

VU Knowledge Exploitation Regulations

Insofar the provisions of this translation of the Knowledge Exploitation Regulations are inconsistent with the provisions of the Dutch version of the Knowledge Exploitation Regulation (“regeling kennisexploitatie”), the provisions of the Dutch version will prevail.

Background to the Regulations

Reasons for common regulations

- For the sake of harmonious cooperation between the knowledge institutions, researchers from the various institutions involved should not be subjected to different conditions.
- There is a need for clear and unambiguous agreements concerning the exploitation of research results within knowledge institutions (faculties/divisions/institutes/research schools).
- To ensure transparency and clarity, the Amsterdam knowledge institutions want to apply the same rules to knowledge exploitation as far as is possible. Support for knowledge exploitation is provided by the staff of the Innovation Exchange Amsterdam (IXA), a partnership between the three Knowledge Transfer Offices/Technology Transfer Offices of the institutions.

General principles

- Knowledge transfer is a core task of the knowledge institutions and their researchers.
- Knowledge transfer is a broad concept, encompassing every way in which society makes use of research results. The exploitation of knowledge (whether or not for financial gain) is an important form of knowledge transfer and it is only this form of transfer that is the subject of these Regulations.
- Research results are the property of knowledge institutions, with the exception of scientific books or publications or in the case of deviating contractual agreements.
- Knowledge institutions make the decision to exploit the generated knowledge.
- Researchers receive a share of any Net Income, to encourage them to contribute to successful knowledge exploitation and distribution.
- Academic Medical Center (AMC), the University of Amsterdam (UvA), VU Amsterdam and VU University Medical Center Amsterdam (VUmc) attach importance to exploiting results from teaching, research and patient care through licensing or transferring those results to – and collaborating with – companies and organizations.

Objective of these regulations

- Promoting the development of scientific knowledge and facilitating the exploitation of results from teaching, research and patient care in the knowledge institutions involved.
- Promoting the marketing and active protection of knowledge from AMC, UvA, VU Amsterdam and VUmc that is of interest to the market.
- Providing researchers with frameworks relating to the process of exploiting research results and possible claims to intellectual property rights, the distribution of income from such rights and the procedure for publishing protectable inventions.
- Communicating conditions under which employees can participate financially in new (spin-off) companies that are established on the basis of knowledge or intellectual property rights of an Amsterdam knowledge institution.

1. Definitions, duration and scope

1.1 Definitions

- a. **Department:** in the case of UvA and VU Amsterdam, this refers to the relevant organizational unit of a faculty, and in the case of AMC and VUmc, it refers to the relevant organizational unit of a division.
- b. **AMC:** the Academic Medical Center.
- c. **Trade Secret:** know-how, business information or technological information that is generated by Employees of an Institution during the course of their work and to which the following applies:
 - it is secret in the sense that, as a whole or in the precise composition and order of its components, it is not generally known or easily accessible to persons within the circles that normally deal with the type of information in question;
 - it has commercial value because it is secret; and
 - the person who is lawfully in possession of the know-how or information is subject to reasonable measures to maintain the secrecy of said know-how or information.
- d. **Executive Board:** the Executive Board of an Institution.
- e. **Participant:** employee of an Institution or other person to whom the Regulations apply by means of an agreement or declaration – including a visiting employee, authorized person, person on secondment, temporary employee, student or trainee – who is directly and substantively involved in teaching, Research or patient care within an Institution that has generated or might generate Knowledge.
- f. **Exploitation:** the utilization of Knowledge, whether through Participation in a company as referred to in the Regulations or otherwise. For the purposes of these Regulations, this includes the transfer or licensing of Knowledge without financial compensation.
- g. **Exploitation plan:** document that sets out how the Knowledge will be exploited.
- h. **Holding Company:** holding company or other investment vehicle of, among others, an Institution's participations in spin-off companies.
- i. **IP Rights:** all intellectual property rights, including copyrights, patent rights, drawing and design rights, plant variety rights, database rights and related rights.
- j. **Institution:** any institution to which the Regulations apply, i.e. AMC, UvA, VU Amsterdam and VUmc.
- k. **IXA:** Innovation Exchange Amsterdam, the pan-Amsterdam partnership that provides internal support and advice in the field of knowledge transfer and is also the one-stop shop for external parties seeking collaboration with AMC, Amsterdam University of Applied Sciences (HvA), UvA, VU Amsterdam or VUmc.
- l. **IXA Board:** the knowledge transfer portfolio holders of the Executive Boards and Boards of Directors.
- m. **IXA KTO:** the Knowledge Transfer Office (also known as Technology Transfer Office (TTO)) as organizational unit of an Institution that facilitates Participants in knowledge transfer activities, i.e. the IXA Offices of AMC, UvA-HvA (known at these institutions as the Knowledge Transfer Office (Bureau Kennistransfer)), and VU Amsterdam-VUmc.
- n. **Knowledge Disclosure Form:** a form on which possible exploitable Knowledge can be reported, for example an Invention Disclosure Form (IDF).
- o. **Knowledge:** knowledge that lends itself to Exploitation and of which the use by third parties can be excluded, for example through IP rights or because this knowledge qualifies as a Business Secret or Research Product.
- p. **Knowledge Exploitation:** converting Knowledge into competitive products, services, processes and new activities.
- q. **Breeder:** the person who has cultivated a plant variety through his or her own work or has discovered and developed the variety.
- r. **Author:** author of a copyrighted work under the applicable copyright law.
- s. **Employee:** employee of an institution, as defined in the Collective Labour Agreement for Dutch universities (CAO NU) or the Collective Labour Agreement for University Medical Centers (CAO UMC).

- t. **Net Income:** all gross revenues from Knowledge Exploitation, including royalties, licence revenues, revenues from Knowledge transfer and revenues from Participations, after deduction of the costs incurred. Costs include in any case the costs of applying for, granting and maintaining patents, and the costs incurred in granting licences, transferring IP rights and any costs of advice from external experts. Costs incurred as a result of written agreements between a Spin-off company and an Institution, such as rent for work space or research space, use of facilities and/or materials, further development, etc., will also be deducted from the Institution's gross revenues from this Participation to the extent that they have not yet been paid.
- u. **Research:** scientific and other research activities carried out by Participants at an Institution, including externally funded research, e.g. through indirect, contract or another type of funding.
- v. **Research products:** goods or services produced within the framework of Research or other projects of a Participant or Participants supported by an Institution or Institutions or external parties. Research products include, but are not limited to, biological material (such as cell lines); technical drawings; semiconductor products or topographies thereof; websites or web applications; databases, including electronic databases; carriers containing such databases; prototypes and models of equipment; and equipment.
- w. **Participation/Participate:** participating in the liable equity of a Spin-off enterprise. In the case of a company, this means acquiring shares or depositary receipts.
- x. **Regulations:** these regulations.
- y. **Board of Directors:** the Board of Directors of an Institution.
- z. **Spin-off company:** enterprise set up to carry out Knowledge Exploitation and based on Knowledge of the Institution.
- aa. **Inventor:** any person considered to be an inventor according to the applicable patent legislation.
- bb. **UvA:** University of Amsterdam.
- cc. **VU Amsterdam:** Vrije Universiteit Amsterdam.
- dd. **VUmc:** VU University Medical Center Amsterdam.

1.2 Duration and scope

- a. The Regulations take effect on 9 April 2019, hereinafter the 'Effective Date', and as from that date, they replace the existing VU Amsterdam regulations in the area of Knowledge Exploitation.
- b. The Regulations apply to all Net Income from Knowledge that is generated on or after the Effective Date.
- c. With the approval of the Executive Board or Board of Directors concerned, the Regulations may be declared applicable with retroactive effect if, in the opinion of the Executive Board or Board of Directors, their non-application in individual cases would lead to unfair situations.
- d. The Regulations apply to Participants.
- e. The Regulations apply to a work that is subject to copyright if that work is suitable for Knowledge Exploitation (e.g. in the form of a service or product, such as computer programs – including source codes, algorithms, apps, games – data or a questionnaire that has been analysed). These Regulations are not applicable to the exploitation of books and academic publications.

- f. Persons, not being Employees, who are directly and substantively involved in teaching, Research or patient care within an Institution that has generated or may generate Knowledge must contractually undertake to comply with the Regulations. Employees who also have an appointment or contract of employment elsewhere will notify their manager of this. Their manager, in consultation with the Dean concerned and the IXA KTO, will make appropriate arrangements regarding Knowledge and Knowledge Exploitation. For Employees, the Regulations concern further rules or service regulations in Article 1.20(2) of the CAO NU and Article 9.4 of the CAO UMC. These are in force on the basis of Article 1.4(4) of the CAO NU and Article 9.5 of the CAO UMC.
- g. At the request of the relevant IXA KTO, Participants must sign a statement in which they waive any claims they have to Knowledge, with the exception of claims pursuant to the Regulations, without prejudice to any applicable Collective Labour Agreement provisions.
- h. The Regulations will be made available to Participants via the Institutions' intranet or otherwise.
- i. After the effective date, the Regulations will be evaluated every two years by the IXA Board, in coordination with the IXA KTOs, in order to advise the Executive Boards and Boards of Directors.
- j. In relation to
 - i. establishing, defending, maintaining and waiving IP Rights
 - ii. managing and exploiting Knowledge
 - iii. licensing or disposing of Knowledge
 - iv. managing the necessary resources for Knowledge and
 - v. all other aspects relating to the implementation of the Regulationsthe respective IXA KTOs ensure the administration and organization of Knowledge. The respective Executive Boards and Boards of Directors or the relevant IXA office have the mandate to decide on these matters, depending on the applicable mandating rules of the relevant Institution.
- k. Participants only have the right to the entitlements referred to in the Regulations to the extent that they have provided IXA with the most recent relevant personal data, including address details.

2. Rights and obligations

2.1 Entitlements to Knowledge

- a. To the extent that it is not contrary to the applicable legislation and regulations, including the applicable Collective Labour Agreements and provisions in these Regulations, an Institution is or will become the owner or holder of all Knowledge arising from teaching, Research and patient care carried out by Participants.
- b. Prior to conducting Research, the legal position of the Institution and the Participant in relation to Knowledge, where the Institution is not already entitled to the Knowledge through employer's clauses laid down by law or in a Collective Labour Agreement, will be laid down in a contract. The obligation to do so lies with the Faculty or Division concerned, which is responsible for complying with the notification requirement as referred to in Article 2.4(a), signing the contract as referred to in Article 1.2(f) and transferring Knowledge to the Institution in cases where this is necessary. This does not affect the Institution's right to provide or transfer Knowledge or the entitlement to Knowledge to a third party.
- c. An Institution may transfer its entitlements to Knowledge to a third party or third parties. This is done, for example, by concluding cooperation agreements, grant agreements or other research agreements. These agreements contain provisions that are as far as possible in line with the principles laid down in these Regulations.

2.2 Cooperation

- a. Participants who are or have been directly and substantively involved in teaching, Research or patient care within an Institution that has generated or may generate Knowledge will provide all relevant information regarding such Knowledge at the request of the Board of the Faculty or Division concerned or the IXA KTO of their Institution.
- b. Persons as referred to in paragraph a of this article will reasonably cooperate in establishing, defending or transferring IP Rights for which a registration procedure is followed, without prejudice to any applicable Collective Labour Agreement provisions.
- c. In the event that the provisions in the Regulations are not complied with, measures may be imposed on Participants in accordance with the applicable legislation and regulations, the provisions in the Collective Labour Agreement applicable to the Institution or the Regulations, without prejudice to the Institution's right to recover additionally any damage suffered or loss of profits from Participants.

2.3 Confidentiality and Publications

- a. Participants are obliged to observe confidentiality regarding activities carried out within the Institution that could reasonably lead to the exploitation of Knowledge, to the extent that such confidentiality is necessary for this purpose (e.g. for a successful application for an IP right, for maintaining protected Knowledge or in connection with contractual agreements between the Institution and third parties). This is without prejudice to the provisions on confidentiality in the CAO NU and the CAO UMC.
- b. The obligation to maintain confidentiality will not prevent publication of the results of the activities referred to in paragraph (a) of this article, on the understanding that if any registration procedure to protect IP rights requires a postponement, the Participant may be required not to publish during that period.
- c. In order to properly assess an invention and record it in a patent application, inventors may be required to postpone publication, but for no longer than 12 weeks after submission of the manuscript to be published, or, if later, the signing of the Knowledge Disclosure Form. If agreements have been made with a third party concerning a specific period of postponement, then, in deviation from the previous sentence, the postponement will be equal to the period laid down in the agreement with the third party.

2.4 Notification and decision on exploitation

- a. Any Participant who carries out activities of which he knows or should reasonably know that they may result in exploitable Knowledge, will notify the relevant IXA KTO of this in writing or by email.
- b. Participants will also notify the IXA KTO of the relevant Institution of any approach by a third party for the exploitation of Knowledge.
- c. If notifications as referred to in paragraph (a) of this article are made to the Board of a Faculty or Division, they will inform the IXA KTO concerned of this in writing as soon as possible.
- d. In the event of a notification, the results of the activities referred to in paragraph (a), as well as their commercial application, must be described in a 'Knowledge Disclosure Form' (KDF). Any Net Income will be divided proportionally in the case of joint generation of Knowledge by several Participants (unless they mutually agree in writing on a different division).
- e. Every Participant who wishes to be listed and identified as a contributor to Knowledge in registration documents or publications must substantiate his or her contribution to the relevant IXA KTO and state which other persons may have made a contribution.

- f. After a notification as referred to in paragraph (a) or (b) of this article, IXA will consult as soon as possible with the Participant who made the notification and with the Faculty or Division concerned (in the case of a joint decision), in order to make a decision about the possible protection or exploitation of Knowledge. This decision will be made within two months of the notification (if sufficient information has been provided), unless protection or a successful application is not yet possible and it has been agreed with the Participant to generate additional necessary Knowledge first. If it appears that a Participant has wrongly not been identified as a contributor to Knowledge or has been wrongly identified as having contributed, agreements already made will be revised as necessary, such that the rights and obligations of all Participants concerned are respected under these Regulations.

3 Establishing and maintaining IP Rights

- a. Each knowledge institution has its own fund from which the costs of establishing, defending and maintaining IP rights can be financed. The Executive Boards and Boards of Directors have entrusted the management of this fund to the IXA KTOs.
- b. After a notification as referred to in Article 2.4(a) or (b), the IXA KTO concerned will assess whether there is a reasonable prospect of successful exploitation. A possible IP Right will only be applied for by IXA after a decision to exploit has been made.
- c. Based on the CAO NU, the CAO UMC and the applicable legislation and regulations, IP Rights are applied for or registered in the name of the Institution or a legal entity designated by the Institution. The Participants involved in an IP Right will be specified as such in the application.
- d. A decision will be made regarding the territories in which IP Rights will be applied for and about the maintenance of those IP Rights. This is done after consultation with Participants and in agreement with the Faculty or Division concerned (in the event that it takes part in the decision).
- e. A decision to terminate an application procedure concerning an IP Right is made after consultation with Participants and in agreement with the Faculty or Division concerned (in the event that it takes part in the decision).

4 Exploitation

4.1 Exploitation of knowledge

- a. After the decision to exploit as referred to in Article 2.4(f), the IXA KTO concerned will draw up an Exploitation Plan after consulting with the Participant or Participants and, depending on the Institution, with the Board of the relevant Faculty or Division if the IXA KTO considers this to be necessary. Appendix A contains an example of an Exploitation Plan.
As far as possible at this time, the Exploitation Plan will indicate the manner in which Knowledge will be exploited: for example, through collaborative ventures with a third party or third parties; a licence or transfer of Knowledge to a third party or third parties or a Spin-off company; the establishment of a Spin-off company or a combination of these options. The Exploitation Plan will indicate as clearly as possible the area of application, the duration and the possible fee to be charged for the use of Knowledge by a third party. The Exploitation Plan will substantiate the choice of route and the choice of partner, where applicable, as the best destination for this Knowledge.

4.2 Specific provisions for unpatented software

- a. In the case of the Exploitation of software, it is possible to release the source code and permit its use, reuse and adaptation for non-commercial purposes, unless it is reasonable to assume that such will impair its Exploitation. This will be determined by the IXA KTO concerned after consultation with the Participant or Participants.

- b. If IXA, following consultation with the Participant, determines that there is no realistic prospect of successful Exploitation of the software, then the Participant will be free to decide on the knowledge transfer strategy. In the case of publicly funded Research, there is a preference – or there may be an obligation – to make the source code as accessible as possible and to make use of customary open source licences.
- c. The above will be deviated from if the software created by the Participant has been derived from open source software that imposes the obligation to distribute the derived software under the same conditions, i.e. as open source software.
- d. Exploitation opportunities for open source software will be explored with the relevant IXA KTO.

5 Income from Knowledge

- a. If there is positive Net Income, it will be distributed in accordance with this article.
- b. The IXA KTO concerned is responsible for determining, collecting and distributing the Net Income, or having it distributed.
- c. Net Income will be distributed according to the following allocation formula:
 - i. One third for the Participant(s) up to an individual maximum of €1 million and a group maximum (all Participants concerned together) of €2.5 million per successful exploitation route as determined reasonably by the IXA KTO.
 - ii. One third for the Faculty or Division where the Participant(s) worked at the time that the Knowledge concerned was generated.
 - iii. One third for the Institution's central budget for the purpose of Knowledge Exploitation.
- d. In the case of a Trade Secret or Research Product, Participant is understood to mean:
 - i. where no IP Rights are attached to the Research Product: the Participant who made a substantive contribution to the development of the Research Product;
 - ii. where one or more IP Rights are attached to the Research Product: the Participants who are responsible for the creation of the IP Rights, such as the inventor and the author;
- e. Where a Participant participates financially (by means of shares or depositary receipts) in a Spin-off company in which Knowledge is exploited, he or she is excluded from the share of the Net Income from the exploitation of that Knowledge as referred to in paragraph (c) under i, because of entitlement to income based on shares or depositary receipts.
- f. The Institutions may decide to distribute Net Income only to the Faculty or Division if the income does not exceed an amount to be determined by the Executive Board or Board of Directors concerned, due to the costs associated with its distribution. This threshold amount has been set at €5,000. In the event that there is additional Net Income at a later date, as a result of which the total Net Income exceeds this threshold amount, the surplus (up to a maximum of €10,000) will be distributed equally between the Participant(s) concerned as referred to in Article 5c(i) and the central budget as referred to in Article 5c(iii). For Net Income above €15,000, the distribution as described in Article 5c again applies. If several Participants or Departments have a claim to income from Knowledge, they will jointly receive at most the percentage of the relevant category referred to in paragraph (c) of this article. This claim will be divided in equal parts among the parties belonging to a category, unless it has been or is agreed otherwise.
- g. If one or more Participants are excluded from this remuneration arrangement due to Participation in the Spin-off Company, the share that this Participant or these Participants would receive according to the remuneration arrangement will be divided equally between the Faculty or Division where the Participant(s) is/are employed and the central budget of the Institution for the purpose of Knowledge Exploitation.
- h. Participants may freely dispose of their share of the Net Income, whether or not it is paid in the form of a bonus. The payment is subject to statutory deductions of wage tax and contributions.

- i. If the Net Income is negative or becomes negative, this will not result in recovery of Net Income already paid out, but it will lead to a suspension of the payment of positive Net Income until the negative Net Income has been made up. The IXA KTO will be responsible for implementing this arrangement.
- j. Participants who, by virtue of their position at the Institution concerned, have to take account of the interests of the Institution that are relevant in this context, such as lawyers, controllers, executives, operational managers, operational directors or employees of IXA who have contributed to the generation of Knowledge, are excluded from participating in the distribution as described in paragraph c in order to prevent a conflict of interest or the appearance of such a conflict.
- k. Participants may waive their rights under these Regulations. If they wish to do so, they must make this known as soon as possible and before the income concerned has been generated by the Institution concerned, so that this can be taken into account when Net Income is dealt with, including for tax purposes. This part of the income will accrue to the department where the Participant concerned is employed.
- l. In the event that third parties such as funding bodies set conditions regarding the distribution of Net Income, these will be observed.

6 Setting up and participating in a company

6.1 Conditions for setting up a company

- a. A decision may be made to set up a Spin-off company on the basis of the Knowledge described in Article 2.1 if the following conditions are met:
 - i. An up-to-date and appropriate business plan has been drawn up for the company, which, if so requested by the IXA KTO, has been assessed by an independent panel of experts and which offers sufficient confidence with regard to the feasibility and continuity of the company.
 - ii. The business plan provides sufficient insight into the financial resources required and how to obtain them.
 - iii. Clear agreements have been made between all parties concerned regarding the investments by Participant(s) as referred to in Article 6.3 and at the expense of the budget and capacity managed by the Board of the Faculty or Division concerned and/or at the expense of the central budget managed by the Executive Board or the Board of Directors concerned, including any agreements allowing the Participant to carry out work or ancillary activities in the company.

6.2 Participation and establishment by Institution

- a. The IXA KTO determines whether there is Knowledge to which the Institution is entitled and which is suitable for exploitation by means of establishing a Spin-off company, and if necessary, it informs the Holding Company accordingly.
- b. On the advice of the IXA KTO concerned, it may be decided to establish the Spin-off company or to acquire a Participation, in which the Institution (via the Holding Company) acquires a majority or minority interest in the Spin-off company. The size of the Participation will be determined by, among other things, the nature and value of the Knowledge to which the Institution is entitled, in relation to the other contributions to the Spin-off company.
- c. When setting up a Spin-off company, the Holding Company is responsible for distributing the remaining shares (not attributable to the Holding Company or the Participant(s)). In addition to Participants, internal or external staff of the Spin-off company to be established or other investors may be entitled to shares.
- d. In principle, the Holding Company's Participation in a Spin-off company is limited in time and it is assumed that the Participation will be sold at some point (exit moment).
- e. The structure and position of the Holding Company within the organization of an Institution, as well as the budgets used in this connection for setting up and financing Spin-off companies, are determined internally by the Institutions themselves. This is not affected by these Regulations.

6.3 Participation and establishment by Participants

- a. Participants may, if applicable and after approval in accordance with the current regulations on ancillary activities, invest in a Spin-off company and, under certain conditions, acquire an interest of up to 4.9% of the shares or depositary receipts of the Spin-off company if they waive their remuneration under Article 5(c)(i). Further agreements will be made with the Participants based on the principle that their interest will remain the same after a first investment round in which a (new) third party participates and will therefore not be diluted.
- b. Participants who do not remain employed by the Institution concerned may increase their interest by making further agreements with the relevant IXA KTO, for example in the context of making labour or capital available.
- c. The shares of a Participant who is also an Employee of the Institution concerned may be certified, thereby creating a split between the economic and legal interest in the shares. The voting right on the shares will in principle be exercised by an independent foundation for the management of employee financial participations, which acts as an 'administration office'. The economic interest remains with the Participant through depositary receipts. Conversion of depositary receipts into shares will take place under conditions to be agreed upon.
- d. Persons who, by virtue of their position at the Institution concerned, have to take account of the interests of the Institution that are relevant in this context, such as executives, lawyers, controllers, operational managers, operational directors or employees of the IXA KTOs, are not permitted to participate directly or indirectly (via another private limited company) in a Spin-off company as referred to in this article, in order to prevent a conflict of interest or the appearance of such a conflict.
- e. The persons referred to under (d) of this article, as well as heads of department within the Institution concerned, will not hold a management position in this company in order to prevent a conflict of interest or the appearance of such a conflict.
- f. If the Participant does work for a Spin-off company, this constitutes ancillary activities and the relevant regulations within the Institution concerned apply in this respect. This is an internal matter of the Institution, and Participants must act in accordance with such regulations.
- g. A Participant who considers setting up a Spin-off company following the Exploitation Plan will develop an appropriate business plan, including a feasibility study that offers prospects for the continuity of the company. The business plan will include at least a financial foundation, an analysis of market potential, a competition analysis, an earnings model, a marketing plan, etc. In addition, the business plan will provide clarity on the financial resources required, how to obtain them and other forms of input (e.g. labour). It should be clear which milestones have to be achieved in the period from establishment to termination of participation by the Holding Company, and what the consequences are of failing to achieve these milestones.
- h. The Participant shall not refer to the relevant Institution in the name of the Spin-off company without the consent of the Institution. The Spin-off company may refer to its relationship with the Institution in public statements, provided that this cannot result in harm to the Institution's image. The Institution accepts no liability as a result of such public statements.
- i. The Participant will observe academic values and academic integrity when acting with, on behalf of, or at the behest of the Spin-off company, and when working for the Institution. If there is a potential or apparent conflict of interest, the Participant will not be entitled to participate in a Spin-off company.

6.4 Investments in a Spin-off company

- a. Investment in a Spin-off company can take place in the following ways:
 - i. Contribution of Knowledge
 - ii. Contribution in kind (e.g. through the use of products, facilities and services of the Institution)
 - iii. Contribution of cash
 - iv. Contribution of labour

- b. How the relative contribution of each of the investments listed in this article to the total Participation is distributed and the distribution among the underlying stakeholders as referred to in Article 6.2(c) will be determined and laid down in writing within the Institutions concerned, partly for the purpose of the calculation referred to in paragraph (c) of this article.
- c. The allocation formula as specified in Article 5 applies to Net Income from the Participation that is attributable to the contribution of Knowledge by the Holding Company or Institution. If the Participants concerned invest in the company in accordance with Article 6.3(a), the portion of the Net Income that would accrue to them without their investment will be divided equally between the Faculty or Division and the Institution. If some Participants invest and others do not, those who do not will be entitled to a proportional share of the third part that would accrue to the joint Participants if none of them acquired shares or depositary receipts. If more than one patent or other form of Knowledge has been contributed to the Spin-off company from the knowledge institution, the IXA Office concerned will determine, with the approval of the Executive Board/the Board of Directors, what share each form of Knowledge has had in the success of the Spin-off company. The non-investing Participants involved in the relevant patent or other form of Knowledge will then be entitled to a share of the income in proportion to their share of each patent or other form of Knowledge.

6.5 Making resources available

If the Spin-off company makes use of the institution's existing infrastructure, space, equipment and/or staff, without allocating any shares in exchange, the management of the relevant Faculty or Division and the Spin-off company will make written price and other arrangements in this respect, based on which the full cost price will be charged to the Spin-off company. In order to prevent a conflict of interest or the appearance of a conflict of interest, Persons who Participate financially in the Spin-off company cannot act on behalf of the Institution concerned in making such agreements.

6.6 Drawing up agreements

In relation to the Spin-off company, the necessary agreements will be drawn up by the various stakeholders, such as a letter of intent, a shareholders' agreement, articles of association and management statutes, which include regulations regarding the Management Board and any other bodies, such as a supervisory board.

7 Final provisions

Exceptional circumstances

The Executive Boards or Boards of Directors concerned may deviate from the provisions of these Regulations if this is warranted by exceptional circumstances that are substantiated in writing.

In implementing these Regulations, the applicable legislation and regulations and the guidelines applicable at the Institution concerned, including those concerning state support, privacy, data protection and transparency, will be observed.

Insofar the provisions of this translation of the Knowledge Exploitation Regulations are inconsistent with the provisions of the Dutch version of the Knowledge Exploitation Regulation ("regeling kennisexploitatie"), the provisions of the Dutch version will prevail.

Executive Boards of Amsterdam UMC, UvA and VU

Appendix A: Sample Exploitation plan

This report provides insight into the options for exploiting the proposed application of the invention and makes it possible to make a choice that is as well-founded as possible for the optimal exploitation route. In broad terms, the following exploitation routes are distinguished:

1. Exploitation by a third party on the basis of a licence (patents, software)
2. Exploitation by a third party through the transfer of the intellectual property or knowledge
3. Joint exploitation in the form of a research collaboration venture between the Institution and an external partner
4. Establishment of a Spin-off company

Based on the analysis of: (1) the invention, (2) the initiator and (3) the exploitation opportunities, a recommendation will follow on the optimal exploitation route for this application.

1. Invention:

- What is the invention? See IDF (appendix)
- Who is/are the inventor(s)?
- What costs were incurred in developing this invention?
- Can the invention be protected or still be protected?
 - Patent
 - Copyright
 - Model
 - Trademark
 - Other...
 - No, no protection is possible
- What is/are the area(s) of application of the invention?
- What problem(s) does this application solve?
- Which development phase has the invention reached?
 - Proof of Concept
 - Prototype
 - Market ready
 - Other, please specify...
- What is the need for investment in the short, medium and long term?
- Other remarks?

2. Initiator

- What is the initiator's personal goal in exploiting the invention?
 - starting up his or her own company
 - obtaining income for his or her own research by
 - licensing knowledge or IP
 - seeking collaboration with third party/parties
- What relevant capacities does the initiator have: e.g. entrepreneurship?
- What relevant network contacts does the initiator have?
- What funding opportunities does the initiator have?

3. Exploitation opportunities

- Possible exploitation opportunities for the invention:
 - Exploitation by a third party on the basis of a licence (patents, software)
 - Exploitation by a third party through the transfer of the intellectual property or knowledge
 - Joint exploitation in the form of a research collaboration venture between the institution and a third party
 - Starting up a Spin-off company
- Is there an understanding of the relevant market: size, niche market or not, possible competitive position, players?
- Can third parties be identified who see application opportunities for the invention and might be interested?
- For what fee and for what period of time could a third party make use of an invention?
- Is there already a preference for a third party and if so, why?
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4. Recommendation for optimal exploitation route

Recommendation:

Substantiation:

APPENDIX B for VU FOUNDATION to the 'Knowledge Exploitation Regulations' dated 9 April 2019 ('Regulations').

In addition to or in derogation from Article 6.3 of the Regulations, the following provisions apply:

1. Applicable to VU Foundation.
2. Applicable to Participants with a contract of employment with VU Amsterdam.
3. Does not apply to Participants who have or also have an appointment or contract of employment with VUmc, AMC, UvA or HvA.
4. A Participant may submit a substantiated request to the Institution via IXA VU to increase his/her (future) equity interest, in derogation of the provisions of the Regulations under Article 6.3 (hereinafter: 'the Request'). If there are several Participants, such a Request may only be made jointly. The Request is made in the case of a specific intention to establish the private limited company, in compliance with the policy and regulations of the Institution. Only in special cases may such a Request be considered after the private limited company has been established.
5. The Request will be substantiated by arguments as to why, in the opinion of the Participant(s), there should be a derogation from the provisions of Article 6.3.
6. The Request includes a plan that clearly indicates when, how and under what conditions (including milestones) acquisition and expansion of the relative number of shares will take place and why this is desirable (hereinafter: 'the Plan'). The Plan should also explain what the added value will be for the private limited company. It also includes all other benefits, income, options and suchlike enjoyed by the Participant.
7. The Request contains a specific description of the actual time spent by the Participant(s), including the impact on the immediate private and working environment of the Participant concerned.
8. Article 6.3(a) of the Regulations, which relates to claims on non-dilution of the share percentage, will lapse and will not be compensated for by the Institution.
9. All Participants involved in the Exploitation will take part in a decision to derogate from the Regulations.
10. The Institution may submit the Request to an expert panel as referred to in point 13 (hereinafter: the 'Expert Panel'), which will then assess it in order for the Institution to obtain an independent opinion on the Request submitted. If an application for funding (PoC, Preseed) is submitted to the Expert Panel or if a request for advice is made when a private limited company is being set up, the Request may be included in it.
11. Prior to submitting the Request to the Expert Panel, the Faculty Board, VU Holding BV and IXA VU must agree that:
 - a. the plan and explanation submitted provide a sufficient basis for the Expert Panel to make an assessment.
 - b. the activities in and for the private limited company are compatible as ancillary activities with the activities as a researcher / employee and all the other provisions in the Regulations.
12. The Expert Panel will at least assess the request in relation to:
 - a. feasibility, desirability, usefulness and necessity for the business case and compatibility with it.
 - b. potential conflict(s) of interest due to the scope of the appointment and an increased equity interest. An assessment is made of how the Participant deals with dilemmas. The Expert Panel may take into account the evidence of experience in dealing with such issues, through participation in IXA-recommended programmes such as DemonstratorLab or ACE Incubator.
 - c. compatibility with academic integrity and ethical values.
 - d. the need to take additional measures, such as increasing the business-related and physical distance from VU Amsterdam. NB: In all cases, there must be at least a business relationship between the Institution and the private limited company. How this materializes will be explained in more detail.
13. The Expert Panel will consist of an independent external chairperson and at least two external members (including an ethicist) who have no interest in the faculty, department or researchers, nor in the private limited company (existing or yet to be established) and

its stakeholders. The chairperson and at least one external member will be appointed for at least one year to guarantee as much continuity as possible. The Expert Panel will contain a maximum of two internal (VU Amsterdam) members.

14. After the Expert Panel has made its recommendations, IXA VU, VU Holding BV and the relevant Faculty Board will jointly submit these to the Executive Board for further decision-making.
15. The Participant(s) additionally undertake(s) to inform IXA VU and the relevant Faculty Board annually regarding compliance with agreements made. In the event of an existing or potential conflict of interest, the Participant(s) will immediately inform IXA VU and the relevant Faculty Board. In the event of non-compliance with agreements made, appropriate measures may be taken, including in the most extreme case termination of the employment contract with the Participant.