spin-Out Companies

The formation of a Spin-Out Company is chosen if the Intellectual Property is best exploited through (and is capable of supporting) a new company rather than an existing one. The University provides supports to Spin-Outs through the Technology Transfer Office.

The establishment of a Spin-Out requires that a business plan, a suitable management team and investment are all in place. In some cases the Inventor/Creator may leave the University to join the Spin-Out full-time. In other cases, the University Inventor/Creator will remain in the University and not take an executive role in the company (although they may provide scientific support on an ad-hoc basis). The management team will be asked to form a company, usually with a standard company constitution.

The University will then license Intellectual Property subject to execution of a License Agreement and a Subscription and Shareholders agreement. The inventor, the management team, the investors and the University will subscribe for equity in the company.

The University will subscribe for shares based on exclusive licensing of the IP without requirement for upfront payments, on fair commercial royalty rates, and for the supports it can provide to the Spin-Out. Such University shareholding will either be negotiated on a case-by-case basis though the following are considered reasonable starting points for negotiation:

a) 20% of issued share capital if the University subscribes for shares before an external and significant cash investment is made in the Spin-Out; or

b) 15% of issued share capital if the University subscribes for shares in the Spin-Out at the same time as the first seed investment by an angel or other investor is made.

The University may choose to dispose of its equity share as it sees fit, subject to any terms of restriction in the Spin-Out company constitution and the Subscription and Shareholders Agreement.

For the avoidance of doubt Founders who taken any equity share in a spin out company forfeit their right to receive any income payments under Section 10.

7. CONSULTANCY

Members of the University staff are permitted to engage in consultancy projects for third parties subject to the Conflict of Interest Policy and External Works form. It is the responsibility of each individual staff member to inform the University, and to keep the University informed, of any actual or perceived conflict of interest or conflict of commitment.

8. INTELLECTUAL PROPERTY ASSIGNMENTS AND PATENT ASSIGNMENTS

For the avoidance of doubt the provisions of this section apply to all the departments, faculties, full-time members of staff, part-time members of staff, and postgraduate students, consultants or any third-party conducting research or other intellectual activity using the University supplies, facilities, assets, confidential information, trade secrets or existing intellectual property of the University.

As a condition of employment as a University employee or contractor or relevant third party (as the case may be) you shall comply with this Intellectual Property Policy and shall agree to assign to the University (or a person or company designated by the University or an agency which provided the funding for the relevant research) any and all inventions discovered and produced or otherwise developed while the person was an employee of the University. Staff and relevant third parties will agree to sign an Intellectual Property assignment. In addition, all abovementioned personnel agree to execute such documents of assignment or other documentation required to assign or transfer Intellectual Property and have any moral rights to ensure, protect, perfect and enforce the University rights, title and interest in the University Intellectual Property. In addition, each member of staff and relevant third-party personnel agree to do anything that may reasonably be required to assist any assignee of any patent application or other intellectual property to obtain, protect and maintain its rights, title and interest.

For the avoidance of doubt, Intellectual Property created by a registered student of the University belongs to the student unless:

- it was created while the student was participating in a funded research programme; and/or
- other than incidental use of the University's resources were made in its creation.

In either of the above-mentioned cases, the Intellectual Property is owned by the University or other party as may be required by the funding research programme, grant or stipend. In the case of student created Intellectual Property owned by the University, the student of the University would participate in any commercial benefits as described in Section 12 in the same way as would a staff member of the University.

9. RESEARCH FINANCED BY THIRD PARTIES

Any research which is partly or wholly financed by any third-party agency shall be subject to the specific provisions of the grant or contract covering that work. In the event of any inconsistency between this Policy and the terms of any such grant or contract then the provisions of the said grant or contract shall prevail provided that the intellectual property clauses in the contract have been reviewed and signed by the University.

10. ADMINSTRATION OF THE INTELLECTUAL PROPERTY POLICY

At the University, the office responsible for supporting the development and commercialisation of IP is the Technology Transfer Office. All Intellectual Property created by University personnel must be disclosed in accordance with the procedures laid down in this policy.

The TTO is the function within the University charged with day to day matters relating to the identification of Intellectual Property, securing and maintaining Intellectual Property rights where appropriate and facilitating the exploitation of Intellectual Property in a fashion consistent with the University's values and mission. In furtherance of this role, the TTO shall:

- Provide training and support on Intellectual Property matters
- Assist in formulating invention disclosures, and processing patent applications
- Evaluate the commercial potential of intellectual property in cooperation with other University staff and outside experts as appropriate
- Develop and undertake an appropriate Commercialisation strategy for University-owned Intellectual Property
- Negotiate on behalf of the University any and all contracts and agreements relating to the generation, ownership, protection and exploitation of Intellectual Property
- Deal with Intellectual Property issues that may arise in the administration of such agreements or contracts
- Support the formation of Spin-Out companies
- Create, foster and inform an Intellectual Property aware research culture

11. DISCLOSURE

It is a condition of the employment of each member of staff that the results of all research or projects shall be fully and completely disclosed.

In order to enable the University to ensure that it fulfils its obligations to organisations such as Science Foundation Ireland, Enterprise Ireland, companies and other third parties in both the public and private sectors, who are funding research at the

University, all the University Personnel must disclose any intellectual property arising from such research to the University through the Technology Transfer Office as soon as possible after such intellectual property is apparent. The discovery shall be kept confidential for a period of time until a timely evaluation of the case including patentability assessment has taken place. No publication shall be made prior to disclosure. Confidentiality agreements shall be used where appropriate.

Procedures to be followed in respect of invention applications

1. Submission of Invention Declaration Form (issued via the TTO)

   - The Policy requires that a staff member or student of the University, or relevant third party, complete an Invention Declaration Form regarding any discovery or invention made by the individual (or group of individuals that might be useful, patentable or otherwise protectable.
   - This form shall be submitted to the TTO

2. Commercial Evaluation of Intellectual Property

   - The criteria to assess the commercial value of the Intellectual Property shall include:
     - Assessment that the invention does not cater for a once-off need and that it has a potential long-term benefit
     - Technical and commercial feasibility
     - Proof of concept (business plan, access to finance, etc.)
     - Potential for sale or licensing of technology or consultancy
     - Demonstrates a competitive advantage based on differentiated or innovative product or service
     - Development stage of the subject matter
     - Commercial focus and profit motive
     - Study of comparable existing subject matter, licences and commercialisation practices
     - Proximity to market
     - Market valuations – in other words 'what is the current market willing to pay?
     - Barriers to entry into markets
     - Estimated projected sales based on market research
     - Third party assistance including for example input from industry and state agencies
     - Estimated cost of patent process

   While the criteria listed above are not exhaustive, it provides guidance to persons submitting an application as well as to those determining the

commercial value. As it is a complex decision, the TTO may refer to other expertise where necessary, and further criteria may be applied.

- A decision will be made by the TTO within a reasonable time (e.g. 60/90 days, but in any event no longer than one year from date of report) of receipt of the application, where practicable, and the inventor will be notified in writing of the decision made.
- If the evaluation is rejected by the TTO, the TTO in consultation with the Commercialisation Committee may decide in appropriate circumstances, to offer the opportunity to the inventor to pursue exploitation independently if appropriate under agreed terms.

3. Submission of a patent application:

    - The University shall have the right, but not the obligation, either directly or through an outside agent, to seek patent or other protection of the invention and to undertake efforts to introduce the invention into public use.
    - Where a decision is made by the TTO to proceed with a patent application, the inventor is required to cooperate in every reasonable way and shall assist the TTO in completing the patent application form, but all ownership rights will be assigned by the inventor to the University. The application shall remain confidential until such time as the process is complete. Confidentiality agreements will be used where appropriate.
    - Commercialisation activities shall recognise specific terms and conditions in appropriate funding contracts including any External Agreements.
    - The cost of the submission of the application shall be paid by the University. Any expenses incurred will be reimbursed to the University prior to the distribution of any royalty income (if any) from the invention.
    - The inventor and the University shall take all reasonable precautions to protect the integrity and confidentiality of the Intellectual Property in question. The inventor shall be made aware that publication prior to the filing of patent applications may prevent the granting of certain patents.
    - The University may decide at any stage to withdraw from the process of exploiting an invention. This may include:
        - concern regarding the technical or commercial feasibility of an invention
        - costs of exploiting the invention are excessive
        - external sponsorship of the process is no longer available
    - The inventor will be notified in writing of the intention of the University to withdraw from the process and the withdrawal will apply from immediate effect.

- The invention will be returned to the originator and ownership may be transferred to them in appropriate circumstances, offering the opportunity to the inventor to pursue exploitation independently if appropriate under agreed terms.
- No patent application, assignment, licensing or other agreement may be entered into or will be considered valid with respect to the University Intellectual Property except as entered into by an Officer of the University specifically authorised to do so.

12. LICENSING AND DIVISION OF INCOME

- The University welcomes the development by industry, for public use and benefit, of inventions and other Intellectual Property resulting from the University research. The University will maintain a flexible and open approach to bringing University Intellectual Property into commercial use. Each case will be considered individually and will involve an assessment of all the potential risks and potential rewards.

- In instances where Intellectual Property is not sufficiently strong or broad enough to trigger the creation of a Spin-Out, then one commercialisation opportunity may be to license it to an existing company. With the assistance of the Inventor/Creator, the TTO will have the responsibility to negotiate a licence to a third parties on an exclusive or non-exclusive basis and at fair and reasonable commercial terms to the maximum benefit of the University.

- Income derived from inventions or other Intellectual Property which are patented and/or commercialised by the University in accordance with the provisions of this Intellectual Property Policy will be distributed between the Inventor(s), the Inventor's Department and the University Research and Innovation Support Fund (inclusive of Technology Transfer).

- The first €10,000 of commercial benefit will be distributed in its entirety to the Inventor(s) of the Intellectual Property.

- After the first €10,000, all charges associated with the protection and administration of the Intellectual Property will be deducted. While such costs are deducted from the proceeds at this point, they do not count as distributions for the purposes of calculating cumulative thresholds. These costs are reimbursed to the TTO in recompense for associated costs incurred previously.

	Inventor(s)	The University Research and Innovation Support Fund (incl. Technology Transfer)	Inventor's Department
€10,000 to €100,000	75%	10%	15%
€100,0001 to €500,000	50%	20%	30%
€500,001 and over	40%	25%	35%

The division of income in this table will be reviewed annually by the Commercialisation Committee and recommendations brought to the Finance Committee for approval.

- The definition of 'income' includes, but is not limited to, up-front licence fees, down payments, minimum annual payments, royalties on sales and equity sale from spin out companies all of which is net of any expenses incurred by the University in commercialising the relevant Intellectual Property.
- All direct expenses incurred by the University in the patenting and commercialisation of an invention, including administrative, licensing, legal, and any other expenses and costs involved in patenting an invention and any subsequent investigation, development and promotion, will be deducted from the initial royalty income or lump sum. No royalty income will be made available for distribution until such expenses have been recovered.
- If more than one inventor or department is involved, unless formally agreed amongst themselves, with due regard to the value and substance of their respective contributions, the Inventor's share set out above shall be divided equally among them.
- The inventor's share shall continue to be paid to the Inventor even though they have left the University.

13. INTELLECTUAL PROPERTY CREATED OUTSIDE OF EMPLOYMENT

The University will have no interest in any inventions or other intellectual property created by University personnel or students entirely on their own time without the use of any the University assets. The onus shall be on University personnel asserting their rights under this clause 13 to prove to the satisfaction of the University that the said invention or intellectual property was in fact created by them on their own time without the use of any the University assets. University personnel must not infringe the Intellectual Property Rights of any third parties.

In the case of staff or student owned Intellectual Property, if the owners wish, subject to a mutually acceptable written agreement, they may, engage the TTO to protect and commercialise this Intellectual Property. The University would expect to participate in the commercial benefits, if any arise, in such a situation.

14. PUBLICATION OF RESEARCH RESULTS

It is the University policy to encourage staff and students to place the results of their research in the public domain either through publication in learned journals or presentation at conferences. This is a vital factor for academic recognition. It is mandatory that disclosure is not in violation of the terms of any agreement that has been entered into by the University with a sponsor or other Third Party.

It must be recognised that premature publication or disclosure except on a confidential basis may make it impossible to obtain valid patent protection. Where possible the delay in publication to enable a patent application to be filed shall be for a period of 90 days. The placing of a thesis in the University library without ensuring that accessibility is restricted constitutes publication.

15. ARBITRATION

Any dispute between the University and the creator of intellectual property will be forwarded to an independent arbitrator to be agreed by the parties. Failing agreement, the arbitrator will be appointed by the Director for the time being of the Incorporated Law Society. Expenses incurred in arbitration shall be deducted from royalty income before distribution.

16. CONFLICT OF INTEREST RELATING SPECIFICALLY TO TECHNOLOGY TRANSFER AGREEMENTS

16.1. The University encourages full disclosure of potential areas of conflict and open discussion at an early stage. The University will endeavour to help alert staff to recognise where conflicts may occur and to manage and resolve these conflicts.

16.2. As a condition of employment, engagement or admission by the University, University personnel shall furnish all such information, documents and reasonable assistance as may be required to review, determine and/or manage any potential conflicts and to otherwise enable the University to fulfil its obligations under the

National Intellectual Property Protocol to minimise and manage Conflicts of Interest.

16.3. A potential Conflict of Interest occurs when a University personnel's personal or private interests might lead an independent observer to reasonably question whether their professional actions or decisions are influenced by considerations of personal interest, financial or otherwise. Listed below are examples of situations that may give rise to a perception of, potential or actual Conflict of Interest. This list is provided by means of example only and is non-exhaustive.

- Use of public grant funds or other resources to realise inappropriate personal gain
- Private business related to a research programme or activities
- Employment in addition to University employment
- Outside professional activities and consultancy
- Holding executive or non-executive directorships
- Holding an interest in an external body which is involved in the negotiation of any research or licence agreement or other arrangements with the University
- Receipt of gifts or direct benefits, such as sponsorship, provision of materials, facilities or personal support, travel, accommodation, conference fees or expenses from external organisations or individuals with a direct interest in the subject matter or materials of a Personnel Member; and/or any other activity or interest which would be deemed under the National Intellectual Property Protocol to constitute a Conflict of Interest.

16.4. Where there is doubt as to whether a potential or actual Conflict of Interest or Conflict of Commitment exists, the activity or interest must be reported as per Conflict of Interest policy.

16.5. Disclosure of potential Conflicts of Interest shall be made;

(a) prior to the commencement of such a conflict
(b) when circumstances change in such a way that may give rise to a potential conflict
(c) in response to such information requests or updates as may be reasonably required by the University from time to time in accordance with its relevant procedures

16.6. In any case affecting a partially or wholly State funded research programme, The University is required to report to the State research funding organisation concerned any unresolved Conflict of Interest and must agree with that funding organisation appropriate steps to deal with the conflict.

16.7. A written record of how the conflict was dealt with and resolved will be maintained by the Conflict of Interest Committee. All such records will be retained for a period of at least seven (7) years from the date of disclosure. Without limiting the University's obligation to treat and maintain confidentially all disclosures may be subject to internal audit from time to time in accordance with the University's relevant procedures.

17. MONITORING AND EVALUATION OF POLICY

17.1. National Intellectual Property Policy

The University implements the Intellectual Property management procedures detailed in the National Intellectual Property Protocol. The National Intellectual Property Protocol provides a framework for best practice, guiding on the expected norms for research-related engagements between industry and State research performing organisations (RPOs). The National Intellectual Property Protocol comprises two volumes: the Policy Document which sets out the framework underpinning research collaboration and access to intellectual property from state-funded research; and the Resource Guide which provides an overview of the national Intellectual Property management guidelines and links to a wealth of resources and template documents that support these guidelines. It also provides an overview of the knowledge transfer structures in Ireland and the kinds of agreements that can be used to formalise research-industry engagements.

There are nine fundamental requirements of the Intellectual Property Protocol for the management of Intellectual Property:

	Requirement	**Details**
1	Ensure early awareness of the importance of Intellectual Property management amongst Researchers.	Appropriate programme of Intellectual Property awareness is delivered by the University to the RPO Researcher community.
2	Set obligations of individual Researchers to ensure Intellectual Property is managed in a professional way.	Principal Investigator confirms that - as accountable Project leader – they are aware of their particular responsibilities in respect of the Collaborative Research Agreement. All Researchers involved in the Project confirm that they have read and understood the Collaborative Research Agreement.

3	Maintain confidentiality before publication and confidentiality of data provided by others.	Include suitable confidentiality terms and suitable processes for pre-publication review in Collaborative Research Agreement.
4	Protect Intellectual Property arising from research Projects or Programmes.	Appropriate Programme of Intellectual Property awareness is delivered by the University to the RPO researcher community. The University has adequate procedures in place. The University undertakes due diligence and appropriate protection of Intellectual Property arising from research Project or Programme and in accordance with the terms of the Collaborative Research Agreement.
5	Introduce existing Background Intellectual Property into a Project diligently.	Background Intellectual Property to be introduced into a research Project or Programme by all parties is detailed in the Collaborative Research Agreement. The University completes a Background Intellectual Property Due Diligence Form prior to signature of the Collaborative Research Agreement.
6	Conduct appropriate due diligence before licensing Intellectual Property.	Researcher and the University complete Invention/ Intellectual Property Disclosure Form (IDF).
7	Maintain records of Intellectual Property and licences.	The University has robust Intellectual Property and licence management systems and databases in place.
8	Manage conflicts of interest.	The University has a published policy for management of conflicts of interest.
9	Implement systems for the sharing of income from the commercialisation of Intellectual Property within the RPO.	The University has a published policy for commercialisation and revenue share.

The University is committed to protecting the rights and privacy of individuals with respect to the processing of their personal data. A copy of the University's Privacy notice is available on the University's website. This website also contains further information relating to your rights regarding subject access requests, records retention and data

protection in general. Any further queries in relation to the GDPR can be addressed to the University's Data Protection Oversight Group.

ANNEX I

Definition of Intellectual Property

1 Intellectual Property

The University defines intellectual property as the tangible or intangible results of research, development, teaching, or other intellectual activity. Intellectual property allows creativity and innovation to be captured and owned in the same way as physical property can be owned. Intellectual property includes individually and collectively all technical innovations, inventions, improvements, and/or discoveries, information, writings and software, whether or not patentable or otherwise susceptible to intellectual property protection, including technology and materials in their tangible form.

1.1 Patents

Patents are intended to protect new and improved products and processes that have some technical innovation and are capable of industrial application.

A Patent gives its owner the right, for a limited period, to stop others from making, using or selling the invention without the permission of the owner in a particular territory. Patent rights are territorial in that an Irish Patent does not give Patent rights outside Ireland. Most Patents are for improvements in a known technology rather than the devising of a completely new technology.

1.2 Copyright

Most of the Copyright and Related Rights Act, 2000 came into force on January 1, 2001. This was intended to transpose a number of EU Directives into Irish law and to bring Irish law into conformity with its obligations under various International Treaties.

Copyright gives the right to control use of certain material such as books and other literature, art, music, sound recordings, films and broadcasts. However, copyright does not protect inventions (see Patents) or brand names (see Trademarks). Most, but not all, uses of copyright material will require permission from the copyright owner.

Copyright protection is automatic in Ireland in that there is no official application or recording system.

1.3 Trademarks

Trademarks are intended to protect a brand's identity so as to distinguish the goods or services of one trader from those of another trader. A Trademark may be a word, logo, slogan, colour, three-dimensional shape and even a sound or smell. The Trademark must be capable of being represented in words and/or pictures.

1.4 Industrial Design and Unregistered Design Right

The Industrial Designs Act 2001, which brings Irish law into compliance with EU Directive 98/71/EC, came into force on **July 1, 2002**. Designs cover the appearance of a product, either the whole or a part, resulting from such features as lines, contours, colours, shape, texture or materials of the product itself or its ornamentation. The term **product** embraces any industrial or handicraft item. The term **product** has a wide meaning that includes packaging, get-up and graphic symbols (e.g. Desktop icons) etc.

Registration is not available for features of a design which are dictated by the technical function of the product. The new law contains a *must fit* exclusion under which it is not possible to obtain registration for features which are dictated by the need for the product to fit another. However, modular products, i.e, made up of several components which can be fitted together in different ways, are protectable.

Design Registration gives the owner the right, for a limited period (up to 25 years, with renewals every 5 years), to stop others from making, using or selling a product to which the design has been applied, or in which it is incorporated.

From early 2003, it will be possible to obtain a *Registered Community Design* covering all member states of the EU. Registered Community Design Applications will be handled by the office (OHIM) which currently handles Community Trade Marks.

An *unregistered design right* is available at Community level and eligibility for protection is the same as for a Registered Design. The right comes into existence automatically by the mere fact of making the product incorporating the design available to the public within the European Community. Protection is limited to 3 years and to preventing the use of copies of original designs. It is important to note that a Registered Design gives exclusivity whereas an *unregistered design right* can only be enforced where copying can be proved.

1.5 Confidential Information and Know How

Protection for confidential information and know-how arises from the law of confidentiality. The confidential information may be know-how associated with a Patent or a Patent Application, or material in existence before, for example, a Patent Application is filed, or material already protected by another form of intellectual property, for example, copyright.

1.6 Domain Names

A domain name is a unique address on the Internet. There are various generic TLDs, such as .com and .biz, as well as, ccTLDs (Country code), such as .ie.

1.7 Tangible Research Property

This includes biological materials such as cell lines, plasmids, hybridomas, monoclonal antibodies and plant varieties; computer software, data bases, integrated circuit chips, prototype devices and equipment, circuit diagrams: and analytical procedures and laboratory methods, whether or not intellectual property protection is available through Patents and/or copyright or otherwise.

1.8 Other Forms of Intellectual Property

Other forms of intellectual property include, but are not limited to, database right for certain types of database (under Copyright and Related Rights Act, 2000); protection for semi-conductor topographies; plant breeders' rights in certain plant varieties; and protection against unfair competition under "passing off" law.

The Intellectual Property Policy is applicable to *the University Intellectual Property* that is owned by the University for any of the reasons outlined below:

- It is developed by the University personnel in the course of their normal or specifically assigned duties either when intellectual property could be reasonably expected to result from the carrying out of those duties and/or, at the time the intellectual property was developed, there was a special obligation on the relevant University personnel to further the interest of the University.

- Under the 2000 Act, the University is the first owner of any copyright in the work created by The University Personnel in the course of their employment unless precluded by a prior agreement between the University and a third party (or is covered by Clause 5 of this Intellectual Property Policy).

- The intellectual property arises out of funded or non-funded research where such research has, in the opinion of the University, made use of the equipment, facilities, the University assets and other resources of the University unless such action was precluded by prior agreement between the University and third parties.

- If it is a condition of a research contract with a third party that the University shall have ownership of the intellectual property arising from the contract.

1.9 Literary Works

Literary means literary works of copyright to the extent created by a Creator during the course of (and/or as part of) his or her employment including, but not limited to, books, articles and other scholarly publications, manuals, slides, audio-visual materials, multi-media materials, musical and artistic materials, on-line content and Teaching and Research Materials, other than and excluding:

- any works or materials which were commissioned by the University or by any party with which the University contracted to produce such works or materials;
- any other works or materials which were carried out as part of or for the purposes of Funded Research or otherwise with the support of funding provided by any third party;
- computer software and databases; and
- the University IP.

COPYRIGHT AND RELATED RIGHTS ACT, 2000 ("2000 Act")

First ownership of copyright.

Section 23 (1) of the 2000 Act provides that: "The author of a work shall be the first owner of the copyright unless …. the work is made by an employee in the course of employment, in which case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary".

Maker of database.

Section 322 (2) of the 2000 Act provides that: Where a database is made by an employee in the course of employment, his or her employer shall be regarded as the maker of the database, subject to any agreement to the contrary".

PATENTS ACT 1992 ("1992 Act")

Right to patent.

Section 16(1) of the 1992 Act provides that: "The right to a patent shall belong to the inventor or his successor in title, but if the inventor is an employee the right to a patent shall be determined in accordance with the law of the state in which the employee is wholly or mainly employed or, if the identity of such state cannot be determined, in accordance with the law of the state in which the employer has his place of business to which the employee is attached."

ANNEX II

All forms, declarations and other documents related to commercialisation are available from the Technology Transfer Office. Templates are not provided as part of the policy as these documents are regularly revised.

Declaration of Potential Conflict of Interest relating specifically to Technology Transfer Agreements are available from the Technology Transfer Office