

Comments to Template Project Agreement

This Template Project Agreement is a draft model agreement prepared on behalf of SWElife, the national Innovation Programme for Life Science. This agreement may be used by parties wishing to collaborate regarding research and development work/study under a project in which Vinnova has contributed with financing.

The ambition has been to provide relevant parties with a rather simple and straight forward agreement in an attempt to cover and give examples on some of the most relevant issues in these kind of agreements, striving also to comply with the requirements set up by Vinnova (Vinnovas avtalsguide (Dnr 2015-04004_1) and Vinnova's allmänna villkor för bidrag (Dnr 2016-05143) for its financial contribution to this kind of project.

Please note that there may be many other issues to consider and stipulate, and/or to agree upon completely different terms and conditions.

Each party using the Template Project Agreement is responsible for ensuring that it is completed correctly, adapted to the relevant situation and that it complies with all applicable laws, rules and regulations. For instance have no considerations been taken concerning public procurement, state aid, competition law and tax law.

Below follows some comments to the Template Project Agreement.

Parties and Background

Description of the parties to the agreement, which on one side is the University. Due to the teachers' exemption under Swedish law the researchers involved in the project have to sign a separate document as well wherein they confirm that they will adhere to the Project Agreement to the extent that the agreement concerns them personally (results, confidentiality etc). On the other hand is the industrial party to the agreement. Also the company registration number or social security number of each of the parties should be provided.

A background and introduction to the project should be given for a better understanding and interpretation of the rest of the agreement.

Definitions

Suggestions on definitions are given. Please note that it is important that the definitions reflects the specific conditions in each specific case. The definitions also refer to appendices which needs to be agreed upon and to be attached to the agreement. Since among other the project, project plan and financing is referred to by way of specifications in appendices a great deal of effort needs to be put down so that these issues are correct and sufficiently described - as they constitute the basis for the entire agreement.

Many researchers will continue to conduct research outside the scope of the project. It is therefore also important to ensure that the study and results under the agreement are clearly defined and limited, as example by way of defining the Field and to exclude certain information as Background Information.

The Project

Description of the scope, i.e. the general essence, of the project, such as financing, performance and general responsibilities of the parties. Most of these issues are suggested to be agreed upon and stipulated in the project plan, where for instance clearly shall be stated who will do what and when, the financing/budget and allocation hereof between the parties, the management and reporting and the planned result and the plans for the utilization of such (e.g. by means of commercialization, licensing or publication, please see further Vinnova's allmänna villkor för bidrag § 7.1).

For reporting requirements set up by Vinnova, please see further Vinnova's allmänna villkor för bidrag §§ 1.5-1.7, 5 and 8).

Background Information and Materials

The use of the background information each party provide the project, which does not comprise the so-called foreground information, i.e. the work conducted and the results under the agreement. Material may also be provided under the agreement.

Confidentiality

Most agreements of this kind include provisions on confidentiality, which may replace and supersede any previous agreements between the parties regarding confidentiality (for instance an NDA).

The confidentiality undertaking by the University is restricted by law.

Publication

An important section for the academic party/ies to include. Although for instance results may be jointly owned with, or assigned or licensed to the industrial party, the academic party/ies may wish to publish background information, results and other confidential information relating to the project. This is normally solved by allowing the industrial party appropriate time to first investigate whether a patent could be applied for and to file such application, prior to the academic party's/ies publication of information.

Results

Stipulates the ownership to all results under the agreement which have been either invented, developed, created or discovered by solely one of the parties, or jointly by the parties and how this latter jointly owned results should be handled and treated by the parties. This may be further agreed upon, e.g. should the joint ownership under certain circumstances be dissolved by way of one party assigning its rights to the other and/or should the act on joint ownership (*sw. samäganderättslagen*), and (if possible) the Act on Partnerships and Non-registered Partnerships (*sw. lagen om handelsbolag och enkla bolag*) be applicable or not (please see also Section 4.8 in the Template Project Agreement).

There could also be provisions for instance of assignment of or a first right of refusal to results under the project, and in such a case stipulations on how the compensation should be decided upon.

Inventorship

This provision just makes clear that the agreement is not meant to determine inventorship for inventions generated within the Project. Applicable patent laws shall instead determine this.

Licenses

Description of the grants (in the form of licenses) to the other parties of the right to use its background information and results, both during the Term for implementation of the project and for later necessary use in order to be able to use its own results. For further information please see Vinnova's allmänna villkor för bidrag § 7.2.

Licenses may be exclusive/non-exclusive, worldwide/regional, and/or field limited, to develop, make, have made, use, import, export, market, sell, have sold etc. The license provisions should also state whether the intellectual property rights licensed, in this case related to background information and result may be sub-licensed or else transferred, and under which circumstances.

The right to use a party's result for use in own result is subject to fair and reasonable conditions to be agreed upon. As for compensation, this might be for example by a lump sum, or by royalty payments, or by a combination thereof. Fixed payments are often made during the project, upon certain dates or fulfilled milestones. Often royalties are not payable until a result is commercialised. Also other conditions may be specifically agreed upon, which should be regulated in a separate agreement between the parties.

Representations and Warranties

Under this heading, the guarantees as to background information, result and other confidential information, are limited to the right to disclose, ownership and to the best of knowledge no actions/claims raised and non-infringement in third parties' rights.

Employees and Subcontractors

States that the Parties must assure that their employees can properly carry out their obligations under this Agreement. The easiest way to this is by having the employees sign a separate document wherein they confirm that they will adhere to the Project Agreement to the extent that the agreement concerns them personally.

Liability

Obligations on limitation of liability is a way to neutralise too far-reaching indemnification as well as representations and warranties provisions. Such limitations can for example put a cap on damages owed because of a breach of contract.

Also liquidated damages could be stipulated, for example by breach of confidentiality undertakings under the Agreement.

Insurance

Applicable to all Parties.

Force Majeure

Important to consider the consequences of so-called force majeure, i.e. a situation beyond the reasonable control of a party. Is it reasonable that each party shall have the right to terminate the agreement after a certain stipulated period in time?

Term and Termination

Term and termination but also effects of the termination, such as what happens to the licenses upon one party's breach of the agreement.

Use of name

In accordance with Trademark law, a party shall not use the trademarks of the other party without prior written consent.

Notice

Description how written notices shall be given to the other parties. Here is suggested to the contact person of each party stipulated in the project plan.

Miscellaneous

The parties should not be able to assign the agreement to a third party, without the other parties written approval. The parties have chosen its partner for a reason and also the provisions for Vinnova's contribution most likely would prohibit the same or at least require Vinnova's approval. The latter is likely applicable also on any material adjustments or amendments of the agreement, such as for instance the project plan.

Governing Law and Dispute Settlement

Defines which national law is to be used to interpret the agreement.

Defines what dispute resolution form to be used (court or arbitration). Larger companies often want disputes to be subject to arbitration. In contrast to open court, arbitration is secret and fast, but often more expensive. The University might be restricted to use arbitration. Below is an example of a mediation and arbitration clause which could be used instead of the provided suggestion in the Template Project Agreement on dispute resolution by court.

Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be referred to Mediation in accordance with the Mediation Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, unless one of the Parties objects.

If one of the Parties objects to Mediation or if the Mediation is terminated, the dispute shall be finally resolved by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be [Lund]. The language to be used in the arbitral proceedings shall be [Swedish]. The Parties undertake and agree that all arbitral proceedings conducted by reference to this arbitration clause shall be



**kept strictly confidential and all information disclosed in the course of such
arbitral proceedings will be used solely for the purpose of these proceedings,
including any decision or award that is made or declared during the proceedings.**

Rubrik

Inledning

Bröd