

GUIDANCE NOTES ON COLLABORATION AGREEMENTS

DRAFT

FRAMEWORK FOR COLLABORATION

1. Definitions

(i) The Programme:

All work carried out under a particular programme and supported by the ALSF and other funding organisations (if any) and extending to the exploitation of that work.

(ii) The Project:

Specific work undertaken in collaboration as part of the Programme with financial support from the ALSF and other funding organisations (if any).

(iii) Consortium:

The participants in the Project working within the terms of a formal collaboration agreement.

(iv) Participant:

Any commercial, academic or other science-base research organisation undertaking research within the terms of a collaboration agreement as part of the Project supported by the ALSF and other funding organisations (if any) under a Programme.

(v) Lead Organisation:

Where specified by the collaboration agreement, the Participant that co-ordinates the applications.

(vi) Intellectual Property:

Any inventions (whether patentable or not) and applications thereof, patents, registered designs, copyright material including computer software, and technical know how and other information.

(vii) Background:

Any Intellectual Property made available by a Participant for use in the Project or necessary to exploit the results but not generated under the Project and belonging to the Participant or to which the Participant has the necessary rights for the purpose of the Programme. References to Background in this Framework include only such material as above which is made available before or during the Project or identified before the end of the Project or is necessary for the exploitation of the results of the Project.

(viii) Results:

Any Intellectual Property generated under the Project by one or more Participants or under any subcontract made between a Participant and a subcontractor in connection with the Project.

(ix) IPR:

Intellectual Property rights including Background and Results.

(x) Dissemination:

The passing of a report prepared by a Participant to any other Participant(s) which contains:

- (a) a statement on the Results and/or progress of work done under the Project;
- (b) a statement of the performance, form, fit or function of items resulting from work on the Project.

(xi) Disclosure:

The passing to any party by a Participant of information which contains:

- (a) data relating to capability, technology, techniques, process know-how and the like;
- (b) any data which is deemed by the disclosing party to be of a commercially sensitive nature.

2. Structure of Collaboration

Each Participant will be entitled to choose its partners in any Consortium. The members of a Consortium will submit a joint proposal to the Department. A formal collaboration agreement shall be entered into, setting out inter alia:

- (a) the terms of the collaboration between the intending Participants and the mechanisms for managing the Project;
- (b) ownership and licensing of IP;
- (c) provisions for confidentiality including any mechanisms for dissemination and disclosure.

3. Management/Organisation of a Consortium

The collaboration agreement relating to a Project should cover the management and organisation of the Consortium. It should set out the details of how the work by the different Participants will be co-ordinated; the responsibilities and liabilities of the Participants; how information relating to the Project will be collected and assessed; and the mechanisms for reviewing progress and reporting the results of these reviews to MIRO and to other funding organisations (if any) at agreed intervals. The following conditions shall apply:-

- (1) the Consortium should appoint an employee of one of its Participants as Project Manager responsible for the documentation of IPR and the implementation of a project management system. The Project Manager will also act as a formal contact point with the Department and other funding organisations (if any) for the collection, co-ordination and communication of management information and submission of regular progress reports;
- (2) MIRO will normally appoint a Project Monitor to undertake the technical monitoring required under the Programme. The participants will co-operate with the Project Monitor and make available such information

(both financial and technical) as he/she considers necessary for the effective monitoring of the Project.

4. Intellectual Property

(1) Participants should make all reasonable enquiries concerning the availability of, and rights to use, IP needed for the Project and ensure that to the best of their respective beliefs there are no such rights which are required in connection with the carrying out of the Project or the exploitation of the Results that are not owned by or available to the Participants at the start of the Project.

(2) Background necessary for the purposes of the Project shall be made freely available within each Consortium for such purposes for the duration of the project. Participation in the Programme shall not of itself affect the ownership of Background.

(3) Results will be made freely available within each Consortium for the purpose and duration of the Project.

(4) When a Participant subcontracts work under a Project, he shall take such steps as are necessary to ensure that his obligations under the Programme can be met.

5. Dissemination and Disclosure

(1) Each Consortium should furnish regular reports describing progress and Results for dissemination to Participants in other projects within the Programme. It is intended that these should be informative but may exclude commercially sensitive information.

(2) Participants should not withhold unreasonably information relating to a Project requested by Participants of other projects in the Programme who are not also Participants in that Project. The owner of the information may require the recipients to enter into an appropriate confidentiality agreement which may be subject to the prior approval of the other members of the Consortium.

(3) Participants are free to take into account their commercial interests when deciding whether and how material stemming from a Project should be made public. Within the constraints that this may impose, Participants should be able to publish material as they think appropriate and other Participants should not seek to impose unreasonable restrictions on their doing so.

(4) Where the Consortium includes one or more Government Establishments, the Crown shall have the right, free of payment, to use the Results for information and research purposes only, within Government departments and establishments, provided that any information not in the public domain relating to such Results shall not be communicated outside such Government departments and establishments without the prior written permission of the Participants to whom the Results are proprietary.

(5) Where disclosure of information about a Project is necessary for the purpose and implementation of another Project, and the conditions set out in this section and elsewhere do not provide a means of ensuring this, the MIRO and other funding organisations (if any) may call a meeting of the

interested parties with a view to determining what information should be made available for the purposes of that Project and on what terms.

6. Further Research

In general science-base Participants shall be entitled to use their Results for further research. Where this involves the use of information supplied or generated by other Participants, consent should not be unreasonably withheld.

7. Termination

A Participant may withdraw from a Project only with the unanimous consent of the other Participants. Otherwise withdrawal shall be treated as default and the conditions set out below should apply.

If a Participant to a Project defaults on its obligations so as to jeopardise the objectives of the Project, the defaulting Participant's right to continue participating in the Project may be terminated, where upon:-

- (a) rights granted to other Participants in respect of the defaulting Participant's Background shall continue for the duration of the Project; to the extent that exploitation of the Results of other Participants is dependent on the defaulting Participant's Background this shall be licensed on terms to be specified in the collaboration agreement.
- (b) the defaulting Participant shall provide other Participants with a free licence to use any of its Results necessary for the implementation of the Project and furthermore to the extent necessary for them to exploit their own rights.
- (c) all rights acquired by the defaulting Participants to the Background and Results of other Participants shall cease immediately

