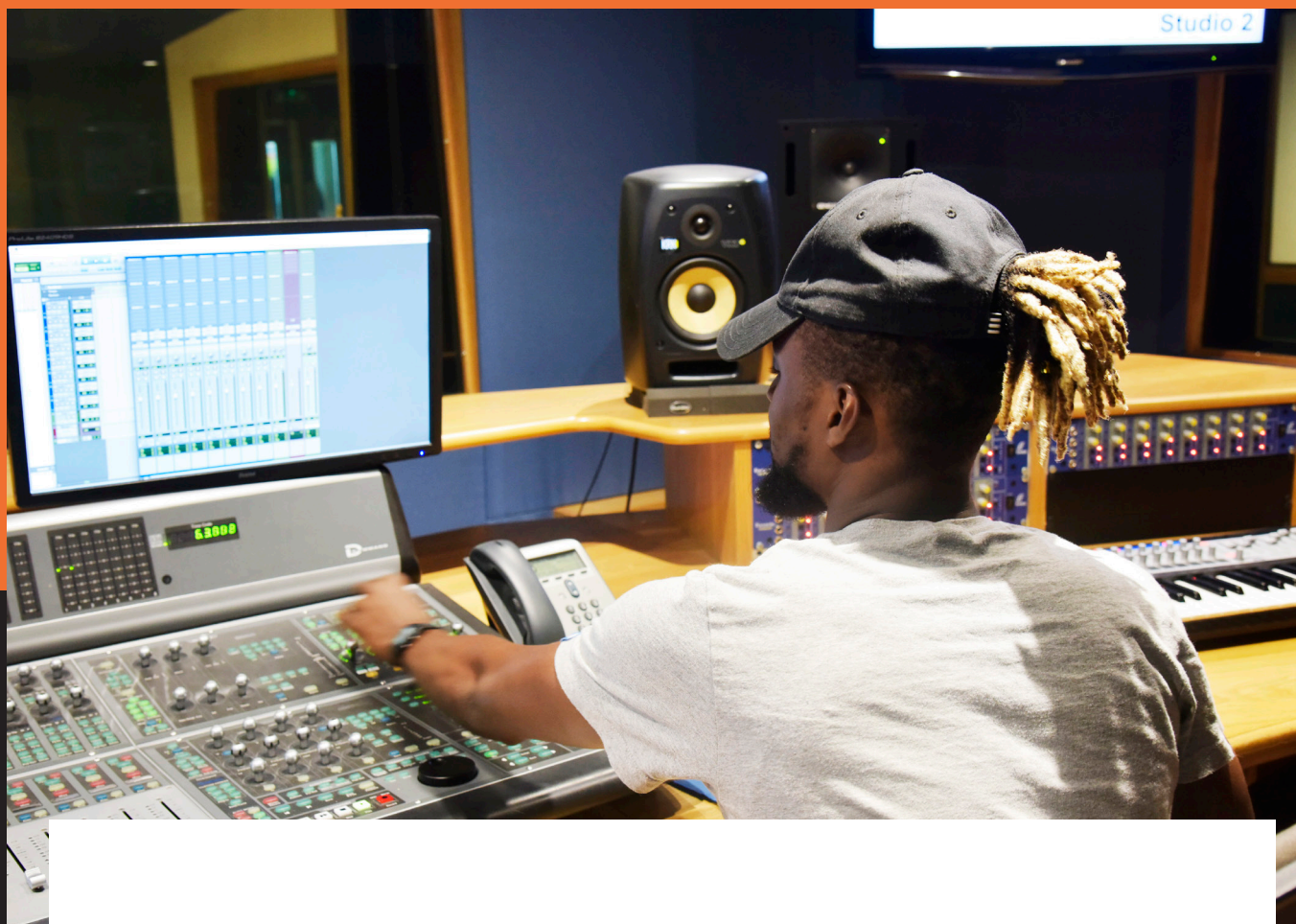




BUCKINGHAMSHIRE
NEW UNIVERSITY

EST. 1891



INTELLECTUAL PROPERTY – POLICY AND PROCEDURES

Effective from June 2009

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If required this formal document is available in an alternative format, for example braille, tape, disc, email or a larger font size. Please contact the University Secretary's Office.

Preamble

This policy and procedure is made by Senate under its remit in the Articles of Government of the University. Words used in this policy and procedure shall have the meanings assigned to them in the Articles of Government. In the case of conflict between this policy and procedure and the Articles of Government, the Articles of Government shall take precedence.

All policies and procedures on intellectual property approved by Senate before June 2009 shall be rescinded.

The names of committees and titles of posts may change from time to time. This shall not invalidate the powers of the equivalent successor committees or postholders.

In the case of doubt, the Academic Secretary shall have authority over the interpretation of the text of the policy and procedures, on behalf of Senate.

All University formal documents relate to the policies, strategies, procedures and regulations of the University having been approved by the appropriate formally recognised and constituted body. All University employees and students are required to adhere to the formal processes and regulations of the University

This document should not be read in isolation as other University formal documents could be relevant. A full listing of all formal documents is available on the University's website.

Intellectual property – policy and procedures

1 Introduction

- 1.1 Ideas originated by employees and students of the University, including its subsidiary companies, may be or may become intellectual property (IP). The University recognises that IP is a commercial asset and its policy is to:
- either acquire, protect and exploit any IP created using the University's knowledge, support and/or facilities;
 - or to contract with the originator to protect and exploit any IP created using the University's knowledge, support and/or facilities;
 - or to contract with third parties to protect and exploit any such IP created using the University's knowledge, support and/or facilities.
- 1.2 Universities are established in the UK to undertake teaching and research for public benefit. They are the recipients of public funds for this purpose. Thus the University's aim in exploiting IP is not only to create a revenue stream for investment purposes and to enhance its reputation but also to promote new knowledge for general economic and intellectual prosperity.
- 1.3 No matter how the IP is assigned in terms of ownership, the University will endeavour to ensure that the originator of the idea and IP is rewarded and has a financial incentive to develop the IP further and commercialise it. It is generally in the interests of the IP originator to work within the University's and its subsidiaries' auspices and this policy encourages employees and students to do so. In respect of financial rewards, employees and students will be treated consistently, by use of a single financial model described in this policy. The University may offer other support for protection, development and commercialisation of IP by means of funding of equipment or posts, process development, legal advice, administration and exploration of commercial opportunities.
- 1.4 Decisions on IP ownership and reward are taken on a case by case basis and through negotiation, based on the principles and financial rewards model in this policy. As a minimum the University will ensure that it recoups its costs and investment in contributing to the generation and protection of IP. As a maximum the University will exploit IP on a commercial basis. The extent of the rewards to the originator will be based on the principles in these guidelines and the rewards model in section 6 below. The policy also upholds the academic employment contract currently in place and allows fair and consistent interpretation of the relevant clauses.
- 1.5 This policy and procedures document should be read in conjunction with the University's Applied Research Strategy 2009 and any available guidance on the commercialisation of ideas.

2 Scope

Employees

- 2.1 This policy and associated procedures covers all employees of the University. For the purpose of this policy, the term 'employees' extends to visiting readers and professors, industrial fellows, knowledge transfer partnership (KTP) associates and research assistants in so far as they may generate IP with more than incidental use of University resources (see section 3). Hourly paid lecturers are also encouraged to work within the scope of this policy where there are mutual interests and benefits to be pursued between the lecturer and the University.

Students

- 2.2 The policy and procedures similarly apply to all taught and research postgraduate students of the University and to all undergraduate students who have the potential to generate IP in the course of their studies. If a student is also an employee of the University and generates IP in their capacity as an employee, they are treated as an employee. If the IP is generated in their capacity as a student, they are treated as a student.

Subsidiary companies

- 2.3 The policy and procedures also applies to employees of the University's subsidiary companies and students and KTP associates holding a contract with, or working under the auspices of, the subsidiary companies.

Partner colleges

- 2.4 Students of the University who are studying at partner colleges are also covered by this policy and associated procedures, but employees of partner colleges are not so covered.

Other organisations

- 2.5 This policy and procedures does not govern the University's educational or commercial partner organisations or funding bodies, but provides a starting point for negotiating with them.

3 Principles of IP ownership and exploitation

- 3.1 The general principle is that a student or employee, working with an Applied Research Group and/or the relevant officers in the University, seeks to:

Identify IP → Protect IP → Exploit IP

Who owns the IP in the first place?

- 3.2 Normally the originator of an idea owns the IP. But a different position obtains for those who create IP in the course of their employment. This policy discusses employees first and then students. At the earliest possible stage after identification of IP, ownership should be assigned between the originator and the University and this should be done in line with the criteria from 3.3 to 3.17 below and following the procedures in section 5.

Employees

- 3.3 IP created by a University employee is owned by the University as follows:

- a) automatically, if the work leading to the creation of IP is carried out wholly in the course of employment, using University resources (see definition in section 4 below) including earmarked University funding and/or other resources;
- b) automatically, if the University has commissioned the research or related activity;
- c) automatically, in the case of teaching materials (see definition in section 4 below) including e-learning materials;
- d) automatically, if the job specification makes it clear that a major part of the employee's remit is to generate work in a specific field;
- e) by transfer (assignment), if the work leading to the creation of IP is carried out partly or wholly outside employment, but with more than incidental use of University resources (see definition in 3.4 below);
- f) by prior agreement, if the work leading to the creation of IP is carried out within a programme or project sponsored by an outside body (see definition in section 4 below)

and if the terms of agreement of such sponsorship assign the rights to the University; otherwise the IP rights remain with the outside body.

- g) by mutual or negotiated agreement in other cases.
- 3.4 “More than incidental use of the University’s resources” means that University funds have been used either directly to support the work, or indirectly, for example where teaching by, and discussions with, academic employees and/or the use of unpublished research and consultancy, and/or regular use of phones, photocopiers, computers or other equipment have aided the research. Use of the University library is not included in the definition since the published works held there are available to all employees and students and are generally in the public domain. Use of the University’s name may or may not be included in the definition depending on the extent of use.
- 3.5 For the avoidance of doubt it follows from 3.3 and 3.4 above that, if the IP has been created solely in the unpaid time of the employee without ‘more than incidental use of the University’s resources’, the IP rights remain with the employee unless otherwise agreed. Similarly, under the terms of the employment contract for academic employees, if the employee and University agree by mutual consent or negotiate a position whereby the University waives its rights, the IP rights may transfer (be assigned) to the employee.
- 3.6 In all cases relating to 3.3 to 3.5, sections 39 to 43 of the Patents Act 1977 apply as does the academic employment contract of the University in respect of academic employees.
- 3.7 In the case of scholarly materials (see definition in section 4 below), the University waives its IP rights by contractual agreement (that is, the standard contract of employment for academic employees), unless:
- a) the employee has generated the scholarly materials at the express request of the University and has used earmarked University funding, including paid sabbatical leave; and/or
 - b) the nature of the employee’s job means that they are predominantly paid to produce such material;
 - c) the material has been judged likely to harm the University’s reputation, in the opinion of a Pro Vice Chancellor;
 - d) the material could be used to economic advantage by a competitor, in the opinion of a Pro Vice Chancellor;
 - e) there is substantial use of the University’s name.
- 3.8 Further to 3.3 to 3.7 above, the University will be entitled to a licence from the employee to use the employee’s IP for promotional and educational purposes, on request.
- 3.9 Employees are also referred to paragraph 5.12 which outlines their responsibility to negotiate these principles into agreements with other universities or parties for whom they carry out work which may result in IP creation and also to ensure that the rights of those universities and other third party rights are not infringed. Employees will be supported by the University in this.
- 3.10 Employees are required to sign any document that the University reasonably requests in order to protect the IP rights of the University under 3.3 to 3.9 above and confirm the provisions of this IP policy.
- 3.11 Employees who terminate their employment with the University carry forward only the IP rights that they owned prior to their employment with the University subject to any agreements to the contrary. Where the University owns the IP rights over any unpublished material it should be

assigned to the Bucks knowledge archive when the employee leaves, if this has not already been done.

Students

- 3.12 IP created by a University student is owned by the student as follows:
- a) initially in all cases where the original IP is the student's and is documented as such (see 5.5 below); this includes research theses;
 - b) if the IP under a) above is not considered appropriate, for whatever reason, for exploitation and commercialisation, the student retains ownership of the IP;
 - c) if the IP under a) above is considered appropriate for exploitation and commercialisation, at an early stage the student is asked to assign their IP rights to the University so that exploitation can take place with the support of the University's resources and the economic benefits can be shared; this includes IP generated outside a University taught or research programme but with more than incidental use of the University's resources (see 3.4 above);
 - d) if the IP under a) is being developed through sponsorship by an outside body which has legitimate claims to the IP, at an early stage the student is asked to assign their IP rights to the University initially and the University will apportion the rights in the IP according to the terms of agreement with the outside body so that the economic benefits can be shared;
 - e) if an idea, which may not be solely the student's original idea, is being developed in collaboration with other students and/or employees of the University or its subsidiaries, under this policy the student is asked to assign their IP rights to the University initially and the University will apportion the rights to the participants so that the economic benefits can be shared. If this also involves an outside body, the terms of agreement with that body are taken into account.
- 3.13 If the student creates IP using equipment or facilities, which are themselves subject to copyright restrictions, the student complies with the restrictions and this clause overrides clause 3.12 in whole or in part.
- 3.14 Further to 3.12 above, the University will be entitled, where necessary, to a licence from the student to use the student's IP for promotional and educational purposes, on request.
- 3.15 Students are also referred to paragraph 5.12 which outlines their responsibility to negotiate these principles into agreements with other universities or parties for whom they carry out work which may result in IP creation and also to ensure that the rights of those universities or other third party rights are not infringed. Students will be supported by the University in this.
- 3.16 Students are required to sign any document that the University reasonably requests in order to protect the IP rights of the University under 3.12 to 3.15 above and to confirm the provisions of this IP Policy.
- 3.17 On leaving the University, students carry forward only the IP rights that they owned prior to commencing their studies at the University, subject to any agreements to the contrary. Where the University holds the IP rights over any unpublished material it should be assigned to the Bucks knowledge archive when the student leaves, if this has not already been done.

4 Definitions

4.1 Copyright

Copyright is an automatic property right that applies to original written, graphical, musical or other artistic works or derivative works relating to them including visual recordings or software which is committed to writing or otherwise produced in tangible form (including electronic format). Copyright expires 70 years after the death of the author of the work in the case of written or visual work and 50 years in the case of music recordings.

It is worth noting that multiple copyright works may apply to a single original idea. For example an original piece of music may comprise a literary copyright work when it is in written form, and then separate copyright works when it is recorded, remixed and broadcast.

4.2 Design rights

Design rights are automatic property rights that apply to the production of a 3D physical article (a product) in accordance with a new 2D design drawing, which may be in electronic format. Design rights may include protection of the form or appearance of the represented article including its shape and configuration. An eligible design may be registered by applying for design protection with the UK Intellectual Property Office. If registered, the registration may be renewed every 5 years up to a maximum of 25 years. If a design is not registered, unregistered design protection should last for a maximum of 10 years after the date of first marketing of the 3D article made in accordance with the design.

4.3 Know-how and trade secrets

Know-how is any knowledge or technical or commercial information not covered by other IP definitions. It is not necessarily always defined as IP, and may or may not be capable of bestowing exclusive property rights on the originator.

4.4 Patents

Patents are concepts and inventions in any academic sphere, including creative arts, which are brand new (novel) and are capable of industrial application. They must be registered in the UK with the UK Intellectual Property Office and only when registered is a monopoly over the exploitation of the invention granted to the originator. If registered, a patent can be renewed on an annual basis for up to a maximum of 20 years. It is especially important to retain confidentiality in the run-up to a patent application, since if disclosed to the public before a patent application is filed, the invention will be considered no longer novel and thus the patent application will be refused or may be challenged and cancelled by third parties on this basis.

4.5 Trade marks

Trade Marks are distinguishing "marks" which are capable of being graphically represented and which identify the owner's business specifically. They are to do with branding, image, reputation and ownership of the business. They may be registered at the UK Intellectual Property Office, and if successfully registered may be renewed every 10 years forever. If a trade mark is used for a significant period of time but not registered, then it may acquire unregistered trade mark rights. However acquired reputation in the trade mark would need to be established in order to support unregistered trade mark rights and so registering is a sensible option.

4.6 Other definitions used in sections 3 above and 5 below

“Commercialisable IP” means any disclosed IP which the IP authorising group considers to be fit for commercialisation and for the University’s support.

“Commercialisation” means any form of exploitation of disclosed IP including assignment, licensing or other transfers of rights for financial reward or payment in kind or other reward such as publicity and promotion.

“Disclosed IP” means IP which has been described in writing in an IP (Ideas) disclosure form.

“Disputes resolution procedure” means the formal procedure appended to this policy for use when an employee or student wishes to challenge a decision made by an IP authorising group or the Negotiator (See Appendix 6).

“Idea” means an invention in written, graphical, visual, musical or software-related form.

“IP authorising group” means the group that considers the fitness of an idea for commercialisation and makes a decision on the extent of University support. The group comprises:

- either the relevant Pro Vice Chancellor or Director of Enterprise
- relevant Head of School and Head of Research
- relevant Applied Research Group leader if applicable
- advised by the Senior Registrar for Research and a member of the Finance Directorate.

The decision is incorporated into an IP assignment agreement. For a subsidiary company an analogous group is formed involving one director of the subsidiary company board. A subsidiary company group cannot commit University funds.

“KTP associate” means a person conducting research or other work which has potential to produce IP, under the auspices of the University and an outside body, with earmarked public funding from the KTP Scheme and a specific contract with the University. Normally the outside body retains IP rights over the work done by the KTP associate.

“Licence” means a form of contract which confers rights to use IP on others. The University can contract with an employee, student or organisation to give them exclusive, non-exclusive or exclusive rights to use identifiable IP. An employee or student can contract with other parties, ensuring the safeguard of the University’s and third party interests.

“Negotiator” means the person to whom a case is referred if the IP authorising group cannot reach agreement because of the complexity or technicality of the case.

“Originator” means the inventor of the idea.

“Outside body” means a company, public sector or private sector or charitable funding body, another university or educational organisation or similar third party.

“Research results” means the products of research including interim results and any ancillary materials or apparatus produced indirectly by research.

“Rewards” means the payment made by the University to the originator under the formula in this policy.

“Scholarly materials” means books, textbooks, academic journal articles, conference papers and related publications, teaching and research notes created for the employee’s own personal use including as an aid to teaching, theses and dissertations, and non-fiction writing, unless any of these, or part of them, are included in “Teaching Materials” or “University Materials”. Such materials may be in written, graphical, visual or musical form or may be a piece of software, demonstration model or apparatus.

“Teaching materials” means lecture, tutorial and seminar notes prepared directly for the purposes of teaching and communicating with students; also handouts, course guides, presentation slides and other audio-visual materials, manuals, demonstration models and other apparatus, assessment and examination materials including revision materials. Such materials may be in written, graphical, visual or musical form or may be a piece of software, demonstration model or apparatus.

“Uncommercialisable IP” means IP which the Director of Enterprise or relevant Head of Research at an informal stage or the IP authorising group does not consider fit for commercialisation or University support.

“University materials” means recruitment and promotional copy, committee papers including drafts, policies, regulations and procedures, financial and other management information, administrative materials. Such materials may be in written, graphical, visual or musical form or may be a piece of software, demonstration model or apparatus.

“University resources” means University, or subsidiary company, funding (other than the salary paid to an employee or general bursary provided to a student, but including paid sabbatical leave), facilities and resources including equipment, space, light, heat and power, or the time of another employee or student of the University or subsidiary company or the use of the University’s name in the promotion of the work. For definition of “more than incidental use of University resources” see 3.4 above.

5 Procedures to identify, protect and exploit IP

5.1 Defining the IP

It is very important to identify potential IP at an early stage. The first step for an employee to take is to discuss it with the relevant Applied Research Group leader, Head of Research or Director of Enterprise. Sometimes the Applied Research Group leader, Head of Research or Director of Enterprise will make the first approach when potential IP becomes informally known. The first step for a student to take is to discuss it either with the tutor or supervisor involved in the work or the relevant Head of Research, Director of Enterprise or the Senior Registrar for Research. Again they may make the first approach to the student. The Director of Enterprise or Senior Registrar for Research, if approached, will normally involve the relevant Head of Research. The matter will be kept confidential as described in 5.3 below.

5.2 Role of Head of Research or Director of Enterprise and Senior Registrar for Research

The role of the Head of Research and/or Director of Enterprise, advised by the Senior Registrar for Research, is to weigh up the general costs and benefits of potential commercialisation, to estimate the likely cost and source of any necessary additional investment, and to consider how to assign ownership of the IP, if this is not automatic under 3 above. The Head of Research and Director of Enterprise consults the Finance Directorate on all matters concerning predicted costs and returns. They will then advise the originator, who may be an employee or student, on whether a recommendation can be made for commercialisation and the University’s support. If it is reasonably clear to the Head of Research or Director of Enterprise that an idea is uncommercialisable IP, then at the earliest possible stage this position will be agreed with the Applied Research Group leader and the originator.

5.3 Maintaining confidentiality

At the same time as taking the steps in 5.1 above, originators are advised to keep their work, including their research results, confidential within the University until they have protected and are ready to exploit their IP. This can be done by asking all participants to respect confidentiality at particular seminars or other sessions when discussing the ideas. It is also possible to ask other employees and students to sign formal confidentiality agreements (see Appendix 1). Employees and students who are working for subsidiary companies or partners to

the University or outside bodies may benefit from the use of a two-way confidentiality/non-disclosure agreement between the University and another party (see Appendix 2). The University undertakes to maintain confidentiality of the originator's ideas.

5.4 **Asserting ownership**

In addition to 5.3 originators are advised to:

- mark important written/design/artistic work with “©, [name and date]”. If this is not done the owner still retains the IP but it will notify third parties of the claimed IP rights and owner;
- work with other parties in the case of potential multiple copyrights, such as recording and broadcasting studios in the case of the production of an original song;
- if registrable, protect a trade mark by registering it at the UK Intellectual Property Office. Mark any branding phrase and logo design with an ® if it is registered or ™ to assert ownership;
- if registrable, protect designs by registering them at the UK Intellectual Property Office;
- if the idea may be patentable, visit the UK Intellectual Property Office website and consider their advice on patents.

5.5 **Producing evidence of ownership**

Where the idea cannot simply be written down by the originator, in order to prove ownership employees and students are advised to photocopy diagrams and designs, make notes of any discussions, record any music or other sounds at the time. It is advisable to maintain a clear records and filing system relating to the research and development of the idea, allowing the evidence to be easily retrieved. This puts the idea in material form and provides evidence of automatically arising IP such as copyright. It also shows that the employee or student is the originator and proof of this may be needed should a dispute arise.

5.6 **Making an application for the University's support**

Following the Head of Research and/or Director of Enterprise's consideration under 5.2 above, with their supporting recommendation, the originator may apply for the University's support for the exploitation and commercialisation of the idea. Applications are made on an IP (Ideas) disclosure form (see Appendix 3) which is sent in the first instance to the Senior Registrar for Research. The idea then comes under the definition of Disclosed IP.

5.7 **Authorisation of University support and assignment of IP**

The Senior Registrar for Research establishes an IP authorising group (see definition in section 4 but normally the relevant Pro Vice Chancellor or Director of Enterprise, Head of Research, Head of School, Applied Research Group leader advised by the Senior Registrar for Research and a member of the Finance Directorate) appropriate to the subject area. This group considers the IP (Ideas) disclosure form, in discussion with the originator as necessary. The IP authorising group either:

- authorises University support and provisionally assigns (see appendix 4) the IP, in line with section 3 of this policy and procedures, either to the University or the originator or to an outside body where applicable;
- declines to authorise University support in which case any uncommercialisable IP rights are interpreted as residing with the originator or the University in line with section 3 of this policy and procedures.

5.8 **Negotiation**

Where assignment of the IP is not clear or cannot be agreed by the authorising group or is stated in this policy to be a matter for negotiation and agreement, the relevant Head of Research, Director of Enterprise and University Secretary, working together, refer the case to the Negotiator (see definition in section 4) who may be an external legal adviser. It will normally be the case that where an outside body is involved and the IP rights are not laid down in standard terms of agreement, the Negotiator will be involved.

5.9 **IP Assignment agreement**

An IP assignment agreement is then signed by the originator and the University and any outside body where applicable (see Appendix 4 for KTP associates and Appendix 5).

5.10 **Disputes**

Where assignment of IP leads to a dispute, the employee or student may use the Disputes resolution procedure (see Appendix 6).

5.11 **Plagiarism**

If someone has plagiarised a copyright work, the originator is advised to write to the plagiariser citing any evidence such as an audit trail of notes from when the relevant copyright work was first created and to await their reaction and see if the copying stops. If the relevant copyright work has been commercialised or if the plagiarist does not stop, the originator may wish to take legal action if the relevant copyright work is potentially commercialisable IP and may attract significant rewards. It will help if there is significant evidence of the origin and creation of the relevant copyright work and it may be possible for employees and students to claim damages which can be quite high in cases of flagrant copying. And this may also spoil the plagiarist's reputation.

5.12 **Responsibilities of the originator**

It is the responsibility of the originator:

- a) to ensure that any arrangements made with third parties do not conflict with this policy and employees' contractual obligations to the University in relation to IP. This point covers consultancy, sub-contracting with other parties and publishing arrangements in respect of scholarly materials;
- b) to ensure that third party IP rights are not infringed. In the case of students using original material created by other parties as part of their course, academic employees are asked to guide students in the various accepted ways that such rights can be acknowledged and try to ensure that this is done;
- c) to take care in assigning IP rights to others by written and signed agreement or alternatively licence IP rights to others under a written and signed contract. The originator may lose their rights over the IP and any spin-offs from the creation.

6 **Rewards model**

6.1 The financial rewards model below applies to both employees and students and does not rest on any decision about ownership of the IP in an idea. Once the IP is the subject of an IP assignment agreement, the originator is recognised and rewarded in all cases.

6.2 The University reserves the right to negotiate different terms from those below and will normally do so when outside bodies are involved or when the case is complex and shared between a number of people who are responsible for origination. It is also the case that this section of the

policy does not override the academic employment contract but it does provide a way of operating section 9 in that contract.

6.3 Subject to any agreement with outside bodies, the originator is entitled to rewards as indicated in the following table and they are paid annually during the commercialisation period. The formula is distinct from the Personal development fund which is a different concept for a different purpose.

Net cumulative *return (NCR)	Originator's reward (% of NCR)	Faculty or Directorate share (% of NCR)	University share (% of NCR)
£1K to £100K	60%	20%	20%
£100K and above	40%	40%	20%

*net cumulative return is the money received by the University in relation to exploitation of the relevant IP minus payment of fees, royalties, tax, travel, raw materials, production, development costs, legal fees, expenses of registration or other protection, employer's NI and pension contributions, overhead charge.

7 Legal considerations

7.1 IP rights vary in law across the world. Where international IP issues are concerned, special legal advice may be sought via the University Secretary's office. Normally the policy and procedures above will be interpreted within the framework of English law.

7.2 The University's guidelines on the multiple reproduction of copyrighted materials for teaching purposes and the single copying of documents for research and private study should be followed at all times. Advice may be sought from the library.

Appendices

- Appendix 1 One-way confidentiality agreement
- Appendix 2 Two-way confidentiality/non disclosure agreement
- Appendix 3 IP (Ideas) disclosure form
- Appendix 4 Example KTP associate contract
- Appendix 5 Drawing up IP assignment agreements
- Appendix 6 Disputes resolution procedure

(See separate documents)

Prepared by:	University Secretary	June 2009	
Final Approval by:	Senate [June 2009]		
Review Date:	2012		
Updated on:			



One-way confidentiality agreement

This is a generic simple confidentiality agreement which may be adapted for specific purposes and activities such as research, enterprise, postgraduate teaching and research degree supervision, undergraduate teaching, generation of all forms of intellectual property (IP), information given at formal meetings and other University activities. In itself the agreement does not claim IP for the University or assign any IP to the University. Where applicable, it should be read in conjunction with the University's IP - policy and procedures.

This Agreement is made with an effective date of _____ (day month, year)

between:

Buckinghamshire New University, a higher education corporation, whose administrative offices are at Queen Alexandra Road, High Wycombe, Bucks, HP11 2JZ (the "University")

and

[Recipient's name], of _____ (full address) (the "Recipient").

This agreement governs the receipt of confidential information from the University by an individual.

In consideration of disclosure of the Confidential Information (as defined below) by the University to the Recipient, the Recipient hereby agrees to the following:

- 1 To keep confidential all information disclosed to the Recipient by through the University [for the purpose of] [relating to]..... ("Confidential Information") without express written consent except as required by law.
- 2 The above confidentiality obligation shall apply without time limit until the Recipient receives formal written notification to the contrary from [an authorised officer] [the University].
- 3 Confidential Information, for the purposes of this agreement will not include:
 - a) information already in the Recipient's possession at the time of receipt (as evidenced by written records);
 - b) information which at the time of disclosure is available to the public other than as a result of a breach of this agreement by the Recipient; and
 - c) information received by a third party under no obligation of confidence to the University other than as a result of a breach of this agreement by the Recipient.
- 4 This Agreement will be governed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

Signed by the Recipient:

Signed by an authorised representative of the University:



Two-way confidentiality/ non disclosure agreement

This is a mutual confidentiality agreement which may be adapted for specific purposes but which applies in particular to activities which may generate a competitive advantage and/or any form of intellectual property and which is made between the University and a company, another university or other outside body.

This Agreement is made with an effective date of [day month, year]

between:

Buckinghamshire New University, a higher education corporation, whose administrative offices are at Queen Alexandra Road, High Wycombe, Bucks, HP11 2JZ (the "University")

and

[Company's/University's/other body's full name],

Either: a company registered in [England] under number [.....], whose registered office is at [.....] (the "Contracting Party")

Or: whose administrative offices are at [full address].

Background and Definitions

- a The parties wish to discuss a potential [collaborative research project] [business arrangement] and it is likely that either or both of the parties will find it necessary to disclose Confidential Information (as defined below) to the other party. The parties have agreed that such Confidential Information will be disclosed between them in confidence subject to the terms of this Agreement.
- b For the purposes of this Agreement, the term 'Confidential Information' is defined as each party's confidential information including any written documents, illustrations, drawings, diagrams, technical notes and any other such materials disclosed by each party to the other which by their nature may reasonably be considered to be confidential information, all intellectual property in such materials and know-how disclosed by that party to the other for the Specified Purpose of this Agreement.
- c For the purposes of this Agreement, the term 'Specified Purpose' is defined as the purpose of [evaluating the possibility of the University and the Company/University/outside body working together to exploit the development of] [or insert alternative purpose for disclosure].

The parties agree as follows:

1 Confidentiality

- 1.1 Neither party will, before the expiry of not less than [3][5][7][10] years after the [date of this Agreement][its receipt of any of the other party's Confidential Information], disclose

to any third party, nor use for any purpose except the Specified Purpose, any of the other party's Confidential Information, subject to the terms of this Agreement. For this period, each party hereby undertakes and agrees to keep all Confidential Information of the other party secret and confidential.

- 1.2 Neither party will be in breach of any obligation to keep any information confidential or any obligation not to disclose any information to any other party to the extent that it:
 - 1.2.1 is known to the party making the disclosure before its receipt from the other party, and not already subject to any obligation of confidentiality of the other party;
 - 1.2.2 is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
 - 1.2.3 has been obtained prior to this Agreement by the party making the disclosure from a third party in circumstances where the party making the disclosure has no reason to believe that there has been a breach of an obligation of confidentiality owed to the other party;
 - 1.2.4 has been independently developed by the party making the disclosure prior to obtaining it from the other party; or
 - 1.2.5 is approved for release in writing by an authorised officer of the other party.
- 1.3 If the University receives a request under the Freedom of Information Act 2000 to disclose any information that, under this Agreement, is the Contracting Party's Confidential Information, it will notify the Contracting Party and will consult with the Contracting Party prior to releasing any such Confidential Information of the Contracting Party. The Contracting Party will respond to the University within 10 Days after receiving the University's notice if that notice requests the Contracting Party to provide information to assist the University to determine whether or not an exemption to the Freedom of Information Act applies to the information requested under that Act.

2 Intellectual Property Rights

- 2.1 Nothing in this Agreement grants any licence or right to use the Confidential Information or any copyright, trade marks, design right, patents or other intellectual property rights which may subsist in the Confidential Information, other than as required for the Specified Purpose.
- 2.2 Neither party will remove any proprietary notices relating to copyright, trade secret, confidentiality or other legal subject matter from any of the other party's Confidential Information.

3 Term

- 3.1 Subject to clause 1.1, this Agreement will continue indefinitely notwithstanding the conclusion of the discussions between the parties.
- 3.2 On conclusion of the discussions between the parties, each will, at the other's request;
 - 3.2.1 return or destroy the other's Confidential Information in its possession, custody or control without retaining any copies (whether in digital or hard copy format); and
 - 3.2.2 confirm in writing that the above has been done without retaining any copies (whether in digital or hard copy format).

4 **Governing Law**

This Agreement will be governed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

Signed for and on behalf of the University:

Signed for and on behalf of the Contracting Party:

Name

Name

Position

Position

Signature

Signature



Date received	
Reference No.	

Appendix 3

Intellectual property (Ideas) disclosure form

Please read the Intellectual Property policy and procedures 2009 and take the steps described. Then, at the right stage, fill in and send this form to the **Senior Registrar for Research**. This form will be used to ascertain the facts relating to any idea (that is the invention, writing, design, trade marks, software or other material) in which intellectual property (IP) may subsist. It provides an additional dated reference in support of other notebooks and records concerning when the work was created. The information provided in this form will be treated as confidential and will be used for the sole purpose of assessing the potential for protecting and commercialising the disclosed IP.

Do not divulge any details of your invention to anyone unless they are bound by a confidentiality agreement (see Intellectual Property policy and procedures appendices 1 and 2).

Details of idea originator or inventor completing this form

Name: School, Faculty, or Directorate: University employee <input type="checkbox"/> Student: <input type="checkbox"/>

Other contributors

Please list any other individuals who have made an active contribution to the IP
(Please attach further pages if necessary)

Name: School, Faculty, Directorate or Affiliation: University employee <input type="checkbox"/> Student: <input type="checkbox"/> External: <input type="checkbox"/> Nature of contribution:
Name: School, Faculty, Directorate or Affiliation: University employee <input type="checkbox"/> Student: <input type="checkbox"/> External: <input type="checkbox"/> Nature of contribution:
Name: School, Faculty, Directorate or Affiliation: University employee <input type="checkbox"/> Student: <input type="checkbox"/> External: <input type="checkbox"/> Nature of contribution:

Details of IP (idea)

Working title or name of IP (idea): Over what time period have you been working on the ideas that led to the IP? Is the IP fully documented (in notebooks etc)? Brief description of IP: Full description of IP: <i>(Please attach further pages as necessary in order to assist in the possible briefing of a patent agent)</i>
--

External Resources

Please give details of any external funding including grants, contracts and studentships or equipment/other resources owned by a third party used in connection with this work.

Internal Resources

Please give details of any internal University funding including grants, sabbatical leave, equipment purchased;

Please give details of the use you have made of University resources such as equipment, materials and discussions with University employees and students.

Past Disclosure / Publication

Have details of the IP been disclosed in public or published in any form? Yes No

If 'yes', please give details and, where appropriate, attach copies of any publications

Future Publication

Are any publications or other forms of disclosure planned? Yes No

If 'yes', please give details

Commercialisation

In which markets do you think the IP will find most success?

List potential commercial benefits of the IP?

Do you think the IP needs further development and resourced support before it can be commercially exploited? Yes No

If 'yes', please provide details of the development work and resources necessary to support this:

Background Information

List results of any searches of existing competing products or existing conflicting IP (attach further information as necessary) and any searches of the UK IP registers (including patent register, design right register and trade mark register):

Declaration

I declare that the information given is true, to the best of my knowledge, at the time of writing.

Idea Originator/Inventor's signature:

Date:

Pro Vice Chancellor's/Director of Enterprise's signature:

Date:

Dated _____ 20(09)]

(1) **Buckinghamshire New University**

(2) [.....]

**Example of Collaborative Research Agreement
for Knowledge Transfer Partnership**

Based on the Lambert Model Collaborative Research Agreement - 4

THIS AGREEMENT dated [.....] 20[08] is made **BETWEEN:**

- (1) **Buckinghamshire New University**, whose administrative offices are at [.....] ("the University"); and
- (2) [.....] [**LIMITED**], a company registered in [England] under number [.....], whose registered office is at [.....] ("the Company")

1. **DEFINITIONS**

In this Agreement the following expressions have the meaning set opposite:

this Agreement: this document, including its Schedules, as amended from time to time in accordance with clause 11.9;

the Associate: [*insert name*];

Background: information, techniques, Know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) that are provided by one party to the other for use in the Project (whether before or after the date of this Agreement), except any Result;

a Business Day: Monday to Friday (inclusive) except bank or public holidays in [England];

the Company Supervisor: [*insert name*] or his or her successor appointed under clause 10.2;

Confidential Information: each party's confidential information is: any Background disclosed by that party to the other for use in the Project, and identified as confidential before or at the time of disclosure; and any Results in which that party owns the Intellectual Property;

the Effective Date: [*insert date the Project starts*];

External Funding: any funding or assistance provided for the Project, or to any party for use in the Project by any third party, including without limitation, any state or public body;

the Financial Contribution: the financial contribution to be provided by the Company, as set out in the Full Programme Proposal ('The Proposal') or subsequently modified and agreed at the Local Management Committee;

a Group Company: any undertaking which is, on or after the date of this Agreement from time to time, a subsidiary undertaking of the Company, a parent undertaking of the Company or a subsidiary undertaking of a parent undertaking of the Company, as those terms are defined in section 258 of the Companies Act 1985;

Intellectual Property: patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, confidential

information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

the Key Personnel: the Associate, the Knowledge Base Supervisor, the Company Supervisor and any other key personnel identified in the Full Proposal for the KTP, as agreed between the company and the University, and as approved by the Programme Assessment Group or, subsequently, by the Local Management Committee;

Know-how: unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;

the Knowledge Base Supervisor: [insert name] or his or her successor appointed under clause 10.2;

the Location: the location(s) at which the Project will be carried out as set out in The Proposal;

the Project: the programme of work described in The Proposal, as amended from time to time in accordance with clause 11.9;

the Project Period: the period described in clause 3.1;

Publication: the publication of an abstract, article or paper in a journal, or its presentation at a conference or seminar; and in clauses 6 and 7 "to Publish" and "Publication" are to be construed accordingly;

the Results: all information, Know-how, results, inventions, software and other Intellectual Property identified or first reduced to practice or writing in the course of the Project;

2. SCOPE

2.1 The Company partner owns the Intellectual Property in the Results and the University has the right to use the Results for academic teaching and academic research.

3. THE PROJECT

3.1 The Project [will begin on][began on] the Effective Date and will continue until [insert date] or until any later date agreed in writing between the parties, or until this Agreement is terminated in accordance with clause 9 or 10. If this Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.

3.2 Each of the parties will carry out the tasks allotted to them in The Proposal, and will provide the human resources, materials, facilities and equipment that are designated as its responsibility in The Proposal. The Project will be carried on under the direction and supervision of the

Knowledge Base Supervisor and the Company Supervisor. The Project will be carried out at the Location.

- 3.3 Although each of the parties will use reasonable endeavours to carry out the Project in accordance with The Proposal, neither party undertakes that any research will lead to any particular result, nor does it guarantee a successful outcome to the Project.
- 3.4 The Associate, under University guidance, will provide the Company with reports for each Local Management Committee meeting, summarising the progress of the Project and a copy of all of the Results.
- 3.5 The University warrants to the Company that the University has full power and authority under its constitution, and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement and to carry out the Project.

4. FINANCIAL CONTRIBUTION AND EXTERNAL FUNDING

- 4.1 The University will keep complete and accurate accounts of its expenditure on the Project. The Company will pay the Financial Contribution to the University in accordance with The Proposal, and any additional financial commitments agreed subsequently, within 30 days of invoice date (currently invoiced on a quarterly basis).
- 4.2 All amounts payable to the University under this Agreement are exclusive of VAT (or any similar tax) which the Company will pay at the rate from time to time prescribed by law.
- 4.3 If the Company fails to make any payment due to the University under this Agreement, without prejudice to any other right or remedy available to the University, the University may charge interest (both before and after any judgement) on the amount outstanding, on a daily basis at the rate of four per cent per annum above the London Interbank Offer Rate from time to time in force. That interest will be calculated from the date or last date for payment to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Company will pay that interest to the University on demand.
- 4.4 The University will own all equipment purchased or constructed by it, or for it, using the Financial Contribution or any External Funding.
- 4.5 With respect to External Funding received to support the Project, each of the parties will comply with the terms of that External Funding.

5. USE AND EXPLOITATION OF INTELLECTUAL PROPERTY

- 5.1 This Agreement does not affect the ownership of any Intellectual Property in any Background or in any other technology, design, work, invention, software, data, technique, Know-how, or materials that are not Results. The Intellectual Property in them will remain the property of the party that contributes them to the Project (or its licensors). No licence to use any Intellectual Property is granted or implied by this Agreement except the rights expressly granted in this Agreement.
- 5.2 Each Party grants the other a royalty-free, non-exclusive licence to use its Background for the purpose of carrying out the Project, but for no other purpose. Neither party may grant any sub-licence to use the other's Background except that the Company may allow its Group Companies and any person working for or on behalf of the Company or any Group Company to use the University's Background for the purpose of carrying out the Project.
- 5.3 The Company will own the Intellectual Property in the Results and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection for that

Intellectual Property, including filing and prosecuting patent applications for any of the Results. Where any third party such as the Associate or a student or contractor is involved in the Project, the University or the party engaging that contractor (as the case may be) will ensure that the Associate, student or contractor assign any IP they may have in the Results in order to be able to give effect to the provisions of this clause 4.

- 5.4 To the extent that any Intellectual Property in the Results is capable of prospective assignment, the University now assigns those Intellectual Property to the Company; and to the extent any Intellectual Property in the Results cannot prospectively be assigned, the University will assign those Intellectual Property to the Company as and when they are created, at the request of the Company. The Company will provide the University with such information that as the University may reasonably request from time to time to demonstrate that the Company is exploiting or is taking reasonable steps towards exploiting the Results. If the Company does not demonstrate that it is exploiting any of the Results or is taking reasonable steps towards exploiting them, the Company will, if requested to do so by the University, reassign the Intellectual Property in those Results to the University. The Company will notify the University if the Company decides not to proceed with the exploitation of any of the Results and will, if requested to do so by the University, reassign the Intellectual Property in those Results to the University.
- 5.5 Each of the parties will notify the other promptly after identifying any Result that it believes is patentable, and will supply the other with copies of that Result. The University will notify other Results to the Company in the reports provided under clause 3.4.
- 5.6 The Company grants the University a royalty-free, non-exclusive licence to use the Results for the purpose of carrying out the Project, but for no other purpose. The University may not grant any sub-licence to use the Results.
- 5.7 Despite the assignment or agreement to assign under clause 5.4, the University, the Associate and any employee and student of the University will have the irrevocable, royalty-free right to use the Results for the purposes of academic teaching, scholarship and academic research, and clinical patient care, including research projects that are sponsored by any third party. The rights in this clause are subject to the rules on Publication in clause 6.

6. PUBLICATION

- 6.1 The Project is undertaken in pursuance of a primary charitable purpose of the University; that is the advancement of education through teaching and research. Therefore, the Associate or any employee or student of the University (whether or not involved in the Project) may, provided the University has not received a Confidentiality Notice under clause 6.2:
 - 6.1.1 discuss work undertaken as part of the Project in University seminars, tutorials and lectures; and
 - 6.1.2 publish any Background of the Company (unless it is the Company's Confidential Information) or any of the Results.
- 6.2 The University will submit to the Company, in writing, details of any Results and any of the Company's Background that the Associate or any employee or student of the University intends to Publish, at least 30 days before the date of the proposed Publication. The Company may, by giving written notice to the University ("a Confidentiality Notice"): require the University to delay the proposed Publication for a maximum of 3 months after receipt of the Confidentiality Notice if, in the Company's reasonable opinion, that delay is necessary in order to seek patent or similar protection for any of the Company's background or any Results that are to be Published; or prevent the Publication of any of the Company's Background that is Confidential Information. The Company must give that Confidentiality Notice within 15 days after the Company receives details of the proposed Publication. If the University does not receive a Confidentiality Notice within that

period, its employee or student may proceed with the proposed Publication, provided that, whether or not it has received a Confidentiality Notice, any of the Company's Background that is Confidential Information may not be published.

7. CONFIDENTIALITY

- 7.1 Subject to clause 6, neither party will, either during the Project Period or for 3 years after the end of the Project Period, disclose to any third party, nor use for any purpose except carrying out the Project, any of the other party's Confidential Information.
- 7.2 Neither party will be in breach of any obligation to keep any Background, Results or other information confidential or not to disclose it to any other party to the extent that it:
- 7.2.1 is known to the party making the disclosure before its receipt from the other party, and not already subject to any obligation of confidentiality to the other party;
 - 7.2.2 is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
 - 7.2.3 has been obtained by the party making the disclosure from a third party in circumstances where the party making the disclosure has no reason to believe that there has been a breach of an obligation of confidentiality owed to the other party;
 - 7.2.4 has been independently developed by the party making the disclosure;
 - 7.2.5 is disclosed pursuant to the requirement of any law or regulation (provided, in the case of a disclosure under the Freedom of Information Act 2000, none of the exceptions to that Act applies to the information disclosed) or the order of any Court of competent jurisdiction, and the party required to make that disclosure has informed the other of the requirement and the information required to be disclosed; or
 - 7.2.6 is approved for release in writing by an authorised representative of the other party.
- 7.3 The University will not be in breach of any obligation to keep any of the Company's Background that is not Confidential Information, or any Results, or other information, confidential or not to disclose them to any third party, by Publishing any of the same if the University has followed the procedure in clause 6.2 and has received no Confidentiality Notice within the period stated in that clause.
- 7.4 The Company will not be in breach of any obligation to keep any of the University's Background, or other information, confidential or not to disclose them to any third party, by making them available to any Group Company, or any person working for or on behalf of the Company or a Group Company, who needs to know the same in order to exercise the rights granted in this Agreement, provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep that Background or information confidential.
- 7.5 If the University receives a request under the Freedom of Information Act 2000 to disclose any information that, under this Agreement, is the Company's Confidential Information, it will notify the Company and will consult with the Company. The Company will respond to the University within 10 days after receiving the University's notice if that notice requests the Company to provide information to assist the University to determine whether or not an exemption to the Freedom of Information Act applies to the information requested under that Act.
- 7.6 Neither the University nor the Company will use the other's name or logo in any press release or product advertising, or for any other promotional purpose, without first obtaining the other's

written consent, except that the University may identify the sums received from the Company in the University's Annual Report and similar publications.

8. **LIMITATION OF LIABILITY**

8.1 Neither of the parties [except under clause 8.8] makes any representation or gives any warranty to the other that any advice or information given by it or any of its employees [or students] who work on the Project, or the content or use of any Results, Background or materials, works or information provided in connection with the Project, will not constitute or result in any infringement of third-party rights.

8.2 Except under [the limited warranty in clause[s] 8.1 [and 8.8] and] the indemnity in clause 8.3, and subject to clause 8.6, neither party accepts any responsibility for any use which may be made by the other party of any Results, nor for any reliance which may be placed by that other party on any Results, nor for advice or information given in connection with any Results.

8.3 The Company will indemnify the University, the Knowledge Base Supervisor, the Associate and every other employee and student of the University (the Indemnified Parties), and keep them fully and effectively indemnified, against each and every claim made against any of the Indemnified Parties as a result of the Company's use of any of the Results or any materials, works or information received from them pursuant to the terms of this Agreement, provided that the Indemnified Party must:

8.3.1 promptly notify the Company of details of the claim;

8.3.2 not make any admission in relation to the claim;

8.3.3 allow the Company to have the conduct of the defence or settlement of the claim; and

8.3.4 give the Company all reasonable assistance (at the Company's expense) in dealing with the claim.

The indemnity in this clause will not apply to the extent that the claim arises as a result of the Indemnified Party's negligence, breach of clause 7 or the deliberate breach of this Agreement.

8.4 Subject to clause 8.6, and except under the indemnity in clause 8.3, the liability of either party to the other for any breach of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project and the Results, will not extend to any indirect damages or losses, or any loss of profits, loss of revenue, loss of data, loss of contracts or opportunity, whether direct or indirect, even if the party bringing the claim has advised the other of the possibility of those losses, or if they were within the other party's contemplation.

8.5 Subject to clause 8.6, and except under the indemnity in clause 8.3, the aggregate liability of each party to the other for all and any breaches of this Agreement, any negligence or arising in any other way out of the subject matter of this Agreement, the Project and the Results, will not exceed in total the Financial Contribution.

8.6 Nothing in this Agreement limits or excludes either party's liability for:

8.6.1 death or personal injury;

8.6.2 any fraud or for any sort of liability that, by law, cannot be limited or excluded; or

8.6.3 any loss or damage caused by a deliberate breach of this Agreement or a breach of clause 6.

- 8.7 The express undertakings and warranties given by the parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.
- 8.8 The University warrants to the Company that, in relation to any assignment made under or pursuant to clause 5.4:
- 8.8.1 the University has the right to dispose of the Intellectual Property in the Results and that the University it will, at its own cost, do all that it reasonably can to give the title that it purports to give; and
- 8.8.2 that the Intellectual Property in the Results is free from all charges and encumbrances and rights of any third party (except those that the University is unaware or could not reasonably be aware of).

9. **FORCE MAJEURE**

If the performance by either party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control, that party will not be in breach of this Agreement because of that delay in performance. However, if the delay in performance is more than 6 months, the other party may terminate this Agreement with immediate effect by giving written notice to the other party.

10. **TERMINATION**

- 10.1 Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- 10.1.1 the other party is in breach of any provision of this Agreement and (if it is capable of remedy) the breach has not been remedied within 90 days after receipt of written notice specifying the breach and requiring its remedy; or
- 10.1.2 the other party becomes insolvent, or if an order is made or a resolution is passed for its winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed over the whole or any part of the other party's assets, or if the other party makes any arrangement with its creditors.
- 10.2 Each of the parties will notify the other promptly if at any time any of the Key Personnel appointed by that party is unable or unwilling to continue to be involved in the Project. Within 3 months after the date of that notice, the party who originally appointed that member of the Key Personnel will nominate a successor. The other party will not unreasonably refuse to accept the nominated successor, but if the successor is not acceptable to the other party on reasonable grounds, on reasonable grounds, or if the appointor cannot find a successor, either party may terminate this Agreement by giving the other not less than 3 months' notice.
- 10.3 Clauses 2, 4, 5, 6, 7, 8, 9, 10.3, 10.4[, 10.5] and 11 will survive the expiry of the Project Period or the termination of this Agreement for any reason and will continue indefinitely.
- 10.4 On the termination of this Agreement, the Company will pay the University for all work done prior to termination. If the Company has paid any of the Financial Contribution in advance and the whole of that contribution has not, by the end of the Project Period or the termination of this Agreement, been used by the University for the purposes for which that Financial Contribution was provided, the University will return to the Company the unused portion of that contribution.

10.5 Following the termination of this Agreement under clause 10.2, if the Financial Contribution includes the costs of employing any University staff involved in the Project, the Company will continue to reimburse, in accordance with clause 4, the actual direct employment costs of staff who were appointed by the University to work on the Project before the service of the notice, provided that the University takes all reasonable steps to minimise those costs. Reimbursement will continue until the effective date of termination of each staff contract or the date on which the Project was to have ended (whichever is the earlier). Those direct employment costs will include a proportion of any redundancy costs that have been incurred by the University as a direct result of the termination of this Agreement, that proportion to be calculated by dividing the individual's involvement in the Project by the duration of his period of employment by the University.

11. **GENERAL**

11.1 **Notices:** Any notice to be given under this Agreement must be in writing, may be delivered to the other party or parties by any of the methods set out in the left hand column below, and will be deemed to be received on the corresponding day set out in the right hand column:

Method of service	Deemed day of receipt
By hand or courier	the day of delivery
By pre-paid first class post	the second Business Day after posting
By recorded delivery post	the next Business Day after posting
By fax (provided the sender's fax machine confirms complete and error-free transmission of that notice to the correct fax number)	the next Business Day after sending or, if sent before 16.00 (sender's local time) on the Business Day it was sent

The parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as follows:

For the University:	For the Company:
Name:	Name:
Address:	Address:
Fax number:	Fax number:

11.2 **Headings:** The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.

11.3 **Assignment:** Neither party may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other party. That consent may not be unreasonably withheld or delayed.

- 11.4 **Illegal/unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.
- 11.5 **Waiver of rights:** If a party fails to enforce, or delays in enforcing, an obligation of the other party, or fails to exercise, or delays in exercising, a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 11.6 **No agency:** Nothing in this Agreement creates, implies or evidences any partnership or joint venture between the parties, or the relationship between them of principal and agent. Neither party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.
- 11.7 **Entire agreement:** This Agreement constitutes the entire agreement between the parties relating to its subject matter. Each party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement. Each party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of, any representation which is not an express provision of this Agreement. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.
- 11.8 **Formalities:** Each party will take any action and execute any document reasonably required by the other party to give effect to any of its rights under this Agreement, or to enable their registration in any relevant territory provided the requesting party pays the other party's reasonable expenses.
- 11.9 **Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each party's representative.
- 11.10 **Third parties:** No one except a party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a party to this Agreement may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise.
- 11.11 **Governing law:** This Agreement is governed by, and is to be construed in accordance with, English law. The English Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement, except that either party may bring proceedings for an injunction in any jurisdiction.
- 11.12 **Escalation:** If the parties are unable to reach agreement on any issue concerning this Agreement or the Project within 14 days after one party has notified the other of that issue, they will refer the matter to the Head of Research of relevant Faculty in the case of the University, and to *[insert officer]* in the case of the Company in an attempt to resolve the issue within 14 days after the referral. Either party may bring proceedings in accordance with clause 11.11 if the matter has not been resolved within that 14 day period, and either party may apply to the court for an injunction, whether or not any issue has been escalated under this clause.

SIGNED for and on behalf of the University:

Name:

Position: Pro Vice Chancellor

Signature:

SIGNED for and on behalf of the Company:

Name:

Position:

Signature:

Read and understood by the Knowledge Base Supervisor

.....
Signature

.....
Date

Read and understood by the Company Supervisor

.....
Signature

.....
Date



Drawing up IP assignment agreements

There is no single form of IP assignment agreement which applies to the University's Intellectual Property – policy and procedures. Students and employees may find the Lambert collaboration agreements on the Department of Innovation, Universities and Skills website helpful.

- http://www.dius.gov.uk/innovation/supporting_business_innovation/business_support/lambert_agreements/model_research_collaboration_agreements

Normally when commercialisable IP is being discussed by an IP authorising group, the Senior Registrar (Research) and University Secretary will advise on the form of IP assignment agreement which can be drafted or adapted to meet the requirements of particular cases.



Disputes resolution procedure

- 1 If a dispute arises about the assignment of IP the dispute is normally resolved to the satisfaction of all parties through the Intellectual Property - policy and procedures ('procedures').
- 2 If no resolution is reached, under clause 5.10 of the procedures the matter is referred in writing to the Deputy Vice Chancellor who is asked to make an interpretation of the University's IP policy and decide on the appropriate assignment of IP.
- 3 The Deputy Vice Chancellor interviews the various parties including, where necessary, the Negotiator.
- 4 A student or employee being interviewed by the Deputy Vice Chancellor may be accompanied by a representative who is normally a friend, work colleague or trades union representative.
- 5 The Deputy Vice Chancellor issues a report on his decision normally within 15 working days of receiving notification of the dispute.
- 6 The Deputy Vice Chancellor's decision is final.