

- 3) If the parties do not create a separate entity, the following issues must also be considered:
  - How will the management or administrative duties be shared or concentrated?
  - What will be the decision-making process?

***Financing***

- 1) Will the contract be supported by grants or mainly by the parties?
- 2) If supported by grants, what will happen when the grants, even minor ones, are cancelled, or when funds run out?
- 3) Does the financing period coincide with the duration of the contract?
- 4) What are the tax implications of the financing scheme?

***Resolution of Conflicts***

- 1) How will disputes be resolved?
- 2) If by arbitration, where and how will arbitration take place?
- 3) What will be the venue or venues for legal proceedings, and what will be the courts' jurisdiction with respect to the agreement?
- 4) Which country's laws will govern the agreement?

***Representations and Warranties***

- 1) What statements of fact are important enough to be stated as representations or warranties by the parties?
- 2) What remedies will be available if a representation or warranty should be discovered to be false?

***Miscellaneous Provisions***

- 1) Is the contract open to other participants? If so, under what terms and conditions?

- 2) What specific rights and duties must be performed by the parties to the agreement, failing which the agreement may or must be terminated?
- 3) Is the relationship between the parties to be exclusive, or will the parties be free to enter into the same or similar agreements with third parties?
- 4) Have each of the parties to the agreement been made responsible for adhering to the laws of their own and other relevant jurisdictions?
- 5) Have the parties to the contract ensured that it does not contravene national and international anti-trust and competition laws, wherever they may apply?
- 6) Have the parties ensured that the contract does not contravene any of the laws of the jurisdiction that governs it? Many contracts state that any provision that contravenes such laws may be severed without the severance affecting the validity of the rest of the contract.

## **INTELLECTUAL PROPERTY IN A CONTRACT**

The World Intellectual Property Organization definition is often used in bilateral agreements. For example: "For the purposes of this agreement, intellectual property will be as defined by the World Intellectual Property Organization."

***Inventory of Contributions***

Before entering into a contract, the parties should prepare and agree to an inventory of their respective contributions to the project.

***Definition of Terms***

All key terms in the contract should be defined, including the following:

- 1) The domain or field of use of the technology, or background technology.