

Aberystwyth University Spin Out Policy

Aberystwyth University is committed to ensuring the results of its teaching and research are used for the benefit of the society and economy of Wales and beyond. This document (“Policy”) sets out the University’s policy position with regard to the commercialisation of University Intellectual Property through the creation of a spin-out company.

The Policy explains the University’s approach to spin-out company formation, the requirements and decision-making processes, and the role of Staff who are Founders in the company.

1. Principles of the Policy

The exploitation of Intellectual Property enhances dissemination of research results and contributes to the University’s social and economic impact agenda and can generate income for the University and its Staff. In particular, the creation of a spin-out company to commercialise University Intellectual Property can be a key contributor to the University’s Strategic Plan and Mission to support innovation in industry and contribute to the growth of our local and wider economy.

This Spin-out policy applies to Staff and Students wanting to form a new company to exploit Intellectual Property owned or co-owned by the University.

The policy is not applicable to new companies formed by Staff or Students, which do not involve University owned Intellectual Property. For guidance and support with these types of ventures please refer to the AU careers department (students) or AberInnovation (staff).

This Spin-out Policy should be read in conjunction with the University’s Intellectual Property Policy available here <https://www.aber.ac.uk/en/rbi/strategies-and-policies/>.

2. Definitions

In this Policy, the following expressions shall have the following meanings:

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| 2.1 | RBI | the University department responsible for the commercialisation of Intellectual Property, currently the Department of Research, Business & Innovation. |
| 2.2 | Conflicts of Interest | as defined in the University’s Conflicts of Interest policy https://www.aber.ac.uk/en/hr/info-staff/employment/managingofconflict/ |
| 2.3 | Creator(s) | any Staff or Student who creates, devises or invents an item of Intellectual Property that is owned by the University and is licensed to a Spin-out. |
| 2.4 | Department | any unit having primary responsibility for the delivery of programmes leading to the award of undergraduate and postgraduate degrees and other academic qualifications |

of the University and/or the conduct and promotion of research activity, participation in knowledge exchange or self-funded units and/or such other functions including but not limited to professional services to the University.

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| 2.5 | Founders | Staff and any other person or persons who will form part of the initial management team of a Spin-out. Founding Staff are generally Creators of the Intellectual Property that is the basis for the Spin-out. |
| 2.5 | Intellectual Property | shall include copyright, patents, design rights, trademarks, trade names, service marks, database rights, plant breeders' rights, performance rights, utility models, know-how, confidential information and other intellectual property rights, in each case whether registered or unregistered and including applications for any of the foregoing and all rights or forms of protection in any jurisdiction. |
| 2.6 | Memorandum and Articles | documents that state the key details necessary for a company's incorporation and the rules that regulate the company. |
| 2.7 | Staff | all persons employed part-time or full time by the University be it in an academic, research, technical, professional service, academic related or other position whether fixed-term or permanent. |
| 2.8 | Shareholders Agreement | an agreement entered into between all of the shareholders in a company, which regulates the relationship between the shareholders, the management of the company, ownership of the shares and the protection of the shareholders. |
| 2.9 | Spin-out | a new company formed to commercialise Intellectual Property owned by the University and in which the University has a shareholding. |
| 2.10 | Students | registered students of the University whether postgraduate, undergraduate or on an exchange scheme, non-graduating or otherwise and including postgraduate students during the period of writing up the results of their research. |
| 2.11 | Term Sheet | a non-binding document that sets out the key terms and conditions for the formation of a new company, including its ownership structure and terms relating to any Intellectual Property being licensed to the company, |

or other rights being acquired by the company, on formation.

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| 2.12 | University | Aberystwyth University (Prifysgol Aberystwyth). |
| 2.13 | University Resources | University facilities or resources including (but not limited to):- <ul style="list-style-type: none">(i) office, laboratory & studio space & equipment;(ii) computer hardware, software & support;(iii) secretarial services;(iv) research, teaching & laboratory assistants;(v) supplies & utilities;(vi) funding for research & teaching activities, travel & other funding reimbursements, equipment or time;(vii) central support services such as Finance Office, Legal support or technology transfer support. |

3. Decision to create a Spin-out

- 3.1 The decision to form a Spin-out company to exploit University Intellectual Property (rather than, for example, licensing the Intellectual Property to a third party) will be considered on a case-by-case basis.
- 3.2 A Spin-out company may be the appropriate route to market in the following circumstances:
- a) The Intellectual Property has more than one application and in multiple markets
 - b) The Intellectual Property is too early in its development to attract a licensee and requires investment to realise commercial exploitation
 - c) A strong market need has been established but there is no other route to market (for example via licensing)
 - d) The University is looking to combine Intellectual Property with a third party and both parties agree this is best achieved through a Spin-out
- 3.3 Founders will need to demonstrate they are able to commit time and energy to the new venture for the University to support a decision to create a Spin-out. They will also need to lead on creating a business case to present to internal stakeholders for Spin-out approval.
- 3.4 The formal decision to form a Spin-out will be made by RBI after taking into consideration factors including a commercialisation plan, potential reputational impact and Welsh language standard implications.

- 3.5 Where the Spin-out includes third-party Intellectual Property (for example from another university), agreement will also be needed from the third-party.
- 3.6 Founders may have different roles in the Spin-out All decisions relating to these activities and in particular use of University time for Spin-out activities will be agreed by their respective Head of Department.
- 3.7 Staff who own shares in a Spin-out must ensure any potential Conflicts of Interest are managed in accordance with the University's Conflicts of Interest policy.

4. Spin-out process

- 4.1 Once a decision has been made in principle to form a spin-out, RBI will work with the Founders, and if appropriate, other third-party Intellectual Property owners, to agree a Term Sheet that defines the products and services the Spin-out will develop, the proposed management structure, shareholding and the terms for the University Intellectual Property that will be licensed to the company. The Term Sheet may also detail the conditions under which access to other University Resources may be provided.
- 4.2 The new company will be incorporated using a standard set of Memorandum and Articles. Shares will be distributed to Founders and the University through an agreed standard Shareholders Agreement.
- 4.3 Staff considering founding a spin-out will need to seek their own legal advice.

5. Shareholding

- 5.1 The percentage shareholding owned by the University on formation of the Spin-out will be negotiated between RBI and the Founders.
- 5.2 Creator(s) will not benefit from income generated through the sale or disposal of shares owned by the University in a Spin-out.

6. Rights to University Intellectual Property

- 6.1 University Intellectual Property required by the Spin-out will be licensed to the Spin-out on commercial terms to be negotiated on a case-by-case basis.
- 6.2 Licence terms will take into consideration the nature of the Intellectual Property, the scope of the licence and the level of investment the University has made in the protection and development of the Intellectual Property.
- 6.3 On achieving certain agreed product development, revenue generation or investment milestones, the University may agree to assign the Intellectual Property to the Spin-out. Any such assignment will require the company to grant back to the University a licence to the Intellectual Property for academic research and teaching purposes and for commercial exploitation outside the agreed fields of use.

- 6.4 The distribution of income from licences granted to a Spin-out will be in accordance with the University’s Intellectual Property Policy.
- 6.5 The Spin-out company will not be able to use the University’s name, logos, branding or trademarks without prior written permission.

7. Board of Directors

- 7.1 For as long as the University is a shareholder in the Spin-out, it will have the right to appoint a director or observer to the board of the company.
- 7.2 If the University elects not to appoint a director or observer, it will retain the same rights to receive board papers as if it had appointed a director or observer.

8. Dispute Resolution

- 8.1 Any issues, dispute, claims or any clarification required as to any provision of this Policy should in the first instance be referred to the Director of RBI who will liaise with the relevant Head of Department or their nominee in considering the matter.
- 8.2 If a decision is not mutually agreed within a reasonable amount of time, then the dispute can be referred to the Pro Vice-Chancellor for Research, Knowledge Exchange & Innovation who will make a determination.
- 8.3 If the parties seek outside advice in such a dispute, the costs of such advice will be borne by the party seeking it. The decision will be final and binding on all parties involved.

9. Implementation

This Policy shall not have retrospective effect. This Policy shall come into effect on 11 July 2023.

10. Revision History

This Policy will be managed by RBI and approved by the Executive. It will be subject to periodic revision in consultation with the appropriate University bodies.

Date Created/Reviewed	Changes	Reviewed by Executive	Approved by Executive
March 2023	Welsh language standards inserted	25 April 2023	11 July 2023

ENDS