

# UNIVERSITY OF MALTA INTELLECTUAL PROPERTY (IP) POLICY 2014

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## 1 INTRODUCTION

The University of Malta (“University”) has established its Intellectual Property (“IP”) Policy to govern the ownership rights emanating from research and materials produced by University staff and students, and to establish objectively fair and equitable criteria for the transfer of knowledge. The University regards the creation and exploitation of IP as an important objective and shall thus promote and support this activity with a view to maximise its socio-economic benefits.

The central tenets of this IP Policy are:

- incentives for originators to create IP, and involvement of the originators in the IP exploitation process;
- effective and efficient services to support in the process of identifying, evaluating, protecting and exploiting the IP, so as to maximise its socio-economic benefits while providing just and attractive rewards to its originators;
- safeguarding the reputation and interests of University in view of its broader mission and the resources it places for the fulfilment of these activities; and
- compliance with the “EU Council Resolution on the Management of Intellectual Property in knowledge transfer activities and Code of Practice for Universities and Other Public Research Organisations”<sup>1</sup>.

The University acknowledges that registration and commercial exploitation of IP is often a long and costly process which is only justified once it is ascertained that there exists a business case for such registration and exploitation. It is known that in practice, only a small number of works can be commercially exploited in a viable manner, depending on the nature and marketability of the work in question.

## 2 DEFINITIONS

For the purposes of this Policy:

“*Academic*” shall mean an employee of the University who is a Resident Academic or a Research Academic or a member of the Visiting Teaching Staff falling within the ambit of their duties in terms of the Collective Agreement.

“*Academic and Research Purposes*” means research, teaching or other scholarly use which is undertaken for the purposes of education and research.

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<sup>1</sup> 2871st Competitiveness (Internal Market, Industry and Research) Council Meeting, Brussels, 29 and 30 May 2008

*“Academic Research”* shall mean any research whatsoever which is carried out by Academics within the ambit of their duties, and includes any research carried out with use of University Resources and which is not subject to a separate contract.

For clarity, Academic Research specifically excludes:

- a) research which is subject to a separate contract for provision of services within the context of Collaborative or Contracted Research in terms of this Policy; and
- b) research for which special authorisation has been granted in terms of Article 33 of the Collective Agreement.

*“Assessable Student Work”* shall include, but is not limited to, theses, dissertations, long essays, assignments, research projects and presentations, whether in the form of written works, film, video or audio-recordings, and other creative works, created by a student for the purposes of assessment in the course of their studies.

*“Collective Agreement”* shall mean the Collective Agreement for Academic Staff of the University and Academic Staff of the Junior College 2014 – 2018 or the subsequent Collective Agreement that supersedes it.

*“Collaborative Research”* shall refer to research activities governed by a specific contract, that are carried out by the University in collaboration with one or more third parties, whereby the University does not receive full financial remuneration for the research activities from such third parties.

*“Commercialisation Rights”* shall refer to the rights to take IP to the market in the form of a product or service with the aim of making a commercial gain.

*“Contracted Research”* shall refer to research activities governed by a specific contract, that are commissioned or subcontracted to the University and/or its subsidiary companies by one or more third parties and for which the University and/or its subsidiary companies shall be financially remunerated by such third party/parties.

*“Intellectual Property (IP)”* shall include:

- a) All inventions and designs registered or registrable under the Patents and Designs Act 2000 (Chapter 417 of the Laws of Malta), including utility models and plant variety rights, also known as industrial property;
- b) All copyright conceived or developed and protected under the Copyright Act 2000 (Chapter 415 of the Laws of Malta) which shall be further divided into:
  - i. Artistic, audiovisual, literary (except computer programs) or musical works, or performances;
  - ii. Topographies of semiconductor products and integrated circuits;
  - iii. Databases, including questionnaires;
  - iv. Computer programmes, including digital games;

- c) Trademarks registered or registrable under the Trademarks Act 2000 (Chapter 416 of the Laws of Malta);
- d) Trade secrets and confidential information protected by express contractual obligation;
- e) Any new forms of intellectual property that may be added to the above categories during the time this Policy is in effect; but does not include any moral right.

*“Lead Originator”* shall be an Academic who is identified from among the Originators as the leader of the research effort that results in the generation or potential generation of IP.

*“Net Profits”* shall mean gross profit less professional fees, expenses and other outgoings in managing and protecting the IP; procuring any necessary clearances, rights and approvals; and making arrangements for exploitation.

*“Non-Commercial Use”* means use for Academic and Research Purposes and the purposes of Clinical Patient Care. This includes the right for the University to license the IP to any of its collaborators in connection with and solely for the University's Academic and Research Purposes; but it does not include the right to grant any licence to commercially exploit the IP.

*“Originator”* shall mean an initiator, inventor, author, creator or other generator of IP who is an Academic, University Member of Staff or Student at the time of invention, authorship, creation or other generation.

*“Scholarly Materials”* are materials produced by an Academic during the course of their employment, or a Student during the course of their studies, which include but are not limited to books or parts thereof, academic journal articles, conference papers, abstracts, posters and related presentations, own theses and dissertations, artistic, audiovisual, literary or musical works, or performances.

*“Student”* shall mean any person accepted to join a course or particular study-units at the University and who falls under the categories of (i) regular student or (ii) junior, probationary and provisional students as defined in the General Regulations<sup>2</sup>.

*“Teaching Materials”* are materials produced by an Academic during the course of their employment which include but are not limited to textbooks, , own theses and dissertations, notes, audio/visual presentations, and other instructional materials used in teaching including on electronic platforms, but specifically exclude Degree/Diploma/Certificate course plans and programmes of study.

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<sup>2</sup> Admissions Regulations, 1997

*“University”* means the University of Malta, as established by the Education Act (Chapter 327 of the Laws of Malta).

*“University Member of Staff”* shall mean any person engaged by and/or seconded to the University who is not an Academic.

*“University Resources”* shall mean any funds (except for Academic Work Resources), facilities or infrastructure (including without limit: apparatus, equipment and consumables, use/supply of heat, light or power, libraries, databases, background IP and other materials) of the University, assistance of any University Member of Staff, Academic during the course of their duty, assistance of any Student while creating Assessable Student Work and use of the name, crest, coat-of-arms and/or logo of the University or any of its companies.

The singular includes the plural and references to the male gender shall be deemed to apply to the female gender.

### **3 IMPLEMENTATION MANAGEMENT AND SUPPORT FOR IP POLICY**

This Policy shall be managed and implemented by the Corporate Research and Knowledge Transfer Office (“KTO”), whose duties shall include the following:

- To ensure the correct application, implementation and interpretation of and compliance with this Policy, and to take any necessary action in case of non-compliance;
- To propose amendments to this Policy to Senate and Council from time to time with the aim of enhancing it and adapting it to prevailing scenarios;
- To ensure that the University has access to or possesses professional knowledge transfer services including legal, financial, commercial as well as IP protection and enforcement advisors, in addition to staff with technical background;
- To raise awareness and build basic skills regarding IP and knowledge transfer through training actions for Academics, University Members of Staff and Students, and to ensure that the staff responsible for the management of IP and knowledge transfer have the required skills and receive adequate training;
- To provide advice to Academics, University Members of Staff and Students concerning the application and interpretation of this Policy;
- To maintain standard agreements and associated guidance notes;
- To work on the creation of coherent portfolios of IP in specific technological areas in line with the strategy and mission of the University and, where appropriate, participation in IP pools with third parties:
  - To promote the identification, exploitation and, where appropriate, protection of IP, to create value in line with the strategy and mission of the University;
  - To assess whether University has the right to commercialise IP;

- To assist in the drafting and filing of any applications for the registration of IP rights;
- To advise on whether a proposed application for commercial exploitation of IP is subject to registration including by carrying out preliminary searches;
- To draft agreements and make the necessary arrangements for the licensing and assignment of IP rights to organisations in order to facilitate the commercialisation process;
- To monitor and support post-deal relationships.
- To monitor and take any necessary action against third party infringements of IP rights owned by the University;
- To support the creation of new ventures when appropriate, and to assist in defining long-term relations between University and such ventures;
- To assist University authorities, Academics, University Members of Staff, and Students to participate in externally funded Collaborative and/or Contracted Research and knowledge transfer, establishing clear principles regarding the sharing of financial returns from these activities between the University, its Faculties, Departments and MUHC and its subsidiaries, Academics, University Members of Staff, and Students;
- To monitor and publicise IP protection and knowledge transfer activities and related achievements, and disseminate information regarding University IP and expertise to third parties, in order to promote their exploitation;
- To manage its budget in support of IP protection and exploitation, including proof of concept development;

The KTO shall be headed by the Director for Corporate Research and Knowledge Transfer.

In addition to the KTO, the role of a copyright officer has been set up in the Library to deal with queries related to the use of copyrighted material. Copyright guidelines are available on the Library website<sup>3</sup>.

## 4 OWNERSHIP OF IP GENERATED AT UNIVERSITY

### 4.1 IP owned by Originators who are Academics or University Members of Staff

The copyright on any Teaching and Scholarly Materials shall be owned by the Academic Originator/s. The Academic Originator/s are free to publish and disseminate the said Teaching and Scholarly Materials as long as (a) co-authorship rights of all co-researchers

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<sup>3</sup> [https://www.um.edu.mt/library/help\\_az/copyrightforstaff/](https://www.um.edu.mt/library/help_az/copyrightforstaff/)

and (b) third party copyright, are respected. Such ownership shall have the following exceptions:

- The copyright on textbooks or other materials that were commissioned by the University or developed with the use of University-administered funds allocated specifically to support development of the textbooks shall be owned by University;
- Although the copyright shall remain with the Originator/s, the Commercialisation Rights conferred by the following types of IP shall be deemed to be transferred to the University:
  - Materials describing inventions and designs registered or registrable as patents or designs, including utility models and plant variety;
  - Topographies of semiconductor products and integrated circuits;
  - Databases, including questionnaires;
  - Computer programmes, including digital games;
- Where the Teaching and Scholarly Materials are created through Collaborative or Contracted Research, copyright may be subject to the terms and conditions of the respective contract.

The University shall be entitled to use Teaching and Scholarly Materials owned by the Academic Originator/s subject to the moral rights of the author to be acknowledged, and provided that the University refrains from using the work of the author in a way prejudicial to the honour or reputation of the author.

Third party IP should not be used in Teaching and Scholarly Materials without the necessary intellectual property rights or rightholder's permission, whether the materials are delivered traditionally or through the Virtual Learning Environment ("VLE") platform. For permissions or queries related to the use, or fair use, of third party IP in Teaching and Scholarly Materials, the Originator should consult with the Library's copyright guidelines3.

The trademark and design rights on Logos and non-functional product designs shall be owned by the Originators, with the exception of University logos and crests.

## 4.2 IP Owned by Student Originators

The copyright on any Assessable Student Work shall be owned by the Student Originator/s, with the following exceptions:

- Although the copyright shall remain with the Originator/s, the Commercialisation Rights conferred by the following types of IP shall be deemed to be transferred to the University:
  - Materials describing inventions and designs registered or registrable as patents or designs, including utility models and plant variety rights;
  - Topographies of semiconductor products and integrated circuits;
  - Databases, including questionnaires
  - Computer programmes, including digital games;

- Where the Assessable Student Work is created through Collaborative or Contracted Research, copyright may be subject to the terms and conditions of the respective contract;

And under the following conditions:

- the Student grants to the University a non-exclusive, irrevocable, royalty-free, perpetual licence to use Assessable Student Work, or parts thereof, for inclusion as and/or in learning materials or in publications;
- the Student grants to the University a non-exclusive, irrevocable, royalty-free, perpetual licence to use or modify Assessable Student Work, or parts thereof, for archival purposes, including for borrowing and copying in line with the general policies adopted by the University Library;
- the Student is required to obtain written permission from the University<sup>4</sup> in the event that he wishes to publish or otherwise commercially exploit his Assessable Student Work, whether in total or in part, at any time prior to or following the submission, for assessment, of the Assessable Student Work, until the lapse of two years from the date of its final submission to the University, which permission shall not be unreasonably withheld.

In the event that Students produce or contribute towards Scholarly Materials, they will be considered an author or co-author, respectively.

### 4.3 IP owned by the University

With the exception of the IP described in sections 4.1 and 4.2, IP generated at the University or with the use of University Resources, including patentable IP, shall be owned by the University, with the following exceptions:

- Where the IP is generated as part of Collaborative or Contracted Research, ownership of such IP may be subject to the terms and conditions of the respective contract;
- IP owned by the University may be assigned back to the Originators as described in Article 6.1.

The copyright on Degree/Diploma/Certificate course plans and Programmes of Study created by an Academic during the course of his employment shall be owned by University.

In the case of University owned IP, the Originators shall retain the right to be acknowledged as inventors or authors.

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<sup>4</sup> Specifically, the Board of the Faculty or Centre or Institute or School under which the Assessable Student Work was carried out

## 5 PUBLICATION AND DISCLOSURE OF IP

The broad dissemination of Teaching and Scholarly Materials, Assessable Student Work and R&D results by Academics and Students is deemed to be a crucial aspect of University activity. In this respect, the University encourages and supports the publication of research results wherever possible and the movement towards the use of open access platforms.

This notwithstanding, it is important that in the process, due caution and prudence are exercised in order not to prejudice any potential for registration and exploitation of IP. In this respect, Originators shall undertake to duly disclose to the KTO, any work which could give rise to commercially valuable IP. In particular, where the registration of a patent is envisaged, Originators should be aware that public disclosure of details of research will prejudice possibilities of patent protection.

### 5.1 Publication of Assessable Student Work

In the event that Assessable Student Work gives rise to commercially valuable IP, the content is considered to be confidential information until a strategy for the management of such IP has been determined and implemented. The outputs of such research should, therefore, be embargoed in the Library until such time as the strategy has been implemented or the KTO renounces the University's right to maintain such information confidential.

Consequently, students are required to obtain written permission from the University<sup>5</sup> in the event that they wish to publish or otherwise exploit their Assessable Student Work, whether in total or in part, at any time prior to or following the submission, for examination, of the Assessable Student Work, until the lapse of two years from the date of its final submission to the University, which permission shall not be unreasonably withheld.

In the case of any publication arising out of the Assessable Student Work, the Student's moral rights shall be respected and the student shall have a right to be listed as a co-author. The other Originators shall use all reasonable endeavours to contact the Student to confirm their desire to be listed as co-author. Should the other Originators (a) not succeed in contacting the Student within thirty (30) days from initial attempt or (b) should the Student not provide a position within thirty (30) days from first communication received, the other Originators may proceed with publication listing the Student as co-author.

The University retains the right to include any other person who contributed as co-author in any publication arising out of the Assessable Student Work, provided that the

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<sup>5</sup> Specifically, the Board of the Faculty or Centre or Institute or School under which the Assessable Student Work was carried out

inclusion of such a person as co-author is reasonably justifiable i.e. such person would have made a significant contribution to the concept, design, execution or interpretation of the research leading to the publication.

Academics are also encouraged to embargo confidential Assessable Student Work, particularly theses and dissertations, which they deem to contain valuable IP, whether for exploitation or publication, until such publication is issued. The Academic binds himself to publish with minimum delay and to recognise the Student as an author, as stated above.

## **5.2 Disclosure of University or Third Party IP**

Where Academics and Students wish to publish material that may disclose potentially commercially valuable IP, they should first seek the advice of the KTO. The KTO binds itself to communicate a decision to the Academic or Student involved with minimum delay.

The KTO shall not be held responsible for the loss of any IP rights in the event that the Originator does not follow the KTO's communicated advice.

Disclosures through publication of potentially valuable IP may also jeopardise third party rights in the case of Collaborative and/or Contracted Research. Any such disclosures must be approved *a priori* by any third parties involved in the ownership of IP, unless otherwise agreed.

## **6 NOTIFICATION AND EVALUTATION OF IP**

Academics, University Members of Staff and Students shall notify the KTO<sup>6</sup> when they are aware of IP that could be of potential commercial value. In order to assess whether the University has an interest in commercialising such IP, the KTO shall evaluate the IP using criteria which shall include: whether the invention can be clearly defined; whether a unique selling proposition exists; whether the competitive advantage is sustainable; whether the invention can be protected; whether the University has the right to commercialise; whether and how the invention could be commercially exploited; the upfront resources required to commercialise the invention; and the extent to which the Originator would like to be involved. In the event that the KTO deems commercialisation of the IP worth pursuing, it shall engage with the Originator as detailed in Article 7 of this Policy. If it decides not to pursue, the KTO shall communicate the decision in writing to the Lead Originator by not later than six (6) months from date of receipt of the IP Notification Form, in which case the IP will be automatically assigned to the Originator.

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<sup>6</sup> <https://www.um.edu.mt/knowledgetransfer>

## **6.1 Assignment of IP Back to Originator**

Should University decide that it has no interest in pursuing its rights in relation to specific IP, the Originator shall be offered the assignment of the rights, title and interest in such IP by the University, whilst the University shall retain the right to use the said IP in whichever manifestation for teaching and research purposes. Moreover the University shall be entitled to 15% of all Net Profits gained by the Originator derived from commercial exploitation of such IP. It is understood that the University shall collaborate with the Originators concerned to facilitate the commercial exploitation.

In such a case, the Originator concerned shall make accounts related to the commercialisation of the IP available for audit by all stakeholders, and the Net Profits shall be calculated, shared and paid annually or according to an agreed schedule.

In a case where the University has attempted to commercially exploit the IP and has decided to stop pursuing its rights in relation to specific IP, the Originator shall be offered the assignment of rights, title and interest in such IP by the University. Upon successful commercialisation of the IP, the University shall be entitled to 15% of all Net Profits gained by the Originator derived from commercial exploitation of such IP.

## **6.2 IP Generated with Third Parties**

The Originator shall not enter into any sponsorships or commercial agreements with third parties related to their research at University without prior written and express authorisation by the Rector or his authorised delegate. The claims on IP expected by the third party must be agreed upon explicitly upfront.

The terms of agreement governing Collaborative and Contracted Research activities shall be determined by the concerned parties on a case by case basis depending on the objectives of the parties. Such terms should take into account the level of external funding and be in accordance with the objectives of the research activities, in particular: to maximise the commercial and socio-economic impact of the research; to support the University's objective to attract private research funding; to maintain an intellectual property position for the University that allows further Academic and Collaborative Research; and where possible to avoid impeding the dissemination of the R&D results.

IP-related issues shall be clarified between all concerned parties as early as possible in the research project before project commencement. IP-related issues include:

- Allocation of the ownership of the IP which is generated in the framework of the project (hereinafter "Foreground");
- Identification of the intellectual property which is possessed by the parties before starting the project (hereinafter "Background");

- Access to IP which is necessary for project execution or exploitation purposes, (hereinafter “Access Rights”<sup>7</sup>) to Foreground and Background for these purposes;
- Appointment of one of the parties to take the lead role for the commercialisation of IP; and
- Sharing of revenues.

As a general principle, in a Collaborative Research project, ownership of the Foreground should stay and vest with the party that has generated it, but can be allocated to the different parties on the basis of a contractual agreement concluded in advance, adequately reflecting the parties’ respective interests, tasks and financial or other contributions to the project. The University may also have rights to Foreground which is jointly owned with third parties.

In the case of Contracted Research, the Foreground generated by the University shall generally be owned by the external party that has contracted the research.

The ownership of Background should not be affected by the project.

Access rights shall be clarified by the concerned parties as early as possible in the research project before it starts. Where necessary for the purpose of conducting the research project, or for the exploitation of the Foreground of a party, access rights to other parties’ Foreground and Background should be available, under conditions which should adequately reflect the parties’ respective interest, tasks, and financial and other contributions to the project.

In the event that such a role is assigned to the University, commercialisation shall be carried out as per Article 7 below. Any revenue generated through the commercialisation of such jointly owned IP shall be distributed in the same way as revenue generated through the commercialisation of University IP, as stated in Article 7.

The University shall endeavour to include ‘license back’ clauses in any IP agreements with third parties, which would grant the University and those persons who at any time work or have worked on the IP, a non-transferable, irrevocable, perpetual, royalty-free licence to use and publish the IP for Non-Commercial Use.

### **6.3 Acknowledgement of the University’s Contribution**

Academics, University Members of Staff, Students or third parties who may have rights to the IP shall recognise that the work has been accomplished through the University through acknowledgements and/or the use of the University logo, where possible. The

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<sup>7</sup> Access rights refer to rights granted by the parties to each other, as opposed to licences to third parties. They should determine which parties can use which pieces of foreground/background, for research purposes and/or for exploitation purposes, and on what conditions.

University may, in turn, publicise the fact that the user is making use of IP generated at the University in its effort to promote success stories.

## **7 COMMERCIAL EXPLOITATION OF IP & REVENUE SHARING**

The University shall endeavour to commercially exploit any IP which it owns in collaboration with the Originator (unless the University's entitlement is relinquished). Consequently, the Originator shall notify the KTO of all IP which might be commercially exploitable and of any associated materials, including research results, as early as possible in the research project. In case of doubt as to whether research is commercially exploitable or otherwise, the Originator undertakes to seek the advice of the KTO.

The KTO shall decide whether the University has an interest to protect and exploit the relevant IP and shall communicate the decision in writing to the Originator within six (6) months from the date of notification. If the University decides to protect and exploit the IP, it is understood that:

- the Originator shall collaborate with the University, through the KTO, to develop an action plan for the protection and commercial exploitation of the IP;
- the KTO in collaboration with the Originator shall carry out a due diligence exercise to ensure that, as far as possible, third party rights are not infringed through the process; and
- the University shall seek to protect the right of the Originator to use the said IP for teaching and research purposes, subject to the disclosure limitations described in Article 5.

Where there is more than one Originator, all Academic Originators are entitled to a share of these entitlements, and in such case, a Lead Originator shall be appointed from amongst them. Where the Originators include University Members of Staff or Students, it is at the discretion of the Lead Originator whether or not they shall be allocated a share of these entitlements.

In cases where there is more than one Originator, IP-related issues should be clarified as early as possible in the research project and the Lead Originator is responsible for ensuring that an agreement<sup>8</sup> is signed between the Originators regulating the apportionment of any potential profits. The apportionment should be in proportion to impact/time/effort of each participating Originator.

The University shall make accounts related to the commercialisation of the IP available for audit by all stakeholders. Net Profits shall continue to be paid to the participating Originator should they leave the University, and in the event of an Originator's death, the entitlement shall continue to be paid for the benefit of his or her estate.

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<sup>8</sup> A template for the revenue sharing agreement is available from the KTO.

The University shall exploit IP which (a) it owns, (b) it has a right to exploit and (c) will not expose the University and its reputation to unnecessary risk. The University may then exploit IP in one or more of the following ways:

- Licensing
- Setting up and incubating spin-out companies
- Consultancy / Contracted Research

### 7.1. Licensing

Licensing allows the University to grant permission for the use of its IP for a given purpose, in a given territory or market sector, for a period of time. University will endeavour to licence its IP in order to generate socio-economic value, meaning that licensees shall not be permitted to license IP without committing to further develop and commercialise the IP.

Licensing activity should not impede the Academic's core activities.

By default, IP will be licensed out by the University for use by a third party, as opposed to being assigned. Assignment of IP shall be considered a last resort and will only be used if absolutely necessary, for example, in the event that a spin-out in which the University is a shareholder cannot be sold due to the fact that it does not own the IP.

Net profits generated through commercialisation of such IP which are directed towards University, i.e. after all third party obligations have been met, shall be distributed in the following way:

Originator/s <sup>9</sup>	UNIVERSITY			
	50%			
50%	KTO	Faculty	Department	Academic Originator/s Principal Research Fund <sup>10</sup>
	20%	5%	10%	15%

### 7.2. New Ventures/Companies

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<sup>9</sup> As agreed upon in the IP3 form for the particular disclosure.

<sup>10</sup> The split between the various funds shall be in the same ratio as agreed upon in the IP3 form for the particular disclosure.

The University has set up a Business Incubator (BI) under the directorship of the Centre for Entrepreneurship and Business Incubation (CEBI) and under the management of the Directorate for Corporate Research and Knowledge Transfer through its BI Manager. The BI shall support new spin-out companies by providing mentoring, specialist services and space, so as to increase the new venture's chance of success.

Potential revenue streams may develop for the University and the Originator through the formation of new companies. These include:

- revenue through licensing of University IP to the new venture;
- Private Consultancy/Contracted Research services to the new venture; and
- shareholding in the venture.

### **7.3. Private Consultancy and Contracted Research**

Academics have two options for offering their services as experts and therefore commercially exploiting their know-how: (a) Private Consultancy in their own capacity, as defined in the Collective Agreement and (b) consulting through the University, referred to as Contracted Research.

Where Private Consultancy work is carried out, the University shall not make any claim to any IP generated thereby. In the context of such work, the Academic may not use IP or University Resources without the approval of the Rectorate as stipulated in Article 33.4 (a) of the Collective Agreement. It shall be at the Rectorate's discretion whether and on what terms to grant such permission. Failure to abide by this obligation may give rise to a claim for infringement of University's rights without prejudice to any other action that may arise.

Private Consultancy may also be undertaken through University structures such as MUHC and its subsidiaries. In such cases, the consultancy contract may include provisions for expenses related to use of University Resources, professional indemnity (PI) insurance, protection of IP, a license back option allowing the Academic to continue using the IP for teaching and research, reduced personal liability and so on.

Contracted Research must be undertaken through University structures such as MUHC and its subsidiaries, given that it makes use of University Resources.

## **8 CONFLICT OF INTEREST AND DISPUTE RESOLUTION**

Should any Academic, University Member of Staff or Student feel aggrieved by any decision taken by the KTO regarding any use of IP, such person shall have the right to refer the matter to the responsible Pro-Rector who shall act as an arbitrator in such cases. It is important that conflicts of interest are identified and managed, particularly potential conflicts of interest which may arise as Academics engage in commercial activity.

The Parties shall attempt to settle any claim, dispute or controversy arising out of or in connection with this Policy, including without limitation any controversy regarding the interpretation of this Policy, through consultation and negotiation in good faith and in the spirit of mutual cooperation.

In the event of disagreement between the Originator and the KTO on issues related to IP, including the registration of specific IP, the Office of the Rector shall be consulted to reach a solution. If no solution is reached within fourteen (14) days, an external expert such as an IP advocate or practitioner shall be engaged by the KTO in agreement with the Originator/s, to mediate discussions.

Where any such claim, dispute or controversy cannot be settled amicably by the Parties within ninety (90) days from the attempt to mediate by the external expert, such claim, dispute or controversy shall be deemed to be an unresolved dispute for the purposes of this Policy and shall be submitted to arbitration as provided in the Arbitration Act (Chapter 378 of the Laws of Malta).

## **9 GENERAL PROVISIONS**

### **9.1. University Crests and Logos**

In the implementation of this Policy, it is acknowledged that the crests and logos identifying the University are registered trademarks and are thus the exclusive property of the University. Any use thereof can only be made with the consent of the University and for purposes which enhance the reputation of the University and promote its aims and interests. It is understood that University gives automatic consent to Academics for use thereof on routine academic work, such as lecture notes and conference presentations.

### **9.2. Legal Nature and Binding Force**

It shall be binding upon the University, all Academics, University Members of Staff and Students, whether on a part-time or full-time basis.

### **9.3. Confidentiality and Non-Disclosure**

Academics, University Members of Staff and Students undertake to keep confidential and not disclose any confidential information, data, materials, know-how, trade secrets or any other IP, as defined herein, to any unauthorised third party and shall also undertake to keep such information secure and strictly confidential both during the course of research activity and also on and following completion thereof.

#### **9.4. Breach of Policy**

Any breach of this Policy may lead to disciplinary action and legal proceedings where appropriate in accordance with the Code of Professional Academic Conduct.

Any breach by Students shall be subject to disciplinary action through the Office of the Registrar.

#### **9.5. Governing Law**

This Policy shall be governed by, and construed in accordance with the laws of Malta, as in force from time to time.

#### **9.6. Severability**

Any clause of this Policy which is prohibited, unenforceable or otherwise declared invalid by a court or tribunal shall be ineffective only to the minimum extent necessary without invalidating the remaining clauses of this Policy. Provided that in any such case, the Parties shall as soon as practicable substitute such prohibited, unenforceable or invalid clause with a new clause which shall be as close as possible to the substituted clause.

#### **9.7. Entire Understanding**

This Policy and all annexes attached hereto constitute the entire understanding between the Parties in respect of the subject matter contained herein. This Policy and all annexes hereto shall be complementary to the clauses contained in the Collective Agreement in force between the University and the Academics as well as the Student Regulations.

#### **9.8. Waivers**

The remedies provided herein are cumulative and are not exclusive of any remedies that may be available to the University, the Academics, Members of Staff and Students concerned at law.

Any waiver of any provision of this Policy and any consent to any departure from the terms of any provision of this Policy shall not be effective unless made in writing and signed by all the parties involved.

Provided that in the case of Academics falling under the Research Stream as defined in Article 20 of the Collective Agreement, the provisions of this Policy may be altered through a separate contract as per Article 20.1.6 of the Collective Agreement.

## **9.9. Warranties**

The Originator shall exercise due caution not to infringe third party rights when conducting their work and during the process of protecting and exploiting the IPRs, and in case of doubt, shall inform and seek the advice of the KTO. The Originator shall also strive to not harm the reputation and interests of the University. The University will protect Originator from being personally liable for product liability claims arising from University's exploitation activities.

The University shall not warrant that it owns or has freedom to operate any of its IP in dealings with third parties. However, it will do its utmost to ensure ownership and freedom to operate through its due diligence exercises.

## **9.10. Effective Date**

This Policy shall be effective as of 1<sup>st</sup> January 2014 and shall supersede the previous IP policy. Any rights granted by virtue of this Policy shall not apply retroactively, and in any case shall be without any prejudice to any prior policies, agreements or provisions of a legally binding nature between University and third parties concerning and/or regulating IP.

**Last Updated – 10<sup>th</sup> July 2024**