



Ollscoil
Teicneolaíochta
an Atlantaigh

Atlantic
Technological
University

Intellectual Property Policy and Procedure

Version 1.0

Revision History:

Date of this revision: 13 June 2022		Date of next review: 13 June 2023	
Version Number/ Revision Number	Revision Date	Summary of Changes	Changes marked
1.0	n/a	New Policy	n/a

Consultation History:

Version Number/ Revision Number	Consultation Date	Names of Parties in Consultation	Summary of Changes
1.0	December 2021 to May 2022	IP Pragmatics Ltd, VPs for Research & Innovation, Heads of Research, University Planning Team	n/a, new policy

Approval:

This document requires the following approvals:

Version	Approved By:	Date
1.0	ATU Governing Body	13 June 2022

Quality Assurance:

Date Approved: 13 June 2022	Date Policy to take effect: 13 June 2022	Date Policy to be Reviewed: 13 June 2023
Written by:	ATU Technology Transfer Officers within the Research and Innovation function	
Approved by:	University Planning Team	
Approving Authority:	ATU Governing Body	
Head of Function responsible:	VP for Research and Innovation leading the Technology Transfer functions and Office	
Reference Documents:	<ul style="list-style-type: none">• Conflict of Interest Policy / Code of Conduct Policy 2022• Consultancy Policy• The National IP Protocol 2019	

Document Location:

Website – Policies and Procedures	X
Website – Staff Hub	X
Website – Student Hub	X
Other: - Governing Body Share Point	X

This Policy was approved by the Governing Body on 13 June 2022. It shall be reviewed and, as necessary, amended by the University annually. All amendments shall be recorded on the revision history section above.

Contents

1	Introduction.....	4
2	Administration of the IP Policy.....	5
2.1	Responsibility of the IP Committee.....	5
2.2	Responsibility of Personnel.....	7
3	Identification of Intellectual Property.....	8
3.1	Disclosure.....	8
3.2	Publication of Results.....	9
4	Ownership of Intellectual Property.....	9
4.1	Student-Created IP.....	10
4.2	Visitors.....	10
4.3	Consultants.....	10
4.4	Personnel Based Temporarily Outside of the University.....	11
4.5	Dual Appointments.....	11
4.6	Option to Commercialise With TTO Support.....	11
4.7	Return of Ownership to Creators.....	11
4.8	Literary Works.....	12
5	Commercialisation.....	12
5.1	IP Evaluation and Protection.....	12
5.2	License and Assignment.....	13
5.3	Spin Out Companies.....	13
5.4	Spin Ins.....	15
6	Incentivisation Programme.....	15
6.1	Revenue Share Arrangement.....	15
6.2	Spin Out Company Incentives.....	17
7	Consultancy.....	17
8	Conflict of Interest Relating Specifically to Commercialisation.....	17
9	Dispute Resolution.....	19
10	Monitoring and Evaluation of Policy.....	19
	Appendix 1 – Definitions.....	20
	Appendix 2 – Spin out Company Approval Process.....	22

1 Introduction

The mission of **Atlantic Technological University (“ATU”)** is to develop life-long learning opportunities through, teaching, research and support for regional development. The generation of Intellectual Property (“IP”) is an area of very substantial importance in the academic environment of ATU which supports and resonates with ATU’s mission.

In Ireland, each Institute of Technology, University and other public research organisation (a “**Research Performing Organisation**” or “**RPO**”) is required to ensure that it has in place an internal Intellectual Property management system that meets or exceeds the requirements described in the National IP Protocol and that all of its research is carried out in compliance with that system. Where commercially exploitable Intellectual Property arises as a result of any publicly-funded research and development activities undertaken by the RPO, the RPO is further required to ensure, that the opportunity is taken, where possible and appropriate, to commercialise that Intellectual Property in all possible fields, applications and territories.

Atlantic Technological University (the “**University**”) has developed this Policy to clarify the role of Intellectual Property in the activities of the University. It takes account of the requirements of the National IP Protocol and draws on guidelines from various research funding agencies in relation to the treatment of Intellectual Property and similar policies from a selection of Irish and international Higher Education Institutions.

The goals of this Policy are to:

- Encourage University Personnel to consider the potential for Intellectual Property arising from their work;
- Promote an entrepreneurial culture within the University that fosters the development of potentially commercial Intellectual Property arising from research at the University;
- Clarify rights, obligations and procedures with regard to Intellectual Property and its commercialisation;
- Describe the University’s incentive program related to Intellectual Property;
- Provide an efficient process by which the commercial potential of Intellectual Property can be assessed by the University and its advisors;
- Ensure that the process of Intellectual Property evaluation, protection and Commercialisation is carried out in a timely manner;
- Outline the University offices and procedures concerned with Intellectual Property;
- Encourage strategies of Commercialisation and Technology Transfer that provide the greatest benefit to the University, our region, and to the Irish economy; and,
- Develop and continually improve a long-term strategy that enables the development of Intellectual Property, related Commercialisation and Technology Transfer, together with maintenance of high standards of education.

This Policy sets out the principles and rules that govern the creation, ownership and Commercialisation of Intellectual Property which is created by University Personnel during the course of any Funded Research and/or while making more than Incidental Use of the University Resources. It is intended to provide information and guidance in relation to Intellectual Property and to outline the steps required to help ensure the protection, management, dissemination and/or exploitation of that Intellectual Property in a manner which is mutually beneficial for University Personnel and the University and consistent in all material respects with the National IP Protocol.

Appendix 1 contains a list of important definitions used in this Policy, while Appendix 2 contains details of the approval process for spin-out companies. Copies of relevant forms referred to in this Policy may be obtained (in electronic or printed versions) by contacting the University function with responsibilities for Technology Transfer (the “**Technology Transfer Office**” or the “TTO”, as defined in Section 2.1).

This Policy applies to all University staff and students engaged in Research, Innovation and Engagement programmes, including, for the avoidance of doubt, visiting or adjunct faculty or staff, and others participating in programmes carried out using the University Resources. To the maximum extent possible, all consultants engaged by the University will be required to assign to the University all rights in and to Intellectual Property that may be created during their engagement.

Should any clarification be needed on this policy please contact the designated Head of the TTO.

2 Administration of the IP Policy

The administration of this Policy is the responsibility of the University's TTO and the TTO will manage, in consultation with members of the IP Committee as required, decisions related to the approval of licensing agreements, spin-out companies and other arrangements or agreements for the exploitation of Intellectual Property. The IP Committee may delegate responsibility for such activities from time to time as it sees fit.

Responsibility of the 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 formulating invention disclosures, and processing patent applications;
- Evaluate, in cooperation 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 in consultation with members of the IP Committee, as required, 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.
- 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 IP Committee, if required.

2.1 Responsibility of the IP Committee

The IP Committee oversees and manages all aspects of the strategic utilisation of ATU's IP. The IP 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 IP Committee meets on an as needed basis to consider:

- Approving all decisions related to the prosecution or defence of patents and other forms of Intellectual Property
- Determining the commercial value of IP and/or inventions;
- Approving licensing or assignment of Intellectual Property;
- Determining IP agreements with industry regarding contract and collaborative research projects;
- Facilitating a fair and equitable return to those involved in the commercialisation of their research/work;
- Nominating negotiators with third parties and ensuring a reasonable financial return to the relevant Personnel (where appropriate) and to ATU
- Approval of spin-out company formation 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'.

Once approved, licenses, contracts and other such documents as necessary which effect the exploitation will be signed by either the Chair of the IP Committee or the VP for Research and Innovation leading the Technology Transfer functions and Office or other such party as may be nominated by the University, or as may be required to bring into full effect such licenses, contracts or other documents.

All signatories on agreements must comply with the University's Policy for Signing Authorities.

The processes and procedures adopted by the IP Committee shall consider 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.

The IP Committee will consist of the following members:

- VP for Finance and Corporate Services (Chair, or ATU nominee external to the University's Research and Innovation functions)
- VP for Research and Innovation leading the Technology Transfer functions and Office;
- Designated Head of the TTO;
- Expert in area of technology (appointed in consultation with inventor), as required;
- Other professional advisors as required; and
- Additional members as appointed from time to time by the Chairperson.

The composition of the IP Committee may be changed from time to time at the discretion of the President of the University.

Members of the IP 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 IP Committee on such matters.

Recognising the fact that personal information may be involved in matters before the IP Committee, all members of the IP Committee shall be required to sign a confidentiality agreement with respect to all matters before it.

2.2 Responsibility of Personnel

Results of all research or projects, which are likely to have generated IP should be fully, promptly and completely disclosed to ATU, through the Technology Transfer Office as soon as possible after such IP becomes apparent. The IP should be kept confidential until a timely evaluation of the case assessment (including, without limitation, patentability) has taken place. No public disclosure of any form should be made prior to a decision by the IP Committee on the further management of the disclosure has been made. Confidentiality agreements and/or non-disclosure agreements should be used where appropriate.

It is the responsibility of all Personnel to keep proper records of research conducted and results recorded. Records created for the purpose of research and development activities undertaken by ATU may be subject to the Freedom of Information Act, 2014.

At the University's cost, Creators also agree at any later time to and to continue to:

- execute documents to assign or transfer Intellectual Property to properly ensure all of the University's rights, title and interest in and to the Intellectual Property;
- perform actions as 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; and
- use all reasonable endeavours to do or procure to be done all such further acts and to provide such reasonable assistance as may be reasonably required from time to time for the purpose of giving the University the full benefit of the provisions of this Policy.

There are various responsibilities of the Principal Investigator (PI) on a research project undertaken by or for the University. These responsibilities typically fall to the PI because the PI is often a signatory to agreements relating to Funded Research programmes and would also be the person most aware of the terms under which research is being undertaken as well as the people and organisations of the University participating in that research.

In exceptional circumstances, the responsibilities of the PI under this Policy may be delegated, in whole or in part, by agreement in writing between the PI and the VP for Research and Innovation leading the Technology Transfer functions and Office in which it is clearly indicated what responsibilities have been delegated to whom. In the absence of any such delegation these responsibilities remain with the PI.

It is the role of the Principal Investigator to inform all participants in a Funded Research programme of cases where the terms of funding require any form of prior publication review, or other procedures intended to preserve the rights of partner organisations, to avoid the unintentional loss of Intellectual Property, and to use all reasonable efforts to ensure that appropriate procedures are followed.

The PI is responsible for informing everyone involved in the research programme of any confidentiality or other Intellectual Property related obligations of the grant/contract, ensuring that appropriate record keeping procedures are instituted and followed and that any required Intellectual Property assignment documentation is executed by the relevant parties. The TTO can assist the PI in these areas.

3 Identification of Intellectual Property

Proper identification, protection and development, including commercial exploitation where appropriate, of Intellectual Property can play an important contributory role in promoting the University's mission.

Examples of IP generated from materials/works created by Staff, Students, and Other Relevant Parties (together referred to as "Personnel") include, but are not limited to:

- copyright (including rights in computer software and moral rights);
- patents;
- design rights;
- 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 IP in materials which are developed by Personnel which they cause to come into existence:

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

A full definition of intellectual property can be found Appendix 1.

3.1 Disclosure

In order to ensure that Intellectual Property is identified at a sufficiently early stage and to avoid the unintentional loss of available protection, University Personnel must disclose to the TTO on a timely basis anything they believe may have an Intellectual Property component.

Where the TTO believes Intellectual Property that is potentially patentable is identified, the TTO will request the Creator(s) to file an Invention Disclosure Form (IDF) with the TTO; a template IDF is available from the TTO. The IDF is used to assess the invention and identify its Creator(s). Failure to properly identify the Creators of Intellectual Property may jeopardise the ability to acquire or maintain rights in the Intellectual Property.

It is important to note that, in some cases, the premature or inappropriate public disclosure can affect the protection available. This is particularly important for patentable inventions, the premature disclosure of which may result in the loss of patent protection.

3.2 Publication of Results

It is the policy of ATU 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. However, such disclosure must not be in violation of the terms of any agreement that has been entered into by ATU 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 should be for a period of 90 days from the date when this IP is ready for publication. The placing of a thesis in the ATU library without ensuring that accessibility is restricted constitutes publication.

4 Ownership of Intellectual Property

The purpose of this section is to describe those situations where the University does have rights in specific Intellectual Property, including the University IP. Except in the situations described below, generally Creators own Intellectual Property which they create and they are typically free to disseminate this Intellectual Property, publish or conduct performances based on it, or to pursue its Commercialisation. Creators may, if they wish, pursue commercialisation through the TTO based on a mutually agreed, written framework. In each such case the University would expect to share in any commercial benefits that might be generated from the commercialisation of the Creator-owned Intellectual Property in question.

In cases where Intellectual Property is created by Personnel and one or more of the following conditions apply, Intellectual Property ownership is as follows:

- The Intellectual Property is developed under an agreement to generate the Intellectual Property between the University and the Creators. Intellectual Property is owned by the University unless specifically designated otherwise in the agreement.
- Intellectual Property resulting from the performance of a written contract, agreement or commission in which the University and the Creators have agreed to Intellectual Property ownership or in a Funded Research programme. This may include, without limitation, products prepared for industry clients and continuous professional development courses or State sponsored programmes. Ownership is with the University unless specified otherwise in the governing agreement.
- The Intellectual Property which results from the course of the Creator's normal employment, even if he/she is not specifically requested to create such Intellectual Property. Such Intellectual Property is owned by the University.
- The IP arises out of research carried out by Personnel where such research has, in the opinion of ATU, made use of the equipment, facilities, ATU Assets and/or other resources of ATU. Ownership is with the University unless specified otherwise in the governing agreement.

IP arising from research or other work sponsored by an external organisation (e.g. Enterprise Ireland) shall be subject to the IP provisions that are stipulated in the related agreement between ATU and the external organisation ("External Agreement"). Where an External Agreement requires all new IP rights to be assigned to a private company, the entry level (or "background") ATU IP should be defined so that it is not inadvertently assigned to the private company as part of the new IP (also described as

“foreground IP” or “results”) but is retained as ATU IP. All External Agreements should be reviewed by ATU’s legal authority or representative.

4.1 Student-Created IP

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 6, in the same way as would a staff member of the University.

4.2 Visitors

While visiting faculty and staff may participate fully in University activities, it must be recognised that such visitors may not be employees of the University, or may simultaneously be under employment obligations to other institutions or companies (and such obligations are likely to also address issues of confidentiality and Intellectual Property generation, exploitation and ownership). The University is bound contractually and by the National Protocol to ensure that it maintains such ownership rights as clearly as practically possible.

Prior to offering a visiting position, the relevant Head of Department should be consulted by the visitor’s sponsor, to ensure that, if necessary, protections in relation to Intellectual Property rights are incorporated from the outset. The TTO will provide advice to the Head of Department on such matters and will ensure that appropriate agreements are drawn up where necessary and provided to the sponsor for execution by the visitor. Consultation with the TTO is required even in cases where no Intellectual Property related agreements will be required of the visitor.

Offer letters should be contingent on acceptance by the visitor of any requirements as directed by the Head of Department.

4.3 Consultants

Consultants engaged to perform a specific task may retain rights in Intellectual Property created as part of such engagement unless the engagement agreement or contract explicitly specifies otherwise. In all consulting engagements, it is recommended that the consultants agree to be bound, for the purposes of the engagement (each engagement separately in cases where the same consultants are used for multiple engagements) by an appropriate agreement, including addressing the provision of IP ownership. The TTO can assist with such agreements.

Consultants, however, should not be engaged without either a general agreement or a specific written agreement as appropriate to the case in hand and developed in conjunction with the TTO. Copies of all such agreements must be maintained by the University.

4.4 Personnel Based Temporarily Outside of the University

University staff and registered students who spend time at institutions outside of the RPO shall continue to be bound by this policy and shall not enter into any intellectual property agreements with the host institution except through a formal written agreement between the University and the host institution.

4.5 Dual Appointments

In the case of Dual/Joint Appointments, where academic staff are employed also at another academic institution, a separate written agreement shall be entered between the University and the other institution to deal with intellectual property, copyright and related matters prior to the commencement of employment at the RPO.

4.6 Option to Commercialise With TTO Support

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.

The TTO provides guidance to staff or students in relation to Intellectual Property under this Policy. This resource is available, to a reasonable extent and subject to availability, even in the case of staff- or student- owned Intellectual Property. In such a case, the TTO will maintain such discussions in confidence unless authorised by the Intellectual Property owners to do otherwise. Only if an agreement in writing is entered into by the University with the staff/student owner concerned or as may otherwise be set out in this Policy, will the University acquire any rights in the staff- or student- owned Intellectual Property, and only to the extent explicitly granted in that agreement.

4.7 Return of Ownership to Creators

In its sole discretion ATU, may assign to inventor(s), by written instrument only, any IP owned by ATU, but which ATU has determined not to be of commercial interest to it. Further, it is understood if ATU does not find a means of exploiting such IP within a reasonable period after filing, then ATU has the right, but not the obligation, to assign ownership rights to the inventor(s). Requests for releases should be made to the TTO. It is understood that once assignment of ownership has taken place in accordance with this paragraph, ATU forfeits its rights to any future income derived from such IP and cannot be held responsible for any IP costs generated after that date.

4.8 Literary Works

Although 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 licence 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:

- a) 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;
- b) 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
- c) 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.

5 Commercialisation

5.1 IP Evaluation and Protection

Once an IDF has been submitted to the TTO disclosing the invention, the University shall determine the viability of commercialisation and shall decide, at its sole discretion, whether and in what form to pursue protection or to maintain existing protection. Unless otherwise agreed with a Commercialising partner, the University shall bear the costs of such protection.

The TTO will conduct a commercial evaluation of the IP. The criteria to assess the commercial value of the IP should include (without limitation):

- Identification of novelty, non-obviousness and inventive step(s) of the invention;
- Technical, financial, legal and commercial feasibility and due diligence;
- Development stage of the subject matter and proof of concept;
- Analysis of existing patent claims, publications and other disclosures;
- Market and competitive landscape
- Commercial potential: likelihood to become a licence or spin out
- Estimated cost of IP filing and maintenance (less IP grants, e.g. EI)

Whilst the criteria listed above are not exhaustive, it provides guidance to persons submitting an Invention Disclosure as well as to those determining the commercial value. As it is a complex decision, the TTO will present its recommendations on the commercial evaluation to the IP Committee, who will make the decision on whether to proceed with a patent application.

A decision will be made by the IP Committee within the evaluation period of receipt of the Invention Disclosure, where practicable, and the creator of the IP will be notified in writing of the decision made within 60 days of receipt of the Invention Disclosure Form in order to facilitate publication. Further investigation may be required in certain circumstances for an informed decision to be made regarding

an invention's patentability, in which case the evaluation period suggested herein may be extended as reasonably required. No public disclosure should occur during this time.

Prior to a patent application being filed by the University, Personnel must assign to ATU any and all IP in and to inventions discovered and produced or otherwise developed. Additionally, prior to filing a patent application a confirmatory revenue share agreement should be signed between creators. If a properly executed agreement is not agreed by all Creators in writing, distributions will be made to all listed Creators equally. The TTO, with support of external experts, may provide support in determining who are the contributors of a technology and the relative contributions of Creators.

ATU may decide at any stage to withdraw from the process of exploiting a particular piece of IP. For example, this may arise where:

- Concern exists regarding the technical, financial, legal and / or commercial feasibility of a particular piece of IP;
- costs of exploiting and maintaining the IP are excessive; or
- external sponsorship of the process is no longer available.

The creator of the IP will be notified in writing of the intention of ATU to withdraw from the process and the withdrawal will apply with immediate effect. The IP may, at ATU's entire discretion, be assigned or licensed to the creator in appropriate circumstances, offering the opportunity to the Creator of the IP to pursue exploitation independently.

5.2 License and Assignment

The TTO will support, provide advice, or procure the provision of outside professional advice in relation to the various options for commercialisation and technology transfer that may be appropriate in order to best meet the aims of this IP Policy, including:

- Licensing the IP to a third party for a fixed sum and/or royalties related to future sales;
- Assigning the IP to a third party for a fixed sum and/or royalties related to future sales;
- Developing the commercial potential of the IP through a campus company or similar spin-out;
- Developing the commercial potential of the IP through a joint venture with a third party; or
- Any other arrangement that may be considered appropriate.

The TTO will recommend the commercialisation route and associated contractual terms to the IP Committee for their consideration and approval. In providing this advice and assistance, the TTO will give due consideration to the retention of the right to use and access know-how and research materials for the purpose of continuing and further teaching and research. In addition, the policies and principles of the National Intellectual Property Protocol (2019) governing state-funded research in Ireland will be applied to ensure that as much social and economic impact is achieved, where possible, in Ireland. Assignment of IP may be considered where this is demonstrably the most effective way of exploiting the IP subject to adequate safeguards as described in the National IP Protocol.

5.3 Spin Out Companies

The University encourages University Personnel, where appropriate, to consider, commercialising Intellectual Property they have created (whether the University has an ownership interest or not) through a start-up company. Where the University has an ownership stake in the IP, that company would

be regarded as a 'spin-out' company of the University. The TTO will assist interested parties in exploring such opportunities, where possible and appropriate.

An application for approval of a ATU Spin-out Company is developed by the relevant Case Manager from the TTO team in conjunction with the promoters for the company. The application is considered and approved by the IP Committee. As part of the approval process shown in Appendix 2, in assessing an ATU spin out company for approval, consideration will be given to the following:

- Business plan
- Technical and commercial feasibility
- Management team
- Capitalisation / financial arrangements
- Possible conflicts of interest
- Accommodation, lab space, etc.
- Relationship with ATU, potential benefits to company from ATU expertise and facilities
- Potential for research collaboration with ATU
- Potential for technology transfer between ATU and the company (licence or assignment of technology, consultancy, etc.)
- National IP Protocol Compliance
- State Aid Compliance

While each situation is different and will be considered on its merits, and decided by the TTO in consultation with members of the IP Committee, as a general guideline the University will consider a 15% fully-dilutable equity stake to be appropriate in a spin-out company. This is a guideline only and may be subject to change. Depending on the circumstances and the nature of the University IP, the University may elect to take a higher or lower equity stake in the spin-out company with or without, at the University's discretion, the additional payment of royalties, milestone payments and/or other licence fees by the licensing spin-out company to the University.

ATU reserves the right to appoint a director to the board of an ATU Spin-Out company. ATU's objective in appointing directors is to bring an appropriate mix of business and scientific expertise to support the management of the company at the early stages.

ATU Spin-out Companies should manage their internal operations in accordance with their constitutions. They are responsible for discharging all legal obligations under the Companies Act (2014).

ATU Spin-out Companies should give ATU access to management accounts and should allow for University inspection of accounts on request, either directly or through a University appointed director or agent.

University Personnel may take on such roles as serving as a director, a consultant, an advisor or part-time employee in a spin out company, some of which the Personnel may be compensated for their contributions. The University will, in a manner consistent with its other policies, taking into account the specific roles involved within the University and the needs and/or commitments of the University, endeavour to support University Personnel wishing to so engage. Any such external employment, self-employment, working partnerships or consultancy work undertaken by an individual in their own name must be pre-approved by the President of the University.

In order to avoid the potential for any conflict of interest or any conflict of commitment in the case of spin-out companies commercialising University IP, the University Personnel receiving compensation, or likely to receive compensation, from such activities should always declare their involvement to their

direct supervisor, and to the VP for Research and Innovation leading the Technology Transfer functions and Office.

It is the responsibility of each individual Personnel Member to inform the University, and to keep the University informed, of any actual or perceived conflict of interest or conflict of commitment.

In no circumstances can the IP Committee be forced to dispose of the University's stake in the company against its wishes. The IP Committee may, however with due notice to the company board, dispose of any or all of the University's shares in the company as it wishes.

5.4 Spin Ins

The University may, at its sole discretion, and subject to the agreement of the company concerned allow companies external to the university to spin in to the University in order to access the University's inventions, research, technologies and facilities. In return, the University may take an equity stake in or offer convertible loans to the Spin-In company.

6 Incentivisation Programme

The purpose of the University's *Incentivisation Programme* is to fairly reward those responsible for the creation of commercially successful University IP and to incentivise staff and students to be entrepreneurial in this respect. In order to benefit from the Incentivisation Programme and to share in the revenues generated from the Commercialisation of the University IP, the Creator(s) of the University IP must comply with the terms of this Policy.

Commercial benefits may be derived from the exploitation of Intellectual Property in a number of ways. These include, for example, revenues in the forms of royalties, up front, annual or minimum license fees, dividends related to equity ownership or revenue derived from the sale of equity interests.

The goals of this incentive program are to:

- encourage the development and exploitation of Intellectual Property;
- reward those responsible for the creation of commercially valuable Intellectual Property;
- cover the costs incurred by the University in protection and commercialisation activities; and
- provide the University with a fair proportion of such commercial benefits.

6.1 Revenue Share Arrangement

The following general principles apply to the sharing of revenue derived from University IP:

- The definition of "revenue" includes revenue derived from the relevant patents or any other ATU IP in question, which are commercialised by ATU, and also includes (without limitation) up-front licence fees, down payments, minimum annual payments, sale of equity interest, royalties on sales and is net of any expenses incurred by ATU in commercialising or protecting the relevant patents or other ATU IP.
- All direct expenses incurred by ATU in:
 - the patenting or other registration or protections of ATU IP; and

- the commercialisation of an invention or any other ATU IP; including (without limitation) administrative, licensing, legal, and any other expenses and costs and any subsequent investigation, development and promotion,

will be deducted from the initial royalty income or lump sum. However, such charges will only be deducted to the extent they are out of pocket expenses for the University and apply specifically to the Intellectual Property in question. No royalty income will be made available for distribution until such expenses have been recovered.

- If more than one Creator or department is involved, unless formally agreed amongst themselves, with due regard to the value and substance of their respective contributions, the Creator's share set out above shall be divided equally among them.
- The division of royalty income will be carried out annually by ATU, such divisions will be paid at the end of the financial year / academic year.
- The Creator of the IP's share shall continue to be paid even though he/she may have left ATU.
- The TTO/University can use their share to assess, protect and facilitate the commercialisation of ATU IP through the pursuit of patent or other protection, the granting of licenses, the development of campus companies and/or otherwise to ensure maximum benefit to ATU and the public good, as determined by the IP Committee in line with the IP Policy.
- Any monies received by the Department/Research Centre in respect of its share of the revenues above may be used by the Department/Research Centre to reward people other than the Creator(s) who, in its reasonable discretion, the Department/Research Centre believes contributed to the development of the Intellectual Property, and also to foster the goals of the Department/Research Centre.
- Creator(s) have the option to receive revenue through payroll or into a nominated Research and Innovation University account, related to the IP-generating research activity.

In the tables below, three beneficiaries for disbursement of revenues from the commercial development of University-owned Intellectual Property are identified. These include:

- 1) the Creator(s) of the relevant University IP;
- 2) the TTO/University; and
- 3) the Department or Research Centre of the Creator(s)

When revenue is derived from inventions or other IP which are commercialised by ATU in accordance with the provisions of this IP Policy, ATU will first recoup all direct expenses incurred in the commercialisation of an invention. Subsequent revenue will be distributed (subject to final determination by the IP Committee) as follows:

Net Cumulative Revenue	Creator(s)	TTO/University	Department or Research Centre of the Creator(s)
<€20,000	75%	10%	15%
€20,001 - €200,000	50%	25%	25%
>€200,001	35%	30%	35%

For example, in the case of the receipt by the University of €250,000 in relation to a specific piece of Intellectual Property, in which case €10,000 was incurred by the University in legal fees associated with finalising the license, the distribution would be as follows:

Calculation	Creator(s)	TTO/University	Department or Research Centre of the Creator(s)
Cost Recovery		€10,000	
Revenue Share (First €20,000)	€15,000	€2,000	€3,000
Revenue Share (€20,001 - €200,000)	€90,000	€45,000	€45,000
Revenue Share (+ €200,001)	€14,000	€12,000	€14,000
TOTAL	€119,000	€69,000	€62,000

At the sole discretion of the IP Committee and in extraordinary circumstances, ATU may alter the revenue share splits outlined in this policy. ATU reserves the right to offer a lump sum payment in lieu of ongoing revenue share payments.

In the case of Intellectual Property in which the University is a part owner, the process is similar with the revenue eligible for distribution under this Policy referring only to that portion of the revenue attributed to (and paid to) the University in accordance with its portion of ownership.

6.2 Spin Out Company Incentives

Where a Creator elects, at its discretion, to take an equity share in any spin-out or other private company to which the University IP is licensed, it is important to note that the Creator will in such circumstances be deemed to have forfeited, and will forfeit, his/her right under this Policy to share in the distribution of any revenues howsoever generated by and paid to the University as a result of the Commercialisation of that University IP.

7 Consultancy

Staff are permitted to engage in consultancy projects for third parties subject to compliance with applicable ATU consultancy policies in force from time to time and subject to approval by the President of ATU. Any such approved consultancies must be disclosed to the TTO and advised to the IP Committee.

8 Conflict of Interest Relating Specifically to Commercialisation

The University recognises that in the pursuit of commercially orientated research or the commercialisation of Intellectual Property, there will be situations in which University staff will find themselves in a position that may constitute a conflict of interest or a conflict of commitment. This is not unusual, conflicts of interest occur in all professional environments and are not uncommon with respect to IP commercialisation.

It is important, however, when conflict of interest situations (or their appearance) arise that they are acknowledged and handled appropriately as per the University's Conflict of Interest Policy. Failure to do so can, in extreme situations, cause serious damage to individual and institutional reputations, incur the loss of support and potentially result in significant costs, legal and otherwise.

ATU encourages full disclosure of potential areas of conflict and open discussion at an early stage. Members of the IP Committee shall be required to declare any interest or potential conflict of interest position relative to any matter to be presented to the Committee. If a member has any such interest, or potential conflict, they will absent themselves from any committee discussion pertaining to such matters. Senior Staff members of the University are also required to inform the Chairperson of the IP Committee of situations where they have an interest in, or potential conflict of interest related to any proposed commercialisation and to abide by the Chairperson's guidance with respect to their participation in such commercialisation endeavours. While specific mention is made here of potential conflict of interest issues related to the workings of the IP Committee, it is important to realise that in exercising their responsibilities under this Policy, all staff of the University must exercise due caution to avoid even the appearance of acting while in a conflict of interest situation.

Should a staff member or a student feel they may have a conflict of interest, or be affected by one, the proper action to take is to disclose their concern, in writing if possible. Such disclosure should be made to any of the Heads of Faculty/School of the University. The staff member or student is free to choose whichever Head of Faculty/School they wish, not being restricted to the Faculty/School with which they may be associated. The Head of Faculty/School will treat such matters in confidence and may, in order to properly address the concerns, draw on advice and expertise from both inside and outside the University, including the Chairperson of the IP Committee.

In many cases, simply disclosing the potential for conflict may be sufficient action. However, in certain cases, at the discretion of Chairperson of the IP Committee, and subject to consultation with senior University management, it may be deemed appropriate to modify responsibilities in order to mitigate any conflict. The reasons for, and extent of, any such guidance shall be documented in writing and provided to those involved.

In certain cases, staff of the University may be subject to the terms of the Ethics in Public Office Act of 1995 and 2001, or the Standards in Public Office Act of 2001. Nothing in this Policy undoes or modifies in any way obligations that University Personnel may have to comply with the provisions of the foregoing acts.

9 Dispute Resolution

Creators may appeal decisions made by the TTO concerning Intellectual Property in which they have an interest to the VP for Research and Innovation leading the Technology Transfer functions and Office. Such Creators may further appeal decisions of the VP for Research and Innovation leading the Technology Transfer functions and Office to the President of the University. Similarly, decisions of the IP Committee may be appealed to the President of the University.

Any dispute or difference arising out of, or in connection with, the University President's decision shall then be referred to mediation by a professional and independent mediator appointed by the University. If the mediation is abandoned by the mediator, or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to and finally resolved by arbitration. Expenses incurred in dispute resolution may be deducted from any revenue income before distribution.

10 Monitoring and Evaluation of Policy

This IP Policy will be monitored by the Technology Transfer Office on an annual and on-going basis. The IP Policy and related research, commercialisation and technology transfer will be monitored and evaluated at least every four years and within six months of any new or updated National IP Protocol or, the relevant Code(s) of Governance and the Annual Governance Statement to the Higher Education Authority.

Appendix 1 – Definitions

Creator - means someone who, alone or in collaboration with others, creates Intellectual Property. A Creator may be a Personnel Member, whether permanent, temporary or visiting, or a student. In the case of patents, Creators are those who meet the legal standard for inventorship, and in the case of Copyright Materials are the authors of the work in question.

Incidental Use - means minor usage of normal office equipment, including on-line or electronic teaching support facilities, and resources that does not interfere with the normal performance of the duties of the Personnel Member initiating the use, nor of any other Personnel Member, nor the normal operations of the University.

University **Resources** – means the physical or financial resources, assets, facilities, equipment, Know-How, Confidential Information, services or personnel of the University and/or the University IP.

Intellectual Property - means patents, patent applications, inventions, Know-how, trade secrets and other confidential information, rights in design (registered and unregistered), copyright (including, without limitation, rights in computer software), data, database rights and sui generis rights, rights affording equivalent protection to copyright, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, brand names, certification marks, assumed names and other indicators or origin, rights in any drawings, designs, plans, specifications, manuals, computer software, assets, inventors certificates and invention disclosures, writings and other works, whether copyright or not, bills of material, moral rights and all other industrial or intellectual property or other rights or forms of protection of a similar nature or having similar effect in any part of the world and rights in and in relation to them and, where appropriate, applications for any of them in any country or jurisdiction, rights in the nature of unfair competition rights, rights to sue for passing-off, the right to apply for any of them and all other information necessary for the technical exploration of any of the same and all registration, and includes Inventions, Copyright Materials, Physical Materials, Marks and/or Confidential Information.

“Literary Works” 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:

- a) 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;
- b) 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;
- c) computer software and databases; and
- d) the University IP.

Personnel - means all personnel of the University to which this Policy applies, including without limitation all Students, staff (including Senior Staff) and other relevant parties of the University.

Spin In - is a company which works with the university to access its inventions, research, technologies and facilities to develop a commercial opportunity through a collaborative approach in return for an equity stake.

Spin Out – A spin-out is an incorporated entity which at the time of formation was dependent on the exploitation of specific intellectual property rights of the University. The rights to the company can be linked to a specific researcher who was within the University at the time of company formation and who would be considered an academic founder. The University may or may not hold equity in the Spin-Out.

Staff – ATU part-time and full-time staffing having casual, indefinite duration, permanent, pro rata or temporary contracts (including, without limitation ATU post-doctoral researchers) and persons employed by ATU on fixed purpose academic contracts.

Student – ATU registered undergraduate students and ATU registered postgraduate students. The term Students includes those undertaking ATU research for which they are paid during summertime and other periods.

Other Relevant Parties - All individuals other than Staff and Students who are engaged in research at ATU including but not exclusively visiting academics, visiting students, adjunct staff and all others undertaking research for ATU or utilising ATU's assets and who agree to be bound by the provisions of this IP Policy.

Teaching and Related Materials – means the teaching and related instructional materials, films or other media, books, textbooks, articles or other scholarly publications which are developed or used by a University Personnel and provided, or made accessible, in the normal course of providing such instruction to registered students of the University in association with their participation in any educational program provided by the University in whatever form.

Appendix 2 – Spin out Company Approval Process

The IP Committee reviews and recommends to the President approval of ATU Spin-outs. The Spin Out Approval Process is outlined below.

Procedure

- 1) Promoter(s) with support from the relevant TTO Case Manager assigned to the IDF will complete an approval application for ATU Spin-outs and the relevant Case Manager will complete an approval application for ATU Commercial Licences and Assignments and submit them to the designated Head of TTO for review and submission to the IP Committee.
- 2) The IP Committee reviews all applications and makes a recommendations to the President.
- 3) The President makes his/her decision having received the recommendations of the IP Committee.
- 4) Once approved, the TTO Case Manager engages with the Promoter(s) to conclude the Shareholders Agreement and/or the Licence or Assignments.
- 5) Any significant changes to the Shareholder Agreement or Licence or Assignment that arise during that process are to be reviewed by ATU Legal and brought to the President for approval if they extend beyond the scope of the approval already given by the President.
- 6) Execution of Licence is subject to prior/parallel execution of the Shareholder Agreement for Spin-Out Companies.
- 7) Spin-Out Company Promoters complete the application form for incubator space at ATU if needed.
- 8) A separate arms-length commercial agreement setting out terms for the use of laboratory space or other university facilities will be agreed. The execution of a space licence agreement is subject to prior/execution of the Shareholder Agreement.

