

# UNIVERSITY OF ALCALÁ REGULATIONS FOR TECHNOLOGY BASED COMPANIES OR SPIN-OUTS

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**TRANSITORY PROVISIONS****FINAL PROVISION****PRELIMINARY REMARKS**

The experiences acquired since Governing Body approved at ordinary meeting on 30 October 2008 the Regulations for UAH Technology-Based Companies (hereinafter "spin-out companies" or "spin-outs"), together with new legislation introduced thereafter and confirming the key role of these instruments of research and transfer of research outcomes, make it advisable to approve a new set of regulations in substitution of the former set which takes into account aspects of spin-out activity that were previously unregulated and ensures that spin-out activities are carried on to the benefit of the securities attributed to them by the legal regime law.

Spin-out companies are one means, though not the only one, of commercialising the University's technology and carrying out its transfer policy. These regulations aim to strengthen UAH spin-out companies by contributing to uphold the public interest of the university by means of reinforced supervision and monitoring.

## **HEAD I.- GENERAL PROVISIONS**

### **Chapter I.- Object of Regulations and definition of University of Alcalá spin-out company**

#### **Article 1.- Object of Regulations**

These Regulations have as their object the establishment of the provisions to be applied generally to the creation, modification, dissolution and liquidation of spin-out companies on the part of the University of Alcalá (hereinafter, "UAH"); the regulation of the relationship between them, once incorporated, and the UAH; and the regulation of the UAH's supervision, audit and control of them.

#### **Article 2.- Definition of UAH spin-out company**

1. A UAH spin-out company is taken to mean any company created or developed under the terms of these Regulations on the basis of patents or results which are the outcome of research projects carried out in the UAH and financed fully or in part by the state and on the proposal in all cases of UAH teaching staff, full or part-time, civil servant or permanent contracted staff, in accordance with the provisions of art. 83 of the Organic University Law (LOU), and which has as its goal the commercial exploitation of UAH intellectual property.

2. UAH spin-outs may be incorporated as joint stock or limited companies.

### **Chapter II.- Participation of UAH staff in a UAH spin-out company**

#### **Article 3.- Participation of UAH staff in a UAH spin-out company**

1. UAH teaching staff as referred to in article 2.1 will not be affected by the incompatibilities as specified in article 12.1 b) and d) of Law 53/1984, of 26 December, regarding incompatibilities and civil service workers provided that the spin-out's creation has been approved in accordance with the procedure set out in Head II of these Regulations and in compliance with the stipulated in Additional Provision 24 of Law 4/2007, of 12 April, regarding the reform of the LOU.

2. UAH teaching staff as referred to in article 2.1 may request ad hoc temporary leave of absence in order to be engaged with the spin-out for a maximum of five years, in compliance of the terms established in Organic Law 6/2001, of 21 December, regarding the Universities, as modified by Organic Law 4/2007, of 12 April, and its implementing regulations.

### **Chapter III. The UAH Spin-out Company Register**

#### **Article 4.- Spin-out company register**

1. The Research Management Service will maintain a register spin-out companies created under the terms of these Regulations.

2. This Register will contain details of:

- a) The identity of the founders of spin-out and of the members of its board of directors.
- b) The percentage of the UAH's equity stake.
- c) The date of incorporation and the object of its activity.
- d) The industrial or intellectual property rights of the UAH to be used or exploited by the spin-out; how they are to be used; and any development or modification to which they may be subject.
- e) Statutory modifications or other significant changes to the spin-out, including changes in the company board.
- f) The dissolution and liquidation of the spin-out, should this be the case.

3. It is the duty of the creators to inform the Research Management Service and provide the necessary information in writing for annotation in the Register of any of the circumstances mentioned in the previous paragraph of this article no later than one month after it arises.

4. The Research Management Service will produce an annual report about UAH spin-out companies on the basis of the information held in the Register. This report will be made known by the competent Vice-Rector to the UAH's Social Council and Governing Body.

## **HEAD II. PROCEDURE FOR CREATING A UAH SPIN-OUT COMPANY**

### **Chapter I.- Applying to create a spin-out company**

#### **Article 5.- Promoters of the spin-out**

The proposal to for a UAH spin-out to be created must always be made by UAH teaching staff as referred to in article 2.1 (hereinafter, "promoters") before the relevant Vice-Rector and in the form set out in the following articles.

#### **Article 6.- Application to create a spin-out**

1. The application to create a spin-out must contain the following minimum information:

- a) Name, surname, applicant's or applicants' tax no., signature(s) and contact details.
- b) Presentation of the promoters, stating the type and nature of their ties to the UAH, as well as of other entrepreneurs from outside the UAH who wish to participate in the spin-out as partners. Documentation vouching to their professional experience must accompany the application.  
Should the stake in the spin-out of non-UAH entrepreneurs exceed 15% of the social equity, the promoters must write and sign a memorandum setting out the grounds justifying this percentage stake.  
This memorandum will in all cases form part of the set-up file.
- c) UAH intellectual property to be exploited by the spin-out company, setting out the form of transfer and the proposed retribution.

d) Activities which are to constitute the object of the spin-out.

2. The application must be accompanied by a Business Plan enabling the spin-out company's viability to be assessed. The plan should cover the following aspects:

- a) A memorandum on the activities to be carried on by the spin-out.
- b) An economic and financial study covering staff costs, equipment, premises and, in general, all resources required for the spin-out's start-up and activity.
- c) Capital to be brought to the spin-out company, with indication of its origin and the length of its commitment, and the intellectual property to be exploited by the spin-out and a valuation of it.
- d) Sources of funding additional to social equity during the first 5 accounting years.
- e) Human resources to be assigned in the first five years of activity, an estimate of the dedication of the promoters and non-UAH entrepreneurs, and a forecast of staff to be contracted and their dedication to the spin-out.
- f) Forecast date for the commercial start-up, sales forecast and expected cash-flow for the first five years with estimate of the rate of return on the investment.
- g) Market research about the proposal's commercial prospects.
- h) Amount of start-up social equity, identity of partners and distribution among them of shares or participations in the social equity, with an indication of the proposed number of shares or participations to be subscribed to by the UAH and justifying the assessment criteria for proposing that number. On this point, as applicable, the stipulated in section 1.b) of this article must be born in mind.

3. The application must also be accompanied by the following additional documentation:

- a) Decision regarding the company address of the spin-out company whose creation is proposed.
- b) Composition of the spin-out company's board of directors, which must be collegiate and non-remunerated.
- c) Proposed articles of association.
- d) Proposed partnership arrangement between the spin-out company and the UAH.
- e) Draft contract of intellectual property transfer from UAH to the spin-out.

4. When preparing the application, the promoters may seek support from the UAH's competent research results transfer office.

## **Chapter II.- The application and approval process**

### Article. 7.- The application and approval process.

1. After inspecting the application to create a spin-out company and the accompanying documentation, the competent Vice-Rectorate will apply to the UAH's General Secretariat and Management Office for the prescribed legal and financial reports required to proceed with the application, submitting to this end a complete copy of the file.

2. Should the reports be unfavourable or voice misgivings, the Vice-Rectorate will decide how best to proceed. Should the reports be favourable, the Vice-Rectorate will create a file including the application to create the spin-out, the business plan, supporting documentation and the legal and financial reports.

3. The Vice-Rectorate will submit the file for inspection by the Research Committee, which will then send it to the UAH Governing Body which, when appropriate, will present the proposal to create the spin-out for approval by the Social Council.

4. The Social Council will reach a decision to approve or otherwise the proposal to create the spin-out as formulated by Governing Body. If the proposal is not approved, the resolution must state the grounds on which the decision is based.

### **HEAD III. THE UAH REGIME FOR SPIN-OUT COMPANIES**

#### **Chapter I.- The UAH as stakeholder**

##### **Article 8.- UAH participation in the spin-out's social equity**

1. The percentage of the UAH's participation in the spin-out company's social equity will be determined according to the value of the technology and the rights of industrial and intellectual property that the UAH transfers to the spin-out for its development and exploitation.

2. The minimum UAH participation in the spin-out's social equity will be 5 per cent.

3. The UAH will transfer to the spin-out the industrial and/or intellectual property rights over the knowledge or technology involved in each case through the drawing up of licensing contracts permitting its commercial exploitation by the spin-out or, where applicable, through assignment contracts, depending on the circumstances surrounding each case and adopting the form of transfer deemed most appropriate by the UAH's authorities.

4. The UAH's participation in the spin-out's equity will be direct, not by means of other companies in which the UAH participates as stakeholder.

##### **Article 9.- The UAH's right to withdraw from the spin-out**

1. At all times, the UAH reserves the right to withdraw from the spin-out company, by virtue of which, with the agreement of the Social Council on the proposal of Governing Body, it may give up its participation in the company, and the promoters must acquire the UAH's stake at a real Price as fixed by an external auditor if the parties fail to agree.

2. Once the UAH has communicated its decision to exercise its right to withdraw, the spin-out's board of directors will dispose of three months to urge the termination of contractual relations entered into with the UAH regarding those goods or rights in UAH ownership, of which the spin-out has been beneficiary; more particularly:

- a) The commercialisation of technologies and knowledge.
- b) The possession or use of moveable or fixed assets.
- c) Industrial or intellectual property rights.
- d) All other good or rights owned by the UAH being used by the spin-out.

3. If the spin-out company chooses to maintain these ties, the legal regime of each one will be reviewed and, where necessary, the terms and conditions indicated by the UAH will be modified, and the UAH will apply market prices and conditions to the surviving ties.

4. Once the right to withdrawal has been exercised, the spin-out will no longer be able to use the company name “spin-out of the UAH”.

5. In all cases, this right to withdraw must be set out in the spin-out company’s statutes at the moment of its incorporation.

#### Article 10. – Economic benefits for the UAH

1. The licensing or transfer of intellectual or industrial rights contracts entered into by the UAH and the spin-out company will specify clearly the annual income in terms of royalties that will be due to the UAH. These quantities will be decided preferably on the basis of easily obtainable figures such as income or trading figures, but not profits.

2. Notwithstanding, in the contracts mentioned in the previous point, the UAH may fix a minimum amount to be received per accounting year.

### **Chapter II. The spin-out company’s obligations towards the UAH**

#### Article 11.- Use of the name “UAH Spin-out Company”

1. Spin-out companies incorporated under the terms of these regulations must use the name “UAH Spin-out Company” (Spanish: “EBT de la UAH”) and the corporate image stipulated for such uses in association with the spin-out’s own corporate image.

2. The UAH may require that the spin-out cease to use the name and corporate image mentioned in the previous point. In that case, the spin-out must cease to use said elements immediately.

3. In no case shall the use of the name “UAH Spin-out Company” mean that these companies act on behalf of the UAH or that the latter endorses their business activities.

#### Article 12.- Monitoring the spin-out’s activity

1. The spin-out must submit to the UAH’s Governing Body and Social Council the following information:

- a) An annual report on the spin-out's research activity.
- b) The annual accounts accompanied by the spin-out's management report and the report of the audit firm selected by the UAH in line with applicable legislation on public contracts.

2. Notwithstanding the foregoing, the UAH may carry out any kind of audit of the spin-out when it deems fit.

#### Article 13.- Commitments of the spin-out company to the UAH

The mere fact of its creation commits the spin-out company to the UAH as follows:

1. The spin-out will be obliged to obtain all the permissions required by current legislation before commencing its activity, and to carrying on its business in compliance with the provisions of its legal regime.

Particularly:

- i) The spin-out will be obliged to honour its tax, trading and social security obligations and to comply with employment and workplace risk prevention legislation.
- ii) Also, the spin-out must ensure compliance with all potentially relevant legislation, including, but not limited to, company law, intellectual and industrial property law, environmental legislation, where applicable, and personal data protection legislation.

2. The spin-out company must undertake the legal defence of those intellectual and industrial rights of the UAH transferred to it in the event of such a defence being called for.

3. The spin-out will undertake not to impede achievement of the UAH's institutional ends and may not use the name of the UAH outside the scope of its business activities.

4. The spin-out will be obliged to enter into a stakeholders' agreement with the UAH as soon as deed of incorporation is issued in order to create a regulatory framework for certain issues related to its management and administration and an internal operating system which ensures that the spin-out does not take decisions that may be to the detriment of the UAH. The spin-out accepts that any new partner will be under the obligation to abide by the stakeholders' agreement.

5. Notwithstanding the provisions elsewhere in these regulations, the spin-out company will be obliged to inform the UAH of the following situations:

- (i) one or some of the promoters wishes to leave the spin-out or any other circumstance which may affect the composition of the partners in the spin-out;
- (ii) any new intellectual or industrial property rights generated in the course of the spin-out's activity;



(iii) whatever circumstances may be of interest to the UAH in relation to the protection of its intellectual and industrial property rights and technology.

#### **HEAD IV.- PROCEDURE FOR MODIFYING THE STATUTES OR FOR DISSOLUTION AND LIQUIDATING A UAH SPIN-OUT**

##### **Chapter I. Statutory modifications and other significant changes**

###### **Article 14.- Capital transactions and other statutory or structural modifications**

1. Equity operations and other statutory or structural modifications to the UAH spin-out company will be subject to approval by the UAH's Social Council, at the behest of Governing Body.

2. With a view to satisfying these requirements, the spin-out's managing director will write to the relevant Vice-Rectorate, submitting the following documents:

- a) A copy of the minutes of the spin-out's general meeting showing the approval of the relevant agreement, the validity and efficacy of which will in all cases be subject to the express approval of the UAH's Social Council, at the behest of Governing Body.
- b) Copy of the spin-out's articles of incorporation and of any subsequent statutory modifications.
- c) Current articles of association and proposed modification to them.
- d) Proposed agreement to update the Stakeholders' agreement or to draft a new one if appropriate.
- e) Annual accounts of latest completed accounting year.
- f) Spin-out's balance sheet and profit and loss account, drawn up no sooner than one month after the date of the agreement adopted by the general meeting.
- g) The company's business plan and degree of accomplishment.
- h) As applicable, legally prescribed reports in accordance with relevant legislation.

3. Once in receipt of these documents, the competent Vice-Rectorate will follow the procedure described in article 7 of these regulations.

###### **Article 15.- Other significant changes and decisions**

1. Other changes or decisions which may affect ownership of the spin-out's equity, the composition of its board or in substantive fashion its assets, or that may be of interest to the UAH due to some material impact on its activity, will also require approval from the Social Council at the behest of Governing Body.

2. Among others, significant changes and decisions will be taken to include any having to do with rights to intellectual or industrial property which the spin-out company may develop or exploit, or any having to do with the participation or professional dedication of the promoters in the spin-out.

3. For the purposes of securing approval for carrying out these changes or adopting these decisions, the spin-out will apply to the competent Vice-Rectorate, setting out the grounds for the proposed decision or change. The application will be accompanied by the documentation relevant to each case.

4. The Vice-Rectorate will follow the procedure set out in article 7 of these regulations.

## **Chapter II. Dissolution and liquidation**

### Article 16.- Requirements for dissolution and liquidation

1. In order to be effective, the dissolution and liquidation of a UAH spin-out company will require the approval of the UAH's Social Council, at the behest of Governing Body. Permission cannot be refused if there are legal grounds for dissolution, which the UAH's Social Council and Governing Body will verify in view of documentation furnished by the spin-out in accordance with articles 2 and 3 of these regulations.

2. In order to comply with the requirements for permission, and regardless of whether there are or not legal grounds for dissolution, the spin-out company's general meeting will submit for approval to the aforementioned organs of university government the agreement to wind up the company, to which end it shall send a copy of the minutes of the meeting at which the decision was adopted to the Vice-Rectorate with competence in matters related to research.

3. With this object, the spin-out company must send to the competent Vice-Rectorate the following documents:

- a) Current articles of association.
- b) Current stakeholders' agreement.
- c) Annual accounts of latest completed accounting year.
- d) Spin-out's balance sheet and profit and loss account, drawn up no sooner than one month after the date of the agreement adopted by the general meeting.
- e) Licensing/transfer of rights to intellectual or industrial property contracts entered into by the UAH and the spin-out and, where applicable, third parties.
- f) Report justifying the agreed dissolution and liquidation.
- g) A copy of the minutes of the spin-out's general meeting showing the approval of the relevant agreement, the validity and efficacy of which will in all cases be subject to the express approval of the UAH's Social Council, at the behest of Governing Body.

4. The Vice-Rectorate will follow the procedure set out in article 7 of these regulations.

#### Article 17.- Share of liquidation and termination of relations

1. Once the spin-out has been liquidated, should there remain capital to be distributed among stakeholders, the UAH will receive the share of the liquidation corresponding to its participation in the social equity.
2. The UAH and the spin-out company will resolve the contracts relating to intellectual or industrial property rights, said rights being restored to the UAH; in no case will the resolution of these or other ties between the UAH and the spin-out result in any cost to the UAH.

#### Article. 18.- Indemnifying the UAH

1. The spin-out will bear the costs deriving from the dissolution and liquidation process which as stakeholder or in any other capacity might correspond to the UAH, this latter remaining exempt of any payment of any amount deriving from said process.
2. The administrators or, as applicable, the remaining spin-out stakeholders will provide the spin-out with the funds required to bring to an end the dissolution and liquidation process, as well as to protect the UAH from any third-party claims that might arise from this process.

#### **TRANSITORY PROVISION**

Spin-outs created before these regulations came into force:

- a) shall, within twelve months from their coming into force, ensure their operations comply with the rules contained in these regulations.
- b) shall carry out statutory modifications and other significant changes in accordance with them, and
- c) in the event of dissolution and liquidation, shall follow the procedure set out herein.

#### **FINAL PROVISION**

These regulations will come into force the day following their publication in the Official Bulletin of the University of Alcalá (BOUAH).