

## FFI - Fordonstrategisk Forskning & Innovation - FKG

**Alternative appendix (Annex 3) that provides clarity and transparency regarding which background IP is relevant and licensed for the project, and reduces the risk of disputes, delays, and costs.**

*This version of Annex 3 has been developed with support from Autoliv. Note that the contract templates are voluntary to use. What Vinnova requires is an agreement regulating the parties in a project, which must be in place at the start of the project.*

### **1. Definitions**

1.1. Unless otherwise clearly evident from the context, the following terms – when used in any part of the Agreement – shall have the meanings set out below.

"**Agreement**" shall mean the project agreement to which these General Terms are an annex, including all of its annexes, as well as amendments and supplements to or in each document of such type, in accordance with the provisions of the Agreement.

"**Authority**" shall mean the authority that issued the Grant Decision according to the provisions of the Agreement.

"**Background Information**" means information held by a Party (as owner, or with a right of use) and contributed by that Party to the Project at some stage of the Project Term in accordance with applicable provisions in these General Terms, and which is significant in relation to the carrying out of the Project in accordance with the Project Plan, such as technical know-how, inventions, knowledge about materials, equipment and products, and patents as well as other intellectual property rights. "**Background Information**" means information that: i) is held by a Party (as owner, or with a right of use); ii) has been identified in writing as Background Information in Annex 6 and thus provided to the project; and contributed by that Party to the Project at the start of the Project Term in accordance with applicable provisions in these General Terms, and iii) is significant in relation to the carrying out of the Project in accordance with the Project Plan, such as technical know-how, inventions, knowledge about materials, equipment and products, and patents as well as other intellectual property rights.

"**Confidential Information**" shall mean;

- a) information of any type that a Party has disclosed to another Party within the Project context, provided that such information has been clearly marked as confidential or, in the case of verbal information, has been specified as confidential or is otherwise clearly of confidential nature;

- b) a Corporate Party's Background Information and Individual Project Results, which however shall not be defined as Confidential Information for the Corporate Party itself;
- c) a Research Party's Background Information and Individual Project Results that have not been published, provided that such Background Information and Project Results shall not be considered as Confidential Information for the Research Party itself;
- d) unpublished Joint Project Results.

**"Corporate Party"** shall mean a Party who is not a Research Party.

**"Cost Plan"** shall mean the Project's FFI Budget Form as set out in a separate annex to the Agreement, with the Parties' budget for completion of the Project divided by Party and by year and with a description of the financing.

**"General Terms"** shall mean these general terms for collaborative research within FFI.

**"Grant Decision"** shall mean the Authority's decision to finance a Party's performance of work in the Project in the form of a grant to such Party, including the terms and conditions applicable to the Authority's grant.

**"Group Company"** shall mean a legal entity which, under Chapter 1, Section 11 of the Companies Act (2005:551) forms part of the same group of companies as a Party, or which (in

relation to foreign legal entities) would have done so under the same provision if its board of directors would have had its registered seat in Sweden.

**"Holding Company"** shall mean a Party that is fully managed and controlled by a University which (a) is or is owned by a foundation, or (b) is a representative of the state as a shareholder, as well as, in both cases, such company's wholly owned Group Company.

**"Individual Project Result"** shall mean a Project Result that a Party generated alone or independently of collaboration with any other Party.

**"Joint Project Result"** shall mean a Project Result generated by several Parties in collaboration.

**"Management Group"** shall mean the highest ranked decision-making body in the Project, as regulated under a separate heading in these General Terms.

**"Party/ies"** shall mean the entities having signed the Agreement.

**"Project"** shall mean the research or innovation project that the Parties intend to run jointly under the Agreement and which is defined in the Project Plan.

**"Project Coordinator"** shall mean the Party designated as such in the Agreement and who acts, as described in these General Terms, as coordinator of and direct beneficiary in the Project.

**"Project Manager"** shall mean the person in charge of the daily management of the Project, appointed according to specific provisions in the Agreement.

**"Project Plan"** shall mean the FFI Project Description that forms part of the Grant Decision and that is included as an Annex to the Agreement.

**"Project Results"** shall mean all results, including information, that arise by execution of the Project, regardless of whether or not it can be protected under intellectual property law, such as technical know-how, inventions, knowledge about materials, equipment and products, and other intellectual property rights.

**"Project Share"** shall mean the contribution in Swedish kronor, which according to the Cost Plan corresponds to the concerned Party's total costs (regardless of how these are financed) for its own contributions to the Project.

**"Project Term"** shall mean the duration of the Project as set out in the Grant Decision.

**"Publication Notice"** shall mean a written notification of an intention to publish or otherwise disclose information (such as Background Information and Project Results) attributable to the Project.

**"Researcher"** shall mean each individual who is employed as teacher or researcher at a University and who, in this capacity, carries out work in the Project in accordance with the Project Plan.

**"Research Party"** shall mean a Party that carries out research activities and that is a college, university or other research body (e.g. a research institute). Research Party also refers to a Holding Company in case an assignment is made in accordance with these General Terms and the Holding Company becomes a Party, unless otherwise specified in these General Terms.

**"Result Notice"** shall mean a written notification of Project Results in accordance with Clause 2.2.2 in these General Terms.

**"University"** shall mean a Research Party that is a college or a university. University does not cover a Holding Company.

**"Utilise"** shall mean a Corporate Party's direct or indirect use of Project Results or Background Information in research activities or for purposes of developing, creating, manufacturing, marketing, providing and/or maintaining a product, process or service in its own business operations.

- 1.2. If compensation is to be paid under the Agreement for the use or assignment of a Project Result, the taxes and social security contributions falling due as a result of such compensation being paid (in whole or part) to the receiving Party's employees, shall, if applicable, also be covered.

## **2. Overall obligations of the Parties**

### **2.1. Implementation of the Project**

- 2.1.1. Throughout the Project the Parties undertake to endeavour to work for the best possible conditions for a successful Project, to their best ability complete the Project in accordance with the Project Plan and with the care and workmanship that can reasonably be expected of them, and not to discriminate any other Party.

- 2.1.2. A Party may, within the Project, appoint subcontractors to carry out minor work that is not already subject to outsourcing under the Project Plan. Performance by subcontractors of work of a

greater extent must be approved in advance by the Authority and (unless the subcontractor is appointed by a Party's Group Company) by the other Parties.

2.1.3. All Parties shall provide each other with such assistance as may reasonably be required to be able to fulfil their respective obligations within the Project (for example, in relation to organisation, reporting and audits).

## **2.2. Information requirement**

2.2.1. Each Party shall ensure, with all the care that can reasonably be expected of such Party, that all information (including Background Information) disclosed to other Parties within the Project is correct and up-to-date. Each Party shall also disclose, with the same level of care and without undue delay, any reservations required in such respect due to circumstances which such Party is or becomes aware of. In connection therewith, such Party shall correspondingly disclose restrictions in relation to the validity of the information and risks of infringement of third party rights.

2.2.2. A generating Party shall, promptly in writing, notify the Project Manager and the other Parties (via their respective representatives in the Management Group) of the origination of all and any Project Results that can be reasonably assumed to be of current or future commercial interest

to such Party or to another Party (Result Notice), including a detailed description of the Project Result and, where applicable, information on generating Researchers. A Research Party shall also specify in such notice if there is an existing intention to issue a Publication Notice within three (3) months thereafter in relation to the same Project Result.

## **2.3. Economic assumptions**

2.3.1. Budgeted costs of the Project as well as the Parties' respective economic obligations are set out in the Cost Plan. Each Party is responsible for their own part of the Project financing. Accordingly, the Parties shall not be jointly and severally liable towards each other.

2.3.2. The Parties' pledged cash contributions shall, where applicable, be paid to the Project Coordinator semi-annually, no later than 31 March and 30 September respectively. A prior specified requisition to the Project Coordinator is required in order for such cash contribution to be allocated to a Party.

2.3.3. The Parties' efforts in the Project will be valued at actual costs according to the principles set out in the Grant Decision.

### **3. Organisation, reporting and audits**

#### **3.1. General**

- 3.1.1. Work in the Project shall be carried out in accordance with the Project Plan, with responsibilities shared among the Management Group, the Project Coordinator and the Project Manager as described below.
- 3.1.2. Each Party shall be responsible for the performance of its own respective obligations according to the Project Plan.

#### **3.2. Management Group**

- 3.2.1. The Management Group is the highest ranked decision-making body of the Project, and is responsible for the completion of the Project within the framework of available funds, with decision-making authority in all matters arising within or being of significance to the Project. Neither the Management Group nor the members thereof have a mandate to represent any of the Parties, the Parties jointly or the Project in relation to third parties, to make decisions constituting exercise of authority or to make decisions, without the approval of the affected Party, that alter a Party's rights or obligations under the Agreement.
- 3.2.2. The Management Group shall consist of an equal number of representatives from each of the Parties, who shall appoint them in consultation with all Parties. As of the date of the signing of the Agreement, the Management Group consists of the representatives listed in a separate annex to the Agreement. If a Party replaces its representatives, such Party must notify the other Parties according to the provisions regarding notices in the Agreement.
- 3.2.3. The Project Coordinator's representative shall be Chairman of the Management Group.
- 3.2.4. The Management Group shall meet when needed, or if so requested by any of its members. The Chairman shall convene all meetings.
- 3.2.5. The Management Group shall be competent to act if more than half of the Parties are represented. Decisions are made by a simple majority of votes, whereby all members have one vote each and the Chairman has the casting vote in case of equal votes.
- 3.2.6. A Party shall have a right to subsequently veto a decision by the Management Group that materially conflicts with such Party's legitimate interests. However, this requires that such Party's representative did not vote in favour of the decision. A veto must be submitted in writing to the Management Group without undue delay, but in any event no later than one (1) month from the vetoing Party's receipt of the approved minutes (including detailed contents of the decision), and must also be well motivated.
- 3.2.7. Management Group meetings shall be recorded in the minutes. The minutes shall be signed and sent to all Parties without undue delay.

### **3.3. Project Coordinator**

- 3.3.1. The Project Coordinator shall coordinate the Project and represent the other Parties, to the extent required, regarding the Project towards the Authority and shall be responsible for ensuring that requested reports are drafted and submitted (with a copy to the Management Group for information).
- 3.3.2. The Project Coordinator shall also be responsible for the Project's financial administration and for other administrative work according to the Project Plan.

### **3.4. Project Manager**

- 3.4.1. There shall be a Project Manager within the Project, with responsibility for the day-to-day coordination and review within the Project as well as for other tasks that may be defined by the Management Group.
- 3.4.2. The Grant Decision sets out who is Project Manager at the start of the Project. The Authority must approve a change of Project Manager.
- 3.4.3. The Project Coordinator may, in whole or in part, delegate his/her responsibilities relating to reporting and financial administration etc. to the Project Manager.
- 3.4.4. The Project Manager shall participate in the Management Group meetings, unless the Management Group decides otherwise. The Project Manager shall have no right to vote at such meetings.

### **3.5. The relation to the Authority**

- 3.5.1. The Parties are aware that, according to the Grant Decision, the Authority has independent rights to, subject to potential confidentiality restrictions, revise the Project and to duplicate and distribute all or part of the reports and other information from and regarding the Project.
- 3.5.2. The Parties are further aware that regardless of the Project Coordinator's coordinating responsibility, each of them may have individual obligations towards the Authority under the Grant Decision.

## **4. A Party's relation to persons involved in the Project**

### **4.1. Responsibility**

- 4.1.1. Each Party shall be responsible as for itself towards the other Parties, for employees, Researchers, Group Companies or subcontractors involved by the Party in the Project.
- 4.1.2. If such involvement has taken place jointly by several Parties, they are jointly and severally responsible correspondingly.

4.1.3. A Holding Company, which is a Party, is responsible towards the other Parties as for itself for its own Group Companies that enjoy rights and/or shall exercise obligations according to the Agreement.

#### **4.2. Contracting obligations**

Each Party shall, in relation to all persons it intends to involve in the Project, conclude agreements in advance and obtain the undertakings required to secure the other Parties' rights under the Agreement and to ensure that the involving Party is able to meet its obligations as relates to, for example, confidentiality, publication, rights of use to Background Information and option rights as well as rights of use regarding Project Results.

#### **4.3. Agreements between Researchers and Universities or Holding Companies**

4.3.1. An agreement between a University and a Researcher as described above shall include pre-assignment to the University of all the Researcher's future Individual Project Results and shares in Joint Project Results. The other Parties shall accept that assignment back to the Researcher may occur, together with the associated rights and obligations, when the applicable deadline for claiming of license according to the agreement has expired. If the assignment concerns a share in the Joint Project Result or if a license agreement has been entered into in relation to the relevant Project Result, the University shall notify the affected Parties in advance.

4.3.2. Instead of pre-assignment to a certain University, a pre-assignment of all the Researcher's future Individual Project Results and shares in Joint Project Results can be made to its Holding Company. In case such pre-assignment takes place, the Holding Company shall form a Party to the Agreement. The University, which manages and controls the Holding Company in question, shall ensure that the Holding Company form a Party to the Agreement as described above. The other Parties agree that the assignment back to the Researcher may take place, together with the related rights and obligations, when the applicable deadline for claiming of license according to the Agreement has expired. If the assignment relates to a share in Joint Project Results or if a license agreement was entered into in relation to relevant Project Result, the Holding Company shall notify the affected Parties in advance.

4.3.3. Universities or when applicable Holding Companies have a right to appoint Researchers who have generated certain Project Results as representatives in negotiations of reasonable terms of assignment or licensing of the Project Result. If such negotiations do not result in agreement within a reasonable period of time, the University or when applicable the Holding Company shall appoint another representative.

#### **4.4. Information**

Each Party has an obligation to, on request, provide copies to the other Parties of agreements and undertakings concluded or given in accordance with the above.

## **5. Confidentiality**

- 5.1. No Party may, during the Project Term or a subsequent period of five (5) years, without the disclosing Party's prior written consent disclose Confidential Information to third parties except as expressly permitted below. However, in relation to the Universities, the confidentiality never applies to specific pieces of information for more than ten (10) years as of the receipt thereof.
- 5.2. In the absence of a right of use granted under the Agreement, the receiving Party may not use Confidential Information for other purposes than for the completion of the Project.
- 5.3. Confidential Information shall be treated by each Party in accordance with its confidential nature and at least in the same manner as such Party's own confidential information, which for instance means that it may only be disclosed to employees, Researchers, Group Companies and subcontractors to the extent they need such information due to their involvement in the Project or (when applicable) for the use of Background Information or Project Results in accordance with the Agreement.
- 5.4. Confidential Information in written form shall be securely stored. It shall also be returned to the disclosing Party, at such Party's request, unless otherwise provided by law or the below provisions on the rights of use of Background Information and Project Results. Notwithstanding the above, each Party shall always have the right to keep and store copies to the extent required for the fulfilment of statutory archiving obligations.
- 5.5. Confidentiality shall not apply;
  - a) to Confidential Information which was demonstrably already known by the receiving Party at the time received;
  - b) to information which is already publicly known other than through breach of the Agreement;
  - c) if the receiving Party demonstrably already developed similar knowledge independently of the disclosing Party and the Confidential Information concerned;
  - d) to information which the receiving Party obtained from a third party without the latter having breached any obligations of confidentiality;
  - e) if the Party who owns or submitted the Confidential Information consented in writing to the disclosure or distribution thereof;
  - f) to reports to the Authority in accordance with the Grant Decision; or
  - g) to the extent a Party has an obligation to disclose Confidential Information under applicable laws (such as the Public Access to Information and Secrecy Act (2009:400), as applicable to Universities and other governmental Research Parties), stock market regulations applicable to such Party, or court decisions, provided however that prior consultation has taken place with the affected Party/Parties regarding the manner of disclosure, unless the disclosing Party is subject to an expedited process.

## **6. Title to and use of Background Information**

- 6.1. Background Information is and shall remain the property of the contributing Party and may be used freely and disposed of (for instance through assignment) by such Party.
- 6.2. Background Information may, during the Project Term, be used free of charge by all Parties for the purpose of carrying out the Project.
- 6.3. Corporate Parties shall be entitled, on fair and reasonable terms, to obtain a non-exclusive, worldwide and perpetual license to Utilise the Background Information of other Parties if and to the extent the licensee needs access to the Background Information in order to be able to Utilise Project Results in accordance with the Agreement. Corresponding rights shall apply to a Corporate Party's Group Companies, provided that the granting of a license would not conflict with the owning Party's legitimate interests.
- 6.4. Research Parties, excluding Holding Companies, shall be entitled to obtain a non-exclusive, worldwide, perpetual and royalty free license to use the Background Information of other Parties to the extent required by the Research Party for use in its own research activities of Individual Project Results or own share in a Joint Project Results. Universities shall also be entitled to obtain a non-exclusive, worldwide, perpetual and royalty free license to use the Background Information of other Parties to the extent necessary for the University's use in its own research activities of the University's or its Holding Company's Individual Project Results or share in Joint Project Results (which has been acquired by the University or its Holding Company after pre-assignment). Such Project Results may be used in education after written consent has been obtained, such consent not to be unreasonably withheld or delayed. Use for educational activities should in such case be free of charge.
- 6.5. A Holding Company shall be entitled, on fair and reasonable terms, to obtain a non-exclusive, worldwide and perpetual license to use the Background Information of other Parties to the extent necessary for use in its own business operations of the University's or the Holding Company's Individual Project Results or shares in Joint Project Results (which has been acquired by the University or its Holding Company after pre-assignment or assignment) provided that the granting of a license would not conflict with the owning Party's legitimate interests.
- 6.6. Each Party may, in a specially designated annex to the Agreement, exempt (wholly or partly) or limit another Party's right to a license in relation to certain Background Information. If possible, such annex shall be completed already at the time of signing of the Agreement, but no later than when the Background Information is added to the Project.

## **7. Title to Project Results**

Ownership to a Project Result shall accrue to and be owned by the Party that generated it, or – if several Parties generated the Project Result – such Parties in equal shares. If, in the latter case, the Parties' contributions in the creation (intellectual or other, which by law generate intellectual

property rights) are clearly identifiable and quantifiable, the shares in the ownership shall, however, be allocated proportionately according to the extent of the respective contributions.

## **8. Management and disposal of a Party's own Project Results**

### **8.1. Individual Project Results**

Each Party is solely responsible for the management of and has the right to freely use, assign and otherwise dispose its own Individual Project Results unless otherwise expressly set forth in the Agreement. This means *inter alia* that the owning Party shall decide on and bear the costs of patenting and similar measures.

### **8.2. Joint Project Results**

- 8.2.1. A Corporate Party who co-owns a Joint Project Result may freely Utilise such Joint Project Result in its own business or its Group Companies' businesses (by granting the Group Companies access to the Project Result or by assignment of its share in the Project Result to the Group Companies). Project Results may be licensed, without the consent of other co-owners and without any obligation to compensate such other co-owners, to third parties who need access to the relevant Project Results due to their involvement in the assignor's or its Group Companies' business, such as in sub-contracted manufacturing.
- 8.2.2. A Research Party, excluding its Holding Companies, may freely use a Joint Project Result co-owned by itself or any of its Holding Companies in research activities. If such Project Result have been published in accordance with the provisions of this Agreement it can also be used for educational activities. If not disclosed in such manner, it may only be used in educational activities after prior written consent of the other co-owners, such consent not to be unreasonably withheld or delayed. During the Project Term, a non-reply from the recipient after thirty (30) days, or, for requests received during the period between 15 June - 15 August, fortyfive (45) days, shall be deemed to constitute a consent.
- 8.2.3. A Joint Project Result co-owned by a Holding Company (its share of which has been acquired by the University or the Holding Company by pre-assignment or assignment) may be used freely by the University Group Company and the Holding Company in its own business, provided that the other co-owners have consented thereto in writing. Such consent may be withheld only if a consent would conflict with the legitimate interests of the relevant co-owner(s).
- 8.2.4. Other granting of rights of use to the Joint Project Results to third parties, or to Parties who are not co-owners, requires unanimity among all co-owners in relation to the granting as such, the terms of use and the allocation of licensing fees (if any).
- 8.2.5. Decisions on the protection of intellectual property rights in Joint Project Results (regarding, for example, submission of registration applications, who should be the applicant and geographical scope of the protection sought) requires unanimity among all co-owners. All costs associated

with registering, maintaining and defending intellectual property rights shall be borne jointly, with allocation pro rata to the respective ownership shares, unless otherwise agreed.

- 8.2.6. A co-owner who does not want to participate in a registration application for, or in the maintaining or defending of intellectual property rights, or to bear any part of costs associated therewith shall offer the other co-owners to redeem its share in the Project Result, on terms agreed and reasonable in each situation (for example, rights of use and/or compensation). If a cost, which a co-owner does not want to bear, is attributable solely to a certain geographical region or an otherwise separable part of the registered protection, the offer may be restricted to such part of the right.
- 8.2.7. A Party who accordingly declines to participate in an application shall promptly provide such cooperation and assistance as required for another Party to register the intellectual property rights. In case of extensive cooperation and assistance, reasonable compensation shall be provided.
- 8.2.8. A co-owner's assignment or other disposal of its share in a Joint Project Result as well as management measures (such as enforcement against infringements) which are not regulated in the Agreement requires the other co-owners' written consent. However, consent is not required for assignments by a Corporate Party to its Group Company. A consent to an assignment by a University to its Holding Company may only be denied if it would conflict with the legitimate interests of the co-owner. The University that manages and controls the Holding Company concerned shall ensure that it is made a Party to the Agreement. During the option and preemptive periods, the specific provisions in the Agreement regarding such transfers shall apply.
- 8.2.9. Notwithstanding any of the above, a co-owner shall always have a right to take the measures necessary for the enforcement of rights relating to Joint Project Results which cannot be postponed.
- 8.2.10. Neither the Joint Ownership Act (1904:48 p. 1) nor the Partnership and Non-Registered Partnership Act (1980:1002) shall apply in any part to Joint Project Results or co-owners' management thereof.

## **9. Use of the other Parties' Project Results**

- 9.1. To the extent required to complete the Project in accordance with the Project Plan, all Parties may use the Project Results without any costs during the Project Term.
- 9.2. A Research Party, excluding its Holding Companies, shall have the right to obtain a nonexclusive, worldwide, perpetual and royalty free license to use another Party's Project Results to the extent required for the Research Party's use in its research activities in its own Individual Project Results or in its share in Joint Project Results. Corresponding rights shall apply to a University for its own Individual Project Results and shares in Joint Project Results which were generated by a Researcher but assigned to its Holding Company. If such Project Result have been published in

accordance with the provisions of this Agreement it can also be used for educational activities. If not published in such manner, it can only be used by the University for educational activities after written consent from the owning Party/Parties.

- 9.3. Holding Companies shall have the right to, on fair and reasonable terms, obtain a non-exclusive, worldwide and perpetual license to use another Party's Project Result in its own business. This right does only apply to the extent required for the Holding Company's use in its own operations of the University's or the Holding Company's Individual Project Results or share in a Joint Project Result (which has been acquired by the University or the Holding Company after pre-assignment or assignment), provided that the granting of a license would not conflict with the owning Party's legitimate interests.
- 9.4. Corporate Parties and their Group Companies shall have the right to, on fair and reasonable terms, obtain a non-exclusive, worldwide and perpetual license to Utilise another Party's Project Result in its own operations. This right applies either solely to the extent required for the requesting Corporate Party's Utilisation of its own Individual Project Results or shares in Joint Project Results, or without limitation to such requirements. The alternative applicable follows from the main document of the Agreement, labelled "FFI Project Agreement".

## **10. Joint provisions on licenses to Background Information and Project Results**

- 10.1. A license to Background Information and Project Results must be requested within three (3) years from the completion of the Project. On request, this deadline shall be extended up to a maximum of two (2) years. However, Research Parties, excluding Holding Companies, may request a license for use of another Party's Project Result according to the Agreement, without any limitation in time.
- 10.2. When a license according to the Agreement is requested, the affected Parties shall promptly initiate negotiations regarding the license terms, which shall be compatible with the Agreement. If an agreement is not reached, the Party who requested the license may invoke arbitration in accordance with this Agreement in order for such terms to be finally settled. The requesting Party may then choose whether to pursue or refrain from the requested license. If such information has not been submitted within two (2) weeks from the date of the arbitration tribunal's ruling, the license right shall be deemed to have expired.
- 10.3. The arbitration costs shall be shared equally between the Parties, save that when a University or Holding Company is involved in the arbitration (however, only in cases where the Holding Company by pre-assignment is the formal owner of the results and representative of the Researcher and does not have an own interest by use of the results in its own business) such costs shall be borne fully by the relevant Corporate Party (or the Corporate Parties jointly and severally, if several Corporate Parties are involved in the arbitration). However, the Parties shall always bear their own costs (e.g. for lawyers' fees).

- 10.4. Use may commence once the negotiating Parties have reached an agreement, or when performance has occurred after an arbitration tribunal ruling. The final license terms shall be confirmed without undue delay in a written license agreement.
- 10.5. Licenses to Background Information and Project Results may be assigned or sub-licensed by a Corporate Party as licensee to its Group Companies. Sub-licensing is also permitted to third parties to the extent that the right of use is needed for the latter's participation in the licensee's operations (such as for subcontracted manufacturing). Corresponding sub-licensing rights shall also apply to Corporate Parties' Group Companies.

## **11. Research Parties' rights of use after assignment**

Research Parties, Holding Companies, who, in compliance with the provisions of this Agreement, have assigned Individual Project Results or shares in a Joint Project Performance to another Party shall retain their rights under the Agreement to use both the assigned Project Results and other Party's Project Results and Background Information that the Party had before the assignment, however, with the limitation that the assigned Individual Project Result and Joint Project Results may be used only for own research or, after written consent (if required under this Agreement), for educational activities. The same right shall be granted to a University whose Researcher has assigned Individual Project Results or a share in Joint Project Results to a Holding Company, and the Holding company, in its turn, has assigned it to another party.

## **12. Option and pre-emptive rights to a Research Party's Project Results**

### **12.1. Option rights**

- 12.1.1. A Corporate Party shall, as set out below, have an option to acquire a Research Party's Individual Project Results and share in Joint Project Results, which the Corporate Party is already a coowner of or which were generated exclusively by Research Parties.
- 12.1.2. Compensation shall be decided by the affected Parties and shall be reasonable and based on the market value of the acquired Project Result.
- 12.1.3. Unless explicitly permitted by the Agreement, a Project Result may not be disposed of (e.g. by way of assignment), encumbered with a right of use or published before the deadline for exercise of option rights as set out below has expired in relation to all affected Corporate Parties.
- 12.1.4. Options shall be exercised by written notice to the affected Research Party, with a copy to the other Corporate Parties who have an option right to the same Project Results. A Party's option right expires if it has not been exercised within six (6) months from the receipt of a Result Notice. However, if both a Publication Notice has been served and a Corporate Party has exercised its option, the other Corporate Parties' option rights, if any, shall expire one (1) month after the last of these two events.

12.1.5. A Publication Notice including a Project Result not previously subject to a Result Notice shall be deemed to constitute a Result Notice in relation to such Project Result.

12.1.6. If several Corporate Parties exercise their option rights in relation to the same Project Result, the Corporate Party whose Project Share is largest, in relation to firstly the work package, secondly the sub-project within which the relevant Project Result was generated, and thirdly the entire Project, shall have precedence. If the Project Shares are identical in all aspects, the acquisition shall be made jointly in equal shares. Regardless of Project Shares, Corporate Parties may demand a joint acquisition with any share distribution.

12.1.7. Upon exercise of an option right, the exercising Corporate Party (if applicable, with precedence as set out above) and the owner shall, without undue delay, initiate negotiations and act in good faith to reach an expedited settlement regarding fair and reasonable compensation for the assignment. If the Parties are unable to reach an agreement, the Corporate Party may request that an impartial appraiser be appointed by the Stockholm Chamber of Commerce. All costs for and related to the appraiser shall be borne by the Corporate Party.

12.1.8. The Research Party shall be bound to assign the Project Result on the terms set out by the appraiser, whereas the Corporate Party shall have a right to refrain from the acquisition. If the Corporate Party has not submitted a written notice to the Research Party or if appropriate the Holding Company within two (2) weeks of the appraiser's statement that the acquisition will proceed, the Corporate Party shall be deemed to have refrained from the acquisition.

12.1.9. If exercise of options and negotiations according to the above do not lead to an acquisition, the Research Party shall grant the other Corporate Parties that have exercised their options in a timely manner an opportunity to negotiate accordingly.

12.1.10 If an acquisition is completed, the terms thereof shall, without undue delay, be confirmed in a written agreement. Subsequently, title shall pass automatically once the payment is made, following which the assignor Party shall take all measures reasonably required to ensure that the assignee can access and dispose of the Project Result.

## **12.2. Pre-emptive rights**

12.2.1. Each Corporate Party shall, for a period of three (3) years after the option period for all Corporate Parties under Clause 12.1.4 has expired, have a pre-emptive right to the Individual Project Results and shares in Joint Project Results owned by the Researcher Party and to Joint Project Results which the Corporate Party is already a co-owner of or which were exclusively generated by Research Parties. This means that no assignment may occur during the three-year period unless the Corporate Parties with pre-emptive rights have first been offered and then have waived the opportunity to acquire the Project Result on the negotiated terms. However, an assignment may be made by a University to its Holding Company provided that the Holding Company's operations are not likely to conflict with any Corporate Party's legitimate interests.

12.2.2. An offer as described above shall be submitted by written notice of who the other stakeholder is, and the terms negotiated with it. Notwithstanding any confidentiality obligations, the Research Party must in relation to third party stakeholders, to facilitate this, reserve a right to fulfil its information obligation under this Clause, while, in turn, the Corporate Parties shall undertake confidentiality obligations to a corresponding extent as those that apply to the Research Party.

12.2.3. Corporate Parties with pre-emptive rights shall respond to offers as above with urgency. A Corporate Party that has not expressly accepted an offer within four (4) weeks of receipt of a formal notice shall be deemed to have rejected the offer.

12.2.4. If several Corporate Parties accept an offer as above, bidding shall take place between them and assignment shall be made to the highest bidder.

12.2.5. If an acquisition is completed, the terms of the acquisition shall be confirmed in a written agreement without undue delay. Subsequently, title shall pass automatically once payment is made, following which the assignor shall take all measures reasonably required to ensure that the assignee can access and dispose of the Project Result.

## **13. Publication**

13.1. All Publications of Project Results shall be made in accordance with good international practice for the publication of research findings (meaning among other things that another Party's Background Information and Project Results and other Confidential Information may not be published to a greater extent than as permitted under the Agreement) and with due observance of the other terms in the Agreement.

13.2. In addition, the below provisions of this Section 13 shall apply specifically to publications by a Research Party, excluding Holding Companies.

13.3. A Research Party shall have a right to publish and otherwise disclose information attributable to the Research Party's Individual Project Results or Joint Project Results to which the Research Party is a co-owner, or if appropriate the Individual Project Results or Joint Project Results generated by a Researcher and which have been assigned to the University or the Holding Company according to these General Terms and the agreement between the Researcher and the University or the agreement between the Researcher and the Holding Company, provided the following has been observed.

13.4. The Research Party shall, through a Publication Notice, report to the Project Manager and the other Parties (via their respective representatives in the Management Group) complete information of the manner and scope of the planned publication as well as drafts thereof.

13.5. The other Parties shall then have a right to, within thirty (30) days from the receipt of a Publication Notice, or forty-five (45) days if the Publication Notice is received in the period between 15 June - 15 August (the "Review Period"), serve written notice to;

- a) prevent publication due to still existing option rights to Project Results covered by the publication, whereby a copy of such notice shall be sent to all other Parties;
- b) request that the contents or manner of the planned publications be amended, if the reported material covers Confidential Information (however it may not be objected that Joint Project Results covered by a Publication Notice constitute Confidential Information) if any other trade secrets of the requesting Party thereby would be revealed, or in case of other extraordinary circumstances;
- c) request that the publication be postponed due to an application to register intellectual property rights to protect the Project Result covered by the considered or prepared publication; or
- d) Provide other comments on the content and manner of the publication.

13.6. Grounds for prevention according to Clause 13.5 a) shall be handled as follows.

13.6.1 Grounds for prevention shall cease to apply once the relevant option right expires (i.e. if the option is not exercised in a timely manner), when option negotiations (if any) and valuation are concluded, or if the option right is waived in writing. Publication may thereafter take place regardless of whether or not an acquisition of the Project Result have occurred, provided that the request referred to in Clause 13.5. b) or the reason for postponement according to in Clause 13.5 c) is not present.

13.6.2 As a fall-back, a Research Party may always publish information relating to the relevant Project Result six (6) months after the expiry of the Review Period, provided that the request referred to in Clause 13.5 b) or reason for postponement according to Clause 13.5 c) is not present. Should the Research Party exercise this possibility and the option right is still existing in relation to the relevant Project Result, a potential purchaser's interest in maintaining the value of the relevant

Project Result shall also be taken into account as far as possible when the publication is drafted.

13.6.3 However, the said fall-back does not apply should the Research Party have failed to perform its agreed obligation to serve a Result Notice regarding the Project Result covered by the planned publication.

13.7. Following a request in accordance with Clause 13.5 b), the affected Parties shall discuss the request in order for the planned publication (with eventual adjustments) to be made without undue delay. The Research Party shall take into account all requests of the requesting Party and take the reasonable measures necessary to accommodate those requests.

13.8. Postponement in accordance with Clause 13.5 c) may last for up to four (4) months as of the last date of the applicable Review Period and if there are exceptional reasons, for a maximum of two

(2) additional months.

- 13.9. A Party who has not in a timely manner served notice on grounds of prevention, postponement or provided comments in accordance with Clause 13.5 following the Publication Notice relating to a Project Result which is wholly or partly owned by a Research Party, shall be deemed to have consented to the publication in the manner, to the extent and with the contents specified in the Publication Notice.
- 13.10. A Party may not assert grounds for prevention or request postponement of publications for a longer period or to a greater extent than reasonable. A Party shall handle causes for postponement with reasonable urgency and promptly allow publications once any potential grounds for prevention have been removed (for example through the submission of a patent application), i.e. even if the applicable postponement deadline has then not yet formally expired.

## **14. Use of a Party's name or trademark**

Unless necessary to fulfil reporting or information obligations in relation to another Party or to the Authority in connection with the Project, a Party may not use another Party's business name or trademark without that other Party's prior written consent.

## **15. Accession and replacement of Parties**

Accession as well as replacement of a party to the Agreement and the Project requires an agreement (governing the rights and obligations applicable to such party) between said party and the existing Parties as well as the Authority's approval of the accession or replacement.

## **16. Liability**

- 16.1. Without prejudice to the obligation of publication set out above, neither Party shall be liable for a certain result not being achieved in the Project or for Project Results not being able to use in a certain manner.
- 16.2. Liability under this Agreement shall not cover compensation for indirect damages and shall be limited to the higher of two (2) times the liable Party's Project Share and one million (1,000,000) SEK. However, no such limitation shall apply in the event of a breach of the provisions in the Agreement regarding confidentiality, publication, option rights or pre-emptive rights.
- 16.3. A Party's total liability under this Agreement shall never exceed ten-million (10,000,000) SEK.
- 16.4. No limitation of liability in the Agreement shall apply to damages caused intentionally or through gross negligence.
- 16.5. A Party who wants to claim damages from another Party for damage incurred shall have an obligation to reasonably mitigate the harmful effects of the responsible act.
- 16.6. Failure to perform obligations under the Agreement may not be invoked against a Party during a period when such performance is prevented by circumstances beyond such Party's reasonable

control, and the occurrence or the consequences thereof could not reasonably have been foreseen or removed, avoided or overcome by such Party (Force Majeure), such as legal enactment, court decisions, import or export restriction, natural disaster, war and labour conflicts. A Party who wishes to invoke Force Majeure shall promptly notify the other Parties of the occurrence and termination of such circumstances.

## **17. Term of Agreement**

The Agreement shall enter into force when the Authority decides to grant financing for the Project and when the Agreement has been signed by all Parties, with retroactive effect (where applicable) from the date when the Project work actually started (which may never be earlier than the date of the Grant Decision). The Agreement shall then remain in force until expiry of the Project Term.

## **18. Premature termination of the Agreement**

- 18.1. This Agreement shall automatically expire if and if so when the Authority decides that the financing to (a) certain Party/Parties shall be withdrawn, unless the other Parties jointly decide that the Project shall continue (in which case they shall agree jointly on the amendments to the applicable terms that may be required as a result of the new circumstances in the Project).
- 18.2. The Agreement can be terminated by or in relation to a Party as set out below. However, this presupposes that the Authority approves such termination, which regardless of any notice period shall become effective as of the date of the Authority's decision or such later date as set out in the decision.
- 18.3. A Party may terminate the Agreement prematurely with six (6) months prior notice, or such shorter notice period which all other Parties approve or which the terminating Party shows to be reasonable. It shall then be liable to perform all of its obligations during and after the period of notice with respect to commitments already made, unless the Project can otherwise obtain corresponding contributions on reasonable terms and conditions.
- 18.4. This Agreement may be terminated in relation to a Party who has materially or repeatedly breached its undertakings of the Agreement and has failed to take corrective actions within thirty (30) days of a written notice by any of the other Parties. Termination may also be made by a Party who has been declared bankrupt, suspended its payments, initiated composition negotiations, entered into liquidation or reorganization, or who for other reasons can be presumed to be insolvent. A decision of termination shall be made by the other Parties by a simple majority of votes.
- 18.5. If the underlying prerequisites of the Project are substantially changed, the Parties may agree that the Agreement shall expire and the Project shall terminate. If so, a Research Party shall, subject to the Authority's approval, have a right to receive reasonable compensation from

Authority funds that may be available, for the work performed and for necessary closing-down costs.

## **19. Notices**

- 19.1. All written notices, confirmations, requests, inquiries and other messages that a Party wishes to send to another Party during the Project Term and in accordance with the Agreement shall be transmitted or sent to the other Party's representative in the Management Group by courier, letter or email to the address notified for such representative.
- 19.2. If a Party needs to submit a notice, in a similar manner, to another Party after the termination of the Project, the document shall be submitted by courier or sent by recorded delivery to the contact person or function specified by the other Party in a separate annex to the main document of the Agreement labelled "FFI Project Agreement" or, if such information is missing or there is reason to believe that it is out of date, to the other Party's official address and marked "att: [Rector] / [Chief Executive Officer], cc General Counsel".
- 19.3. A notice shall be deemed received by the addressee:
  - a) on delivery, if delivered by courier;
  - b) three (3) banking days after the date of posting, if sent by ordinary letter or recorded delivery; and
  - c) on a read receipt, if sent by e-mail.

## **20. Effects of expiry of the Agreement**

Notwithstanding the expiry of the Agreement, the provisions of Sections 5-13, 16, 19, 21 and 23 shall, together with this Clause 20, continue to apply for as long as they have practical significance. However, a Party who has been excluded from or withdrawn from the Agreement shall have no rights under said Clauses.

## **Assignment etc.**

Disposal of Background Information and Project Results (e.g. by assignment) may occur in accordance with what is specifically stated in these General Terms.

A Party may wholly or partly assign, pledge or otherwise encumber other rights or obligations under the Agreement subject to prior written consent from the other Parties. However, such requirement of consent does not apply to a Corporate Party's assignment to a Group Company.

Upon disposal as set out above, the Parties shall ensure through contract that all rights and obligations under the Agreement against and for all Parties concerned remain.

## **22. Amendments and supplements**

Amendments or supplements to this Agreement shall, in order to be valid, be made in writing and signed by all Parties.

## **23. Applicable law and dispute resolution**

- 23.1. This Agreement shall be governed by and construed in accordance with the laws of Sweden, excluding its conflict of law principles providing for the application of the laws of any other jurisdiction.
- 23.2. Any dispute arising in connection with the Agreement shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce, in accordance with its Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce, or alternatively, if the Institute so determines, taking into regard the complexity of the case, the amount in dispute and other circumstances, its ordinary Arbitration Rules (in which case the Institute shall also determine the number of arbitrators). The seat of arbitration shall be Stockholm, unless otherwise agreed by the Parties.
- 23.3. Notwithstanding the above, the Parties shall always have a right to turn to a court or another competent authority to seek payment of an undisputed and overdue claim.