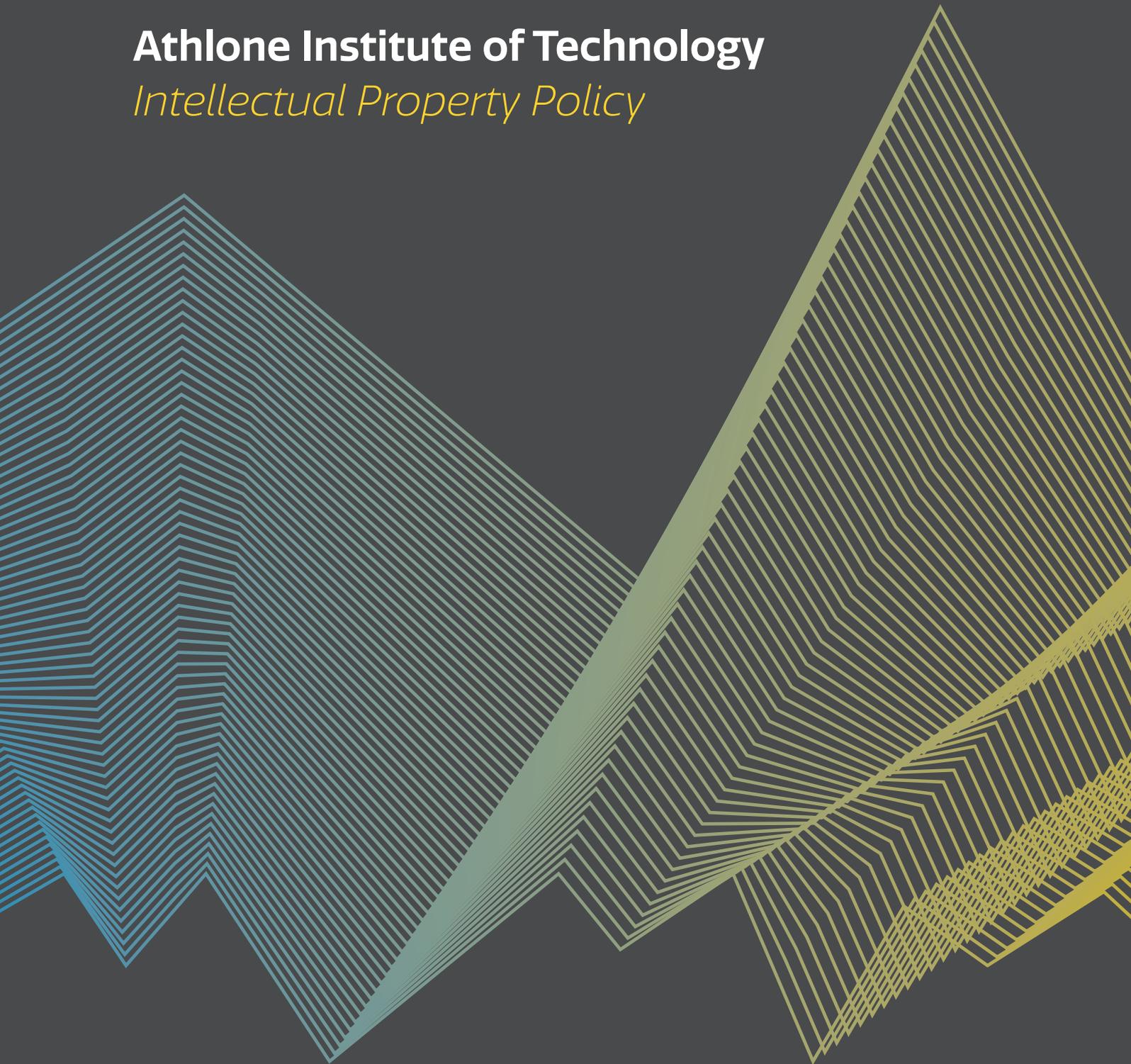




Athlone Institute of Technology
Intellectual Property Policy





ATHLONE INSTITUTE OF TECHNOLOGY

INTELLECTUAL PROPERTY POLICY

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CONTENTS

1	Introduction	1
	1.1 General	1
	1.2 Guiding Principles and Government Policies	1
	1.3 Knowledge Transfer Ireland (“KTI”)	2
	1.4 Purpose of this Policy	2
	1.5 Scope and Application of this Policy	2
	1.6 Monitoring of and Changes to this Policy	3
	1.7 Related Conflict of Interest Policy	3
	1.8 Related AIT Forms	3
2	Intellectual Property and Relevant Definitions	3
	2.1 Intellectual Property (IP)	3
	2.2 Specific Definitions	4
3	Aims of the Policy	4
	3.1 Aims and Objectives	4
4	Governance and Decision Making	5
	4.1 Intellectual Property Committee	5
	4.2 Role of the IP Committee	5
	4.3 Decision-Making Authority of the IP Committee	6
	4.4 Role of the TTO	6
	4.5 Principal Investigators and other Personnel	7
5	Ownership of AIT IP	7
	5.1 General Provisions	7
	5.2 Scope	8
	5.3 Execution of Documents and Reasonable Assistance	8
6	Sponsored Research Activities	9
	6.1 Ownership	9
	6.2 Prevailing Terms	9
7	External Work	9
8	Assignment of Intellectual Property Rights to AIT	10
	8.1 Early Formal Assignment of Rights by Personnel	10
9	Administration of the IP Policy	10
10	Disclosure to and Evaluation by AIT	10
	10.1 Disclosure Requirements	10
	10.2 Submission of Invention Disclosure Form to TTO	11
	10.3 Commercial Evaluation of IP and Decision Making	11
	10.4 Submission of patent application or an application for other protection	12
11	Commercialisation of AIT IP	13
	11.1 Route to Commercialisation	13
	11.2 Continuing Research Activities	13
12	Licensing and Division of Income	14
	12.1 Licence Agreements	14
	12.2 Research and Technology Transfer Fund	14
	12.3 General Principles	14
	12.4 Division of Income	15
13	Spin-out Companies	15
	13.1 Background, Proposals and Evaluation	15
	13.2 Incorporation of a Spin-out Company and Legal Agreements	17
	13.3 Duties and Independent Legal Advice	18
	13.4 AIT Shares in a Spin-out Company	19
	13.5 Division of Income received from Spin-out Company	20
	13.6 Spin-out Companies and this Policy	21

13.7	<i>Employees and Contractual Issues</i>	21
13.8	<i>Services and Support to Spin-out Companies</i>	22
13.9	<i>Indemnity</i>	22
13.10	<i>Disclaimer</i>	22
14	<i>Publication of Research Results</i>	22
15	<i>Resolution of Disputes</i>	23
16	<i>Conflicts of Interest Relating Specifically to Research and Commercialisation Activities</i>	23
ANNEX		
I	<i>Definitions</i>	25

1. INTRODUCTION

1.1 General

Athlone Institute of Technology (AIT) is committed to the creation of new knowledge or Intellectual Property. AIT has a strong interest in promoting the generation of IP in the context of Ireland's aim to provide an exemplary research and innovation ecosystem that creates economic and societal benefits including the promotion of entrepreneurship, high potential start-ups and job creation by new and established firms.

AIT promotes collaboration with industry in researching, developing, validating and testing new technologies, products and platforms in ways that will lead to commercialisable assets. As such, AIT encourages the generation of IP by Staff, Students and Other Relevant Parties.

Commercialisation is often the most efficient means of promoting the widest possible dissemination and use of such IP. Where commercially exploitable IP arises as a result of research and development activities which are funded wholly or in part by the State, the opportunity shall be taken by AIT in a timely manner to Commercialise the IP in all possible fields, applications and territories with a view to maximising the economic and societal benefits and returns to Ireland from its public investment in research.

In such circumstances, it is appropriate and desirable for both AIT and the Originator of the IP to benefit from its commercial exploitation. These benefits may include sharing financial rewards resulting from the Commercialisation of the relevant IP and the promotion of greater industry involvement in research, which in turn may lead to new research programmes, academic publications, increased funding for AIT and the stimulus of greater industry interaction for individual Personnel.

1.2 Guiding Principles and Government Policies

The National IP Protocol¹ sets out the Government's policies to encourage industry to benefit from publicly-funded research in Ireland. AIT is required to have policies and systems in place that meet the National IP Management Requirements with the aim always of giving confidence to industry and to State research funding organisations that AIT manages research, related contracts and IP in a professional manner.

The National IP Management Requirements are described in the National IP Protocol and summarised below:

- **Requirement 1:** Adopt and disseminate a policy for IP commercialisation that includes the Minimum Requirements for an IP Commercialisation Policy;
- **Requirement 2:** Ensure early awareness amongst Personnel of the importance of IP management;
- **Requirement 3:** Set obligations on individual researchers (supported by robust procedures and internal IP management systems) to ensure IP is managed in a professional way;

¹ <https://www.knowledgetransferireland.com/Reports-Publications/Ireland-s-National-IP-Protocol-2019-.pdf>
See also: <https://www.knowledgetransferireland.com/Reports-Publications/IP-Protocol-Resource-Guide.pdf>

- **Requirement 4:** Maintain confidentiality before publication of research and confidentiality of IP provided by and to others;
- **Requirement 5:** Protect IP arising from research projects and programmes;
- **Requirement 6:** Introduce existing Background IP into a research programme diligently;
- **Requirement 7:** Conduct appropriate due diligence before licensing IP;
- **Requirement 8:** Maintain appropriate records of IP and licences;
- **Requirement 9:** Manage actual and potential conflicts of interest;
- **Requirement 10:** Implement systems for the sharing of income from the Commercialisation of IP within AIT.

AIT may report its Commercialisation activities to the appropriate Government agencies, including, but not limited to, Knowledge Transfer Ireland, the Higher Education Authority and other State educational authorities or Government agencies.

1.3 Knowledge Transfer Ireland (“KTI”)

KTI is the Government’s central technology transfer office in Ireland. KTI is responsible for evaluating and reporting on performance under Enterprise Ireland’s Technology Transfer Strengthening Initiative (TTSI) and is charged with delivering the national Annual Knowledge Transfer Survey (AKTS). AIT is part of a technology transfer consortium led by Maynooth University under TTSI.

1.4 Purpose of this Policy

This IP Policy is intended to provide information, support and guidance regarding commercial exploitation, ownership of and income from AIT IP and the use of AIT facilities and resources. It sets out AIT’s policy in relation to the protection and Commercialisation of IP arising from research undertaken by Personnel and details the benefits accruing to and duties owed by Personnel under this IP Policy.

In particular, this IP Policy sets out the principles and rules that govern AIT IP in line with the National IP Protocol and the National IP Management Requirements.

1.5 Scope and Application of this Policy

This IP Policy (and any subsequent amendments made to this IP Policy) is the agreed IP Policy referenced in all Staff and Student regulations, including:

- (a) the Staff contract of employment;
- (b) the Staff fixed purpose contract;
- (c) any document engaging an Other Relevant Party;
- (d) the Student Handbook; and
- (e) any Acceptance Form or Intellectual Property Assignment Agreement signed by Staff and/or Students and/or Other Relevant Parties.

This IP Policy also forms part of the regulations of AIT which govern the conduct of Staff and Students.

For the avoidance of doubt, this IP Policy extends to Other Relevant Parties, such as non-employees who participate in research projects at AIT including visiting academics, industrial personnel, and undergraduate students on sponsored research activities, or who work closely with any other member of Staff or Student in the

performance of any research, sponsored work placements and sponsored competitions within the scope or context of this IP Policy and/or where it would otherwise be in AIT's interests to own any IP resulting from such activities, unless otherwise agreed by AIT. Other Relevant Parties at AIT who have a prior existing and conflicting intellectual property agreement or arrangement with another employer or third party must enter into an agreement with AIT (and their employer or relevant third party) to abide by the conditions of this IP Policy in the course of their activities in AIT.

1.6 Monitoring of and Changes to this Policy

This IP Policy will be monitored by AIT's Technology Transfer Office (TTO) on an ongoing basis. It is subject to review by AIT at least every four years and also within six months of the introduction of updates to the National IP Protocol or Code of Governance for Institutes of Technology or any other significant change in national policy or guidance and may be amended at any time by AIT in accordance with its normal procedures. The IP Committee may also make such minor edits, amendments or other updates to this IP Policy as may be reasonably required from time to time or otherwise required to comply with the National IP Protocol (including the National IP Management Requirements) as defined, and from time to time updated, by KTI, the requirements of any regulatory or education authority or applicable law.

This Policy shall record all dates upon which the Policy was reviewed and/or revised and the date of next scheduled review. This Policy shall also detail the body within the Institute that has approved the latest version of the Policy and the title of the Policy owner.

All amendments to this IP Policy shall be posted on the AIT website and/or Intranet and such amendments shall be fully valid and effective from the date of posting.

1.7 Related Conflict of Interest Policy

AIT's Conflict of Interest Policy is relevant for the purposes of this IP Policy and should be read in conjunction with this IP Policy. The Conflict of Interest Policy is available on AIT's website and/or Intranet or from the TTO.

1.8 Related AIT Forms

Forms identified in this IP Policy which are related to research, AIT IP and/or its Commercialisation may be obtained by contacting AIT's TTO or by accessing on AIT's Intranet.

2. INTELLECTUAL PROPERTY AND RELEVANT DEFINITIONS

2.1 Intellectual Property (IP)

IP is the tangible or intangible results of research, development, teaching, or other intellectual activity. It may be created by academic, research and other Staff, by Students and by Other Relevant Parties such as contractors and consultants.

Types of IP may include patents, copyright, trade marks, designs, domain names, software algorithms and code (as a special case of copyright), data, databases,

confidential information and know-how and specialist types of IP protection such as plant breeders' rights.

IP allows creativity and innovation to be captured and owned in the same way that physical property can be owned. IP includes individually and collectively all technical innovations, inventions, improvements, and/or discoveries, information, writings and software, whether or not patentable or otherwise susceptible to IP protection, including technology and materials in their tangible form and includes IP generated from AIT Assets.

2.2 Specific Definitions

Unless the context otherwise requires, all capitalised terms in this IP Policy have the meaning given to them in Annex I.

3. AIMS OF THE POLICY

3.1 Aims and Objectives

The objective of this IP Policy is to provide a consistent framework within which AIT IP is developed and managed for the benefit of AIT, the Originator, industry and Ireland and to maintain compliance with the National IP Protocol and the National IP Management Requirements.

The specific aims of this IP Policy are as follows:

- To create an environment that encourages the generation of new knowledge and IP by AIT.
- To encourage the recognition and identification of IP within AIT and promote an entrepreneurial culture among Personnel that fosters the development of IP with commercial potential arising from their activities at AIT.
- To provide an efficient process by which the commercial potential of IP can be assessed by AIT and its advisors and to ensure that the process of IP evaluation, protection and Commercialisation is carried out in a timely manner.
- To motivate the development and exploitation of IP by providing appropriate rewards to both Originators and AIT, and to provide administrative assistance in Commercialising IP.
- To provide support and supervision for the creation of economic structures through which AIT IP is developed and used commercially.
- To maximise the earnings potential from Commercialisation and to utilise financial and other returns to advance and encourage research in AIT.
- To encourage strategies of Commercialisation and technology transfer that provide the greatest benefit to the Irish economy.
- To encourage public use and timely Commercialisation of AIT IP by facilitating its transfer from AIT to industry and business.
- To continue to recognise the traditional AIT practices with respect to education, publication and scholarly works.
- To ensure that the financial return from the development of AIT IP does not distort decisions and operations of AIT in a manner contrary to the mission of AIT.
- To give due regard to the non-financial benefits (e.g. non-cash consideration, benefit of strategic relationships between AIT and third parties, access to IP and confidential information) that will accrue to AIT and to the Originators of IP in pursuing the goals of this IP Policy.

- To develop and continually improve a long-term strategy that enables the development of IP and related Commercialisation and technology transfer, together with the maintenance of high standards of education.
- To foster the general awareness by Personnel of this Policy through dissemination and information campaigns, and to provide specific training to Personnel engaged in research activities within the scope of this IP Policy.

4. GOVERNANCE AND DECISION MAKING

4.1 Intellectual Property Committee

The IP Committee consists of the following members:

- A Dean of Faculty/ A Director of Research Institute;
- Vice President of Finance and Corporate Affairs (or nominee);
- Vice President for Research (Chair) (or nominee);
- Director of Innovation and Enterprise;
- Technology Transfer and Commercialisation Officer; and/or
- Such other members as AIT may nominate and appoint from time to time.

AIT reserves the right to alter the composition of the IP Committee at any time.

The IP Committee members are required to treat as confidential information regarding proposals submitted and regarding the IP produced at AIT and presented to the IP Committee.

The relevant AIT Personnel may be required to put forward a proposal to the IP Committee regarding the IP on a project and may be requested to attend a Committee meeting, where appropriate.

The IP Committee is convened by the TTO. Without limiting their obligations under the Conflict of Interest Policy, members of the IP Committee will be required to declare their interest in a proposal if such exists and to absent themselves from any discussion pertaining thereto. Where such an interest exists, AIT may remove that person from the IP Committee and replace him/her.

The TTO is responsible for putting the decisions of the IP Committee into effect.

The importance of appropriate outside professional assistance is acknowledged. The IP Committee and the TTO will avail of these resources when appropriate.

4.2 Role of the IP Committee

The IP Committee is responsible for and decides on or approves the following:

- processing of IP applications submitted using an Invention Disclosure Form;
- assessing the commercial viability of IP and/or inventions and approving support to further develop/Commercialise the IP;
- facilitating a fair and equitable return to those involved in Commercialisation of their research/work in line with this IP Policy;
- nominating negotiators (if required) with third parties and ensuring a reasonable financial return to the Personnel involved (where appropriate) and to AIT; and

- approving the licensing or (on consultation with and/or with the approval of AIT's Governing Body, where required, or its permitted nominee) assignment of Intellectual Property in whatsoever form and for approving decisions related to the prosecution or defence of patents and other forms of IP.

4.3 Decision-Making Authority of the IP Committee

The IP Committee decides on the following matters for and on behalf of AIT:

- the commercial evaluation of new innovations and AIT IP;
- the protection and prosecution, including filing and management of patent applications and related IP protection for the AIT IP;
- on consultation with the relevant Originators, how the Originators are identified and decided;
- on consultation with the relevant Originators, the relevant contributions made by the Originators to the new innovations and AIT IP and how these are identified and decided;
- the exploitation route for the AIT IP;
- the approval of commercial terms relating to the licensing or assignment of AIT IP and the process involved;
- the abandonment of a patent application and the process, if applicable, to offer the AIT IP back to the relevant Originator;
- the approval of AIT taking equity in a Spin-out Company and any processes involved;
- the approval of commercial terms of spin-out and any processes involved;
- how the AIT Shares or any other AIT spin-out equity is managed, including when and how to sell the AIT Shares;
- the approval of any Originator or Promoter to act as a director of a Spin-out Company and any processes involved with AIT; and
- the approval of and allowing of access to certain of AIT's facilities by a Spin-out Company and the processes involved.

The decision to form a Spin-out Company or decisions as to when to sell the AIT Shares or any other AIT equity holding in a Spin-out Company will also involve at least one senior executive from within AIT who is not part of the research hierarchy, for examples, the Vice President of Finance and Corporate Affairs or the Vice President for Strategic Planning.

Details of AIT's authorised signatories are available on AIT's Intranet or from the TTO.

4.4 Role of the TTO

The TTO is in charge of the administration of the activities set out in this IP Policy including (without limitation) putting the decisions of the IP Committee into effect. The TTO shall be responsible for:

- the day-to-day matters relating to the identification, evaluation, protection and exploitation of IP;
- drafting, and negotiating the terms of IP agreements (such as non-disclosure agreements, material transfer agreements, research contracts, collaboration agreements, etc.) with industry and/or other research organisations regarding collaborative research projects;

- advising on disclosures and publications;
- externally communicating on matters of IP on behalf of AIT;
- managing internal communications regarding IP within AIT; and
- driving the effective and appropriate Commercialisation of AIT IP in accordance with this IP Policy and the national IP Protocol;

subject always to the guidance of the IP Committee to which it will report as reasonably required.

In order to enable the achievement of the aims and goals of this IP Policy, the TTO will, through dissemination of information and the holding of general information sessions for Personnel, foster the general awareness by Personnel of this IP Policy. In addition, the TTO will provide specific training on this IP Policy and its day to day application and relevance to Personnel engaged in research activities within the scope of this IP Policy.

4.5 Principal Investigators and other Personnel

As the lead researcher on a programme of research, the Principal Investigator carries a particular responsibility for compliance with AIT's IP management system throughout the programme. This is also relevant for the purposes of good record keeping and the disclosure, introduction and/or use of Background IP in a particular programme of research or project, and in the context of recording the outcomes of such activities. To acknowledge this responsibility, the Principal Investigator will be required to give a PI Undertaking (in the standard form designated by AIT from time to time) prior to signature of the contract or collaborative research agreement for the performance of such research activities. All other members of Personnel involved in the performance of such research activities under the collaborative research agreement may be required to give a Researcher Undertaking (in the standard form designated by AIT from time to time) confirming that they have read and understood the contract or collaborative research agreement governing the performance of the research.

5. OWNERSHIP OF AIT IP

5.1 General Provisions

As a general rule (subject to the exceptions or any other provisions to the contrary set out in this IP Policy), any IP rights in or to any material/works created by Personnel in the course of their employment or education by AIT or in relation to work carried out for AIT and/or through the use of AIT Assets is the property of and vests solely and absolutely in AIT or such companies or organisations as AIT may nominate for such purposes. Such material/works include, but are not limited to any:

- 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; and
- other Intellectual Property rights or other property rights, (whether vested, contingent or future anywhere in the world).

This applies to any IP developed by Personnel which they cause to come into existence:

- during the working hours of AIT or outside those hours if related to and within the scope of the individual's job responsibilities, even if he or she is not specifically requested to create it;
- when using AIT's equipment, supplies, facilities or AIT Assets;
- during an individual's use of their personal time or own facilities if the basic nature of the work created is related to the individual's job;
- using AIT's confidential information, trade secrets, know how or any AIT IP; or
- in relation to any work performed for AIT (including pursuant to any third party funded research programmes).

5.2 Scope

This IP Policy is applicable to IP that is owned by AIT, for (without limitation) any of the reasons outlined below:

- It is developed by Personnel in the course of their normal or specifically assigned duties either when IP could reasonably be expected to result from the carrying out of those duties and/or, at the time the IP was developed, there was a special obligation on the relevant Personnel to further the interest of AIT.
- Under the 2000 Act (as defined in Annex 1 of this IP Policy), AIT is the first owner of any copyright in the work created by Staff in the course of their employment unless precluded by a prior agreement between AIT and a third party (or as covered by paragraph 6 of this IP Policy).
- The IP arises out of funded or non-funded research where such research has, in the opinion of AIT, made use of the equipment, facilities, AIT Assets and/or other resources of AIT (except where ownership of such IP was provided for in a prior agreement between AIT and third parties).
- If it is a condition of the appointment of a Student to perform research, that AIT should have ownership of the IP arising from the research performed by such Student.
- If it is a condition of the admission or appointment of an Other Relevant Party to perform research that AIT should have ownership of the IP arising from the research performed by such Other Relevant Party.

As mentioned above, this IP Policy extends to Other Relevant Parties. Such Other Relevant Parties may be required to enter into an appropriate agreement with AIT to regulate their relationship with AIT.

5.3 Execution of Documents and Reasonable Assistance

At AIT's reasonable cost, Personnel agree to execute any and all documentation and provide all reasonable assistance to AIT to secure, protect, perfect or enforce any and all of AIT's rights, title and interests in and to AIT IP and to otherwise comply with its obligations under this IP Policy and/or any Relevant Contract.

The Originator and other Personnel concerned shall give such assistance to AIT and to the licensees/assignees of the AIT IP as is reasonably necessary to enable the

licensee (or assignee) to properly use and Commercialise the AIT IP, in accordance with the terms and conditions agreed in the collaborative research agreement or other Relevant Contract.

6. SPONSORED RESEARCH ACTIVITIES

6.1 Ownership

Ownership of IP arising from research or other work partly or wholly sponsored by an external agency, industry partner or other organisation shall be subject to the IP provisions that are stipulated in the Relevant Contract. Commercialisation activities shall recognise specific terms and conditions in appropriate funding contracts including any collaborative research agreements or other Relevant Contract.

Where the Relevant Contract requires new IP rights generated during the performance of the research or other work to be assigned to a private company, the entry level AIT Background IP should be clearly defined and agreed so that it is not inadvertently assigned to the private company as part of the new or Foreground IP but is retained as AIT IP.

For the avoidance of doubt, however, where any IP is generated from research that is 100% funded by monies provided directly by the State, or by any not-for-profit financial instrument which has been established by an organisation or individual, and awarded through a public service organisation charged with the granting and dissemination of research funds, this IP will be exclusively and absolutely owned by AIT.

AIT will adhere to any national guidelines, rules and procedures relevant to external funding including the principles for collaborative research engagement with industry set out in the National IP Protocol.

6.2 Prevailing Terms

In the event of any inconsistency between this IP Policy and the terms of any such grant or Relevant Contract, the provisions of the said grant or Relevant Contract shall prevail provided that the IP clauses in such grant and/or Relevant Contract have been reviewed by the TTO (which will seek external advice if necessary) and, in the case of a Relevant Contract, such Relevant Contract has been approved and properly executed for and on behalf of AIT.

7. EXTERNAL WORK

Staff are permitted to engage in external work for third parties subject to compliance with their AIT employment contract and External Work Form requirements and subject to (i) written approval by the President of AIT and (ii) the provisions of the Conflict of Interest Policy.

8. ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS TO AIT

8.1 Early Formal Assignment of Rights by Personnel

For the avoidance of doubt, the provisions of this paragraph 8 apply to all the faculties, departments, institutes, centres and Personnel conducting research or other intellectual activity using AIT Assets and AIT's supplies, facilities, confidential information, trade secrets or existing AIT IP.

As a condition of:

- (a) employment or engagement by AIT as Staff;
- (b) admission by AIT as a Student; or
- (c) engagement by AIT as an Other Relevant Party;

each Staff member, Student and Other Relevant Party (as the case may be) shall comply with this IP Policy and shall agree to assign to AIT (or a person or company nominated by AIT or an agency which provided the funding for the relevant research) any and all IP in and to inventions or other IP discovered and produced or otherwise developed while the person was Personnel as the case may be.

When required by the specific circumstances of a project and on the request of the IP Committee, a member of Personnel will agree:

- (a) to sign an Intellectual Property Assignment Agreement;
- (b) to execute such documents of assignment, confirmatory assignment or other documentation required to assign or transfer IP and waive any moral rights to ensure, protect, perfect and enforce AIT's rights, title and interest in AIT IP;
- (c) to do anything that may reasonably be required to assist any assignee of any patent application or other IP to obtain, protect and maintain its rights, title and interest; and
- (d) to use all reasonable endeavours to do or procure to be done all such further acts and things and to execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each party thereto the full benefit of the provisions of this IP Policy.

9. ADMINISTRATION OF THE IP POLICY

At AIT, the office responsible for supporting the development and Commercialisation of AIT IP is the TTO. All AIT IP created by Personnel must be disclosed to AIT in a timely manner and in accordance with the procedures laid down in this IP Policy.

The TTO will ensure that appropriate IP education and training is made available to Staff and Students (and as required Other Relevant Personnel) of AIT.

10. DISCLOSURE TO AND EVALUATION BY AIT

10.1 Disclosure Requirements

It is a condition of:

- (a) employment or engagement by AIT as Staff;
- (b) admission by AIT as a Student; or
- (c) engagement by AIT as an Other Relevant Party;

that the results of all research or projects should be fully, promptly and completely disclosed to AIT.

In order to enable AIT 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 AIT, all Personnel must disclose any IP arising from such research to AIT through the TTO as soon as possible after such IP is apparent.

The IP should be kept confidential for a minimum of 6 months or longer if requested by the IP Committee until a timely evaluation of the case assessment (including, without limitation, patentability) has taken place.

No publication (written, oral or other public statement) should be made prior to disclosure.

Confidentiality agreements and/or non-disclosure agreements should be used where appropriate.

10.2 Submission of Invention Disclosure Form to TTO

- Regarding any discovery or invention made that might be useful, patentable or otherwise protectable, this IP Policy requires that Personnel complete an Invention Disclosure Form.
- The proper and prompt completion of an Invention Disclosure Form is essential to the functioning of the TTO.
- This form should be promptly submitted (and in any event no later than within 30 days of the discovery or invention or other IP in question) to the TTO.

10.3 Commercial Evaluation of IP and Decision Making

- Any IP reported in an Invention Disclosure Form shall be submitted to the IP Committee for assessment under the guidelines of this IP Policy and for recommendations to AIT regarding the patentability and/or potential Commercialisation.
- The IP Committee may recommend that other suitably qualified advisors or external consultants be engaged to advise on the assessment of the IP.
- As far as practicable, the relevant Originators or researchers should be involved in the evaluation (and where relevant protection) process by the IP Committee.
- The criteria to assess and decide on the commercial value of the IP should include (without limitation):
 - Assessment that the IP 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.
- 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.
- Whilst 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 IP Committee may refer to other expertise (internal or external) where necessary, and further criteria may be applied.
- A decision will be made by the IP Committee within 60 days (or such longer period as may reasonably be required) of receipt of an Invention Disclosure Form and the Originator of the IP will be notified in writing of the decision made.
- The IP Committee may decide, at its discretion and where it is in a position to do so, to offer the opportunity to the Originator of the IP, at his/her expense and risk, to pursue exploitation independently if this is deemed appropriate under agreed written terms (which may include appropriate 'windfall' clauses for the benefit of AIT), without prejudice to or limiting AIT's rights to continue to use the IP for its teaching and academic purposes.

10.4 Submission of a patent application or an application for other protection

- AIT shall have the right, but not the obligation, either directly or through an outside agent, to seek patent or other protection of the IP and to undertake efforts to introduce the invention into public use.
- Where a decision is made by the IP Committee to proceed with an application for protection of IP, the process below shall be carried out in a timely manner.
- Where a decision is made by the IP Committee to proceed with a patent application, the Originator of the IP is required to cooperate in every reasonable way, to execute all necessary documents and to assist the IP Committee in processing the patent application. The application will remain confidential until such time as the filing process is complete and any disclosure outside AIT during this period must only be made under confidentiality agreements agreed in advance by the TTO.
- The cost of the submission of the application shall be paid by AIT. The Originator may be required to assist AIT and/or its advisors with the preparation of a claim for appropriate support for IP protection. Any expenses incurred will be reimbursed to AIT prior to the distribution of any income (if any) from the IP.
- The Originator of the IP and AIT shall take all reasonable precautions to protect the integrity and confidentiality of the IP in question. The Originator of the IP should be aware that publication prior to the filing of a patent application will destroy patentability.
- AIT may decide at any stage to withdraw from the process of exploiting a particular piece of IP. This may arise where:
 - concern exists regarding the technical or commercial feasibility of a particular piece of IP,
 - costs of exploiting the IP are excessive, or
 - external sponsorship of the process is no longer available.
- The Originator of the IP will be notified in writing of the intention of AIT to withdraw from the process and the withdrawal will apply with immediate effect.
- The IP may, at AIT's entire discretion and where it is in a position to do so, be assigned (on an exceptional basis, subject to appropriate 'windfall' clauses for the benefit of AIT) or licensed to the Originator in appropriate circumstances, offering the opportunity to the Originator of the IP to pursue exploitation

independently and at his/her own cost and risk. AIT will remain entitled, however, and reserves the right at all times to use the same IP for its academic research and teaching purposes in all fields of use or applications.

- No patent application, assignment, licensing or other agreement may be entered into or will be considered valid with respect to AIT IP except when properly and lawfully executed by AIT.

11. COMMERCIALISATION OF AIT IP

11.1 Route to Commercialisation

The TTO will assist, 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 compliance with the National IP Protocol and the National IP Management Requirements.

Generally, the main routes for the Commercialisation of IP would be: (i) licensing, (ii) the creation of a Spin-out Company or (iii) where permitted, assignment. For example, this may (subject to IP Committee approval) include:

- Licensing the IP on an exclusive or non-exclusive basis to a third party for a fixed sum or a royalty related to future sales and/or other licence fees.
- Licensing the IP under the terms of a non-exclusive and royalty-free licence to IP arising from research under a collaboration agreement in which the licensee contributed minimum defined costs of the programme. This is subject to conditions and may not apply in all cases.
- In permitted or other exceptional cases, assigning the IP to a third party for a fixed sum or a royalty related to future sales.
- Developing the commercial potential of the IP through a Spin-out Company.
- Developing the commercial potential of the IP through a joint venture with a third party.
- Any other arrangement that may be considered appropriate.

While AIT will not normally consider assigning ownership of the AIT IP, it may in exceptional circumstances once the AIT IP has been created, agree to transfer or assign ownership of that AIT IP, provided that it receives fair value in return, is able to continue its research and teaching in the field and satisfied itself that the assignment is the best route to generate maximum benefit for Ireland.

The principles for collaborative research engagement with industry as set out in the National IP Protocol and any corresponding terms agreed by AIT under a collaborative research agreement will also be relevant in this context.

11.2 Continuing Research Activities

In providing advice and assistance under this IP Policy, 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 research as well as options which may provide most benefit to the Irish economy.

12. LICENSING AND DIVISION OF INCOME

12.1 Licence Agreements

A Licence Agreement is a contract under which an owner or licensee of Intellectual Property rights (the licensor) permits another person (the licensee) to engage in activities that, in the absence of the Licence Agreement, would infringe the Intellectual Property rights. In return for the grant of a commercial Licence Agreement from AIT the licensee will typically make payments to AIT in respect of its use of the licensed AIT IP – a fee-bearing licence. In some situations a licence may be granted by AIT to a licensee with no such fee requirements.²

12.2 Research and Technology Transfer Fund

The RTT Fund is used to promote and enhance research and development and Commercialisation activities within AIT. A share of the licensing income or other income derived from the Commercialisation of the AIT IP and received by AIT will be distributed to the RTT Fund. The RTT Fund is administered by the TTO and the Finance Office, subject to the annual approval of the IP Committee.

12.3 General Principles

The following points apply in relation to licensing and division of income from Commercialising AIT IP resulting from AIT research:

- AIT will maintain a flexible and open approach to bringing AIT IP into commercial use. Each case will be considered individually and will involve an assessment of all the potential risks and potential rewards.
- If more than one Originator is involved, unless specifically agreed in writing as on IDF, the Originators' share shall be divided equally among them.
- AIT will endeavour to ensure that the division of income will be carried out within approximately 2 months of the receipt of such income by AIT.
- An individual Originator's share shall continue to be paid to him/her even though he/she may have left AIT. It is the Originator's responsibility, however, to ensure that AIT is provided with accurate and up-to-date contact details and such other details as may be reasonably required to enable AIT to continue to make such payments to the Originator.
- For the avoidance of doubt, Personnel (whether Originators of IP or otherwise) that are not Staff or Students but are an Other Relevant Party shall not be entitled to income arising from AIT IP to which they have contributed unless this is stated in their contract of engagement or AIT agrees otherwise in writing. In the case of AIT IP to which an undergraduate student of AIT has contributed in its creation, it is the intention of AIT that the undergraduate student would participate in any commercial benefits in the same way as would a Staff member or Student of AIT.

² <https://www.knowledgetransferireland.com/Reports-Publications/Ireland-s-National-IP-Protocol-2019-.pdf>,
Chapter 3 Framework for IP Licensing

12.4 Division of Income

Subject to the terms of this IP Policy including the general principles set out above, income derived from AIT IP Commercialised by AIT in accordance with the provisions of this IP Policy will (subject to any ministerial/government department consents which may be required from time to time) be distributed (net of all charges associated with the protection and administration of the IP) between the Originator(s), the AIT RTT Fund and the Originator(s)' Faculty(s)/Research Institute, (subject to final determination by the IP Committee):

Level of cumulative net income	Originator(s)	AIT RTT Fund	Originator's Faculty/Research Institute
Portion €0 - €100,000	60%	25%	15%
Portion €100,001 - €250,000	40%	35%	25%
Portion > €250,000	30%	40%	30%

All payments to Originators under this Policy are subject to compliance with applicable taxation provisions as required by law at the time of distribution.

Any Originator receiving a personal equity in any Spin-out Company (as a Promoter or a Contributing Shareholder) shall not be entitled to receive any share of royalties, milestone payments, licence fees or any other income whatsoever received by AIT which results from or relates to the Commercialisation of the AIT IP by the same Spin-out Company, and the share of income which would otherwise have been allocated to that Originator (pursuant to this section 12.4) shall be allocated to the AIT RTT Fund.

13. SPIN-OUT COMPANIES

13.1 Background, Proposals and Evaluation

Spin-out Companies, are companies, usually highly knowledge- and skill-intensive enterprises, which are formed for the purposes of exploiting AIT IP. A Spin-out Company is usually reliant on AIT IP at the time of formation and will usually take a licence to that AIT IP from AIT and at the same time issue a percentage share equity in the capital of that Spin-out Company to AIT.

Agreeing equity share in a Spin-out Company is a commercial negotiation based on risk and reward. Equity share for AIT will depend on the specific proposition and commercial potential and will have regard to the stage of development and commercial readiness of the licensed AIT IP and the resources required to Commercialise it, in addition to any State support given to the creation or development of the AIT IP. The Originators' (including any Promoter, Contributor or Contributing Shareholder) contribution, investment and/or involvement will also be relevant.

The Promoter, usually a director of the Spin-out Company, plays a key role in the management and operation of the Spin-out Company and/or its efforts to Commercialise the relevant AIT IP.

The **Contributing Shareholder** plays an important part in contributing to the creation or further development of the AIT IP and acquires a number of shares in the capital of the Spin-out Company, subject to the following limitations:

- a Contributing Shareholder may be issued with such number of shares as shall represent, immediately following completion, up to a maximum of 3% of the entire issued voting share capital of the Spin-out Company; and
- to the extent there are two or more Contributing Shareholders under any one Spin-out Company, the maximum number of shares in the capital of the Spin-out Company which may be allocated and issued pursuant to this Policy to all of the Contributing Shareholders collectively shall not in any event exceed 10% of the entire issued voting share capital of the Spin-out Company.

The Contributor, like the Contributing Shareholder, plays an important part in contributing to the creation or further development of the AIT IP but does not acquire any shares in or ownership of the Spin-out Company or play an active role in the management or operation of the Spin-out Company.

The equity percentages set out in this section reflect the *maximum* number of shares which may be issued to one or more Contributing Shareholders. AIT does not represent or guarantee that each Contributing Shareholder will be entitled to or allocated a 3% equity share in any Spin-out Company or that a 10% equity share in any Spin-out Company will be allocated collectively between its Contributing Shareholders; this will be subject to review and agreement in each case based on commercial considerations in the best interests of the Spin-out Company. Without limiting the duties and responsibilities owed by a Contributing Shareholder to AIT, each Contributing Shareholder, as a Shareholder, will then have certain rights and responsibilities in relation to the business of the Spin-out Company.

In order for AIT, through its IP Committee, to properly evaluate, approve or take any other decision relating to the proposed establishment of a Spin-out Company and any related licensing transaction, those wishing to establish a Spin-out Company will be required to prepare and submit a business plan (or a business proposition or business strategy document) for the Spin-out Company, including details of the activities intended to be undertaken by the Spin-out Company to develop and Commercialise the AIT IP. The business plan (or a business proposition or business strategy document) should ideally establish proof of concept and set out as much as possible and in reasonable detail:

- (a) the relevant AIT IP proposed to be used by the Spin-out Company (including a copy of the relevant IDF and details of (or a copy of) the decision taken by the IP Committee, following its evaluation of the relevant AIT IP in accordance with the procedures set out in this Policy);
- (b) the proposed field for Commercialisation of the AIT IP;
- (c) the particulars of each Promoter (and any Contributor or Contributing Shareholder);
- (d) the proposed company name or where the Spin-out Company has been registered, include a copy of the CRO document as evidence of registration;
- (e) the proposed capital/financial arrangements (including initial cashflow);
- (f) the proposed authorised and issued share capital;

- (g) who will be involved in the Spin-out Company and how they will be engaged, including the proposed management structure and staffing arrangements;
- (h) the projected requirements for space and facilities;
- (i) the strategy for the protection and exploitation of existing or future Intellectual Property;
- (j) the targeted market for Commercialisation and a competitive analysis of that market to show the proposed venture is viable;
- (k) the reasons why the Spin-out Company option is being pursued rather than other options for Commercialisation;
- (l) outline whether the Spin-out Company will have an ongoing relationship with AIT and if so, on what basis;
- (m) confirmation that the Promoter (and each Contributor and Contributing Shareholder) has, by a determination of the Conflicts Committee, satisfied (or is in the process of satisfying) the conditions set out under the Conflict of Interest Policy, as applicable; and
- (n) any other information or documents AIT may reasonably require from time to time.

Each proposal submitted to the TTO will be reviewed and evaluated by the TTO and the IP Committee and any sub-committee nominated by the IP Committee from time to time, including, but not limited to the Conflicts Committee having regard to all of the circumstances. The TTO and the IP Committee may, at its or their absolute discretion, reject a submission outright or move to full examination of the concept. Such examination will normally require further information and, if appropriate, a period of negotiation on the detailed arrangements for the establishment of the Spin-out Company and the licensing of the relevant AIT IP.

Following full examination the IP Committee may recommend either approval or rejection of the proposal to establish a Spin-out Company.

The IP Committee's decision will require endorsement by the Research, Innovation and Enterprise Committee of AIT. A condition for such endorsement will be that an assurance is given that appropriate health and safety standards can be met and that there are adequate indemnities in place (or which will be put in place) for the protection of AIT against any loss, liability or third party action arising out of or in connection with the Spin-out Company's use or Commercialisation of the AIT IP.

13.2 Incorporation of a Spin-out Company and Legal Agreements

Where a proposal has been approved by the IP Committee as above and agreement on detailed terms of establishment has been reached:

- (a) a Constitution may be drawn up and the Spin-out Company may be registered for trading. In certain cases, it may be necessary for a Spin-out Company to be incorporated before AIT has approved the full business plan (or business proposition or business strategy document), for example, in order to avail of a particular funding or business opportunity. AIT will aim to be flexible in these circumstances, where possible and appropriate; and

- (b) AIT and the Spin-out Company will agree and enter into a Licence Agreement, and at the same time, the Shareholders, the Spin-out Company and AIT will agree and enter into a Shareholders' Agreement.

The Spin-out Company and/or its Shareholders (other than AIT) will be responsible for the costs of incorporating the Spin-out Company and for all costs it incurs in connection with the negotiation and completion of the above legal agreements and the transactions contemplated by them.

13.3 Duties and Independent Legal Advice

The incorporation and operation of any Spin-out Company carries with it important responsibilities and legal obligations. The management of the Spin-out Company is the responsibility of its directors, who are subject to a large number and wide range of statutory obligations including those set out from time to time under the Companies Act.

It is the duty of every director of a Spin-out Company to ensure that the Spin-out Company complies with the Companies Act. The Companies Act imposes an obligation on every director to make a written compliance statement to this effect and in respect of its compliance with all other legal obligations.

Other statutory fiduciary duties of a director of a Spin-out Company include, but are not limited to:

- (a) to act in good faith in what the director considers to be the best interests of the Spin-out Company;
- (b) to act honestly and responsibly in relation to the conduct of the affairs of the Spin-out Company;
- (c) to act in accordance with the Constitution of the Spin-out Company and to exercise his or her powers only for the purposes allowed by law;
- (d) to have regard to the interests of the employees and members of the Spin-out Company;
- (e) not to use the Spin-out Company's property, information or opportunities for his or her own or anyone else's benefit unless this is expressly permitted by the Constitution of the Spin-out Company or the use has been approved by a resolution of the Spin-out Company in general meeting;
- (f) not to agree to restrict his or her power to exercise independent judgment unless this is expressly permitted by the Constitution of the Spin-out Company or the director believes, in good faith, that to fetter his or her discretion is in the best interests of the Spin-out Company;
- (g) to avoid any conflict between the director's duties to the Spin-out Company and the director's other (including personal) interests, unless the director is released from his or her duty to the Spin-out Company in relation to the

matter concerned, whether by the Constitution of the Spin-out Company or by a resolution of the members in general meeting; and

- (h) to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both the knowledge and experience that may reasonably be expected of a person in the same position as the director and the knowledge and experience which the director has.

In some cases, penalties, restriction or personal liability might attach to a director in the event of a breach of his or her director's duties to the Spin-out Company, depending on the circumstances and subject to certain exceptions.

The summary information set out in this section is provided for general guidance and informational purposes only. It is not exhaustive and may be subject to change. It should not be construed as or relied upon as legal advice. A decision to act as a director of any Spin-out Company (or to enter into any of the legal agreements contemplated by this Spin-out Company Policy) should not be taken lightly. Independent legal advice (and tax advice) is advised in each case.

13.4 AIT Shares in a Spin-out Company

A share of the equity in the Spin-out Company will normally be set aside for external seed capital investment and the issued share capital of the Spin-out Company will be divided between the Promoters, the Contributing Shareholders and AIT. The actual percentage of the initial equity to be made available for seed capital will be decided based on commercial considerations in the best interests of the Spin-out Company.

Equity share will be negotiated on a case by case basis. Spin-out Companies are typically required to give AIT a 15% share in the equity of the Spin-out Company and must take all such steps as are reasonably necessary and/or set out from time to time in the Shareholders' Agreement and the Constitution to allot and issue the AIT Shares to AIT. This is a guideline only and AIT may negotiate a higher or lower equity stake in the capital of the Spin-out Company.

Any conditions attaching to AIT's shareholding must be agreed by AIT prior to the establishment of the Spin-out Company and will be as set out in the Shareholders' Agreement.

Subject to any anti-dilution rights of AIT under the Shareholders' Agreement, any subsequent dilutions of existing shareholdings will be based on commercial considerations in the best interests of the Spin-out Company. In recognising the value of equity in running and controlling a start-up Spin-out Company, equity will usually only be given to investors, Personnel, Contributing Shareholders and/or Promoters who will be committed to adding value to the Spin-out Company on a long-term basis.

AIT may dispose of or transfer part or all of the AIT Shares with due notice to the Spin-out Company's directors, subject to and in accordance with the terms of the Shareholders' Agreement and the Constitution.

13.5 Division of Income received from Spin-out Company

- (a) The division of income received by AIT as a result of the Commercialisation of the AIT IP by the Spin-out Company, including royalties, option fees, milestone payments or other licence fees or assignment fees paid by the Spin-out Company to AIT pursuant to the Licence Agreement (or any other agreement) will be divided and disbursed by AIT subject to and in accordance with this IP Policy; provided however:
- (i) **where a participating Personnel Member is a Promoter**, the Promoter will be given ordinary shares in (i.e., part ownership of) the Spin-out Company and no additional payments will be required to be made by AIT to that Promoter under this Policy in respect of any income (or any part of it) received by AIT in respect of that AIT IP pursuant to section 13.5(a) or otherwise; or
 - (ii) **where a participating Personnel Member is a Contributing Shareholder** (but not a Promoter), the Contributing Shareholder will be given ordinary shares in (i.e., part ownership of) the Spin-out Company (subject to the limitations set out above) and no additional payments will be required to be made by AIT to that Contributing Shareholder under this IP Policy in respect of any income (or any part of it) received by AIT in respect of that AIT IP pursuant to section 13.5(a) or otherwise; or
 - (iii) **where a participating Personnel Member is a Contributor** (but not a Promoter), the Contributor will be entitled, subject to and in accordance with the IP Policy, to receive his or her share of the licensing income received by AIT in respect of that AIT IP pursuant to section 13.5(a) above in accordance with this IP Policy. For clarity, however, the Contributor will not receive an equity share in the capital of the Spin-out Company at the same time.
- (b) For the purposes of this IP Policy, each Personnel Member must inform the TTO as early as possible and without delay of his or her intention as to whether he or she wishes to act as (a) a Promoter of the Spin-out Company and pursue Commercialisation of the relevant AIT IP or (b) a Contributing Shareholder or (c) a Contributor. In such circumstances, the Promoter and Contributing Shareholder of each approved Spin-out Company will be deemed to have waived any right under the IP Policy to receive a share of the any income received by AIT pursuant to section 13.5(a) above or otherwise under the IP Policy in respect of that AIT IP and the Contributor of each approved Spin-out Company will be deemed to have waived any right to receive founding equity in the capital of such Spin-out Company.
- (c) For the avoidance of doubt, and without limiting the application of the IP Policy:
- (i) the division of licensing income pursuant to section 13.5(a) above (where applicable) is net of, and after the deduction of, any and all expenses to the extent incurred by AIT in relation to the relevant AIT IP, including, but not limited to, patent costs, legal fees, and any applicable taxes; and

- (ii) nothing in this IP Policy shall impose any obligation on AIT to distribute to any Contributor, Contributing Shareholder, Promoter and/or Personnel Member (i) any dividends to the extent paid by the Spin-out Company to AIT pursuant to and in accordance with the Shareholders' Agreement and/or the Constitution in relation to the AIT Shares; and/or (ii) any other proceeds to the extent received by AIT from the permitted transfer or sale of some or all of the AIT Shares or the permitted transfer or sale of the Spin-out Company or all or substantially all of its assets. All such dividends and/or other proceeds shall be retained by AIT and used by and at the discretion of AIT in the furtherance of its academic, research or Commercialisation activities or in any other way AIT sees fit.

13.6 Spin-out Companies and this Policy

Personnel seeking to exploit existing or future Intellectual Property of AIT through a Spin-out Company will be bound by, and must comply with and have complied with, the terms of this IP Policy.

Detailed arrangements for the continued protection, use and Commercialisation of AIT IP will be as set out in the Licence Agreement. The Licence Agreement provides that:

- (a) the Spin-out Company will be required to pay (or in the case of a non-exclusive licence, to contribute to) all protection costs (including patent costs) incurred by AIT during the term of the Licence Agreement in respect of the AIT IP;
- (b) the AIT IP is and will be made available to the Spin-out Company on an "as is" basis and without warranty or representation of any kind as to its usefulness, completeness, fitness or purpose and the Spin-out Company use of the AIT IP will be at its sole risk; and
- (c) without limiting AIT's other rights of termination under the Licence Agreement, the Licence Agreement (and all rights and licences granted to the Spin-out Company under it) may be terminated by AIT in the event the Spin-out Company fails to Commercialise the AIT IP and/or the Spin-out Company becomes insolvent, bankrupt or otherwise enters into receivership, examinership, liquidation or any other arrangement with its creditors or ceases (or threatens to cease) to carry on business, and in such circumstances all rights, title and interest in and to the AIT IP will revert to AIT on termination.

13.7 Employees and Contractual Issues

Employment contracts issued by Spin-out Companies will state clearly that its staff are not employees of AIT and that the Spin-out Company will be responsible for all remuneration, tax, pensions, insurance and all other obligations to its employees. Similarly, all contracts issued to external suppliers, consultants or any other subcontractors, will be clearly in the name of the company and will exclude AIT from any obligation or liability arising from such contracts.

13.8 Services and Support to Spin-out Companies

Spin-out Companies may avail of a range of AIT services and supports, including, where appropriate, incubation facilities and business development support in the Midlands Innovation and Research Centre; access to specialised equipment and laboratory facilities; Library services; security and car parking; and catering services, subject to availability and agreement in writing on terms and conditions and compliance with State Aid Rules.

13.9 Indemnity

The Promoters of a Spin-out Company must provide evidence of adequate personal and professional indemnities and shall undertake to indemnify and hold AIT harmless from and against any legal action, loss, liability, claims or damages howsoever arising from Spin-out Company activities, including any disruptions to services.

13.10 Disclaimer

Nothing in this Policy will be deemed to impose any obligation on AIT to create or incorporate any particular Spin-out Company or to grant any rights or licences in respect of any of AIT's Intellectual Property. No obligations will bind AIT arising out of it otherwise than in accordance with the terms and conditions of any agreements negotiated in the manner referred to above and formally accepted by AIT. Any such agreement shall be governed by the laws and regulations of Ireland. Any disputes arising out of or in connection with any such agreement which are not resolved through mediation or arbitration shall be settled by the relevant court in Ireland.

14. PUBLICATION OF RESEARCH RESULTS

It is AIT 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 or any other media. This is a vital factor for academic recognition. It is mandatory that such disclosure is not in violation of the terms of any Relevant Contract or other agreement that has been entered into by AIT 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 such period as is reasonably determined by the IP Committee to protect the patentability of the IP.

In this Policy, publication refers broadly to any disclosure of the Intellectual Property, or any part of it, in any public format, including, but not limited to, journals, conference proceedings, conference abstracts, conference presentations, undergraduate / postgraduate thesis, websites and posters. Even publications of limited scope (for example, describing an overall approach) and scale (presentation to a small group) can have a significant impact and potentially reduce the ability of AIT to adequately protect such Intellectual Property.

In the case of funded research programmes, any requirements for the protection of Intellectual Property must be complied with prior to publication. Examples of such requirements would be the need to obtain prior approval from collaborating institutions (academic or commercial) prior to submission for publication, and/or a

requirement that documents be approved by the TTO prior to submission for publication. While no such requirement exists for non-funded research programmes, the PI should consult with the TTO prior to publication where the PI believes there may be commercial or other potential not addressed solely in the publication.

Questions or concerns with regard to the potential impact of publication on Intellectual Property rights may be directed to the TTO.

15. RESOLUTION OF DISPUTES

Any dispute between AIT and an Originator of IP, which after making every reasonable effort cannot be resolved between them fairly by negotiation within sixty (60) days, shall be submitted for mediation by a mediator or other appropriate independent third party expert agreed by the parties or, in default of agreement, appointed by the Centre for Dispute Resolution in Dublin.

The cost of any such mediator or expert shall be borne equally by the parties.

In the case of collaborative research with industry, in certain situations, KTI may assist in facilitating dispute resolution.

In the case of AIT, the Office of the Vice President of Finance and Corporate Affairs or its nominee shall have authority to decide and seek to resolve any such disputes for and on behalf of AIT during the course of any settlement negotiations or subsequent mediation.

16. CONFLICTS OF INTEREST RELATING SPECIFICALLY TO RESEARCH AND COMMERCIALISATION ACTIVITIES

A Conflict of Interest arises when an individual holds a personal interest, whether direct or indirect, which in the opinion of a reasonably-informed and well-advised person is sufficient to call into question the independence, impartiality and objectivity the individual is obliged to exercise in the performance of his or her duties. Conflicts of Interest may be financial or non-financial or both.

The existence of an actual, perceived or potential Conflict of Interest does not necessarily imply wrongdoing on anyone's part. However, any private, personal or commercial interests which give rise to such a Conflict of Interest must be recognised, disclosed appropriately and either eliminated or properly managed.

Conflicts of Interest that may arise in connection with IP Commercialisation include, but are not limited to, the following:

- An individual using their AIT position to:
 - influence a contract or other favourable terms for a company in which they, or a relative or friend, had a financial interest.
 - obtain financial or non-financial benefits for themselves or for a relative or friend in return for providing advantage, or potential advantage.
 - use AIT resources or confidential information for personal financial or non-financial benefit or benefit to a relative or friend.
- Conducting business, employment or activity outside of AIT which adversely affects the individual's ability to perform their duties.

- An individual compromising research objectivity or independence in return for financial or non-financial benefit for them or for a relative or friend.

Examples of these kinds of Conflicts (this is not an exhaustive list):

- A researcher having a financial interest in the company sponsoring research, this being exacerbated if the value of the researcher's interest may be affected by the outcome of the research.
- An individual is an inventor of patents or creator of other IP whose value may be affected by the outcome of research in which they are involved.
- An individual holds a position in an enterprise (e.g. as director) that may wish to restrict (or otherwise manage) adverse research findings for commercial reasons or not wish to publish the results of the research.
- An individual having a financial interest or other personal interest in a Spin-out Company or may have personal IP with which they are intending to create a start-up company.
- An individual having a financial interest in the licensee (or proposed licensee) of AIT Intellectual Property.
- An individual taking part in the negotiation of a contract between AIT and a company, where the individual or their family or a close personal friend has a financial or non-financial interest (e.g. a directorship) in that company.

AIT's Conflict of Interest Policy sets out the procedures to be followed by AIT in respect to actual, perceived or potential Conflicts of Interest.

AIT requires full disclosure of potential areas of conflict and open discussion at the earliest possible opportunity. AIT will endeavour to alert Personnel to recognise where Conflicts of Interest may occur in relation to its or their research and Commercialisation activities and to manage and resolve these conflicts in line with its Conflict of Interest Policy.

The responsibility for avoiding Conflicts of Interest rests, in the first instance, with each Personnel Member. In the event that the TTO identifies a potential, actual or perceived conflict of interests related to IP Commercialisation, it shall make the individual Personnel Member concerned aware of the Conflict and advise them to follow the process outlined in the Conflict of Interest Policy.

ANNEX I

DEFINITIONS

The following definitions shall have the following meanings in the IP Policy, unless the context otherwise requires or otherwise defined therein.

“AIT” or **“Athlone Institute of Technology”** means Athlone Institute of Technology, an educational institution established under the Regional Technical Colleges Act 1992, located in Athlone, Co. Westmeath, Ireland.

“AIT Assets” means any or all of the facilities, patents, know-how, (secret or otherwise), confidential information or other forms of IP (including but not limited to patent applications, registered designs including applications for registered designs, copyright in documentation and software and any other IP for which protection could or has been applied for) of AIT.

“AIT IP” means any and all Intellectual Property of AIT.

“AIT Shares” means means such number of fully paid-up ordinary shares in the capital of a Spin-out Company as shall immediately following completion represent up to or, subject to section 14.1 of the IP Policy, in excess of fifteen percent (15%) of the entire issued voting share capital of the Spin-out Company.

“Background IP” means any IP (i) licensed or owned by any party to a research contract prior to the beginning of any programme of research; or (ii) generated or licensed independently of the programme by that party; and which is brought into or used as part of the programme and excluding (for the avoidance of doubt) any IP created by any party to a research contract during the performance of the programme of research.

“Commercialise” or **“Commercialisation”** means the use of Intellectual Property to create or develop a commercial activity, and the words **“Commercialised”** and **“Commercialising”** are to be construed accordingly. This may involve exclusive or non-exclusive licensing, or where permitted an assignment, of Intellectual Property and may lead to a new company formation, including for example, a Spin-out Company, and/or the development and/or introduction of new or improved products or services.

“Companies Act” means the Companies Act 2014 and every statutory modification and re-enactment thereof for the time being in force in Ireland.

“Confidential Information” and **“Know How”** Confidential information or know how is a broad term used to cover information not generally known or reasonably ascertainable, by which the owner can obtain an advantage over competitors. It may refer to a formula, practice, process, design, instrument, pattern, or compilation of information. More specifically, know-how typically includes unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain.

“Conflicts Committee” means the conflicts committee of AIT as from time to time constituted pursuant to and in accordance with the Conflict of Interest Policy.

“Conflict of Interest” has the meaning given to it from time to time in the Conflict of Interest Policy.

“Conflict of Interest Policy” means the Conflict of Interest Policy of AIT in force from time to time and any subsequent amendments to it.

“Constitution” means the constitution of a Spin-out Company as adopted upon incorporation and amended from time to time by special resolution.

“Contributor” means a Personnel Member who:

- (a) in the course of his or her employment or education by AIT or in relation to work carried out for AIT creates or develops, or contributes to the creation or development, of AIT IP which is licensed (or intended to be licensed) to a Spin-out Company; and
- (b) who elects not to participate as a Contributing Shareholder or a Promoter of that Spin-out Company, and as such **is or will remain an employee of AIT** (subject to the terms and conditions of his or her employment).

“Contributing Shareholder” means a Personnel Member who:

- (a) in the course of his or her employment or education by AIT or in relation to work carried out for AIT creates or develops, or contributes to the creation or development, of AIT IP which is licensed (or intended to be licensed) to a Spin-out Company; and
- (b) who elects to participate as a Shareholder (but not a Promoter) of that Spin-out Company subject to the limitations set out in this Policy, and as such **is or will remain an employee of AIT** (subject to the terms and conditions of his or her employment).

“Copyright” Copyright is generally applied to original literary (including books and other writings), dramatic, musical or artistic works, sound and visual broadcasts, computer programmes, original databases or the typographical arrangement of published additions. Copyright gives exclusive rights to that original work with the right to prohibit or authorise others to copy, perform, adapt or make the original work available to the public through broadcasting or recordings. Copyright law does not cover ideas and information themselves, only the form or manner in which they are expressed.

“Design Rights” means registered or unregistered rights in the appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or ornamentation.

“Domain Names” means an Internet or other URL address. There are various generic top level domains (“TLDs”), such as .com and .biz, as well as, ccTLDs (Country code), such as .ie.

“Foreground IP” or **“Results”** means IP which comes into existence in the course of performance of a programme of research.

“Invention Disclosure Form” or **“IDF”** means the invention disclosure form in the format used from time to time by AIT.

“Intellectual Property” or **“IP”** means 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 patents, trade marks, service marks, registered designs, drawings, utility models, design rights, business ideas, concepts, inventions, discoveries, breeders' rights, copyright (including the copyright in software in any code), database rights, know-how, trade secrets and other confidential information, technology, business or trade names, goodwill and all other rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not, and including all applications and the right to apply for any of the foregoing rights.

“Income” means, for the purposes of this IP Policy, revenue derived from the relevant patents or other AIT IP in question, which are Commercialised by AIT, and includes (without limitation) up-front licence fees, down payments, annual payments, milestone payments and royalties on sales to the extent received by AIT in connection with the Commercialisation of the AIT IP after the deduction of any and all expenses incurred by AIT in Commercialising or protecting the relevant patents or other AIT IP. This means all direct expenses incurred by AIT in:

- the patenting or other registration or protection of the AIT IP; and
- the Commercialisation of an invention or any other AIT 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 income. No income will be made available for distribution until such expenses have been recovered.

“IP Committee” means the Intellectual Property Committee established from time to time by AIT.

“IP Policy” or **“Policy”** means this Intellectual Property Policy and Procedures and any valid amendments to it.

“KTI” or **“Knowledge Transfer Ireland”** means Knowledge Transfer Ireland, the central office responsible for the knowledge transfer (KT)/technology transfer (TT) system in Ireland.

“Licence Agreement” means the exclusive or non-exclusive licence agreement in the form as may be agreed by AIT from time to time and entered into between AIT and a Spin-out Company or other licensee for the Commercialisation of the AIT IP in a defined field [, whether with or without a time-limited, conditional and fee-based option to acquire an assignment of part or all of the licensed AIT IP].

“Midlands Innovation and Research Centre” means AIT's campus business incubation centre or any other business incubation centre established and/or operated at or by AIT from time to time.

“National IP Protocol” means the set of objectives, agreed by the Irish Government, governing the management of and access to Intellectual Property undertaken in the Irish public research system as set out from time to time in the policy document entitled *“Ireland's National IP Protocol 2019 A Framework for Successful Research Commercialisation”* and any valid amendments or supplements thereto or binding guidelines or binding requirements issued therefrom.

“Originator” means the member or members of Personnel who is or are an originator, inventor or creator of or contributor to IP within the scope of this IP Policy.

“Other Forms of Intellectual Property” includes, 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.

“Other Relevant Parties” means individuals other than Staff and Students such as visiting students, visiting researchers, other visitors, consultants and independent contractors on sponsored research projects and/or who are engaged in research or other IP related activities at or behalf of AIT. To the extent an AIT registered undergraduate student participates in the performance of any sponsored research project, any Relevant Contract or otherwise works closely with any member of Staff in connection with the performance of a programme of research or where it would otherwise be in AIT’s interests to own the IP resulting from research activities, the AIT registered undergraduate student will also be regarded as and fall within the definition of Other Relevant Parties for the purposes of, and subject to the terms of, this IP Policy.

“Patent” A patent is intended to protect inventions for new and improved products and processes that have some technical innovation and are capable of industrial application.

“Personnel” means Staff, Students, and/or Other Relevant Parties.

“Personnel Member” means any member of Personnel.

“Promoter” means a Personnel Member who:

- (a) in the course of his or her employment or education by AIT or in relation to work carried out for AIT creates or develops, or contributes to the creation or development, of AIT IP which is licensed (or intended to be licensed) to a Spin-out Company; and
- (b) who elects to participate as a promoter and Shareholder of that Spin-out Company and as such **is or elects to become an employee of the Spin-out Company.**

“Relevant Contract” means the agreement between AIT and the external agency, industry partner or other organisation in relation to the performance of a programme of research.

“RTT Fund” means AIT’s Research and Technology Transfer Fund.

“Shareholder” means any person or entity who or which holds shares in the capital of a Spin-out Company.

“Shareholders’ Agreement” with regard to a Spin-out Company, means the shareholders’ and share subscription agreement entered into from time to time by Spin-out Company, its Shareholders and AIT in connection with the subscription by AIT for the AIT Shares

“Spin-out Company” means a private company limited by shares (LTD) or designated activity company (DAC) which is incorporated in Ireland under the Companies Act and granted certain rights and licences by AIT to Commercialise the AIT IP (or part of it) in a defined field, application and/or territory in consideration for which, and for other good and valuable consideration, AIT is allotted and issued the AIT Shares.

“Staff” refers at all times to AIT part time and full time staff having casual, indefinite duration, permanent, pro rata or temporary contracts (including, without limitation AIT post-doctoral researchers) and persons employed by AIT on fixed purpose academic contracts, under dual appointments (where relevant) and/or who are based temporarily outside of AIT.

“Students” means AIT registered postgraduate students.

“Trade Mark” is a unique, recognisable sign, design, symbol or expression which identifies products or services of one undertaking from those of another. It is intended to protect a brand’s identity so as to distinguish from others and may comprise of a word, logo, slogan, colour, three-dimensional shape and even a sound or smell. The Trade Mark must be capable of being represented in words and/or pictures.

“TTO” means AIT’s Technology Transfer Office. The TTO leads work to identify and Commercialise IP arising from research at AIT, within limits of authority set by AIT and subject to supervision by KTI as to its compliance with the requirements of the National IP Protocol. The TTO reports to the Director of Innovation and Enterprise.

“TTSI” or **“Technology Transfer Strengthening Initiative”** means the Enterprise Ireland programme of funding to support technology transfer and research commercialisation within research performing organisations, including AIT.

□ **COPYRIGHT AND RELATED RIGHTS ACT, 2000 (the “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 (the “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.”
