

Intellectual Property

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POLICY

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1 TERMS OF REFERENCE

1.1 University Mission & Vision

The University's mission is fundamentally to create and exchange knowledge that benefits society, to be world leading within all its specialist areas of science, technology, engineering and business, and to continue in its efforts to build a global University that pioneers innovation in education, research and enterprise.

At the very heart of this mission is the equitable transfer of the University's knowledge in the form of Intellectual Property to those in society who can make best use of it for the general good. At the same time, the Policy must ensure that the University's principles of academic freedom, scholarship, research and the endowment of knowledge to others through publication are firmly upheld.

1.2 Purpose of this Policy

Please note that this Policy creates legally binding rights and obligations. The University reserves the right to amend the Policy. The version of the Policy in force at the date of completion of an Invention Disclosure Document (IDF) shall apply to the Intellectual Property which is the subject of that IDF and the definition of "Policy" shall be construed accordingly.

The IP Policy constitutes an operational framework that supports and formalises the following:

- Establishing the rights and responsibilities of the University, Staff, Students and Visiting Scholars with respect to Intellectual Property.
- Raising awareness of, and importance of IP.
- Building a truly innovative culture to stimulate and promote the creation of IP.
- Ensuring the economic exploitation of University IP to the benefit of society.
- Enabling the transfer of knowledge and technology to society.
- Promoting and guiding effective engagement with industry and commerce.
- Rewarding Staff, Students and Visiting Scholars for their creativity.
- Defining the financial and non-financial benefits of knowledge transfer and enterprise.
- Ensuring that financial benefits received through the exploitation of IP are distributed in a fair and reasonable manner amongst all entitled beneficiaries including the University, Schools, Enterprise, and Creators.
- Provision of information for companies and entrepreneurs who may wish to exploit the University's IP.
- Identifying the IP outcomes of University research.
- Creating and managing a process for recording of IP in the form of an Invention Disclosure Form (IDF).

1.3 Reference and Guidance Documents

The Policy takes as its reference:

- Heriot-Watt University Charter [02/06/2019]
- Heriot-Watt University Statutes [12/06/2019]
- Heriot-Watt University Ordinances [21/09/2018]
- Heriot-Watt University Regulations [V11 27/02/2019]

It further takes guidance from:

- WIPO Intellectual Property Policy for Universities and Research Institutions [29/01/2019]
- UK IPO Intellectual Asset Management for Universities [2014]
- European Commission recommendation on the Management of IP in Knowledge Transfer Activities and Code of Practice for Universities and other Public Research bodies [2008/416/EC].

2 TERMINOLOGY & INTERPRETATION

Words defined in this Policy shall have the same meaning in all referenced documents and annexes. Unless the context requires otherwise, words in the singular shall include the plural and words in the plural shall include the singular and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.

The headings used in this Policy are provided for reference only and are not intended to have legal effect.

This Policy is not intended to affect any rights which may arise under Section 40 of the Patents Act 1977, nor does it constitute a 'relevant collective agreement' within the meaning of Section 40(3) of the Patents Act 1977.

Any disagreement arising from the interpretation of this Policy will be dealt with under Clause 10 of this Policy.

POLICY

3 SCOPE OF THE POLICY

3.1 Policy Applicability

This Policy applies to all Staff Members, Visiting Scholars, and Students and this Policy relates to any Intellectual Property that is created by Staff, Visiting Scholar or Students within their relation with the University.

The general terms and principles set out within this Policy should where at all possible be reflected in agreements entered into between the University and all other related Parties including but not limited to third parties, where such agreements include aspects relating to Intellectual Property.

3.2 Prior Background IP

Should a Staff Member, Visiting Scholar or Student (the Party) hold personal title to any Background IP prior to their employment, enrolment or engagement at the University and wish that this Background IP be included as part of any work undertaken by the University (e.g. a Research Project) then this must be approved by the University and agreed in writing between the Party and the University.

3.3 Policy Compliance

Once approved, this Policy shall constitute an agreement between the University, Staff Members, Visiting Scholars and Students such that:

3.3.1 Staff Member

The University shall ensure that the employment contract or other equivalent agreement between the Staff Member and the University includes a clause instructing the Staff Member to read and comply with the provisions of this Policy, i.e. that also binds the Staff Member to the provisions of this Policy.

3.3.2 Visiting Scholar

The University shall ensure that the Management and Enrolment of Visiting Scholars agreement or other equivalent agreement between the Visiting Scholar and the University includes a clause instructing the Visiting Scholar to read and comply with the provisions of this Policy, i.e. that also binds the Visiting Scholar to the provisions of this Policy.

3.3.3 Student

The University shall ensure that the Student matriculation or registration process includes a Clause instructing the Student to read and comply with the provisions of this Policy, and which upon completion by the Student also binds the Student to the specific provisions of this Policy.

3.4 Information Accessibility

The University shall ensure that this Policy is made publicly available and that a reference to this Policy is included in the enrolment information given to Students and in the procedural documents made available to Staff Members and Visiting Scholars..

4 RESEARCH CONTRACTS WITH EXTERNAL PARTIES

4.1 Authority

No Staff member, Visiting Scholar or Student has the right to enter into a research contract or other legal agreement with third parties on behalf of the University without the express written approval to do so from the University's Global Director of Research Engagement and the University's Head of Legal, and their delegates.

5 OWNERSHIP AND USE OF IP

5.1 Moral Rights

5.1.1 Acknowledging specific Rights

The University acknowledges that Authors have specific moral rights related to copyright works regardless of ownership of the copyright, and specifically:

- the right to be identified as the author of a work, also known as the right of paternity
- the right to object to derogatory treatment of a work, also known as the right of integrity
- the right not to be identified as the author of someone else's work
- the right to privacy.

5.1.2 Respecting Rights

The University acknowledges and undertakes to respect and protect the fundamental moral rights that Copyright Law confers on Authors of Copyright works as embodied within the UK Copyright Designs and Patents Act 1988.

5.2 IP created by Staff

5.2.1 University Ownership

- a) As set out in Section 39 of the Patents Act 1977 and Section 11 of the Copyright, Designs and Patents Act 1988, the University owns all IP that is created by a Member of Staff in the course of and within the normal scope of or specifically assigned task to the Member of Staff's employment and which is not governed by any other contractual obligations; or
- b) otherwise through the Member of Staff making Substantial Use of the University's resources outwith the normal scope of the Member of Staff's employment and where such Substantial Use is granted to the Member of Staff under an agreement with the University in which a portion or all rights to IP that may be created is transferred to the University.

5.2.2 IP developed under Contract

If IP is developed as part of a legal agreement with a third party including Research and similar contracts, then in addition to the operation of laws which shall take precedence, the terms of that agreement shall also regulate ownership of IP created by a Member of Staff.

5.2.3 Staff Member Ownership

A Member of Staff will own IP (or will co-own where more than one Staff member has developed the IP):

- a) Where the IP was created outside the course and scope of the Member of Staff's employment and specific duties, and without making Substantial Use of the University's resources.
- b) In respect of any IP that exists or arises in Scholarly Works (see Article 5.6).

5.2.4 Member of Staff's Appointment at other Institutions

Members of Staff who hold an academic, research or honorary appointment at another Institution are responsible for drawing that Institution's attention to the Member of Staff's obligations and commitments embodied within their employment and this Policy prior to accepting tenure at that institution. Should the institution's own IP Policy make claim to any IP created by the Member of Staff during their appointment, it is the responsibility of the Member of Staff to communicate such information to the University's Enterprise Directorate and also to ensure that the institution negotiates an appropriate IP arrangement with the University to avoid conflict of interest.

5.2.5 Protection of IP created by Staff

Should a member of Staff identify IP that they have developed which may require protection, then they must record the IP in accordance with the conditions laid out in Article 6 of this Policy (Creator Responsibility to Disclose)

5.3 IP created by Students

5.3.1 Student Rights to IP

A Student shall own the Copyright and related IP of materials (including dissertations, theses and other scholarly works) created by the Student during the course of their study, in accordance with the Copyright, Designs and Patents Act 1988 **except for the provisions of Articles 5.3.2 to 5.3.6 inclusive below.**

5.3.2 Research work

With respect to a Student undertaking any postgraduate research work or work as listed below in Articles 5.3.3 to 5.3.6, the Student shall agree to assign and transfer all rights to any IP arising as a result of such work to the University by concluding the Student Intellectual Property Agreement as a pre-condition prior to undertaking such research work, subject to Article 5.3.8 below on Right to Refuse.

5.3.3 Third-Party funded work

With respect to any work carried out by a Student that is funded by a third party where an Agreement between the University and the third-party includes conditions on Intellectual Property Rights, any IP that may arise from such work shall belong in the first instance to the University unless specified otherwise within the Agreement.

5.3.4 Graduate Apprentices and similar schemes

With respect to any work carried out by a Student where that Student is enrolled under the terms of a scheme agreement and is also an employee of a Third Party where the conditions of employment of the Third Party, any IP that may arise from such work shall belong in the first instance to the Third Party or as separately defined within the scheme's agreement.

5.3.5 Research work with IP Restriction

With respect to any work to be carried out by a Student where the work is subject to IP restrictions which require that the Student must assign their IP rights to the University or to a third party.

5.3.6 IP Rights Agreement

With respect to a Student who is a signatory to a work, study or research related Agreement where that Agreement determines the ownership of any IP resulting from that work.

5.3.7 Registering Assignment of Student IP Rights to the University

The University requires that the rights in any Intellectual Property created by a Student who falls within any of the terms of Articles 5.3.2 to 5.3.6 above are assigned to The University. The Student must complete and sign a Student Intellectual Property Agreement at the time of his/her online enrolment and this legal record must be returned to the University's Legal department for safekeeping.

5.3.8 Right to Refuse

- (i) Students have the right to refuse to assign their rights in any IP they create to The University and shall not be prevented from matriculating unless it is a pre-condition in receiving funding for the payment of their tuition fees that they assign such rights to The University. However, refusing to assign Intellectual Property Rights could affect the student's ability to matriculate or participate in certain projects with intellectual property restriction e.g. where the funding provider requires University or third-party ownership of IP.
- (ii) A Student can refuse the assignment where the student has already transferred their IP to a third party prior to carrying out the research work or matriculation, for example, to an existing employer, individual sponsor (country or state funding) etc. This must be made known to the University and to the Student's supervisor at the earliest possible opportunity.

5.3.9 Action in the case of Refusal

If a Student refuses to sign a Student Intellectual Property Agreement, then they must inform the University's Registration Office at the time of matriculation or at the earliest opportunity where they have become subject to any of the Articles 5.3.2 to 5.3.6 above, and must also notify their Academic Supervisor. The Student shall not commence their research work or course of study at the University until the matter is resolved.

5.3.10 Transfer of Student IP to the University

If the University is to become the owner of IP created by a Student in terms of Articles 5.2.2 to 5.2.6 above, then the University shall:

- Provide the student with a clear explanation of the reasons for assignment of the IP to the University
- Obtain a written Assignment from the Student for all IP that is to be assigned from the Student to the University (currently the Student Intellectual Property Agreement or its replacement).

Should the IP assignment entitle the Student to a share of any IP revenues (as laid out within Annexe 1 IP Revenue Sharing of this Policy), the University shall distribute the student's entitlement as defined within this Policy.

Should a Student be under an existing contractual Agreement (e.g. contract of employment with a company) which disallows the Student from ownership of IP, then the Student's rights to IP ownership and to revenue share will be determined by that contractual Agreement.

5.3.11 University Right to Reproduce Student Work

Notwithstanding the other terms of this Policy and irrespective of whether a Student agrees or refuses to complete a Student Intellectual Property Agreement The University shall have the right to reproduce any copyright works, designs or databases created by a Student arising out of their course of study at The University in accordance with normal academic practice or in satisfaction of The University's obligations under the Freedom of Information (Scotland) Act 2002. For the avoidance of doubt such copyright works, designs and databases shall include without limitation research results, algorithms, diagrams, textile designs, software code, and journal publications.

5.3.12 IP developed through Funded Study

An organisation that provides a scholarship, bursary or similar funding to a Student may choose to own any IP that might be created by a Student in the course of their study at the University. This assignation of IP rights shall only be allowed if both the Student and the University have given their prior consent in writing.

5.3.13 Protection of Student-owned IP

Should a Student wish the University to help them protect IP that the Student has ownership of, then at the University's discretion and through consultation with the University Enterprise Directorate, the Student may assign their IP to the University and thereafter be afforded the same rights and obligations as Staff members under this policy.

5.4 IP & The Visiting Scholar

A Visiting Scholar shall be bound by the IP terms and conditions embodied within their Appointment Agreement. The Appointment Agreement with the University shall normally ensure that any and all rights to any Intellectual Property created by the Visiting Scholar will be automatically assigned to The University. If such rights have been, may or must be assigned to another person or body and therefore cannot be assigned to the University, the Visiting Scholar is under an obligation to inform the Enterprise Directorate at the earliest opportunity.

5.5 Course Materials

5.5.1 University Ownership

The University will own IP vested in Course Materials created by a Staff Member with the exception of Course Material that is created from or for Open Educational Resources, in accordance with Article 5.7.1 of this Policy.

5.5.2 Licensing of Course Materials

Creators of Course Materials are granted a royalty-free, non-exclusive licence by the University to use the Course Materials for Research and teaching purposes within the University.

5.5.3 Exploitation of Course Materials

In certain circumstances and with the express prior written agreement of the University, Course Materials may be used for commercialisation outside of the University. In this case, the written agreement shall include details with respect to costs incurred for commercialisation and share of any eventual revenues between the Creator(s) and the University.

5.6 Scholarly Works

5.6.1 Rights to Publication

The University recognises and endorses the rights of Staff Members and Students to publish their Scholarly Works provided that where such scholarly work may disclose any University IP such Staff Member or Student must obtain prior written clearance obtained from the University's Enterprise Directorate before publishing any Scholarly Work.

5.6.2 University Use of Scholarly Works

The University reserves the right to a royalty-free, non-exclusive and non-time-limited licence to use Scholarly Works that are created by Staff Members, Visiting Scholars and Students for the University's own Research, academic and teaching purposes. Accordingly, each Staff Member, Visiting Scholar and Student hereby grants to the University (including by way of present grant of the copyright in any future Scholarly Works) a royalty-free, non-exclusive, world-wide, irrevocable, non-terminable, perpetual licence (with rights to sub-licence) to use his or her Scholarly Works for the University's own Research, academic and teaching purposes.

5.6.3 University Repository

Staff Members and Students should seek and obtain the permission of the publisher of a Scholarly Work (whether in published or pre-published form) before it is included within the University's repository.

5.7 Public Domain

5.7.1 IP Falling within the Public Domain

University IP will form part of the Public Domain if:

- a) A contractual agreement between the University and a third-party (e.g. a Research contract) requires that the results of the Research be placed in the Public Domain
and / or
- b) The IP is a work of development that has utilised an open licensing method for materials or software including but not limited to Open Educational Resources (OER), Creative Commons, Open Source or GNU GPL licensed software, and where the licensing conditions of the same require that derivatives are released into the Public Domain.

5.7.2 Release of IP into the Public Domain

The University may decide to release University-owned IP into the Public Domain under one or more the following circumstances:

- Where it is deemed by the University to be in the public interest
- Where the IP has sufficiently low commercial or developmental value
- Where the University deems it either necessary or desirable for other reasons.

5.8 Duration & Persistence of Rights

Any Intellectual Property which is the property of the University or which shall become the property of the University shall remain the property of the University whether the Creator remains part of the University as a Student or Member of staff or otherwise or not.

6 CREATOR RESPONSIBILITY TO DISCLOSE

6.1 Disclosure & Recording of IP

When a Creator identifies potential IP arising from their Research or other related work that may have commercial value, they should disclose such IP to the Enterprise Directorate using an Invention Disclosure Form (IDF).

6.2 The Invention Disclosure Form (IDF)

The IDF document records all the necessary basic Invention information, potential for Commercialisation, background funding and resources utilised, Creators' details and also Creator and Enabler declarations including agreed share of inventorship. It allows for all aspects of IP due diligence to be recorded by the University and for further use in any processes applied for IP protection (e.g. Patenting).

On completion and signing of the IDF, the Creator(s) must send it to Enterprise. Any additional explanatory materials should be attached to / send with the IDF. Also, if any agreements were entered into that relate to the Invention, then copies of these agreements must also be attached / sent at the same time.

Enterprise will register the document and will assign a unique reference number to the IDF. This referenced version of the IDF will then be sent back to the Creator(s) for their own records.

6.3 Assignment of IP Ownership

Once the IDF has been completed the Creator(s) will be required to formally assign any right, title or interest they may have in that IP to the University in the form of an Assignment included within the IDF document that specifies the rights that will accrue to the Creator(s) and the University, and the obligations that they will have to assist the University with the Commercialisation of that IP.

6.4 IDF and Confidentiality

Submitted IDFs are treated as confidential by both the University and the Creator until a patent application is filed, or the invention is publicly disclosed by other means. Prior to a patent filing or Public Disclosure, the information in submitted IDFs will not be distributed or disclosed except:

- to research sponsors or partners as may be stipulated by contract
- to parties that are under confidentiality agreements
- as may be required by law or a court of competent jurisdiction.

7.1 Confidential Information

Any Student or Member of Staff or Visiting Scholar who comes into contact with any Confidential Information is under an obligation without limit of time save as may be required by law or a court of competent jurisdiction:

- (a) to preserve completely confidentiality of such;
- (b) not to publish or otherwise disclose in any way or permit the disclosure of such.
- (c) not to use such information in any way other than is permitted in writing by The University;
- (d) to return all such information (in whatever form and howsoever stored) to The University immediately if requested by The University;
- (e) not to reproduce such information or any part of it in any manner or form or take notes of it other than expressly permitted by The University;
- (f) not to store such information in any computer or electronic information retrieval system accessible from outside The University or transmit it in any form by any means outside The University; except where required in the performance of his/her duties hereunder or where such information becomes part of the public domain otherwise than as a result of their own breach of the terms of this policy or any other confidentiality obligation.

It is the responsibility of any supervising Member of Staff to ensure that all Students and Visiting Scholars are fully aware of and adhere to their obligations with regard to confidentiality.

Any information thought to be Confidential Information should be kept separately in a secure manner and marked as 'Confidential'. If Confidential Information is likely to benefit from one or more disclosure exemptions under the Freedom of Information (Scotland) Act 2002, details of such likely exemption if known should also be marked upon such Confidential Information.

7.2 Exchange of Confidential Information

Any Student or Member of Staff or Visiting Scholar wishing to disclose or give access to any Confidential Information to a person or body outside The University in any form whether written or oral or otherwise is under an obligation to ensure that there is a written agreement in place governing disclosure of said Confidential Information.

Any agreements relating to Confidential Information must only be signed on behalf of The University by an authorised signatory of the University. Failure to obtain an authorised signature will invalidate the document and an unauthorised signatory shall be personally liable for all consequences.

7.3 Publication Rights

7.3.1 Right to Publish

The University recognises the rights of Creators to decide whether and when their Research results are to be published, subject to the Articles related to Scholarly Works identified within Article 5.6 of this Policy.

7.4 IP protection through Non-Disclosure

With respect to the Right to Publish identified above, Creators are hereby informed that premature Public Disclosure of information pertaining to IP may well result in the loss of IP protection rights or the diminished ability to protect IP in the future. Although Patents are designed to protect Intellectual Property, a Patent cannot be granted unless the IP has not been previously disclosed.

Non-disclosure is the most effective way to protect confidential information, sensitive issues and novel ideas.

7.5 IP protection through Non-Disclosure-Agreement

Where some disclosure is necessary, for example where commercial interest is sought for University IP, then a Non-Disclosure (or Confidentiality) Agreement (NDA) should be used. An NDA is a legally binding contract between parties who wish to share confidential information with each other and also wish to prevent disclosure of this information to third parties. Where confidential information relating to the University's IP is not otherwise protected, An NDA should always be used to protect against further unwanted disclosure of that information. The NDA will also provide documentary evidence with respect to future exploitation of the IP.

7.5.1 Availability of NDA Templates

NDA templates are available from the University Legal department and also from the Enterprise Directorate.

7.5.2 Authorised Signatories for NDAs

An NDA must only be signed by an authorised signatory of the University, who shall usually be an authorised member of the University Legal Department or University School or Institute. For the avoidance of doubt, other than as defined in this Article, Staff and Students are not authorised to enter into or sign NDAs with third parties on behalf of the University.

7.6 Protection by Trade Secret

The University may decide to treat IP that constitutes some form of confidential information (normally that pertaining to a formula, practice, process, design, instrument, pattern, commercial method, or compilation of information not generally known to or ascertainable by others) as a Trade Secret.

7.6.1 What can be protected by Trade Secret

A trade secret does not need to be novel, and may be legally protected for an unlimited period of time. However, once a trade secret is revealed to the public, it loses its Secret status and therefore its protection under law.

For University information to be protected as a trade secret, it must meet the following requirements:

- It must be a secret
- It must have commercial value
- It must have been subject to measures aimed at keeping it secret

7.6.2 Procedures for Managing a Trade Secret

The following procedures must be followed to effectively manage Trade Secrets:

- I. All documents and materials either pre-existing or that are created that relate to the trade secret must be marked as “confidential” or the equivalent.
- II. Access to Trade Secret materials must be restricted to persons who have authority to view and use those materials (use of file and/or computer password protection and/or locked physical storage is recommended).
- III. Staff must be made aware of the confidential nature of the Trade Secret material, and if not already contractually obliged to maintain confidentiality, an NDA should be entered into between Staff and the University.
- IV. Where any printed copies of Trade Secret materials must be disposed of, a suitable paper shredded should be utilised.
- V. Should a member of Staff who has access to Trade Secret materials submit a notice of resignation from the University, then all Trade Secret materials in their possession must be returned to the University, and access to Trade Secret materials must be removed for that member of Staff.
- VI. Where Trade Secret material is to be exchanged with external parties, this must be done under an NDA or through the inclusion of non-disclosure Clauses within agreements such as licence agreements, consortium agreements or partnership agreements.

7.6.3 Legal Remedies

The leaking of Trade Secret materials by someone under the obligation to keep confidentiality may constitute a breach of contract allowing remedies for the University. Moreover, if a person obtains the Trade Secret by dishonest means, all countries in the European Union offer some form of protection under unfair competition law.

8 IP REVENUES ENTITLEMENT & DISBURSEMENT

8.1 Method for calculating & disbursing revenues

Revenues will be calculated using the following rules:

8.1.1 IP Expenses

IP Expenses is all expenses incurred by the University in the management of IP for which Gross IP Revenue has been received or is expected to be received and includes, but is not limited to, those expenses that relate to

- The University's expenses incurred by payment to third parties for securing, maintaining and enforcing IP protection (e.g. patenting and legal expenses)
- Costs incurred by the University in the licensing/assignment of IP, including marketing costs, contract negotiation and licence drafting costs.
- Costs incurred in the making, shipping or distributing of products, processes or services that embody the particular IP, but not including staff time or general administrative costs.

8.1.2 IP Expenses Records

Enterprise shall maintain accurate and transparent documentation of all IP Expenses incurred for a given IP and shall be entitled to cover all IP Expenses it has incurred, as set out in 8.1.1 above. Net IP Revenue is calculated as Gross IP Revenue less IP Expenses.

8.1.3 IP Co-Ownership

Where IP is co-owned by the University and a third-party, the Gross IP Revenue received by the University will be shared in accordance with a pre-determined formula as defined by the contractual arrangement with that third-party. The University share of Gross IP Revenue and the Net IP Revenue will be determined, and revenues will be shared in accordance with Articles 8.1.4 to 8.1.8 below.

8.1.4 Share of Net IP Revenues

Net IP Revenues shall be shared between the University and the Creator(s)/Enabler(s) according to the standard revenue sharing scheme laid out within **Annexe 1: IP Revenue Sharing** of this Policy.

8.1.5 Exclusions to share of Net IP Revenues

For the avoidance of doubt, the provisions of this Article 8 (and in particular, but without limitation, the share of Net IP Revenues under Article 8.1.4) shall not apply to the following:

- IP in teaching, learning, online learning or distance learning materials, books or learned articles, artistic or musical works, sound recordings, films or broadcasts, works protected by design right, trademarks (all of which are regarded in this Policy as 'creative works') except to the extent that any creative works form part of an Invention.
- certain types of copyright works being specifically articles in learned journals, published books and published papers.
- such other items as The University may from time to time specify in writing.

8.1.6 Creator Entitlements

Where there is more than one Creator, they are entitled to a share, the proportion of which is defined within the Innovation Disclosure (IDF) document pertaining to the IP or in the absence of this record, any other signed Agreement made between Creators.

8.1.7 Enabler Entitlements

Where there is more than one enabler, they are entitled to an equal share of the entitlement set aside for Enabler(s) and defined within a prior written and signed Agreement (e.g. Invention Disclosure Form (IDF)). The Enabler entitlement shall in all cases be shared out from the proportion set aside for Creator Entitlement and not from any other portion of revenues received.

8.1.8 Creator/Enabler holding shares in a Commercialisation Entity

In the case where Creator(s) / Enabler(s) are granted an equity holding in a commercialisation entity that licences the University IP which the Creator(s) / Enabler(s) have created, such Creator(s)/Enabler(s) rights to participation in the University standard revenue sharing scheme (as defined within Appendix 1 (IP Revenue Sharing) of this Policy shall be forfeited.

8.1.9 University Equity Share of a Commercialisation Entity

Where a Commercialisation Entity is formed based on University-owned IP, such IP shall be licenced to the Commercialisation Entity in return for the University being granted an Equity Share in the Commercialisation Entity, as defined and regulated within the University's Regulation [42](#).

8.1.10 University Equity Holdings

Where the University receives equity in the form of shares in a licensee company which is also a Commercialisation Entity (e.g. Spin-Out company), the University will hold such shares until disposal or sale, at which time any income received will be considered Gross IP Revenue and the Creator(s)/Enabler(s) will receive their share according to the revenue sharing scheme identified within Appendix 1 (IP Revenue Sharing) of this Policy.

8.1.11 Additional IP Licensing Benefits

Notwithstanding the benefit sharing in respect of shares in terms of this Article 8.1, but subject always to 8.1.8, the Creator(s)/Enabler(s) will still be entitled to their share of any other revenues under the IP license.

8.1.12 Payment

Payment to the Creator(s)/Enabler(s) will be made by the University on a periodic basis as agreed in writing, but no later than 6 months after receipt of the Gross IP Revenue by the University.

8.1.13 Taxes

Payments made will be subject to personal tax. The University may, if so obliged by UK tax laws, make any applicable tax deductions before making payments to the Creator(s) / Enabler(s). This process will be administered by the University Finance Department.

8.1.14 Entitlement.

A Creator or Enabler and their heirs will be entitled to receive their share of IP revenue received by the University and this right shall survive any resignation or termination of employment.

8.1.15 Banking details.

It is the responsibility of each individual Creator and Enabler to ensure that the University has a correct record of their current banking details for the purpose of revenue disbursement.

8.1.16 Failure to Collect

Should payment not be possible due to invalid banking records, the University will use its reasonable effort to contact the recipient to notify them of the situation and will further keep the relevant IP revenue amounts in reserve for a maximum period of 3 (three) years from the date of notification, after which all rights of Creator(s)/Enabler(s) to receive such payments will be forfeited, and the sums involved will be transferred to the University's IP fund.

8.1.17 Disbursement Errors

If the University pays an amount into an incorrect account as a result of information supplied to it being out-of-date or incorrect, the University will not have any further obligation or liability in respect of such payment, which will be deemed to have been duly and properly made.

9 CONFLICTS

9.1 Commitment to the Institution.

The primary commitment of the time and intellectual contributions of Staff and Visiting Scholars shall be to the education, research and academic programmes of the University.

9.2 Best Interests of the University

Staff Members and Visiting Scholars have a primary professional obligation to act in good faith and in the best interests of the University and should avoid situations where external interests might significantly and negatively affect their work ethic and research integrity.

9.3 Agreements with Third Parties.

It is the responsibility of Staff Members and Visiting Scholars to ensure that any agreements that they enter into with third parties do not conflict with their duties and responsibilities in terms of this Policy.

This provision shall apply in particular to any private consultancy or other research service agreements concluded with third parties. Each individual must make their duties and responsibilities clear to those with whom such agreements may be made and should ensure that the third-party are provided with a copy of this Policy.

9.4 Disclosure of External Activities and Financial Interests.

Staff Members and Visiting Scholars must promptly report any existing or potential Conflict of Interest (COI) to their Head of School in compliance with the University's COI policy.

[<https://www.hw.ac.uk/services/docs/hr/policies/conflict-of-interest-policy.pdf>].

The University Authority will be responsible for resolving the conflict or reaching a solution satisfactory to all parties concerned.

10 DISPUTES

10.1 Violation.

Breach of the provisions of this Policy shall be dealt with under the normal procedures of the University including the separate Staff and Student disciplinary procedures and in accordance with the relevant provisions of UK laws and University regulations in force.

10.2 Dispute Resolution.

Any internal disputes or questions of interpretation arising under this Policy must in the first instance be referred to the Senior Responsible Officer for consideration.

10.3 Referral

If the matter cannot be resolved by the Senior Responsible Officer, then the matter may optionally be elevated to the University Deputy Principal (Business and Enterprise) who also may optionally elevate any decision to the University Principal.

10.4 Arbitration

Should the matter not be resolved, then the University or the Staff member or Student or Visiting Scholar may at their own discretion refer the matter to an independent committee for arbitration as final arbiter of any disputed issues or for final determination.

11 DEFINITIONS

Each entry below gives a definition of a particular term or phrase used within this document, and is provided in order to avoid misunderstanding or misinterpretation of this Policy's Articles. Each entry shows the defined word or phrase highlighted in bold and its definition provided in the immediately adjacent paragraph(s). Without prejudice to any applicable laws, in this Policy the definitions set out below shall apply:

Appointment	Means a formal agreement for a Visiting Scholar at the University, which is a prerequisite to participate in or conduct Research, scholarship, creative work, or teaching at the University.
Assignment	Means in this context a transfer of rights to Intellectual Property from one body or individual to another body or individual.
Author	Means any person to whom this Policy is applicable, who individually or jointly with others makes a design, a mark or copyrightable work and who meets the criteria for authorship as defined within the UK Copyright, Designs and Patents Act 1988 (as amended).
Background IP	Means any IP created outside of the scope of or before the execution of any Research Project, or prior to a Creator becoming subject to this Policy, by virtue of Appointment in the case of a Visiting Scholar, employment contract in the case of a Staff Member, or registration in the case of a Student.
Campuses	For the avoidance of doubt, the campus locations of the University and the members of the Heriot-Watt Group include the University Campuses at Edinburgh, Galashiels in the Scottish Borders, Stromness in Orkney, Dubai in the United Arab Emirates and Putrajaya in Malaysia, and any future Campuses or University-owned properties.
Charter	means the Charter of the University as amended or replaced from time to time.
Commercialisation	Means any form of utilisation of IP intended to generate value, which may be in the form of a marketable product, process or service, commercial returns, or other benefit to society, provided that for clarity, use of IP by the University for academic, teaching (including online teaching) and/or Research purposes does not constitute "commercialisation" or exploitation of such IP. "Commercialise" is similarly defined.
Commercialisation Entity	Means a company that has access to the IP of the University, through any one or more of the available Commercialisation modes, to produce new products, processes or services. This can be a Spin-Out Company or a Start-Up Company that licences University-owned IP.
Commercialisation Pathway	Commercialisation Pathways may include: <ul style="list-style-type: none"> • License, either exclusive or non-exclusive, and variations thereof. • Assignment (usually in the form of the sale of IP).

	<ul style="list-style-type: none"> • Formation of a Commercialisation Entity to which the IP is licensed or Assigned. • Outright sale of the IP • Non-profit use or donation. • Joint Ventures. • Royalty-free access on humanitarian or other grounds. • various combinations of the above.
Confidential Information	<p>Means;</p> <ol style="list-style-type: none"> i. any information in any form including but not limited to orally transmitted information or electronically stored information or written information of a confidential nature or relating to any Intellectual Property Rights which is owned or controlled or may in the future be owned or controlled by the University, disclosure of which may in any way endanger or invalidate the ability of The University to properly protect or exploit such. ii. any information, dissemination of which in any form it is thought in the opinion of any Creator or in the opinion of Enterprise would be disadvantageous to the commercial interests of The University which shall specifically include any trade secrets or know-how developed as part of any Creator's work within The University and any laboratory notebooks including those stored in an electronic fashion. iii. any information marked as 'Confidential' iv. any information originating from a person or body outside The University of which the receiver is made aware of its confidential nature whether in written or oral fashion. v. any information held by The University whether belonging to The University or not for which The University has given an undertaking to preserve confidentiality of such under any other agreement.
Conflict of Interest (COI)	<p>Means any situation in which real or perceived interests of an individual Staff Member or Student may run counter to the interests of the University or negatively affect their employment or duties.</p>
Course Materials	<p>Means all materials used in, or in connection with, and for the purpose of, teaching an education course (whether online or on premises) through the provision of lectures, tutorials, seminars, workshops, field or laboratory classes, assessments, practicals and other teaching activities (including in relation to all of the foregoing, online) conducted by the University; and all IP in such materials.</p>

Creative Commons	An American non-profit organization devoted to expanding the range of creative works available for others to build upon legally and to share. The organization has released several copyright-licenses, known as Creative Commons licenses, free of charge to the public, and which allow creators to communicate which rights they reserve and which rights they waive for the benefit of recipients or other creators.
Creator	Means any person to whom this Policy is applicable, who creates, conceives, reduces to practice, authors, or otherwise makes a substantive intellectual contribution to the creation of IP and who meets the definition of Inventor or Author as generally implied within the Intellectual Property laws of the United Kingdom and within the UK Patents Act 1977 (as amended).
Enabler	Means any person(s) identified by the Creator(s) as having made a significant but not intellectual contribution to the creation of IP who is not a Creator.
Enterprise	Means the Heriot-Watt University Enterprise Directorate and includes any successor thereof.
Genetic Resources (GRs)	Means genetic material of actual or potential value, and is further defined as any material of plant, animal, microbial or other origin containing functional units of heredity.
GNU General Public Licence	The GNU General Public License (GNU GPL or GPL) is a widely-used free software license, which guarantees end users the freedom to run, study, share and modify the software.
Gross IP Revenue	Means the total amount of IP revenue recognised for a given IP in a given reporting period, prior to any deductions, including any revenue obtained from the sale or disposal of University equity holdings related to that IP.
Heriot-Watt Group	means those entities associated with the University whether by ownership of shares or otherwise and which the Court determines should form part of the Heriot-Watt Group for the purposes of the Charter and Statutes, and which are listed in the Ordinances, and "member of the Heriot-Watt Group" shall be construed accordingly.
Intellectual Property (IP)	Means all outputs of creative endeavour in any field of the University for which legal rights may be obtained or enforced pursuant to the law including: Literary works, including publications in respect of Research results, and associated materials, including drafts, data sets and laboratory notebooks; Databases, tables or compilations, computer software, preparatory design material for a computer program, firmware, courseware, and related material; Patentable and non-patentable technical information; Designs including layout designs (topographies) of integrated circuits; Teaching materials including online materials [and recorded lectures, presentations and other academic or

	<p>teaching activities and in lecture capture recordings (whether audio, visual, digital or similar formats)] , books or learned articles, artistic or musical works, sound recordings, films or broadcasts, works</p> <p>Trademarks;</p> <p>Plant varieties and related information;</p> <p>Know-how, trade secrets and associated information and data;</p> <p>Any other such items as the University may from time to time specify in writing and;</p> <p>Any other University-commissioned works not included above.</p> <p>Intellectual Property under this Policy is expressly stated to exclude:</p> <p>Performance Rights with respect to video recordings, filming or similar media that may be created as laid out in the UK Copyright, Designs and Patents Act 1988 (CDPA) and specifically sections 70, 80, 84 and 182A-182.</p> <p>Articles in learned journals, published books and published papers; and</p> <ul style="list-style-type: none"> • Such other items as The University may from time to time specify.
Intellectual Property Rights	Means any legal rights that subsist in any Intellectual Property under any current or future laws including but not limited to all United Kingdom Statutes, European Treaties, Directives and Regulations, International Treaties and common law.
Intellectual Property Audit	Means an inventory of any Intellectual Property which a Member of Staff or Student has or may have created before or during their time working with The University and the state of any Intellectual Property Rights that attach thereto made in order to facilitate teaching, research activities, protection and exploitation
Invention	Means a unique or novel device, contrivance, method, composition or process or as further defined and limited for the purposes of patenting by the UK Patents Act 1977 (and as amended), and also other Intellectual Property (IP) for the purposes of this Policy.
Invention Disclosure Form (IDF).	Means the University's standard Invention Disclosure Form which shall be completed by Creators and submitted to Enterprise to document the invention.
IP Expenses	Means all expenses incurred by the University in the management and Commercialisation of any given element of IP.
Joint Creator	Means any person to whom this Policy is applicable, who jointly with others creates, conceives, reduces to practice, authors, or otherwise makes a substantive intellectual contribution to the creation of IP and who meets the definition of Inventor or Author as generally

	implied within the Intellectual Property laws of the United Kingdom and within the UK Patents Act 1977 (as amended).
Net IP Revenue	Means Gross IP Revenue less IP Expenses.
Open Educational Resources (OER)	Means teaching, learning and Research materials that reside in the Public Domain and that have been released under an open license that permits their free use or modification by others.
Open Source Software	Means a type of computer software in which source code is released under a licence in which the copyright holder grants users the rights to study, change, and distribute the software to anyone and for any purpose. A User of Open Source Software is usually bound to licence back any development made to the source. Open-source software may be developed in a collaborative public manner.
Policy	Means this Intellectual Property Policy of The University
Student Intellectual Property Agreement	Means a document issued by The University in accordance with the Policy whereby the Student agrees to assign Intellectual Property Rights created whilst registered as a Student at the University to the University and in return the Student will enjoy entitlement to benefits as if a Staff Member under Appendix 1 of this Policy : IP Revenue Sharing.
Public Disclosure	Means the communication of information relating to IP to external parties. Public Disclosure includes, but is not limited to, disclosure in written or oral form; communication by email; posting on a web blog; disclosure in a news report, press release or interview; publication in a journal, abstract, poster, or report; presentation at a conference; examination of a thesis; demonstration of an Invention at a trade show; or the industrial application of an Invention. Public Disclosure excludes the delivery of online teaching and lecture capture recordings.
Public Domain	Means the freely accessible public realm in which works that are not protected by IPRs, either because the rights have been forfeited or because the rights have been expired, and are thereby held by the public at large and available for all to use without permission from the Creator or owner. Note: not all publicly available information falls within the Public Domain.
Research	Means any creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications. It comprises three activities: basic research, applied research and experimental development.
Research Contract	Means any type of agreement between the University and an external party or research sponsor, concerning Research, which could result in IP being created by the University. This shall include, but is not limited to, all

	sponsorships, donorships and collaborations with the external party or research sponsor.
Research Project	Means any project that forms the basis of Research undertaken by the University and includes projects undertaken by a Student, under the supervision of a Staff Member as part of a research degree programme .
Scholarly Works	Means all copyright works which are the outputs of academic Staff Members and Students including Research, creative and other outputs in area(s) of his/her expertise. It does not include Course Materials., teaching materials or lecture capture recordings.
School	Means any primary academic unit within The University as may from time to time be specified in the Ordinances and Regulations of the University.
Senior Responsible Officer	Means the Chief Entrepreneurial Executive of the University Business & Enterprise Directorate, and who is the person within the University who has decision-making authority regarding matters relating to IP, and who has the option of elevating any decision to the University Deputy Principal (Business and Enterprise) who also may optionally elevate any decision to the Principal and Vice-Chancellor.
Service Company	Means a company whose principal object is the use of technology or facilities created or provided by the University.
Spin-Out Company	Means a company formed by a Creator or Staff Member or Student with the assistance of The University whose principle object is the development and commercialisation of the technologies or methodologies owned by The University or the use of know-how and/or facilities created or provided by The University.
Staff Member	Means any person who is under a contract of employment with the University or by any member of the Heriot Watt Group including academic, research, technical, administrative and adjunct staff, whether full-time or part-time or on a temporary, fixed term or permanent basis and as further specified in the Ordinances and Regulations of the University
Student	Means any person undertaking any Programme of Study of the University and as further specified in the Ordinances and Regulations of the University
Substantial Use	Means the use of University facilities or equipment or devices provided by the University where significant costs have been incurred by the University or substantial use over time has been made of the University's facilities, equipment and Staff. Use shall be deemed non-substantial if minimal overhead costs have been incurred by the University (e.g. through use of office, library, standard facilities & standard computing), time spent using other institution facilities has been minimal, or where the IP has been developed in the personal unpaid time of the Staff member or Visiting Scholar .outside of their usual duties for the University.

Trade Secret	<p>Means information which, as further defined within the UK Trade Secrets (Enforcement, etc.) Regulations 2018</p> <ul style="list-style-type: none"> i. is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question, ii. has commercial value because it is secret, and iii. has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret
University	<p>means the body politic and corporate by the name of "Heriot-Watt University" which was constituted in 1966 with perpetual succession and a Common Seal.</p>
University IP	<p>Means IP owned or co-owned by the University.</p>
Visiting Scholar	<p>Means any person who enters into academic and/or industrial participation and/or collaboration with the University, including visiting professors, adjunct and conjoint professors, teachers, researchers, scholars and volunteers; and who concludes an Appointment Agreement with the University.</p>

APPENDIX 1: IP Revenue Sharing

Net IP Revenue shall be shared according to the scheme detailed below:

All IP revenues received from the commercial exploitation of a given IP whether returned in the form of Royalties, from the disposal or sale of equity or other financial benefit (e.g. Patent) will be used in the first instance to recover any outstanding IP Expenses that are not otherwise bound to be remunerated to the University by a Licensee or through similar contract conditions.

Once these costs have been recovered, then the following rules shall apply:

Recipient	< £250,000 – IP Cost	£250,000 – £1,000,000	£1,000,000 +
Creator(s) (recognising their valuable contributions to IP generation. Where there is more than one creator, they are entitled to an equal share or as separately defined within a prior written agreement (e.g. IDF document - Inventorship share).	80%	50%	40%
Enabler(s) (An option open to Creators to recognise significant contributions to the creation of IP of one or more persons who cannot be defined for legal reasons as a Creator)	Agreed portion (percentage or discrete amount) of the 80% allocated to Creator(s)	Agreed portion (percentage or discrete amount) of the 50% allocated to Creator(s)	Agreed portion (percentage or discrete amount) of the 40% allocated to Creator(s)
University (Recognising the institutional contribution to IP creation and need to support future IP creation)	20%	50%	60%

University IP Revenues Disbursement

IP revenues retained by the University will be considered for disbursement to Schools and/or Institutes and/or Enterprise and / or any innovation-related funds as decided from time to time by the University Executive.

Creator / Enabler IP revenues Disbursement

The Enterprise Directorate shall disburse the Creator (and any Enabler) share of Revenues according to the agreed inventorship % share and any additional agreed Enabler share. For the avoidance of doubt, any Enabler share or revenues shall be taken solely from the share of total revenues allocated to Creator(s)

PROCEDURES