



AQUAculture infrastructures for EXCELlence
in European fish research towards 2020 —
AQUAEXCEL2020

TNA IP Term Sheet *Bénédicte Ferreira*



Executive Summary

Following the AQUAEXCEL project, it was decided, in the frame of Task 1.5 to propose an IP Term sheet on the conditions of access and specific IP issues to be adapted to each TNA Project and institution. This aims at ensuring that partners and users work together in a transparent environment in terms of rules governing the TNA and confidentiality. After surveying the partners and RI managers on previous experience and also on other projects, it was obvious that the main issue to be addressed by the term sheet should not be IP but rather all general principles about implementing a TNA project and clarifying in a flexible document both the host facility/organisation and the user(s)' rights and obligations. Indeed, AQUAEXCEL²⁰²⁰ partners reported no IP issue from TNA in the previous AQUAEXCEL project and questions to other Infrastructure Projects managers and RI managers revealed that:

- All organisations already have their own 'policy', many of them not willing to engage in a complicated legal contracting procedure with users

Instead, the partners' needs were more on identifying more clearly the rules governing the user(s)'s visit, use of material, obligation of reporting and dissemination, etc. In other words, the responsibility of each party.

We therefore envisaged this Term Sheet as a sort of check list (non-binding contract) broad enough to be adaptable to each partner organisation with the intention:

- NOT to make a contract or force partners to use the document
- to propose guidelines to help RI managers: several blocks of 'rules' that they could use to draft their own contract
- to anticipate how to solve problems if an issue arises / show that we have thought about it upstream.
- In case both parties agree, that some points may be fixed from the beginning (ex: co signing a publication)
- to provide a sort of check list clearly mentioning the intentions of each party

Objectives: D1.2 aims to enounce the principles to be applied in TNA and serve as a tool which can be adapted to each institution.

Rationale: A first discussion with the coordinator, the WP1 leader and the partners took place at the Kick Off meeting in November 2015 to collect their thoughts on this term sheet. After that, a questionnaire was sent to the Managers of each AQUAEXCEL²⁰²⁰ TNA facility (see Annex 1) to build the term sheet as a useful tool – corresponding to their needs -, and not as a new administrative layer. We have also checked what had already been implemented in other EU FP7 Infrastructure projects (Trees4Future, Nadir, ExpeER) to build on the best practices from them.

The Term Sheet is also based on the TNA rules set up in the Grant Agreement (articles 16, 35, 36, 38, 46), in the Consortium Agreement (article 9.9) and in the European Charter for Access to Research Infrastructures.

Main Results: The term sheet is flexible tool to be used and adapted by each AQUAEXCEL²⁰²⁰ TNA facility. We will also follow up the use of this tool by the partners and its efficacy: this tool might need to be revised and updated depending on specific issues that may arise in the course of the project.

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Table of contents

Executive Summary	2
Table of contents.....	3
1. TERM SHEET	4
Glossary.....	11
Document information	12
Annex 1: Questionnaire sent to each RI manager	13

1. TERM SHEET

AQUAEXCEL²⁰²⁰ TNA AGREEMENT

Once signed, a scan of this Term Sheet should be sent to the TNA manager John Bostock, UoS j.c.bostock@stir.ac.uk

TNA Leader Name: _____

TNA Project short title (30 characters) from the application form: _____

Project Code and Acronym: _____

Installation Name: _____ Country code: _____

Number of physical visits: ____

Visitor name	Arrival date dd/mm/yyyy	Departure date dd/mm/yyyy	No. of days considered for reimbursement ¹

Number of units of access agreed to be used in this project: _____

Maximum travel costs to be reimbursed for this project: _____ (€)

Deadline for implementing the project: _____

Deadline for sending the report to the RI manager: _____ (date of end of experiment + 45 days)

Deadline for providing the related Ethics documents to the TNA manager: _____

Deadline for sending the (WP2) project catalogue to the TNA manager: _____

_____ (date of end of experiment + 45 days)

The applicant and PI of the infrastructure have discussed the planned project and have agreed on: (please tick the appropriate boxes)

- ☐ working regulations at the site, including insurance for the people involved
- ☐ technical access to be provided (equipment, consumables)
- ☐ technician support to be provided
- ☐ measurement/analyses services to be provided
- ☐ conditions of access to data and background knowledge of the host
- ☐ conditions for reimbursement by host organization have been explained to the user (forms, condition of reporting etc)
- ☐ use and insurance of instruments brought by the user during the project

¹ This information is meant to help calculate the reimbursement costs to the users.

- ☐ sharing, reporting and publishing of the data and research results
- ☐ the TNA application has been evaluated and both the applicant seeking access and the host facility have confirmed the project.
- ☐ the user and the host have agreed on the conditions of project authorization regarding ethics and animal experimentation.
- ☐ the user(s) and the host have read and agreed on the conditions for TNA specified at the end of this document
- ☐ In each dissemination activity, users have to acknowledge the EC funding/project for their access: *The project leading to these results has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 652831" (AQUAEXCEL²⁰²⁰). This output reflects only the author's view and the European Union cannot be held responsible for any use that may be made of the information contained therein.*

Upon signing the agreement, the applicant commits to report the results of the project to the AQUAEXCEL²⁰²⁰ TNA Manager as soon as the TNA has come to an end, with a deadline of latest 45 days after the end of the experiment.

Participant #1: Full Name (TNA User): _____ Date, Location : Signature:
Participant #2: Full Name (TNA User): _____ Date, Location : Signature:
Date, Location : Full Name (TNA Installation manager): _____ Signature:

A separate specific agreement, whose nature will depend on the type of collaboration, may be signed between the host and the external users: it may either be a Research (partnership) agreement or a hosting or service provision agreement depending on the level of autonomy of the user, the type of support provided by the RI and if it is a joint RI/user research activity. This specific agreement will define the access rules to the RIs, in particular, to the Parties' laboratories, biological materials, equipment or to any other necessary resources. This agreement will have to include the elements listed in the different sections below.

The Parties (i.e. the host and the external user(s)) agree upon the following general principles:

General Principles for providing trans-national access to research infrastructure²

*Research Infrastructures should have an access policy defining how they **regulate, grant and support** Access to Users" (...)*

- ☐ This installation has one: _____ (title/reference number of the document and were to find it)
- ☐ This installation doesn't have one

² [European Charter for Access to Research Infrastructures](#), chapter 4 and Consortium Agreement Article 9.9

Research Infrastructures should have a **research data management policy**. Research Infrastructures and Users should have an **agreement on how to use the data**

- ☐ This installation has one: _____ (title/reference number of the document and were to find it)
- ☐ This installation doesn't have one

The Access provider must request written approval from the European Commission for the selection of user groups requiring visits to the installation(s) exceeding three months, unless otherwise specified in the description of the action.

In addition, the Access provider shall:

- advertise widely, including on a dedicated website, the access offered under this Grant Agreement;
- promote equal opportunities in advertising the access and take into account the gender dimension when defining the support provided to users;
- ensure that users comply with the terms and conditions of AQUAEXCEL²⁰²⁰ Grant Agreement;
- ensure that its obligations under Articles 35 (conflict of interest), 36 (confidentiality), 38 (visibility of EU funding) and 46 (liability for damages) of the Grant Agreement also apply to the users.

Transnational access agreements³

The agreement to be signed between the host organization and the user shall foresee the following elements:

- i) **The hosting of External Users' staff in the premises of the Parties** shall be subject to a hosting agreement. This agreement shall define, amongst other elements, the purpose of the hosting and relevant intellectual property rules;
- ii) **All access rights to the Background and to Results of the Parties** shall be subject to prior approval of the owning Party/ies, via a license agreement. The access rights shall be granted on a non-exclusive and non-transferable basis;

Before the implementation of the TNA project (during the application), the parties (users and RI managers) should determine the background of the host to which they are ready to grant access rights. Conversely, both parties should agree that all background not listed in this notice shall be explicitly excluded from access right.

- iii) **Access and exchange of biological material and software belonging to the Parties** to External Users shall be subject to the signature of a material transfer agreement (MTA);
- iv) **Access to the AQUAEXCEL²⁰²⁰ RIs by the External Users** will be subject to the signature of a specific agreement which shall, in particular, define the conditions of use of the RIs, the financial terms and the rules of intellectual property which will apply in the frame of this access. In particular, if the staff employed by the involved RIs effectively works and cooperates with the External User, a partnership agreement shall be signed in the conditions defined at v) hereinafter;
- v) **When within the frame of a research programme set on a common initiative**, the Parties and the External Users shall sign a partnership agreement. The Parties and the External Users shall agree to share the intellectual property of all the Results developed during this programme ;

³ Consortium Agreement Article 9.9

- vi) **The Parties shall ensure that External Users have signed all necessary insurance policies** to insure their activity against all risks and liabilities lying upon them;
- vii) **The conditions of confidentiality, publication and communication** shall be expressly mentioned in any of the above mentioned specific agreements signed between the External Users and the concerned Parties.

Reporting and Dissemination

- Only user groups that are allowed to disseminate the results they have generated under the action may benefit from the access, unless the users are working for SMEs⁴. Hence, it is an obligation to **publish** the **results** from the TNA project in the project database at a minimum. It is not required to develop a scientific publication, although it would be advantageous.
- As a condition for funding, each TNA user/user group which has been granted access to an AQUAEXCEL²⁰²⁰ infrastructure is committed to provide a report to the AQUAEXCEL²⁰²⁰ RI manager on the experiment carried out, and the results. This will be communicated to the EU and will allow the users to benefit from AQUAEXCEL²⁰²⁰ advertisement through the project's communication tools (newsletter, website...).
- In each dissemination activity, users should acknowledge the EC funding/project for their access: *The project leading to these results has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 652831" (AQUAEXCEL²⁰²⁰). This output reflects only the author's view and the European Union cannot be held responsible for any use that may be made of the information contained therein.*
- In case of scientific publication, the user must publish in **open access**, either gold (paid for) or green (author version in a public repository).
- Following their TNA project, users have to submit the completed project catalogue template summarizing results to the TNA manager. The best catalogues will be selected by the AQUAEXCEL²⁰²⁰ Industry and Research Advisory Panel and the selected users will be given financial support to attend a selected scientific conference or industry event to disseminate their results. Guidelines are available on www.aquaexcel.eu

Costs for TNA (visits and experiments) and deviations

Conditions for reimbursement shall be compliant with the internal rules of the host institution.

The maximum daily allowance for TNA visits is(€)/person

The maximum allowance for travel is [..... (€)/person] [or based on real costs in the limit of €/person]

In case the TNA experiment implies that the users' visit is longer than 7 consecutive days, weekends shall be taken into account for the reimbursement of the user (daily allowance). The same happens in case there is a national holiday during the stay.

The time required for local staff support should be estimated before the start of the TNA project's implementation and be mentioned in the contract.

Deviations

- Any change, in the limit of 25% of the total number of units of access initially validated by the Selection Panel, for the same TNA project requires an agreement between the User and the Host. If the difference of number of units of access exceeds 25% or leads to a new project, it will have to go through a reviewing process again (AQUAEXCEL²⁰²⁰ Selection Panel).

⁴ Article 9.9 Consortium Agreement

- Any change in personnel on the project requires authorization by the Host and Selection Panel. A CV of the substitute person must be sent to the WP1 Leader and/or uploaded to the TNA online application and management system.
- Any change in the travel dates and number of days initially agreed for the stay of the user shall be first validated with the host. The host may refuse to reimburse these costs if it was not informed and did not agree before the change occurred.
- Unpredictable problems and Force Majeure: on the host side, some deviations may occur out of its control: impossibility to perform the experiments because of weather conditions or for technical or biological reasons (e.g. fish death, broken apparatus, instrumentation damage, illness, flight cancellation). In this case, an agreement will be sought between the host and the user to postpone the experiment and/or the visit.
- Unforeseen costs: any need to use facilities or supplies that were not previously anticipated by the host and the users (analyses, chemicals, shipping to/from the Infrastructure etc) may lead to additional costs for the users unless the host accepts to cover them. The level of reliance of the user on the local RI staff should be anticipated by the host and the user through telephone/video conference or any other relevant means as early as possible and before the visit/the beginning of the experiment.
- In case of use of hazardous products and/or biohazards conditions, of specific health and safety conditions in the host facilities or in case of need for field collection of resources (permits), specific clauses will be added in the agreement.

Conclusion

This term sheet has been circulated to all the partners which are involved in the TNA part of AQUAEXCEL²⁰²⁰ (Research Infrastructure Managers) and their feedback was included.

This tool will not be compulsory but aims to help TNA managers and External users anticipate any possible issue upstream.

If needed, this document will be updated in the course of the project to address specific needs.

Glossary

AQUAEXCEL²⁰²⁰: AQUAculture Infrastructures for EXCELlence in European Fish Research towards 2020

IRAP Industry-Research Advisory Panel

IP Intellectual Property

TNA Transnational Access

Document information

EU Project N°	652831	Acronym	AQUAEXCEL ²⁰²⁰
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		CI Classified, information as referred to in Commission Decision 2001/844/EC.		

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03/07/2016	2	Bénédicte Ferreira	2 nd version reviewed by 2 nd reviewer Marieke Reuver and all TNA partners
11/07/2016	3	Bénédicte Ferreira	Last version validated by the coordinator

Annex 1: Questionnaire sent to each RI manager

Defining a Term Sheet for TNA users and Host infrastructure regarding conditions of access and specific IP issues

According to the EU Charter for access, Research Infrastructures should have a policy defining how they regulate, grant and support Access to Users. *The annotated Model Grant Agreement, article 16, states that the access provider must ensure that its obligations under Articles 35 (conflict of interest), 36 (confidentiality), 38 (promotion & visibility of EU funding) and 46 (liability for damages) also apply to the users.* The aim of this questionnaire is to **better define the needs at the infrastructure level** in relation with hosting an external user and propose something **useful** to the project and to the host infrastructure. The term sheet will take the form of a **“check list” of general principles** to be known beforehand by both the TNA user and the RI manager (but it is not a contract).

General

1. Will a non-binding term sheet be helpful in managing user access to your infrastructure or do you think a formal agreement is necessary?

Intellectual Property (IP) aspects

2. In previous FP7 infrastructure projects (FP7-Aquaexcel and other), did some IP problems arise during the application phase and discourage people from applying to your infrastructure? If yes, please give details.

3. In previous FP7 infrastructure projects (FP7-Aquaexcel and other), did some IP problems arise during the TNA access to your facility? ? If yes, please give details.

4. Did your infrastructure sign contracts or agreements with users during previous EU (infrastructure) projects regarding IP? If yes, is it possible for you to copy us a template /anonymized copy in order to help us build the term sheet ?

5. Do you think publication strategy (co-authorship, acknowledgements, timing, acknowledgement of EU funding) regarding TNA should be agreed in advance with the users ?

6. Are there other specific needs on your side (RI managers) in terms of IP?

7. Who is in charge of such contracts & issues in your organisation (IP/Technology Transfer officers)?

Other aspects that could/should be part of the term sheet

8. Do you think that this document should include the dates of the visit and the number of units of access to be signed by the TNA users and RI managers?

9. What other issues arose in FP7-Aquaexcel that could be addressed in a term sheet?
e.g. users delaying projects, unforeseen costs, too much reliance on infrastructure staff, need to use facilities or supplies that were not previously anticipated, misunderstandings over expense payments, deadline for implementing the access etc ?

10. Should be term sheet specify that expenses (all or part) will not be paid until certain milestones or deliverables have been met (e.g. completion of evaluation forms or delivery of results)? Or even require compensation (up to the projected cost of access) to be paid to the Host Infrastructure if the visiting party default on their obligations or cause any damage or loss?

11. Any specific requests for additions/changes to the TNA application form? (See <https://docs.google.com/document/d/1NiJS3fZZJi8mVLrqnjt8F9beBm3fKRko3VyJY1gO8Fc/edit?usp=sharing>)

12. Any specific suggestions for questions to be addressed to the RI Manager by the TNA Coordinator (John Bostock)? (i.e. see Section 14 of the Application form - <https://docs.google.com/document/d/1NiJS3fZZJi8mVLrqnjt8F9beBm3fKRko3VyJY1gO8Fc/edit?usp=sharing>)

13. Do you have suggestions for efficiently recording user time and completion of work at infrastructure?

Communication & other

14. How to properly present the RI facilities and terms to prospective users (handbook/website etc?)

15. Would a meeting/phone conference of all AE2020 RI managers be useful for you? If yes, which topics would you like to discuss?

16. In the case of your infrastructure, is there an RI Assistant Manager or equivalent who should be copied into communications etc?

17. In your opinion will a term sheet be useful (and under which conditions)? How to avoid to complicate things and long procedures with legal services?

18. Any other remark, need or question? Which other aspects should be taken into account in the term sheet?

Thank you for your time and contribution!