

# Main Agreement

for

## Biogas Research Center

### BRC

a Competence Center at Linköping University

Centrum för Biogasforskning  
ett kompetenscentrum vid Linköpings universitet

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## AGREEMENT

This Agreement has been agreed upon by:

(1) Linköpings universitet (org. nr. 202100-3096), SE 581 83, Linköping;  
; hereinafter referred to as ”**LiU**” or jointly or individually with other Higher Educational Institutions that may join BRC as “**Higher Educational Institution**” or , “**Higher Educational Institutions**”,

(2) AB Östgötatrafiken (org. nr. 556038-8950), SE 582 18, Linköping  
(3) Linköpings kommun (org. nr. 212000-0449), SE 581 81, Linköping  
(4) Norrköpings kommun (org. nr. 212000-0456), SE 601 81, Norrköping  
(5) NSR Produktion AB (org. nr. 556875-8493), SE 251 89, Helsingborg  
(6) Scandinavian Biogas Fuels AB (org. nr. 556691-9196), SE 111 60, Stockholm  
(7) Svensk Biogas i Linköping AB (org. nr. 556034-8228), SE 581 15, Linköping  
(8) Swedish Biogas International AB (org. nr. 556690-6839), SE 582 73, Linköping  
(9) Tekniska Verken i Linköping AB (org. nr. 556004-9727), SE 581 15, Linköping  
; no 2-9 hereinafter, jointly or individually, referred to as ”**Partners**” or ”**Partner**”,

and

(10) Biototal Resource AB (org. nr. 556762-6634), SE 583 30, Linköping  
(11) Econova AB (org. nr. 556530-9738), SE 616 21, Åby  
(12) Holmen Aktiebolag (org. nr. 556001-3301), SE 114 51, Stockholm  
(13) InZymes Biotech AB (org. nr. 556801-0341), SE 583 30, Linköping  
(14) Purac AB (org. nr. 556229-3125), SE 223 69, Lund jointly with the affiliate  
Purac Puregas AB (org. nr. 556298-9524), SE 392 39 Kalmar  
(15) Svensk Kollektivtrafik (org. nr. 802002-1500), SE 118 46, Stockholm  
(16) Västblekinge Miljö Aktiebolag (org.nr. 556198-1480), SE 375 91, Mörrum  
(17) Västerviks Kommun(org. nr. 212000-0779), SE 593 80, Västervik  
; no 10-17 hereinafter, jointly or individually, referred to as ”**Members**” or ”**Member**”,

and

(18) AgroÖst Forskning och Utveckling AB (org. nr. 556728-6678), SE 590 76, Vreta Kloster jointly  
with  
Lantbrukarnas Ekonomi AB (org. nr. 556032-9269), SE 112 51, Stockholm, and  
Lantmännen ek för (org. nr. 769605-2856), SE 104 25, Stockholm  
(19) Hifab KanEnergi AB (org. nr. 556541-8927), SE 532 31, Skara  
(20) Rena Hav Sverige AB (org. nr. 556923-3686), SE 456 50, Smögen  
; no 18-20 hereinafter, jointly or individually, referred to as ” **Associates**” or ” **Associate**”,

relating to the research cooperation “Biogas Research Center at Linköping University” (“**BRC**”), or in Swedish; Kompetenscentrum för Biogasforskning vid Linköpings universitet.

All the above; Higher Educational Institutions, Partners, Members and Associates, are hereinafter, jointly or individually, referred to as ”**Parties**” or ”**Party**”.

**Whereas:**

LiU has been granted funding from the Swedish Energy Agency for the purpose of ~~establishing BRC and~~ carrying out the research ~~projects~~ specified in the **Grant** (Annex 1, including its appendices) and the **Program Description** (Annex 2). In addition to this the Parties are contributing as specified in this Agreement.

The Parties hereby acknowledge that the conditions stated in ~~the~~ Annex 1 and Annex 2 are a part of this Agreement and binding for all Parties and furthermore that this Agreement shall be interpreted with those conditions in mind. The Parties agree to adhere to all conditions of the Grant and the Program Description.

The Parties are divided in different categories (as above), depending on their amount of Financial and In Kind contribution, for which the conditions may vary only to the extent explicitly specified in this Agreement.

The Parties, having considerable experience in the field concerned, have agreed to cooperate under these conditions and wish to specify binding commitments among themselves.

**Now therefore it is hereby agreed as follows:**

## **1. BACKGROUND AND PURPOSE**

- 1.1. The implementation of resource-efficient biogas solutions in new applications can benefit society by contributing to a more sustainable energy supply, improved environmental conditions, and good business opportunities. In order to facilitate such a development, the Parties have agreed to collaborate in BRC, a competence center financed by the Swedish Energy Agency, LiU, and the other Parties with roughly one-third each.
- 1.2. BRC is intended to be a long-term cooperation between the Parties and is planned in three phases, the first lasting two years and the second and third four years each. The first phase has been finalized and the Consortium Agreement for phase 1 is fully replaced by this Agreement.
- 1.3. The main purpose of this Agreement is to specify, with respect to BRC, the relationship among the Parties for the four year Phase 2, in particular regarding the organization of the work, the management of BRC, and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.
- 1.4. The conditions under which BRC operates are affected by the fact that it to a significant extent is financed by society, through the Swedish Energy Agency and LiU, both being Government authorities.

BRC has as its foremost priority to disseminate results through scientific publications. This is a direct consequence of the significant public funding, through the Swedish Energy Agency and LiU. In order to promote efficient use of the results, however, Parties with commercial interests shall be given the opportunity to protect and commercialize results.

A main strategy is to bring together individuals and groups from different fields, to create interaction on many levels - between industry, academia and society, between different perspectives, and between different disciplines and areas of expertise. It is furthermore the intention of the initial Parties to allow for new Parties to join BRC in order to further the development of BRC and to establish BRC as an internationally renowned competence within the field of biogas solutions even beyond the initial ten year timeframe.

- 1.5. LiU will be the host university of BRC, and BRC is governed by LiU. The daily activities are led by a Center Manager. A Program Committee with representatives from the Parties and the Swedish Energy Agency shall give recommendations for the decisions of BRC. A Program Council and an International Reference Group will support and assess the development of BRC.

## 2. DEFINITIONS

Words beginning with a capital letter shall have the meaning defined herein. Further definitions will be found in other parts of the Agreement where needed.

- 2.1. “**Access Rights**” shall mean licenses and user rights to Background and/or Foreground, and shall be deemed to include a right to use for affiliates under the same conditions.
- 2.2. “**Background**” shall mean information which is held by the Parties prior to their accession to this Agreement or separate Projects, as well as copyrights or other intellectual property rights pertaining to such information and which is Needed for carrying out the Project.
- 2.3. “**Commercial Conditions**” shall mean fair and reasonable terms and remuneration on a level corresponding to the commercial value and customs usual in the relevant business segment.
- 2.4. “**Confidential Information**” shall mean all information in whatever form or mode of transmission, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with a Project or other discussions falling under the scope of this agreement and that:
- has been clearly identified as Confidential Information; or
  - if supplied verbally, was stated to be Confidential Information at the time of disclosure.
- 2.5. “**Defaulting Party**” shall mean a Party which is identified to be in breach of this Agreement.
- 2.6. “**Foreground**” shall mean all results, including information, whether or not they can be protected, which are generated in Projects under BRC. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection.
- 2.7. “**Higher Education Institutions**” shall mean Parties which are Higher Education Institutions as defined in the Swedish Higher Education Act (2010:2002) with the following in mind;
- Researchers at Higher Education Institutions function under the so called Teachers Intellectual Property Rights (lärarundantaget) which means that Background and Foreground they create, by default, is owned by the individual researcher(s), and that they consequently shall decide on ownership issues. The Higher Education Institutions may accrue user rights as agreed upon in this Agreement, such usage rights shall however not limit any rights or remuneration individual researchers will be entitled to.
- 2.8. “**Needed**” shall mean:
- For the implementation of the Project:  
Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.
  - For Use of Foreground:  
Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground would be technically or legally impossible.

- 2.9. **"Project"** shall mean research projects which are conducted in the framework of BRC and approved by the Program Committee. The Projects in BRC are conducted separately from each other; consequentially an Access Right under one Project cannot be used in another Project.
- 2.10. **"Project Party", "Project Partner", "Project Member", "Project Associate"** or similar shall mean a Party, Partner, Member, Associate etc. working actively in a Project with In Kind contribution of no less than 50 000 SEK/year.

### **3. TASKS FOR BRC**

- 3.1. The overall purposes of BRC is to:
- ensure that the activities are of the highest scientific quality
  - accomplish innovation through cooperation between researchers from various fields of expertise as well as between universities and the surrounding society
  - involve the trade and industry in the cooperation
  - act as a competence to whom biogas-related problems may be presented

### **4. RESPONSIBILITIES OF PARTIES**

- 4.1. Contribution of the Parties:

Partners shall contribute a minimum of 250 000 SEK per year in Financial and In Kind contribution, of which a minimum of 200 000 SEK must be Financial contribution.

Members will contribute a minimum of 250 000 SEK per year in Financial and In Kind contribution, of which a minimum of 50 000 SEK must be Financial contribution.

Associates will contribute a minimum of 250 000 SEK per year with no requirement of Financial contribution.

The contribution may be divided on two Parties if agreed on by all Parties or clearly stated in this agreement.

- 4.2. Each Party undertakes to take part in the efficient implementation of the cooperation, and to cooperate, perform and fulfill, promptly and on time, all of its obligations as may be reasonably required from it and in a manner of good faith.
- 4.3. Each Party undertakes to notify promptly any significant information, fact, problem or delay likely to affect a Project within the scope of BRC and provide information reasonably required by BRC to carry out its tasks.
- 4.4. Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.
- 4.5. If a Party has Background which possibly will be Needed for use of foreseeable Foreground in a proposed Project that Party has to notify the Center Manager immediately in order to allow for a termination of the proposed Project or a discussion regarding licensing conditions. Failure to notify the Center Manager will allow other Parties Access Rights under the conditions of Article

10 in this agreement. The obligation to notify the Center Manager shall also be applicable to third party licenses that a Party holds.

Where such notice is given, the Center Manager and the Party shall agree on how to proceed, for example by ensuring that the Project is not continued or that licensing conditions are negotiated before the commencement of the Project. For avoidance of doubt, this shall not be interpreted as an obligation for a Party to reveal the contents or nature of Background to any other Party. If the Center Manager agrees to receive the contents or nature of such Background it shall be deemed Confidential Information both with regards to thirds parties as well as to the other Parties.

- 4.6. A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in a Project remains solely responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Agreement and shall bear the burden of proof to show that all reasonable care has been taken therefore.
- 4.7. As the host university LiU is responsible for submitting reports required by the Swedish Energy Agency in Annex1, all Parties shall however contribute with the accounting etc. needed to create the reports in due time.

## **5. LIABILITY**

### **5.1. No warranties**

- 5.1.1. In respect of any information or materials (incl. Foreground and Background) supplied by one Party to another, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Supplying Party should however act with due diligence and inform the recipient Party of any proprietary rights of third parties.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliates) exercising its Access Rights.

### **5.2. Limitations of contractual liability**

- 5.2.1. No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a willful act or by a breach of confidentiality.
- 5.2.2. A Party's aggregate liability towards the other Parties collectively shall be limited to the equivalent of the Party's total In Kind and Financial Contribution, provided such damage was not caused by a willful act or gross negligence.
- 5.2.3. The terms of this Agreement shall not be construed to amend or limit any Party's non-contractual liability.

### **5.3. Damage caused to third parties**

5.3.1. Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Agreement or from its use of Foreground or Background.

#### 5.4. Force Majeure

5.4.1. No Party shall be considered to be in breach of this Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Center Bodies of any Force Majeure as soon as possible. If the consequences of Force Majeure for a Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Center Bodies.

## 6. FINANCIAL PROVISIONS

### 6.1. Financial undertaking

6.1.1. The Parties financial undertakings can be made through allocation of resources In Kind or transfer of money (Financial Contribution). The Grant from the Swedish Energy Agency consists of Financial Contribution. The Parties agree to make the contributions specified below each year of the four years long phase 2:

	Financial Contribution	In Kind	Total
Swedish Energy Agency	6 843 200	0	6 843 200
Linköpings universitet	tbd	tbd	6 843 200
AB Östgötatrafiken	250 000	100 000	350 000
AgroÖst Forskning och Utveckling AB Lantbrukarnas Ekonomi AB Lantmännen ek förening	0	250 000	250 000
Biototal Resource AB	50 000	200 000	250 000
Econova AB	100 000	150 000	250 000
Holmen Aktiebolag	50 000	200 000	250 000
InZymes Biotech AB	50 000	343 200	393 200
KanEnergi Sweden AB	0	250 000	250 000
Linköpings kommun	200 000	100 000	300 000
Norrköpings kommun	200 000	100 000	300 000
NSR Produktion AB	250 000	300 000	550 000
Purac AB Purac Puregas AB	50 000	200 000	250 000
Rena Hav Sverige AB	0	250 000	250 000
Scandinavian Biogas Fuels AB	250 000	400 000	650 000
Swedish Biogas International AB	200 000	400 000	600 000
Svensk Biogas i Linköping AB	200 000	50 000	250 000
Svensk Kollektivtrafik	100 000	200 000	300 000
Tekniska Verken i Linköping AB	300 000	550 000	850 000
Västblekinge Miljö AB	100 000	150 000	250 000
Västerviks kommun	50 000	200 000	250 000
<b>Total per year</b>	<b>tbd</b>	<b>tbd</b>	<b>20 529 600</b>



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Total phase 2	Financial Contribution	In Kind	Total
Grand total	40 972 800	41 145 600	82 118 400

## 6.2. Financial Contribution

- 6.2.1. LiU shall send one invoice per Party for each year. The invoice shall be sent at least 30 days before the first payment each year is due in order to allow for the Parties to transfer Financial Contribution. Financial Contribution shall be paid in advance, on an annual, quarterly or monthly basis.

## 6.3. In Kind Contribution

- 6.3.1. In Kind contribution shall be estimated and determined in accordance with the guidelines of the Swedish Energy Agency.
- 6.3.2. In Kind contribution shall be performed continuously as agreed in this Agreement, Projects or otherwise.
- 6.3.3. Performed In Kind contribution cannot be used to reduce the assured Financial Contribution.

## 6.4. Delays

- 6.4.1. LiU may, upon request by Party, approve delayed fulfillment of the Party's contribution. Financial Contribution shall however at the latest always be fulfilled by the expiration of this agreement. LiU may also approve of fulfillment of assured In Kind contribution by Financial Contribution instead. Such a decision may be made without request by a Defaulting Party.

## 6.5. Terminating Parties

- 6.5.1. A Party leaving BRC shall refund payments it has received except the amount of contribution accepted by LiU. Furthermore a Defaulting Party shall bear any additional costs occurring to the other Parties in order to perform its and their tasks.

## 6.6. Responsibility

- 6.6.1. Each Party is responsible for its own assured In Kind and Financial Contribution. There is no joint responsibility. The terms of this Agreement shall not be construed to amend or limit any Party's non-contractual liability.

## 6.7. Justifying Costs

- 6.7.1. In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to individual Projects.

# 7. TRANSPARENCY AND AUDITING

## 7.1. Obligation to Disclose

The Center Manager shall, if so requested by a Party, provide information about the Center's activities, if it is deemed possible without any risk of damage to another Party. If it is not

deemed possible to disclose the requested information without risk of damage, the Party which requested the information shall be immediately informed of the same.

## 7.2. **Transparency in Accounting**

All Parties shall have the possibility to view the accounting of the Projects and BRC to the extent it does not disclose any Confidential Information or other obligations regarding secrecy. If this can take place without any unreasonable costs or inconveniences, the Center Manager shall, upon request, assist the Party with any inquiry required for this purpose and provide any necessary copies.

## 7.3. **Auditing**

The Swedish Energy Agency shall have the right to perform an audit of BRC.

# 8. **GOVERNANCE STRUCTURE**

## 8.1. **General Structure**

8.1.1. The vice chancellor of LiU has the ultimate decision right on all matters related to BRC. The decision making power may be delegated within the LiU-organization.

8.1.2. The organizational structure of BRC shall comprise the following Center Bodies:

- A **Program Committee** which is the supervisory body for the research under BRC and shall report to and be accountable to the vice chancellor of LiU.
- A **Program Council** which is advisory regarding the formation of the Program Committee, and regarding strategic decisions for BRC.
- A **Center Manager** whom has the overall responsibility to supervise BRC as well as the individual Projects.
- An **International Reference Group** which is advisory to the Program Committee, Center Manager and research projects regarding evaluation of Projects, proposals for new Projects and other assessments as may be required.

## 8.2. **General operational procedures for all Center Bodies**

8.2.1. Appointed members of a Center Body should be present or represented at any meeting of such Center Body and may appoint a substitute or a proxy to attend and vote at any meeting. Such proxy shall be bound by the non-disclosure obligations of this Agreement at the risk of the appointing Member.

8.2.2. Appointed members of all Center Body are appointed for the duration of this Agreement.

8.2.3. Appointed members shall participate in a cooperative manner in the meetings.

8.2.4. The chairperson of a Center Body shall convene meetings of that Center Body and give notice in writing of a meeting to each appointed member of that Center Body in ample time.

8.2.5. The chairperson of a Center Body shall prepare and send each appointed member a written agenda no later than two weeks prior to the meeting.

8.2.6. During a meeting the Members of a Center Body present or represented can unanimously agree to add a new item to the original agenda provided that all the members are present or represented.

- 8.2.7. Each Center Body shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented.
- 8.2.8. Each appointed member of a Center Body present or represented in the meeting shall have one vote.
- 8.2.9. Defaulting Parties may not vote.
- 8.2.10. Decisions shall be taken by a simple majority (more than 50% of the given votes).
- 8.2.11. Center Body meeting may be held per capsulam, through video conference or by other means for long distance communication provided that the chairperson approves.
- 8.2.12. A Party which can show that its own work, time for performance, costs, liabilities or intellectual property rights, in relation to Background, Foreground, Access Rights, obligations or work under this agreement, would be severely affected by a decision of a Center Body may exercise a veto with respect to the corresponding decision or relevant part of the decision.
- 8.2.13. When the decision is foreseen on the original agenda, an appointed member may veto such a decision during the meeting only.
- 8.2.14. When a decision has been taken on a new item added to the agenda before or during the meeting, an appointed member may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent.
- 8.2.15. In case of exercise of veto, the members of the related Center Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Parties.
- 8.2.16. A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in BRC or the consequences of them.
- 8.2.17. A Party requesting to leave BRC may not veto decisions relating thereto.
- 8.2.18. The chairperson of a Center Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. Draft minutes shall be sent to all appointed members within 14 calendar days of the meeting.
- 8.2.19. The minutes shall be considered as accepted if, within 14 calendar days from sending, no appointed member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.
- 8.2.20. The chairperson shall send the accepted minutes to all the all appointed members of the Center Body and to the Center Manager, who shall safeguard them. If requested the Center Manager shall provide copies to Parties.
- 8.2.21. No Parties shall receive any remuneration for appointments and work in the Center Bodies.

### 8.3. **Program Committee**

- 8.3.1. The Program Committee shall be appointed as follows:
  - The Swedish Energy Agency shall appoint one member
  - LiU shall appoint three members, including the Chairperson, and six to eight representatives for the Partners, Members and Associates

The representation shall consist of at least 40% of both sexes and the Program Committee shall not allow for substitutes or proxies. All members shall have one vote.

- 8.3.2. The Program Committee shall:

- monitor the effective and efficient implementation of Projects and, if necessary, propose modifications of the research projects
- recommend new projects
- recommend projects, work plans and annual budgets for Projects
- review resources and assess compatibility with the project plans in the Projects
- recommend corrective actions in the case of deviations or delays from the time frame described in the work plans. This may include suggesting re-planning of resources
- recommend relevant measures for Projects that do not work as planned and measures relating thereto
- in the case of abolished tasks as a result of a decision of LiU, the Program Committee shall advise on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled
- seek consensus among the Parties

8.3.3. More detailed instructions for the Program Committee may be decided upon by LiU.

#### 8.4. **Program Council**

8.4.1. Each Partner and Member shall have the right to appoint one member to the Program Council.

8.4.2. The Program Council shall:

- be advisory regarding the formation of the Program Committee
- be advisory regarding the admission of new Parties to BRC in order for said new Parties to participate in BRC and in particular Projects
- be advisory in errands that the Program Committee judge to be of special strategic importance for the development of BRC

8.4.3. More detailed instructions for the Program Council may be decided upon by LiU.

#### 8.5. **Center Manager**

8.5.1. The Center Manager shall lead the activities of BRC operationally and present reports to the Program Committee. LiU shall appoint the Center Manager.

8.5.2. The Center Manager shall be employed by LiU, whom shall be responsible for working conditions etc. The costs for the Center Manager shall be paid by BRC.

8.5.3. The Center Manager shall be responsible for:

- monitoring compliance by the Parties with their obligations
- preparing and submitting reports and other deliverables
- keeping an address list of Parties and other contact persons updated and available
- administering the financial contributions and fulfilling the financial tasks
- transmitting documents and information connected with the Projects as appropriate
- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Center Manager when such copies or originals are necessary for the Parties to present claims

8.5.4. Detailed instructions for the Center Manager may be decided upon by LiU.

8.5.5. The Center Manager shall not be entitled to act or to make legally binding declarations on behalf of any Party.

#### 8.6. **International Reference Group**

- 8.6.1. The International Reference Group members shall be appointed by LiU and be convened by the Center Manager when needed. The International Reference Group shall consist of internationally renowned experts within the field and preferably not be active in Sweden. The Center Manager shall chair the International Reference Group meetings.
- 8.6.2. The International Reference Group shall:
- review the quality of reports and research made by the Projects
  - review the scientific value of proposed new projects
  - assist the Center Manager, Program Committee and LiU with overall counsel regarding the development of BRC
- 8.6.3. LiU may decide on remuneration to the members of the International Reference Group, if so, funds shall have been set aside for that purpose.

## **9. BACKGROUND**

### **9.1. Background included**

- 9.1.1. Upon entering a Project the Project Parties agree to include all Background under their control which is Needed for the implementation of the Project and/or for the use of foreseeable Foreground of that Project. It is the prerogative of Parties to refrain from entering specific Projects. If a Party has Background it does not want to divulge or grant Access Rights to, it shall refrain from entering Projects where such Background may affect foreseeable Foreground. The Parties shall however notice the obligation to inform of Background which may block use of Foreground in Article 5.4.
- 9.1.2. Project Parties shall, for each Project separately and in writing, identify Background to which they shall grant Access Rights, subject to the provisions of this Agreement.
- 9.1.3. Parties outside of a Project may include Background in a Project.
- 9.1.4. The owning Party may add further Background to a Project by written notice. However, only the LiU can permit a Party to withdraw any of its Background and furthermore - only after approval from all Parties that are directly affected by the withdrawal.

### **9.2. Background excluded**

- 9.2.1. Background not listed for a Project shall be excluded from Access Rights. A Party shall however not exclude or fail to divulge the existence of any Background information which may affect foreseeable Foreground.

### **9.3. Access Rights**

- 9.3.1. Access Rights to Background Needed for the performance of the own work of a Party under the Project shall be granted for the duration of the Project on a royalty-free basis, unless otherwise agreed.
- 9.3.2. Access Rights to Background included in a Project and Needed for use of Foreground shall be granted to all Partners and to Project Members on Commercial Conditions. Parties which are Higher Education Institutions shall however be granted a royalty-free license, unlimited in time, to use Background Needed for use of Foreground in its own activities (non-exclusive license without a right to sub-license or license to a third party).
- 9.3.3. Any Access Rights granted exclude any rights to sublicense unless expressly stated otherwise.

#### 9.4. **Responsibilities for Parties**

- 9.4.1. Parties shall inform the other Parties of any limitations to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software).
- 9.4.2. Background shall be used only for the purposes for which Access Rights to it have been granted.

### 10. **FOREGROUND**

#### 10.1. **Notifications**

- 10.1.1. A Party/Parties generating significant Foreground shall give written notice to the Center Manager upon creation of such Foreground. The Center Manager shall inform any Party (/Parties) that have an option to acquire the Foreground or which accrues an Access Right to the Foreground without undue delay, or, with regards to Access Rights - as soon as possible given consideration to an ongoing patenting process, however not later than 3 (three) months after the Foreground is created.
- 10.1.2. Partners and Members generating patentable Foreground shall, in order to facilitate the preparation of publications, to apply for patents, discuss transfers of ownership or licensing agreements, be given a deliberation-period of three (3) months from the time Foreground is created and accordingly disclosed to the Center Manager, to decide whether a patent shall be filed or not. Subsequently 11.5.2 will be enforceable only if a patent application has not been filed within 3 (three) months from the day patentable Foreground was created (for Foreground created by researchers at a Higher Education Institution, see 11.4).

#### 10.2. **Ownership**

- 10.2.1. Foreground generated within the scope of a Project is owned by the Party (/ies) that generated the Foreground.

#### 10.3. **Joint Ownership**

- 10.3.1. Foreground generated by more than one Party shall have joint ownership, in relation to the contribution to the Foreground, and all joint owners shall agree on all protection measures and the division of related cost in advance.
- 10.3.2. If only one/some joint owners protects patentable Foreground, the other contributors shall only have Access Rights or licenses to such Foreground if otherwise agreed or stated in this Agreement, see for instance 11.5.3, and be remunerated with fair and reasonable compensation on Commercial Conditions given due consideration to any Access Rights accrued.

#### 10.4. **Option to Acquire Foreground from Higher Education Institution researchers**

- 10.4.1. Parties shall be given an option to acquire Foreground from Higher Education Institution researchers in return for fair and reasonable remuneration under Commercial Conditions in the following order:
  - 1. where Foreground is jointly owned by a Researcher, the other joint owners shall be given a right to acquire the right of ownership of that Foreground

2. where Foreground is solely owned by a Researcher, or other joint owners decline an acquisition, Project Parties to the Project where Foreground has been generated shall be given a right to acquire the Researchers share of ownership of that Foreground

10.4.2. The formal procedure shall be:

1. the Party given an option to acquire shall inform the Center Manager and the owner(s) of an intention to acquire the Foreground, in writing, within twenty (20) days from the day they were informed of such Foreground
2. if an acquisition is not made within forty five (45) days from the day intent to acquire was given, any other Parties entitled (in the order given in 11.4.1) shall be given an option to acquire the Foreground
3. if no agreement is made within the stipulated time-limit(s) the researcher(s) has a right of disposal of the Foreground. For patentable Foreground 11.5.2 will however be enforceable if there has been no patent application filed within eight (8) months from the date the last forty five (45) day period in 2) expired
4. if the researcher(s) makes an agreement with a third party regarding acquisition of the said Foreground within twelve (12) months from the last forty five (45) day period in 2) has expired, the conditions offered to the third party may not be more favorable than those that were offered to the Partners and Members. Should the conditions nevertheless be more favorable, the Partners and Members have a right to take over the Foreground on the same terms as were offered to the third party. A transfer to a University's holding company or a company in which a University's holding company holds an ownership interest shall not be considered as transfer to a third party.

10.4.3. For acquisitions under Article 11.4 the following shall apply:

- the acquisition shall be governed by a separate agreement and negotiated in good faith
- Higher Education Institutions shall always retain a royalty-free license, unlimited in time, to use that Foreground in its own activities and to publish (non-exclusive license without a right to sub-license or license to a third party)
- for avoidance of doubt, the Access Rights granted Parties in Article 11.5 shall always be assured, and valid from the day the Foreground was created

## 10.5. **Access rights**

10.5.1. Access Rights to Foreground Needed for the performance of the own work of a Party under the Project shall be granted for the duration of the Project on a royalty-free basis, unless otherwise agreed.

10.5.2. If patentable Foreground shall not be protected by patent(s) (in accordance with what is stated in Article 11.1 or 11.4) that specific Foreground shall be free to publish for all Parties, opportunity to publish shall be given to the Project Parties generating the Foreground first, and shall be accessible to the public domain to use, for free, without restrictions.

10.5.3. Project Partners and Project Members and Project Associates shall be given a non-exclusive license to all Foreground of Project Partners and Project Members and Project Associates in that specific Project without a right to sub-license or license to a third party for remuneration corresponding to their share of direct costs related to the patent protection or other direct costs related to industrial protection, otherwise without any remuneration. The same license shall be given Project Partners and Project Members and Project Associates upon request for Foreground of Higher Educations Institutions for remuneration on market conditions.

- 10.5.4. Parties which are Higher Education Institutions shall be given a free license, unlimited in time, to use all Foreground in its own activities (non-exclusive license without a right to sub-license or license to a third party).

**10.6. Transfer of Foreground**

- 10.6.1. Each Party may transfer ownership of its own Foreground. The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer.

**11. SPECIAL PROJECT AGREEMENTS**

- 11.1. If all Project Parties of a specific Project wants to, a separate Project Agreement may be agreed upon for the Project. Any rights agreed upon in this Agreement affecting Parties outside of the Project shall however not be affected. Between themselves the Parties may decide on a Project Agreement which deviate from the default options of this Agreement as long as it follows what is specified in the Grant (Annex 1, including its appendices) and the Program Description (Annex 2) and any other parts of this Agreement that reasonably shall be interpreted as mandatory.

**12. CONFIDENTIALITY**

- 12.1. The Recipient undertakes not to make use of Confidential Information for any purpose other than in accordance with this Agreement or to disclose Confidential Information to third parties without the prior written approval of the Party supplying the information.
- 12.2. These confidentiality and non-use obligations do not apply to information:
- that was public knowledge at the time of disclosure or subsequently becomes public knowledge by means other than breach of this Agreement;
  - that was already in the possession of the Recipient prior to its disclosure by the transferring party;
  - that was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
  - the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
  - that the receiving party duly became aware of independently of the transferring party;
  - and/or that a Party is required to disclose under applicable law or regulation, or the order of a court of competent jurisdiction.
- 12.3. In matters regarding Parties who are authorities the Swedish Secrecy and Public Record Act (2009:400) shall apply.
- 12.4. The Recipient shall be responsible for the fulfillment of the confidentiality and non-use obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible.
- 12.5. It is incumbent upon the recipient to take reasonable actions in order to ensure that Confidential Information is protected from unauthorized access. The recipient shall therefore apply at least the same level of prudence as when protecting its own Confidential Information.



- 12.6. What is set out in this Article regarding confidentiality and non-use shall survive the expiry or termination of this Agreement and shall remain in full force and effect for three (3) years after disclosure.

### **13. DISSEMINATION**

- 13.1. As a result of the academic freedom, the importance of scientific qualifications at the University and the conditions of the Grant from the Swedish Energy Agency (Appendix 1) all Parties have the right to publish or otherwise publicly disclose Foreground in accordance with generally accepted international standards for publication of research results.
- 13.2. No later than thirty (30) days before such publication or public disclosure, the Party wishing to disclose Foreground shall supply a copy of the proposed publication to the owner of Foreground for examination. The owner is entitled, within the said period, to request that Confidential Information be excluded if a publication or public disclosure would impair a patenting process.
- 13.3. None of the Parties may withhold its consent to publication for more than ninety (90) days following the first submission of the proposed publication, and the Parties acknowledge that the main purpose of that time limit is to allow for the possibility to file patent applications.
- 13.4. The Swedish Energy Agency shall have a non-exclusive license to translate, duplicate, use and transfer copies of the reports the Parties are obliged to submit under §4 of Annex 1.

### **14. NEW PARTIES**

- 14.1. The Parties hereby authorize LiU to determine whether a third party shall be allowed to accede to this Agreement as a new Party; which financial undertakings said acceding Party shall make, and whether said Party shall pay an amount which it would reasonably have contributed with if it had participated in the Center's operations from the start. New Parties shall however not be allowed to enter Projects in progress or make any other actions within BRC which may reasonably affect another Party in an unacceptable way, especially with regards to IPR-issues, without written approval from all Project Parties or other Parties which can show reasonable grounds.
- 14.2. The LiU shall, without undue delay, inform all Parties if an application has been received from a third party requesting permission to accede to the agreement, and to indicate the identity of said Party. LiU shall determine a reasonable time period for the Parties to present their objections to allowing the third party to accede to the agreement. Should LiU allow for a new Party to accede this Agreement, any Party who is a competitor of the new Party is entitled to resign from the BRC with immediate effect. Said Party shall, in their remarks, give the Program Committee notice of their intention to resign. Any Parties who neglects to do so lose its right to resign immediately.

### **15. SCOPE**

- 15.1. **Term of Agreement**

- 15.1.1. This Agreement shall enter into effect 2014-12-01 subject to the approval of the Swedish Energy Agency.
- 15.1.2. This Agreement shall terminate 2018-11-31 or the later date at which all commitments and the cooperation by and between the under this Agreement have been finalized.
- 15.2. **No Representation, Partnership or Agency**
- 15.2.1. The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.
- 15.2.2. Nothing in this Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.
16. **PREMATURE RESIGNATION**
- 16.1. All Parties may prematurely resign from this agreement giving six (6) months' notice of termination. It is incumbent upon the Party to fulfill its undertakings during the period of notice of termination; and the economic undertakings shall be fulfilled to the extent that they accrue during the termination period.
- 16.2. Any contributions In Kind which should have been fulfilled in part or in full prior to the resignation shall instead be fulfilled through payment of the equivalent value in cash, unless otherwise decided by BRC. Contributions In Kind that accrue for the time after the resignation, or which exceed the promised Contributions in Kind, shall not cause a reduction of the monetary contribution.
- 16.3. Any Party who prematurely resigns from the agreement shall retain all rights and licenses to Foreground which have arisen prior to the effective date of resignation.
- 16.4. BRC shall continue its operations with the remaining Parties notwithstanding the resignation of a Party from the agreement.
17. **ASSIGNMENT AND AMENDMENTS**
- 17.1. No rights or obligations of the Parties arising from this Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.
- 17.2. Modifications or amendments to this Agreement or its Appendixes shall be unanimous between the Parties and require a separate agreement between all Parties.
18. **BREACH**
- 18.1. In the event a Party or a Center Body identifies a breach by a Party of its obligations under this Agreement (e.g.: a Party producing poor quality work), the Center Manager will give written notice to such Party requiring that the breach be remedied within 30 calendar days.

- 18.2. If such breach is substantial and is not remedied within that period or is not capable of remedy, the LiU may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation. Such decision shall only be taken after consultation of all Parties directly affected by the breach, which usually shall be restricted to Project Parties.

## **19. SETTLEMENT OF DISPUTES**

- 19.1. All disputes arising out of or in connection with this Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Linköping if not otherwise agreed by the conflicting Parties. The award of the arbitration will be final and binding upon the Parties.

- 19.2. Nothing in this Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

- 19.3. This Agreement shall be construed in accordance with and governed by Swedish law.

## **20. MISCELLANEOUS**

- 20.1. Any notice to be given under this Agreement shall be in writing, which shall be interpreted to include e-mail.

- 20.2. Nothing in this Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

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All Parties have individually signed one separate copy of this agreement. All copies shall be kept in safe custody by Linköping University.

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