

INTELLECTUAL PROPERTY POLICY

Section	Research
Contact	Office of AVC Research, Academic and Enterprise
Last Review	May 2014
Next Review	May 2017
Approval	C14/70 – July: 4.3.1
Effective Date	2 May 2014

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 Assistant Vice-Chancellor (Research, Academic & Enterprise) 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 Assistant Vice-Chancellor (Research, Academic & Enterprise) unless exempted in this Policy or otherwise agreed by this Office (See [Schedule 1](#));

In general, the University claims legal and beneficial ownership of all Intellectual Property Rights generated under the auspices of the University. However, Staff and Students retain ownership of copyright and other rights (as identified in this policy) but grant a licence to the University on the terms specified in the policy. The Assistant Vice-Chancellor (Research, Academic & Enterprise) 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](#));

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 Commercial Office (See [Schedule 3](#));

The Assistant Vice-Chancellor (Research, Academic & Enterprise) (or delegated agent) will normally contract the Commercial Office who will evaluate notified Intellectual Property Rights and make a decision, within a prescribed or agreed period of time, as to whether to pursue Commercialisation. Where the Commercial Office decides not to exploit the Intellectual Property Rights, the Staff and/or Students involved can apply to have all ownership rights assigned to them (See [Schedule 4](#));

The Assistant Vice-Chancellor (Research, Academic & Enterprise) 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 academic staff and the Assistant Vice-Chancellor (Research, Academic & Enterprise) are required to take special care to ensure that the 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 Assistant Vice-Chancellor (Research, Academic & Enterprise) must notify the Assistant Vice-Chancellor Māori & Pasifika 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 Assistant Vice-Chancellor and Commercial Office will endeavour to negotiate intellectual property clauses which are consistent with this Policy. (See [Schedule 8](#));

Exceptions – Written signed Agreements between the University and the Students concerning intellectual property rights shall apply to Student Works defined in the Agreement concerned and not this Policy. When a Student's Work is submitted for a competition organised by the University, the rules for that competition shall apply to the Student's 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:

Patents Act 1953
Designs Act 1953
Plant Variety Rights Act 1987
Copyright Act 1994
Layout Designs Act 1994
Companies Act 1993
Trade Marks Act 2002

Legal Compliance

All research practice must comply with relevant legislation. Guidance can be obtained from the Law Guide available on-line at <http://policyguide.massey.ac.nz/>

Related Procedures:

[Definitions and Schedules for Intellectual Property Policy \(see below\)](#)
[Research Practice Policy \(Responsible Research Conduct\)](#)
[Code of Responsible Research Conduct and Procedures for dealing with Research Misconduct](#)
[Conflict of Commitment and Interest Policy](#)
[Research and Consultancy Activity Proposals Policy](#)
[Matua Reo Kaupapa: Māori Language Policy](#)
[Use of Research and Consultancy Funding Policy](#)
[Student Contract](#)
Student Work Consent Form

Document Management Control:

Prepared by: Research Strategy and Policy Manager
Owned by: Assistant Vice-Chancellor (Research, Academic & Enterprise)
Authorised by: Council – C14/71 – July: 4.3.1
Date issued: March 2006
Last review: May 2014
Next Review: May 2017

SCHEDULES AND DEFINITIONS

Definitions

- Schedule 1: [Authority for Dealing with Intellectual Property Rights](#)
- Schedule 2: [Ownership of Intellectual Property Rights](#)
- Schedule 3: [Disclosure and notification of Intellectual Property Rights](#)
- Schedule 4: [Evaluation of Intellectual Property Rights](#)
- Schedule 5: [Allocating the benefits of IP](#)
- Schedule 6: [Students](#)
- Schedule 7: [Māori Language Resources and Traditional Knowledge](#)
- Schedule 8: [Contracts with Third Parties](#)
- Schedule 9: [Dispute Resolution](#)
- Schedule 10: [Cessation of Employment or Enrolment](#)

Definitions pertaining to the Massey University Policy on Intellectual Property:

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.

Commercial Office means the administrative office or other entity nominated by the Assistant Vice-Chancellor (Research, Academic & Enterprise) and charged with responsibility for identifying, protecting and Commercialising Intellectual Property Rights in which the University has an interest.

Confidential Information means information obtained by a Staff member in the course of his or her employment, or by a Student in the course of his or her 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 Students;
- (b) relating to the actual or proposed Commercialisation of any Intellectual Property Rights by the University, including the terms of any commercial 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 Commercial Office confirms in writing is no longer confidential.

Creator means the Staff member or Student responsible for creating, inventing, developing or conceiving any New Intellectual Property Right and who has an ownership interest in that New Intellectual Property Right or who, but for this Policy, any agreement to the contrary or operation of law, would have an ownership interest in that New Intellectual Property Right.

Intellectual Property Rights means all intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to all copyright and similar rights that may subsist in works or other subject matter; rights in relation to inventions (including all patents and patent applications); trade secrets and know-how; rights in relation to designs (whether registrable); rights in relation to registered and unregistered trademarks; business names; and rights in relation to domain names.

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

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 as part of their employment or enrolment.

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 his or her employment at the University and includes:

- (a) in relation to a Staff member's research activities, any scholarly publications including books, text-books, 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 his or her 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 the tertiary education institution established as a University under the Education Act 1989.

SCHEDULE 1: Authority for Dealing with Intellectual Property Rights

1. The Assistant Vice-Chancellor (Research, Academic & Enterprise) 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 through the office of the Assistant Vice-Chancellor (Research, Academic & Enterprise) unless otherwise provided under this Policy or directed by the Assistant Vice-Chancellor (Research & Enterprise)'s office.
2. Except where expressly permitted under this Policy, no Staff member or Student may apply for in their own name, assign, license or otherwise deal with, any Intellectual Property Rights in which the University has a commercial interest or can reasonably be said to have a commercial interest, without the written consent of the Assistant Vice-Chancellor (Research & Enterprise).
3. The Assistant Vice-Chancellor (Research & Enterprise) will normally delegate his or her authority under this Policy to the Commercial Office 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 he or she creates 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 Commercial Office.
- 1.2 Where required by the Commercial Office, Creators must promptly complete and sign all documentation required by the Commercial Office to give effect to clause 1.1 of this Schedule.
- 1.3 Ownership of any New Intellectual Property Rights developed by a Creator that the Commercial Office 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 his or her Scholarly Work;
 - (ii) grants the University a non-exclusive, royalty free, irrevocable, transferable perpetual license to use, modify and reproduce his or her Scholarly Works for research and teaching purposes;
 - (iii) must not assign or license copyright in his or her Scholarly Work to any other university or tertiary education institute other than in accordance with clause 2.1(iv) or with the Commercial Office's prior written agreement; and
 - (iv) must not use his or her Scholarly Work to provide any course at any other university or tertiary education institute during the term of his or her 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.

- 2.2 Each Student:
- (i) retains copyright (but no other Intellectual Property Rights) in his or her Student Work; and
 - (ii) grants the University a non-exclusive, royalty free, irrevocable, transferable perpetual license 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 he or she derives 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, he or she must discuss that New Intellectual Property Right with a senior representative of the Commercial Office as soon as practicable and must complete and return to the Commercial Office a confidential notification about that New Intellectual Property Right, unless the Commercial Office agrees in writing that the confidential notification is not required. The notification must include sufficient information for the Commercial Office to understand the New Intellectual Property Right and to assess its commercial potential.
2. If a Creator is not sure whether to have discussion with, or notify, the Commercial Office about any New Intellectual Property Right under clause 1 of this Schedule, he or she should consult the head of his or her

academic unit or supervisor. If any doubt remains, the Creator must discuss the New Intellectual Property Right with the Commercial Office and notify the Commercial Office 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 the Commercial Office.
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, he or she 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 the Commercial Office 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 the Commercial Office. 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 Assistant Vice-Chancellor (Māori & Pasifika) as well as the Commercial Office 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 the Commercial Office.

SCHEDULE 4: Evaluation of Intellectual Property Rights

1. Determination by the Commercial Office as to the viability of Commercialisation

- 1.1 The Commercial Office 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 New Intellectual Property Right.

2. Notice of determination by the Commercial Office

- 2.1 The Commercial Office 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.
- 2.2 Where the Commercial Office decides to pursue Commercialisation of any New Intellectual Property Right:
 - (i) it will have discretion in relation to seeking patent protection and negotiating and entering into commercial 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 the Commercial Office 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 the Commercial Office wishes to Commercialise solely to the extent that the Commercial Office 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 the Commercial Office 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 him, her or them. The continuation of the dissemination embargo would then be at the discretion of the Creator(s). That transfer will then be negotiated with the Commercial Office in good faith and in a timely manner. The Commercial Office may require some form of consideration for that transfer, including (for example) ongoing royalty payments or the provision of an ongoing licence back to the University for research and teaching purposes or both. However, the Commercial Office 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 Commercial Office's discretion, the Commercial Office 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 Commercial Office 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 Commercial Office can demonstrate that any use or disclosure of the New Intellectual Property 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.

SCHEDULE 5: Allocating the benefits of IP

1. Revenue and costs

- 1.1 Subject to the terms of this Policy or any applicable agreement, the Commercial Office will treat both Staff 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 the Commercial Office;
 - (b) all costs and expenses incurred by the Commercial Office 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 Assistant Vice-Chancellor (Research, Academic & Enterprise) may first off set its own Costs (including Costs of the Commercial Office) then offset Costs of the applicable College in which the Creators were employed or enrolled.
- 1.4 In relation to any period, the Commercial Office may decide to spread Costs over both current and expected future Revenue. Where it does so:
- (i) only the portion (determined by the Commercial Office) 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 the Commercial Office 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, the Commercial Office may enter an agreement with that Creator(s) to set out the 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, the Commercial Office 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 licensed 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 the Commercial Office 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 the Commercial Office and the Creator(s) to negotiate arrangements outside these parameters in particular cases where the Commercial Office 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 The Commercial Office 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 the Commercial Office and a Creator intend to agree on that Creator acquiring shares under clause 3.1, the University will refund that Creator the direct cost for first three hours of legal and/or accounting advice he or she receives in relation to that arrangement provided that:
 - (i) the Creator notifies the Commercial Office before seeking such advice;
 - (ii) the Commercial Office 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 licensed 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 a confidentiality agreement should be consistent with the University's embargo policy or as otherwise agreed by the Assistant Vice Chancellor Research, Academic & Enterprise; 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 mindful of its obligations under the Treaty of Waitangi.
2. The University is also mindful that Māori language is an official language of New Zealand, and of Massey University.
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, the Commercial Office must notify the Assistant Vice-Chancellor (Māori & Pasifika) 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 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 Assistant Vice-Chancellor (Māori & Pasifika) before a decision is made to submit for publication.
5. The Assistant Vice-Chancellor (Māori & Pasifika) 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 Assistant Vice-Chancellor (Māori & Pasifika) wishes to respond, the response must be supplied to the Commercial Office within 21 working days (or otherwise by mutual agreement) of receiving notification of the matter.
7. The Commercial Office is obliged to take account of this advice (if tendered) before allowing any transfer, license 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, 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 Commercial Office will ensure that the applicable Staff and Students are aware of the content of that agreement to the extent it impacts on those Staff and Students in their employment or enrolment at the University.
5. When Staff members or Students are to undertake work with considerations about Intellectual Property Rights at sites controlled by other organisations in the course of their employment or research with the University, the Staff or Students concerned shall notify the Commercial Office before such work commences. The Commercial Office 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.
6. 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. 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.

Procedure

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 he or she may have, that Staff member or Student will continue to be bound by his or her obligations of confidentiality in relation to information he or she 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 his or her 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 the Commercial Office to negotiate arrangements outside these parameters in particular cases where the Commercial Office considers it appropriate. Shareholdings already allocated in spin out companies are 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.