



**EUROPEAN FOODBUSINESS TRANSFER LABORATORY FOR STIMULATING
ENTREPRENEURIAL SKILLS, FOR FOSTERING INNOVATION AND FOR BUSINESS
CREATION IN THE FOOD SECTOR / FOODLAB**

**Contractual template to help companies and HEI to work
together within ECOTROPHELIA initiative**

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1 Introduction

Scope and addresses

REGARDING the **lack of competences** on legal aspects concerning the development of food projects highlighted in FOODLAB Deliverable 4.1 “Handbook of concrete competences sharing that may follow innovation fostering and innovation transfer improvement”, guidelines and best practices are provided for strengthen relations among Universities, Students and Businesses.

The framework

RECALLING the development of **new educational content methodologies** and organisation carried out in FOOLAB WP3 included useful tools for the creation of an entrepreneurial spirit already starting from the Universities;

REFERRING to the will, on the part of Universities, to **develop their so-called “Third mission”** by being the promotor of economic progress and thus to work more in connection with the private sector in order to receive necessary funds with which to carry out University research projects;

REFERRING to the fact that a development of the Universities **“Third mission”** creates an image of the **Universities** as being **more linked to the world of work**. Efforts in order to encourage entrepreneurial culture early on in the educational system are useful in order to develop, on the part of the students, an entrepreneurial spirit and thus to further stimulate entrepreneurship in the market (e.g. creation of spin-offs and start-ups);

REFERRING to the **stronger links created by the Universities with the private sector** which enables research and collaboration which lead to the **adequate exploiting of these results** (including the launch phase of a new product in the market);

REFERRING to the need, on the part of **Businesses** (particularly Small and Medium Size Enterprises ‘SMEs’ and start-ups), **to be supported in technological developments** in order to be competitive in the market; the European food sector is experiencing a rapid structural change as shown by the rising concerns about several issues such as **health, food safety and the environment**¹. With reference to the development of a confluence climate regarding University research, Businesses are more inclined to invest in scientific research carried out at the Universities with the commitment on valorisation of results and inventions achieved;

¹ Willnegger, E., *Patents in the Food Sector- A Retrospective with Special Emphasis on the TRIPs Agreement*, München: MIPLC Nomos Verlag, 2008.



RECOGNISING the importance of **European level Institutes** such as “European Universities Association²”, “ASTP-PROTON Knowledge Transfer Europe³”, “European Institute of technology⁴”, “Entreprise Europe networks⁵”, “Innoget⁶” and initiatives such as “Heinnovate⁷”, “European Business Cooperation⁸” and “Ecotrophelia⁹” which show that technological development and knowledge transfer, including the creation of Universities/Businesses partnerships, are key challenges for the future of both Businesses and Universities in Europe;

STRESSING the need to **make Universities aware** of the growing importance of the “Third mission”, it has thus to be noted that the impact of Universities/Businesses research projects co-development must to be assessed not only taking into consideration “**tangible**” results (patents, licences, Spin-offs) but also **behavioural issues**¹⁰.

HIGHLIGHTING the importance of structures dedicated to technological support and transfer such as **Universities incubators, Innohubs, specialised Universities Departments** (like Europe’s Start Up Hubs¹¹, the Italian Tecnopoli¹² and University incubators¹³, the Spanish Oficinas de Transferencia de Resultados de Investigación (“RED-Otri”)¹⁴, the French Sociétés d’Accélération du Transfert de

² The largest and most comprehensive organisation representing universities in Europe which provide its member the opportunity to share best practices and to influence and shape future European policy and initiatives affecting higher education and research <<http://www.eua.be>> accessed 9 December 2016.

³ An Association for professionals involved in knowledge transfer between Universities and Industry <<http://www.astp-proton.eu/organisation/about/>> accessed 9 December 2016).

⁴ An Institute with the purpose of supporting innovation and entrepreneurship across the EU by creating dynamic pan-European partnership <<https://eit.europa.eu/eit-community/eit-glance>> accessed 9 December 2016.

⁵ A Network which helps small and medium-sized enterprises (SMEs) to make the most of business opportunities in the EU and beyond <<http://een.ec.europa.eu>> accessed 9 December 2016.

⁶ An open innovation marketplace for selling and buying technologies and knowledge about life science, chemistry, engineering and computer science. <<http://www.innoget.com/about-us>> accessed 9 December 2016.

⁷ An initiative of the European Commission and the OECD and supported by a panel of six independent experts. Heinnovate is a self-assessment tool for all types of higher education institutions in order to evaluate entrepreneurial activities and to provide tools for spreading this entrepreneurial spirit <<https://heinnovate.eu>> accessed 9 December 2016.

⁸ A study carried out in order to understand “the state of the art” University-Business cooperation in Europe <<http://www.ub-cooperation.eu/index/whythisstudy>> accessed 9 December 2016.

⁹ The European Food Innovation Student Awards: a competition that, since 2011, brings the world of higher education, research and the food industry together around the creation of an innovative food project <<https://eu.ecotrophelia.org>> accessed 9 December 2016.

¹⁰ European Commission Directorate-General for Education and Culture-Directorate C: Lifelong learning: higher education and international affairs European Institute of Innovation and Technology; economic partnership. The State of European University-Business Cooperation- Part of the DG Education and Culture Study on the Cooperation between Higher Education Institutions and Public and Private Organisations in Europe, May, 15, 2010 to August 31, 2011. Science-to-Business Marketing Research Centre, Germany, p. 5 <http://ec.europa.eu/dgs/education_culture/repository/education/tools/docs/uni-business-cooperation_en.pdf>, accessed 9 December 2016.

¹¹ Europe’s Start Up Hubs <<http://www.startuphubs.eu/>>, accessed 9 December 2016.

¹² Such as Emilia Romagna Region Tecnopoli within the Emilia Romagna High technology network <<http://www.retealtatecnologia.it/tecnopoli>> accessed 9 December 2016.

¹³ Such as University of Turin incubator <<http://www.unito.it/universita-e-lavoro/opportunita-ed-esperienze-di-lavoro/studenti-e-laureati/mettersi-proprio-3>>, accessed 9 December 2016.

¹⁴ A network of offices dedicated to the knowledge and technological transfer <<http://www.redotriuniversidades.net/index.php/presentacion>> accessed 9 December 2016.

Technologie (“SATT”)¹⁵, the Italian Uffici di Trasferimento Tecnologico (“UTT”)¹⁶ with the purpose of collaboration facilitation between Universities and Businesses,;

HIGHLIGHTING the importance of **building a link among Universities** (e.g. with a similar structure and same objectives), for example through **Consortia**, in order to share their best practices;

EMPHASIZING the need for **stronger public financial support** in order to facilitate the development of the University role in innovation and the creation of entrepreneurship through, for example, the creation of spin-offs;

RECOGNISING the importance of **programmes** which have as their objective to **support** research and innovation valorisation as well as **cooperation between Universities and Businesses in strategic sectors**¹⁷ ;

CONSIDERING the need to set up **soft law guidelines for all EU Universities** for a smart collaboration and in order to foster innovation;

NOTING THAT **legal rules are different from Country to Country** and therefore Universities and Businesses are not always fully aware of the several opportunities that exist in order to work together on innovative projects;

ACKNOWLEDGING the need to select **the best practices** in order to transfer innovative projects to Businesses so that to **facilitate entrepreneurship** both by highly qualified students and SMEs in the food sector;

WELCOMING the **efforts made** towards innovation fostering and innovation transfer improvement;

HIGHLIGHTING the need of **harmonization of notions** to be used when defining the scope and the objectives of Universities/Businesses research project co-development;

ENCOURAGES Universities and Businesses, **for the purpose of a smooth collaboration among Universities and Businesses as well as students and future entrepreneurs**, to consider the following guidelines when drafting a contract/agreement on Project co-development

¹⁵ Societies created among public research entities to which the University entities (for example: departments) in charge of research valorisation confer valorisation management duties <<http://www.satt.fr/wordpress/que-sont-les-satt/>>, accessed 9 December 2016.

¹⁶ Very frequently Uffici di Trasferimento Tecnologico (“UTT”) are included in the HEIs and have the purpose of results valorization and technological transfer. In: Osservatorio Università-Imprese, Fondazione CRUI- Gruppo di lavoro 3. La valorizzazione della ricerca scientifica: uffici di trasferimento tecnologico (UTT), incubatori universitari, spin off/start up e brevetti/licenze <http://www2.cruil.it/cruil/osservatorio/3_GdL3_Rapporto%20Def.pdf>, accessed 9 December 2016.

¹⁷ French “Programme d’investissements d’avenir” (PIA) <<http://www.gouvernement.fr/pia3-5236>>; European FoodBusiness Transfer Laboratory for stimulating entrepreneurial skills, for fostering innovation and for business creation in the Food Sector / FOODLAB” (co-founded by the Erasmus +, Programme of the European Union) <<https://foodlab-eu.com/>>; Universidad Politécnica de Valencia- Ciudad de la Innovación- Parque científico en red de la Universidad Politécnica de Valencia <<http://cpi.upv.es/quienes-somos/presentacion>>, accessed 9 December 2016.

2 Section 1 of the university/business project co-development

Section 1: Addresses and Definitions

- 1.1) a) Project: planning of activities to be performed. Any type of project in the scientific research field¹⁸ (e.g. at European, National or Regional level);
- b) Co-development of project: A project in which there are at least two parties working together towards a shared objective; hereinafter referred to as: *Project/Project co-development*.
- 1.2) The parties in the Project are those legal entities which are engaged in the Project itself; hereinafter referred to as:
- a) *Partners* (in the co-development of the Project);
- b) *Participants* (in the Project itself);
- c) *Parties* (in the agreement/contract on Project co-development drafted on the basis of this contractual template);
- d) *Consortium* (two or more Parties involved in the Project).

For the purpose of this contractual template, the Parties shall be considered as being:

- a1) Higher Education Institutions (HEIs) are understood to mean all institutions which provide higher education. These institutions must be formally recognized by the relevant national/regional authority. HEIs are: Universities, Universities of Applied Sciences, Polytechnics /technical universities, Colleges and tertiary schools; hereinafter referred to as: *the Universities*¹⁹;
- b) Businesses are hereby include privately and publicly owned organizations, Non-Government Organizations (NGOs) and no-profit organizations²⁰; hereinafter referred to as: *Businesses*.
- 1.3) Co-development of the Project and activities to be performed:
- a1) co-development: activities are performed by the Universities as well as by the Businesses;

¹⁸ This contractual framework particularly relates to the food sector.

¹⁹ The State of European University-Business Cooperation, *l.c.* p. 7.

²⁰ The State of European University-Business Cooperation, *l.c.* p. 8.



a2) co-development: activities are performed by the Universities and the Businesses which provide financial support.

1.4) Initiation of the Project: the idea may originate from the Universities or the Business, or by both Parties.

1.5) Possible people involved in the Project:

Students (or PhD students): individuals responsible for the effective implementation of the Project (whether at the laboratory, office, at home or any other location). These individuals will be employed under contract by either the Businesses or the Universities.



3 Section 2 of the university/business project co-development

Section 2: General principles

The Code of ethics principles are applicable (FOODLAB Universities/Businesses Project co-development Code of Ethics).



4 Section 3 of the university/business project co-development

Section 3: Implementation of the Project²¹

4.1 Sub-section 3.1: Prior Knowledge

3.1.1) Background: information and knowledge held by the Parties prior to the Project itself. At the moment drafting the contract/agreement on Project co-development it is important to clarify all pre-existing knowledge of each Party in the Project.

3.1.2) Access Rights to Background: if applicable, written agreements, established by the Party indicating the requirements of the Project, have to include a precise list of information which may be accessed by each Party and highlights the ways in which to use this information under the direct supervision of the interested Party.

3.1.3) Licenses and Usage Rights to Background: if applicable, specific agreements where one Party gives the other permission to use the whole Background or parts thereof. In principle Parties will have access to the Background of the other Party at either no cost, or on the basis of fair and reasonable conditions (i.e. appropriate conditions including possible financial terms taking into account the specific circumstances of the request for access).

4.2 Sub-section 3.2: Results achieved

3.4) Foreground: results, including information, materials and knowledge developed/attained in a given Project. If following the research activity an invention is achieved, it is important to take into consideration issues such as ownership of the invention and royalties to be recognized to the inventor as well as the activities to be performed in order to protect the invention itself.

²¹ The definitions (e.g. Background, Access rights, Licenses and Usage Rights to Background) are derived from: European Commission- Community Research. Guide to Intellectual Property Rules for FP7 projects, 7th Framework Programme- Version 3 <http://ec.europa.eu/research/participants/data/ref/fp7/89593/ipr_en.pdf>, accessed 9 December 2016.

5 Section 4 of the university/business project co-development

Section 4 Research activities and people involved

5.1 Sub-section 4.1: Organization

4.1.1) Research activities to be performed and the Project schedule for both the Universities and the Businesses (i.e. specific provisions in the contract/agreement on Project co-development between the Universities and the Businesses) have to be specifically planned.

4.1.2) The roles and responsibilities of each individual involved in the Project from both the Universities and Businesses shall conform to the ethical standards defined in the Code of Ethics.

4.1.3) Parties shall establish the premises where the research will be carried out and which equipment will be needed. Parties shall also ensure the compliance with all safety requirements.

5.2 Sub-section 4.2: The verifying of the duties of individuals involved in the Project co-development

4.2.1) “Traceability” system: agreed mechanisms to be used in order to monitor all activities performed by those individuals involved in the on hand implementation of the Project. These mechanisms shall include:

- a) daily / weekly upload of Project working documents on a web platform accessible by either or both the Universities and Businesses;
- b) monthly web conferences;
- c) periodical meetings;
- d) progress and final reports.

4.2.2) The “traceability system” shall allow:

- a) the Universities, and in particular the Head of Department/Institute, to monitor the work carried out by the individuals assigned to perform the specific tasks;
- b) any supervisor assigned to assist the students to monitor the methodology and execution of Project-related work, and to provide relevant advice when necessary;
- c) the Businesses in order to monitor the expenditure of any financial support it may have provided, and to determine which activities have been carried in developing the Project;



- d) the Businesses to make suggestions and express opinions concerning the activities performed in order to implement the Project;
- e) an agreement should be reached to address the eventuality that an individual/individuals is/are unable to continue working on the Project due to unforeseen circumstances. Should this occur it may, for example, be necessary to employ a replacement to take over the vacant role.



6 Section 5 of the university/business project co-development

Section 5 Technological Transfer

6.1 Sub-section 5.1: Scope and objectives of Technological Transfer

5.1.1) Technological transfer: facilitates the dialogue between Universities and Businesses. It shall provide new synergies, produce new knowledge, bring strategic valorisation to University research and create a commercial exploitation of inventions²².

There are several mechanisms of technological transfer, such as research on commission, research on collaboration, advice, conferences and publications²³.

5.1.2) Building of Universities/Businesses partnerships: offices dedicated to technological transfer are extremely important tools which provide information on research activities carried out at the Universities. These offices are also useful in order to let Businesses enter University premises and there meet researchers and students whilst assisting with legal advice concerning invention protection (e.g. patent proceeding)²⁴.

5.1.3) Facilitating student entrepreneurial spirit: the Universities may give students²⁵ appropriate tools, methodologies and financial support in order to carry out a research activity.

Initially, all the student projects belong to the Universities.

When the Project has been finalized it may happen that:

- a Business wants to buy the invention/product (Foreground of the Project);
- some students, among those who carried out the Project, want to develop their own business.

This transfer of Foreground shall be ruled as follows:

- the Business shall pay the Universities an agreed sum which is then divided between the Universities and the students who carried out the Project;

²² Cicchetti, A., Leone, F. E., Mascia, D., *Ricerca scientifica e trasferimento tecnologico-Generazione, valorizzazione e sfruttamento della conoscenza nel settore biomedico*, Milano: FRANCOANGELI/Sanità, 2007, p. 39.

²³ Cicchetti, A., Leone, F. E., Mascia, D., *l. c.*, p. 39.

²⁴ Cicchetti, A., Leone, F. E., Mascia, D., *l. c.*, 61-62.

²⁵ Interesting is the example of France where there is a commitment on valorisation of scientific research and inventions.



- the students who want to develop their own business shall pay the Universities an established amount which is divided between the Universities and those students who do not want to take part in the development of the business.

6.2 Sub-section 5.2: Best practices in Technological Transfer

Italian context

Research contracts:

1- “Contratto di ricerca conto terzi” (Third Party Research Contract): the Business, which is aware of the significant competence had by the Universities in a particular field, confers to the University the task of carrying out scientific research. In this case, the University works for the Business and in accordance with the instructions given by them. The Business will be the owner of the results obtained in performing such research.

2- Contract on Academia/Business collaboration: Business and University have competence in a field and decide to carry out a research together. In this case the University does not work for the Business, but rather works with the Business. Similarly, where the University has already accumulated significant Foreground and needs financial support in order to continue its research activity, the Business which is available to give financial support initiates a collaboration with the University.

Different rules applicable related to Foreground achieved:

-Research contract- “modello equo premio”: the public or private entity which confers to the University the task of carrying out a research activity shall own the results if any are achieved.

- Research contract- “modello contitolarità dei risultati”: University and public or private entity have joint ownership of the rights on the results achieved.

This format may be used mainly in two cases:

1- The University has already achieved some significant results (or has already registered a patent) and needs financial support in order to go on with its research activity. In this case the Business invests in this research which may lead to the achievement of significant results. Hence, if these results are achieved, the Business aims at receiving royalties from the exploitation of these results. Also the Business aims at industrially developing the product based on the patent in order to commercially exploit the said patent;

2- The University and the Business together develop a research Project and carry out research activity. Should results are obtained, an agreement between Parties shall be adopted. This can depend on the commercial power of the Parties. For example, if the Business is a big Business they may want to be entitled to the patent and to manage it; while if one of the Parties is a small Business it may be willing to carry out a joint management of the registered patent itself.



Spanish context

- 1- Contract on the basis of which the University provides advice/technological support to the Business;
- 2- Material transfer agreement between the University and a Business where the University renders available to the Company pieces of to be used in the Laboratory;
- 3- Specific academic cooperation agreement between the University and an individual (e.g. a student) for the completion of the work.

French context

- 1- Contract of Transfer of Intellectual Property Rights.

Hungarian context

- 1- Agreement cooperation for providing professional-practical training;
- 2- Confidentiality agreement.

Spin off: a perfect example of effective technological transfer. The spin-off may be defined as a business founded by Professors/researchers with the purpose of using Foreground deriving from research activity carried out at the University. Spin-off is a Company and is able to commercially exploit Foreground deriving from research activity²⁶. University supports and facilitates the creation and the starting of spin-off. The spin-off may be seen as a model that allows the research to be applied for the development of products and that brings Universities closer to the entrepreneurial world.

²⁶ Within the University, there are two types of Spin-off: “University Spin-off” (University itself takes part to the Spin-off) and “Academic Spin off” (students, University staff are the founders of the Spin off).



7 Section 6 of the university/business project co-development

Section 6 Intellectual Property Rights (IPRs) and Industrial Property Rights

6.1.1) Applicable rules: rules to be applied are the ones stated in the different Intellectual Property Codes in force among Parties²⁷, however Parties may agree on different terms. These different terms may be stated in specific regulations adopted by the Universities or may be established in clauses contained in the contract drafted between the Parties and the people involved in the Project. Parties are free to set specific contracts on IPR transfer from the student to the University and to state the amount of royalties to be given to the student (with the quotation of the specific law if it exists in the applicable legal framework).

6.1.2) When Parties are in a Consortium the general rule is that “Results are owned by the Party that generates them”²⁸.

7.1 Sub-section 6.1 Ownership of Foreground

6.1.1) Specific clauses on IPRs and addresses shall be stated:

- Between University and its students;
- Between Universities and the Business when a collaboration Project is carried out;
- Between Universities and the Business when the University carries out a commissioned research activity;
- In a Consortium (not necessarily between Universities and Businesses).

6.1.2) Single ownership: Parties to the Project agree that Foreground resulting from the Project is solely owned by one Party²⁹. The person who owns Foreground is able to benefit from intellectual

²⁷ The matter of intellectual property rights (IPRs) is regulated in the majority of legal systems. Codes on intellectual property rights or industrial property (IPC) represent the basis of all rules to be taken into consideration when analysing the matter and when adopting agreements (for example on Academia/Business Project co-development) in which to recall or, possibly, derogate these rules.

²⁸ DESCA, Horizon 2020 Model Consortium Agreement, 2016, p. 25 <http://www.desca-2020.eu/fileadmin/content/Desca_2020_1.2/DESCA2020_v1.2_March_2016_with_elucidations.pdf> accessed 9 December 2016.

²⁹ In some cases, one Party is more involved (economically or because of specific interest) on the Project, hence this Party is established as the owner in the agreement set up.

property protection of the said Foreground. In the context of projects carried out in the scientific field, patents are filed in order to protect results which often consist of inventions³⁰.

It has to be noted that it is the owner of the patent who has to carry out all the activities concerning patent protection including judicial proceedings against usurpation, counterfeit, or other cases where there is illegal use of the patent.

6.1.3) Joint ownership: Parties agree that Foreground resulting from the Project is owned by both Parties and they agree on terms of exercising joint ownership (for example, the University owns the patent and the Business is entitled to an exclusive commercial licence regarding the patent and it has to carry out all the activities linked to patent protection). Owners have to agree on terms of exercising joint ownership and to set rules on IPR protection.

6.1.4) Shared ownership: Parties to the Project agree that Foreground resulting from the Project is owned by the Parties who produce this specific piece of Foreground.

7.2 Sub-section 6.2 Best practices on ownership and exploitation of Foreground

6.2.1) General cases:

-The Party who has the best interest in the execution of the Project owns foreground and is able to apply for the patent and to see through its follow-up; the other Party may apply for a licence to exploit and disseminate this Foreground;

- The entitlement to apply for the patent depends on the innovation skills of the Parties. In the case where the Business is applying for the patent, the University shall receive a fixed amount of royalties deriving from patent exploitation;

- Parties have information duties: for example, if the contract establishes that the Business owns the rights on Foreground and the Business then decides not to continue exercising of the said rights or waive any of the titles applied for, it shall report to the University so that the University can decide whether or not to retain these rights under its own responsibility.

6.2.2) Distinguishing provisions:

- One of the Parties is a University: in the case of it being the University applying for the patent, a contractual clause shall be stated where the Business shall have the exclusive right to

³⁰ The technique or product is an invention if it is new and no scientific publication or other means have concerned the invention itself, if it is the result of an innovative activity and if it may be industrially applied (Art. 10 Italian D.Lgs No of 10 February 2005 on the Industrial Property Code; Art. 4 Hungarian Act XXXIII of 1995 on the protection of the inventions by patents; Art. 4 Spanish Real Decreto Legislativo No 1 of 12 April 1996 on revised Intellectual Property Law (which harmonizes all existing legal provisions); Art. L611-10 French Law n° 92-597 of 1 July 1992 on the Intellectual Property Code).

commercially exploit the patent or the product deriving from the patent. The Business shall inform the University of its decision to exploit Foreground and shall give the University its due royalties;

- Parties are University, Business and students (or only students and the University): all these Parties may opt for a spin-off: the University and the Business start a spin-off which exploits Foreground deriving from University research.

7.3 Sub-section 6.3: Access Rights to Foreground and Licences

6.5) Access Rights to Foreground: when one Party is not recognized as the owner of the Foreground, it has to be, in any case, allowed Access Rights to Foreground. In addition, royalties have to be given to this Party.

6.6.1) Licences: Parties which are not owners of Foreground but have licence may use these Foreground (for example commercial exploitation).

Licence may be subject to costs or may be “an open licence”. Costs are often expressed as royalties that have to be paid to the owner. An open licence is not a transfer of copyrights or Intellectual Property Rights (IPR). Beneficiaries will continue to have the copyright³¹.

³¹ European Commission (2016). Erasmus + Programme Guide, p. 252 <http://ec.europa.eu/programmes/erasmus-plus/sites/erasmusplus/files/files/resources/erasmus-plus-programme-guide_en.pdf> accessed 9 December 2016.

8 Section 7 of the university/business project co-development

Section 7: Confidentiality and Dissemination of Foreground

8.1 Sub-section 7.1: Confidentiality requirements

7.1.1) Confidentiality shall be required:

- a) as a result of the objective of the Project or parts thereof;
- b) in relation to some pieces of Foreground already obtained, in order to fulfil all other envisaged activities of the Project;
- c) as a result of a request of one Party, especially if it is the owner of Foreground.

7.1.2) Confidentiality protection:

- a) parties shall only undertake to use confidential information in relation to the execution of the Project;
- b) dissemination of any material associated with the Project must comply with the permanent or temporary requirements of confidentiality of the Project itself.

7.1.3) Temporary protection: the possibility of keeping Foreground confidential for an agreed period of time and to postpone the filing of a patent or other IPR application and journal publications or any other forms of dissemination.

7.1.4) Dissemination: disclosure of Foreground by any appropriate means other than those resulting from Foreground protection (i.e. publication of Foreground in any medium, such as in digital form, accessible through the Internet free of charge, under open licences). This in such a way as to not cause a breach of confidentiality obligations. Information on Foreground owner shall be included when dissemination activities are undertaken.

8.2 Sub-section 7.2: Scientific publications

7.2.1) Agreement between the inventor of Foreground and the Parties: an agreement should be reached in order to balance the interest of students, the Universities and the Businesses in relation to the possibility of scientific publication.

7.2.2) Before submitting the scientific publication several issues have to be borne in mind:

- b) the importance of discussing an intention to publish a paper with the other Party;



b) the importance of obtaining the necessary permission from the Party owning the Foreground before submitting a paper for publication.

7.2.3) When a paper is published scientific review copyright rules shall apply: specific focus should be placed on copyright rules established in the contributor contract. Many publishers require the authors to sign an agreement where they assign to the publisher the entire or partial copyright and of all other rights of a similar nature. In any case, contributor and publisher may agree that the paper should be republished in part having the publishers' prior written permission. Such permission is not to be unreasonably withheld, provided that proper acknowledgement is given to the Publishers and to the Work in such republication.

7.2.4) If applicable, the publishers and the contributor may reach an agreement on the following terms:

a) copyright rules may be applied only to the published text and not to any inventions or other knowledge described in the text itself;

b) other papers or other forms of dissemination of Foreground may be permitted insofar as no parts of the first text(s) are used.

7.2.5) Means of complying with copyright rules as well as with other interests of the Parties: an agreement between the inventor(s) of Foreground, the Universities and the Businesses may be reached with the overriding purpose of suggesting means of accommodating the different interests of the Parties (e.g. publication in an open source review).



9 Section 7 of the university/business project co-development

Section 8: Additional Agreements between the Universities and the Businesses

9.1 Sub-section 8.1: Facilitation of University/Business Project Co-development

8.1.1) Creation of specialised institutions/organisms dedicated to technological support and transfer. These organisms shall be able to focus on innovative projects between Universities and Businesses and on the valorisation of students' ideas on the part of Universities and the need for more confidence and willingness to collaborate with/to support Universities in innovative projects on the part of Companies.

8.1.2) Parties shall adopt agreements on limitation of competition in which they indicate the territorial extension and duration of this limitation.

8.1.3) Agreements on "Exclusivity": in order to encourage Businesses to invest in University scientific projects. The agreement may:

- a) states an obligation, on the part of the University, not to work on the same subject matter with other Businesses;
- b) define that the exclusivity obligation is a crucial requirement for the effective cooperation between the Universities and Businesses, so that an infringement thereof may result in a breakdown of trust between the Parties;
- c) provide for adequate compensation to the University; in order to calculate the appropriateness and level of compensation, all possible losses incurred as a result of the University foregoing other potentially fruitful collaborations have to be taken into consideration.

9.2 Sub-section 8.2: Communication

8.2.1) Symbols: the name, logo and reputation of both the Universities and the Businesses must be used without causing any reputational harm to either Party.

8.2.2) Media relations: any interaction with the Media must safeguard confidentiality requirements concerning the Universities, the Businesses and the Project itself at all times. Foreground of the Project co-development may not be communicated without the explicit written agreement of the other Party.



8.2.3) Dissemination activities: an agreement should be reached which states the extent to which the University is willing to dedicate time and resources to:

- a) the possible drafting of articles to be published in the Media;
- b) the participation at conferences and at meetings;
- c) any other activity necessary in order to disseminate the Project and its Foreground.



10 Section 9 of the university/business project co-development

Section 9: Financial provisions

10.1 Sub-section 9.1: University/Business Project co-development support

9.1.1) Incentives shall be made available in order to push for financial support in projects in the scientific field.

9.1.2) Financial funding by the Businesses or by both the Businesses and the Universities: deadlines should be clearly set in order to determine the date of issuing interim and final payments.

9.1.3) Agreement on the appointing and identity of an external auditor: Parties may decide to involve an external auditor in the Project in order to verify the correspondence between agreed and performed activities, and who is entitled to acknowledge payment requests. The role of auditor may be performed by the Project Leader.

10.2 Sub-section 9.2: Costs

9.2.1) Costs shall be precisely agreed to and stated in the contract.

9.2.2) Types of costs are:

- Real costs (e.g. for equipment, travel, use of premises) to be precisely listed in the contract;
- Personnel costs (e.g. for involved personnel (permanent or non-permanent), to be precisely indicated in the contract: name or position, percentage of time devoted to the Project, average cost for this personnel (per month or year). Personnel costs may be calculated on the European basis (number of working days declared by workers);
- Overhead costs (administrative and indirect costs) shall not exceed the percentages defined by national calls for research and innovation activity. Administrative costs may change in relation to the sector of research and of to the departments/faculties which carry out the research; these costs may also vary if private or public funding are used and in relation to specific requirements for the Project;
- Other costs (e.g. remuneration to Professors, researchers and technicians who work on the Project).



11 Section 10 of the university/business project co-development

Section 10: Entry into force and duration

10.1) Entry into force

The contractual template shall be adapted in order to suit the peculiarities of each single Project co-development³².

A Party becomes a Party to the contract/agreement on Project co-development once drafted on the basis of this contractual template and upon signing of the contract/agreement by a duly authorised representative³³.

The contractual template shall have effect from the effective date identified in the specific Project co-development contract/agreement itself³⁴.

10.2) Duration

The contractual template shall continue to remain applicable even after the termination of the Project co-development until the fulfilment of all obligations undertaken by the Parties of the contract/agreement on Project co-development³⁵.

A reference is made to the specific contract/agreement on Project co-development in relation to Applicable Law and Settlement of disputes including all possible cases for its termination.

³² DESCA (2016), *l. c.*, p. 3.

³³ DESCA (2016), *l. c.*, p. 8.

³⁴ DESCA (2016), *l. c.*, p. 8.

³⁵ DESCA (2016), *l. c.*, p. 8.

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OECD. Commercialising Public Research: new Trends and Strategies, 2013. Available at: <<http://www.oecd.org/sti/sci-tech/commercialising-public-research.htm>>.

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Industrial/intellectual property Codes

Italian D.Lgs No of 10 February 2005 on the Industrial Property Code

Hungarian Act XXXIII of 1995 on the protection of the inventions by patents

Spanish Real Decreto Legislativo No 1 of 12 April 1996 on revised Intellectual Property Law (which harmonizes all existing legal provisions);

French Law n° 92-597 of 1 July 1992 on the Intellectual Property Code.

References on comparative Analysis

ITALY

Normative

- Decree of the President of the Republic (D.P.R.) 11 July 1980, n. 382, Art. 66: research activities and advice carried out by University (Departments or other entities) in accordance with what has been established in contracts and conventions agreed with public or private entities.
- Law 27 December 1997, n. 449 on agreements of collaboration between public administration and public or private entities with the purpose of providing advice and other services on a rate fee.
- Ministerial Decree (D.M.) 8 August 2000, n. 593 which provides the framework for University-Business project co-development.

University Rules

- Università Cattolica del Sacro Cuore, Regolamento di ateneo in materia di spin-off e invenzioni (University Regulation on spin-off and inventions), issued by Rectorial Decree n. 1619 of 21 October 2004, revised by Rectorial Decree n. 439 of 16 July 2013.
- Regolamento dell'Università degli Studi di Milano- Bicocca in materia di brevetti e trasferimento tecnologico (Regulation on patents and technological transfer), adopted with Rectorial Decree on 8 June 2005, revised with Rectorial Decree on 22 September 2006, revised with Rectorial Decree on 8 September 2014.
- Regolamento dell'Università degli Studi di Milano per la disciplina delle attività di ricerca, di consulenza e di formazione svolte con finanziamenti esterni nonché dalle attività di collaborazione scientifica (Regulation on research activity, advice and training carried out thanks to external financial support and also on activities of scientific collaboration), issued by Consiglio di amministrazione on 27 January 2015.

SPAIN

Normative



- Law (Ley orgánica) n. 6 of 21 December 2001 on Universities (it refers to knowledge valorization and to the creation of companies for the valorization of scientific knowledge). Especially: Art. 8 Law n. 6/2001 which provides a legal basis for University contracts.
- Law n. 14 of 1 June 2011 on Science, Technology and Innovation (it highlights the importance of Universities in the framework of science, technology and innovation in Spain, it makes reference to its promotion and it speaks about technological transfer).
- Law n. 2 of 4 March 2011 on Sustainable economy (it highlights the important role played by the University in the framework of Spanish economic competitiveness and it refers to technological transfer from Universities).

University rules

- Normativa sobre la creación de empresas en la Universidad Politécnica de Valencia a partir de la actividad de investigación universitaria (Law on the creation of business in the UPV following on from research activity), adopted by Consejo de Gobierno on 15 May 2008.
- Reglamento de protección y transferencia de derechos de propiedad intelectual e industrial de la Universitat Politècnica de València (Regulation on the protection and transfer of Intellectual and Industrial Property Rights of the UPV) adopted by the Consejo de Gobierno on 9 November 2012).

FRANCE

Normative

- Loi No 82-610 of 15 July 1982 on research orientation and planning and of technological development of France (one of the objectives is the valorisation of scientific research).
- Décret No 80-645 of 4 August 1980 on inventions achieved by officers and public agents.
- Décret No 85-618 of 13 June 1985 on Higher Education staff or Research staff (who are under the authority of the Ministry of Health) remuneration for scientific research activities carried out in the framework of Contracts or Conventions.
- Décret No 96-858 of 2 October 1996 on economic benefits of officers and State Agents and of other public Institutions who are authors of software, who achieved results concerning plants or other works. Issues related to royalties to be recognized to authors of inventions are taken into consideration in the Décret.

HUNGARY

Normative

- Hungarian Education Act No. CCIV of 2011.
- Government Decree No 230 of 28 August 2012.



- Hungarian Act No. CLV of 2011 on bachelor and master training courses.

