

## **Regulations for establishing WUR spin-off companies (spin-off regulations)**

Wageningen University & Research (WUR)  
August 31<sup>st</sup>, 2020

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# Regulations for establishing WUR spin-off companies (spin-off regulations)

August 31<sup>st</sup>, 2020

The Executive Board herewith proposes the following regulations<sup>1</sup> for Wageningen University & Research (WUR):

## 1. General

WUR has a legal mandate for three core activities: education, research and value creation/valorisation. The latter is defined as the transfer of knowledge and technology to society, leading to economic and/or societal impact. The transfer of knowledge by WUR graduates at organisations where they will work is an important modes of value creation. But just as important is the development of new methods and technologies that are transferred directly to business and society. The effective use in practice of new WUR knowledge supports the creation of innovative products, services and jobs in the Netherlands and far beyond. That is why WUR provides targeted support for the commercial exploitation of its intellectual property.

One route of value creation routes involves the creation of spin-offs. This route is suitable when innovative concepts are still premature for implementation by established parties or when the early stage technology could serve various markets and applications. A new company joins three aspects together: targeted development of innovation, market development and entrepreneurship. WUR encourages and facilitates entrepreneurship and the creation of start-ups and spin-offs amongst its students, graduates and employees. Scalable, robust new companies ran by highly motivated entrepreneurs give WUR an opportunity to achieve global impact with its knowledge.

The Corporate Value Creation department (CVC) helps all WUR staff, students and alumni who are interested in establishing impact-driven spin-off companies. CVC Entrepreneurship also provides advice on compliance with these spin-off guidelines. CVC Knowledge Transfer supports the Science Groups in choosing the best value creation route, their concerns about maintaining freedom of research and WUR's scientific independence, and helps them to clarify and prevent potential conflicts of interest (in relation to ancillary activities or ancillary interests). In addition, all WUR employees are also responsible at all times for their own actions.

Establishing a business offers great opportunities, but also entails risks. The founders will benefit from potential gains, but will also bear the risk of any losses.

CVC conducts the strategic policy and management of participating interests in spin-offs within WUR. These regulations explain the legal and financial aspects of the spin-offs and the participating interests in these spin-offs.

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<sup>1</sup> This document replaces the *PROTOCOL DEELNEMINGEN Wageningen UR – 2009 (PROTOCOL ON PARTICIPATING INTERESTS 2009)* and is in line with the *VSNU Richtsnoeren Omgang met aandelenbelangen van kennisinstellingen en medewerkers in academische start-ups (Guidelines for dealing with the equity interests of knowledge institutions and employees in academic start-ups)* and *Omgang met intellectuele eigendomsrechten (IER) richting academische start-ups (Dealing with intellectual property rights (IPR) regarding academic start-ups)*, the *WUR policy on Intellectual Property & value creation* and the *WUR Kader samenwerking met & investering in venture capital fondsen–2019 (WUR Framework for cooperation with & investment in venture capital funds – 2019)*. We are also grateful to *ETH Zurich* and *TUD, TUE, UT, NKI, TNO* for their inspiration for these regulations.

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## 2. Scope

These regulations provide a framework for the commercial exploitation of WUR research results through the creation of spin-off companies, regardless of whether this spin-off was founded by staff, students or graduates of WUR, or another natural person. Provisions about conflict of interest apply only to employees who remain employed by WUR (part-time, full-time, permanent and temporary).

## 3. Definition of a “WUR spin-off”

A spin-off is a company that has been established with the express purpose of further developing or exploiting knowledge of WUR that is not in the public domain or that is protected. This is defined as “WUR Knowledge”. WUR Knowledge may concern intellectual property rights, such as patent applications, granted patents, software, plant breeders' rights, trade secrets, confidential know-how or assets such as databases, prototypes and designs. WUR spin-offs build on WUR Knowledge and have a formal contractual agreement for the use of this WUR Knowledge. The spin-off may be set up by a WUR-employee, but this is not a precondition.

A “WUR spin-off” is defined as a legally autonomous company or legal entity that is independent of WUR, meets the spin-off criteria set out in Article 9.1 below and is officially accredited as a WUR spin-off by WUR as specified in Article 9 and 10. In these regulations, the terms “spin-off company of WUR”, “spin-off” and “company” are interchangeable.

A WUR start-up is a newly registered company established by staff, alumni and/or students for the purpose of developing and exploiting *public* and *non-protected* knowledge developed by WUR. WUR start-ups can make use of the general knowledge and experience that the founders have acquired during their time at WUR. WUR start-ups that wish to collaborate with research groups are permitted – and encouraged – to give shape to this wish by means of a collaboration agreement or project agreement.

A spin-out is a current business activity that is split off from an existing organisation (also known as a ‘carve out’), and is established as a separate company to continue independent development of this activity.

## 4. The process of establishing a spin-off

WUR encourages entrepreneurship among its staff and students. Employees can consider establishing a new company (spin-off or start-up) and/or participating in a new company. When employees are considering a new spin-off, at WUR we go through the seven steps in the following process, and each step is reviewed before the next step can begin.

Disclosure obligation: the employee’s intention to establish a company must be discussed with the chair holder (at WU) or the Business Unit Manager (at WR) and CVC based on a Value Creation Form or Invention Disclosure Form. Based on the recommendation from CVC, the chair holder or Business Unit Manager decides whether the spin-off value creation route for the relevant WUR Knowledge warrants further consideration. They assess the knowledge position and any rights previously granted (conveyance, options or licenses) or agreed confidentiality regarding that knowledge position.

1. Based on a concise draft plan (1-2 pages), the employee/founder submits a request to determine the feasibility of a spin-off to the General Director of its Science Group. The General Director sends a written approval or rejection of this request to the employee/founder, and

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informs CVC of this decision.

2. A Value Creation Assessment Team (VCAT) is appointed by the General Director and the CVC Director<sup>2</sup>. The primary function of this team is to represent the interests of WUR, supervise the spin-off process and draw up a 'term sheet' outlining the material terms and conditions for the agreement on the use of WUR Knowledge. The VCAT prepares all aspects of the spin-off to ensure a smooth process. Besides this comprehensive remit, it is also mandated to complete the preparations quickly. The VCAT has the lead in the elaboration of the **spin-off proposal**, which will be developed together with the intended founders or future entrepreneurs. This proposal consists of three components:

- a. The term sheet.
- b. A discussion of potential conflicts of interest and clear agreements about roles (see Article 8)
- c. Additional agreements (optional) such as cooperation and access to facilities.

The employee also drafts an adequate business plan. As a minimum, this plan includes a description of the company, its products, markets, and the intended management team, as well as:

- A feasibility study that provides insight into the continuity of the company and provides clarity about the required financial resources and how to acquire them (based on a realistic investment budget and cash flow forecast).
- Clarity about any non-financial contributions that are required and the intended contributor(s).
- Clarity about the milestones and underlying 'road maps' (on technologies, markets and organisation) to be achieved in the first 2 to 4 years.

3. The spin-off proposal is developed under the leadership of the VCAT. The business plan is developed by the employee/founder and has the support of the relevant chair group or Business Unit. The employee/founder submits the final business plan to the VCAT team leader, who then presents this, together with the spin-off proposal, to the General Director and CVC. CVC makes a recommendation to the General Director about the spin-off proposal and business plan. The General Director reviews the proposal and plan regarding the following:

- a. The possible access to, or contribution of WUR Knowledge and the intended knowledge transfer agreements (term sheet).
- b. The organisation or management structure of the company.
- c. The desired collaboration with and/or access to WUR facilities, which will be specified in a collaboration agreement.
- d. If the employee wishes to remain employed by WUR: permission for ancillary activities, including assessment of potential conflicts of interest, see Article 8.1, and any additional financial agreements that are required.

After completing this review, the General Director may request that the proposal be improved and presented again.

4. The General Director makes a decision (approval or rejection) with regard to the term sheet, the future role of WUR, agreements to limit and mitigate any conflicts of interest, and (if applicable) other proposed agreements such as use of facilities.  
In the event of exclusive access to WUR Knowledge, the conveyance thereof, or if an equity position is taken in the spin-off, the Executive Board makes this decision, not the General

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<sup>2</sup> Usually consisting of staff of CVC-Knowledge Transfer, a Business Developer, legal support staff from the Sciences Group and/or corporate legal staff, F&C support on request and possibly an external advisor.

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Director. The CVC Director and the General Director of the Science Group concerned must jointly submit a proposal to this effect to the Executive Board, including a draft exit strategy in case of equity participation.

5. If a spin-off proposal is approved, the necessary agreements are specified. Legal advice to the CVC Director with regard to the participating interests themselves (including shareholdership, articles of association, administrative regulations, management statutes) is in principle provided by staff of Corporate Governance & Legal Services, who advise the shareholders/statutory directors of the relevant holding. Legal advice with regard to value creation routes, license agreements (Article 5), cooperation agreements with participating interests (and use of facilities or WUR personnel), is provided primarily by the legal staff of the relevant Science Group.
6. After signing the necessary agreements, the company can be established (by the founders) and registered with the Chamber of Commerce (KvK). Due to applications for financing, it may sometimes be advisable for the spin-off company to register with the Chamber of Commerce before this. This is only possible after prior consultation and approval by CVC for spin-offs for which no participating interest is foreseen. Apart from the Chamber of Commerce registration, the company also receives the accreditation as a "WUR spin-off" and permission to use the WUR spin-off label after the necessary agreements are signed (in accordance with Articles 9 and 10).

## 5. Licenses and donations

### 5.1 Licenses

When a new company is established to develop or exploit WUR Knowledge (spin-off), a formal contractual relationship between WUR and the spin-off must be concluded for the access to and use of this WUR Knowledge. The use of WUR Knowledge by a spin-off company without a valid license from WUR is not permitted. This also applies to the use of other WUR resources such as brands or databases.

For licensing WUR Knowledge, the regulations for the commercial exploitation of research results – the *WUR policy on Intellectual Property & value creation* – are in force. Access to WUR Knowledge is normally made available to the spin-off by means of a license, for which the spin-off will have to pay a fee on market terms. This can be in the form of royalties and/or milestone payments to which the *Regeling Octrooien en Vindingen (Regulation on Patents and Inventions)* also applies. An alternative could be the valorisation of the WUR Knowledge in exchange for shares in the spin-off for WUR (equity participation). This is not the preferred option for WUR, but it is possible (see Article 6).

In any case, the fair market value of WUR Knowledge is determined<sup>3</sup> and the conditions for the fee are negotiated between WUR and the spin-off company by the VCAT (Article 4, step 3).

### 5.2 Donations when no license or equity participation is possible

Especially when the company does not need a license from WUR, the Wageningen University Fund is always open to a suitable donation from a WUR start-up or spin-off if the company is successful. This applies specifically to companies whose business idea is based on knowledge of WUR that is in the public domain. Agreements to this end are detailed in a binding donation agreement or at least a letter of intent.

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<sup>3</sup> See the WUR Guidelines and considerations on IP valuation methods @WUR, 2019

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## 6. WUR equity participation (shares) in spin-off companies

WUR primarily opts for license agreements with spin-off companies. Milestone payments and royalties are preferred over equity participation. WUR may consider taking an equity interest in the spin-off in the event that:

- a. The WUR Knowledge still needs development and for that reason it is sensible to reduce payments to WUR (cash-out) in the early phase of the spin-off.
- b. The spin-off is of particular strategic importance to WUR.
- c. A combination of a and b.

The decision to acquire an equity interest in a spin-off company is the responsibility of the Executive Board (directors of the holding). The Executive Board also decides on the sale of this equity interest (selling some or all of the shares). Equity participations are centrally managed under CVC and are monitored by Corporate Finance & Control (see Article 12).

### 6.1 Further considerations regarding participating interests

1. If WUR decides to establish a spin-off or acquire a participating interest in a spin-off, the magnitude of its participation is proportional to previous WUR investments, the value of the corresponding WUR Knowledge and the investments of other shareholders in the intended company. The equity interest is effectively a result of negotiating a license fee and of joint valuations and risk assessments. A temporary (1 year) 100% interest can be considered in exceptional cases. Valuation, future business development and WUR financial governance all play a role in this consideration. The aim is to achieve a minority interest between 5% (in connection with the WUR participation exemption corporate income tax) and 24.9% (to maintain the unaffiliated SME status of the spin-off to qualify for grants<sup>4</sup>); up to a maximum of 49% in exceptional cases (due to consolidation with the WUR balance sheet).
2. Equity participation by WUR is always limited in time, as the primary goal is implementation of WUR Knowledge in practice. The basic principle is that there will be an exit moment for WUR. For standard equity participation in a spin-off, this exit should take place within 5 years from the start of the company, but this term can be extended by the holding company (effectively the Executive Board, see Article 12.1). For example, exit can take place during a new financing round for the company, a share buyback or share conversion by the company. Another consideration is whether the exit moment is suitable for the company with respect to the estimated potential, risks and interests of stakeholders and shareholders. The options for WUR exit will be included as a standard component in agreements with the spin-off (the shareholders agreement and/or articles of association).
3. The CVC Director and the General Director of the relevant Science Group jointly submit a proposal to the Executive Board (in their role as directors of the holding companies, see Article 12.1) for new equity participation or modification of existing participation (see step 5, Article 4). This proposal includes an exit strategy (to be drawn up by CVC), a business plan and:
  - a. Clarity about the milestones that need to be achieved – from start-up to the intended termination of participation by WUR – and the consequences of not achieving these milestones.
  - b. Clarity about the distribution of the shares between the parties and method of valuation in the event of a change in equity participation (as in the case of exit).
  - c. Clarity about the WUR employees involved and whether/what agreements have been made to limit and mitigate a conflict of interest (or the semblance of such a conflict).

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<sup>4</sup> <https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition> up to 25% is a goal, although an exception applies to the 25% limit for universities & non-profit research institutions, with room for up to 50%.

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4. In case of minority equity participation, WUR does not hold executive or management positions. However, the relevant WUR holding company will participate in the General Meeting of Shareholders and the holding company may consider – based on the provisions in the shareholders' agreement – appointing one or more (externally recruited) supervisory board members.
  5. In principle, WUR does not invest money in existing spin-offs and does not participate in new investment or financing rounds. Instead, the spin-off company acquires external financing from private capital sources, public funds and/or grants. To this end, cooperate with market parties and investment companies.
  6. During the creation of a spin-off, WUR can contribute the following:
    - a. WUR Knowledge.
    - b. Contributions in kind, for example by making WUR facilities available, such as laboratory space, libraries or equipment, but in principle limited in time (maximum of 3 years) and valued at cost price.
    - c. Personnel capacity (usually the researcher(s) or inventor(s) concerned) that is valued at cost price (maximum of 2 years).
    - d. Provision of a loan (at market rates) by the holding company, in line with legal frameworks as a university and research institution (this is very unusual, see Article 12).
  7. A WUR internal distribution of (equivalent) value/net proceeds of the equity participation/shares amongst the employee(s)/research group/Science Group as specified the *Regulation on Patents and Inventions* is relevant only when the equity participation by WUR is reduced or terminated.
  8. If WUR takes an equity interest in the spin-off, this does not entitle the company to include a reference to Wageningen University & Research its name. Reference to the WUR spin-off accreditation and use of the associated WUR spin-off label is explained in Articles 9 and 10.

## 7. Support

Although WUR supports and encourages entrepreneurship and entrepreneurial skills, and in particular the creation of spin-off companies, any beneficial treatment must not lead to market disruption or be in conflict with prevailing laws and regulations (e.g. regarding state aid). As a rule, therefore, WUR does not support spin-offs financially (Article 12), but it can support its recognised spin-off companies in the initial phase. The founders often experience this phase as a transition period from research to commercialisation. In addition, WUR is aware that the company still has to take many steps in its development, that it will take risks and that it needs to acquire external financing (given the often negative free cash flow in its first years).

That is why WUR support is contractually arranged and why support measures are available for a limited period (up to three years). This includes, for example, the rental of offices (StartHub Wageningen), access to laboratories and the use of infrastructure (e.g. specialised research equipment – Shared Research Facilities) of WUR. Support for spin-off companies by WUR may be possible on favourable terms and is in any case limited to a period of no more than three years after the establishment of the WUR spin-off

### 7.1 Office and laboratory space

During the first three years after their incorporation, spin-off companies can request rental of office space (in StartHub Wageningen) or laboratory space from WUR, if available. Office accommodation

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within the buildings of Science Group is strongly discouraged. Recognition as a spin-off company does not as such entitle the spin-off the right to rent office of laboratory space from WUR.

Every spin-off company that rents space from WUR needs liability insurance and is responsible for compliance with the relevant safety regulations. The spin-off company must observe regulations regarding safety, security, health, environment, disposal of hazardous materials and all other applicable (government) regulations and internal WUR regulations. CVC and Facilities and Services can help companies with compliance. The space is rented out by Facilities and Services or (in the case of laboratories) by the relevant Science Group. The following steps are taken for the initial lease agreement and a possible renewal:

1. The spin-off company or the founder (if the company has not yet been incorporated) initially requests accommodation at CVC. CVC can, upon request, introduce the company to the StartHub incubation manager or to private lessors on and near Wageningen Campus, such as the business complex PlusUltra which was developed (with the help of WUR) for start-ups and SMEs. Requests for renovation or structural modifications of WUR buildings will not be taken into consideration. For the intended use of *laboratories* at research groups, the needs and agreements are discussed with the responsible persons (chair holder or BU manager). CVC (Shared Research Facilities team) can facilitate this discussion on request. For access to *shared measurement equipment*, CVC (Shared Research Facilities team) offers guidance to the spin-off company. For access to *laboratory and measurement equipment*, the company/founder always needs permission from the relevant institute and department.
2. If the company is compatible with the target group of StartHub Wageningen and is admitted to the StartHub incubation programme, it can submit a request to use the workplaces to the incubation manager of StartHub. This applies to spin-off companies founded by BSc, MSc or PhD students of WUR or alumni who graduated no more than two years ago.
3. The StartHub incubation manager, in collaboration with WUR Facilities and Services, draws up a draft lease agreement with the spin-off company/founder (based on a standard template). In case of access to a Science Group, the CVC employee informs the relevant Science Group (chair group/Business Unit and possibly the contracting/legal department) about the needs of the start-up for the use of laboratories and/or measurement equipment and the status of the company within the framework of these spin-off regulations. Agreements on the use of research infrastructure are specified in accordance with Article 7.3 below.
4. Facilities and Services enters into a lease agreement with the spin-off company/founder and invoices the company. The Science Groups draw up a lease agreement for laboratory use and invoice the costs. Shared Research Facilities draws up an agreement for using shared measurement equipment and specifies the costs.

## **7.2 Wageningen Campus location and trade registry address**

The registration of spin-off business addresses on Wageningen Campus inside a WUR building is discouraged. For registration at a WUR address, the trade registry of the Chamber of Commerce requires WUR permission, which can be derived from a signed lease agreement. WUR can stipulate that the spin-off must have a different place of business (such as the home address of a director) in the Trade Registry. In consultation with Corporate Legal, CVC issues a statement to the spin-off with which it can be registered. Registration will not be allowed at the same address as that of the Executive Board.

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### 7.3 Use of research infrastructure and the Technical Design Studio

If a spin-off intends to use research infrastructure (measurement equipment, laboratories, etc.) that is part of a WUR chair group or business unit, this is contractually arranged in a user agreement or infrastructure agreement with the research group concerned or with Shared Research Facilities (if it provides the facilities). Financial compensation for the shared use of the infrastructure is invoiced to the spin-off company by the WUR organisational unit concerned. In principle, spin-off companies are treated in the same way as external companies. Any favourable rates (covering at least cost price) are offered equally by the relevant facilities to all WUR spin-offs for a maximum period of three years after foundation.

Spin-off companies registered with StartHub Wageningen or supervised by the national accelerator StartLife can make use of the favourable internal WUR rates scheme (arranged by CVC) at the Technical Design Studio – TDS.

## 8. Conflicts of interest

### *Disclosure and obtaining permission for ancillary activities*

The *Regulations for Ancillary Activities* apply at all times when an employee is going to work for the new company or expects to receive shares, income or other compensation from the company. All WUR employees must disclose all activities to their General Director regarding the creation of a spin-off company. Employees also have a duty to disclose possible conflicts of interest with their activities at WUR that result from their involvement – either directly or indirectly (through a personal relationship<sup>5</sup>) – with the company (yet to be established). All employees are responsible for this disclosure and must do so before the company is incorporated.

Based on the provisions in the *Regulations for Ancillary Activities*, all WUR employees must obtain prior permission of the chair holder/BU Manager and the General Director for any role that this employee wants to take in the spin-off. According to Article 12, sub d of the *Regulations for Ancillary Activities*, no permission is granted for the performance of ancillary activities where there is a conflict of interest (or the semblance thereof) with educational and/or research activities.

During the assessment by the General Director, particular attention is paid to the possible influence on the *professional and independent functioning* of the WUR employee in question as a result of share ownership or an advisory or operational management role in spin-offs. In this context, the provisions on conflicts of interest in the VSNU Guidelines on dealing with equity interests of universities/research institutions and employees in academic start-ups (2018) and the Netherlands Code of Conduct for Research Integrity (2018) are relevant. In addition, care must be taken to ensure that no improper advantage is gained from access to WUR knowledge or other WUR resources (infrastructure, materials or personnel).

### *Recording and updating*

Conflicts of interest may also arise *prior* to the incorporation of the spin-off, for example when an employee works on a WUR research project with the same scope as the activities of the intended spin-off. In addition, the assessment of potential conflicts of interest always reflects a particular point in time. Not all conflicts of interest can be foreseen in advance. Changes may also occur in the meantime – for example in the activities at WUR or in the involvement in the spin-off (such as expanding the share package or the amount of time spent, or taking an executive position). Such changes may lead to revision of agreements or withdrawal of permission for ancillary activities. The employee is required to actively disclose any changes and other potential conflicts of interest.

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<sup>5</sup> Such as a family member, friend, acquaintance or business partner.

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To help prevent, limit and mitigate conflicts of interest (or the semblance thereof), all agreements regarding possible conflicts of interest that are made between the employee, manager and the Management Council of the Science Group are recorded in writing. The agreements will also clarify how specific potential conflicts of interest can be reported easily by the relevant WUR employee and assessed within the Science Group. In addition, the operation of the agreements is periodically discussed by the employee and their manager (e.g. during the P&D interview) and evaluated after 2 years. The Management Council of the Science Group discusses the operation of these agreements with the relevant chair holders or business unit managers each year.

Clear agreements and optimal transparency are crucial for all parties involved. The employee and their manager will be optimally transparent about the various roles/interests within and outside WUR.

### **8.1 Roles of employees and their possible participating interests in spin-off companies**

WUR encourages entrepreneurship among its employees and the translation of its knowledge into practical applications. Taking an active role in a spin-off company is permitted. To prevent conflicts of interest as much as possible, this requires clearly disclosed expectations, clear agreements and transparency before taking on such a role. During the spin-off process (Article 4), the employee, their manager and the General Director explicitly discuss, consider and agree upon objectives, activities and interests. This takes place prior to the incorporation of the company. Personalised agreements about the degree of involvement are made, recorded in writing and communicated transparently.

#### *Employee role in a spin-off*

In exceptional cases – and only when the WUR employee within the spin-off is or will not be active in the research field of the WUR department concerned – the WUR employee can request to take an employee role in a spin-off in addition to their WUR employment. The *Regulations for Ancillary Activities* are determinant in this respect. The salary costs for part-time deployment at the spin-off are not borne by WUR and it must be transparent how those costs are borne. Clear role and job descriptions must be drawn up for both roles and attached to the agreements to be signed. The greater the employee's decision-making and management influence in their WUR role, the more stringently the request for an employee role in a spin-off will be reviewed.

#### *Consultant/adviser role in a spin-off*

An employee can also be involved in a spin-off as a consultant or scientific advisor in the form of an ancillary activity or by means of secondment from WUR to the spin-off. In these cases, the employee holds no executive or management role in the new company. The role of Chief Scientific Officer is normally a management position and in principle cannot be seen as an ancillary activity.

#### *Shares in a spin-off*

WUR employees are permitted to invest in a WUR spin-off as private individuals, either directly (e.g. via shares) or indirectly (e.g. via options or convertible loans). The obligation to disclose ancillary activities (see introductory text under Article 8) applies to such investments, and agreements must also be made in accordance with Article 8.2.

Participation is based on the employee's own investment and risk, with a share capital that is proportional to the total value of the investments. For employees who remain employed full-time at WUR, a maximum share capital of 4.9% applies, and direct influence on the business operations by the shareholder-employee is limited by a distinction between financial and legal interest (the shares of the WUR employee are placed in a STAK Trust Office Foundation and the shares are

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certified without voting rights)<sup>6</sup>. In exceptional cases (for example imminent emeritus status), the Executive Board may authorise a higher share percentage. If more than one full-time employee wishes to participate in the spin-off company, the overall participation of these WUR employees will be limited together and weighted according to their own investment and risk. Furthermore, the employee concerned must not have pre-emptive rights with respect to the other founders at the time of founding, unless there is a good reason for this. If no outside investors are directly involved, it is advisable that the operational team holds a majority of the share capital at the time of incorporation. When an employee acquires a share position on the basis of inventorship, it will be agreed in advance how to prevent this employee from receiving double income from the net income distribution from WUR IP as inventor<sup>7</sup> (if WUR IP is contributed to the spin-off).

The greater the decision-making and management influence of the WUR employee, the more important it is to mitigate the risk of a conflict of interest by taking a limited role as scientific advisor without any stake in the company.

## **8.2 Agreements about conflicts of interest**

### *Access to WUR information*

WUR employees involved in a spin-off are not permitted to adapt their research or have it adapted by others to the needs of the company. They are also not permitted to provide the company with access to unpublished research results or relevant WUR business information (about leads, new research proposals, funding sources or personnel), as this may give the company an unfair competitive advantage. This does not apply to research results licensed to the company based on the provisions in Article 5.

This means that it is determined in advance which information the WUR employee has access to, and that this access can be withdrawn where necessary. Clearly demarcate work fields to prevent mixing of knowledge (and avoid uncertainty about knowledge ownership). Ensure coordination from the start of the project development phase based on the role and capacity of the WUR employee who will be involved in the project.

### *Competences and strategic influence*

Conflicts of interest can arise if an employee has competences within WUR that can be used to benefit the spin-off. Obviously, the employee concerned cannot represent WUR in relation to the same spin-off in which the employee is involved, also not in cases where contracts between WUR and a third party provide the spin-off with an indirect advantage. Mandates will be considered on a case-by-case basis: concluding contracts with your own spin-off is obviously not permitted. It will also have to be considered to what extent the employee concerned influences the strategy and decision-making within the Science Group.

### *Collaboration*

Collaboration between the spin-off and WUR employee (or their research group) is certainly possible with due observance of Article 8 and taking into account the WUR integrity guidelines for research contracts. Joint projects with a spin-off that are relevant to both the scientific research of WUR and the research and development work of the company are regulated in agreements. This often involves a generic cooperation agreement and/or specific project agreements. These agreements establish rights to the project results and their exploitation. In addition, in the context of their studies, students may come into contact with subjects during study projects that could also be relevant for a spin-off. Targeted cooperation with the spin-off with student involvement is

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<sup>6</sup> VSNU Richtsnoer Omgang met aandelenbelangen van kennisinstellingen en medewerkers in academische start-ups (VSNU Guidelines on dealing with equity interests of universities/research institutions and employees in academic start-ups)

<sup>7</sup> According to Article 10 of the *Regeling Octrooien en Vindingen (Regulations on Patents and Inventions)*, an inventor can relinquish their entitlement to any net proceeds from IP for WUR in exchange for shares.

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regulated separately in project agreements. These students must be independently supervised, with a deliberate focus on WUR employees who have an interest in the spin-off. In the event of a potential conflict of interest, the Code of Integrity and related regulations provide rules for negotiating and signing such agreements.

#### *Transparency<sup>8</sup>*

Openness about ancillary activities is crucial, both internally and externally. Internally, the employee concerned and their manager will have to inform colleagues about any agreements that are made. Employees must also be transparent externally about their role in the spin-off, for example in their profile in We@WUR and LinkedIn, but also in funding or grant applications and in publications.

#### *Procedure for reporting specific conflicts of interest*

Not all conflicts of interest can be foreseen in advance. However, agreements can be made so that potential/new conflicts of interest can be easily reported and investigated internally. If a specific conflict of interest is reported, all relevant information must be provided and the employee must refrain from further involvement until a definitive agreement is concluded.

#### *Time restriction*

Agreements are made for a foreseeable period (2 years) and are periodically evaluated.

## 9. Accreditation as "WUR spin-off"

### **9.1 Requirements**

A spin-off can be accredited as a "WUR spin-off" in two ways: as part of the knowledge transfer process described in Article 4 or via an application submitted by the company to CVC.

A legally autonomous company or legal entity can be accredited as a WUR spin-off if it meets all of the following criteria:

- a. The company makes commercial use of WUR Knowledge (Article 3).  
The intended commercial use must be innovative or related to intellectual property held by WUR.
- b. Preferably, a current or former employee, alumnus, student, PhD student, postdoc or professor of WUR is closely involved in the company during the incorporation, equity participation and/or fulfilment of a central operational/strategic role within the company, with which he/she makes an important contribution to its development.
- c. The business idea and business plan are solid, sustainable and in line with the mission of WUR.
- d. The founder and the founding team are cooperative and are demonstrably enterprising.
- e. If the company is successful, the Netherlands is expected to benefit as a business location (economic impact).
- f. On the date of application, the company has not existed for more than two years (after its incorporation).

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<sup>8</sup> [Netherlands Code of Conduct for Research Integrity](#) (2018):

"Be open and complete about the role of external stakeholders, commissioning parties, funding bodies, possible conflicts of interest and relevant ancillary activities." (3.4 item 44);

"Refrain from making an assessment if any doubts could arise regarding your independence (for example, because of possible commercial or financial interests)." (3.5 item 49). "Be open and honest about potential conflicts of interest." (3.6 item 55).

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## 9.2 Procedure and decision-making process

CVC verifies and assesses whether the spin-off meets the criteria for accreditation and discusses the substantive relationship with the spin-off with the General Director of the Science Group involved.

During the assessment period, at least one conversation in person is required between the founder(s) and the CVC employee who is responsible for handling the spin-off accreditation application. This discussion will include at least one representative of the relevant chair group/business unit, such as the chair holder/BU Manager<sup>9</sup> and possibly a business developer from the research group at which the WUR Knowledge was developed that the spin-off will exploit. In addition, with an application such as that referred to under Article 4, the founder provides CVC with the necessary documentation (business plan, documents relating to intellectual property and/or publications of WUR, etc.), which enables CVC to make an assessment.

The CVC Director, mandated by the Executive Board, makes the decision on accrediting the spin-off. There is no legal right to be accredited as a WUR spin-off company. WUR maintains a publicly accessible on-line register of accredited WUR spin-offs. The accreditation has a term of five years, after which it expires by default and can be renewed on request as long as the provisions in Article 9.1 (through clause e) are complied with.

## 9.3 Withdrawal of accreditation

If circumstances give reason to do so (such as reputation-damaging behaviour, takeover/merger), WUR may unilaterally withdraw accreditation as a WUR spin-off at any time. WUR will explain this decision.

All correspondence regarding a withdrawal will take place by registered mail. In that case, the right to reference to the WUR spin-off accreditation and use of the associated WUR spin-off label will be withdrawn with immediate effect, as described in Article 10. The support described under Articles 7 and 11 (if any) will also be discontinued with immediate effect, and the company will be deleted from the online registry.

# 10. Use of the WUR spin-off label and the WUR name & logo

## 10.1 WUR spin-off label

Once the company has been accredited, it has the right to call itself "WUR spin-off" and to use the special WUR spin-off label, as long as the link is maintained based on the provisions in Article 9.1a. The company must always be recognisable as an independent entity. If the company no longer complies with the criteria, if the spin-off is taken over by another company and changes its name or adopts the name of the acquiring party, or if the accreditation is withdrawn, then the spin-off company may no longer call itself "WUR spin-off" or use the WUR spin-off label.

The WUR spin-off label can be used by the company in its general communication (for example on its website, or in company brochures), but not in the marketing of individual products or services (e.g. product advertisements, product labels or product descriptions).

The exact conditions for using the WUR spin-off label will be provided prior to its provision.

## 10.2 "Wageningen University & Research (WUR)" name and logo

Without prior permission, clients and companies – including WUR spin-offs – are forbidden use the Wageningen University & Research name and logo (see WUR General Terms and Conditions). If a spin-off wants to use the WUR name and/or logo, it must first request permission from Corporate Communication & Marketing, which assesses the application in accordance with the instructions on

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<sup>9</sup> As budget manager and group representative.

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“Use of name/logo by external parties” and responds in writing to the request. The name or the WUR logo may never be used to promote products or services.

## 11. Advice from Corporate Value Creation

The Corporate Value Creation department advises and inspires all WUR staff and students who are interested in entrepreneurship and who want to explore setting up a company (spin-off or otherwise). This is done by the CVC Entrepreneurship team, in which StartHub Wageningen, and the coordinating office for entrepreneurship education are positioned.

The CVC Entrepreneurship team advises the potential entrepreneur regarding all entrepreneurial skills and requirements for starting a business. The entrepreneur is always responsible for the methods and preparations for establishing the company. When access to WUR Knowledge and facilities is required, and a spin-off is envisaged (Article 3), a member of the CVC Knowledge Transfer team supervises the process on behalf of WUR and becomes part of the VCAT during the realisation (Article 4) of the spin-off.

CVC maintains confidentiality about all plans concerning the establishment of the company and any information (such as the business idea, business plan, financial plan and licensing conditions) that is provided by the spin-off company to WUR as part of the spin-off accreditation. CVC-Knowledge Transfer participates in and is responsible for the process of negotiating and monitoring license agreements (together with the relevant Science Group), and advises the Science Groups about other transactions with the spin-off.

WUR CVC can – on a confidential basis – provide other units / Sciences Groups within WUR that have a direct interest or involvement in the spin-off with information that is necessary to make their decisions.

After establishing the company and completing the spin-off process (step 7, Article 4), the company can be admitted to the national StartLife accelerator programme. This programme is supported by WUR and is intended to accelerate and possibly pre-seed finance the spin-off company at an early stage.

## 12. Financing of spin-offs and management of participating interests

WUR does not finance spin-offs itself and does not offer any financing instruments; in principle, the spin-off company acquires external financing from private capital sources or public funds and grants. This also applies if WUR holds a participating interest in the company, especially after its incorporation. Instead, it supports spin-offs through indirect benefits such as the use of real estate and infrastructure (temporary, mainly StartHub Wageningen) and licenses on intellectual property. CVC also provides access to private capital from the innovation ecosystem, for example through partnership with venture capital funds (WUR participates in a few venture capital funds) and in the investor network maintained by CVC & StartLife. Such indirect support is always in accordance with these regulations. However, WUR can decide to participate with shares in spin-off companies, in line with Article 6.

In addition, the Road to Innovation grant and external valorisation grants can be used to finance (or co-finance) initial steps within WUR (before incorporation) regarding feasibility and exploration of the value creation route.

WUR/CVC will inform venture capital funds with which it collaborates or participates<sup>10</sup> and the national incubator StartLife about companies that have received the WUR spin-off accreditation in accordance with Article 4 and Article 9. It is up to the company to give shape to and realise

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<sup>10</sup> Innovation Industries, Shift Invest, in addition to collaboration with many others such as VIVES, Pymwymic.

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external financing and participation in incubator programmes. WUR spin-offs are not entitled to funding from the investment funds in which WUR participates, nor are they obligated to accept an offer from these funds.

### **12.1 Management – Governance of the WUR participating interests**

Participating interests in spin-off companies are held by Wageningen Business Generator (WBG) BV or Wageningen University Holding (WUH) BV. The delineation of strategic lines and the management of participating interests has been entrusted to CVC, which always acts in close collaboration with Science Groups that have the greatest alignment with and substantive expertise regarding the domain of the specific value creation and exploitation. Corporate Finance & Control monitors the participating interests and keeps the accounts of the holdings.

WUH and WBG are the holding companies for all participating interests within WUR. The competences of WUH and WBG as shareholders rest with the statutory directors of WUH and WBG (being two members of the Executive Board). Specific competences are reserved for WUH and WBG as shareholder/statutory director (members of the Executive Board).

The CVC Director, or a person mandated by the CVC Director, acts as an authorised or delegated shareholder with regard to the participating interests within the following frameworks:

- a. As an authorised shareholder representative, the CVC Director adheres to the general and specific instructions regarding the policy to be pursued as given by the statutory directors of the holding companies and remains within the competences specified in the articles of association.
- b. The CVC Director maintains regular consultation with the Management Council of the Science Group from which the participating interest originated in order to coordinate the value creation potential and the strategic aims of the Science Group concerning the participating interest.
- c. The CVC Director reports to the Executive Board during his management interviews.
- d. It is the duty of the CVC Director to inform the shareholder (WUH BV or WBG BV) and the General Director of the relevant Science Group at all times, and as soon as possible and on his own initiative, regarding developments in the participating interests about which the shareholder and Science Group should reasonably be aware.
- e. The CVC Director is authorised, with due observance of the general or specific instructions given by the shareholder (this refers in particular to sub 1 and 2 above), to take decisions on behalf of the shareholder regarding:
  - Approval of annual accounts and profit appropriation.
  - Appointment/remuneration/suspension/dismissal of the executive management.
  - Changes in share capital in the context of the agreed exit strategy.
  - Shareholder agreements.
  - Amendments of the articles of association.

A power of attorney will be issued for this purpose.

### **12.2 Financial structure**

On the basis of the legal positioning and relevant legislation, the participating interests are, where appropriate, consolidated within WBG or WUH. The strategic financial course is set out by CVC in consultation with the Management/Directors of the relevant Science Group, including any budgetary consequences. In principle, WUR does not finance participating interests itself. Instead, the company in question acquires external financing from private capital sources or public funds and grants. See Article 10.

The Science Groups are expected to deploy their own investment resources for value creation/knowledge valorisation. A Science Group can consider using its own resources to work on further development of propositions (proof-of-concept phase) that may become new participating

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interests (spin-off route). In that case, the policy-related financial consequences with regard to the creation of the participating interests are borne by the Science Group.

For spin-offs, investments that run exclusively through the Science Group will in principle lead to the net proceeds also accruing to the Science Group. The same principle applies here as with regard to protected intellectual property (patents) and license income. Alignment is sought with the established allocation agreements in the *Regulations on Patents and Inventions Wageningen University & Research*, especially Articles 10 and 11.

Essential external management costs (not being investments or liquidity reinforcement, but rather advice/business services) for the management of the participating interests are in principle borne by CVC the holding company; costs exceeding € 5.000 per participating interest are settled upon exit. In exceptional cases and only after prior written approval by the Executive Board, the relevant Science Group may provide loans to the spin-off company or convert license agreements into loans (via the holding company).

In addition to the administration of the holding companies, the preparation of the annual accounts and the budget of WBG and WUH is the responsibility of Corporate Finance & Control. For the purpose of the planning and control cycle, CVC, in collaboration with the Science Group and CF&C, draws up a six-monthly report for each participating interest.

Invoices/expense declarations and loans to be booked at the expense of WBG/WUH can be submitted to the CF&C Director with written substantiation.

### 13. Entry into force

These regulations enter into force on August 31<sup>st</sup>, 2020 and replace the "*Protocol Deelnemingen Wageningen UR 2009*" (*Protocol on Participating Interests 2009*).