

Purpose of this document

This paper explains and documents our current thinking on how to regulate Intellectual Property Rights (IPR) and licences to this IPR within a possible PCP, which the HPC Platform Subproject of the Human Brain Project is considering to launch to address specific HPC requirements related to brain simulation. This paper is made available solely for the purpose of initiating an open dialogue with any potential bidder. It does neither signify formally the beginning of a PCP procedure nor does it constitute a commitment by Forschungszentrum Jülich, the designated Procuring Entity, to carry out such a procedure at a later stage. The final details of the PCP procedure and contractual provisions could differ from what is presented in this document.

Definitions

In this document we apply the following definition of **IPR**:

Any and all patent rights (including but not limited to divisionals, extensions, improvement patents, supplementary protection certificates), inventions (whether or not patentable or capable of registration), trademarks, copyrights (including moral rights), topography rights, design rights, rights in and to databases (including the right to prevent the extraction or reutilisation of information from a database), trade secrets and rights of confidence, know-how, trade or business names, domain names, whether or not any of them are registered or registerable and including applications for registration, renewal or extension of any of them, and any other rights or forms of protection of a similar nature which have an equivalent or similar effect to any of them which may now or in the future exist anywhere in the world.

The term **Background** is defined as follows:

Information, technology or IPR relating to such information or technology owned, developed or controlled by either of the parties at the date of this agreement or which shall at any time thereafter become so owned, developed or controlled otherwise than as a Result of the project or under this agreement.

Finally, we provide the following definition of the term **Results**:

Any data, material as well as any prototypes and pilot systems or related installations and any other result generated by or under the services.

Intellectual Property Rights and licences

Within a PCP risks and benefits must be shared between the Contractors and the Procuring Entity in such a way that there is an incentive to take up the solutions developed within this PCP and that under all circumstances state aid is avoided. The latter also affects the question how the developed technology (i.e. foreground IP) can be used in case it is (tightly) linked to other technologies (i.e. background IP). Therefore we intend to foresee the following provisions:

R&D risks and benefits will be shared between Contractors and the Procuring Entity in such a way that all parties have an incentive to pursue wide commercialisation and take up of the new solutions. Therefore, ownership of

Project Intellectual Property Rights generated by a Contractor during the PCP contract will remain with the Contractor generating it. Ownership of any Contractors' Background will also remain with the Contractor.

However, the Procuring Entity will be granted on an individual basis an irrevocable, worldwide, free and non-exclusive licence until the expiry of the respective Project Intellectual Property Rights, at no additional cost, to use for such internal purposes as the Procuring Entity shall in their absolute discretion deem fit, the Project Intellectual Property Rights, the relevant Background and the Results.

In addition, upon request of the Procuring Entity, the Contractor shall grant a non-exclusive licence to use or exploit for any purpose (including commercial purposes) the Project Intellectual Property Rights, the relevant Background and/or the Results on significantly better terms and conditions than those prevailing on the market, reflecting the fact that the Procuring Entity has partly funded the research having led to the Project Intellectual Property Rights.

It is important that Tenderers and, as the case may be Contractors, fully value the Project Intellectual Property Rights resulting from the PCP. To make sure a fair market price is offered in their bid, the Procuring Entity requires Tenderers and, as the case may be the Contractors, to state two prices, the Actual Price and the Virtual Price.

In addition, Tenderers are required to mention in their Bid for Phase I whether they will rely on Background they (or any of their Subcontractors) hold at the date of the Bid that pertains or may pertain to the Project or any part thereof. Similarly, Tenderers will have to mention in the Bid for Phase I whether they will rely on pre-existing third party software.

Note that if the Procuring Entity subsequently purchases products from a Contractor which includes Project Intellectual Property Rights, the Contractor may not charge the Procuring Entity for the licence to that Project Intellectual Property Rights as this has already been licenced for free.

Sub-licences

To reflect the fact that the PCP is carried out within the Human Brain Project the Procuring Entity considers requesting sub-licences to partners within that project. The list of entities that will be entitled to receive a sub-licence will be restricted. The Procuring Entity is considering to restrict the list to a sub-set of non-profit entities which are part of the HBP's HPC Platform Subproject such that the number of entities will be about 10. The list of these entities will be published in the tender. The following clause is thus considered:

This licence [as granted to the Procuring Entity] shall be sub-licensable but only to the following legal persons: <list of entitled partners>

Call-back clause

All parties must have an incentive to pursue wide commercialisation and take up of the new solutions developed within the PCP. Therefore the following call-back clause is foreseen:

A call-back provision will ensure that all rights, title and interests in the Project Intellectual Property Rights that are not commercially exploited by marketing a commercial application within three (3) years after the end of the last awarded Phase in the Project or that are used to the detriment of the public interest, will be assigned to the Procuring Entity.