

INTELLECTUAL PROPERTY POLICY AND PROCEDURES

January 2017

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Amendments:	<ul style="list-style-type: none"> To allow appeals to the IP Committee – remove President as a member of the IP Committee [clause 4] Modified Clause 4, para 4, “Members of the IP Committee.....” to “The President and members....”. Expand role of IP Committee to cover approval and recommendation of IP Licence T&C’s and Campus Company Designation applications. [clause 5] Clarify that Undergraduate students typically own their own IP [6] Clarify that DkIT exerts no claim of ownership of copyright in scholarly or artistic works by students or staff. [6] Included paragraph on who can draw up licences and who is approved to sign agreements [6.7] Removed reference to Technology Transfer fund [13] Division of Income now only between Inventor and DkIT – removed Inventor’s Dept. [13] New section to incorporate Campus Company Policy [14] 		
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1. INTRODUCTION

Intellectual Property (IP) is an area of very substantial importance in the academic environment of Dundalk Institute of Technology (DkIT). The purpose of defining an IP policy is to encourage the generation of IP by Staff, Students, and Other Relevant Parties. This DkIT IP Policy (IP Policy) is intended to provide support and guidance regarding commercial exploitation, ownership and income from IP and the use of DkIT facilities and resources to ensure that the development of IP is mutually beneficial for Staff, Students, Other Relevant Parties and DkIT.

The Institute recognises and encourages the principle that IP developed at DkIT (DkIT IP) should be used for the greatest public benefit. Commercialisation is often the most efficient means of promoting the widest possible dissemination and use of DkIT IP. In such circumstances, it is appropriate and desirable for both DkIT and the originator of the IP to benefit from the commercial exploitation of IP produced at DkIT.

In particular, this document sets out the principles and rules that govern the creation, ownership and commercialisation of IP developed by Staff, Students and Other Relevant Parties participating in programmes carried out using DkIT facilities, know-how, confidential information and/or DkIT IP (together, DkIT Assets).

DkIT has a strong interest in promoting the generation of IP in the context of the Government's drive to create a knowledge based economy, to increase the number of patents coming out of third level institutions and to transfer that technology into viable commercial entities.

For the avoidance of doubt, this IP Policy (and any subsequent amendments made to this IP Policy) is the agreed protocol or IP Policy referenced in:

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

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

2. DEFINITION

DkIT defines IP as the tangible or intangible results of research, development, teaching, or other intellectual activity (a full definition is contained at Annex I). Such IP may be created by academic, research and other DkIT staff (full-time or part-time) in the course of their employment, by post-graduate students, by consultants or other relevant parties in the course of

their education, research, development, teaching, consultancy and other intellectual activity carried out for DkIT, collectively **Personnel**.

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 DkIT Assets. See the full definition of Intellectual Property in Annex I.

3. AIMS OF THE POLICY

The objective of this IP Policy is to provide a consistent framework within which DkIT IP is developed and managed for the benefit of DkIT, the originator and the public good.

The specific aims of the IP Policy are as follows:

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

The importance of appropriate outside professional assistance is acknowledged. The IP Committee and the Office of Strategic Planning, Communications & Development will avail of these resources when appropriate.

4. INTELLECTUAL PROPERTY COMMITTEE

A Committee shall be set up in DkIT and shall consist of the following members (IP Committee):

- Vice-president of Strategic Planning, Communications and Development (Chair).
- Head of School or Head of Department or nominee (from the school to which the proposal is relevant, decided by the Head of School).
- Head of Research
- Vice-President of Finance and Corporate Affairs (or nominee).
- Technology Transfer Manager
- Innovation and Business Development Manager.
- Expert in area of technology (appointed in consultation with inventor), if deemed required by the IP Committee.
- Other professional advisors if deemed required by the IP Committee.

The IP Committee members will be required to sign a confidentiality agreement regarding proposals submitted and regarding the IP produced at DkIT and presented to the IP Committee. This will ensure that new ideas are protected. DkIT reserves the right to alter the composition of the IP Committee.

The relevant developer of the IP or their manager/supervisor may be required to put forward a proposal to the IP Committee regarding the developed IP and may be requested to attend a Committee meeting, where appropriate.

The President and Members of the IP Committee will be required to declare their interest in a proposal if such exists and to absent themselves from any discussion pertaining thereto.

The Office of Strategic Planning, Communications & Development has overall responsibility for each of the activities set out in this IP Policy including (without limitation) putting the decisions of the IP Committee into effect.

A quorum of 4 members is required for an IP Committee meeting.

The developer of the IP and or the proposer of an IP related proposal to the IP Committee may refer the decision of the IP Committee to the president for review.

5. ROLE OF THE IP COMMITTEE

- Processing of IP applications.
- Determining the commercial value of IP and/or inventions.
- Determining IP agreements with industry regarding collaborative research projects.
- Facilitating a fair and equitable return to those involved in commercialisation of their research/work.
- Authorising the Technology Transfer Manager, or nominating negotiators, to negotiate with third parties licence agreements to DKIT IP to ensure a reasonable financial return to the Personnel involved and to DKIT.
- Approval and recommendation of IP licence terms and conditions.
- To review and make recommendations concerning applications for Campus Company designation.

6. GENERAL PROVISIONS OF DKIT IP POLICY

6.1 As a general rule (further details of which are set out in Clause 6.3, and subject to the exceptions set out in this IP Policy), any IP rights in any material/works created by Personnel in the course of their employment or education by DkIT or in relation to work carried out for DkIT is the property of and vests solely and absolutely in DkIT or such companies or organisations as DkIT may nominate for such purposes. Such material/works include, but are not limited to any:

- copyright (including rights in computer software and moral rights),
- patents,
- design rights,
- trademark rights,
- brand rights,
- database rights,
- know how,
- trade secrets,
- confidential information rights in design,
- semiconductor topography rights,
- or other intellectual property rights or other property rights, (whether vested, contingent or future anywhere in the world).

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

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

6.1.1 Notwithstanding 6.1, as a general principle DkIT recognises the undergraduate student as owner of any IPR he/she produces while a registered student of DkIT. This principle is subject to variation in the case of;

Students who receive financial aid or remuneration under a sponsored programme where the terms of a DkIT agreement with the sponsoring agency limit those rights.

Students engaged in work for DkIT (including work carried out pursuant to any third party funded research programmes).

Students who are working on a project that derives from the IP of academic staff or involves substantial collaboration with academic staff.

In all above cases the IP Committee will determine the ownership rights.

- 6.1.2 DkIT shall not assert ownership of copyright in scholarly publications, or artistic works including books, articles, plays, scores, lyrics, paintings, photographs, films, sculptures and multi-media works, of Personnel regardless of the form of expression, unless such works are created pursuant to a contract between DkIT and a Third Party, or unless there is a written agreement between the creator and DkIT to the contrary. DkIT retains a free, non-exclusive, non-transferrable, perpetual, royalty-free licence to reproduce, distribute, publicly perform, publicly display, or make derivative works of the copyrighted works for teaching and research purposes only, subject to preservation of the rights of the author. This exception to DkIT ownership of IP does not extend to copyright in software or to database rights.
- 6.1.3 The DkIT shall retain ownership of institutional works, that is, works commissioned by DkIT for a specific purpose, or which cannot be attributed to one or several authors but rather result from the simultaneous or sequential contributions over time by many staff and/or students.
- 6.2 At DkIT's reasonable cost, Personnel also agree at any later time to execute any documentation or otherwise provide assistance to DkIT to secure, protect, perfect or enforce any of DkIT's rights, title and interests in and to DkIT IP.
- 6.3 This IP Policy is applicable to IP that is owned by the DkIT for any of the reasons outlined below:
- It is developed by Personnel in the course of their normal or specifically assigned duties either when IP could be reasonably expected to result from the carrying out of those duties and/or, at the time the IP was developed, there was a special obligation on the relevant Personnel to further the interest of DkIT. Examples of such would be teaching and learning materials or aids, promotional material and institute presentations, slides and posters.

- Under the 2000 Act (as defined in Annex 1 of this IP Policy), DkIT is the first owner of any copyright in the work created by Personnel in the course of his/her employment unless precluded by a prior agreement between DkIT and a third party (or is covered by Clause 5 of this IP Policy).
- The IP arises out of funded or non-funded research where such research has, in the opinion of DkIT, made use of the equipment, facilities, DkIT Assets and/or other resources of DkIT (except where ownership of such IP was provided for in a prior agreement between DkIT and third parties).
- If it is a condition of the appointment of a relevant party to perform research that DKIT should have ownership of the IP arising from the research performed by such Other Relevant Party.

6.4 IP arising from research or other work sponsored by an external organisation (e.g. Enterprise Ireland) shall be subject to the IP provisions that are stipulated in the related agreement between DkIT and the external organisation (External Agreement). Where an External Agreement requires all new IP rights to be assigned to a private company, the entry level (or “background”) DKIT IP should be defined so that it is not inadvertently assigned to the private company as part of the new IP (also described as “foreground IP” or “results”) but is retained as DKIT IP. All External Agreements should be reviewed by a legal person representing DkIT.

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

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

6.6 In order to enable the achievement of the aims and goals of this IP Policy, the Office of Strategic Planning, Communications & Development will, through dissemination of information and the holding of general information sessions for Staff, foster the general awareness of Staff of this Policy. In addition, the Office of Strategic Planning, Communications & Development will provide specific training on this IP Policy and its day to day application and relevance to research active Staff.

6.7 Drafting and Signing of Agreements.
Where DkIT is considering engagement with a Third Party which encompasses the transfer or the potential for the future transfer of knowledge the responsibility for the drafting of such agreements lies with the Office of Strategic Planning, Communications & Development. Such drafting will be conducted by the Technology Transfer Manager

under the Office of Strategic Planning, Communications & Development and in consultation with the relevant personnel.

Members of staff and researchers may not sign or agree to any contract involving licences to, or for, intellectual property rights. Agreements committing DkIT to a course of action or to the sharing or transferring of knowledge may only be signed by an authorised person.

Examples of such contracts include, but are not limited to, the following:

- | | |
|---|--------------------|
| • Memorandum of Understand (MOU, LOU) | President, VP |
| • Research Memorandum of Understanding | HoR, TTO |
| • IP Licence agreements, Shareholders Agreements | President, VP |
| • External funding bodies Agreements | President, VP |
| • EU H2020 Consortium Agreements and Grant Agreements | HOR, TTO |
| • Non-Disclosure Agreements; (NDA, CDA) | TTO, HoR, VP, HoS |
| • Material Transfer Agreements; (MTA) | TTO, HoR, VP(OSCD) |
| • Open Source Licences; | TTO, HoR, VP(OSCD) |
| • Innovation Vouchers; | TTO, VP(OSCD) |
| • InterTradeIreland Fusion Programme agreements | TTO, VP(OSCD) |

The Office of Strategic Planning, Communications & Development can advise as to the authorised person for agreements/contracts not listed above.

Where a Third Party supplies their own agreement this must be reviewed by the Office of Strategic Planning, Communications & Development to ensure that the current and future rights and interests of DkIT are considered.

- 6.8 Members of staff and researchers must observe the copyright, intellectual property and data protection rights of others in both the preparation and publication of teaching and research materials and results, including the use of image databases and open source software. Advice should also be sought from Technology Transfer Office and the Research Office before accepting any terms for the licensing of such material and before using it with intellectual property created at DkIT.

Members of staff must not bring to, or use in the course of their employment with, DkIT any trade secrets or confidential information belonging to a previous employer or any other third party.

Members of staff may have access to and be entrusted with information in respect of intellectual property of the business of companies dealing with DkIT and may become aware of a company's dealings, transactions and affairs all of which information must be treated as confidential and not revealed to Third Parties.

7. CONSULTANCY

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

8. INTELLECTUAL PROPERTY ASSIGNMENTS AND PATENT ASSIGNMENTS

For the avoidance of doubt, the provisions of this Clause 8 apply to all the departments, centres, institutes, schools, Staff, Students and Other Relevant Parties conducting research or other intellectual activity using DkIT Assets and DkIT's supplies, facilities, confidential information, trade secrets or existing DkIT IP.

As a condition of:

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

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

When required by the specific circumstances of a project, and on the request of the IP Committee, a member of Staff, a Student or an Other Relevant Party will agree:

- (a) to sign an Intellectual Property Assignment Agreement (see Annex II); and
- (b) to execute such documents of assignment or other documentation required to assign or transfer IP and any moral rights to ensure, protect, perfect and enforce DkIT's rights, title and interest in DkIT 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.

9. RESEARCH FINANCED BY THIRD PARTIES

Any research which is partly or wholly financed by any third party agency shall be subject to the specific provisions of the grant or contract covering that research. In the event of any inconsistency between this IP Policy and the terms of any such grant or contract then the provisions of the said grant or contract shall prevail provided that the IP clauses in such grant or contract have been reviewed by the Office of Strategic Planning, Communications & Development (who will seek external advice if necessary) and, in the case of a contract, such contract has been properly executed by DkIT.

10. ADMINISTRATION OF THE IP POLICY

At DkIT, the office responsible for supporting the development and commercialisation of DkIT IP is the Office of Strategic Planning, Communications & Development. All DkIT IP created by Personnel must be disclosed in accordance with the procedures laid down in this IP Policy.

11. DISCLOSURE

It is a condition of:

- (a) employment or engagement by DkIT as Staff;
- (b) admission by DkIT as a Student; or
- (c) engagement by DkIT as another relevant party;

that the results of all research or projects should be fully, promptly and completely disclosed to DkIT pursuant to this policy

In order to enable DkIT 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 DkIT, all Personnel must disclose any IP arising from such research to DkIT through the Office of Strategic Planning, Communications & Development as soon as possible after such IP is apparent. The IP should be kept confidential for a period of time until a timely evaluation of the case including patentability assessment has taken place. No publication should be made prior to disclosure. Confidentiality agreements should be used where appropriate.

Procedures to be followed in respect of IP protection applications

1. Submission of Invention Declaration Form (see Annex IV):
 - The IP Policy requires that all Staff, Students and Other Relevant Party complete an Invention Declaration Form regarding any discovery or invention made that might be useful, patentable or otherwise protectable.
 - This form should be promptly submitted to the Office of Strategic Planning, Communications & Development.

2. Commercial Evaluation of IP:
 - Any IP reported in an Invention Declaration Form shall be submitted to the IP Committee for assessment under the guidelines of the IP Policy and for recommendations to DkIT regarding the patentability or potential commercialisation.

- The IP Committee may recommend that other suitably qualified advisors or external consultants be engaged to advise on the assessment of the IP.
- The criteria to assess the commercial value of the IP should include:
 - Assessment that the IP does not cater for a once-off need and that it has a potential long-term benefit.
 - Technical and commercial feasibility.
 - Proof of concept (business plan, access to finance etc.).
 - Potential for sale or licensing of technology or consultancy.
 - Demonstrates a competitive advantage based on differentiated or innovative product or service.
 - Development stage of the subject matter.
 - Commercial focus and profit motive.
 - Study of comparable existing subject matter, licences and commercialisation practices.
 - Proximity to market.
 - Market valuations – in other words ‘what is the current market willing to pay?’
 - Barriers to entry into markets.
 - Estimated projected sales based on market research.
 - Third party assistance including for example input from industry and state agencies.
 - Estimated cost of patent process.
- Whilst the criteria listed above are not exhaustive, it provides guidance to persons submitting an application as well as to those determining the commercial value. As it is a complex decision the IP Committee may refer to other expertise, where necessary, and further criteria may be applied.
- A decision will be made by the IP Committee within a reasonable time (e.g. 60/90 days, but in any event no longer than one year from date of report) of receipt of the application, where practicable, and the originator of the IP will be notified in writing of the decision made.
- If the evaluation is rejected by the IP Committee, the IP Committee may decide in appropriate circumstances, to offer the opportunity to the originator of the IP to pursue exploitation independently if appropriate under agreed written terms. DkIT will have no rights if it subsequently proves successful, subject to any agreed terms.

3. Submission of a patent application or an application for other protection:

- DkIT shall have the right, but not the obligation, either directly or through an outside agent, to seek patent or other protection of the IP and to undertake efforts to introduce the invention into public use.
- Where a decision is made by the IP Committee to proceed with a patent application, the originator of the IP is required to cooperate in every reasonable way, to execute all necessary documents and to assist the IP Committee in completing the patent application form. The application should remain confidential until such time as the process is complete. Confidentiality agreements will be used where appropriate.

- Commercialisation activities should recognise specific terms and conditions in appropriate funding contracts including any External Agreements.
- The cost of the submission of the application shall be paid by DkIT. Any expenses incurred will be reimbursed to DkIT prior to the distribution of any royalty income (if any) from the IP.
- The originator of the IP and DkIT shall take all reasonable precautions to protect the integrity and confidentiality of the IP in question. The originator of the IP should be aware that publication prior to the filing of patent applications may prevent the granting of certain patents.
- DkIT may decide at any stage to withdraw from the process of exploiting a particular piece of IP. This may arise where:
 - concern regarding the technical or commercial feasibility of a particular piece of IP,
 - costs of exploiting the IP are excessive, or
 - external sponsorship of the process is no longer available.
- The originator of the IP will be notified in writing of the intention of DkIT to withdraw from the process and the withdrawal will apply from immediate effect.
- The IP may, at DkIT's entire discretion, be assigned or licensed to the originator in appropriate circumstances, offering the opportunity to the originator of the IP to pursue exploitation independently.
- No patent application, assignment, licensing or other agreement may be entered into or will be considered valid with respect to DkIT IP except when properly and lawfully executed by DkIT.

12. COMMERCIALISATION

The Office of Strategic Planning, Communications & Development will assist, provide advice, or procure the provision of outside professional advice in relation to the various options for commercialisation and technology transfer that may be appropriate in order to best meet the aims of this IP Policy, including:

- Licensing the IP to a third party for a fixed sum or a royalty related to future sales.
- Assigning the IP to a third party for a fixed sum or a royalty related to future sales.
- Developing the commercial potential of the IP through the formation of a start-up company.
- Developing the commercial potential of the IP through a joint venture with a third party.
- Any other arrangement that may be considered appropriate.

In providing this advice and assistance, the Office of Strategic Planning, Communications & Development will give due consideration to the retention of the right to use and access know-how and research materials for the purpose of continuing and further research.

13. LICENSING AND DIVISION OF INCOME

Licensing

It is the responsibility of the Technology Transfer Manager to negotiate licensing terms and conditions. Prior to initiating negotiations the Technology Transfer Manager will seek approval from the IP committee. Upon reaching final terms and conditions the IP Committee will review and make a recommendation to the President as to whether such an agreement should be entered into.

Division of Income – General Principles

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

- DKIT welcomes the development by industry, for public use and benefit, of inventions and other IP resulting from DKIT research. DKIT will maintain a flexible and open approach to bringing DKIT IP into commercial use. Each case will be considered individually and will involve an assessment of all the potential risks and potential rewards.
- The definition of “income” includes revenue derived from the relevant patents or other DkIT IP in question, which are commercialised by DkIT, and also includes (without limitation) up-front licence fees, down payments, minimum annual payments, royalties on sales and is net of any expenses incurred by the DkIT in commercialising or protecting the relevant patents or other DkIT IP.
- All direct expenses incurred by DkIT in
 - the patenting or other registration or protections of DkIT IP; and
 - the commercialisation of an invention or other DkIT IP;including (without limitation) administrative, licensing, legal, and any other expenses and costs and any subsequent investigation, development and promotion, will be deducted from the initial royalty income or lump sum. No royalty income will be made available for distribution until such expenses have been recovered.
- If more than one inventor or department is involved, unless formally agreed amongst themselves, with due regard to the value and substance of their respective contributions, the Inventor’s share set out above shall be divided equally among them.
- The division of royalty income will be carried out within 2 months of the receipt of such income by DkIT.
- The originator of the IP’s share shall continue to be paid even though he/she may have left DkIT.
- For the avoidance of doubt, individuals (whether originators of IP or otherwise) that are not Staff or Students but are Other Relevant Party shall not be entitled to royalty income arising from DkIT IP to which they have contributed unless this is stated in their contract of engagement or DkIT agrees otherwise in writing.

Division of Income From Patents

Income derived from inventions or other IP which are patented and commercialised by DkIT in accordance with the provisions of this IP Policy will (subject to any ministerial/government department consents which may be required from time to time) be distributed between the originator(s), the originator(s)' Department(s) and the DkIT Research and Technology Transfer office. While it is recognised that each project may have to be negotiated on its own merits, the following scale will apply (subject to final determination by the IP Committee):

Level of patent income	Inventor(s)	DKIT
First €20,000 of patent royalties	50%	50%
Over €20,000 of patent royalties	35%	65%

The IP Committee will also make a recommendation as to the further distribution of the DKIT portion among, for example, the relevant school, Inventor's department, research centre or technology transfer office.

Division of Income From Intellectual Property Other Than Patents

Division of income derived from commercialising DkIT IP which is not patented may occur from time to time and must be approved by the Financial Controller of DkIT on a case by case basis. It is intended that the division of income will where possible be agreed in advance of commencing a research project. However, it is acknowledged that it is more difficult to calculate the level of income that is derived from IP that is not patented than from patents due to issues such as the following:

- Non-patented IP is often used in bundles where a number of kinds of IP are involved e.g. trade secrets, confidential information and know-how with each kind of IP belonging to a separate originator.
- Where non-patented IP is supplied in bundles, it can be difficult to attribute specific value to each of the parts of the bundle.
- Third party IP may form part of the bundle in question.
- DkIT non-patented IP may include or be based on third party IP and it may be difficult to separate out the value of each.

The ranges of income that might be approved by the IP Committee are set out below in the Guide Table, however the final division of income will be approved by that Committee (and in certain circumstances, may require the approval of the Minister of Education and Science). DkIT reserves the right to offer a lump sum payment in lieu of an ongoing royalty payment.

Level of income derived from non-patented IP	Inventor(s)	DKIT
First €20,000 of income	10 - 50%	90 - 50%
Over €20,000 of income	10 - 35%	90 - 65%

The IP Committee will also make a recommendation as to the further distribution of the DKIT portion among, for example, the relevant school, Inventor’s department, research centre or technology transfer office.

14. Campus Company designation.

Definitions:

A “Campus Company” is a private limited liability company promoted by a member/members of DKIT Personnel to trade in an agreed range of goods or services for a specified period and formed in accordance with the policy and procedures outlined in this document. A campus company is a commercial company with a strategic link to the knowledge, research or strategic activities of the Institute.

An “Institute Company” or “College Company” is a company established and owned by DKIT for the purpose of providing services of the institute or engaging in activities on behalf of the Institute.

The Institute is of the view that the use of the appellation “a Dundalk Institute of Technology Campus Company” will be of benefit to a company, especially a newly formed company. In recognition of this the IP committee will consider applications for such a designation by companies who meet the requirements and agree to the conditions as outlined in ANNEX VII - Campus Company requirements and terms. The IP committee will recommend to the President to approve or decline such an application.

15. INTELLECTUAL PROPERTY CREATED OUTSIDE DkIT EMPLOYMENT

The DkIT will have no interest in any inventions or other IP created by Personnel entirely on their own time without the use of any DkIT Assets. The onus shall be on Personnel asserting their rights under this Clause 14 to prove to the satisfaction of the IP Committee that the relevant invention or IP was in fact created by them on their own time without the use of any DkIT Assets. Personnel must not infringe the Intellectual Property Rights of any third parties.

16. PUBLICATION OF RESEARCH RESULTS

It is DkIT Policy to encourage staff and students to place the results of their research in the public domain either through publication in learned journals or presentation at conferences. This is a vital factor for academic recognition. It is mandatory that such disclosure is not in

violation of the terms of any agreement that has been entered into by DkIT with a sponsor or other Third Party.

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

17. ARBITRATION

Any dispute between DkIT IP Committee and the originator of IP or an applicant for Campus Company designation will be forwarded to the President for review. Failing acceptance of the President's decision an independent arbitrator to be agreed by the parties will be appointed. Failing agreement, the arbitrator will be appointed by the President for the time being of the Law Society of Ireland. Expenses incurred in arbitration shall be deducted from royalty income before distribution.

18. CONFLICT OF INTEREST RELATING SPECIFICALLY TO EXTERNAL OR CONSULTANCY AGREEMENTS

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

19. ORGANISATIONS AND COMPANIES COLLABORATING WITH DkIT ON RESEARCH PROJECTS

As a public organisation, DkIT has an obligation to ensure the maximum public benefit from the exploitation of IP created from both publicly funded research and collaborative co-funded research. This is usually best maximised when IP is commercially exploited. DkIT will be guided by the relevant Irish Government policies or protocols which will be in place from time to time.

The DkIT IP Committee will conduct a commercial evaluation on the IP created/to be created in a research project and will seek information from the collaborating organisation on how it intends to commercialise the IP, and also determine the IP ownership rights they require from the project. The evaluation to determine the commercial value and IP ownership rights will include an examination of the criteria listed in Clause 11 of this policy. All such information requested and provided will be treated in strict confidence.

Upon above assessment, the IP Committee will decide on the IP ownership rights DkIT require and will agree the sale/assignment, licensing (exclusive or non-exclusive), or joint venture agreements with the collaborating company to ensure maximum commercial benefits. A legal

agreement will be executed between the parties, setting out the rights, entitlements and obligations of each party prior to the commencement of work on the project.

20. MONITORING AND EVALUATION OF POLICY

This IP Policy will be monitored by the Office of Strategic Planning, Communications & Development on an on-going basis. The Policy and related research, commercialisation and technology transfer will be monitored and evaluated on an annual basis and may be amended by DkIT from time to time. All amendments to this IP Policy shall be posted on the DkIT Intranet and such amendments shall be fully valid and effective from the date of posting.

ANNEX I

DEFINITION OF INTELLECTUAL PROPERTY

1 Intellectual Property

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

1.1 Patents

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

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

1.2 Copyrights

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

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

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

1.3 Trademarks

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

1.4 Industrial Design and Unregistered Design Right

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

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

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

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

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

1.5 Confidential Information and Know How

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

1.6 Domain Names

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

1.7 Tangible Research Property

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

1.8 Other Forms of Intellectual Property

Other forms of intellectual property include, but are limited to, database right for certain types of database (under Copyright and Related Rights Act, 2000); protection for semi-conductor topographies; plant breeders' rights in certain plant varieties; and protection against unfair competition under "passing off" law.

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

- It is developed by DkIT Personnel in the course of their normal or specifically assigned duties either when intellectual property could be reasonably expected to result from the carrying out of those duties and/or, at the time the intellectual property was developed, there was a special obligation on the relevant DkIT Personnel to further the interest of DkIT.
- Under the 2000 Act, the DkIT is the first owner of any copyright in the work created by DkIT Personnel in the course of his/her employment unless precluded by a prior agreement between the DkIT and a third party (or is covered by Clause 5 of this IP Policy).
- The intellectual property arises out of funded or non-funded research where such research has, in the opinion of DkIT, made use of the equipment, facilities, DkIT Assets and other resources of the DkIT unless such action was precluded by prior agreement between the DkIT and third parties.
- If it is a condition of a research contract with a third party that the DkIT should have ownership of the intellectual property arising from the contract.

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

First ownership of copyright.

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

Maker of database.

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

□ PATENTS ACT 1992 (1992 Act)

Right to patent.

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

ANNEX II

Intellectual Property Assignment Agreement for Personnel at Dundalk Institute of Technology (DkIT)

Research Project Title: _____ (the “Project”)

Research Project Number: _____

I understand that, consistent with applicable laws and regulations, Dundalk Institute of Technology (DkIT) is governed in the handling of intellectual property by its official Intellectual Property (IP) Policy entitled *Intellectual Property Policy and Procedures*, (a copy of which I have received), and I agree to abide by the terms and conditions of this IP Policy in the course of my DkIT activities and in the work that I carry out on the Project.

As a general rule (and subject to the exceptions set out in this IP Policy) any intellectual property rights in any material, (including any copyright (including rights in computer software and moral rights), patent, design right, trademark rights, brand rights, database rights, know how, trade secrets, confidential information rights in design, semiconductor topography rights or other intellectual property rights or other property rights, whether vested, contingent or future anywhere in the world), created by me in the course of my work with DkIT (and in particular in the course of my work on the Project) is the property of and vests solely and absolutely in DkIT (“DkIT Intellectual Property”).

Pursuant to this IP Policy, and in consideration of my participation in projects (and the Project) administered by DkIT, access to or use of facilities provided by DkIT and/or other consideration, I hereby agree as follows:

1. I will disclose to DkIT all potentially patentable inventions and other DkIT Intellectual Property conceived or first reduced to practice in whole or in part in the course of my DkIT responsibilities, my participation in the Projects at DkIT or with more than incidental use of DkIT resources. I further assign to DkIT all my right, title and interest in such patentable inventions and other DkIT Intellectual Property created in connection with DkIT and/or the Project and to execute and deliver all documents and do any and all such things necessary and proper on my part to effect such assignment. Such assignment is not inconsistent with the terms of my continuing employment outside of DkIT (if any) or with any other agreement I have entered into.
2. I will not use any information defined as confidential or proprietary by any non-DkIT employer (if any) in the course of my DkIT responsibilities and I will not do consulting or research work for any non-DkIT employer (unless such work is approved of in writing by DkIT).
3. I will not enter into any agreement creating copyright or patent obligations in conflict with this agreement. I hereby waive any moral rights to which I may be entitled under any legislation now existing or in future enacted in any part of the world and

for the avoidance of doubt this waiver shall extend to the licensees and successors in title to the copyright in the DKIT Intellectual Property and the Project.

4. This agreement is effective on date of my DkIT hire, enrolment or participation in projects administered by DkIT, and is binding on me, my estate, heirs and assigns.
5. [I hereby agree and acknowledge that in respect of the Project and in respect of my assignment of IP to DkIT in this Agreement, my full and final entitlement to payment, royalty or other income arising therefrom is set out in the Schedule to this Agreement and I further agree and acknowledge that I shall have no other entitlement or claim against DkIT or any party to whom DkIT assigns or licences this IP in respect of payment, royalty or other income arising therefrom.]¹

Signed this ----- day of -----, 20●●

Signature

Printed or typed name

DKIT title

DKIT Department

[Schedule]

[Insert details of payment, royalty or other income

OR

I agree and acknowledge that I have no right to any payment, royalty or other income in respect of the Project and in respect of my assignment of IP to DkIT in this Agreement].

¹ In the event that this document is to be signed by an Other Relevant Party, (as that term is defined in the Introduction of the IP Policy), it may be appropriate to include this provision and the Schedule.
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ANNEX III

Intellectual Property Agreement for Personnel at DkIT who have a prior existing and/or conflicting Intellectual Property Agreement or arrangement with another employer or a third party

I understand that, consistent with applicable laws and regulations, Dundalk Institute of Technology (DkIT) is governed in the handling of intellectual property by its official IP Policy entitled *Intellectual Property Policy and Procedures*, (a copy of which I have received), and I agree to abide by the terms and conditions of this IP Policy in the course of my DKIT activities.

As a general rule (and subject to the exceptions set out in this IP Policy) any intellectual property rights in any material, (including any copyright (including rights in computer software and moral rights), patent, design right, trademark rights, brand rights, database rights, know how, trade secrets, confidential information rights in design, semiconductor topography rights or other intellectual property rights or other property rights, whether vested, contingent or future anywhere in the world), created by you in the course of your work with DkIT is the property of and vests solely and absolutely in DkIT (“DkIT Intellectual Property”).

Pursuant to this IP Policy, and in consideration of my participation in projects administered by DkIT, access to or use of facilities provided by DkIT and/or other consideration, I hereby agree as follows:

1. I will disclose to DkIT all potentially patentable inventions and other DKIT Intellectual Property conceived or first reduced to practice in whole or in part in the course of my DkIT responsibilities, my participation in research projects at DKIT or with more than incidental use of DkIT resources. I further assign [jointly] to DkIT [and to my non-DKIT employer]² all my right, title and interest in such patentable inventions and other DkIT Intellectual Property created in connection with DkIT and to execute and deliver all documents and do any and all such things necessary and proper on my part to effect such assignment. Such assignment is not inconsistent with the terms of my continuing employment outside of DkIT or with any other agreement I have entered into.
2. I will not use any information defined as confidential or proprietary by my non-DKIT employer in the course of my DkIT responsibilities and I will not do consulting or research work for my non-DKIT employer while at any facility owned or leased by DkIT.
3. I am free to place my inventions in the public domain as long as in so doing neither I nor DkIT violates the terms of any agreements that governed the work done or my agreements with my non-DKIT employer.

² To be considered on a case by case basis
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4. I will not enter into any agreement creating copyright or patent obligations in conflict with this agreement.
5. This agreement is effective on date of my DkIT hire, enrolment or participation in projects administered by DkIT, and is binding on me, my estate, heirs and assigns.
6. [I hereby agree and acknowledge that in respect of the Project and in respect of my assignment of IP to DkIT in this Agreement, my full and final entitlement to payment, royalty or other income arising therefrom is set out in the Schedule to this Agreement and I further agree and acknowledge that I shall have no other entitlement or claim against DKIT or any party to whom DkIT assigns or licences this IP in respect of payment, royalty or other income arising therefrom.]³

Signed this ----- day of -----, 20●●

Signature

Printed or typed name

DkIT title

DkIT Department

Acknowledged and accepted:

Non-DkIT Employer: -----
(Insert name)

³ In the event that this document is to be signed by an Other Relevant Party (as that term is defined in the Introduction of the IP Policy), it may be appropriate to include this provision and the Schedule.
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Signature

Title

Date

[Schedule]

[Insert details of payment, royalty or other income

OR

I agree and acknowledge that I have no right to any payment, royalty or other income in respect of the Project and in respect of my assignment of IP to DkIT in this Agreement.]

ANNEX IV

INVENTION DECLARATION FORM

IDF No. _____

Date Received: _____

1. Title of Invention

2. Inventors

	Department	Affiliation with Institute (i.e. department, student, staff, visitor)	Address, contact phone no., e-mail	% Contribution to the Invention

3. Contribution to the Invention

Each contributor/potential inventor should write a paragraph relating to his/her contribution and include a signature and date at the end of the paragraph.

4. Description of Invention

(Please highlight the novelty/patentable aspect. Attach extra sheets if necessary including diagrams where appropriate).

5. **Why is this invention more advantageous than present technology?
What are its novel or unusual features?
What problems does it solve?**

--

6. **Sponsorship**

Government Agency & Department	
% Support	
Contract/Grant No.	
Contact Name	
Phone No.	
Address	

Industry or other Sponsor	
% Support	
Contract/Grant No.	
Contact Name	
Phone No.	
Address	

7. **Where was the research carried out?**

--

8. What is the potential commercial application of this invention?

9. Was there transfer of any materials/information to or from other institutions regarding this invention?

If so please give details and provide signed agreements where relevant.

10. Have any third parties any rights to this invention?

If yes, give names and addresses and a brief explanation of involvement.

11. Are there any existing or planned disclosures regarding this invention?
Please give details.

12. Has any patent application been made? Yes/No

If yes, give date: _____ Application No.: _____

Name of patent agent: _____

Please supply copy of specification.

13. Is a model or prototype available? Has the invention been demonstrated practically?

I/we acknowledge that I/we have read, understood and agree with this form and the Institute's *Intellectual Property and Procedures* and that all the information provided in this disclosure is complete and correct.

I/we shall take all reasonable precautions to protect the integrity and confidentiality of the IP in question.

Inventor: _____
Signature **Date**

Inventor: _____
Signature **Date**

Inventor: _____
Signature **Date**

Inventor: _____
Signature **Date**

Reviewed By IP Committee on: _____

Decision:

Signed: Technology Transfer Manager: _____

ANNEX V

Data Protection and Confidentiality Undertaking for Employees, Contractors or Students taking part in a project involving DkIT and an outside Partner:

DATA PROTECTION AND CONFIDENTIALITY UNDERTAKING

Name:

Employee/Student ID Number (if applicable):

Function:

Project Title/Project Number:

In consideration of my appointment by Dundalk Institute of Technology (DkIT) as a [assistant] in the performance of services (“Services”) under the [research agreement] (Agreement) between DkIT and [NAME OF PARTNER] (Partner) and the related opportunity to gain experience in the Services, I hereby acknowledge that I will acquire certain confidential information (Confidential Information) relating to DkIT’s intellectual property, products and strategies and the intellectual property, products and strategies of the Partner.

I hereby undertake to use the Confidential Information only as may be necessary to perform the Services under the Agreement and not to disclose it to any person other than those who have agreed to the same confidentiality undertaking.

I shall use all precautions necessary to protect the Confidential Information from unauthorized disclosure.

I hereby acknowledge that the Confidential Information is a trade secret of DkIT and/or the Partner and that DkIT and/or the Partner may claim damages from the undersigned for loss of business in the event of any unauthorized disclosure.

For the purposes of the Data Protection Acts 1988 to 2003, I hereby consent to the processing of all personal data that I provide to DkIT in connection with the performance of the Services and the Agreement.

This undertaking will continue indefinitely until

- (a) the Confidential Information is published or otherwise made public by DkIT;
- or
- (b) I am expressly released from this undertaking by DkIT,

and is not conditional on my being or remaining an employee or student of DkIT.

I hereby acknowledge that this undertaking will also benefit the successors and assigns of DkIT together with its related bodies corporate.

Dated:

Signature of person giving the undertaking

Signature of Witness
Name of Witness:

ANNEX VI

NON-DISCLOSURE AGREEMENT

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on • 200•.

PARTIES:

- (1) **DUNDALK INSTITUTE OF TECHNOLOGY** of Dublin Road, Dundalk, County Louth (**DkIT**); and
- (2) • of • (**Receiving Party** which expression shall be deemed to include those of its employees or advisors to whom any Confidential Information is to be disclosed).

BACKGROUND:

DKIT proposes to allow the Receiving Party access to certain information concerning its business to enable the Receiving Party to consider and evaluate a possible commercial relationship between DkIT and the Receiving Party (**Project**). The Receiving Party agrees to hold and maintain as confidential all such information provided by DkIT for such purposes, on the terms and conditions of this Agreement.

AGREED TERMS:

Now it is hereby agreed as follows consideration of DkIT disclosing the Confidential Information (as defined below) to the Receiving Party:

1. **Definition**

Confidential Information means any and all information in whatever form disclosed by DkIT to the Receiving Party whether orally or in writing or whether eye readable, machine readable or in any other form including, without limitation, the form, materials and design of any relevant software (including source and object code) or equipment or any part thereof, the methods of operation and the various applications thereof, processes, formulae, plans, business plans, strategies, data, know-how, ideas, designs, photographs, drawings, specifications, technical literature, information relating to employees, customers, subscribers, students, post doctoral students, contractors registered with DkIT, suppliers or content providers and any other material made available by DkIT to the Receiving Party or gained by the visit by the Receiving Party to any establishment of DkIT whether before or after this Agreement is entered into, for the purpose of considering, advising in relation to or furthering the Project (and any information derived from such information) and provided that such information is by its nature clearly confidential (whether or not that information is marked or designated as confidential or proprietary).

2. Undertakings

The Receiving Party hereby undertakes with DkIT:

- (a) to maintain the Confidential Information in strict confidence;
- (b) save as provided in this Agreement, not divulge any of the Confidential Information to any third party or communicate, indicate or suggest to any third party the existence of the Project;
- (c) not to make use of the Confidential Information other than for the purpose of the Project;
- (d) not at any time contest or dispute the ownership of the Confidential Information;
- (e) to restrict access to the Confidential Information only to its own responsible employees or professional advisers who need to have such access for the purposes of the Project and to impose upon such persons obligations of confidentiality equivalent to those contained in this Agreement (and to be responsible for any breach of the terms of this Agreement by its own employees or professional advisers);
- (f) not at any time to reverse engineer, decompile or disassemble any software disclosed to it in the course of the Project and not to remove, overprint or deface any notice of copyright, trademark, logo, legend or other notices of ownership from any originals or copies of Confidential Information;
- (g) to take or to permit to be taken only such copies of any document or other material (in whatsoever medium) embodying any of the Confidential Information as are reasonably necessary for the purposes of the Project
- (h) if the Receiving Party receives any communication requesting disclosure of any of the Confidential Information or indicating an intention to obtain or the fact that there has been obtained any order which would oblige the Receiving Party in law to disclose any of the Confidential Information, the Receiving Party will (immediately and by the fastest means possible, confirmed in writing) communicate to DkIT the fact that the communication has been received and all details of the same with a view to the parties co-operating in taking all reasonable and proper steps to ensure so far as is possible that the Confidential Information and the Project are maintained in the strictest confidence; and
- (i) to confirm to DkIT in writing at any time on request that it has complied and continues to comply with the provisions hereof.

3. Acknowledgements and Confirmations

The Receiving Party hereby further acknowledges and confirms to DkIT as follows:

- (a) that the Confidential Information is proprietary information of DkIT, the disclosure of which could adversely affect the business of DkIT and result in economic harm;

- (b) that neither DkIT nor any of its advisers nor any of its agents, officers, students, post doctoral students, contractors registered with DkIT, or employees accept responsibility or liability for or make any representation, statement or expression of opinion or warranty, express or implied, with respect to the accuracy or completeness of the Confidential Information or any oral communication in connection therewith unless and save to the extent that such representation, statement or expression of opinion or warranty is expressly incorporated into any legally binding contract executed between the parties;
- (c) that the provisions of this Agreement shall continue in effect notwithstanding any decision by the parties not to proceed with the Project or any return or destruction of the Confidential Information;
- (d) that damages alone would not be an adequate remedy for any breach of the provisions of this Agreement and, accordingly, without prejudice to any and all other rights or remedies that DkIT may have against the Receiving Party, DkIT shall be entitled without proof of special damage to the remedies of temporary or permanent injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement;
- (e) that if DkIT furnishes or has furnished any confidential information of an affiliated company, the Receiving Party will have the same obligations to such affiliated company with respect to such information as it has to DkIT with respect to the Confidential Information as if all references in this Agreement to DkIT were references to such affiliated company; and
- (f) that the disclosure of the Confidential Information by DkIT shall not be deemed to confer any proprietary rights upon the Receiving Party nor shall such disclosure be construed as granting any license of rights of any intellectual property in the Receiving Party.

4. Exceptions

The undertakings contained in Clause 2 and the confirmations and acknowledgements contained in Clause 3 shall not apply to Confidential Information which:

- (a) is or becomes publicly available, other than as a result of a breach of this Agreement, or becomes lawfully available to the Receiving Party from a third party free from any confidentiality restriction;
- (b) was already in the possession of the Receiving Party (as shown by its pre-existing written records) before it was disclosed to the Receiving Party;
- (c) was independently developed without access to or use of the Confidential Information;
- (d) the Receiving Party is required to disclose:
 - (i) by law;
 - (ii) by any rule or regulation of any stock exchange;
 - (iii) by any Court procedure; or

- (iv) by any rule or regulation of any governmental or other competent authority,
provided that, so far as is practicable to do so the Receiving Party shall consult with DkIT prior to such disclosure with a view to agreeing its timing and content.

5. Return of Confidential Information

The Receiving Party hereby undertakes with DKIT:

- (a) upon demand by DkIT or its professional advisers, to either return to such person as they may direct, or destroy, at the option of DkIT all the Confidential Information (including all printed and electronic copies thereof) in its possession or control; and
- (b) upon the return or destruction (as the case may be) of all the Confidential Information, to provide DkIT with a certificate from an authorised officer stating that it has complied with its obligations under this Clause.

6. Indemnity

The Receiving Party agrees to fully indemnify, keep indemnified and hold harmless DkIT against all losses, damages, claims, costs, expenses, liabilities, proceedings and demands which DKIT may suffer or incur or which may be made against DkIT as a result of any unauthorised disclosure or use of the Confidential Information by the Receiving Party, its employees and/or professional advisers.

7. Term

- (a) The Receiving Party agrees that its agreements, covenants and undertakings set out in this Agreement will continue in full force and effect and will apply to the Confidential Information for the period of [3] years from the date of this Agreement.
- (b) The provisions of this Agreement shall continue in force notwithstanding the fact that the Project is not proceeded with or has been terminated and regardless of the reasons for such termination.

8. General

- (a) The laws of Ireland shall govern this Agreement and any disputes, claims or proceedings arising out of or in any way relating to this Agreement.
- (b) The Irish courts shall have exclusive jurisdiction for the purpose of any proceedings arising out of or in any way relating to this Agreement.
- (c) This Agreement contains the entire agreement between the parties and supersedes all prior oral, written representations, understandings, or agreements.
- (d) Both parties must agree any changes to this Agreement in writing.
- (e) Each Clause of this Agreement is severable if deemed void, illegal or unenforceable by a court or competent authority.

**Signed for and on behalf of
DKIT by its authorised signatory:**

**Signed for and on behalf of
by its authorised signatory:**

ANNEX VII

Campus Company Policy and Procedure:

Campus Company Policy and Procedures for Dundalk Institute of Technology Personnel revised January 2017

Definitions:

- A. A “**Campus Company**” is a private limited liability company promoted by a member/members of the Institute Personnel⁴ to trade in an agreed range of goods or services for a specified period and formed in accordance with the policy and procedures outlined in this document. A campus company is a commercial company with a strategic link to the knowledge, research or strategic activities of the Institute.
- B. An “**Institute Company**” or “**College Company**” is a company established and owned by the Institute for the purpose of providing services of the Institute or engaging in activities on behalf of the Institute.
- C. DkIT defines **Intellectual Property (IP)** as the tangible or intangible results of research, development, teaching, or other intellectual activity (and as defined in the Institute’s Intellectual Property Policy). Such IP may be created by academic, research and other Staff, by Students and by Other Relevant Parties such as contractors and consultants.

Policy

Preamble

The Institute is of the view that the use of the appellation “a Dundalk Institute of Technology Campus Company” will be of benefit to the promoters. Therefore, permission to use the appellation will be subject to written permission from the Institute. This permission may be withdrawn at any time if the Institute is dissatisfied as to the conduct of the company or the standard of the company’s compliance with its various legal obligations. The Institute’s determination as to what constitutes unsatisfactory compliance will be conclusive. Once served with notice of dissatisfaction, a company may no longer hold itself out as a campus company of the Institute and must amend its stationery and advertising immediately.

⁴ In this policy, the term “personnel” refers to staff, students and other relevant parties.
dundalk it ip policy jan 2017

Subject to the above preamble:

- 1) The objectives of a campus company formed in accordance with this policy shall normally include the commercialisation of research, development and consultancy activities of Institute personnel or the results of European Union, national programmes and other development projects undertaken by personnel.
- 2) This policy and the procedures set out for the formation of campus companies shall comply with the Regional Technical Colleges Act (1992) and Institutions of Technology Act 2006, extant Company Law and other relevant legislation.
- 3) Promoters of campus companies may nominate as joint promoters' persons who are not personnel of the Institute, provided that at least one of the promoters is a member of Institute personnel. The Institute reserves the right to decline any nomination of specific promoters in its response to applications. In the case where all promoters have an interest, defined by the current Institute IP policy, in IP related to the company, an agreement to exploit the IP, with consideration of the provisions of the current Institute IP policy, must be reached with all such inventors.
- 4) The President is authorised to grant approval to a member/s of personnel to proceed with the formation of a campus company in accordance with the definition, policy and procedures set out herein. Those Institute personnel acting as shareholders, directors or consultants to campus companies must have approval from the President.
- 5) The Institute retains the right to suspend or permanently revoke campus company status. If such action is considered the Institute will write to the campus company explaining the reasons for its actions, providing, if possible, a reasonable period to resolve the issues. If the Institute is satisfied by the remedial actions taken by the company then the continuation of campus company status may be granted by the Institute. However, the Institute retains the right to make a final decision in this regard. In situations in which the campus company status is revoked, any agreements on IP, and provision or exchange of equity, services and facilities, between the campus company and the Institute, must be honoured by all parties to this agreement.

Requirements:

1. The company may organise its internal operations as it sees fit, in accordance with its memorandum and articles of association.
2. The company will at all times ensure that those trading with it are aware of its limited liability status and that the Institute is not in any way responsible for its operations.

3. A condition for receiving Campus Company status, the Promoters must provide evidence of personal and professional indemnities to hold the Institute harmless against suits taken against the company.
4. Any employee of the campus company will be advised and know that the employment contract is with the company and not the Institute.
5. To maintain Campus Company Status, the company will agree to comply with the provisions of the Companies Acts with regard to filing and other legal obligations. An annual certificate confirming compliance with the filing requirements of the Companies Acts and compliance with the filing and other requirements by the Revenue authorities will be a requirement to maintaining campus company status. Recognition will be withdrawn in the event of non-compliance. Such documentation should be provided to the Institute on an annual basis. Evidence of insurance to be produced on an annual basis.
6. The Institute will receive an agreed equity share or retain an option to acquire an equity holding at no cost in all campus companies. This equity share will be a minimum of 5% and a maximum of 15% depending on campus company use of Institute Intellectual Property, facilities and services as well as commercial considerations and will be determined on a case by case basis. The IP Committee (defined in the Intellectual Property Policy & Procedures document of the institute) will make a recommendation of the % equity share to the President in this regard.
7. DKIT retains the right to nominate a director to any campus company. This Director will be selected in consultation with the company.
8. A written agreement covering time and payment issues, between the Campus Company and the Institute will be required for the use of Institute facilities, services and resources. Agreements will be reviewed annually.
9. The Institute retains the right to request any company information at any time and should be provided with such information within eight weeks of request. Campus Companies are required to present a written report of the company's activities detailing the progress of the company against its business plan every 6 months during the first three years of operation and annually thereafter to the Vice President for Finance & Corporate Affairs and Vice President of Strategic Planning, Communications and Development .
10. Campus companies will be permitted to use the DkIT name, logo and association in their promotion and advertising activities. The Institute retains the right to revoke this permission. The Institute reserves the right to use non-commercially sensitive information about Campus Companies for publicity and promotional purposes and will be done in consultation with the Campus Company.
11. The Campus Company will be subject to the procedures outlined in the policy on Intellectual Property Rights in the Institute. This policy addresses the ownership of Intellectual Property rights, income from them and the use of Institute facilities for

the development of Intellectual Property. A separate agreement to assign IPR to the campus company will be required.

12. Once a campus company is in operation any significant change in the approved focus of the business should be reported to the Institute.
13. The Institute retains the right to revoke campus company status and support from the company should the following instances occur:
 - Concerns about the liability of the Institute
 - Change in business substantially in that it no longer reflects the nature and activities as outlined in its original submission to the IP Committee
 - Unethical practices including equality issues or fraud or other financial malpractice
 - Concerns about the commercial viability of the company.

Revocation of campus company status will, as a consequence, preclude the company from using Institute facilities. They would be required to vacate the premises within 30 days and will have no claim against the Institute for any resultant costs. In such an event, the Institute in consultation with the company will determine how the Institute's equity share and or options will be affected. This will be determined on a case by case basis.

Procedures

The procedure for the establishment of a Campus Company as defined herein is outlined in the following steps:

1. Discuss idea/proposed campus company with the Technology Transfer Manager
2. The Technology Transfer Manager will schedule a meeting of the IP Committee to consider the application.
3. Submission of a Business Plan to the IP Committee
4. Presentation of proposal to the IP Committee:

At this stage, or prior, the President and Members of the IP Committee will be required to declare their interest in a proposal if such exists and to absent themselves from any discussion pertaining thereto.

Promoters will be required to make presentations to the IP Committee. The Technology Transfer Manager will advise promoters on requirements for this presentation. The applicant will be required to provide the following information:

- Board composition
- Business plan outlining proposed business, link with the Institute, marketing strategy and financial projections
- Company information including names of shareholders, articles, memorandum
- Information concerning links with non-campus companies and non-staff
- Funding or proposed funding arrangements – e.g. Enterprise Ireland grants, external sponsorship etc.
- The extent to which Institute resources (facilities, equipment, human etc.) are required and the access arrangements and frequency of use envisaged.

5. IP Committee makes recommendations to the President. The possible recommendations may be for:
 - Approval as a campus company
 - Refusal of campus company status
 - Resubmission of business plan subject to modifications
 - Removal of a campus company
6. The President reviews the IP Committee recommendation and makes the final decision on approval, in accordance with the policy, and procedures herein. Appeals against refusal may be made to the President, who can consult directly with members of the IP Committee. A formal process for appeals will be put in place.
7. The President approves the campus company proposal.
8. Notice of new campus companies is given to the Governing Body and to the Institute's Insurers.
9. Campus Company registers as a company in accordance with the Companies Acts.
10. A Service Level Agreement between the Institute and the Campus Company is drawn up on all aspects of Institute support to include access the incubation space, research labs, specialist equipment etc.

The Institute retains the right to amend the Campus Company Policy and Procedures in the future. However, this will not alter agreements already in place.