

ACADEMIC POLICY FRONT COVER SHEET



Name of Policy:	Spin Out Policy
Scope of Policy:	This policy sets out how spinout companies may be used as an exploitation vehicle for University intellectual property.
Author:	The policy is owned by the Deputy Vice Chancellor (Research and Innovation) and was drafted by Charles Mycroft, Contracts and IP Officer, Research and Enterprise
Applicable to:	Staff of the University
Consultation Process:	The policy was developed in consultation with College Senior Leadership Teams, College Research Committees and the University's Enterprise Committee.
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UNIVERSITY OF LINCOLN

SPIN OUT POLICY

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1. INTRODUCTION

- 1.1 A Spin Out is a company, which has been created by the University, and/or its Staff, to enable the development and commercialisation of University Assets, for example the outcome of academic research or University owned Intellectual Property (IP).
- 1.2 The University of Lincoln is committed to facilitating innovation and entrepreneurship amongst its Staff. The University wishes to actively encourage appropriate “Use” of its assets such as its expertise, research outputs and associated intellectual property (IP); more specifically it wishes to fully encourage the transfer of its knowledge and research outputs to industry to create societal benefits. Where feasible this will include the commercialisation of University Assets in the form of Staff expertise, know-how, university patents, designs, software or creative works etc, as well the provision of innovative services to industry via use of University equipment and facilities.
- 1.3 Encouraging the use of University Assets can be achieved through various mechanisms, such as collaboration(s), consultancy, licensing of IP rights to existing companies, or the creation of University Spin Out companies. The University is keen to support Spin Out activity where this is identified as an appropriate route to create value (e.g., impact, financial, reputational) from its Assets.
- 1.4 This document describes the formal policy of the University in relation to authorising the formation of, participation in and monitoring of Spin Out companies and the ownership, control, and management of any associated University Assets.
- 1.5 This Policy is intended to apply to University Assets which are capable of industrial use and/or commercial application, as such it will typically apply to Assets in the form of patents (for an invention) or know-how, as well as to creative works (and similar) which can also be commercialised via the formation of a Spin Out. This Policy will not normally apply in the case of University commissioned or owned teaching materials.
- 1.6 Capitalised words and phrases contained in this policy are as defined in **Appendix A**.

2. APPROVAL PROCESS FOR FORMING A UNIVERSITY SPIN OUT

- 2.1 As set out in the [University's Financial Regulations](#), ultimate approval to form a University Spin Out company, in which the University has an equity share and/or any other involvement, and which has the goal of developing and/or commercialising University Assets, rest with the Board of Governors. The hierarchy of the University's decision-making process for Spin Out formation is outlined in **Appendix B**.
- 2.2 SLT approval is required before the Board of Governors are approached for authorisation to form a Spin Out. Such approval will be in response to recommendations made to it by the CAB. The Deputy Vice Chancellor (Research & Innovation), or nominated deputy, will be responsible for presenting the CAB's recommendations to SLT for consideration.
- 2.3 The CAB will make recommendations to SLT, if appropriate, following consideration of information, in particular the Spin Out Formation Plan, as set out below. It is the task

of the CAB to assess and approve or reject a Spin Out Formation Plan prior to making recommendations to SLT. The CAB will review all relevant information, including (but not limited to) considering the Spin Out's business plan, determination of equity shares, arrangements to access University Assets, resources/facilities, Staff time considerations, requirements for licensing or assignment of University IP, financial forecasts, and risk management approaches etc. The CAB will also consider financial and management proposals that will underpin the relationship between the Spin Out and the University.

- 2.4 The RET has processes and requirements for creating and completing a Spin Out Formation Plan and, working with the Founders where applicable, will support the creation of the plan for submission to the CAB. It will be the responsibility of the Founder(s) and the RET (where applicable) to present the Spin Out Formation plan to the CAB for review and consideration.
- 2.5 It is the role of the CAB to consider the merits of the application. CAB may agree to (or ask to set) any conditions associated with the formation of a Spin Out company. If, for any reason, there are specific terms or conditions recommended or set by the CAB which cannot be agreed in a Spin Out Formation Plan, and which require further negotiation with the Founder(s), then the CAB can request the Director of Research and Enterprise, or their individual nominee(s), acting jointly or individually, to act on its behalf to engage in and conclude such negotiations, if possible. Ultimately, if the CAB and the Founder(s) are unable to agree terms then the CAB may also reject an application.
- 2.6 In order to enable the fullest assessment of Spin Out opportunities it is important that key areas of the institution, that may be affected by any Spin Out plans or are able to offer relevant information, are aware of such requests and are able to comment. This includes Schools, Colleges and where applicable a Founder(s)' immediate Line Manager(s). A prerequisite to a Founder(s) submitting a Spin Out request to the RET is a requirement for them to have consulted with the following to inform them of the intent to submit a Spin Out request and to secure in principle approval or commentary on the proposed request:
 - 2.6.1 Line Manager(s)
 - 2.6.2 Head of School
 - 2.6.3 Head of College
- 2.7 Any commentary should be requested in writing and comment on potential Spin Out benefits, risks, use of school resources/facilities, and the identification of any potential conflicts of interests. In addition, the RET (as required) will confirm the views of the above in relation to supporting the Founder(s) in drafting a Spin Out Formation Plan.
- 2.8 Beyond approving the formation of a Spin Out, if appropriate, the University is keen to see such companies survive and succeed. In this regard the University may be able to provide the Founder(s) and the resulting Spin Out with a range of support services. Such support may include business case preparation, marketing support, providing business expertise or access to finance support. Such services are optional, at the University's discretion and subject to any professional or regulatory restrictions. Not all University Spin Out opportunities will require significant support and any support will be subject to agreement by either SLT or CAB, depending on the precise nature and

value of support being requested. In the event that such support is requested (or provided) it may be considered a major material benefit to the Spin Out and further material contribution from the University, in which case it will likely be reflected in any Spin Out formation terms, e.g., higher University equity share in the Spin Out, or alternatively may entail the University and Spin Out agreeing terms, conditions and fees for such services.

- 2.9 Ultimately, it will not always be appropriate to support or approve the formation of a Spin Out. Only after due consideration, by RET, CAB and SLT, of the risks, the benefits and other commercialisation options can such a decision be made, based on a realistic assessment of a Spin Out's commercial and success potential as conveyed in its Spin Out Formation Plan.
- 2.10 The procedure for forming and approving a Spin Out is Outlined in **Appendix C**.

3. UNIVERSITY SPIN OUT PROVISIONS

- 3.1 It is the University's aim to establish Spin Outs that are best positioned to deliver impact and achieve measurable success via the further development and commercialisation of University Assets. Thus, Spin Outs will be formed on a case-by-case basis under terms and conditions that meet the requirements as set out in this policy and which are best aligned to the conditions in their Spin Out Formation Plan. For some Spin Outs this could mean having formation conditions that are appealing to external investment, for others the goal may be around creating impact or achieving organic (self-funded) growth.
- 3.2 In seeking to create successful Spin Outs there are several areas that investors and Founders typically seek clarity on, so in order to provide clarity and enable the prompt and effective formation of Spin Outs, the following shall typically apply:

Grant of Licences to a Spin Out Company

- 3.3 A Spin Out may seek a licence agreement for access to and use of University Assets, such as the University's IP. In return for agreeing licence terms the University will usually acquire an equity shareholding in the Spin Out.
- 3.4 Typically, Spin Out licences will be royalty-free. However, this policy reserves the right for the University to make such licence(s) royalty bearing depending on the type of University Asset. For example, in the case of a Spin Out formed to commercialise University Assets as a service(s) company – using university equipment or facilities – the Spin Out will likely be subject to separate agreements (specific to the facilities or equipment they propose to use) and required to agree royalties / revenue sharing on any income they receive.
- 3.5 Typically, the University will not approve any assignment of University Assets to a Spin Out Company. However, this may be considered in exceptional circumstances.

Equity Sharing

- 3.6 The formation of a Spin Out company requires participating parties to agree their relative equity share in the company. On incorporation of Spin Out based on University Assets, at first share allocation, the University and Founder(s) will agree an equity share split of 20% to the University and 80% to the Founder(s). The University's equity level will be non-dilutable pre any third party investment into the Spin Out and any equity allocation for the Spin Out's management team will come from the Founder(s) equity share.

Right to Appoint Directors

- 3.7 In order to protect the University's interest in the Spin Out and also to ensure that the Spin Out has an appropriate level of expertise within its management team, the University reserves the right to:
- 3.7.1 Appoint a named individual of its choice to the Spin Out Board, with full voting and associated rights. Such rights will be detailed in any Shareholders Agreement, Articles of Association or any other relevant agreements or documentation.
 - 3.7.2 Exceptionally, in the absence of appointing a Director, to appoint a University Observer to attend Spin Out Board meetings to monitor and participate in any proceedings as specified.
- 3.8 The University acknowledges that not all Spin Outs opportunities will require the appointment of a University Director or a University Observer, hence on a case by case basis the SLT (at their sole discretion) will assess the need for such appointments further to recommendation made by the CAB.

Staff Time

- 3.9 Spin Out Founder(s) will identify any staff time (time allowance available to the Founder(s) to be committed to the Spin Out) and ensure it is captured in the Spin Out Formation Plan. Such allowances will initially be subject to the in principle approval of the Founder(s)' Head of School and Head of College, prior to review and consideration by the CAB and SLT. It is likely that any such approval will follow the University's current policy on Staff Consultancy. Also, any time in excess of any agreed Staff time will be subject to the in principle approval of the Head of School and will likely require the Spin Out to agree a Consultancy Agreement to pay the University consultancy fees at commercial rates for further Staff time spent supporting the Spin Out company. Such arrangements must be agreed prior to the Spin Out benefitting from excess Staff time support. For the avoidance of doubt, the University's cost of investment in the Spin Out company, (a factor to be considered when the CAB and SLT agree equity shares), will be calculated to include any agreed period of Staff time required to support the Spin Out (if required and/or appropriate and not part of a consultancy agreement) as an additional contribution from the University.

Spin Out Legal Requirements

- 3.10 As a minimum, Spin Outs must ensure that suitable Articles of Association and a Shareholders Agreement acceptable to all shareholders (including the University) are put in place upon incorporation. The University or its authorised agent will typically issue such documents and the Founder(s) will be responsible for their own legal advice and expenses incurred in relation to such agreements and any other legal support they require.
- 3.11 Any additional documents or agreements (e.g., consultancy agreements, paid services agreements, access to facilities, or licensing of University Assets) will be drawn up by the University or its authorised agents.
- 3.12 For the avoidance of doubt, no University Asset or resource (e.g., Intellectual property, Staff time for consultancy, University resources or facilities etc.) shall be accessed or released to the Spin Out until all relevant legal agreements formalising the relationship between the University and the Spin Out have been agreed and executed.

Exiting Spin Outs

- 3.13 In approving the formation of Spin Outs the University will duly consider the financial, impact and reputational benefits of its participation in the business.

For Spin Outs with conventional commercial potential via equity (share) value growth, as identified via their Spin Out Formation Plan, it is anticipated that the company will pursue a strategy to increase its value and its potential for shareholders to benefit from exiting the company at a suitable future event. Such an event could be the Spin Out receiving a significant third party investment as part of an external buy-in, being subject to a trade sale or the listing of the Spin Out on a recognised investment market/stock exchange.

To best manage its equity (share) position and to facilitate future exit strategies, the University requires approved Spin Outs to be part of several agreements. The University will ensure the drafting and adoption of appropriate Articles of Association and/or Shareholder Agreement(s) to include where appropriate:

- Enshrining the right for the University to transfer its shares within the University group
- A means to manage share transfers (permitted and compulsory etc) and provide for appropriate exit strategies based on the transfer or sale of shares
- Standard or custom pre-emption rights, to enable the University to benefit from an option to co-invest future funds into the Spin Out on terms available to all shareholders, or to seek preferential rights in terms of future investment rounds
- Conventional exit options, such as 'drag along' and 'tag along' provisions, providing all shareholders, including minority shareholders, with the rights to exit the Spin Out (to their potential advantage) in the future.

In addition to being an institution which is home to traditional forms of research, the University of Lincoln is a progressive and entrepreneurial institution and wishes its Spin

Outs to reflect its entrepreneurialism. It is likely that for certain types of proposed Spin Outs, the benefits to the University are likely not to arise from a traditional equity exit (e.g., sale of shares) but from other types of financial returns (e.g., income sharing, royalties etc) or from indirect financial benefits such as enhanced impact or entrepreneurial reputation. Correspondingly, approval for forming a Spin Out will entail agreements between the University and the Spin Out company of suitable terms and conditions (in the Spin Out's Articles of Association and/or Shareholders Agreement) which will be drafted to reflect the likely return/benefits to the University.

Performance Monitoring

- 3.14 Whilst the University remains a shareholder, it will impose obligations on the Spin Out to keep the CAB and/or the SLT fully and regularly informed of developments and progress in terms of its business, commercial and impact objectives and any other relevant information or as required or requested by the CAB and/or SLT. Specific reporting requirements will be detailed in relevant documentation or agreements.

4. FOUNDER SPIN OUT CONSIDERATIONS

- 4.1 Creating and / or participating in a University Spin Out can be a complex and involved activity which requires a high level of commitment. The University is not responsible for advising or seeking advice on behalf of any Founder(s) in respect of individual or corporate taxation, legal, technical or any other matters arising from forming, participating or operating a Spin Out which may affect them. Founder(s) are strongly advised to seek their own independent professional advice where required.
- 4.2 Any Founder(s), who are members of Staff of the University (or a wholly owned subsidiary of the University) will require authorisation from the CAB/SLT before setting up a Spin Out or becoming an officer (Director or Company Secretary) of such a company. For the avoidance of doubt, no individual member of Staff of the University shall have the authority to incorporate or dispose of a University Spin Out. Ultimately, such activity is subject to approval by the Board of Governors.
- 4.3 To start the process to form a Spin Out, Founder(s) shall firstly engage with the stakeholders identified in Clause 2.6.1-2.6.3 and then with the RET who will be initially responsible for advising and supporting the Founder(s) in progressing their Spin Out request.
- 4.4 A Founder(s) who is a full-time University member of Staff may not be an employee of a Spin Out. However, the University may permit a full-time member of Staff to become part-time in order to be employed part-time by a Spin out.
- 4.5 Any conflicts of interest, actual or perceived, for Founder(s) which arise, or may arise, as a result of the creation of a Spin Out company shall be declared and addressed within the Spin Out Formation Plan, or if arising post creation of the plan or after company formation, through the University's policy on Conflict of Interest.
- 4.6 Founders are responsible for determining any relative split of shareholding between themselves prior to starting the process for seeking approval to create a Spin Out. For

example only, this is usually based on the contribution of each Founder to any underlying University Assets and their intended contribution to the Spin Out.

- 4.7 For the avoidance of doubt, Founders will receive any payments through the distribution of any revenues (from royalty income ONLY and NOT from dividends or equity sale etc) the University receives.
- 4.8 Staff responsible for the creation of University Assets used in a Spin Out will be required to sign an IP assignment form transferring all rights of the created University Asset to the University. Although as an employee of the University, the Assets created by the creator are owned by the University, according to the Copyright, Designs and Patents Act 1988, in order to licence a University Asset to a Spin Out, this assignment undertaking is a requirement of most investors in Spin Outs.

Staff responsible for the creation of University Assets used in a Spin Out who elect not to participate in the Spin Out company, will be required to formally waive their rights in terms of Spin Out involvement. Such individuals will be eligible to participate in the University's IP as outlined in the University's IP Policy.

Spin Out Founders will be responsible for identifying all individuals (not only staff) who were involved in creating the relevant Spin Out asset(s) or otherwise have an interest in the asset(s). Where applicable, Founder(s) will document this information in the Spin Out Formation Plan and any other documentation deemed necessary. Further to the above waiver, the CAB will typically seek an indemnity from Founder(s) in favour of the University in respect of any future claims by individuals not identified in this regard.

- 4.9 Further to the completion of any allocated free or subsidised Staff time to support the Spin Out, Founders may have to decide whether to leave the University and become an employee of the Spin Out or remain as a University employee with limited involvement with the Spin Out. The University remains open to discussions with its Spin Outs to explore opportunities for providing Staff time support for follow-on research or consultancy at market/commercial rates.

5. SPIN OUT COMPLAINTS AND DISPUTES

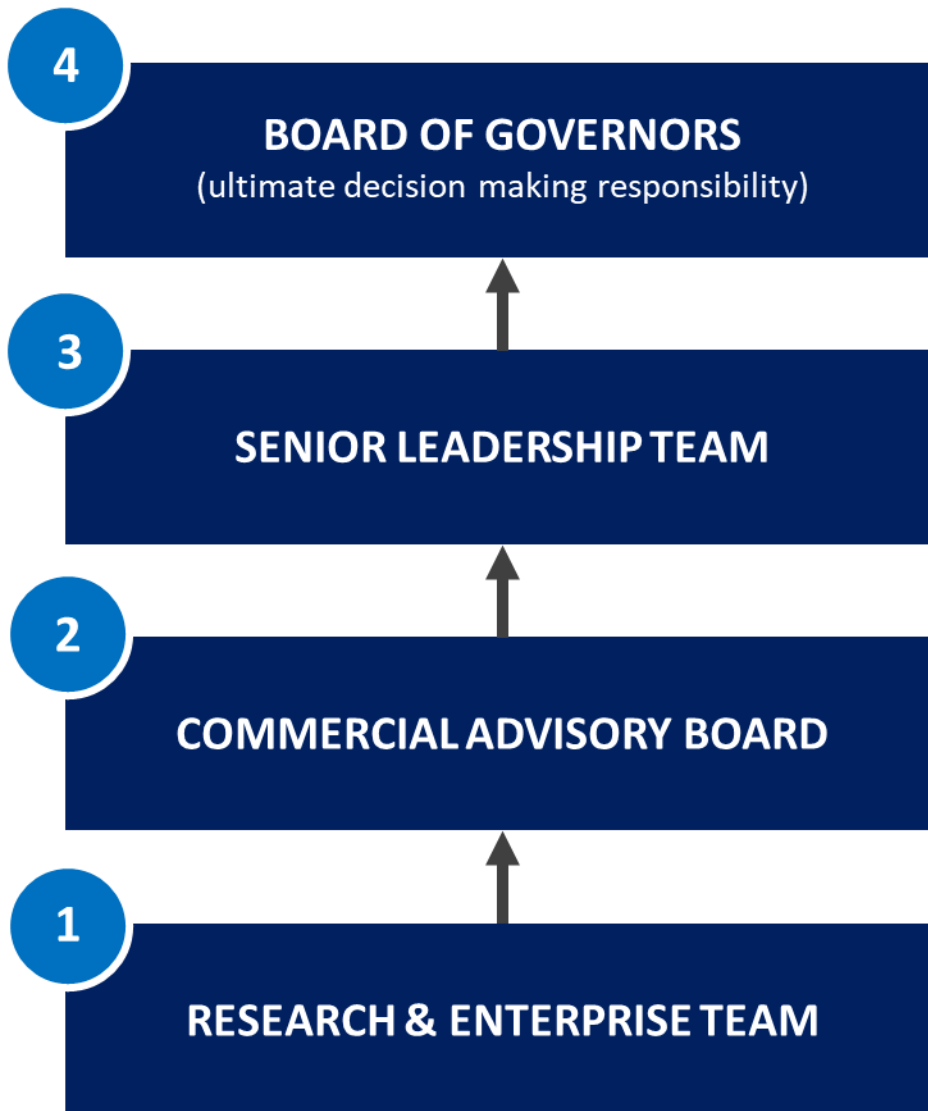
- 5.1 If a member of Staff has a concern, or a complaint, they wish raise in connection with this policy, in the first instance they should contact Charles Mycroft, The University's Contracts and IP Officer via contracts@lincoln.ac.uk.

APPENDIX A – DEFINITIONS

“CAB”	means the University’s Commercialisation Advisory Board
“Drag along”	compels a shareholder to sell, where an offer has been received from a third party for a specific percentage of the equity share capital of the company. That percentage is usually a controlling interest. Such a provision can stop an uncooperative shareholder frustrating other members from realising their investment or seeking a disproportionate share of the proceeds as a “ransom” position
“Founder(s)”	are University Staff who wish to participate in or materially contribute to a Spin Out Company. Note this policy only covers Founders who are University staff
“Intellectual Property or IP”	means all types of intellectual property rights – such intellectual property rights include (by way of example only) patents, rights to inventions copyright, trademarks, rights in get-up and trade dress, goodwill, rights in designs, database rights, performers’ rights, rights to use, and protect the confidentiality of, confidential information (including, but not limited to, know-how and trade secrets)
“RET”	means the University’s Research and Enterprise Team
“SLT”	means the University’s Senior Leadership Team
“Spin Out”	a company whose principal objective is the development and commercialisation of identified University Assets in a manner beneficial to the University
“Spin Out Formation Plan”	are a suite of documents, to support the evaluation and progress approval of Spin Out opportunities. Materials may include, but is not limited to, invention disclosure, business case, authorisation to form a spin out form, equity statement, IP assignment, waivers of rights to revenue-sharing arrangements, commentary from College/School, facilities agreement, heads

	of terms and additional supporting documentation
“Spin Out Support Activities”	are optional activities that may be provided by the University on a case-by-case basis in response to a Spin Out’s specific business plan and support needs, on terms to be agreed
“Tag along”	means that a shareholder who has received an offer for his/her shares must also obtain the same offer for the other shareholders in the company. They must give all shareholders the opportunity to exit at the same time (and at the same price) before being able to sell his/her shares to that third party. This is particularly important for shareholders with relatively modest percentage holdings as, without tag along rights, they could simply be left holding shares, whilst the controlling parties sell their shares.
“University”	means University of Lincoln and, where relevant, its subsidiaries
“University Assets or Assets”	means (by way of example only) intellectual property, intellectual property rights, inventions, equipment, facilities, software, data, knowledge, methods, know-how and expertise created and/or owned by the University
“University Director”	means a representative nominated by the University and appointed to the Board of a Spin Out to act in the capacity of a Director, with full voting rights
“University Observer”	means a representative nominated by the University to attend Spin Out Board meetings in the capacity of an Observer to monitor, participate and inform proceedings if invited to
“University Staff or Staff”	means a person who is employed or engaged under contract by the University

APPENDIX B– OUTLINE OF THE SPIN OUT GOVERNANCE PROCESS



APPENDIX C – SPIN OUT APPROVAL PROCESS

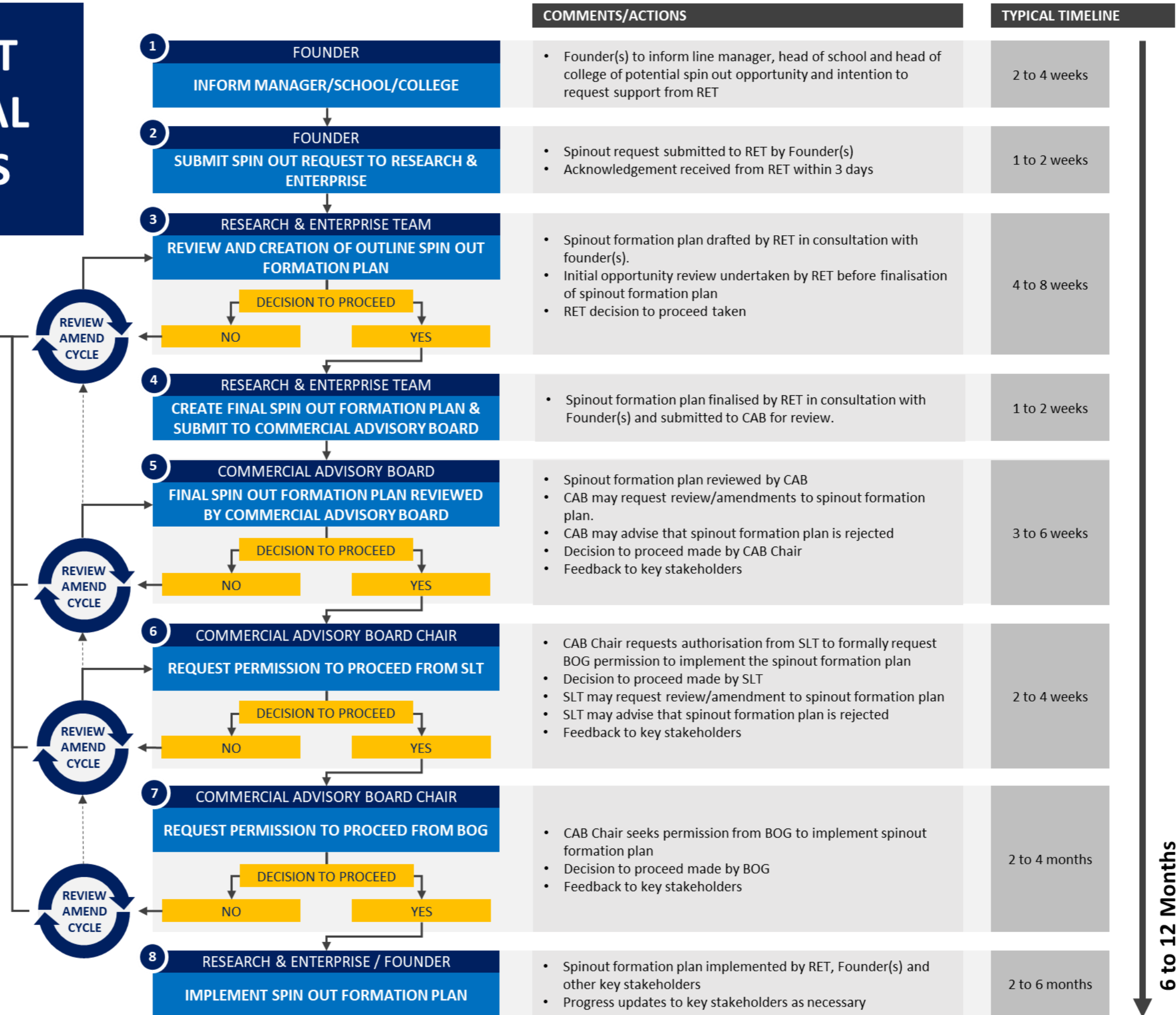
SPIN OUT APPROVAL PROCESS

REJECT SPIN OUT FORMATION PLAN

- No further action, opportunity dismissed.
- Alternative exploitation options may be explored by RET & Founder through the University's Commercialisation Process



KEY	
	Review/amendment of spinout formation plan by RET/Founder
	Spinout formation plan may be pulled back to a previous step
RET	Research & Enterprise Team
SLT	Senior Leadership Team
CAB	Commercial Advisory Board
BOG	Board of Governors



6 to 12 Months