

University of Bristol

Policy on Spin out Company Formation¹

1. Introduction

The University of Bristol actively promotes the utilisation of its research with the primary aim of generating a positive economic and/or social impact on society. Recognising that the commercialisation of research is one way to realise this impact agenda, the University will work with its Researchers to facilitate and drive research commercialisation. Commercialisation will be undertaken through several different mechanisms, such as commercial collaboration, licensing of Intellectual Property to existing companies or the creation of Spin Out Companies from the University. Where the creation of Spin Out Companies is the commercialisation mechanism most likely to maximise impact, the University will drive their creation with its Researchers.

Both the University and the Researchers will receive a reward from commercialisation through Spin Out Company creation. The reward will depend on *inter alia* the University research and Intellectual Property forming the basis of the Spin Out Company, the roles played by the Researchers in preparing the opportunity, and the role expected to be played by the University and the Researchers after establishment of the Company.

It is recognised that the success of a Spin Out Company will depend on a number of stakeholders, internal and external to the University. While this policy deals strictly with internal stakeholders, all parties involved should receive a reward that reflects the risks taken, and incentivises success.

This policy sets out the key principles governing the formation of Spin Out Companies, including the roles of the University and Researchers, and the allocation of fair rewards from commercialisation.

2. Definitions

- 2.1 “Deliverables” means outputs that must be produced by the University Founders before approval of the incorporation of the Company and before the IP will be licensed to the Company. Typical Deliverables are given in Appendix D.
- 2.2 “Development Activities” are activities to develop, protect and commercialise the IP by Researchers and/or RED; typical activities are listed in Appendix B. For the sake of clarity, the patenting of IP is always considered a Development Activity. Development Activities may be undertaken before or after a decision has been made to create a Spin Out Company.
- 2.3 “Director” means a person appointed to the Board of the Spin Out Company.
- 2.4 “University Founders” are Researchers who intend to make a material contribution to the future of the Spin Out Company; they may or may not be Originators. Note that there may be additional Founders who are not University staff or students; these additional Founders are not covered by this policy and their contribution and reward will be negotiated on a case-by-case basis by the Spin Out Company.
- 2.5 “General Activities” are activities undertaken by RED in the course of identifying and evaluating IP and providing permissions for commercialisation; typical activities are listed in Appendix A.
- 2.6 “Intellectual Property” or “IP” means Inventions, software, copyrights, design rights, database rights, trade marks and know-how owned by the University.
- 2.7 “Inventions” are any research outputs that can be reasonably identified as having commercial potential including patentable or potentially patentable discoveries or ideas and any associated

¹ Approved by UMT on 8 October 2018

technology required for their development or application.

- 2.8 “Originators” are Researchers who have made a material contribution to development of the IP; they may or may not be University Founders. Originators always includes, but is not limited to, inventors of Inventions.
- 2.9 “Policy” means this policy.
- 2.10 “RED” is the Research and Enterprise Development Division of the University.
- 2.11 “Researchers” are University staff or students (where the University owns the IP generated by the student in accordance with the Intellectual Property Policy for Students²). Professional Services staff who make a substantial contribution to the conception or design of the Intellectual Property, or the acquisition, analysis, or interpretation of data of the Intellectual Property being commercialised are also considered “Researchers” for the purpose of this Policy.
- 2.12 “Researcher Block of Shares” means the portion of the Shares that is allocated to the Originators and University Founders.
- 2.13 “Shares” means the Shares issued to the University, Originators and University Founders.
- 2.14 “Spin Out Company” or “Company” is a company limited by shares created to commercialise the IP which has at least one University Founder involved in the Company.
- 2.15 “Spin Out Company Support Activities” are activities undertaken by the University to provide support to the Spin Out Company; typical activities are listed in Appendix C. Spin Out Company Support Activities are usually provided after a decision has been made to create a Spin Out Company.
- 2.16 “University” is the University of Bristol.

3. Exclusions and inclusions

- 3.1 If the University does not own all or some of the IP on which the Company will be based, then this Policy does not apply.
- 3.2 Where a Spin Out Company is based on IP partly owned by the University, then this Policy shall apply to that portion of the IP which belongs to the University.

4. Commercialisation

- 4.1 RED, acting on behalf of University, is responsible for the evaluation, protection and commercialisation of IP owned by the University.³ RED will consult with the Originators regarding the development, protection and commercialisation of IP.
- 4.2 RED, in consultation with the Originators, may determine that the creation of a Spin Out Company is the most appropriate mechanism for the commercialisation of the IP.
- 4.3 The Originators and RED and/or the Company may agree that one or more of the Originators should play a full- or part-time role in the Company. In this case they are also University Founders. If they are staff members of the University who wish to remain staff members, they will require the permission of their Head of School and Dean.

² www.bristol.ac.uk/media-library/sites/secretary/documents/student-rules-and-regs/student-intellectual-property.pdf

³ General terms and conditions of employment for all staff, Clause 11.6. <http://www.bris.ac.uk/hr/terms/generaltterms.html#a11>

- 4.4 The Originators and RED and/or the Company may agree that the Originators should not play a role in the Company.
- 4.5 The Originators and RED and/or the Company may agree that other University Researchers who were not involved in the development of the IP may be most appropriate to play a role in the Company. In this case they are University Founders. If University Founders are staff members of the University who wish to remain staff members, they will require the permission of their Head of School and Dean.

5. Shareholding⁴ in Spin Out Company⁵

- 5.1 The Originators are responsible for determining the split of shareholding between Originators and University Founders in the Researcher Block of Shares. This will typically be based on the contribution of each Originator to the development of the IP and the intended contribution of each University Founder to the future of the Spin Out Company. Note for the sake of clarity that the Researcher Block of Shares includes shares allocated to University Founders who are not Originators.
- 5.2 Where there have been no Development Activities, and RED and the University Founders agree that the University Founders do not need Spin Out Company Support Activities, the Researcher Block of Shares will be 85% and the University shares will be 15%.
- 5.3 Where there have been Development Activities, and RED and the University Founders agree that the University Founders do not need Spin Out Company Support Activities, the Researcher Block of Shares will be 70% and the University shares will be 30%.
- 5.4 Where there have been Development Activities, and RED and the University Founders agree that the University Founders need Spin Out Company Support Activities, the Researcher Block of Shares will be 55% and the University shares will be 45%.
- 5.5 Where RED and the University Founders agree that the University Founders do not need Spin Out Company Support Activities, RED and the University Founders must agree on Deliverables before approval of the incorporation of the Company and before the IP will be licensed to the Company.
- 5.6 If RED and the University Founders cannot agree that these Deliverables have been met, an independent external expert will adjudicate and propose a way forward.
- 5.7 Where Originators or University Founders are allocated shares from the Researcher Block of Shares, they will agree to waive any entitlement to any other payments in connection with the Intellectual Property, for example, under the Revenue Sharing Scheme⁶.

6. Creation of Spin Out Company

- 6.1 A business case for the creation of the Company, normally in the form of a business plan, must be presented by the University Founders and RED for approval to the RED Director of Enterprise and the Chief Financial Officer of the University.
- 6.2 After approval, RED will typically incorporate the Company and will provide the agreed shares to the Originators and University Founders.
- 6.3 Typically, at establishment of the Spin Out Company, the Originators will nominate one

⁴ Note that the shareholding refers to the split between the University and the Researchers who are Originators and University Founders at incorporation of the Company. This is regardless of whether the University and Researchers are the only shareholders or not.

⁵ See Appendix E for a flowchart illustrating this section.

⁶ General terms and conditions of employment for all staff, Clause 11.3. <http://www.bris.ac.uk/hr/terms/generalterms.html#a11>

Director of the Spin Out Company and RED will nominate one Director of the Spin Out Company.

7. IP licence to Spin Out Company

- 7.1 The University will licence the required IP to the Spin Out Company after incorporation of the Company.
- 7.2 The University will not assign the IP to a Spin Out Company until certain milestones have been met that provide more confidence that the Company is sustainable.
- 7.3 The IP licence will typically be royalty-free.

8. Research Commercialisation Oversight Group

- 8.1 The Research Commercialisation Oversight Group acting under the authority of the University Management Team will have responsibility for the interpretation of this policy and any subsidiary policies or guidelines, and will rule on any questions or disputes arising in relation to it.
- 8.2 The Research Commercialisation Oversight Group may issue guidelines on the meaning and interpretation of the policy.

Appendix A: General Activities

Note that not all activities may be provided for every IP opportunity.

Note that this list is non-exhaustive.

- Undertake due diligence to ensure clarity of IP ownership
 - Ensure awareness of stakeholders and expectations
 - Provide templates for approvals from Heads of School and Deans
 - Provide guides to Originators and University Founders
 - Incorporate the Company if appropriate
-

Appendix B: Development Activities

Note that not all activities may be provided for every IP opportunity.

Note that this list is non-exhaustive.

Note that these activities may be done before or after the decision to create a Spin Out Company.

Development of IP

- Help determine commercial rationale before determining commercialisation mechanism
- Assist with development of research strategy to answer commercial questions
- Assist with access to funding for technology development before determining the commercialisation mechanism

IP management

- Pay patent costs before licensing of IP
- Assist with prior art searches
- Develop recommendation documents for patent filing approval
- Liaise with patent attorneys regarding patent filing
- Manage patent documentation and payments
- Manage patent prosecution process

Strategy

- Work with Researchers to determine best commercialisation route for the IP
 - Explore options with potential commercial partners
 - Assist with access to funding and/or resource for development of commercial options such as IAA and Innovate UK
-

Appendix C: Spin Out Company Support Activities

Note that not all activities may be provided for every Spin Out Company.

Note that this list is non-exhaustive.

Note that these activities are undertaken after the decision to create a Spin Out Company.

Idea to business

- Provide initial assessment of potential customers and market for the Company
- Assist with reaching common understanding of the key unique selling points and the value proposition for the Company
- Help determine the initial target markets for the Company, competitive advantage in those markets and the commercial rationale to test with customers
- Identify key market metrics and impact on the business proposition
- Assist with formulating a technology marketing plan for the Company

Planning the business

- Build financial modelling template that will underpin the business plan

- Help to prepare the business plan for the Company
- Provide advice on developing an IP strategy

Preparing for funding

- Provide support in finding grant funding and assistance in writing bids for the Company
- Help prepare executive summary and investor presentation deck
- Assist with pitch practice
- Provide an input to Company valuation
- Provide equity modeling tool
- Introduce Company to investors from network

Building the team

- Match University Founders to mentors, consultants, potential CEOs/commercial management and NEDs through networks
- Provide guidance on secondments or other arrangements for University Founders

Process

- Provide template legal documents to the Company
- Help open the bank account
- Explain all aspects of process in plain English
- Provide access to external legal firms
- Provide Preferred Suppliers list

Building value

- Provide Board Director or observer who can add value where appropriate
- Offer product / service development inputs
- Help University Founders identify experts for regulatory or other hurdles
- Provide support for successive funding rounds
- Provide support in preparing for exit

Other support

- Access to University facilities
- Support University Founders to find alternative locations
- Provide access to range of training seminars and events, etc.

Appendix D: Typical Deliverables if no Spin Out Company Support Activities are provided by RED

Note that not all Deliverables may be required for every Spin Out Company.

Note that this list is non-exhaustive.

Note that Deliverables will have an agreed time frame (typically no longer than 12 months).

- Viable route to commercial sustainability
- Sound outline business plan
- Market analysis
- Launch customer or investor is in place to take technology past next critical stage of development
- Cash flow showing sustainability
- Team with commercial capability

Appendix E: Flowchart to illustrate decision-making and shareholding

