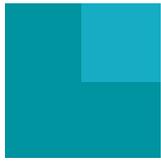


# BIOINNOVATION CONSORTIUM AGREEMENT

*SUPPORTED INNOVATION COLLABORATION*



# BIOINNOVATION CONSORTIUM AGREEMENT

## *SUPPORTED INNOVATION COLLABORATION*

### **BioInnovation Model Consortium Agreements**

BioInnovation is a cross-industry initiative supported by the Swedish Agency for Innovation Systems (VINNOVA), the Swedish Energy Agency and the Swedish Research Council Formas to develop strong, competitive and innovative materials, products and services based on renewable raw materials. BioInnovation supports Sweden's shift to a bio-based economy.

BioInnovation has commissioned the drafting of three separate model consortium agreements for the benefit of and support to the innovation project consortia of BioInnovation. To address the various needs of different types of consortia, the three agreements have separate regulations pertaining to inter alia governance and ownership to results while at the same time maintaining the same structure. The agreements are the Value Chain Innovation, the Innovation Hub with Collaborative Activities and the Supported Innovation Collaboration.

BioInnovation provides these model agreements without assuming any warranty or responsibility and all use takes place at the parties own risk. The parties are advised to take all necessary steps, including their own legal examination and assessment, to cover their interests and protect their rights. The model agreements are at the free disposal of all BioInnovation projects. The consent of BioInnovation shall be obtained prior to any other use.

Stockholm in October 2015

#### **Updates - February 2016**

- *Correction of typographical errors and other writing mistakes.*
- *8.3.6. New clause and corresponding amendments in 8.3.3 and 8.3.4, introducing an obligatory period of negotiation before the rights to grant sub-licenses and the liability for costs of patenting shall apply.*
- *8.4.2. Addition pertaining to the holding companies of a college or university.*
- *8.4.3. (New numbering) Amended obligation pertaining to results of an academic researcher, from an obligation to transfer also "sideground" developed during the term, to an obligation to inform and to regulate.*
- *14.2.2 Amendment as to use of terminology as the Stockholm Chamber of Commerce no longer separates its Mediation Institute from its Arbitration Institute.*

#### **Updates - December 2016**

- *7.1.6 Clarification pertaining to the intended limitation of the purpose for which background information not reported may be used.*
- *8.3.4 Clarification regarding co-owners not being liable for reimbursement of costs incurred before the end of negotiation period.*
- *8.3.4 Additions pertaining to patent applications: all co-owners shall receive a copy prior to the filing, and requests for pre-publication shall not be allowed.*
- *12.1 Clarification regarding the time at which the agreement shall be binding upon a party.*

#### **Updates - November 2016**

- *8.2.7 New section to clarify the requirement on the parties to comply with applicable competition law, such as the rules on state aid.*

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## PARTIES

[name of party]  
[reg. no. or other identification], [address]

[name of party]  
[reg. no. or other identification], [address]

[name of party]  
[reg. no. or other identification], [address]

[name of party]  
[reg. no. or other identification], [address]

[name of party]  
[reg. no. or other identification], [address]

below referred to as Party and Parties respectively.

## 1. PREAMBLE

BioInnovation is a cross-industry initiative supported by the Swedish Agency for Innovation Systems (VINNOVA), the Swedish Energy Agency and the Swedish Research Council Formas to develop strong, competitive and innovative materials, products and services based on renewable raw materials. BioInnovation supports Sweden's shift to a bio-based economy.

This present agreement has been drafted using the model agreement **Supported Innovation Collaboration**. BioInnovation provides model agreements without assuming any warranty or responsibility and all use takes place at the parties own risk. The parties are advised to take all necessary steps, including their own legal examination and assessment, to cover their interests and protect their rights.

The model agreements are at the free disposal of all BioInnovation projects. The consent of BioInnovation shall be obtained prior to any other use.

*[Introduction to the project]*

## 2. DEFINITIONS

**Academic Party** – shall mean a Party being a Swedish university or college.

**Accession Agreement** - shall mean such agreement whereby a Joining Party accedes to this Agreement.

**Background Information** - shall mean Materials, Know-How or a patented invention, or an invention for which patent is pending, which is submitted pursuant to Section 7 for use in the implementation of the Project by the Party owning said information.

**Business Day** – shall mean an ordinary day of business in Sweden, i.e. a day other than Saturday and Sunday and public holidays.

**Commencement Day** – shall mean the date the Project commenced; the Commencement Day is [date].

**Confidential Information** – shall have the meaning given in Section 9.2.

**Contribution** – shall mean the co-financing of a Party to the Project, comprising both financial (cash) and non-financial (in-kind) contributions such as work time, materials, equipment and resources, made available for purposes of implementing and executing the Project.

**Declaration of Result Ownership** – shall mean the process by which a Result is transferred to a Party or group of Parties.

**Group Company** – shall mean any and all companies within the group to which the Party belongs in accordance with the Swedish Companies Act (Sw. Aktiebolagslag (2005:551)), which for the avoidance of doubt and purposes of this Agreement includes the Party's ultimate mother company and/or any and all of such company's subsidiaries.

**Joining Party** – shall mean such party which pursuant to Section 5 may join the Project after the Commencement Day.

**Key Contribution** – shall mean a Contribution, in-kind or financial, committed by a Party which pursuant to Section 6.1.3 is deemed to be a determinant factor to the realisation of the Project as it is planned.

**Know-How** – shall mean applied or applicable technical knowledge, methods and data; which is specific, detailed and identifiable; which is used for realizing or carrying out in practice techniques serving industrial purposes; and which is secret in character and may be of commercial value to the holder.

**Managing Party** – shall be the Party so named in the list of Parties.

**Materials** – shall mean materials, compounds and/or substances made available for use in the Project.

**Primary Party** – shall be a Party so named in Section 3, and any reference to a Primary Party shall be understood as comprising also any and all of such Party's Group Companies.

**Project** – shall mean the research project governed by this Agreement, described in the Project Plan attached in Appendix 1 and comprising the activities set out therein.

**Project Agreement, also called Agreement** – shall mean this agreement including all appendices as these stand at each given time.

**Project Board** – shall be body of representatives established pursuant to Section 5.

**Project Board Member** – shall be a representative of a Party appointed as member of the Project Board.

**Project Manager** - shall mean the person appointed to lead the activities, scientifically and operationally, of the Project.

**Project Plan** – shall be documents describing the Project, attached in Appendix 1.

**Project Work Package(s), also called Work Package(s)** – shall mean the various research and development Work Packages of the Project, as described in Appendix 1 as it stands at each given time.

**Result** - shall mean a new invention, new software or new Know-How, which is invented, created, developed or discovered within the Project under this Agreement.

**Supporting Party** – shall be a Party so named in Section 3.

**Term** – shall have the meaning given in Section 12.

### 3. PRESENTATION OF PARTIES

#### **PRIMARY PARTIES** [at least two]

Managing Party: [name of party], below referred to [short], [description/main focus area/function to the Project, etc.];

[name of party], below referred to [short], [description/main focus area/function to the Project, etc.]; and

[name of party], below referred to [short], [description/main focus area/function to the Project, etc.].

#### **SUPPORTING PARTIES**

[name of party], below referred to [short], [description/main focus area/function to the Project, etc.];

[name of party], below referred to [short], [description/main focus area/function to the Project, etc.]; and

[name of party], below referred to [short], [description/main focus area/function to the Project, etc.].

### 4. THE PROJECT

4.1. The Project is a project under the BioInnovation initiative. Even though BioInnovation as such is not a party to this Agreement, the Project shall be conducted also for the benefit of the initiative and its other projects.

4.2. The details of the Project are set forth in the documents of Appendix 1. The Project shall be conducted according to said documents as they stand at each given time.

### 5. PROJECT GOVERNANCE

#### 5.1. *The Managing Party & the Project Manager*

5.1.1. The Project shall be managed and coordinated by the Managing Party, whose special tasks and responsibilities are set out in the relevant sections of the Agreement.

5.1.2. The Managing Party shall appoint a Project Manager to be the operational leader of the Project. The Project Manager shall supervise the activities of the Project and report to the Managing Party and to the Project Board. The Project Manager may be assisted by one or more assistants to be appointed by the Managing Party and of which the Project Board shall be informed. The Project Manager shall assume responsibility for any tasks performed by the assistants.

#### 5.2. *Establishing the Project Board*

5.2.1. The Project Board shall facilitate the aims of the Project, inter alia by being a platform for information sharing and decisions of the Project. The representative of the Managing Party shall be its chairman, to preside over the meetings and lead the work of the Project Board.

5.2.2. The Project Board shall consist of one representative appointed by each Party, to serve as a Project Board Member, and one representative to serve as Deputy Project Board Member. Each Primary Party shall have one vote, to be exercised by its appointed representatives. For the avoidance of doubt, a Supporting Party shall not have a vote. The Project Board Member and the Deputy Project Board Member of a Party shall be allowed to be simultaneously present at the meeting. A Party may at any time, by written notice to the Project Manager change or revoke its appointed representatives. All actions and omissions of the appointed representatives of a Party shall be fully binding on said Party.

5.2.3. A Party may waive its right to having representatives and thus the right, for a Primary Party, to exercise its vote. A Primary Party having thus waived its right to representatives shall be deemed to have accepted all decisions duly made by the Project Board.

5.2.4. Should an appointed representative not be an employee of the Party, or of a Group Company of such Party, the approval of the other Parties shall be obtained for the appointment.

5.2.5. The Project Board may establish written rules of procedure for their work; comprising for example the organisation within the Project Board, the allocation of practical work among the representatives, the Managing Party and the Project Manager, how often the Project Board shall meet, and to which extent the deputies shall participate in the work of the Project Board and be called to its meetings.

5.2.6. The names and titles of all representatives and contact persons of the Parties, information regarding the Work Packages of each Party and the contact details of the representatives, shall be set out in Appendix 3. Each Party shall ensure that the information in said appendix is at all times updated. The Project Manager shall keep said appendix.

### **5.3. Meetings of the Project Board**

5.3.1. The Managing Party shall ensure that Project Board meetings are held when needed and not less than three times each calendar year.

5.3.2. The Project Board shall be convened by the chairman, on the chairman's own initiative or following a request from any of the Parties.

5.3.3. The notice convening the meeting shall include an agenda in relevant detail, clarifying such agenda items requiring decisions to be made. It is acknowledged that meetings may take place by telephone conference or other technical mean. The notice shall, unless otherwise agreed, be distributed to the Project Board Members and to the Project Manager no later than two weeks prior to the date of the meeting.

5.3.4. The Project Board shall be competent to decide on all matters regarding the Project, including amendments, modifications and changes to appendices, and prolongations of the Term pursuant to Section 12.2.

5.3.5. The Project Board shall be competent to make decisions providing that the meeting has been duly summoned and more than half of the total number of Primary Parties are represented at the meeting.

5.3.6. The Supporting Parties, as well as the Project Manager, shall have the right to speak at the meeting and their opinions and input shall be valued and considered.

5.3.7. Should both the Project Board Member and the Deputy Project Board Member of a Primary Party be present at the meeting, only the Project Board member shall have a vote.

5.3.8. The opinion of more than half of the total number of Primary Parties shall be the decision of the Project Board, regardless of the number of Primary Parties represented at the Project Board meeting. Upon equal number of votes, the Parties shall once more deliberate the matter after which a new vote shall be made by the Primary Parties until a decision is made or the vote is postponed.

### **5.4. Minutes**

5.4.1. The meetings of the Project Board shall be recorded in minutes. The minutes shall include: all decisions made by the Project Board and any dissenting opinions and the decisions to be numbered continuously, Background Information presented and the information summary to be attached, Results reported and the brief report to be attached, and any decisions taken pertaining to Declaration of Result Ownership, including the owner(s).

5.4.2. The minutes shall be signed and verified. The original shall be kept by the Managing Party and copies shall be distributed to the Parties upon request.

### **5.5. Joining Parties**

5.5.1. For the purpose of procuring additional competence as well as financial and intellectual contributions to the Project the Parties may suggest potential Joining Parties to the Project, as both Primary Parties and Supporting Parties. Should a new party be proposed to join the Project, such initial proposition shall be considered by the Project Board at a meeting.

5.5.2. The initial proposition, which shall include a brief report on the Joining Party as well as if such party is proposed as Primary Party or Supporting Party, must have been submitted with the notice and the agenda prior to the Project Board meeting or else the Project Board shall not be competent to make a decision.

5.5.3. Should the Project Board decide in favour of the initial proposition, the Managing Party shall be assigned to lead the discussions and negotiations with the Joining Party.

5.5.4. For the sole purpose of the facilitating the discussions and negotiations, the Managing Party shall be permitted to disclose Confidential Information to the Joining Party. Prior to such disclosure, the Joining Party shall have signed a confidentiality agreement pertaining to such information, not less strict than the provisions contained in this Agreement, and the disclosure shall be as limited as possible.

5.5.5. After having finalized the negotiations, the Managing Party shall present a final proposition for the accession of the Joining Party at a meeting of the Project Board. The final proposition, which shall include a report on the terms and conditions of the accession of the Joining Party, must have been submitted with the notice and the agenda prior to the Board meeting or else the Project Board shall not be competent to make a decision.

5.5.6. Should any one of the Primary Parties, at the initial or the final proposition, object to the proposed Joining Party on the grounds that such party is a competitor of the Primary Party in areas relevant to the research theme of the Project, or that the accession of the proposed Joining Party would otherwise affect the Primary Party adversely, the Project Board shall decide against the proposition.

5.5.7. Should any one of the Supporting Parties object to the proposed Joining Party such Supporting Party shall be given reasonable time to withdraw from the Project prior to the accession of the Joining Party and on the terms of Section 12.5.

5.5.8. Should the Joining Party be accepted by the Primary Parties, the Joining Party shall be admitted to accede to the Project by the signing of an Accession Agreement on the terms and conditions agreed. Following accession, the Joining Party shall be regarded as a Primary Party or a Supporting Party, on equal terms as other Parties of such category.

5.5.9. Should a Supporting Party be proposed to shift category and become a Primary Party such proposition shall be assessed and decision be made pursuant to this Section 5.5.

## **6. PROJECT BUDGET AND COSTS**

### **6.1. The Yearly Project Budget**

6.1.1. The overall project budget of the Project is attached in Appendix 2.

6.1.2. The Managing Party shall prepare and propose a project budget for each Project Year to be presented to the Project Board. The project budget shall cover all binding commitments of Contributions from the Parties as well as binding financial contributions from third parties, inter alia from funds and government financiers.

6.1.3. A Contribution may when it is committed to the Project be deemed by the Managing Party and the Project Board to be a Key Contribution. Should the contributing Party not accept that the Contribution be defined as a Key Contribution, said Party shall without undue delay withdraw such contribution from the Project.

6.1.4. [Time provided pertaining to work as representative in Project Board, unless associated with additional work benefitting also other Parties such as being chair or meeting secretary, shall not be regarded as a Contribution.] OR [Time provided pertaining to work as representative in Project Board shall be regarded as a Contribution.]

6.1.5. In order to be allocated to the project budget, the contributions shall be set out to be made available to the Project within the year of the project budget. The different kinds of contributions, as well as any terms and

conditions associated with the contributions which may be relevant to the project budget, shall be stated in the project budget. The proposed project budget may allocate the funds available to the different actions of the Project Plan.

6.1.6. Unless otherwise agreed, the proposed project budget shall be submitted to the Project Board no later than two months prior to the commencement of the new Project Year shall for a decision on the project budget for the coming Project Year. The Project Board shall seek to have a project budget established no later than one month prior to the commencement of the new Project Year.

### **6.2. Amendments of the Project Budget During a Project Year**

Should the Managing Party find that the project budget established by the Project Board for a Project Year proves to be insufficient, pertaining to the means available to the Project to cover the costs related to the planned activities of said Project Year, the Project Board shall decide upon actions to solve the matter.

### **6.3. Requirements Pertaining to External Contributions**

6.3.1. The Managing Party shall actively promote the complying of requirements from external financiers pertaining to external contributions by, inter alia, continuously inform the Parties of any such requirements and by efforts to settle any ambiguities in the implementation of said requirements.

6.3.2. Insofar as a Party receives additional funding which falls outside the scope of this Agreement the Party shall ensure that the receipt of such funding is compatible with the EU State Aid rules. The Financial Contributions of a Party may not be conditioned by the right of such Party to receive additional funding in relation to the EU State Aid rules.

### **6.4. Public Procurement**

The Parties shall comply with any and all applicable legal requirements (if any) on public procurement when acting as contracting authorities on behalf of the Project.

## **7. BACKGROUND INFORMATION**

### **7.1. Providing Background Information**

7.1.1. Each Party may provide Background Information to the other Parties for the implementation of the Project. The Background Information of a Party shall either be presented to the Managing Party prior to the signing of this Agreement or it shall be presented at a meeting of the Project Board.

7.1.2. At the presentation of the Background Information, the Party providing the Background Information shall submit a short information summary in writing comprising all relevant aspects of the information.

7.1.3. The Managing Party, through the Project Manager, shall keep a list of all Background Information provided which shall be continuously numbered. Background Information presented shall be noted in the minutes of the meeting of the Project Board.

7.1.4. The Party or Parties providing the Background Information shall unilaterally define the terms and conditions upon which such Background Information is provided, including the terms and conditions pertaining to access rights for exercising a Result for which the Background Information has been used to develop or invent. All terms and conditions shall be presented and submitted in writing at the time of the presentation of the Background Information, and any restrictions presented at a later time shall not be binding upon the Parties.

7.1.5. Should no terms or conditions have been presented, or should these not have been submitted in writing, such Background Information shall be deemed to have been provided on a royalty-free basis to be used for the sole purpose of implementing the Project and each Party shall be deemed to also have been granted a royalty-free licence for the purpose of exercising a subsequent Result which may be dependent on said Background Information. For the avoidance of doubt and unless otherwise agreed, a license for the purpose to exercise a subsequent Result shall not be interpreted as comprising a right to such use of said Background Information which is separated from the subsequent result or otherwise independent.

7.1.6. Should a Result be invented, created, developed or discovered using background information which has not been provided pursuant to Sections 7.1.1 and 7.1.3, and should said Result be dependent on such background information, the information shall, for the exclusive purpose of exercising the Result dependent on the background information, be deemed to have been submitted as Background Information pursuant to 7.1.5 and shall retroactively and exclusively for said purpose be noted in the list of Background Information. For the avoidance of doubt: licence to use the background information upon which said Result is dependent for any other purpose, for example for the purpose of implementing the Project, shall not be deemed to have been granted.

## **7.2. Providing Materials**

7.2.1. Materials may be provided as Background Information to the other Parties for the implementation of the Project. Unless otherwise agreed in writing, Materials provided under this Agreement may only be used within the Project, for its implementation. Materials are provided as such, and shall not be understood as comprising also rights to any intellectual property associated to it.

7.2.2. Materials provided are subject to Section 7.1 above, with the addition of this Section 7.2.

7.2.3. The Party providing the Materials shall submit a brief report to the Project Manager on the Materials including a specification of the Materials, the amount, the intended use and other relevant information.

7.2.4. Materials may only be transferred among Parties. Any transfer of Materials outside of the group of Parties must, prior to such transfer, be accepted in writing by the Party providing the Materials.

7.2.5. As Materials are transferred between Parties, a Party receiving Materials shall keep detailed records of the Materials, and keep documentation and records accessible to the Project Manager and to the Party having initially provided the Materials to be presented upon request. Before re-transferring the Materials, whether returning it to the providing Party or to another Party, it shall be reported to the Project

## **8. RESULTS**

### **8.1. Reporting of Results**

8.1.1. The Parties commit to reporting all findings which may constitute Results to the Project Manager. The potential Result shall be reported by the Party, or the joint Parties as the case may be, having invented, created, developed or discovered said Result.

8.1.2. The Project Manager shall report the Result to the Project Board. The reported Result shall be on the agenda for the next meeting of the Project Board. The Party having reported the Result shall submit a brief report on the Result in relevant detail to be distributed with the notice convening the meeting. The report shall include information on any Background Information having been employed when developing the Result.

8.1.3. Each Result reported shall be continuously numbered and be noted in the minutes of the Project Board meeting, including information on Background Information having been employed for such Result.

### **8.2. Ownership to the Result**

8.2.1. The legal, economical and beneficial ownership to any Result shall initially be vested in the Party having reported the Result. Each Party hereby consents to submit any Result which such Party may develop and/ or invent under this Agreement, whether alone or in collaboration with other Parties, to a Declaration of Result Ownership and to transfer the Result in accordance with the decision of the Project Board. The Declaration of Result Ownership shall be understood as the process by which, following such decision by the Project Board, the full and undivided ownership and all rights, titles and interests to such Result is transferred and assigned, without compensation, to any designated Primary Party or group of Primary Parties.

8.2.2. The Result reported shall be on the agenda for the following meeting of the Project Board. The chairman shall establish which of the Primary Parties are interested in ownership of the Result. Should one or more Primary Parties be interested in ownership of the Result, the Project Board shall decide that the Result be subject to a Declaration of Result Ownership by which the Result is transferred and assigned to the Primary Party or Primary Parties choosing to become owners or co-owners. All remaining Primary Parties shall have a consideration period of 30 days, as of the date of the meeting of the Project Board, during which they are entitled to become co-owners of the Result by a written notice to the Project Manager and to the owner(s) of the Result.

8.2.3. Following a decision by the Project Board that a Result shall be subject to a Declaration of Result Ownership, all rights, titles and interests in and to the Result, including the right to dispose of and command of such Result, shall be deemed to have been transferred and assigned by the owner(s) to the designated Party or group of Parties.

8.2.4. The previous owner(s) hereby undertake(s) to execute relevant documents in favour of the new owner(s) following the Declaration of Result Ownership, as the owners may reasonably require in order to secure their rights to the Results.

8.2.5. Following a Declaration of Result Ownership, the owner(s) of said Result shall grant the other Parties a licence to the Result as Background Information pursuant to Section 7 and it shall be noted and numbered in the list of Background Information.

8.2.6. For the avoidance of doubt, Parties not being owners of the Result shall not be entitled to use the Result in any other way than as granted in the Background Information licence.

8.2.7. When transferring rights pertaining to Results and/or Background Information, each Party shall comply with any and all applicable legal requirements so as to not distort competition in the internal market of the European Union, specifically but not limited to compliance with state aid requirements.

### **8.3. *Jointly Owned Results***

8.3.1. Should a Result be jointly owned, and should the co-owners not have executed an agreement pertaining to the ownership, or in writing have agreed otherwise, each of the co-owners shall, without any prior consent from and without compensation to the other co-owner(s), have a right to use and to exploit the jointly owned Result. Such use and/or exploitations may not commence until the Result has been treated by the Project Board and, if relevant, a Declaration of Result Ownership process has been completed pursuant to Sections 8.2.2 and 8.2.3.

8.3.2. The right to use and to exploit the Result pursuant to Section 8.3.1 shall at all times be subject to the confidentiality undertaking pursuant to Section 9.4, so as to not by the breaching of the confidentiality compromise the possibility to obtain patent protection for said Result. Should the usage of a co-owning Party or such Party's licensee pursuant to Section 8.3.3 by negligence cause a breach of the confidentiality of the Result attributable to the co-owning Party, such Party shall be fully liable to the other co-owners.

8.3.3. As of the end of the negotiation period of Section 8.3.6., the rights of the co-owners shall include the right to grant non-exclusive licenses to third parties. Such licenses shall be executed in writing, shall include an obligation for the licensee to protect the confidentiality of the Result and may not contain a right for the licensee to sub-license.

8.3.4. Each of the co-owners of a Result may, in the name of all co-owners, apply for patent protection for the said Result, which shall not be regarded as a breach of the confidentiality undertaking. Costs pertaining to the preparation and prosecution of a patent application as well as costs for maintenance shall, unless otherwise agreed, be borne by the co-owners in equal shares. A co-owner incurring such expenses shall, unless otherwise agreed, be reimbursed by invoice. No one of the co-owners shall however be liable for the reimbursement of costs incurred before the end of the negotiation period of Section 8.3.6. For information purposes only, all co-owners shall receive a copy of the patent application before it is filed. No one of the co-owners shall be entitled to request pre-publication of a patent application without the prior written consent of all other co-owners, and a request for pre-publication without consent shall be regarded as a breach of the confidentiality undertaking of the requesting Party.

8.3.5. Each of the co-owners of said Result shall be entitled to defend the Result at its own expense. Any award which such defence may bring, through a settlement or a court verdict, shall be collected solely by such co-owner having defended the Result.

8.3.6. Following the consideration period of Section 8.2.2 and in good faith and loyalty, the co-owners shall initiate negotiations aiming at a contract governing the co-owned Result or an agreement regarding the dissolution of the joint ownership and the conditions therefore. Unless the co-owners agree otherwise, the negotiation period shall last for 6 months as of the end of the consideration period in Section 8.2.2.

### **8.4. *Academic Parties***

8.4.1. Pursuant to Swedish law Academic Parties, being academic institutions such as colleges and universities, are prevented from owning the patentable Results of their employees.

8.4.2. The employees and consultants of an Academic Party who shall participate in the Project shall be obliged to a complete transfer and assign in writing all rights, titles, interests and obligations in and to any and all Results they may invent, create, develop or discover under this Agreement, to a non-Academic Primary Party to this Agreement designated by said employee or consultant. For the avoidance of doubt, such transfer and assignment need not be without compensation. Should the assignor wish to transfer and assign the potential Results to the holding company of a Swedish college or university, such holding company shall be accepted as an additional Party to the Agreement and as a Work Package Party to each Work Package where the assignor shall participate. Such holding company and the Academic Party of the assignor shall together with the other Parties, led by the Managing Party, agree in writing on the terms and conditions of participation of said holding company in relation to the relevant Academic Party.

8.4.3. The transfer and assignment agreement shall also include definitions and provisions regarding the potential rights, titles, interests and obligations of new inventions and Know-How, related to the subject matter of the Project and invented, created, developed or discovered during the Term while falling outside of the scope of this Agreement and thus of the transfer and assignment agreement. The assignor shall exhaustively and in writing inform the non-Academic Party receiving the transfer and assignment, on all relevant undertakings of the assignor during the Term

8.4.4. An employee or consultant leaving the Project during the Term shall upon request be relieved from transfer and assignment of future rights, titles, interests and obligations as of the date of such employee's or consultant's last day of participation.

8.4.5. The non-Academic Party having received the transfer and assignment of an employee or consultant pursuant to Section 8.4.2 shall for the purpose of this Agreement be regarded as being the Party having generated such Result.

8.4.6. Actions taken and work carried out on behalf of an Academic Party which are not of purely administrative nature may only be carried out by individuals who, pursuant to Section 8.4.2 have transferred and assigned rights, titles, interests and obligations.

8.4.7. The Academic Party shall provide the Managing Party with a list of the names of all individuals working in the Project on behalf of the Academic Party. The Academic Party shall keep such list up-dated throughout the Project. All Academic Parties shall provide the Managing Party with a copy of the assign and transfer documents of each individual named in the list. This copy shall be shown to any Party upon request.

## **9. INFORMATION AND CONFIDENTIALITY**

### **9.1. Information Sharing**

9.1.1. All Parties conducting work within the Project shall be obliged to disclose all information in relevant detail pertaining to such work, including its progress. The Parties shall not be obliged to disclose any additional information to other Parties.

9.1.2. For the greater benefit of BioInnovation and its projects and initiatives the Parties agree to provide information of general character and interest from the Project to BioInnovation. Should such information be Confidential Information, the Managing Party shall at all times be entitled to ask the Party or Parties owning the information if it, in whole or in part, may be contributed to BioInnovation. Should the owning Party or Parties agree in writing, and following a decision in the Project Board, the information may be shared.

9.1.3. Should a Party wish to make public certain information inter alia as a scientific publication, as a presentation at a conference or to be included in an application for funding, and should such information include Confidential Information a draft shall be submitted to all Parties and a written approval be obtained from each and every Party prior to making such information public. A Party objecting to making the information public shall be entitled but not obliged to suggest such revisions and amendments as would make the publication acceptable to the Party. Should revisions and amendments be made, the new draft shall be submitted to the Parties for written approval. For the avoidance of doubt, only such specific version of the presentation of said information which each and every Party has approved of, may be made public. The unanimous approval of making a draft public shall imply that the Parties have agreed that information comprised in the draft has ceased to be Confidential Information already at the time of the approval

### **9.2. Confidential Information**

9.2.1. Confidential Information shall mean any and all material, non-public information which is developed, transferred or otherwise obtained under this Agreement, comprising information disclosed between Parties and information which a Party otherwise develops, obtains or identifies through the collaboration.

9.2.2. Information which is or becomes publicly known, other than through breach of this Agreement, or any other undertaking to keep it confidential, shall not be Confidential Information.

**9.3. Public Access to Information and Secrecy Act**  
*[This agreement is not drafted to include parties bound by the principle of public access other than academic parties. Should such other parties participate, the agreement needs to be amended accordingly.]*

9.3.1. Academic Parties are obliged under Swedish law to keep certain information confidential when conducting research and development projects in collaboration with private parties (Chapter 24 § 5, Public Access to Information and Secrecy Act (Sw. Offentlighets- och sekretesslag (2009:400))).

9.3.2. All non-Academic Parties hereby declare that the Project in their opinion shall be understood as comprising such a collaboration referred to in Chapter 24 § 5 of the Public Access to Information and Secrecy Act (Sw. Offentlighets- och sekretesslag (2009:400)). All non-Academic Parties furthermore declare that the keeping confidential of information pertaining to the businesses of the Parties, to Background Information and to Results shall be understood as a prerequisite of their participation in the Project.

#### **9.4. Protection of Confidentiality**

9.4.1. The Parties recognize and acknowledge that they may obtain Confidential Information during the Project. Pertaining to Confidential Information obtained under this Agreement, the Parties undertake to not use it in any way, for its own benefit or the benefit of any third party, except as is explicitly permitted in this Agreement.

9.4.2. Save as expressly permitted by the Agreement, the non-Academic Parties undertake to not disclose any Confidential Information to any third party.

9.4.3. The Parties shall protect the Confidential Information obtained and handle it with care and diligence.

9.4.4. Certain Confidential Information shall be excluded from the undertakings pursuant to Sections 9.4.1 and 9.4.2 of a receiving Party, if proven by the receiving Party that: (i) said information received under this Agreement was already rightfully in the possession of the receiving Party; (ii) said information is or has been received from a third party without any confidentiality restrictions; (iii) said information was independently developed by the receiving Party without the use of any Confidential Information provided under this Agreement; or (iv) said information is or becomes generally available and/or known to third parties without the breach of this Agreement.

9.4.5. The Parties undertake to disseminate Confidential Information only to such employees and consultants who need it for the execution of their work and only for purposes of the implementation of the Project, as well as to its legal and financial advisors. Parties are obliged to ensure that all employees and consultants of the Party who can be expected to come into contact with Confidential Information are informed of and bound by confidentiality undertakings executed in writing no less strict than as required by this Agreement.

9.4.6. Except for Section 9.4.7 below, the confidentiality undertaking of the Parties shall be valid during the Term and shall survive the termination or expiry of this Agreement for an additional period ending on the date following four years after such termination or expiry.

9.4.7. The confidentiality undertaking pertaining to such Confidential Information which constitutes Know-How or Results kept confidential shall survive the termination or expiry of this Agreement and subsist for as long as such Confidential Information is kept confidential by its owner(s).

#### **9.5. Permitted Uses of Confidential Information**

9.5.1. Each Party, together with its Group Companies, shall always in its own business be entitled to use Confidential Information received through said Party's commitment in the Project to the extent such use does not (i) compromise the confidentiality of the information; or (ii) exceeds such Party's right to use information constituting Background Information and/or Results.

9.5.2. A Party wishing to conduct its own internal research and development activities in collaboration with a commercial third party, may in writing request to use specific Confidential Information of another Party for such activities. A Party receiving such a request shall respond within 30 days, the permission not to be unreasonably withheld, and failing to respond to the request shall be deemed to constitute permission. Providing that permission is granted and unless otherwise agreed in writing, the Confidential Information may be used on the following terms: (i) the use shall not exceed such Party's right to use information constituting Background Information and/or Results; (ii) each such collaborative party shall sign a non-disclosure agreement committing to a confidentiality undertaking no less strict than in this Agreement; (iii) a copy of the signed non-disclosure agreement shall be submitted to the owner of the Confidential Information prior to any disclosure; and (iv) each such collaborative party shall only receive Confidential Information on a need-to-know basis.

9.5.3. Subject to the terms of the licences granted to Background Information, the confidentiality undertakings shall not prevent a Party from exercising, on the terms and conditions of this Agreement, its rights pertaining to Background Information and to Results. Such exercising of rights granted shall not constitute a breach of the confidentiality undertaking of a Party.

9.5.4. The confidentiality undertakings shall not prevent a Party from disclosing Confidential Information if required to do so by law or for regulatory purposes, or to comply with the requirements of any stock exchange, or to safeguard and protect its legitimate interests in case of a dispute, provided that, where possible, prior notice of such disclosure is given to the Party owning the information.

## 10. REPRESENTATIONS AND WARRANTIES

10.1. The Parties recognize the importance of competence, knowledge and professionalism to obtain the most favourable outcome of the Project. Each Party therefore undertakes to participate professionally and responsibly in the Project, to conduct all work undertaken in accordance with the skill, care and diligence to be expected by similar professionals under similar circumstances, and to work and act in accordance with general professional standards in the field. Each Party assumes full responsibility for all personnel, employees and consultants acting on behalf of the Party.

10.2. Each Party represents and warrants that it has full rights in and to Confidential Information provided and information provided as Background Information for the Project, and that it has and shall have the right to disclose and grant rights to such Information to the other Parties. Should an Academic Party provide Background Information owned by its employees such Academic Party represents and warrants that it has obtained in writing all such rights it shall need as to fulfil its obligations in this Agreement.

10.3. The Parties shall use reasonable efforts to conduct their work in the Project in such a way that, to the best of their knowledge and belief, neither the work itself nor any Results will infringe any third party's intellectual property rights. Unless otherwise specifically stated, inter alia by referring to state of the art, all work by the Parties shall, to the best of their knowledge and belief, be their original work.

10.4. To the best of each Party's knowledge, there are no actions pending or threatened or any claims being asserted against such Party by any third party pertaining to Background Information submitted, to the work conducted by the Party in the Project or to any Results invented, created, developed or discovered by the Party. Should such claims or actions arise, an affected Party shall immediately give notice to the Managing Party.

10.5. Each Party represents and warrants that all individuals conducting work in the Project have fully assigned to such Party any and all rights they would otherwise have to any Results or Background Information generated, save as pursuant to Section 8.4.2. The Parties assume full responsibility for any compensation, financial or otherwise, which said individuals rightfully may claim in their capacity as inventors.

## 11. LIABILITY

### 11.1. *Research activities*

Uncertainties of effects and results are typical to all research and development activities and specific outcomes of the activities in the Project cannot be guaranteed. The

Parties acknowledge and accept these uncertainties and agree not to bring any claims against any other Party to this Agreement, pertaining to the anticipated outcome or the results and success of the Project.

### 11.2. *Breach of Contract, Rectification and Compensation*

If a Party fails to comply with its obligations under this Agreement each of the other Parties shall be entitled to claim prompt rectification. Should such failure of the Party cause a delayed performance of activities for which said Party is responsible, each of the other Parties shall be entitled to claim accelerated performance by the failing Party, pertaining also to activities not yet commenced. Subject to the limitations set out in Section 11.3 below the aggrieved Parties shall also be entitled to compensation from the defaulting Party corresponding to the losses and damages incurred as a result of the breach of contract.

### 11.3. *Limitations of Liability*

11.3.1. In any event, and notwithstanding anything contained in this Agreement save as pursuant to Section 8.3.2 above and except in the case of gross negligence or wilful misconduct or in relation to death or personal injury caused by the negligence of the defaulting Party or its employees or consultants while acting in the course of their employment or commission, a Party's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement shall be limited to an amount corresponding to the defaulting Party's aggregated Contributions and [1.000.000 SEK]; whichever is the greater.

11.3.2. In any event, and notwithstanding anything contained in this Agreement save for the exceptions set out in Section 11.3.1 above, under no circumstance shall a Party be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (i) for any anticipated increased costs or expenses, or (ii) for any loss of profit, business, contracts, revenues, or anticipated savings, or (iii) for any special, indirect or consequential damage of any nature whatsoever.

11.3.3. In any event, and notwithstanding anything contained in this Agreement save for the exceptions set out in Section 11.3.1 above and provided that Section 10.3 has been fully satisfied, under no circumstance shall a Party be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise for any damage incurred by another Party by reason of the use of Background Information provided or by reason of any kind of errors or harmful effects of such Background Information or the use of such Background Information.

### 11.4. *Force Majeure*

Should a Party, due to a situation of force majeure, fail to fulfil any of its obligations under this Agreement, the failure shall be considered neither a breach of, nor a default under, the Agreement. Force majeure shall mean any sit-

uation beyond the reasonable control of a Party, which by the exercise of due diligence such Party is neither able to foresee, avoid nor overcome and which makes a Party's performance of its obligations hereunder impossible, or as impracticable as reasonably to be considered unreasonable under the circumstances. When becoming aware of a situation constituting force majeure, the suffering Party shall without undue delay notify the Project Manager who shall notify the Project Board. The suffering Party shall state the nature of the situation and its extent and/or duration.

## **12. TERM AND TERMINATION**

### **12.1. Term**

This Agreement shall be binding upon each Party upon signature. It shall become effective on the date it is signed by at least two Parties and shall initially be in force as from the Commencement Day until [date], after which it may be prolonged pursuant to Section 12.2 below. The Term shall mean both the initial period from the Commencement Day until [date] as well as any and all prolongation periods.

### **12.2. Prolongation of the Term**

12.2.1. The Project Board may decide to prolong the Term, twelve months at a time. A decision to prolong the Term shall be unanimous among the Primary Parties and be made no later than six months prior to such date as the Term would otherwise end.

12.2.2. Six months prior to such date as the Term shall end The Managing Party shall assess, whether there remain issues for which decisions need to be taken by the Project Board and whether the remaining six months suffices. Should the Managing Party for any reason regard the time remaining as insufficient, the Term shall be prolonged by a twelve months winding-down period during which the Parties shall make relevant decisions for all matter that may need to be resolved. The Managing Party shall promptly inform all Parties of the decision for a winding-down period.

### **12.3. Early Termination**

This Agreement may be terminated for any reason by a unanimous decision among the Primary Parties giving at least 14 months' written notice to the Supporting Parties. Following such decision of early termination, the final 12 months of the Term shall be regarded as a winding-down period during which the Parties shall make relevant decisions for all matter that may need to be resolved prior to the termination. For the avoidance of doubt, Section 12.2 shall cease to apply in case early termination has been decided.

### **12.4. Breach of Contract and Insolvency**

12.4.1. Should a Party breach this Agreement or commit a non-performance and should said Party not within 30 days after being required in writing to do so, have tak-

en reasonable steps to remedy the breach or non-performance to the reasonable satisfaction of the other Parties, and should such breach or non-performance be of essential importance, the Project Board may terminate the Agreement in relation to such Party. The breaching Party shall not be entitled to vote when such decision is made. Should the existence of such a breach or non-performance or the importance thereof be disputed, the remedy period will cease to run until such time as the dispute is resolved pursuant to Section 14.

12.4.2. The Agreement may be immediately terminated in relation to a Party which is declared bankrupt or enters into voluntarily or compulsory liquidation, suspends its payments or enters into composition arrangements with its creditors or is otherwise found to be insolvent.

12.4.3. The Project Board shall be competent to decide upon a termination of the Agreement in relation to a Party pursuant to this Section. Such termination shall be regarded as effectuated when communicated to the terminated Party in writing pursuant to Section 13.2.1.

12.4.4. Any and all rights transferred and assigned under this Agreement to such Party whose Agreement is terminated pursuant to this Section 12.4 shall be considered to have been automatically re-transferred and re-assigned without further compensation, immediately prior to the termination, to the party having transferred and assigned such right. Any and all licenses to Background Information granted to a Party whose Agreement is terminated pursuant to this Section 12.4 shall be immediately revoked, terminated and cease to apply. Any and all licenses to Background Information granted under this Agreement by a Party whose Agreement is terminated pursuant to this Section 12.4 shall be continuously in force on the same terms as they have been granted.

### **12.5. Withdrawal of a Party**

12.5.1. With the exception of the Managing Party, each Party may withdraw from the Project by terminating this Agreement giving six months' notice. Such a termination shall only affect the withdrawing Party and the Agreement shall continue to be in force as between the remaining Parties. A Party withdrawing from the Agreement shall be obliged, to the best of its efforts, to fully execute and complete any Key Contributions it has committed to the Project, regardless of its withdrawal. Following the written permission of the other Parties such obligation pertaining to a Key Contribution may be assigned and transferred to a third party.

12.5.2. By this Agreement the Parties have not intended for the creation of a non-registered partnership and the Act on Partnerships and Non-registered Partnerships (Sw. lag (1980:1102) om handelsbolag och enkla bolag) shall not apply. In the event that it be established, contrary to the intent of the Parties, that said law shall nevertheless apply and that there exists grounds for liquidation pursuant to Sections 24-27 of said law, the Parties have

agreed that liquidation shall not be effectuated, instead such Party to whom such grounds may be attributable shall withdraw from the Project and from this Agreement.

12.5.3. Upon withdrawing from this Agreement, all committed Contributions of the withdrawing Party which have not yet been realized or used, except for contributions defined as Key Contributions, shall be revoked, terminated and cease to apply. The withdrawing Party shall retain all right, title and interest in and to Results having been assigned and transferred to said Party. Licenses to Background Information granted to the withdrawing Party pursuant to Sections 7.1.4 and 7.1.5 shall only remain in force to the extent necessary for the withdrawing Party to exercise a Result it owns, and all other rights granted be revoked and terminated. Licenses to Background Information granted by the withdrawing Party pursuant to Sections 7.1.4 and 7.1.5 shall remain in force on the terms and conditions upon which they were granted.

## **13. MISCELLANEOUS**

### **13.1. *Surviving provisions***

All terms of this Agreement which explicitly or by their nature shall survive the termination of this Agreement or the withdrawal of a Party shall continue to remain in force also thereafter. This applies inter alia regarding assignments and licenses (Sections 7, 8, 12.4.4, 12.5.3), confidentiality (Section 9), warranties and liability (Sections 10-11), transfer of rights (Section 13.4) and dispute resolutions (Section 14).

### **13.2. *Contact persons, messages and notices***

13.2.1. All notices and communication which shall be provided to a Party under this Agreement, shall be in writing, addressed and delivered or sent by mail, facsimile or e-mail to such Party's ordinary Project Board Member. If no such Project Board Member has been appointed by a Party, the notice or communication shall instead be provided to the contact person of such Party.

13.2.2. A notice or communication be regarded as having been given and received: (i) if delivered to a Party's address, on the day of delivery if a Business Day, otherwise on the next Business Day; (ii) if sent by pre-paid mail, on the day of confirmation of reception by the receiving Party; (iii) if transmitted by facsimile, and a correct and complete transmission report is received, on the day of transmission, otherwise on the next Business Day; and (iv) if sent to a Party's representative's e-mail, on the day of confirmation of reception by the receiving Party by other means than an automatically generated message.

### **13.3. *Amendments***

13.3.1. Save as pursuant to Section 5.3.4, no amendments and/or additions to this Agreement shall be binding unless executed in writing by all Parties.

13.3.2. Should any provision or part of this Agreement to any extent be or become invalid or unenforceable, this Agreement shall be adjusted as to secure the vital interests of the Parties as well as the main objectives of this Agreement at the time of its execution. Pursuant to Section 14.3 below, the Agreement shall be adjusted by arbitrators if the Parties should fail to agree on such adjustments.

### **13.4. *Assignments***

Except to the extent explicitly permitted in this Agreement, no Party to this Agreement may without the prior written consent of the other Parties wholly or partly assign or pledge its rights or obligations under this Agreement to any third party.

## **14. GOVERNING LAW AND DISPUTE RESOLUTION**

14.1. This Agreement shall be construed in accordance with and governed by the substantive laws of Sweden.

### **14.2. *Mediation***

14.2.1. Should a dispute or controversy arise which cannot be settled by the Project Board, the Project Manager shall promptly inform the representatives or contact persons of each Party involved or affected by the dispute, of the need to negotiate the dispute. The representatives or contact persons shall discuss the matter at a meeting, over which the Managing Party shall preside, and initiate an attempt to resolve the dispute by negotiation, between the representatives or others as the Parties see fit. Should such negotiations not solve the dispute within 45 days or another period as is otherwise agreed, the dispute shall be subject to mediation pursuant to Section 14.2.2 below.

14.2.2. Unless objected to by any of the Parties, such disputes and controversies, as well as claims arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be subject to mediation in accordance with the Mediation Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC).

### **14.3. *Arbitration***

14.3.1. Where the dispute is not settled by mediation, it shall be finally settled by arbitration administered by the Arbitration Institute of the SCC.

14.3.2. The SCC shall apply the Rules for Expedited Arbitrations unless it in its discretion, taking into account the complexity of the case, the amount in dispute and other circumstances, determines that the Arbitration Rules shall apply. The Arbitral Tribunal shall always be composed of three arbitrators to be appointed jointly by the Parties to the dispute.

14.3.3. The Parties undertake and agree that all arbitral proceedings will be kept strictly confidential. This confidentiality undertaking shall pertain to all informa-

tion disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the written consent of the other Parties. A Party shall not however be prevented from disclosing such information in order to safeguard its rights in relation to another Party to the dispute, or if obliged to disclose the information pursuant to statute, regulation, authority decision, a stock exchange contract or the like.

14.3.4. The place of the arbitration proceedings shall be Stockholm, Sweden. The language to be used in the arbitration proceedings shall be English, unless the parties affected by the arbitration agree otherwise.

## **APPENDICES TO THE AGREEMENT**

Appendix 1 – Project Plan and Division of Work Packages

Appendix 2 – Budget

Appendix 3 – List of Representatives and Contact Persons of Each Party

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*[Signatory pages to follow]*