

## **STANDARD TERMS FOR CO-FINANCED RESEARCH PROJECT AT AARHUS UNIVERSITY, FACULTY OF SCIENCE AND TECHNOLOGY AND FACULTY OF HEALTH (non-clinical research) (Attachment 1 to Agreement on co-financed research project)**

### **1 INTRODUCTION OF THE STANDARD TERMS**

- 1.1 These standard terms apply to co-financed research projects which are conducted in collaboration between a department under the Faculty of Science and Technology and/or Faculty of Health (non-clinical research only) at Aarhus University and a Company. These standard terms shall be regarded as agreed terms for the Project the fast track standard agreement at Aarhus University.
- 1.2 The content and Budget for the respective research project is described in the Agreement on co-financed research project and its corresponding Attachments. These standard terms shall be regarded as agreed terms for the respective research project and may not be dispensed from.

### **2 DEFINITIONS**

**Agreement:** The Agreement on co-financed research projects in place for the respective research project.

**Background Knowledge:** The Parties unpublished knowledge in the form of know-how, unpublished inventions or other specialised unpublished knowledge whether it is or can be protected and intellectual property rights derived thereof that the Parties have informed each other of or made available for the completion of the project.

**Budget:** As included in Attachment 3 to the Agreement.

**Confidential Information:** Background Knowledge and Foreground Knowledge clearly marked confidential or undoubtedly of confidential nature and not comprised by clause 8.3.

**Equipment:** All materials, both technical and non-technical, including data, appliances, machinery, material samples, test animals, reagents, etc. which are provided by a Party as supporting materials in connection with the Project.

**Field of Application:** The field defined by the Parties in Attachment 4 to the Agreement as the field in which the Company intends to make commercial use of the Foreground Knowledge generated by the Project and comprised by Clause 5.

**Foreground Knowledge:** All information – including any data and/or result, regardless of form and regardless of whether it is or can be protected and intellectual property rights derived thereof, which originates from the Project and which is generated by a person employed with and allocated by a Party to the Project.

**Invention:** Foreground Knowledge which may enjoy protection as patent or utility model or software under the generating Party's national law.

**Negotiation Period:** As defined in Clause 5.3.

**Project:** The Project that forms the subject of this Agreement between the Parties, as described in Attachment 2 to the Agreement.

**Project Management Group:** The individuals appointed by each Party cf. Clause 2.3 in the Agreement.

**Third Party:** An individual or entity other than the Parties. For the avoidance of doubt the employees of AU shall in context of Clause 5.4 be considered a Third Party.

### **3 ECONOMICS**

- 3.1 The Parties have jointly prepared a Budget for the Project, as detailed in the Attachment 3 to this Agreement. The Budget was prepared in accordance with the budget guidelines issued by the Danish Ministry of Finance. The Budget, including the individual items and financing of the Budget cannot be changed without explicit prior written agreement of the authorized individuals.
- 3.2 If the Budget agreed between the Parties cannot be met and this is not due to errors or omissions by one of the Parties, the Parties shall jointly reassess the Project and the costs required to finalise the Project. The Parties shall together decide whether the Project shall be completed by means of additional work or cash contributions, etc. or be terminated as is.
- 3.3 The cash contributions of the Company including VAT shall be paid thirty (30) days after demanded at the times indicated in Attachment 3 to AU, who shall be responsible for invoicing the Company.

### **4 RIGHTS**

- 4.1 Each Party shall own the Foreground Knowledge created solely by that Party as a result of their participation in the Project. Inventorship and or authorship of intellectual property shall be governed by national intellectual property law applicable for the respective Party and AU represents that it has or will obtain assignments of any and all rights in and to Inventions and any and all intellectual property rights thereof from its respective employees.
- 4.2 Foreground Knowledge created jointly by the Parties shall be jointly owned according to their respective intellectual contributions. If the respective contributions of the Parties cannot be documented, the Foreground Knowledge shall be owned by the Parties in equal shares.
- 4.3 All forms of disposal of any jointly owned Foreground Knowledge that is not licensed to the Company in accordance with clause 5.2, including filing of patent application, licensing to a Third Party and assignment, shall require agreement between the Parties.
- 4.4 During the term of the Project, the Parties shall grant each other a non-exclusive, non-transferable, fully paid-up, royalty free access right to use their respective Background

and Foreground Knowledge that is strictly required for the purpose of completing the Project and for no other reason. For the avoidance of doubt such access shall not extend to any commercial work or any work that shall benefit a for-profit organisation, and shall cease with the Project.

## **5 TRANSFER OF RIGHTS**

- 5.1 The Parties shall have a non-exclusive right to utilise, free of charge, any Foreground Knowledge generated by the Project and not constituting an Invention, or covered by other specific legislation about intellectual property rights during and after the Project. Publishing of the Foreground Knowledge of the other Party shall require that Party's consent, cf. Clause 9.2.
- 5.2 The Company shall have a time limited first option to negotiate a non-exclusive or exclusive, royalty-bearing right within its Field of Application to make commercial and research use of an AU Invention developed in the Project or an AU share in joint Inventions on reasonable and fair market terms taking into consideration the Company's contribution to the Project.
- 5.3 If an Invention that is deemed patentable is made entirely or partially by an AU employee as part of the Project covered by the Agreement, the inventor(s) shall immediately inform the Project Management Group accordingly. Provided that the Invention falls within the scope of the Company's Field of Application, the Company shall notify AU within thirty (30) days from receipt of the information about the Invention whether it wishes to make use of its option to the non-exclusive or exclusive right of use set out in Clause 5.2. If Company timely exercises its option as indicated above, the Parties will negotiate in good faith to reach agreement on and execute a license agreement within ninety (90) days after Company's notice exercising the option (Negotiation Period).
- 5.4 If the Company does not make use of the right set out in Clause 5.2 to an Invention made by AU, or if the Parties fail to execute a license agreement prior to the end of the Negotiation Period, then AU shall be entitled to transfer the Foreground Knowledge in question to a Third Party on market terms with no further obligation to the Company.
- 5.5 AU shall have the right to prepare, file, prosecute and maintain patent applications and patents for any Inventions included in its Foreground Knowledge. In the event Company elects to exercise its option to negotiate an exclusive license to Foreground Knowledge or otherwise requests that AU files a patent application on any such Foreground Knowledge, Company shall be obligated to pay all patent expenses. While AU will be responsible for making decisions regarding scope and content of application(s) to be filed and prosecution thereof, the Company shall be given an opportunity to review and provide input thereto.
- 5.6 Notwithstanding a Company's acquisition of rights pursuant to Clause 5.2, AU is hereby granted an irrevocable, non-transferable, royalty-free right to use all Foreground Knowledge and Inventions generated by its employees in the course of the Project for academic and research purposes, including research involving projects funded by Third Parties provided that those Parties gain or claim no rights to such Foreground Knowledge and Inventions.

## **6 EQUIPMENT**

- 6.1 Equipment made available by one Party to other Parties for use in the Project shall remain the property of the former Party and shall only be used by the other Parties in connection with the Project. The right of use shall lapse after expiry of the Agreement, and the Equipment shall be returned to the Party who made the Equipment available unless otherwise agreed to in writing.

## **7 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

- 7.1 The rights and obligations under this Agreement cannot be assigned to a Third Party except in the event of structural changes or changes regarding jurisdiction, etc. within the public research sector and except in the case of mergers or divisions or assignment to another company within the same group or to a Third Party in connection with that Party's complete or partial takeover of Party's assets and liabilities, provided always that the performances of the Parties under this Agreement are not affected.

## **8 CONFIDENTIALITY**

- 8.1 Confidential Information received by one Party from the other Party in connection with the Project shall only be used for Project purposes and shall not without the written consent of the Party from whom the Confidential Information has been received be passed on to individuals not taking part in the Project.

- 8.2 A Party's obligation to treat Confidential Information as confidential, cf. Clause 8.1, shall apply to all individuals who through employment or other association with the Party gain access to the other Party's Confidential Information. The Parties shall issue instructions about the duty to treat the Confidential Information of the other Parties as confidential.

- 8.3 A Party's duty of confidentiality as set out in Clauses 8.1 and 8.2 shall not apply to knowledge that:

- *at the time of acquisition was or later became publicly available and not as a result of a breach of the duty of confidentiality;*
- *was received without any restrictions regarding confidentiality from a Third Party who was entitled to pass on the knowledge in question;*
- *must be passed on to outside Parties in accordance with an obligation stipulated by law, a legal decision or other binding public document;*
- *a Party has developed independently of his participation in the Project as documented in the books and records of such Parties*

- 8.4 In the event of a dispute about the duty of confidentiality, the Party who wishes to invoke one of the provisions in Clause 8.3 shall have the burden of proof.

- 8.5 The duty of confidentiality shall terminate 3 (three) years after completion of the Project.

## **9 PUBLICATION OF FOREGROUND KNOWLEDGE**

- 9.1 The Parties accept and respect that AU is obliged to publish scientific publication and disseminate its research activities and achievements in a concise, clear and popular way.

- 9.2 Each Party shall be entitled to publish its own Foreground Knowledge. Foreground Knowledge jointly owned by two or more Parties can be published jointly by those Parties, or, in the case that one or more of the owning Parties does not wish to participate in the publication, the remaining Party or Parties shall be entitled to publish on their own.
- 9.3 Any Party who wishes to publish Foreground Knowledge generated under this Agreement shall notify the other Parties at least thirty (30) days prior to the intended time of submission and forward the text and any additional material the Party wishes to publish to the other Parties. Within thirty (30) days after receipt of the proposed publication or dissemination, each of the recipient Parties can request that publication be postponed by up to sixty (60) days from the date from which the draft publication was received for review, provided the Party in question proves that the postponement is important for that Party's prospects of acquiring intellectual property rights protection of the knowledge the other Party wishes to publish or the Party in question justifies that the publication contains its Confidential Information.
- 9.4 In case PhD students are carrying out their PhD projects as part of the Project under this Agreement, the Parties shall cooperate to ensure that that the PhD student(s) can complete the PhD programme and acquire the PhD degree. The Parties accept that according to the Ministerial Order on PhD programmes (BEK no. 18 of January 14 2008, latest amended by consolidation act of 27 August 2013), the PhD student has a duty to publish the Foreground Knowledge generated by the PhD student in the form of a PhD thesis, subject to the obligations of confidentiality pursuant to Clause 8.
- 9.5 Notwithstanding Clause 9.2, the Parties agree and accept that the PhD student shall submit and defend its PhD thesis at the set time according to the PhD plan determined by the enrolling Institute, which takes precedence over the possibility of postponement of publications in Clause 9.2. The Parties shall be entitled to request that the thesis is treated confidentially by the assessment committee during the two (2) months assessment period. Furthermore, parts of the thesis may be treated confidentially in a separate confidential annex to the PhD thesis if deemed necessary in order to protect Confidential Information. The public part of the PhD thesis shall however have sufficient scientific merit for the PhD student to obtain his/her PhD degree based on the public part alone.
- 9.6 Postponement of the PhD Student's defence beyond the time set in the PhD plan shall require the consent of the PhD Student, cf. Article 20(3) of the "ph.d.- bekendtgørelsen". A Party wishing to postpone a PhD defence shall notify the PhD student within ten (10) working days after receiving a copy of the PhD thesis, cf. Clause 9.3. If a PhD-student has to delay the defence, the Company demanding the postponement will compensate AU the value of the actual, reasonable and documented income lost by the PhD-student due to the postponement. AU will subsequently compensate the PhD-student.
- 9.7 Publication of knowledge shall always take place with due respect for the duty of confidentiality set out in Clause 8.

## **10 BREACH**

- 10.1 If a Party commits a serious breach or repeatedly breaches its obligations under this Agreement and the conduct that constitutes the breach has not come to an end within

thirty (30) days from a request by the other Party to do so, each Party may terminate the Agreement.

- 10.2 If a Party is prevented from fulfilling its obligations under the Agreement as a result of extraordinary events beyond the Party's control and which the Party could not have foreseen when the Agreement was entered into (force majeure), this shall not be regarded as a breach. In such cases the other Parties shall, however, be entitled to terminate the Agreement with the Party that is prevented from fulfilling its obligations if the result would be a material delay in the completion of the Project. A delay of more than six (6) months compared with the time schedule agreed between the Parties, cf. Attachment 1 shall always be deemed material.
- 10.3 If the Agreement is terminated vis-à-vis a Party in breach, the other Party can claim compensation for the loss caused by the breach in accordance with the provisions set out in Clause 13. In the event of a breach by AU, the Company shall also be entitled to invoke their rights as set out in Clauses 5.2.

## **11 LIABILITY**

- 11.1 The Parties shall not provide any guarantee and cannot be held liable if their performance in connection with the completion of the Project does not lead to a specific result.
- 11.2 The Parties shall perform their tasks towards the completion of the Project to the best of their ability and in accordance with best practices for scientific work. A Party shall be liable for gross negligence or intentional neglect of its obligations under the Agreement.
- 11.3 If the Parties have agreed to use one another's Foreground Knowledge, Background Knowledge or other Confidential Information received from the other Party during the Project, then such use shall in every respect take place on the receiving Party's own responsibility. The receiving Party may not in any way or in respect of any situation bring a claim against the providing Party based on such use. This exclusion of liability applies, but is not limited, to lack of serviceability, liability for personal injury or property damage or liability in the event of infringement of Third Party rights.
- 11.4 The Company shall hold AU harmless from any Third Party claim for compensation based on product liability law that may result from the Companies' commercial use of Foreground Knowledge. The limitation of liability as outlined in section 11.8 shall not apply to this section.
- 11.5 None of the Parties shall be liable for a failure to fulfil their obligations under the Agreement if the failure to perform is due to force majeure as set out in Clause 10.2.
- 11.6 The liability of the Parties pursuant to Clauses 11.2 shall be subject to the limitations set out in Clauses 11.7 and 11.8 except in the case of gross negligence or intentional acts or omissions.
- 11.7 Apart from a breach of confidentiality, cf. Clause 8, the liability of one Party to compensate the other Party shall not apply to consequential losses such as production interruptions, loss of turnover/profit, other indirect losses, or losses which could not reasonably have been foreseen by the Parties.

- 11.8 A Party's aggregate liability towards the other Party shall be limited to once the Party's share of the total costs of the Project or DKK 500,000.00 (five-hundred-thousand) whichever is the smallest amount.

## **12 INFORMATION TO THE PUBLIC**

- 12.1 To the extent AU are legally obligated to publish information on private co-financing of the AU's research, the Company shall accept that the requested information is published in accordance with relevant legal provisions.
- 12.2 No Party shall use the name, logo, or trade mark of any other Party, its employees or affiliates in any publicity, advertising, or news release without the prior written approval of that Party (such consent not to be unreasonably withheld or delayed).

## **13 NATURE OF AGREEMENT – RESTRICTIONS OF COMPETITION**

- 13.1 This Agreement does not create a legal entity with the Parties as participants, and the Parties therefore cannot bind each other vis-à-vis a Third Party.
- 13.2 The Parties do not accept other restrictions between themselves than those expressly mentioned in the Agreement, including restrictions of competition.

## **14 DURATION**

- 14.1 The Agreement shall become effective on the commencement date indicated in Clause 1.1 in the Agreement. If the Project started prior to the commencement date, the Agreement shall retrospectively apply to the performance of the Project or in the event that the Project starts after the commencement date, then this Agreement shall apply prospectively.
- 14.2 Except for the provisions of the Agreement that according to their content are intended to be in effect for longer, the Agreement shall expire when the Project has been completed, cf. the project description in Attachment 2.

## **15 DISPUTES**

- 15.1 All disputes between the Parties about the interpretation and implementation of this Agreement shall be settled in accordance with Danish law. Before taking any legal action, cf. Clauses 15.2, 15.3 and 15.4, the Parties to the dispute shall endeavour to settle the dispute amicably.
- 15.2 Each of the Parties to the dispute shall be entitled to request that matters not relating to Background Knowledge, Confidential Information or intellectual property rights be decided by the ordinary courts of Aarhus, Denmark.

- 15.3 Each of the Parties to the dispute shall be entitled to request that matters relating to Background Knowledge, Confidential Information or intellectual property rights be finally and conclusively settled by arbitration in accordance with the procedural rules of the Danish Institute of Arbitration, in which case each of the Parties to the dispute shall appoint an arbitrator and the Institute of Arbitration shall appoint the presiding judge,
- 15.4 The arbitration provision in Clause 15.3 shall not prevent a Party from making use of the provisions of the Danish Administration of Justice Act on injunction and/or other interlocutory remedies.