

## INTRODUCTION

The CENTRE FOR ECOLOGICAL RESEARCH AND FORESTRY APPLICATIONS (hereinafter: CREAM) is a consortium established in 1987 by the Catalan Government, Generalitat de Catalunya.

According to the government agreement GOV/155/2010 (article 1), CREAM's Board of Trustees is made up by the Generalitat de Catalunya, Universitat Autònoma de Barcelona, IRTA research institute, Universitat de Barcelona, Institut d'Estudis Catalans and the Spanish National Research Council (CSIC).

The involvement of Generalitat de Catalunya in CREAM is implemented through its ministries in charge of environment, territorial policy, agriculture and rural action, research and innovation; and fire prevention, suppression, and rescue.

CREAM aims to contribute to the knowledge of **conservation** and **management** of natural environment and territory, and to the adaptation to environmental changes at a local, regional and global level, linking academia, administrations and society, and creating opinion in its scopes of action.

The achievement of CREAM's mission is assessed through:

- Acts of excellent, innovative and leading basic research, to become a benchmark at both a national and an international level.
- Promotion of an applied research, especially in the forestry sphere, to contribute to the sustainable management and conservation of resources and ecosystems.
- Development of concept and methodological tools to ease the decision-making process and enhance the environment management.
- Dissemination of these scientific and technological knowledge through training, advising and communication activities.

Apart from its own research activities, CREAM is involved on an intensive activity with other public and private bodies for the development of specific research projects.

The recent change in the regulation of public research promoted on the occasion of the adoption of the new Spanish Law 14/2011, of June 1<sup>st</sup>, on Science, Technology, and Innovation, plays an important part on intellectual and industrial property, establishing the legal framework applicable to this specific subject in public research centres.

Likewise, with the adoption of the Spanish Law 7/2011, of July 27<sup>th</sup>, on tax and economic measures establishing the legal system of the CERCA institution (Research Centres of Catalonia), research, development and innovation want to be promoted as

key elements for the new model of economic transformation and cohesion, aiming to consolidate Catalonia as a benchmark for knowledge pioneering. In this respect, CREAF is regarded as a research centre of Catalonia, identified as a CERCA member, and therefore being subject to the legal system established by the Law 7/2011, on tax and economic measures, by the eighth additional provision of the aforementioned law, and by other specific regulation on research enforced by the Catalan Government.

Therefore, aiming to promote research activities within the scope of the centre, it is regarded necessary to define an appropriate legal framework to perform any research activities of the centre, whether in its generation or exploitation stages.

With the current regulation, and regarding research staff in research centres foreseen in the aforementioned Law 14/2011, a double objective is being aimed:

- (i) to boost research activity, while increasing the legal security needed by the involved parties in the development of research activities,
- (ii) to get the consortium staff involved in these activities, not only recognizing their participation in the development of new knowledge and technology, but also making them take part of the results that should be obtained through the commercial exploitation of the results of their research activity.

Therefore, CREAF's Board of Trustees has deemed appropriate to pass this protocol, which will enable a comprehensive and consistent regulation of the subject aiming to reach a safe framework supporting research activities arisen in the centre.

**TITLE I. PURPOSE AND DEFINITIONS****Article 1. Aim and field of application**

The present regulations aim to cover the following aspects:

- Any results' ownership arising from any research, development, and innovation (henceforth, "Research") and sourcing in their research activities, whether developing an activity from the institute itself or in collaboration with third parties.
- Procedures to be followed for the protection of the aforementioned results of CREAM's research activities.
- Financial rights arising from the exploitation of the aforementioned results.

**Article 2. Definitions**

The following definitions will be taken into account regarding current regulations:

- a) **Research staff:** CREAM staff that, having the qualification needed in each case, develop a research activity, understood as the creative work performed systematically to increase the knowledge volume, the use of this knowledge to develop new applications, its transfer and dissemination. Any staff deployed outside the consortium but with a labor or service relationship will be considered in this category.
- b) **Affiliated staff:** affiliated research staff from universities or other research institutions that maintain their labor or service relationship with their home institution but develop research activities at CREAM due to an affiliate agreement with their home institution.
- c) **Research results:** any technology, knowledge, know-how, or processes or results developed or obtained after any research activity developed by the centre's research staff.
- d) **Works:** research results subject to protection due to Intellectual Property rights, including but not limited to books, publications, lectures, multimedia works, databases and software.
- e) **Inventions:** research results subject to protection of Industrial Property rights, including but not limited to patents, utility models, semiconductor topographies and industrial designs.

**TITLE II. OWNERSHIP OF RESEARCH RESULTS, ITS RIGHTS OF INDUSTRIAL AND  
INTELLECTUAL PROPERTY AND EXPLOITATION RIGHTS****SECTION I. CREAM'S OWN RESEARCH**

**Article 3. Ownership of CREAF's research results**

The consortium retains the ownership, as well as the exploitation rights, research results developed by CREAF's research staff after their research activities.

**Article 4. Ownership of Industrial Property rights**

The consortium retains the ownership of Industrial Property rights on inventions sourcing from research results described in Article 2, above.

**Article 5. Ownership of Intellectual Property rights****a) Ownership of Intellectual Property rights**

The consortium's research staff retain the authorship of works, created after their research activities at CREAF, except in the cases explicitly provided by the current regulation.

Exploitation rights on works carried out within the framework of the aforementioned functions are retained by CREAF, under the terms and scope foreseen in the legislation on intellectual property. Notwithstanding the foregoing, CREAF will try to agree with the research staff the cession in favor of the centre of any exploitation rights of works generated in research activities of the consortium whose ownership could eventually remain on the research staff.

**b) Ownership of intellectual property rights in specific cases****1. Software**

If the work developed by CREAF's research staff performing their research activities at the centre is a piece of software, the ownership of exploitation rights on it will be solely retained by the consortium.

If the software is developed collectively under CREAF's initiative and coordination, the authorship of, as well as the ownership of exploitation rights on the aforementioned work, will be retained by CREAF in case it is edited and disseminated under its name, unless agreed otherwise.

**2. Collective works**

If the work is created collectively under CREAF's initiative and coordination, the authorship of, as well as the ownership of exploitation rights on the aforementioned work, will be retained by the consortium in case it is edited and disseminated under its name, unless agreed otherwise.

**3. Databases**

The ownership of exploitation rights on databases that due to their content selection or provision are turned into intellectual creations according to applicable regulations, and developed by CREAF's research staff performing their research activities at the centre, will be retained by CREAF, notwithstanding, if applicable, of any existing rights on these contents.

**Article 6. Moral rights of authorship of centre's research staff**

CREAF will always respect the right of the consortium research staff to be acknowledged as inventors or authors, as appropriate, of inventions or works developed by them.

**Article 7. Obligation to specify the relationship with the consortium**

In all cases, and except when CREAM states otherwise, any invention or work in which the centre's research staff are involved, performed directly or indirectly under their activities, has to specify the relationship with CREAM. In this respect, all works whose ownership is on CREAM have to clearly mention its belonging to the centre, referring the consortium as «CREAF».

**SECTION II. RESEARCH PROJECTS DEVELOPMENT WITH OTHER INSTITUTIONS****Article 8. Research results obtained in line with research projects developed in collaboration with third parties**

CREAF's research staff, in order to perform any research assignment or project, regardless of its knowledge field, will be granted, whenever possible, an appropriate collaborative research agreement.

Ownership on research results rights obtained within the execution of a collaborative research agreement, as well as the distribution of the corresponding exploitation rights that may be derived, will be foreseen in the aforementioned collaborative research agreement, notwithstanding that the agreement itself can defer their distribution.

**Article 9. Research results obtained through the participation of affiliated staff**

Ownership of research results developed with the participation of affiliated staff with who CREAM does not maintain a labor or service relationship will be determined according to what is foreseen in the agreement with the home institution.

In any case, affiliated staff have to abide to any foreseen obligation of the research staff in this regulations and the eventual convention.

**TITLE III. RESEARCH RESULTS MANAGEMENT****Article 10. Research results protection management**

The protection tasks from research results arising from CREAM's own projects will be developed by CREAM's Transfer Committee, with the eventual collaboration of third party professionals to perform its duties.

Regarding research results arising from collaborative projects with other public or private institutions, protection will be performed according to what is established in the signed agreements between collaborating organizations.

The management team has to avoid any potential conflicts of interests or overlapping between different projects and their research results that may eventually be obtained.

#### **Article 11. Communication and collaboration of CREAM's research staff**

In the event that CREAM's research staff develop a research result subject to protection, it has to be submitted to the Transfer Committee, attaching all information referring to the creation or invention developed to enable CREAM, should it be considered appropriate, instigate the formalities necessary for its legal protection.

Authors or inventors of the research result must collaborate with CREAM or the body or institution with which they develop their management tasks with any needed effort to obtain the best protection of intellectual or industrial property and its eventual transfer.

In particular, the obligation to collaborate may also be extended to the signature of the appropriate public or private documents, specially before any national or international office on intellectual or industrial property (including but not limited to patent or trademark offices, intellectual property registries, etc.) in order to achieve that CREAM is declared or becomes, as appropriate, owner of the intellectual and industrial property rights on the research result, so it can exercise its due rights because of its ownership.

#### **Article 12. Confidentiality and publication of research results**

CREAM's research staff, as well as any staff involved in research activities around CREAM, have to treat any information related to any developed research around CREAM as confidential, and perform their best efforts to ensure this confidentiality in order to preserve CREAM's rights or third parties' rights collaborating in research activities.

After defining the procedure to be followed for the protection of research results, the person in charge of each group will agree with the Unit of Industrial Property the publication terms of their research and the corresponding application for permits deemed necessary for third parties, if appropriate. Also, they will commit not to publish after an agreement has been reached in order to avoid harming any legal protection.

In cases of joint development of research projects with other institutions, CREAM will try to include in any respective regulation agreements the centre's policies regarding the confidentiality of developed research results.

#### **Article 13. Surrender of Industrial Property rights**

If CREAM is not interested in the ownership of a title or the international extension of an industrial property right or decides not to apply or maintain them, it will be reported to the inventors. If they are interested in them, CREAM can transfer the

aforementioned rights to them, according to the conditions agreed between the centre and the inventors. However, if CREAM has signed an agreement with a third party foreseeing in its favor a preferential right to take the ownership of the aforementioned research results if CREAM surrenders its rights, any established clause in this agreement will be applied.

For the surrender of any industrial and intellectual property title, an agreement on the board of trustees, or from CREAM Manager, if the powers have been delegated to this position, will be required.

If CREAM has surrendered its rights in favor of the inventor, he or she can trade the research result as long as the trading activity does not contravene the principles established by CREAM's mission.

CREAM reserves the right to participate in a percentage of the benefits obtained through the exploitation of the research result assigned to inventors, regardless of whether these are exploited by themselves or through license or transfer to third parties. Moreover, CREAM reserves in any case the right to use research results with non-commercial purposes through a license non-exclusive, non-transferable and free for teaching and research purposes only.

In the latter, CREAM can define any mechanism deemed adequate to recover any cost from management, writing, processing, and maintenance of the aforementioned title of Industrial Property.

#### **TITLE IV. RESEARCH RESULTS EXPLOITATION**

##### **Article 14. Exploitation formulas of research results**

CREAM, through its Transfer Committee, can plan and exploit commercially any research result in the way deemed most adequate to fulfill its purpose and, as far as possible, in agreement with the author or inventor from research staff. In any case, the most possible access for the society to any new knowledge and technologies must be ensured, whether through CREAM or by the cession of its exploitation rights to third parties.

##### **Article 15. Distribution of research results exploitation benefits**

For the purposes contemplated in this article, "benefits" are understood as the difference between the following:

- (+) Gross income obtained by CREAM through the exploitation of research results, including any payment received from the exploiting company and income due to an eventual surrender on behalf of any shared owner of the research result;
- (-) minus a remuneration equivalent to five per cent (5%) of gross income reserved by CREAM to cover any management expense;

(-) minus any direct expense due to protection, evaluation, and development of research results and management costs (including, for instance but not limited to, any expense on intermediary services, lawyers, patent agents, and so forth).

Any benefit obtained by CREAM for the commercial exploitation of one or several research results (exploited jointly or with a clear relationship between them) must be distributed according the following proportion:

- a) A third for the personal use for CREAM's research staff considered authors or inventors;
- b) A third for the research developed by the group of CREAM's research staff considered authors or inventors;
- c) And a third for CREAM

Should there be more than one author or inventor, they will share proportionally the corresponding sum, according to the document signed by all parties in which contribution percentages for each inventor are established, or in case of disagreement, through legal ruling or arbitral award determining each participation percentage.

However, in the specific case of publications and articles, benefits obtained by its commercial exploitation will correspond in full to their authors. Any economic right recognized to authors or inventors of the research results cannot be assigned to third parties not involved in the execution of the project from which the research results are sourced, nor to legal entities, with the exception of reaching an *ad hoc* agreement with CREAM and within the current legal framework, or by legal obligation or legal or administrative ruling.

The distribution of benefits obtained through the commercial exploitation of research results developed in joint projects with other public or private institutions or with external researchers in their personal capacity will be determined by agreement between any institutions involved in the project. If not, parties must mutually agree, respecting in any case the contribution of the parties for obtaining and protecting research results.

In any case, the distribution of foreseen benefits in this article will be adjusted to any financial limitation established by applicable regulations.

## **CONCLUDING PROVISIONS**

### **FIRST. LEGISLATION INTERPRETATION**

The resolution of any interpreting doubt of the current regulations will be solved by the CREAM Board of Trustees.





## REGULATION ON INTELLECTUAL AND INDUSTRIAL PROPERTY OF CREAM

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### **SECOND. COMING INTO FORCE**

The current regulations will come into force the day after its approval at CREAM Board of Trustees.