

KENNISCLUSTER VERZILTING Partner Agreement

THE PARTNERS:

1. ...
2. ...
3. ...

All parties hereinafter together and individually to be referred as "Partners".

WHEREAS:

The Parties now wish to lay down in writing the terms and conditions for the execution of the Kenniscluster Verzilting.

HAVE AGREED AS FOLLOWS:

Article 1 – Definitions

As used in this Agreement the following terms, either in plural or in the single form, have the following meaning:

1. 'Agreement' shall mean this agreement, including all annexes and amendments hereto.
2. 'Background' shall mean any and all (technical) know-how, information, data, algorithms and (biological) materials, provided by a Party to the other Parties within the scope of the Project, with the exception of the Results.
3. 'Manager' shall mean the person that is responsible for the governance of the Stichting Kenniscluster Verzilting.
4. 'Results' shall mean all inventions, know how, (biological) materials, methods, processes, products, programmes, algorithms, software, findings and discoveries generated by or on behalf of the Partners within the Project, and any intellectual property rights pertaining thereto.
5. 'User Committee' shall mean the user committee as described in Article 2.4 of this Agreement.

Article 2 – Conduct of the Project

1. For the performance of the Project, the Partners shall select and appoint personnel with appropriate qualifications. The Partners shall ensure that the Manager and the other employees that are involved in the Project comply with the obligations imposed on the Partners and its employees in this Agreement.
2. During the performance of the Project, the Partners will comply with all applicable legislation and will behave in an ethically acceptable manner as may be expected in scientific and/or technological research. The Partners shall inform KENNISCLUSTER VERZILTING immediately if new information emerges which is relevant to (the conduct of) the Project or the utilization of the Results.
3. A User Committee will be formed, consisting of representatives of involved Partners. The Manager chairs the User Committee. The User Committee shall meet at least twice a year. During such meetings, the User Committee shall discuss the progress of the activities of the Kenniscluster Verzilting, on the basis of the written progress report, prepared by the Manager. The progress report shall be sent at least two weeks before the User Committee meeting to the User Committee members and shall contain amongst others a description of the Results obtained so far. The Parties may only invite representatives of other organizations to join the User Committee as advisory members, upon the prior written consent of all Parties. Such advisory member shall have no voting rights or decisive powers.

Article 3 – Funding and payment

To be added

Article 4 – Results

1. Results are owned jointly by KENNISCLUSTER VERZILTING and the Partners.
2. KENNISCLUSTER VERZILTING and the Partners hereby grant to Companies at no costs a non-exclusive worldwide, non-transferable, irrevocable, royalty-free right to use the Results for research, development and commercial purposes without the right to sublicense other than to its Affiliates.
3. In the event Partners wish(es) to be granted exclusive rights and/or full ownership to a particular Result, Partners will inform KENNISCLUSTER VERZILTING in written notice within three (3) months of being notified of the existence of such Result. In that case, that specific Partners shall be granted exclusive rights and/or full ownership to such Result upon –at least- the following conditions:
 - a) Partners pays to KENNISCLUSTER VERZILTING/Partners a remuneration based on a market price. This remuneration shall be a lumpsum and/or royalty payment based on the revenues generated by the Results. In the negotiation about the market price Parties shall take into account the in kind and financial contribution of Partners to the Programme and the particular Project. Such negotiations on the market price shall be conducted in good faith by the Parties.
 - b) KENNISCLUSTER VERZILTING and the Partners that generated the Result retain(s) at all times a royalty-free right to use the Results for further non-commercial internal research and education.

- c) KENNISCLUSTER VERZILTING and the Partners are not liable for any loss or damage incurred by Partners or by third parties arising out of the use or exploitation of the Results. Partners indemnify(ies) KENNISCLUSTER VERZILTING and the Partners from claims from third parties due to damage arising out of the use or exploitation of the Results by or through Partners.
- 4. As long as the option as meant in paragraph 3, is not being executed by Partners, KENNISCLUSTER VERZILTING and the Partners shall be entitled to grant (user) rights with regard to the Results to third parties.
- 5. The Manager shall inform KENNISCLUSTER VERZILTING and Partners immediately if Results are generated which are eligible for protection by a patent. The Manager shall then complete an invention disclosure form, the format for which can be found on the website of KENNISCLUSTER VERZILTING. Based on said invention disclosure form, Partners shall decide within three (3) months whether the Results will be patented. In case of a positive decision, the Parties shall agree on the details for the patent application procedure and the patent application shall be filed on behalf of Partners. The costs related to the patent application shall be borne by Partners.

Article 5 – Confidentiality and publication

Confidentiality

- 1. Each Party undertakes to observe the Background of another Party as well as the Results, in whatever form, as to be information of a confidential nature, unless expressly agreed otherwise in this Agreement. Unless expressly agreed otherwise in this Agreement each Party undertakes to hold the Background of another Party as well as the Results, both during the term of this Agreement as well as for an indefinite period of time thereafter, in strictest confidence and agrees not to disclose or allow the disclosure of the Background of another Party or the Results to any third party, or to make the Background of another Party, the Results, or any part thereof, publicly available. A Party shall treat the Background of another Party as well as the Results with the same degree of care that it applies to its own confidential information (but in any case not less than reasonable care).
- 2. Each Party undertakes to use the Background of another Party solely for performance of the Project, and not for any other purpose. Each Party shall furthermore undertake to use the Results only in accordance with the terms of this Agreement.
- 3. The aforementioned obligations and prohibitions are not applicable to the Background, the Results, or any part thereof:
 - a. which was already in the public domain prior to the start of the Project, or which has become part of the public domain thereafter, other than through any unlawful act or negligence of the Party intending to disclose or use the Background or Results; or
 - b. of which the Party, intending to disclose or use the Background or Results, will be able to demonstrate that the Background was, respectively the Results were already in its possession at the time of disclosure by the disclosing Party, or in case of the Results at the time the Results were generated; or
 - c. of which the Party, intending to disclose or use the Background or Results, will be able to demonstrate that the Background was, respectively the Results were disclosed by a third party, which third party was entitled to such disclosure; or

- d. of which the Party, intending to disclose or use the Background or Results, will be able to demonstrate that the Background was, respectively the Results were developed independently by said Party, without reliance on the Background disclosed by the disclosing Party, respectively the Results received as part of the Project; or
 - e. which is required to be disclosed by law or by order of the court provided that the Party required to disclose the Background or the Results first provides the disclosing Party, respectively the other Parties with notice of such requirements and of its intent to disclose the Background, respectively the Results; or
 - f. to which disclosure or use the disclosing Party has, or in case of the Results, the other Parties have given its previous written permission, either in this Agreement or otherwise, provided however, with regard to the use that such use is not prohibited due to any intellectual property rights belonging to another Party.
6. Each Party is entitled to give its employees and the employees of its Affiliates access to the Background of another Party as well as the Results, as far as such is necessary for them to fulfil their tasks under this Agreement. Each Party will ensure that its employees and the employees of its Affiliates will hold the Background of another Party as well as the Results in strictest confidence and use the Background of another Party as well as the Results in accordance with the provisions of this Agreement.

Publication procedure

1. The Partners shall be entitled to publish the Results, however with due observance of the provisions in this paragraph as well as Article 4.4 above. The Manager shall submit a proposed publication to the User Committee at least thirty days before its intended disclosure. Upon receipt of a proposed publication, the User Committee shall convene as soon as possible to discuss possible objections to the publication. A reason for objection could be the fact that the publication contains i) information that can or will be used in a future patent or patent application or ii) confidential Background of a Party. As soon as possible after the review by the User Committee, the secretary of the User Committee shall inform the Partners whether there are any objections to the publication. If no objections have been raised, the Partners may disclose the publication.

Invention

1. Partners and KENNISCLUSTER VERZILTING agree to give good faith consideration to any comments or suggestions which are offered by Partners within the time limits set forth in this paragraph. In addition, at Partners request. Partner and KENNISCLUSTER VERZILTING shall delay any proposed publication disclosing inventions, ideas, or other intellectual property for which Partners intends to obtain patent protection, until such time that Partners will need in order to properly submit a patent application. This period will depend on the nature of the invention, whether additional data need to be obtained and the season during which such can be done. However, Partners shall limit any such delay to a maximum period of six (6) months.
2. For the purposes of reporting to the government and the society, KENNISCLUSTER VERZILTING may publish non-enabling summaries of the Project following consultation with the Manager. KENNISCLUSTER VERZILTING shall ensure that such summaries shall not affect the possibility of applying for patent rights with regard to the Results or disclose any Background.

Article 6 – Liability and warranties

1. Each Party is responsible for its own actions and omissions under this Agreement.
2. Each Partner agrees to indemnify and hold harmless Kenniscluster Verzilting and Partners for any claims and damages arising out of the execution of this Agreement but only in proportion to and to the extent such claims or damages are caused by or result from the gross negligent acts or omissions or intentional misconduct of that individual Partner.
3. Notwithstanding Article 2.1. above, the Partners make no representation and extend no warranty of any kind, either express or implied, with regard to the effectiveness, merchantability or fitness for a particular purpose of the Results.
4. Except in case of gross negligence or intentional misconduct, the maximum aggregate liability of each Partner shall be equal to its share in the overall Project Budget. The Partners shall not be liable for any indirect damage.

Article 7 – Term and termination

1. This Agreement shall enter into force on the date that the Kenniscluster Verzilting officially starts and shall remain in full force and effect until the Kenniscluster Verzilting ceases to exist.
2. After this Agreement has ended, the Articles 4., 5., 6., 7.2., 8. and 9. shall remain in full force and effect.
3. With regard to a Party:
 - I. has not, not timely or not properly fulfilled its essential obligations under the Agreement and, after having been summoned thereto in writing, is still in default by not having properly fulfilled its concerning obligations within a reasonable term mentioned in the summons, without prejudice to the right of the other Party to claim the losses it has suffered as a result of the default and/or termination of the Agreement;
 - II. In respect of which a suspension of payment is granted, bankruptcy is granted, an administration order is filed, a receiver is appointed in respect of its assets or a general assignment for the benefit of creditors is made; or
 - III. that goes into liquidation or that permanently discontinues its business,

the other Parties together can terminate this Agreement with immediate effect, without judicial intervention or any further summons being required, by giving notice by registered post with return receipt. The other Parties shall discuss if they wish to continue the Agreement and on what conditions.

4. When the participation of a Party has been terminated as meant in paragraph 3 or 4 above, paragraph 2 above shall apply, with the understanding that said Party shall not acquire any rights with regard to the Results, generated after the termination of its participation.

Article 8 - Governing law and jurisdiction

1. This Agreement shall be governed by the laws of the Netherlands.
2. If any dispute should arise between any of the Parties, such Parties shall use reasonable effort to settle such dispute before pursuing any remedy they may have at law.
3. Any dispute, resulting from this Agreement, or further agreements resulting there from which do not stipulate otherwise, which has not been solved by the Parties in accordance with the previous provision, shall be submitted to the competent court of law in Utrecht, the Netherlands.

Article 9 - Miscellaneous

1. None of the Parties shall be entitled to transfer, by means of assignment, sale or otherwise, or to encumber any and all of the rights granted under and obligations deriving from this Agreement, either in whole or in part, to a third party without the prior written consent of the other Parties.
2. Unless explicitly agreed otherwise in writing, none of the Parties is entitled to act or make legally binding declarations on behalf of any of the other Parties. Nothing in this Agreement shall be deemed to constitute a joint venture, agency or any other kind of formal business grouping or entity between the Parties.
3. Any amendments or additions made to the Agreement shall only be valid and binding between the Parties if made in writing and executed by all Parties.
4. Partners shall inform the other Parties immediately if there are indications during the term of this Agreement that the Results are covered by a patent or patent application of one of the Partners or a third party.
5. None of the Parties grants any rights and/or licenses to the other Parties, either explicit or implicit, nor waives any of its existing rights, unless explicitly mentioned in this Agreement.

As agreed upon and signed in threefold,

Partner 1:

Partner 2:

Partner 3: