**TKI CONSORTIUM AGREEMENT**

Title Project: “[Title of the Project]“

**THE UNDERSIGNED**:

- [Full legal name of Partner 1], having its office at [ADDRESS], The Netherlands;

- [Full legal name of Partner 2], having its office at [ADDRESS], The Netherlands;

- [Full legal name of Partner 3], having its office at [ADDRESS], The Netherlands;

The above partners individually referred to as “**Partner**” and together referred to as “**Partners**”;

AND

- [Full legal name of Knowledge Institute], having its office at [ADDRESS], The Netherlands;

The above institute is referred to as “**Knowledge Institute**”;

The Partner(s) and Knowledge Institute hereinafter jointly referred to as “**Parties**” and individually referred to as “**Party**”.

**WHEREAS**:

* The Dutch government has deployed an innovation policy, which aims to strengthen the international competitiveness of nine leading industrial sectors (the Topsectors) through innovation;
* This policy is implemented through the installation of a TKI per Topsector. The TKI has a role in determining the research agenda of the relevant Topsector. Ultimately, the respective ministry is responsible for granting public funding through the TKI.
* Parties have expressed their willingness to participate in the TKI project "[Title of the Project]", as described in the Project Plan, attached as Annex 1, and to this end have been granted funding by the respective ministry under the applicable conditions of the TKI. The EU Framework[[1]](#footnote-2), Framework Decision National Grants of the Ministry of Economic Affairs (“Kaderbesluit nationale EZK en LNV-subsidies”[[2]](#footnote-3)) and subsidy regulations for applied research institutes “Subsidieregeling instituten voor toegepast onderzoek (TO2)[[3]](#footnote-4)” as amended or revised are applicable to this funding. Parties are aware that the Knowledge Institute will perform its tasks in conformity with the Netherlands Code of Conduct for Research Integrity 2018[[4]](#footnote-5), or its successor;
* the Parties now wish to lay down their arrangements with regard to the Project in this Consortium Agreement;

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS**:

**Article 1: Definitions**

"**Affiliate**" means an existing legal entity that controls a Party or that is under the control of a Party, or that is under the same control as the Party, control taking any of the following forms:

1. the direct, or indirect through (but not together with) other entities, holding of more than 50% of the voting rights of the shareholders or associates of that entity; or
2. the power to determine the policy of the legal entity concerned in a decisive way.

Parties will specify their Affiliate’s in a separate list included in Annex 6.

An Affiliate will be considered as being part of the respective Party throughout this Consortium Agreement.

**“Annex”** means any appendix attached to this Consortium

Agreement.

"**Background**" means information, know-how, data or material, whatever its form or nature, which is either held by a Party prior to its accession to this Consortium Agreement or that has been developed or obtained by a Party thereafter independently from the Project, as well as any IP Rights pertaining to such information, know-how, data or material.

"**Consortium Agreement**"
means this agreement including all Annexes and addenda thereto.

**“Confidential Information”**
means any business information (including legal, financial, commercial, trade secrets and technical information), personal data and Background which the Receiving Party has received from the Disclosing Party in connection with the Consortium Agreement and (1) which is designated by the Disclosing Party as confidential or (2) which the Receiving Party reasonably can know or should know is confidential due to its nature.

**“Coordinator**" means the Party that is authorised by the other Parties to coordinate and manage the Project, having the tasks assigned to it under Article 4.

“**Disclosing Party**” means the Party disclosing Confidential Information to the Receiving Party.

“**Effective Date**” means the day that this Consortium Agreement enters into force, which is [date].

“**EU Framework**” means the “Framework for State Aid for Research and Development and Innovation”, as published in the Official Journal of the European Union, 2022/C 414/01.

“**Expiry Date**” means the last day that this Consortium Agreement is in force, and is the end date of the Project, which is [date].

“**Field of Use**” means the application area per Party as specified hereafter:

[Name Partner 1] - [describe Field of Use]

[Name Partner 2] - [describe Field of Use]

[Name Partner 3] - [describe Field of Use]

[Knowledge Institute] - [describe Field of Use]

"**Force Majeure**" means situations which impede performance of the Consortium Agreement by a Party beyond its control and for which this Party is not liable pursuant to the law, legal acts or generally accepted standards, including, but not limited to, situations such as pandemics and the loss of animals or plants used in performing the Project due to causes beyond the reasonable control of the Party affected.

"**Foreground**" means the results that are generated within the Project, including information, (raw) data, know-how and materials, regardless of whether or not such results are protected by IP Rights.

“**IDF**” means an invention disclosure form, to describe Foreground which may be protectable by IP Right(s), and of which a model is provided in Annex 4.

**“Intellectual Contribution”**
means actively conceiving the idea, in an important way contributing to the development of the invention and providing solutions to problems in and during the Project. Mere efforts, ordinary assistance and the sharing of ideas, hypotheses and information, passively following instructions, performing routine tasks and executing result testing in and during the Project do not constitute to an intellectual contribution.

**“IP Flow Scheme**” means the process to determine ownership of Foreground and IP Right(s), and licensing opportunities, as specified in Annex 5.

"**IP Right(s)**" means plant breeder’s rights, trademark rights, patent rights, designs and models rights, integrated circuit topography rights (computer chips rights), either applied for, granted or registered, or claims to any of the foregoing.

**“Market Conditions”** means conditions determined in accordance with generally accepted methods for IP Rights valuations (market based, income based, cost based as specified in the “Spelregels voor privaat-publieke samenwerking bij programmering en uitvoering van fundamenteel en toegepast onderzoek"[[5]](#footnote-6)) taking into account the Parties own contribution (in cash and/or in kind contributions) and percentage co-ownership, all in accordance with the EU Framework.

“**Member**” means a representative on behalf of a Party in the Project Committee.

**“Ministry**" means the Dutch ministry responsible for the funding and auditing of the Project, or - as the case may be - the respective governmental organisation acting on behalf of a Dutch ministry.

"**Project**" means all activities related to the project entitled: "[Title of the Project]", which shall be carried out on the basis of the Project Plan and which shall be governed pursuant to the provisions of this Consortium Agreement.

"**Project Budget**" means the allocation of all the resources, in cash and/or in kind, contributed by the Ministry, Partners and the TKI for the activities with regard to the Project (including managing costs of the Coordinator) as specified in the Project Plan.

"**Project Committee**" means the decision making body as described in Article 4.

"**Project Plan**" means the research work plan and related Project Budget attached to this Consortium Agreement as Annex 1.

“**Receiving** **Party**” means the Party receiving Confidential Information from the Disclosing Party.

“**TKI**” means the Top Consortia for Knowledge and Innovation. This is a Public-Private Partnership which entails long-term partnership in concrete roadmaps for research & innovation across the entire chain, from fundamental research to demonstration projects.

**Article 2: Purpose**

The purpose of this Consortium Agreement is to specify the rights and obligations of the Parties with respect to the Project.

**Article 3: Responsibilities of Parties**

3.1 Each Party shall contribute to the efficient implementation of the Project Plan by carrying out the tasks allocated to it thereunder and shall cooperate, perform and fulfil on time, all of its obligations under this Consortium Agreement as may be reasonably required from it and in a manner of good faith.

3.2 Each Party undertakes to notify as soon as possible the other Parties of any significant information, fact, problem or delay likely to affect the Project.

3.3 Each Party shall provide as soon as possible all information reasonably required by the Project Committee or Coordinator to carry out its tasks. The Parties are not obliged to include Confidential Information in the Project, unless the Parties have agreed to disclose Background as described in article 7.1 of this Agreement.

3.4 Each Party shall support the achievement of the goals of the Project.

3.5 A Party is only allowed to involve third parties other than its Affiliates in the execution of its tasks under the Project Plan upon prior approval thereof by the Project Committee. The Party that involves Affiliates or third parties for the execution of its Project tasks shall at all times remain responsible for the execution of its relevant part of the Project and for such third party’s or Affiliate’s compliance with the provisions of this Consortium Agreement. In addition the Party has to ensure that the involvement of third parties or Affiliates does not affect the rights and obligations of the other Parties under this Consortium Agreement.

3.6 In connection with the reporting requirements of the TKI and the Ministry, Parties acknowledge that the Knowledge Institute shall provide both the TKI and the Ministry with financial reports as well as scientific reports (which may include an abstract of the Project Plan) of the Project. Each Party shall provide promptly all information reasonably required by the Knowledge Institute to carry out this task.

**Article 4: Governance structure**

4.1 Parties appoint [name of the Party] as Coordinator. The Coordinator shall, and the other Parties hereby authorise the Coordinator to carry out the tasks set forth under this Consortium Agreement which are specifically designated to the Coordinator. The Coordinator may delegate certain Coordinator tasks to the Knowledge Institute. The Coordinator shall remain responsible for Coordinator tasks carried out by the Knowledge Institute.

4.2 In particular, the Coordinator shall be responsible for:

* preparing the meetings, proposing decisions and preparing the agenda of the Project Committee, chairing the meetings and preparing the written minutes of the meetings, which shall be the formal record of all decisions taken. The Coordinator shall send the draft minutes to all Members within ten (10) calendar days of the meeting. The minutes shall be considered as accepted if, within eight (8) calendar days from sending, no Member has sent an objection in writing to the Coordinator, with respect to the accuracy of the draft of the minutes;
* monitoring the implementation of decisions taken at meetings;

- keeping the address list of Members and other contact persons updated and available;

- collecting and reviewing information on the progress of the Project and submitting outline scientific reports and other deliverables (including financial statements and related certification), if required, to the TKI and other Parties;

- promptly circulating the documents and information related to the Project to the Members;

- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims; and

- all communications with the TKI and the Ministry in relation to the Project on behalf of the Parties.

4.3 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party.

4.4 The Parties shall establish a Project Committee for the duration of the Project. The Project Committee shall consist of the Members. Each Party will appoint one Member to the Project Committee and each Member or its substitute will have one vote.

4.5 All Members:

- shall use their best efforts to be present or represented at all meetings;

- may appoint a substitute or a proxy to attend and vote at any meeting; and

- shall participate in a cooperative manner in the meetings.

4.6 The Project Committee shall meet, either in person, by telephone or by other electronic means, on a regular basis, at least twice a year.

4.7 The Project Committee shall discuss the progress of the Project, such as planning, requests for withdrawal, content, Parties’ compliance with obligations and the Foreground generated so far. The Project Committee shall take the following decisions and actions:

1. changes to the Project Plan (excluding the Project Budget);
2. amendments to Annex 2 “Background included”;
3. requests to involve third parties or updates of the list of Affiliates;
4. change of the Coordinator and inform the TKI of such substitution;
5. verifications according to the “IP Flow Scheme”;
6. suspension of all or part of the Project;
7. decision on a Party’s request for withdrawal from the Project and the approval of the settlement on the conditions of the withdrawal;
8. termination of the Project and the Consortium Agreement.

4.8 Decisions shall be taken unanimously by the Members of the Project Committee in meetings where all Members are present or represented. Decisions that need the approval of the TKI (such as substantial changes to the Project, Project Budget, involved Parties etc.) will only be effective after such approval is received. A Party has no voting rights regarding decisions relating to its identification to be in breach of its obligations or to its identification as a defaulting Party and subsequent termination of its participation in the Project and measures relating thereto. A Party in default will not have a voting right until such default is remedied. Any decision may also be taken without a meeting if all Members agree to the decision by email. Such decision will become effective as of the moment the Coordinator informs all Members of such decision.

4.9 In respect of the Ministry’s special position in societal and political issues, Parties will grant the Ministry the right to delegate a governmental observer to attend meetings of the Project Committee (hereinafter referred to as: "Delegate"). The Delegate shall have no voting rights or other rights granted to the Members.

**Article 5: Confidentiality**

5.1 Each Party hereby undertakes during the Project and for a period of 5 (five) years as of the Expiry Date:

- not to disclose another Party’s Confidential Information to any third party without the prior written consent of the Disclosing Party;

- not to use another Party’s Confidential Information except for purposes of the Project; and

- to ensure that internal distribution of another Party´s Confidential Information shall take place on a strict need-to-know basis.

The aforementioned is not applicable to Confidential Information of which the Receiving Party can demonstrate that it:

- was in the possession of the Receiving Party without confidentiality obligations prior to disclosure;

- was already publicly available at the time of its receipt or has become publicly available thereafter through no fault or action of the Receiving Party;

- has been obtained from a third party without an obligation to maintain confidentiality;

- was developed by the Receiving Party outside the framework of this Consortium Agreement and completely independently of any such disclosure by the Disclosing Party under this Consortium Agreement;

Each Party agrees to destroy or return to the Disclosing Party all Confidential Information that has been disclosed to the Receiving Party including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible, on request of the Disclosing Party, except as agreed otherwise in this Consortium Agreement. The Receiving Party may keep one copy of the Confidential Information to the extent it is required to keep, archive, or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of ongoing obligations, provided that the Receiving Party complies with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

5.2 Each Party agrees that for as long as the Foreground has not been disseminated in accordance with Article 6 or the Review Period as specified in Article 6.2 has not yet lapsed, whichever is earlier, not to disclose the Foreground to any third party, without the prior written consent of all Parties, with the exception of those cases that are explicitly agreed upon between the Parties in this Consortium Agreement in deviation from this.

The aforementioned is not applicable to Foreground of which the respective Party making reference to such an exception can demonstrate that it

- was already publicly available at the time of its receipt or

- has become publicly available through no fault or action of such Party;

- is disseminated in accordance with Article 6 of this Consortium Agreement.

5.3 Parties will have the right to disclose another Party’s Confidential Information and Foreground to involved and approved third parties solely for the execution of the Project, provided that they are bound by confidentiality and non-use obligations not less stringent than those contained in this Consortium Agreement.

5.4 The confidentiality obligations under this Consortium Agreement shall have no obstructing effect with regard to the communication with the TKI and the Ministry. The Party communicating with the TKI and the Ministry shall nevertheless use its reasonable efforts to ensure confidentiality.

5.5 If any Party is required to disclose another Party’s Confidential Information or Foreground in order to comply with applicable laws or regulations or with a court or administrative order, nothing herein shall restrict the Party from disclosing such information, but only to the extent of such order, law or regulation and it shall, to the extent it is lawfully able to do so, prior to any such disclosure;

- notify the Disclosing Party; and

- comply with the Disclosing Party’s reasonable instructions to maximally protect the confidentiality of the information.

**Article 6: Dissemination**

6.1 The Parties shall endeavour to disseminate the Foreground. The Knowledge Institute shall be responsible for making Foreground available to the general public under the conditions specified in this Article.

6.2 The Parties shall have the right to disseminate either by publication or otherwise the Foreground in accordance with the terms of this Consortium Agreement. During the term of this Consortium Agreement, as well as for a period of 2 (two) years thereafter (hereinafter “Review Period”), the Party intending to disseminate Foreground shall provide the other Parties with the intended dissemination at least 30 (thirty) calendar days before the intended dissemination date. Any objection to the intended dissemination shall be made in writing to the Party intending to disseminate the Foreground within 30 (thirty) calendar days after receipt of the intended dissemination. If no objection is made within the time limit stated above, the dissemination is permitted.

An objection is justified if:

(a) the proposed dissemination includes another Party’s Confidential Information or Foreground; or

(b) the objecting Party’s legitimate interests are harmed by the dissemination; or

(c) the proposed dissemination includes Foreground for which IP Right(s) can be applied for and of which the objecting Party has expressed its interest to obtain a licence thereto or the transfer of ownership thereof in accordance with Article 9; or

(d) the proposed dissemination takes place during the Project.

For the avoidance of doubt and in accordance with Article 5.1, Confidential

Information of another Party may not be disseminated without permission of

the Disclosing Party before the confidentiality period specified in Article 5.1 has

lapsed.

6.3 The objection must include a precise request for necessary modifications. If an objection has been raised, the Parties involved shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amending the intended dissemination and/or by protecting information before dissemination), provided that the scientific integrity of the dissemination in conformity with the Netherlands Code of Conduct for Research Integrity 2018 is preserved. The objecting Party shall not unreasonably continue the opposition, where appropriate actions are performed following the discussion.

6.4 If the objection is based on Article 6.2 (b) or (c), the intended dissemination can be delayed for up to six (6) months from the day the objection has been made to allow an application for IP Rights to be filed, to secure its interest or to modify the dissemination as described in Article 6.3. As from the expiration of this term, the Party wishing to disseminate will be entitled to proceed with the intended dissemination.

6.5 The provisions contained in this Article 6 shall not apply to communication with the TKI and the Ministry, including the submission of scientific reports to the TKI and the Ministry as meant in Article 3.6. The content of these reports will be shared with the Parties before submission to the TKI and the Ministry. Parties acknowledge and agree that the TKI may publish summaries of the Project on their website.

6.6 The Parties undertake to cooperate to allow the timely submission, examination, dissemination and defence of any dissertation or thesis for a degree which includes the Foreground of the Knowledge Institute subject to the dissemination provisions agreed in this Article 6. In deviation of Article 6.4 if an objection is based on Article 6.2 (b) or (c), the dissemination can be delayed for a maximum of three (3) months from the day the objection has been made.

6.7 Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties, its employees or any of their logos or trademarks without their prior written approval.

6.8 The Party disseminating Foreground will acknowledge the funding of the TKI in accordance with the applicable conditions of the TKI.

**Article 7: Background**

7.1 Background disclosed by a Party during -and for the purpose of- the Project, is and remains the (intellectual) property of, and belongs exclusively to the Party who disclosed such Background. Each Party shall make available to another Party any Background necessary for the performance of the Project as described in Annex 2 with, if applicable, any limitations of use. The Parties nevertheless may contribute additional Background not listed in Annex 2, as far as necessary for the execution of the Project. This additional Background shall be added to Annex 2 when such addition has been agreed upon in a meeting of the Project Committee and included as separate bullet point, clearly indicated as “additional Background”, in the minutes of such meeting without a signed amendment being needed.

Parties are not obligated to disclose (additional) Background for the Project, unless the Parties have agreed to disclose (additional) Background in accordance with this Article 7.1.

7.2 Each Party hereby grants to the other Party/Parties (including involved third parties permitted under Article 3.5) as far as needed by such Party/Parties in order to perform its/their tasks under the Project a non-exclusive, non-sublicensable, royalty free, non-transferable right to use its Background listed in Annex 2.

7.3 When technically or legally necessary for the use and exploitation of Foreground subject to rights granted under this Consortium Agreement, each Party shall upon request of another Party, grant to such Party a non-exclusive, worldwide, non-transferable licence to use its Background listed in Annex 2, subject to the limitations of use mentioned in Annex 2. The conditions for such licence shall be fair, reasonable, and non-discriminatory and the fee shall be calculated in an objective, reasonable manner, at arms' length. Such request to the owner of the Background has to be made within 6 (six) months after the Expiry Date. After this period the granting of such licence and the conditions thereof is at the discretion of the owner of the Background.

**Article 8: Foreground**

8.1 Foreground shall be the property of the Party that generated such Foreground.

If particular Foreground has been generated by more than one Party and cannot be attributed to one Party or the other, these Parties shall jointly own such Foreground.

8.2 Each Party hereby grants to the other Party/Parties (including its/their involved third parties as permitted under Article 3.5) as far as needed by such Party/Parties in order to perform its/their tasks under the Project, a non-exclusive, royalty free, non-transferable right to use its Foreground.

8.3 The owner(s) of the Foreground is/are free to use its/their Foreground subject to the provisions in Article 5.2, 6.2 and in accordance with arrangements made between the Parties pursuant to Article 9.

8.4 The Knowledge Institute will at all times remain entitled to use all Foreground for internal research and educational purposes subject to the provisions of Articles 5 and 6.

8.5 Each Party shall have the right to use another Party’s Foreground in as far as not protected by IP Rights for internal research and internal development purposes only. This neither includes the performance of services for third parties for a fee, nor manufacturing products for sale to third parties.

After dissemination of such Foreground in accordance with Article 6 or after the confidentiality period specified in Article 5.2 has lapsed, whichever is earlier, each Party will be free to use that Foreground which is not protected by IP Rights for all purposes.

In deviation of the above, if Foreground consists of software the Parties will receive an option to obtain a licence to such Foreground which will be treated in the same manner as the option to obtain a licence to IP Rights as arranged in article 9.8. The conditions for access to the source code and/or object code of the software will be agreed upon in a separate licence agreement.

8.6 Before dissemination of Foreground or before the confidentiality period specified in Article 5.2 has lapsed, whichever is earlier, and notwithstanding Articles 3.5, 8.3 - 8.5 and 9.8, a Party is entitled to grant to a third party, being a service provider, a royalty-free (sub)licence to use the Foreground solely for the purpose of research activities for the benefit of such Party only. The Party will at all times remain responsible for such service provider and ensures that such third party will keep the Foreground strictly confidential in accordance with the provisions of this Consortium Agreement and that it shall only be used for said research activities.

**Article 9: IP Rights, Licensing, and Transfer of Ownership**

General

9.1 If Foreground that can be protected with IP Rights is generated and/or identified by a Party, the owner(s) of such Foreground shall instruct its researchers to fill out an IDF in consultation with a patent specialist chosen by the Parties involved. Subsequently, the owner(s) of the Foreground shall send a draft IDF to all Parties. Within one month after receipt of the draft IDF, Parties can propose changes and additions to the draft IDF. After one month the owner(s) of the Foreground shall send a written notification, including the final and signed IDF, to all Parties.

The owner(s) has/have the exclusive right to apply for or register IP Rights on its/their Foreground in its/their own name and at its/their own expense.

9.2 If Background of other Parties is included in the draft IDF, these Parties can object to the inclusion of such Background in the IDF within one month after receipt of the draft IDF in accordance with article 9.1. If an objection has been raised, the Parties involved shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amending the IDF). The objecting Party shall not unreasonably continue the opposition, where appropriate actions are performed following the discussion.

9.3 In case the Foreground for which protection by IP Rights will be sought is joint Foreground, the joint owners shall as soon as practicably possible execute a joint ownership- or transfer agreement in which they make arrangements regarding the transfer or licensing of the joint Foreground and/or financial compensation of the other owner(s) in accordance with the clauses of this Consortium Agreement and the IP Flow Scheme. This will be done within 6 (six) months (or in case of urgent filing requirements 2 (two) months) as of the date the final IDF is sent to all Parties and prior to the application or registration of IP Rights. The ownership share of the Parties shall be determined in good faith, taking into account each of the Parties’ Intellectual Contribution to such joint Foreground.

In case of joint ownership of Foreground whereby Parties are unable to execute a joint ownership- or transfer agreement within the aforementioned period, then the Knowledge Institute shall apply for IP Rights on that Foreground in order to secure such IP Rights and costs of such filing will be equally split between the owners, unless agreed upon otherwise. All owners of this Foreground will be named as applicants of the IP Rights. After such filing the concerned Parties shall agree on the ownership and exploitation of such IP Rights in good faith.

9.4 The Parties shall be entitled to obtain from the owner(s) of the Foreground a licence on Foreground protected by IP Rights in their Field of Use under the conditions as specified hereunder.

The Parties shall inform the owner(s) of the Foreground in writing, within 45 (forty five) calendar days after receipt of the final IDF whether they are interested in obtaining a licence to the IP Rights (to be) vested in the Foreground.

9.5 If one or more Parties are interested in obtaining a licence to such IP Rights, the owner(s) of the Foreground shall apply for or register IP Rights in its/their own name and at its/their own expense, and involve the interested Parties in the patent strategy, the countries in which to file, the phrasing of claims etc.

9.6 If none of the Parties are interested in obtaining a licence to such IP Rights, the owner(s) of the Foreground will still have the right to apply for or register IP Rights on the Foreground for its/their own (commercial) purposes and to transfer, or license such IP Rights to third parties.

9.7 If the IP Rights on Foreground are licensed to or owned by a Party other than the Knowledge Institute, the Knowledge Institute will at all times remain entitled to use such Foreground for non-commercial research and educational purposes subject to Articles 5 and 6.

Licence rights

9.8 A Party can exercise its option to obtain from the owner(s) of the Foreground a licence to use the protected Foreground for commercial purposes in their Field of Use, with the right to sub-license to its contracted manufacturers (hereinafter referred to as: “Licence”) within the period as specified in Article 9.4. This Licence can be granted on a non-exclusive, semi-exclusive or exclusive basis, depending on the number of interested Parties. Only in the situation of an exclusive Licence, the licensee is allowed to provide sub-licenses to third parties.

 If Licences are granted to more than one Party (when at least one of those Parties requested an exclusive Licence) for Fields of Use that overlap or concern consecutive steps (e.g. as parts of a value chain), then such Licences will become semi-exclusive, meaning that licensees are not entitled to limit the other licensee’s Licence in the overlapping Field of Use or in the full exploitation of the consecutive step for which the Licence was obtained.

 The conditions and fee for such Licence shall be determined in accordance with Market Conditions. The Licence fee shall be paid to the Party owning the IP Rights. In addition to the Licence fee, the concerned Parties may agree on a reasonable compensation for the annual maintenance costs of the IP Rights in the countries the licensee is interested in, which will be incurred each year by the owner(s) of the concerned IP Rights.

9.9 *<OPTIONAL Intentionally left blank or include only if applicable; “*In deviation of Article 9.8, Parties consider that if the individual or combined contribution of the Partner(s) equals or supersedes 31% of the Project costs (in cash and/or in kind), such contribution adequately represents the market value of the IP Rights. Therefore, in such event, a non-exclusive Licence for use in their Field of Use shall be granted royalty free to each Partner. However, this Licence shall only be royalty free to a Partner if this sufficiently reflects that Partner's role as a risk taking participant, its work package(s), contribution and respective interests and if the value (as it is at the moment of granting the Licence) of this Licence turns out not to be significantly higher than the contribution of the Partner, otherwise Article 9.8. shall apply instead.”>

9.10 Should the concerned Parties be unable to agree on the Licence conditions, they shall, on a concerned Party’s request, refer this dispute to an independent expert for a binding decision. The Parties concerned shall together appoint such independent expert and share the related costs equally. In case Parties cannot agree on the appointment of the independent expert Article 17.3 shall apply. Should the respective Parties be unable to agree on the terms of a licence agreement within a period of six (6) months after having exercised the option and not having involved the independent expert or if all concerned Parties elected to disregard the decision of the independent expert, the owner(s) shall have the right to license or transfer their protected Foreground to any third party. The owner(s) shall however – for a period of one year as of the termination of these negotiations - neither grant licences nor transfer the relevant Foreground and IP Rights to other Parties or third parties on more favourable terms (taking into account objective standards, such as Field of Use, geographical scope, exclusivity, the contributions made by the Partners to the Project), than offered to the interested Part(y)(ies).

9.11 The litigation costs of the owning Party with respect to the IP Rights will not be included in the Licence fee or the compensation for the annual maintenance costs of the IP Right(s). In case litigation is contemplated, the Parties involved shall enter into further negotiations regarding the litigation and the division of the associated costs.

Transfer of Ownership

9.12 Article 9.1 to 9.11, except for Article 9.9 are mutatis mutandis applicable to the transfer of ownership of IP Rights mentioned in Article 9.13.

9.13 A Party can request from the Knowledge Institute the ownership of the IP Rights vested in the Foreground of the Knowledge Institute within the 45 calendar days period and under the conditions as specified in Article 9.4. This request can only be made if the Field of Use of the requesting Party is similar to the application area of the IP Rights. The decision whether or not to grant the request is at the sole discretion of the respective Knowledge Institute.

9.14 The Knowledge Institute shall transfer the ownership of the IP Rights to the interested Partner(s), after payment by the acquiring Partner(s) of the application costs of said IP Rights and a purchase price determined in good faith and in accordance with Article 9.8.

9.15 If the ownership of the IP Rights on Foreground is transferred to another Party or third party, the Party transferring the IP Rights shall ensure that any such transfer shall be subject to all prior rights (including options and licences granted to Parties in accordance with Articles 8 and 9), commitments and undertakings entered into by that Party in respect of the existing rights to the Foreground and corresponding IP Rights prior to the date of any such transfer of the IP Rights.

9.16 Irrespectively of the above transfer of ownership unless specifically agreed upon otherwise, the original owner(s) shall exclusively retain the copyright to its reports, brochures, designs, blueprints, drawings, models, source code of software and/or in general any and each product in the field of literature, science and art, expressed in any manner or form whatsoever, which have been produced by the original owner(s) within the framework of the Consortium Agreement.

**Article 10: Exchange of material**

10.1 Any transfer of material during the Project may be subject to the conclusion of a Material Transfer Agreement. A template for a Material Transfer Agreement is attached to this Consortium Agreement as Annex 3.

10.2 The Parties acknowledge that to the use and/or transfer (to the other Parties or third parties) of “genetic resources” and/or “traditional knowledge”, the terms, conditions and other provisions of the Nagoya Protocol, EU regulation 511/2014, the Convention on Biological Diversity and/or national legislation of the country of origin of such material may be applicable.

10.3 Parties undertake to comply with the applicable regulations specified in Article 10.2. The declaration of due diligence shall be submitted by the Coordinator.

Both the providing Party (Parties) and the receiving Party (Parties) shall provide the Coordinator with all the information required for this purpose, and the Parties hereby consent and empower the Coordinator to file the declaration(s) of due diligence on their behalf.

**Article 11: Financing of the Project**

11.1 The Project will be financed in accordance with the Project Budget as included in the Project Plan. All amounts are in Euro’s and excluding VAT or any other taxes.

11.2 All in kind and in-cash contributions to be made to the Project by each of the Parties are specified in Annex 1 to this Consortium Agreement. Each Party shall only be responsible for making its own contribution as specified in Annex 1.

The Knowledge Institute shall send invoices to each Partner separately for the amount due by such Partner according to the Project Budget for such year. In case no payment schedule is included payment will be due at the start of each Project year. In case of financing by governmental bodies a declaration can be send to such governmental bodies instead of an invoice. Invoices/declarations will be paid within 30 days of receipt thereof.

11.3 In accordance with its own usual accounting and management principles and practices – which may be verified by the TKI or the Ministry – each Party shall be solely responsible for justifying its costs and/or contributions with respect to the Project. Each Party shall provide the Coordinator with a director’s statement with regard to its justified costs regarding a calendar year, before 1st March of the subsequent calendar year. This director’s statement shall be signed by a Party’s legal representative. A template director’s statement can be obtained from the Coordinator. Parties receiving an aggregate TKI-toeslag (as defined by the TKI) of EUR 125,000.- (one hundred twenty five thousand euro) or more shall be required to provide an audit certificate with regard to the expenditure thereof at its own costs.

Parties (except WR) receiving a yearly WR-capacity subsidy of EUR 125,000.- (one hundred twenty five thousand euro) or more, shall be required to provide a yearly audit certificate with regard to the expenditure thereof at its own costs ultimately before 1 May of the subsequent calendar year. The requirements for the audit certificate are specified in article 1.5 of the Regeling nationale EZK- en LNV-subsidies. In case the audit certificate is (partly) not accepted by TKI or the Ministry, the respective Party will be solely responsible for the restitution of such funds.

The Coordinator will not be involved in the (financial) reporting requirements in cases where Parties are obligated to report their expenditures directly to TKI or the Ministry.

**Article 12: Limitation of liability and exclusion of warranties**

12.1 Each Partner’s aggregate liability under or in connection with this Consortium Agreement towards the other Parties collectively shall be limited to an amount equal to once its total in-kind and in-cash contribution. The aggregate liability of the Knowledge Institute under or in connection with this Consortium Agreement towards the other Parties collectively shall be limited to an amount equal to the total in-kind and in-cashcontribution of the Partner(s).

12.2 Parties shall only be liable to any other Party for direct damages which does not include indirect damages such as but not limited to lost turnover, lost profits, loss of business or clients, loss of goodwill, penalties, fines, punitive damages, damage resulting from late delivery, reputational damage, or the loss of data and/or materials.

12.3 In the event that a Party does not or does not fully meet its committed in-kind contribution, such Party shall be obliged to pay the monetary equivalent of such in-kind contribution to the Party to which such contribution was due, without prejudice to the right of the latter to claim compensation for the actual loss suffered.

12.4 Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party’s obligations under this Consortium Agreement or from its use of Foreground or Background and indemnifies and holds harmless the other Parties against all claims of third parties to this end.

* 1. If and when a request (on behalf) of TKI or the Ministry for refunding of subsidy has been received, the Party/Parties to which this can be attributed will be responsible for complying with such request. Such Party/Parties will indemnify and hold harmless the other Parties against damages and costs related hereto.

12.6 The exclusions and limitations of liability stated in this Article 12 shall not apply to loss or damage arising out or in connection with:

(a) the wilful failure or gross negligence of a party in performing its contractual obligations;

(b) breach of Article 5 (Confidentiality);

(c) death or personal injury or loss or damage for which liability cannot be limited or excluded by law;

(d) a request for refunding of subsidy as meant in Article 12.5.

12.7 Parties give no warranties or guarantees, expressed or implied, for the Background and/or Foreground they provide to the other Parties, including merchantability or fitness for a particular purpose or that the use of the Background and/or Foreground will not infringe any intellectual property rights of a third party. The decision whether to use the Background and/or Foreground is the sole decision and responsibility of each Party and each Party shall assume sole responsibility for any claims or liabilities that may arise as a result of its use of the Background and/or Foreground. Each Party however shall inform the other Parties if it has knowledge that Background or Foreground received or provided under the Project infringes the rights of a third party.

**Article 13: Term**

13.1 This Consortium Agreement shall become effective as of the Effective Date, provided that the Consortium Agreement has been signed by all Parties, and shall end on the Expiry Date. Parties shall execute the Project as specified in the Project Proposal within this period of time.

13.2 Six months before the Expiry Date, Parties shall consult with each other and the TKI whether an extension of the period provided in Article 13.1 is desirable.

**Article 14: Termination**

14.1 With regard to a Party:

(a) that, except in case of Force Majeure, has not, not timely or not properly fulfilled an essential obligation under this Consortium Agreement and, after having been summoned thereto in writing, is still in default by not having properly fulfilled its concerning obligations within a reasonable term mentioned in the notice of default, without prejudice to the right of the other Parties to claim the losses they have suffered as a result of the default and/or termination of the Consortium Agreement;

(b) that justifiably relies on Force Majeure which has lasted longer than ninety (90) days;

(c) who is declared bankrupt, in respect of whom a suspension of payment is granted, an administration order is filed, a receiver is appointed in respect of its assets or a general assignment for the benefit of creditors is made; or

(d) that goes into liquidation or that permanently discontinues its business;

the other Parties together, upon a majority vote, can terminate this Consortium Agreement towards said Party with immediate effect, without judicial intervention or any further summons being required, by giving notice by registered mail with return receipt. The Consortium Agreement shall remain in full force and effect between the remaining Parties, unless the remaining Parties agree otherwise.

14.2 If the termination is based on Article 14.1 (a), the Party whose participation in the Project has been terminated shall bear any reasonable and justifiable additional costs incurred by any of the other Parties, in order to perform that defaulting Party’s tasks. At all times, the defaulting Party shall use its best reasonable efforts to limit damages and losses of the other Parties. The remaining Parties shall discuss how to deal with the excess amount or loss of funds, for example by amending the Project Plan.

14.3 When the participation of a Party has been terminated pursuant to Article 14.1, said Party shall not acquire any rights with regard to the Foreground generated after the termination of its participation. Such Party's right to request a Licence to Foreground and the right to use Foreground or Background shall cease immediately upon receipt of the formal notice of termination.

In addition, such Party shall continue the access rights it has granted to its Background and Foreground under this Consortium Agreement as if it had remained a Party for the whole duration of the Consortium Agreement.

14.4 Each Party is entitled to forthwith terminate the Consortium Agreement in the event of a final decision (not open to appeal) of the Ministry to discontinue funding the Project.

14.5 Articles 1 (Definitions), 5 (Confidentiality), 6 (Dissemination), 7 (Background), 8 (Foreground), 9 (IP Rights), 12 (Limitation of liability and exclusion of warranties), 14 (Termination), and 17 (Applicable law and dispute), as well as the Articles which, considering their nature, are intended to remain in force between the Parties after termination of this Consortium Agreement, or after termination of this Consortium Agreement towards a Party, shall survive termination of this Consortium Agreement.

**Article 15:**  **New party joining the Collaboration**

15.1 If a new party wishes to join the Project, all Parties must agree to such acceding and the terms and conditions thereof. The Parties and the acceding new party shall execute an addendum to this Consortium Agreement. All Foreground developed before the accession of a new party shall be considered as Background of the owning Party with regard to such new party.

**Article 16: Miscellaneous**

16.1 If conflicts appear between the Annexes and the body text of this Consortium Agreement, the latter shall prevail.

16.2 Should any provision of this Consortium Agreement become invalid, illegal, unenforceable, or is not in accordance with the applicable regulations of the TKI and the EU Framework, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties shall ensure that a valid and practicable provision shall be negotiated which fulfils the purpose of the original provision.

16.3 The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, an offer by, or creating any obligation of any Party to enter into any form of agreement other **than** stated in this Consortium Agreement or interest grouping or any other kind of formal business grouping or entity between the Parties.

16.4 Unless explicitly mentioned otherwise in this Consortium Agreement, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, without the other Parties’ prior written approval, except that each Party shall have the right to assign all or part of its rights and obligations to an Affiliate. Nevertheless, the assigning Party shall inform the other Parties about such assignment as soon as reasonably possible.

In case of change of ownership of a Party prior consent from the other Parties is not required. The Party shall inform the other Parties about such transfer of ownership as soon as possible. Subsequently the Project Committee shall discuss the transfer of ownership. In case there is a conflict of interest, the other Parties together, upon a majority vote, can terminate this Consortium Agreement towards said Party with immediate effect, without judicial intervention or any further summons being required, by giving notice by registered mail with return receipt. The Consortium Agreement shall remain in full force and effect between the remaining Parties, unless the remaining Parties agree otherwise.

16.5 Amendments and modifications to the text of this Consortium Agreement, including the accession of any new party, require a separate agreement between all Parties.

16.6 This Consortium Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall together constitute one and the same agreement, and shall become effective when signed by each of the Parties and delivered to the other Parties by regular mail or by reliable electronic means.

16.7 If this Consortium Agreement is executed in electronic form then it will be provided to all Parties in PDF by e-mail or by electronic signing.

**Article 17: Applicable law and disputes**

17.1 This Consortium Agreement (and any questions regarding its existence, validity or termination) and the performance thereof is exclusively governed by Dutch law.

17.2 The Parties shall attempt to resolve any dispute arising out of or relating to this Consortium Agreement amicably.

17.3 Should Parties fail to resolve a dispute amicably, then such dispute shall exclusively be judged by the competent court in The Hague, the Netherlands .

**Article 18: Annexes**

18.1 The following Annexes form an integral part of this Consortium Agreement:

Annex 1: Project Plan and Project Budget;

Annex 2: Background Included;

Annex 3: Template Material Transfer Agreement.

Annex 4: Template Invention Disclosure Form (IDF)

Annex 5: IP Flow Scheme

Annex 6: List of Affiliates

**[The remainder of the page is left blank intentionally, signature pages follow]**

**This Consortium Agreement has been signed by**:

**[Partner 1]**

Name: …………………………

Position: …………………………

Place/Country: …………………………

Date: …………………………

Signature: …………………………

**This Consortium Agreement has been signed by**:

**[Partner 2]**

Name: …………………………

Position: …………………………

Place/Country: …………………………

Date: …………………………

Signature: …………………………

**This Consortium Agreement has been signed by**:

**[Partner 3]**

Name: …………………………

Position: …………………………

Place/Country: …………………………

Date: …………………………

Signature: …………………………

**This Consortium Agreement has been signed by**:

**[Knowledge Institute]**

Name: …………………………

Position: …………………………

Place/Country: …………………………

Date: …………………………

Signature: …………………………

**Annex 1 – Project Plan and Project Budget**

**Annex 2 - Background Included** (and limitations on use)

**[Partner 1]**

As to [NAME OF THE PARTY], it is agreed between the Parties that, to the best of their knowledge

*<Choose OPTION 1 or OPTION 2, delete the OPTION that is not applicable>*

*OPTION 1;* the following Background is identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

|  |  |  |
| --- | --- | --- |
| Describe Background | Specific limitations and/or conditions for the Project  | Specific limitations and/or conditions for exploitation  |
|  | Note: this can be limited to a specific work package or use case. |  |
|  |  |  |

*OPTION 2*; no data, know-how or information of [NAME OF THE PARTY] shall be needed by another Party for the Project or exploitation of the Foreground.

This represents the status at the time of signature of this Consortium Agreement.

.....................................................................................................................

**[Partner 2]**

As to [NAME OF THE PARTY], it is agreed between the Parties that, to the best of their knowledge

*<Choose OPTION 1 or OPTION 2, delete the OPTION that is not applicable>*

*OPTION 1;* the following Background is identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

|  |  |  |
| --- | --- | --- |
| Describe Background | Specific limitations and/or conditions for the Project  | Specific limitations and/or conditions for exploitation  |
|  | Note: this can be limited to a specific work package or use case. |  |
|  |  |  |

*OPTION 2*; no data, know-how or information of [NAME OF THE PARTY] shall be needed by another Party for the Project or exploitation of the Foreground.

This represents the status at the time of signature of this Consortium Agreement.

.....................................................................................................................

Etc.

**Annex 3 Template MTA**

**Material Transfer Agreement**

**THE UNDERSIGNED:**

1. **[Party supplying the material]**, having its registered office at [adres], [country], hereinafter also to as: 'Provider';

and

2. **[Party receiving the material]**, having its registered office at [adres], [country], hereinafter also referred to as: 'Receiver';

Provider and Receiver are hereinafter individually also referred to as a “Party” and collectively as the “Parties”;

Any capitalized term used in this material transfer agreement (hereinafter referred to as: “MTA”), but not defined herein, shall have the meaning ascribed thereto in the Consortium Agreement (see definition below);

**WHEREAS:**

1. Provider and Receiver are both a Party to the TKI research project called “[project title]” (hereinafter also referred to as: “Project”) and have, together with some other Parties (“hereinafter also referred to as: “Project Partners”), entered into a Consortium Agreement on [Effective Date] (hereinafter also referred to as the “Consortium Agreement”);
2. Provider is the owner and/or holder of certain material, which is specified in Annex 1;
3. Receiver is interested in investigating this material for research purposes only for the Project to which the material shall be included as Background of Provider and Receiver is willing to provide the results of its research to Provider and the other parties to the Project;
4. Provider is prepared to make available to Receiver such material subject to the provisions of this MTA.

**HAVE AGREED AS FOLLOWS:**

Article 1 - Supply and use of the Material

1. As soon as possible after this MTA has been signed by the Parties, and under the terms and conditions of this MTA, Provider or any of its Affiliates shall provide Receiver with certain [brief description of the material], as further specified in Annex 1 to this MTA (hereinafter referred to as the “Material”).
2. Provider hereby grants Receiver a non-exclusive right to use the Material solely for performing its tasks within the Project (hereinafter referred to as: “Activities”). The Material shall be included as Background of Provider in the Project.
3. Unless expressly agreed otherwise, Receiver shall keep the Material towards third parties, other than the Project Partners, in strictest confidence in compliance with Article 5 of the Consortium Agreement and shall not provide (any part of) the Material to any third party, or otherwise disclose, release, licence, lend, part with, or allow access to (any part of) the Material, without the prior written consent of Provider.
4. Receiver is nevertheless entitled to give its Affiliates’, and service providers access to the Material, as far as such is necessary to perform the Activities. Receiver will ensure that its Affiliates, and service providers will hold the Material in strictest confidence and will use the Material strictly in accordance with the provisions of this MTA.

Article 2 - the Material

1. The rights to the Material and any derivatives thereof belong to Provider.
2. Receiver undertakes not to disclose to any third party and/or publish that the Material originated from and/or has been supplied by Provider, unless Provider has given its prior written approval thereto.
3. Receiver shall use the Material in compliance with all laws and governmental regulations and guidelines applicable to the Material, including, where applicable, the conditions of the country where the Material originates (Mutually Agreed Terms (MAT) and/or Prior Informed Consent (PIC)), and shall ensure that it can provide all required permits if requested. Provider shall provide Receiver with all the information required for this purpose.
4. Receiver shall not make or have made any analysis of any Material received by it under this MTA for the sole purpose of determining its (chemical) composition, except to the extent necessary for the Activities.

Article 3 - (Rights on) Results

1. Receiver shall provide the results of the Activities to the Project Partners. These results shall become Foreground in the Consortium Agreement.
2. Provider is allowed to use these results with regard to the Material within its own organization and may share the results with its Affiliates, provided that that is permitted under the Consortium Agreement.

Article 4 - Warranties and liability

1. Receiver agrees and acknowledges that the Material has been provided to Receiver without any warranty, either expressed or implied, with regard to its quality, stability, fitness for a particular purpose, or any other quality.
2. Provider makes no representations and extends no warranties, either expressed or implied, that the use of the Material in accordance with this MTA will not infringe any (intellectual property) right of a third party. Provider is however not aware of such conflicting third party´s rights.
3. Receiver will not hold Provider and/or its Affiliates liable, neither jointly nor separately, for any damages suffered by Receiver arising from Receiver’s use of the Material.
4. No right or licence, neither expressed nor implied, is granted to Receiver with regard to the Material or other IP Rights belonging to Provider and/or its Affiliates, except as explicitly set forth in this MTA.

5. Provider will process, pack and ship the Material in accordance with all applicable legislation and good industry practice.

6. Provider shall not be liable to Receiver for any damage or loss of Receiver due to or arising from the shipping and delivery and/or use, storage or disposal of the Material by Receiver. Receiver shall indemnify and hold Provider harmless against any claims that may arise out of Receiver’s use, storage or disposal of the Material.

Article 5 - Term and termination

1. This MTA shall enter into force on the date this MTA has been signed by the Parties, and shall remain in full force and effect until [insert end date].
2. After expiration of this MTA, the articles 1.3 (Confidentiality), 2 (The Material), 3 ((Rights on) Results), 4 (Warranties and liability) and this article 5 (Term and termination) as well as the Articles which, considering their nature, are intended to remain in force between the Parties after termination of this MTA, shall survive termination of this MTA.
3. After expiration of this MTA and upon request of Provider, Receiver shall immediately destroy or return all remaining Material and any derivatives thereof in its possession, such to the sole discretion of Provider.

Article 6 –Applicable law and dispute resolution

1. This MTA and the performance thereof is exclusively governed by Dutch law.
2. The Parties shall attempt in to resolve any dispute arising out of or relating to this MTA amicably.
3. Should Parties fail to resolve a dispute amicably, then such dispute shall exclusively be judged by the competent court in The Hague, the Netherlands.

Agreed and signed by,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Provider Receiver

By: By:

Position: Position:

Place: Place:

Date: Date:

**Annex 1 to the MTA – specification of the Material**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Unique identifier of supplying Party | Provider\* (donor or collector) | Unique identifier of Provider\* | Country of origin | Date the sample left the country of origin | Terms and conditions of Provider\* |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

\* Information to be supplied in case Material was obtained from a third party

**Annex 4 - Invention Disclosure Form (IDF)**

Title of the invention:

Date:

Submitted by (name and affiliation):

**Part A. Description of the Invention**

**Background of the invention (state of the art); why is the invention required, what problem is solved? Has it been tried to solve this problem before or by different means?**

* Describe the background of the invention (3-4 paragraphs):
* Describe the problem(s) solved by the invention:
* Describe the differences from the state of the art:
* Has any patent search been carried out? If so, provide results.

**Give a short description of the invention and the inventive steps (i.e. non-obvious steps which are crucial in obtaining the benefits of the invention).**

* Description of the invention (3-4 paragraphs):
* Indicate the inventive steps:
* Describe the benefits of the invention:

**Description of the research that resulted in the invention. Is it a result of a main project of the group? Is further research going to be conducted in the next twelve months? Will this research further contribute to the invention?**

* Description of how invention has originated:
* In case of result from research project/theme give here the description of project/theme:
* Does the research continue in next 12 months?:
* Does the further research contribute to invention? How?:

**Describe the development stage (how much further development is required for commercialization). Is funding needed?**

* Describe the development stage (concept, proof of concept, prototype, etc.):
* Is further research or development required?
* Is funding needed?

**When was the invention made? When was the first written record of the invention made? When was the first experimental demonstration of the invention (proof of concept) or how much time is needed to deliver proof of concept?**

* Invention made (date):
* First written record of invention (date):
* Time needed for proof of concept (months):

**Part B: Inventor details**

Name only those who made an Intellectual Contribution (meaning actively conceiving the idea, in an important way contributing to the development of the invention and providing solutions to problems in and during the project. Mere efforts, ordinary assistance and the sharing of ideas, hypotheses and information, passively following instructions, performing routine tasks and executing result testing in and during the project do not constitute to an intellectual contribution) to the inventive step of the invention. Please note that inventorship is not the same as authorship and has important legal implication in the procedure for acquiring patent protection. An inventor is somebody who made an Intellectual Contribution to the invention.

**Inventor 1:**

Full Name:

Function Title:

Employer:

Details of third party payment covering employment:

% inventorship:

Signature:

**Inventor 2:**

Full Name:

Function Title:

Employer:

Details of third party payment covering employment:

% inventorship:

Signature:

**Inventor 3:**

Full Name:

Function Title:

Employer:

Details of third party payment covering employment:

% inventorship:

Signature:

**Inventor 4:**

Full Name:

Function Title:

Employer:

Details of third party payment covering employment:

% inventorship:

Signature:

***If more inventors are involved, please add all names.***

In case of more than 4 inventors, please add all names and details and also in the right order of first inventor, second, etc***.***

**Part C: Intellectual Property information**

**Give full details of funding sources of the research that led to the invention. Research contract details, terms of the contract covering Intellectual Property (provide copies if applicable). This information is needed to establish third party rights.**

* Give details of funding sources of the research:
* Give research contract details:
* Give terms of the contract concerning IP (provide copy):

**Give full details of the materials used in the research (including for instance special software programmes) and any Material Transfer Agreements (MTA) that are applicable.**

* Details used materials:
* Details used software programmes:
* Details of MTA (provide copies where applicable):

**Part D: Disclosure**

**Please list any previous or anticipated disclosures of information that could be relevant for the invention. This includes publications, abstracts, posters, lectures in public meetings as well as disclosures to colleagues from other organisations. These may affect the patentability and the time of filing. Please, provide information of all relevant publications in the field of invention, including background publications, conference abstracts, relevant patents or patent applications, etc.**

* Previous or planned disclosures of information:
* Relevant publications:
* Disclosures to others:
* Patents:
* Key words for searching databases and markets

**Part E: Commercial information**

**Provide any details that may help to assess the commercial potential of the invention. In particular list any companies that you know use or exploit the type of technology and detail any interest they may have (shown) in your research.**

* Describe commercial perspectives for the invention:
* For what market segment is the invention relevant (e.g. agro-chemical; food; medical; pharma; plant breeding; veterinary; etc.)
* Give names of companies that could be interested:
* Give names of any research group working in the same area:

**List any thoughts you have as to how the invention could be exploited. I.e. will it lead to new research projects that could be funded externally, can the technology/product be sold in the next years, is the invention suitable for a spin-off company?**

* Perspectives for commercialisation:
* Interest in new research to be funded externally:
* Interest in selling the invention:
* Interest in using the invention for spin-off:

Annex 5 - IP Flow Scheme

|  |  |
| --- | --- |
| Step 1: | In case of Foreground which potentially can be protected by an IP Right, the researchers of the Parties involved describe the invention in an IDF including percentage (%) inventorship. The draft IDF is sent to all Parties for their review. |
| Step 2: | The Project Committee has to verify the inventors indicated in the IDF and their percentage inventorship, before the IDF is made final and is signed. |
| Step 3: | The owners shall send the final IDF to all Parties with the request to inform the Project Committee of their interest in exploitation of the potential IP Right(s) within their Field of Use. |
| Step 4: | The Project Committee verifies whether the arrangements on ownership of IP Rights between all interested Parties are made in accordance with the “Guidelines for determining ownership IPR” as described below. |
| Step 5: | If Partner(s) want to becomefull owner of IP Right(s) in accordance with step 4, and the Knowledge Institute is a co-owner then such Partner(s) and Knowledge Institute determine the Market Conditions of such IP Right(s) in accordance with Article 9.8 of the Consortium Agreement. If applicable, the acquiring Partner(s) who shall become the owner(s) of IP Right(s) shall remunerate the Knowledge Institute for the transfer of the IP Right(s), thereby taking into account the in-kind, cash, Background contribution and percentage (%) inventorship of Parties. These conditions are arranged in a transfer agreement. If Partner(s) transfer(s) the ownership to the Knowledge Institute, then no remuneration of the Knowledge Institute to the Partner(s) is due. |
| Step 6: | Owner(s) of IP Right(s) apply/applies for or register(s) the IP Right(s) in its/their own name, and assume(s) all costs of filing and maintenance. In case no agreement on step 5 is reached within 6 months or within 2 months when filing is urgent (as mentioned in article 9.3 of the Consortium Agreement) , then the Knowledge Institute will apply for or register the IP Right(s) in order to secure the priority date and costs of such filing will be equally split between the owners, unless agreed upon otherwise. All owners of this Foreground will be named as applicants of the IP Right(s). In such case, the Knowledge Institute and the concerned Parties shall agree on the ownership and exploitation of such IP Right in accordance with the Consortium Agreement. |
| Step 7: | Licence arrangement(s) between each interested Party and the owner(s) of IP Right(s) will be negotiated in good faith and will include among others the following: Field of Use, territories, royalty payments (offset by own contributions, and taking into account market value), payments for maintenance of IP Right(s), extension of IP Right(s) to specific countries, and any other costs that might be connected to the IP Right(s) (i.e. oppositions, infringement, termination, litigation). When a Partner is interested in a license and has transferred its ownership to the Knowledge Institute (step 6), this transfer of ownership will be compensated as part of the licencing agreement to this Partner. |
| Step 8: | Exploitation of IP Right(s) by owner and each interested Party by means of a license. |
|  |  |

**Guidelines for determining ownership IP Right(s)**

*When a Knowledge Institute is co-owner of the Foreground , co-ownership of IP Rights with the Knowledge Institute is not possible. And therefore the following applies:*

**Option 1:**

* The application area of the IP Right(s) is within the Field of Use of the co-inventing Partner(s) and there is no interest from other Partners:
	+ Knowledge Institute(s) transfer(s) ownership of the IP Right(s) to Partner(s) in accordance with Article 9.

Or

**Option 2:**

* The application area of the IP Right(s) is larger than the Field of Use of the co-inventing Partner(s) and there is no interest from other Partners:
	+ Unless Project Committee decides otherwise, Partner(s) transfer(s) ownership of the IP Right(s) to Knowledge Institute in exchange for a licence in accordance with Article 9.

Or

**Option 3:**

* Multiple Partners have expressed their interest in the IP Right(s) and their Fields of Use overlap:
	+ Unless Project Committee decides otherwise, Partner(s) transfer(s) ownership of the IP Right(s) to Knowledge Institute in exchange for a licence in accordance with Article 9.

**Annex 6 – List of Affiliates**

1. available at https://eur-lex.europa.eu/legal-content/ENG/TXT/HTML/?uri=CELEX:52022XC1028(03 [↑](#footnote-ref-2)
2. available at <https://wetten.overheid.nl/BWBR0024796> [↑](#footnote-ref-3)
3. available at <https://wetten.overheid.nl/BWBR0040605> [↑](#footnote-ref-4)
4. available at <https://www.wur.nl/en/show/Netherlands-Code-of-Conduct-for-Research-Integrity-2.htm> [↑](#footnote-ref-5)
5. available at <https://www.topsectoren.nl/publicaties/publicaties/publicaties-2022/feb/240222/spelregels-pp-samenwerking> [↑](#footnote-ref-6)