

**CENTRE FOR GENOMIC REGULATION**

**INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER POLICY**

March 2015

## INTRODUCTION

The FUNDACIÓ CENTRE DE REGULACIÓ GENÒMICA or Centre for Genomic Regulation (henceforth, the “CRG”) is a research institute created in the year 2000, formed as a non-profit foundation by the Department of Universities, Research and Information Society of the Catalan Government. The CRG involves the participation of the Catalan Government, via the Department of Health and the Department of Economics and Knowledge, as well as the Pompeu Fabra University and the Ministry of Economy and Competitiveness.

The mission of the CRG is to discover and advance knowledge for the benefit of society, public health and economic prosperity by promoting excellence in basic research in biomedicine and, particularly, in the fields of genomics and proteomics.

CRG’s Articles of Incorporation highlight its role in the development and transfer of inventions and discoveries arising from research done at the institute as it sets out *inter alia* the following specific purposes of the CRG: “...(b) “to facilitate the development of applications of the knowledge of the structure, function, and regulation of genes in the field of biomedicine to meet the challenges of the post-genomic age”; (c) to facilitate the contact between the basic research and the applied research from the biology, clinical, and public health perspectives; (d) “to be a centre of technology transfer to the biomedical industry, including the pharmaceutical and biotechnology industries; ...”.

In order to fulfill its objectives, the CRG: (a) carries out its own research activities; (b) is very active in collaborating with other national and international organizations (including other research centers and companies); and (c) promotes effective technology transfer through the protection and commercialization of the knowledge and technologies developed in the context of its scientific activities as well as the creation of spin-off companies emerging from such research activities.

This Intellectual Property and Technology Transfer Policy is applicable jointly with the provisions of other internal policies of the Centre for Genomic Regulation currently in force. Such internal policies include the “Conflict of Interest Policy”, and the “Code of Good Practice”. Such policies form an inherent part of the professional duties of the CRG researchers. Therefore, each CRG researcher must be aware of implement and comply with all such policies and rules.

This Intellectual Property and Technology Transfer Policy is intended to supplement, but not replace, any applicable laws governing conflicts of interest applicable to the CRG, as well as any mandatory rules set forth by law, including, employment law and rules on safety in the workplace, or by contract, including employment and commercial contracts.

## PURPOSE AND SCOPE

### 1. Purpose

This Intellectual Property and Technology Transfer Policy clarifies, translates and complements existing laws and regulations on the ownership, management and transfer of intellectual and industrial property rights following from the research performed at publically-funded research centers, namely. Further, it describes where necessary the existing mechanisms and structures designed to promote the transfer of research results to the rest of the scientific community, to industry and, last but not least, to society.

Therefore, this policy aims to establish a framework regulating the following aspects:

- (a) The ownership of knowledge and results derived from research, development and innovation activities carried out at the CRG.
- (b) The duty of the CRG researchers to communicate the results of their work to the CRG, and to collaborate with the CRG in order to facilitate the transfer of such results.
- (c) The procedures to be followed for the protection of the aforementioned knowledge and results, to prevent third parties from commercially exploiting the CRG's research output independently from the CRG.
- (d) The transfer of the aforementioned knowledge and results in the form of sponsored research collaborations or services, consultancy or advice services, licensing of patents and/or know-how, and/or data, and/or materials, and other knowledge and results so that such research, development and innovation activities may result in useful products.
- (e) The incentives for the CRG researchers as a share of the revenues obtained through the commercial transfer of the results of their research.
- (f) The support given by the CRG to: (i) generate new business opportunities arising from the research activities carried out at the CRG, that may be identified by the CRG itself or at the initiative of CRG researchers or of third parties; (ii) promote the creation of new spin-off entities, companies, or organizations; and (iii) facilitate the transfer of research results to society, eventually, through such new spin-off entities, companies, or organizations.

## 2. Scope

This policy is applicable to all the CRG researchers that carry out research, development and innovation activities (the “**Research Activities**”) using funds, facilities, space, equipment, supplies and/or materials or other resources of the CRG, or participate in Research Activities headed by the CRG without prejudice in such case of other parties' rights in this respect, should that be the case, under or subject to an agreement between the CRG and a third party. More specifically, this refers to: (a) full and part time staff and researchers, including pre-doctoral, postdoctoral, or research support technicians who have entered into an employment agreement with the CRG; (b) staff and researchers, including pre-doctoral, postdoctoral, or research support technicians who –not being CRG employees– have entered into any type of contractual engagement with the CRG; and (c) collaborating researchers who have no direct link to the CRG but perform Research Activities at the CRG, including visiting researchers from other research centers or organizations, researchers having affiliations with other research centers or organizations, and researchers from the industry, regardless of their obligations to such other entities, companies, organizations, or institutions (the “**Researchers**”).

## **OWNERSHIP AND TRANSFER OF RIGHTS**

### **3. Ownership and acknowledgment of inventorship or authorship**

The CRG shall be the owner of all the inventions and works arising from the Research Activities performed by the Researchers employed by CRG, this without prejudice of the rights that the Researchers that are inventors and authors of such inventions and works shall have, including the right to be recognized as such, and the right to participate from the revenues obtained through the transfer of their Research Activities.

The CRG shall be the owner of any and all technology, knowledge, processes, know-how,

discovery, invention, data or information, biological material or any other type of material, creation or result, multimedia work, images, databases and computer programmes (software), expression of ideas, documents, manuals, papers, articles, or reports, that are developed or obtained by the Researchers employed by CRG as a consequence of their Research Activities (hereinafter, “**Research Results**”). For visitors, collaborators, double affiliations or any other researchers performing Research Activities at the CRG but not directly employed by the CRG, the CRG shall be owner of all the inventions and works arising from the Research Activities performed by the Researchers on a case to case basis depending on the legal relationship and documents signed with CRG.

In particular, the CRG shall be the owner of any and all of the following Research Results:

### **3.1 Inventions and Patents (“*Propiedad Industrial*”)**

Inventions refers to Research Results developed by the Researchers in the course of their Research Activities susceptible of protection (according to Spanish Law or other applicable legislation as the case may be) by industrial property rights, including but not limited to, patents, usage models, semiconductor topographies and industrial designs that is conceived or reduced to practice by a Researcher (whether alone or together with others) in the performance of its Research Activities, if conceived or reduced to practice in whole or in part: (i) with the use of direct or indirect financial support from the CRG, including support or funding from any outside source awarded to, or administered by the CRG; or (ii) with use of space, facilities, supplies and/or materials or other resources provided by or through the CRG; or (iii) under or subject to an agreement between the CRG and a third party (hereinafter, “**Inventions**”).

The Researcher who, individually or jointly with others makes an Invention (whether or not this ends up in a patent) and who meets the criteria for inventorship under the Spanish or other applicable legislation as the case may be shall be referred to as the “**Inventor**”.

For the avoidance of doubt, **Patent** refers to a form of protection of Inventions which are: (a) susceptible of industrial application (when its object can be manufactured or used in any form of industry, including agriculture); (b) new (it does not form part of the state of the art which comprises everything made available to the public by means of a written or oral description, by use, or by any other way, before the date of filing of the patent application); and (c) involve an inventive step (it does not result from the state of the art in a manner obvious to a person skilled in the art).

A **Patent** shall give its owner the right to prevent any third party from undertaking the manufacturing, offering for sale, the marketing or use of, or importing or possessing the product or process that is the subject matter of the patent (as defined in its claims) without its/his consent. Therefore, the patent provides its owner with exclusivity to use and transfer the invention as described in its claims for the duration of the protection in the country in which the patent application has been filed (twenty years from the date of filing in Spain).

### **3.2 Unpatented Materials**

Unpatented Materials refers to any biological materials such as cell lines, organisms, proteins, plasmids, antibodies, DNA/RNA, chemical compounds, transgenic animals, data or information resulting from preclinical or clinical trials in humans or animals, and other materials useful for research, development, and innovation or for commercial purposes for which patent applications are not possible, or make no commercial sense (the “**Unpatented Materials**”), where such Unpatented Materials are developed by the Researchers in the course of their Research Activities.

The Researcher who is determined by the principal investigator of a research group or program, as applicable, as having made a relevant contribution to the development of the Unpatented Materials (be it alone or jointly with others) shall be referred to as the “**Contributor**”.

### **3.3 Rights to transfer copyright (“*Propiedad Intelectual*”)**

#### ***(a) Copyright: General provisions***

The copyright in any scientific work shall belong to the author by virtue of the sole fact of its creation. The Researcher who creates any scientific work shall be considered the author (the “**Author**”). Any scientific work shall be deemed to be copyright and shall be protected as copyright as long as it is original and is expressed in a manner or medium, whether tangible or intangible, that is known at present or may be invented in the future. Therefore, the ideas are not protected by copyright as such but only the expressions of those ideas provided that they are original.

The author has a number of personal or moral rights that are inalienable and non-transferrable. Such personal rights include the following: (i) to decide whether his work is to be disclosed, and if so in what form (as a consequence of this, it is a standard practice for journal publishers to request the researchers to authorize the publication and to assign their copyrights to the journal when they publish the work (papers or results) of the researchers); (ii) to determine whether such disclosure should be effected in his name, under a pseudonym or sign or anonymously; (iii) to request the recognition of the authorship of the work; (iv) to request the respect of the integrity of the work and to object any distortion, modification or alteration of it or any act in relation to it that might adversely affect his/her interests or threaten his/her reputation; (v) to alter the work without prejudice of the obligation to respect the acquired rights of third parties; (vi) to withdraw the work from circulation under certain circumstances.

The CRG shall be the owner of each and all rights to transfer the copyright or any other copyright related to the original work developed by one or more Researchers, or acquired from third parties by agreement with the Author(s) or other rights holder(s). Notwithstanding the right to transfer of the CRG, the Researchers that are authors of such works shall have the right to be recognized as such as well as the rest of the personal or moral rights, and the right to participate from the revenues obtained through the transfer of their Research Activities, except as otherwise provided by the Spanish or other applicable legislation, or by this Policy.

In all copyrights in which the transfer rights are owned by the CRG the following wording shall be visibly stated: “© *Fundació Centre de Regulació Genòmica, year (...). All rights reserved.*”

#### ***(b) Copyright: Specific provisions***

##### ***(i) Software***

When the work resulting from the Research Activities of one or more Researchers is software, CRG will own the right to exploit such software and related copyright rights, this without prejudice of the rights that the Researchers that are authors of such software shall have the right to be recognized as such as well as the rest of the personal or moral rights, and the right to participate from the revenues obtained through the transfer of their Research Activities, and except as otherwise provided by the Spanish or other applicable legislation, or by this Policy. In all software in which the transfer rights are owned by the CRG the following wording shall be visibly stated: “© *Fundació Centre de Regulació Genòmica, (year ...). All rights reserved.*”

##### ***(ii) Databases***

The ownership of the transfer rights over databases developed by one or more Researchers in the execution of their Research Activities, will be owned by the CRG, this without prejudice of the rights that the Researchers that are authors of such software shall have the right to be recognized as such as well as the rest of the personal or moral rights, and the right to participate from the revenues obtained through the transfer of their Research Activities, and except as otherwise provided by the Spanish or other applicable legislation, or by this Policy. The *sui generis* rights in a database protect the substantial investment, assessed either qualitatively or quantitatively, made by its manufacturer in the form of finance, time, effort, or energy or other means of similar nature dedicated to either the obtaining, the verification or the presentation of its contents. In all databases in which the transfer rights are owned by the CRG the following wording shall be visibly stated: “© Fundació Centre de Regulació Genòmica, year (...). All rights reserved.”

*(iii) Images*

The CRG shall own the transfer rights on images and photographs (the “Images”), where such Images are created by the Researchers in the course of their Research Activities.

The Researchers who have created the Images will be the Authors.

## **DISCLOSURE AND PROTECTION**

### **4. Duty to Disclose, management and protection of Research Results**

4.1 The Technology and Business Development Office (TBDO) is in charge of the activities related to the transfer of technology at CRG. In the case that a Researcher considers that as a consequence of his/her Research Activities, he/she has developed or obtained a Research Result that: (a) is or may be potentially patentable; and/or (b) that may have a commercial interest; or (c) may be relevant for technology transfer, such Researcher will be obliged to disclose the creation or discovery of such Research Result to the TBDO in order to facilitate its transfer. Such disclosure should take place as soon as possible after the creation, conception or reduction to practice of such creation or discovery, and in any case not later than two (2) months before any publication or communication is planned. Disclosure shall be made using the proper Disclosure Forms established by the TBDO which is available online at the CRG’s website, attaching all the relevant information related to the Research Results, and submitting such Disclosure Form to the TBDO. Aside from the necessary technical or scientific information, the Disclosure Form will include the identity of the Inventor(s) and/or Author(s) of the Research Results object of disclosure, as the case may be, and the percentage of contribution of such Inventors or Authors to the Research Results, as well as the contribution of third parties to the Research Results in any form whatsoever. The TBDO will notify the Researcher in writing and within a period not exceeding two (2) months from receipt of a complete Invention Disclosure Form, about its decision regarding the protection and the interest of the TBDO to support the transfer of the Research Results.

4.2 The TBDO shall be solely responsible for determining whether a patent application shall be filed on an Invention and whether the TBDO will support the transfer of the Research Results. In case the TBDO decides to support the transfer of the Research Results, it will assist the Researcher in the valorization of the Research Results, the identification of business opportunities, and the identification of potential partners that might be interested in the Research Results. The TBDO decisions should be mostly guided by patentability criteria as well as the transfer/commercial potential of a technology, and the needs and



resources required to promote its (commercial) transfer, including, *inter alia*, the need or possibility to protect such. However, other criteria may apply if they favor future disclosures or transfer at the CRG.

## **5. Collaboration of Researchers**

- 5.1 The Researchers must collaborate with the CRG through the TBDO so that the CRG can obtain and maintain the proper protection of the Research Results as a means for their eventual transfer. In addition to this, the Inventor(s) of an Invention for which patent applications are filed shall cooperate in the patent process as required by the TBDO or its agent or designee. The CRG acknowledges that the Researchers involved in the Research Results have a deep and comprehensive understanding of such Research Results. Therefore, the collaboration of the Researchers involved in the Research Results will be crucial to obtain and maintain appropriate protection of the Research Results. Such protection is of essence for the eventual transfer of the Research Results as the CRG will only try to transfer the Research Results once the Research Results have been duly protected. The TBDO will apply its reasonable efforts to find a fair balance between the duties to collaborate described in this Clause and the rest of the duties of the Researchers.
- 5.2 Once the Research Results that have been disclosed by the Researchers in accordance with Clause 4.1 above and been identified by the TBDO as being of interest in accordance with Clause 4.2 above, the Researcher will agree with the TBDO on the terms of dissemination of his/her Research Results in compliance with the terms and conditions of Clause 4.1 above. The Researcher will not carry out any act of disclosure until the protection of the Research Results has been completed as set forth pursuant to Clause 5.1 above. Failure to adopt appropriate measures of protection prior to the dissemination may adversely affect and even entirely prevent the transfer of the Research Results. In such a situation, the potential value of the Research Results will not generate any revenue which could further support additional future research, development, and innovation, besides reporting financial return to the Author or Inventor. Unjustified disclosure of the invention by the Researchers prior to the protection in breach of Clause 4.1 and 5.1 above will result in all costs of the protection incurred by the CRG will be charged to the budget of the CRG Researcher who made the disclosure.

## **6. Waiver of industrial and intellectual rights in favor of Researchers**

- 6.1 Should the CRG not be interested in requesting, keeping or maintaining the ownership of all or part of its copyright assets, it will communicate such decision to the Inventors and Authors, as the case may be, by serving a prior notice of at least one (1) month prior to the date in which such decision will be effective. In the case that the Inventors and Authors are interested in pursuing the protection and/or transfer of the corresponding rights, the CRG may transfer said rights to them, subject to the Spanish or eventually other applicable legislation as the case may be
- 6.2 Notwithstanding this, if the CRG has signed a contract with a third party giving such third party preferential rights to assume ownership of Research Results, in case of waiver or abandonment by the CRG, the contract with that third Party will prevail.
- 6.3 In the event that the CRG abandons or waives its rights in favor of the Inventors or Authors, the Inventors or Authors may exploit the Research Results as they see fit.
- 6.4 However, the CRG will be entitled to:
  - (a) Receive 10% of all the Net Income (as defined in Clause 8.1 below or equivalent

calculation) obtained by the Inventors' and Authors' from the transfer of the rights assigned to them independently of whether this transfer is made directly by them or through a third party. Income subject to this revenue sharing provision includes the proceeds resulting from the sale of equity received by Inventors and Authors as consideration for the Research Results;

- (b) Reserve the right to use the Research Results for non-commercial purposes through the grant back to the CRG of an irrevocable, perpetual, royalty-free, non-exclusive, non-transferrable, worldwide right and license to use Research Results for Research Activities solely or jointly with third parties.
- (c) Ensure such limitations on the CRG's liability and indemnity provisions are implemented in all cases as the CRG sees fit.

## **EXPLOITATION OF RESEARCH RESULTS**

### **7. Formulas for the transfer of Research Results**

7.1 The CRG, through the TBDO, may exploit its Research Results in the way it considers most appropriate to serve its purpose, ensuring in every case the widest possible access to society for the new knowledge and technologies.

In particular, the CRG, through the TBDO, may exploit its Research Results under terms and conditions, including the financial terms and others, to be determined by the TBDO exclusively in direct negotiations with third parties and under a number of alternatives or forms, including, without limitation, any of the following forms:

- (a) **Research collaborations** means research projects carried out between one or more research groups of the CRG, and one or more research groups of other institutions or companies in which each party contributes with its own know-how and/or resources, and share the ownership and/or the transfer rights of the Research Results, and of the industrial and copyright rights deriving from such Research Results.
- (b) **Sponsored Research collaborations** means research projects carried out between one or more research groups of the CRG, and one or more research groups of other institutions or companies in which the other party or parties financially support in whole or in part the Research done at the CRG, while ownership and/or the transfer rights of the Research Results and the patents or copyright and any other right deriving from such Research Results remains at the CRG or is shared between the CRG and the sponsor.
- (c) **Research Services** means research projects and technical activities carried out by one or more research groups of the CRG upon request of companies or other external institutions which finance such research in its entirety, in exchange for the ownership and/or the transfer rights of the resulting Research Results and related rights. For the avoidance of doubt, the definition of Research Services herein excludes the services provided by CRG's Core Units and Facilities according to their standard service routine.
- (d) **Consulting or advice services** means services provided by the Researchers: (a) directly on the basis that the provision of such services have been previously notified or authorized in writing by CRG, as the case may be; or (b) through the CRG, as the case may be, using only their own know-how and knowledge, and not involving the



use of resources, rights or Results of the CRG. CRG encourages Researchers to provide consulting services. In this regard, CRG advises Researchers to channel the provision of consulting services through the CRG's TBDO and eventually also through Department of Human Resources of the CRG in order to comply with certain requirements set forth by applicable Law and to better protect the Researchers' rights and obligations as well as the patent rights and the copyrights through the CRG. In addition to this, the CRG would have a better bargaining power in the negotiations of the terms and conditions of the consulting services with private companies, at national and international level, in particular, in the negotiations with multinational companies. The Researchers may choose to provide consulting services to non-for profit entities or to for profit corporations. In case the Researchers enter into a consulting agreement with a non-for profit entity, such Researchers will not be bound to the distribution of revenues set forth pursuant to Clause 8 as such distribution of revenues only applies when the consulting service is provided to a for-profit corporation. If the Researchers decide to enter into consulting agreements with for-profit corporations, such distribution will apply and the Researchers may choose to fall under any of the following two (2) categories by serving notice of its decision to the CRG:

- (i) *A consulting service supported by the CRG:* Under this category, the CRG will provide the necessary legal advice and support to protect the Researcher and will ensure that the rights and obligations of the CRG, and its patent rights and copyrights are well preserved; or
  - (ii) *A consulting service not supported by the CRG:* In the case, the Researcher shall manage the negotiation of the terms and conditions of the consulting agreement, and shall assume sole responsibility resulting from the consulting agreement. The CRG will not provide any legal advice and support to the Researcher in the negotiation and execution of the consulting agreement, and the Researcher will seek its own external legal advisors and will assume all costs related to such legal advice. The Researcher will be required to comply with the following requirements: (1) to serve notice to the CRG of the consulting agreement with a third party once it has been executed by the Researcher; (2) to fill in and submit the corresponding "Conflict Avoidance" statement under the Conflict of Interest Policy; and (3) to comply with the requirements set forth by the applicable Law and the CRG Policies.
- (e) **Out-licensing of, without limitation, Patents, Unpatented Materials, Software, Images** (each and all as defined above) and any other copyright means the granting by the CRG of exclusive or non-exclusive licenses on Patents, Unpatented Materials, Software, and Images in favor of researchers and/or companies and/or other external institutions in exchange for upfront payments, payments for the achievement of milestones, annual payments, and/or royalty fees.

## **8. Distribution of revenues from commercial transfer**

8.1 For the purposes of this Clause, "Net Income" is to be understood as the income obtained by the CRG from the transfer (including any use, exploitation or commercialization, marketing, promoting, distributing, importing or exporting for sale, offering for sale, and selling) of Research Results or related rights minus:

- a) The income to be shared with third co-owner parties pursuant to previously signed

agreements (e.g., ICREA).

- b) The direct costs and out-of-pocket expenses actually paid by the CRG to any third party, including legal costs, courier or travel expenses, in connection with the preparation, filing and maintenance of patent applications or other forms of protection of the Research Results, as well as with the direct marketing, negotiation, execution and maintenance of licenses or other type of agreement related to the transfer of such Results or related rights.

8.2 To promote further technology transfer activities at the CRG and the function of the TBDO, the Net Income obtained by the CRG for the commercial transfer of Research Results will be distributed in accordance with the provisions below. In exceptional circumstances of strategic value for the CRG, the percentage allocated to CRG Valorization Fund could be reconsidered by the TBDO.

In case the form of transfer consist of the out-licensing of patents and software:

<b>Accumulated Net Income received by the CRG from the effective date of the agreement</b>	<b>Percentage to be allocated to Inventors and Authors (*)</b>	<b>Percentage allocated to the Valorization Fund of CRG</b>	<b>Percentage allocated to the TBDO operational account</b>
Up to or equal to € 10,000 (**)	95%	0%	5%
Above € 10,000 and up to or equal to € 125,000	50%	45%	5%
Above € 125,000 and up to or equal to € 500,000	40%	55%	5%
Above € 500,000	30%	65%	5%

(\*) The percentage allocated to Researchers will be distributed between the Researchers considered to be the Authors or Inventors as established in the Report of Invention in proportion to the percentage of ownership of each Author or Inventor; In case of disagreement among the Authors or Inventors, the TBDO will be the competent body for determining the final decision on the matter.

(\*\*) The First 10,000 € per invention income generated from patents, royalties or other arrangements with commercial partners` payments should go unimpeded to the inventor(s) once a 5% deducted for managing costs.

8.3 Should Net Income be generated in a continuous manner, the CRG will make the corresponding calculations annually, at the end of the month of February of each year, and perform the corresponding payments during the month of March, for the total Net Income received during the previous year. Notwithstanding this, the CRG may consider it appropriate to make more frequent payments. The CRG will inform the individuals entitled to receive the above-mentioned Net Income on the applicable distribution of such Net Income during each month of March, whether or not they are still Researchers. In case any of the individuals entitled to receive the above-mentioned Net Income ends his engagement with CRG as a Researcher, he/she will be obliged to serve notice of his/her new contact details to the Department of Human Resources of the CRG and to notify any change or update of such contact details. In the case where the Department of Human Resources of the CRG is not provided with the contact details or with the updated contact details and the Department of Human Resources of the CRG is unable to contact such individual, the CRG will not be obliged, and will assume no liability for such event, to pay applicable distribution of the Net Income in favor of such individual following the expiry of two (2)

years from the date in which the last payment was made, and the CRG will be entitled to use such funds for any purpose the CRG may deem fit at its full discretion. In the case of the death of a Researcher, the financial rights accrued by such Researcher in accordance with this Policy will be transferred to his/her heirs.

- 8.4 The payments of the Net Income to a Researcher entitled to receive such in accordance with this policy will be made by the Department of Human Resources of the CRG. The payments of the Net Income to the research group or groups entitled to receive such in accordance with this policy will be coordinated by the TBDO.
- 8.5 In every case, the distribution of the revenues set forth in this Clause will be in compliance with the criteria for the control of the use of funds that the Spanish or any other applicable legislation may establish.

## **SPIN-OFF CREATION AND SUPPORT**

### **9. Creation of Spin-off companies**

The CRG recognizes that the creation of Spin-off companies plays an important role in the national and regional economies, and numerous new companies have been established that commercialize technology licensed from academic or research institutions.

The CRG acknowledges that Inventors and Authors and other Researchers often play a key role in the creation of Spin-offs, and the opportunity to participate in a new Spin-off without having to leave the CRG can be attractive to them, and advantageous to the CRG. For these reasons, a Spin-off may offer the best opportunity for the rapid commercial development of certain Research Results of CRG. Therefore, when a Spin-off is deemed to have the potential to obtain sufficient and adequate financial and management resources for the development of any Research Result of CRG, licensing to that Spin-off will be given serious consideration by the CRG.

The TBDO shall decide on the transfer of Research Results to a Spin-off through fair and thoughtful consideration of a variety of factors. Such factors include: (a) the team involved; (b) the reason for the proposed transaction; (c) the nature of the Research Result to be transferred; (d) the market for such Research Result; (e) the nature of a given individual's involvement in the generation of the Research Results, and his/her involvement with the Spin-off company. For example, the highly conceptual or early-stage nature of the Research Results often requires the ongoing involvement of Inventors or Authors in the Spin-off's development efforts as they are fully aware of the status of development of the Research Results and the next stages of development. While the CRG supports the commercial transfer of Research Results, it also recognizes that the involvement of its Researchers in the development and commercial transfer of Research Results under certain circumstances may be relevant to the success of the Spin-off.

### **10. Licensing request process**

The CRG welcomes and encourages entrepreneurial activity, whether or not the entrepreneur is or has been working for, or has had any engagement with the CRG, and whether such entrepreneur is within or outside the CRG, as long as he/she (the "Entrepreneur") is interested in exploiting and commercializing any Research Result of CRG through the creation of a Spin-off company under the framework of this policy.

The Entrepreneurs, who are interested in the licensing of Research Results as the basis

for the creation of a new (Spin-off) company, must submit a formal request to the TBDO, such request including the following information:

- (a) A presentation of the partners/entrepreneurial team, and a statement declaring whether any of the members of the team have any relationship with the CRG.
- (b) A draft strategic plan, including:
  - Identity as well as the respective updated CV of all the members of the team that will be involved in the Spin-off.
  - A strategic viability study, setting out the competitive advantages of the proposed project to ensure its successful implementation in the market to which it is directed, and an analysis of the market and the potential competitors.
  - An economic and financial feasibility study evaluating the economic potential of the project, possible viable funding alternatives, prediction of necessary investment as well as income.

Once the request has been submitted, the TBDO shall analyze the application on the basis of the following criteria: (a) the team; (b) the viability of the business project and its potential success.

The TBDO may request from the applicants any additional information it requires to evaluate the proposal. Notwithstanding the foregoing, the TBDO will actively support CRG researchers/entrepreneurs in all the above-mentioned activities, as it deems necessary for the good development of the process, and subject to the researcher's commitment and other relevant circumstances, as well as resources available.

## **11. License agreement**

- 11.1 Upon receipt of the request for a license to the Spin-off submitted by the Entrepreneur, the TBDO will determine whether the Spin-off has the potential to obtain sufficient financial, managerial and technological resources to enable vigorous development of the technology to be licensed:
  - (a) If the TBDO determines that the proposed licensee has such a potential, then the TBDO, at its discretion, using its best professional judgment, may enter into an exclusive or non-exclusive license agreement with the Spin-off, where the agreement shall contain provisions for the use of the Research Results by the Spin-off and the upfront payment, royalties, and any other remuneration which the CRG will be entitled to receive as well as license termination provisions in the event that the company fails to meet its objectives, time-limited business development milestones that may include, e.g., achieving capitalization to a threshold level deemed sufficient by the TBDO to enable vigorous development of products based on the licensed Research Results or meeting specific technology-based milestones; or
  - (b) If the TBDO determines that the proposed licensee would not have such a potential, then TBDO, at its discretion, using its best professional judgment, may grant the Spin-off a short-term "stand-still" or option period of between three (3) months and up to six (6) months which could be extended for an additional term of three (3) additional months and up to a maximum of six (6) additional months (up to one (1) year in total and in an aggregate), during which the Spin-off may seek to assemble resources identified by the TBDO as critical and/or negotiate an exclusive or non-exclusive license for the relevant Research Results, the granting of which will be contingent upon the company having

met pre-agreed criteria.

The terms and conditions of such agreement or option will be negotiated by the TBDO with the Spin-off.

- 11.2 The CRG understands that the request for upfront payments to the Spin-off for the granting of a license to the Research Results might adversely affect or compromise the viability of the Spin-off. In such circumstances, the Spin-off may request CRG to contemplate alternative means of payment. The alternative means of payment that CRG might contemplate, at its discretion, may include the acceptance of:
- (a) equity of the Spin-off by holding a percentage of the share capital of the Spin-off under certain conditions;
  - (b) convertible debt into share capital by means of a share capital increase offsetting the credit of the CRG against the Spin-Off upon request of the CRG at any time and for the amount the CRG may determine at the same valuation or of any of the subsequent financial rounds or at a discount;
  - (c) options to subscribe shares in the share capital of the Spin-off by means of a share capital increase offsetting the credit of the CRG against the Spin-Off and/or to acquire shares in the share capital of the Spin-off free of charge under the terms and conditions to be determined by the CRG;
  - (d) reduced upfront payments, payments for the achievement of milestones, annual payments, and/or royalties; or
  - (e) a combination of any of the above-mentioned alternatives.

## **12. Participation of the CRG**

- 12.1 In case the CRG decides to participate in the share capital of any Spin-off,<sup>1</sup> such participation will be subject to the following requirements: (a) such participation will usually represent, 10% of the share capital of the Spin-off free of charge; (b) such participation will be protected with an anti-dilution clause in case of subsequent share capital increases below a valuation to be mutually agreed between the CRG and the Spin-off; (c) the CRG will not make and will not be required to make any type of representation and warranty or give any guarantee in connection with the subscription of shares or the signature of the shareholders agreement or in connection with any transaction or the signature of any document vis-à-vis shareholders, third parties, or future investors or purchasers; and (d) if the shareholders' agreement includes a drag along clause, such clause must state that it can only be exercised when an offer to purchase the shares of the Spin-off is submitted for at least the market value of the shares as determined by: (a) a binding offer from a third party different to the shareholders of the Spin-off company; or (b) an auditor designated by the administrative body of the Spin-off company different to the auditor of the Spin-off company.

The participation of the CRG in the share capital of the Spin-off by holding equity shares will be subject to the previous approval of the Board of Trustees of the CRG.

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<sup>1</sup> Equity is not taken in preference to cash; rather, in the absence of sufficient cash compensation and where the TBDO believes it has negotiated the best cash terms possible, equity is taken as added compensation. The shares are viewed as a reasonable business solution to enhance the overall financial package acceptable to the company and its investors, while providing an opportunity for the CRG to increase its potential return.

- 12.2 Any Spin-off in which the CRG participates must annually submit their annual accounts to the TBDO.
- 12.3 The CRG will not hold a position in the Board of Directors of the Spin-off but it will be entitled to appoint an observer to attend each and all of the meetings of the Board of Directors and the Shareholders' Meetings of the Spin-off.
- 12.4 The observer will be appointed by the TBDO.
- 13. Participation of the Researchers in the Spin-off**
- 13.1 The Researchers may request authorization for the provision of services to a Spin-off, through a part-time fixed-term employment contract, subject to certain conditions to be agreed between such Researchers and the CRG.
- 13.2 If the CRG is not a shareholder in the Spin-Off, the participation of Researchers in the share capital of the Spin-off will not be above 10% and the Researchers will not be able to be member of the governing body in accordance with the applicable legislation.
- 13.3 If the CRG is a shareholder in the Spin-Off, the Researchers will be entitled to take a position in the governing body of the Spin-off, and will have no limitation so as to the percentage of his/her participation in the share capital of the Spin-off.
- 13.4 The CRG and the Spin-off will be entitled to enter into a service and/or collaboration agreements.

## MISCELLANEOUS

### **14. Conflicts of interest**

Researchers are encouraged to read the Conflict of Interest Policy to ensure that no Conflict of Interest affects his/her participation or involvement in any activity with CRG. In case any Researcher falls under any conflict of interest, the Conflict of Interest Policy shall apply.

### **15. Reference to the bodies referred to in this Policy**

In the case that any of the bodies referred to in this policy ceases to hold any of the responsibilities or duties provisioned herein, their position within these current policies shall be assumed by the organization that is designated by the CRG for the undertaking of those responsibilities or duties.

### **16. Sanctions for Violations of Policy**

Any failure to comply with the provisions of this Policy may result in disciplinary sanctions consistent with applicable collective bargaining agreements, up to and including termination of employment. In addition to this, it may also lead to a loss and/or withdrawal of grant funding or support, ineligibility to submit grant applications to research sponsors or to participate in research on behalf of the CRG, and/or ineligibility to supervise the work of researchers in research projects.

### **17. Interpretation of the Policies**

The resolution of any question of interpretation of the policies shall be referred to the TBDO.

### **18. Transitory Provision**





The rights and duties contained in this Policy shall apply from their entry into force to all research activities carried out by the CRG starting from the date it entered into force, including the Policy of the distribution of revenues derived from the commercial transfer of the Research Results, which will apply only to those revenues obtained after the entry into force of this Policy.

**19. Derogation Provision**

This Policy derogates the policies currently in force, and any other policy that opposes this current Policy as from the date this Policy entered into force.

**20. Adaptation of the Provisions to the Applicable Legislation**

The CRG will endeavor, in the shortest time possible, to adapt this Policy to any possible modification of the applicable legislation in force from time to time, in particular concerning incompatibilities and the creation of companies.

**21. Entry into force**

This policy will come into force on the day following its approval by the Board of Trustees of the CRG. This Policy was approved by the Board of Trustees of the CRG on June 19<sup>th</sup> 2015.