

## **APPENDIX 1**

### **GOVERNANCE / INTELLECTUAL PROPERTY AND ACCESS RIGHTS**

#### **I. GOVERNANCE**

##### **1. Project Management Committee**

The Project Agreement shall include a project management committee (PMC) which shall lead and oversee the research conducted within the Project. The PMC shall consist of the principal investigators of the Project Parties as well as the key contacts according to Article 4.1 of the Framework Agreement of the respective Project Partners.

The PMC shall meet regularly in person or via teleconference and discuss the progress of the Project, efforts made, results achieved, obstacles encountered. In case of controversies regarding the management of the Project, the PMC shall discuss the issue, seek to moderate the positions and find possible solutions/compromises within the existing legal and financial framework of the Project. The PMC shall not be entitled to agree on changes of the existing legal and financial framework.

##### **2. Material Transfer**

The provisions of the transfer of any biological material and/or data shall be specifically agreed upon in the Project Agreement. In case of biological material taken from humans or animals, the ethical and legal framework must be followed, in particular regarding data protection rules and sufficient patient consent in order to allow use within the Project. In case of doubt, the respective Party bringing in such material or data shall raise the issue as soon as possible and the Parties shall decide how compliance can be ensured. Costs of legal opinions obtained with consent of all Parties shall be considered costs of the Project. In case the Project Agreement does not provide rules for material transfer, such transfer shall be made on the basis of market standard MTAs, use strictly within the Project, no patenting of the material by the recipient, no reach-through provisions to IP created by the recipient while using the material, use without any warranty/liability by provider on as-is basis.

#### **II. INTELLECTUAL PROPERTY AND ACCESS RIGHTS**

##### **1. GENERAL PROVISIONS APPLYING TO ACCESS RIGHTS**

1.1 "Access Rights" means the rights to use;

1.2 "Background" means information, including data and know-how that is held by a Party prior to, on or after the accession to the Project Agreement, as well as copyrights or other intellectual and industrial property rights pertaining to such information, to the extent necessary to carry out the Project and identified in the relevant Appendix to a Project Agreement.

- 1.3 "Commercialization" means to develop for commercialization or to commercialize Foreground itself, including the grant of licenses for commercialization.
- 1.4 "Foreground" means the results, including data, know-how and information, whether or not they can be protected, which are generated within a Project. Such results include rights related to copyright, design rights, patent rights, or similar forms of protection.
- 1.5 "Fair and Reasonable Conditions" for purposes of Sections 3.4, 4.6 and 4.9 shall mean appropriate conditions, including financial terms or royalty-free, taking into account the specific circumstances of the request for access, for example the actual or potential value of the Foreground or Background, to which Access Rights are requested, and/or the scope, duration or other characteristics of the Research Use envisaged.
- 1.6 Foreground and Background shall be used only for the purposes for which Access Rights to the same have been granted and only for so long as is necessary for those purposes. Access Rights are non-exclusive, not sublicensable and not transferable, unless expressly stated otherwise herein.
- 1.7 "Research Use" means the use of Foreground or Background for purposes other than for completing any Project work. Research Use includes the use for purposes of internal research and development, excluding Commercialization and providing services to Third Parties.

## **2. OWNERSHIP OF BACKGROUND**

- 2.1 Each Project Party shall remain the exclusive owner of its Background and the participation to the Cooperation shall not affect such ownership rights in its Background, without prejudice to any rights and obligations under this Framework Agreement or any Project Agreement.
- 2.2 The Background shall be identified in the relevant Appendix of a Project Agreement. The Appendix identifying the Background shall also identify potential limitations to the granting of Access Rights to Background or any other restriction which might substantially affect the granting of Access Rights.
- 2.3 Each Party shall inform the other Party of any legal restrictions of which it is aware that may affect the use of the respective Background for work within the purpose and term of the Cooperation.
- 2.4 Each Party may transfer ownership of its own Background. The other Party hereby has no right to object any such transfer. The transferring Party shall, however, notify without delay the other Party of any such transfer and shall ensure that the rights of the other Party pursuant to **Clause 3.4** of this Appendix 2 will not be affected by such transfer.

### **3. OWNERSHIP OF FOREGROUND**

- 3.1 Foreground shall belong to the Project Party who generated it.
- 3.2 Where two or more Project Parties have generated Foreground and where it is not reasonably possible to distinguish their respective inventive shares therein, such Foreground shall be jointly owned between/amongst them (the "Co-owners") in ownership shares reflecting the value of their respective scientific contributions.
- 3.3 In the case that the respective share of the Co-owners cannot be defined, in particular – with respect to inventions - taking account any declarations made in the ("Erfindungsmeldung" – Invention Disclosure), the PMC shall moderate and suggest a solution.
- 3.4 Unless otherwise agreed, each Co-owner shall grant to the other Co-owner(s) and its (their) Affiliated Entities Access Rights to the jointly owned Foreground for Research Use [REDACTED]
- 3.5 Where a Project Party in accordance with a respective Project Agreement has sub-contracted work, this Party shall ensure that any Foreground arising thereunder will be owned in accordance with **Clause 3.1** and **3.2**.
- 3.6 If any Third Party working on behalf of a Project Party is entitled to claim rights to Foreground, the Project Party contracting such Third Party shall ensure that it is possible to exercise those rights in a manner compatible with its obligations under the respective Project Agreement.

### **4. ACCESS RIGHTS FOR THE PURPOSE OF CARRYING OUT THE PROJECT AND FOR RESEARCH USE**

#### Foreground (for Project use)

- 4.1 Subject to the provisions of a respective Project Agreement, each Party and its Affiliated Entities is hereby granted Access Rights to the Foreground of the other Party solely and to the extent necessary to undertake its own research or for its sub-contractor to perform the research within the scope and for the term of the Project.

4.2 [REDACTED]

#### Background (for Project use)

- 4.3 Subject to the provisions of a respective Project Agreement, each Party and its Affiliated Entities is hereby granted Access Rights to the Background of the other Party solely and to the extent necessary to undertake its own research within the scope and for the term of the Cooperation.

4.4 [REDACTED]

Foreground (for Research Use)

- 4.5 Each Party and its Affiliated Entities is hereby granted Access Rights to the Foreground of the other Party or, in the case of jointly owned Foreground, of both Parties solely and to the extent necessary for the purposes of Research Use.
- 4.6 [REDACTED]
- 4.7 Any Research Use of the Foreground belonging to another Party pursuant to Clause 4.5 shall acknowledge the ownership of such Party and shall identify the Cooperation as the source thereof.

Background to use Foreground (for Research Use)

- 4.8 Each Party and its Affiliated Entities is hereby granted Access Rights to the Background of the other Party solely and to the extent necessary for the purposes of Research Use of Foreground.
- 4.9 [REDACTED]
- 4.10 Access Rights for Research Use must be executed within [REDACTED] where the Foreground has been generated; thereafter Access Rights to be granted subject to availability.

**5. ACCESS RIGHTS FOR COMMERCIALIZATION**

- 5.1 Subject to Clause 5.3 below, the Parties may use, exploit, sublicense or otherwise commercialize their own Foreground and Background as they see fit.
- 5.2 [REDACTED]
- 5.3 [REDACTED]

[REDACTED]

6. FILING, PROSECUTION AND MAINTENANCE

6.1 The Parties shall inform each other about inventions resulting from the Project.

Inventions relating to solely owned Foreground pursuant to Clause 2.1.

6.2 The respective Party shall have the entire right to such inventions and the entire right in respect thereof to apply for patents and to obtain such other intellectual property protection as it deems appropriate throughout the world and at its own expenses.

Inventions relating to jointly owned Foreground pursuant to Clause 2.2.

6.3 The Co-owners shall jointly file the patent application and be jointly responsible for the preparation, prosecution and maintenance of such patent application and patents resulting therefrom.

6.4 The Co-owners mutually agree on the content of the application and shall cooperate in the preparation, filing, prosecution, and maintenance of any resulting patent and shall perform all necessary formalities.

6.5 [REDACTED]

6.6 The Parties shall instruct their employees to communicate their respective share of the invention in the report of the invention.

6.7 [REDACTED]

[REDACTED]

## 7. DISSEMINATION

7.1 A Party wishing to disseminate information relating to Foreground will inform the other Party via the PMC with prior written notice of any such publication. The other Party may object to a publication within thirty (30) days of notification. If no objection is stated within this time frame, the publication may go ahead without changes. If an objection is upheld, the publishing Party will:

- (a) Modify the publication as requested for patent reasons;
- (b) And/or delete such other Party's Confidential Information from the intended dissemination;
- (c) Extend the review period and delay the proposed publication for a period not exceeding sixty (60) days in the case of (a) and (b) above.

- 7.2 For the avoidance of doubt, a Party may not publish or communicate Foreground generated by another Party or any Background of such other Party, even if such Foreground or Background is amalgamated with such Party's Foreground, without the other Party's prior written approval except to its sub-contractors.
- 7.3 Nothing in a Project Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.