1. Preamble and objectives

In addition to research and teaching, knowledge transfer and technology transfer are focuses of the University of Vienna. Therefore, the University of Vienna strives to utilise findings from research, teaching and other university operations for society and to reach a dissemination of ideas, technologies and applications as broad as possible through exploitation. Exploitation activities can be of either commercial or non-commercial nature.

This Policy defines the basic principles for spin-off companies at the University of Vienna and the associated transfer of intellectual property of the University of Vienna. These basic principles also apply in cases where start-up companies of the University of Vienna are interacting with researchers at the University.

In this regard, the University of Vienna fosters entrepreneurial initiatives and the use of intellectual property created at the University of Vienna by its employees through the creation of spin-offs. The aim is to generate more spin-off companies from university operations through awareness-raising measures and to provide support for specific spin-off projects that are directly related to the intellectual property of the University of Vienna through different services.

This Spin-Off Policy should thereby serve as a transparent system of rules that can be disseminated broadly for company formation at the University of Vienna. It should also provide persons interested in creating a company as well as those responsible for technology transfer at the University of Vienna with guidelines for handling spin-offs. This should contribute to increasing spin-off activities in the environment of the University of Vienna and enable successful knowledge and technology transfer. Finally, this Spin-Off Policy also aims to assist in protecting the rights of the University of Vienna regarding intellectual property and to guarantee support for spin-off companies within the framework of state aid law and competition law.

2. Definition, scope and legal framework

2.1. What is a spin-off company of the University of Vienna?

A spin-off company of the University of Vienna designates the formation of a new company (according to section 2 of the Business Start-Up Promotion Act, NEUFöG) for whose formation the use of intellectual property created at the University of Vienna in research, teaching or other operations is indispensable. The prerequisite for being recognised as a spin-off company of the University of Vienna is that the company uses intellectual property of the University of Vienna.

In this context, intellectual property (IP) means any creation of the mind of employees of the University (for example, inventions, know-how, software, literary or artistic works, as well as symbols, names, pictures, patterns and models used in commerce), which was generated within the framework of the activity at the University, was inspired by the activity at the University, or was facilitated by the use of the experience or resources of the University.

Spin-off companies using this intellectual property require a valid IP contract regardless of whether it was created by the founders or later employees of the spin-off itself.

The member of the Rectorate responsible for technology transfer decides on the recognition of spin-off company of the University of Vienna. There is no legal claim to this recognition. Recognised spin-off companies are allowed to call themselves spin-off company of the University of Vienna according to section 5.
2.2. What is a start-up company of the University of Vienna?

Start-up companies of the University of Vienna are legally independent companies (co-)founded by members of the University of Vienna that are not using protected intellectual property of the University of Vienna.

2.3. Scope

This Spin-Off Policy regulates the commercial exploitation through the creation of companies based on intellectual property generated in research, teaching or other operations at the University of Vienna. It applies to all employees and persons who are creating or intend to create a company based on intellectual property of the University of Vienna.

2.4. Legal framework

The legal framework underlying this Spin-Off Policy is, among others, the right of the University of Vienna to claim and exploit ideas and inventions of its employees in accordance with section 106 of the Universities Act.

Any support services for spin-off companies must be designed in accordance with European state aid law.

Prior to the establishment of a legally independent partnership or corporation, the University of Vienna can offer support services for spin-off projects without violating competition law or state aid law, as such activities can be assigned to the area of knowledge transfer and thus to the non-economic sphere of activity of the University. In this regard, the support services set their focus on persons interested in creating a company having a concrete spin-off project based on the intellectual property of the University of Vienna.

Following the establishment of a spin-off company, the University of Vienna can offer support services within the framework of competition law or state aid law and subject to conditions and remunerations usual in the market.

3. Opportunities of the University of Vienna for supporting spin-off companies

The aim of the University of Vienna is to increase the number and quality of company formation activities in the University’s environment through awareness-raising measures and support services. The support services by the University of Vienna comprise offers before and after the creation of a company:

- Awareness-raising measures for the topic of entrepreneurship, including information events
- Entrepreneurship training and continuing education courses for (early stage) researchers and students, coordinated by the Research Services and Career Development service unit in close collaboration with the faculties and centres (e.g. hackathons, seminars, workshops, talks)
- Identification of suitable spin-off projects and technologies by the Research Services and Career Development service unit in close collaboration with the faculties and centres
- Support of early-stage spin-off projects (innovation labs, hosting entrepreneurship fellows)
- Services by the Research Services and Career Development service unit during the company creation phase (e.g. coaching and networking activities, patent strategy, licensing agreements with the University of Vienna, support in market research)
- Temporary use of rooms and infrastructure (see ‘guidelines for temporary use of resources by spin-off companies of the University of Vienna’ for further information).
For detailed information about support services and the application procedure, persons interested in creating a company are advised to contact the responsible person for entrepreneurship in the Research Services and Career Development service unit (entrepreneurship@univie.ac.at).

4. Procedure for the establishment of a company and contact persons

This section illustrates the spin-off process at the University of Vienna. It should help persons interesting in creating a company to obtain orientation and clarity regarding the necessary steps.

If employees of the University think that their activity resulted in an invention or innovation with exploitation potential, it is important that they immediately contact the Research Services and Career Development service unit and that they disclose an invention disclosure form before anything is made public (e.g. in the form of a publication, a lecture or a poster). Any disclosure jeopardises the protection of the invention and limits the exploitation opportunities. This is independent of any potential protection plans and future exploitation steps.

The spin-off process begins with the report of an invention or an IP exploitation project. The aim is to agree on a road map together with potential founders early on in the process. The road map outlines the milestones to be reached and the individual steps towards company creation. The initiation and implementation of the steps in the process are either the responsibility of the person interested in creating a company or the University of Vienna. After each step, the process can be terminated by the University of Vienna or the person interested in creating a company if there is no further interest in the exploitation through a spin-off. The Research Services and Career Development service unit leads the process and is the contact and coordination point during the entire process.

4.1. Invention disclosure, initial counselling, road map

Persons interested in creating a company initiate the spin-off process based on their ideas and intellectual property with exploitation potential. Prior to the start of the spin-off process, the person has to report the underlying intellectual property to the Research Services and Career Development service unit (*see IP Policy).

The persons interested in creating a company are responsible for initiating this process.

During an informal exploratory talk, the person interested in creating a company and a technology transfer manager discuss the invention disclosure form as well as an exploitation opportunity through the creation of a company. The formal invention disclosure form may also be reported after this first exploratory talk. If it is intended to exploit the invention through a company, the spin-off project is assigned to an employee in the Research Services and Career Development service unit. Inventors do not necessarily have to commit themselves to the creation of the company.

The employee from the Research Services and Career Development service unit and the person interested in creating a company agree in a personal meeting on a road map with the next steps and a time schedule for the further spin-off process, which is written down in a process term sheet. In addition, the meeting serves the purpose of informing the person interested in creating a company about the spin-off process, the expectations of the University of Vienna and its support offers.
To establish a company, founders need to fulfil several requirements that ultimately determine the success of the company. Establishing a spin-off is a very appealing but also ambitious endeavour to make use of new research findings, results and technology in the form of successful services and/or products or, in general, in a successful and sustainable company. Especially in the initial phase, a high level of time commitment and corresponding priority-setting is required.

Persons interested in creating a company who are participating in the pre-spin-off phase and are not, or no longer, employed with the University of Vienna can receive the temporary status of ‘Entrepreneurship Fellow’ to create a connection to the University of Vienna. This status makes the affiliation to the University of Vienna transparent and entitles the person to make use of all support services in the pre-spin-off phase. This designation does not entail any contractual obligation of the University of Vienna beyond that, in particular, it does not entail any financial obligations or employment relationship.

The persons interesting in creating a company in collaboration with the University of Vienna are responsible for this process.

4.2. Due diligence check of the intellectual property

The due diligence check of the intellectual property is of significant importance to allow for proper handling of all matters related to intellectual property forming the basis of the spin-off. On the one hand, this allows to identify any obligations related to IP (e.g. from research contracts or any suspected violation by third parties) early in the process. A due diligence check is usually also a prerequisite for attracting investors. On the other hand, IP due diligence may trigger measures to have certainty regarding IP before any agreements are concluded.

The University of Vienna in collaboration with the person interesting in creating a company or the inventor is responsible for this process.

4.3. Market research, preparation of company formation

To better understand the exploitation potential of the intellectual property which should form the basis for the spin-off project, the University of Vienna conducts market research. This allows to evaluate the economic viability and the market potential. It is a first assessment of the prospect of success of the spin-off company or of the alternative exploitation option. To allow for a conclusive market research, persons interesting in creating a company should have already identified some fields of application of the intellectual property and developed initial ideas about a business model.

Depending on the results of the market research, the member of the Rectorate responsible for technology transfer at the University of Vienna in exchange with the person interesting in creating a company decides on the next steps. This concerns the question whether the University of Vienna intends to principally exploit the intellectual property and take up the invention, and subsequently, if it should be exploited through a company to be formed as the most suitable form of exploitation. Based on this, the existing support services by the University of Vienna are presented.
For a successful university spin-off company, good academic practice serves as a foundation for offering a unique and high-quality product and/or service on an international competitive market. In addition, it is very important that the product or service really meets a customer need: It should not be a ‘nice to have’ solution but a ‘need to have’ solution.

Following the decision of the University of Vienna to pursue the exploitation in the form of a spin-off, persons interested in creating a company can make use of the support services of the University of Vienna intended for the pre-spin-off phase, such as counselling and training. In the following weeks and months, the focus should lie on the further development of the intellectual property and the further specification of the business model or the development of a sound business plan. This is an iterative process throughout which the founders are working on the business plan and coordinating with their contact person in the Research Services and Career Development service unit. Access to the partner network of the University of Vienna, such as the high-tech incubator INiTS are of particular relevance in this regard. Further information about support services is provided by the employees of the Research Services and Career Development service unit.

Before investors are taking a share in your endeavour, the technology/product offered usually has to be sufficiently validated and safeguarded in the form of prototypes or successful tests.

The University of Vienna in cooperation with the person interesting in creating a company is responsible for this step.

4.4. IP protection and company formation

To enable the economic exploitation of intellectual property, the University of Vienna takes relevant steps to guarantee the protection of intellectual property (e.g. patent application).

Investors usually request that the central invention/technology is protected against imitation by competitors to ensure a sustainable competitive advantage. For this, you need a suitable strategy to establish intellectual property rights, such as patents, copyright, trade secrets and brands. Simultaneously, you also need sufficient freedom to operate so that your spin-off company is not restricted by patents or intellectual property of third parties.

In addition, the relationship of the founders to the University of Vienna following the foundation of a spin-off company is clarified and IP conditions for relevant intellectual property are negotiated. Here, the Rectorate takes the decision if intellectual property is protected and transferred in accordance with the guidelines on the economic exploitation of research results (IP Policy) of the University of Vienna and if it is transferred only upon mutual agreement between the founder and the University of Vienna.

The University of Vienna is responsible for this step.

The final step of the spin-off process is the formal establishment of a legally independent partnership or corporation by the founder. The newly established company is permitted to use the title ‘spin-off company of the University of Vienna’ upon recognition by the Rectorate.

Successful company creation requires a complementary team having all necessary abilities both on the level of technology/academia and the level of business and management. A complementary team is an important element for convincing investors. They must be able to rely on the ability of the team to successfully implement the business plan and to tackle the challenges in the process of making an international successful enterprise out of academic results.

The founders including the partner network of the University are responsible for this step.
5. Use of the spin-off label and the spin-off logo of the University of Vienna

A spin-off company according to section 2.1 is entitled to use the designation ‘a spin-off company of the University of Vienna’ in addition to their company name and to use the spin-off logo of the University of Vienna. If the spin-off company is acquired by another company and adopts the name of the acquiring company, this entitlement forfeits. Spin-off companies are permitted to use the spin-off logo for general communication purposes (e.g. on the company’s website, in a company brochure), but not for advertising single products (e.g. product ads, product label, product description).

The University of Vienna, on the other hand, claims the right to report on the spin-off company and to use information about the spin-off company, including the logo of the company for awareness-raising or public relations measures.

6. Transparency and conflicts of interest

When establishing a spin-off company of the University of Vienna, the founder is obliged to clarify any conflict of interest (also family ties) between their activity at the University and their commitment within the spin-off company. They are also obliged to disclose any resulting conflicts of interest to the University of Vienna. This also includes the commitment in start-up companies, if a cooperation between the start-up company and the University of Vienna is being planned or implemented.

Employees of the University of Vienna can in general perform activities in a spin-off as a secondary employment in addition to their university tasks and in accordance with the applicable personnel law, unless it is prohibited. In this case, the secondary employment may not violate any obligations under labour law or impair any other significant employment interests of the University of Vienna. Every secondary employment must be reported to the University if it is gainful or if it includes activities in the executive board, board of directors or board of administration in a profit-making legal entity. This applies in particular to spin-off and start-up companies. Any secondary employment must be reported to the Human Resources unit of the University of Vienna using the relevant form.

In case of spin-off or start-up companies, for reasons of transparency, shares in the spin-off or start-up (e.g. shareholdings) as well as active roles (e.g. scientific advisor) in the spin-off or start-up must also be disclosed to the Rectorate. In any case, the rights of the University of Vienna to intellectual property must be protected and the impression of misappropriation of public funds and resources in the environment of the University must be avoided.

Employees of the University of Vienna may participate in research projects of the spin-off or start-up company according to section 6.4 of this Policy provided that the necessary provisions on conflicts of interest, publications, intellectual property, ownership of project results, projects costs, etc. are regulated in a contract.

In case of gross violation of this Policy, breach of contracts with the University of Vienna, deliberate withholding of information about conflicts of interest or any other behaviours that may damage the University’s reputation, the Rectorate may revoke the status ‘spin-off company of the University of Vienna’ in written form. In this case, a spin-off company loses all rights and support offers that spin-off companies enjoy in accordance with this Policy.
6.1. Role of the founders
Founders of a spin-off or start-up company who would like to continue to work at the University of Vienna in addition to their operational activities in the spin-off company following company establishment can apply for a part-time employment at the University of Vienna restricted to a period defined following official procedures. In any case, founders have to report a secondary employment to the Human Resources unit of the University of Vienna.

In case of overlapping tasks of the founders within the spin-off or start-up company on the one hand, and tasks at the University of Vienna on the other hand, contracts between the University of Vienna and the spin-off or start-up have to be concluded. These have to clearly define the scope of the roles and job descriptions.

6.2. Role and shareholding of academic executive staff
The role of ‘scientific advisor’ without holding a share in the company has the lowest potential for critical conflicts of interest. In contrast to other activities of academic executive staff, this activity can be performed without a temporary limitation.

Academic executive staff who are performing an operational function in the spin-off or start-up company in addition to their activity at the University can do so as a secondary employment, unless it is prohibited. Any conflicts of interest resulting from these activities must be disclosed to the Rectorate.

Academic executive staff are not allowed to align their research to the needs of the spin-off company. In accordance to state aid law, they are also not permitted to give the company access to unpublished research results without a valid licensing agreement and thus to deliberately or non-deliberately guarantee the company a competitive edge that other companies do not have. The same also applies to the role of the ‘scientific advisor’ in spin-off or start-up companies.

6.3. Role of decision-makers at the University of Vienna and employees of the Research Services and Career Development service unit
Members of the Rectorate, employees of the Research Services and Career Development service unit and other persons supporting spin-off companies at the University of Vienna are not allowed to take any active role in the company as a private person and are not allowed to take a share in the spin-off company as long as these spin-off companies are still supported by the University of Vienna in whatever form. This applies in particular for the period in which the spin-off company is making use of services of the University.

It is possible that they are active in start-up companies, but they have to disclose their activities to the Rectorate.

6.4. Collaboration with the University of Vienna
Subject to adherence to the cooperation guidelines specified in the IP Policy of the University of Vienna, the University of Vienna may implement commissioned research projects. The spin-off or start-up company and the University of Vienna may engage in academically relevant cooperation projects. This collaboration, especially the rights to any project results and their exploitation, is regulated in a contract.
7. Assistance and funding by the University of Vienna

The University of Vienna generally does not offer any direct financial support or indirect funding to already established spin-off companies. The support services by the University of Vienna only encompass the above-mentioned points (see item 3), especially by indirect services following company establishment, such as the use of rooms and infrastructure (see ‘guidelines for the temporary use of resources by spin-off companies of the University of Vienna’).

In case of funding by public funding bodies (e.g. FFG, aws), the University of Vienna may support the spin-off company according to competition law and funding law, such as by paying patenting costs. The basis for this type of support is the decision of the University of Vienna to take up the intellectual property and to engage in its exploitation.

Persons interesting in creating a company receive special support in the pre-spin-off phase. This does not constitute an investment in a spin-off company. Persons interested in creating a company, together with the University, can use external funding schemes to further develop promising IP and prepare the establishment of companies. Further support offers are internal funding programmes. The Research Services and Career Development service unit supports related measures and implements these together with faculties, if needed. The University of Vienna owns any results developed through these funding schemes. The spin-off company can subsequently obtain a licence.

In addition, the University of Vienna offers spin-off or start-up companies its network of partners, such as incubators and investors and provides information about new spin-off companies. It is the responsibility of the spin-off or start-up company or the founders to obtain funding from sponsors.

8. Licensing

Licensing of intellectual property at the University of Vienna is subject to the IP Policy of the University of Vienna and can, in particular, include patent applications, patents, software, material, secret know-how (trade secrets), brands and designs. A spin-off company is not allowed to use intellectual property without a valid licence or any other written permission by the University of Vienna. This also includes intellectual property resulting from, or developed in, third-party funded projects that have been acquired by the founder or person interesting in creating a company and which have been implemented at the University of Vienna.

8.1. Principles

With regard to state aid law, a spin-off company of the University of Vienna has to pay a price usual on the market for licensed intellectual property. The determination of this price usual on the market and the conditions is subject to the usual conditions for university licences. Ideally, the price is negotiated between the University and the spin-off company already before the creation of the company. Here, the special situation of spin-off companies is taken into consideration. The following principles apply, among others:

- As far as possible, licensing conditions are applied that consider the general negative free capital flow of spin-off companies in the first years following their establishment;
- The licence consists either of the minimum charges and royalties from products’ or services’ sales revenues that belong to the licence, or a temporary limited general share in the company’s revenues. The price depends on the amount of the required investment until the spin-off company enters the market and the potential profit margin;
- Depending on the technology and the expected development effort until market entry, it is possible to specify milestones for the implementation of the licensed object. If these milestones are not reached, the University may even cancel the licensing agreement;
Spin-off companies can select between lower royalties and higher minimum charges, including milestone payments; or higher royalties and lower minimum charges, including milestone payments;

Sub-licensing is permissible against an appropriate share. It depends on whether the spin-off company has significantly contributed to the further development of the licensed object;

Prior patent costs or other investments of the University, such as external market research benefiting the spin-off company, are invoiced to the spin-off company which pays back the sum to the University according to its financial capacity. This applies in particular to those external patent costs borne by the University before the licensing agreement was concluded.

Upon conclusion of the licensing agreement, the licence holder bears the costs of any other patent application;

In addition, the University of Vienna retains the right to use the intellectual property in research and teaching in any case.

The decision if the licensing agreement is concluded according to the negotiated conditions is made by the member of the Rectorate responsible for technology transfer.

8.2. Transfer

In general, intellectual property should be licensed, and not transferred to a spin-off company. This increases the chances of further using the IP (further research, product development, exploitation) if the spin-off company does not adhere to the agreements or if the spin-off process fails (e.g. insolvency of the spin-off company). In addition to the risk of losing the IP if the spin-off company fails, there is also the insecurity of how to calculate any compensation. Due to the usually very early development phase and the market that often needs to develop first, an economic assessment is only possible to a limited extent and subject to a lot of uncertainty. Moreover, the company may face difficulties in funding a purchasing price.

Exceptions are possible for intellectual property jointly owned by the University of Vienna and the spin-off company or other owners, especially if the University of Vienna only has a small share (30 % or less). An application for the transfer of intellectual property may be submitted to the University of Vienna through the Research Services and Career Development service unit if the spin-off company is being sold.

The member of the Rectorate responsible for technology transfer decides on this.

9. Inventor’s bonus

The University has, ex lege, a right to take up employee inventions. It must exercise its right to take up the invention within three months following the invention disclosure. If an invention is not disclosed to the University, the University can claim its right to take up the invention at any time.

In any case, employees deserve an appropriate, special bonus for an employee invention according to section 8, number 1 of the patent act if they yield their invention to the employer or if they grant the University a right to use their invention. This bonus must be paid as soon as the revenues from the invention’s patent exploitation have been received, such as licensing revenues or option charges.

According to section 11, number 3 of the patent act, an employer is exempt from the obligation to pay a bonus if they commit themselves to granting third parties defined by the employee the right to use the invention. If this applies to inventors who are employees of the University and the spin-off company as third party, it is agreed, according to the licensing agreement, that the spin-off company has to remunerate the inventor for their share in the invention which needs to be determined according to the provision in section 9, lit. c of the patent act. The University is exempt from paying the bonus in this case.
If the above paragraph does not apply to the inventor, the inventor receives an inventor’s bonus according to the general inventor’s bonus rules depending on the net revenue from the licensing agreement. In any case, the licensing agreement always has to include a provision specifying that the spin-off company indemnifies and holds the University harmless in respect of any later inventor’s claims on a higher inventor’s bonus.

10. Exclusion of liability

The University of Vienna assumes no liability for the licensed object and cannot guarantee that the use of the licence respects the rights of third parties. The spin-off company as licence holder compensates and holds harmless the University for any loss or damage caused by the licence holder when using their licence.

11. Entry into force

This Policy enters into force on 20 of September 2022.