**Consortium Agreement Guideline with Principles of IPR**

WHEREAS the Parties to ‘the Consortium Agreement for [name of the project] with contract number [number contract] (hereinafter: the Consortium Agreement) shall be aware that this Consortium Agreement with its annexes and including its definitions is legally binding and precedes later made agreements;

WHEREAS in the Consortium Agreement terms as ‘Project’, ‘Parties’ and ‘Consortium Agreement’ have already a specific meaning, by which these terms cannot be used in the context of research programs and/or projects financially supported and monitored by [name initiative];

WHEREAS the Parties to the [name initiative] Consortium Agreement do not assume that the Project Work under the Consortium Agreement for [name initiative] will generate know how that is capable of industrial or commercial application, and the results of research carried out due to the Project, but not financed by the means of the Project Budget are not part of the intellectual property rights of the [name initiative] Consortium;

WHEREAS the availability of – by all the Parties to the Consortium Agreement approved - Principles of IPR (hereinafter: the IPR-Guideline) for use within the [name initiative]-projects is advisable in order to have a same starting point regarding intellectual property rights for all ERA-IB-projects, and to obtain a sufficiently balanced distribution of rights and duties for the ownership, use and exploitation of knowledge and results among those Parties who cooperate within a specific [name initiative];

WHEREAS the nature of the Consortium Agreement leads to [name initiative] projects of which the parts (Subprojects) will be subsidized by several (national) funding organizations ([name initiative] parties) and executed in several knowledge institutes and/or companies that may have different IPR-regimens;

The Parties to the Consortium Agreement approve the following Guideline:

**1. Definitions**

In addition to the definitions already given in the Consortium Agreement and its annexes, the following expressions shall have the meaning specified:

Background IP IP-rights relating to the subject matter of an [name initiative] project and already existing before the start of the project;

Collaborators the parties that shall jointly execute the activities under a specific [name initiative];

EB the Executive Board of [name initiative];

Foreground IP IP-rights generated in or arising out of an [name initiative] project;

Patent any and all patents and patent applications, including all related patents

anywhere in the world or claiming priority there from;

Results the results, conclusions and findings of an [name initiative] project;

Subproject Part of an [name initiative] project, executed by one (or more) Collaborator(s), funded by one of the funding organizations.

**2. Provisions**

The provisions of the articles 3, 4 and 8 are binding, whereas the provisions of the articles 5, 6 and

7 shall be considered as supplementary guidelines which may be deviated from. If no deviations

are to be agreed, these Articles 5, 6 and 7 should be applied as the default.

**3. Ownership and protection of Results**

The Results shall be the property of the Collaborator who has generated it. This party shall ensure

that the ownership, title and all the intellectual property rights in any Results generated by its staff

or its subcontractors are transferred or assigned to this party with law or under separate

agreements on transfer.

If a Result has been generated together (joint invention), the Collaborators have a joint ownership

unless otherwise agreed. If possible, the shares of ownership should reflect the contribution to the

Result. If the contribution to the Result cannot be ascertained or there is a disagreement about the

shares of ownership of some Collaborators, these Collaborators have full right to the joint

ownership of these shares. Joint owners shall agree separately on the management of the joint

ownership.

The leaders of the Subprojects within the same [name of the project]-project inform each other about the IPR regimen

applicable on their Subprojects timely before the start of that project. In case the leader of

a Subproject is of the opinion that the IPR-regimen applicable on (an) other Subproject(s) will be

harmful for the performance of the activities within his/her own Subproject, this project leader shall

communicate this to the leader(s) of the concerned Subproject(s). The project leaders involved

shall then gear the different IPR-regimens to one another and send the text of the adapted IPR regimens

to the project leaders not involved.

The owner(s) of the Results shall, where these Results are capable of industrial or commercial

application, provide for its adequate and effective protection, in conformity with all relevant legal

provisions. None of the other Collaborators shall interfere with obtaining this protection (e.g.

postponing publishing). Where the Results are owned by more than one Collaborator, they shall

agree in good faith on the modalities of the protection to the benefit of all owners.

**4. The** [name initiative] **Consortium Agreements**

Each [name initiative] Consortium Agreement shall contain the following IPR arrangements:

1. List of Background IP according to the provisions of section 5;

2. Ownership of the Results, where needed and in accordance to the provisions of section 6;

3. Utilization plan, particularly arranging the use of the Foreground IP in accordance to the provisions of section 7;

4. Information procedure(s) to inform each other timely on inventions, patent strategies, and use of Background- and Foreground IP beyond the [name initiative] project;

5. Confidentiality and dissemination provisions supplementary to the articles 9 and 10 of the Consortium Agreement and section 7 of this Guideline.

Participation in an [name initiative] project does not justify any claim for use of Background- or Foreground IP royalty-free beyond that project.

Compensation paid for intellectual property rights in the context of [name initiative] projects shall be set in a transparent and objective way referring generally accepted market conditions. Any contribution of

a Collaborator to a specific [name initiative] project may be considered as a deduction to due compensation within that project.

**5. Use of Background IP**

Before the start of an [name initiative] project the Collaborators will draw up a list of all their Background IP involved. This list shall also contain all relevant information about the ownership restrictions of this

IP as well as the terms and conditions for use thereof during and after the [name initiative] project. Use of Background IP belonging to other Collaborators cannot be claimed unless recorded in meant list.

Collaborators shall have a royalty-free non-exclusive access right to the use of Background IP included in the list of an [name initiative] project where this Background IP is reasonably required to perform their own activities within that project.

Transfer of listed Background IP after approval of this list by the Collaborators involved cannot

infringe their rights on that Background IP without their explicit written approval.

Where Background IP is desirable for own internal commercial use of a Collaborator, access to this

IP on its written request shall not unreasonably be withhold or supplied under unfair terms.

**6. Disclosure and use of Foreground IP**

The owner(s) of Foreground IP shall disclose this IP as soon as possible to the [name initiative] Office that forwards the disclosed information to all other Collaborators.

The owner of disclosed Foreground IP shall grant non-transferable and non-exclusive, royalty-free

access rights to this IP to any of the other Collaborators upon written request where such IP is

reasonably required to undertake any activity under an [name initiative] project.

Unless otherwise agreed, the public research organizations shall have a non-exclusive right to use

the disclosed Foreground IP for further research and for educational purposes royalty-free.

Other Collaborators than public research organizations shall have the right to negotiate of the use

of the Foreground IP beyond the [name initiative] project for reasonable period of time (= right to primary negotiation).

Unless otherwise agreed, for jointly owned Foreground the default regime shall apply that:

a. Each joint owner may grant non-exclusive licences to third parties;

b. Prior notice should apply;

c. When transferring Results to commercial use, a fair and reasonable compensation should be paid

to all the other joint owners.

**7. Confidentiality and dissemination**

The Collaborators shall agree on confidentiality having due regard to each others trade secrets.

Each Collaborator within an [name of the project]-project shall maintain adequate procedures to protect any confidential information of the other Collaborators which was made accessible to them.

Procedures and rules of dissemination shall be agreed before the start of each [name initiative] project. All dissemination of Results shall be conducted in the manner that the objectives of the [name initiative] project concerned will be obtained best.

**8. Dispute resolution**

Unless otherwise agreed, the Collaborators within an [name initiative] project shall try to negotiate the

solution whenever a conflict occurs.

If the negotiation fails and the conflict regards Foreground or Background IP, required to undertake

any activity under an [name initiative] project, the conflicting Collaborators shall submit the conflict to the Executive Board, which board shall decide on the question within four weeks. This decision is binding for the Parties involved. In all other conflicts concerning IPR-related issues the conflict shall be solved by

the Arbitrator and according to the rules and procedures by the International Chamber of Commerce.