

Guidelines from the University Executive Board for the establishment of spin-off companies at the University of Bern

Based on article 2, para. 5 from the Law on the University (UniG) and article 5 of the Statute of the University of Bern (UniSt), the University Executive Board issues the following guidelines:

Preamble

Spin-off companies are an important instrument for commercial implementation of university research. They strengthen Bern's position as a location for innovative business. For university graduates, spin-off companies also represent new career options. The same applies to start-up companies. For these reasons the University of Bern supports the establishment of spin-off and start-up companies in every way it can.

The following is a description of the framework and modalities which are to be observed for founding companies (so-called spin-off companies) at the University of Bern and the associated transfer of university research results.

The guidelines are also applicable in cases where co-founders of start-up companies exchange or interact with research groups at the University of Bern.

Further guidelines of the University Executive Board, namely its directives on the commercial exploitation of intangible assets of the University of Bern, must also be observed.

1. Definitions

¹ Spin-off companies are legally independent enterprises founded with the aim of commercially implementing intellectual property belonging to the University of Bern, developed in research, teaching or other university operations.

² Start-up companies are legally independent companies that were (co-) founded by employees of the University of Bern, but do not use any protected intellectual property belonging to the University of Bern.

2. Support for the establishment of spin-off companies

¹ The Innovation Office, located at the Vice-Rectorate Research, is the central contact point and hub of the University of Bern for the topics of innovation and entrepreneurship. It offers support and advice for spin-off and start-up companies and other commercial enterprises of

students, researchers and professors from the University. This includes in particular the establishment of the basis for the founding team's licensing negotiations with Unictetra (according to para. 3.1).

² The technology transfer office Unictetra (www.unictetra.ch) advises members of the University of Bern interested in founding a spin-off company, with a focus on validation of the business idea, protection of intellectual property, and the technology transfer process (licensing) to the spin-off company.

3. Licensing negotiations

¹ The basis for Unictetra's licensing negotiations with the founding team are:

- a. A convincing and sustainable implementation plan (pitch deck or business plan); An entrepreneurial spirit and the necessary experience of the founding team (or consultation with appropriate external expertise);
- b. Secured financing for the spin-off company, or a concrete plan on how the required financial resources will be acquired.

² In order to avoid conflicts of interest, Unictetra conducts licensing negotiations with founders, investors or representatives (lawyers, licensing experts) of the spin-off company who are not simultaneously employed at the University of Bern. Exceptionally, licensing negotiations may also be conducted with members of the University of Bern if they are only employed at the University of Bern for a short time and will join the spin-off company after its foundation.

4. Licensing agreements

¹ Protected intellectual property developed at the University of Bern belongs to the University of Bern. It may only be used by third parties under terms of a licensing agreement. This also applies if it has been personally developed by one or more of the spin-off's founding members as part of their employment at the University of Bern.

² Protected intellectual property may include patent applications, patents, software, material, proprietary know-how (trade secrets), trademarks, or designs. Use by the spin-off company without a license from the University of Bern is not permitted.

³ A license to a spin-off company is granted under usual terms for university licenses, while taking into account the special situation of spin-off companies. Among other things, the following principles apply:

- In order to prevent cash outflow in the early life of the spin-off company, license fees may in part consist of shares granted to the University of Bern at no cost (instead of a license issue fee and early milestone payments);
- Revenue from the sale of products or services covered by the license is shared with the University of Bern (royalties);
- Sublicensing is possible once the licensee has contributed substantially to the commercial development of the licensed property;
- The licensee bears the costs of further patent proceedings after conclusion of the licensing agreement;

- Milestones are set for the commercial implementation of the licensed property. If the licensee does not meet the milestones, the University of Bern has the right to terminate the license.

Further details can be found in Appendix A.

⁴ Intellectual property rights belonging to the University of Bern are, as a matter of principle, not assigned to a spin-off company. Upon request, the University Executive Board may grant exceptions in the case of intellectual property that is jointly owned by the University of Bern and the spin-off company and in which the share of the University of Bern is insignificant (20% or less).

Furthermore, in case of a trade sale of the spin-off company to a larger company, an assignment can be requested from the University Executive Board. Here, it must be ensured, no matter what, that the intellectual property rights (namely the patent rights) are transferred back to the University of Bern if the property is not used. The University Executive Board is not obliged to grant such a request.

5. Handling potential conflicts of interest

A. Existence of conflicts of interest

¹ A conflict of interest exists when personal interests or configurations influence or may influence the professional judgment, conduct, or decisions of members of the University of Bern, or an indication of the existence of such a configuration may arise.

² An increased risk of conflicts of interest exists in particular in the following cases:

- Acting as a member of the board of directors or member of the management board of a spin-off or start-up company;
- Performing paid or unpaid work for a spin-off or start-up company;
- Owning shares of a spin-off or a start-up company;
- Having business relationships with related persons to which one of the preceding points applies.

B. Handling conflicts of interest

¹ If there is a conflict of interest according to Section A or if such a conflict or the indication of such a conflict could arise, this must be disclosed to the University of Bern by the person concerned without delay so that the necessary measures can be taken.

² Members of the University of Bern who find themselves in such a conflict of interest must be careful not to infringe or circumvent intellectual property rights of the University of Bern and may only use public funds, third-party funds, university resources, and personnel in the interests of the spin-off or start-up company with the written approval of the University of Bern. They may not act in the name of the University of Bern in connection with their own activities for the spin-off or start-up company. In particular, the use of the University e-mail address or signature is not permitted. Furthermore, they may only disclose new research results and other confidential information from the University of Bern to the spin-off or start-up company under a written contractual arrangement.

³ Full-time employees of the University of Bern are not allowed to hold an operational position in spin-off or start-up companies.

⁴ Part-time employees of the University of Bern who intend to work simultaneously for a spin-off or start-up company must obtain prior approval from the University Executive Board (see article 93 para. 1 Ordinance on the University (UniV) and line 3 of Guidelines on Secondary Employment at the University of Bern). If the activity at the University of Bern and the spin-off or start-up company is in overlapping areas, the respective approval shall include a provision regarding the intellectual property rights created by this person irrespective of the place of work.

⁵ Members of the University of Bern who wish to become members of the Board of Directors or the Executive Board of a spin-off or start-up company must obtain prior approval from the University Executive Board (see article 95 para. 2 (UniV)).

⁶ Members of the University of Bern who are involved in a spin-off or start-up company must also respect the following:

- They may not participate in the licensing negotiations between the University of Bern and the spin-off company (avoidance of conflict of interest).
- They must disclose their shareholdings in the spin-off company (including options) to the University of Bern without being prompted to do so. Such a disclosure obligation also exists for members of the university who participate or cooperate in any way in start-up companies.
- In order to ensure full transparency, they must disclose to the University of Bern any consulting agreements or other contractual arrangements with the spin-off or start-up company and other activities for its benefit (including planned purchases), even if this is merely a secondary activity.
- They may not direct their research specifically to the needs of the spin-off or start-up company or deliberately use their research results to provide it with an advantage that is withheld from other companies.
- Professors must not have any privileges compared to the other founders when founding the company. As long as no investors are involved, it is recommended that the operating team owns a clear majority of the shares at the time of foundation.

6. Research Collaborations

¹ Any research collaboration between a spin-off or start-up company and the research group of a member of the University of Bern's who is involved in or working for this company must be governed by a written contract.

² The corresponding agreement must be co-signed by a member of the University Executive Board.

³ Research collaborations which involve clinical trials are to be avoided. If this cannot be avoided, it must be ensured that members of the University of Bern involved in the spin-off company are not principle investigators of the respective studies. Justified exceptions are

only possible with the written approval of the responsible member of the University Executive Board. In this approval, any conditions for the project are to be specified.¹.

7. Use of the name and logo of the University of Bern

The name and logo of the University of Bern may only be used by a spin-off company with the prior written consent of the University Executive Board.

In addition, the University of Bern grants spin-off companies the right to use the "University of Bern Spin-off Logo" upon conclusion of an agreement.

8. Use of premises and other infrastructure of the University of Bern

¹ The use of premises of the University of Bern by a spin-off company is possible depending on availability, but must be governed by a written contract. This must contain information on the time limitation and amount of compensation. Other uses of infrastructure (equipment, facilities) as well as the communication and information services of the University of Bern must also be specified in writing. The Administrative Director's Office is responsible for these agreements.

² The use of the address of the University of Bern (c/o University of Bern) requires prior approval by the University Executive Board (signing of a domicile acceptance statement by the Administrative Director).

9. Entry into force

These guidelines shall enter into force as of May 1, 2021.

This document is a translation that is provided for information purposes only. It is not legally binding. In the event of a dispute about the interpretation of an article, the text of the original German version will therefore always prevail.

¹ The following conditions should be considered in particular: Mandatory disclosure to patients of existing vested interests (transparency); requirements for the use of patient data from Inselspital or reference to applicable processes; if necessary, analogous requirements for product testing outside of clinical trials.

Appendix A: Spin-off license conditions

1) Equity

The share of equity depends on the state of the technology at the time of licensing and the amount of other financial compensation. It is usually in the range of 5-9% (with antidilution provisions until the first significant financing round has taken place), or in the range of 8-12% without antidilution provisions.

Low values (in extreme cases even lower than the range mentioned above) are applied if:

- Technology is in a very early phase of development, little or no proof-of-concept data is available
- Royalties and shares of sublicensing revenues are above average
- Intellectual property protection is weak and easily circumvented; there is dependence on third-party intellectual property rights
- The market is difficult or small

High values (in extreme cases even higher than the range mentioned above) are applied if:

- Technology is in an advanced stage of development (e.g. functional prototype available, comprehensive animal or other data)
- Royalties and shares of sublicensing revenues are below average
- Intellectual property protection is strong and difficult to circumvent
- There is significant market potential

2) Royalties

Royalty rates are in the standard range for university licenses. As a guideline, the following applies under normal conditions (e.g. normal profit margin):

- Technology with high investment requirements after licensing (>100 million CHF, e.g. pharma): around 2%.
- Technology with medium investment requirements after licensing (>10 to 100 million CHF, e.g. MedTech): around 3%.
- Technology with low investment requirements after licensing (<10 million CHF): around 3-5%.
- Technology near market when licensed: >5%.

Royalties relate to sales of the licensed products, regardless of whether the sale is made by the licensee or a sublicensee (reach-through royalties).

3) Sublicensing fees

The share of sublicensing fees (upfront payments, milestone payments, etc.) payable to the University of Bern depends on the extent to which the licensee has further developed the licensed property after the license was concluded up to the time of sublicensing (little further development – high share, extensive further development – low share). Sublicensing can

only take place after certain implementation obligations have been fulfilled. The share of sub-licensing fees is usually between 5-25%.

4) Implementation obligation

The license agreement specifies milestones, and deadlines for reaching them. If a milestone is not reached, the University of Bern may request the submission of an adjusted schedule for further development. If it is not possible to agree in good faith on an updated schedule for the milestones, or if the licensee has ceased development, the University of Bern may terminate the license agreement.

The license agreement may stipulate that the dates for meeting milestones be postponed within a reasonable time frame in exchange for payment of fees.

5) Liability

The University of Bern assumes no liability with regard to the licensed property and no guarantees that use of the license does not conflict with the rights of third parties. It shall be indemnified and held harmless by the licensee for any damage caused by the licensee through the use of the license.