



Intellectual Property Policy

Version 1.0

Revision History:

Date of this revision: 21 November 2022	Date of next review: November 2024
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Version/ Revision No.	Revision Date	Summary of Changes	Changes marked
1.0	21 November 2022	New Policy	N/a

Consultation History:

Version/ Revision No.	Consultation Date	Parties to Consultation	Summary of Changes
1.0	July to October 2022	TUS, MU, IP Pragmatics, TUS Policy Review Consultation Group	

Approval:

This document requires the following approvals:

Version	Approved By:	Date
1.0	TUS Governing Body	21 November 2022

Quality Assurance:

Date Approved:	Policy Effective Date:	Policy Review Date:
21 November 2022	21 November 2022	December 2024
Policy Developer:	Director of Innovation and Enterprise	
Policy Owner:	Vice President Research, Development and Innovation	
Approving Authority:	TUS Governing Body	
Head of Function responsible:	Vice President Research, Development and Innovation	
Reference Documents:	N/a	

Questions related to the content of this Policy:

Questions relating to the content of this Policy should be addressed to:

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Document Location:

Website – Policies and Procedures :	<input checked="" type="checkbox"/>
Website – Staff Hub:	<input checked="" type="checkbox"/>
Website – Student Hub:	<input checked="" type="checkbox"/>
Other – Internal Use Only:	<input type="checkbox"/>

This Policy was approved by TUS Governing Body on 21 November 2022.

This Policy is subject to review at least every four years and also within six months of the introduction of updates to Ireland's National IP Protocol or Code of Governance or any other significant change in national policy or guidance.

All amendments shall be recorded on the revision history section above.

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1. INTRODUCTION

1.1 General

Technological University of the Shannon: Midlands Midwest (TUS) is committed to the creation of new knowledge or Intellectual Property and to bringing research developments and advancements to the marketplace for societal benefit. The creation and exploitation of Intellectual Property (IP) contributes significantly to both institutional and regional development including the promotion of entrepreneurship, high potential start-ups and job creation by new and established firms. TUS 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, TUS encourages the generation of IP by Staff, Students and Other Relevant Parties.

Where commercially exploitable IP arises as a result of research and development activities at TUS which are wholly or in part publicly funded, the opportunity shall be taken by TUS 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.

In such circumstances, it is appropriate for both TUS and the Originator(s) 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/or the promotion of greater industry involvement in TUS research, which in turn may lead to new research programmes, academic publications, increased funding for TUS and the stimulus of greater industry interaction for individual Personnel.

1.2 Ireland's National IP Protocol 2019

Ireland's framework for research commercialisation is called the National IP Protocol. It provides for best practice, guiding on the expected norms for research-related engagements between industry and State research performing organisations (RPOs) and the formation of spin-out companies from State research.

Under the National IP Protocol, TUS 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 TUS manages research, related contracts and IP in a professional manner.

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

- **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;
- **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 TUS.

1.3 Knowledge Transfer Ireland

Knowledge Transfer Ireland (KTI) is the national office that helps business to benefit from access to Irish expertise and technology by making it simpler to connect and engage with the research base in Ireland. KTI's mission is to support business and the research base to maximise innovation from State funded research by getting technology, ideas and expertise into the hands of business, swiftly and easily for the benefit of the public and the economy.

KTI is responsible for evaluating and reporting on performance under Enterprise Ireland's programmes of support for research commercialisation within Ireland's research performing organisations, including TUS, and is charged with delivering the national Annual Knowledge Transfer Survey (AKTS).

1.4 Purpose of this Policy

This IP Policy is intended to provide information, support and guidance regarding ownership, protection, Commercialisation of and income from IP arising from research or other IP-related activities undertaken by Personnel and/or the use of TUS Resources and details the benefits accruing to and duties owed by Personnel under this IP Policy.

1.5 Objectives of this Policy

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

The specific objectives of this IP Policy are as follows:

- To create an environment that encourages the generation of new knowledge and IP by TUS.
- To encourage the recognition and identification of IP within TUS and promote an entrepreneurial culture among Personnel that fosters the development of IP with commercial potential arising from their activities at TUS.
- To provide an efficient process by which the commercial potential of IP can be assessed by TUS and to ensure that the process of IP evaluation, protection and Commercialisation is carried out in a timely manner.
- To give due regard to the non-financial benefits (e.g. non-cash consideration, benefit of strategic relationships between TUS and third parties, access to IP and confidential information) that will accrue to TUS and to the Originators of IP in pursuing the goals of this IP Policy.
- To foster general awareness by Personnel of this Policy and to provide specific training to Personnel engaged in research activities within the scope of this IP Policy.

1.6 Scope of this IP Policy

This IP Policy (and any subsequent amendments made to this IP Policy) is the agreed IP Policy of TUS and forms part of the regulations of TUS which govern the conduct of Staff and Students. TUS Staff and Students who spend time at institutions outside of TUS shall continue to be bound by this Policy and shall not enter into any IP agreements with the host institution except through a formal written agreement between TUS and the host institution.

This IP Policy extends to Other Relevant Parties. Such Other Relevant Parties may be required to enter into an appropriate agreement with TUS to regulate their relationship with TUS.

Personnel who have a prior existing and conflicting intellectual property arrangement with another entity must declare/report same to TUS under TUS's Conflict of Interest Policy and must enter into an agreement with TUS (and the relevant entity) to abide by the conditions of this IP Policy.

1.7 What this IP Policy Covers

This Policy sets out the principles and rules that govern the creation, ownership and Commercialisation of IP arising from research undertaken by Personnel and/or while making more than incidental use of TUS Resources. It covers:

- Rights, responsibilities, obligations and procedures of TUS and Personnel with regard to IP;
- Decision-making processes relating to IP Commercialisation, including a dispute-resolution process;
- The major IP commercialisation routes, including licensing, assignment and spin-out company creation;
- The basis of revenue / equity share allocation for TUS and TUS Originators;
- The situation and process for grant back of rights to Originators;
- The potential for conflicts of interest.

1.8 Monitoring of and Changes to this Policy

This IP Policy will be monitored by TUS's Office of Vice President Research, Development and Innovation on an ongoing basis. It is subject to review by TUS at least every four years and also within six months of the introduction of updates to the National IP Protocol or Code of Governance or any other significant change in national policy or guidance.

The IP Committee may approve such minor edits, amendments or other updates to this IP Policy as may be required to comply with the requirements of KTI, the HEA or any regulatory or education authority or applicable law.

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

All revisions to this IP Policy shall be posted on the TUS website and/or Intranet.

1.9 Conflict of Interest Policy

TUS's Conflict of Interest Policy, which takes into account the management of potential or actual conflicts of interest concerning the Commercialisation of IP, should be read in conjunction with this IP Policy. The Conflict of Interest Policy is available on TUS's website and/or Intranet, from the Knowledge Transfer and Commercialisation Office or from the Office of Vice President Finance and Corporate Governance.

1.10 Related TUS Policies

This IP Policy should also be read in conjunction with TUS's Code of Conduct for Employees, TUS's Research Regulations, TUS's Ethics Policy for Research and TUS's Research Integrity Policy.

1.11 Statutory Provision

Decision-making and approvals relating to TUS IP are governed by statutory provision including the Freedom of Information Acts, 2014, the Data Protection Acts, 1988 and 2003, the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001, and the Technological Universities Act 2018. This IP Policy augments the Irish statutory provisions governing the ownership of intellectual property rights.

1.12 Related TUS Forms

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

1.13 Reporting

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

2. INTELLECTUAL PROPERTY AND RELEVANT DEFINITIONS

2.1 Intellectual Property (IP)

IP is the tangible or intangible result 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.

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 TUS Resources.

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. OWNERSHIP OF TUS IP

3.1 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 (Staff, Students and Other Relevant Parties) in the course of their employment or education by TUS or in relation to work carried out for TUS and/or through the use of TUS Resources is the property of and vests solely and absolutely in TUS or such companies or organisations as TUS may nominate for such purposes.

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

- while undertaking normal or specifically assigned TUS duties either when IP could be reasonably expected to result from the carrying out of those duties;
- during the working hours of TUS or outside those hours if related to the individual's TUS job responsibilities, whether their place of work is TUS or elsewhere, even if he or she is not specifically requested to create it;
- when using TUS Resources;
- using any TUS IP; or
- arising out of funded or non-funded research where such research has, in the opinion of TUS, made use of TUS Resources (except where ownership of such IP was provided for in a prior agreement between TUS and third parties).

The rights to IP created by the Personnel under these conditions is the property of and vests solely and absolutely in TUS, subject to the exceptions outlined in sections 3.2 to 3.6.

3.2 Staff

Under Irish employment law, intellectual property created by TUS Staff in the course of employment is owned by the employer.

In certain cases, intellectual property may be jointly or wholly owned by a sponsoring company, body, agency or other academic institution. In these cases, the contractual terms and conditions of the research contract will set out the ownership terms along with associated responsibilities and benefits.

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 TUS and the other institution to deal with intellectual property, copyright and related matters prior to the commencement of employment at TUS.

TUS will not assert any rights to IP that is unrelated to an individual's TUS duties provided he or she does not make use of TUS Resources.

3.3 Students

TUS claims ownership of all IP which is devised, made or created by Students engaged in TUS Research in the course of, or incidentally to, their studies.

The extent of TUS interest, if any, in Intellectual Property developed by Students on sponsored research activities will be determined by reference to contractual arrangements with sponsoring organisations the terms of which will take precedence.

TUS will not assert any rights to IP created by a Student in a project that is not TUS Research and that is entirely initiated by the Student (with the exception of cases where that work is subject to the terms and conditions of any other agreements). However, where there are IP contributions to a Student-initiated project by Personnel Members supervising/co-supervising or otherwise engaged with the project, the IP created by those Personnel Members will be owned by TUS.

Any IP created by a postgraduate research student in a project that was initiated or assigned by a Personnel Member other than the student will be owned by TUS.

In the case of undergraduate students, TUS does not claim ownership of IP created by undergraduate students, except to the extent the undergraduate student participates in the performance of any sponsored research project, any Relevant Contract or otherwise works closely with any member of Staff or TUS postgraduate research student in connection with the performance of a programme of research or other IP related activities.

3.4 Other Relevant Parties

This IP Policy extends to Other Relevant Parties.

Other Relevant Parties at TUS who have a prior existing and conflicting intellectual property agreement or arrangement with another employer or third party must enter into an agreement with TUS (and their employer or relevant third party) to abide by the conditions of this IP Policy in the course of their activities in TUS.

TUS claims right of ownership to IP created by visitors undertaking research or other IP-related activities at TUS by invitation from any TUS Staff or Student, unless there is a written agreement with TUS that explicitly states the contrary in place prior to the commencement of such research.

Where there are IP contributions to a Student project by an external supervisor/co-supervisor, the IP created by the external supervisor/co-supervisor will be owned by TUS, unless there is a written agreement with TUS that explicitly states the contrary in place prior to the commencement of such supervision/co-supervision.

TUS does not claim ownership of IP created by individuals (who are not Staff or Students) in receipt of TUS-administered funding, where such funding is solely granted for the purpose of supporting a start-up.

TUS does not claim ownership of IP created by third parties who are located in TUS premises, as permitted under the terms and conditions of a property licence agreement or equivalent.

3.5 Scholarly Materials

In accordance with long-standing academic tradition, TUS waives its right of ownership of copyright (including moral rights) in Scholarly Materials created by Personnel (unless such rights have been created pursuant to a Relevant Contract or agreement with a third party). TUS shall have a perpetual, irrevocable, royalty-free licence to use such copyright in Scholarly Materials in its promotional, educational, training and research purposes.

The above exception to TUS ownership of IP does not extend to copyright in software, apps, data, databases, database rights or to any online teaching materials (including courses captured in video, or in other digital forms) existing or new and TUS shall own all copyright in such works and publications created by Personnel in the course of their activities at TUS.

3.6 Sponsored Research Activities

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.

The following table provides an indicative outline of IP ownership and exploitation in sponsored/funded research programmes:

	Funding Model				
	100% Company / Private Funding			Joint Public/ Private Funding	100% Public Funding
Programme Type	Company Managed and Directed.	Jointly Directed and Managed. TUS introduced Know how and Background IP.	Consultancy.	Jointly Directed and Managed. TUS and Company introduce Knowhow and Background IP.	TUS Managed and Directed.
IP Ownership	Company owns all IP.	Employer of Inventor/Creator owns IP. Jointly created Foreground IP is jointly owned.	Generally, all Foreground IP is assigned to the Company.	TUS owns all Foreground IP as per IP Protocol model, other models apply with EU funding, etc.	TUS owns all IP.
IP Access	TUS will have IP access rights for research purposes.	Company gets non- exclusive, royalty free access to TUS jointly created Foreground IP.		Company gets first option to negotiate license to TUS Foreground IP. Creation of Spin-Out Company may be considered.	IP commercialised via licensing or creation of Spin-Out Company.

Where research or other IP-related activity is undertaken in collaboration with other organisations (e.g. universities, companies, partnerships, etc.) the terms of a negotiated and executed collaborative research agreement will be used to manage the ownership, protection and commercialisation of IP.

In Relevant Contracts, entry level TUS Background IP must be clearly defined and agreed so that it is clearly distinguished from new or Foreground IP and is retained as TUS IP.

For the avoidance of doubt, where any IP is generated from research that is part or wholly 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 TUS.

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.

TUS will generally seek to employ a standard contract for sponsored research and consultancy work and where appropriate KTI template based forms of agreements shall be used. Deviations in contract formats may be used on the basis of particular circumstances, taking into account the overall interests of TUS, the collaborating organisation and/or incorporating guidelines that may be laid down from time to time by TUS, KTI or other agencies.

TUS 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.

4. RESPONSIBILITIES OF PERSONNEL

4.1 Disclosure Requirements

It is a condition of:

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

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

In order to enable TUS 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 TUS, all Personnel must disclose any IP arising from such research to TUS through the Knowledge Transfer and Commercialisation Office as soon as possible after such IP is apparent.

4.2 Submission of Invention Disclosure Form to KTC Office

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 (via the following link: tus.submit.com/show/13).

This form should be promptly submitted (no later than within 30 days of the discovery or invention or other IP in question) to the KTC Office via the link above.

Where there are multiple Originators the relative contributions of each should be noted in the IDF. Post online submission, the KTC Office will request/require a hardcopy of the IDF to be signed by all Originators.

The Originators are responsible for agreeing their respective contributions but should that prove impossible, on referral by the KTC Office, the IP Committee may at its sole discretion decide, on consultation with the relevant Originators (or more widely if/as necessary), how the Originators are identified and the relative contributions made by the Originators to the new TUS IP. Alternatively, the IP Committee at its sole discretion may request third party arbitration on the matter under section 14 of this IP Policy.

4.3 Confidentiality

In order to protect Intellectual Property with a view to commercialisation, it is essential in some circumstances to delay the publication (written, oral or other public statement) of research. This is normal practice, and follows the principle “protect first, then publish”. TUS requires Personnel to take all reasonable measures to protect Intellectual Property with commercial value and, if in doubt, to make enquiries of the KTC Office as to whether there is Intellectual Property of value to be protected, before submitting material for publication. This applies to all forms of publication, including open access publication.

The integrity and confidentiality of identified Intellectual Property shall be of prime concern. TUS and the Originators shall ensure that Intellectual Property is not disclosed in such a way as to destroy its patentability, e.g. by premature public disclosure.

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

The Originators of IP shall seek the approval of the KTC Office before making any disclosure.

No disclosure of Intellectual Property can take place without an appropriate Non-Disclosure Agreement (NDA or Confidentiality Agreement) having been put in place by the KTC Office.

4.4 Execution of Documents and Reasonable Assistance

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

Personnel shall do everything that may reasonably be required of them to assist TUS to protect, maintain and exploit the disclosed IP, including executing all documents which may be necessary to prove, confirm or perfect the title of TUS to any such IP.

The Originator(s) will have an active role in assisting the KTC Office in its evaluation of the disclosed IP in the IDF. Further development and Commercialisation of the disclosed IP shall proceed with close collaboration between the Originator(s) and the KTC Office.

The Originator(s) and other Personnel concerned shall give such assistance to TUS and to the licensees (or assignees) of the TUS IP as is reasonably necessary to enable the licensee (or assignee) to properly use and Commercialise the TUS IP, in accordance with the terms and conditions agreed in the collaborative research agreement or other Relevant Contract.

4.5 Early Formal Assignment of Rights to TUS by Personnel

For the avoidance of doubt, the provisions of this paragraph 4.5 apply to all the faculties, departments, institutes, centres and Personnel conducting research or other intellectual activity using TUS Resources.

As a condition of:

- (a) employment by TUS as Staff;
- (b) admission by TUS as a Student; or
- (c) engagement by TUS 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, where and as required, agree to assign to TUS (or a person or company nominated by TUS 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 Knowledge Transfer and Commercialisation Office, 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 TUS's rights, title and interest in TUS 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.

4.6 Principal Investigators and other Personnel

As the lead researcher on a programme of research, the Principal Investigator (PI) carries a particular responsibility for compliance with TUS'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 (PI) will be required to give a PI Undertaking (in the standard form designated by TUS 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 may be required to give a Researcher Undertaking (in the standard form designated by TUS from time to time).

4.7 Record Keeping

It is important that TUS Personnel understand that their records may be subject to legal scrutiny in the securing of protection for Intellectual Property (e.g., patent protection). This requires the maintenance of accurate and contemporaneous records of the steps leading to their invention/discovery. Accordingly, data generated during research should be held in laboratory notebooks or in an electronic format, suitably backed-up. Records should be dated, and regularly signed by the Principal Investigator and witnessed by the Head of Department, Centre/Institute Head/Director as appropriate.

5. ROLE OF TUS IN THE COMMERCIALISATION OF IP

5.1 Role of the Knowledge Transfer and Commercialisation Office

The Knowledge Transfer and Commercialisation Office is in charge of the administration of the activities set out in this IP Policy including putting the decisions of the IP Committee into effect. The KTC Office shall be responsible for:

- processing of IP applications submitted using an Invention Disclosure Form (tus.submit.com/show/13);
- facilitating a fair and equitable return to those involved in Commercialisation of their research/work in line with this IP Policy;
- day-to-day matters relating to the identification, evaluation, protection and exploitation of IP;
- decisions in respect of commercial evaluation of new innovations;
- decisions in respect of IP protection and prosecution including filing and management of patent applications and related IP protection;
- decisions on the exploitation route;
- negotiating commercial terms;
- decisions not to file a patent application or other IP protection or any commercialisation route; decisions not to continue with prosecution of a patent application or other IP protection after it has been filed (but not yet granted); decisions not to continue with commercialisation activity after one or more patents have been granted;
- the process, if applicable, to offer TUS IP back to relevant Originator(s);
- drafting/negotiating/executing non-disclosure agreements, material transfer 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 TUS;
- managing internal communications regarding IP within TUS;
- fostering general awareness by Personnel of this IP Policy and ensuring that appropriate IP training on this IP Policy and its day to day application and relevance is made available to Staff and Students (and as required Other Relevant Parties) of TUS; and
- driving the effective and appropriate Commercialisation of TUS IP in accordance with this IP Policy and the National IP Protocol.

The following decisions will require the approval of the Vice President Research, Development and Innovation:

- the commercial terms of a licence or assignment with a value less than €150,000;
- the decision to offer / grant back IP / rights to TUS Originator(s).

5.2 Intellectual Property Committee

The IP Committee consists of the following members:

- Vice President Research, Development and Innovation (Chair);
- Vice President Finance and Corporate Governance (or nominee);
- Dean of Graduate Studies;
- Director of Innovation and Enterprise;
- Head of Research;
- A Research Institute Director;
- A Dean of Faculty; and
- Such other members as TUS may nominate and appoint from time to time.

The IP Committee reviews proposals and take decisions relating to the following:

- The approval of the creation of a TUS Spin-out Company.
- The approval of TUS taking equity in a spin-out Company.
- The approval of commercial terms of Spin-out including any related TUS IP licensing transaction(s).
- How TUS equity is managed, including when and how to sell TUS shares.
- The approval of any Originator or Promoter or of a TUS representative to act as a director of a Spin-out Company.
- The approval of and allowing of access to certain of TUS's facilities by a Spin-out Company.
- The approval of the commercial terms of a licence or assignment with a value of or exceeding €150,000.

The decision to form a Spin-out Company or the decision as to when to sell TUS Shares in a Spin-out Company will also involve at least one Vice President from within TUS who is not part of the research hierarchy.

The IP Committee monitors the status of TUS's IP management and compliance with the National IP Management Requirements. Where issues exist, the Committee makes recommendations as to how the issue can be remedied.

The IP Committee meets on at least an annual basis, or as otherwise necessary. The IP Committee is convened by the KTC Office.

Without limiting their obligations under the Conflict of Interest Policy, members of the IP Committee are required to declare their interest in a proposal if such exists and to absent themselves from any discussion pertaining thereto.

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

5.3 Commercial Evaluation of IP

- Any IP reported in an Invention Disclosure Form shall be submitted to the KTC Office for assessment regarding its patentability and/or potential Commercialisation.
- The KTC Office 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 Originator(s) or researchers will be involved in the evaluation (and, where relevant, protection) process by the KTC Office.
- The KTC Office will assess such disclosure normally within three months (or such longer period as may reasonably be required) of receipt of an Invention Disclosure

Form as to its patentability and potential for Commercialisation and provide an initial assessment of the most suitable next steps and/or exploitation route to Originator(s) of the IP.

- For the avoidance of doubt, IP that is deemed to have commercial potential can include IP that cannot be protected by patenting, in addition to IP that is protectable by patents (or some other method of IP protection deemed appropriate by the KTC Office).

5.4 Submission of a Patent Application

- TUS 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 Commercialise the IP.
- Where a decision is made by the KTC Office 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 KTC Office in processing the patent application. The application will remain confidential until such time as the filing process is complete and any disclosure outside TUS during this period must only be made under confidentiality agreements agreed in advance by the KTC Office.
- The cost of the submission of the patent application shall be paid by TUS. The Originator(s) may be required to assist TUS and/or its advisors with the preparation of a claim for appropriate support for IP protection.
- The Originator(s) of the IP and TUS shall take all reasonable precautions to protect the integrity and confidentiality of the IP in question. The Originator(s) of the IP should be aware that publication prior to the filing of a patent application will destroy patentability.
- No patent application, assignment, licensing or other agreement may be entered into or will be considered valid with respect to TUS IP except when properly and lawfully executed by TUS.

5.5 Authorised Signatory

To ensure validity of all legal agreements governing the transfer and use of TUS IP, an authorised signatory, as defined in the TUS Delegation of Authority Policy and Schedule, must sign on behalf of TUS. Unauthorised Personnel cannot sign legal agreements on behalf of TUS.

6. GRANT BACK OF RIGHTS TO TUS ORIGINATORS

6.1 KTC Office decides not to file a patent application or other IP protection or any commercialisation route

Upon the request of the Originator(s), TUS may decide, at its discretion and where it is in a position to do so, to offer the opportunity (licence or assignment) to the TUS Originator(s) of the IP, at their expense and risk, to pursue exploitation independently if this is deemed appropriate under agreed written terms (which may include future revenue sharing and/or appropriate 'windfall' clauses for the benefit of TUS), without prejudice to or limiting TUS's rights to continue to use the IP for its academic and research purposes in all fields of use or applications and subject to any reasonable conditions necessary to protect TUS e.g. in relation to the requirements of the Sponsor of the research which gave rise to the IP.

6.2 KTC Office decides not to continue with prosecution of a patent application or other IP protection after it has been filed (but not yet granted)

The KTC Office may decide at any stage to withdraw from the process of protecting/exploiting a particular piece of IP. This may arise where concern exists regarding the technical or commercial feasibility of a particular piece of IP, where prosecution is considered likely to be unsuccessful, the costs of exploiting the IP are excessive, or external sponsorship of the process is no longer available.

The TUS Originator(s) of the IP will be notified (with as much notice as practicable) of the intention of TUS to withdraw from the process.

Upon the request of the Originator(s), the IP may, at TUS's entire discretion and where it is in a position to do so, be offered (licence or assignment) to the TUS Originator(s) of the IP (subject to reimbursement of prior IP protection costs and the TUS Originator(s) stepping in to assume the prosecution of the patent at their sole expense), at their expense and risk, to pursue exploitation independently under agreed written terms (which may include future revenue sharing and/or appropriate 'windfall' clauses for the benefit of TUS). TUS will remain entitled, however, and reserves the right at all times to use the same IP for its academic and research purposes in all fields of use or applications.

6.3 KTC Office decides not to continue with commercialisation activity after one or more patents have been granted

All IP under management by the KTC Office, including patented IP, will be reviewed periodically to determine whether the costs of retention within the portfolio continue to be justified in the context of market information and technology performance.

As a result of such a review, and upon the request of the Originator(s), TUS may decide, at its discretion and where it is in a position to do so, to offer the IP (licence or assignment) to the TUS Originator(s) of the IP (subject to reimbursement of prior and and/or ongoing IP protection and related enforcement costs), at their expense and risk, to pursue exploitation independently under agreed written terms (which may include future revenue sharing and/or appropriate 'windfall' clauses for the benefit of TUS), without prejudice to or limiting TUS's rights to continue to use the IP for its academic and research purposes in all fields of use or applications.

6.4 Conditions

Any assignment under section 6 of this IP Policy shall be subject to State Aid Rules. For the avoidance of doubt, if IP is assigned to Originator(s) under section 6, then TUS shall no longer be responsible for any subsequent costs of the IP after assignment to Originator(s).

Notwithstanding the provisions of section 6, TUS will be free to dispose of TUS IP as it deems appropriate.

7. COMMERCIALISATION OF TUS IP

7.1 Routes to Commercialisation

The KTC Office will maintain contact with the Originator(s) to assess the state of readiness of the TUS IP. Once the KTC Office determines that the TUS IP has reached an adequate state of development and/or protection, a Commercialisation plan is developed in consultation with the Originator(s).

Generally, the main routes for the Commercialisation of TUS IP are: (i) licensing, (ii) where permitted, assignment or (iii) the creation of a Spin-out Company (including developing the commercial potential of the IP through a joint venture with a third party).

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

7.2 Continuing Research Activities

In providing advice and assistance under this IP Policy, the KTC Office will stipulate the retention of the right to use and access know-how and research materials for the purpose of continuing and further research at TUS as well as options which may provide most benefit to the Irish economy.

8. LICENSING OF TUS IP

8.1 Licence Agreements

Licensing of TUS IP will be in accordance with the general principles laid out in the National IP Protocol which will guide the approach taken and the commercial terms appropriate.

Licensing aims to ensure effective exploitation of TUS IP. In instances where TUS IP is not sufficiently strong or broad enough to trigger the creation of a TUS Spin-Out Company, then the best commercialisation opportunity for a particular piece of TUS IP may be to license it to an existing company. For example, a relatively small technological improvement to existing products with well established companies dominating the market will typically be best exploited by licensing it to a market leader.

Where the chosen exploitation route is a licence to an existing company, the KTC Office will prepare non-confidential summaries and in consultation with the Originator(s) seek to identify potential licensees.

A company Sponsor of research may have an option to a licence to TUS IP under a Relevant Contract.

With the assistance of the Originator(s), the KTC Office will have the responsibility to negotiate a Licence Agreement to a third party on an exclusive (where this optimises exploitation of the IP) or non-exclusive basis, relating to specific fields of application and/or geographical territories, and at fair and reasonable commercial terms to the maximum benefit of TUS.

When licensing TUS IP to a Spin-out Company, while negotiated on arms-length terms, TUS may modify any milestone payments so that these are weighted and timed to occur when the Spin-out Company becomes cash generative.

Licence Agreements must always provide for TUS's future use of the TUS IP for its core academic and research activities and to assist TUS's wider regional and national objectives.

9. ASSIGNMENT OF TUS IP

9.1 Assignment

While TUS will not normally consider assigning ownership of TUS IP, it may in exceptional circumstances where TUS is satisfied that assignment is demonstrably the most effective way of exploiting the IP and is the best route to generate maximum benefit for Ireland, agree to transfer or assign ownership of the TUS IP, provided that TUS receives fair value in return and is able to continue its research and teaching in the field.

TUS will not normally consider an assignment of TUS IP until such time that TUS is satisfied that certain criteria can be met, including but not limited to:

- the assignee has the resources to deliver any proposed commercial plans for the TUS IP;
- any assignment of TUS IP shall be for the fair market value of the IP, such value shall be established by the KTC Office and may involve external experts;
- the assignment has no negative impact on TUS's research activities;
- no State Aid issues arise.

TUS IP will not be assigned to a Spin-out Company at the point of spin-out, and only exceptionally at a future time and if certain pre-agreed commercial, developmental and/or investment milestones are met, such that TUS has confidence that the Spin-out Company has a sound financial future and a reasonable chance of successfully Commercialising the TUS IP.

10. SPIN-OUT COMPANIES

10.1 Background, Proposals and Evaluation

The Framework for Spin-Out Company Formation contained in the National IP Protocol guides TUS's approach to Spin-out Companies.

The formation of a Spin-Out Company is chosen if the TUS IP is best exploited through (and is capable of supporting) a new company rather than an existing one. For example, platform technologies which need to build new market demand in fragmented markets may be optimally developed in a Spin-out Company environment.

A Spin-out Company will usually take a licence to the TUS IP from TUS and at the same time issue a percentage share equity in the capital of that Spin-out Company to TUS.

Where the proposed TUS IP exploitation route involves the formation of a new Spin-out Company, a brief case will be prepared by the KTC Office, working with the

Originator(s), setting out the preferred exploitation route and other options considered, details of the activities intended to be undertaken by the Spin-out Company to develop and Commercialise the TUS IP, the future role in the company of the Originator(s) or Promoter(s), including how any potential conflicts of interest are to be managed (see section 15), and an outline business plan.

The IP Committee will evaluate the case, and may, at its absolute discretion, reject a submission outright or move to full examination of the concept. Such examination will require further information and, if appropriate, a period of negotiation by the KTC Office on the detailed arrangements for the establishment of the Spin-out Company and the licensing of the relevant TUS IP.

The IP Committee will fully examine the proposal and take decisions relating to the following:

- The approval of the creation of a TUS Spin-out Company.
- The approval of TUS taking equity in the Spin-out Company.
- The approval of commercial terms of Spin-out including any related TUS IP licensing transaction(s).
- How TUS equity is managed, including when and how to sell TUS Shares.
- The approval of any Originator or Promoter or of a TUS representative (the IP Committee will have at its discretion the right to appoint a TUS director) to act as a director of the Spin-out Company.
- The approval of and allowing of access to certain of TUS's facilities by the Spin-out Company.

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

A decision to form a Spin-out Company or the decision as to when to sell TUS Shares in a Spin-out Company will also involve at least one Vice President from within TUS who is not part of the research hierarchy.

10.2 Role(s) of TUS Originator(s) in relation to Spin-Out Company

Each TUS Originator must inform the KTC Office as early as possible 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 TUS IP or (b) a Contributor.

A 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 TUS IP and acquires a number of shares in the capital of the Spin-out Company.

A Contributor plays an important part in contributing to the creation or further development of the TUS IP but does not have any formal or active role in the management or operation of the Spin-out Company post-formation and does not acquire any shares in or ownership of the Spin-out Company.

The Promoter of an approved Spin-out Company will be deemed to have waived any right under this IP Policy to receive a share of any income received by TUS pursuant to section 11.3 or otherwise in respect of that TUS IP and the Contributor of an approved Spin-out Company will be deemed to have waived any right to receive founding equity in the capital of such Spin-out Company pursuant to section 12.1. In short, Originators are not allowed to 'double dip'.

10.3 Incorporation of a Spin-out Company and Legal Agreements

Where a spin-out proposal has been approved by the IP Committee and agreement on detailed terms/conditions of establishment has been reached:

- (a) a Constitution may be drawn up and the Spin-out Company may be registered for trading; and
- (b) TUS 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 TUS will agree and enter into a Shareholders' Agreement.

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.

10.4 TUS Shares in a Spin-out Company

Agreeing equity share in a Spin-out Company is a commercial negotiation based on risk and reward. Equity share for TUS will depend on the specific proposition and its commercial potential and will have regard to the stage of development and commercial readiness of the licensed TUS IP and the resources required to Commercialise it, in addition to TUS and State support given to the creation or development of the TUS IP.

Where TUS directly assists in:

- the development of the business plan; or
 - the raising of investment capital; or
 - negotiations with prospective clients; or
 - provision of space and facilities and access to infrastructure; or
 - the direct funding of the project leading to the Spin-out Company opportunity;
- then a higher equity stake may be negotiated on a case by case basis taking account of the investment by TUS and its continuing support for research relevant to the project (for example, a pipeline agreement which allows the Spin-out Company to access future related IP emerging from TUS).

A Spin-out Company which is based on individual know-how and has not required much TUS support might have a lower TUS equity stake.

TUS's equity stake may be affected where third party funding terms or joint IP ownership are involved.

TUS shall seek a fair return that balances the contributions to date from the State and TUS (financial and in-kind) against the future commercial development required. Ultimately TUS shall act to maximise the overall economic and social benefits for Ireland.

TUS will not make any payment to the Spin-out Company for such equity / TUS Shares.

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

TUS may dispose of or transfer part or all of the TUS 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 of the Spin-out Company, and subject to approval by the IP Committee.

10.5 Spin-out Companies and this IP Policy

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

10.6 Spin-out Company Licence Agreement

Detailed arrangements for the continued protection, use and Commercialisation of the TUS IP will be as set out in the Licence Agreement.

Without limiting TUS'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 TUS in the event the Spin-out Company fails to Commercialise the TUS 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 TUS IP will revert to TUS on termination.

10.7 Employees and Contractual Issues

Employment contracts issued by Spin-out Companies will state clearly that its staff are not employees of TUS 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 Spin-out Company and will exclude TUS from any obligation or liability arising from such contracts.

10.8 Services and Support to Spin-out Companies

Spin-out Companies may avail of a range of TUS services and supports, including, where appropriate, incubation facilities and business development support in one of TUS's four campus incubators: the Midlands Innovation and Research Centre, the Hartnett Enterprise Acceleration Centre, Questum Acceleration Centre or Thurles Chamber Enterprise 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.

10.9 Indemnity

The Promoters of a Spin-out Company must provide evidence of adequate personal and professional indemnities and shall undertake to indemnify and hold TUS harmless from and against any legal action, loss, liability, claims or damages howsoever arising from the Spin-out Company's activities and against any third party action arising out of or in connection with the Spin-out Company's use or Commercialisation of the TUS IP.

10.10 Enterprise Ireland

Enterprise Ireland offers a range of supports to Spin-out Companies. Enterprise Ireland's Commercialisation Specialists and Development Advisers will work with the Promoters and the KTC Office to nurture and develop the Spin-out Company to the point where it can be classed as an Enterprise Ireland High Potential Start-Up (HPSU) company and considered for financial investment from the Enterprise Ireland Innovative HPSU Fund.

11. LICENSING INCOME - SHARING WITH TUS ORIGINATORS

11.1 General Principles

It is recognised that the development of TUS IP is dependent on the existence of satisfactory incentives to provide rewards to TUS inventors / Originators. TUS is also committed to the provision of non-financial rewards for such activities including academic recognition, improvements in the Department's / Research Institute's facilities and funds for research.

If TUS IP is licensed (or, exceptionally, assigned) to an existing company or to a Spin-Out Company, Income (royalties, milestones, annual/maintenance payments, lump sums etc) will be available (after any direct expenses incurred by TUS are deducted) for sharing with the TUS Originator(s) of that TUS IP.

11.2 Entitlement

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 TUS IP to which they have contributed unless this is stated in their contract of engagement or TUS agrees otherwise in writing.

The division of Income received by TUS as a result of the licensing (or, exceptionally, assignment) of TUS IP to a Spin-out Company, including royalties, option fees, milestone payments or other licence fees or assignment fees paid by the Spin-out Company to TUS pursuant to the Licence Agreement will be divided and disbursed by TUS subject to and in accordance with this IP Policy:

- Where a TUS Originator is a Contributor to a Spin-out Company, the Originator will be entitled, subject to and in accordance with this IP Policy, to receive his or her share of the licensing (or, exceptionally, assignment) Income received by TUS in respect of that TUS IP. For clarity, however, the Contributor will not receive an equity share in the capital of the Spin-out Company at the same time.
- Any Originator receiving personal equity in a Spin-out Company as a Promoter shall not be entitled to receive any share of royalties, milestone payments, licence fees or any other Income whatsoever received by TUS which results from or relates to the licensing (or, exceptionally, assignment) of TUS IP to the same Spin-out Company.

11.3 Division of Income

Subject to the terms of this IP Policy, it is intended (but always subject to TUS's discretion) that Income derived from licensing (or, exceptionally, assignment) of TUS IP in accordance with the provisions of this IP Policy will (subject to any KTI, HEA, agency, government guidance/policy from time to time) be distributed (net of all

charges associated with the protection and administration of the IP) between the TUS Originator(s), TUS and the Originator(s)' Faculty/Research Institute:

Level of cumulative net income	TUS Originator(s)	TUS	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%

Net Income to be distributed to TUS Originators in respect of an item of TUS IP will be allocated to them individually in proportion to their respective intellectual contributions to that TUS IP as outlined in the Invention Disclosure Form (see section 4.2). Where an Originator is not entitled to receive a share of Income (under section 11.2), the share of Income which would otherwise have been allocated to that Originator (pursuant to this section 11.3) shall be allocated to TUS.

For the avoidance of doubt, and without limiting the application of this IP Policy, the division of licensing Income pursuant to this section 11.3 (where applicable) is net of, and after the deduction of, any and all expenses to the extent incurred by TUS in relation to the relevant TUS IP, including, but not limited to, patent costs, legal fees, and any applicable taxes

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

An individual Originator's share shall continue to be paid to him/her even though he/she may have left TUS. It is the Originator's responsibility, however, to ensure that TUS is provided with accurate and up-to-date contact details and such other details as may be reasonably required to enable TUS to continue to make such payments to the Originator.

12. EQUITY IN SPIN-OUT COMPANY - SHARING WITH PROMOTERS

12.1 Promoter Equity share in Spin-out Company

In recognising the value of equity and the role of shareholders in running and controlling a start-up Spin-out Company, equity will usually only be given to TUS, Promoters, external founders (if applicable), investors and Enterprise Ireland (if applicable) who will be committed to adding value to the Spin-out Company on a long-term basis.

The share of equity to be allocated to Promoters will take into consideration their contribution to the creation and subsequent development of the Spin-out Company, the risk taken (and intended to be taken), any personal financial investment, the level of commercial readiness of the proposition and the downstream effort required to bring success.

It is important to bear in mind that further equity sharing will be required downstream e.g. with external founder(s), subsequent investors, management and staff.

For clarity, the Contributor of an approved Spin-out Company will be deemed to have waived any right to receive founding equity in the capital of such Spin-out Company pursuant to this section 12.1.

12.2 Income/Proceeds from TUS Shares in a Spin-Out Company

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

13. PUBLICATION OF RESEARCH RESULTS

It is TUS 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 carried out in accordance with and is not in violation of the terms of any Relevant Contract or other agreement that has been entered into by TUS with a Sponsor or other third party.

TUS also recognises that there are times when Intellectual Property should be protected before being published. 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 KTC Office 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 theses, 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 TUS to adequately protect such Intellectual Property.

Deposition of a thesis in a TUS Library constitutes publication and may prejudice patent action unless an appropriate provision is made for limited accessibility to the thesis, as provided for via a "closed thesis" in TUS's Research Regulations.

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 organisations (academic or commercial) prior to submission for publication, and/or a requirement that documents be approved by the KTC Office prior to submission for publication. While no such specific requirement exists for non-funded research programmes, the Principal Investigator (PI) should consult with the KTC Office prior to

publication where the PI believes there may be commercial or other potential in the results of the research.

Questions or concerns with regard to the potential impact of publication on Intellectual Property rights may be directed to the Knowledge Transfer and Commercialisation Office.

14. RESOLUTION OF DISPUTES

Any dispute between TUS and an Originator(s) of IP, which after making every reasonable effort cannot be resolved between them fairly by negotiation within sixty (60) days, shall at first instance be escalated to the Vice President Research, Development and Innovation for resolution, and if unsuccessful, 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 TUS, the Office of Vice President Finance and Corporate Governance or its nominee shall have authority to decide and seek to resolve any such disputes for and on behalf of TUS during the course of any mediation or settlement negotiations.

15. 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 TUS position to:
 - influence a contract or other favourable terms for a company in which they, or a relative or friend, have 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 TUS 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 TUS 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 TUS Intellectual Property.
- An individual taking part in the negotiation of a contract between TUS 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.

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

TUS requires full disclosure of potential areas of conflict and open discussion at the earliest possible opportunity. TUS 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 Knowledge Transfer and Commercialisation Office 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 TUS's 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.

“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.

“Knowledge Transfer and Commercialisation Office” or **“KTC Office”** means TUS’s Knowledge Transfer and Commercialisation Office. The Knowledge Transfer and Commercialisation Office leads work to support knowledge transfer and to identify and Commercialise IP arising from research at TUS, within limits of authority set by TUS and this IP Policy and subject to compliance with the requirements of the National IP Protocol. The Knowledge Transfer and Commercialisation Office is led by the Director of Innovation and Enterprise and reports to the Vice President Research, Development and Innovation.

“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.

“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 TUS 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 TUS Originator of TUS IP which is licensed (or intended to be licensed) to a Spin-out Company and who elects not to participate as a Promoter of that Spin-out Company.

“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.

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

- the patenting or other registration or protection of the TUS IP; and
- the Commercialisation of an invention or any other TUS 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.

For clarity, Income does not include dividends from TUS Shares or proceeds from the sale of TUS Shares.

“Intellectual Property” or **“IP”** means the tangible or intangible results of research, development, teaching, or other intellectual activity. Intellectual property includes know-how, copyright, trade marks, service marks, data, database rights, design rights, patents, utility models, business ideas, concepts, inventions, discoveries, 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.

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

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

“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 system in Ireland.

“Licence Agreement” means the exclusive or non-exclusive licence agreement in the form as may be agreed by TUS from time to time and entered into between TUS and a Spin-out Company or other licensee for the Commercialisation of TUS IP in a defined field.

“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 Relevant Parties” means individuals other than Staff and Students such as visiting students, visiting academics/researchers, external supervisors/co-supervisors, research fellows, Emeritus or adjunct appointments, retired employees, other visitors, consultants, industrial personnel and independent contractors on sponsored research projects and/or who are engaged in research or other IP related activities at or on behalf of TUS and/or where more than incidental use of TUS Resources occurs.

“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 Other Relevant Parties.

“Personnel Member” means any member of Personnel.

“Principal Investigator” means the TUS lead researcher on a programme of research.

“Promoter” means a TUS Originator of TUS IP which is licensed (or intended to be licensed) to a Spin-out Company and 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 TUS and the external agency, and/or industry partner and/or other organisation in relation to the performance of a programme of research.

“Scholarly Materials” include pedagogical works, scholarly publications, books, poems, video and film materials or artistic works of Personnel, regardless of the form of expression.

“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 TUS in connection with the subscription by TUS for the TUS 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 TUS to Commercialise the TUS IP (or part of it) in a defined field, application and/or territory in consideration for which, and for other good and valuable consideration, TUS is allotted and issued the TUS Shares.

“Sponsor” means an external organisation to TUS which funds its research.

“Staff” refers at all times to TUS employees, whether part-time or full-time, permanent or temporary (including without limitation TUS post-doctoral researchers) and persons employed by TUS under dual appointments (where relevant) and/or who are based temporarily outside of TUS, and all employees of TUS’s wholly-owned subsidiary companies.

“Students” means all registered undergraduate and postgraduate students of TUS.

“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.

“TUS” or **“Technological University of the Shannon: Midlands Midwest”** means Technological University of the Shannon: Midlands Midwest, a technological university established under the Technological Universities Act 2018.

“TUS Originator” means an Originator who is a member of Staff or Student of TUS or an Other Relevant Party whose entitlement is stated in their contract of engagement with TUS or TUS agrees otherwise in writing.

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

“TUS Research” means activities that involve one or more of the following:

- any use of Intellectual Property owned or controlled by TUS;
- any use of TUS Resources (excluding the TUS Libraries);
- any use of TUS administered or hosted funding (internal or received from third parties);
- any research commissioned by third parties under which TUS is contractually obliged to ensure that it owns any and all IP arising from such activities; or
- any research project that is being carried out for the express purpose of TUS securing a contract with an external party.

“TUS Resources” means any or all of the physical or financial resources, assets, facilities, equipment, services, supplies, know-how (secret or otherwise), confidential information or IP of TUS.

“TUS Shares” means such number of shares held by TUS in the capital of a Spin-out Company.