MANAGEMENT OF STAFF AND STUDENT INTELLECTUAL PROPERTY POLICY

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Scope of the Policy

1. **This Policy applies to** all Intellectual Property (IP) generated at the University, by staff members, students and all who have signed a written agreement with the University agreeing to be bound by its regulations, policies and procedures.

Purpose of the Policy

2. **Promotion of IP utilisation**. To promote an entrepreneurial culture and greater creation of academic, societal and financial value at the University.

   IP management. To set the framework for the protection and translation of the IP arising from the University's work into products, services and processes.

   Rights and responsibilities. To clarify the University's position regarding ownership and use of IP, the recognition and reward for the Creators, and the rights and responsibilities of all parties, and to observe good practice in relation to IP.

   Fair and reasonable. To be a fair and reasonable approach to IP ownership and exploitation that benefits Creators and the wider University.

   Entrepreneurial culture. To encourage an entrepreneurial culture and foster IP awareness and commercialisation and activity.

Definitions

3. **Creator**. Within the IP laws of the United Kingdom, a Creator is any person who creates, conceives, reduces to practice, authors, or otherwise makes a substantive intellectual contribution to the creation of IP and to whom this Policy is applicable. For this policy, a Creator can be any person to whom this policy applies (see para 1).

4. **Enabler**. Any staff other than the Creator(s) who have made significant sustained contributions beyond that typically expected from their role that have (i) indirectly contributed to the creation of IP, and/or (ii) without whom the successful commercialisation would not have been possible. Enablers will not be listed themselves as a Creator in terms of Intellectual Property.

5. **Intellectual Property (IP)**. All outputs of creative endeavour in any field at the University for which legal rights may be obtained or enforced. IP may include, but is not limited to:
   - Literary works, including publications.
   - Teaching and learning materials.
   - Outcomes of research and innovation.
   - Original literary, dramatic, musical or artistic works, sound recordings, films, broadcasts.
   - Databases, tables or compilations, computer software.
   - Patentable and non-patentable technical information.
   - Designs including layout designs (topographies) of integrated circuits.
   - Plant varieties and related information.

   The Intellectual Property Office contains a comprehensive list of intellectual property types, see the UK Intellectual Property Office's IP Overview section.

6. **Background Intellectual Property.** Background IP is defined as any Intellectual Property Rights, know-how, developed, controlled, in application process or owned by a Party prior to their commencement date at the University.

7. **Intellectual Property Rights (IPRs)**. The proprietary rights that may be granted should the statutory requirements for protection be met that result in a patent, copyright, trademark, registered design, database rights, trade secrets.

8. **Patent**. A patent is an intellectual property right to protect inventions, granted by a country's government as a territorial right for a limited period. Patent rights make it illegal for anyone except the owner or someone with the owner's permission to make, use, import or sell the invention in the country where the patent was granted. For a patent to be granted the invention must be: (i) something that can be made or used, (ii) new, and (iii) have an inventive step - not just a simple modification to something that already exists.

9. **Know-how.** This is generally confidential and separate from proprietary intellectual property rights such as patents, copyright or design rights. Know-how can be equally valuable to IP rights and essential to optimally exploit related IP, such as a patented invention or software product; it is often included in technology transfer arrangements. Commercial confidential information is also referred to as a trade secret. This might include unique research methodologies, data analysis techniques, distinctive creative processes or specialised skills.

10. **Invention**. A new discovery, typically a device, apparatus, or process that the Creator(s) believe may be patentable.

11. **Substantial Use**. Substantial Use is defined as being use of University resources to a degree or nature that either (i) is not routinely made available to staff or students in the course of their employment or study, or (ii) makes a crucial contribution to the IP created. Resources include but are not limited to facilities, equipment, staff, funds, bursaries and Background IP that is not publicly available. Not included is routine use of libraries or office space. Substantial Use will be determined from discussions between the involved parties and the IP and Commercialisation Team (IPCT).

12. **Gross IP Revenue.** Is defined as 'all revenue received by the University for commercialisation of University IP before any cost recovery or deductions for IP Expenses' and includes, but is not limited to, outright sale of IP, option payments received, licence fees received, evaluation fees received, upfront and milestone payments received, royalty payments received, share of profits received, dividends received, commissions, income through disposal of equity, and direct sale of products or services.

13. **IP Expenses**. Is defined as 'all expenses incurred by the University in the management of IP for which Gross IP Revenue has been received' and includes, but is not limited to, those expenses that relate to (i) the University's expenses incurred by payment to external entities for securing, maintaining and enforcing IP protection, such as patenting and litigation expenses; (ii) costs incurred by the University in the licensing/assignment of IP, including marketing costs, contract negotiation and drafting costs; and (iii) costs in making, shipping or otherwise distributing products, processes or services that embody the particular IP, but not including staff time or general administrative costs.

14. **Net IP Revenue.** Is defined as Gross IP Revenue less IP Expenses.

15. **Visitors**. People working at the University who have signed a written agreement with the University agreeing to be bound by its regulations, policies and procedures (see para 1) but are not staff and students. This includes, but is not limited to, visiting researchers, secondments and sabbaticals.

Operations

16. **The IP and Commercialisation Team (IPCT).** The IPCT, centred within the University's Department of Research & Innovation (DRI) manages the IP and commercialisation budget and is responsible for overseeing IP, patent and commercialisation activities at the University. It works with staff and students to help them interpret and comply with the requirements of the policy, and to provide advice and support in managing and commercialising IP. Contact IPCT at: Intellectual-Property@port.ac.uk

Ownership of IP and Rights of Use

17. **Background IP**. Upon commencing employment, enrolment or an appointment, all in scope for this Policy (see para 1) must declare any existing IP relevant to the work to be undertaken at the University. This is to ensure that the development of any subsequent IP is as easy and effective as possible. This declaration is made using the Background IP Declaration Form (available on request from IntellectualProperty@port.ac.uk). If there is no relevant IP then the form need not be submitted.

18. **Summary of IP ownership by staff and student category.** The approach to IP ownership reflects employment and study terms, recognises the contributions made and enables the University to provide the most effective support to the successful exploitation of the IP.

Staff or Student Category	Ownership of IP
Academic Staff	University
Non-Academic Staff	University
Visitor	Jointly held with University normally
PhD or MRes Student (University funded)	University
PhD or MRes Student (Research Council funded)	University
PhD or MRes Student (other external funder)	University, unless stipulated in funding agreement
PhD or MRes Student (self-funded & with †Substantial Use of University facilities)	University
PhD or MRes Student (self-funded & without †Substantial Use of University facilities)	Student normally (see para 24)

Professional Doctorate (employer funded)	Employer normally
Professional Doctorate (self-funded)	Student normally
Professional Doctorate (self-funded with †Substantial Use of University facilities)	University normally
Professional Doctorate (other funder)	University, unless stipulated otherwise in funding agreement
Masters Student Taught	Student normally (see para 24)
Undergraduate Student Taught	Student normally (see para 24)
Degree Apprentices Taught	Employer normally (see para 24)

†For definition of Substantial Use, see para 11.

19. **IP Created by Staff Members**

20. **University ownership**. The University owns all IP created by a Staff Member:

    1. In the course and scope of their employment; or
    2. Which is created by making Substantial Use of the University's resources, but outside of the course of their normal employment duties.

    Staff Members agree to take all necessary steps required by the University to assign all IP created in accordance with this paragraph. Staff Members should ensure that they are fully aware of the provisions of the University's Content Capture Policy.

21. **IP created outside of employment**. Staff Members will own the IP they have created when such IP was created outside of the course and scope of their normal employment duties. Specifically, when the IP is created by the employee (i) entirely on his or her own time, (ii) without Substantial Use of the University's resources, (iii) does not relate directly to their University work, and (iv) does not make use of the outcomes of their work performed for the University.

22. **IP emanating from research or innovation contracts**. Ownership of IP arising from research or innovation projects must be defined in the project's contract and governing documentation.

23. **Appointment of University staff members at another university**. It is the responsibility of each Staff Member who holds an honorary or other academic appointment at another university (the Host University) to bring to the Host University's attention their obligations under this IP Policy, prior to formally signing the appointment agreement with the Host University.

24. **IP Created by Students**

    A high-level summary of student IP ownership is given in the table above (para 18).

25. **Taught Undergraduate or Masters students (including degree apprenticeships) and research-based Masters and PhD students**. Any student who generates IP as part of their academic programme (e.g. through their project element) will have sole ownership of this IP unless:

25.1 The IP was generated as part of an activity where a third party requires ownership and this is contractually agreed (e.g. where on a student placement a host requires ownership, an employer is funding their employees programme of study or where research is externally funded and the funder requires ownership, see para 26).

25.2 The course or work is funded by the University or a Research Council.

25.3 The student generated IP builds upon existing IP generated by University staff.

25.4 The student generated IP is jointly created with University staff.

25.5 The student makes Substantial Use of the University's resources (excluding supervision).

25.6 The IP created are teaching materials (see paras 33-36).

25.7 The student is recruited on a specific understanding that due to the commercial or IP sensitive environment they will not own the IP.

Where the exceptions 25.2 to 25.6 apply the University will be the sole owner of the IP. This does not impact on either the student's right to be recognised as a Creator of the IP nor their right to a share in revenues (see paras 40 and 42).

26. **IP emanating from research or innovation contracts with an external party**. The terms of the research or innovation contract will regulate the ownership of IP created by a student.

27. **Student placements**. The IP arrangements for student placements are defined by the agreement reached between the external organisation and representatives of the University organising the placements, who will ensure that the confidentiality of any relevant background IP of university staff is taken into consideration.

28. **External bursaries/scholarships**. An external party that grants a bursary or scholarship to a Student may elect to own the IP created by that student provided the student and the University have consented to the assignment of IP ownership in writing. In cases where the external party does not elect to own the IP then the ownership will revert to that set out in para 18.

29. **University commercialisation of student IP**. If desired by the student, IPCT may, upon agreement, provide commercialisation services to students to help exploit their IP. In this event, students will be required to assign their IP to the University and will be afforded the same rights and obligations as staff members under this policy.

30. **IP Created by Visitors**

31. **Ownership**. Ownership of IP created by visitors will normally be jointly held with the University. The relative contributions made by each party to the IP will be agreed between the Visitor and the University staff they work with and overseen and approved by IPCT after an Invention Disclosure Form has been submitted.

32. **Leaving the University**. On leaving the University, a visitor must sign and submit to the IPCT an IP Disclosure Form disclosing any IP created by them whilst at the University. If no IP has been created the form does not need to be completed.

33. **Rules for Course and Teaching Materials**

34. **University ownership.** The University will own the IP in course materials created by a staff member or a visitor, with the exclusion of course material created from or for open educational resources.

35. **The University is solely allowed to commercialise course and teaching materials** created by those to whom this policy applies, whether for financial gain or not, including licensing or assigning the IP in course and teaching materials to third parties. For clarity, revenue sharing (paras 40-47) does not apply to revenues generated from course and teaching materials.

36. **Licensed by the University**. The University grants the creators of course materials a royalty-free, non-exclusive licence to use the course materials created by them for teaching, research and innovation purposes at the University. Whilst not normal practice, the University reserves the right to refuse permission for staff to use course materials created whilst at the University in another role if they leave the University. With the express prior written permission of the University, such licence may be utilised for commercial purposes outside the University.

37. **Rules for Scholarly Works**

38. **Publication.** The University recognises and endorses the rights of staff members, students and visitors to publish their scholarly works. However, staff members, students and visitors are strongly encouraged to disclose, in advance of publication, any University IP within the publication that they believe to be exploitable; this is so IPCT can protect the IP prior to public disclosure (see para 48 and 49).

39. **Licensed to the University**. Where free to do so, staff members, students and visitors grant to the University a non-exclusive, royalty free licence to use their scholarly works for the University's administrative, promotional, research, innovation and teaching purposes.

Sharing of Revenue

40. **The University owns all IP created by a staff member**, as set out in the Contract of Employment (para 20), but wishes to share the financial benefits with the staff member(s) received from successful commercialisation activities, with the exception of all revenues generated from course and teaching materials (para 35). Subject to any contrary agreement, cessation of employment with the University will not normally affect an individual's right to receive a share of income in accordance with para 41-47.

41. **Distribution of cumulative Net IP Revenues**. The distribution of the cumulative Net IP Revenue is:

		University	
Cumulative Net IP Revenue	**Creator**	**Centre**	**Dept/School**
£0 to £5,000	100%	0%	0%
£5001 to £50,000	75%	12.5%	12.5%
£50,001 to £100,000	50%	25%	25%
Above £100,001	25%	37.5%	37.5%

Note: the cumulative Net IP Revenue is cumulative over the lifetime of the IP.

42. **Where there is more than one Creator**, the Creators are entitled to an equal or *pro rata* share, based on contribution, of the cumulative Net IP Revenue. The share between the Centre and the Department or School is 50:50.

43. **Distribution of cumulative Net IP Revenues, if Enablers are involved**. Where an Enabler demonstrates a very significant contribution to the commercialisation, without which the commercialisation would not have been possible, the University will normally elect to set aside the following proportions of Net IP Revenue:

			University	
Cumulative Net IP Revenue	**Creator**	**Enabler**	**Centre**	**Dept/School**
£0 to £5,000	85%	15%	0%	0%
£5001 to £50,000	70%	10%	10%	10%
£50,001 to £100,000	48%	6%	23%	23%
Above £100,001	25%	1%	37%	37%

44. **Where there is more than one Enabler**, the Enablers may be entitled to an equal or *pro rata* share, based on contribution, of the cumulative Net IP Revenue. The relative share between Centre and the Department or School is 50:50.

45. **University centre and department's distribution**. The share between the University Centre and Department/School is split equally. Where there is more than one Creator, the Creator's Schools or Departments will be entitled to an equal or *pro rata* share, based on the Creator's contribution, of the Net IP Revenue.

46. **Spinout**. Creators/Enablers may choose to either take equity/shares in a spinout, or may receive income from the standard sharing formula above, but not both. In the case where a Creator/Enabler is granted equity in a spinout company they will not be eligible to receive the portion of the standard revenue sharing formula above (to avoid 'double-counting' as they may receive income arising from their shareholding). Creators/Enablers may be able to purchase shares in an arm's-length transaction alongside other investors without affecting their right to share in the net IP revenues defined above. Allocating founding equity in this way aligns with typical expectations of investors who wish to see those critical to the company being rewarded through the success of the company. Equity may also be issued to individuals deemed necessary to the success of the spinout company.

47. **All Creators/Enablers electing not to receive equity**, will share the financial benefits in accordance with the distribution given above (para 41 and 43).

Non-Disclosure Prior to IP Protection

48. **Non-disclosure for IP protection**. Creators should be aware that premature public disclosure may result in loss of IP protection rights. Therefore, Creators are strongly encouraged to make all reasonable efforts to identify any protectable IP as early as possible and consult the IPCT before making any public disclosure of potential University IP, e.g. via publications, presentations, posters (see para 38 also). IPCT can provide advice on this in confidence as required.

49. **Public disclosure includes**, but is not limited to, communication of information: 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.

Decisions by the IP and Commercialisation Team (IPCT)

50. **IP disclosure**. When staff identify potential IP resulting from their work, or that of their team, they shall disclose this to the IPCT promptly by means of an Invention Disclosure Form. Contact for IPCT: Intellectual-Property@port.ac.uk

51. **Complete disclosure**. Creators must provide to the IPCT full, complete and accurate information that the IPCT may reasonably require to enable it to assess the technical and related features and functions, ownership, commercial potential and IP protection that might be applicable to the IP.

52. **Creatorship and ownership.** Staff will be asked to sign the appropriate legal documents that attest to who the Creator(s) of the IP is/are. Where there is more than one Creator, and there is a dispute as to the

contribution of each to the IP, IPCT shall assist the Creators in determining the percentage contribution of each Creator to the IP.

53. **Evaluation and recommendations for IP protection and commercialisation.** The IPCT will analyse the information disclosed in the IP Disclosure, in a timely manner and within 90 days of formal receipt. The analysis will include whether or not the subject matter is protectable as IP; an assessment of economic viability or marketability; and determination of any rights of external parties, such as a funder or collaborator. After evaluation, the IPCT will prepare a report with findings to enable it to decide if it will proceed with IP protection and commercialisation. The Creator(s) will be involved in the creation of this report.

54. **Decision to protect/commercialise**. The IPCT will decide, as soon as reasonably practicable, whether it wishes to protect and/or commercialise the IP or not. The IPCT will use all reasonable efforts to notify the Creator(s) of the decision within 90 days of formal receipt of the IP Disclosure.

55. **University elects not to protect or commercialise the IP**

56. **IP abandoned or not commercialised**. The University reserves the right not to protect or commercialise IP that it owns if after consultation with the Creators:

- There is no reasonable prospect of commercial success.
- It is not deemed to be in the best interest of the University or public interest.

A decision to discontinue commercialisation efforts may occur at any stage of the process.

57. **Transfer of ownership**. In the event that the University decides not to pursue IP protection and/or commercialisation, if requested, it will take steps to assign the IPRs to the Creator(s), contingent on any other superseding contract rights of external parties.

58. **Terms and conditions**. If the University assigns IPR to the Creator(s) the assignment may be subject to one or more of the following terms and conditions:

- If the Creator independently generates revenues from successful commercialisation, the University will be compensated for any reasonable expenditure it may have incurred previously in direct connection with the IP protection.
- That the University be granted a non-exclusive, royalty-free licence to use the IP for Research and teaching purposes.

Commercialisation of IP

59. **Determination of the commercialisation strategy**. Once a decision has been made to progress with protecting IP, the IPTC will work with the Creator(s) to develop an appropriate strategy to achieve a successful commercialisation. The aim will be to compete this work within 6 months of the decision date.

60. **Assistance to IPCT**. Creators of IP which has been selected for IP protection and commercialisation must provide the IPCT (Intellectual-Property@port.ac.uk) with all reasonable support in the assessment, protection and commercialisation of the IP.

61. **Sovereignty and cooperation**. The University shall have the sole discretion regarding the commercialisation of IP owned by it. The commercialisation of University's IP will be planned, executed, and monitored by the IPCT in collaboration with the Creator(s).

62. **Commercialisation pathways**. Modes of IP commercialisation may include, but are not limited to:
    - Licence, either exclusive or non-exclusive, and variations thereof.
    - Assignment (sale).
    - Formation of a commercialisation entity (e.g. spinout).
    - Non-profit use or donation; royalty free access on humanitarian or other grounds.

63. **Spinout**. If the commercialisation route is via a spinout company, the creator(s) will be eligible to receive equity (shares) in the company. It is typical for Creators/Enablers who are actively participating in the company to take founding equity in the spinout, but they are not required to. In-line with the Government's Independent Review of University Spinout Companies recommendations, the University will take a maximum of 25% equity in high IP-intensive ventures such as life science spinouts with exact terms varying depending on the wider commercial deal. In software-only spinouts, which are usually less IP-intensive, the University equity will be 10% or less. However, due to the many influencing factors, the actual distribution will be decided on a case-by-case basis, with prior contributions, fairness and the success of the venture being the guiding principles. Further spinout guidance is provided by IPCT.

64. **Commercialisation decisions**. The process for taking the decision to commercialise by licence, assignment, non-profit or donation routes (para 62) will be via approval of a business case made by IPCT to the Deputy Vice-Chancellor (Research and Innovation) and the Head of Innovation.

    For a spinout, the decision will be via approval of a business case made by IPCT to a panel comprising: Deputy Vice-Chancellor (Research and Innovation), an Executive Dean, Executive Director of Finance, and the Head of Innovation (or their nominees). After this approval has been secured, in alignment with the Spinout Guidance, further approval from the University Executive Board and Board of Governors is required.

65. **Guidelines**. Regardless of the mode of IP commercialisation, the transaction will be executed in a contract which:
    - Protects the interests of the University, its staff members, students and visitors.
    - Retains rights for the University to use the IP for educational, Research and Innovation purposes.

Conflicts of Interest and Conflicts of Commitment

66. **Best Interests of the University**. Staff members and visitors have a primary professional obligation to act in the best interests of the University. They should avoid situations where external interests could lead to conflict of commitment and negatively affect their work ethic and research and innovation integrity.

67. **Declarations of conflicts of interest**. All staff members and visitors must ensure familiarity with and abide by, and make the relevant declarations to, the University's Declarations of Interest Policy.

68. **Agreements with external parties**. It is the responsibility of all staff members and visitors to ensure that their agreements with external parties do not compromise or conflict with their duties and responsibilities in terms of this Policy. This provision shall apply in particular to private consultancy and other research or innovation service agreements concluded with external parties.

Disputes

69. Any disputes arising under this Policy must in the first instance be referred to the IPCT for consideration. If this is not successful then mediation and final resolution will be taken jointly by the Deputy Vice-Chancellor (Research and Innovation) and Executive Director of Corporate Governance, who may wish to draw upon relevant specialist advice from others to inform their deliberations. All those involved must supply all information relevant on request to enable fair and robust deliberations and decisions to be made.

Further Questions

70. If you have any questions please contact the IPCT at Intellectual-Property@port.ac.uk