

Code of Practice on Intellectual Property, Commercial Exploitation and Financial Benefits

The purpose of this document is to set out the policy and code of practice governing the management and commercial exploitation of the University's Intellectual Property ("IP") and the use by the University of IP owned by others ("Third Party IP").

Intellectual Property refers to creations of the mind; for example, research results, inventions, literary and artistic works, software, designs, etc. Like other forms of property, IP is an asset which has value and can be traded; it can be bought, sold and licensed.

Legal protection for Intellectual Property in the UK and elsewhere in the world is provided by legal rights, which are known as Intellectual Property Rights ("IPR").

This Code of Practice applies to all forms of legally recognised IP that are created or devised in the course of employment of University staff (i.e. any employees of the University), or study by students, or in the course of contractual relationships (to the extent it is agreed that this Code applies in the contract in question), and this Code also applies to any other IPR assigned to or owned by the University or to which the University is entitled (except to the extent the University has agreed otherwise).

This Code of Practice will be managed by Research and Enterprise and approved by Council.

The University, as owner of the intellectual property of its employees, reserves at all times the right to modify this Code of Practice and the accompanying Guide at its discretion. It will in any event be subject to periodic revision in consultation with the appropriate University bodies.

This version of the Code of Practice (version 2.0) shall take effect from 5 July 2010 (the *Effective Date*) in place of and superseding all previous versions of the Code.

This document should be read in conjunction with "The University of Reading Copyright Policy", and the current version of "The Guide to the Commercialisation of Intellectual Property".

Revision History

Version	Author	Date	Comments
1.0	Sue O'Hare	7 April 2005	Approved by Council 18 March 2005 and issued
1.1	Sue O'Hare	30 March 2007	Revenue and equity sharing sections redrafted by Blake Laphorn Tarlo Lyons to accommodate the strategic partnership with ANGLE plc. Approved by Council 23 March 2007 and issued with effect as of that date.
1.2	Liz Kirby	17 December 2008	Revenue and equity sharing sections redrafted by Blake Laphorn to reflect the termination of the strategic partnership with ANGLE plc. Approved by Council 17 December 2008 and issued with effect as of that date.
2.0	Liz Kirby	16 June 2010	Revised version approved by Council 5 July 2010 and issued with effect as of that date.

Contents

1. Preamble
2. Objectives
3. Policy Statement
4. Scope and Coverage
5. Ownership and Use of IP for Staff, Students and others
6. Ownership and use of IP resulting from work funded by Third Parties or Consultancy
7. Ownership and use of some specific types of IP
 - Teaching and Learning Materials
 - Software
 - Databases
 - Materials
 - Theses and Dissertations
 - Scholarly Works
8. Discretion to Assign/Licence back
9. Using IP Belonging to a Third Party
10. Confidential Information
11. Revenue Sharing
12. Employee participation in the commercialisation of IP
13. Obligations and Responsibilities
14. On Leaving the University
15. Death
16. Dispute resolution

Annexes

Annex 1. Distribution of income and shares arising from the commercialisation of University IP

Annex 2. Definitions

1. **Preamble**

The University is committed to the widespread dissemination and use of the results of its research and other activities, which generate Intellectual Property, through both publication and commercial exploitation as appropriate. Intellectual Property is an asset that may have commercial value. The University has a responsibility to ensure that IP is managed effectively for the benefit of the University as a whole, the creators of the IP and its funders, and to respect the rights of third parties when using third party IP.

2. **Objectives**

The purpose of this document is to set out the policy and code of practice governing the management and commercial exploitation of the University's intellectual property, and the use of third party IP in order to:

- clarify:
 - ownership criteria for IP
 - rights and obligations of all parties
 - roles and responsibilities in relation to the management and use of IP
 - the use of third party IP, so as to avoid infringing the rights of others

- specify:
 - the code of practice when dealing with IP
 - distribution of revenue or equity resulting from IP commercialisation

3. **Policy Statement**

It is the policy of the University that:

- 3.1. The product of work carried out with the benefit of the University environment, which includes facilities, resources, expertise and intellectual assets, constitutes intellectual property which should be owned, protected and used by the University for the general good of the whole University community and for the benefit of society.
- 3.2. The University should protect and exploit its intellectual property by the most appropriate means, whilst safeguarding academic dissemination, in order to enhance the reputation and resources of the University, to encourage innovation and to provide new educational opportunities.
- 3.3. The University should meet its obligations to the funders of research, including where required the management and commercialisation of the results of the research.
- 3.4. The University should not infringe the rights of others who own and control Intellectual Property.
- 3.5. The University should make provision to recognise and reward persons, through professional development or financial reward, who create work within the University that generates a commercial return.

4. Scope & Coverage

This Code of Practice is concerned with the management and use of IP owned by, and/or created within the University, be it in research, teaching, commercialisation or other activities. It is also concerned with the use of third party IP, to ensure freedom of use for the University's activities. The policy statements are above. This Code of Practice is designed to implement these policy statements.

- 4.1 This Code of Practice covers all IP owned or managed by the University, where
 - 4.1.1 the IP has been created by a person as part of their employment by the University in circumstances where the law presumes ownership to the employer, or the ownership has been assigned as part of the employment contract. For the avoidance of doubt this covers all IP in Teaching and Learning materials produced by staff in connection with their employment;
 - 4.1.2 the IP has been created under a contract or grant agreement in which the ownership of new (foreground) IP is agreed to be (wholly or partially) with the University;
 - 4.1.3 the IP has been created by an organisation or individual under contract to the University, in which the IP (wholly or partially) is assigned to the University as part of the contract and it is agreed that the Code will apply; or
 - 4.1.4 the IP owner has assigned his/her rights in the IP to the University or the University is otherwise entitled to the IP (except where the University agrees otherwise).
- 4.2 This Code of Practice covers all persons connected with the University who use the University's resources and facilities. For the avoidance of doubt this includes full or part-time staff, students, visiting researchers and academics. The Code also applies to all persons who have signed an agreement with the University whereby they have agreed to be bound by it.
- 4.3 This Code of Practice will clarify exceptions, where the University has no claim, or chooses not to make any claim, on IP.
- 4.4 The University as a whole is a large user of third party copyright materials for teaching, learning and research, and there is a specific policy for copyright materials or works used within the scope of University activity ("The University of Reading Copyright Policy"). The Copyright Policy forms part of the University's Information Strategy and operates as part of the Information Management Policy. Some elements of the Copyright Policy are included in this Code of Practice.

5. Ownership and Use of IP for Staff, Students and Others

This section clarifies the ownership of IP created by staff, students and others using the University's resources and facilities or otherwise created in the course of employment or under contract with the University. Also, as a general principle and notwithstanding the other provisions of the Code, it is agreed that the University is entitled to the ownership of IP created by staff using the University's resources and facilities, whether or not created in the course of employment, unless otherwise agreed by the University.

IP ownership depends on the legal and contractual situation between the funding body, the creator (inventor) of the IP, the creator's employer and the nature of the IP itself.

Inventorship is not the same as ownership. A creator of IP is considered to be an inventor and have rights to be recognised as such. IP Rights (IPR) are statutory rights which protect and give legal recognition to the owner of the IP, who may be different from the inventor. It is therefore essential to have a clear understanding of who owns IP and which rights apply to the owner and the inventor.

Staff

- 5.1 In general terms, under the Patents Act 1977 and the Copyright, Designs and Patents Act 1988, employers own IP created by their employees in the course of their employment, subject to any exceptions and the conditions of the employment contract. Therefore, the University will usually automatically own intellectual property created by its staff in the course of their duties or otherwise in the course of their employment. This Code is without prejudice to section 42 of the Patents Act 1977.
- 5.2 The University asserts its rights to ownership of all IP created as defined in 5.1 including but not limited to the following:
 - 5.2.1 Films, typographical arrangements, video tapes, records, drawings, broadcasts, multi-media productions, photographs or other works made with the aid of University facilities.
 - 5.2.2 Courseware, databases, computer software and firmware. For the avoidance of doubt this also includes copyright in computer software.
 - 5.2.3 Works generated by computer hardware or software owned or operated by the University.
 - 5.2.4 Patentable and non-patentable technical information, plant varieties and related information.
 - 5.2.5 Registered and unregistered designs and semi-conductor chip topographies.
 - 5.2.6 Copyright works, but excluding those works included in the subject matter of clauses 7.5, 7.17 and 7.21

- 5.3 The University grants the Author(s) of the material a free, non-assignable and non-sublicensable right to use and copy the copyright works mentioned in Clause 5.2.1, 5.2.2 and 5.2.6 for their own academic purposes, but not in any way for commercial purposes unless otherwise agreed by the University.
- 5.4 Where copyright belongs to the University, staff should confirm the fact by inserting the following copyright notice on all material: “© University of Reading 20[xx]. All rights reserved.”

Students

- 5.5 Legislation states that as a general rule employers own IP created by their employees in the normal course of their employment. As students are not employees, the University does not automatically own student IP.
- 5.6 A student may choose to assign their IP to the University, or the University may require a student to assign their IP in certain circumstances (see Clause 5.7). By doing so, the student will be treated on the same basis as staff and benefit from the support provided by the University for the management and commercialisation of the IP, including financial support. This may include costs related to filing and maintaining patents; costs associated with IP, technology and market assessment; legal costs; access to specialists in fund raising and commercialisation via licensing or start-up companies. In addition, the student will be eligible to participate in any revenue or reward sharing should the IP be successfully commercialised (see Clause 11 and Annex 1).
- 5.7 There are circumstances where the University will require a student to assign their IP to the University before, during or after their course of studies. These include the following:
- 5.7.1 A project which is funded by a third party under a grant or contract, or is subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation that affects ownership of the intellectual property. The terms of the grant or contract between the University and the funding body, or other agreement, will determine ownership of the IP and in some cases the student will be required to provide an undertaking to assign their IP to the University (or possibly the funding body).
 - 5.7.2 A student working in collaboration with University staff where the IP generated by the student is needed to enable the use of the entire technology.
 - 5.7.3 A student working under supervision from University staff where the IP has been generated with a significant contribution from their supervisor or other member of staff, such that the member of staff is a joint or co-inventor or co-owner of the IP.
 - 5.7.4 The student has received significant financial support or material contribution from the University (for example a stipend or fees waiver, including those directly from a School or unit) to undertake the research.

- 5.8 When the circumstances in Clause 5.7 do not apply, but the student wishes to work with the University to exploit their IP, they may offer it for assignment to the University. If the University agrees to the assignment, the student will be treated on the same basis as staff with respect to support services and revenue sharing.
- 5.9 To assign IP to the University the student will be required to complete an Assignment Agreement and abide by the procedures and accept the obligations in this Code of Practice.
- 5.10 Students who assign their IP to the University will be treated for ownership and reward purposes as though they were staff of the University and thus benefit from input of Research and Enterprise professionals in IP management and be eligible for revenue sharing in accordance with clause 11 and Annex 1 of this Code of Practice.
- 5.11 It is essential that a supervisor informs the student of any contractual issues concerning IP ownership at the start of the project and a confidentiality agreement is signed where appropriate. If an assignment of IP is necessary, the supervisor will inform the Academic Legal Services Team in Research and Enterprise immediately. If a student is not willing to assign their future IP to the University then the University shall be free to re-assign the student to another project.
- 5.12 Students who have assigned their IP to the University and who make or contribute to intellectual property arising from an undergraduate project, a postgraduate dissertation or research should bring this to the attention of their tutor or supervisor.
- 5.13 Students who have assigned their IP to the University must seek guidance and approval from their supervisors before submitting anything for publication arising from their theses or other University work, in which event it is the supervisor's duty to consider the possible impact on the University's rights and to consult Academic Legal Services in Research and Enterprise
- 5.14 A student who remains uncertain of their rights and obligations in the protection of IP is encouraged to consult Academic Legal Services in Research and Enterprise in the first instance and seek independent advice if necessary.

Also see the Clauses 7.17-7.20 concerning theses and dissertations.

Non-Employees of the University (not being students)

- 5.15 Any third party engaged by the University to undertake work will be bound by the terms of a contract which determine the conditions with respect to IP ownership or assignment and use.
- 5.16 Heads of School shall require academic visitors to sign an agreement which includes terms of ownership of IP invented or discovered by the visitor in the course of the visit and (if appropriate) agreement to this Code. The agreement will be one of the following:

5.16.1 If the academic visitor has no contract of employment, IP will belong to the University;

5.16.2 If the academic visitor has a contract of employment with another institution, the ownership and exploitation of the IP will be subject to an inter-institutional agreement to be put in place by the Academic Legal Services team in Research and Enterprise before work commences.

5.17 Retired members of staff (including emeritus professors), who are no longer employees of the University, but continue to collaborate on research projects at the University, or otherwise use significant University resources, will be asked to sign an agreement confirming their agreement to this Code and the terms of ownership of IP created during their collaboration, or with the use of University resources. The default position is that such retired members of staff will be required to assign any IP they develop during their collaboration and with the use of University resources to the University and in return they shall be treated for reward purposes as if they were members of staff with revenue sharing in accordance with clause 11 and Annex 1 of this Code of Practice.

6. Ownership and Use of IP resulting from work funded by third parties or consultancy

Work Funded by Third Parties

6.1 If IP arises from research which is supported or commissioned by a third party (e.g. Research Council, Government, Industry, Charity) under a grant or contract, then the terms of the contractual agreement between the University and the third party will determine ownership, use, commercial exploitation and the rights, if any, of the University to any revenue from commercial exploitation.

6.2 All staff and students involved in a research project supported or commissioned in full or in part by a third party must be informed of the contractual issues by the Principal Investigator before the research starts.

IP arising from Consultancy Work undertaken by Staff

6.3 Where the consultancy is done under a contract between the University and a client/customer, then the work will be done in the course of employment of the member of staff and this Code will apply and the terms of contract with the client/customer will determine the ownership of any intellectual property coming out of the work.

6.4 The University makes no claim on intellectual property rights arising from wholly private consultancy work, provided no use is made of University resources or facilities.

6.5 Employees are referred to the University "Consultancy Policy" as in force from time to time.

7. Ownership and Use of Specific types of IP

Teaching and Learning Materials

Teaching and Learning Materials now include many different forms of Intellectual Property and Intellectual Property Rights. As well as traditional paper based material, Teaching and Learning Materials include digital media, web based content, broadcasts, video and audio materials and software. As well as copyright in printed materials and software, IP Rights can also include performing rights, design rights, database rights, trademarks, etc. Moral rights for the creator of the material also exist for the copyright materials.

7.1 In accordance with Clause 5.1, the University owns all Teaching and Learning Materials, other than those in clause 7.5, that:

7.1.1 are developed by staff in the normal course of their duties while employed by the University; or

7.1.2 are otherwise created in the course of their employment, which shall be deemed to include in addition any Teaching and Learning Materials which:

7.1.3 use significant University resources in their development such as multi-media materials, visuals or slide shows; video and audio material; presentations streamed or made downloadable over the intranet or Internet; or

7.1.4 are specifically commissioned by the University from a member of staff (requested by a line manager – normally in writing), whether in return for a special payment or not; or

7.1.5 are produced in connection with a University module / course / programme, including Teaching and Learning Materials produced for issue to students; for example, handouts, summaries; case studies; seminar papers; or any materials made available on the virtual learning environment (VLE).

7.2 Members of staff are granted a personal, non-exclusive, worldwide, royalty free licence to the material defined in Clause 7.1 which they personally authored to adapt such materials, and to use these adapted materials solely for their own teaching purposes within the University or for a future employer.

7.3 Where the University has contractual arrangements in place, the agreement terms will take priority, and will determine the ownership of Teaching and Learning Materials created under them.

7.4 For works commissioned by the University from a member of staff, which is to be produced outside the normal course of their duties (i.e. outside the course of their employment), or from someone who is not a member of staff, the University will use a form of contract which makes it clear that all IP and IPRs in the work belong to the University.

7.5 Notwithstanding clause 5.1, the University does not assert ownership of IP in Teaching and Learning Materials produced by the member of staff for their personal use and reference in teaching (for example as personal notes and annotations to support teaching materials). The Author(s) of such Teaching and Learning Materials grant(s) the University a free, unconditional, irrevocable and perpetual, transferable, non-

exclusive licence to make available, use and copy such material for academic and administrative purposes.

7.6 For the avoidance of doubt, the University does not claim rights in pre-existing materials created by members of staff prior to their employment with the University, although clause 9.2 should be noted, and adaptations and modifications made as a member of staff in accordance with clause 7.1 will be owned by the University.

Software

7.7 In accordance with Clause 5.1, the University owns all software and associated items that are developed by staff in the normal course of their duties or otherwise in the course of their employment. The University also asserts ownership of all software and associated items that are the subject of any contract whereby ownership is with the University or that are developed by a student in the circumstances specified in clause 5.7.

7.8 Software is automatically protected by copyright, but in some situations can also be protected by a patent.

7.9 Items associated with software, which may also be protected by IPR, include:

- manuals, which may be a copyright literary work
- icons and other pictorial elements which may be copyright artistic works
- a logo may be a copyright artistic work and/or a protected design and/or a registered or unregistered trade mark
- the name may also be protected against passing-off and other restricted uses as a trade-mark
- databases, which may be protected by database right
- software fonts, software-related peripherals, such as dongles, and on screen displays are eligible for registered design protection as well as possible trademark protection.

7.10 When using pre-existing software components or development tools to create new software, care should be taken to ensure that the terms of the licence agreements ensure that the required use is permitted, without restrictions or obligations. For example, if a licence is for educational use the software should not be used in a commercially funded project such as a consultancy or technical services project; or where commercialisation of the final code is envisaged care should be taken to ensure that the University's ability to commercially exploit is maintained.

7.11 Care should be taken to ensure that contractual obligations relating to IP, such as in consortium or collaboration agreements, consultancy or other contracts, permit subsequent access to and use of any software being developed, for teaching, research and commercial use as appropriate.

7.12 The University encourages dissemination of research results, including software code, however, care should be taken when publishing software, or making it available for

download from the Internet, to ensure that it is covered by an appropriate licence agreement. This licence would normally restrict the use to research, teaching or evaluation purposes, but not commercial use. Contact the Academic Legal Services team in Research and Enterprise for more information and guidance.

Databases

7.13 In accordance with Clause 5.1, the University owns databases that are developed by staff in the normal course of their duties or otherwise in the course of their employment. The University also asserts ownership of all databases that are the subject of any contract whereby ownership is with the University, or that are developed by a student in the circumstances specified in clause 5.7.

7.14 A database may be protected both as copyright and under the database right.

7.15 The Copyright, Designs and Patent Act 1988, defines a database as:

*“a collection of independent works, data or other materials which –
(a) are arranged in a systematic or methodical way, and
(b) are individually accessible by electronic or other means.”*

Since this covers all types of works, a multi-media work as a whole may be protected as a database if the component parts can be accessed individually. However, it does not include a computer program used in making or operating databases.

Materials

7.16 The use of proprietary tangible property for research purposes, often-biological material, either owned by a third party and transferred to the University, or owned by the University and transferred to a third party, should be the subject of a Material Transfer Agreement or Collaboration Agreement, which should include agreed terms on publication rights, ownership, management and commercialisation of new inventions arising from the use of the materials.

Theses and Dissertations

7.17 The University does not claim copyright in theses or dissertations; this copyright shall belong to the Author.

7.18 For the avoidance of doubt, the ownership of other IP rights in the underlying research reported on in the thesis remains with the University if the Author has made an assignment under clause 5.7, 5.8, 5.16, or 5.17, or is an employee of the University.

7.19 The Author grants the University a free, unconditional, irrevocable and perpetual, transferable non-exclusive licence to make available, use and copy the thesis or dissertation for academic and administrative purposes; the licence will remain in effect in the event that the Author leaves the University. The University requires a copy of the

thesis to be deposited in the University and the British Libraries, for further information a student should contact the Examinations Office.

7.20 Where a patent application is being contemplated on an invention disclosed in a thesis, regardless of ownership, then external examiners or external subject reviewers must sign a confidentiality undertaking before being sent the thesis. It may also be necessary for the thesis to be held in the University Library on a restricted access basis with readers being denied access or being asked to sign confidentiality undertakings, until a patent application has been filed. For the avoidance of doubt, restricted access of a thesis may also be necessary under the terms of a contract between the University and a third party funder to protect third party confidential information; if in doubt contact the Academic Legal Services Team in Research and Enterprise.

Scholarly Works

7.21 The University does not claim copyright in scholarly works produced solely in the furtherance of an academic career, such as articles in journals, papers for conferences, study notes not used to deliver teaching and books not commissioned by the University.

7.22 For the avoidance of doubt, the University does assert its ownership over other IP rights in the content of the scholarly work, where the content is based on work to which the University asserts its ownership as a result of an employment or other contract.

7.23 The Author(s) grants the University a free, unconditional, irrevocable and perpetual, transferable non-exclusive licence to use and copy material the subject of clause 7.21 for academic and administrative purposes, including for archival purposes and to make it available online for academic purposes (subject to clause 7.24 below).

7.24 Any Author submitting material to be published must inform the publisher of the licence between themselves and the University defined in clause 7.23. When copyright is transferred or exclusively licensed to a publisher the University must retain a licence to archive the material and make it freely available online, subject to any agreed embargoes.

7.25 Any Author submitting material for publication, whose subject is known to be of commercial value, or where there is any doubt as to the possible commercial value, should first consult the Academic Legal Services Team in Research and Enterprise to avoid inadvertent disclosure of a potentially patentable invention.

8. Discretion to Assign / Licence back

8.1. If the University decides that it does not wish to pursue the commercialisation of any Intellectual Property, or that it does not wish to maintain an interest in Intellectual Property, it can at its discretion offer to assign its ownership to the Creators of the IP, or to enter into an agreement to enable the IP to be used by the Creators, on terms to be agreed.

9. Using IP Belonging to a Third Party

It is essential that the University does not infringe Intellectual Property Rights which belong to third parties. This may include background IP used in a research project, IP generated at the University but owned by a third party, or IP owned by the University but licensed to a third party under terms which might restrict further use. Whilst in many cases research or teaching use is permitted by law, if third party IP is to be used, then care must be taken that appropriate permission or rights exists for the intended use and if not approval should be sought from the owner for the envisaged use. Contact the Academic Legal Services Team in Research and Enterprise for advice.

- 9.1 Staff and students intending to use any material provided by or owned by third parties must ensure that they and the University are authorised to do so. Anyone in doubt should contact the Academic Legal Services Team in Research and Enterprise.
- 9.2 When bringing materials into the University from a previous employer, for example Teaching and Learning Materials or software codes, care should be taken to ensure the appropriate rights to use them in the University have been obtained.
- 9.3 Particular care should be taken when downloading material from web sites, since using such material may amount to copyright infringement. Staff and students are referred to the “Rules for the Use of University Computers and Data Networks” for further guidance.
- 9.4 If software code or applications are downloaded, the terms of the licence agreement must be adhered to, for example software on an educational only licence must not be used for commercial purposes, and care taken to ensure its use does not compromise the use or commercialisation of research results which incorporate the code or are based on it. For further guidance contact the Academic Legal Services Team in Research and Enterprise. Employees should note that they do not have the authority to bind the University to an agreement unless expressly given that authority.
- 9.5 The law concerning database rights allows the copying of insubstantial parts of a database for any purpose and databases can also be copied for the purpose of non-commercial research or private study, to the extent permitted by statute. Care should be taken to ensure that any use that is made of third party databases is done either with permission from the rights holder, or within the parameters of what is legally permissible, taking into account the terms of any licence.
- 9.6 When a staff member receives confidential information from a third party in the course of sponsored research or otherwise, the treatment of that information will be governed by the terms of the applicable sponsored research agreement or confidentiality agreement.

10. Confidential Information

- 10.1. All staff, students and visitors should be made aware of and abide by any confidentiality obligations concerning projects on which they are working. Confidentiality undertakings may be required of both the University as well as the individual personally. Consult the Academic Legal Services Team in Research and Enterprise for advice.

- 10.2. Know-how is a valuable asset, which may be transferred into and out of the University under confidentiality agreements or through consultancy. Care should be taken to ensure any use of third party know-how is not subject to any confidentiality or use restrictions, and that the transfer of any valuable confidential University Know-How is covered by an appropriate confidentiality agreement.
- 10.3. The University's policy is to support the academic dissemination of research results and encourage the publication of scholarly and scientific works. However, in the case of technical inventions (including some computer enabled inventions) which may be patentable, premature public disclosure, including verbal disclosure, prior to the filing of a patent application may be an obstacle to patentability and adversely affect the commercial value of the invention. All those bound by this Code of Practice should, where commercialisation may be possible, contact Academic Legal Services in Research and Enterprise and ensure that research results are kept confidential until an assessment is made of patentability and commercial potential.
- 10.4. During discussions with third parties, which may lead to research collaboration and/or to a commercial arrangement for Intellectual Property, it may be necessary for the University to disclose confidential and valuable information to a third party, and vice versa. This is especially true when negotiating commercial terms for an exploitable invention but can also apply to know-how or other research results when discussing research collaboration. To ensure that both parties are clear about the basis of the discussion and to protect the University's rights, those who are bound by this Code of Practice should disclose only what is necessary to enable the talks to proceed sensibly. This should only be done after the third party has signed a confidentiality agreement. The University has a standard agreement which can be obtained from the Academic Legal Services Team in Research and Enterprise. In some cases the third party will also wish for a similar undertaking to be made by the University.
- 10.5. Only duly authorised signatories are able to sign confidentiality agreements on behalf of the University. For further information and advice, please contact the Academic Legal Services Team in Research and Enterprise.

11. Revenue sharing

- 11.1. Revenue generated from the commercial exploitation of University IP will, subject to clause 11.2, be shared with the Creators, where they are staff, students or others who have entered an agreement with the University which states that the revenue sharing provisions of this Code of Practice apply, and the Creators' Schools according to the Revenue Sharing principles outlined in this Code of Practice Annex 1.
- 11.2. Revenue generated by arm's length, University licensed third party use of Teaching and Learning Materials will be shared with the Creators, where they are staff, students or others who have entered an agreement with the University which states that the revenue sharing provisions of this Code of Practice apply, and the Creators' Schools according to the Revenue Sharing principles outlined in the Code of Practice unless:
- 11.2.1. Teaching and Learning Materials are specifically commissioned by the University; OR

11.2.2. Teaching and Learning Materials are developed using significant University resources; OR

11.2.3. Teaching and Learning Materials are created by a member of staff whose job description specifically includes the creation of these Teaching and Learning Materials for the purposes of commercial exploitation by a third party.

11.3. For the avoidance of doubt, revenue generated from the use of Teaching and Learning Materials by the University through its own activity, and not by a third party at arm's length, will not be shared with the Creator(s).

11.4. Persons offered a reward under this system will be required to execute a formal agreement covering the terms of the reward and their obligations.

11.5. Where IP is generated jointly by staff, or by staff and students, they are each responsible for informing the University of their individual contributions to its generation by each completing a University Invention Disclosure Form available from the IP Advisors in Research and Enterprise. For the purposes of distribution of compensation or reward in respect of IP generated jointly among staff and students it shall be their responsibility to agree their pro rata shares and to inform the University in writing on the University Invention Disclosure Form. Where there is no agreement, no money will be distributed to any individual unless and until there is an agreement between all the Creators.

12. Employee participation in the commercialisation of IP

12.1. The active participation of the inventor(s) in the commercialisation of IP is welcome and encouraged, and is often necessary for a successful outcome.

12.2. If commercialisation of IP is through a company, an inventor (s) may participate as a director or employee of that company, subject to there being no conflicts of interest. Advice on obtaining the necessary University approvals should be sought from the Technology Commercialisation Manager in Research and Enterprise.

13. Obligations and Responsibilities

Record keeping

13.1. All researchers are referred to the University Code of Good Practice in Research. Researchers are obliged to keep good records of research activity, for example, in the form of laboratory notebooks. This can be important in order to confirm the dates of creation, but also to support the preparation of patents or other materials needed to commercialise the invention or apply for further research funding.

Disclosure

13.2. All persons bound by this Code of Practice are obliged to disclose to the Technology Commercialisation Manager in Research and Enterprise as soon as they become aware of it:

- 13.2.1. any potentially commercialisable IP arising from their work
- 13.2.2. the ownership by a third party of any IP required for commercialisation of their work

Securing IP rights

13.3. All persons bound by this Code of Practice must co-operate with Research and Enterprise to ensure that:

13.3.1. terms concerning IP issues are agreed and made clear in any bid or proposal or collaboration document prior to the commencement of the work or before the start of any collaboration with third parties (including students, visiting academics, other universities and companies);

13.3.2. the University procures from a third party owner or controller of any IP to be used for work in the University an appropriate licence, assignment or consent for the University's use of the IP at the outset of the work;

13.3.3. no work is conducted for the benefit of or using material owned by a third party before the terms of ownership, access and use of project/work outcome are agreed; and

13.3.4. that the University's ownership is asserted in relation to trademarks, or its copyright interest in paper or electronic materials, by incorporating the appropriate copyright notice (see Clause 5.4) or Trademark symbol.

Notification of infringement

13.4. Any person bound by this Code of Practice must alert the Academic Legal Services Team in Research and Enterprise immediately on suspecting or becoming aware of an infringement of IP rights being either

13.4.1. infringement of IP rights owned by the University or

13.4.2. the University's infringement of IP rights owned by a third party

14. On Leaving the University

14.1. Persons bound by this Code should continue to acknowledge and attribute the University's IP rights, which were created during the period of their employment, study or under other contractual agreements at the University, in a clear manner and to avoid misleading future employers or collaborators or other third parties regarding the IP concerned.

14.2. Cessation of employment, under normal circumstances, will not affect an individual's right to receive a share of income.

14.3. Staff should consult the Academic Legal Services Team in Research and Enterprise to ensure they have the necessary rights to continue to use any IP they have contributed

to developing, for example Teaching and Learning Materials, once they have left the University. Such rights will not be unreasonably withheld by the University.

15. Death

15.1. In the case of the death of an individual who is due a share of income, that share of any income will be payable to the estate of the deceased.

16. Dispute Resolution

16.1 Unless the parties expressly agree otherwise in writing, any dispute arising out of or in connection with this Code of Practice, any of its annexes, or its subject matter (the "Dispute") will be dealt with in accordance with this Clause 16.

Negotiated Resolution

16.2 In the first instance the parties to the Dispute ("Party" or "Parties") and/or any representative(s) appointed by them with authority to settle the Dispute ("the Authorised Representative(s)") shall attempt to resolve the Dispute through negotiation. To this end upon the written request of a Party, the Parties and/or the Authorised Representative(s) will meet within **[10]** business days of any request for the purpose of resolving the Dispute. The Parties and/or the Authorised Representative(s) shall act in good faith in an attempt to resolve the Dispute at any such meeting.

16.3 If the Parties and/or the Authorised Representative(s) are unable to resolve the Dispute within **[5]** business days of the meeting (or such other period as may be agreed between them), the Dispute at the request of any Party shall be referred to the Director of Research and Enterprise (the "Director"), who for the avoidance of doubt shall be representing the University. The Director and/or his/her Authorised Representative(s) shall meet with the other Party or Parties and/or the Authorised Representative(s) within **[10]** business days of any request for the purpose of resolving the Dispute. The Director, the Parties and/or the Authorised Representative(s) shall act in good faith in an attempt to resolve the Dispute at any such meeting.

16.4 If the Director, the Party or Parties and/or the Authorised Representative(s) are unable to resolve the Dispute within **[5]** business days of the meeting (or such other period as may be agreed between them) the Dispute at the request of any Party shall be referred to the Pro-Vice Chancellor (Research and Enterprise) (the "Pro-Vice Chancellor"), who for the avoidance of doubt shall be representing the University. The Pro-Vice Chancellor and/or his/her Authorised Representative(s) shall meet with the other Party or Parties and/or the Authorised Representative(s) within **[10]** business days of any referral for the purpose of resolving the Dispute. The Pro-Vice Chancellor, the Parties and/or the Authorised Representative(s) shall act in good faith in an attempt to resolve the Dispute at any such meeting.

- 16.5 Where the University is not directly a Party to the Dispute the Director and/or his/her Authorised Representative(s) and the Pro-Vice Chancellor and/or his/her Authorised Representative(s) as appropriate under clauses 16.3 and 16.4 respectively shall act as a facilitator in relation to the Dispute. If a resolution is reached, the Parties shall agree a written note of its terms, which will be signed by all Parties and the Director and/or his/her Authorised Representative(s) and/or the Pro-Vice Chancellor and/or his/her Authorised Representative(s) as appropriate. The resolution shall be binding on all Parties.
- 16.6 The University and/or the Director and/or his/her Authorised Representative(s) and the Pro-Vice Chancellor and/or his/her Authorised Representative(s) as appropriate under clauses 16.3 and 16.4 respectively when acting as a facilitator shall not be liable to the Parties for any act or omission in such capacity unless the act or omission is proved to have been fraudulent or involved wilful misconduct.
- 16.7 Unless otherwise agreed between the Parties and the Director or the Pro-Vice Chancellor, as appropriate, the meetings referred to in clauses 16.2 to 16.5 shall be held within the University grounds and shall be conducted in English. The meetings shall be conducted on a without prejudice basis and shall be confidential to the Parties.

Mediation

- 16.8 If the Parties are still unable to resolve the Dispute, any Party and, if it is not a Party, the University is entitled to request that the Pro-Vice Chancellor refers the Dispute for mediation to the Centre for Effective Dispute Resolution ("CEDR") to be conducted under its auspices. Within **[5]** business of such a request the Pro-Vice Chancellor or his/her Authorised Representative(s) shall refer the Dispute to CEDR and notify the other Parties that he has done so. The Pro-Vice Chancellor or his Authorised Representative(s) shall request CEDR to provide a list of suitable Mediators to choose from. In the absence of agreement between the Parties within **[5]** business days (or such other period as may be agreed between them) of receipt of such a list the Parties or, if it is not a Party, the University shall request CEDR to appoint a Mediator of its choice.
- 16.9 Unless the Mediator and the Parties agree otherwise, the mediation shall be held within the University grounds and shall be conducted in English. the Parties shall bear their own costs of the mediation save that the costs of the Mediator, CEDR, and any rooms required for the mediation shall be paid for by the University. The mediation and meeting shall be conducted without prejudice to the rights of the Parties and shall be confidential to the Parties. The mediation shall be conducted under the terms and conditions of the standard CEDR mediation agreement from time to time in force. The Mediator shall act as a mediator, and not in any other capacity, in relation to the Dispute. The Parties shall act in good faith in an attempt to resolve the Dispute at the mediation meeting.

- 16.10 If a resolution is reached, the Parties shall agree a written note of its terms, which will be signed by all Parties and the Mediator. The resolution shall be binding on all Parties and, if it is not a Party, a copy shall be provided to the University.
- 16.11 If in the opinion of the Mediator a resolution of the Dispute can not be arrived at within a reasonable amount of time and in any event within **[5]** working days of the conclusion of the meeting (unless the Parties and the Mediator agree to a longer period) the Mediator will declare the mediation at an end.
- 16.12 The Parties and the Authorised Representative(s) shall keep confidential to themselves and their professional advisors the existence and details of any proceedings pursuant to this clause 16 save to the extent such information is in the public domain (other than as a result of a breach of this clause 16) or to the extent disclosure is required by law or as is reasonably necessary to protect or pursue a legal right or remedy.

Arbitration

- 16.13 In the event that the parties are unable to resolve the Dispute within **[10]** business days of the mediation coming to an end (or any extension of time agreed in writing for further negotiations) the Dispute shall be referred by any Party, and, if it is not a Party, the University shall be entitled to refer the Dispute, by notice in writing to, and to be finally resolved by, arbitration in accordance with the Rules of the London Court of International Arbitration ("LCIA") from time to time in force, which rules are deemed to be incorporated by reference into this clause. The seat, or legal place of arbitration shall be Reading. There shall be a sole arbitrator. The language used in the arbitration shall be English and the governing law shall be the substantive law of England and Wales.
- 16.14 The arbitrator shall be a senior barrister of at least 10 years call in private practice in barristers' Chambers in London specialising in English intellectual property and patent law ("the Arbitrator"). The Parties shall attempt to agree the identity of the Arbitrator between them. If the Parties fail to agree the identity of the Arbitrator within **[10]** business days (or any extension agreed in writing) any Party and, if it is not a Party, the University may request that the Arbitrator be appointed by the LCIA.

Applicable Law

- 16.15 This Code of Practice is governed by the law of England and Wales.
- 16.16 Nothing in this clause 16 shall prohibit a Party from making an application to any Court of competent jurisdiction for the purpose only of seeking interim relief to protect any Intellectual Property Right or obligation of confidence. Any such application will not constitute a breach or waiver of this clause 16.

Annex 1

Distribution of income and shares arising from commercialisation of University IP

1. General

A.1. The provisions in this Annex apply to determine the distribution between the University, the Creator(s) and the Creator(s) School of:

A.1.1. net income and net cash receipts (including cash receipts derived from shares which are not shares in a spin-out company); and

A.1.2. shares in a spin-out company,

arising from the commercialisation of University IP, whether by licensing, or assigning or spin-out arrangements.

A.2. The University acknowledges that special circumstances may arise in any particular commercialisation opportunity, which makes modification of these arrangements necessary or desirable. In such a case, these arrangements would be subject to review and, where agreed with the University and the Creator(s), subject to modification.

2. Distribution of net revenue

A.3. Entitlement to distribution of revenue and other cash payments is determined on the basis of the following:

A.3.1. "*Net Revenue*" means gross revenue and other cash receipts less deductible costs. Deductible costs are defined in Clause A.15 below; and

A.3.2. where instead of royalty or other cash payments the University is allocated shares in a company which is not a spin-out company, any income or other cash other cash receipts derived from such shares (or any sale of such shares) shall be treated as gross revenue for the purposes of this section 2 but the shares themselves will not be subject to distribution with the Creator(s) and/or the Creator(s)' School.

A.4. As a general rule, but subject to review on a case by case basis and within the University's discretion, deductible costs which are recouped from gross revenue will be credited to the originating University budget (for example patent costs deducted from gross revenue will be credited to the University patent budget).

A.5. Any dispute relating to the treatment of any expenditure shall be referred for resolution in accordance with the Code of Practice, clause 16.

A.6. The standard arrangements for distribution of Net Revenue are as follows:

A.6.1. Net Revenues will be shared between University central funds, the Creator(s) and the Creator'(s)' School(s) in accordance with the scale set out in clause A.8 below.

A.6.2. to determine a Creator's share:

A.6.2.1. Net Revenue generated from the commercialisation of all University IP related to a particular Technology will be aggregated, subject to any agreements in place prior to the Effective Date for the sharing of such revenue which shall continue to apply after the Effective Date . The scale referred to below shall apply to aggregate revenue generated from commercialisation of all the University IP related to a particular Technology and not by reference to each separate commercialisation activity.

A.7. where more than one Creator is entitled to share in the revenue generated from a particular University IP commercialisation:

A.7.1. the Creators, in consultation with, and with the assistance where required of, their respective Heads of School will be responsible for determining and agreeing in writing as early as possible the split as between them of such share and shall notify the University's Academic Legal Services of such split;

A.7.2. the revenue allocation to each Creator will then be shared as between the University central funds, the Inventor and the Creator's School in accordance with the scale referred to in clause A.8 below.

A.8. The Net Revenues will be shared between the Creator(s), the School and the University in accordance with the following scale (with the intent that the School's share is capped at £1,000,000):

Net revenue	Creator(s) (to be allocated between them in accordance with clause A.7.1)	School	University
first £5,000	100%	0%	0%
£5,001 - £100,000	60%	20%	20%
£100,001 - £3,043,000	1/3	1/3	1/3
over £3,043,000	1/3	-	2/3

The accompanying Guide to this Code contains illustrations of the application of this clause.

- A.9. A Creator entitled to receive a share of the Net Revenues from commercialised IP in accordance with the above scale will continue to receive his/her share if he/she leaves the University until the Net Revenues cease. In the event that the Creator dies, the estate of the deceased will continue to receive his/her share.
- A.10. The Finance and Corporate Services Directorate will be responsible for distributing any Net Revenues in a timely manner.

3. Distribution of shares (equity)

- A.11. This section 3 (clauses A.12 to A.15) sets out the standard arrangements for the distribution of shares arising from University IP commercialisation in a spin-out company.
- A.12. Where University IP is commercialised using a spin-out company, the Creator(s) will receive their share of the benefits as equity and not cash and the provisions of this section 3 shall apply, notwithstanding any income or other cash receipts to which the University may in addition be entitled arising from the IP commercialisation.
- A.13. The University acknowledges that special circumstances may arise in any particular commercialisation opportunity, which make modification of these arrangements necessary or desirable. In such a case, these arrangements would be subject to review and, where agreed with the University and the Creator(s), subject to modification.
- A.14. The standard arrangement is as follows:

A.14.1.1. the Creator (or, if more than one, the Creators together) and the University shall share in the equity in equal proportions;

A.14.1.2. where more than one Creator has created the IP, the Creators, in consultation with, and with the assistance where required of, their respective Heads of School and, where relevant, the other investors in the spin-out company, will be responsible for determining and agreeing in writing as early as possible the split as between them of such equity share and shall notify the University's Academic Legal Services Team of such split;

A.14.1.3. the shares shall be distributed as follows (with the intent that the spin-out company does not fall to be treated as a subsidiary of the University):

Creator(s) (to be allocated between them in accordance with clause A.14.1.2)	University
50%	50%

A.14.1.4. In certain circumstances, third parties may become entitled to equity participation in the company, eg. as a result of awards or grants made under other funding sources or where IP is jointly owned with a third

party. In such circumstances, the percentages referred to above will be adjusted on a pro-rata basis based on the level of third party equity participation.

A.14.2. The University intends that the net sale proceeds (after recoupment of all University costs (including any applicable taxes)) from any future sale of the University's shares in any particular spin-out company and any dividends paid before sale would be divided equally between the University and the Creator(s)' School, but subject to an overall limit of £1,000,000 on the School's aggregate receipt (with any net sale proceeds (together with any dividends before sale) above such amount retained by University central funds).

4. Deductible Costs

A.15. Subject as provided in paragraph A.15.2 below, the following categories of cost shall be deducted from gross revenue for the purposes of clause A.3:

- A.15.1.1. all expenses paid outside the University, including patent agent fees, for the filing, prosecution and maintenance of intellectual property rights which are not reimbursable otherwise;
- A.15.1.2. all external legal fees incurred in the commercialisation of the IP;
- A.15.1.3. all external legal or other fees or costs expended on litigation or any arbitration or mediation in relation to the IP;
- A.15.1.4. all applicable expenditure on insurance relating to the maintenance and enforcement of intellectual property rights;
- A.15.1.5. all professional fees relating to the commercialisation of the IP;
- A.15.1.6. all reasonable expenses incurred in connection with the commercialisation of the IP, e.g. travel made expressly for the purpose of meetings, negotiations etc;
- A.15.1.7. salary and associated costs for staff employed specifically to provide ongoing support for a commercialisation activity;
- A.15.1.8. any payment due to third parties, for example through revenue sharing agreements with sponsors of the research leading to the IP;
- A.15.1.9. any sums payable under any then existing agreement (e.g. joint ventures, licences or assignments);
- A.15.1.10. any repayments of grants, loans or subsidies for the purpose of commercialising the IP;
- A.15.1.11. any applicable taxes;
- A.15.1.12. any other expenditure that is agreed with the University and the Inventor(s).

A.15.2. The following categories of cost shall not be deducted from gross revenue for the purposes of clause A.3:

A.15.2.1. any internal recharges for time spent by University staff unless a specific fee has been paid, or the time spent has been exceptional;

A.15.2.2. any departmental costs or charges relating to any use or provision of any equipment or facilities.

Annex 2

Definitions

<i>Author(s)</i>	means any person or persons who create a copyright work
<i>Creator(s)</i>	means an Author or Inventor, i.e. any person or persons who have created an item of copyright or other item of IP or who have contributed to an invention.
<i>Effective Date</i>	means the date this Code is stated to take effect.
<i>Intellectual Property (IP)</i>	refers to creations of the mind; for example, research results, inventions, literary and artistic works, software, designs, etc. Like other forms of property, IP has an owner, can be bought, sold and licensed/rented, and is protected by law. Protection is provided by statutory rights known as Intellectual Property Rights (IPR).
<i>Intellectual Property Right (IPR)</i>	<p>refers to the legal rights which safeguard the rights of Intellectual Property owners and creators. There are many different IPR's, which apply to different forms of IP. Whilst there are some international agreements, IPR's are national or European rights, and some differences exist, and some countries have additional rights. Intellectual Property Rights in the UK include but are not limited to:</p> <ul style="list-style-type: none">• Patents protect inventions, each embodying a new idea capable of being made or used by industry and involving a non-obvious inventive step, e.g. devices, DNA sequences, new chemical entities, some computer programs.• Plant Breeders' Rights protect new varieties of plants or seeds, protected by• Copyright protects literary and artistic works, films, videos, records, broadcasts and typographical arrangements, including computer software, electronic materials and web pages.• Registered Design Rights protect designs and design drawings, mainly of aesthetic objects.• Unregistered Design Rights protect engineering components, architectural drawings, etc.• Trade Marks protect product brand names, company logos, etc.• Database Rights protect collections of independent works, data or other material in electronic or paper form.

- **Rights in** Know-How and other information, which include trade secrets and background techniques, usually created through confidentiality and other agreements.
- **Other Rights** may exist in different countries, for example, Utility Models or Petty Patents, and the details of some rights may differ between countries. Expert advice should always be sought from the IP Advisors in Research and Enterprise.

Inventor(s) means any person or persons who contributes to an invention, such as a technical invention, software, design, or other item which is novel or includes an inventive step.

Research & Enterprise means the department of the University containing Academic Legal Services, Research and Enterprise Development, Strategic Programmes and the Knowledge Transfer Partnership team, which is responsible for managing and commercialising the University's IP.

School means the School, Directorate, Self Financing Centre or unit to which an individual is assigned in accordance with his/her contract of employment or student registration.

staff means individuals who are employed by the University under a contract of employment whether fixed term or permanent, including but not limited to Academic and Research, Professional and Managerial, Academic and Administrative Support, and Ancillary and Operational Support job families.

student means any person registered as a full or part-time undergraduate, or taught or research postgraduate student of the University, or following any course as if such a student.

supervisor means a member of academic staff responsible for supervising, assisting, guiding, or in any other way monitoring a specified piece of academic or research work, including assessments, by a student.

Teaching and Learning Materials

material used for teaching and/or learning purposes including traditional paper based material and handouts, as well as presentations, slides, digital media, web based and electronic content, broadcasts, video and audio materials, and software.

Technology means a bundle of Intellectual Property, protected by various rights, which are commercialised together and are given a D0x-xxx number in the Academic Legal Services records; for example if several patents, copyright items and know-how are licensed together then they count as one Technology, or if the same (or

similar) bundle of IP is licensed to several different parties (eg multiple non-exclusive licences, or licenses in different fields) then all those licences are also all attributed to one Technology.

third party

means an organisation or individual other than the University or an individual bound by the terms of this Code of Practice.

University means

The University of Reading.

University IP

means IP created by, or licensed to or by the University which it wishes to commercialise in collaboration with the Creator(s).