

Intellectual Property Rights Conditions for Collaborative Research Projects (IPR Conditions)

I. GENERAL PRINCIPLES

These rules should promote the protection of intellectual property and the use and dissemination of results. They should ensure that participants have mutual access to pre-existing know-how and to knowledge arising from research work to the extent necessary to conduct the research work or to use the resulting knowledge. At the same time, they should guarantee the protection of the participants' intellectual assets.

These *IPR Conditions* establish rules for the dissemination and use of results from *Collaborative Research Projects* carried out under the Joint Calls decided by *Partners of ERA-PG*.

These *IPR Conditions* are complementary to the national funding rules and their application is highly recommended to all funding *Partners of ERA-PG*. These conditions may become obligatory if so approved unanimously by the *Partners of ERA-PG* prior to the end of April 2006.

II. DEFINITIONS

Words defined here have the following meaning in this agreement and appear in *italics*.

“Access rights” means licences and user rights to *Knowledge* or *Pre-existing Know-how*.

“Collaborative Board” means the decision making body of the *Collaborative Research Project*.

“Collaborative Research Project (CRP)” means a project set up by two or more research groups that are funded by their respective national funding organisations (the *Partners of ERA-PG*) and organised in a transnational co-operation.

“Consortium” means all the *Participants* in the *Collaborative Research Project*.

“Consortium Agreement” means an agreement that participants in a *CRP* conclude amongst themselves for its implementation.

“Dissemination” means the disclosure of *Knowledge* by any appropriate means other than publication resulting from the formalities for protecting *Knowledge*.

“Fair and Non-discriminatory Conditions” means fair market conditions.

“IPR Conditions” means special rules on Intellectual Property Rights for *Collaborative Research Projects* which are complementary to the national rules and are part of the conditions stated in the national funding contract or grant agreement.

“Knowledge” means the results, including information, whether or not they can be protected, arising from the *Collaborative Research Project*, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

“Legitimate interest” means a *Participant’s* interest of any kind, particularly a commercial interest which may be claimed in the cases provided for in these *IPR Conditions*. To this end the *Participant* must prove that failure to take account of its interest would result in its suffering disproportionately great harm.

“National Networks” means the national plant genomic networks of which the *Participants* are members of, such as GABI, Génoplante, GARNET.

“Need” or “needed” shall mean that, without the grant of such *Access rights*:

- In the case of *Access rights* granted for the execution of the *CRP*, carrying out the tasks assigned to the recipient *Participant* would be impossible, significantly delayed, or require significant additional financial and human resources
- In the case of *Access rights* granted for *Use*, the *Use* of a defined and material element of the recipient *Participants’* own *Knowledge* would be technically or legally impossible.

“Participant” or “Participants” means any party or parties participating in this *Collaborative Research Project*. In certain cases where it is the researcher or a group of researchers who apply for funding from a *Partner of ERA-PG*, *Participant* shall notwithstanding refer to the host institution to which the *Partner of ERA-PG* allocates the funding.

“Partners of ERA-PG” means the national funding organisations involved in the Coordination Action ERA-NET Plant Genomics (EC Contract Number: ERAC-CT-2003-510189).

“Pre-existing Know-how” means the information which is held by the *Participants* prior to the start date of the *Collaborative Research Project*, as well as copyrights or rights pertaining to such information following applications for, or the issue of, patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

“Third Party” means any party other than the *Participants*.

“Use” means the direct or indirect utilisation of *Knowledge* in research activities or for developing, creating and marketing a product or process or for creating and providing a service.

“Utilisation Agency” means an organisation that supports the exploitation and dissemination of knowledge into commercial use including the generation of intellectual and industrial property to be listed in the *Consortium Agreement*.

III. RULES FOR OWNERSHIP, ACCESS RIGHTS, DISSEMINATION AND USE

1. Ownership of knowledge

- 1.1 *Knowledge* arising from work carried out under a *Collaborative Research Project* shall be the property of the *Participant* carrying out the work leading to that *Knowledge*.

- 1.2. Where several *Participants* have jointly carried out work generating the *Knowledge* and where their respective share of the work cannot be ascertained, they shall have joint ownership of such *Knowledge*. They shall agree among themselves on the allocation and the terms of exercising the ownership of the *Knowledge* in accordance with the provisions of these *IPR Conditions* and the national funding rules.
- 1.3. If a *Participant* belongs to a *National Network* which has agreed on different rules on ownership such as direct ownership of its *Knowledge* to its *Utilisation Agency* together with the obligations attached to it, then its part of ownership as stated under article 1.1 and 1.2 shall comply with the rules of its *National Network*.
- 1.4. If personnel employed by a *Participant* or if *Utilization Agencies* are entitled to claim rights to *Knowledge*, the *Participant* shall take steps or reach appropriate agreements to ensure that these rights can be exercised in a manner compatible with its obligations under these *IPR Conditions*, the national funding rules and other *Participants* of the *CRP*.
- 1.5. Where a *Participant* transfers ownership of *Knowledge*, it shall take steps or conclude agreements with the other *Participants* to pass on its obligations to the assignee, in particular concerning the granting of *Access rights*, the *Dissemination* and *Use* of the *Knowledge*. As long as the *Participant* is required to grant *Access rights*, it shall give prior notice to the other *Participants* in the same *CRP* of the envisaged assignment and the assignee. The *Collaborative Board* or other *Participants* in the *CRP* may object within 30 days of notification to such a transfer of ownership if this would adversely affect their *Access rights* and/or *Legitimate Interest*.
 The *Partners of ERA-PG* concerned with that *CRP* may object to any transfer of ownership to *Third Parties*, in particular to those not established in a Member State or an associated State, if such a transfer is not in accordance with the interests of developing the competitiveness of the dynamic, knowledge-based European economy, or is inconsistent with ethical principles.

2. Protection of knowledge

- 2.1. Where *Knowledge* is capable of industrial or commercial application, its owner shall provide for its adequate and effective protection in conformity with relevant legal provisions, the national funding rules and the *Consortium Agreement*, and having due regard to the *Legitimate interests* of the *Participants* concerned.
- 2.2. Where the *Partners of ERA-PG* concerned with that *CRP* considers it necessary to protect *Knowledge* of their respective *Participants* in a particular country, and where such protection has not been applied for or has been waived, they may adopt protective measures.
- 2.3. A *Participant* may publish or allow the publication, on whatever medium, of data concerning its *Knowledge* provided that the need to safeguard intellectual property rights, confidentiality as well as the *Legitimate interests* of other *Participants* has been properly considered. The *Collaborative Board* and the other *Participants* in the same *CRP* shall be given prior written notice of any planned publication. Rules concerning the publication of *Knowledge* shall be agreed in the *Consortium Agreement*.

3. Plan for using and disseminating the Knowledge

The plan for using and disseminating the *Knowledge*, which is part of the full proposal, shall be revised every 12th month.

4. Principles for Access rights

- 4.1. *Access rights* shall be granted on written request. The granting of *Access rights* may be made conditional on the conclusion of specific agreements, aimed at ensuring that they are used only for the intended purpose, and the giving of appropriate undertakings as to confidentiality. *Participants* may also conclude agreements with the purpose, in particular, of granting additional or more favourable *Access rights*, including *Access rights* to *Third Parties* or specifying the requirements applicable to *Access rights*, but not restricting the latter. Such agreements shall comply with the applicable competition rules. The *Partners of ERA-PG* concerned with this *CRP* may object to any grant of *Access rights* to *Third Parties*, in particular to those not established in a Member State or an Associated State, if such a grant is not in accordance with the interests of developing the competitiveness of the dynamic, knowledge-based European economy, or is inconsistent with ethical principles.
- 4.2. *Access rights* to *Pre-existing Know-how* shall be granted provided that the *Participant* concerned is free to grant them.
- 4.3. All *Access rights* shall be granted on a non-exclusive basis and any rights to sublicenses are explicitly excluded, unless otherwise agreed in the *Consortium Agreement*.
- 4.4. Unless otherwise agreed, the *Consortium Agreement* shall include an annex named “*Pre-existing Know-how*” which will define all the *Pre-existing Know-how* needed for the performance of the research and granted by each *Participant* to the other *Participants*.
- 4.5. *Participants* in the same *CRP* shall be informed as soon as possible by the *Participant* required to grant *Access rights* of any limitations to the granting of *Access rights* to *Pre-existing Know-how*, of any obligations to grant rights to *Knowledge*, or of any restriction which might substantially affect the granting of *Access rights*, as the case may be.
- 4.6. A *Participant* may explicitly exclude specific *Pre-existing Know-how* from the obligation to grant *Access rights* by means of a written agreement between the *Participants* before a new *Participant* joins the *CRP*. The other *Participants* may only withhold their agreement if they demonstrate that the execution of the *CRP* or their *Legitimate interests* will be significantly impaired thereby.
- 4.7. Except where the *Participant* granting *Access rights* so agrees, such rights shall confer no entitlement to grant sub-licences.

5. Access rights for the execution of CRPs

- 5.1. *Participants* in the same *CRP* shall enjoy *Access rights* to the *Knowledge* arising from work carried out under the concerned *CRP* and to the *Pre-existing Know-how*, if that *Knowledge* or *Pre-existing Know-how* is *needed* to carry out their own work under that *CRP*. *Access rights* to *Knowledge* shall be granted on a royalty-free basis. *Access rights* to *Pre-existing Know-how* shall also be granted on a royalty-free basis, unless otherwise agreed in the *Consortium Agreement*.
- 5.2. Subject to its *Legitimate interests*, the termination of the participation of a *Participant* shall in no way affect the obligation to grant *Access rights* to the other *Participants* in the same *CRP* until its end.

6. Access rights for Use

- 6.1. *Participants* in the same *CRP* shall enjoy *Access rights* to the *Knowledge* arising from work carried out under the concerned *CRP* and to the *Pre-existing Know-how*, if that *Knowledge* or *Pre-existing Know-how* is *needed* to use their own *Knowledge*. *Access rights* to *Knowledge* shall, for bona-fide academic research purposes be granted on royalty free conditions, and in other cases be granted under *Fair and Non-discriminatory Conditions*, unless otherwise agreed in the *Consortium Agreement*. *Access rights* to *Pre-existing Know-how* shall be granted under *Fair and Non-discriminatory Conditions* to be agreed.
- 6.2. Subject to the *Participants' Legitimate interests*, *Access rights* may be requested until two years after the end of the *CRP* or after the termination of the participation of a *Participant*, whichever falls earlier, unless there is provision for a longer period in the *Consortium Agreement*.

7. Incompatible or restrictive commitments

Participants shall make no commitments incompatible with the obligations provided for in the national funding rules.