



Explaining the National IP Deal Terms for spin-offs

Explaining the Dutch Research Institution's
investment terms for IP based startups

2025

1 Introduction

Spin-offs are based on disruptive research results generated by Research Institutions. These ventures are granted access rights to or sometimes ownership of Research Institution's Intellectual Property ("IP") and often an exclusive right to use that IP for commercial purposes is granted.

The Principles aim to expedite the spinout process, enabling stakeholders to achieve financial returns and achieve the goal of Research Institutions to generate positive impacts from their research.

Granting those rights is governed by specific commercial and non-commercial terms, captured in a license agreement and potentially a subsequent transfer agreement.

National IP Deal Term Principles are a set of best-practice investment and licensing terms for the formation of spinout companies, developed and agreed upon by leading VC investors and Research Institutions. Designed to foster fair and transparent deals, the Principles aim to expedite the spinout process, enabling stakeholders to achieve financial returns and achieve the goal of Research Institutions to generate positive impacts from their research.

The Principles address compensation and agreements regarding IP rights in situations where an inventor, a

researcher or an employee or entrepreneur of the Research Institution seeks to start a company based on IP owned by the Research Institution. The Principles aim to maximize efficiency, fairness, and transparency. In this document the Principles are outlined according to which rights to the IP may be granted.

These explanatory notes to the Principles aim to provide researchers and investors with deeper insights into the diverse interests involved in spinning out a company and how universities balance these complex and interconnected interests to decide on company formation. Emphasizing a fair, transparent and smooth process, the Principles support innovation and entrepreneurship by streamlining and clarifying processes, making it easier to bring innovations to market.

When TTO is investing €
Eg. Royalty + Shares

IP



IP for Royalty

€



€ for Shares

**What the current IP
Deal Terms cover**

When TTO is investing €
Eg. Only Shares

IP



IP for Shares

€



€ for Shares

**What the current IP
Deal Terms cover**

While the Research Institution drafts a deal based on these Principles, it can decide for itself which specific options or rights to include in the deal. For example, a Research Institution that opts not to take equity in a spin-off cannot be compelled to do so merely because the option exists within the Principles.

These Principles serve as guiding starting points rather than binding rules. The “comply or explain” principle applies: deviations are permitted, provided they are reasoned and justifiable based on the institution’s policies or context.

These IP deal terms focus on the IP investments. A Research Institution may also decide to invest with cash or in-kind contributions, not related to IP. This investment, whether in the form of cash, in-kind contributions, or venture building and support services in exchange for shares, can thus lead to an additional shareholder position that is not covered by these IP Deal Term Principles.

*More information about the context and the process of securing a deal can be found in the document **A national blueprint for enabling academic spin-offs in the Netherlands**, which provides detailed guidance on the steps involved.*

2 How the National IP Deal Terms came to be

In February 2023, the Universities of the Netherlands (UNL) introduced transparent Principles for providing a spin-off access to IP from their Research Institution. These IP Deal Term Principles (“Principles”) are based on international best practices with the input from universities, investors, and entrepreneurs, with support from Techleap.nl.



The Principles aim to expedite negotiation processes between Research Institutions and young companies, thereby enhancing growth and opportunities for success.

Knowledge Transfer Offices (KTOs) of the Research Institutions, in collaboration with Techleap, entrepreneurs, and investors, will periodically monitor, evaluate and refine the IP deal terms to enhance the efficiency of the spin-off process.

The Principles refer to the Socially Responsible Licensing Toolkit. This toolkit elaborates on the ‘ten Principles for Socially Responsible Licensing (SRL)’, providing a foundation for discussions between knowledge institutions and market parties about the future use of patented knowledge, facilitating the conversion of academic knowledge into valuable products and services. The SRL toolkit aims to balance the commercialization of academic knowledge with societal responsibility, ensuring that innovations from Dutch IP benefit both the market and the public.

3 Key principles of the deal

The deal is grounded in the following set of core principles.

Agreements are structured to enable the spin-off to succeed, attract funding and grow.

→ **Impact first.** By creating spin-offs, Research Institutions play a pivotal role in transforming academic knowledge into societal and economic impact. These ventures are not merely business endeavours but essential to the Research Institution's mission to impact and contribute positively to society.

→ **Transparency and Consistency.** Maintaining clarity and consistency in deal terms across agreements.

→ **IP is owned by the Research Institution.** A spin-off leverages Research Institution's IP. According to legal frameworks, collective labour agreements, and employment contracts, IP generated during employment is typically owned by the Research Institution. Hence, a spin-off initiated during an employee's tenure is presumed to be based on Research

Institution IP, unless proven otherwise. It's important to note that IP encompasses any results generated by any research and innovation activities, and can include patents, copyrights, trademarks, publications, data, know-how, prototypes, processes, practices, technologies, inventions, software or business models.

→ **Fair return.** In the case of successful valorisation through a spin-off, a fair return to the Research Institution must be ensured, so that a reasonable share of the proceeds flows back and can be reinvested in research and innovation.

→ **Spin-offs are partners.** Spin-offs are not profit models but pivotal partners for valorisation and collaborative research. There is a shared interest in the success of these ventures, minimizing conflicts of interest. Agreements are structured to enable



the spin-off to succeed, attract funding and grow.

→ **In founder we trust.** Confidence in the founders' capability to effectively expand the spin-off, assessed through objective milestones.

→ **Use.** As the Research Institution aims to maximize the impact of its IP, initially the spin-off may be granted conditional access to these rights. Continued access to the IP is contingent upon the spin-off achieving specific milestones, ensuring progress, value creation and a capability of bringing the IP to the public. If the spin-off demonstrates success in meeting these milestones, its access to the IP will be sustained or in specific cases ownership may be transferred.

→ **Market-Conform Compensation.** The deal's compensation terms align with market practices and are designed to avoid market distortion. Fees for IP are based on Fair, Reasonable, and Non-Discriminatory (FRAND) principles, ensuring that pricing reflects the actual value of the IP without giving undue advantage to any party, regardless of their association with the organization

or their financial capacity. Deal structures are adapted to the unique characteristics of spin-offs but maintain neutrality, ensuring spin-offs do not receive preferential treatment over established organizations or other spin-offs. In addition, to uphold competitive integrity and comply with antitrust regulations, it is crucial that pricing remains flexible and responsive to market dynamics. Fixed pricing in advance may contradict the principles of a free market, where prices are ideally determined by open competition rather than pre-set conditions. This approach ensures that compensation practices do not interfere with market dynamics or violate competition laws.

→ **Facilitating future success.**

Encouraging the spin-off's development to amplify its societal and economic impact. Research Institution compensation is tied to the spin-off's success. Generally, equity agreements avoid pre-revenue cashouts or milestone payments without clear investment components and provide adequate rewards to ensure founders' sustained dedication to the spin-off's success. The deal structure is optimized to attract future investments.

4 Fair Reasonable and Non-Discriminatory (FRAND) Terms

Because the IP owned by the Research Institution are (partially) funded with public money, compliance with state-aid regulations requires the institution to establish a market-conform deal with the spin-off.



To meet these requirements, the IP deal terms outline three specific compensation structures from which the Research Institution can choose:

- **A fully dilutive equity share.** This option allows the Research Institution to hold a minority equity stake in return for the use of its IP by the spin-off that adjusts over time as new investments dilute shares, ensuring the institution's stake is proportionate to the company's growth and additional funding rounds.
- **A license deal with royalty payments.** In this structure, the spin-off receives a license to use the IP, with the Research Institution earning ongoing royalties based on revenue or sales, ensuring fair compensation that

scales with the spin-off's successful commercialization.

- **A hybrid equity-royalty deal.** This combines elements of both equity and royalty arrangements, allowing the Research Institution to benefit from both an equity stake in the spin-off and a royalty stream.

The Research Institution (or its Holding) will decide which of the deal structure (equity, royalty, hybrid) is applicable. Time spent by Research Institution employees before the incorporation of the spin-off is part of the valorisation task of the Research Institution.

The IP Deal Term Principles apply to situations in which the results from the research have a Technology Readiness Level (TRL) of a maximum of 4. The Research Institution or its Holding can deviate from the terms for results at a higher TRL Level.

5 The license

As a rule, IP is licensed rather than transferred due to Social Responsible Licensing obligations. In exceptional cases, the institution may consider a request for IP transfer, but such requests will only be granted if there are compelling reasons like an exit and no conflicting interests, such as existing license agreements with multiple parties.



A license is a permission granted by the owner of IP that allows another party to act under all or some of the owner's rights, usually under a written license agreement. A license agreement describes the rights and responsibilities related to the use and exploitation of IP owned by the Research Institution. The license agreement is usually concluded at a very early stage, when it is still unclear whether there will ever be a product on the market. A license agreement usually stipulates that the licensee should diligently seek to bring the IP into commercial use for the public good and provide a reasonable return to the Research Institution. A licensee is chosen based on its ability to commercialise the technology and bring the technology to society for the benefit of the general public. The

Research Institution will also check the reputation of the licensee (and its shareholders) and its intentions to use the IP for good.

A national guideline¹ provides additional recommendations for licensing agreements with spin-offs. Standard conditions include:

- **Fair market price** ("Fair Reasonable And Non-Discriminatory" terms)
- **Spin-off reimburses the costs** incurred by the Research Institution to establish and maintain the IP.
- Research Institution will at all times retain an **academic license**, being an automatic, non-exclusive, royaltyfree license on any use of the

¹ <https://www.universiteitenvannederland.nl/files/publications/Richtsnoer%20omgang%20met%20IE%20ENGLISH.pdf>



IP, but exclusively for educational and research purposes, including but not limited to research in national and European projects executed with public funding.

→ In case the spin-off needs Research Institution facilities (access to research labs), it will enter into a **separate agreement** with the faculty/lab.

→ **Right to publish.** The Research Institution can and may publish the results of joint research without restrictions and use these findings for research and educational purposes.

→ **Follow-up research.** Results of follow-up research by the Research Institution and the IP that may be arise from it, are the property of the Research Institution. The spin-off does not have automatic access to this future IP; this is to ensure the academic freedom of the Research Institution. The Research Institution expressly disclaims any and all implied or express warranties and makes no express or implied warranties of merchantability or fitness for any particular purpose of the IP. If the

spin-off is interested in follow-on IP, an agreement can be discussed at Research Institution's discretion.

→ **Periodic reporting.** In order to keep track of payments as well as how the results are being used, a Research Institution will expect to periodically receive reports from the start-up. The nature and content of these depends on the spin-off's development phase at the time. The report could relate to technological developments, the actions and objectives relating to the launch, sales successes and any sublicenses and so on.

→ **Anti-shelving.** Access to knowledge from the Research Institution always takes place on condition that the user makes reasonable commercial effort to actively bring the knowledge to the market.

→ **Cooperation of Research Institution staff** in case of infringement proceedings or other IP related legal actions. For licensees or subsequent owners it is often of paramount importance that they have continued access to the original inventors, in the

The spin-off team has to prove that they are successful in development to maintain access to the IP.

case of extending a patent or if there is a court hearing. It is important that Research Institutions cooperate with such requests from spin-offs.

Diligent effort

The spin-off team has to prove that they are successful in the early phase of the development of the spin-off to maintain access to the IP. This is being measured by objective milestones: an investor has assessed the business case and is willing to invest a significant amount of venture capital, or the spin-off has shown to be successful by realising a certain amount of sales. Optional: the Research Institution (or its Holding) can add a technology milestone such as a certification or development milestone. Therefore, the milestones will be:

- **Net Sales** amounting to at least € XXX
- **Venture capital or other equity investment** of at least € YYY;
- (Optional) **Technology milestone** (e.g. certification).

Access to IP and commercial rights

- In case of IP that is more broadly applicable than the business of the spin-off, the license and/or its exclusivity may be limited to a specific field.
- The spin-off is granted an **exclusive, unrestricted user license**, with the exclusion of the Academic License, with the right to grant sublicenses on the IP for a period of X years.
- To meet diligent effort obligations, **objective milestones** are determined in advance. In case the spin-off fails to meet the milestone(s) within X years, the spin-off will be granted a (continued) exclusive, a non-exclusive or no license to the IP at Research Institution's discretion.



Spin-off's rights and obligations with respect to the patents

- The Research Institution shall **consult** with spin-off on important steps related to the preparation, filing, and maintenance of the patent, provided it has been granted an exclusive license.
- All out-of-pocket cost incurred by the Research Institution in connection with the filling, maintenance, and enforcement of the Patent Rights up to the signing of the license agreement (the 'Historical Costs') shall be **reimbursed by the spin-off** upon signing of the license agreement or upon completion of the agreed Milestones, as applicable.
- All costs incurred after the signing of the licence agreement, including but not limited to expenses related to the prosecution, maintenance, enforcement, and upholding of the patent rights, as well as costs related to national phase entries, transfer of rights, and any post-transfer expenses, shall be **borne directly by the spin-off**.

→ In case the spin-off has met the milestone(s) within X years, the spin-off proves to be **successful in the early development phase**. If and when the spin-off has met the milestone(s) within X years, the Research Institution may consider a request for IP transfer. In case of a royalty agreement, the obligation to pay royalties will stay in force after transfer of the patent application to the spin-off.

The signing of a License Agreement is usually the beginning of a long-term relationship. Most licensees continue to develop an invention to enhance the technology, reduce risk, prove reliability and satisfy market requirements for adoption by end-users. This can involve additional testing, prototyping for manufacturability, durability, integrity and further development to improve performance and other characteristics.

5 The compensation for IP

The Research Institution may offer one of the following types of agreements:

- 1. fully dilutive equity share**
- 2. license deal with royalty payments, upfront fees and fixed fees**
- 3. hybrid equity-royalty deal**



In any case all inventors of the IP benefit from the proceeds that are being received by the Research Institution. The exact division of the proceeds is determined by the policy of the Research Institution.

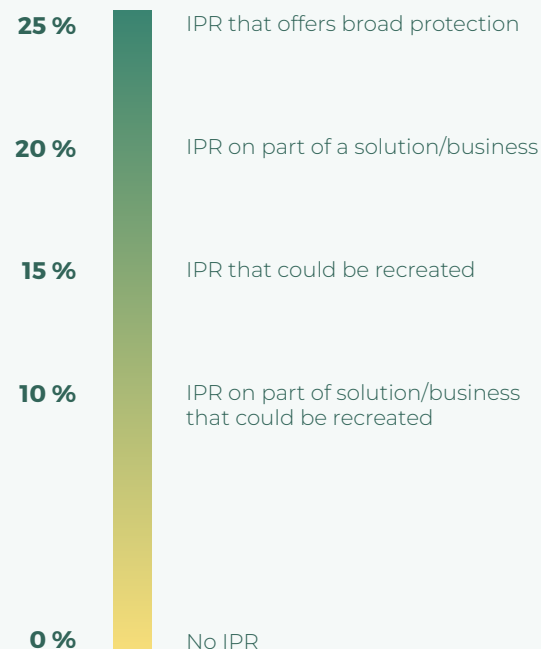
1. IP for Equity

In this model, the Research Institution acquires the right to participate in the spin-off in exchange for access to the IP. Accordingly, the Research Institution acquires fully dilutive shares with the same rights as the other founders. Dilutive means that when new shareholders (such as an investor) join the company and receive newly issued shares, the share percentage of each shareholder proportionally decreases. As all initial shareholders dilute pro-rata with such an investment, this means

that interests between founders and Research Institution remain aligned.

Share percentage

The percentage of shares in the share capital of the spin-off requested by Research Institution Holding depends on how important the IP is to the initial unique value proposition of the spin-off, and the strength of the IP and the competitive advantage it provides. The share percentage relates to the attributes at the time of agreement, usually at incorporation. It will not be retroactively adjusted, for example, after pivots made possible by attracted resources based on the initial idea. The remaining shares will be for the current and/or future team members and are intended to build and reward the team that is able to reach the milestone(s). Until the Milestone is reached the



IPR that offers broad protection:

- IPR that, at the start of the company, makes the solution and business proposition unique compared to the currently available solutions.

IPR on part of a solution/business:

- IPR that, at the start of the company, needs essential IPR from other existing sources (e.g. from another company), to make the solution and business proposition unique compared to the currently available solutions.

IPR that could be recreated:

- IPR that can be copied with limited effort, but which is still an asset and provides the advantage of a head-start.

IPR on part of solution/business that could be recreated:

- **1)** IPR that can be copied with limited effort, but which is still an asset and provides the advantage of a head-start, and, **2)** at the start of the company, needs essential IPR from other existing sources (e.g. from another company), to make the solution and business proposition unique compared to the currently available solutions.

founders have to build and reward the team from the initial founder shares without affecting the share of the Research Institution.

Shareholders that remain (partly) employed by the Research Institution need explicit approval and have to comply with the applicable rules of their institution on ancillary activities and maximum allowable share percentage. In case all shareholders remain (partly) employed by the Research Institution the situation might occur that not all shares can be distributed amongst the entrepreneurial researchers, in this case the Research Institution temporarily

can hold a larger percentage of shares (or even majority) than the maximum amount of shares as indicated on the ruler.

Inventors/creators of the IP are rewarded for their efforts by benefitting from the proceeds that are being received by the Research Institution. The exact division of the proceed is determined by the policy of the Research Institution. The shares for the team are meant for future commitment to the spin-off.

When benchmarked against international standards, the Dutch system is competitive in this context.

	US Models	Swiss model	NL-Hybrid	Quick License	NL-Royalty	USIT Royalty	NL-Equity	USIT Equity
Equity	<10% 'single digit'	Max 12% (max 9% non-dilutive)	Max 12,5%				10-25%	10-25%
Dilution	Non-dilutive till X M\$ valuation	Fully dilutive	Fully dilutive				Fully dilutive	Fully dilutive
License	Royalty	Royalty up to 5%	Royalty	Royalty	Royalty up to 5%	Royalty up to 5%		
Exit fee				Fixed exit Fee				
Possibility of assignment of patent to spin-off	No	No	Yes	No	Yes	Optional	Yes	Optional

References

US models
Swiss model

Quick license
USIT

https://otd.harvard.edu/uploads/Files/Sample_Basic_Patent_Rights_Exclusive_License_Agreement.pdf
Unitecra (Basel, Bern, Zurich), see e.g.: https://www.unibe.ch/unibe/portal/content/e152701/e322683/e1084391/e1143019/ul_guidelines_spin-off_en_ger.pdf
<https://drive.google.com/file/d/1g-LyKnoxJW3nKL2Zdr7aRdmiWCtxjOw2/view>
<https://ten-u.org/news/the-usit-guide>



Shares - summary

- The shares issued to the Research Institution Holding will be fully **dilutive and of the same value** and type as the founders, helping to align interests.
- The **percentage of shares** in the share capital of the spin-off requested by Research Institution Holding depends on how important the IP is to the initial unique value proposition of the spin-off, the protection it offers and the potential for a competitive advantage.
- The remaining shares will be for the **current and/or future team members** and are intended to build and reward the team that is able to reach the milestone(s).
- The Research Institution Holding will have **fully dilutive shares**, except for that its share percentage will not be affected as a result of changes in and additions to the team until reaching the milestone(s), as the intended management has to build a team that is able to reach the milestone(s).
- The milestone(s) are **objectively measurable** and reflect if the team has been successful in the early phase of the development of the spin-off: an investor has assessed the business case and is willing to invest a significant amount of venture capital, or the spin-off has shown to be successful by realising a certain amount of sales. Optional: the Research Institution (Holding) can add a technology milestone such as a certification or development milestone. Therefore, the milestones will be:
 - Net Sales amounting to at least € XXX OR Venture capital or other equity investment of at least € YYY;
 - (Optional) Technology milestone (e.g. certification).
- Shareholders that remain (partly) employed by the Research Institution need **explicit approval** and have to comply with the applicable rules of their institution on ancillary activities and maximum allowable share percentage.

Research Institution Holding may require that in the shareholders' agreement and/or articles of association it is described that some specific far-reaching decisions may need a qualified majority.

- Research Institution Holding may require that in the shareholders' agreement and/or articles of association it is described that some specific far-reaching decisions may need a **qualified majority**. This qualified majority may require a blocking vote for the Research Institution holding until a bona fide professional investor steps in.

Share division & (parttime) employees

In case researchers that are parttime or fulltime employed at the Research Institution want to become a shareholder in the spin-off they have to comply with standing policy of the Research Institution. Being an inventor does not imply that the inventor has the right to become a shareholder, it is about the future commitment and role in the spin-off. It is up to the team to decide on the distribution of the shares over the team members. It is advised to take into account:

- the activities of the person for the spin-off and the commitment to work for the spin-off (number of hours per week);

- which unique expertise, network or competences does the person bring to the spin-off;
- what is the risk that the person is taking, e.g. quitting (a part of) their job;
- does the person receive payment for the work for the spin-off.

2. IP for Royalty

In case of a royalty deal, the Research Institution will receive a royalty payment on sales or other income related to products or services that make use of the IP. The royalty payment for the license will consist of:

- A royalty as a **percentage of Net Sales** and other income related to products or services that make use of the IP;
- A (substantially higher) royalty percentage on **income from sublicenses**;
- A **minimum annual royalty payment** (of which the first payment is an up-front fee and will be due on closing the license agreement);
- (optional) **Milestone payments** related to e.g. certification, commercial sales.



The royalty percentages are dependent on the market sector, expected gross margin, TRL, exclusivity, field of use and territory. It is recommended that each deal, technology and situation is considered and discussed in good faith to arrive at an agreed net sales royalty rate. Based on international benchmarks the following principles have been included illustrate a typical example.

- For technologies up to TRL 3-4 the typical **royalty rate is up to 5%.**
- For later stage TRL technologies, for example technologies at clinical stage, those with stronger IP positions (e.g. multiple patent families) and those technologies with application in advanced, high growth fields and/or new modalities royalty rates are typically **above 5%.**

The royalty agreement stays in force at completion of the milestone.

Apart from the above-mentioned payments and the payments related to the filing, maintenance and upholding of the patent rights, no other payments will be due.

If the spin-off is granted the option to acquire the IP, royalty obligations will remain in force, unless the spin-off buys off the royalty obligations for a FRAND fee. This fee will be negotiated at the moment that the option is exercised.

The spin-off will each year report all necessary information to the Research Institution, so the Research Institution will be able to determine the amount of royalties due. The provisions of the SRL toolkit will be taken into account when concluding a royalty deal.

3. Hybrid

In a hybrid deal, the equity terms and royalty terms are combined: for example, part of the equity percentage plus part of a full-royalty deal. However, it is important to emphasize that the combined value of the equity and royalties must remain fair and balanced, ensuring that both parties have a just agreement.

6 Definitions

Dealmaking refers to the process that often encompasses more than just financial agreements and may include arrangements regarding use of Research Institution facilities, collaborative R&D, spin-off support.

IP Deal Term Principles refers to a set of principles proposed in this guide to determine the financial and legal arrangements related to providing access to Intellectual Property to the spin-off company.

Intellectual Property (IP) covers any results generated by any research and innovation activities, and can include patents, copyrights, trademarks, publications, data,

know-how, prototypes, processes, practices, technologies, inventions, software or business models that are fully or partly owned or contributed by the Research Institution.

Research Institution refers to Dutch universities, university medical centers (UMCs), Applied Research Organisations (TO2), institutes of the Netherlands Organization for Scientific Research (NWO), the Netherlands Cancer Institute (NKI), and the Royal Netherlands Academy of Arts and Sciences (KNAW).

Spin-off refers to a start-up based on knowledge from scientific research conducted at Dutch Research

Institutions. It is important to note that not all spin-offs are necessarily scalable tech companies; they can also include social enterprises, NGOs, and knowledge-intensive services as long as they offer scalable solutions.

Spin-off Process refers to the internal procedure a Research Institution uses to check if the spin-off route is the best valorisation strategy, if IP arrangements are needed and how the role of the researcher relates to the principles regarding ancillary positions. If founding a spin-off is identified as the optimal route for commercializing an invention, the Research Institution will negotiate with the company's representative to grant the necessary rights.