

General terms

I. Preamble

In recent years the Government of Catalonia has made a concerted effort to create its own network of research centres (CERCA), focusing on excellence in specific areas of knowledge. The development of these centres, independently managed and with a strong focus on research, is one of the most notable changes in the Catalan science and technology system. The Government hopes that these institutions will become internationally renowned centres for the generation of knowledge, attracting talent and transferring knowledge to the productive economy in order to make Catalonia's economy more competitive and improve people's welfare.

The statutes of the Institutional Foundation for Research Centres in Catalonia (I-CERCA), as a self-managed tool and technical service of the Government of Catalonia, state that its specific aims include increasing and facilitating the transfer of knowledge to the business sector and to society in general, and providing support, advice and encouragement for the creation of spin-off companies based on patents or general results.

On 22 June 2016 the Board of Trustees of the CERCA Institute agreed to launch the GÍNJOL programme, the aims of which included supporting patents developed by the CERCA centres.

The Catalan name for the jujube red date (*Ziziphus jujuba*) is the *GÍNJOLer*. The wood of this bush or small tree is used to make musical instruments such as the traditional Catalan *gralla* and *tenora*. Its fruit, the *gínjol* in Catalan, is prized for its nutritional value, whether fresh or dried. It also has medicinal uses. This idea of making use of the entire tree and its fruit is the inspiration behind this programme, intended to ensure that every aspect of the results and benefits of research and technology is fully exploited by Catalan society.

II. Creation of the GÍNJOL patents fund

I-CERCA has decided to develop an agreed funding programme with the CERCA centres, to support their knowledge transfer projects, specifically in terms of protecting intellectual and industrial property rights, known as the GÍNJOL Patents Fund. This fund is not a separate legal entity, and is therefore set up and managed internally by I-CERCA, which will centrally administer contributions to the GÍNJOL programme and allocate resources to the projects selected in each selection and assessment period.

The funding for these activities may come from the following sources:

- Funds contributed by I-CERCA,
- Start-up funds allocated to CERCA partner centres under agreements with I-CERCA,
- Funding from public grants and programmes or from private non-profit institutions, and
- Funds generated from I-CERCA's shares in the profits of projects selected and financed by the GÍNJOL Patents Fund.

III. Partner centres

CERCA partner centres of the GÍNJOL Patents Fund may be any centre listed in Resolution ECO/2405/2015 of 21 October, Official Journal of the Government of Catalonia (DOGC) no. 6988 of 2/11/2015, or any subsequent Resolution that replaces it.

The relationship between I-CERCA and the partner centres, with regard to the GÍNJOL Patents Fund, will be set out in a bilateral agreement between I-CERCA and the CERCA centre, establishing the framework for cooperation based on this programme, and each party's rights and obligations. This agreement will be signed when the project is presented to I-CERCA and before the end of the assessment or selection process for the projects in this funding round.

IV. Structure of the GÍNJOL Patents Fund

The CERCA Institute will allocate a minimum of 60,000 euros to the GÍNJOL Patents Fund in 2016.

To contribute to the setting up and management expenses of the GÍNJOL Patents Fund, each partner centre will make a start-up contribution estimated at 9,000 euros. The amount of this start-up contribution may be increased over time for those CERCA centres that present projects or become partners during the project assessment and selection periods, giving an advantage to those CERCA centres which were partners from the start of the programme (2016). The contribution to the second programme is expected to be 12,000 euros, and 15,000 euros to the third programme.

CERCA centres are not expected to have to make periodic or additional contributions other than the start-up contribution, apart from the specific returns agreed on the projects financed by the GÍNJOL Patents Fund.

V. Submission and presentation of projects

I-CERCA will periodically announce new rounds of funding, through the GÍNJOL Patents Fund, for innovative research projects with marketing potential. Each funding round will be open to centres registered as partners when the funding programme is announced and there will be a limit on the number of proposals each centre can present.

The opening of a new round will be announced electronically and I-CERCA will contact each partner centre via the communication channel it has provided for that purpose, at least one (1) month prior to the opening of the period during which applications will be accepted.

To apply for funding, CERCA centres must submit an application which must include the following documentation in order to be considered:

- A brief technical description of each project, including the main elements of the proposal and the expected results or impact, a description of the research team developing the project, current progress on the project and the eligible expenses for which funding is sought.
- A marketing proposal for the results of the project, including not only a marketing model and its expected impact, but also a proposed system of returns based on the future profits it will offer to the GÍNJOL Patents Fund in order to be sustainable. This must include a general returns model based mainly on royalties generated on operating income, together with the terms under which returns would be paid if the technology is sold, in the event of early returns, or if the project fails.

I-CERCA may ask the CERCA partner centre to provide any additional documentation or information required to assess the proposal.

The announcement of a new funding round may include other formal or material requirements which partner centres must meet when applying for funding. A time limit will be set for the submission of applications after which no proposal will be accepted.

VI. Eligible activities

The funding awarded through this programme may be used to finance the services needed to protect, exploit and market the results of research generated by the research projects submitted in the time period established for each funding round.

These may include:

- Advisory services related to procedures and strategies for protecting the intellectual and industrial property related to the technology.
- External services to assess the technological suitability and market potential of the technology developed.
- Strategic and economic consultancy services related to the marketing of the technology.

The services will not be provided by I-CERCA, nor will it prescribe which consultants must be used for the provision of the services. The services must be contracted by the research centres from third-party professionals, in accordance with their contracting standards, although the suitability of the provider selected and the financial terms must be justified to I-CERCA.

The CERCA centre agrees to fund from its own resources the activities referred to in the application, on a percentage basis agreed between the two Parties.

VII. Financial terms: funding and returns

The funding provided will not be in the form of a grant (in accordance with its regulations) as it will be structured on a returns-based model. The GÍNJOL Patents Fund will be entitled to a share of the revenues obtained from exploiting the results of the project. I-CERCA will not assume any ownership rights over said results.

Initial funding for each project is expected to be 10,000 euros, depending on the activities to be carried out and the budget included in the application. Other funds must be available to co-finance the project: these may be drawn from the centre's own resources or from third parties.

The returns will be agreed by the parties in the negotiation stage and, in the event that there are revenues, they will never be less than the amount awarded plus 50% (in respect of patent fund creation and management expenses), although the parties may agree a fixed rate of return on all revenues or any other formula.

Alternative returns models may be considered based purely on variable revenues in those cases where it may be agreed that the GÍNJOL Patents Fund will assume all the costs of protecting intellectual and industrial property.

The final returns model, share percentages and stages will be agreed in negotiations between I-CERCA and the CERCA centre, taking into account aspects such as the amount of funding and the contributions made by each party, the nature, features and technological readiness of the project, and the percentage ownership held by the CERCA in the results (in cases where there are co-owners). Mechanisms will be established to regulate any potential dilution of these percentages due to the entry of additional investments to finance the development of the project or set up a spin-off company to commercially exploit the results.

VIII. Selection and negotiation of terms

In the first stage, I-CERCA staff will confirm whether the proposals submitted comply with the formal requirements in accordance with the criteria and conditions established in the announcement of the funding round, in order to complete the information required to assess the proposal.

To ensure that the selection of projects is based on innovative and market criteria, an Assessment Committee will be appointed for each funding round, composed of four to six experts drawn from the private sector and experts in different areas of research.

The panel of experts will be selected by I-CERCA, and appointees accepting the post must comply with a policy on preventing conflicts of interest under which they agree not to use the information and knowledge acquired during the assessment process in their own interest or that of third parties. The experts also agree that they will not participate in the assessment of projects of which they have had prior knowledge through their professional activities or undertake to provide the consultancy services subject to the funding.

The Assessment Committee will evaluate all the proposals submitted and may ask the applicants for any additional information needed to complete their assessment, via the most suitable channel. The assessment may involve meeting the applicants face-to-face or via teleconference, so that they can present the project, its requirements and the expected results.

Once the assessment of the projects is completed, the Assessment Committee will produce a full proposal containing the projects that, in its opinion, have the best prospects, both technically and in marketing terms, and the recommended amount of funding for each one, together with any other recommendation it may have with regard to the agreements to be drawn up with the corresponding CERCA centre.

The Assessment Committee will submit its proposal to I-CERCA management which, as the body responsible for the GÍNJOL Programme, will use it as the basis for making a provisional selection of the projects to be funded, and the amount and terms applicable in each case.

I-CERCA will inform each centre if their projects have been selected or not and, in the case of the selected projects, will contact them directly to negotiate the terms of the funding.

IX. Project funding agreements

The selection process will involve the negotiation of the definitive financial terms of the funding, based on the proposal submitted by the CERCA centre in the initial application, in order to ensure the most suitable model is applied depending on the nature of the project and its technological readiness.

Once the final terms have been agreed, an agreement between I-CERCA and the CERCA centre acting as executor will be signed, establishing the following items:

- The specific nature of the research project and the results obtained or expected.
- The financing terms of the project (amount, form, dates, etc.).
- The specific services to be funded (in accordance with the budget presented in the application).
- The terms of the financial returns to be obtained by the GÍNJOL Patents Fund when the results are marketed.
- The obligations with regard to the execution of the project (contracting of research staff involved in the project, timetable, projected results, etc.).
- The rights reserved by I-CERCA with regard to information and the prior authorisation of certain strategic decisions relating to the development of the project and the exploitation of results.

- The accountability requirements that the Centre must meet.
- A commitment by the centre to extend the fulfilment of its obligations to any spin-off which may be set up to exploit the results of the project.
- The applicable regime should the centre fail to fulfil any of its obligations.

Once all the negotiations are complete and the agreements signed, I-CERCA will publish a list of the projects and centres to which funding has been granted, using the channels it deems most suitable.

X. Project follow-up

The agreements with centres will include powers for I-CERCA to follow up and audit the project, ensuring that the project milestones are met and the funds are used for the purpose to which they were allocated in the submission.

Furthermore, as financial returns are a key element of the programme, I-CERCA will reserve the right to apply mechanisms for following up the financial and commercial performance of the research results, including the right to request an audit of the accounts in order to confirm the accuracy of the figures submitted by the applicants.

These rights will apply equally to any spin-off set up to commercially exploit the results of the research generated by the funded project. The CERCA partner centre must, therefore, agree to expressly include the rights ceded to I-CERCA in all agreements related to the establishment of a spin-off, including shareholder agreements, and contracts to transfer the results of research, so that the spin-off will assume the obligations corresponding to it as the entity which will commercially exploit said results.

Failure to fulfil these obligations will give I-CERCA the right to cancel the agreement and demand repayment of the funding granted, without prejudice to any claim for damages presented before any authority.

XI. Governance of the GÍNJOL Programme

The GÍNJOL Patents Fund will be subsumed by I-CERCA and will therefore be administered by said body in accordance with the legal regime applicable to it.

Additionally, a GÍNJOL Programme Coordination Committee will be set up with the participation of all CERCA partner centres. Its role will be to supervise the activities of the GÍNJOL Programme and support I-CERCA in the definition of the programme lines and activities to be developed by the GÍNJOL Patents Fund, drawing on the experiences of each CERCA partner centre to improve the selection conditions and processes and the supervision of projects with each funding round.

I-CERCA will also inform the CERCA partner centres about the financial performance of the GÍNJOL Patents Fund in order to assess its financing needs and the financing formulae which may be required or which best meet its spirit and aims.

The Coordination Committee will contain representatives from I-CERCA and all the CERCA partner centres from the moment they sign the partnership agreement and pay in the contribution required to become a partner centre.

XII. Disaffiliation

CERCA centres' affiliation as partners of the GÍNJOL Patents Fund will be indefinite and in accordance with the agreement of both parties.

A CERCA partner centre may therefore disaffiliate from the GÍNJOL Patents Fund at any time, using the communication mechanism established in the bilateral agreement.

Disaffiliation will mean that the centre will no longer be able to submit applications in future funding rounds, but will not lead to the cancellation of funding for projects agreed up to that moment, which will remain valid with regard to all the terms expressly agreed to that effect.

The amounts contributed by the CERCA centre to set up and manage the GÍNJOL Patents Fund when the bilateral agreement was signed will not be returned on disaffiliation, given the specific nature of this initial contribution.