

# Loughborough University SpinOut Policy

January 2020

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## Version Control

Version Number	Date	Summary of Changes
1.0	March 2019	
1.1	08/01/2020	Clarifications to treatment of Conflicts of Interest Clarifications regarding requirement to agree commitments of Founders with School management. Clarifications regarding expectation of support from the University post incorporation. Changes of names of Professional Services teams supporting SpinOuts (REO, Commercialisation Team, Legal Services).

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## 1. Executive Summary

This document seeks to refresh and clarify the University's policy in regard to approving and supporting the formation of companies spun out from our research base. The policy is a core element of a wider approach to develop a supportive environment for entrepreneurial academics, the overall aim of which is to maximise the impact of our research in the outside world.

The policy spells out the key considerations for the University and for the founders of the SpinOut, the associated assessment and approval processes, the various potential forms of SpinOut and the University's position on important terms and conditions.

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## 2. Alignment of the SpinOut Agenda with Loughborough University Strategy

The University's [Strategy](#), states that we have the ambition to develop 'Outstanding partnerships to deliver social, economic and cultural prosperity' by 2020. It goes on to say:

*"We will realise the commercial potential of our research and forge productive, collaborative links with partners across all sectors. This will ensure that we meet their requirements and that the impact of our activities helps to support economic development and drive innovation and performance on local, national and international levels."*

Clearly the ability to support academics in their ambitions to realise the commercial potential of their ideas and hence to demonstrate the real-world impact of their research is core to the strategy of the University and is a fundamental part of the remit of the Research and Enterprise Office. Where it makes more sense to form a SpinOut to realise these aims – rather than partnering with an existing company for example – then this option should be fully supported.

SpinOuts are not always, of course, the most sensible route for commercialisation and the Commercialisation Team will work with the Founders and Inventors to review the potential SpinOut based on clear criteria (see Section 4) to ascertain:

- whether a SpinOut is the optimal route to market
- whether the proposed roles and time commitments of the Founders in the SpinOut are compatible with their ongoing Research and Teaching roles at the University and whether their involvement in the SpinOut is likely to result in potential conflicts of interest
- whether the aims of the SpinOut meet the requirements of the market
- whether the SpinOut route has sufficient potential to succeed and hence achieve the desired impact

Expectations regarding the number of SpinOuts formed should be aligned with the scale of research at the University. Benchmarking against similar sized universities indicates that one to three SpinOuts per year might be a reasonable expectation for Loughborough, but also that the rate of formation will vary considerably from year to year. The University needs to have sufficient capacity within the Research and Enterprise Office to support that level of activity as part of its overall portfolio of Commercialisation projects, but should also tie into other sources of support (e.g. external advisers, the MICRA project through the Midlands Innovation consortium) and other entrepreneurial networks such as the Loughborough Enterprise Network (for students and graduates) to ensure that our SpinOuts have access to both adequate specialised support and a strong entrepreneurial ecosystem.

### 3. Objectives of the Policy

- The University wishes to develop a culture that ensures that the formation of a SpinOut is seen as a legitimate and beneficial commercialisation route.
- The University wishes to create an environment to enable those SpinOuts to maximise their potential.
- The University wishes to promote the formation of good quality SpinOuts which have the highest chance to generate impact and/or commercial return.
- The University wishes to create transparent policies and procedures which are consistently adopted across campus and which protect the interests of the Founders, their School and the University.

### 4. Definitions and Scope

**SpinOut** = Company formed on the basis of University IP

*SpinOuts usually, but not exclusively, involve academic staff. Research students (PhD or Masters) may also be involved where their contribution to the IP meets the definition of University IP. May also involve Professional Services and other support staff.*

**StartUp** = Company formed on the basis of Founder's own IP

*StartUps are usually driven by undergraduates or graduates, but occasionally could be led by or involve staff.*

**Founder** = Key staff who will take a lead role in the SpinOut such as executive management (CSO, CTO) or Non-Executive Director or who will have substantial time commitments to the SpinOut.

**Inventor** = University staff who made an inventive contribution to the IP which is the basis of the SpinOut and who therefore are entitled to a share of revenue from the commercialisation of that IP.

**NB:** Founders do not necessarily have to be Inventors, but conversely, not all Inventors have to become Founders (i.e. have an involvement in the SpinOut).

**Intellectual Property (IP)** = Any novel or valuable idea, know how or expertise that forms a key part of the value of the SpinOut. This IP can be protectable – in the form of patents, design rights, copyrights etc – or non-protectable – in the form of know-how, expertise etc.

**University IP** = IP owned by the University because it arises from the Founders' and/or Inventor's work at the University. This applies where the research is funded by the University or is funded by external sources the terms of which stipulate that the IP is owned by or controlled by the University. For more clarification, see please refer to your [Conditions of Service](#).

### SCOPE

This policy and associated support mechanisms are designed to cover the formation of **University SpinOuts based on University IP**.

- StartUps (where the IP is not owned by the University) do not come within the scope of this policy and are not covered by the associated support mechanisms.
- Where the Intellectual Property has been wholly generated by Undergraduates or Graduates and it is agreed that the IP is not owned by the University, then support for the formation of a StartUp will come from the Student and Graduate Enterprise (SAGE) Team and will be governed by University policies relating to Students. If SAGE are in any doubt regarding the ownership of the IP, then they will liaise with the Commercialisation Team to carry out due diligence.
- Where the Intellectual Property has been wholly generated by University Staff but, after review by the Research and Enterprise Office and School Management, it has been decided that the Intellectual Property has not arisen from their work at the University, then subject to the External Professional Work Procedures the Staff members may be given permission by their Dean (or Line Manager in the case of non-academic staff) to form a StartUp in their own right subject to the [External Work Procedures](#).

Further information on the practicalities of forming a SpinOut, external resources and the key issues that any Founder needs to consider will be covered in guidance material to be developed by the Commercialisation Team.

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## 5. Criteria for the Formation of a SpinOut

The following lists the key criteria the University will use when deciding whether to form a SpinOut. More detailed guidance can be obtained from the COMMERCIALISATION Team. It also acts as a useful set of criteria for any Founders to review their own plans for spinning out, as private sector investors will also want to have a clear answer on all of these elements before committing investment.

Gaps in the criteria are to be expected at the early stages of consideration of a SpinOut, but the R&EO (and potentially external parties) can work with Founders to ensure that all criteria are met before the business is finally spun out.

Different forms of SpinOut may require these criteria to be met to a lesser or greater extent – see Section 6 for clarification.

### 1. Clear Rationale for SpinOut vs License/Collaboration

A clear case must be made for the formation of a SpinOut over other forms of technology transfer or commercialisation such as licensing, consultancy via LUEL or contract research.

### 2. Clear Proof of Concept Pathway

The risks going forward to prove the concept behind the business must be clearly identified and a clear plan must be in place to minimise and manage these risks. These risks may be technological, personnel, project or commercial in nature.

### 3. External Validation of Demand

Clear evidence must be available that the market for the solution has been identified, that there is a clear value proposition which aligns with the needs of that market and that there is tangible evidence that customers have validated that proposition.

### 4. Compelling Business Case

A robust financial plan must be developed that clearly identifies all costs that the business will incur and how these will be funded, including planning for different scenarios. It must be clear that the SpinOut has a good chance of being financially viable without further University funding.

If the SpinOut is to be funded by private investors (such as angel investors or venture capitalists), then the business plan must demonstrate how the SpinOut will realise the return on investment that these investors require.

### 5. Bankable Management Team

The core management team to lead the SpinOut must be identified and be of sufficient calibre to be able to attract appropriate finance for the business.

### 6. Agreed Resource Allocation of Academics and Evidence of Founder's Commitment

- a) The Founders involved in the SpinOut must demonstrate that they are willing to commit sufficient time to the business to make it a success.
- b) There must, however, be agreement with the School and any appropriate line management that the time commitment of the Founders to the SpinOut is in line with their other commitments to Research, Teaching or other roles within the University.

### 7. Agreed use of University Facilities and Resources (if any)

Should the SpinOut require access to any University facilities (such as lab/office space, testing or fabrication equipment) or personnel (e.g. Academics, RA's, PhD students, technicians) then the use of

those facilities or personnel will need to be agreed with the School and arrangements made to pay for access at commercial rates.

## 8. Agreement on use of University Intellectual Property (IP)

SpinOuts, by definition, are predicated on University owned Intellectual Property, whether that is formal IP (patents etc.) or informal IP (know-how). Arrangements for the SpinOut to access that IP must be negotiated on an arms-length basis.

## 9. Agreed Governance Approach

It must be recognised that forming a SpinOut could result in significant governance issues – in particular, conflicts of interest. A clear plan must be developed with both the School and the University to manage both the internal governance of the SpinOut and the governance of the relationship between the SpinOut and the University after spinning out.

**Conflicts of Interest:** The Founder's roles in the SpinOut should not result in influence being brought to bear or decisions being made which result in a conflict of interest with their responsibilities and duties as employees of the University. For example:

- Founders should not direct or supervise the work of students, postgraduates, or RAs on projects which directly or indirectly benefit the SpinOut. Alternate supervisors or co-supervisors should be found to ensure that the interests of the individuals on the project are taken care of.
- Founders should not ask/expect staff for whom they have line management responsibility (or other influence) to carry out work which benefits the SpinOut.
- Founders should not utilise in the SpinOut or transfer to the SpinOut any knowledge, data or IP from projects at the University which are not subject to an arms-length agreement with the SpinOut.
- Founders should not use their influence or decision-making responsibility to ensure commitment or prioritisation of the use of facilities, equipment or technical staff to the SpinOut.

Founders should also familiarise themselves with the [University's Conflicts of Interest policy](#) and review how this might impact their involvement in the SpinOut.

## 10. Robust Intellectual Property Strategy

A robust strategy must be developed to identify the core IP on which the SpinOut is to be based, to protect that IP and to maintain and defend that portfolio in the future.

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## 6. Forms of SpinOut

Type	Purpose of SpinOut	Uni IP?	Key Criteria (Section 4)	Notes
<b>Growth SpinOut</b>	Attract investment to go to market and realise significant return for all shareholders	Y	1- 10	Business plan must demonstrate route to significant return on investment
<b>Interim</b>	An interim company to attract public/private funds not available to Uni to progress the opportunity and then sell out/licence	Y	1-10	To be supported only if new funding adds value leading to a defined exit (e.g. investment, licensing)  Business plan must demonstrate route to being self-sustaining
<b>ServiceCo</b>	Provide on-going services to external parties on a commercial basis	Y	3-7, 9	Business plan must demonstrate route to being self-sustaining
<b>Social Enterprise</b>	Develop impact through a not-for-profit venture	?	1, 2, 4, 6, 7,9 <u>Plus</u> a clear pathway to impact	Business plan must demonstrate route to being self-sustaining
<b>StartUp</b>	Staff member (Academic, RA, PGR etc.) to exploit their own IP	N		- If no financial return or Impact for LU – then must be led by Staff member subject to External Work Procedure - If return or Impact for LU – then R&EO may agree to support as per SpinOut

## 7. Key Policy Elements

For this policy to be successful, the following key elements need to be adopted and implemented:

- **Formal Policy Elements**
  - University assessment procedures and criteria (Section 8)
  - University position on key SpinOut terms and conditions (Section 9)
  - University position on University-SpinOut engagement post incorporation (Section 9)
- **Implementation**
  - The policy and associated procedures need to be clearly signaled and be accessible to all academic and professional services staff.
  - The Research and Enterprise Office must ensure that it has a team with the skills and bandwidth to support the formation of SpinOuts; a clear view on legal agreements; and access to experienced advisors internally and externally (business, legal, IP, finance);
  - The overall approach to SpinOuts, as well as the rationale for specific SpinOuts, should ideally be in alignment with the relevant Schools' Impact Strategy.
  - The specific arrangements for any SpinOut in regard to the involvement of academics as Founders, any use of other research staff, students, lab space and equipment must be agreed with the School Management.
  - The University must ensure that it provides access to suitable support mechanisms and an entrepreneurial environment. Elements of this can be in-house, but others can be accessed externally (through other networks for instance). Important aspects of this include:
    - Entrepreneurial training schemes
    - A network of external entrepreneurs as business mentors and potential CEOs
    - Funding for commercialisation (proof of concept funds, venture capital etc.)
    - Incubator space to allow SpinOut staff to focus on the business and to network with and learn from like-minded entrepreneurs
    - Alignment with Student and Graduate Enterprise (SAGE) activities and support mechanisms.

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## 8. Loughborough University Assessment and Completion Process

*Members of University staff should note that the Research and Enterprise Office is the sole department in the University with the authority to commercially exploit the University's IP. This activity is managed through the Commercialisation Team and contracts dealing with this commercialisation are drafted and negotiated in conjunction with the Legal Services Team and (where appropriate) external counsels. Such contracts are signed by an appropriate authority in the Research and Enterprise Office or in the senior management team of the University as stipulated in the Contracts Approval Policy. Staff should in no circumstances look to negotiate or sign any agreement relating to University IP.*

The assessment approach outlined below is common to all exploitable ideas arising from University Research – whether they are licensed to an existing company or commercialised through a SpinOut. Inventors are also referred to the University's Intellectual Property Policy for more detail of the overall approach and, in particular, policies relating to ownership of IP and to sale or license of IP arising from University Research.

Prospective SpinOut Founders should not underestimate the amount of time and effort that they will need to put in to form a SpinOut. In addition, significantly more time will need to be spent by the Research and Enterprise Office and other Professional Services and there are many more issues and possible risks to be considered than in executing other forms of commercialisation deals (such as licences).

- It should therefore be expected that the University will scrutinise any prospective SpinOut very closely.
- Founders should also expect a timescale of (at the very least) six months to move from a request to SpinOut to completion of contracts. This is in addition to any time required to complete further assessments (e.g. proof of concept, market analysis).

## Stage 1: Opportunity Assessment and Development:

### a) Idea Assessment

As with any exploitable invention or idea arising out of Research, the Inventors should engage early with the Commercialisation Team to carry out an initial review of the potential value of the opportunity. The Commercialisation Manager (CM) assigned will work with the inventors to review the commercial potential for the idea, the potential for IP protection and whether licensing, research collaboration or SpinOut is the most viable route to realizing the value and impact expected.

If after this initial review, the CM is satisfied that there is sufficient basis for commercialisation then the idea will be logged as an Opportunity to be further supported. If it is felt that there is currently insufficient basis for commercialisation, then feedback will be given to the Inventors and they can choose either to develop the idea further in the research domain or to pursue more promising ideas instead.

### b) Opportunity Development

For each Opportunity which passes this initial stage gate, a plan will be developed by the CM/Inventor team to make progress towards the expected commercialisation goal. This plan may require further funding to add further value to the proposition and get the Opportunity to the stage where external private partners (licensees or investors) would be willing to invest. This funding could come from internal or public-sector sources and could cover the costs of elements such as IP protection, market analysis, technical proof of concept, testing, training of inventors in commercial matters or business plan development. The CM will help the team to identify and secure suitable sources of funding. Examples of such funding include:

- [Enterprise Projects Group \(EPG\) funding](#). Internal funds allocated to the University by EPSRC and HEIF.
- Entrepreneurial training schemes – such as [iCure](#) and [Medici](#).
- Other funding sources are also listed on the [EPG web-page](#).

Usually the team will keep an open mind throughout this process on the eventual commercialisation route until there is greater clarity on the potential, where it fits in the market and what is still left to be done to enter the market.

While the licensing route is more common, a SpinOut may be appropriate in the following circumstances:

- No existing company is ready or able to take on the IP on a licensing basis
- The invention consists of a portfolio of products, or is an enabling technology capable of application in a number of fields
- The Inventors are prepared to invest significant time and effort to launch the company
- A corporate vehicle will be seen more positively in the market by external organisations
- There is the potential for much higher returns from the creation and growth of a new company that outweighs the additional risk.

Where a SpinOut option is proposed, the CM will work with the academic team to review the Opportunity against the criteria set out in Section 5. If the Opportunity does not sufficiently meet the criteria, then feedback will be given and alternative routes to market (e.g. licensing) will become the focus. If there is still seen to be potential for a SpinOut, but there are gaps in the assessment then the commercialisation plan should be adapted to allocate time and resources to fill these gaps (e.g. business plans, management team).

**Stage 2: SpinOut Review:****a) External Review:**

When a SpinOut becomes a likely option, the R&EO will seek opportunities to present the opportunity and the team to external advisors (VCs, Angel Investors etc.) for informal feedback on investment likelihood and strategy.

The feedback given will be used to decide on next steps, which as before might include:

- i. Proceed to formal approval for the SpinOut
- ii. Address identified gaps or refocus strategy before proceeding
- iii. Seek alternate routes to commercialisation (e.g. licensing)
- iv. Refocus on R&D route.

**b) Formal Approval:**

Before seeking formal approval from the University, the SpinOut Team must ensure that the Opportunity meets the key criteria (See Sections 5 and 6).

It is to be expected by this point that the SpinOut Team will have negotiated with the R&EO the key terms (legal and financial) on which they expect to SpinOut (the 'Heads of Terms') as these terms will outline the approach to many of the key criteria (e.g. shareholdings, board structure, access to IP, access to facilities).

On request by the R&EO, the Enterprise Committee (EC) will authorize the formation of a Working Group, including the Pro Vice Chancellor for Enterprise and representatives of R&EO, Finance, and the relevant School(s) as well as a member of Council or appropriate external advisor. The Working Group will review the proposed SpinOut against the criteria.

As and when the Working Group are satisfied that the SpinOut meets the criteria, they will submit a recommendation to the Operations Committee for Approval.

**Stage 3: Contract Negotiations and Completion:****a) Contract Negotiations:**

On gaining formal approval to SpinOut, the University and the Founders will then independently seek legal representation and start the process – based on the Heads of Terms developed to date - of negotiating the detailed legal agreements required to form the SpinOut (e.g. Shareholders Agreement and Articles of Association) and to confirm access to IP (Licence Agreement) and/or people or facilities at the University (Service Level Agreement).

If external investors are already on board by this point, it is likely that they will be actively involved in the negotiations.

Founders may be given advice by either the R&EO or their investors, but it should be remembered that neither can represent the specific interests of the Founders. We recommend, therefore, that they seek independent legal, tax and financial advice to ensure that their interests are represented.

**b) Completion:**

Prior to completion, a company must be incorporated, and it is this company which will be the party to the legal agreements.

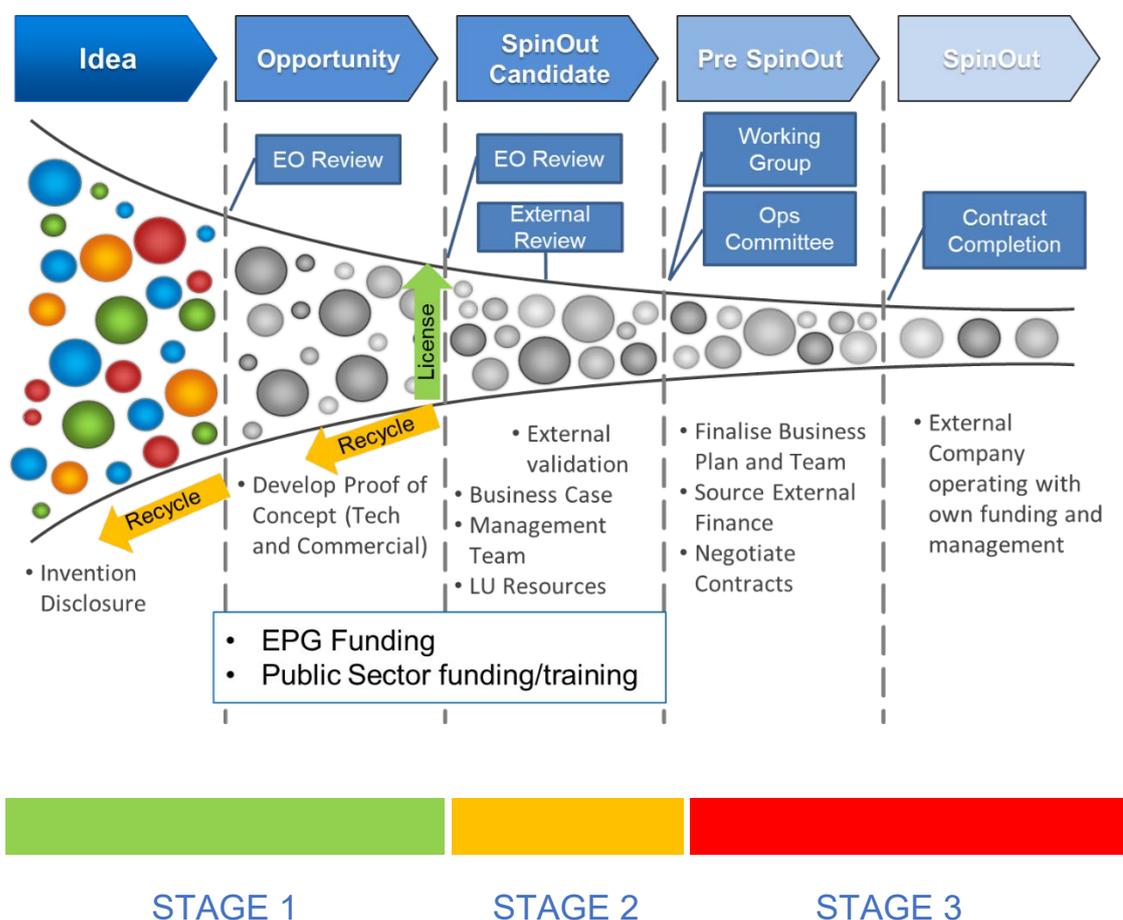
The following documents will be required upon formation of a SpinOut:

- Incorporation documents (known as the Memorandum and Articles of Association)
- Shareholders agreement
- Loan agreements (if appropriate)
- Investment agreements (if appropriate)
- IP licences
- Service contracts
- Consultancy agreements

- Facilities agreements and licence to occupy
- Resources and Governance Agreement: An agreement with the School and the University on the responsibilities, time and resource commitments of the Founders in the SpinOut, the management of their existing work commitments in the University and the management of any potential conflicts of interest.

It is a pre-requisite for completion that the funds required to implement the business plan are committed (by private investors or from other sources). The University will not step in to underwrite the finances of a SpinOut and must have confidence that the SpinOut has sufficient finance for it to reach the next commercial milestone and associated funding round.

On signing of all relevant agreements, the SpinOut process has been completed and an independent company has been formed with the express aim of exploiting the Opportunity. This company should operate on a transparent, 'arms-length' basis with the University from this point on – particularly in regard to access to University facilities, staff and IP. A clear governance plan should be in place between the SpinOut and the University to ensure that there can be no accusations of a conflict of interest, misappropriation or state-aid issues for instance.



## 9. University Position on Key Terms and Conditions

### 9.1 Incentivisation:

The equity split between the University and the Founder in the SpinOut before any external investment will follow the standard revenue share as outlined in the Intellectual Property Policy – namely 50% to the Founders, 50% to the University.

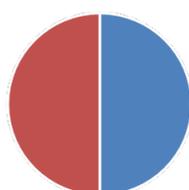
In addition to being in line with the standard revenue share, this share of equity is very much aligned with best practice at many other UK universities and is in fact, more generous than some.

To ensure consistency of approach and fairness to all prospective SpinOuts, the above equity split should not be seen as negotiable. In exceptional circumstances changes may be considered, but the 50:50 split should be seen as a standard that is to be applied in almost all cases.

Founders should note, however, that it is standard practice for key staff in a SpinOut to be incentivised for their active engagement through the grant of additional equity from an options pool. This is usually a discussion to be had with the investors and any management team that are brought in.

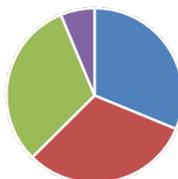
Founders should set their expectations that whatever their initial shareholding, this will reduce over the lifetime of the company as other investors come in and gain equity. As an illustration:

#### Pre-Investment



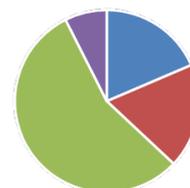
■ LU ■ Founders

#### Round 1 (Seed) Investment



■ LU ■ Founders ■ Investors ■ Options

#### Round 2 Investment



■ LU ■ Founders ■ Investors ■ Options

*For illustration only*

The Founders should also note that, where they are named contributors to the intellectual property (Inventors), they have the additional potential to gain financially from any royalties due under the licence of that IP to the SpinOut (Section 9.2).

### 9.2. Access by the SpinOut to Intellectual Property

By definition, a SpinOut will require access to Intellectual Property that the Inventors and/or Founders have developed during the course of their employment at the University. This IP may take a form that is protectable through various forms of IP rights (such as patents, design rights or trademarks), or it may take the form of know-how and expertise that is not protectable but is nevertheless valuable. If it has been developed before the point of forming the SpinOut it is referred to as **Background IP**.

The CM will carry out due diligence to assess the provenance of the IP and assess whether there are other claims to the commercial use of the IP (such as previous contract research funding by industry).

Investors will carry out their own very detailed due diligence on the IP and it is very sensible for both the University and the Founders to be comfortable with the details of basis of the IP.

If the due diligence is clear, the University will expect to license this Background IP into the SpinOut as part of the suite of agreements necessary to form the SpinOut. It is common that this licence will be exclusive to ensure that the SpinOut has the ability to protect its position in the market, but it is possible that the licence could be limited to a particular field of use.

Like any other transaction between the University and the SpinOut, the licence must be contracted on an arms-length basis to ensure full transparency, to protect the interests of the University (and any Inventors who have chosen not to become Founders) and avoid conflicts of interest or tax issues. It is to be expected that the licence will be on commercial terms and that the SpinOut will pay royalties, but also that the terms will take into account the stage of the business. For example, a SpinOut will not typically bring product to market, nor make a profit for a number of years after formation.

As and when such a licence does generate royalties, then these revenues will be split between the University and the Inventors after deduction of costs according to [Section 28 of the Conditions of Service](#) and the associated Intellectual Property Policy. As stated above, if the Founders are also Inventors then they also stand to gain from this income stream.

The University will not consider (and won't be obliged to) assign the IP to the SpinOut until such a point that the company is on a firm financial basis and has made significant progress towards commercialisation. In essence, the University will view the SpinOut as it would any other external company that it might licence IP to. If that company were an early stage start-up, we would also expect progress towards milestones that de-risked both the company and the technology before we would consider a long-term commitment of the IP. This ensures that the University retains options to seek other routes to maximise impact from its research if the initial partner is not capable of doing so.

The University may also consider licensing IP from ongoing or future University research programmes (**Pipeline IP**) into the SpinOut if this is closely aligned to the aims of the SpinOut, but this will be subject to:

- adequate additional consideration for that IP (to satisfy the terms of the University's charitable status),
- due diligence on other claims on that IP (e.g. research funded by other parties) and
- an assessment of the impact on academics at the University who remain active in that research domain but who may not be involved or incentivised by the SpinOut. A Pipeline Agreement should only be entered into where such an agreement would not restrict future research work at the University.

A Pipeline Agreement will normally be limited to:

- the activities of named individuals who have given their agreement to such a pipeline (a general term of 'research group' should be avoided unless clearly defined)
- a clearly specified narrow field
- a maximum period of three (3) years following the date of agreement

### 9.3. SpinOut Board

The Board of the SpinOut will be made up of a number of Directors who have a legal and financial duty to act in the interests of the company.

It is common for some or all of the Founders to take up a position as a Director on the Board. If they do so they should consider carefully the responsibilities and risks of doing so. Acting as a director carries extensive legal responsibilities, with criminal penalties for non-performance/negligence on some occasions. More detail on the nature of Boards and Directorships – and options for training – can be provided by the Commercialisation Team but it is the responsibility of the Founder to ensure that they are fully briefed and insured against such risks.

In addition, no member of staff will be permitted to become a Director without the express consent of their Dean. In the case where the Dean wishes to become a Director, approval must be sought from the Provost.

The University will expect to have at least one representative on the Board. At minimum this will be as an Observer but could be as a Non-Executive Director where the University has specific objectives or has specific expertise to support the SpinOut.

#### 9.4. Academics as Entrepreneurs

The default position is that Academics should NOT take up lead business management roles (such as CEO, MD or Chief Operating Officer) in SpinOuts. This reflects:

- a) a potential conflict with Academic commitments. A management role will require significant input of time as well as intellectual bandwidth, which may make it difficult for the Academic to meet their on-going research and teaching commitments.
- b) a lack of appropriate training or experience. Managing a SpinOut requires significant skills and expertise in business management (particularly driving towards achieving commercial milestones – but also HR, business development, legal, financial) that are usually not part of the skill base of staff coming from a University. Investors are unlikely to invest in a SpinOut unless the core management team has the required skills and experience.

Exceptions may (rarely) be considered in the case of certain types of SpinOut (e.g. Service or Interim – see Section 4) where there is minimal requirement to achieve commercial milestones (for instance), or where there is clear evidence of the required skillset. Necessary skills would include:

- Financial management of a business
- Business planning
- The ability to raise private sector investment (not grants)
- The ability to lead a team to realise commercial milestones (product to market, sales targets etc.)

The Commercialisation Team will support the Founders in sourcing appropriately experienced senior managers and may also help identify suitable training for Founders who have the potential to grow into such a role.

It is much more usual – and appropriate – for the Founder(s) to take up a lead technical role, such as Chief Technical Officer or Chief Scientific Officer, as this both matches their skills and experience and ensures continuity in driving forward the technical aspects of the business.

#### 9.5. Governance

In its engagement with the University (both pre and post incorporation), the SpinOut and its Founders should always operate in a manner that is transparent, open and that avoids conflicts of interest. For more detail on the University's approach to Conflicts of Interest see [Link](#). The detailed nature of this governance approach will be agreed for each SpinOut between the Founders, the University (represented by the R&EO) and the relevant School management\*.

##### Conflicts of Interest

A key tenet of this governance should be that Founders (or other SpinOut employees) should not be put into a position of conflict of interest where they make the final decisions on projects, budgets, staff or facilities within the University or where they may have privileged access to information and at the same time they also stand to gain financially from the output of such projects, access to information etc. through the SpinOut.

##### Access to University Resources

Once the company has spun out from the University it may need access to University Resources (staff, students, lab or office space, test equipment etc.) to be able to meet its stated aims. Access to such resources must be arranged on a fully transparent, 'arm's-length' basis and not arranged on an informal basis.

'Arm's length basis' means that any terms and conditions must be equivalent to those which would be offered/accepted to/from an external organisation. This is required to ensure that the transactions do not conflict with the University's charitable status. Because of our status, the University is not allowed to subsidise the activities of a commercial organisation.

The default position is that such access should be paid for at commercial rates. Any deviation from this basis is at the discretion of the Dean of the relevant School\*. The terms and conditions for access to University resources should be negotiated with the School on a reasonable basis but should not result in the School funding or subsidising the SpinOut or unnecessarily profiting from the relationship.

Completion of negotiations for access to such University resources, including the consent of the Dean\*, is a pre-requisite for the University to formally approve incorporation.

Key issues that will require an initial agreement - and a robust and transparent future decision-making process - include:

- Allocation of University facilities (e.g. lab space, office space, testing equipment)
- Use of staff (academic, technical, PDRA) or student (undergraduate or postgraduate) time
- Sharing of confidential information between University staff and SpinOut staff and Founders
- Costing and pricing of services provided by the University to the SpinOut

\* In the event that the Dean is one of the Founders, then the consents referred to above must be referred to the Provost.

### **SpinOut Independence**

The University will expect SpinOuts to become independent of the University as soon as possible. This is especially so in relation to funding, employment of staff, use of professional advisers, use of space, and use of equipment. The SpinOut should not expect any further financial or other in-kind support from the University once they have formed. Spin-out companies, and the staff involved in such companies, must not under any circumstances purport to be acting on behalf of the University, and the University's logo, letter head or address must not be used for any correspondence issued on behalf of spin-out companies.

### **Company Governance**

The University will also expect the SpinOut to be run by its Board of Directors according to principals of good governance and that the Directors be properly equipped to perform their duties. A Directors Code of Conduct should be developed to inform individuals of their obligations as a director, which must be signed upon taking a directorship. The SpinOut is required to obtain professional indemnity insurance and directors' and officers' insurance from commencement.

SpinOut company Boards of Directors should meet at least every two months initially, with detailed and accurate minutes to be recorded in the company records. The Board will be required to provide regular reports to the University (and other shareholders). These reports will include basic information on financial performance, sales and other significant changes and events.

The University Finance Office is responsible for formal monitoring of the financial performance of SpinOut companies. This will principally be to ensure that ownership of equity does not compromise the University's tax position.

## **9.6. SpinOut Location**

The default position is that SpinOuts should aim to locate their staff in a suitable business environment (such as LUSEP or other incubator) to ensure complete focus on the business goals and avoid being side-tracked with research or teaching commitments. Access to lab space and facilities will of course be necessary until such a point that the SpinOut has sufficient funds to support its own facilities.

If SpinOuts have to remain within the academic offices for a period of time, this should be seen as a strictly temporary arrangement and they should aim to move out within a maximum of one year.

Loughborough University Science and Enterprise Park has developed (and is further developing) facilities for business 'incubation' – specifically to nurture innovative young companies. The facilities provide a comprehensive supportive environment with flexible facilities, mentoring, training and networking, designed to maximise chances of success. Space ranges from a desk in a shared space, to separate units of considerable size. The strategy is that companies will move into larger units as they grow.

## **9.7. Advice to Academics**

The R&EO will support Founder teams to the best of their ability and will highlight or explain the key legal, financial and tax issues related to forming a SpinOut, becoming a Director and other related matters. It should be noted, however, that as the SpinOut is effectively moving outside the University, the Founders will become a separate party to the University in negotiations. The University and its staff can therefore not represent them.

All Founders should therefore seek their own advice in regard to legal, tax and financial matters.

The University may consider (as part of an EPG project for example) supporting appropriate training of founders.