

AMMA-EU Consortium Agreement - Article 9. Intellectual Property Rights

9.1. Confidentiality

During the term of the Project and for a period of five (5) years thereafter, the Contractors shall treat as confidential any information which is designated as proprietary by the disclosing Contractor by an appropriate stamp, legend or any other notice in writing, or when disclosed orally, has been identified as confidential at the time of disclosure and has been promptly (thirty (30) days at the latest) confirmed and designated in writing as confidential information by the disclosing Contractor.

Accordingly, each Contractor undertakes (in addition and without prejudice to any commitment under the EC Contract) that

- (i) the receiving Contractor shall not use any such information for any purpose other than in accordance with the terms of the EC Contract and this Consortium Agreement, and
- (ii) the receiving Contractor shall not disclose any such confidential information to any third party except with the disclosing Contractor's prior written consent, and
- (iii) such information shall neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorised in writing by the disclosing Contractor.

The confidentiality obligation stipulated above shall not apply to information for which the receiving Contractor can prove that it

- had a public nature prior to its communication by the disclosing Contractor or fell within the public domain after such communication by the other party but though not fault of its own;
- was already in its possession at the time of signature of the Consortium Agreement;
- was received from a third party without any secrecy obligation;
- is subsequently developed by or for the receiving Contractor independently of the confidential information received from the disclosing Contractor;
- had to be communicated to comply with applicable laws or regulations or with a court of administrative order provided that insofar as reasonably possible the receiving Contractor shall have informed the disclosing Contractor of such need and shall have complied with the disclosing Contractor's reasonable instructions designed to protect the confidentiality of such information.

The Contractors shall contractually impose the same obligations on all of their employees or any other personnel working for a Contractor, who may have access to confidential information, to the maximum extent and for the maximum duration authorised by law, including upon the end or the termination of their employment or work, unless the employees are obliged to confidentiality by their contract of employment.

The Contractors shall impose the same obligations on their Affiliates, subcontractors, third parties contributing to the Project in accordance with article II-19-1- (e) of EC Contract or Members they represent if specified in a special clause n°23 inserted in the addendum of the EC Contract.

9.2. Publication

Any proposed publication or communication by a Contractor or Member, regardless of the media (including any plan or model), in connection with all or part of the Project and/or the Knowledge is required to be submitted with the prior written consent of the other Contractors and the Commission.

To this end a brief description and the subject of the proposed publication or communication has to be submitted by registered letter to the others Contractors and to the Commission. The Contractors shall have a period of six weeks from the date of receipt of the proposed publication or communication to object to the publication/communication. Beyond this period, their consent shall be deemed to have been given.

This objection may consist in

(a) a request for modifications, specifically if certain pieces of information contained in the proposed publication or communication are likely to affect the industrial and commercial use of Knowledge; provided however that the scientific content and conclusions remain unaltered;

or

(b) a request that the publication or communication be postponed if, in its opinion, real and serious reasons require this, especially if the information contained in the proposed publication or communication should be the subject matter of intellectual property protection.

However, none of the Contractors may withhold their consent to publication or communication upon the expiry of a period of six calendar months.

The IPC (Intellectual Property Committee) shall be consulted to help the Governing Board settle the matter within the said period of six months.

All publications will acknowledge the Project and acknowledge that the Project received funding from the Commission's Sixth Framework Programme, it being understood that any publication or communication made pursuant to this Article is required to indicate the contribution made by each of the Contractors to the conduct of the research.

Nothing contained in the above paragraph shall prevent

- the submission of a thesis to examiners in accordance with the normal regulations and practice of the Public bodies subject where appropriate to such examiners being bound by confidentiality provisions in no less terms than those outlined in article 9.1;
- the obligation of a Contractor or a Member to issue a scientific activity report for the State or administrative organisation it belongs to. This communication shall not constitute a public disclosure, but shall be an internal communication to the Contractor. It is the responsibility of the Contractor concerned to ensure that this communication shall not constitute a public disclosure.

9.3. General principles regarding Pre-Existing Know-How (PEKH)

9.3.1. Ownership

Each Contractor or Member is and remains the sole owner of its intellectual and industrial property rights over its PEKH. Unless expressly provided otherwise, trademarks are not part of PEKH.

9.3.2. Identification of Pre-Existing Know-How

Access Rights may be granted only on Pre-Existing Know-How and Knowledge arising from the research carried out by the Contractors' and Members' departments, institutes, or laboratories implied in the Project, as described in the EC Contract Preparation Forms or annex 1 by each Contractor or Member, subject to the respect of disposals of the EC Contract and of this Consortium Agreement.

Before the conclusion of the EC Contract, the Contractors and Members have identified and listed

in Annex 4 the Pre-Existing Know-How explicitly excluded from Access Rights (Annex n°4).

Access rights to PEKH not explicitly listed in Annex 4 shall be determined according to the following general principles.

- Models, algorithms (and related software), instruments and observation methods shall be deemed to be PEKH excluded from the regime of granting of Access rights.
- Geophysical and socio-economical data relating to the AMMA international project shall be deemed to be PEKH for which Access rights may be granted for the Project.

The Contractors and Members agree to provide access to all Pre-Existing Know-How held by them that are required for the conduct of the Project, except for those listed in Annex 4 and in the abovementioned paragraph, and for those the concerned Contractor or Member is not free to grant.

9.4. General principles applicable to Knowledge

9.4.1. Ownership and protection of Knowledge

Knowledge shall be the property of the Contractor and/or Member carrying out the work leading to that Knowledge.

When several Contractors and/or Members have jointly carried out work generating the Knowledge and where their respective share of work cannot be ascertained, they shall have joint ownership of that Knowledge.

The Contractors and/or Members concerned (“Contributors”) agree to jointly apply to obtain and/or maintain the relevant intellectual property rights and shall strive to set up amongst themselves appropriate agreements in order to do so.

These co-ownership agreements shall specify, inter alia, the applicable arrangements in case of the extension of rights as well as those applicable to the allocation and assumption of expenses in connection with the requested protection. The share of each of the Co-owners to the development of the Knowledge shall be defined proportionally to the resources contributed by each, whether human, financial or intellectual.

So long as any such intellectual property rights are in force, such Contributors shall be entitled to use and to licence such right on a non-exclusive basis with a financial compensation due to the other Contributors decided on a case-by-case basis in accordance with the agreements concluded with the prior written consent of the other Contributors. This compensation shall be due to Public bodies.

In case a Contractor or Member (“Originators”) decides in its sole discretion that it does not intend to seek adequate and effective protection over certain pieces of its Knowledge issuing from the Project, then, the Originator shall inform in writing the other Contractors and Members, through the Co-ordinator, and any Contractor or Member interested in applying to obtain and maintain such protection shall advise the other Contractors and Members through the Co-ordinator and in writing within one (1) month of receipt of relevant notice.

In case several Contractors and/or Members are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements to this end.

Should no other Contractor or Member show an interest in so applying, the Co-ordinator shall inform accordingly the Commission in accordance with Annex II General Conditions - Part B, Article II.33.

The foregoing shall be without prejudice to the Access rights of all Contractor and Members that shall

remain unaffected.

Any agreement concluded between the Contractor or a Member and a subcontractor shall prohibit the subcontractor from applying for any intellectual property right with regard to the Knowledge.

9.4.2. Use and dissemination

If dissemination of Knowledge does not adversely affect its protection or Use and subject to legitimate interests, the Contractors or the Members shall ensure further dissemination of their own Knowledge as provided under the EC Contract and this Consortium Agreement.

9.5. Access rights

9.5.1. General principles

Each Contractor and Member shall take appropriate measures to ensure that it can grant Access rights and fulfil its obligations under the EC Contract and this Consortium Agreement notwithstanding any rights of its employees, or any person it assigns or engages to perform its own Work-Package for the Project.

The Contractors and Members agree that Access rights needed for the execution of the Project or for Use are granted on a non-exclusive basis.

The Contractors and Members agree that, for the execution of the Project, needed Access Rights shall be granted on written request to the owner of the Pre-Existing Know-How or Knowledge.

Access Rights to Knowledge and Pre-Existing Know-How needed for Use shall be granted upon bilateral agreement between the Contractors and Members concerned.

The Contractors and Members also agree that, if not otherwise provided in this Consortium Agreement or granted by the owner of the Knowledge or Pre-Existing Know-How, Access rights shall not include the right to grant sub-licences.

In relation to the grant of Access Rights, "needed" or "need" shall mean that, without the grant of such Access Rights,

- in the case of Access Rights granted for the execution of the Project, carrying out the tasks assigned to the recipient Contractor or Member would be impossible, significantly delayed, or require significant additional financial or human resources;
- in the case of Access Rights granted for Use, the Use of a defined and material element of the recipient Contractor's or Member's own Knowledge would be technically or legally impossible.

Members shall have the same rights and obligations as the Contractors regarding Access Rights.

9.5.2. Affiliates

Upon request, each Contractor shall grant Access rights to the Affiliates of the requesting Contractors identified in Annex 1, as if such Affiliates were parties hereto, provided all such Affiliates are bound by all confidentiality and other obligations of the Contractors under the EC Contract and under this Consortium Agreement, including, but not limited to confidentiality undertakings, as if such Affiliates were parties thereto.

A parent company, which is not a Contractor for the purposes of the EC Contract with the

Commission is not eligible to benefit from any Access rights.

Upon cessation of the control of an Affiliate any Access rights granted to such Affiliate in respect of Knowledge or Pre-existing Know-How shall lapse, except otherwise agreed between such Affiliate and the Contractor concerned and the Executive Committee.

9.5.3 Access Rights for third parties

Each Contractor or Member (the "First Contractor") may enter into a technical cooperation or licensing arrangement with a third party in respect of any minor amount of Knowledge of another Contractor or Member (the "Second Contractor") which have been unavoidably incorporated into or amalgamated with the First Contractor's or Member's own Knowledge.

In such circumstances and upon request of the First Contractor, the Second Contractor shall grant to the First Contractor non-exclusive licenses over its Knowledge against terms and conditions to be agreed upon, provided that no legitimate interests of the Second Contractor oppose the grant of any such license.

9.5.4. Access rights for execution of the Project

For the duration of the Project, the Contractors and Members agree that the Access rights to the Pre-existing Know-How needed for carrying out their own work under the Project shall be granted on a royalty-free basis.

For the duration of the Project, the Contractors and Members agree that the Access rights to the Knowledge needed for carrying out their own work under the Project shall be granted on a royalty-free basis.

9.5.5. Access rights for Use of Knowledge

The Contractor and Members agree that the Access rights to the Pre-Existing Know-How needed for the requesting Contractor or Member in order to Use its own knowledge shall be granted on fair and nondiscriminatory conditions.

The Contractors and Members agree that the Access Rights to the Knowledge needed for the requesting Contractors and Members in order to Use its own Knowledge shall be granted at preferential conditions.

9.5.6 Database and Software Access Rights

9.5.6.1 General principles

The general provisions for Access Rights provided for in article 9.5.1 through 9.5.5 are applicable also to database and Software.

The Contractors and Members agree that when applied to Software, Access Rights shall not include access to Source Code but only to Object Code or, if the normal use of such an Object Code requires an API, access to the Object Code and such an API.

Access Rights to Source Code may be granted on request. Any such request may be rejected by the Contractor or Member owner of the Source Code unless needed as described above. Access right to Source Code will be granted subject to separate agreements only to be concluded between the Contractors and Members concerned.

Access Rights to Software do not include any right to receive Source Code or Object Code ported to a

certain hardware platform or any right to receive respective Software Documentation in any particular form or detail, but only as available from the Contractor or Member granting the Access Rights.

9.5.6.2 Access Rights to database or software for execution of the Project

Access Rights to database or Software which are Knowledge or Pre-existing Know-how, needed for the execution of the Project shall be granted upon written request, specifying the scope and duration of their application particularly with respect to database and Software which are Pre-existing Know-how.

Access Rights to Software comprise a non-exclusive, non-transferable right to install, use and reproduce it exclusively in the field of the requesting Contractor's or Member's subproject and only for the execution of the task of the requesting Contractor or member.

The Contractors and Members agree that when applied to database, Access Rights for the execution of the Project include the right to extract in whole or in part the content of the concerned database.

9.5.6.3 Access Rights to database or Software for Use of Knowledge

Access Rights to database or Software, which are Knowledge or Pre-existing Know-how needed for Use shall be granted upon a bilateral agreement between the Contractors and/or Members concerned.

This agreement shall define the scope, the financial conditions, the duration of the Use and the assigned right, being understood that the financial principles stated at article 9.5.5 shall be applied.

The Contractors and Members agree that when applied to database, Access Rights for Use shall include the right to extract data only when it is necessary for the customers of the requesting Contractor to use the concerned rights.

9.6. Protection of acronym of the Project and filing of a domain name

After having carried out all searches for prior rights that may be required, the Contractors or/and members may agree that the Co-ordinator or any other Contractors or/and Member shall be in charge of proceeding, in its own name, with the filing of the acronym for the Project as a mark as well of a corresponding domain name. The Contractors or/and Members shall agree on the extent of the protection sought.

The non-filing parties shall benefit from a non-exclusive licence to use this mark under financial terms corresponding to an amount no higher than that resulting from an equal share of the cost of filing, obtaining and maintaining the mark.

No Contractor or/and member shall be allowed to use the AMMA or any related derived acronym and/or logo for commercial purposes as long as the acronym and the logo of the Project have not been filed as a mark or a domain name with the prior consent of the other Contractors or/and Members.

