

University of Liverpool

Intellectual Property Policy

Version Number	<i>IP Policy 2024 (previous IP Policy 2016)</i>		
Effective Date	<i>11 April 2024</i>		
Review Period	<i>April 2027</i>		
Responsible Department	<i>Research, Partnerships and Impact</i>		
Policy Author	<i>Emma Nolan/Anthony Hollander</i>		
Approval Route	Committee	Submission Date	Approved?
	Enterprise Board	October 2023	Yes
	Senior Leadership Team	November 2023	Yes
	Senate	20 March 2024	Yes
	Finance and Resources Committee	22 March 2024	Yes
	Council (Chair's Action)	11.04.24	Yes
Linked Documents	<i>Spinout Guidelines 2024</i>		
Does this replace any previous policies?	<i>Yes – Spinout Guidelines 2019</i>		
Consultation	<p><i>An independent review was commissioned to look at practise across the sector, and propose a number of options regarding equity sharing models. The review was discussed by the Enterprise Board at an Away Day, and consensus reached on the preferred model. The Enterprise Board is chaired by Anthony Hollander PVC for Research & Impact. The Board membership includes internal representatives from all the Faculties, the Head of Legal, a representative from Finance, a representative from the Alumni team. A number of external lay members are representatives on the Board, including two investors, two industrialists and a member of Council.</i></p> <p><i>The spinout guidelines were also reviewed by an external investor who works across a number of HEIs in the sector, supporting technology transfer spinouts.</i></p> <p><i>The guidelines have been reviewed by the Enterprise Board, VC and Council members.</i></p>		
Equality Impact Assessment	<i>An EQIA screening form is currently being undertaken to establish whether a full Equality Impact Assessment is required for this policy.</i>		
Regulatory/ Compliance	<i>N/A</i>		

Data Protection	<i>No data protection implications</i>
Communication	<i>The Enterprise Team will work with RPI communications team to publicise and disseminate the new policy.</i>

1. Principles

Based on an independent review, and following discussions at the Enterprise Board, it was concluded that the University's academic equity policy should be re-positioned to reduce barriers, enable successful ventures and facilitate higher numbers of spin-out companies.

Although the University wishes to participate fairly in any returns from commercialisation, it is equally important to create spin-out company share structures that are most likely to support investment and long-term success.

In line with general practice across the HEI sector, and recent government guidelines, the new Spinout Guidelines reduces equity taken by the University at the point of founding new spinout companies from 50% to 20%. The reduced equity stake will be balanced by the University putting in place a royalty-bearing licence and/or an exit fee.

Alongside revised Spinout Guidelines, a light touch review of the University's IP Policy has been undertaken. The IP Policy has been updated to reflect the IP Commercialisation team's new name (The Enterprise Team), and minor amendments to processes around approvals and conflict resolution, to reflect custom and practise.

2. Scope

The policy applies to all members of University staff, and postgraduate research students, who are treated as employees for the purposes of the IP Policy. The spinout guidelines do not automatically apply to undergraduates, taught students, or 'spin-in' companies.



University of Liverpool Intellectual Property Policy

February 2024

INTRODUCTION

The University of Liverpool (the University) is committed to a culture that promotes academic excellence in teaching, research, dissemination of knowledge, innovation and entrepreneurship, enabling the University's intellectual output to benefit society. The nature of the University's activities, in particular its research, often gives rise to the creation of Intellectual Property (IP) in the form of, but not limited to, patents, copyright, know-how, registered trademarks, registered designs and unregistered designs). Such IP can be a valuable asset, and substantial impact and income may be generated through its successful protection and exploitation.

The University's IP Policy governs the ownership of rights emanating from research of and/or materials produced by the University's employees, honorary appointees and students, and its obligations to public and private sector partners. It draws on the Patents Act 1977, the Copyright and Designs and Patents Act 1988 the Bribery Act 2010 and should be read in conjunction with the University's Conflict of Interest Policy ([Policy on Disclosure Of Interest - Policy centre - University of Liverpool](#)).

This Policy provides clear guidance for maximising the impact of IP, and criteria for the incentivisation, management, and governance of IP exploitation.

DEFINITIONS

Definitions relating to this Policy are provided in Annex 1:

1. SCOPE

1.1 This Policy applies to all Creators of IP, namely:

- a. Employees of the University
- b. Academics / researchers working on contract basis
- c. Employees Working at Partner NHS Trusts
- d. Administrative Personnel
- e. Students (including those visiting) throughout their period of registration
- f. Personnel working on contract basis
- g. Honorary academics and visiting researchers

at the time of invention, authorship, creation or other generation who have contributed to the production of Disclosable Work.

1.2 IP comprises:

- a. works generated by computer hardware or software owned or operated by the University;
- b. works created with the aid of University Support, including (e.g.) films, videos, photographs, multimedia works, typographic arrangements, and field and laboratory notebooks capable of commercial exploitation;
- c. patentable and non-patentable inventions;
- d. registered and unregistered designs, plant varieties, and topographies;
- e. University-commissioned works not within (a), (b), (c), or (d) including but not limited to teaching materials intended for use by students in the course of their study including (e.g.) course guides, presentations, handouts, manuals and assessment documents as well as novel reagents or materials;
- f. Databases, computer software, firmware, courseware (presentations, tutors, academic's notes and reports, photos, graphics, educational videos, multimedia material, self- evaluation exercises, case studies) and related material not within (a), (b), (c), (d), or (e), **but only if they may reasonably be considered to possess commercial potential**; and

g. know-how and information associated with all the above.

Exceptions

The University does not usually intend to assert ownership of copyright in books, articles, lectures and artistic works, other than those which are capable of commercial exploitation (e.g. computer software), specifically commissioned by the University or that are of benefit to a partner institution of the University.

In the absence of University support and in areas outside the Creator's normal duties for and activities at the University, the rights of ownership of IP remains with the Creator.

Students will normally own any IP they create in the course of their taught studies, subject to the terms and conditions which apply to their studentship and the specific circumstances of the IP created.

Creators of IP often wish to publish articles describing their research in learned journals or are required to do so as a thesis. Where commercial exploitation of the results is a possibility, the University may require that publication be withheld until appropriate IP protection is put in place.

2. OWNERSHIP

The University claims ownership of all IP specified in Section 1.2 which is devised, made or created by those included in section 1.1, with the exceptions noted below.

The University frequently enters into agreements with third parties that specify ownership of IP generated by University staff and students in research collaborations or sponsored research. Where it is a contractual obligation to do so, the University may transfer its rights to a third-party. For example, to the overall funder of a project or study, or to a collaborator.

The University does not normally seek ownership of student IP, unless agreements with third parties apply or the Disclosable Works are either related to existing University IP or created through University Support, but in the event it is required the student will assign the IP they create to the University. Where students own their IP the students may be given the option to assign any IP to the University. When a student assigns their IP to the University they are granted the same rights as University employees as set out in this policy.

3. INTELLECTUAL PROPERTY PROCESS and RESPONSIBILITIES

The process for the exploitation of IP is referenced in Annex 2.

Creator Responsibility

Creators have responsibilities with regard to IP arising from and/or used by them in the course of their duties and activities at the University. They should ensure that all measures are taken to protect and exploit IP they have created.

- If, in the course of his or her duties or other activities carried out under the auspices of the University, a Creator makes any Disclosable Work he/she shall notify the Enterprise Team of all Disclosable Work as early as possible. This notification shall be effected by means of an Intellectual Property Disclosure Record, IDR, referenced in Annex 2, a copy of which can be obtained by emailing "UoL-Enterprise@liverpool.ac.uk"
- Staff and students are responsible for making themselves aware of the terms of any contract relating to their research. If necessary, they may request such information from the University and the University shall provide such information in a timely fashion.
- Creators shall not apply for patents or other IPRs in relation to any Disclosable Work, unless specific prior written permission is provided by the Enterprise Team, nor will they use any such Disclosable Work for business purposes or for their own benefit whether directly or indirectly actioned.
- It is expected that all Creators within the University will keep good records of their research and teaching, in line with the University's general guidance on research conduct and integrity, thereby supporting any potential exploitation of IP.
- Creators shall undertake to keep confidential, and not disclose any confidential information, data, materials, know-how, trade secrets or any other IP, to any unauthorised third party and shall also undertake to keep such information secure and strictly confidential both during the course of research activity, be it of an Academic or Collaborative/Contract nature, and also upon and following completion thereof.
- The Creator(s) shall collaborate with the Enterprise Team, to develop an appropriate plan for the protection and commercial exploitation of the IP.
- The use of third party owned IP for research purposes is limited by law, and therefore all Creators should be mindful to avoid use of such IP. In the event an employee receives a notification from a third party alleging the University has infringed a third party's IP rights, the employee should contact the Enterprise Team immediately by emailing "UoL-Enterprise@liverpool.ac.uk".
- Where Creators are offered honorary appointments within other institutes and universities, they should ensure through the Dept. of Legal and Governance (LegalServices@liverpool.ac.uk) that an appropriate agreement is in place between the University and the host institution for IP ownership and exploitation.

Further obligations in the event that employees change status, e.g. cease employment at the University can be found in Section 5.

Support for Creators

The University recognises that Creators will require support and assistance to help them meet their responsibilities to the University and its funders and this will be provided by the Enterprise Team in the first instance. The Enterprise Team may assign appropriate resources to work in support of the Creator and the University on a Disclosable Work in accordance with the University's available resources and risk management framework, and will ensure that the most appropriate IP strategies are employed to achieve the University's wider research, impact and innovation goals.

If the University decides to protect and/or exploit the IP:

- the Creator/s shall collaborate with the Enterprise Team, for the Enterprise Team to develop an appropriate plan for the protection and commercial exploitation of the IP;

- University contracts with third parties wishing to access University IP must be negotiated by the Enterprise Team and not directly by any Creator of the IP;
- Any association of the Creator/s with a potential counter-party in an IP agreement (e.g. a licensee or assignee) will be subject to full disclosure to and prior approval of the Head of Enterprise and comply with University's Conflicts of Interest Policy;
- The Enterprise Team, in collaboration with the Creator/s, shall seek to ensure that third party rights are not knowingly infringed in any way through the planned exploitation; and
- the University shall seek to retain and protect the right of the Creator/s to use the relevant IP solely for teaching and academic purposes, though in some cases certain research may be disallowed.
- The University shall ensure that researchers do not become personally liable for product liability claims arising from the University's exploitation activities, unless such liability arises due to the researcher's employment or appointment in a University spin-out company.

4. INCENTIVISING IP EXPLOITATION

Consistent with government policy and in line with the University's strategy to encourage entrepreneurship and promote a culture which enables its intellectual output to benefit society, Creators of IP may benefit from revenues received by the University as a result of exploiting the IP as set out in University Revenue Sharing scheme in Annex 3.

The University will make any relevant payments in arrears to the Creators, no more than once a quarter and usually no less than once a year, via the University payroll after deducting, in the case of employees, the University's National Insurance contribution and any other tax applicable at the time of payment (e.g. but not limited to income tax).

Spin-outs

Where exploitation involves the creation of a spin-out company (i.e. a company formed as an exploitation 'vehicle' for university IP) or a start-up company (a company created by a third party (e.g. a student or university alumni) in which the University is invited to participate), due to the significant potential for conflicts of interests, all matters pertaining to the equity allocation and Creator involvement in spin-outs, both pre-investment and post-investment, shall be considered and endorsed/approved by the EB taking into account the University's Conflict of Interest Policy. For the avoidance of doubt, staff specifically employed to further the University's commercial activities are not normally permitted to acquire equity in spin-out companies whilst remaining as an employee of the University.

The involvement of one or more Creators in providing initial and future ongoing services to that company must be governed by an appropriate agreement, e.g. for the provision of consultancy or research services. The Enterprise Team, in conjunction with, the Consultancy Team and/or Legal & Governance will be responsible for drafting, reviewing and completing such agreements for the University upon approval by the EB.

Creator(s) are permitted to provide services, either as a director of the company or simply as an advisor, subject to the University's normal policy on consultancy. (See the University's Conflict of Interest, Consultancy Services/CPD Policies). University employees may also be seconded to the company subject to the normal contracting and approval processes, and generally subject in all cases to the full recovery of cost unless otherwise agreed (including the use of University facilities and services).

In general, such companies should only operate from University premises under a specific licence to occupy, or the company would secure space in a defined incubator with access to University facilities under an appropriate agreement.

For further details and guidance on the process of spinning out a company see the University's Spinout Guidelines 2024.

Discretion to assign/ licence back

If the University does not wish to maintain an interest in any IP, it has the right to assign such IP rights to its Creator/s by entering into an agreement with that Creator/s. This will generally only be granted where there is clear evidence that:

- the IP provides no significant benefit to the University; and
- the IPR is not related to other IP in which the University has an interest; and
- where assignment of the IPR will not have the potential to harm the name and reputation of the University.

Requests for any transfer of rights from the University to another party should be made to the Enterprise Team in the first instance and shall be subject to conditions noted in Annex 3.

5.CHANGE OF CREATOR STATUS

Cessation of employment, under normal circumstances, will not affect an individual's right to receive a share of revenue under the University's Revenue Sharing Scheme. Outside normal circumstances, continuation of the revenue share will be at the discretion of the Head of Enterprise. In the event of the Creator's death, payment of a revenue share will continue for the benefit of their estate.

It shall be the responsibility of each Creator (or their representative) to provide contact details (including private email) to the Enterprise Team from time to time so that the University can maintain contact with those who have left the University and, if necessary, make contact with the estate of any Creator who has died. If contact is lost for six consecutive months, the University will send notice to the last known address. If no contact details are received by the University within three months after such notice, the University shall retain that Creator's share for the benefit of the Faculty to which they belonged.

By law employees leaving the University have to keep confidential any proprietary information and IP owned by the University and are not permitted to use or disclose such information after cessation of their employment with the University.

The Head of Enterprise will consider any request from a former employee to use any IP created by them whilst at the University at their new institution. Where appropriate, the University may grant a licence or assignment of the IP to the former employee's new employer for teaching and non-commercial research purposes and/or for commercial purposes, on terms to be agreed.

6.BREACH OF POLICY

Breach of this Policy may be a disciplinary matter for University staff and students. The University will consider all avenues available to it, and may take legal action, if necessary, against any person bound by this Policy, who has acted in breach of them. The University's Conflicts of Interest Policy should be complied with in all circumstances.

7.DISPUTES

In the event of a dispute between the Creator and the Enterprise Team concerning the exploitation of IP (e.g. licensing or spin-outs), the PVC for Research & Impact (PVC) will undertake the dispute resolution. The PVC will make their decision within 90 days of submission of the dispute application.

In the event of a dispute between the Creator and the Enterprise Team concerning the ownership of IP, the matter shall be referred to an independent expert to be agreed between the Enterprise Team and the Creator. If agreement on the identity of the expert is not reached within 30 days, the expert shall be a barrister specialising in IP law, who shall be nominated for the purpose by the Chairman of the General Council of the Bar. The costs shall be shared equally between the Creator and the University, unless otherwise agreed.

Where such claims or disputes cannot be settled amicably, they may be taken to arbitration.

8. AMENDMENTS TO THE POLICY

This IP Policy shall be governed by, and construed in accordance with English Law.

Amendments to this Policy will be proposed by the EB and approved by Council.

This revised IP Policy supersedes that which was adopted by the University Council in November 2016. It is effective from [] and will apply to any IP first disclosed to the Enterprise Team on or after []. Where new IP is disclosed to the Enterprise Team after [] and are commercialised as part of a package of IP with IP disclosed prior to [], the EB will determine a fair apportionment between old and this revised IP Policy and their decision will be final and binding on all parties.

This policy will be reviewed 3 years from its effective date.

Annex 1 - Definitions

Confidential, for the purpose of this document, includes work that is restricted by contractual obligation to be kept confidential, including relationships with or data received from third parties, and/or work which has been declared confidential by ethics committees, and/ or unpublished work which has been disclosed to the Enterprise Team, and which is being evaluated for commercial potential.

Creator - See Clause 1.1 of the Policy

Disclosable Work shall mean such IP work that is novel, original and/or important and may have commercial potential. This work is characterised by the IPRs it generates.

Distributable Proceeds from Commercialisation are the amount of the Revenues available to be shared between the Creators and the University after deduction of eligible costs. Eligible costs may include, without limitation, payments to the funders of the original research, third party collaborators or any other third party with a legal interest in the IP that are deducted as a direct cost and any University Costs the University may elect to recover.

Impact is defined as 'an effect on, change or benefit to the economy, society, culture, public policy or services, health, the environment or quality of life, beyond academia', as per the Research Excellence Framework (REF), the first exercise to assess the impact of research outside of academia.

Intellectual Property (IP) for the purposes of this IP Policy includes but is not limited to inventions; software; databases; know-how; trade secrets; literary and artistic works; designs; and symbols, names and images used in commerce as well as any new and useful process or tangible property such novel materials or articles of manufacture.

Intellectual Property Policy (IP Policy) is the name of this document that outlines the regulations of the University in regard to disclosure and exploitation of IP.

Intellectual Property Rights (IPRs) are the rights afforded to Intellectual Property, the main classes of which are patents, trade marks, copyright and design right. These rights shall also include the rights to use, and protect the confidentiality of, confidential information (including know-how) and all other registered or unregistered IP rights or forms of protection having equivalent or similar effect anywhere in the world.

University of Liverpool Enterprise (the Enterprise Team) is the unit within the University that is responsible for decisions regarding, and the administration of invention disclosures, IP protection and IP exploitation.

Revenues are the cash or non-cash considerations received from third parties by the University resulting from intellectual property agreements (e.g. licensing, assignment or sale transactions) for University IP; but shall exclude funds or other consideration received for either sponsored research activities or ongoing IP protection costs.

The Enterprise Board (EB) is the University's body with oversight of decisions regarding IP investment, commercialisation, and disputes.

¹ University staff with *clinical duties* may also hold *honorary* contracts of employment with an NHS Partner Trust. The ownership of IP will remain with the University unless otherwise agreed in writing with the said NHS Partner Trust. Guidance on specific circumstances ought to be sought from the Enterprise Team.

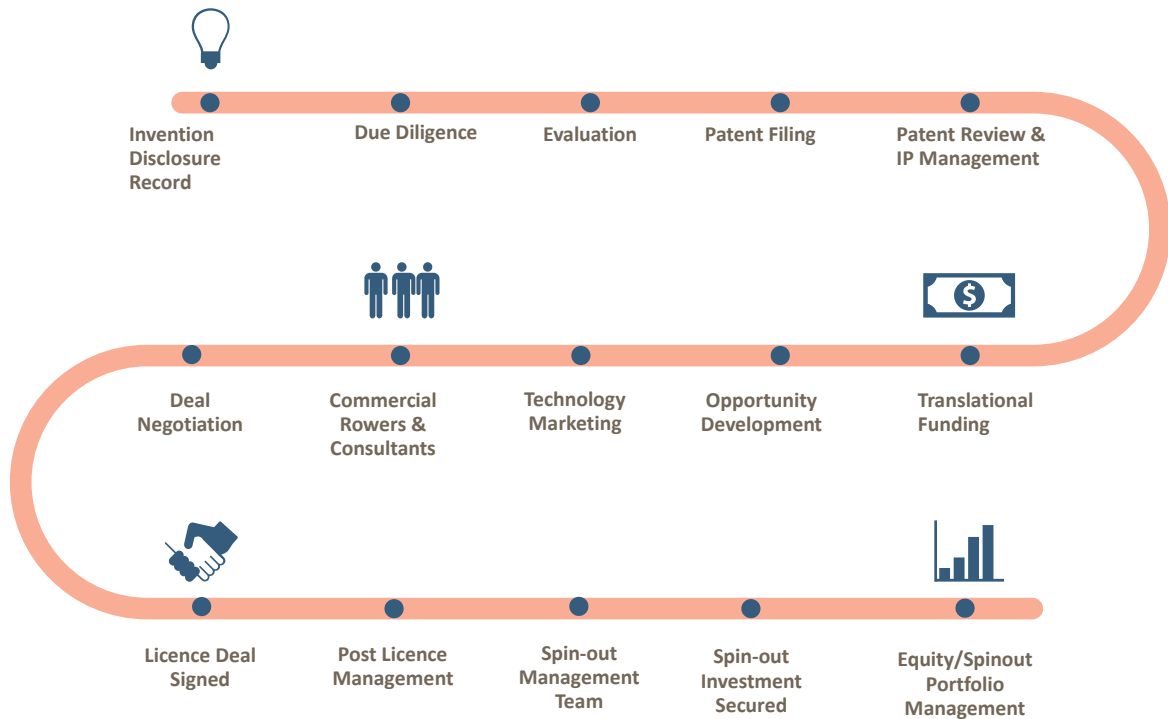
² Honorary or visiting positions who are not employed by the University may, under certain circumstances, be required to transfer to the University any IP they create in the course of their activities for the University. This would be agreed in writing through Human Resources (perhaps in consultation with the Enterprise Team) at the time of appointment by the University of the honorary or visiting party.

The University, for the purpose of this document, is the University of Liverpool.

University Costs means costs, taxes and duties incurred by the University (both internal and external) associated with specific IP; including but not limited to costs arising from: 1) external professional advisers (e.g. patent, legal and accounting); 2) consultants; 3) official fees paid in relation to registered IPRs; 4) unrecovered VAT and withholding tax; 5) licensing and license maintenance fees; 6) cash investment in proof of concept or other development activities; 7) patent infringement and litigation activities; and 8) the exploitation fee charged by the University; but shall exclude internal University staff and facilities costs.

University Support includes but is not limited to accessing University's infrastructure and facilities, making use of its financial resources and /or receiving funding or sponsorship (both directly from or channeled through the University) and / or its intellectual input.

Annex 2: IP Management Process



Enterprise Board

Terms of Reference

1. Oversees and governs the delivery of the University's IP exploitation activities, stimulates an enterprise culture across the University, maintains connections with all University initiated enterprise activities and reviews delivery against aims and best practice.
2. Ensures that the maximum impact benefits are being achieved from all opportunities supported.
 1. Reviews the performance of all licensing activity.
 2. Approves the creation of and monitors all research and know-how related University spin-out companies.
 3. Approves all changes (buying and selling of shares) to the University equity interests in spin-out companies.
 4. Approves all investments (grants and loans) greater than £50k granted from the Enterprise Investment Fund, enabling the University to support high risk commercial propositions within a balanced portfolio of investments.

Annex 3: The University of Liverpool’s Revenue Sharing Scheme

The University is responsible for collecting Revenues and, notwithstanding third party obligations, these shall belong to the University. The University has a policy of granting a generous share of the Distributable Proceeds from Commercialisation to Creators of IP to encourage their support in both the development and commercial exploitation of University IP. The University seeks to retain more of the returns based on its ownership of the IP if such returns are so substantial that it would be inappropriate for the University, as a charitable organisation, not to reinvest the returns according to the University’s charitable objectives.

Distributable Proceeds from Commercialisation are shared between the Creators and the University as shown in Table 1 and represents the total payable by the University in respect of all Creators. The University accepts no responsibility for any delay or non-payment where the Intellectual Property Disclosure Record (IDR) has not been fully completed and provided to the Enterprise Team. The first £10,000 is payable to the Creator(s) without any deduction of University Costs. Above this amount University of Liverpool Costs are deducted.

Distributable Proceeds from Commercialisation	Creator Share ³	School Share ⁴	Faculty Share	University Share
First £10,000 (gross of University Costs)	100%	0%	0%	0%
£10,001 - £100,000	70%	30%	0%	0%
£100,001 and above	50%	0%	20%	30%

Table 1. Revenue sharing model

The University recognises that the Schools (inclusive of School level Institutes) and Faculties play an important role in fostering the creation and development of new IP. Distributable Proceeds from Commercialisation are shared with both these University budget holders⁵ and should be used to support the creation and development⁶ of new IP, as determined at the discretion of the respective Head of School (for the School Share) or the Faculty Executive Pro-Vice Chancellor (in the case of the Faculty Share). The University Share shall be deployed in accordance with the objectives of the University’s Senior Management Team.

A Creator may make a request in writing to the Head of Enterprise, no more than once per annum, to alter the recipient of their share (either in part or in whole) of the Distributable Proceeds from Commercialisation. The Head of Enterprise is not obliged to agree to any such request, but will review each on a case by case basis. The Enterprise Team may require additional documents to be completed by the Creator to give effect to any request approved by the Head of Enterprise. Only after these have been completed will payments be amended.

³ In accordance with the Creator splits as recorded in the Intellectual Property Disclosure Record.

⁴ The term “School” shall include Institute level University bodies.

⁵ In the case of multiple Creators the split in payment between the Schools & Faculties shall follow apportionment in the IDR. In the event of any doubt regarding the appropriate School and/or Faculty, a final determination shall be made by the EB.

⁶ This is inclusive but not limited to seed funding for new areas of research, providing matched funding for industrial sponsored research as well as gap funding.

More than one individual may be involved in the creation of a Disclosable Work (including parties outside the University) and in the case of patents, some of those involved may not be an inventor. Where more than one Creator has contributed to the generation of the IP they, or in the case of inventions solely the inventors, collectively shall decide between themselves how they will share the Distributable Proceeds from Commercialisation to reflect the respective personal contribution of the Creators. In the case of inventions, the named inventors may sacrifice a portion of their share in favour of individuals who have contributed to the invention but are not legally defined as inventors; under such circumstances these individuals will also be classified as a Creator of the IP.

The share of Distributable Proceeds from Commercialisation shall be documented in the Intellectual Property Disclosure Record describing the Disclosable Work. This document shall be signed by all eligible Creators or, in the case of inventions, the inventors together with any other individuals considered a Creator by the inventors, and Heads of Department.

Where claims of a pending patent application change such that one or more named inventors are no longer inventors, they will remain recognised as Creators and be entitled to the same share of revenue as recorded in the Intellectual Property Disclosure Record.

Where the Creators are unable to agree the percentage allocation of their respective personal contribution, any individual Creator may apply to the Head of Enterprise for consideration of their case. The Head of Enterprise will establish the most appropriate action to determine the respective personal contribution of each Creator and will in consultation with the PVC propose a revenue share. The decision of the Head of Enterprise and the PVC will be final and binding on all parties.

Revenues Arising from IP Agreements

The University frequently enters into research or collaboration agreements with third parties, such as research sponsors or collaborators in other organisations. These agreements specify how income generated from the commercial exploitation of IP generated under the agreement will be shared between the University and the sponsor or collaborator. Prior to the University Revenue Share Scheme allocating monies as Distributable Proceeds from Commercialisation for the benefit of the Creators, these obligations to third parties have to be fulfilled. Thus, IP Agreements with licensees that create Revenue may need to be shared with a third party funders (e.g. The Wellcome Trust) or another institution (e.g. due to a contributor to the creation of the IP being employed elsewhere or after assignment of IP into the University the following the Creator's employment by the University), and after certain eligible deductions (e.g. patent costs, an exploitation fee⁷ etc.) are accounted for. Once these costs have been deducted, along with other University Costs, the remaining amount maybe distributed in accordance with Table 1. It is noted that the first £10,000 of Distributable Proceeds from Commercialisation is payable free from any University Costs but after third party obligations have been met.

Assignment of IP to Creators

In the event that a Creator, either directly or indirectly, successfully commercialises any IP following its assignment from the University the Creator shall agree to a share of revenue with the University which shall not generally exceed 5% of revenue associated with that IP.

⁷ Consistent with many other organisations the University will charge an exploitation fee to external funders or joint owners where it is eligible.