

**Collaboration Agreement (framework type)**

**and**

**Project Agreement under Collaboration Agreement**

***TEMPLATE TOOL WITH COMMENTARY***

**Scope and purpose**

This document is envisaged as a guidance to those who need to assemble a Collaboration Agreement (hereinafter “Collaboration Agreement” or “CA”). And although agreements for setting up collaborations are almost inevitably a tailor- made process, these guidelines help to identify some of the CA main components.

Collaboration Agreement can be concluded between parties only for one, specific project. However, more common type of the Collaboration Agreement is a framework type of the agreement with a legal structure suitable for execution of multiple, different projects under the pre-negotiated set of clauses. This helps save the time as the parties have previously agreed on all the main features (such as intellectual property, publication, liability etc.) that will generally be applicable to all specific projects to be executed under such framework Collaboration Agreement. In that way, only specifics of each project such as project plan with budget, contributions, deliverables and timeframe for performance needs to be agreed upon between the parties which steers the process and enables execution of more projects in a shorter time. Specific projects are therefore executed by a way of separate Project Agreements concluded under the Collaboration Agreement. Such are therefore integral part of the Collaboration Agreement and can be executed as appendices to it.

**Content**

1. Title of the agreement
2. Parties to the agreement
3. Preamble
4. Definitions
5. Scope
6. Governance
7. Individual projects under Collaboration Agreement
8. Subcontracting
9. Intellectual Property
10. Confidentiality
11. Publication
12. Entering into force or Effective Date of the Agreement
13. Term and Termination of the Agreement
14. Liability
15. Governing law
16. Miscellaneous
17. Signatures

18. Project Agreement - Annex \_ to the Collaboration Agreement (example included)

1. **Title of the agreement**

Along with the title of the agreement, it is useful (specifically during the negotiations and multiple exchange of different versions of the draft proposals of the agreement) to provide a version number and date with each revision version of the agreement. This way parties to the agreement are always aware which version is the latest one and which version they are signing at the end.

This version number(s) and associated date(s) can be noted in the *header* or *footer* of thedocument/agreement and can be easily revised each time new version of the agreement is exchanged.

Example:

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

*Research Collaboration Agreement, Version 1, 9th September 2018.*

1. **Parties to the agreement**

In this part, indication of the all parties to the CA is provided.

Name of the contracting party and its address (registered office /principal place of business), and indication of the person acting as a duly authorized signatory/legal representative.

3. **Preamble**

If considered relevant to the agreement, a concise description or statement on the nature, mission, or other general information of the contracting parties can be added and expressed in the preamble of the Agreement as well as the main features and specific field of collaboration.

Example:

**WHEREAS:**

a) COMPANY is engaged in the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

b) INSTITUTION A is an academic hospital engaged in\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

c) INSTITUTION B is a university engaged in\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

d) Parties wish to establish a long term, non-exclusive public-private academic alliance for research and development under the terms of this CA, predominantly in the field of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and more specifically for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

e) This CA will serve as a framework agreement under which Parties from time to time will negotiate and agree upon projects, preferably following the pre-defined lines of the project types hereunder, to all projects the terms of this CA will apply;

**4. Definitions**

Depending on the context of an agreement, a Definition clause lists and defines most frequently used terms throughout the text of the agreement. This should be done in order to avoid any possible misunderstandings or different interpretations about the meaning of these terms by different parties to the agreement. Below, some examples of definitions are provided.

These definitions should not be used uncritically – make sure that definitions listed are applicable, fit for and used consistently throughout the text of the CA.

Where the scope of the certain terms may be unclear, example may be provided along with the definition of the term.

Example (non-exhaustive list):

**1.DEFINITIONS**

The following terms shall have the following meanings:

1.The term **“Affiliate”** means any individual, corporation, association or other business entity which directly or indirectly controls, is controlled by, or is under common control with the Party in question. As used in this definition of “Affiliate,” the term “control” means the direct or indirect ownership of more than fifty percent (>50%) of the stock having the right to vote for directors thereof or the ability to otherwise control the management of the corporation or other business entity whether through the ownership of voting securities, by contract, resolution, regulation or otherwise.

2.The term **“Annex”** shall mean an appendix to this CA.

3.The term **“Background”** shall mean information, data, techniques, Know-how, inventions, discoveries, software, materials (regardless of the form or medium in which they are disclosed or stored) and Intellectual Property Rights owned or controlled by any Party (a) prior to this CA; or (b) which are acquired; or generated; or developed; or devised, or conceived and reduced to practice, outside of the work performed pursuant to Projects under this CA; and in each case which are introduced to or disclosed or otherwise supplied by that Party to one or more other Parties for use in a Project and which are identified as Background in an annex to the associated Project Agreement.

4**.**The term **“Foreground”** means any and all Results and Intellectual Property Rights pertaining to such Results as well as any other Intellectual Property Rights acquired; or generated; or developed; or devised; or conceived and reduced to practice or writing; or otherwise made by the Parties, jointly or separately, in the course of and as a result of the performance of a Project under this CA.

5.The term “**Intellectual Property Rights**” means patents, rights to inventions, utility models, trademarks, service marks, registered designs, copyrights and related rights, database rights, design rights, rights to use and protect confidential information, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any of the above and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.

6. The term **“Joint Foreground”** shall mean all Foreground which is acquired; or generated; or developed; or devised; or conceived and reduced to practice or writing; or otherwise made jointly by one or more Project Parties in the course of and as a result of the performance of a Project under this CA.

7.The term **“Know-How”** shall mean technical information (including information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) which is not in the public domain, including rights in Confidential Information.

8.The **“CA”** is this document including any and all Annexes and amendments to it.

9. **“Patent”** shall mean patents or patent applications, in any country of the world, including any patents issuing from such patent applications, and further including any substitutions, extensions or supplementary protection certificates, reissue, re-examination, renewal, divisions, continuations or continuations-in-part of any of the foregoing.

10. The term **“Third Party”** shall mean a person or entity other than the Parties to this Agreement and its Affiliates.

**5. Scope**

Following preamble and definitions section, the scope and aim of the intended collaboration and partnership should be considered and described in terms of: the nature of research to be carried out, resources shared, the types of products aimed for, and the areas of application if commercialized later.

1. The purpose of this agreement is to regulate the terms and conditions for establishment of a scientific collaboration between the Parties in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. Parties shall collaborate on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with an aim to\_\_\_\_\_\_\_\_.

The collaboration hereunder will operate primarily in (but shall not be limited to) the field of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3.Parties will be discussing Projects initially related to\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a focus on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. More specifically, Parties will discuss Projects including following matters:

- …………………….;

- ……………………..;

- …………………… and

**6. Governance**

The governance of non-profit–public collaborations is important for their effectiveness. Therefore, in collaborations, specifically those including multiple contracting parties and involving medium and large projects, it is recommended to set up the governance structure with clearly assigned roles and responsibilities. By predicting and establishing certain ‘bodies’ consisting of representatives from the parties to the collaboration, overall supervision and strategy of the collaboration as well as day-to-day operations, communication and management of the project/s execution is more likely to run smoothly and more time effective. Face-to-face meetings and teleconferences should be utilized to ensure smooth collaboration and steer execution of the projects.

Example:

1. The Steering Committee is responsible for the overall supervision, decision making and strategic control of the collaboration with a focus on the development of science. The Steering Committee will provide input into the strategy for and execution of the Projects selected for implementation under the CA.

2. The Steering Committee members shall consist of the following: two representatives from COMPANY, and one representative from each of the Institutions. One Steering Committee representative shall chair the Steering Committee (hereafter referred to as the “Chairperson”) on a rotating annual calendar year basis.

3. The Operational Committee shall be responsible for the operations and day-to-day running of the collaboration, supporting the Project Teams, and advising the Steering Committee on decisions with operational impact.

4. After the approval of a Project Proposal by the Steering Committee, the Operational Committee will establish a Project Team. The Project Team shall be responsible for managing the performance and delivery of the Project in accordance with the Project Agreement and Project Plan.

**7. Individual projects under Collaboration Agreement**

As previously discussed, framework collaboration agreement set up allows parties to the collaboration to identify specific areas of interest as they emerge and execute specific project agreements under the Collaboration Agreement.

In the Collaboration agreement, types of such possible projects and required content of such Project agreements can be already envisaged.

Specific Project Agreements would therefore include project specifics such as project plan with associated budget, deliverables and contributions within set time-frame while referencing all other otherwise needed clauses of the agreement to those of Collaboration Agreement.

Example:

1.From time to time one or more Parties may identify particular areas of research that is of interest to them, which could form the subject matter of a Project.

2.To facilitate the efficient creation of Projects, Parties shall create a Project under a set of Project Types including:

**Project Type 1 – COMPANY Initiated and COMPANY Proprietary Project;**

**Project Type 2 – Collaborative Project;**

**Project Type 3 – External Funding Project;**

Or as otherwise specified under a Project Agreement.

3.In the event that any Party wishes to pursue a Project with any other Party/Parties, they shall agree on a Project Type and execute a definitive Project Agreement specifying whether it is a Project Type 1, a Project Type 2, or a Project Type 3, prior to initiating any activity, unless agreed differently under a specific Project Agreement.

4.Each Project Agreement shall consist of such additional terms and conditions as are agreed between the Project Parties. Such additional terms shall include:

i. the scope of work

ii. the time-frame for the performance of the Project

iii. the contributions to be made by the Project Parties in terms of personnel, financial compensation, funding, and access to facilities and laboratory use materials, equipment, and Background;

iv. Go/no-go decision moments in the Project Plan;

v. The specifics of the Project Plan

vi. The deliverables under the Project.

5. All Parties agree that no Project Party shall commence any work on any Project until and unless a formal Project Agreement has been executed by the involved Project Parties thereto.

6. The Project Parties agree that each Project Agreement shall constitute a separate and individual contract between the Project Parties to the relevant Project but that the terms and conditions of this CA shall be incorporated into, form part of and govern all Project Agreements.

7. An individual Party may decide to refrain from participating to a Project.

**8. Subcontracting**

It is very often the case that the performance of specific projects will require some involvement of the third parties (third party meaning any other party besides the contracting parties and their affiliates). This is usually the case when a contracting party cannot perform the complete work or service under the project without subcontracting a part of it to a third-party subcontractor. The use of subcontractors is usually subject to a prior written consent of the other parties to the project and a contracting party using subcontractors takes the responsibility for the acts and omissions of the subcontractor as if it performed such work or service itself. It is common and advised for a party using a subcontractor to put in place a separate subcontracting agreement between itself and a subcontractor with the clear obligations to be honoured and liabilities in case of non-performance or malperformance.

Example:

1. A Party may subcontract all or any part of the work to be undertaken by it pursuant to any project to its Affiliates. A Party may subcontract to a Third Party (a “Subcontractor”) all or any part of the work to be undertaken by it pursuant to any project with the prior written consent of the other Party(ies) to the project. The work performed by a Subcontractor shall be at the risk of the Party subcontracting (that part of) the work.

2. Subcontracting shall be permitted on the condition that:

a.) it shall not in any way affect the rights and benefits conferred on any Party under this CA or under an applicable project agreement;

b.) any Subcontractor shall be bound by confidentiality undertakings in a similar (but in any event in a no less onerous) form to the obligations set forth in this CA in the event that any other Party’s Confidential Information is to be disclosed to any Subcontractor;

c.) each Party shall be responsible for all acts and omissions of its Subcontractors in respect of the subcontracted works in all aspects as if the said work had been conducted by the subcontracting Party itself.

**9. Intellectual Property (IP)**

The nature of IP arrangements varies across different public–private collaborations. For example, in some cases, IP is negotiated on a case-by-case project basis. In other cases, all parties agree to implement intellectual property on the lines of pre-negotiated principles or all IP rights may be fixed at the start. The way intellectual property is handled in the collaboration is of key importance and provides an important reason for partners to participate or not.

Several aspects should be carefully addressed such as: ownership and (use) rights of the intellectual property which existed prior to the collaboration (“Background”); ownership and (use) rights for IP generated as a result of the collaboration (“Foreground”); rights of the parties with regard to improvements to the technology/Background that may arise from the collaboration and who will be responsible for the handling of applications for the registration of intellectual property (where applicable).

If the intention of the parties is to share the data and resources without intellectual property rights, rights of access and use rights should still be defined and formalized.

Example:

1. This Agreement does not affect the ownership of any Background. The Background will remain the property of the Party which contributed them to the project (or its licensors). No licence to use any Background is granted or implied by this CA except the rights expressly set out in this CA.

2. Each Project Party grants to the other Project Parties, a royalty-free, non-assignable, non-exclusive right and license (with the right to grant sub-licenses for the purposes of sub-contracting) to use the Background for the duration of the relevant Project and solely and exclusively for the purpose of conducting the project plan of the relevant project and for no other purposes whatsoever.

3.To facilitate Projects in a more efficient way, Parties define a set of Project Types as defined hereinafter. Parties may choose to deviate under specific projects from these types and will define project specific timelines, budget and Intellectual Property Rights regimes:

3.1. **Project Type 1** is a type of sponsored research Project which will be **initiated and fully financed by COMPANY** with a direct involvement and contribution by COMPANY. The outcome is regarded by COMPANY as important to its business:

i.) The research is result orientated with relating milestones and payments by COMPANY as defined in the Project Agreement:

ii.) COMPANY provides proprietary materials and/or compounds;

iii.) Institutions perform the research;

iv.) COMPANY will own all Foreground arising from the performance of Type 1, however the Institutions involved will have the right to use the Foreground for education and non-commercial research purposes;

v.) If for any specific Type 1 project, because of the particular work proposed, it is envisaged that Foreground will include improvements to the Background of Institution(s) and improvements to Background of COMPANY, the Project Agreement for such a Type 1 Project may specify a subject-matter based split of the ownership of the Foreground, to be negotiated between the Project Parties to ensure that improvements of Background of Institution(s) are owned by the respective Institution(s) and that the Background of COMPANY is owned by COMPANY;

vi.) COMPANY will make payments under market conditions for the initiated research based upon the pre-defined rates and budget under a Project Agreement;

vii.) The Project Parties shall provide necessary input on Background for the purpose of the research and the use of generated outcomes;

viii.) Institutions may publish following the Publication policy under Article\_\_ on Publication.

3.2. **Project Type 2** is a type of Project which will be initiated by a researcher or a group of researchers from Institution(s) only, or with COMPANY jointly:

i.) Project Type 2 is a **collaborative type of Project** where the participating Institutions and COMPANY jointly define the research Project and their respective input in terms of people and monetary contribution;

ii.) This model is investigator initiated and submitted by a researcher or researchers. The research is merely research and scientifically motivated;

iii.)  COMPANY has an option to receive a non-exclusive or exclusive license (as it may so decide) to the Foreground arising from the performance of a Type 2 Project to be negotiated and agreed upon between the relevant Parties in good faith;

iv.) Ownership of Foreground arising from the performance of Type 2 Project is defined by inventorship;

v.) If for any specific Type 2 project, because of the particular work proposed, it is envisaged that Foreground will include improvements to the Background of COMPANY, the Project Agreement for such a Type 2 project may specify a subject-matter based split of the ownership of the Foreground, to be negotiated between the Project Parties;

vi.) If, to the reasonable opinion of the relevant Parties a license to Background of a Party is needed for the use of another Party’s Foreground, the terms of such license will be negotiated in good faith between such relevant Parties provided that the owner of such Background shall not be required to grant such license if, in its reasonable opinion, it determines that the grant of such license would create or potentially would create prior art or if it has other valid reasons for withholding such license.

vii.) Background remains the ownership of the Party supplying it for use in a Type 2 Project, allowing access to the other Parties for the purpose of the research;

viii.) Publications and disseminations have to follow the approval procedure under Article \_\_on Publication**;**

3.3. **Project Type 3** is a type of Project which will be initiated by one or more Parties **with a direct involvement of external funding** and/or in collaboration with Third Parties:

i.) Project Type 3 is a **collaborative type** of Project where Parties jointly define the research Project and their respective input in terms of personnel and monetary contribution;

ii.) This type of Project is scientifically driven and designed by one or more researchers;

iii.) The research and the needed Background is supported by Institutions and COMPANY and will be defined based upon need;

iv.) **Financing of the Project may come from grants or research funding may be sought from national or international funding bodies.** It may be an advantage that COMPANY formally supports a grant application;

v.) COMPANY has an option to receive a non-exclusive or exclusive license (as it may so decide) to the Foreground arising from the performance of a Type 3 Project to be negotiated and agreed upon between the relevant Parties in good faith, however any provisions of a funding body prevail;

vi.) Ownership of Foreground will be determined by inventorship;

vii.) If for any specific Type 3 Project, because of the particular work proposed, it is envisaged that Foreground will include improvements to the Background of COMPANY, the Project Agreement for such a Type 3 project may specify a subject-matter based split of the ownership of the Foreground IP, to be negotiated between the Project Parties and subject to the terms of any grant agreement with a funding body.

viii.) Transfer of ownership of Foreground will be agreed upon in advance and set out in the relevant Project Agreement, however adhering to the rules by a grant body;

ix.) Publications and disseminations have to follow the procedure and rules of funding/grant body, or, if no such special funding/grant requirements in place, following Article \_\_ on Publication**;**

4. For Project Type 1 all Foreground shall be the sole and exclusive property of COMPANY. In order to accomplish the foregoing and so far, as necessary, the Institutions (or its researchers, as applicable) shall assign the Foreground concerning the Projects Type 1 to COMPANY and shall provide all assistance and execute all deeds to accomplish an unencumbered assignment of such Foreground to COMPANY. COMPANY shall have the unlimited right to use such Foreground for all purposes including but not limited to all commercial purposes.

For Project Type 2 and Project Type 3 (subject to the terms of any grant agreement with a funding body) all rights, title and interests to the Institution Foreground shall be solely owned by the relevant Party (or its researchers, as applicable) which invented or created the same or if jointly invented or created by those Parties jointly as joint owners.

5. For Project Type 2 and Project Type 3 (subject to the terms of any grant agreement with a funding body) each Institution (or its researchers, as applicable) involved in such Project agrees to grant to COMPANY, a royalty-free, non-assignable, non-exclusive right and license with the right to grant sub-licenses for the purposes of subcontracting to use the Foreground resulting from such Projects, as applicable, for research and development purposes. For Project Types 1, 2, 3 (subject to the terms of any grant agreement with a funding body), COMPANY agrees to grant to the other Project Parties involved in such Projects, a royalty-free, non-assignable, non-exclusive right and license to use the COMPANY Foreground or Joint Foreground resulting from such Projects, as applicable, for internal teaching and research purposes.

6. To the extent needed, Institutions will ensure that third party researchers have assigned Foreground to their Institution (including making a prospective assignment where appropriate) at no cost to COMPANY.

7. COMPANY at its sole discretion and at its sole costs shall be responsible for the handling of all applications for the registration of Patents, designs and copyrights (where applicable) for the protection of Foreground for Project Type 1.

8. The relevant Institution at its sole discretion and at its sole costs shall be responsible for the handling of all applications for the registration of Patents, designs and copyrights (where applicable) for the protection of the Institution Foreground for Project Type 2 and Project Type 3.

**10.Confidentiality**

The Collaboration Agreement should set out the conditions under which the parties may disclose or use secret or confidential information associated with the collaboration and pertaining projects. It is important to define what is to be considered as confidential information, confidentiality obligations (including their scope and duration) and permitted exceptions.

The above should not however interfere with the requirement of research institutions to ensure freedom to publish research results and this should be ensured by appropriate clauses elsewhere in the Collaboration Agreement (usually under the Publication clause).

By the time negotiations on Collaboration Agreement text start, parties most probably already signed certain non-disclosure/confidentiality agreement (NDA/CDA) preceding collaboration agreement (CA) in order to protect the confidential content of initial discussions. Confidentiality clause of the Collaboration agreement will supersede such NDA/CDA unless parties agree in the Collaboration Agreement that their confidentiality obligations will remain to be governed by the concluded NDA/CDA (less likely option).  
For specific projects under the Collaboration Agreement, Parties may decide to conclude additional confidentiality agreements (additional to Collaboration Agreement confidentiality clause).

Example:

1. Parties entered into a non-disclosure agreement dated\_\_\_\_\_ (hereinafter “NDA”). This confidentiality clause supersedes the NDA, as where for specific cases of disclosure Parties still may opt to conclude a confidentiality agreement.

2.Parties agree that all information supplied by one Party to one or more Parties and (i) which is marked as “Confidential” at disclosure or, in case of oral information, is confirmed in writing to be “Confidential” within 14 days from disclosure or (ii) of which a Party reasonably should understand the confidential nature thereof from the circumstances apparent at the time of disclosure, is confidential (Confidential Information) and all Parties are obliged to keep such Confidential Information confidential. Each Party will allow the other Parties access to such information as is reasonably necessary or desirable to collaborate with each other. Each Party will in good faith use reasonable endeavours to ensure that the information provided to the other is accurate and not misleading;

3.The transfer of Confidential Information shall not be construed as a grant of any right or license with respect to the Confidential Information delivered except as set forth herein or in a duly executed license agreement.

4.The receiving Party agrees to use the Confidential Information of the disclosing Party solely for the purposes of this CA and/or the purpose of the relevant project agreement(s) as the case may be.

5.The receiving Party agrees that all Confidential Information communicated in connection with this CA as well as the Steering Committee’s activities, discussions, deliberations and considerations shall be kept confidential by the receiving Party unless a specific written release is obtained from the disclosing Party. The receiving Party agrees to make Confidential Information it receives available only to those employees, servants, agents, consultants, contractors and students who require access to it in the performance of this CA and any Project Agreement or to its stakeholders and/or funding agencies for reporting purposes. The receiving Party shall exert reasonable efforts, no less than the protection given to its own confidential information, to maintain such Confidential Information in confidence.

6.This obligation of confidentiality on the receiving Party shall continue to survive for a period five (5) years from the expiration/termination date of each specific project agreement.

It is agreed that (a) Part(y)(ies) have no obligation of confidentiality if the Confidential Information:

a) was generally available to the public at the time of disclosure, or information which becomes available to the public after disclosure by the disclosing Party other than through fault (whether by action or inaction) of the receiving Party,

b) can be shown by written records to have been already known to the receiving Party prior to its receipt from the disclosing Party,

c) is obtained at any time lawfully from a Third Party under circumstances permitting its use or disclosure,

d) is developed independently by the receiving Party as evidenced by written records other than through knowledge of Confidential Information,

e) is required to be disclosed by the receiving Party to comply with applicable laws, a court or administrative order providing the Receiving Party as far as legally possible, furnishes prompt notice (where possible under applicable law), in no event less than three (3) days, to the Disclosing Party to enable it to resist such disclosure, or

f) is approved in writing by the Disclosing Party for release by the Receiving Party.

**11. Publication**

While research institutions’ interest is mainly focused on disclosing research results and new scientific and technical knowledge through publications, private companies’ focus lies in commercialising the resulting innovation and protecting research results through patents and trade secrets.

In case collaboration results in a patentable material, it is usual to agree on certain periods during which publication will be withheld to allow review of the proposed publication material and removal of the confidential information and/or to allow a patent application to be filed. This period is typically up to maximum three (3) months. As financing of the project may come from grants or research funding may be sought from national or international funding bodies, in such cases publications and disseminations have to follow the rules and procedure of such grants and/or funding bodies.

Example:

1.In general the Parties encourage publication of work arising from the projects and commit not to unreasonably block or delay publication for reasons other than those specified below. The Parties agree to reasonably collaborate to maximize the scientific impact of Publications.

2.Any Party may publish or otherwise publicly disclose any information it has gained in the course of a Project Type 2 or Project Type 3, provided that it follows commonly accepted principles hereunder which affords the other Project Parties a reasonable opportunity to review and propose the removal of its Confidential Information from the Publication and/or a delay of publication to protect patentable subject matter from the Publication. Delay of publication for review of papers shall be no more than thirty (30) days, and for abstracts it shall be fourteen (14) days. An extension of such delay period shall be acceptable for up to maximum sixty (60) days in order to remove Confidential Information and/or allow a patent application to be filed.

3.In order to ensure that COMPANY will be able to make comments and suggestions where pertinent, a proposed Publication related to a Project Type 1 shall be submitted to COMPANY for review at least sixty (60) days prior to submission for Publication. Comments and/or suggestions for amendments shall be notified by COMPANY to the Party or Parties proposing to publish within sixty (60) days upon of receipt of the proposed Publication. COMPANY shall be entitled to make a reasoned request to the Party or Parties proposing to publish that the proposed submission for Publication be delayed for a period of up to ninety (90) days from the date of first submission to COMPANY in order to enable COMPANY to take steps to protect its Confidential Information and/or COMPANY Foreground. If this request is notified within the term indicated above, the Party or Parties proposing to publish will delay the proposed disclosure for a period not exceeding ninety (90) days from the date of first submission to COMPANY. COMPANY may however, within the above mentioned ninety (90) day period for comments and/or suggestions, instead of requesting a delay of publication, at its own discretion, request that COMPANY’s Confidential Information and/or COMPANY Foreground (however, not including such Foreground that has been transferred to COMPANY under the relevant Project from the Party or Parties proposing to Publish) be deleted from the intended Publication, whereby such COMPANY Confidential Information and/or COMPANY Foreground shall be removed. For the avoidance of doubt, COMPANY’s right to have the Publication delayed for protection of Foreground shall not cease in such case.

**12. Entering into force or Effective Date of the agreement**

Entering into force or Effective Date of the agreement can be either specified as a precise date in the agreement or referenced to be considered as a date when the last party to the agreement signed the agreement (in this case it is important to remember to insert the dates with the signatures).

Example:

1. This CA will enter into force on *dd/mm/year*; or

2. This CA will become effective when signed by all parties; or

3. This CA shall enter into force on the date of the last signature to it.

**13. Term of the Agreement and Termination**

The term of agreement can be indefinite (less likely in practice) or definite (in most cases). The initial term of the agreement is usually set in X years counted from the entering of the agreement into force (Effective Date- see point 12. above).

Depending on the scenario, agreement with definite term (i.e. 4 years from the Effective Date) will expire on the known date while in case of indefinite term of the agreement - agreement will terminate by notice of a one party to another party/ies.

Renewal of the agreement in case parties wish to prolong the collaboration can be set as automatic renewal or renewal subject to decision off the parties prior to expiration date of the agreement (non-automatic renewal).

Besides above, termination of the agreement can be associated with a number of possible events that can be numbered in agreement itself such as earlier termination by mutual consent or termination due to the non-cured breach, bankruptcy etc.)

Example:

1.This CA shall be effective as of the Effective Date and, remain in force and effect for an initial period of \_\_\_\_\_\_ (\_) years (the “Initial Period”).

A formal review of the collaboration under this CA will take place six (6) months before the end of the Initial Period. If this formal review results in a decision to extend this CA beyond the initial period, the CA may be extended by up to \_\_\_ (\_) years. Such an extension shall be effected by a written amendment to this CA to be signed by all Parties. For the avoidance of doubt, none of the Parties shall be bound by any obligation to join such extension of this CA.

2.This CA may be terminated by written consent of all the Parties.

3.Without prejudice to the right of a Party to withdraw from the CA under clause 4. below, a Party may terminate the Project Agreement and/or this CA in respect of a Party (hereinafter the “Terminated Party”) with immediate effect and without any further notice or compensation by any other Party in the event:

a) the Terminated Party is in material default of the performance of its obligations under this CA and fails to remedy such failure within sixty (60) days after written notice thereof or the default cannot be remedied as stated in such written notice in which case the date of termination shall be the date of the written notice; or

b) the Terminated Party incurs an insolvency event; provided, however, in the case of any involuntary bankruptcy proceeding, such right to terminate shall only become effective if the Party that incurs the Insolvency event consents to the involuntary bankruptcy or such proceeding is not dismissed within ninety (90) days after the filing thereof.

4.A Party may withdraw from this CA at any time and for any reason (the Withdrawing Party) by giving the other Parties ninety (90) days’ prior written notice, in which case the Withdrawing Party shall be deemed to no longer be a Party to this CA from the end of the ninety (90) day notice period.

5. The withdrawal of a Withdrawing Party or a Terminated Party from this CA will neither affect the validity and continuity of this CA by the other Parties, nor any on-going Project Agreement established under it prior to such withdrawal. The terms and conditions of this CA shall continue to apply, unchanged to Project Agreements still in existence at the date of the withdrawal of the Withdrawing Party or the Terminated Party as if this CA had not been terminated, unless Parties agree to terminate a Project.

6. In the event that COMPANY terminates a Project Agreement to which it is a Party, in application of paragraphs 3 and 4 of this Article, COMPANY shall pay:

a) all amounts due under that Project Agreement up to the date of termination in respect of work done;

b) all un-cancellable documented Project related costs. This includes the salary costs of staff that is specifically hired for the Project under the terminated Project Agreement and which cannot be cancelled;

7.The termination of a Project Agreement in accordance with the termination rights specified therein and/or of this CA shall have no effect on any rights and licenses with respect to COMPANY Foreground, Institution Foreground and/or Joint Foreground granted by a Project Party to the other Project Parties prior to the dated of termination of a Project Agreement and/or the CA.

8. No Party terminating the CA and/or a Project Agreement in accordance with the termination rights specified therein, shall have any right, title whatsoever with regard to any Foreground to the related Projects which is generated after the date of termination of the relevant agreement. The Party terminating the CA, or a Project Agreement grants a non-exclusive license to its Background and Foreground which has already been generated and/or used in the Project Agreement solely for the purpose of allowing the continuation of and use in a Project which have already been initiated.

**14. Warranty/ Liability/ Indemnity**

Warranty/liability/indemnity clause (sometimes referred to simply as a liability clause) is the section in the agreement that specifies the damages that one party will be obligated to provide to the other under the terms and conditions stipulated in the agreement. Generally, it covers who is liable for what and level of damages if something goes wrong (compensation for failure to perform). The liability clauses may vary considerably depending on the scope, field, nature and other components of the collaboration. Also, when limiting liability, it should be checked whether the applicable national law allows liability to be limited in the way envisaged. In many countries, for instance, excluding liability for fraud or willful misconduct is not allowed. Because a limitation of liability clause typically favors whichever party drafted the agreement, it's particularly important to negotiate that part of the agreement after careful consideration and consult a lawyer if you’re having a tough time untangling the terms and their implications.

Example:

1.Each Party represents and warrants that it has the right to enter into this CA.

2. Each Party shall indemnify and hold harmless the other Party and its directors, officers, employees and affiliates from and against all claims and damages (including without limitation attorneys’ fees and costs) which arise out of, relate to or result from any act or omission of indemnifying Party.

3.Parties are not liable towards each other for any claims, costs or damages that may result, directly or indirectly out of the performed activities under the CA or Projects, unless and to the extent that damage is caused by gross fault and/or due to wilful misconduct by a Party. Parties shall in no case be liable, towards the other Parties, for any indirect, incidental or consequential damages (including without limitation, lost business or profits, loss of data or loss of use of equipment, loss of goodwill, loss of use, loss of production or business interruption costs).

4. Nothing in this CA limits or excludes any Party’s liability under Projects for: (i) death or personal injury; or (ii) any fraud or for any sort of liability that, by law, cannot be limited or excluded.

5.The foregoing representations and warranties are in lieu of all other representations and warranties not expressly set forth herein. Institutions and company disclaim all other warranties, whether express or implied, with respect to each of their research, development and commercialization efforts hereunder, including, without limitation, whether the products can be successfully developed or marketed, the accuracy, performance, utility, reliability, technological or commercial value, comprehensiveness, merchantability or fitness for any particular purpose whatsoever of the products.

**15. Governing law**

This clause sets forth which jurisdiction’s law will govern the interpretation of the contract and where a party can bring a claim under the contract.

This clause is intended for the parties to the CA to negotiate in advance which jurisdiction and law shall be applicable in case of disputes between the Parties arise under the CA. In case of both parties existing and incorporated under the law of the same country this is fairly easy as there is only one law and system in question. In case of parties incorporated in different countries and legal regimes, there will be negotiations about the governing law and each party will lobby for the law of its own country.

In these cases, it might be useful to agree on a ***law of a third/neutral country*.** In choosing third/neutral country law, it is advisable to agree on a law and a system which is fairly similar to the party’s own law.

Other possibility is choosing a ***law of the defendant party*** as governing law in which case the party which is in breach of the agreement and sued by the other party is able to defend itself under its own legal system.

As for the jurisdiction- there are few options, but the two most common ones are choosing either choosing courts or arbitration.

Example:

(a) This Agreement is subject to ………. law excluding its conflict of law provisions. The Parties shall attempt in good faith to resolve promptly any dispute, arising out of or relating to this Agreement by negotiation.

Any dispute that cannot be settled through negotiations shall be exclusively decided by the competent court in ………. (place). The proceedings shall be conducted in ............ (language).

(b) Should disputes arise over the interpretation or execution of this Agreement, the Parties will try to obtain amicable reconciliation leading to a transaction. Any claim, controversy or dispute arising under this Agreement that cannot be amicably settled shall be governed by and construed in accordance with the laws of the defending Party. Jurisdiction and venue for any dispute arising shall be exclusively in the city where the defending Party is registered/has its statutory seat.

(c) The Parties shall endeavour to resolve all disagreements or difficulties that may arise concerning the implementation of this Agreement without appealing to courts. In case an amicable settlement cannot be reached despite all efforts, the dispute shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be ………. (place/city), ……………. (country).

When the contracting parties are located or incorporated in different states (or countries), or when the transaction itself crosses jurisdictional lines, this clause should be reviewed and negotiated to ensure the selected law and forum is appropriate and agreeable.

**16. Miscellaneous**

Although standard, the so-called "miscellaneous" provisions must not be overlooked while reviewing or drafting a contract. These provisions, although often boilerplate, can have significant implications, so they should be analyzed and adjusted to ensure that its terms are appropriate in light of the particular transaction.

Example clauses

11.1 **Entire Agreement.** This Agreement and Specific Agreements constitute the entire understanding between the Parties relating to the subject matter hereof and supersede all prior understandings with respect hereto

11.2. **Amendments.** The Parties hereto may during the time of this Agreement modify, vary or alter any of its provisions. This Agreement may not be altered, modified or amended except in writing, signed by duly authorized representatives of all Parties.

11.3 **Language.** Language of this Agreement shall be English. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent and no rule of strict construction against either Party shall apply to any term or condition of this Agreement.

11.4. **Headings.** Headings contained in this Agreement are for reference purpose only and shall not be used to construe any provision.

11.5. **Relationship between Parties.** The relationship between \_\_\_\_\_, \_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_ under this Agreement is that of independent contractors.

11.6. **Waiver.** The waiver by either Party of a breach of any of the provisions of this Agreement by the other Party/ies shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission by either Party/ies in exercising any right that it may have under this Agreement operate as a waiver of any breach or default by the other Party/ies.

11.7. **Severability.** If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, it shall be ineffective to the extent of such invalidity, illegality or unenforceability, and the validity, legality and enforceability of the remaining provisions contained in this Agreement shall remain in effect and the invalid or unenforceable provision shall be deemed modified to the limited extent required to permit its validity or enforcement in a manner most closely approximating the initial intention of the Parties as expressed by initial provision.

11.8. **Assignment**. Neither Party shall assign or transfer all or any part of its rights and obligations under this Agreement and Specific Agreements without prior written consent of the other Party/ies.

**17. Signatures**

The signature is the most common way to indicate that parties have read and agreed to an agreement. If the agreement has gone through a number of rounds of negotiations or revisions, it is essential to assure that one is signing the right version and fully understands the terms of the document before its signature.

The Parties have caused this Agreement to be signed in duplicate by their respective authorized representatives:

**Date: …………………………………………….**

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name:**

**Function:**

**18. PROJECT AGREEMENT (PA)**

As previously discussed, more common type of the Collaboration Agreement is a framework type agreement with a legal structure suitable for execution of multiple, different projects under the pre-negotiated set of clauses. In that way, only specifics of each project such as project plan with budget, contributions, deliverables and timeframe for performance needs to be agreed upon under between the parties which steers the process and enables execution of more projects in a shorter time. Specific projects are therefore executed by a way of separate Project Agreements concluded under the Collaboration Agreement. Such are therefore integral part of the Collaboration Agreement and can be attached as appendices to it.

Example:  **ANNEX \_**

**to COLLABORATION AGREEMENT (CA)**

**PROJECT AGREEMENT ON\_\_\_\_\_\_\_\_\_**

THIS Project Agreement is made and entered into as of the date of the last signature below (the “Effective Date”), by and between the Parties listed below:

**Parties**

[specific Parties to the Project Agreement to be identified]

Also referred to individually as a” Party**”** or collectively as**” Parties”**.

**WHEREAS:**

a). Parties agree that they have signed a Collaboration Agreement on [date] \_\_\_\_\_\_\_ (hereinafter “CA”) in the field of \_\_\_\_\_\_.

b.) This Project Agreement refers to Project Type \_\_ under Article \_\_\_ of the CA.

**HAVE AGREED AS FOLLOWS**

**1.Project Type**

Following Article \_\_\_ of the CA this Project is a **\_\_\_\_\_\_\_** [project type] as defined under the Project Plan as attached.

**2. Project type terms/Intellectual Property Regime**

The terms of Article \_\_\_of the CA are valid and are fully applicable.

**3. Project Lead Party**

Project Lead Party under this Project Agreement shall be\_\_\_\_\_\_\_\_\_\_\_\_

1. **Project Team**

In accordance with CA, the Project Team responsible for the execution of the Project under this Project Agreement shall be comprised of representatives from \_\_and \_\_. The names of the elected members shall be added to this Project Agreement as Appendix 4.

1. **Contact details/Notices**

[………………………………]

**6. CA applicability**

All (other) clauses of the CA remain unchanged and applicable.

**7. Term**

This Project Agreement shall be effective as of the Effective Date and remain in force and effect until ………………

In witness, whereof, the Parties have executed this Project Agreement as of the Effective Date in [\_]-fold.

Signatures

Name:

Title:

Date:

**Appendix 1**

**PROJECT PLAN /PROJECT BUDGET**

**1.PROJECT DESCRIPTION**

**[ ]**

**2.Background/Introduction/Objectives**

*(Should include background to origin of work/collaboration and objectives – details as necessary can be included).*

**3. Scope of Work**

*(A definition/description of the work to be done and the objectives in the project. Can also include methodology, if necessary)*

***4.*****Contributions to the Project made by the Parties**

*(which Party does what and which Party provides what)*

**5. Deliverables/ Time Frame for performance**

*(An indication of the Project schedules and milestones, update reports - if any, may be put in a tabulated format for easy reference)*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **DELIVERABLES** | **Q1** | **Q2** | **Q3** | **Q4** |
| Objective 1 |  |  |  |  |
| Objective 2 |  |  |  |  |
| Objective 3 |  |  |  |  |
| Progress report |  |  |  |  |
| Technology/Invention Disclosure |  |  |  |  |
| Final Report |  |  |  |  |

1. **Milestones/Go-No-Go decision moments**

|  |  |  |
| --- | --- | --- |
| **MILESTONE** | **Date** | **Go/No-Go criteria** |
| Milestone 1 |  |  |
| Milestone 2 |  |  |
| Milestone 3 |  |  |

1. **BUDGET**

(*Statement of in-kind or existing resources that each party will be putting into the Project)*

|  |  |  |  |
| --- | --- | --- | --- |
| **DELIVERABLES** | **BUDGET/COSTS/RESOURCES** | **PARTY 1** | **PARTY 2** |
| Objective 1 |  |  |  |
| Objective 2 |  |  |  |
| Objective 3 |  |  |  |
| **TOTAL** |  |  |  |

**Appendix 2**

**Background Know-How**

(to be listed)

**Appendix 3**

**Background Patents**

(to be listed)

**Appendix 4**

**PROJECT TEAM**

(names of members)

*DISCLAIMER: Above examples of clauses provided under each commentary segment of the CA and provided example of Project Agreement under CA are not to be used as a template agreement/s on “as is basis”. They need to be adjusted to reflect and encompass the specifics of each collaboration and specific field. This document is therefore aimed to assist those who need to engage in collaboration agreement and/or pertaining project agreement and serves as a guidance on different aspects to be considered.*