

Schedule 1
**Intellectual Property and Confidentiality Agreement between a Higher
Education Institution (IES in Spanish) and a Delivery Entity**

This document sets out recommendations that may be adapted according to the needs of organisations pursuant to their internal policies.

**INTELLECTUAL PROPERTY AND CONFIDENTIALITY AGREEMENT BETWEEN A
UNIVERSITY OR HIGHER EDUCATION INSTITUTION (IES in Spanish) AND A DELIVERY
ENTITY FOR PROJECT “ _____ ”**

Between the undersigned, _____, who is of legal age, is a resident of _____ and is domiciled in _____, is identified with Colombian Citizenship Card No. _____ issued in _____, is acting in the capacity of _____, and on behalf and in representation of _____, hereinafter referred to as UNIVERSITY or HIGHER EDUCATION INSTITUTION (IES in Spanish) and, on the other hand, _____, who is of legal age, is a resident of _____ and is domiciled in _____, is identified with Colombian Citizenship Card No. _____ issued in _____, is acting in the capacity of _____, and on behalf and in representation of _____, hereinafter referred to as DELIVERY ENTITY, have agreed to sign this intellectual property and confidentiality agreement regarding the results derived from the delivery of the _____ scientific, technological development or innovation project, hereinafter referred to as THE PROJECT, which has been submitted by the DELIVERY ENTITY to COLCIENCIAS through researchers, research groups or centres, [or] technological developments recognised by COLCIENCIAS, and the investment or donation for which shall be made in 2016.

The above is based on the following **recitals**:

1. Law 29 of 1990, "*by which provisions are set forth for promoting scientific research and technological development, and special powers are granted*", establishes in its Article 1: "*the State is responsible for promoting and directing scientific and technological advancement and is therefore required to include science and technology in Colombia's economic and social development plans and programmes, and formulate science and technology plans for both the medium and the long term. Furthermore, the State shall establish mechanisms to connect its scientific and technological development activities with the activities in the same fields that are carried out by Colombian universities, scientific community, and private sector.*" **2.** The aforementioned law granted special powers to the Colombian Government by stipulating the following in Subsection 2 of Article 11: "*to set out the rules which must be followed by the nation and its decentralised entities when associating with third parties in scientific and technological activities, research projects, and technology creation*" and in Subsection 4: "*to regulate specific types of agreements for promoting scientific and technological activities.*" In the use of said special powers, the Colombian Government issued Law Decree 393 of 1991, "*by which rules are set out regarding associations for scientific and technological activities, research projects, and technology creation*", and Law Decree 591 of 1991, "*by which specific types of agreements for the promotion of scientific and technological activities are regulated.*" **3.** Law 80 of 1993 was enacted and its Article 32 defined state contracts as: "*all binding legal actions entered into by entities referred into in this statute, provided by private law or special provisions, or derived from the exercise of free will...*" **4.** The Congress of Colombia issued Law 1280 of 2009 by which "*Law 29 of 1990 is modified, transforming COLCIENCIAS into the Administrative Department for Science, Technology and Innovation, the National Science, Technology and Innovation System is strengthened, and other provisions are set forth.*" Furthermore, Subsection 1 of Article 33 stipulates: "*Article 33. Activities, contracts and agreements made with the purpose of carrying out science, technology and innovation activities, and entered into by state entities shall continue to be governed by applicable special rules. In consequence, such contracts shall be entered into directly...*" **5.** In accordance with the above, it is concluded that contracts entered into with the purpose of promoting science, technology and innovation are regulated by Law Decrees 393 and 591 of 1991, and are also subject to Law 80 of 1993 in all other aspects not regulated by said decrees. **6.** According to Law 1286 of 2009, the Administrative Department for Science, Technology and Innovation (COLCIENCIAS) is the governing entity of the National Science, Technology and Innovation

System (SNCTel in Spanish), and is in charge of directing, coordinating and promoting scientific and technological development and innovation in Colombia. In compliance with its mission and legal mandate, COLCIENCIAS promotes the generation and transfer of scientific knowledge, technological development and innovations that will allow, on the one hand, the consolidation of a scientific community in different knowledge fields and, on the other hand, a contribution to Colombia's economic and social development. **7.** Article 10 of Law 1753 of 2015 stipulates: *"Article 10. Intellectual property rights for research and development projects funded with public resources. In the case of research and development projects in science, technology and innovation and information technology and communications that are carried out with public resources, the State may assign free of charge, except for national security and defence reasons, the intellectual property rights it holds, and approve their transfer, marketing and exploitation to whoever carries out a project, without constituting economic damage to the State. The conditions for assignment shall be established in the respective contract and, in all cases, the State reserves the right to obtain a non-exclusive free licence to said intellectual property rights for reasons of national interest."* **8.** Intellectual property means creations derived from human intellect in the industrial, scientific, literary and artistic spheres, with the implication that the holder of said intellectual property must be aware of and understand the rules that govern its creation, maintenance, defence and expiration, with the purpose of protecting one of the most valuable assets a natural or legal person can ever own. **9.** Intellectual property is divided into two categories: **a)** Industrial property, which is the exclusive right a natural or legal person holds over an invention, an industrial design or a distinctive sign. Furthermore, industrial property is divided into two branches. The first one is New Creations, which include all invention patents, utility model patents, industrial designs, and integrated circuit etching patterns. The second one refers to Distinctive Signs, which include brands, commercial slogans, trade names, commercial logos, and designations of origin. **b)** Copyright, which is a set of rules intended to protect the authors and owners of artistic, scientific and literary works, and grants them the power to control all matters related to the use and exploitation of their work regardless of its use and the way or form it is expressed. Thus, copyright protects: Books, pamphlets and written documents, conferences, speeches, sermons and other works of a similar nature, musicals, dramas, choreographies, pantomimes, musical compositions with or without lyrics, film works, videogrammes, drawings, paintings, architectural works, sculptures, engravings, lithographs, photographic works, applied art works, illustrations, maps, plans, sketches, plastic art works relative to geography, topography, architecture or the sciences, computer programmes, databases and multimedia creations; in short, all literary or artistic productions that can be reproduced or defined by any printing or reproduction method, including phonography, radio telephony or any other means that are or could be known. **10.** It is very important to be aware of the content of the categories of intellectual property rights, that is copyright and industrial property rights, where copyright includes moral rights and economic rights. Regarding the former, they are highly personal rights which safeguard the link between the author and his or her work; they are perpetual, inalienable, non-attachable, non-transferable and non-waivable, and cannot be sold or transferred. Moral rights grant the following powers over a work: Paternity right, the right to withdraw the work or to repent, integrity right, the right to keep the work unpublished, and the right to modify it. Regarding the latter, that is, the economic rights, they enable the author or any other natural or legal person that has acquired the copyright, to control the work and obtain an economic benefit from allowing the work to be used. The holder of economic rights has the exclusive power to approve or forbid actions such as the work's reproduction, translation, adaptation, modification, publication by any means, and distribution. Regarding industrial property, it contains strictly economic rights when exercising in rem property rights, that is, use, enjoyment and disposal with exclusivity over third parties. Therefore, the holder shall have the power of exploitation, directly or through third parties, by entering into use licence agreements. In light of the above recitals, THE PARTIES agree to the following clauses:

CLAUSE 1. INTELLECTUAL PROPERTY. THE PARTIES agree that the Intellectual Property

derived from the execution of the PROJECT that is the subject of this agreement -- if the [project] proposal is selected from THE CALL for support and funding – shall be governed by what is set out herein and by applicable laws currently in force.

1. Ownership of Moral Rights. Ownership of moral rights derived from results obtained during the execution of the PROJECT shall vest in each one of the participating authors and inventors that are related to THE PARTIES as established by law.

2. Economic Rights. Ownership of economic rights over scientific articles, as well as papers, presentations, knowledge, products, results and technologies that are or may be obtained during the execution of the PROJECT shall vest in the DELIVERY ENTITY due to the fact that COLCIENCIAS will assign the transfer, marketing and exploitation of the intellectual property rights unless there are reasons of national security and defence or other reasons provided by law that prevent said assignment.

If appropriate, the delivery parties involved in the project shall jointly define the ownership of the intellectual property rights generated by the project funded with resources from the national budget.

3. Industrial Property Rights. Ownership of invention patents, utility model patents, industrial designs, integrated circuit etching patterns, brands, commercial slogans, trade names, commercial logos, designations of origin, and other creations subject to industrial property protection that are derived from the execution of the project shall vest in the DELIVERY ENTITY, due to the fact that COLCIENCIAS will assign the transfer, marketing and exploitation of the industrial property rights unless there are reasons of national security and defence or other reasons provided by law that prevent said assignment.

If appropriate, the delivery parties involved in the project shall jointly define the ownership of the intellectual property rights generated by the project funded with resources from the national budget.

CLAUSE 2. PUBLICATIONS. Publications generated from the results obtained from the execution of the PROJECT, as well as summaries or any other means of disclosure that were to take place, shall always mention the name of COLCIENCIAS and the natural or legal person who funded and/or collaborated with the execution of the PROJECT (DELIVERY ENTITY).

Paragraph 1. The specific Intellectual Property Rights Distribution Agreement signed by THE PARTIES shall establish the rules for information publication provided it does not contradict the Intellectual Property Rights that may be derived from this agreement.

CLAUSE 3. ASSIGNMENT OF ECONOMIC RIGHTS BETWEEN THE DELIVERY ENTITY AND THE CREATORS. The DELIVERY ENTITY and the creators who participate and intervene in the execution of the project undertake to establish the confidentiality and intellectual property rights ownership terms before the commencement of the project.

CLAUSE 4. PRIOR CONSENT STATEMENT FOR THE USE OF INTELLECTUAL PROPERTY RIGHTS. The parties to this agreement acknowledge and state that in case they need to use intellectual property held by one or several parties, approval shall be granted provided it is for achieving the project's established goal. **Paragraph 1.** The parties acknowledge and state that they have ownership of, and/or a legitimate right to use and exploit prior knowledge. **Paragraph 2.** The parties acknowledge and state that no third party rights were breached when obtaining and exploiting intellectual property assets. **Paragraph 3.** The parties acknowledge that the prior consent statement for the use of intellectual property rights does not constitute a contribution to this project.

The tangible or intangible assets to which the approval for use applies shall be identified and listed with at least the following information:

Intellectual Property Area	Type of Intellectual Property Right	Identification (Title or Name)	Owner of the Right	Document approving the Ownership of the Right	Comment
Example					
Industrial Property	Invention Patent	Invention Patent Title: Machine for ...	Universidad Nacional	SIC-issued Registration Certificate N° XXXX	Invention patent granted on 27 April, 2001, valid until 27 April, 2021.

CLAUSE 5. CONFIDENTIALITY. The parties executing this project, as well as each and every person intervening in the execution of this project, agree that any information disclosed among them or that might be jointly developed during the execution of the project shall be confidential, private or secret, and shall not be disclosed or revealed fully or in part to any persons different from the parties to this agreement, or to any current or future media, according to the following conditions:

A) The party receiving the information shall keep it confidential, and shall refrain from revealing it to third parties for its own benefit or that of others without the prior written consent of the party holding the right. B) The confidentiality obligation shall extend to developments made as a result of the use of information exchanged during the project. C) The party receiving the information shall be responsible for having the persons under its charge, and those intervening in the project, complying with the confidentiality agreement established herein. As a result, such persons are forbidden from transferring or providing to third parties, for any purpose, any information obtained from the other parties during the execution of the project. D) The parties undertake to disclose the information referred to in this clause solely to employees, contractors and dependents who need to be aware of said information for the performance of their activities and under a confidentiality obligation. Furthermore, the parties shall reveal to said persons only the part of the information that is pertinent to the performance of their activities in the project. E) The parties undertake to adopt all reasonable security measures according to the nature of the information in order to guarantee its confidentiality, secrecy and privacy. F) The parties undertake to maintain the confidentiality of all information that is disclosed by one party to the other parties which may be subject to intellectual property protection in its own right without any development whatsoever. **Paragraph 1.** If there are any doubts about the confidentiality, privacy or secrecy of any information provided by one party to the other parties, said information shall be treated as confidential until the disclosing party states otherwise in writing. This confidentiality obligation shall not apply to information that is in the public domain or has been known to any of the parties before this agreement, or disclosed by a third party that did not have a confidentiality, privacy or secrecy obligation. **Paragraph 2.** Breach of the obligation of confidentiality by any of the intervening parties shall be considered a breach of this agreement. **Paragraph 3.** The confidentiality, secrecy and/or privacy obligation on the parties shall persist as long as the information is considered confidential, secret and/or private.

CLAUSE 6. STATEMENT. After the contractual relationship between THE PARTIES to the project is formalised through a duly legalised document and funding is granted by COLCIENCIAS, THE PARTIES shall, before starting to execute the project, agree on the percentage distribution of the ownership of each one of the products that are obtained and may be subject to intellectual property protection, as well as the terms and conditions and rules for the products' use and commercial exploitation, in case it exists.

CLAUSE 7. INTELLECTUAL PROPERTY COMMITTEE. The parties shall set up an Intellectual Property Committee which shall be comprised of one (1) representative from each intervening party. **Paragraph 1.** The Intellectual Property Committee has the following functions: 1. To define the most appropriate and strategic means to protect the products obtained as a result of the project; 2. To support the parties intervening in the project regarding marketing agreements that may be made based on the results of the project; 3. To inform the parties of the confidentiality obligation, as well as its implications regarding project-related information; 4. To prepare an inventory of the products developed as a result of the project, and to monitor and perform quarterly updates on the inventory; 5. To request from the appropriate persons reports on the intellectual contribution of THE PARTIES regarding the PROJECT'S developments; 6. To look after compliance with legal provisions related to intellectual property; 7. To look after compliance with this agreement; 8. To submit bimonthly reports to each one of the parties' LEGAL REPRESENTATIVE or whoever is acting on his/her behalf. **Paragraph 2.** The Intellectual Property Committee shall appoint a secretary who will be in charge of preparing and safeguarding the minutes and documents related to the Committee's functions. **Paragraph 3.** The Intellectual Property Committee shall call bimonthly meetings, for which minutes shall be prepared and sent to each one of the parties.

In witness thereof, the parties sign this intellectual property agreement in the city of _____ on the ___ day of _____, _____.

Note: This intellectual property and confidentiality agreement was prepared using the agreements made by the Government of Antioquia on the same matter.