INTELLECTUAL PROPERTY POLICY

Section	Research
Contact	Provost
Last Review	September 2024
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Approval	C24/66
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Purpose:

To ensure that Intellectual Property Rights generated by Massey University Staff and Students are used to maximise the flow of benefits to the community, enhance the reputation and wealth of the University, encourage Staff and Students to benefit from their commercially viable activities and to protect the rights of Staff, Students and the University where Intellectual Property Rights are concerned.

Policy:

The Provost is the custodian of the University's Intellectual Property Policy and is the University's delegated agent for all of the University's rights and obligations under this Policy. All matters involving Intellectual Property Rights in which the University has an interest, must be directed through the office of the Provost unless exempted in this Policy or otherwise agreed by this Office (See Schedule 1).

The Provost will endeavour to ensure that claims are clearly recognised and attributed fairly to the parties (e.g. Staff, Students, the University) in which an interest is held (See Schedule 2).

In general, the University claims legal and beneficial ownership of all Intellectual Property Rights in relation to all Intellectual Property generated under the auspices of the University. This includes, without limitation, Intellectual Property created by any of the University's staff during the course of their employment or arising out of performance of a duty relating to their employment, and Intellectual Property created by any of the University's students in the course of their study at the University.

The University does not claim ownership of copyright to Scholarly Work, creative work or instructional materials created by its staff in the course of their employment, or Student Work created by its students in the course of their study at the University, unless those works or materials have been explicitly commissioned by the University, or created with the material use of University (or University sourced) funding or allocation of significant University resources specifically related to the creation of such Scholarly Work of Student Work. Unless otherwise agreed, copyright in non-commissioned works belongs to the creators. Notwithstanding this, the University shall have a permanent, nonexclusive, royalty-free, world-wide licence to use scholarly works (including instructional material) created by its staff in the course of their employment, or its students in the course of their study, provided that such use is confined to research or teaching of courses offered by the University. Where a legal impediment to the granting of such licence exists (for example, the potential infringement of IP rights held by a third party), then such licence is granted to the extent permissible at law (i.e., to the extent such licence does not infringe on the IP rights held by a third party).

Staff and Students are bound by obligations of confidentiality in relation to Intellectual Property Rights or any other commercially sensitive information (either that which the University and/or a third party has an interest) they become aware of during their work or study at the University. Except as expressly stated in this Policy, where Staff or Students create Intellectual Property Rights which may be of commercial interest to the University, they will formally notify (in confidence and at the earliest practicable opportunity) the Massey Enterprise (See Schedule 3).

The Provost (or delegated agent) will normally assign Massey Enterprise the responsibility to evaluate notified Intellectual Property Rights and make a decision, within a prescribed or agreed period of time, as to whether to pursue Commercialisation. Where Massey Enterprise decides that it or the University would not exploit specific Intellectual Property Rights, the applicable Staff and/or Students will be notified of that decision, and may then request to have ownership of those Intellectual Property Rights assigned to them (See Schedule 4).

The Provost will take all reasonable steps necessary to fairly and transparently allocate the benefits of Intellectual Property Rights to all parties with an interest (See Schedule 5).

Students are subject to most of the rights and obligations of Staff for the purposes of this Policy. Relevant staff and the Provost are required to take special care to ensurethat the reasonable interests and academic progress of students are protected (See Schedule 6).

Where Intellectual Property Rights are directly related to Māori Language Resources or derived from any Māori Traditional Knowledge, the Provost must consult the Deputy Vice-Chancellor Māori if and when it decides to proceed with Commercialisation (See Schedule 7).

Contracts with third parties will take precedence over this Policy. In negotiating contracts between the University and third parties, the University, and where applicable Massey Enterprise, will endeavour to negotiate intellectual property clauses which are consistent with this Policy. (See Schedule 8).

Exceptions – Written signed agreements between the University and Students (and/or any third party) concerning Intellectual Property Rights shall apply to Student Works as defined in the agreement concerned and not this Policy. When Student Work is submitted for a competition organised by the University, the rules for that competition shall apply to the Student Work submitted and not this Policy.

The University will take all reasonable steps to resolve any dispute over Intellectual Property Rights between the University and the applicable Staff and Students. This will be carried out with the assistance of an independent third party if necessary (See Schedule 9).

Staff and Students that leave the University may be entitled to continue receiving benefits from the Commercialisation of Intellectual Property Rights (See Schedule 10).

Audience:

Massey University staff, students and other personnel using Massey University facilities and resources.

Relevant Legislation:

Companies Act 1993
Copyright Act 1994
Crimes Ac 1961
Designs Act 1953
Education and Training Act 2020
Fair Trading Act 1986
Geographical Indications (Wine and Spirits) Registration Act 2006
Hazardous Substances and New Organisms Act 1996
Layout Designs Act 1994
Patents Act 2013
Plant Variety Rights Act 2022
Research Data Management Policy
Trade Marks Act 2002

Legal Compliance

All research practice must comply with relevant legislation.

Related Policies, Procedures and Documents:

Academic Outputs Policy

Code of Responsible Research Conduct
Commercial Contracts management Policy/Framework
Conflict of Commitment and Interest Policy
Delegations of Authority
Grounds for Embargo Policy
Information and Records Management Policy
Matua Reo Kaupapa: Māori Language Policy
Progressive Procurement Policy
Research and Consultancy Activity Proposals Policy
Research and Consultancy Contracts Policy
Use of Copyright Material for Educational Purposes Policy
Use of External Research and Consultancy Funding Policy
Student Contract
Student Consent Form
Treaty of Waitangi Policy

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Definitions:

Artistic Work means a Scholarly Work or Student Work that has an artistic quality and may include: paintings; design; photography drawings; sculptures; literature; poetry; performances; musical works, dramatic works or films that have any artistic quality.

Commercialisation in relation to any New Intellectual Property Rights, includes:

(a) the sale, licensing or other transfer of the New Intellectual Property Rights; or

(b) the use of the New Intellectual Property Rights in relation to the supply of any good or service,

in return for consideration which may include the provision or promise of assets, money, shares or similar. However, Commercialisation does not include the University's use of New Intellectual Property Rights in relation to the supply of teaching or contract research services or the supply of any goods related to those teaching or contract research services. **Commercialise**, **Commercialising** and **Commercialisable** have corresponding meanings.

Confidential Information means information obtained by a Staff member in the course of their employment, or by a Student in the course of their enrolment, which the University identifies as confidential, or that could reasonably be considered to be confidential, to the University or a third party, and includes information:

(a) relating to any New Intellectual Property Rights created by any Staff or Student;

(b) relating to the actual or proposed Commercialisation of any Intellectual Property Rights by the University, including the terms of any agreement; or

(c) provided by, or confidential to, any of the University's clients, collaborators, licensees, service providers or any other third party,

but does not include information that is in, or becomes part of, the public domain (other than because of a breach of this Policy by any Staff or Student) or which the University confirms in writing is no longer confidential.

Creator means the Staff member or Student who individually or jointly with others creates, invents, develops or conceives any New Intellectual Property Right and who meets the criteria for inventorship or ownership under relevant legislation. 'Create', 'created' and 'creating' have corresponding meanings in this instance.

Instructional Material means any copyright material prepared specifically for the purpose of teaching and learning.

Intellectual Property (IP) means any discovery, innovation, invention, form, shape, sound, image, expression,

technique, or process which is the product of skill, effort or intellect, and includes:
(a) copyright works, computer programs, and performances.
(b) patentable and potentially patentable subject matter, trade secrets, applications, and associated know-how.
(c) plant varieties and invented or protected life forms.
(d) Designs, registerable or otherwise.
(e) Databases and other valuable or potentially valuable information, including research outcomes and records.
(f) Embodied ideas or concepts.
(g) Layout designs for integrated circuits.
(h) Signs or insignia of origin, quality, or reputation.
(i) Registered and unregistered trade marks, domain names, and business names.
(j) Instructional material.

Intellectual Property Rights means any claim, right or interest, whether conferred by statute, at common law, by contract, or in equity, to Intellectual Property, and which is enforceable under the law of New Zealand or any other country where protection of the Intellectual Property is being sought, whether by contract or direct operation of the law.

Māori Language Resources means any (re)sources written in the Māori Language, Te Reo Māori.

Massey Enterprise means the administrative office or other entity nominated by the Provost and charged with responsibility for identifying, protecting and Commercialising Intellectual Property Rights in which the University has an interest.

New Intellectual Property Rights means all Intellectual Property Rights arising in the course of a Staff member's employment, and/or a Student's enrolment at the University (as the case may be), where the course of employment or enrolment will be read widely to include all research, development, inventive and/or creative work undertaken by that Staff member or Student in connection with their employment or enrolment (as the case may be) or otherwise using University resources.

Policy means this Intellectual Property Policy including the Schedules and Definitions.

Scholarly Work means all literary, dramatic, musical or artistic works, sound recordings, films or communication works produced by a Staff member in the course of their employment at the University and includes work:

(a) in relation to a Staff member's research activities, any scholarly publications including books, textbooks, articles in scholarly journals or conference proceedings or other collections, research reports and book reviews;and

(b) in relation to teaching and other activities, any lectures, lecture notes and material, study guides, assessment materials, images, multi-media presentations, web content and published lectures,

but excludes Software.

Software means protectable computer programs and related programming code, including machine readable object code and human readable source code, and related documentation.

Staff means persons employed by Massey University under either individual employment contracts or a collective employment contract.

Student means a person who has enrolled at Massey University in any paper listed in the University Calendar and who has received a student identity number.

Student Work means all literary, dramatic, musical or artistic works, sound recordings, films or communication works produced by a Student in the course of their enrolment at the University and includes reports, research papers, theses, dissertations, books, journal articles, conference papers and book reviews, but excludes Software.

Traditional Māori Knowledge means a body of knowledge, innovations, and practices generated within Māori communities and transmitted between generations in oral, written, or electronic form.

University means Massey University, the tertiary education institution established as a University under the Education Act 1989.

Visitor means a person other than Massey University Staff or Student who is given access to or use of University resources, including but not limited to adjunct appointees, temporary staff, consultants, contractors, external library borrowers, private researchers/research assistants, Professor's Emeriti, University patrons, external users of university facilities or resources, or visiting academics/researchers/students.

SCHEDULE 1: Authority for Dealing with Intellectual Property Rights

1. The Provost is the custodian of this Policy and is the University's delegated agent for all of the University's rights and obligations under this Policy. All matters involving Intellectual Property Rights in which the University has a commercial interest must be directed throughthe office of the Provost unless otherwise provided underthis Policy or directed by the Provost.

2. Except where expressly permitted under this Policy, no Staff member or Student may apply for in their own name, assign, licence or otherwise deal with, any Intellectual Property Rights in which the University has an interest or can reasonably be said to have an interest, without the written consent of the Provost.

3. The Provost will normally delegate their authority under this Policy to Massey Enterprise to allow for the expeditious use and Commercialisation of New Intellectual Property Rights by the University in accordance with this Policy.

SCHEDULE 2: Ownership of Intellectual Property Rights

1. Ownership of New Intellectual Property Rights:

1.1 Each Creator agrees that the legal and beneficial ownership of all New Intellectual Property Rights they create vests in the University on creation except:

(i) in relation to copyright in Scholarly Works which is addressed under clause 2.1 of this Schedule;

(ii) in relation to copyright in Student Works, which is addressed under clause 2.2 of this Schedule;

(iii) in relation to moral rights, which are addressed in clause 3 of this Schedule;

(iv) where otherwise agreed in writing by the University.

(v) where there are agreements with third parties, or underlying rights in a work that are outside the control of the Creator

1.2 Where required by the University, Creators must promptly complete and sign all documentation required by the University to give effect to clause 1.1 of this Schedule.

1.3 Ownership of any New Intellectual Property Rights developed by a Creator that Massey Enterprise notifies the Creator are not considered Commercialisable under Schedule 4, may be assigned to the Creator in accordance with clause 3 of Schedule 4.

2. Scholarly Works and Student Works:

2.1 Each Staff member:

(i) retains copyright (but no other Intellectual Property Rights) in their Scholarly Work, unless that Scholarly Work has been explicitly commissioned by the University, or created with the use of University (or University sourced) funding or allocation of University resources specifically related to the creation of such Scholarly Work, or unless otherwise agreed;

(ii) grants the University a non-exclusive, royalty free, irrevocable, transferable, perpetual licence to use, modify and reproduce their Scholarly Work for research, teaching and promotional purposes (unless restrained by some legal or contractual arrangement);

(iii) must not assign or licence copyright in their Scholarly Work to any other university or tertiary education institute other than in accordance with clause 2.1(iv) or with the University's prior written agreement;

(iv) must not use their Scholarly Work to provide any course at any other university or tertiary education institute during the term of their employment, other than as reasonably required as part of that Staff member's overseas duties, study leave, secondment or similar visit to that university or tertiary education institute approved by the relevant Head of Department for that Staff member; and

(v) must keep copies or images or other form of description of all Scholarly Work, including Artistic Work, created by the Staff member in the course of their employment at the University or which have been expressly commissioned by the University or created with the use of University (or University sourced) funding or allocation of University resources, in the University's Record Keeping System (as defined in the *Information and Records Management Policy*). The Provost may establish, from time to time, the requirements for storing those, taking into account, amongst others:

(a) consistency with reporting requirements from external funding bodies.

(b) consistency of approach across the University.

(c) consistency with international conventions.

(d) efficiency of administration

(e) addressing the needs of Colleges

2.2 Each Student:

(i) retains copyright (but no other Intellectual Property Rights) in their Student Work, unless their Student Work has been explicitly commissioned by the University, or created with the use of University (or University sourced) funding or allocation of University resources specifically related to the creation of such Student Work, or unless otherwise agreed; and

(ii) grants the University a non-exclusive, royalty free, irrevocable, transferable, perpetual licence to use, modify and reproduce such Student Work for the University's teaching, research and promotional purposes.

2.3 Notwithstanding clauses 2.1 and 2.2 above, Staff and Students must comply with their confidentiality obligations relating to Scholarly Works and Student Works, including those set out in Schedule 3 of this Policy.

2.4 Nothing in this policy requires that a Staff member or Student share with the University any consideration they derive from the licensing or other Commercialisation of any copyright held by that Staff member or Student.

3. Moral rights and modification

3.1 The University recognises moral rights held by Creators in their works under the Copyright Act 1994,

including the right of fair attribution of authorship and the need for work not to be modified or used in such a way that it harms the Creator's reputation.

3.2 The University will use its reasonable endeavours to assist Creators in asserting their moral rights in Scholarly Works or Student Works in cases where clear breaches of accepted academic conventions occur.

3.3 In exercising the rights granted under clause 2.1(ii) or 2.2(ii) of this Schedule, the University will use its reasonable endeavours to ensure that any modification it makes to any Scholarly Work or Student Work:

(i) does not harm the Creator's reputation; and

(ii) is limited to the extent that modification is necessary for the University's purposes; and

(iii) does not in its opinion prejudice the creative integrity of that work.

SCHEDULE 3: Disclosure and notification of Intellectual Property Rights

1. Where a Creator develops, creates, or conceives (whether totally or in part) any New Intellectual Property Right that is related to the business of Massey University in any way and/or that may be of commercial interest to the University, they must discuss that New Intellectual Property Right with a senior representative of Massey Enterprise as soon as practicable and must complete and return to Massey Enterprise a confidential notification about that New Intellectual Property Right, unless Massey Enterprise agrees in writing that the confidential notification is not required. The notification must include sufficient information for Massey Enterprise to understand the New Intellectual Property Right and whether there are co-Creators, to undertake due diligence to assess any obligations arising from Contracts with Third Parties (Schedule 8) and to assess its commercial potential.

2. If a Creator is not sure whether to have discussion with, or notify, Massey Enterprise about any New Intellectual Property Right under clause 1 of this Schedule, they should consult the head of their academic unit or supervisor. If any doubt remains, the Creator must discuss the New Intellectual Property Right with Massey Enterprise and notify Massey Enterprise about the New Intellectual Property Right in accordance with clause 1 of this Schedule.

3. A confidential register of notifications submitted under this Schedule will be maintained by Massey Enterprise.

4. Staff members or Students must not use or disclose Confidential Information for any unauthorised purpose. Where a Staff member or Student knows (or should reasonably know) that the University owes another party an obligation of confidentiality in relation to any information, they will comply with that obligation.

5. Staff members and Students must keep confidential all New Intellectual Property Rights developed at the University that are notified (or should be notified) to Massey Enterprise under this Policy. Without limitation, this means they must not submit or publish any academic abstracts or other publications, make any conference presentations, release press articles or otherwise disclose or use such New Intellectual Property Rights without the written approval of Massey Enterprise. Such use or disclosure may prejudice the patentability and commercial potential of those New Intellectual Property Rights. This requirement is in addition to the requirements of the University's Thesis Embargo policy. The University will comply with its obligations under Schedule 6 of this Policy in relation to Students' obligations under this paragraph.

6. When a Staff member or Student is considering publishing or commercialising material that can be reasonably said to relate directly to Māori Language Resources or to be derived from any Māori Traditional Knowledge they must notify the Deputyt Vice-Chancellor (Māori) as well as Massey Enterprise as soon as is practicable and before a decision is made to submit for publication or before they complete and return a confidential notification form to Massey Enterprise.

SCHEDULE 4: Evaluation of Intellectual Property Rights

1. Determination by Massey Enterprise as to the viability of Commercialisation

1.1 Massey Enterprise will use its best efforts to assess the commercial potential of any New Intellectual Property Right within three months of receiving all relevant information relating to that NewIntellectual Property Right.

2. Notice of determination by Massey Enterprise

2.1 Massey Enterprise will promptly advise the Creator(s) of any decision it makes to proceed with Commercialisation or not or where it decides to defer that decision.

(i) 2.2 Where Massey Enterprise decides to pursue Commercialisation of any New Intellectual Property Right:it will have discretion in relation to seeking patent protection and negotiating and entering intocommercial agreements;

(ii) it will advise the Creator(s) on progress, but will not need consent from the Creator(s) in relation to such activities; and

(iii) the Creator(s) will:

(a) provide all reasonable assistance to Massey Enterprise including providing information and advice, assisting with due diligence, attending meetings and executing required documentation; and

(b) assign to the University copyright in all Student Works or Scholarly Works (as applicable) that are part of or directly related to the New Intellectual Property Right that Massey Enterprise wishes to Commercialise solely to the extent that Massey Enterprise considers on reasonable grounds that the copyright in such works is, or will be, required for the purpose of Commercialisation.

3. Unwanted IP

3.1 Where Massey Enterprise notifies the Creator(s) that it does not wish to Commercialise any New Intellectual Property Right or continue to commercialise any new IP Right, the Creator(s) may request that the New Intellectual Property Right be transferred to them. The continuation of the dissemination embargo would then be at the discretion of the Creator(s). That transfer will then be negotiated with Massey Enterprise in good faith and in a timely manner. Massey Enterprise may require some form of consideration, including recovery of costs, for that transfer, including (for example) recovery of any investment by the university or Massey Enterprise, ongoing royalty payments, an equity stake, and/or the provision of an ongoing licence back to the University for research and teaching purposes. However, Massey Enterprise must not unreasonably withhold its consent to a transfer or seek to impose unreasonable consideration obligations or other conditions in relation to any transfer under this clause 3.1.

3.2 Without limiting the University's discretion, the University may decide not to assign any New Intellectual Property Right to the Creator(s) where:

(i) that New Intellectual Property Right arose out of, or is closely related to, any ongoing research or development work at the University and the University wishes to assess the future outputs from that research or development work before determining whether or not to assign any New Intellectual Property Right to the Creator(s); or

(ii) the University can demonstrate that any use or disclosure of the New IntellectualProperty may:

(a) endanger public safety;

(b) prejudice the teaching and research activities of the University; or

(c) prejudice the commercialisation of any other Intellectual Property by the University or its clients, licensees or collaborators.

3.3 Where a New Intellectual Property Right is subsequently owned solely by a Student Creator or group of Student Creators, and subject to there being no overarching rights or obligations arising from Contracts with Third Parties (Schedule 8), the University may at its discretion agree for the Student Creator(s) to exploit the New Intellectual Property Right without an obligation to share any or some royalties with the University. The University may, at the Student Creators' request, explore the potential for Massey Enterprise to further assist the Student Creator with commercialisation, under such terms as agreed to in writing.

SCHEDULE 5: Allocating the benefits of Intellectual Property

1. Revenue and costs

1.1 Subject to the terms of this Policy or any applicable agreement, the University will treat bothStaff and Students fairly and equitably in any negotiations under clause 2 of this Schedule.

1.2 In relation to any period, "Net Revenue" means (subject to clause 1.3 of this Schedule) all Revenue received by the University in relation to New Intellectual Property Rights in that period less all Costs that have not yet been recovered by the University as at the end of the period, where:

(i) "Revenue" includes:

(a) all royalties, licence fees or other cash consideration from the licensing, assignment or other Commercialisation of the New Intellectual Property Rights; and

(b) where the University acquires shares in return for the licensing, assignment or other Commercialisation of New Intellectual Property Rights (which may include the creation of a new entity), all cash revenue received as distributions or from the sale of such shares,

but does not include research funding received in relation to the licensing, assignment or other Commercialisation of the New Intellectual Property Rights; and

(ii) "Costs" include:

(a) costs and expenses incurred by the University in the development of the applicable New Intellectual Property Rights as evidenced by written records of the University following discussions between the relevant Head of Department or Head of College and Massey Enterprise;

(b) all costs and expenses incurred by Massey Enterprise directly in relation to the Commercialisation of New Intellectual Property Rights;

(c) all external costs and expenses incurred by the University directly in relation to the Commercialisation of the New Intellectual Property Rights including all legal, accounting and other consultancy costs, all patent protection, defence and enforcement costs and all other costs and liabilities arising from any action or proceedings in contract or tort relating to the Commercialisation of the New Intellectual Property Rights, including (without

limitation) all collection costs; and

(d) any penalties or third party liabilities incurred by the University in relation to the New Intellectual Property Rights or its Commercialisation.

1.3 Subject to clause 1.4, when offsetting Costs against Revenue to determine Net Revenue, the University on the recommendation of the Provost may first off set its own Costs (including Costs of Massey Enterprise) then offset Costs of the applicable College in which the Creators were employed or enrolled.

1.4 In relation to any period, Massey Enterprise may decide to spread Costs over both current and expected future Revenue. Where it does so:

(i) only the portion (determined by Massey Enterprise) of Costs that have not been recovered by the University as at the end of that period will be off set against Revenue received in that period;

(ii) any Net Revenue that thereby arises in that period will be allocated in accordance with clause 2 of this Schedule; and

(iii) unless Massey Enterprise determines otherwise, at least the same portion of Costs that have not been recovered by the University at the end of any future period will be off set against Revenue in that future period until all Costs are recovered by the University.

1.5 Any Creator that has a right to any Net Revenue under this Policy may, by written notice and no more frequently than once every 12 months, appoint a registered accountant to audit the University's records at a time reasonably convenient for the University for the sole purpose of validating any Net Revenue payments paid or payable to that Creator. The Creator will meet the full costs of any audit provided that the University will refund those costs where the audit reveals a discrepancy in total payments of more than 5%.

2. Allocation of Net Revenue

2.1 Each year, the University will allocate a percentage of Net Revenue received in that year in accordance with this clause. The percentage of Net Revenue allocated to the Creator(s) and the applicable College and the percentage retained by the University will depend on the total cumulative value of Net Revenue received by the University over the life of the Commercialisation up to the date of the allocation, as follows:

Cumulative Net Revenue (over life of Commercialisation)	**Creator(s)**	**College**	**University**
$1 to $15,000	100%	0%	0%
$15,001 to $50,000	50%	25%	25%
More than $50,000	30%	35%	35%

2.2 Where there is more than one Creator, their percentage of Net Revenue set out above will be shared equally between them, unless they have otherwise agreed in writing.

2.3 Where a Creator(s) has been allocated shares under clause 3 of this Schedule:

(i) that Creator(s) will not be entitled, under this clause 2, to any Net Revenue from revenue received by the University in relation its shareholding, including revenue received by the University from distributions, share sales or similar;

(ii) half of the portion of Net Revenue that would otherwise have been allocated to that Creator(s)

will be allocated to the College and half will be retained by the University; and

(iii) if, in relation to the same New Intellectual Property Rights, another Creator(s) has not been allocated shares, Massey Enterprise may enter an agreement with that Creator(s) to set outthe appropriate allocation of Net Revenue to that Creator(s). That allocation must recognise the reduction of the University's Revenue from distributions and share sales resulting from the other Creator(s)' shareholding.

3. Allocation of shares to Staff and Students

3.1 In some circumstances, Massey Enterprise and the Creator(s) may agree that it is appropriate for the Creator(s) to acquire shares in a company or other entity into which the applicable New Intellectual Property Rights have been licenced or assigned. In such circumstances the Creator(s):

(i) must comply with the Formation of Spin-Out Companies Policy, Conflict of Commitment and Interest Policy, and other relevant University policies;

(ii) if required, must negotiate and agree an appropriate shareholders' agreement and constitution in good faith with the University and other shareholders (as applicable);

(iii) acknowledges the intention that the total aggregate value of the Creator(s) initial shareholding will be no greater than one third of the combined initial shareholding of the University and/or Massey Enterprise and the Creator(s);

(iv) acknowledges that, for the purpose of attracting and securing external investment or support, it may be necessary for the Creator(s) to:

(a) be issued shares of a certain class and/or to enter into a shareholders' agreement so that in any matter that requires unanimous assent or a special resolution of shareholders, the Creator(s) must either not vote, or (if they do vote) they must vote consistently with the University; and

(b) not have a voting position on the applicable company's or entity's board of directors; and

(v) acknowledges that the Creator(s) will have no right to any payment or return received by the University in relation to its shareholding,

provided that it is always open to Massey Enterprise and the Creator(s) to negotiate arrangements outside these parameters in particular cases where Massey Enterprise and Creator(s) consider it appropriate.

4. General

4.1 Each Creator is responsible for assessing and complying with all tax obligations associated with benefits allocated to that Creator under this Policy.

4.2 Massey Enterprise will advise Creators to obtain independent advice prior to them signing any shareholders' agreement or any other agreement relating to any New Intellectual Property Rights.

4.3 Without limiting clause 4.1, where Massey Enterprise and a Creator intend to agree on thatCreator acquiring shares under clause 3.1, the University will refund that Creator the direct cost forfirst three hours of legal and/or accounting advice they receives in relation to that arrangement provided that:

(i) the Creator notifies Massey Enterprise before seeking such advice;

(ii) Massey Enterprise agrees that the proposed advice will fall within the scope of this clause;and

(iii) the Creator provides an itemised invoice or other evidence of the actual costs incurred by the Creator in relation to that advice.

4.4 Where any New Intellectual Property Right is licenced or assigned to a wholly owned subsidiary of the

University, that subsidiary will be treated as part of the University for the purpose of this Schedule, including the determination of Net Revenue.

SCHEDULE 6: Students

1. Subject to written signed agreements with Students concerning Intellectual Property rights, and subject to rules for competitions held by Massey University, where Students are involved in activities that could lead to the development of New Intellectual Property Rights, the following conditions will apply:

   1.1 participation in the research should not interfere with the assessment of the Student's academic performance;

   1.2. any delays in publication of the Student's thesis that arise from an agreement should be consistent with the University's embargo policy or as otherwise agreed by the Provost; and

   1.3 any agreement with a third party should be reached with a view to ensuring that the Student's rights under this Policy are maintained as far as practicable.

   For competitions and promotions, see the Student Consent Form under Related Procedures, listed on page two of this document.

SCHEDULE 7: Māori Language Resources and Traditional Knowledge

1. The University is committed to giving effect to the principles of the Treaty of Waitangi, and its aims under the *Treaty of Waitangi Policy*.

2. The University also recognises Māori language an official language of New Zealand, and of Massey University, and is mindful of its obligations under the Matua Reo Kaupapa - Māori Language Policy.

3. Where the University has a commercial interest in New Intellectual Property Rights that can reasonably be said to be directly related to Māori Language Resources or derived from any Māori Traditional Knowledge, Massey Enterprise must consult the Deputy Vice-Chancellor (Māori) if and when it decides to proceed with Commercialisation (See Schedule 4 section 2).

4. Where publication of material that can similarly be reasonably said to relate directly to Māori Language Resources or to be derived from any Māori Traditional Knowledge, and which has not hitherto been appropriately acknowledged, the relevant academic manager will notify the Deputy Vice-Chancellor (Māori) before a decision is made to submit for publication.

5. The Deputy Vice-Chancellor (Māori) will consider those aspects of Commercialisation or publication that have implications for Māori intellectual property rights and will endeavour to identify where those rights properly reside and how the processes of Commercialisation or publication might then proceed.

6. In the case of Commercialisation, if the Deputy Vice-Chancellor (Māori) wishes to respond, the response must be supplied to Massey Enterprise within 21 working days (or otherwise by mutual agreement) of receiving notification of the matter.

7. Massey Enterprise is obliged to take account of this advice (if tendered) before allowing any transfer, licence or other third-party use or Commercialisation of those New Intellectual Property Rights.

SCHEDULE 8: Contracts with Third Parties

1. In the event of a conflict between this Policy and any agreements the University has with a third party (including scholarship agreements), the latter shall prevail.

2. The University reserves its right to transfer its Intellectual Property Rights to third parties in accordance with this Policy, or otherwise, where practicable, following consultation with the Creator(s) of the Intellectual Property Rights that are still employed by, or enrolled at, the University.

3. All contracts between the University and third parties which include considerations about Intellectual Property Rights must include specific clauses defining the ownership of Intellectual Property. The University shall endeavour to negotiate intellectual property clauses which are consistent with this Policy.

4. On entering contracts with third parties which include considerations about Intellectual Property Rights, the University will ensure that the applicable Staff and Students are aware of the content of that agreementto the extent it impacts on those Staff and Students in their employment or enrolment at the University.

5. Visitors to the University have no rights to the University's Intellectual Property, other than as specifically recorded in a written agreement with the University.

6. Visitors to the University may develop Intellectual Property during their time at the University. Where such Intellectual Property was created with the significant use of University resources or funding, or have been expressly commissioned by the University, or on University premises, then in the absence of an express written agreement to the contrary, any Intellectual Property created during the visitor's time at the University shall be owned by the University. Where such an agreement is negotiated on behalf of the University, Massey Enterprise must do so in consultation with the applicable Head of College/School/Institute/Department.

7. When Staff or Students are to undertake work with considerations about Intellectual Property Rights in collaboration with third parties or at physical or virtual sites controlled by other organisations in the course of their employment or research with the University, the Staff or Students concerned shall notify Massey Enterprise before such work commences. Massey Enterprise will use its best endeavours to negotiate an agreement with the other organisation(s) regarding the allocation of Intellectual Property Rights created. Such agreement shall be in accordance with this Policy as far as is possible.

8. Staff and Students who have been advised of the terms of a contract with a third party must not act (or omit to act) in any way that may result in the University breaching its obligations under that third party contract.

SCHEDULE 9: Dispute Resolution

1. Unless otherwise determined in a written agreement, this disputes procedure is available to all Staff and Students having an interest in decisions or processes relating to the exploitation of Intellectual Property Rights, as described in the Massey University Intellectual Property Policy to which this procedure is appended as a Schedule.

2. In the event of a dispute arising between persons (including the University itself) having an interest in decisions or processes relating to the exploitation of Intellectual Property Rights at or by the University, resolution of this dispute shall be sought in accordance with the following procedure:

   2.1 The aggrieved person(s) shall immediately inform the other party or parties to the dispute of their grievance in writing, and invite them either to remedy the matter complained of or respond to the grievance within thirty (30) days.

   2.2 Should the dispute remain unresolved, all parties shall then seek to settle the matter informally through discussion or negotiation.

   2.3 If no such informal resolution can be reached within a reasonable time, then any party may refer the matter for compulsory arbitration by a single arbitrator to be nominated by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. and such arbitration shall be regarded as final and binding upon all parties.

2.4 Any party may seek the advice, support, assistance or representation from whomever it chooses in seeking to resolve the dispute.

SCHEDULE 10: Cessation of Employment or Enrolment

1. When a Staff member or Student retires, graduates or otherwise leaves the University, without limiting any other right or obligations they may have, that Staff member or Student will continue to be bound by their obligations of confidentiality in relation to information they worked on or became aware of while employed by or enrolled at Massey University.

2. When a Staff member or Student, who is entitled to an allocation of benefits under Schedule 5, retires, graduates, dies or otherwise leaves the University while employed by the University or enrolled at the University, the allocation of benefits will continue after the date of retirement, graduation, death or other departure (and to the extent necessary, will endure to the benefit of their estate) provided that the Staff member or Student is not in material breach of any Policies of the University. Nothing in this Policy requires that the University continue any commercial activity that is uneconomic or otherwise not in the interests of the University. It is always open to Massey Enterprise to negotiate arrangements outside these parameters in particular cases where Massey Enterprise considers it appropriate. Shareholdings already allocated under other agreementsare not affected by this clause.

3. It is the responsibility of Staff and Students to ensure that the University is aware of their contact details, so the University is able to make any payments due under this Policy.