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| **CO-development agreement** |

A co-development agreement is an agreement that defines the framework between the parties in relation to the development of a new solution (or products).

The agreement defines the scope of work to be developed, the ownership rights and the right of use to the developed solution (or products) as well as the contributions that each party will make, including IPR.

This template should be used taking into consideration that it should be adjusted to the specific project and the parties. In particular, it should be assessed if ownership to the developed solution should be jointly owned or if such rights should only belong to one of the parties (or be split between the parties). The template assumes that the developed rights (defined as “Foreground Rights”) are jointly owned.

***Important Information***

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This Co-Development Agreement (hereinafter “Agreement”) is made on the ¦[date]| between

¦[Name]**|**

¦[Address]|

¦[City]|

[Country]

[Business Registration No.]

(hereinafter (“[●]”)

and

[Name]

[Address]

[City]

[Country]

[Business Registration No.]

(hereinafter (“[●]”)

(collectively the “Parties” and individually the “Party”)

WHEREAS[[1]](#endnote-1)

(A) [●] develops [manufactures/markets] [●];

(B) [●] develops [manufactures/markets] [●];

(C) [●] and [●] have entered into a [NDA/LoI/MoU/Co-operation Agreement on [date] concerning the Project [include description of Project]];

(D) [●] and [●] have identified the need to develop [include description of research and development project] for the purpose of the Project; and

(E) the Parties – as a consequence of the above – wish to enter into this Agreement covering the framework of the cooperation concerning such research and development activities;

NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

# DEFINITIONS

## ¦As used in this Agreement, the following terms shall have the following meaning:

## “Agreement” means this Co-Development Agreement, including exhibits, as may be amended from time to time in accordance with clause 11.2.

## “Affiliate" shall mean in relation to any company, any corporation, firm, limited liability company, partnership, or other entity which directly or indirectly Controls or is controlled by or is under common Control with a Party to this Agreement, where "Control" means possession, whether directly or indirectly through one (1) or more Affiliates, more than fifty percent (50%) of the power to direct or cause the direction of the management of any entity, or equivalent governing body of a corporation, whether through the ownership of voting rights, shares or by contract or otherwise.

## "Background Rights" means all Confidential Information and IPR developed or acquired by a Party prior to the Effective Date, whether patentable or protectable through trade secret, including without limitation know-how, trade secrets, research plans, reports, market interests, technology, techniques and ideas and all physical material.

## "Confidential Information" means all technical and other information disclosed by one Party to the other Party, including but not limited to information on Background and Foreground Rights.

## “Development Project” means the research and development activities, which the Parties have agreed to undertake in relation to the Project pursuant to the terms and conditions of this Agreement. The Development Project is further described in Exhibit [●].

## "Effective Date" shall mean the last date of signature of both of the Parties.

## "Field of Use" means [field of use] in respect of [●] and [field of use] in respect of [●].

## "Foreground Rights" means Confidential Information or IPR, including without limitation know-how, trade secrets, research plans, reports, market interests, technology, techniques and ideas and all physical/technical materials, resulting from and made during the Development Project.

## "Project" means [insert description of project] concerning the delivery of [equipment and know-how by the Parties (and possibly other sub-contractors) within areas such as [include description of relevant areas] to [●]] as further outlined in Exhibit [●].

## “Project Plan” means the description set out in clause 2.2 as amended from time to time by the Parties in writing by mutual agreement.

## “IPR” means patents, utility models, designs, copyrights, know-how and any other intellectual property rights anywhere in the world, whether patentable or protectable by trade secrets.

# Scope

## The Parties agree to jointly perform the Development Project in relation to the Project on the terms and conditions set out in this Agreement.

## The Parties shall work together in good faith to achieve the Development Project and the Parties have agreed to produce a project plan detailing the following matters (“Project Plan”) [amend as necessary]:

* [identifying the information and materials needed and tasks to be undertaken by each Party];
* [the subject matter and the objectives of the Development Project and the success criteria by which a successful completion should be measured, and the manner in which this will be able to achieve the deliverable under the Project];
* [the expected Foreground Rights and to whom the Foreground Rights shall belong];
* [at the request of either Party, the Background Rights of each Party expected to be included as part of the Development Project]; and
* [the budget for the Development Project as further set out in Exhibit [●]]

## The Parties agree to establish a Project Management Group that shall be responsible for the continued monitoring and management of the Development Project (hereinafter the “Project Management Group”).

## Each Party shall appoint [one (1) individual / two (2) individuals] to represent the Party in the Project Management Group.

## The Project Management Group shall be responsible for the following [amend as necessary]:

* [supervise and manage the Development Project on a day-to-day basis, including budgeting, staffing and facility requirements];
* [approve any modifications to the Development Project, and/or the Project Plan];
* [determine whether a successful completion of the Development Project has been achieved]; and
* [other responsibilities?].

## The Project Management Group shall have no authority to amend or modify the terms of this Agreement, which is expressly reserved for duly authorised signatories of each Party.

## All decisions by the Project Management Group shall be unanimous. In the event that the Project Management Group is unable to reach a unanimous decision, the dispute shall be resolved by the Parties.

## The Project Management Group shall keep minutes of all meetings and such minutes shall be approved by each Party.

# Costs

## **[**The costs of the Development Project shall be borne by the Parties as set out in Exhibit [●].

## Except as provided in Exhibit [●] or as agreed otherwise by the Parties in writing, a Party shall not be required to bear any costs associated with the Development Project.**]**

## **[**Alternatively to clauses 3.1-3.2: In consideration of the joint purpose of the Development Project, each Party shall – unless otherwise agreed by the Parties in writing – bear its own costs and expenses in connection with the Development Project, including, but not limited to, salaries of employees, materials, travel expenses etc.**]**

# Ownership

## Each Party shall exclusively own its Background Rights and no right or license to any such Background Rights shall be created, by virtue of the Development Project or of this Agreement.

## The Parties shall jointly own all Foreground Rights resulting from the Development Project, whether made solely by a Party or jointly by the Parties[[2]](#endnote-2).

## A Party shall not pledge, sell or otherwise dispose of its interest in Foreground Rights to third parties without the other Party’s prior written consent.

## Licensing of Foreground Rights to third parties shall require the prior written agreement between the Parties setting out their respective rights and obligations, including without limitation, the distribution of licensing costs and income.

# RIGHT of USE

## A Party shall be entitled to [exclusively] use the Foreground Rights within its Field of Use.

## Each Party hereby grants to the other Party the non-exclusive right to use its Background Rights free of charge, but only as strictly necessary to perform the Development Project.

## Each Party hereby grants the other Party a non/exclusive, royalty/bearing, non/transferable right to use its Background Right, but only as strictly necessary to enable the other Party to use the Foreground Rights within its Field of Use. The terms and conditions of the right of use shall be set out in a separate agreement between the Parties.

## The Background Rights may not be transferred by the receiving Party to any third party without the prior written consent of the supplying Party.

## No right to use any Background Rights is granted by one Party to the other under the Agreement except as expressly set out in clauses 5.2-5.3.

# Protection

## The Parties shall decide, by mutual agreement, whether to file for or maintain patent or other IPR protection of the Foreground Rights.

## If the Parties decide to file for or maintain patent or other IPR protection of a Foreground Right, the Parties shall agree which Party shall conduct the activities in the names of and on behalf of both Parties. The Parties shall equally bear all costs resulting from these activities.

## If a Party declines to bear its share of the costs associated with filing for or maintaining patent or other IPR protection of a Foreground Right, the other Party may conduct the activities in its own name and at its own expense. The declining Party shall retain its rights set out in clause 5.1 in respect of the patent or other IPR protection, but shall lose its rights and obligations under clause 4.6 in respect of the patent or other IPR protection.

# enforcement

## The Parties shall decide, by mutual agreement, whether to take action against an infringement of the Foreground Rights by a third party.

## If the Parties decide to take action against an infringement of a Foreground Right by a third party, the Parties shall decide which Party shall control the activities in the names of and on behalf of the Parties. The Parties shall equally bear all costs and income associated with such action.

## If a Party declines to bear its share of the costs associated with the action taken against an infringement of a Foreground Right by a third party, the other Party may decide to take such action in its own name, controlling the action and bearing all costs associated with and obtaining all income resulting from the action.

# Confidentiality

## Each Party shall keep all Background Rights of the other Party and all Foreground Rights strictly confidential and shall not disclose these to any third party without the other Party’s prior written consent.

## The obligations set out in clause 8.1 shall not apply to any Background Rights and Foreground Rights that are generally available to the public, obtained in good faith from a third party, independently developed by a Party or required to be disclosed by law.

# Limitation of liability

## A Party shall not be liable for any failure to fulfil any term or condition of this Agreement due to an event outside its reasonable control (force majeure). If such event continues for [number] days or more, the non-affected Party may terminate the Agreement by written notice and without liability to the affected Party.

## In no event shall a Party be liable to the other Party for consequential, incidental, special, punitive or exemplary loss, including but not limited to, loss of profit, loss of revenue, loss of business, loss of goodwill, loss of anticipated savings or cost of procuring substitute goods or services.

## All Background Rights and Foreground Rights are provided “as is”, and neither Party makes any representation or warranty, including without limitation, any representation or warranty of merchantability, fitness for a particular purpose, non-infringement, validity or patentability.

# Term

## The Agreement shall commence when signed by both Parties.

## Either Party may terminate the Agreement with a written notice of [number] days to the expiry of a [month/quarter] to the other Party.

## Either Party may terminate the Agreement by written notice to the other Party, effective immediately, if the other Party fails to remedy any material breach of the Agreement within [number] days of receiving written notice of such breach or if the other Party enters into insolvency proceedings.

# Miscellaneous

## The Agreement contains the entire understanding of the Parties with respect to the Development Project [except that the Parties have entered into separate agreements concerning the Project, which shall be governed by such agreements].

## The Agreement may not be amended except by written agreement signed by both Parties.

## The provisions of clauses 4, 5.1, 5.3-5.4, 6-8, 9.2-9.3, 11.3 and 12 shall survive termination of the Agreement for any reason.

# Governing LAW AND ARBITRATION

## This Agreement and any dispute arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of Denmark, excluding conflict of law principles.

## Any dispute between or by Parties arising out of or in connection with this Agreement shall be finally settled by arbitration in accordance with the rules of the Danish Institute of Arbitration (Danish Arbitration). The arbitration procedure shall take place in [●] and shall be carried out in the [English] language.

## The proceedings and any award shall be kept confidential by the Parties.

# SIGNATURES

## This Agreement is signed in [●] original copies, one for each of the Parties.

|  |  |  |
| --- | --- | --- |
| ¦[Place]|, on ¦[Date]|: |  | ¦[Place]|, on ¦[Date]|: |
| For ¦[●]|: |  | For ¦[●]|: |
|  |  |  |
|  |  |  |
|  |  |  |
| ¦[Name and Title]| |  | ¦[Name and Title]| |

# References

1. The description should be amended to reflect the specific circumstances and agreements that have been entered into so far by the parties. [↑](#endnote-ref-1)
2. The Agreement stipulates joint ownership to Foreground Rights. This may not always be the ideal solution and as an alternative, it may be agreed that ownership to Foreground Rights shall belong to one Party or be divided between the Parties. The provisions concerning right of use, protection and enforcement must be amended to reflect such changes. [↑](#endnote-ref-2)