

Partnering successfully with companies
How to approach this
and what IXA can contribute

IXA is the valorisation centre of

Vrije Universiteit Amsterdam and Amsterdam UMC (AMC and VUmc) want the knowledge generated by research and education to have a beneficial social and/or economic impact. The knowledge institutes and its researchers cannot achieve this on their own. As a result, collaboration with external private parties often takes place. Good agreements are a necessity for this. The way to approach this, who can help with it and what you need to look out for, is explained in this flyer.

IXA can help you organise partnerships

A successful collaboration agreement between researchers from VU and Amsterdam UMC and external parties starts at Innovation Exchange Amsterdam (IXA), the valorisation expertise centre of the University of Amsterdam, Amsterdam University of Applied Sciences (AUAS), Vrije Universiteit Amsterdam and Amsterdam UMC. The IXA experts provide advice free of charge during the exploratory and negotiation stage, when making agreements on using research results, and when drawing up contracts or protecting knowledge.

'An eye for each other's objectives' keeps a partnership balanced

The objective of a university is to educate and conduct research, and in so doing to create social impact. Companies aim to generate profit and thereby achieve growth and continuity.

Universities (this also refers to the UMCs) and companies have different reasons for wanting to collaborate. Companies are in search for talent and desire access to the newest scientific knowledge and innovations. They want to use this to develop new products or services, with which they can gain a competitive advantage in the market. Universities are looking for applications for scientific research results and new academic challenges in collaboration with companies. In addition, partnerships with third parties can also be partially funded with subsidies and other income.

In a successful partnership, the parties are aware of each other's interests and points of departure. They acknowledge these, without losing sight of their own objective. A good partnership agreement will strike a balance between the various interests.

Selecting a type of partnership and approach

Before a collaboration can begin, the parties must decide which type of partnership best suits their plans. The selected approach will determine how the agreements should be recorded. Sometimes this could be a consultancy agreement. In other cases an extensive collaboration agreement would be the best.

The type of agreement depends on the kind of project, its duration, the budget and the parties' wishes.

Prior to a partnership, the parties must answer the following questions.

- ▶ *What do they intend to achieve with the project?*
- ▶ *How do they want to address the project?*
- ▶ *Which agreements will apply to the project?*

Over the course of time, points of departure have been formulated for a number of established subjects (e.g. publication, intellectual property rights and liability), that acknowledge the interests of both companies and universities. For a general overview of these agreements, see page 4 of the *Public-Private Partnership Model*.

Publication should always be an option

It is essential for the university and for science that research results can be published. For companies it is important that they keep a head start on the competition and often want to use publication strategically. Therefore, the goals regarding publication may differ between companies and the university.

*A university **has** to be able to publish, even if the publication has negative consequences for the company. This is non-negotiable. If a company wants to be able to stop publication at any cost, it should not become involved with a university.*

Postponing publication for a matter of time is often an option, for example in cases where the results being published need patent protection. Generally speaking, three to six months should be enough for patent protection. In most cases, a review period of one month is acceptable for both parties. Sometimes a shorter period will apply to abstracts and academic posters.

Who has the intellectual property (IP) rights?

The intellectual property rights (IP rights) belong to whoever generated the results that the IP rights pertain to. According to relevant legislation – the Patents Act 1995, Copyright Act and the Collective Labour Agreement Dutch Universities (i.e. *Rijksoctrooiwet 1995*, *Auteurswet*, CAO NU and CAO NFU) – the employer of the person who generated the results is the owner of the IP rights.

The state aid regulations state that results generated with public funds may be transferred (or licensed) to a company if that company has paid the entire (integral) costs or if the company pays a price at fair market value for the results. The university conducts research using public funds. If the university does not ask the market price from a company for use of the IP rights, the company will have an advantage over other companies. This is prohibited.

Market price

The market price for research results is difficult to determine. In any case, it is necessary to negotiate about this. Often a royalty is agreed upon – a percentage of the turnover generated by the licence.

Another possibility is to grant the company an option. If the results are interesting enough, the company can decide to negotiate with the university about the market price for the results and their exclusive use at a later stage.

Anti-shelving stipulation

If a company obtains exclusive rights, it is required to actually use the results. It may not shelve the university's research results, for example to market a competing (yet poorer) product. In other words, the intellectual property may not be used 'defensively', strictly as a means of barring others from the market. So if a university does grant exclusive rights, it will always negotiate an *anti-shelving* stipulation: the exclusivity will lapse if the company does not use the intellectual property or makes no efforts to do so. In addition, the university always retains the right to use the research results for further academic research and education.

Liability

Every project entails risks. One risk is that the project does not yield what was hoped for. Since the results of academic research by nature are unpredictable (a hallmark of research), the university will agree to a 'best-efforts obligation'. The university agrees that it will make every effort to conduct the project, but will not guarantee certain results. In addition, often the agreement is reached that the university is not liable for the applicability of the research results.

There is also a risk that the university fails to do what was agreed upon or fails in the performance of an agreement. If the university can be held accountable for this, the university will be liable for the damage that directly ensues.

Public-Private Partnership MODEL



Please note that depending on the type of research partnership, different agreements will be made. Examples of partnerships include equal partnerships, contract research, consortia; in some cases perhaps funded by the government and/or private parties.

In conclusion

The point of departure regarding partnerships with external parties is that the university must be able to freely conduct research. The university must be able to publish the research results and use these for education. This principle which Vrije Universiteit Amsterdam and Amsterdam UMC abide by is recorded in the 'Netherlands Code of Conduct for Academic Integrity' of the Association of Universities in the Netherlands (VSNU).

If you're planning to collaborate, let IXA help you

A successful collaboration agreement between researchers and external parties starts with good agreements. The legal experts and business developers at IXA can provide advice and support when drafting and recording agreements on the use of research results, and with regard to public-private partnerships.

Consult the experts of IXA VU-VUmc and IXA AMC – make an appointment or drop by.