

AGREEMENT ON CO-FINANCED PHD STUDY
(employment at the Institution)

Between

[The university
CVR no.
Address]
(Hereinafter referred to as 'the Institution')

and

[The company
CVR no.
Address]
(Hereinafter referred to as 'the Company')

(Separately, the Institution and the Company are also referred to as 'the Party'
and jointly 'the Parties').

1 Definitions

Agreement: This Agreement on co-financed PhD study with corresponding attachments.

Background Knowledge: The Company's and the Institution's unpublished knowledge in the form of know-how, unpublished inventions or other specialised unpublished knowledge that the Company and the Institution have made known to each other or made available for the completion of the Project.

Foreground Knowledge: All knowledge generated during collaboration on the Project regardless of whether this knowledge was created by the Institution or the Company.

The Institute: The name of the Institute at the Institution with which the PhD student is associated].

Invention: A new product that differs from what is known at the time the product was invented. In this Agreement, the word 'Invention' shall also cover products that may qualify for protection under the Danish Act on Utility Models.

PhD Student: The PhD Student [insert name and student number] who is completing the Project.

Project: The PhD Project that forms the subject of this Agreement between the Institution, the PhD Student and the Company, as described in Attachment 1.

Field of Application: The field defined by the Company and the Institution in Attachment 2 to this Agreement as the field in which the Company intends to make commercial use of the Foreground Knowledge generated by the Project.

Equipment: All materials, data, etc. both technical and non-technical, including appliances, machinery, material samples, test animals, reagents, etc.

2 Background and purpose of the Collaboration

- 2.1. The purpose of the Agreement is to allow the PhD Student in collaboration with the Company and the Institute to complete the PhD programme and acquire the PhD degree. This purpose shall be given priority over other considerations.
- 2.2. Both the Institute and the Company have developed special expertise in [insert the subject area of the Project]. The PhD Student, the Institute and the Company have an interest in expanding their knowledge in [insert the subject area of the Project] through research, and the

Company wishes to use the Foreground Knowledge resulting from this research within the Field of Application indicated in Attachment 2.

- 2.3 The Parties accordingly have a mutual interest in collaborating on the Project relating to [brief description of the Project] and securing the Project financially through co-financing of the PhD programme for the PhD student, as indicated in Clause 4 and Attachment 3.
- 2.4 The Institute shall plan and approve the PhD Student's complete PhD programme and award the PhD degree if the requirements for this have been met. The PhD programme shall be carried out in accordance with applicable rules for PhD students, including the Ministerial Order on PhD programmes (Ministerial Order no. 18 of 14 January 2008) and the universities' internal rules for PhD programmes.

3 Employment at the Institution and work at the Company

- 3.1 The PhD Student is employed at the Institution and shall comply with the Institution's rules for its employees, as applicable from time to time.
- 3.2 In connection with work at the Company, the PhD Student shall comply with the Company's rules, including security rules and instructions. The Company shall have a duty to inform the PhD Student about the Company's rules.

4 Economics

- 4.1. The Parties have jointly prepared a budget for the Project, cf. Attachment 3 to this Agreement. The budget was prepared in accordance with the budget guidelines issued by the Danish Ministry of Finance and the Institution's PhD study guide.
- 4.2. The Institution shall invoice the Company for the Company's cash contributions inclusive of VAT at the times indicated in Attachment 3.

5 Supervision

- 5.1 The Institution has appointed [insert name] who is employed at the Institution as the PhD Student's main supervisor. [Insert name] has been appointed as the Company supervisor.

6 Rights

- 6.1 Each Party shall own the Foreground Knowledge created by the Party in question in connection with the Project.
- 6.2 Foreground Knowledge created jointly by the staff of the Parties shall be jointly owned by the Parties pro rata to their intellectual contribution

to the developed Foreground Knowledge. If the respective contributions of the Parties cannot be documented, the Foreground Knowledge shall be owned by the Parties in equal shares. All forms of disposal of jointly owned Foreground Knowledge which has not been purchased by the Company and to which the Company has not acquired an exclusive licence, cf. Clause 7.4, shall require agreement between the Parties.

- 6.3 During the term of the Project, the Parties shall grant each other free access to use their Background and Foreground Knowledge to the extent it is necessary for the completion of the Project. This access right shall only apply to work in connection with the Project and shall not be used for commercial purposes or transferred to a third party.

7 Transfer of rights

- 7.1 The Parties shall have a, non-exclusive right to utilise free of charge any Foreground Knowledge generated by the Project that cannot be protected by the Danish Patent Act or other specific legislation about intellectual property rights. Publishing the other Party's Foreground Knowledge shall require that Party's consent, cf. Clause 13.1
- 7.2 The Company shall have a non-exclusive right within the Field of Application to make commercial and research use of any of the Institution's Foreground Knowledge that can be legally protected, including patentable Inventions or a share in patentable joint Inventions, as well as any computer programs that form part of an Invention or a share of a joint Invention. The Company shall pay a fee for such use, as indicated in Clause 9.1. The Company shall notify the Institution whether the Company wishes to make use of its non-exclusive right of use before expiry of the deadline indicated in Clause 8.1.
- 7.3 The Company shall be entitled to use computer programs that form part of the Foreground Knowledge created by the Institution as part of the Project with due respect for the rights of third parties. The financial terms for this use shall be determined in accordance with Clause 9.3.
- 7.4 The Company shall be entitled, within the Field of Application, to purchase all rights to any of the Institution's Foreground Knowledge that can be legally protected, including patentable Inventions and shares in patentable joint Inventions. The Company shall exercise its option to purchase subject to notice to the Institution as set out in Clause 7.1. The purchase price shall be determined in accordance with Clause 9.2.

[Alternatively (e.g. in case the patentable Invention is much broader than the Company's Field of Application):

The Company shall be entitled, within the Field of Application, to acquire an exclusive licence to any of the Institution's Foreground Knowledge that can be legally protected, including patentable Inventions and shares in patentable joint Inventions. The Company shall exercise its option to acquire an exclusive licence subject to notice to

the Institution in accordance with Clause 7.1 the licence fee shall be determined in accordance with Clause 9.2.]

In very special cases, the main rule in Clause 7.4 about the Company's unconditional right to purchase rights or acquire a licence can be departed from. The Company's option to purchase rights or acquire a licence can then be made conditional upon the Institution's decision to sell or grant a licence. In these special cases, it is recommended using the following text:

[The Company shall, within its Field of Application, have a first right of refusal to purchase all rights to any of the Institution's Foreground Knowledge that can be legally protected, including patentable Inventions and shares in patentable joint Inventions. The Company's acceptance of an offer from the Institution for sale of a patentable Invention or other protected Foreground Knowledge shall reach the Institution no later than 30 days from the date the offer was sent. If the Company fails to confirm its acceptance before expiry of the deadline, the Institution shall be entitled to make an offer to a third party on terms that should not be more favourable to the third party than the terms offered to the Company.]

[The Company shall, within its Field of Application, have a first right of refusal to acquire an exclusive licence to all rights relating to any of the Institution's Foreground Knowledge that can be legally protected, including patentable Inventions and shares in patentable joint Inventions. The Company's acceptance of an offer from the Institution for acquisition of an exclusive licence to a patentable Invention or other protected Foreground Knowledge shall reach the Institution no later than 30 days from the date the offer was sent. If the Company fails to confirm its acceptance before expiry of the deadline, the Institution shall be entitled to make an offer to a third party on terms that should not be more favourable to the third party than the terms offered to the Company.]

- 7.5 If the Company does not make use of the right set out in Clause 7.4 to an Invention made by an Institution or to other protected Foreground Knowledge belonging to the Institution, the Institution shall be entitled to transfer the Foreground Knowledge in question to a third party.
- 7.6 Clause 7.5 above shall not apply to an Institution's share of a joint Invention or other shared Foreground Knowledge. If the Company does not make use of the right to the Institution's share of a joint Invention or other shared Foreground Knowledge set out in Clause 7.4, the transfer of the Institution's share of joint Inventions or other shared Foreground Knowledge to a third party shall require a joint decision by the Parties.
- 7.7 The Company shall decide whether to apply for patent protection for an Invention purchased by the Company pursuant to Clause 7.4. The

Institution and the person(s) responsible for the Invention shall sign the documents necessary for the patent application. The Institution is willing to assist with the preparation of the patent application against payment in accordance with the Institution's hourly rates for academic staff. The Company's decision not to file a patent application, etc. shall not prevent the Institution from publishing the research results, cf. Clause 13.

- 7.8 The Company's acquisition of rights pursuant to Clause 7.4 shall not prevent the Institution from using the Foreground Knowledge generated as part of the Project in the Institution's further research and teaching after completion of the Project.

8 Reporting of Inventions

- 8.1 If an Invention that is deemed patentable is made entirely or partially by the Institution's staff in connection with the Project, the inventor(s) shall immediately inform the Parties accordingly. If the Company deems an invention patentable, made entirely or partially by the Institution's staff, and provided the Invention falls within the scope of the Field of Application, the Company shall notify the Institution within [] days upon receipt of the information on the Invention whether it wishes to make use of the non-exclusive right of use set out in Clause 7.2, cf. also Clause 9.1, or wishes to purchase [alternatively: acquire an exclusive licence to] the Invention, cf. Clauses 7.4 and 9.2.

9 Fee for transfer of rights

- 9.1 The fee for the Company's non-exclusive right to use the Institution's Invention, cf. Clause 7.2 shall amount to DKK [].

[Alternatively: The fee for the Company's non-exclusive right to use the Institution's Invention, cf. Clause 7.2 shall be determined by negotiation between the Parties. These negotiations shall commence no later than [] days following notification by the Company as set out in Clause 8.1].

- 9.2 If the Company purchases an Invention made by the Institution, cf. Clause 7.4, the purchase price shall amount to DKK []. If the Invention is a joint Invention, the purchase price shall be reduced to an amount that reflects the Company's pro rata share of the Invention.

[Alternatively: The Company shall pay a fee (royalty) of [insert a percentage] of the Company's [insert the basis of calculation] for the exclusive licence indicated in Clause 7.4. [Alternatively: a price per item of [insert amount]]] for the commercial use of the Invention and in general on the terms of the licence agreement entered into by the Parties.]

[Alternatively to both: The purchase price paid by the Company for an Invention made by the Institution [alternatively: The licence fee paid by the Company for an exclusive licence to an Invention made by the Institution], cf. Clause 7.4, shall be determined by negotiation between the Parties. These negotiations shall commence no later than [] days following notification by the Company as set out in Clause 8.1. If the Parties fail to reach an agreement on terms of payment within a period of [] days from the day on which the negotiations shall commence, either Party may request that the terms be decided by an independent third party expert who shall be appointed jointly by the Parties or [the Parties' trade organisations] or, in they fail to reach an agreement, by the President of the Maritime and Commercial Court following a hearing of the Parties].

- 9.3 The fee for the Company's use of computer programs that form part of the Foreground Knowledge created by the Institution as part of the Project, cf. Clause 7.3, shall amount to DKK [].

[Alternatively: The fee for the Company's use of computer programs that form part of the Foreground Knowledge created by the Institution as part of the Project, cf. Clause 7.3, shall be determined by negotiation between the Parties. These negotiations shall commence no later than [] days following notification by the Company as set out in Clause 8.1. If the Parties fail to reach an agreement on terms of payment within a period of [] days from the day on which the negotiations shall commence, either Party may request that the terms be decided by an independent third party expert who shall be appointed jointly by the Parties or [the Parties' trade organisations] or, if they fail to reach an agreement, by the President of the Maritime and Commercial Court following a hearing of the Parties].

10 Equipment

- 10.1 Equipment made available by one Party to another Party for use in the Project, shall remain the property of the former Party and shall only be used by the latter Party in connection with the Project. The right of use shall lapse after expiry of the Agreement, and the Equipment shall be returned to the Party who made the Equipment available.

11 Assignment

- 11.1 The rights and obligations under this Agreement cannot be assigned to a third party except in the event of structural changes or changes regarding jurisdiction, etc. within the public research sector and except in the case of mergers or divisions or assignment to another company within the same group or to a third party in connection with that party's complete or partial takeover of a Company's assets and liabilities, provided always that the performances of the Parties under this Agreement are not affected.

12 Confidentiality

- 12.1 Background Knowledge received by one Party from the other Party in connection with the Project shall only be used for the completion of the Project and shall not without the written consent of the other Party be passed on to individuals not taking part in the Project.
- 12.2 A Party's obligation to treat Background Knowledge as confidential cf. Clause 12.1 shall apply to all individuals who through employment or other association with the Party gain access to the other Party's Background Knowledge.
- 12.3 A Party's duty of confidentiality as set out in Clauses 12.1 and 11.2 shall not apply to knowledge that:
- *at the time of acquisition was or later became publicly available and not as a result of a breach of the duty of confidentiality;*
 - *was received without any restrictions regarding confidentiality from a third party who was entitled to pass on the knowledge in question;*
 - *must be passed on to outside parties in accordance with an obligation stipulated by law, legal decision or other binding public document;*
 - *a Party has developed independently of his participation in the Project.*
- 12.4 In the event of a dispute about the duty of confidentiality, the Party who wishes to invoke one of the provisions in Clause 12.3 shall have the burden of proof.
- 12.5 The duty of confidentiality shall also apply after completion of the Project.

[Alternatively: shall terminate years after completion of the Project.]

13 Publication and defence

- 13.1 Each Party shall be entitled to publish own Foreground Knowledge. Foreground Knowledge jointly owned by the Parties can be published by one of the Parties if the other Party does not wish to take part in the publication, provided it does not counteract the purpose of the Agreement, cf. Clause 2.1.
- 13.2 The Party who wishes to publish Foreground Knowledge shall notify the other Party at least 30 days prior to the intended date of publication and forward the text and any additional material the Party wishes to publish. Until 30 days after receipt of the notice, the receiving Party can request that publication be postponed by up to four months from the date of receipt, provided the Party proves that the postponement is

important for the Party's prospects of acquiring intellectual property rights protection of the knowledge the other Party wishes to publish. This provision cannot result in a postponement of the PhD thesis, cf. Clause 13.6.

- 13.3 Publication of knowledge shall always take place with due respect for the duty of confidentiality described in Clause 12.
- 13.4 According to the Ministerial Order on PhD Programmes, the PhD Student has a duty to communicate the Foreground Knowledge generated by the Project in the form of a PhD thesis. The Institution alone shall be entitled to determine when and where the publication and defence of the PhD thesis take place; however, the defence shall take place no later than three months after submission of the PhD thesis.
- 13.5 No later than 30 days prior to submission of the PhD thesis to the Institution for assessment, the thesis shall be forwarded to the Company, which shall be entitled to request that the thesis be postponed in accordance with the rules set out in Clause 13.2, but see Clause 13.6.
- 13.6 The Institution can decide that the defence be postponed if necessary for the protection of intellectual property rights. Such a postponement of the PhD Student's defence beyond 3 months from the submission of the PhD thesis shall, however, require the consent of the PhD Student, cf. Article 20(3) of the Ministerial Order on PhD Programmes.
- 13.7 If the PhD Student's defence is postponed in accordance with the wish of the Company, the Company shall pay the PhD Student a reasonable salary which it can be proved the PhD Student could have earned during the period up to the date of the defence, provided the salary cost has not already been included in the budget, cf. Attachment 3 to the Agreement.

14 Duration and expiry

- 14.1 The Agreement shall take effect when signed by the Parties and shall expire, except for the provisions of the Agreement that according to their content are intended to be in effect for longer, upon conclusion of the degree programme by public defence, regardless of the outcome of the defence. During that period, the Agreement shall be interminable. The Agreement shall, however, lapse automatically if the degree programme is interrupted, regardless of the reason for the interruption, or if the PhD Student's employment at the Institution is terminated for any reason whatsoever. The Parties shall have no claim against each other in that regard.
- 14.2 In the event of maternity leave or extended illness that results in an extension of the Project, the costs of this extension shall be borne by the Parties in the same ratio as the ratio between the Parties' contributions according to the budget.

15 Breach

- 15.1 If a Party commits a serious breach or repeatedly breaches its obligations under this Agreement and the conduct that constitutes the breach has not come to an end within [] days from a request by the other Party to do so, the other Party shall be entitled to terminate the Agreement.
- 15.2 If a Party is prevented from fulfilling its obligations under the Agreement as a result of extraordinary events beyond the control of the Party and which the Party could not have foreseen when the Agreement was entered into (force majeure), this shall not be considered a breach. In that case, the other Party shall be entitled to terminate the Agreement if the Party's failure to fulfil its obligations results in a material delay in the completion of the Project. A delay of more than [] months compared with the time schedule agreed between the Parties, cf. Attachment [1] shall always be deemed material.
- 15.3 If a Party terminates the Agreement, said Party can claim compensation for the loss caused by the breach in accordance with the provisions set out in Clause 16. In the event of a breach by the Institution, the Company shall also be entitled to invoke its rights as set out in Clause 8.

16 Liability

- 16.1 The Parties shall not provide any guarantee and cannot be held liable if their performance in connection with the completion of the Project does not lead to a specific result.
- 16.2 The Parties shall perform their tasks towards the completion of the Project to the best of their ability and in accordance with best practices for scientific work. A Party shall be liable for gross negligence or intentional neglect of its obligations under the Agreement.
- 16.3 In addition, the Parties shall be liable for the wrongful acts and omissions of their employees and for the risks associated with the Parties' performance (product liability) in accordance with the general rules of Danish law.
- 16.4 None of the Parties shall be liable for a failure to fulfil their obligations under the Agreement if the failure to perform is due to force majeure as set out in Clause 15.2.
- 16.5 The liability of the Parties pursuant to Clauses 16.2 and 16.3 shall be subject to the limitations set out in Clauses 16.6 and 16.7 except in the case of gross negligence or intentional acts or omissions.
- 16.6 Apart from a breach of confidentiality, cf. Clause 12, the liability of one Party to compensate the other party shall not apply to consequential

losses such as production interruptions, and other, loss of turnover/profit or other indirect losses.

16.7 The liability of the Parties shall be limited to a maximum of:

For the Institution DKK []

For the Company DKK []

17 Information to the public

17.1 To the extent the Institution is legally obligated to publish information on the private co-financing of the Institution's research, the Company shall accept that the requested information is published in accordance with relevant legal provisions.

17.2 The Danish Ministry of Science, Technology and Innovation has prepared 'Guidelines for public access to information about private financing of research at government institutions' ('Retningslinjer for offentliggørelse af privat finansiering af forskning ved statslige institutioner') dated 13 January 2000, which oblige the Institutions to publish information about the titles of research projects, the names of private donors as well as the amount of the private subsidies.

17.3 The Company shall not without the written permission of the Institution directly or indirectly refer to the Institution or staff at the Institution in connection with marketing of the Company or its products or otherwise use the Institution's name for commercial purposes.

18 Nature of Agreement – restrictions of competition

18.1 This Agreement does not create a legal entity with the Parties as participants, and the Parties therefore cannot bind each other vis-à-vis a third party.

18.2 The Parties do not accept other restrictions between themselves than those expressly mentioned in the Agreement, including restrictions of competition.

19 Amendments to the Agreement

19.1 Any amendments to the Agreement shall be in writing and be signed by both Parties.

19.2 Both Parties shall be prepared to renegotiate the Agreement if the other Party can prove the failure of basic and material conditions for entering into the Agreement.

20 Notices

20.1 Notices regarding the Agreement shall be forwarded to:

- The Institution: [address and e-mail address, if applicable]
- The Company: [address and e-mail address, if applicable]

21 Disputes

21.1 All disputes between the Parties about the interpretation and implementation of this Agreement shall be settled in accordance with Danish law. Before taking any legal action, cf. Clauses 21.2, 21.3 and 21.4, the Parties shall endeavour to settle the dispute amicably.

21.2 Either Party shall be entitled to request that matters not relating to Background Knowledge or intellectual property rights be decided by the ordinary courts.

21.3 Either Party shall be entitled to request that matters relating to Background Knowledge and intellectual property rights be finally and conclusively settled by arbitration in accordance with the procedural rules of the Danish Institute of Arbitration, in which case each Party shall appoint an arbitrator and the Institute of Arbitration shall appoint the presiding judge.

21.4 The arbitration provision in Clause 20.3 shall not prevent a Party from making use of the provisions of the Danish Administration of Justice Act on injunction and/or other interlocutory remedies.

[Place], (Date)

[Place], (Date)

Attachment 1 – Project description

Body text in normal types. Guiding text marked in italic.

1. Execution of the Task

Each Party has appointed the following individuals to carry out the Project:

From the Company: (insert the names of all individuals who participate in the execution of the Project).

From the Institution: (insert the names of all individuals who participate in the execution of the Project).

2. Scope of Project

(Detailed description of the Project, preferably including the Project's individual milestones).

It is important to describe the Project in detail and, if possible, to clearly define the contribution of each Party and the role of the Project in relation to the Parties' other research and development activities.

Both Parties have an interest in research that expands their knowledge of (insert subject area), and the Company also has an interest in the commercial utilisation of the Foreground Knowledge generated by the Project within its Field of Application.

3. Time schedule

The Project shall commence on (insert start date) and is expected to be completed on (insert date).

Depending on the Scope and duration of the Project, it may be practical to divide the work on the Project into a number of milestones or stages as in the following example:

Stage 1: Initial studies and preparation of a prototype model.

Stage 2: Completion of various research-related analyses and characterisation of material samples, calculations, etc.

Stage 3: Construction of a prototype.

Stage 4: Preparation of a report to the Company.

The time schedule will often be linked to the Project's milestones.

4. Equipment

It will often be necessary to use different Equipment or materials to carry out the Project. The Equipment or materials should be indicated in this section, including whether the Equipment in question was made available to the Institution by the Company or to the Company by the Institution. Examples of Equipment are: appliances, material samples, test animals, reagents, etc.

Attachment 2 – Field of Application

Demarcation of the Field of Application

The Field of Application should be very detailed and specific, as the description determines the extent to which rights can be transferred from the Institution to the Company. A clearly defined demarcation of the Field of Application is also necessary and important for the Institution's possibilities to continue the research and attract research funding from third parties.

The Parties have agreed on the following Field of Application for the Company's commercial use of the Foreground Knowledge generated by the Project.

(Insert a description of the Field of Application, which should be very specific).

Attachment 3 – Budget

The Budget shall be prepared as a total budget comprising total salary costs, Project materials, etc. in accordance with the budget guidelines of the Danish Ministry of Finance for subsidised activities and subsidised research, see <http://www.fm.dk/Publikationer/2006/Budgetvejledning%202006.aspx>.

In addition, the budget shall clearly mention the following:

– In the case of subsidised research, the Institution must have a research-related interest and cannot co-finance projects in which subsidy from government grants or programmes, etc. are supposed to cover the entire cost of the Project.

– If the costs of the Project are partially financed by government grants or programmes, the budget shall be divided into direct salary costs and direct material costs. To this should be added a contribution of 35% of the direct costs. The budget shall be divided so as to separately show the co-financing of the Parties and the requested subsidy.

The budget below is an example of a budget that includes co-financing from Companies, Institutions and e.g. a research council:

Type of costs, e.g.	The Company's co-financing	The Institution's co-financing	External finance, e.g. from a public research council
Salaries (All salary costs for the academic staff and technical or administrative staff employed at the Institution and any salary costs for Company employees that participate in the Project)	(In some cases the Company's co-financing consists of salaries to own employees and in other cases the co-financing may consist in payment of salaries to those of the Institution's employees who participate in the Project. As far as the Companies' own employees are concerned, the co-finance will – generally – consist of X number of hours for the employees in question).	(The Institution's co-financing often consists of x number of hours of work on the Project by the Institution's employees.	(In addition to subsidy for the materials, see below, the external finance can also consist of subsidy for salary costs. This will depend on the terms of the individual grant).
Materials (All material costs that form part of the Project, including technical and non-technical materials, e.g. test animals, different appliances, material samples, reagents, etc.	(Normally, the Company will have financed some of the material costs. Indicate the purchase price of the materials here).	(The Institution may have made materials available, and the Institution may also have purchased materials for the Project).	(The external financing can also consist of subsidies for purchase of materials for the Project. This will depend on the terms of the individual grant).

