

**GALWAY-MAYO  
INSTITUTE OF TECHNOLOGY**

**INTELLECTUAL PROPERTY POLICY AND  
PROCEDURES**

**Version 1.0**

**Approved by GMIT Governing Body**

**on January 17<sup>th</sup>, 2013**

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## 1. INTRODUCTION

The mission of Galway-Mayo Institute of Technology (“GMIT”) is to develop life-long learning opportunities through, teaching, research and supporting regional development. The generation of Intellectual Property (“IP”) is an area of very substantial importance in the academic environment of GMIT which supports and resonates with GMIT’s mission.. The purpose of defining an IP policy is to encourage the generation of IP by Staff<sup>1</sup>, Students<sup>2</sup>, and Other Relevant Parties<sup>3</sup> (together referred to as “Personnel”). The aims of this Galway-Mayo Institute of Technology Intellectual Policy and Procedures document (“IP Policy”) are to provide guidelines and procedures for the generation of exploitable IP, and include:

- protection of GMIT background and foreground IP in legal and IP agreements which underpin research projects and maintain confidentiality;
- educate and train as required research Personnel in IP rights’ protection and exploitation procedures;
- implementation of a lab note book policy;
- identification and capture of developing IP from research project outputs and outcomes;
- management of IP to maximise commercial exploitation of research outputs and outcomes;
- management of IP ownership rights and income generation from IP; and
- use of GMIT facilities and resources to ensure that the development of IP is mutually beneficial for Personnel and GMIT, with a view to benefiting regional economic development.

GMIT recognises and encourages the principle that IP developed at GMIT (“GMIT IP”) should be used for the greatest public benefit. Commercialisation is often the most efficient means of promoting the widest possible dissemination and use of GMIT IP. In such circumstances, it is appropriate and desirable for both GMIT and the originator of the IP to benefit from the commercial exploitation of IP produced at GMIT.

In particular, this document sets out the principles and rules that govern the creation, ownership and commercialisation of IP developed by Personnel participating in programmes carried out using GMIT facilities, know-how, confidential information and/or GMIT IP (together, “GMIT Assets”).

GMIT has a strong interest in promoting the generation of IP in the context of the Government’s drive to create a knowledge-based economy, to increase the number of

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<sup>1</sup> In this IP Policy, the term “Staff” refers at all times to GMIT part-time and whole-time staffing having casual, indefinite duration, permanent, pro rata or temporary contracts (including, without limitation GMIT post doctoral researchers) and persons employed by GMIT on fixed purpose academic contracts.

<sup>2</sup> In this IP Policy, the term “Students” refers at all times to GMIT registered undergraduate students and GMIT registered postgraduate students. The term Students includes those undertaking GMIT research for which they are paid during summertime and other periods.

<sup>3</sup> In this IP Policy, the term “Other Relevant Parties” refers to all individuals other than Staff and Students who are engaged in research at GMIT including but not exclusively visiting academics, visiting students, adjunct staff and all others undertaking research for GMIT or utilising GMIT’s assets and who agree to be bound by the provisions of this IP Policy.

patents coming out of third level institutions and to transfer that technology into viable commercial entities.

For the avoidance of doubt, this IP Policy (and any subsequent amendments made to this IP Policy) is the agreed protocol or IP Policy referenced in:

- (a) the Staff contract of employment;
- (b) the Staff fixed purpose contract;
- (c) any document engaging an Other Relevant Party;
- (d) the Student Handbook; and
- (e) any Acceptance Form or Intellectual Property Assignment Agreement signed by Staff and/or Students and/or Other Relevant Parties.

This IP Policy also forms part of the regulations of GMIT which govern the conduct of Students and Staff.

## **2. DEFINITION**

GMIT defines IP as the tangible or intangible results of research, development, teaching, or other intellectual activity (a full definition is contained at Annex I). Such IP may be created by academic, research and other Staff, by Students and by Other Relevant Parties such as contractors and consultants.

*IP allows creativity and innovation to be captured and owned in the same way that physical property can be owned. IP includes individually and collectively all technical innovations, inventions, improvements, and/or discoveries, information, writings and software, whether or not patentable or otherwise susceptible to IP protection, including technology and materials in their tangible form and includes IP generated from GMIT Assets.*

See the full definition of Intellectual Property in Annex I.

## **3. AIMS OF THE POLICY**

The objective of this IP Policy is to provide a consistent framework within which GMIT IP is developed and managed for the benefit of GMIT, the originator and the public good.

The specific aims of the IP Policy are as follows:

- To create an environment that encourages the generation of new knowledge by GMIT departments and Personnel.
- To encourage the recognition and identification of IP within GMIT and promote an entrepreneurial culture among Personnel that fosters the development of potentially commercial IP arising from their research at GMIT.

- To provide an efficient process by which the commercial potential of IP can be assessed by GMIT and its advisors and to ensure that the process of IP evaluation, protection and commercialisation are carried out in a timely manner.
- To motivate the development and exploitation of IP by providing appropriate rewards to both originators and GMIT, and to provide administrative assistance to originators.
- To provide support and supervision for the creation of economic structures through which GMIT IP is developed and used commercially.
- To maximise the earnings potential from commercialisation and to utilise financial and other returns to advance and encourage research in GMIT.
- To encourage strategies of commercialisation and technology transfer that provide the greatest benefit to the Irish economy.
- To encourage public use and commercialisation of GMIT IP by facilitating its transfer from GMIT to industry and business.
- To continue to recognise the traditional GMIT practices with respect to education, publication and scholarly works.
- To ensure that the financial return from the development of GMIT IP does not distort decisions and operations of GMIT in a manner contrary to the mission of GMIT.
- To give due regard to the non-financial benefits (e.g. non-cash consideration, benefit of strategic relationships between GMIT and third parties, access to IP and confidential information) that will accrue to GMIT and to the originators of IP in pursuing the goals of this IP Policy.
- To develop and continually improve a long-term strategy that enables the development of IP, related commercialisation and technology transfer, together with maintenance of high standards of education.
- To foster the general awareness of Personnel of this Policy through dissemination and information campaigns, and to provide specific training to research active Personnel.

#### **4. INTELLECTUAL PROPERTY COMMITTEE**

A Committee shall be set up in GMIT after the adoption of this IP Policy and shall consist of the following members (the “IP Committee”):

- President (ex officio);
- Head of School/Head of Department/or nominee (from the school to which the proposal is relevant);
- Secretary / Financial Controller (or nominee);
- Head of Development (Chair);
- Commercial Services Manager;
- Expert in area of technology (appointed in consultation with inventor), as required; and
- Other professional advisors as required.

The IP Committee members will be required to sign a confidentiality agreement regarding proposals submitted and regarding the IP produced at GMIT and presented to the IP

Committee. This will ensure that new ideas are protected. GMIT reserves the right to alter the composition of the IP Committee.

The relevant GMIT Project Manager/GMIT Academic Supervisor may be required to put forward a proposal to the IP Committee regarding the IP on a project and may be requested to attend a Committee meeting, where appropriate.

Members of the IP Committee will be required to declare their interest in a proposal if such exists and to absent themselves from any discussion pertaining thereto.

## **5. ROLE OF TECHNOLOGY TRANSFER OFFICE**

The Technology Transfer Office is managed by the Commercial Services Manager and is in charge of the administration of the activities set out in this IP Policy including (without limitation) putting the decisions of the IP Committee into effect. The Commercial Services Manager shall:

- be responsible for the day-to-day management of the IP Policy;
- have authority to externally communicate and make decisions on matters of IP on behalf of GMIT; and
- manage internal communications regarding IP within GMIT,

subject always to the IP Committee to which it will report as reasonably required by the IP Committee and to which it will remain accountable.

The importance of appropriate outside professional assistance is acknowledged. The Technology Transfer Office will avail of these resources where appropriate.

## **6. ROLE OF THE IP COMMITTEE**

The IP Committee manages the strategic direction and has oversight of all aspects of GMIT IP. In particular, its activities will involve:

- Processing of IP applications;
- Determining the commercial value of IP and/or inventions;
- Determining IP agreements with industry regarding contract and collaborative research projects;
- Facilitating a fair and equitable return to those involved in commercialisation of their research/work; and
- Nominating negotiators with third parties and ensuring a reasonable financial return to the relevant Personnel (where appropriate) and to GMIT.

## **7. GENERAL PROVISIONS OF GMIT IP POLICY**

7.1 As a general rule (further details of which are set out in paragraph 7.3, and subject to the exceptions set out in this IP Policy), any IP rights in or to any material/works created by Personnel in the course of their employment or education by GMIT or in relation to work carried out for GMIT is the property of

and vests solely and absolutely in GMIT or such companies or organisations as GMIT may nominate for such purposes. Such material/works include, but are not limited to any:

- copyright (including rights in computer software and moral rights);
- patents;
- design rights;
- trademark rights;
- brand rights;
- database rights;
- know-how;
- trade secrets;
- confidential information rights in design;
- semiconductor topography rights; or
- other intellectual property rights or other property rights, (whether vested, contingent or future anywhere in the world).

This applies to any IP in materials which are developed by Personnel which they cause to come into existence:

- during the working or teaching hours of GMIT; or
- when using GMIT's equipment, supplies, facilities or GMIT Assets; or
- using GMIT's confidential information, trade secrets, know-how or any GMIT IP; or
- in relation to any work performed for GMIT (including pursuant to any third party funded research programmes).

7.2 At GMIT's reasonable cost, Personnel also agree at any later time to execute any documentation or otherwise provide assistance to GMIT to secure, protect, perfect or enforce any of GMIT's rights, title and interests in and to GMIT IP.

7.3 This IP Policy is applicable to IP that is owned by GMIT. Ownership of IP and rights to its exploitation include (without limitation) all of the reasons outlined below:

- It is developed by Personnel in the course of their normal duties or specifically assigned duties either when IP could be reasonably be expected to result from the carrying out of those duties and/or, at the time the IP was developed, there was a special obligation on the relevant Personnel to further the interest of GMIT.
- Under the 2000 Act (as defined in Annex 1 of this IP Policy), GMIT is the first owner of any copyright in the work created by Staff in the course of their employment unless precluded by a prior agreement between GMIT and a third party (or is covered by paragraph 9 of this IP Policy).
- The IP arises out of funded or non-funded research where such research has, in the opinion of GMIT, made use of the equipment, facilities, GMIT

Assets and/or other resources of GMIT (except where ownership of such IP was provided for in a prior agreement between GMIT and third parties).

- If it is a condition of the appointment of an undergraduate Student to perform research that GMIT shall have ownership of the IP arising from the research performed by such Student.
- If it is a condition of the appointment of an Other Relevant Party to perform research that GMIT shall have ownership of the IP arising from the research performed by such Other Relevant Party.

7.4 IP arising from research or other work sponsored by an external organisation (e.g. Enterprise Ireland) shall be subject to the IP provisions that are stipulated in the related agreement between GMIT and the external organisation (“External Agreement”). Where an External Agreement requires all new IP rights to be assigned to a private company, the entry level (or “background”) GMIT IP should be defined so that it is not inadvertently assigned to the private company as part of the new IP (also described as “foreground IP” or “results”) but is retained as GMIT IP. All External Agreements should be reviewed by a legal person representing GMIT.

For the avoidance of doubt, where IP is generated from research that is 100% funded by monies provided directly by the State, or by any not-for-profit financial instrument which has been established by an organisation or individual, and awarded through a public service organisation charged with the granting and dissemination of research funds, this IP will be exclusively and absolutely owned by GMIT.

7.5 The IP Policy also extends to Other Relevant Parties such as non-employees who participate in research projects at the Institute including visiting academics, industrial personnel etc. unless a specific waiver has been approved. Other Relevant Parties at GMIT who have a prior existing and conflicting intellectual property agreement or arrangement with another employer or third party must enter into an agreement with GMIT (and their employer or relevant third party) (see Annex III) to abide by the conditions of this IP Policy in the course of their activities in GMIT.

7.6 For the avoidance of doubt, GMIT, in its sole discretion, may assign to inventor(s), by written instrument only, any IP owned by GMIT, but which GMIT has determined not to be of commercial interest to it. Further, it is understood if GMIT does not find a means of exploiting such IP within a three (3) year period after filing, then GMIT has the right, but not the obligation, to assign ownership rights to the inventor(s). Requests for releases should be made to the Commercial Services Manager. It is understood that once assignment of ownership has taken place in accordance with this paragraph 7.6, GMIT forfeits its rights to any future income derived from such IP and cannot be held responsible for any IP costs generated after that date



7.7 In order to enable the achievement of the aims and goals of this IP Policy, the Technology Transfer Office will, through dissemination of information and the holding of general information sessions for Personnel, foster the general awareness of Personnel of this Policy. In addition, the Technology Transfer Office intends to provide specific training on this IP Policy and its day to day application and relevance to research active Personnel.

## **8. CONSULTANCY**

Staff are permitted to engage in consultancy projects for third parties subject to compliance with applicable GMIT policies in force from time to time and subject to approval by the President of GMIT. Any such approved consultancies must be disclosed to the IP Committee.

## **9. INTELLECTUAL PROPERTY ASSIGNMENTS AND PATENT ASSIGNMENTS**

For the avoidance of doubt, the provisions of this paragraph 9 apply to all the departments, centres, institutes, schools and Personnel conducting research or other intellectual activity using GMIT Assets and GMIT's supplies, facilities, confidential information, trade secrets or existing GMIT IP.

As a condition of:

- (a) employment or engagement by GMIT as Staff;
- (b) admission by GMIT as a Student; or
- (c) engagement by GMIT as an Other Relevant Party;

each Student, Staff member and Other Relevant Party (as the case may be) shall comply with this IP Policy and shall agree to assign to GMIT (or a person or company nominated by GMIT or an agency which provided the funding for the relevant research) any and all IP in and to inventions discovered and produced or otherwise developed while the person was Personnel as the case may be.

When required by the specific circumstances of a project, and on the request of the IP Committee, a member of Personnel will agree:

- (a) to sign an Intellectual Property Assignment Agreement (see Annex II); and
- (b) to execute such documents of assignment or other documentation required to assign or transfer IP and any moral rights to ensure, protect, perfect and enforce GMIT's rights, title and interest in GMIT IP;

- (c) to do anything that may reasonably be required to assist any assignee of any patent application or other IP to obtain, protect and maintain its rights, title and interest; and
- (d) shall use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each party hereto the full benefit of the provisions of this IP Policy.

## **10. RESEARCH FINANCED BY THIRD PARTIES**

Any research which is partly or wholly financed by any third party agency shall be subject to the specific provisions of the grant or contract covering that research. In the event of any inconsistency between this IP Policy and the terms of any such grant or contract then the provisions of the said grant or contract shall prevail provided that the IP clauses in such grant or contract have been reviewed by the Technology Transfer Office (who will seek external advice if necessary) and, in the case of a contract, such contract has been properly executed by GMIT.

## **11. ADMINISTRATION OF THE IP POLICY**

At GMIT, the office responsible for supporting the development and commercialisation of GMIT IP is the Technology Transfer Office within the Office of Development. All GMIT IP created by Personnel must be disclosed in accordance with the procedures laid down in this IP Policy.

## **12. DISCLOSURE**

It is a condition of:

- (a) employment or engagement by GMIT as Staff;
- (b) admission by GMIT as a Student; or
- (c) engagement by GMIT as an Other Relevant Party;

that the results of all research or projects should be fully, promptly and completely disclosed to GMIT.

In order to enable GMIT to ensure that it fulfils its obligations to organisations such as Science Foundation Ireland, Enterprise Ireland, companies and other third parties in both the public and private sectors, who are funding research at GMIT, all Personnel must disclose any IP arising from such research to GMIT through the Technology Transfer Office as soon as possible after such IP is apparent. The IP should be kept confidential until a timely evaluation of the case assessment (including, without limitation, patentability) has taken place. No public disclosure of any form should be made prior to a decision by the IP Committee on the further management of the disclosure has been made. Confidentiality agreements and/or non-disclosure agreements should be used where appropriate.

## Procedures to be followed in respect of IP protection applications

1. Submission of Invention Disclosure Form (see Annex IV ):
  - Regarding any discovery or invention made that might be useful, patentable or otherwise protectable, the IP Policy requires that Personnel complete an Invention Disclosure Form.
  - The Invention Disclosure Form should be carefully drafted to give true, complete and accurate details in respect of each section thereof, and promptly submitted (and in any event no later than within 30 days of the discovery or invention) to the Technology Transfer Office.
  
2. Commercial Evaluation of IP:
  - Any IP reported in an Invention Disclosure Form shall be submitted to the IP Committee for assessment under the guidelines of the IP Policy and for recommendations to GMIT regarding the patentability and/or potential commercialisation.
  - The IP Committee may recommend that other suitably qualified advisors or external consultants be engaged to advise on the assessment of the IP.
  - The criteria to assess the commercial value of the IP should include (without limitation):
    - Identification of novelty, non-obviousness and inventive step of the invention;
    - Technical, financial, legal and commercial feasibility and due diligence;
    - Development stage of the subject matter and proof of concept;
    - Analysis of existing patent claims, publications and other disclosures;
    - Market and Competitive Situation: competitive advantage, projected potential revenues from sale and licence / sub-licence / consultancy over the longer term;
    - Identification of co-sponsorship; and
    - Estimated cost of IP filing and maintenance (less IP grants,e.g.EI)
  - Whilst the criteria listed above are not exhaustive, it provides guidance to persons submitting an application as well as to those determining the commercial value. As it is a complex decision, the IP Committee may refer to other experts (internal or external) where necessary, and further criteria may be applied as well as recourse to the inventor(s) where necessary for additional information.
  - A decision will be made by the IP Committee within the evaluation period of receipt of the application, where practicable, and the originator of the IP

will be notified in writing of the decision made within 60 days of receipt of the Invention Disclosure Form in order to facilitate publication. Further investigation may be required in certain circumstances for an informed decision to be made regarding an invention's patentability, in which case the evaluation period suggested herein may be extended as reasonably required. No public disclosure should occur during this time.

- If the evaluation is rejected by the IP Committee, the IP Committee may decide in appropriate circumstances, to offer the opportunity to the originator of the IP to pursue exploitation independently if appropriate under agreed written terms. GMIT will have no rights if it subsequently proves successful, subject to any agreed terms.

3. Submission of a patent application or an application for other protection:

- GMIT shall have the right, but not the obligation, either directly or through an outside agent, to seek patent or other protection of the IP and to undertake efforts to introduce the invention into public use.
- Where a decision is made by the IP Committee to proceed with a patent application, the originator of the IP is required to cooperate in every reasonable way, to execute all necessary documents and to assist the IP Committee in completing the patent application form. The application should remain confidential until such time as the process is complete. Confidentiality agreements will be used where appropriate. The process will be carried out with professional external assistance.
- Commercialisation activities should recognise specific terms and conditions in appropriate funding contracts including any External Agreements.
- The cost of the submission of the application shall be paid by GMIT. Any expenses incurred will be reimbursed to GMIT prior to the distribution of any royalty income (if any) from the IP.
- The originator of the IP and GMIT shall take all reasonable precautions to protect the integrity and confidentiality of the IP in question. The originator of the IP should be aware that publication prior to the filing of patent applications may prevent the granting of certain patents.
- GMIT may decide at any stage to withdraw from the process of exploiting a particular piece of IP. This may arise where:
  - Concern exists regarding the technical, financial, legal and / or commercial feasibility of a particular piece of IP;
  - costs of exploiting and maintaining the IP are excessive; or
  - external sponsorship of the process is no longer available.

- The originator of the IP will be notified in writing of the intention of GMIT to withdraw from the process and the withdrawal will apply with immediate effect.
- The IP may, at GMIT's entire discretion, be assigned or licensed to the originator in appropriate circumstances, offering the opportunity to the originator of the IP to pursue exploitation independently.
- No patent application, assignment, licensing or other agreement may be entered into or will be considered valid with respect to GMIT IP except when properly and lawfully executed by GMIT.

### **13. COMMERCIALISATION**

The Technology Transfer Office will support, provide advice, or procure the provision of outside professional advice in relation to the various options for commercialisation and technology transfer that may be appropriate in order to best meet the aims of this IP Policy, including:

- Licensing the IP to a third party for a fixed sum or a royalty related to future sales;
- Assigning the IP to a third party for a fixed sum or a royalty related to future sales;
- Developing the commercial potential of the IP through a campus company or similar spin-out;
- Developing the commercial potential of the IP through a joint venture with a third party; or
- Any other arrangement that may be considered appropriate.

A separate GMIT Campus Company Policy outlines GMIT's position on taking equity stakes in spin-off companies and the division of income from such enterprises. This GMIT Campus Company Policy is available to Personnel upon requesting same from the Technology Transfer Office.

In providing this advice and assistance, the Technology Transfer Office will give due consideration to the retention of the right to use and access know-how and research materials for the purpose of continuing and further research as well as options which may provide most benefit to the Irish economy.

### **14. LICENSING AND DIVISION OF INCOME**

#### **Technology Transfer Fund**

GMIT will establish a fund to be used to promote and enhance research and technology transfer development activity and facilities within GMIT as determined by the Research and Development Committee (“R&D Committee”) from time to time - the Technology Transfer Fund (“TT Fund”). The R&D Committee will give due cognisance to the research area/centre that secured the funding in deciding on its expenditure.

The TT Fund will be used to assess, protect and facilitate the commercialisation of GMIT IP through the pursuit of patent or other protection, the granting of licenses, the development of campus companies and/or otherwise to ensure maximum benefit to GMIT and the public good, as determined by the IP Committee in line with the IP Policy, associated policies and procedures and approval of the R&D Committee.

### **Division of Income – General Principles**

The following points apply in relation to licensing and division of income from commercialising GMIT IP resulting from GMIT research:

- GMIT welcomes the development by industry, for public use and benefit, of inventions and other IP resulting from GMIT research. GMIT will maintain a flexible and open approach to bringing GMIT IP into commercial use. Each case will be considered individually and will involve an assessment of all the potential risks and potential rewards.
- The definition of “income” includes revenue derived from the relevant patents or any other GMIT IP in question, which are commercialised by GMIT, and also includes (without limitation) up-front licence fees, down payments, minimum annual payments, royalties on sales and is net of any expenses incurred by GMIT in commercialising or protecting the relevant patents or other GMIT IP.
- All direct expenses incurred by GMIT in:
  - the patenting or other registration or protections of GMIT IP; and
  - the commercialisation of an invention or any other GMIT IP;

including (without limitation) administrative, licensing, legal, and any other expenses and costs and any subsequent investigation, development and promotion, will be deducted from the initial royalty income or lump sum. No royalty income will be made available for distribution until such expenses have been recovered.

- If more than one inventor or department is involved, unless formally agreed amongst themselves, with due regard to the value and substance of their respective contributions, the Inventor’s share set out above shall be divided equally among them.
- The division of royalty income will be carried out within 2 months of the receipt of such income by GMIT.
- The originator of the IP’s share shall continue to be paid even though he/she may have left GMIT.

- For the avoidance of doubt, Personnel (whether originators of IP or otherwise) that are not Staff or Students but are Other Relevant Party shall not be entitled to royalty income arising from GMIT IP to which they have contributed unless this is stated in their contract of engagement or GMIT agrees otherwise in writing.

### **Division Of Income From Patents**

Subject to the General Principles set out above, income derived from inventions or other IP which are patented and commercialised by GMIT in accordance with the provisions of this IP Policy will (subject to any ministerial/government department consents which may be required from time to time) be distributed between the originator(s), the originator(s)' Department(s) and the GMIT Research and TT Fund. While it is recognised that each project may have to be negotiated on its own merits, the following scale will apply (subject to final determination by the IP Committee):

<b>Level of patent income</b>	<b>Inventor(s)</b>	<b>GMIT TT Fund</b>	<b>Inventor's Department</b>
<b>First €20,000 of patent royalties</b>	50%	25%	25%
<b>Over €20,000 of patent royalties</b>	35%	35%	30%

### **Division Of Income From Intellectual Property Other Than Patents**

Subject to the General Principles set out above, division of income derived from commercialising GMIT IP which is not patented may occur from time to time and must be approved by the Financial Controller of GMIT on a case by case basis. It is intended that the division of income will where possible be agreed in advance of commencing a research project. However, it is acknowledged that it is more difficult to calculate the level of income that is derived from IP that is not patented than from patents due to issues such as the following:

- Non-patented IP is often used in bundles where a number of kinds of IP are involved e.g. trade secrets, confidential information and know-how with each kind of IP belonging to a separate originator.
- Where non-patented IP is supplied in bundles, it can be difficult to attribute specific value to each of the parts of the bundle.
- Third party IP may form part of the bundle in question.
- GMIT non-patented IP may include or be based on third party IP and it may be difficult to separate out the value of each.

The ranges of income that might be approved by the IP Committee are set out below in the Guide Table, however the final division of income will be approved by that Committee (and in certain circumstances, may require the approval of the Minister of

Education and Science). GMIT reserves the right to offer a lump sum payment in lieu of an ongoing royalty payment.

<b>Level of income derived from non-patented IP</b>	<b>Inventor(s)</b>	<b>GMIT &amp; TT Fund</b>	<b>Inventor's Department</b>
<b>First €20,000 of income</b>	10 - 50%	25 - 45%	25 - 45%
<b>Over €20,000 of income</b>	10 - 35%	30 - 50%	30 - 50%

The division of income from campus companies is governed wholly by the separate GMIT Campus Company Policy.

## **15. INTELLECTUAL PROPERTY CREATED OUTSIDE GMIT EMPLOYMENT**

GMIT will have no interest in any inventions or other IP created by Personnel entirely on their own time without the use of any GMIT Assets. The onus shall be on Personnel asserting their rights under this paragraph 15 to prove to the satisfaction of GMIT that the relevant invention or IP was in fact created by them on their own time without the use of any GMIT Assets. Personnel must not infringe the Intellectual Property Rights of any third parties.

## **16. PUBLICATION OF RESEARCH RESULTS**

It is the policy of GMIT to encourage staff and students to place the results of their research in the public domain either through publication in learned journals or presentation at conferences. This is a vital factor for academic recognition. It is mandatory that such disclosure is not in violation of the terms of any agreement that has been entered into by GMIT with a sponsor or other third party.

It must be recognised that premature publication or disclosure except on a confidential basis may make it impossible to obtain valid patent protection. Where possible the delay in publication to enable a patent application to be filed should be for a period of 90 days from the date when this IP is ready for publication. The placing of a thesis in the GMIT library without ensuring that accessibility is restricted constitutes publication.

## **17. ARBITRATION**

Any dispute between GMIT and the originator of IP will be forwarded to an independent arbitrator to be agreed by the parties. Failing agreement, the arbitrator will be appointed by the President for the time being of the Law Society of Ireland. Expenses incurred in arbitration may be deducted from royalty income before distribution, subject to the discretion of the arbitrator.



## **18. CONFLICT OF INTEREST RELATING SPECIFICALLY TO EXTERNAL OR CONSULTANCY AGREEMENTS**

GMIT encourages full disclosure of potential areas of conflict and open discussion at an early stage. GMIT will endeavour to help alert Staff, Students and Other Relevant Party to recognise where conflicts may occur and to manage and resolve these conflicts.

## **19. ORGANISATIONS AND COMPANIES COLLABORATING WITH GMIT ON RESEARCH PROJECTS**

As a public organisation, GMIT has an obligation to ensure the maximum public benefit from the exploitation of IP created from both publicly funded research and collaborative co-funded research. This is usually best maximised when IP is commercially exploited.

The GMIT IP Committee will conduct a commercial evaluation on the IP created/to be created in a research project and will seek information from the collaborating organisation on how it intends to commercialise the IP, and also determine the IP ownership rights they require from the project. The evaluation to determine the commercial value and IP ownership rights will include an examination of the criteria listed in paragraph 12 of this policy. All such information requested and provided will be treated in strict confidence.

Upon above assessment, the IP Committee will decide on the IP ownership rights GMIT require and will agree the sale/assignment, licensing (exclusive or non-exclusive), or joint venture agreements or otherwise with the collaborating company to ensure maximum commercial benefits. A legal agreement will be executed between the parties, setting out the rights, entitlements and obligations of each party prior to the commencement of work on the project.

## **20. MONITORING AND EVALUATION OF POLICY**

This IP Policy will be monitored by the Technology Transfer Office on an on-going basis. The IP Policy and related research, commercialisation and technology transfer will be monitored and evaluated on an annual basis and may be amended by GMIT from time to time. All amendments to this IP Policy shall be posted on the GMIT Intranet and such amendments shall be fully valid and effective from the date of posting.

## **ANNEX I**

### **DEFINITION OF INTELLECTUAL PROPERTY**

#### **1 Intellectual Property**

GMIT defines intellectual property as the tangible or intangible results of research, development, teaching, or other intellectual activity. Intellectual property allows creativity and innovation to be captured and owned in the same way as physical property can be owned. Intellectual property includes individually and collectively all technical innovations, inventions, improvements, and/or discoveries, information, databases, writings and software, whether or not patentable or otherwise susceptible to intellectual property protection, including technology and materials in their tangible form.

##### **1.1 Patents**

Patents are intended to protect new and improved products and processes that have some technical innovation and are capable of industrial application.

A Patent gives its owner the right, for a limited period, to stop others from making, using or selling the invention without the permission of the owner in a particular territory. Patent rights are territorial in that an Irish Patent does not give Patent rights outside Ireland. Most Patents are for improvements in a known technology rather than the devising of a completely new technology.

##### **1.2 Copyrights**

Most of the Copyright and Related Rights Act, 2000 came into force on January 1, 2001. This was intended to transpose a number of EU Directives into Irish law and to bring Irish law into conformity with its obligations under various International Treaties.

Copyright gives the right to control use of certain material such as books and other literature, art, music, sound recordings, films and broadcasts. However, copyright does not protect inventions (see Patents) or brand names (see Trademarks). Most, but not all, uses of copyright material will require permission from the copyright owner.

Copyright protection is automatic in Ireland in that there is no official application or recording system.

##### **1.3 Trademarks**

Trademarks are intended to protect a brand's identity so as to distinguish the goods or services of one trader from those of another trader. A Trademark may be a word, logo, slogan, colour, three-dimensional shape and even a sound or smell. The Trademark must be capable of being represented in words and/or pictures.

##### **1.4 Industrial Design and Unregistered Design Right**

The Industrial Designs Act 2001, which brings Irish law into compliance with EU Directive 98/71/EC, came into force on **July 1, 2002**. Designs cover the appearance of a product, either the whole or a part, resulting from such features as lines, contours, colours, shape, texture or materials of the product itself or its ornamentation. The term **product** embraces any industrial or handicraft item. The term **product** has a wide meaning that includes packaging, get-up and graphic symbols (e.g. Desktop icons) etc.

Registration is not available for features of a design which are dictated by the technical function of the product. The new law contains a *must fit* exclusion under which it is not possible to obtain registration for features which are dictated by the need for the product to fit another. However, modular products, i.e. made up of several components which can be fitted together in different ways, are protectable.

Design Registration gives the owner the right, for a limited period (up to 25 years, with renewals every 5 years), to stop others from making, using or selling a product to which the design has been applied, or in which it is incorporated.

Since 1 April 2003 it is possible to obtain a *Registered Community Design* covering all member states of the EU. Registered Community Design Applications are handled by the Office for Harmonization in the Internal Market (OHIM).

An *unregistered design right* is available at Community level and eligibility for protection is the same as for a Registered Design. The right comes into existence automatically by the mere fact of making the product incorporating the design available to the public within the European Community. Protection is limited to 3 years and to preventing the use of copies of original designs. It is important to note that a Registered Design gives exclusivity whereas an *unregistered design right* can only be enforced where copying can be proved.

## **1.5 Confidential Information and Know-How**

Protection for confidential information and know-how arises from the law of confidentiality. The confidential information may be know-how associated with a Patent or a Patent Application, or material in existence before, for example, a Patent Application is filed, or material already protected by another form of intellectual property, for example, copyright.

## **1.6 Domain Names**

A domain name is a unique address on the Internet. There are various generic top level domains (“TLDs”), such as .com and .biz, as well as, ccTLDs (Country code), such as .ie.

## **1.7 Tangible Research Property**

This includes biological materials such as cell lines, plasmids, hybridomas, monoclonal antibodies and plant varieties; computer software, data bases, integrated circuit chips, prototype devices and equipment, circuit diagrams: and analytical procedures and

laboratory methods, whether or not intellectual property protection is available through Patents and/or copyright or otherwise.

### **1.8 Other Forms of Intellectual Property**

Other forms of intellectual property include, but are limited to, database rights for certain types of database (under Copyright and Related Rights Act, 2000); protection for semiconductor topographies; plant breeders' rights in certain plant varieties; and protection against unfair competition under "passing off" law.

The IP Policy is applicable to *GMIT Intellectual Property* that is owned by GMIT for any of the reasons outlined below:

- It is developed by GMIT Personnel in the course of their normal or specifically assigned duties either when intellectual property could be reasonably expected to result from the carrying out of those duties and/or, at the time the intellectual property was developed, there was a special obligation on the relevant GMIT Personnel to further the interest of GMIT.
- Under the 2000 Act (as defined below), GMIT is the first owner of any copyright in the work created by GMIT Personnel in the course of his/her employment unless precluded by a prior agreement between GMIT and a third party (or is covered by paragraph 7 of this IP Policy).
- The intellectual property arises out of funded or non-funded research where such research has, in the opinion of GMIT, made use of the equipment, facilities, GMIT Assets and other resources of GMIT unless such action was precluded by prior agreement between GMIT and third parties.
- If it is a condition of a research contract with a third party that GMIT should have ownership of the intellectual property arising from the contract.

#### **□ COPYRIGHT AND RELATED RIGHTS ACT, 2000 (the "2000 Act")**

##### **First ownership of copyright.**

Section 23 (1) of the 2000 Act provides that: "The author of a work shall be the first owner of the copyright unless ... the work is made by an employee in the course of employment, in which case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary".

##### **Maker of database.**

Section 322 (2) of the 2000 Act provides that: Where a database is made by an employee in the course of employment, his or her employer shall be regarded as the maker of the database, subject to any agreement to the contrary".

#### **□ PATENTS ACT 1992 (the "1992 Act")**

**Right to patent.**

Section 16(1) of the 1992 Act provides that: “The right to a patent shall belong to the inventor or his successor in title, but if the inventor is an employee the right to a patent shall be determined in accordance with the law of the state in which the employee is wholly or mainly employed or, if the identity of such state cannot be determined, in accordance with the law of the state in which the employer has his place of business to which the employee is attached.”

## ANNEX II

### Galway Mayo Institute of Technology (“GMIT”)

#### Intellectual Property Assignment Agreement for Staff, Students and Other Relevant Parties<sup>4</sup>

Research Project(s) Title: \_\_\_\_\_ (the “Project(s)”)

Research Project(s) Number: \_\_\_\_\_

I understand that, consistent with applicable laws and regulations, GMIT is governed in the handling of intellectual property by its official IP Policy<sup>5</sup> entitled *Intellectual Property Policy and Procedures*, (a copy of which I have received), and I agree to abide by the terms and conditions of this IP Policy in the course of my GMIT activities and in the work that I carry out on the Project.

As a general rule (and subject to the exceptions set out in this IP Policy) any intellectual property rights in any material, (including any copyright (including rights in computer software and moral rights), patent, design right, trademark rights, brand rights, database rights, know-how, trade secrets, confidential information rights in design, semiconductor topography rights or other intellectual property rights or other property rights, whether vested, contingent or future anywhere in the world), created by me in the course of my work with GMIT (and in particular in the course of my work on the Project) are the property of and vest solely and absolutely in GMIT (“GMIT IP”).

Pursuant to the IP Policy, and in consideration of my participation in projects (and the Project(s)) administered by GMIT, access to or use of facilities provided by GMIT and/or other consideration, I hereby agree as follows:

1. I will disclose to GMIT all potentially patentable inventions and other GMIT IP conceived or first reduced to practice in whole or in part in the course of my GMIT responsibilities, my participation in the Project(s) at GMIT or with more than incidental use of GMIT resources. I further assign to GMIT all my right, title and interest in such patentable inventions and other GMIT IP created in connection with GMIT and/or the Project(s) and to execute and deliver all documents and do any and all such things necessary and proper on my part to effect such assignment. Such assignment is not inconsistent with the terms of my continuing employment outside of GMIT (if any) or with any other agreement I have entered into.
2. I will not use any information defined as confidential or proprietary by any non-GMIT employer (if any) in the course of my GMIT responsibilities and I

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<sup>4</sup> As the terms Staff, Students and Other Relevant Parties are defined in the GMIT IP Policy.

<sup>5</sup> This Intellectual Property Assignment Agreement forms Annex II of the GMIT IP Policy.

will not do consulting or research work for any non-GMIT employer (unless such work is approved of in writing by GMIT).

- 3. I will not enter into any agreement creating copyright or patent obligations in conflict with this Agreement. I hereby waive any moral rights to which I may be entitled under any legislation now existing or in future enacted in any part of the world and for the avoidance of doubt this waiver shall extend to the licensees and successors in title to the copyright in GMIT IP and the Project(s).
- 4. This Agreement is effective on date of my GMIT hire, enrolment or participation in projects administered by GMIT, and is binding on me, my estate, heirs and assigns.
- 5. [I hereby agree and acknowledge that in respect of the Project and in respect of my assignment of IP to GMIT in this Agreement, my full and final entitlement to payment, royalty or other income arising therefrom is set out in the Schedule to this Agreement and I further agree and acknowledge that I shall have no other entitlement or claim against GMIT or any party to whom GMIT assigns or licences this IP in respect of payment, royalty or other income arising therefrom.]<sup>6</sup>

Signed this ----- day of -----, 20●●

-----  
Signature

-----  
Printed or typed name

-----  
GMIT title

-----  
GMIT Department

**[Schedule]**

[Insert details of payment, royalty or other income

OR

I agree and acknowledge that I have no right to any payment, royalty or other income in respect of the Project and in respect of my assignment of IP to GMIT in this Agreement.]

\_\_\_\_\_  
<sup>6</sup> In the event that this document is to be signed by an Other Relevant Party (as that term is defined in the Introduction of the IP Policy), it may be appropriate to include this provision and the Schedule. To be considered on a case by case basis.





## ANNEX III

### Galway Mayo Institute of Technology (“GMIT”)

#### **Intellectual Property Assignment Agreement for Staff, Students and Other Relevant Parties<sup>7</sup> who have a prior existing and/or conflicting Intellectual Property Agreement or arrangement with another employer or a third party**

I understand that, consistent with applicable laws and regulations, GMIT is governed in the handling of intellectual property by its official IP Policy<sup>8</sup> entitled *Intellectual Property Policy and Procedures*, (a copy of which I have received), and I agree to abide by the terms and conditions of this IP Policy in the course of my GMIT activities.

As a general rule (and subject to the exceptions set out in the IP Policy) any intellectual property rights in any material, (including any copyright (including rights in computer software and moral rights), patent, design right, trademark rights, brand rights, database rights, know-how, trade secrets, confidential information rights in design, semiconductor topography rights or other intellectual property rights or other property rights, whether vested, contingent or future anywhere in the world), created by you in the course of your work with GMIT are the property of and vest solely and absolutely in GMIT (“GMIT IP”).

Pursuant to the IP Policy, and in consideration of my participation in projects administered by GMIT, access to or use of facilities provided by GMIT and/or other consideration, I hereby agree as follows:

1. I will disclose to GMIT all potentially patentable inventions and other GMIT Intellectual Property conceived or first reduced to practice in whole or in part in the course of my GMIT responsibilities, my participation in research projects at GMIT or with more than incidental use of GMIT resources. I further assign [jointly] to GMIT [and to my non-GMIT employer]<sup>9</sup> all my right, title and interest in such patentable inventions and other GMIT Intellectual Property created in connection with GMIT and to execute and deliver all documents and do any and all such things necessary and proper on my part to effect such assignment. Such assignment is not inconsistent with the terms of my continuing employment outside of GMIT or with any other agreement I have entered into.
2. I will not use any information defined as confidential or proprietary by my non-GMIT employer in the course of my GMIT responsibilities and I will not do consulting or research work for my non-GMIT employer while at any facility owned or leased by GMIT.

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<sup>7</sup> As the terms Staff, Students and Other Relevant Parties are defined in the GMIT IP Policy.

<sup>8</sup> This Intellectual Property Assignment Agreement forms Annex III of the GMIT IP Policy.

<sup>9</sup> To be considered on a case by case basis

3. I am free to place my inventions in the public domain as long as in so doing neither I nor GMIT violates the terms of any agreements that governed the work done or my agreements with my non-GMIT employer.
4. I will not enter into any agreement creating copyright or patent obligations in conflict with this Agreement.
5. This Agreement is effective on date of my GMIT hire, enrolment or participation in projects administered by GMIT, and is binding on me, my estate, heirs and assigns.
6. [I hereby agree and acknowledge that in respect of the Project and in respect of my assignment of IP to GMIT in this Agreement, my full and final entitlement to payment, royalty or other income arising therefrom is set out in the Schedule to this Agreement and I further agree and acknowledge that I shall have no other entitlement or claim against GMIT or any party to whom GMIT assigns or licences this IP in respect of payment, royalty or other income arising therefrom.]<sup>10</sup>

Signed this ----- day of -----, 20●●

-----  
Signature

-----  
Printed or typed name

-----  
GMIT title

-----  
GMIT Department

Acknowledged and accepted:

Non-GMIT Employer: -----  
(Insert name)

-----  
Signature

<sup>10</sup> In the event that this document is to be signed by an Other Relevant Party (as that term is defined in the Introduction of the IP Policy), it may be appropriate to include this provision and the Schedule. To be considered on a case by case basis.

-----  
Title

-----  
Date

**[Schedule]**

[Insert details of payment, royalty or other income

OR

I agree and acknowledge that I have no right to any payment, royalty or other income in respect of the Project and in respect of my assignment of IP to GMIT in this Agreement.]

ANNEX IV

Galway Mayo Institute of Technology (GMIT)  
Invention Disclosure Form

IDF No: _____ (for internal use only)
---------------------------------------

1. Title of Invention

--

2. Inventors

<b>Inventor 1</b>	
Full Name	
Nationality	
Home Address	
Employer & Department	
Contact Details (telephone; fax; email)	
% Contribution to the invention	
Signature	

<b>Inventor 2*</b>	
Full Name	
Nationality	
Address	
Employer & Department	
Contact Details (telephone; fax; email)	
% Contribution to the invention	
Signature	

Add more inventors as appropriate.

3. Contribution to the Invention

Each contributor/potential inventor should write a paragraph relating to his/her contribution and include a signature and date at the end of the paragraph.

<b>Inventor 1 Contribution</b>	
Signature	Date
<b>Inventor 2 Contribution</b>	

<b>Signature</b>	<b>Date</b>

**3. Funding Sources**

Please list to what extent the invention was supported by contributions from public, industrial and or other sources. Expand this list to include similar details pertaining to research funding of any co-inventors from collaborating organisations.

<b>Public Agency or Department</b>	
<b>Grant Type</b>	
<b>Grant Title</b>	
<b>Grant Value (in €)</b>	
<b>Contract / Grant No.</b>	
<b>Grant Start and Finish Date</b>	
<b>Contact Name</b>	
<b>Phone No., e-mail</b>	
<b>Address</b>	
<b>Principal Investigator</b>	

<b>Industry, Donation, Bequest, Foundation</b>	
<b>Grant Type</b>	
<b>Grant Title</b>	
<b>Grant Value (in €)</b>	
<b>Contract / Grant No.</b>	
<b>Grant Start and Finish Date</b>	
<b>Contact Name</b>	
<b>Phone No., e-mail</b>	
<b>Address</b>	
<b>Principal Investigator</b>	

**4. Was the research which led to this invention undertaken in the process of collaboration or under contract to a third party organisation (academic or industrial) or individual? Was there transfer of any materials / information to or from other organisations or individuals in relation to the development of this invention?**

If so, please explain the involvement including contact details and attach signed agreements including CDAs / NDAs or MTAs.

--

**5. Invention date and place of invention**

Include attached photocopies of original material (e.g., drawings, written notes, laboratory notebooks). Outline key experiments and tests including names of witnesses.

**6. Disclosures (Planned or Undertaken by inventor(s) or Others)**

Give contact names, addresses, the nature of the disclosure, date and place of exposure. Are CDAs / NDAs in place? Attach copies.

Publications: Give full reference details of any publications or reports and attach copies.

Other Communications: Give details of any abstracts, presentations / proceedings, lectures, seminars, workshops, conferences, theses, web information, etc. where data concerning the invention or the invention concept were disclosed.

Closely related publications and communications by third parties. Supply details and attach.

**7. Related Patents**

List other known closely related patents or patent applications, the date and title of the invention.

**8. Is a model or prototype available? Has this been demonstrated practically?**

**9. Commercial Opportunities**

What are the commercial application(s) of the invention and market size?

What customer / user needs are addressed and what products currently serve these?

What advantages does the invention offer in comparison to current products?

Name companies and contact details which may have an interest in acquiring the invention?

**10. Description of Invention**

For the purpose of drawing up a patent application, describe the specifications of the invention in detail and document tests or experiments which demonstrate that it works. What purpose does it serve? Why is this invention more advantageous than present technology? What problems does it solve? What are its novel or unusual features? What new aspects differentiate the invention from current and previous solutions to the problem? Attach extra sheets if necessary including diagrams, photographs and prototype descriptions. Refer to publications and patents which are similar to the invention in the text.

To undertake a professional claims search, carefully list specific *key words* which characterise the invention and its area of application.

I/we acknowledge that I/we have read, understood and agree with this form and the Intellectual Property Policy of the Galway Mayo Institute of Technology (GMIT), and that all the information provided in this disclosure is complete and correct.

I/we shall take all reasonable precautions to protect the integrity and confidentiality of the IP in question.

**Inventor:** \_\_\_\_\_  
**Signature** **Date**

**Inventor:** \_\_\_\_\_  
**Signature** **Date**

**Witness:**<sup>11</sup> \_\_\_\_\_

<sup>11</sup> Witness should not be connected with the project, should have signed a CDA and be capable of understanding the invention.

**Signature**

**Date**

**Received by GMIT:**

\_\_\_\_\_  
**Commercial Services Manager**

\_\_\_\_\_  
**Date**

**Witness**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**



## ANNEX V

### **Data Protection And Confidentiality Undertaking for Employees, Contractors or Students taking part in a project involving GMIT and an outside Partner:**

#### **DATA PROTECTION AND CONFIDENTIALITY UNDERTAKING**

**Name:**

**Employee/Student ID Number (if applicable):**

**Function:**

**Project Title:**

**Project Number:**

In consideration of my appointment by Galway Mayo Institute of Technology (GMIT) as a [research assistant] in the performance of services (“Services”) under the [research agreement] (“Agreement”) between GMIT and [NAME OF PARTNER] (“Partner”) and the related opportunity to gain experience in the Services, I hereby acknowledge that I will acquire certain confidential information (“Confidential Information”) relating to GMIT’s intellectual property, products and strategies and the intellectual property, products and strategies of the Partner.

I hereby undertake to use the Confidential Information only as may be necessary to perform the Services under the Agreement and not to disclose it to any person other than those who have agreed to the same confidentiality undertaking.

I shall use all precautions necessary to protect the Confidential Information from unauthorised disclosure.

I hereby acknowledge that the Confidential Information is a trade secret of GMIT and/or the Partner and that GMIT and/or the Partner may claim damages from the undersigned for loss of business in the event of any unauthorised disclosure.

For the purposes of the Data Protection Acts 1988 to 2003, I hereby consent to the processing of all personal data that I provide to GMIT in connection with the performance of the Services and the Agreement.

This undertaking will continue indefinitely until

(a) the Confidential Information is published or otherwise made public by GMIT;  
or

(b) I am expressly released from this undertaking by GMIT,

and is not conditional on my being or remaining an employee or student of GMIT.

I hereby acknowledge that this undertaking will also benefit the successors and assigns of GMIT together with its related bodies corporate.

Dated:

\_\_\_\_\_  
Signature of person giving the undertaking

\_\_\_\_\_  
Signature of Witness

Signed for and on Behalf of GMIT

\_\_\_\_\_  
Commercial Services Manager

\_\_\_\_\_  
Date

Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ANNEX VI

### NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** is made on • 200•.

#### **PARTIES:**

- (1) **GALWAY MAYO INSTITUTE OF TECHNOLOGY** of ... address... (“GMIT”); and
- (2) • of • (“Receiving Party” which expression shall be deemed to include those of its employees or advisors to whom any Confidential Information is to be disclosed).

#### **BACKGROUND:**

GMIT proposes to allow the Receiving Party access to certain information concerning its business to enable the Receiving Party to consider and evaluate a possible commercial relationship between GMIT and the Receiving Party (“Project”). The Receiving Party agrees to hold and maintain as confidential all such information provided by GMIT for such purposes, on the terms and conditions of this Agreement.

#### **AGREED TERMS:**

Now it is hereby agreed as follows consideration of GMIT disclosing the Confidential Information (as defined below) to the Receiving Party:

##### 1. **Definition**

“Confidential Information” means any and all information in whatever form disclosed by GMIT to the Receiving Party whether orally or in writing or whether eye-readable, machine readable or in any other form including, without limitation, the form, materials and design of any relevant software (including source and object code) or equipment or any part thereof, the methods of operation and the various applications thereof, processes, formulae, plans, business plans, strategies, data, know-how, ideas, designs, photographs, drawings, specifications, technical literature, information relating to employees, customers, subscribers, students, post doctoral students, contractors registered with GMIT, suppliers or content providers and any other material made available by GMIT to the Receiving Party or gained by the visit by the Receiving Party to any establishment of GMIT whether before or after this Agreement is entered into, for the purpose of considering, advising in relation to or furthering the Project (and any information derived from such information) and provided that such information is by its nature clearly confidential (whether or not that information is marked or designated as confidential or proprietary).

##### 2. **Undertakings**

The Receiving Party hereby undertakes with GMIT:

- (a) to maintain the Confidential Information in strict confidence;
- (b) save as provided in this Agreement, not divulge any of the Confidential Information to any third party or communicate, indicate or suggest to any third party the existence of the Project;
- (c) not to make use of the Confidential Information other than for the purpose of the Project;
- (d) not at any time contest or dispute the ownership of the Confidential Information;
- (e) to restrict access to the Confidential Information only to its own responsible employees or professional advisers who need to have such access for the purposes of the Project and to impose upon such persons obligations of confidentiality equivalent to those contained in this Agreement (and to be responsible for any breach of the terms of this Agreement by its own employees or professional advisers);
- (f) not at any time to reverse-engineer, decompile or disassemble any software disclosed to it in the course of the Project and not to remove, overprint or deface any notice of copyright, trademark, logo, legend or other notices of ownership from any originals or copies of Confidential Information;
- (g) to take or to permit to be taken only such copies of any document or other material (in whatsoever medium) embodying any of the Confidential Information as are reasonably necessary for the purposes of the Project;
- (h) if the Receiving Party receives any communication requesting disclosure of any of the Confidential Information or indicating an intention to obtain or the fact that there has been obtained any order which would oblige the Receiving Party in law to disclose any of the Confidential Information, the Receiving Party will (immediately and by the fastest means possible, confirmed in writing) communicate to GMIT the fact that the communication has been received and all details of the same with a view to the parties co-operating in taking all reasonable and proper steps to ensure so far as is possible that the Confidential Information and the Project are maintained in the strictest confidence; and
- (i) to confirm to GMIT in writing at any time on request that it has complied and continues to comply with the provisions hereof.

### **3. Acknowledgements and Confirmations**

The Receiving Party hereby further acknowledges and confirms to GMIT as follows:

- (a) that the Confidential Information is proprietary information of GMIT, the disclosure of which could adversely affect the business of GMIT and result in economic harm;
- (b) that neither GMIT nor any of its advisers nor any of its agents, officers, students, post doctoral students, contractors registered with GMIT, or employees accept responsibility or liability for or make any representation, statement or expression of opinion or warranty, express or implied, with respect to the accuracy or completeness of the Confidential Information or any oral communication in connection therewith unless and save to the extent that such representation, statement or expression of opinion or warranty is

expressly incorporated into any legally binding contract executed between the parties;

- (c) that the provisions of this Agreement shall continue in effect notwithstanding any decision by the parties not to proceed with the Project or any return or destruction of the Confidential Information;
- (d) that damages alone would not be an adequate remedy for any breach of the provisions of this Agreement and, accordingly, without prejudice to any and all other rights or remedies that GMIT may have against the Receiving Party, GMIT shall be entitled without proof of special damage to the remedies of temporary or permanent injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement;
- (e) that if GMIT furnishes or has furnished any confidential information of an affiliated company, the Receiving Party will have the same obligations to such affiliated company with respect to such information as it has to GMIT with respect to the Confidential Information as if all references in this Agreement to GMIT were references to such affiliated company; and
- (f) that the disclosure of the Confidential Information by GMIT shall not be deemed to confer any proprietary rights upon the Receiving Party nor shall such disclosure be construed as granting any licence of rights of any intellectual property in the Receiving Party.

#### **4. Exceptions**

The undertakings contained in Clause 2 and the confirmations and acknowledgements contained in Clause 3 shall not apply to Confidential Information which:

- (a) is or becomes publicly available, other than as a result of a breach of this Agreement, or becomes lawfully available to the Receiving Party from a third party free from any confidentiality restriction;
- (b) was already in the possession of the Receiving Party (as shown by its pre-existing written records) before it was disclosed to the Receiving Party;
- (c) was independently developed without access to or use of the Confidential Information; and
- (d) the Receiving Party is required to disclose:
  - (i) by law;
  - (ii) by any rule or regulation of any stock exchange;
  - (iii) by any Court procedure; or
  - (iv) by any rule or regulation of any governmental or other competent authority,

provided that, so far as is practicable to do so the Receiving Party shall consult with GMIT prior to such disclosure with a view to agreeing its timing and content.

#### **5. Return of Confidential Information**

The Receiving Party hereby undertakes with GMIT:

- (a) upon demand by GMIT or its professional advisers, to either return to such person as they may direct, or destroy, at the option of GMIT all the Confidential Information (including all printed and electronic copies thereof) in its possession or control; and
- (b) upon the return or destruction (as the case may be) of all the Confidential Information, to provide GMIT with a certificate from an authorised officer stating that it has complied with its obligations under this Clause.

## **6. Indemnity**

The Receiving Party agrees to fully indemnify, keep indemnified and hold harmless GMIT against all losses, damages, claims, costs, expenses, liabilities, proceedings and demands which GMIT may suffer or incur or which may be made against GMIT as a result of any unauthorised disclosure or use of the Confidential Information by the Receiving Party, its employees and/or professional advisers.

## **7. Term**

- (a) The Receiving Party agrees that its agreements, covenants and undertakings set out in this Agreement will continue in full force and effect and will apply to the Confidential Information for the period of 5 (five) years from the date of this Agreement.
- (b) The provisions of this Agreement shall continue in force notwithstanding the fact that the Project is not proceeded with or has been terminated and regardless of the reasons for such termination.

## **8. General**

- (a) The laws of Ireland (excluding Northern Ireland) shall govern this Agreement and any disputes, claims or proceedings arising out of or in any way relating to this Agreement.
- (b) The courts of Ireland (excluding Northern Ireland) shall have exclusive jurisdiction for the purpose of any proceedings arising out of or in any way relating to this Agreement.
- (c) This Agreement contains the entire agreement between the parties and supersedes all prior oral, or written representations, understandings, or agreements.
- (d) Both parties must agree any changes to this Agreement in writing.
- (e) Each Clause of this Agreement is severable if deemed void, illegal or unenforceable by a court or competent authority.

**Signed for and on behalf of  
GMIT**

**Commercial Services Manager**

**Date**

**Witness**

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**Signature**

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**Date**

**Signed for and on behalf of •  
by its authorised signatory:**

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