

**POLICY ON EXPLOITATION AND COMMERCIALISATION OF RESEARCH AND  
INTELLECTUAL PROPERTY**

This policy replaces the Policy on Exploitation and Commercialization of Intellectual Property dated 1 August 2015. The policy has been updated and takes effect from 1 January 2022.

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## 1. OVERVIEW AND PURPOSE

- 1.1 The purpose of this policy is to provide a new framework and drive for the creation of intellectual property (see section 4 for definition) and to provide an environment in which staff and students at the University can make effective use of their ideas to make real change and help shape the world by addressing the challenges that face society today and in the future.
- 1.2 The University's strategic framework Sussex 2025 has Research with Impact, Learn to Transform and Engage for Change as three of its four key priorities. This new policy will help to create a supportive environment that, encourages academics and students to translate their ideas and research in ways that bring about sustainable economic and social change, emphasises the importance of generating a strong innovation and enterprise portfolio, and grows the potential of valuable intellectual property created by staff and students.
- 1.3 This policy aims to be accessible to staff and students to discover the value of what they create in their work and studies, how to go about protecting the results of their skills and efforts, and to provide clear mechanisms for them to access support and advice.

## 2. SCOPE

This policy applies to all staff and students registered at the University, particularly to academic staff and students who generate ideas or conduct research and would like to use, protect and exploit these ideas and research. The policy also applies to visitors who come to the University to work or collaborate and staff at the University who visit other institutions for work or collaboration.

## 3. RESPONSIBILITIES

### 3.1 Responsibilities of staff

- 3.1.1 All staff are responsible for disclosing new IP that is potentially commercially exploitable to the Innovation and Business Partnerships team in Research & Enterprise Services team as soon as it is identified.
- 3.1.2 Staff are required to keep the IP confidential and not to publish or publicly disclose it until an assessment of the commercial potential and IP protection (e.g. patentability) have been made, and IP protection is put in place, such as filing a new patent application.
- 3.1.3 Staff are expected to commit to working with the University to protect IP and to provide adequate time to pursuing activities that will achieve successful commercial exploitation or knowledge exchange outcomes.

### 3.2 Responsibilities of students

- 3.2.1 Where students generate IP and assign it to the University or sponsor in accordance with section 8.2, or, generate IP in the course of employment with the University in

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accordance with section 6.1, the students are responsible for disclosing new IP that is potentially commercially exploitable to their academic supervisor or the Innovation and Business Partnerships team in Research & Enterprise Services team as soon as it is identified.

- 3.2.2 Where section 3.2.1 applies, students are required to keep the IP confidential and not to publish or publicly disclose it until an assessment of the commercial potential and IP protection (e.g. patentability) have been made, and IP protection is put in place, such as filing a new patent application.
- 3.2.3 Where section 3.2.1 applies, students are expected to commit to working with the University to protect IP and to provide adequate time to pursuing activities that will achieve successful commercial exploitation or knowledge exchange outcomes.
- 3.2.4 Students must not copy or distribute any teaching material, including lecture or seminar slides, and exam papers, owned or produced by the University, its staff or authorised contributors, for any purpose except with the prior written consent of the University.

### 3.3 Responsibilities of Innovation and Business Partnerships team

- 3.3.1 To work with staff in advising, guiding and supporting the development, protection and exploitation of IP.
- 3.3.2 To work with students who apply for support in protecting IP in their ideas.

## 4. INTELLECTUAL PROPERTY

- 4.1 Intellectual Property or “IP” are the results of our intellectual thoughts, ideas, activities and creations. We produce IP every day although may not realise it or think of it as IP. We produce IP in both our professional or work lives and our personal lives.
- 4.2 Examples of IP include a poem, research article, book, song, film manuscript or computer code; a painting, sculpture, fabric design, jewelry, furniture, food/drink packaging, brand name or scent; and a drug, medical device, phone, AI-implemented technique, software, quantum computer, sensor or dataset that may be produced by any person.
- 4.3 IP is a potentially valuable asset that should be nurtured and properly taken care of to prevent unauthorised or illegitimate use, which may damage or impugn reputation and the IP itself. IP can be protected by legal rights that arise automatically when a work is created, such as in copyright and design rights, or arise through formal registration, such as in patents, registered designs and registered trade marks.
- 4.4 Protecting IP creates the legal rights that are property rights that can be bought, sold, mortgaged or licensed for monetary value like any other property. Acquiring IP protection for ideas or creations helps grow a portfolio of tradeable assets that add value to a business or company.

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- 4.5 Therefore, it is crucial to identify and protect IP to be able to capture its value and establish it as a tool to be able to create products and services. In addition, protecting IP means it is easier to show who it belongs to and to legally enforce it should it be necessary to stop someone copying or infringing the IP.

## 5. TYPES OF IP RIGHTS AND ASSETS

There are four main types of IP right: patents, designs, trade marks and copyright. Other specific types of IP include database rights, plant breeders' rights and semiconductor topography rights. Although not strictly an IP right, confidential information or data (also known as know-how or trade secrets) can also be a valuable asset to use in a business to acquire a competitive advantage or to license to others to use.

### 5.1 Patents

Patents are filed to protect ideas or inventions that are *novel* (i.e. have not been published before or used publicly), have an *inventive step* (i.e. not obvious to a person skilled in the field of the invention or technology) and have *industrial or commercial application*. Patents can protect devices or products and how they work, and, processes or methods for making products or doing things. Examples of some patentable inventions include a drug for treating cancer, a sensor for monitoring heart-rate, an imaging system for a medical scanner, a suction system for a vacuum cleaner, a process for treating contaminants in oil, a mobile phone, a process for making ink and a lightbulb.

### 5.2 Designs

5.2.1 Registered designs are filed to protect the *physical or aesthetic appearance* of a product or part of a product, not the function or what it is made from. Visual features that form a design include colours, shape, contours, texture and materials. To be registrable, a design must be new and have individual character. Products including industrial and handicraft items, modular systems, packaging, graphic symbols, and typographic type-faces can be protected, for example mobile phones, logos, screen displays, consumer gadgets, board games, and furniture.

5.2.2 Unregistered design rights are used to protect the 3D aspects of designs, i.e. *shape or configuration* of products or articles. Products that are functional in nature can be protected, for example spare parts for appliances, machinery and vehicles, food and drink containers, furniture, tools, utensils, and mobile phones.

### 5.3 Trade marks

Trade marks are any sign capable of distinguishing goods or services of one business from those of another business that can be registered. They can include signs, names, colours, sounds, scents, designs, letters, numbers, and the shape of goods or their packaging. To be registrable, a trade mark must be *distinctive* and *not the same or similar to another trade mark for the same or similar goods/services*. They often become associated with the quality

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and consumer expectations of a product or service. Examples of trade marks include Apple, Google, Kodak, Imperial Leather, and Orange.

#### 5.4 Copyright

Copyright protects the *expression of an idea* and not the idea itself. Copyright subsists in original works and arises automatically as soon as a work is created. This right is used to protect various creative works, such as literary works (e.g. books, computer programs, databases, and songs), dramatic works (e.g. plays and concerts), musical works (e.g. songs and musical arrangements), artistic works (e.g. paintings, drawings, photographs, sculptures, and buildings), sound recordings, films and broadcasts, and typographical arrangements of published editions.

#### 5.5 Database rights

Database right protects *a collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible by electronic or other means*. A database or set of data will qualify for protection if there has been substantial investment in obtaining, verifying or presenting the contents of the database. Examples of databases eligible for protection include customer lists, telephone directories, collection of software modules, screen look up tables, and websites.

#### 5.6 Plant variety (breeders') rights

These rights protect new plant varieties, including genetically modified varieties. To acquire protection, a plant variety must be *new* (i.e. has not been commercialised for more than one year), *distinct* (i.e. have different characteristics to other plants of the same species), *uniform* (i.e. all plants in the variety must share the same characteristics) and *stable* (i.e. it remains unchanged after 'repeated propagation', for example reproduction from seeds, cuttings, bulbs or other plant parts). Any plant genera or species can be protected by such rights, including agricultural, horticultural and ornamental plants.

#### 5.7 Semiconductor topography rights

Topography rights are a special form of design right and copyright that relate to the layout (i.e. 3D model of electronic components for electric flows) of semiconductor products such as microchips. This right protects original integrated circuits that have at least two layers, in which one layer is made of a semiconducting material which has a pattern fixed on it for the purpose of performing an electronic function. It is the topographical design, not the technical function or the technological arrangement of components that is protected.

#### 5.8 Know-how, confidential information and trade secrets

5.8.1 Know-how is knowledge of the methods or techniques of doing something, such as manufacturing of a product or performance of a service which is not readily available to the general public, that gives the acquirer a competitive advantage.

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5.8.2 Almost any information (such as financial, business, scientific, technical, economic or engineering information) can be protected as confidential information, provided it meets a 3-stage test:

- (1) *There must be a 'quality of confidence' to the information;*
- (2) *The information must be provided in circumstances giving rise to an obligation of confidence, and*
- (3) *There must be unauthorised use or disclosure (actual or threatened) of the confidential information which has or will cause a detriment to the information owner.*

5.8.3 A trade secret is defined as any information which

- (1) *Is secret, being not generally known;*
- (2) *Has commercial value because it is secret, and*
- (3) *Has been subject to reasonable steps to keep it secret.*

Examples of famous trade secrets include Google's search engine algorithm, the recipes for Coca-Cola and Pepsi, and the formula for the lubricant WD-40.

5.8.4 Confidential information is private information that helps to ensure an organisation's growth and development by providing it with a competitive edge. Trade secrets and know-how are both subsets of confidential information and only differ in the fact that trade secrets may be protected by law if reasonable efforts have been taken to protect its secrecy.

## 5.9 Data and marketing exclusivity, and orphan medicinal products

5.9.1 Data and market exclusivity rights are based on and run from the marketing authorisation of a new medicinal product.

5.9.2 Data exclusivity runs for a period of 8 years from the initial authorisation of a medicine, during which the marketing authorisation holder has exclusive rights to the preclinical tests and clinical trials data on the medicine, and during which other applicants cannot rely on such data to support their own applications for marketing authorisation for e.g. generic or biosimilar products.

5.9.3 Market exclusivity runs for a period of 10 years period from the initial marketing authorisation of a medicine during which a generic or biosimilar cannot be placed on the market, even if it has already received a marketing authorisation.

5.9.4 An orphan drug is a pharmaceutical agent developed to treat medical conditions which, because they are so rare, would not be profitable to produce without government assistance. The conditions are referred to as orphan disease, for the diagnosis, prevention or treatment of a life-threatening or chronically and seriously debilitating conditions.

## 6. STAFF-GENERATED IP - UNIVERSITY POLICY POSITION ON IP OWNERSHIP

### 6.1 IP generated in the course of employment

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6.1.1 The University owns all IP created by staff who are employed by the University, on a full-time or part-time basis, where the IP is generated under their normal duties of employment or duties that have been assigned to them, relating to research, teaching, knowledge exchange and related activities. This is the position under English law, in accordance with the Patents Act 1977 (s.39(1)) and the Copyright, Designs and Patents Act 1988 (s.11(2)).

6.1.2 Where staff create any IP in relation to their work and under their normal duties of employment or duties that have been assigned to them, but outside of their workplace or normal working hours, the IP shall be owned by the University.

## 6.2 IP generated outside the course of employment

6.2.1 Staff own all IP they create where the IP is generated outside of their duties of employment and is unrelated to their normal work. This position is in accordance with the Patents Act 1977 (s.39(2)). However, staff carrying out any work outside of their normal duties of employment but which uses University facilities or resources (e.g. labs, IT hardware or software, equipment and materials) will in principle result in the University owning the IP arising out of the work.

6.2.2 If a member of staff considers that they own IP because they created it outside of the course of employment at the University, or they are not sure if the IP is owned by them or the University, they should contact the Director, Innovation and Business Partnerships (“IBP”) in Research and Enterprise Services (“RES”) to determine the ownership and treatment of the IP.

## 6.3 Publication of IP in books, research articles and at conferences

The University reserves the right of staff to publish material arising from their research as staff see fit and the University does not claim copyright in books, research articles for journals, or conference papers written by staff unless agreed otherwise. In cases where commercial development or exploitation of research is possible and it is desirable to secure IP protection for the research (if none has yet been secured), the University shall require staff to withhold or delay any publication of the research for a period of time (normally at least 3 months) until assessment of the commercial potential is made and appropriate IP protection is put in place, such as the filing of a patent application.

## 6.4 Production of Creative works

6.4.1 A ‘Creative work’ means a literary work (e.g. books and poems), dramatic work (e.g. plays and concerts), musical work (e.g. songs and musical arrangements), artistic work (e.g. paintings, drawings, photographs, sculptures, buildings, and works of artistic craftsmanship), sound recordings, films, broadcasts, and typographical arrangements of published editions.

6.4.2 The University does not claim copyright in any creative work generated by staff in the course of employment at the University where it is produced with the purpose of

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furthering academic or professional standing and to add to the body of knowledge, except:

- where such works are created in the course of or pursuant to a sponsored or funded project or an agreement with an external party,
- where a member of staff would like to receive support from the IBP team in securing registered IP protection, developing or commercially exploiting a creative work, or
- in relation to any item of work that is commissioned by the University.

In the exceptions above, the University owns the IP, including copyright, in the creative works, subject to any other agreement being made.

- 6.4.3 Where the University does not claim copyright (or waives its rights to copyright) in a creative work under section 6.4.2, this is subject to the staff member who created the work granting the University a non-exclusive, irrevocable, perpetual, payment-free, worldwide licence to do, and authorise others to do, any act restricted by copyright in relation to copies of the work for any purpose associated with promoting the University and its activities, staff and students or their work. For the avoidance of doubt, this licence does not grant any right to the University to commercially exploit a creative work.

## 6.5 Production of other different forms of IP

The University claims ownership of all other forms of IP outside of section 6.3 (subject to section 6.4.2), including other forms of copyright, e.g. software and its documentation, computer programs, distance learning material, continuing professional development (“CPD”) material, e-learning material, web site content, recordings, pod-casts, and any other work commissioned by the University.

## 6.6 Production of teaching material

- 6.6.1 The University owns the IP in teaching material created by staff and, except for any teaching material specifically commissioned by the University (e.g. the University is contracted by a third-party to produce teaching material to be used by the third-party only), grants to individual staff who create the material a personal, royalty-free, non-transferable, right to use and copy the material for academic purposes whether or not the creator is still employed by or has left the University.
- 6.6.2 The licence granted to individual creators in section 6.6.1 shall not extend to any other person, organisation or institution to use, copy, adapt or distribute the material for any purpose. For example, a staff member can continue to use and copy teaching material for academic purposes while employed at the University and after they have left the University, but if the staff member takes up employment at another organisation or institution, then such organisation or institution shall have no right to use, copy, adapt or distribute the material for any purpose without the prior written consent of the University.

## 6.7 IP generated by staff who are jointly-employed

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- 6.7.1 The ownership of IP generated by staff who are jointly employed by the University and another organisation will usually be determined by the terms of each employment contract in the first instance. In these circumstances, any IP generated by a staff member in the course of employment under a University contract of employment shall be owned by the University and any IP generated by the same person in the course of employment under the other organisation's contract of employment shall be owned by the other organisation.
- 6.7.2 Agreement about ownership of IP generated by staff who hold joint appointments should be made or confirmed at the time of appointment of the staff member, by the University and the other organisation concerned.

## 6.8 Visiting academic researchers, collaborators and entrepreneurs-in-residence

### 6.8.1 University staff as visiting researchers or collaborators at other institutions

- 6.8.1.1 If a member of staff would like to participate, work or collaborate on a project at another institution or organisation as a visiting researcher, they should obtain approval from their Head of School and inform the academic School's Research Development Officer or equivalent in RES.
- 6.8.1.2 An appropriate agreement should be entered into with the institution where the member of staff will be a visiting researcher or collaborator that addresses the type and duration of the activity and the ownership and use of IP that is generated. If such an agreement seeks to transfer ownership of any IP generated by the member of staff to the other institution, appropriate checks shall be made by the research contracts team in RES to confirm whether the staff member and University is free and able to sign such an agreement.

### 6.8.2 External researchers, collaborators or entrepreneurs-in-residence as visitors at the University

- 6.8.2.1 Any external researcher, collaborator or entrepreneur-in-residence undertaking any research or work at the University and generating IP will, unless a specific agreement is put in place between such individuals and the University, be owned by such individuals or their employers.
- 6.8.2.2 An external researcher, collaborator or entrepreneur-in-residence, or their employer, is expected to sign a suitable agreement with the University to govern their responsibilities and activities while working at the University. Such an agreement will contain appropriate IP arrangements, for example the joint-ownership of new IP generated based on the contribution by each party. Such agreement should be put in place before or as soon as possible after an external researcher, collaborator or entrepreneur-in-residence starts work at the University.

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- 6.8.2.3 Staff should inform their Head of School or Department and the academic School’s Research Development Officer or equivalent in RES before arranging an external researcher, collaborator or entrepreneur-in-residence to work at the University in order to ensure appropriate arrangements are put in place, including the agreement referred to in section 6.8.2.2, in a timely manner.

## 7. STAFF-GENERATED IP - SUPPORT FOR IP DEVELOPMENT, PROTECTION AND EXPLOITATION

### 7.1 IP development

- 7.1.1 The University provides funding to support the development, protection and exploitation of IP from its annual allocation of the Higher Education Innovation Fund (“HEIF”). HEIF is administered by Research England to support and develop a broad range of knowledge-based interactions between higher education providers and the wider world.
- 7.1.2 The University can provide financial support to staff to develop research, innovation and ideas. The support may be used to fund small-scale or large-scale innovation proposals, in the range of £5,000 to £100,000 depending on budget availability and strength of a proposal. The type of activities that may be funded include:
- Development of proof-of-concept (“POC”) or efficacy study. A POC is a realisation of an idea or process in order to demonstrate its technical feasibility and potential real-world application.
  - Production of supporting data for a new patent application.
  - Development of a prototype, i.e. an early sample, model, or release of a product built to test a concept or process.
  - Development of a mobile app.
  - Development of a minimum viable product (“MVP”). An MVP is a product with enough features to attract early-adopter customers and validate a product idea early in the product development cycle.

Basic academic, pure or non-commercial research is not eligible for this funding where there is no innovation or commercial potential.

### 7.2 IP protection

The University can provide financial support and expert guidance to staff to enable IP to be protected in the best way and at the right time. The support available includes:

- Funding for securing IP protection (e.g. patents) and developing an IP strategy.
  - The typical cost for filing a new patent application in the UK is £7,000 - £10,000.
  - Patents usually take at least 3 or 4 years to be examined and reach allowance. During this time, further costs have to be paid and if is desired to secure patent coverage in different countries, this will involve foreign patent applications having to be filed and associated costs for securing allowance of these patents too.
- Searches of prior-published patents owned by third-parties and analysis of these patents and the competitive landscape (“IP landscaping”).

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- IP advice and IP management, mostly in relation to patent cases and supporting interactions with external patent attorneys.

### 7.3 IP exploitation

The University can provide expert support and guidance to exploit staff-generated IP in the most effective way. The support available includes:

- Introduction to commercial contacts, potential licensees and investors.
- Negotiation of memoranda of understanding (“MOUs”) or term-sheets and IP evaluation, licence and assignment agreements with licensees/customers.
- Setting up spin-out companies to exploit IP and negotiate shareholder and investment agreements.

### 7.4 Process for applying for and obtaining IP support

The process for applying for and obtaining support to develop, protect and exploit staff-generated IP is outlined in Annex 1.

### 7.5 Transfer of University-owned IP to staff

7.5.1 If the University decides not to provide any support for development, protection or exploitation of IP in a project, or the University has provided such support but for whatever reason has not been able to develop or exploit the IP in a viable or timely way, the inventor can apply to the Director, Innovation & Business Partnerships to transfer the IP to the inventor, who will secure agreement from the Pro Vice Chancellor for Research & Enterprise if the request is supported.

7.5.2 Such a request will normally be granted contingent on the inventor exploiting the IP in their own name and time, without use of University facilities, resources and insurance, and without any undue impact on their normal University duties.

7.5.3 Any transfer of IP by the University to staff may be subject to an agreement on revenue sharing with the University to recover any prior funds provided by the University in supporting the project, if the exploitation is successful.

## 8. STUDENT-GENERATED IP - UNIVERSITY POLICY POSITION ON IP OWNERSHIP

### 8.1 IP generated in the course of study or research

8.1.1 Undergraduate and postgraduate (including doctoral) students who are registered at the University, whether they are self-funded or University-funded to participate in their studies, shall own the IP that they generate in the course of their study or research at the University.

8.1.2 The University does not exercise any IP ownership terms as a condition of student registration at the University, subject to section 8.2.

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- 8.1.3 However, postgraduate students grant to the University an irrevocable, non-exclusive, cost-free licence for the University to use the IP such students generate in their course of study or research for the sole purpose that the University can publish students' doctoral theses in the University library.

## 8.2 IP generated in University projects or externally-sponsored research projects

### 8.2.1 Where a student:

- is externally sponsored (e.g. by a company) to participate or undertake work in a project, or
- is engaged in a University project or research group that may be subject to funding conditions that require transfer of the ownership of IP to the funder or University, or
- contributes to University-owned or developed IP,

then the student shall be required to transfer ownership of any IP they create to the sponsor, funder or University, subject to any other agreement being made.

- 8.2.2 In transferring their ownership rights to the University, a student is accorded the same rights as a member of staff in relation to the sharing of financial benefits arising from the University's exploitation of the IP. Section 13 sets out the income distribution that applies in relation to the exploitation of IP.

## 8.3 IP generated by students who are also employed by the University

Where a student is employed by the University to perform certain duties, the ownership of IP will be determined by whether the student created IP:

- in the course of study or research as described in section 8.1, in which case the IP shall be owned by the student, or
- in a University project or externally-sponsored research project as described in section 8.2, in which case the IP shall be owned by the University, or
- in the course of employment arising from a contract of employment with the University as described in section 6.1, in which case the IP shall be owned by the University.

## 8.4 IP generated by BSMS students

Undergraduate and postgraduate (including doctoral) students of the Brighton and Sussex Medical School ("BSMS") are normally registered for joint degrees at both the University of Brighton and the University of Sussex, but subject to the policies and processes of the University of Brighton including its IP policy. In relation to the ownership of IP generated by BSMS students, the University of Brighton IP policy is the same as the University of Sussex policy, in that students own the IP they generate in the course of study or research, except in certain circumstances. The University of Brighton and the University of Sussex have an agreed framework for handling the exploitation of IP arising from BSMS research.

## 9. STUDENTS AND GRADUATES - SUPPORT FOR IP PROTECTION AND EXPLOITATION

### 9.1 Type of support available

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- 9.1.1 The financial support available from the University for IP protection of student-owned IP may be used only to cover the costs for filing a patent application or an application to register a design. The offer of financial support to students registered at the University to protect their IP is designed to enhance the translation of student-generated IP in creating real-world businesses and encourage entrepreneurship by students.
- 9.1.2 The financial support available to students in section 9.1.1 will also be available to graduates for up to 1 year from their graduation date.
- 9.1.3 The typical cost for filing a patent application in the UK and up to 1 year's protection is £10,000. The typical cost for filing a registered design application in the UK and up to 1 year's protection is £1,000.

## 9.2 Process for applying for and obtaining IP support

The process for applying for and obtaining support to protect student-generated IP is outlined in Annex 2.

## 9.3 Student retention of IP ownership

A student or graduate who receives support from the University for protecting their IP to develop their enterprise idea will not be required to transfer ownership of the IP to the University as a condition of receiving support.

## 10. MAKING THE MOST OF IP – DIFFERENT WAYS TO REALISE ITS VALUE

10.1 There are many different ways to exploit IP and create value from it. The University supports many of the different approaches and the particular approach pursued will often depend on the research or IP concerned, the size of the market and how easy it is to access, the expertise or financial investment required to bring the IP to market, and the aims of the academic inventors.

10.2 The common approaches to exploiting IP include:

- Licensing: granting permission to an organisation (“licensee”) to develop, use and/or sell the IP in return for financial compensation.
- Assignment or sale: transferring ownership or selling the IP to an organisation (“assignee”) in return financial compensation.
- Spin-out company: setting up a company to develop and commercially exploit IP that is owned by the University and licensed to the new company.
- Spin-in company: a company established by non-University representatives to pursue a business opportunity wherein the company forms a special relationship with the University for it to conduct specific research which is transferred or licensed to the company for development and exploitation.
- Formation of a University Enterprise Unit: an operating structure set up in the University to allow a business opportunity to be pursued on a self-sustaining basis without the need to set up a company. Depending on the business success

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of an enterprise unit and if further investment is needed to grow the business, it may lead to the setting up of a spin-out company.

- 10.3 Research and IP can also be exploited in other ways, e.g. a joint-venture with a partner to pursue a business opportunity; research collaboration with one or more partners; contract research; consultancy; and knowledge transfer partnerships. These approaches are covered by other University policies and guidance materials.
- 10.4 The IBP team can provide the necessary support and work closely with staff to get their research and IP ready to exploit by any of the above approaches.

## 11. EXPLOITING IP – UNIVERSITY POLICY POSITION

### 11.1 IP Licensing

Any external organisation seeking to licence the University's research or IP to develop and exploit it for commercial and/or social purposes should be aware of the University's terms in licensing its IP:

- Commitment from the licensee to deliver and demonstrate impact from implementation and use of the research/IP by the world and society at large.
- Commitment that the licensee will invest adequately in the IP to bring it to market in a reasonable time and meet any agreed milestones.
- Obligation to pay licence fees and/or royalties so that the University can recover its costs in supporting the project, e.g. research costs and patent costs, and generate a positive return on investment.
- Obligation to pay or reimburse ongoing IP prosecution and maintenance costs if the IP is protected by IP rights, such as patents/patent applications.
- University can reserve its rights to continue to do research and teaching using the IP.
- Freedom to pursue joint research publications with the licensee, provided the licensee's confidential information is respected.

### 11.2 Assignment or sale of IP

Any external organisation seeking to acquire or purchase the University's IP for commercial and/or social purposes should be aware of the University's terms in assigning or selling licensing its IP:

- Commitment from the assignee to deliver and demonstrate impact from implementation and use of the research/IP by the world and society at large.
- Commitment that the assignee will invest adequately in the IP to bring it to market in a reasonable time and meet any agreed milestones.
- To recover the University's costs in supporting the project, e.g. research and IP costs, and generate a positive return on investment.

### 11.3 Formation of a Spin-out company

The University will support the formation of a spin-out company to develop and exploit University research or IP based on the following principles and conditions.

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### 11.3.1 Company registration or incorporation

The spin-out is set up and registered by the University, although an academic founder / inventor, prospective company Director or an authorised representative, e.g. lawyer, may set up and register the spin-out by prior agreement of the University.

### 11.3.2 Pre-requisites to company registration

The team pursuing the project, including the academic inventor(s) and any other partners, e.g. proposed company Director or investor, has agreed with the University:

- A business or operational plan for the company.
- A term-sheet of the main deal terms, including:
  - Shareholdings (“equity”) of the different parties;
  - Roles of each party;
  - Proposed Directors and constitution of the Board;
  - University observer rights at Board meetings;
  - Company matters requiring shareholder and University consent;
  - IP licensing arrangements;
  - IP responsibilities and IP costs;
  - Academic consultancy and/or secondment arrangements;
  - Research collaboration arrangements, and
  - Financial plan.
- Approval of the University’s Director of Finance, Pro-Vice-Chancellor for Research & Enterprise, and the Director of Innovation & Business Partnerships.

### 11.3.3 Allocation of shareholding in the company

11.3.3.1 Setting up a spin-out company involves the allocation of shares in the company usually to the University and academic founders or inventors in the first instance. Shares may also be allocated, at the same stage or later, to an investor(s) and member(s) of the Board or management team depending on when such persons join the team.

11.3.3.1 The default position is that the University shall be allocated a shareholding of 19% on a fully-diluted basis in a spin-out company on its formation. Any change to this equity position depends on the circumstances and is subject to agreement on a case-by-case basis. The shareholding between academic founders / inventors shall usually be agreed between them.

### 11.3.4 Licence of IP to the company

11.3.4.1 The University will licence IP into the spin-out company on an exclusive or non-exclusive basis depending on the company’s business plan. This means the IP remains under the control of the University initially, however the University may agree to upgrade a non-exclusive licence to an exclusive

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licence or to transfer ownership of the IP (i.e. to assign the IP) to the spin-out at a future point in return for financial compensation, if the company is operating successfully and meets certain milestones subject to further negotiation between the University and company.

11.3.4.2 The University will seek to agree the payment of licence fees and/or royalties from the spin-out in exchange for the IP licence. If the IP involves payment of costs to prosecute it and maintain it, e.g. patents, the University will expect the company to reimburse the patent costs on an ongoing basis, and, will seek to agree payment of a total or part contribution toward the historic patent costs that have been incurred by the University before the licence agreement.

### 11.3.5 Multiple agreements

Setting up a spin-out company involves the negotiation and completion of several agreements between the University, the academic inventors, and any investor(s) or other person(s) who join the company, such as a term-sheet, Shareholders Agreement, IP Licence Agreement, Consultancy Agreement, Secondment Agreement and Research Collaboration Agreement. These agreements must always be with the University as a party and should be completed within a reasonable time, of 6 months or less, of registering a new spin-out company.

### 11.3.6 Consultancy or secondment arrangements

Where an academic founder or inventor wishes to enter into a consultancy or secondment arrangement with a spin-out (or spin-in) company, the consultancy or secondment terms should be based on the University's policy and terms and conditions for provision of consultancy or secondment services in place at the time or as updated from time to time.

### 11.3.7 Research framework or collaboration agreement

When a spin-out company is set up, it will often require further research and development activities to be performed at the University research facilities. The University expects to enter into such arrangements under a research collaboration agreement or contract research services and to develop a mutually beneficial relationship with the company in carrying out such research work. The research and use of University facilities will usually be subject to payment at commercial rates on a full economic cost basis.

### 11.3.8 Appointment of a University Director

The University has the right to appoint a Director to the spin-out company at any time, but generally chooses not to invoke this right and to rely on its observer rights (as a shareholder) to attend Board meetings of the company and receive Board minutes to maintain insight into the company's business operations and performance.

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#### 11.4 Spin-in company

In entering into a business relationship or collaboration with a spin-in company to develop and exploit the University's research or IP for commercial and/or social purposes, the University has the following terms it will seek to agree:

- Commitment from the spin-in company to deliver and demonstrate impact from implementation and use of the research/IP by the world and society at large.
- Commitment that the spin-in company will invest adequately in the IP to bring it to market in a reasonable time and meet any agreed milestones.
- Obligation to pay the University at Full Economic Cost ("FEC") or an agreed percentage rate above FEC for commissioning research work from the University.
- Obligation to pay royalties to the University from the spin-in company's exploitation of the IP.
- University can reserve its rights to continue to do research and teaching using the IP.
- Freedom to pursue joint research publications with the spin-in company, provided the company's confidential information is respected.

#### 11.5 University Enterprise Unit

The University's terms for supporting the formation of an Enterprise Unit ("Unit") in an academic school to pursue an enterprise activity as a business operation shall be based on the following principles:

- The Unit must operate on a self-supporting and self-sustaining basis.
- All costs and operations carried out by the Unit should be calculated on a Full Economic Cost basis or an agreed percentage rate above FEC.
- The Unit should operate against a business plan which is reviewed and updated at least on a yearly basis.
- The cost of staff working in a Unit should be fully paid for by the activities of the Unit and approval must be provided by the relevant Head of School for the time commitment of staff involved.
- If the Unit requires access to IP of the University for use and exploitation purposes, access to such IP shall be granted by prior written consent of the University. Such consent will need the approval of the Director of Innovation & Business Partnerships and the Pro-Vice-Chancellor for Research & Enterprise.
- Obligation of the Unit to pay licence fees and/or royalties for accessing the University's IP so that the University can recover its costs in supporting the IP, e.g. research costs and patent costs, and generate a positive return on investment.
- Obligation of the Unit to pay or reimburse ongoing IP prosecution and maintenance costs if the IP is protected by IP rights, such as patents/patent applications.

If an Enterprise Unit performs well, it may lead to the case for forming a separate company to run the business.

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## 12. DIRECTORSHIPS IN COMPANIES

- 12.1 Staff are permitted to accept appointment to Director positions in companies on approval of their Head of School or Professional Service Director, as set out further in the University's Policy on External Professional Activities or other equivalent policy which applies. Staff undertaking such roles are personally liable as a Director and should ensure they understand the legal responsibilities involved.
- 12.2 Staff in senior positions and staff in business development roles undertaking directorships in companies where the University has a shareholding, e.g. spin-out companies, are likely to have actual or potential conflicts of interest with their University position. Such situations must be carefully managed and monitored. A member of staff who is a Director of a company should not be directly involved in the University's decision-making processes relating to that company regarding procurement of goods or services, legal contracting, investment, or disposal of shares or assets.
- 12.3 Staff who have Director positions in companies should disclose this in the University's Register of Interests.

## 13. INCOME DISTRIBUTION FROM EXPLOITATION OF RESEARCH AND IP

### 13.1 Income from IP licensing and sales

- 13.1.1 Income received by the University from IP licenses and assignments, such as licence fees, royalties and milestone payments, will be shared and distributed in the proportions indicated in Table A in section 13.5, which may change from time to time.
- 13.1.2 Income shall be shared net of any costs incurred by the University, i.e. after certain costs are subtracted from the gross income. The applicable costs that apply to the netting-off of gross income are listed in section 13.4.
- 13.1.3 Income allocated to an inventor(s) or creator(s) will be used to pay the individual(s) and also to pay the University's national insurance contribution. Inventors or creators can choose to waive some or all of their right to personal payment and request the income to be placed in a Research Support Account.
- 13.1.4 The information in an IP Disclosure Form describing the IP will usually be used to determine the inventors of the IP and the share of income between them. It is the responsibility of the inventors to agree the share of income between them and inform the University as early as possible before exploitation of any research or IP (e.g. before any IP licence is agreed with a third-party), so that the University can make the appropriate payments to inventors when distributing the income.
- 13.1.5 The income share agreed between inventors must be clearly documented and signed by all inventors, either at the stage of completing an IP Disclosure Form or on filing an international (PCT) patent application. The inventors should also obtain approval and sign-off from their Head of Department or School.

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### 13.2 Income from spin-out and spin-in companies

- 13.2.1 Income from shares (“equity”) held in the name of the University will be shared and distributed, net of any applicable costs as listed in section 13.4, between the inventor(s) School(s) and the University’s Enterprise Development Fund, in the proportions indicated in Table B in section 13.5, which may change from time to time.
- 13.2.2 The benefits from the University’s shares will be realised when it receives dividend payments in relation to its shareholding or a disposal of the University’s shares in the company. The University may decide at any time to sell all or part of its shares in a company.
- 13.2.3 When the University receives equity in a spin-out company, the inventor(s) will normally also receive equity based on their contribution to the IP and their role in the company going forward. Inventor shares shall be held in their own name(s) and they will be able to decide how to manage the shareholding in their own way. The inventor(s) will be responsible for any relevant personal tax matters. By accepting shares in a spin-out or spin-in company, the inventor(s) will waive any right to share in the income received by the University through its shareholding.

### 13.3 Income from University Enterprise Units

For Enterprise Units, a year-end position should be calculated annually to determine costs and income, including work-in-progress. Where a surplus has been achieved, the Unit’s management team should agree how much surplus is to be retained by the Unit for future reinvestment. Any remaining surplus will be shared and distributed, net of any applicable costs as listed in section 13.4, in the proportions indicated in Table C in section 13.5, which may change from time to time.

### 13.4 Applicable costs for netting-off income prior to income distribution

- 13.4.1 The specific costs that should be applied to gross income before any internal distribution include:
- i. Revenue shares to external organisations, e.g. funders and research collaborators.
  - ii. The costs of filing, prosecuting and maintaining patents, including patent office fees, and patent attorney costs, and any costs of applying for and maintaining protection of other forms of IP, e.g. trade mark and design registration.
  - iii. The costs incurred in relation to alleged IP infringement, including investigations, asserting IP rights against infringers, defending allegations of IP infringement, and payment of damages awarded against the University.
  - iv. The costs incurred in relation to IP ownership disputes, and opposition and invalidity / revocation of IP rights, including filing and defending such actions.

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- v. Specific external legal fees, e.g. in relation to a licence agreement, regulatory compliance issue, or company formation matter.
- vi. The purchase of contracted external expertise, e.g. commercialisation specialist in a particular technical field.
- vii. Regulatory costs, e.g. the cost of obtaining CE or similar certification required in any country.
- viii. Specific marketing material and promotional costs.
- ix. Any loan provided by the University.

13.4.2 For the avoidance of doubt, the following costs are not to be included in this process:

- x. The costs of Research & Enterprise staff time.
- xi. The costs covered by any grant or support from the Enterprise Development Fund, including any approved time of Sussex Innovation Centre staff in supporting a project.
- xii. The cost to the University of research that led to the IP.

13.4.3 Also for the avoidance of doubt, any award of damages for infringement of IP will be treated as gross income for the purposes of this distribution process.

### 13.5 Income distribution rates

13.5.1 Table A – Distribution of net income from IP licences and sales.

	Inventor(s)	School(s)	Enterprise Development Fund
First £50k	80%	10%	10%
£50k-£500k	40%	40%	20%
£500k-£5m	35%	25%	40%
Over £5m	20%	0%	80%

13.5.2 Table B – Distribution of net income from equity in spin-out / spin-in companies.

School(s) of the inventor(s)	Enterprise Development Fund
67%	33%

13.5.3 Table C – Distribution of net income from surpluses in Enterprise Units.

Inventor(s)	School(s)	Enterprise Development Fund
40%	40%	20%

13.5.4 The sharing and distribution of net income in accordance with Tables A, B, C will usually take place after the end of each financial year at the University. A financial year at the University starts on 1 August and ends the following 31 July.

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#### 14. RESOLUTION OF DISPUTES

If an internal dispute arises in relation to this policy, and there is a need for adjudication, the matter shall be referred for a decision to the Pro-Vice-Chancellor for Research & Enterprise.

#### 15. MANAGING INTERNATIONAL RISKS OF UNIVERSITY RESEARCH AND IP

- 15.1 It is important for staff and students to safeguard the use, storage and retrieval of research and intellectual property.
- 15.2 There are risks around research security and staff and students need to be mindful of attempts by external actors (such as state agencies, organisations or individuals) who are hostile to try to illegitimately gain access to and acquire the University's academic research, expertise and intellectual property.
- 15.3 Procedures are to be employed to mitigate the risks posed by espionage, subversion or sabotage of the University assets, which include:
- 15.3.1 Creating local, national and international partnerships with other entities in good faith, who are trust-worthy and with adequate due diligence.
- 15.3.2 Establishing appropriate agreements between the University and its collaborators and partners which clearly set out obligations and responsibilities of the parties and complies with all relevant national and international laws, regulations, and protocols.
- 15.3.3 Protecting IP throughout the research lifecycle and monitoring and recording research results and new IP as they arise.
- 15.3.4 Ensuring that research results and new IP that is potentially exploitable has a commercial and patentability assessment carried out and IP protection secured before the research results and new IP is published or communicated to trusted collaborators or partners.
- 15.3.5 Complying with all relevant legal frameworks and other University policies on export controls and data protection.
- 15.4 Staff and students must report any hostile, unauthorised or illegitimate attempts to access, acquire or use research assets, data or IP to the Director of Research and Enterprise Services.

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## ANNEX 1

### STAFF-GENERATED IP – SUPPORT FOR IP DEVELOPMENT, PROTECTION & EXPLOITATION

#### 1. Process for applying for and obtaining IP support

- 1.1 Staff who would like to further develop, protect and commercially exploit research ideas and IP can contact the Innovation and Business Partnerships team (“IBP team”) at [\\_\\_\\_\\_\\_@sussex.ac.uk](mailto:_____@sussex.ac.uk) for a discussion about a project or venture. Staff should apply for support by submitting an application form (also known as the IP Disclosure Form (“IDF”)) to [\\_\\_\\_\\_\\_@sussex.ac.uk](mailto:_____@sussex.ac.uk). The application form is available at \_\_\_\_\_ and applications are invited at any time during the year. The IBP team can help with the completion of application forms as required. Application forms submitted should be signed by all inventors and be approved by the Head of School.
- 1.2 Staff should include the following information when applying for support for an enterprise project or venture:
- Description of the idea, what it does, what is new and inventive, what problem it solves and how, and development status.
  - The inventors and contributors: who conceived the idea and when, what they did or contributed, the contribution share between individuals, and any non-University collaborators.
  - Funding for the idea: source and amount of funding so far together with funding terms, and what funds are now being sought and for what purpose.
  - Contracts with collaborators or funders.
  - Details of prior research publications and patents (own or other) and indication of relevance.
  - The market and potential applications or uses for the idea: how does the idea improve on what is on the market, the benefits and advantages to users, key selling points, relevant market sectors, and any prior engagement with customers or prospective users.
  - Barriers or hurdles to commercial exploitation: regulatory, legal, ethical, financial, technical and commercial, and ways to mitigate or overcome these.
  - Vision for success: preferred exploitation route, impact outcomes, personal goals.

#### 2. Assessment of applications

- 2.1 Applications will be assessed against specific technology and commercially oriented criteria, such as:
- Innovation strength: new technology or concept, significant development or improvement to known technology or concept, incremental improvement to known technology, scalable.
  - Level of progress or maturity of an idea or technology during its development (Technology Readiness Level (“TRL”)).
  - Level of commercial maturity and adoption of an idea in the market (Commercial Readiness Level (“CRL”)).
  - Market potential: Size of market, new / mature / entrenched market, number of competitors, resistance to adoption, market push or pull.

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- Investment needed to commercially exploit.
- Barriers to commercial exploitation: regulatory, legal, ethical, financial, technical and commercial, and potential mitigation.
- Vision for success: commercial and income potential, commercial experience, exit strategy.

2.2 Availability of support will be contingent on staff demonstrating an idea or venture that meets the above criteria and has endorsement from the Head of School.

### 3. Terms of University support

3.1 The University aims to inform staff as quickly as possible of the outcome of applications, no later than 4 weeks from application submission. The IBP team will provide guidance and support to successful applicants as described in sections 7.1 to 7.3 to commercially exploit research, ideas or ventures and realize the commercial value of academic research.

3.2 The funding that will be made available to secure IP protection (typically patents) in a project will be limited to £25,000. This amount normally covers patent costs for a period of 2.5 years to the point that various foreign patent applications may need to be filed in different countries. At this stage, the University usually expects a project to have reached a sufficiently advanced stage such that a commercial deal (e.g. a licence agreement permitting a company to develop and sell products or services incorporating the research or IP) is close to being completed or has been agreed.

3.3 The IBP team will agree with staff to set regular review points and agree relevant milestones at the start of a project and these will be reviewed or adjusted regularly. If a project does not proceed as expected or within a certain timeframe, the University may need to consider reducing or withdrawing further support.

### 4. Accessing additional or external support

4.1 If additional expertise or services are needed to support a project to success, the University may commission such expertise or services from within or outside the University, e.g. specialist external organisations or consultants who provide detailed knowledge of a technology, regulatory framework or market sector.

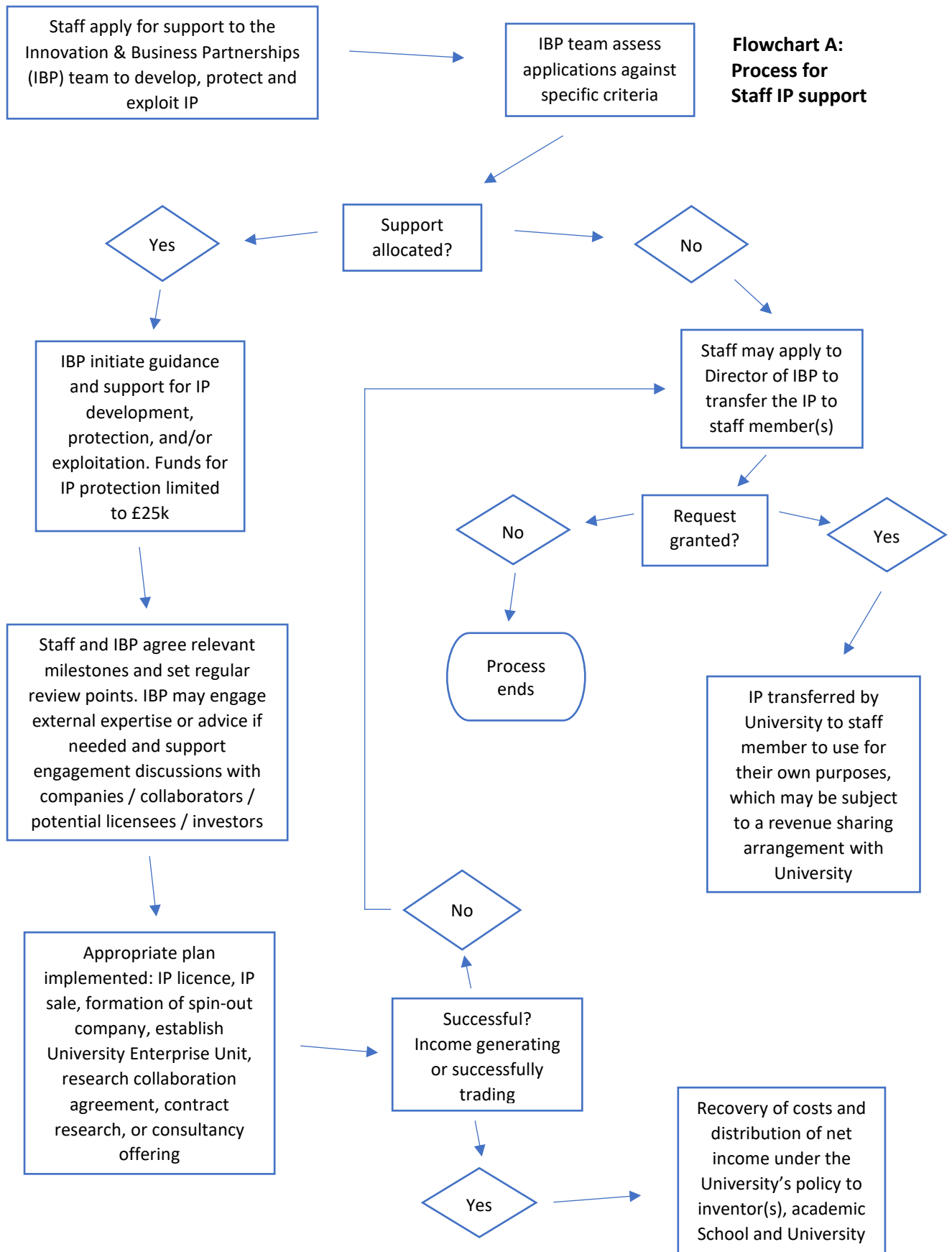
4.2 The University may engage Sussex Innovations (its business incubation partner) to support staff in developing ventures where this intensified support is needed and cannot be provided directly by the IBP team. Such support may include:

- Market research, customer interviews/surveys, and marketing campaigns.
- Developing of a business plan/model and cashflow planning.
- Website design and social media support.

4.3 The IBP team can manage the interactions with external organisations and Sussex Innovations when they are engaged to support specific projects.

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## ANNEX 2

### STUDENTS AND GRADUATES – SUPPORT FOR IP PROTECTION AND EXPLOITATION

#### 1. Process for applying for and obtaining IP support

- 1.1 Students and graduates interested in receiving financial support for protecting their IP should submit an application to the Innovation and Business Partnerships (“IBP”) team at [\\_\\_\\_\\_\\_@sussex.ac.uk](mailto:_____@sussex.ac.uk) setting out their enterprise idea and how they intend to develop it into a business or social enterprise. The application form is available at \_\_\_\_\_ and applications are invited at any time during the year. Students and graduates can contact the IBP team at the above address for an initial discussion about their enterprise idea before submitting an application for IP support.
- 1.2 When applying, students and graduates should indicate what they would like to use the IP funding for, the amount of funding they are seeking and for how long.

#### 2. Assessment of applications

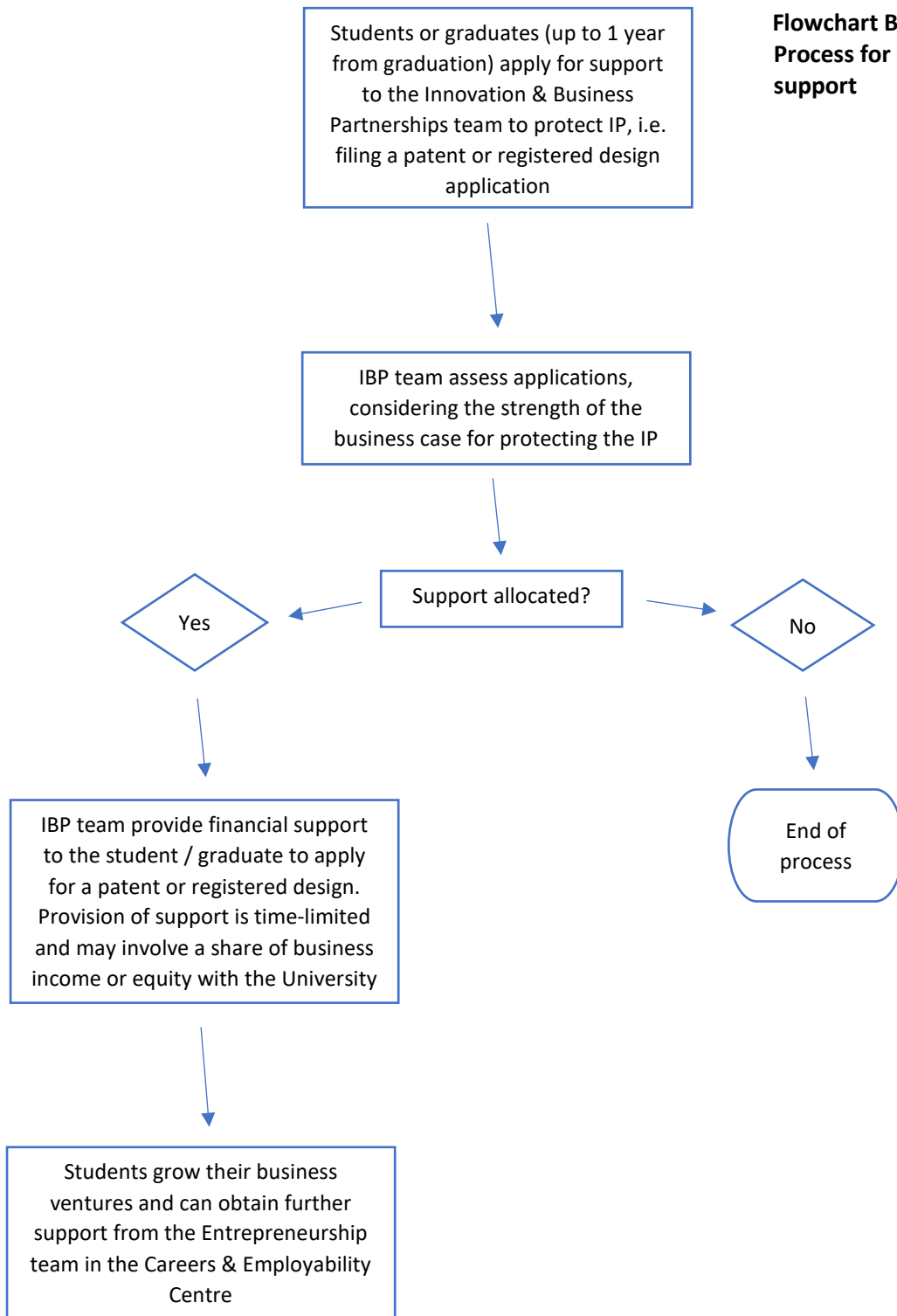
The IBP team will assess applications as and when they are received. The number and size of projects supported in any one year will depend on the available budget in that year and the strength of the business case for protecting the IP. Depending on the number, quality and timing of applications received in any year, the University may prioritise applications but will endeavour to support as many sound business cases as possible.

#### 3. Terms of University support

- 3.1 Students or graduates will be informed of the outcome of their applications within a 3 week period following application submission.
- 3.2 The University’s financial support for IP protection shall be time limited and the University may propose a proportionate share of the business income (turnover or revenue) or the company shares (“equity”) as the venture grows depending on the level of financial support provided. Any proposal from the University in respect of seeking an income or company share will be clear and with plenty of time to consider the choices. Generally, any proposal from the University will seek no more than a 10% share in the company’s business income or equity.
- 3.3 The University encourages students and graduates to acknowledge any financial support they receive from the University in developing their business ideas.

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**Flowchart B:  
Process for Student IP  
support**



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<b>Review / Contacts / References</b>	
Policy title:	Policy on Exploitation and Commercialisation of Research and Intellectual Property
Date approved:	3 November 2021
Approving body:	Research and Knowledge Exchange Committee AND Senate
Last review date:	20 October 2021
Revision history:	
Next review date:	December 2022
Related internal policies, procedures, guidance:	Link to location where documents can be found on University website
Policy owner:	Research & Enterprise (Innovation & Business Partnerships)
Lead contact / author:	Intellectual Property Business Partner (Keith O'Brien)

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