

**ISPT Cluster and Project Regulation**  
**of 30 August 2012**  
**as amended on 16-05-2013, 29 August 2013,**  
**20 March 2014, 20 May 2015, 11 December 2015,**  
**23 September 2020, 21 September 2022 and on**  
**14-03-2024**

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The ISPT Cluster and Project Regulation was accepted by the Supervisory Board on 30 August 2012 in accordance with the article 15 of the Articles of Association (Statuten) of the Stichting ISPT of 2 May 2012, and the amended ISPT Cluster and Project Regulation was lastly accepted on 14 March 2024.

It is an object of the ISPT Cluster and Project Regulation to provide a further framework within which a Cluster as formed in accordance with Rule 4 of the ISPT Regulation of 21 September 2022 will be governed and it will define the rights and obligations of the Participants in the Stichting ISPT in a Cluster and in a Project.

Rules A1 through A3 relate to a Cluster and Rules B1 through B11 relate to a Project.

This Cluster and Project Regulation is exclusively governed by and interpreted in accordance with the law of the Netherlands, and Participant irrevocably agrees that the courts of Midden-Nederland have exclusive jurisdiction to resolve any controversy or claim of whatever nature arising out of or relating to this Cluster and Project Regulation or breach of it.

In this regulation,

- "Access Rights", basic rights of usage.
- "Affiliate", see Rule 1.3 of the ISPT regulation.
- "Cluster", see Rule 4 of the ISPT Regulation
- "Cluster Activity", see Rule 4.5 of the ISPT Regulation.
- "Managing Board" is het Bestuur van de Stichting ISPT, see the Articles of Association (Statuten) of the Stichting ISPT.
- 'Participants': companies and research organisations that participate in the Stichting ISPT, admitted by the Managing Board of the Stichting ISPT by a letter of participation.
- "Partner Company": a company participating in the Stichting ISPT.
- "Partner Research Organization": a research organization participating in the Stichting ISPT.

- "Project", see Rule 6 of the ISPT Regulation.
- "Supervisory Board" is de Raad van Toezicht, see the Articles of Association (Statuten) of the Stichting ISPT.

### **Rule A1 Joining a Cluster**

- A1.1 On participating in the Stichting ISPT a Partner Company may elect to join one or more Clusters, wherein the number of Clusters that can be joined depends on the financial contribution of the Partner Company.
- A1.2 A Partner Research Organization, which has a substantial contribution in the activities of a Cluster, joins this Cluster.
- A1.3 On request of a Partner Company the Managing Board may form a new Cluster, provided there is a minimum number of Partner Companies joining the Cluster to be formed.
- A1.4 If desired to obtain the desired functionality and coherence of a Cluster the Managing Board may decide to split the Cluster.
- A1.5 The Managing Board determines on the advice of the relevant Cluster Committee (a) the minimum duration of the participation of a Partner Company in the Cluster (preferably four years), (b) the minimum financial contribution for joining a Cluster and (c) the minimum number of Partner Companies for a Cluster, wherein the minimum financial contribution is less than the Cluster budget divided by the number Partner Companies joining the Cluster.
- A1.6 The minimum contribution of a small and medium-sized enterprise<sup>1</sup> consists of a financial contribution and/or a contribution in kind, wherein the sum of the contributions is equal to the minimum financial contribution as determined in Rule A1.5.

### **Rule A2 Cluster Committee**

- A2.1 Each Cluster has a Cluster Committee that consists of representatives of the Partner Companies and Partner Research Organizations having joined the Cluster.
- A2.2 In consultation with the Cluster Committee, the Managing Board appoints a Cluster Manager who acts as overall coordinator and manager of the Cluster and reports functionally to the Cluster Committee and hierarchically to the Managing Board.

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<sup>1</sup> A small and medium-sized enterprise is an undertaking within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium- sized enterprises (OJEU 2003, L124/36), or any recommendation or regulation replacing that recommendation.

- A2.3 The Cluster Manager prepares a roadmap and an annual plan in accordance with instructions from the Managing Board for activities directed to research to be carried by the Cluster, and updates the roadmap regularly, which roadmap and annual plan require support of the Cluster Committee and approval of the Managing Board.
- A2.4 The Cluster Manager plans and directs the Cluster Activities directed to research of the Cluster taking into account the goals of the Cluster as set out in the roadmap and in Rule 4 of the ISPT Regulation, and reports on a three-monthly basis to the Cluster Committee upon progress and results of the Cluster Activity.
- A2.5 A decision to split the Cluster as referred to in Rule A1.4 requires hearing the Cluster Committee.
- A2.6 The Managing Board decides on the rights and obligations of a Participant that intends to join the Cluster after it has been formed, taking into account the advice of the Cluster Committee,
- A2.7 The Managing Board decides on the rights and obligations of a Participant that intends to leave the Cluster before the expiration of the four-year period, taking into account the advice of the Cluster Committee.

### **Rule A3 Cluster Activities**

In relation to Cluster Activities, Rules B1 up to and including B11 apply by analogy, wherein one should read for 'project' 'activity' and for 'contractor' 'participant in the Cluster'.

### **Rule B1 Projects**

- B1.1 A Project is governed by a letter of participation from each contractor in the Project, Rules B2 through B11, a work package or Project plan (the "Project Plan") to which all contractors have committed themselves, and optionally a separate project agreement (the "Project Agreement") to be concluded between the contractors in the Project wherein additional issues can be agreed.
- B1.2 Every alteration of the Project Agreement must be in writing and agreed by all Contractors.
- B1.3 In case the Project Agreement deviates from the relevant Rules of this Regulation, the Project Agreement requires approval of the Managing Board.

B1.4 Contractors execute the Project in agreement with the established practices of the Stichting ISPT.

### **Rule B2 Project Board**

B2.1 Each Project has a Project Board that consists of one representative of each contractor of the Project.

B2.2 The Project Board decides on, plans and directs the Project, and has to agree on changes of the Project Plan.

B2.3 The Project Board advises the Managing Board on the rights and obligations of a Participant that intends to participate in the Project as contractor after it has been set-up.

B2.4 The Project Board advises the Managing Board on the rights and obligations of a contractor that intends to leave the Project before the completion of the Project.

B2.5 All contractors must agree in writing to admission of a new contractor or withdrawal of a leaving contractor.

### **Rule B3 IPR regime**

Cancelled

### **Rule B4 Background**

B4.1 "Background" means any data, know-how or information, whatever its form or nature (tangible or intangible), including any rights such as intellectual property rights thereon, that:

- a) is held by a contractor before the formal start of a Project or, the later date on which a contractor accedes to an existing Project, and
- b) is needed by another contractor to implement the Project or exploit the results of the Project, and
- c) is listed in the Project Agreement or in the Project Plan as Background for that Project.

B4.2 In case the data, know-how or information is confidential, it is handled in accordance with Rule B5.

B4.3 Each contractor shall own all rights, title and interest in and to its respective background intellectual property. Each contractor acknowledges and agrees that, except for the Access Rights expressly granted in Rule B7, neither contractor nor its Affiliates shall have any rights to, or licenses under, another contractors background intellectual property.

B4.4 In the Project Agreement or in the Project Plan, Rule B1, the contractors

may identify and agree on the Background expressly made available for Access Rights for the Project and also, where relevant, may inform each other that Access to specific Background is subject to legal restrictions or limits. Please note that it is solely up to each contractor to decide on making available any of its Background. Anything not identified in the Project Agreement or in the Project Plan as Background shall not be the object of Access Right obligations regarding Background. Approval of the Project Board is needed should a contractor wish to modify or withdraw its listed Background.

- B4.5 In respect of any information or materials (incl. results of the Project and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. However, the contractors shall inform each other if they have reason to believe that any result created by another contractor would infringe any of their own intellectual property rights that were not disclosed as Background. However, no contractor shall be obliged to conduct any freedom to operate searches or to create claim charts to verify this.

## **Rule B5 Confidential information**

- B5.1 Contractors may share information within the Project in connection with the Project, which information is designated by the contractor providing it as confidential information, hereinafter referred to as "Confidential Information".
- B5.2 Confidential Information may only be provided after having obtained permission of the receiving party, and Confidential Information must be provided in writing and bear the word "Confidential" or an equivalent qualification, and under the cover of a non-disclosure agreement taking into account the relevant provisions of this Rule.
- B5.3 Contractors undertake to only provide Confidential Information that is reasonably necessary for the activity.
- B5.4 Confidential Information remains the property of the contractor providing it.
- B5.5 If Confidential Information is made available to another contractor for executing the Project, this will be done free of charge. Unless agreed otherwise, this right is granted for the duration of the Project and shall lapse automatically with the termination of the Project.
- B5.6 Contractors agree and declare in respect of each other that for the duration of the Project as well as for five (5) years thereafter:

1. they will not disclose Confidential Information to any third party, with the exception Affiliates. Confidential Information may only be disclosed to Affiliates on the condition that the contractor whose Affiliate will receive the Confidential Information has declared in writing to the contractor providing the Confidential Information that its Affiliate agrees and shall comply with confidentiality provisions that provide the same degree of confidentiality as the provisions of this Rule; and
2. they will not disclose Confidential Information to their professional consultants, unless these professional consultants have agreed in writing to the provisions of this Rule in regard to confidentiality; and
3. they will not use Confidential Information for their own gain and will use Confidential Information only for the execution of the Project.

B5.7 The stipulations in Rule B5.6 do not apply if the Confidential Information provided:

1. is or has become generally known information as a result of an action taken by or failure to take action by an entity other than the receiving contractor;
2. came into the possession of the receiving contractor as a result of action taken by a third party (other than a third party that has disclosed the Confidential Information at the request of the other contractor) whose possession of the Confidential Information is legitimate and not restricted by a confidentiality obligation;
3. is in the possession of the receiving contractor without a confidentiality obligation;
4. has been developed independently by an employee of the receiving contractor without having had access to Confidential Information from a contractor under this agreement.

B5.8 The contractor that has received Confidential Information will take all reasonable efforts to return or destroy this Confidential Information and the information carriers containing this Confidential Information as soon as this is requested by the contractor that provided it.

B5.9 If any receiving contractor becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure (a) notify the contractor providing the Confidential Information, and (b) comply with the providing contractor's reasonable instructions to protect the confidentiality of the information.

## **Rule B6 Results**

B6.1 A contractor that generates a result shall have all rights, title and interest in that result, taking into account the below provisions and Rule B7.

B6.2 In case a result is generated by more than one contractor, the relevant contractors shall first try to split the result into parts that can be allocated with each of these contractors. Where this is not reasonably possible, the relevant contractors shall jointly own that result.

B6.3 Unless stipulated otherwise (e.g. in the Project Agreement or the Project Plan) each of the joint owners shall be entitled to use their jointly owned results for non-commercial research activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and each of the joint owners shall be entitled to otherwise exploit the jointly owned results and to grant non-exclusive licenses to third parties (without any right to sub-license), if the other joint owners are given:

- (1) at least 45 calendar days advance notice; and
- (2) a fair and reasonable compensation.

B6.4 Transfer of ownership.

Unless stipulated otherwise (for example in the Project Agreement or in the Project Plan), each contractor may transfer ownership of its own results or grant exclusive licenses thereto, but the contractor must give 45 days prior written notice to all other contractors as well as to ISPT. The transferring contractor shall ensure that any existing Access Rights to other contractors are not affected. The obligations above apply only for as long as other contractors still have - or still may request - Access Rights to these results.

B6.5 Contractors shall have the right to publish their own results in accordance with Rule B10.

B6.6 Equipment

Unless stipulated otherwise (for example in the Project Agreement or in the Project Plan), an apparatus specifically built for a Project shall be owned by Stichting ISPT.

## **Rule B7 Access rights and basic rights of usage**

B7.1 Use of results

Contractors shall have the right to freely use (but not publish) the results generated by one or more contractors related to an activity within a Project that are not protected by any intellectual property right, the latter including

for the present purposes, protection as a trade secret.

#### B7.2 General principles of Access Rights

Unless explicitly agreed otherwise, Access Rights will be granted:

- a) on a non-exclusive basis;
- b) will expressly exclude any rights to sublicense to third parties;
- c) shall be free of any administrative transfer costs;
- d) automatically (Background and results) for carrying out of the Project;
- e) on request and subject to contract for commercial use; and
- f) with the explicit restriction that results and Background shall be used only for the purposes for which Access Rights to it have been granted.

#### B7.3 Use for subsequent research and teaching purposes

A Partner Research Organization, participating in the Project, shall have the right to use the results of the Project for non-commercial scientific research and teaching purposes.

#### B7.4 Access Rights for carrying out the Project

Unless stipulated otherwise (for example in the Project Agreement or in the Project Plan), each contractor herewith grants to the other contractors a royalty-free, non-exclusive right to use any Background or result generated by this other contractor solely for carrying out their own part of the research in the Project.

#### B7.5 Access Rights for commercial use of results

Without prejudice to Rule B6.1 the contractors agree that they are prepared to grant each other Access Rights for commercial application of the results of the Project that are protected by any intellectual property right, the latter including for the present purposes, protection as a trade secret. Access rights are granted subject to request and subject to a contract. These Access Rights must be requested in writing within two years from the end of the Project, directly from the contractor holding the relevant right. Access Rights for commercial application are granted on fair and reasonable conditions, taking into account, without limitation, factors like the nature of the use, the territory and the technical domain. Where Access Rights are granted by publicly financed entities like universities and knowledge institutes, fair and reasonable conditions shall never be lower than market prices and conditions. The own contribution of the requesting contractor to the Project that has led to the result shall be taken into account for the calculation of the financial conditions. However, where in the Project Agreement or the Project Plan the Project is designated as General Scouting (that is, research not aimed at generating new intellectual property and could be used for current awareness investigations, technology and market overviews, feasibility studies and so on), these rights shall be granted royalty-free.

#### B7.6 Access Rights for Commercial Use of Background or Confidential Information



The contractors may also grant each other Access Rights for commercial application of Background or Confidential Information. Access rights are granted subject to request and subject to a contract. These Access Rights must be requested in writing within two years from the end of the Project, directly from the contractor holding the relevant Background or Confidential Information. Access Rights for commercial application are granted on fair and reasonable conditions, taking into account, without limitation, factors like the nature of the use, the territory and the technical domain. Where Access Rights are granted by publicly financed parties like universities and knowledge institutes, fair and reasonable conditions shall never be lower than market prices and conditions. The access rights can only be requested where (cumulatively):

1. the contractor holding the information has made it available to the Project in accordance with the procedure of Rule B5;
2. the requested Access Right is technically needed for the use of the results of the Project.

#### B7.7 Access Rights for Affiliates

With regard to the application of Rules B7.4, B7.5 and B7.6, a contractor may sublicense Access Rights to its Affiliates on terms as set out in the respective license contract.

#### B7.8 Have Made Rights

Access rights for commercial use of results of the Project shall not include the right to sub-license to third parties, but will include have made rights enabling the requesting contractor to have equipment made by a third party, such equipment solely to be used for its own internal purposes.

#### B7.9 Exclusive licensing and transfer of results

Where a Project involves an original equipment manufacturer ("OEM"), the Project Agreement or the Project Plan may stipulate that some or all contractors may grant exclusive licenses to the OEM participating in the Project. In such case, the Access Rights as laid down in Rules B7.5 and B7.6 will be limited to use for normal operations of the OEM. Similarly, in such cases no "have made rights" shall be extended to the OEM.

The normal operations of the OEM shall be specified in the Project Agreement or in the Project Plan. Each of the contractors herewith acknowledges the normal operations as specified in the Project Agreement or in the Project Plan.

### **Rule B8 Handling inventions arising from a Project**

#### B8.1 Invention disclosure.

A contractor that has generated a patentable result (an invention) in a Project must report the invention to the ISPT office, indicating whether it intends to seek patent protection or wishes to retain the invention as a trade

secret.

The ISPT office will inform the contractors in the Project of the reported patentable result and asks the contractors whether they are interested in filing a patent application.

#### B8.2 Filing a patent application.

If the contractor that has generated the invention has chosen to seek patent protection, then this contractor should take care of protecting the invention whenever reasonably possible, taking into account the provisions of Rules B7.3, B7.4, and B7.5.

#### B8.3 Joint inventions.

If two or more contractors have jointly generated the invention, that is to say, each has contributed to the inventive concept, Rule B6.2 applies by analogy. In this case the contractors involved should make the necessary arrangements between themselves, for example in a patent management agreement.

#### B8.4 Trade secret protection.

Retaining an invention as a trade secret as defined in Art. 2 (1) of EU Directive (EU) 2016/943 (PBEU 2016, L157/1) or its foreign equivalents is allowed when it satisfies the following cumulative conditions:

- (1) is secret in the sense that it is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (2) has commercial value because it is secret;
- (3) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret; and
- (4) excluding this confidential information from a scientific publication does not adversely affect the scientific quality of the publication.

For the avoidance of misunderstandings, it is herewith provided that the normal rules for Access Rights to results for carrying out of the Project respectively for Commercial Use apply also to these inventions retained as trade secrets.

#### B8.5 Patenting by other contractors.

If other contractors wish to file a patent application and/or to assume ownership of the invention, they must make the necessary arrangements with the contractor that has generated the invention, taking into account the provisions of B7.4, B7.5 and B7.6.

#### B8.6 Waiver of IP protection.

If none of the contractors is interested in filing a patent application and the invention is not retained as a trade secret in accordance with Rule B8.4, then all contractors have the right to publish and use the results in accordance with Rules B10 and B7.1.

B8.7 Other registered rights of intellectual property.

Establishing Intellectual property rights other than patent rights, such as trademarks or utility models, will be handled in a similar way as patent rights.

B8.8 Contractors may agree to adopt in the Project Agreement a different way of handling inventions and access rights.

B8.9 The proprietor of a right obtained in accordance with Rules B8.2, B8.3, B8.4 and B8.5 should inform the other contractors in case he intends to transfer the right or grant an exclusive license under that right within two years from the end of the Project in order that the other contractors have an opportunity to obtain Access Rights as referred to in Rules B7.5 and B7.6.

### **Rule B9 Information-sharing**

Unless otherwise agreed, information, such as results of a Project, should be shared with the relevant Cluster Committee or with other bodies of the Stichting ISPT on a non-confidential basis.

### **Rule B10 Release of publications arising from a Project**

B10.1 The Stichting ISPT aims at disseminating the results of a Project and at commercial use of the intellectual property rights by the contractors, wherein the benefits of the results do not accrue to the Stichting ISPT.

B10.2 As a generic principle the contractors agree that results that are not protected by any intellectual property rights, including trade secret protection and that do not contain any Confidential Information shall be widely disseminated.

B10.3 If a contractor wants to publish or otherwise put into the public domain the results of the Project, or parts thereof, the contractor concerned undertakes to submit the proposed publication with a request to consent to publication to the other contractors and to the Managing Board at least one month before publication. The other contractors and the Managing Board have the right to object to the proposed publication as indicated in Rule B10.4. If no objections have been received from the other contractors or the Managing Board within one month, permission to publish is granted. Such consent is no longer required after one year from the end of the

Project.

- B10.4 After consultation with the other contractors, the Managing Board will not withhold its permission for publication unreasonably. The Managing Board may however request the contractor to remove Confidential Information of another contractor, whereby the scientific quality of the publication is maintained and/or suspend publication for a period of not longer than six (6) months commencing on the date that the request to publish the results or parts thereof was submitted to the other contractors and to the Managing Board in order to prevent endangering a patent right, to be filed in accordance with Rule B8 . A decision about this is taken within one month after the contractor has expressed the wish to publish the results or parts thereof to the other contractors and to the Managing Board.
- B10.5 After consultation with and with agreement from the Supervisory Board, the Managing Board may, if it is necessary for patent-related reasons, request that the period of six (6) months is extended by a maximum of six (6) months. The Managing Board will only permit an extension in very exceptional circumstances and must give clear reasons.

### **Rule B11 Limitations of contractual liability**

No contractor shall be responsible to any other contractor for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act or by a breach of confidentiality.

For any remaining contractual liability, a contractor's aggregate liability towards the other contractors collectively shall be limited to once the contractor's share of the total costs of the Project as identified in the Project Plan, provided such damage was not caused by a wilful act or gross negligence.