

WSU OC Spinout Company Formation Guide

***** This guide is intended to serve only as a general guide to starting a business around a university-based technology. *****

Launching a business around a university-based technology can be an extremely rewarding endeavor, as it is sometimes the best way to move the potentially commercializable academic research to the marketplace, solving important societal problems. At the same time, it requires significant investments in terms of your time, effort and resources.

If you are interested in starting a spinout company based on Washington State University (WSU) intellectual property (IP), it is recommended that you contact the Office of Commercialization (OC) staff who can provide general guidance and information about the commercialization process.

Services the Office of Commercialization can/cannot provide

OC can provide Access and Rights to WSU IP

The OC can get an option or license agreement to WSU IP in place once a company is registered and formed. A license will allow the company to move forward with commercializing a commercial product while an option will allow applying for grants, and pitching to investors to raise funding to support further development prior to commercializing a product. Generally, the OC would like to keep copies of the Articles of Incorporation, by-laws and founders' agreements or the equivalent for WSU spinouts as part of its due diligence to verify the company's commitment to developing the technology into a marketable product or service.

A license to practice patent rights can be defined in a variety of ways. For instance, the IP owner (WSU) may grant a license that is exclusive or non-exclusive, it can limit the rights to practice the IP rights to a specified time period or geographic area, and it can impose limits on what kinds of products can be made or what kinds of industries can be served with the IP rights (this last concept is generally referred to as the "Field" or "Field of Use" of the license).

In many instances, a company will want the broadest rights to the relevant IP, meaning a worldwide license that is exclusive for all fields of use. Determining the scope of the company's rights, and its associated obligations to develop those rights, is a part of negotiating a license with OC.

General license terms for licenses are variable, and are determined on a case by case basis. As a starting point, the OC may want to review the company's business model solely to determine whether a viable business case is possible to justify granting rights to the company for WSU's IP. Please note that the execution of the business plan, however, is the company's responsibility. Let the OC know you are interested in forming a spinout. You may then want to enter into an agreement for the IP rights before moving forward.

OC can connect you with the team that administers financial Conflict of Interest

When a spinout company involves a University employee, a conflict of interest (COI) management plan may need to be put in place to monitor and address potential conflicts. This plan identifies and mitigates potential conflicts of interest and should be initiated as early as possible with the Office of Research (<https://research.wsu.edu/resources-researchers/operations-support/coi/>). If a COI management plan is needed, the option or license agreement cannot be signed until a plan is in place. Please contact the COI management team as soon as possible to avoid potential delays in executing an agreement with the OC.

OC can provide you general information on resources

The OC can help connect you with potential resources, and leads that can assist you with forming and building a business. Our contact information is provided at the end of this document.

OC and WSU as a state agency, cannot actively participate in the process to:

- Draft a Business Plan for the Company
- Register the Company for you
- Contribute to the Leadership of the Business
- Invest in the Company or raise funding for the Company
- Participate in Corporate Governance including decision making and day-to-day operations

General Advice

a). Drafting a Business Plan

An excellent business plan is no guarantee of success. Nor does a mediocre plan doom a venture to fail. The OC believes that the research and disciplined analysis involved in writing a convincing business plan (or, at a minimum, an executive summary and supporting financial model) are vital steps in preparing to launch a business. Throughout the process of launching a business, there are usually countless decision points, and unexpected challenges, and the business plan can provide a framework for helping manage these decisions and challenges.

Ideal business plans demonstrate that the founders generally understand, the technology, along with the market environment. It should also outline the buyers, and what resources and actions are needed to actually move the technology from its current status to a point where it can be commercialized.

Conversely, disadvantageous business plans focus exclusively on the technology and problem to be addressed. The implicit assumption in business plans is that the technology is developed successfully and the market will automatically adopt it. As such, business plan should show that the founders understand how purchasing decisions are made and how their product will be commercialized to maximize success.

Generally business plans include:

- A summary of the technology- what it is, what it does, its advantages
- A marketing analysis, including market opportunities and competition
- Production plans, methods, costs, capacities and implementation timeline
- Management team

The business plan is specific as to the need in the market, and the projected product development plan and timeline to market along with the associated costs. If the plan is detailed enough, the OC and the spinout can utilize it as a starting point to begin the license negotiation and identify meaningful milestones for the license.

b). Establishing the company as a legal entity

One of the first steps in launching a spinout is to register the company as a legal entity. Choosing a legal entity that is appropriate for your company is critical since it will affect fundamental matters, such as how the business and its owners will be taxed and who can invest in the company. There are several options and many factors that one can weigh.

For most university spinouts that envision raising significant amounts of money from investors, the better option is usually to form a corporation. On the other hand, if your company will fund its operations from grants, service revenue or other sources, you may be better off starting out as a limited liability company (LLC). Another option is to form a corporation that elects “S” status for tax purposes. Although the form can be changed later in the company’s life, it is worth spending a little time at the beginning selecting the most suitable form.

If you have any questions about any of these steps or need more information, then contact the WSU Office of Commercialization for assistance at:

<https://commercialization.wsu.edu/contact-us/>

commercialization@wsu.edu

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