Introduction

When research breaks new ground, there is a possibility that it may also provide an exciting new commercial opportunity. Students and staff often also see potential business opportunities arising from their ideas and through their studies. Forming a company is just one way of developing and exploiting new ideas and research results; it is the route typically considered when there is no existing business to approach with new ideas or new intellectual property, or because a technology has clear potential to generate many products and engage multiple business sectors. By taking such opportunities to market, you can deliver real economic & social impact, a key mission for the University.

The creation and formation of a successful company is good for the individuals involved, the local and national economy and, further, the University. St Andrews’ position as one of the world’s top 100, and amongst Scotland and the UK’s foremost academic institutions relies upon our proficiency in conducting pioneering research and providing the very highest quality education. If the University can also promote an entrepreneurial culture and exploit cutting-edge intellectual property, technology and ideas for commercial and social benefit, then the University stands to enjoy long-term reputational and financial rewards.

Through encouraging and supporting enterprise among University of St Andrews staff and students the University aims to:

- promote impact from its research activities through developing new services and products providing social, economic and public benefit;
- equip staff and students to develop a mind-set, behaviours and skills that can benefit them throughout their lives;
- inspire all staff and students to begin an entrepreneurial journey;
- encourage staff and students to refine their business concepts, pursue their business ideas and to develop early stage technology and introduce those involved to the wider entrepreneurial network;
- support those staff and students aiming to start a venture with useful help to enable the start-up of an ambitious, profitable and sustainable business.

Through providing clear guidance and appropriate support to staff and students the University of St Andrews will optimise knowledge exchange and technology transfer through the establishment of successful new ventures, supporting employment and local economic growth & development.
Forming a new company

The time, resources and commitment required to create a successful business should not be underestimated. Setting up a vibrant, sustainable new company is a challenging, collaborative and sometimes stressful activity that can distract company founders from their studies, academic roles and research. Founders will need to work with the University to bring together various resources such as specialist management, facilities and funding, typically from a combination of development grants, enterprise competitions, investors and customers.

Not all inventions, IP or good ideas are suited to becoming the platform for a new business and the University can help to evaluate your opportunity. It is never too early to speak to the University’s Knowledge Transfer Centre (KTC) or the Student Enterprise adviser about your ideas and these organisations will welcome your call. It may be that a “proof of concept” project is needed within the University to further demonstrate the feasibility of your idea or technology, and the University can assist with bids for suitable development funding in advance of the need to formalise a company.

The KTC, Careers Centre, and the University’s business-focussed subsidiary (STAAR Ltd) provide advice and offer practical help in developing business proposals and in finding the funding, support and facilities your business or technology development proposal needs.

The University of St Andrews will seek to spin-out its technology into a new company if this is seen as an appropriate route to commercialisation after careful consideration by all relevant parties. For example, if the university technology has a broad application, requires further development, can leverage funding and if the individuals involved are fully committed to the process.

Reasons for considering forming a new company include:

• there being no current or known route to market for a technology;
• the University receiving development funding with set exploitation objectives (commercialisation) which state specifically or include the option of forming a spin-out company e.g. Scottish Enterprise HGSP award, RC Follow-on-Funding;
• a direct approach from a staff member or student with a business idea or proposal;
• overwhelming support from inventors to spin-out a technology-based company (in preference to licensing) and the proposers long-term commitment to drive and support the process e.g. holding positions in, or working for the company;
• the intellectual property lends itself to a potential product portfolio (single product spin-out companies seldom thrive unless they are based on a technology platform with potential high value returns);
• an external commercial champion (individual, group or investor) has produced an appropriate business plan proposing the University and founders form a company.
Company ownership

Rewards arising from new companies and derived from exploiting ideas and technologies at St Andrews will be shared fairly between those involved in starting the enterprise; these include technology inventors, idea proposers, company founders and the University.

The formation of a University Company starts from the premise that the company cannot exist without the involvement of both the founders and the University. The founders and University therefore each expect to be significant initial shareholders in a University Company because of the contribution and resources each make to support the company’s formation and seed investment. Typically, pre-investment, the shareholdings of the company founders and University will be equal.

In cases where there is no direct University involvement and/or no University resources are used to support the company students and staff may propose and found their own companies independently of the University.

Assistance from StAAR Ltd may be useful in developing the company’s commercial offer, undertaking market assessments and in drafting business and financial plans. External business consultants being paid a daily rate by the University for their services via R&D or commercialisation funds are not offered equity based on their paid participation as commercial project champions or as potential future management in a University Company. However it is good practice to motivate, incentivise and reward the emerging new-company management team for successful performance in their roles, so initial company founders (the University and inventors) may agree to offer and reward the management team who participate in raising critical seed-funding with an equity stake in the company.

Whilst each case will be determined and considered on its merits a 50:50 equity split between founders and university may move to an equitable 3-way split (33% each) between the University, founders and management team directly before the completion of a successful seed round investment.

At start-up every participant needs to recognise that unless they can invest at each subsequent round of investment all the initial founding equity holders will be diluted via successive rounds of investment.
Access to University Intellectual Property (IP)

Holding rights to tangible IPR in the form of patents and patent applications is attractive to investors. Consequently new companies founded on University technology will need access to the IP and supporting know-how in order to be an appropriate investment vehicle.

Where a new company proposition is founded around University-owned IP a technology & know-how Licence Agreement will need to be implemented. This Licence will provide commercial rights to the company and a return to the University which is shared with the inventors.

When a University Company is first formed but not trading it will be building the business case and promoting the opportunity externally to potential investors. In parallel the University may continue technology and service development through grant funding awarded to the institution. To cover this period the University will provide the company with an Exclusive Option to the relevant IP on which the spin out is founded. At the point where the company receives its first seed investment and becomes operational the Option would be exercised and the company benefit from a Licence to the appropriate University IP.

The University expects the original agreed licence terms to survive investment negotiations with external parties and licence terms covering the IP to be strongly supported and defended by the company through future rounds of investment.

The licence agreement seeks to recover a return to the University for its investment in the IP, and reflects the potentially lengthy and expensive financial support, and the high risk involved in the University protecting early stage IP arising from fundamental research. The Licence will be royalty-bearing, reimburse ongoing patent expenses and include minimum annual royalty payments and royalties on sales and sublicenses that reflect commercial norms. However, the licence terms will be sympathetic to the circumstances of the new company, due to the importance of cash to the spin-out in its early years. The University will not provide upfront IP assignations to newly established University companies.
Institutional support

Members of staff and PGRs require authorisation from the University before setting up a University Company based on University resources, technology or inventions, and before becoming an officer (director or company secretary) of such a company. This is managed through the KTC.

In authorising new company formation the University will consider the various interests and roles of the University and the staff or student founders which include:

- the impact on existing and future duties of founders;
- the use of Intellectual Property owned by the University and others (past, present and future);
- the use of University/School/Unit resources such as space and equipment;
- the relationship between founders and other University staff and students;
- the relationship between the new company and the University;
- the business and market opportunity and potential impact the new company represents.

Members of staff may:

- own shares or share options in a new company;
- act as a company director;
- act as a paid consultant;
- be seconded for a period from the University into the company to work at their premises;
- manage R&D projects in the University sponsored by the company.

However, an individual’s actions or decisions in regard to their involvement in a new company, made in the course of their University duties, must not be determined by considerations of personal financial gain. Potential founders should be aware of the University’s IPR policy, External Work Document and Conflict of Interest Policy.

The KTC provides support throughout the entire process from invention disclosure, through IP protection and technology development leading up to and during company formation and securing investment. KTC staff have experience in relationship management and in handling a wide range of formal contract negotiations through previous technology development and spinout company formations. The KTC together with StAAR Ltd can provide direct support in the areas of assessing and developing a spinout business proposal and initial business plan, facilitate and coordinate approaches to and from investors, set up meetings as appropriate, provide background information to investors, guidance on University IP issues and legal documents to support confidential disclosures.
The KTC ensures that patents are correctly filed and appropriately prosecuted and this involves extensive liaison with the University’s patent attorneys and lawyers throughout the period in the build-up to a company spinning out. A patent portfolio which has been earmarked for optioning or licencing to a University company can involve the University investing a six figure sum in patent fees prior to company formation and involves a significant amount of KTC time and University funding.

During any research-commercialisation or technology development project funded under a grant to the University a member of the KTC may sit on the project management group and the KTC will report progress to the University’s Business Ventures Group (BVG) which provides guidance and feedback to the KTC on the potential investment opportunity. Other direct approaches on business proposals from academic researchers are also tabled and discussed at BVG meetings, and the group formally takes decisions where there is deviation from adopted practice or precedent, a conflict of interest, or detailed negotiations with an external party seeking to invest in a spin-out. In making its decisions the BVG will consider the best possible outcome for the University in terms of precedent, income, impact and commercial & reputational risk.

The development & spin-out process normally proceeds through a mutual partnership between the internal promote of the opportunity (KTC and academic founders) and their sourcing resources, advice and expertise externally to build the commercial opportunity as an investible entity.

There are many aspects in forming a new venture that require up-to-date legal, taxation, accountancy and financial expertise from fully qualified and regulated professionals. StAAR Ltd can assist with providing such advice and in developing business plans for circulation to investors.

The University and all founders of spin-outs will need to conduct their own investigations and obtain independent legal & professional advice on transactions, particularly where they are cited as individual parties to any legal agreements. In addition to staff, students and the University, third parties external to the University may be involved early in the process of developing and forming a new company; these parties will also have professional advisers to represent their interests.

Whilst it is always every party’s intention to keep company formation and the investment process as simple as possible, developing relationships with potential investors and completing any investment into a new company can become time consuming and complex. It is likely to involve negotiations between lawyers and professionals representing a range of interests including the founders, the University, any external third-parties involved and potential investors (of which there may be several in any single investment round).
Following the formation of the spin-out and its receiving investment the company’s commercial focus will change from raising funding to it developing a commercial product or service, and starting to trade to secure sales and generate income. The nature of work and how the company is organised and run on a day to day basis will change as it becomes operational, and it can no longer be thought of as simply a university project or University Company. Changes may include:

• recruitment of a dedicated CEO to drive the business forward;

• monthly meetings of the Company Board;

• the company actively trading in its own right through agreeing contacts, hiring staff and consultants and buying or selling services and equipment;

• mutually agreed contracts for R&D and any other support provided to the company by the University;

• University employees moving jobs to become an employee reporting to the company.
Further information

General information on Spin-out Companies:

**University of Manchester IP Ltd** - [http://umip.com/pdfs/Spinout_Companies.pdf](http://umip.com/pdfs/Spinout_Companies.pdf)


**PraxisUnico** – Practical guide to Spin-out Transactions [https://www.praxisunico.org.uk/sites/praxisunico.org.uk/files/unico_guides_spinout_0.pdf](https://www.praxisunico.org.uk/sites/praxisunico.org.uk/files/unico_guides_spinout_0.pdf)

**Companies House** - various useful guides regarding company formation, responsibilities of company directors & secretaries. [https://www.gov.uk/government/organisations/companies-house](https://www.gov.uk/government/organisations/companies-house)

**Institute of Directors** - 157 four-page Directors Briefings under free advice section on anything & everything to do with company formation - [https://www.iode.com/](https://www.iode.com/)

**Small Business Service** - [www.sbs.gov.uk](http://www.sbs.gov.uk) and more useful, **Business Link** - [http://www.businessadviceonline.org/cgi](http://www.businessadviceonline.org/cgi)