

Guidelines for exploitation of Intellectual Property (IP) arising from research and enterprise activities at the University of Greenwich

1. Introduction

The University's Intellectual Property (IP) policy sets out the framework for management of IP. Staff and students undertaking research or other academic work at the University produce significant IP, which can be of academic, historical and/or commercial value. The University's IP policy clarifies the often complex issues of ownership of, rights over and access to IP for the University, its staff, students, and interested third parties (such as employers and funding agencies).

The University of Greenwich aims to promote the research activities of members of staff to the maximum extent possible, consistent with its mission to be a research informed university. By their very nature, research activities create new knowledge – and therefore new intellectual property. A high proportion of research activity at the University is applied work with direct (or nearly direct) commercial application. Intellectual property generated from research and enterprise activities at the University is therefore potentially valuable and the University aims to maximise the value and the benefits of intellectual property exploitation accruing to both staff members and the University in the fairest possible way.

Staff may benefit from exploitation of intellectual property in several ways, including:

- A portion of revenues arising from licensing or sale of the intellectual property may be used to support their research
- A portion of revenues arising from licensing or sale may be paid to them personally
- Intellectual property may be licensed or sold to organisations outside the University which then contract the University to undertake further development, leading to research or contracting revenues which provide additional support for the work of the researchers.
- Successful exploitation of intellectual property following the processes described here can lead to increases in levels of research activity and quality and will improve the profile and career prospects for the researchers involved.

The University may also benefit from the exploitation of intellectual property through:

- Successful application of intellectual property developed in the University contributes to the mission of the University in promoting the success of the community it serves.
- Successful commercialisation activities raise the profile and success of the University and the staff involved, both regionally and nationally.

- Revenues generated from intellectual property commercialisation activities may provide support for the research effort of the University – particularly the work of those researchers involved in contracting externally for further development of the IP as detailed in (a) and (c) above.
- Exploitation of intellectual property may lead to the generation of licensing revenues which can be invested in the research infrastructure and activities of the University, providing additional support.
- In rare cases, the University may benefit from increases in the value of shares held in spinout companies – again providing means of supporting research infrastructure and activities.

These benefits are not mutually exclusive. In many cases, they are very closely linked. For example, a successful commercialisation may lead to the generation of license revenues AND research and enterprise revenues from contracting for further development, AND provide opportunities to raise the profile of the University nationally as an institution successfully involved in the promotion of regional economic development.

This document supports the IP policy of the University and sets out routes for exploiting intellectual property arising from research and enterprise activities. It should be read in conjunction with the University's IP policy.

2. Intellectual Property arising from Research and Enterprise Activities

Under the Patents Act 1977 and the Copyright, Designs & Patents Act 1988, intellectual property created or developed through the course of employment belongs to the employer. Research and enterprise activities undertaken by academic staff of the University are considered to be normal duties and so the intellectual property generated by staff while undertaking these activities belongs to the University.

Staff have a duty of care to declare to the University all intellectual property generated during their research and enterprise activities, as early as possible using the University IP Disclosure form available from School Business Development Managers or the University intranet. The benefit of University involvement in the exploitation of IP is to add value to the process. This includes help in the protection of that IP, involvement in the commercial negotiations inherent in exploitation, and realising and adding value to the IP generated by the member of staff. To do this, there need to be mechanisms to ensure that

- Information is captured as early as possible;
- Ownership of the IP is acknowledged by all parties;
- A clear route for all interested parties to benefit from revenue arising out of exploitation is agreed;
- The roles of the individual, Research Centre, School and central University IP support services are clearly delineated.

IP is protected through patenting, registration of trademarks, or similar procedures. For example, if a patent is granted on a new mechanical device, then the owner of the patent may use the rights arising from the patent to prevent others from manufacturing or selling the device for commercial benefit unless a fee is paid. The owner may also claim compensation if the idea is used for commercial benefit without permission to do so first being obtained. The patent therefore protects the rights of the owner to exploit the idea for

commercial benefit. It should be noted that the owner of the IP is not necessarily the inventor. This is particularly true if an employment relationship exists as described above. Generally, an employer (i.e., the University) is in law the owner of IP produced by its employees and will therefore be named as such on a patent application; however, if the work has been funded by grants or contract research, there may be terms to this funding which give the IP to another body. In such cases, that body must be contacted to see if they will give permission to attempt commercialisation, and under what circumstances. If the IP has been developed using confidential information obtained from a third party under the terms of a Confidentiality Agreement, the University will not be able to exploit commercially the results so obtained.

The order in which activities to protect and publish ideas are undertaken is very important to ensure that commercial value is retained. If IP is placed into the public domain prior to action being taken to protect it through patenting, that any subsequent patent application will fail and it then becomes much more difficult to protect it in any commercial sense. For example, if synthesis methods and structures from a programme to develop new chemical compounds are published in an academic journal (or placed in the public domain by other means) prior to an application for patent protection being made, it becomes impossible to gain patent protection for either the compounds or the methods used to make them. The commercial value of the idea is lost. Conversely, if patent protection is applied for prior to the information being placed in the public domain, the ideas may then be published freely in academic journals with no loss of commercial value, provided that no additional information is required to strengthen the protection (e.g. patent).

If staff consider that an idea they develop through research and enterprise work may have commercial value, then they should declare it to Greenwich Research and Enterprise (Contact the Director of Research and Enterprise, Ext. 9549) so that any necessary steps may be taken to protect it prior to it entering the public domain through publication or other dissemination mechanisms. Greenwich Research and Enterprise has funding and expertise available to undertake protection.

3. Principles for exploitation of IP from research and enterprise activities at the University of Greenwich – including distribution of proceeds

Exploitation of IP arising from research and enterprise activities at the University is undertaken according to the following tenets:

a. Openness

The University is committed to open exploitation processes in which both researchers and Heads of School are fully informed and consulted during the exploitation process.

b. Robustness and good practice

The University is committed to applying robust business principles and good practice to optimise the results of IP exploitation activities. This includes the application of a “stage-gate” process to determining which IP will be exploited and the mode of exploitation. All IP arising from research and enterprise activities will be exploited through Greenwich University Enterprises Limited (GUEL) the wholly-owned subsidiary company of the University set up for this purpose.

c. Support

When the decision is made to exploit a particular piece of IP, the University is committed to providing the support necessary (within budget constraints) to undertake the exploitation process.

d. Fairness

The University is committed to fairness in its dealings with staff and Schools during the exploitation process. In particular, the University will ensure fair distribution of the net proceeds from exploitation of IP so that staff, their school, and the university are all able to benefit. Distribution of net proceeds will be undertaken following the provisions of the IP policy of the University. The percentages and thresholds currently approved for distribution of net income arising are as follows:

£0 - £50,000:	Inventor(s) 70%; School 15%; University 15%
£50,001 - £200,000	Inventor(s) 50%; School 25%; University 25%
£200,001 upwards	Inventor(s) 33 ¹ / ₃ %; School 33 ¹ / ₃ %; University 33 ¹ / ₃ %.

Where there is more than one inventor the percentage shown will be divided between the inventors. Unless there is a written agreement to the contrary between the inventors, any such division will be made in equal portions.

4. Resources available for commercialisation of University IP

The University has support and funding available to protect IP and assist with its exploitation. GUEL officers and GRE work together to coordinate the support necessary at each stage of the exploitation process. The support includes:

- A team of staff within the University with commercialisation experience, with responsibility to handle the necessary administration and management requirements for each idea through the exploitation process
- A stage-gate process, with access to a team of confidential advisers, to assist in determination of the best route for exploitation, and to advise the University on investments that should be made during the exploitation process
- A proof-of-concept fund to help support research and business development of University intellectual property to the point where it is attractive to external investors
- Access to a team of experienced intellectual property advisers and patent lawyers to advise on the best way of protecting and exploiting the IP generated
- Access to dedicated funding to support patenting and other protection costs
- Access to contracts advisers and commercial lawyers to assist with arrangements for

the licensing and sale of intellectual property, or the formation of spinout companies or other entities (see below) in order to exploit IP for the benefit of the inventors, their research groups, and the University.

- Support to access external funding schemes for commercialisation activities available through e.g. Research Councils, Regional Development Agencies, and HEFCE.

5. Modes of IP exploitation

The probability of successfully exploiting IP is greatly improved if it is properly protected. Protection via patenting or other routes is the only way to ensure that the owner of the IP has the right to prevent others from using their IP for commercial benefit. Although protection rights may be granted in one country the same rights may not necessarily apply in another, and so – for example – multiple applications for grant of patent may be necessary to ensure the IP is adequately protected across the world.

Without protection, there is nothing to prevent a third party from exploiting the intellectual property, and neither the inventor nor owner of the intellectual property has the ability under law to claim compensation from those doing so. Without adequate protection it can also in practice become very difficult to prove ownership or origin of the intellectual property. This opens up the possibility that third parties coming by the information that is not in the public domain could seek to protect it themselves and prevent the originator from gaining commercial benefit. In order to minimise the possibility of this happening, parties outside the University should be asked to sign confidentiality (non-disclosure) agreements prior to any discussions which may include information about unprotected intellectual property. The University has available standard confidentiality agreements which should be used. These are available through GRE who must be informed prior to any such discussions. Contact the Director of Research and Enterprise.

Proper protection of intellectual property is usually crucial to successful exploitation.

5.1 Licensing

Licensing is the preferred route to exploitation of IP arising from research and enterprise activities at the University. All licence agreements with external parties must be negotiated through GRE, and approved by the Office of the Pro Vice Chancellor, Research and Enterprise. All licensing opportunities must be notified to and discussed with the Director of Research and Enterprise prior to any negotiations with potential licensees. The Director of Research and Enterprise (or their nominee) will lead negotiations. Academic staff may not negotiate licensing arrangements.

When IP is licensed, the owner grants permission to a third party to use the intellectual property to gain benefit. Licenses are usually granted for a limited period and in return for a consideration, usually payment of some kind. Ownership of the intellectual property does not change. The owner of the IP sometimes remains responsible for any ongoing maintenance or protection costs (for example, the costs of litigation if ownership is challenged). If an exclusive license is granted, the licence will usually contain arrangements for payment of maintenance fees by the licensee.

A license to use intellectual property may be exclusive, sole or non-exclusive. With an exclusive licence, only the licensee may make use of the IP. A sole licence allows both the licensee and licensor to make use of the IP. A non-exclusive licence allows other parties also to make use of the IP, possibly under different conditions. The licence may be limited to use of the IP within certain jurisdictions, or it may be worldwide. It may be of limited duration, or

last indefinitely until some event brings the licence to an end.

It may also be possible to sub-license IP. Whether this is permissible should be specified in the licence agreement, along with any terms or restrictions on sub-licensees.

The licence agreement may provide for payments to be made by the licensee to the licensor according to a variety of non-exclusive options. For example, the agreement may provide for lump-sum payments when certain milestones have been reached, or the payment of a certain fraction of the turnover of the business of the licensee when it undertakes exploitation of the licensed technology, or the payment of a fixed sum per item produced or sold by the licensee which uses the intellectual property.

In many cases, licence agreements include the provision for academic institutions to use the IP free of charge for the purposes of teaching and research. If the licence is entered into as part of a collaborative research project, the agreement often provides for partners to use 'Background IP' free of charge for the purposes of executing the project, but requires collaborative exploitation for mutual benefit of new intellectual property developed during the project work.

5.1.1 Principles for licensing intellectual property arising from research and enterprise activities at the University of Greenwich

The details of licenses granted by for the use of University intellectual property will vary depending on the type of intellectual property, the aims of the University in licensing it, and the licensee. The principles described below are therefore general, and will be applied flexibly by the University in negotiations. They apply to intellectual property arising from research and enterprise activities.

- Licence agreements should clearly define the parcel of intellectual property that is being licensed. The parcel of IP must exist at the time the licence agreement is executed, and must be clearly delineated. The description of the IP to be licensed should not include IP or know-how, or knowledge that has yet to be developed. For example, a description such as: 'The use of synthetic pheromones to control the breeding of moths' is unacceptable as it has no limit, whereas: 'The methods of controlling the breeding of moths described in Patent number GBXXXXX' is acceptable as the limits of the IP being licensed are clearly defined by the patent.
- All licenses should be granted in return for a clear and defined benefit to the University.
- When IP is licensed to a commercial entity, the benefit should be financial (for example: annual royalty payments). The benefit must not be limited solely to the granting of shareholdings, share options, or similar stakeholdings in the commercial entity. The preferred form of benefit is ongoing royalty payments through the period of the licence because this provides the University with tangible benefits which may be distributed as described above for the benefit of staff and the development of research capacity. The benefit should adequately and realistically recognise the value of the intellectual property being licensed.
- Licences to commercial entities should be for a limited and clearly defined time period.
- Where exclusive licences are granted to commercial entities, the licence agreement

should seek to recover any costs of protecting or maintaining the IP to which the University might be exposed during the licence period. This recovery should be in addition reasonable royalties for the use of the IP.

- Royalty-free licences should only be granted to organisations that are part of a research collaboration with the University which is the subject of a clear agreement approved by the Deputy Vice Chancellor (Research and Enterprise), AND where there is a clear need for the licensee to have access to the intellectual property to bring well- defined benefit to the University, AND where there is no benefit to be obtained from commercialisation of the intellectual property outside the collaboration.
- Royalty-free licences must be non-exclusive, and must place no limitations on the University itself in using the licensed intellectual property.
- Protection and maintenance of intellectual property which is the subject of a royalty-free license agreement must be at the discretion of the University, not an obligation (express or implied) of the agreement.

5.2 Assignment (sale) of intellectual property

The University may occasionally find itself in a position where assignment of ownership of its IP to an outside party is the best option for exploitation. Experience in the sector indicates that this situation arises very rarely – licensing usually brings more advantages and is much more common. All negotiations for assignment must be led by the Director of Research and Enterprise, or their nominee. Academic staff may not negotiate assignment arrangements.

When IP is assigned, ownership and any rights associated with ownership are transferred to the assignee. The assignment agreement should include provisions for the assignee to take on the costs of further maintenance, protection, and development of the IP.

When IP is exploited commercially, the original owner of the IP usually seeks payment in return for assignment. This may include a lump sum, payments made when business or development milestones are reached, a share of revenue resulting from exploitation of the IP, a shareholding in the company to which the IP is assigned, or any combination of these.

If IP is assigned to a spinout company, it is also quite common for the assignor to gain the right to nominate members of the board of the company, or the right to influence management and operations of the company in other ways.

Assignment is always exclusive – that is, IP cannot be assigned to more than one party.

When IP arising from research in an academic institution is assigned, it is very common for that institution to receive a non-exclusive and royalty-free licence to use the intellectual property for the purposes of academic teaching and further research. The assignment agreement may also oblige the institution to offer the results of that research to the assignee on preferential terms – usually confidential disclosure with a right to exclusive negotiation to license or purchase for a limited time.

5.2.1 Principles for assignment of intellectual property arising from research and enterprise activities at the University of Greenwich

The details of assignment agreements will vary depending on the type of IP, the aims of the University in licensing it, and the assignee. The principles described below are therefore

general, and will be applied flexibly by the University in negotiations. They apply to intellectual property arising from research and enterprise activities.

- Assignment agreements should clearly define the parcel of IP that is being assigned. The parcel of intellectual property must exist at the time the assignment agreement is executed, and must be clearly delineated. The description of the intellectual property to be assigned should not include intellectual property or know-how, or knowledge that has yet to be developed. For example, a description such as: 'The use of anti-inflammatory compounds from the University of Greenwich to control rheumatic pain' is unacceptable as it has no limit, whereas: 'The anti-inflammatory compounds described in Patent number GBXXXXX' is acceptable as the limits of the intellectual property are clearly defined by the patent.

- Assignment should be made only if there is a clear and defined benefit to the University.
- When intellectual property is assigned to a commercial entity, the benefit must be financial (for example: milestone payments). The benefit must not be limited solely to the granting of shareholdings, share options, or similar stakeholdings in the commercial entity. The benefit should adequately and realistically recognise the value of the IP which is assigned.
- The assignment agreement should state clearly that ongoing costs of maintenance or protection of the IP become the responsibility of the assignee.
- The assignment agreement should include a royalty-free license for the University to use the intellectual property for the purposes of academic teaching and research. It should also specify the process to be followed if the research produces commercially-exploitable results. This process should provide for the University to receive financial benefit from any exploitation.

5.3 Spinouts

In exceptional cases, the University may choose to exploit IP through the formation of a spinout company. The spinout process results in a commercial entity that is legally separate from the University, but which enjoys a special relationship that provides access to the University IP it needs. Spinouts usually also have easy access to facilities, expertise, and Regional Development Funding schemes from within the University to enable development of their business. Formation of a spinout company is rarely the optimal route to exploitation of IP because of the high risks involved. International experience indicates that in most cases this is better done through sale or licensing to already existing entities, or by development within the University itself. Very few university spinout companies generate large net benefits for their 'spinning-out' university through realisation of the value of equity in the company held by those universities. Formation of spinout companies by the University is therefore primarily for reasons other than generation of income through equity stakes. These are:

- To raise funding to develop and increase the value of intellectual property arising from research and enterprise activities of the University and owned by it, and,
- To provide a means whereby that intellectual property and associated know-how may be transferred more efficiently to business activity, and,
- To provide funding for research and enterprise activities in the University which are both relevant to the activities of the company and to the mission of the University through the 'contracting back' by the company of research and consultancy services from the University, where appropriate, and,

- To provide a means by which staff may own a stake in the IP they have generated during the course of their university duties, and benefit from increases in its value, and,
- Subject to sufficient funding being available through (c) above via appropriate contracting arrangements with the spinout company, to provide a means by which staff may work commercially on the development of IP they have generated while maintaining their status as University employees and gaining relief from other duties in the University, and,
- To enable the University fulfil the requirements of Government to actively engage in the transfer of its technical expertise and intellectual property to the external marketplace for national economic benefit.

In addition, spin-out companies are generally only appropriate if:

- entry to the market by a new company is plausible with few significant barriers,
- the marketplace is fragmented with a lot of small companies,
- the technology has many applications,
- there is a portfolio of patents,
- further significant investment is required in the technology and associated infrastructure in order to reach the market,
- there is a group of founders motivated to start a company,
- it is likely that investment funds can be raised for a company,
- there is a financial exit route for investors, including the University.

5.3.1 Spin out model and general requirements for spinouts

Spinout companies from the University will be set up as separate legal entities from the University. Company development will proceed in two stages:

- Firstly, as a wholly-owned subsidiary of the GUEL, followed by (if and when agreed milestones are met),
- Spinout into an independent company in which GUEL is a minority shareholder.

In the first stage, GUEL will hold 100% of the fully issued shares in the subsidiary company. Upon formation, a portion of the shares in the spun-out company will be made available to staff involved (for example, the University staff who are inventors of the IP on which the company is based) either directly, or through the issuing of share options.

In addition to satisfying the legal requirements of the jurisdictions in which they are set up and operate, University of Greenwich spinouts must have:

- a) Clearly defined and separable financial and business support systems. In the first stage, these may be provided through the University, acting under contract to the

company, and,

b) A governing board with at least:

- One member who has no financial interest in the company, and,
- One member nominated by the Vice Chancellor of the University

The University would normally expect that the Board have at least one member who is independent – that is, not a member of the University and also having no financial interest in the company. Inventors or other academic staff involved with the spinout will not normally be appointed as Board members during the first stage of company development.

c) a business plan, approved by the Board of GUEL which:

- Is updated annually, and,
- Shows how the company will be able to operate as a going concern, and,
- Contains an agreed description of the milestones to be achieved for the company to progress from wholly-owned subsidiary to spinout (and what will happen if these are not achieved), and,
- Includes plans for IP value growth, and exit strategies

d) A formal agreement between the company and the University (through GUEL) providing access to the IP of the University necessary to the operation of the company in return for both equity in the company and a share of revenues deriving from its exploitation (the 'IP Agreement'), and,

e) A formal agreement between the company and the University (through GUEL) for the provision of:

- The fully-costed time of any University staff working for the company, plus any appropriate margin,
- University accommodation, facilities, and services made available for the benefit of the company.

f) Note that staff time and facilities will normally only be made available in return for cash payments. In exceptional circumstances the University may - at its sole discretion - accept other forms of compensation. Where cash payments are made, these will be applied within the University to defraying the costs of staff time and equipment, thereby enabling the University to guarantee that staff and equipment are available for the work commissioned (The 'Services Agreement').

g. Access to sufficient financial resources to enable trading as a 'going concern' for at least two years following setup while undertaking the activities described in the business plan.

5.3.2 Equity holdings by staff in spinouts

One of the aims of forming spinouts is to provide a means by which staff have the possibility of gaining benefit from the development and commercial exploitation of intellectual property

they have created as part of their University duties. Conventional thinking is that personal benefits for staff will be realised through an increase in value of equity holdings, but this rarely happens in practice. Experience shows that benefits from equity holdings are both highly uncertain and relatively rare.

However, staff can benefit in other and more certain ways from spinout formation. For example, the formation and financing of a spinout company provides an additional route by which research activities can be supported. Where those activities are both relevant to the needs of the spinout and development of the research profile and programme of staff members, the contracting back of research work by the company to the University via the service agreement can provide a means by which resources to support research work become available. Staff can then gain additional time allocation within their University duties to pursue that research.

In another example, the provision of paid access for a spinout to University facilities (for example large-scale items of laboratory equipment) will help to defray the cost of purchasing and running that equipment and may make it possible for the University to have available for research items of equipment that would otherwise be out-of-reach financially. Again, the provision of access to equipment for the spinout company would be covered by the services agreement.

Staff should note that the holding of equity in a University spinout company in which they are involved has the potential to create a conflict of interest for them both commercially, in terms of the operations of the spinout company, and also for them personally in terms of their obligations to the University through their employment contracts. The University would normally expect that staff will hold equity in spinouts formed to exploit the results of their research, but that in order for adequate protections can be put in place both for staff personally, and also for the spinout company itself, this can only be done provided that staff have first obtained:

- Explicit written permission from the Vice Chancellor (or nominee), for their equity holding, and,
- Explicit permission from the University for the activities they will undertake for the spinout. This would normally be covered automatically by the service agreement, through which staff would be covered by University insurance for the work they undertake for the spinouts. Unfortunately, the University is unable to provide protection for staff undertaking work for spinouts which is not covered by a service agreement.

5.3.3 Obligations and risks for staff serving as directors of spinouts, or other companies

From time to time, staff may be invited to serve on the governing boards of spinout companies. It should be noted that company directors assume legally binding personal responsibility for the financial and operational performance of the companies on whose boards they serve. Acceptance of directorships should not therefore be undertaken lightly, as directors may - for example - become personally liable for company debts in the event of insolvency. Directors may also become personally liable for redress ordered in the courts as a result of lawsuits against the company or its board in the event of breaches of agreements entered into by the company, or breaches of the law or the rights of external parties.

Directors have a primary fiduciary duty to the company(s) they serve. Being a director of any company may put staff into a position where there are direct conflicts of interest with their obligations to the University under their employment agreements, and these conflicts must

be recognised and managed appropriately to protect both staff members themselves and the University.

Staff are therefore required to obtain explicit written permission from the Vice Chancellor (or nominee) prior to taking up any directorship for a commercial entity. This includes spinout companies of the University. Staff are encouraged to take independent advice before agreeing to act as a company director.

5.3.4 Detailed procedures for formation of a spinout company of the University of Greenwich

The recommended sequence for proposals and approval for the formation of a spinout company of the University is as follows:

5.3.4.1 Identification of a potential business opportunity by a member of staff

In the first instance this should be discussed with the School Business Development Manager and the School Director of Research and Enterprise. The Commercialisation Manager, GRE, the Consultant Entrepreneur, and the Director of Research and Enterprise are also available to provide assistance and advice. It is strongly recommended that colleagues contemplating proposing the formation of a spinout company seek as many independent views as possible on their proposal.

Note that the provision of this kind of advice is expected as part of the duties of those holding these positions. It is inappropriate to offer future equity stakes in return for advice from these people. Note also that University officers and staff are bound to respect the confidentiality of University business information.

5.3.4.2 Preparation of an Outline Proposal, and submission to the Commercial Activities Group of GUEL

The proposer(s) should then work with the School Business Development Manager and the Commercialisation Manager, GRE, to prepare an Outline Business Case for the formation of a spinout company. This should be submitted to the Commercial Activities Group of GUEL, via the Commercialisation Manager, GRE.

The Outline Business Case should be no longer than 10 pages and should include concise descriptions of the following:

- The University IP that is to be exploited,
- The business proposition for the spinout (including, for example:- the business opportunity, description of the market for the IP or products derived from it, how that market will be addressed by the spinout company, and a description of likely exit strategies),
- The plan for developing the company over the first three years, including plans for building any necessary management, marketing, and research or product development capability,
- A financial analysis describing the investment profile envisaged to be necessary in order to start and then grow the company to a sustainable level, the way in which that investment will be raised, and the likely returns on that investment for the investors,

- A description of the proposed company structure, including board and management. (At this stage, proposers should give thought to persons who they might recommend to be members of the board and management team of the company and indicate this in the proposal. However, it is not recommended that anyone be formally approached until the final company structure has been determined at the next stage. This will give maximum flexibility in planning the company and will enable expectations to be managed appropriately),
- A description of the resources envisaged necessary from the University. This should include the staff time (including that of the proposers), facilities, and space that the proposers may require for company development and operations.

Note that if the formation of the company is approved and financial support is available, contracts will be negotiated for the provision of staff time to the company as described above, and relief from other duties in the University will be provided as appropriate.

The Commercial Activities Group will assess and provide feedback on the proposal. As part of the assessment process, the Group may request to meet with the proposers, and may also consult with the Director(s) of Research and Enterprise in the School(s) of the proposer(s). The Group may recommend that GRE and/or the Medway Enterprise Hub provide resources and assistance to further develop the proposal. Note that all consultations and the provision of any assistance from within the University will be done on a confidential basis and with the support of the University.

The Group may also recommend that - under certain conditions - outside assistance be sought and may offer assistance with defraying the costs of obtaining this.

When the Commercial Activities Group is satisfied that - in their view - the proposal is viable they will make a recommendation to the GUEL Board that the company be formed as a wholly-owned subsidiary of GUEL. The Group will also make recommendations on the following:

- The conditions upon which company formation should be dependant,
- The conditions which must be met for the company to transfer from a wholly-owned subsidiary to a fully-fledged, independent, spinout.
- Board membership
- Management composition
- Specific support which should be provided via GUEL

5.3.4.3 Endorsement of the GUEL Board

The GUEL Board will consider the proposal. If it is of the view that the proposal is viable, the Board will endorse the recommendation from the Commercial Activities Group (with additional conditions if they deem these necessary) and empower the CEO, GUEL to put in place the IP and services agreements necessary to enable operation of the company as a wholly-owned subsidiary of GUEL. The CEO, GUEL will represent GUEL and the University in any other negotiations necessary to set up the company.

5.3.4.4 Negotiation of the necessary agreements for setup of the company as a wholly owned subsidiary of GUEL

The CEO, GUEL (or their nominee) supported by staff of GRE and the Commercial Activities Group, and in discussion with the proposers, will then set terms for the IP and service agreements between the University, GUEL, and the Company. The CEO (or nominee) will also represent GUEL and the University in any other negotiations necessary to form and finance the company.

Note that this stage may take some time. For example, in addition to agreeing terms for the provision of University IP and services and preparing the necessary documentation to satisfy the requirements of the Companies Act 2006 and recognised good practice (for example, shareholders agreement etc.), it will be necessary to approach potential Board and management members and gain their agreement to serve. It will usually also be necessary to find means of financing the company in the first stages of its development. In many cases this will probably be internal proof-of-concept funding from the University, but external finance in terms of grants should also be sought.

GUEL will provide resources to assist with this process, and will take the lead on preparation of company registration documents, and on any necessary negotiations for setup. Subject to the approval of the GUEL Board, the legal costs of preparing the IP, services, and shareholder agreements and the costs of filing registration documents for the company will be borne by GUEL.

5.3.4.5 Development of the company to the next stage (spinout to an independent entity)

The first stage of development of the company will usually largely consist of work to increase the value of the intellectual property on which the company is based, and to secure the finance necessary to enable the company transfer from being a 100% owned subsidiary of GUEL to become a spinout independent of GUEL. This work will include:

- Development work to improve the value and status of the intellectual property and demonstrate proof-of-concept.
- Rewriting a more detailed version of the Business Plan to attract investors
- Seeking investors, assembling a group of shareholders, and agreeing shareholdings for when the company is spun out from the University in the second stage of its development.
- Work to meet other milestones set by the GUEL Board

5.3.4.6 Spinout from a 100% owned subsidiary of GUEL to become an independent entity

When the milestones agreed at initial formation of the company have been met, the company will file a proposal with GUEL to spinout as an independent entity.

The proposal should include:

- Full details of any proposed new structure (board and management), shareholdings, and financing.
- The proposed IP and services agreements that will apply to the spun-out company. These must have been negotiated with GUEL based on the equivalent agreements for

the company as a 100% subsidiary of GUEL.

After due diligence, the Board may approve the spinout at its discretion.

On spinning out, the University will be a shareholder in all cases and will normally have a shareholding of 20% of the total shares issued in the company. Staff members should obtain the written permission of the Vice Chancellor for any shareholdings they may wish to hold and this should be included in the documentation presented to the GUEL Board for final approval before spinout occurs.

5.3.5 Guidelines for IP and Service agreements between the company and GUEL

The detailed content of the IP and Service agreements between the Company and the University will depend on the business opportunity and plan to exploit the IP that will be made available to the company, and the individual requirements of each company for University facilities and services. However, agreements for different companies will nonetheless have many common features, and the University would expect that agreements normally be developed according to a set of common principles as follows:

5.3.5.1 Intellectual Property Agreements

The University will normally license IP to the spinout in the first instance, rather than making an assignment to the company, following the guidelines described in section 5.1 'Licensing' above.

As the spinout develops its business, the University recognises that there may be some instances where assignment of IP to the spinout is necessary or desirable. If there is a strong and clear case for assignment, GUEL may be willing to enter into negotiations regarding intellectual property assignment. This will normally be the subject of a further agreement following the guidelines described in section 5.2 'Assignment', above.

5.3.5.2 Services Agreements

Services agreements will cover the provision of all services from the University or GUEL to the company. This includes:

i. Any time that University staff spend working for the company

In view of the potential for conflicts of interest, and the importance of protecting staff in the event of any claim against them or the University by the company, it is important that all time that University staff spend on company business is covered by the services contract. This will ensure that staff are both covered by University insurance as they work for the company, and also provide a degree of protection against potential breaches of University employment agreements.

The company will be expected to pay the University for the time of staff who provide services for it. The level and timing of payments is negotiable. The inclusion of staff time in the services contract enables the University to provide relief from other duties (where appropriate) for staff to work for the spinout.

It is important to note that if staff time is not fully covered by the services agreement the University will be unable to provide relief from University duties for work on the spinout

company. Additionally, the University will be unable to assist staff should they find themselves subject to claims from outside parties arising as a result of the work or services they provide for the company. Finally, staff may find themselves in breach of their employment agreements with the University.

ii. The provision of access to and use of University premises

Subject to the demands of other University business, the University is able to provide space on its premises for spinout companies to use. This would normally be done through the Enterprise Hub or other dedicated incubation space, but under some circumstances it is also possible to provide shared or dedicated office and laboratory space elsewhere in the University.

Space will normally be provided for a fee, which covers full costs of the space and utilities provided. The company will also be required to follow University health and safety policies, and to provide an indemnity to the University.

Any operations of the spinout company on University premises must be covered by the Services Agreement.

iii. The provision of other University services

Subject to University policies, the company may gain access to other University infrastructure including, for example, the use of University scientific equipment, information systems, or library services.

Any such use, whether by company staff or University staff working on company business must be covered in the services agreement and will be provided on a fully- costed basis.

It should be noted that while the University is willing to provide library access, access to some journals and other information through the library systems by company staff may be limited under the terms of publisher's licenses and alternative arrangements to obtain such access may be necessary.