



**NET KITE - Cross-border NETwork**  
to foster **K**nowledge-intensive business **I**ncubation and **T**Echnology transfer

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## D6.8

# Guidelines and Regulations for Spin-Off Generation and Incubation

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**ENPI  
CBCMED**  
CROSS-BORDER COOPERATION  
IN THE MEDITERRANEAN



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## PREAMBLE

The NETKITE project has fostered an innovative community-led approach to the generation of start-ups from the transfer of knowledge, research and technology results achieved in the academic system.

This approach focused on open innovation, user-driven processes, broad participation of all innovation actors in co-design, ambitious solutions to business challenges. Moreover, it highlighted the peculiar features of Mediterranean business ecosystems as compared to other EU and international scenarios for entrepreneurial development and tried to fully exploit the endogenous potential of the territories and their huge resources in terms of human capital and natural and cultural environment.

This process allowed to give evidence to the strong background held by the potential entrepreneurs and the technology transfer people who have taken benefit from NETKITE set of opportunities. It proved the existence of high quality higher educational institutions and well acknowledged research centres in the Mediterranean partner countries, which stand out for their scientific production and innovation capacity.

At the same time, it enhanced the generation and exchange of new knowledge, the design of innovative technological devices and the exploitation of advanced research outputs which represent the most valuable heritage for the innovators who want to start up a new venture from that.

A great percentage of innovation comes from academic and research institutions that seek through various technology transfer paths, to create value, both economic and societal. One such way is of course through the creation of spinoff companies, that commercialize research results.

The aim of this document is to provide academic founders and University administrators with a guide to the internal process surrounding spinoff company formation with a view to managing expectations and optimizing the establishment of successful spinoff companies and also provide a guide to safeguard specific University policies.

There are many aspects of the task of creating a spinoff that are country or even institution specific, so academic founders should conduct their own investigations and obtain independent professional advice. This document should be treated as a set of generic guidelines and/or an example of how to establish a spinoff company in the context of an academic institution such as a university. This includes also the names of the various departments of the university, e.g. in some Universities the appropriate department for assm might be called TTO in some others IP Office.



## 1. Introduction

'A university spin-off is a start-up company formed as a consequence of university activity or know-how, regardless of whether registered IP is involved, in which the university holds an equity stake.'

The aim of this document is: (a) provide academic founders and University administrators with a guide to the internal process surrounding spin-out company formation with a view to managing expectations and optimising the establishment of successful spinoff companies and (b) provide a guide to safeguard specific University policies (e.g. conflicts of interest)

There are many aspects of company formation which require up-to-date legal, taxation, accountancy and financial expertise from fully qualified and regulated professionals. Academic founders should conduct their own investigations and obtain independent professional advice.

*It is recognised that third parties may be involved in a university spinoff but this document focuses on the Academic Founders, School and University relationships.*



## 2. General provisions

Members of staff require authorisation from the University before setting up a spinoff company and before becoming an officer (director or company secretary) of a spinoff company and undertaking consultancy for the company. This is managed through [RIS/TTO/any other appropriate body].

The interests of the University, the School and the academic founders must all be considered and include: - the impact on existing and future duties of academic founders - the use of Intellectual Property owned by the University (past, present and future)

- the use of University/School resources such as space and equipment - the relationship between other academic staff

The University will require an equity stake in every company involving the development and exploitation of University intellectual property, which includes know-how as well as patents and copyrighted information.

The University retains the right to appoint a Director if the University shareholding is in excess of 10% or otherwise a Nominated Officer to represent the University's interest at shareholders meetings

No full-time employee may also be an employee of a spinoff company

Members of academic staff may: - own shares or share options in a company - act as directors in a company - act as paid consultants to a company

Conflicts of interest and probity in company/ University relationship - it is appropriate that individuals be rewarded for their participation in spinoffs through consulting fees or shareholding. It is wrong, however, for an individual's actions or decisions, made in the course of their University activities, to be determined by considerations of personal financial gain.



### 3. Spinoffs basics

#### Why spinoff?

- wealth creation for the academic founders and the University
- as a mechanism of technology and knowledge transfer
- as a conduit for academic entrepreneurs
- to contribute to the Knowledge Economy
- to improve the economic profile of the region
- to enhance the University's profile
- to attract investment

#### When is spinning off appropriate?

- there is a platform technology or competence
- the financial returns are greater than a licensing deal for IP-based company
- the University, the School and the academic founders **all** benefit
- expected benefits outweigh the risks
- academic founders are credible, enthusiastic and committed to the venture

#### Types of university company:

- Consultancy/services rendered/training, so called 'lifestyle' companies - no IP
- Joint-venture (JV) with third party - with or without IP
- University IP-based company
- Spin-in company - where company has been formed substantively as a response to external stimuli and the company is established as a JV vehicle



## **4. Pre-company formation**

### **4.1. The Commitment**

It cannot be stressed too strongly that establishing and participating in a spinoff company can be very demanding both in terms of time and effort. Academic founders may devote their consultancy time to the venture. Permission is sought from the University Council through the Director of Research Development/Dean/Head of School. Academic staff must seek the agreement of their Head of School in case the permission is sought via other channels.

It should also be appreciated that many of the required skills are quite different from those required for research, teaching and associated administration. However, the required skills may be brought in from outside in exchange for funds, equity or both.

### **4.2. The Process**

An overview of the internal process leading to incorporation is given below. Each of these stages is covered in more detail in the following sections. This process may be achieved very rapidly but experience dictates that the development of the business model is an iterative process.

#### **The Concept**

#### **Commercial Viability Assessment**

#### **Proposal to University Commercialisation Panel**

**(\*Not viable - do not proceed with current model)**

#### **Meeting with School**

#### **Proposal to [University Holding Company]**

#### **Raise funding**

#### **Incorporate**

**\*Company concept/model may be considered to be non-viable at any stage.**



#### **4.2.1. The Concept**

The first step is for the academic founders to discuss the feasibility of the idea with the School Business Development Executive/Manager. Academics from Schools without dedicated business development assistance should contact a representative from the IP Office.

#### **4.2.2. Commercial viability assessment**

The Business Development/IP Office representative will then undertake background research in association with the academic(s) to evaluate the feasibility of the idea. This will include an assessment of the business model, IP status and identification of potential sources of funding. They will suggest the next step forward – this may be to carry out further market research, or to proceed to draft an outline business plan.

#### **4.2.3. The [University] Commercialisation Panel**

In order for the panel to be able to review the concept and give feedback on the next steps the academic founders should complete a brief outline business plan of 3-5 pages. This will ensure that all of the key factors influencing the development of the company have been considered.

#### **Outline business plan structure:**

##### **1. Summary-aim and goals of the company**

##### **2. Background**

- Options and recommended business model (including justification of why spinning off is the preferred model)
- benefits to academic founders, School and University

##### **3. Description of Technology, Product or Service (keep it brief)**

- current status of the technology - anticipated time to market - IP issues - existing and future IP and status (i.e. patent, copyright, know-how) - facilities & services required - within the University or outside - future ideas

##### **4. The Market**

##### **5. The Competition - competing technologies - competitive advantage**

##### **6. Commercialisation strategy - route to market**

##### **7. Management**

- current team
- contributions of each of the academic founders and desired level of involvement
- future management needs - which skills are lacking or absent in the team?



## 8. Finance

- expenditure - how much, how soon, where from?
- income - how much, how soon?
- summary of projections

## 9. Exit strategy

The panel may make further recommendations, at the University's expense, such as undertaking an independent technical evaluation or retaining a consultant with particular expertise in the market in question to advise on the way forward.

### 4.2.4. Meeting with [School]

Once a fairly robust business case has been built, the academic(s) should meet with the Head of School and Head of Division or Group, and other relevant parties such as the School Manager, to discuss the proposal. Issues to be discussed include:

- access to School facilities and resources
- consultancy time and effort
- conflict of interest issues should be identified and addressed

### 4.2.5. Company-formation and Equity Proposition to [University Holding Company]

The outline business plan may now be presented to [University Holding Company], along with an equity proposition for the academic founders versus the University's equity stake in the new company. The equity proposition can be discussed and agreed with a representative from the IP Office who will present the case to [University Holding Company] for approval. The academic founders may also be asked to make a presentation. Once approval has been received it is possible to proceed to company formation.

### 4.2.6. Incorporation

Incorporation may be carried out in 2 ways:

- i) by the academic founders directly ii) through the University

The different routes may have tax implications and academic founders should seek independent legal advice to assist them in making this decision.

### 4.2.7. Documentation

The following documentation, where applicable, may be required. **It should be stressed that these are the precedent documents supplied by the University's solicitors.** Whilst the Founders' solicitors may advise they may not change the wording of any clauses but may alert the Founders to clauses they may wish to discuss further with the University.



- **Shareholders Agreement**

This addresses the relative shareholdings between the founding researchers, the University, management, and investors, and the protections which each shareholder seeks. See section 4.6. New Articles of Association will be adopted if the company is formed by the Founders.

- **Technology License and Pipeline Agreements**

A license will authorize the company to use any specified intellectual property owned by the University which the company wishes to use and which the University is able to make available to the company. In some cases, a Pipeline agreement for future IP arising from the laboratories of the academic founders may be appropriate.

- **Consultancy and/or Director's agreement**

The company will want to secure access to the services of the founding researchers. The arrangements between those individuals employed by the University and the company need to be approved by the University.

- **Facilities and Services agreements**

The majority of companies based on one of the University campuses, be they consultancy, service or research-based, will probably require the use of University services and facilities. See section 4.5

- **Memorandum & Articles of Association**

These documents are standard company documents which set out the nature of the company's business and its operations. These will be supplied on incorporation.

- **Share Option Scheme**

All spinoff companies are likely to establish an incentive scheme at some stage. There may be advantages, relating to the option exercise price, in setting up a share option scheme at the spin-out stage. Academic founders are encouraged to take independent advice.



### 4.3. How much help is available?

Assistance is available from the Technology Transfer Office with the initial stages pre-company formation. However the degree of assistance contributed at each stage of the life of the company is assessed on a case by case basis and may be in exchange for additional equity in the company and in some cases the company may be charged for the service.

## 4.4. Equity and Intellectual Property

### 4.4.1. Equity Division

The University and the academic founders will both receive an equity stake in any companies from or associated with the University. The formation of the company starts from the premise that the company cannot exist without the presence of the academic founders or the University. The starting point for negotiation is 60:40 in the University's favour, which approximates to the University's revenue share scheme relating to the commercialization of intellectual property.

The size of the shareholding that the University agrees to is dependent upon a large number of factors, and is decided on a case by case basis and includes, but is not limited to, the following:

- Present IP
- Pipeline Agreement relating to future IP
- Pre-company formation project specific investment
- Assistance with company formation and development-depends on the degree of assistance pre and post company formation
- Use of the University's name and the 'goodwill' associated with it and the University's risk in allowing its' name to be used

### 4.4.2. Intellectual Property

In the case where formal IPR is already in place, in general the University will license the technology to the company for a nominal fee until such a time as the company is able to pay patent costs to maintain the patent. The University will then undertake to assign the technology to the company without the risk of the patent being allowed to lapse though insufficient funds being available to pay patent fees.

A pipeline agreement may be signed as part of the equity agreement to license future IP arising in a given field from the laboratories of the academic founders into the company.



#### **4.4.3. [Retaining SME status]**

In order for a company to retain SME status (small to medium-size enterprise), another enterprise must not hold more than 24.9% of the equity. In the case of University spinoffs, the University may hold up to 50% of the equity. SME status allows companies access to grants and incentive schemes specifically targeting SMEs and also has specific tax advantages. It is inappropriate for the equity structure of a company to be driven solely by government schemes and although the University will take this into account if these are essential funding sources for the company, the final decision will be based on a combination of the factors outlined above.

#### **4.4.4. Dilution of equity**

If the equity in a company is diluted through investment by a third party the equity of both parties, academic founders and the University, is diluted equally.

#### **4.4.5. Dividends**

This is a matter for the Board of each company. The board must balance return to shareholders with funds retained for company development. The University expects that the company should make a clear case each year to justify re-investment of profits rather than dispersal of dividends with which the University nominated Director/officer must agree.

### **4.5. Facilities and Services agreements**

The majority of companies based on one of the University campuses, be they consultancy, service or research-based, will probably require the use of University services and facilities. The agreements to cover access to and use of space, services and facilities are generally in two forms:

- as a percentage of the net income of the company, for example 15-25%, or
- as a fully commercially-costed agreement, with a fixed amount to be paid quarterly and reviewed annually against usage

These will vary from school to school but the type of agreement will depend on the size of the company and the degree of usage of the facilities. For example, a services rendered-type company which makes heavy usage of University facilities may pay a percentage of all income. A copy of a model facilities and services agreement is available on request from the IP office.

It is not the practice of the University to subsidize its spinoff companies. However, if the initial costs associated with set up are prohibitive to the success of the company, it may be possible to trade equity for a reduced facilities and services charge with the income associated with the additional equity going directly to the School or Div.



It should be noted that, in general, it is recommended that consumables be purchased independently of the School or Department.

Employees of the company wishing to make use of the library databases must make a separate agreement with the Library Services. Academics are covered for use by their University employee status.

Where companies can re-locate off-campus they are strongly encouraged to do so, preferably within three years of formation.

## 4.6. Shareholders agreement

Once the equity negotiation and facilities and services agreements have been concluded a shareholders' agreement between the University and all of the other shareholders of the company will be put in place.

In receiving permission from the University to form a spinoff, the company will be maintaining and benefiting from an on-going relationship with the University. Therefore, it is essential that the company maintains the highest standards of administration and management to safeguard the reputation of the University.

The obligations of the company under the shareholders' agreement provides a mechanism for detailing what those standards should be and, through the appointment of a University director, permits the University to monitor that the standards are met and maintained.

It covers:

- organisation and shareholding of the board,
- frequency and minuting of board meetings
- regulations on company business and information, including monthly management accounts
- matters requiring board approval
- IP matters and confidentiality

A copy of a framework shareholders' agreement is available on request from the IP office.

Share certificates must be issued within 6 weeks of signing the agreement and should be lodged with the IP Office.



## 4.7. Sources of Finance

There are number of different sources of finance available. A representative from the IP Office can assist in identifying the pros and cons of each and the mechanism for applying for funds. If more specific assistance is required in raising funding at any stage this may be accessed in exchange for equity or the company may be charged for the service.

### 1) Funds not requiring a return/equity on investment

- Personal funds, family and friends.
- Research and Development Grants
- Loans-Small Firms Loans Guarantee Scheme

### 2) Funds requiring a return/equity

- Joint venture – funds and perhaps expertise or access to existing customer base provided by third party in exchange for equity
- The University may wish to invest funds in certain projects if funds from third parties dilute equity very significantly
- seed fund
- Business Angels
- Venture Capital



## 5. Post-company formation

### 5.5.1. Management

### 5.5.2. Responsibilities of Directors

Directors of Limited Companies are obliged under the Companies Act to act in good faith and in the best interests of the company. Academic founders should be aware of the responsibilities of being a company director which are substantial and personal. Academics receive permission to be company directors on the understanding that they do so in such a way that it does not conflict with their teaching and research duties. Permission to be a company director may be obtained by completing forms available from RIS/TTO. Permission must be renewed every [three] years.

The University may sell its shareholding in spin-out companies in cases where the company is administered in a manner which is damaging to the University's financial standing, academic or general reputation.

### 5.5.3. Company secretary

The company will require a Company Secretary. Failure to comply with any regulations can result in heavy fines from [Companies House]. Some companies have employed solicitors or accounting firms to carry out company secretarial duties on their behalf. Some accounting firms will offer this service as part of a package comprising payroll, accounting and company secretarial.

### 5.5.4. Business Development and IP assistance

Business development assistance, for example obtaining finance for the company, if not already agreed as part of the equity division, may be obtained from the University for a negotiable fee or further equity. This also applies to advice on IP matters.

### 5.5.5. Financial Services

Payroll and accounting services can be supplied by an accountant or solicitors. It is not currently possible to supply the services from within the University. Payroll is charged at an initial rate for setting up the system plus per capita. Alternatively the company may wish to buy in software to set up payroll within the company.



#### **5.5.6. Legal assistance**

No legal assistance is available from the University and companies are strongly advised to consult their own legal advisors.

#### **5.5.7. Insurance**

The company must take out statutory insurance and will be expected to take out other forms of insurance where appropriate.