

## **TKI CONSORTIUM AGREEMENT**

### **Title project: Collaboration in aspHalt Applications with LIGNiN in the Netherlands (CHAPLIN)**

#### **THE UNDERSIGNED:**

- Stichting Biobased Delta ("SBD"), having its office at Auvergnedijk 2, 4612PZ Bergen op Zoom, The Netherlands and represented in this matter by its Director, Dr. ir. R.J. Zoetemeyer;
- Asfalt Kennis Centrum B.V. ("AKC"), having its office at Olivier van Noortweg 10, 5928 LX Venlo, The Netherlands and represented in this matter by its director, Ing. P.A. Landa;
- H4A Infratechniek B.V. ("H4A"), having its office at Losplaatsweg 1, 4551 LZ Sas van Gent, The Netherlands and represented in this matter by its director, Ing. E.F. de Ruijscher;
- NTP B.V. ("NTP"), having its office at De Koppeling 18, 6986 CS Angerlo, The Netherlands and represented in this matter by its Director, Mr B. Loose;
- Dura Vermeer Infra Participaties B.V. ("Dura"), having its office at Taurusavenue 100, 2132 LS Hoofddorp, The Netherlands and represented in this matter by its Director, G.J.W. Naarding;
- Latexfalt B.V. ("Latexfalt"), having its office at Hoogewaard 183, 2396 AP Koudekerk aan den Rijn, The Netherlands and represented in this matter by its Managing Director, Mr A.H. Tolboom;
- Vertoro B.V. ("Vertoro"), having its office at Urmonderbaan 22, 6167RD, Geleen, The Netherlands and represented in this matter by its CEO, Mr M.D. Boot;
- Avantium Chemicals B.V. ("Avantium"), having its office at Zekeringsstraat 29, 1014 BV Amsterdam, The Netherlands and represented in this matter by its director, T.B. van Aken;

The above partners individually referred to as "Industrial Partner" and together referred to as "Industrial Partners";

AND

- Stichting Wageningen Research, institute Wageningen Food & Biobased Research ("WFBR"), having its office at Bornse Weiland 9, 6708 WG Wageningen, the Netherlands and represented in this matter by its Managing Director, Dr.ir. Sjoukje Heimovaara;
- Universiteit Utrecht, ("UU"), having its office Heidelberglaan 8, 3584 CS Utrecht, the Netherlands, for the benefit of the faculty Geosciences, in this matter duly represented by Prof. dr. ir. Wilco Hazeleger, dean of the faculty of Geosciences;
- Nederlandse Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek – TNO ("TNO"), having its office at Anna van Burenplein 1, 2595 DA Den Haag, the Netherlands and represented in this matter by its Director Mr P.P. van 't Veen;

The above institutes individually referred to as "Knowledge Institute" and together hereinafter referred to as "Knowledge Institutes";

The Industrial Partners and Knowledge Institute(s) hereinafter jointly referred to as "Parties" and individually referred to as "Party".

#### **WHEREAS:**

- The Dutch government has deployed an innovation policy, which aims to strengthen the international competitiveness of nine leading industrial sectors (the Topsectors) through innovation;
- This policy is implemented through the installation of the Topconsortium voor Kennis en Innovatie (TKI) per Topsector, TKI has a role in determining the research agenda of the relevant Topsector. Ultimately, the respective ministry is responsible for granting public funding through TKI;
- Parties have expressed their willingness to participate in the TKI project "Collaboration in aspHalt Applications with LIGNiN in the Netherlands (CHAPLIN)", as described in the Project Proposal, attached as Annex 1, and to this end have been granted funding by the respective ministry under the applicable conditions of TKI. The framework for state aid for research and development and innovation ("R&D&I"), Framework Decision National Grants of the Ministry of Economic Affairs ("Kaderbesluit EZ-subsidies") and subsidy regulations for applied research institutes "TO2" are applicable to this funding. Parties are aware that the Knowledge Institutes will perform its tasks in conformity with the Netherlands Code of Conduct for Research Integrity 2018;
- the Parties now wish to lay down their arrangements with regard to the Project in this Consortium Agreement;

## **NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

### **Article 1: Definitions**

<b>"Affiliated Entity"</b>	means a legal entity that controls a Party or that is under the control of a Party, or under the same control as the Party, control taking any of the following forms: <ul style="list-style-type: none"> <li>(a) the direct, or indirect through (but not together with) other entities, holding of more than 50% of the voting rights of the shareholders or associates of that entity;</li> <li>(b) the power to determine the policy of the legal entity concerned in a decisive way.</li> </ul>
<b>"Background"</b>	means information, know-how, data or material which is either (i) established or held by a Party prior to its accession to this Consortium Agreement (ii) or that has been developed or obtained by a Party thereafter independently from the Project, or (iii) is acquired by a party during the term of the Project from a third party, as well as any IP Rights pertaining to such information, know-how, data or material.
<b>"Consortium Agreement"</b>	means this agreement as well as all Annexes and addenda thereto.
<b>"Coordinator"</b>	means the Party that is authorised by the other Parties to coordinate and manage the Project, having the tasks assigned to it under article 4.
<b>"Field of Use"</b>	means the application area per Industrial Partner as specified hereafter: <ul style="list-style-type: none"> <li>BBD - Stimulate and catalyse the use of biobased (initial focus on lignin) bitumen in asphalt.</li> </ul>

- AKC - Research, development and testing of bitumen, asphalt and its applications (including, without limitation, lignin based bitumen alternatives).
- H4A - Production and processing of asphalt (including, without limitation, lignin based bitumen alternatives).
- NTP - Production and processing of asphalt (including, without limitation, lignin based bitumen alternatives).
- Dura - Processing asphalt into roads and other pavements (including, without limitation, lignin based bitumen alternatives).
- Latexfalt - Production of binders, emulsions and bitumen compounds for roads and other pavements (including, without limitation, lignin based bitumen alternatives).
- Vertoro - The conversion of lignin based biomass (including, without limitation, forest products such as wood and wood-derived materials) and/or the production of lignin thereunder and the application thereof (including, without limitation, lignin based bitumen alternatives).
- Avantium - The conversion of biomass (including, without limitation, forest products such as wood and wood-derived materials) and/or bio-derived carbohydrates to products and/or the production of lignin thereunder and the application thereof (including, without limitation, lignin based bitumen alternatives).

**"Foreground"**

means the results that are generated under the Project, including information, (raw) data, know-how and materials, regardless of whether or not protected by IP Rights.

**"IP Right(s)"**

all intellectual property rights including but not limited to patent rights, design rights, copyrights and related rights, database rights and trade or service marks or other similar rights in any country, in each case whether or not registered and including any applications for registration of any of the foregoing, and/or any trade secrets and/or other proprietary know-how (including, but not limited to, any inventions, creations, discoveries, works, information, experience, models, processes, procedures, devices, compositions of matter, designs, formulas, specifications, methods, techniques, compilations, programs, equipment, computer codes, data, concepts and developments).

**"Ministry"**

the Dutch ministry responsible for the funding and auditing of the Project, or - as the case may be - the respective governmental organisation acting on behalf of a Dutch ministry.

**"Project"**

means all activities related to the project entitled: "Collaboration in aspHalt APplications with LIgniN in the NetherLands (CHAPLIN)" which shall be carried out on the basis of the Project Plan.

**"Project Budget"**

means the allocation of all the resources, in cash and/or in kind, contributed by the Ministry, Industrial Partners and the TKI for the activities with regard to the Project (including managing costs of the Coordinator) as specified in the Project Plan.

**"Project Committee"**

means the decision making body as described in article 4.

**"Project Plan"** means the research work plan and related Project Budget attached to this Consortium Agreement as Annex 1.

## **Article 2: Purpose**

The purpose of this Consortium Agreement is to specify the rights and obligations of the Parties with respect to the Project.

## **Article 3: Responsibilities of Parties**

- 3.1 Each Party shall contribute to the efficient implementation of the Project Plan and shall cooperate, perform and fulfil, promptly and on time, all of its obligations under this Consortium Agreement as may be reasonably required from it and in a manner of good faith.
- 3.2 Each Party undertakes to notify promptly the other Parties of any significant information, fact, problem or delay likely to affect the Project.
- 3.3 Each Party shall provide promptly all information reasonably required by the Project Committee or Coordinator to carry out its tasks.
- 3.4 Each Party shall support the achievement of the goals of the Project.
- 3.5 A Party is only allowed to involve third parties other than its Affiliated Entities in the execution of its work under the Project upon prior approval thereof by the Project Committee. If such approval is obtained, the Party that involves third parties (including, but not limited to, Affiliated Entities) for the execution of the Project shall at all times remain responsible for the execution of its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement.
- 3.6 In connection with the reporting requirements of the TKI and Ministry, Parties acknowledge that the Coordinator shall provide both the TKI and Ministry with financial reports as well as scientific reports (which may include an abstract of the Project Plan) of the Project. Each Party shall provide promptly all information reasonably required by the Coordinator to carry out this task.

## **Article 4: Governance structure**

- 4.1 Parties appoint Stichting Wageningen Research as Coordinator. The Coordinator shall, and the other Parties hereby authorise the Coordinator to carry out the tasks set forth under this Consortium Agreement which are specifically designated to the Coordinator. The Coordinator may delegate certain Coordinator tasks to a Knowledge Institute. The Coordinator shall remain responsible for Coordinator tasks carried out by the Knowledge Institute.
- 4.2 In particular, the Coordinator shall be responsible for:
  - Preparing the meetings, proposing decisions and preparing the agenda of the Project Committee, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings;
  - Keeping the address list of Members (as defined in article 4.4) and other contact persons updated and available;

- Collecting and reviewing information on the progress of the Project and submitting outline scientific reports and other deliverables (including financial statements and related certification), if required, to the TKI and other Parties;
  - Promptly circulating the documents and information related to the Project to the Members;
  - Providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.
- 4.3 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party.
- 4.4 The Parties shall establish a Project Committee for the duration of the Project. The Project Committee shall consist of one representative on behalf of each Party (hereinafter referred to as "Member"). Each Member or its substitute will have one vote.
- 4.5 All Members:
- shall be present or represented at all meetings;
  - may appoint a substitute or a proxy to attend at any meeting; and
  - shall participate in a cooperative manner in the meetings.
- 4.6 The Project Committee shall meet, either in person or by telephone, on a regular basis, at least twice a year.
- 4.7 The Project Committee shall discuss the progress of the Project, such as planning, requests for withdrawal, contents and Parties' compliance with obligations and the Foreground generated so far. The Project Committee shall take the following decisions:
- Changes to the Project Plan (excluding the Project Budget);
  - Change of the Coordinator;
  - Suspension of all or part of the Project;
  - Decision on a Party's request for withdrawal from the Project and the approval of the settlement on the conditions of the withdrawal;
  - Termination of the Project and the Consortium Agreement;
  - Inform TKI of a substitution of the Coordinator.
- 4.8 Decisions shall be taken unanimously by the Members of the Project Committee in meetings where all Members are present or represented. If it is not possible to take decisions in a meeting, a request for decision shall be sent via email to all Members. If a Party fails to respond, a reminder shall be sent and if a partner still does not respond, within four (4) weeks after the decision request has been emailed, it shall be deemed to have given its approval to the decision.  
Decisions that need the permission of TKI will only be effective after such permission is received. A Party in default will not have a voting right until such default is remedied. Any decision may also be taken without a meeting if all Parties agree to the decision by E-mail. Such decision will become effective as of the moment the Coordinator informs all Members of such decision.
- 4.9 The following decisions shall be made by the Party/Parties that is/are entitled to the cash or in kind contribution of the owing Party:
- Decision on a owing Party's non-compliance and, if applicable, subsequent notification of default;
  - Remedies to be performed by the owing Party in default;
  - Termination of the owing defaulting Party's participation in the Project and measures relating thereto;

Decisions as meant in this article shall be communicated to the Project Committee through the Coordinator.

- 4.10 In respect of the Ministry's special position in societal and political issues, Parties will grant the Ministry the right to delegate a governmental observer to attend meetings of the Project Committee (hereinafter referred to as: "Delegate"). The Delegate shall have no voting rights or other rights granted to the Members hereunder.

## **Article 5: Confidentiality**

- 5.1 Each Party hereby undertakes for an unlimited period of time:
- not to use another Party's Background for any other purpose than the purpose of the Project;  
and for a period of 5 years after the Project;
  - not to disclose another Party's Background to any third party without the prior written consent by the disclosing Party;
  - to ensure that internal distribution of another Party's Background shall take place on a strict need-to-know basis.

- 5.2 Each Party agrees:
- to use the received Foreground solely in accordance with the rights granted to such Party in this Consortium Agreement; and
  - not to disclose the received Foreground to any third party without the prior written consent of the providing Party;

with the exception of those cases that are explicitly agreed upon between the Parties in this Consortium Agreement in deviation from this.

- 5.3 The aforementioned confidentiality obligations are not applicable to Background or Foreground of which the receiving Party can demonstrate that it:
- was already publicly available at the time of its receipt or has become publicly available thereafter through no fault or action of the receiving Party;
  - has been obtained from third parties without an obligation to maintain confidentiality;
  - has been developed independently by receiving Party or any of its Affiliated Entities without access to the Background or Foreground of another Party;
  - is disseminated in accordance with article 6 of this Consortium Agreement;
- 5.4 Parties will have the right to disclose another Party's Background and Foreground to any of its Affiliated Entities and involved third parties solely for the execution of the Project and only to those employees who have a need to know, provided that they are bound by confidentiality and non-use obligations not less stringent than those contained in this Consortium Agreement.
- 5.5 The confidentiality obligations under this Consortium Agreement shall have no obstructing effect with regard to the communication with the TKI and the respective Ministry. The Party communicating with the TKI and the respective Ministry shall nevertheless use its reasonable efforts to ensure confidentiality.
- 5.6 If any Party is required to disclose another Party's Background or Foreground in order to comply with applicable laws or regulations or with a court or administrative order, nothing herein shall restrict the Party from disclosing such information, but only to the extent of such order, law or regulation and it shall, to the extent it is lawfully able to do so, prior to any such disclosure
- notify the disclosing Party, and
  - comply with the disclosing Party's reasonable instructions to maximally protect the confidentiality of the information.

## **Article 6: Dissemination**

- 6.1 The (joint) owner(s) of Foreground shall be responsible for making such Foreground available to the general public under the conditions specified in this Article.
- 6.2 The (joint) owner(s) of the Foreground shall have the right to disseminate either by publication or otherwise their Foreground. During the term of this Consortium Agreement, as well as for a period of 2 (two) years thereafter, the disseminating Party shall provide the other Parties with the intended dissemination at least 30 (thirty) calendar days before the dissemination. Any objection to the planned dissemination shall be made in writing to the publishing Party within 30 (thirty) calendar days after receipt of the notice. If no objection is made within the time limit stated above, the dissemination is permitted.

An objection is justified if:

- (a) the proposed dissemination includes another Party's Background or Foreground; or
  - (b) the objecting Party's legitimate interests are harmed by the dissemination;
  - (c) the proposed dissemination includes Foreground for which IP Right(s) can be applied for and for which the objecting Party has expressed its interest to purchase such IP-Right(s) or a licence thereto.
- 6.3 The objection has to include a precise request for necessary modifications. If an objection has been raised, the Parties involved shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amending the planned dissemination and/or by protecting information before dissemination), provided that the scientific integrity of the dissemination is preserved. The objecting Party shall not unreasonably continue the opposition, where appropriate actions are performed following the discussion.
- 6.4 If the objection is based on Article 6.2 (b) or (c), the intended dissemination can be delayed for up to six (6) months to allow an application for IP Rights to be filed, to secure its interest or to modify the dissemination. As from the expiration of this term, the owning Party will be entitled to proceed with the proposed dissemination.
- 6.5 The provisions contained in this Article 6 shall not apply to communication with the TKI and Ministry, including the submission of scientific reports to TKI and Ministry as meant in Article 3.6. Parties acknowledge and agree that TKI may publish summaries of the Project on their website.
- 6.6 A Party shall not disseminate Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party's own Foreground, without the other Party's prior written approval.
- 6.7 The Parties undertake to cooperate to allow the timely submission, examination, dissemination and defence of any dissertation or thesis for a degree which includes the Foreground of the Knowledge Institute subject to the dissemination provisions agreed in this Article 6. In deviation of Article 6.2 if an objection is based on Article 6.2 (b) or (c), the dissemination can be delayed for a maximum of three (3) months.
- 6.8 Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties, its employees or any of their logos or trademarks without their prior written approval.
- 6.9 The Party making a dissemination for publicity for the Project shall ensure that in such dissemination reference to the specific TKI's as providing part of the funding will be made.

## **Article 7: Background**

- 7.1 Background disclosed by a Party during - and for the purpose of - the Project, is and remains the (intellectual) property of-, and belongs exclusively to the Party who disclosed such Background. Each Party shall make available to all Parties any Background necessary for the performance of the Project as described in Annex 2 with applicable limitations of use. The Parties are nevertheless entitled to also contribute Background not listed in Annex 2, as far as necessary for the execution of the Project This additional Background shall be added to Annex 2. However, no Party shall have an obligation to disclose such additional Background.
- 7.2 Each Party hereby grants to the other Party/Parties (including its/their Affiliated Entities and involved third parties as specified in article 3.5) as far as needed by such Party/Parties in order to perform its/their tasks under the Project, a non-exclusive, royalty free, non-transferable right to use its Background listed in Annex 2.
- 7.3 When necessary for the use of Foreground, each Party shall upon request of another Party, grant to such Party and its Affiliated Entities a royalty-bearing, non-exclusive, worldwide, non-transferable licence to use its Background listed in Annex 2. The conditions for such licence shall be calculated in an objective, reasonable manner, at arms' length. Such request has to be made within 6 (six) months after the end of the Project.

## **Article 8: Foreground**

- 8.1 All Foreground shall be the property of the Knowledge Institute that generated such Foreground.

If particular Foreground is generated by more than one Knowledge Institute and if their intellectual contributions to such Foreground form an undividable part thereof, these Knowledge Institutes (individually referred to as: "Entitled Party") shall be jointly entitled to such Foreground (hereinafter referred to as: "Joint Foreground"). The share of each of the Entitled Parties shall be determined in good faith, taking into account each Entitled Party's relative intellectual contribution to the Joint Foreground.

If Foreground has been generated independently from the (intellectual) contribution of a Knowledge Institute by one Industrial Partner or by more Industrial Partners jointly, as specified in the Project Plan, such Industrial Partner(s) will become the owner(s). Such Industrial Partner(s) shall have the exclusive right to file patent applications for its (/their) owned Foreground in its (/their) name(s) and at its (/their) expense. In case of joint ownership of Industrial Parties only, those Industrial Parties shall make additional arrangements with regard to application, acquisition and / or maintenance of their Foreground and shall designate a lead Party. The lead Party shall timely discuss with the other Party applications, reports etc. in order to give the other Party the opportunity to comment there on, and Parties shall, and shall ensure that its employees, researchers, research fellows, individuals equivalent to those persons, give full cooperation and shall execute all documents, deeds and so forth as may reasonably be required in connection with the registration, protection and / or maintenance of that their Foreground.

The owner has the exclusive right to file for IP Rights on its Foreground. In the event of Joint Foreground, the Entitled Parties shall have the exclusive right to file patent applications for such Joint Foreground in their names and at their expense.

A Party which intends to file for IP Rights to its Foreground will inform the other Parties of such intention by invention disclosure form (hereinafter referred to as: "IDF") (see Annex 4) in order for the other Parties to verify that no Background or Foreground of them is



included.

Each Party hereby grants to the other Party/Parties (including its/their Affiliated Entities and involved third parties as specified in article 3.5) as far as needed by such Party/Parties in order to perform its/their tasks under the Project, a non-exclusive, royalty free, non-transferable right to use its Foreground.

- 8.2 Each (joint) owner of the (Joint) Foreground is free to use its (Joint) Foreground without limitations with due observance of Article 9.
- 8.3 Each Party shall have the right to use another Party's Foreground that is not protectable or will not be protected for internal activities only and not for the benefit of, nor together with third parties (other than Affiliated Entities). After dissemination of such Foreground each Party will be free to use the disseminated Foreground without any limitation.
- 8.4 Notwithstanding Articles 3.5, 8.3 and 9.5, a Party is entitled to grant to a third party, being a subcontractor, a royalty-free (sub)licence under its licence to use the Foreground solely for the purpose of research activities in accordance with its tasks under the Project (to be performed by such service provider).. The Party will at all times remain responsible for such subcontractor and ensures that such third party will keep the Foreground strictly confidential in accordance with the provisions of this Consortium Agreement and that it shall only be used for said research activities.

## **Article 9: IP Rights on Foreground**

### General

- 9.1 The Industrial Partners shall be entitled to obtain from the Knowledge Institute a licence in their Field of Use to, or the ownership of the IP Rights vested in the Foreground of the Knowledge Institute. In case the Knowledge Institute agrees to a transfer of its ownership of the IP Rights to an Industrial Partner, then the Knowledge Institute which transfers such IP Rights will receive an exclusive, worldwide, royalty free and sub-licensable licence back for all applications outside the Field of Use of such Industrial Partner if and insofar and to the extent the protection of the IP Rights by the owner is not blocked, affected or limited in any way, which means (not limited to) confidential use of such IP Rights until the IP Rights are filed and secured, with a maximum period as mentioned in 9.10.
- 9.2 If Foreground that can be protected with IP Rights is generated and identified by the Knowledge Institute, the Knowledge Institute shall instruct its researchers to fill out an IDF. Subsequently, the Knowledge Institute shall send a written notification, including the IDF, to all Parties. The Industrial Partners shall then inform the Knowledge Institute, also in writing, within 30 (thirty) calendar days after receiving the written notification of the Knowledge Institute, whether they are interested in obtaining a licence to, or the ownership of the IP Rights (to be) vested in the Foreground.
- 9.3 If one or more Industrial Partner(s) are interested in obtaining a licence to, or the ownership of such IP Rights, the Knowledge Institute(s) may file for IP Rights, or alternatively, appoint (one of) the Industrial Partner(s) to file for IP Rights and/or discuss a transfer of ownership, in case the Knowledge Institute is not interested in filing for IP Rights itself. The provisions regarding obtaining a licence to the IP Rights are listed in Articles 9.6-9.9 and the provisions regarding transfer of ownership of the IP Rights are listed in Articles 9.10-9.12.
- 9.4 If none of the Industrial Partner(s) are interested in obtaining a licence to, or the ownership of such IP Rights, the Knowledge Institute(s) will still have the right to file for IP Rights on the Foreground for its own (commercial) purposes including transferring, or licensing it to third parties.

- 9.5 If the ownership of the IP Rights on Foreground are transferred or licensed to another Party or third party, the Knowledge Institute(s) will at all times remain entitled to use such Foreground for internal research and educational purposes.

#### Licence rights

- 9.6 Each Party, can at all times and at its own discretion obtain from the owner(s) of the IP Rights a royalty-bearing, (non-)exclusive, non-transferable licence to use the protected Foreground for commercial purposes, with the right to sub-license to its Affiliated Entities and/or third parties as agreed upon in writing (hereinafter referred to as: "Licence") for use in their Field of Use.

If Licences are granted for Fields of Use that overlap or concern consecutive steps (e.g. as parts of a value chain), then such Licences will become semi-exclusive meaning that licensees are not entitled to limit the other licensee's Licence in the overlapping Field of Use or in the full exploitation of the consecutive step for which the Licence was obtained.

The conditions and fee for such Licence shall be determined in accordance with market conditions, taking into account the Industrial Partner's own contribution (in cash and, where applicable, in kind contribution). The Licence fee shall be paid to the owning Party/Parties. In addition to the Licence fee, the Industrial Partner(s) that obtained a Licence shall each year pay a reasonable compensation for the annual maintenance costs of the IP Rights, incurred that year by the owner(s) of the concerned IP Rights.

- 9.7 Should the respective Parties be unable to agree on the terms of a licence agreement within a period of six (6) months following the written notification including IDF as mentioned 9.2, the (joint) owners shall have the right to license their protected Foreground to any third party. This negotiation period can be extended upon mutual agreement. The (joint) owners shall however – for a period of one year as of the termination of these negotiations, - not grant licences to other Parties or third parties on more favourable terms (taking into account objective standards, such as field of use, geographical scope, exclusivity), than offered to the interested Industrial Partner(s).
- 9.8 The litigation costs with respect to the IP Rights will not be included in the Licence fee or the compensation for the annual maintenance costs of the IP Right(s). In case litigation is contemplated, the Parties involved shall enter into further negotiations regarding the litigation and the division of the associated costs.

#### Transfer of Ownership

- 9.9 Should the Knowledge Institute agree to transfer the ownership of the IP Rights to the interested Industrial Partner(s), then such transfer becomes effective after payment by the acquiring Industrial Partner(s) of the application costs of said IP Rights and a purchase price in line with market conditions minus the acquiring Industrial Partner's own contribution (in cash and, where applicable, in kind contribution). Prior to the filing of the IP Rights, the Knowledge Institute shall consult with the Industrial Partner(s), in as far as reasonably possible, about the content and specifics of the application.
- 9.10 Should the Industrial Partner(s) and the owning Knowledge Institute(s) be unable to agree on the terms of the transfer within a period of six (6) months following the written notification including IDF as mentioned 9.2, the Knowledge Institute/Knowledge Institutes shall have the right to transfer the IP Rights on Foreground to any third party. This negotiation period can be extended upon mutual agreement. The Knowledge Institute(s) shall however – for a period of one year as of the termination of these negotiations - not transfer to other Industrial Partners or third parties on more favourable terms than offered to the interested Industrial Partner(s).

- 9.11 If the ownership of the IP Rights on Foreground is transferred to another Party or third party, the Party transferring the IP Rights shall ensure that any such transfer shall be subject to all prior rights, commitments and undertakings entered into by that Party in respect of the existing rights to the IP Rights prior to the date of any such transfer of the IP Rights.
- 9.12 Irrespectively of the above transfer of ownership, the Knowledge Institute(s) shall, to the extent this does not affect or limit the acquiring Party's ownership rights to the IP Rights which have been transferred, retain the copyright to any and all research descriptions, reports, brochures, designs, blueprints, drawings, models, source code of software and/or in general any and each product in the field of literature, science and art, expressed in any manner or form whatsoever, which has been produced within the framework of the Consortium Agreement.

#### **Article 10: Exchange of material**

- 10.1 Any transfer of material during the Project may be subject to the conclusion of a Material Transfer Agreement. A template for the Material Transfer Agreement is attached to this Consortium Agreement as Annex 3.

#### **Article 11: Financing of the Project**

- 11.1 The Project will be financed in accordance with the Project Budget as included in the Project Plan. All amounts are in Euro's and excluding VAT or any other taxes.
- 11.2 All in kind and in-cash contributions to be made to the Project by each of the Parties are specified in Annex 1 to this Consortium Agreement. Each Party shall only be responsible for making its own contribution as specified in Annex 1.
- 11.3 In accordance with its own usual accounting and management principles and practices - which may be verified by the TKI or Ministry - each Party shall be solely responsible for justifying its costs and/or contributions with respect to the Project. Where an audit certificate is required, Parties shall provide such certificate at their own costs..

#### **Article 12: Limitation of Liability and exclusion of warranties**

- 12.1 Any Industrial Partner's(s') aggregate liability under or in connection with this Consortium Agreement towards the other Parties collectively shall be limited to an amount equal to once its Project share, regardless of whether the contribution was in kind or in cash. The aggregate liability of the Knowledge Institute under or in connection with this Consortium Agreement towards the other Parties collectively shall be limited to an amount equal to the average of the Project shares of the Industrial Partner(s), regardless of whether their contributions were in kind or in cash.
- 12.2 Parties shall only be liable to any other Party for direct damages which does not include indirect damages such as but not limited to lost turnover, lost profits, reputational damage, or the loss of data and/or materials.
- 12.3 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 under this Consortium Agreement or from its use of Foreground or Background.
- 12.4 The exclusions and limitations of liability stated in this Article 12 shall not apply to loss or damage arising out or in connection with:  
(I) the wilful failure or gross negligence of a party in performing its contractual obligations;

- (II) breach of Article 5 (Confidentiality);
- (III) death or personal injury or loss or damage for which liability cannot be limited or excluded by law.

12.5 Parties give no warranties or guarantees, expressed or implied, for the Background and /or Foreground they provide to the other Parties, including merchantability or fitness for a particular purpose or that the use of the Background/Foreground will not infringe any intellectual property rights of a third party. The decision whether to use the Background and/or Foreground is the sole decision and responsibility of each Party and each Party shall assume sole responsibility for any claims or liabilities that may arise as a result of its use of the Background and/or Foreground.

### **Article 13: Term**

- 13.1 This Consortium Agreement shall become effective as of 01-01-2020 and shall end on 31-12-2022, provided that the Consortium Agreement has been signed by the duly authorised representatives of all Parties. Parties shall implement the Project as specified in the Project Proposal within this period of time.
- 13.2 Six months before the expiration of the Consortium Agreement, Parties shall consult with each other and TKI whether an extension of the period provided in Article 13.1 is desirable.

### **Article 14: Termination**

- 14.1 With regard to a Party:
- a. that, whether or not through force majeure, has not, not timely or not properly fulfilled a essential obligation under this Consortium 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 notice of default, without prejudice to the right of the other Parties to claim the losses they have suffered as a result of the default and/or termination of the Consortium Agreement;
  - b. who is declared bankrupt, in respect of whom a suspension of payment 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
  - c. that goes into liquidation or that permanently discontinues its business;

the other Parties together, upon a majority vote, can terminate this Consortium Agreement towards said Party with immediate effect, without judicial intervention or any further summons being required, by giving notice by registered post with return receipt. The Consortium Agreement shall remain in full force and effect between the remaining Parties, unless the remaining Parties agree otherwise.

- 14.2 If the termination is based on Article 14.1a, the Party expelled from the Consortium Agreement shall bear any reasonable and justifiable additional costs incurred by the other Parties in order to perform the expelled Party's tasks. The remaining Parties shall discuss how to deal with the excess amount or loss of funds, for example by amending the Project Plan.
- 14.3 When the participation of a Party has been terminated pursuant to Article 14.1, said Party shall not acquire any rights with regard to the Foreground, generated after the termination of its participation as well as such Party's right to request access rights to Foreground or Background shall cease immediately upon receipt of the formal notice of termination.

In addition, such Party shall continue the access rights it has granted to its Background and Foreground under this Consortium Agreement as if it had remained a Party for the whole duration of the Consortium Agreement.

- 14.4 Each Party is entitled to forthwith terminate the Consortium Agreement in the event of a final decision (not open to appeal) of the Ministry to discontinue funding the Project.
- 14.5 Articles 1 (Definitions), 5 (Confidentiality), 6 (Dissemination), 7 (Background), 8 (Foreground), 9 (IP Rights), 12 (Limitation of Liability and exclusion of warranties), 14 (Termination), and 17 (Applicable law and dispute), as well as the articles which, considering their nature, are intended to remain in force between the Parties after termination of this Consortium Agreement shall survive termination of this Consortium Agreement.

#### **Article 15: New party joining the Collaboration**

If a new party wishes to join the Project, all Parties must agree to such acceding and the terms and conditions thereof. The Parties and the acceding party shall execute an addendum to this Consortium Agreement. All Foreground developed before the accession of a new party shall be considered as Background with regard to such new party.

#### **Article 16: Miscellaneous**

- 16.1 If conflicts appear between the Annexes and the body text of this Consortium Agreement, the latter shall prevail.
- 16.2 Should any provision of this Consortium Agreement become invalid, illegal, unenforceable, or is not in accordance with the framework for state aid for research and development and innovation ("R&D&I"), it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties shall ensure that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.
- 16.3 The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, an offer by, or creating any obligation of any Party to enter into any form of agreement other than stated in this Consortium Agreement or interest grouping or any other kind of formal business grouping or entity between the Parties.
- 16.4 Unless explicitly mentioned otherwise in this Consortium Agreement, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, without the other Parties' prior written approval.
- 16.5 Amendments and modifications to the text of this Consortium Agreement, including the accession of any new party, require a separate agreement between all Parties.
- 16.6 This Consortium Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which shall together constitute one and the same agreement, and shall become effective when signed by each of the Parties and delivered to the other Parties by regular mail or by reliable electronic means.
- 16.7 This Consortium Agreement will be executed in electronic form and provided to all Parties in PDF by e-mail.

#### **Article 17: Applicable law and disputes**

- 17.1 This Consortium Agreement (and any questions regarding its existence, validity or termination) and the performance thereof is exclusively governed by Dutch law.
- 17.2 The Parties shall attempt to resolve any dispute arising out of or relating to this Consortium Agreement amicably.
- 17.3 Should Parties fail to resolve a dispute by negotiation, then such dispute shall exclusively be judged by the competent court in The Hague, the Netherlands.

**Article 18: Annexes**

- 18.1 The following Annexes form an integral part of this Consortium Agreement:
- Annex 1: Project Plan and Project Budget;
  - Annex 2: Background Included;
  - Annex 3: Template Material Transfer Agreement.
  - Annex 4: Invention Disclosure Form (IDF)

**[The remainder of the page is left blank intentionally, signature pages follow]**

**In witness whereof this Consortium Agreement has been signed by:**

**Stichting Biobased Delta**

Name: Dr. ir. R.J. Zoetemeyer  
Position: Director  
Place/Country: Bergen op Zoom  
Date: 23-04-2020.....

Signature: .....  .....

Name: Dr. Ir. W.L.Sederel  
Position: Member of the Board  
Place/Country: Bergen op Zoom  
Date: 18 mei 2020.....

Signature: .....  .....

**In witness whereof this Consortium Agreement has been signed by:**

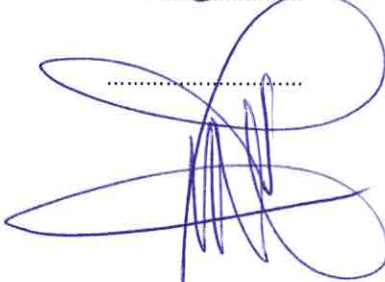
**Asfalt Kenniscentrum B.V.**

Name: Ing. P.A. Landa

Position: Director

Place/Country: ..... *Utrecht* .....

Date: ..... *6 mei 2020* .....

Signature: .....  .....



**In witness whereof this Consortium Agreement has been signed by:**

**H4A Infratechniek B.V.**

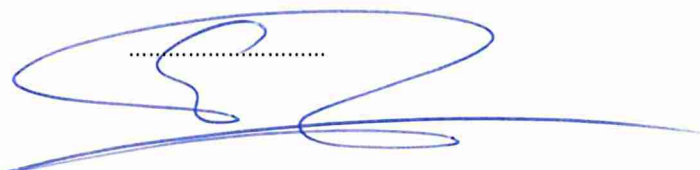
Name: Ing. E.F. de Ruijsscher

Position: Director

Place/Country: Sas van Gent

Date: 17-03-2020

Signature:



**In witness whereof this Consortium Agreement has been signed by:**

**NTP B.V.**

Name: Mr. B. Loose

Position: Director

Place/Country: Angelo

Date: 16 maart 2020

Signature: 

**In witness whereof this Consortium Agreement has been signed by:**

**Dura Vermeer Infra Participaties B.V.**

Name: Mr G.J.W. Naarding

Position: Director

Place/Country: The Hague / Netherlands

Date: 17-04-2020

Signature: 

A19620359 Consortium Agreement TKI TBBE119007, with the title: "Collaboration in asphalt Applications with Lignin in the Netherlands (CHAPLIN)"\_final.

**In witness whereof this Consortium Agreement has been signed by:**

**Latexfalt B.V.**

Name: Mr A.H. Tolboom

Position: Managing Director

Place/Country: Koudekerk

Date: 15-4-2020

Signature:



**In witness whereof this Consortium Agreement has been signed by:**

**Vertoro B.V.**

Name: Mr M.D. Boot

Position: CEO

Place/Country: ..Geleen, the Netherlands

Date: 23-03-2020

Signature: 

**In witness whereof this Consortium Agreement has been signed by:**

**Avantium Chemicals B.V.**

Name: ~~Mr T.B. van Aken~~

Position: ~~Director~~

Place/Country: ~~Amsterdam~~

Date: ~~13 March 2020~~

Signature: ~~[Signature]~~

*[Handwritten mark]*

**In witness whereof this Consortium Agreement has been signed by:**

**Stichting Wageningen Research,  
institute Wageningen Food and Biobased Research**

Name: Dr.ir. Sjoukje Heimovaara

Position Managing Director

Place: Wageningen, the Netherlands

Date: 30/03/2020

Signature: 

**In witness whereof this Consortium Agreement has been signed by:**

**Universiteit Utrecht**

Name: Prof. dr. ir. Wilco Hazeleger

Position: Dean of the faculty of Geosciences

Place/Country: ..... Utrecht, the Netherlands

Date: ..... 16-4-2020

Signature: ..... 



**Nederlandse Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek – TNO.**

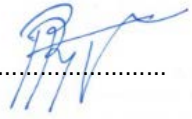
Name: Dhr. P.P. van 't Veen

Position: Director

Place/Country: Delft.....

Date: 19 March 2020.....

Signature:

.....  
  
.....

## **Annex 1 – Project Plan and Project Budget**

## Annex 2 - Background Included and limitations on use

### TNO:

As to TNO, it is agreed between the Parties that, to the best of their knowledge, the following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for the Project	Specific limitations and/or conditions for exploitation
WO 2015/137813 AI And all related information regarding lignin modification.	Only to be used by WR and Latexfalt in accordance to activities in WP2.	

This represents the status at the time of signature of this Consortium Agreement.

### WR:

As to WR, it is agreed between the Parties that, to the best of their knowledge, the following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for the Project	Specific limitations and/or conditions for exploitation
<ul style="list-style-type: none"> <li>- WO 2015/137813 Bitumen composition, Slaghek, T.M., Van Vliet, D., Giezen, C., Haaksman, I.</li> <li>- WO 2019/092278 Lignin-based bio-asphalt, Landa, P., Gosselink, R.J.A.</li> </ul>		Parties are not allowed to use this background for exploitation during or after the duration of the project. Only specific agreement or licence can be given under negotiated terms with the owner(s) of this background.

This represents the status at the time of signature of this Consortium Agreement.

Annex 3 Template MTA

**Material Transfer Agreement**

**THE UNDERSIGNED:**

1. **[Party supplying the material]**, having its registered office at [address], [country], hereinafter also to as: '[X]', lawfully represented in this matter by its [position], [name];  
  
and
2. **[Party receiving the material]**, having its registered office at [address], [country], hereinafter also referred to as: '[Y]', lawfully represented in this matter by its [position], [name];

[X] and [Y] are hereinafter individually also referred to as a "Party" and collectively as the "Parties";

Any capitalized term used in this material transfer agreement (hereinafter referred to as: "MTA"), but not defined herein, shall have the meaning ascribed thereto in the Consortium Agreement (see definition below);

**WHEREAS:**

- A. [Y] and [X] are both a party to the TKI T&U research project called "[project title]" (hereinafter also referred to as: "Project") and have, together with some other parties ("hereinafter also referred to as: "Project Partners"), entered into a Consortium Agreement on [date] (hereinafter also referred to as the "Consortium Agreement");
- B. [X] is the owner and/or holder of certain material, which is specified in Annex 1;
- C. [Y] is interested in investigating this material for research purposes only for the Project to which the material can be qualified as Background of [X] and [Y] is willing to provide the results of its research to [X] and the other parties to the Project, subject to the limitations as set out in this MTA;
- D. [X] is prepared to make available to [Y] such material subject to the provisions of this MTA.

**HAVE AGREED AS FOLLOWS:**

**Article 1 - Supply and use of the Material**

1. As soon as possible after this MTA has been signed by the Parties, and under the terms and conditions of this MTA, [X] or any of its Affiliated Entities shall provide [Y] with certain [brief description of the material], as further specified in Annex 1 to this MTA (hereinafter referred to as the "Material").
2. [X] hereby grants [Y] a non-exclusive right to use the Material solely for performing its tasks within the Project (hereinafter referred to as: "Activities").
3. Unless expressly agreed otherwise, [Y] shall keep the Material towards third parties, other than the Project Partners, in strictest confidence in compliance with Article 5 of the Consortium Agreement and shall not provide (any part of) the Material to any third party, or otherwise disclose, release, license, lend, part with, or allow access to (any part of) the Material, without the prior written consent of [X].

4. [Y] is nevertheless entitled to give its employees access to the Material, as far as such is necessary to perform the Activities. [Y] will ensure that its employees will hold the Material in strictest confidence and will use the Material strictly in accordance with the provisions of this MTA.
5. [Y] shall not analyze or have analyzed or reverse engineer the Material to determine its composition or formulation, or permit or allow any third party to do so, except to the extent as determined in the Project Plan and therefore for the purpose of the Project.
- 6.

#### Article 2 - the Material

1. All IP rights to the Material and any derivatives thereof will remain the sole and exclusive property of [X]. [X] is and remains free to grant licenses regarding the IP Rights to the Material without the consent of [Y]
2. [Y] undertakes not to disclose to any third party and/or publish that the Material originated from and/or has been supplied by [X], unless [X] has given its prior written approval thereto.
3. [Y] shall use the Material in compliance with all laws and governmental regulations and guidelines applicable to the Material.
4. [Y] shall use the Material in compliance with all laws and governmental regulations and guidelines applicable to the Material, including, where applicable, the conditions of the country where the Material originates (Mutually Agreed Terms (MAT) and/or Prior Informed Consent (PIC)), and shall ensure that it can provide all required permits if requested.

#### Article 3 - (Rights on) Results

1. [Y] shall provide the results of the Activities to to [X], after which [X] and [Y] shall jointly consult on how the results are provided the Project Partners, taking into account the obligations under the Consortium Agreement.. These results shall become Foreground in the Consortium Agreement.
2. [X] is allowed to freely use these results with regard to the Material within its own organization and may share the results with its Affiliated Entities, provided that that is permitted under the Consortium Agreement.
3. [Y] ensures that it shall only use these results in such way, that [X] and its Affiliated Entities will at all times remain free to produce, develop, use, commercialize and/or distribute the Material.

#### Article 4 - Warranties and liability

1. [Y] agrees and acknowledges that the Material has been provided to [Y] without any warranty, either expressed or implied, with regard to its quality, stability, fitness for a particular purpose, or any other quality.
2. [X] makes no representations and extends no warranties, either expressed or implied, that the use of the Material in accordance with this MTA will not infringe any (intellectual property) right of a third party.
3. [Y] will not hold [X] and/or its Affiliated Entities liable, neither jointly nor separately, for any damages suffered by [Y] arising from [Y]'s use of the Material.

4. No right or licence, neither expressed nor implied, is granted to [Y] with regard to the Material or other IP Rights belonging to [X] and/or its Affiliated Entities, except as explicitly set forth in this MTA.
5. [X] will process, pack and ship the Material in accordance with all applicable legislation and good industry practice.
6. [X] shall not be liable to [Y] for any damage or loss of [Y] due to or arising from the shipping and delivery and/or use, storage or disposal of the Material by [Y]. [Y] shall indemnify and hold [X] harmless against any claims that may arise out of [Y]'s use, storage or disposal of the Material.

#### Article 5 - Term and termination

1. This MTA shall enter into force on the date this MTA has been signed by the Parties, and shall remain in full force and effect until [insert end date of the Consortium Agreement].
2. After expiration of this MTA, the articles 1.3 (Confidentiality), 2 (The Material), 3 ((Rights on) Results), 4 (Warranties and liability) and this article 5 (Term and termination) shall remain applicable for an indefinite period of time.
3. After expiration of this MTA, [Y] shall immediately destroy or return all remaining Material and any derivatives thereof in its possession, such to the sole discretion of [X].

#### Article 6 – Applicable law and dispute resolution

1. This MTA and the performance thereof is exclusively governed by Dutch law.
2. The Parties shall attempt in to resolve any dispute arising out of or relating to this MTA amicably.
3. Should Parties fail to resolve a dispute amicably, then such dispute shall exclusively be judged by the competent court in The Hague, the Netherlands.

Agreed and signed in twofold by,

---

**[Y]**

By:  
Position:  
Place:

Date:

---

**[X]**

By:  
Position:  
Place:

Date:

## **Annex 1 to the MTA – specification of the Material**

## **Annex 4 - Invention Disclosure Form (IDF)**

Title of the invention:

Date:

Submitted by (name and affiliation):

### **Part A. Description of the Invention**

**Background of the invention (state of the art); why is the invention required, what problem is solved? Has it been tried to solve this problem before or by different means?**

- Describe the background of the invention (3-4 paragraphs):
- Describe the problem(s) solved by the invention:
- Describe the differences from the state of the art:
- Has any patent search been carried out? If so, provide results.

**Give a short description of the invention and the inventive steps (i.e. non-obvious steps which are crucial in obtaining the benefits of the invention).**

- Description of the invention (3-4 paragraphs):
- Indicate the inventive steps:
- Describe the benefits of the invention:

**Description of the research that resulted in the invention. Is it a result of a main project of the group? Is further research going to be conducted in the next twelve months? Will this research further contribute to the invention?**

- Description of how invention has originated:
- In case of result from research project/theme give here the description of project/theme:
- Does the research continue in next 12 months?:
- Does the further research contribute to invention? How?:

**Describe the development stage (how much further development is required for commercialization). Is funding needed?**

- Describe the development stage (concept, proof of concept, prototype, etc.):
- Is further research or development required?
- Is funding needed?



**When was the invention made? When was the first written record of the invention made? When was the first experimental demonstration of the invention (proof of concept) or how much time is needed to deliver proof of concept?**

- Invention made (date):
- First written record of invention (date):
- Time needed for proof of concept (months):

## **Part B: Inventor details**

Name only those who contributed intellectually in the inventive step of the invention. Please note that inventorship is not the same as authorship and has important legal implication in the procedure for acquiring patent protection. An inventor is somebody who contributes intellectually to the invention. It does not concern those who only perform the work or those who made the work possible.

### **Inventor 1:**

Full Name:  
Function Title:  
Knowledge Institute:  
Details of third party payment covering employment:

### **Inventor 2:**

Full Name:  
Function Title:  
Knowledge Institute:  
Details of third party payment covering employment:

### **Inventor 3:**

Full Name:  
Function Title:  
Knowledge Institute:  
Details of third party payment covering employment:

### **Inventor 4:**

Full Name:  
Function Title:  
Knowledge Institute:  
Details of third party payment covering employment:

***If more inventors are involved, please add all names.***

In case of more than 4 inventors, please add all names and details and also in the right order of first inventor, second, etc.

## Part C: Intellectual Property information

**Give full details of funding sources of the research that led to the invention, including funding from within Wageningen UR. Research contract details, terms of the contract covering Intellectual Property (provide copies if applicable). This information is needed to establish third party rights.**

- Give details of funding sources of the research, including funding from within WUR:
- Give research contract details:
- Give terms of the contract concerning IP (provide copy):

**Give full details of the materials used in the research (including for instance special software programmes) and any Material Transfer Agreements (MTA) that are applicable.**

- Details used materials:
- Details used software programmes:
- Details of MTA (provide copies where applicable):

## Part D: Disclosure

**Please list any previous or anticipated disclosures of information that could be relevant for the invention. This includes publications, abstracts, posters, lectures in public meetings as well as disclosures to colleagues from other organisations. These may affect the patentability and the time of filing. Please, provide information of all relevant publications in the field of invention, including background publications, conference abstracts, relevant patents or patent applications, etc.**

- Previous or planned disclosures of information:
- Relevant publications:
- Disclosures to others:
- Patents:
- Key words for searching databases and markets

## Part E: Commercial information

**Provide any details that may help to assess the commercial potential of the invention. In particular list any companies that you know use or exploit the type of technology and detail any interest they may have (shown) in your research.**

- Describe commercial perspectives for the invention:
- For what market segment is the invention relevant (e.g. agro-chemical; food; medical; pharma; plant breeding; veterinary; etc.)
- Give names of companies that could be interested:

- Give names of any research group working in the same area:

**List any thoughts you have as to how the invention could be exploited. I.e. will it lead to new research projects that could be funded externally, can the technology/product be sold in the next years, is the invention suitable for a spin-off company?**

- Perspectives for commercialisation:
- Interest in new research to be funded externally:
- Interest in selling the invention:
- Interest in using the invention for spin-off: