# CONSORTIUM UMBRELLA AGREEMENT FOR PPP Projects

This agreement (hereinafter “**Umbrella Agreement**”) is effective as of [date] (the “**Effective Date**”), by and between:

1. **[Consortium Partner 1]**, incorporated under [nationality] law, having its statutory seat [in place, country] and its address [address] and registered with the [nationality] Chamber of Commerce under number [number], hereinafter referred to as the “**Research Organisation X/Industrial Partner X**” and as “[**Name Partner**]”. [**Consortium Partner 1]** shall also act as the Program Coordinator;
2. **[Consortium Partner 2]**, incorporated under [nationality] law, having its statutory seat [in place, country] and its address [address] and registered with the [nationality] Chamber of Commerce under number [number], hereinafter referred to as the “**Research Organisation X**” and as “[**Name Partner**]”;
3. **[Consortium Partner 3]**, incorporated under [nationality] law, having its statutory seat [in place, country] and its address [address] and registered with the [nationality] Chamber of Commerce under number [number], hereinafter referred to as the “**Industrial Partner X**” and as “[**Name Partner**]”;

# Etc.

Each of the Participants hereinafter also referred as “a **Participant**” and together as “the **Participants**”.

# WHEREAS:

1. The Dutch Top Sector Life Sciences and Health (‘*Topconsortium voor Kennis en Innovatie*’ or ‘*TKI*’ *Life Sciences and Health*) is represented by Stichting Life Sciences Health – TKI (also acting under its trade name Health~Holland, hereinafter referred to as “**Stichting LSH-TKI**”), tasked by the Dutch government to promote and stimulate new public-private partnerships to undertake research and development projects in the life sciences;
2. To promote such partnerships, the Minister of Economic Affairs and Climate Policy has allocated certain funds to Stichting LSH-TKI, to grant allowances to programs under the TKI-programme Life Sciences & Health (each such allowance a “**PPP Allowance**”);
3. Participants desire to start a research program titled [Program title] (the “**Program**”) within the scope of the TKI-programme Life Sciences & Health and have submitted an application to Stichting LSH-TKI for the grant of such PPP Allowance to the Program (the “**Program Application**”);
4. Participants desire to specify the binding commitments among themselves with regard to the Program and the work to be allocated thereunder as set out in the Program Application, all in accordance with the terms and conditions of this Consortium Umbrella Agreement and the Consortium Project Agreements concluded under this Consortium Umbrella Agreement, whereas all such Consortium Project Agreements may be tailored in accordance with the modalities of a Project, all under the governing terms and conditions of this Consortium Umbrella Agreement;
5. The Participants agree that in case Stichting LSH-TKI does not grant the PPP Allowance as applied for, this Consortium Umbrella Agreement and the Consortium Project Agreements will be terminated, except for the confidentiality provisions that will survive termination;

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

Article 1. **Definitions**

Words beginning with a capital letter shall have the meaning defined either herein or in the Consortium Project Agreement(s).

* 1. “**Affiliate**” means the legal entity that is either the ultimate parent company of a Participant or that is under the direct or indirect control of a Participant, or under the same direct or indirect control as the Participant, control taking any of the following forms:
		1. the direct or indirect holding of more than 50% of the nominal value of the issued share capital in the legal entity concerned, or of a majority of the voting rights of the shareholders or associates of that legal entity;
		2. the direct or indirect holding, in fact or in law, of decision-making powers in the legal entity concerned.
	2. “**Budget**” means the budget submitted to Stichting LSH-TKI in the TKI-LSH Match Budget Form providing an estimate of the total cost to carry out the Program, including an overview of the contributions of each Participant to the Program. The Budget is attached to the Consortium Project Agreement as Annex 2;
	3. “**Chairperson**” means the person appointed by the Steering Committee to chair the Steering Committee’s meetings. The Chairperson is the Program Coordinator or the Program Coordinator’s representative, unless no Program Coordinator is appointed or if the Program Coordinator is subject to a decision of the Steering Committee to replace the Program Coordinator, or to declare the Program Coordinator a Defaulting Participant;
	4. “**Confidential Information**” shall mean any information or material, irrespective of its nature or form, disclosed by the disclosing Participant to the receiving Participant in connection with the Program (i) which is marked or indicated as being confidential by the disclosing Participant, or (ii) when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing, within thirty (30) calendar days from oral disclosure at the latest, as Confidential Information by the disclosing Participant.
	5. “**Consortium Umbrella Agreement**” means this Consortium Umbrella Agreement as well as the pre-amble and all annexes hereto;
	6. **“Consortium Project Agreement”** means the project contract that specifies project specific terms and conditions and the work to be allocated as set out in Project Plan.
	7. “**Defaulting Participant**” means a Participant which the Steering Committee has declared to be in substantial breach of this Consortium Umbrella Agreement or the Consortium Project Agreement in accordance with Sections 3.5 and 6.5 of this Consortium Umbrella Agreement;
	8. “**Effective Date**” means the date first written in the pre-amble;
	9. “**Member**” has the meaning assigned to it in Section 6.1;
	10. “**Program Share**” means the value of a Participant’s total share in the Program, in cash and in kind, as identified in the Budget.
	11. “**Steering Committee**” has the meaning assigned to it in Section 6.1;
	12. “**Stichting LSH-TKI**” means the Stichting Life Sciences and Health, also acting under its trade name Health~Holland, having its statutory seat in The Hague, the Netherlands and its address at Wilhelmina van Pruisenweg 104, 2595 AN, The Hague and registered with the Dutch Chamber of Commerce under number 27380989.

Article 2. **Purpose**

* 1. Purpose. As a master (umbrella) form of contract, this Consortium Umbrella Agreement allows the Participants to contract for multiple Consortium Project Agreements. The purpose of this Consortium Umbrella Agreement is to specify, with respect to the Program, the overall relationship among the Participants. This includes in particular the management of the Program, the organisation of the work between the Participants as set out in the Program Application and in accordance with the Budget. Each Consortium Project Agreement shall become binding to the Participants upon being signed by the Participants and shall be consecutively numbered and incorporate the terms of this Consortium Umbrella Agreement by reference.
	2. Conflict. The Participants acknowledge and agree that if there is any conflict between the terms of this Consortium Umbrella Agreement and the Consortium Project Agreement(s), the terms of the Consortium Project Agreement(s) will prevail with regard to the PPP Allowance and the obligations of the Participants towards the Stichting LSH-TKI. In any other event, the terms of the Consortium Umbrella Agreement shall prevail, also over the provisions of the Consortium Project Agreements.

Article 3. **Entry into force, duration and termination**

* 1. Entry into force. This Consortium Umbrella Agreement shall enter into force on the Effective Date and shall continue in full force and effect until all obligations undertaken by the Participants under the Consortium Project Agreements and under this Consortium Umbrella Agreement are completed, unless this Consortium Umbrella Agreement or the participation of one or more Participants is terminated in accordance with the terms of this Consortium Umbrella Agreement.
	2. New Participant. A new entity becomes a Participant to the Consortium Umbrella Agreement upon signature of the accession document attached as Annex 1 to this Consortium Umbrella Agreement, by the new Participant, the Program Coordinator and the Stichting LSH-TKI. Such accession shall have effect from the date identified in the accession document. The new Participant shall simultaneously conclude a Consortium Project Agreement, conform the format attached as Annex 2 to this Consortium Umbrella Agreement.
	3. Termination of the Consortium Umbrella Agreement. This Consortium Umbrella Agreement shall terminate automatically upon rejection of the Program Application by the Stichting LSH-TKI.

Furthermore, in the event that a Consortium Project Agreement is terminated, the Consortium Umbrella Agreement may be terminated by the Participants upon mutual written agreement and the prior written approval of Stichting LSH-TKI.

* 1. Termination of a Participant’s participation. The Steering Committee is entitled to terminate a Participant’s participation to the Consortium Umbrella Agreement with immediate effect upon written notice to that Participant by the Program Coordinator, or if the Program Coordinator is the

subject of termination, the Participant appointed by the Steering Committee, in the following events:

* + 1. Insolvency. If a Participant is declared insolvent or granted suspension of payments, or a insolvency / winding-up petition has been filed in respect of such Participant to that end or its business is liquidated, dissolved or discontinued;
		2. Breach. If a Participant is in substantial breach of any of its obligations under the Consortium Umbrella Agreement or the Consortium Project Agreement, which is not caused by Force Majeure, and cannot be remedied or has not been remedied pursuant to Section 3.5;
		3. Force Majeure. If circumstances beyond the control of the Participants or investigator make it unreasonable to require the Program’s continuation or a Participant is in a situation of Force Majeure which has continued for a period longer than ninety (90) calendar days as described in Article 5.7.
	1. Defaulting Participant. In the event that the Steering Committee identifies a breach by a Participant of its obligations under this Consortium Umbrella Agreement or the Consortium Project Agreement (*e.g.* improper implementation of the program), the Program Coordinator or, if the Program Coordinator is in breach of its obligations, the Participant appointed by the Steering Committee, will give written notice to such Participant requiring that such breach will be remedied within 30 (thirty) calendar days from the date of receipt of the written notice by the Participant. If such breach is substantial and is not remedied within that period or is not capable of remedy, the Steering Committee may decide to declare the Participant to be a Defaulting Participant and may terminate its participation in accordance with Section 3.4.2, unless such termination is not in reasonable proportion to the consequences for the Program.
	2. Voluntary termination by a Participant. A non-Defaulting Participant may request the Steering Committee to terminate its participation in the Program and to this Consortium Umbrella Agreement and such Participant shall repay any payments already received by this Participant until the effective date of the termination.
	3. Consequences of termination.
		1. *Termination of a Participant’s participation pursuant to Section 3.4.1 and 3.4.3*. In the event that the Steering Committee terminates the Participant’s participation to the Consortium Umbrella Agreement in accordance with Section 3.4.1. or Sections

3.4.3, the Participant(s) shall per the effective date of termination have no right to receive further payments (including the payment of PPP Allowance) and shall repay any payments it has received for work not implemented.

* + 1. *Termination of a Participant’s participation pursuant to Section 3.4.2 or pursuant to Section 3.6.* In the event that the Steering Committee terminates the Participant’s participation to the Consortium Umbrella Agreement in accordance with Section 3.4.2. or a Participant voluntary terminates its participation pursuant to Section 3.6, the Steering Committee may require that Participant repays all payments it has received, except the amount of PPP Allowance accepted by the Stichting LSH-TKI which shall be repaid by the Participant or the Program Coordinator to Stichting LSH-TKI in accordance with the Consortium Project Agreement, or any pertaining document as made available by Stichting LSH-TKI to such Participant.

Furthermore such a Participant shall, within the limits specified in Section 5.5 of this Consortium Umbrella Agreement, bear any reasonable and justifiable additional costs occurring to the other Participants in order to perform its and their tasks.

* 1. Legal conditions. In the event that the (voluntary) termination of the participation of one or more Participants to the Consortium Umbrella Agreement results in the Program no longer satisfying the conditions set in the Consortium Project Agreement or the applicable law (including the PPP Allowance Regulation) and the Stichting LSH-TKI requires a repayment of all or part of the PPP Allowance, the Participant(s) whose termination has resulted herein, shall repay the PPP Allowance required by the Stichting LSH-TKI under the Consortium Project Agreement. This obligation shall be subject to the limits specified in Section 5.5 of this Consortium Umbrella Agreement. Any excess amount shall be apportioned to the remaining Participants pro rata to their share in the total costs of the Program as identified in the Budget.
	2. Survival. The following Sections 2.2, 3.7, 3.8, 3.9, 4.4, 4.5, 7.4, 7.5, 10.2, 10.3 and Articles 5, 8, 9, and 11 shall survive termination of this Consortium Umbrella Agreement. Termination shall not affect any rights or obligations of a Participant whose participation to the Consortium Umbrella Agreement has terminated and that are incurred prior to the date of termination, unless otherwise agreed between the Steering Committee and such Participant. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

Article 4. **Responsibilities of the Participants**

* 1. General principles. Each Participant agrees to take part in the efficient implementation of the Program, in accordance with the Program Application, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under this Consortium Umbrella Agreement, the Consortium Project Agreement and the Consortium Project Agreement(s) as may be reasonably required from it.
	2. PPP Allowance Regulation. The Participants agree to act in accordance with the applicable laws and regulations, and in particular to adhere to the terms and conditions of the PPP Allowance Regulation as applicable.
	3. Information obligations. Each Participant undertakes to promptly notify the Steering Committee through the Program Coordinator of any significant information, fact, problem or delay likely to affect the Program. Each Participant shall promptly provide all information reasonably required by the Steering Committee through the Program Coordinator to carry out its tasks. Each Participant shall take reasonable measures to ensure the accuracy of any information (including Background and Foreground) or material it supplies to the other Participants.
	4. Involvement of Affiliates or third parties. A Participant is only allowed to involve its Affiliates or third parties in the execution of its work under the Program upon prior approval thereof by the other Participants. A Participant that involves its Affiliates or third parties in the Program shall at all times remain responsible for the implementation of its allocated part of the Program and for such Affiliate or third party’s compliance with the provisions of this Consortium Umbrella Agreement. Such Participant shall ensure that the involvement of Affiliates or third parties does not affect the rights and obligations of the other Participants under this Consortium Umbrella Agreement.
	5. Reporting. In connection with the conditions and reporting requirements as set out in the Consortium Project Agreement Participants shall provide the Program Coordinator with financial, scientific and progress reports with regard to the Program.

Article 5. **Warranties and Liability**

* 1. Warranties. Each Participant represents and warrants to the other Participants that it has full power, authority and legal capacity to execute and to perform its obligation(s) under this Consortium Umbrella Agreement, and the conclusion of this Consortium Umbrella Agreement does not violate any of its contractual or other obligations.
	2. No further warranties. In respect of information or materials, intellectual property supplied by or on behalf of one Participant to another Participant under the Program, no warranty or representation of any kind is made, given or implied as to the sufficiency, accuracy or fitness for purpose of such information, nor as to the absence of any infringement of any proprietary rights of third parties. The receiving Participant shall be entirely and solely liable for its use of the information and materials, intellectual property provided by or on behalf of another Participant under this Consortium Umbrella Agreement and the Consortium Project Agreement(s) the receiving Participant is a party to.

Each Participant shall be fully liable for the implementation of any part of its part of the Program as set out in the Program Application, including such part that may be implemented by its Affiliate or third party in accordance with Section 4.4.

* 1. Liability to third parties. Subject to such other undertakings as are provided for in this Umbrella Agreement, each Participant shall be solely liable for any loss, damage or injury to third parties resulting from the performance (or non-performance) of the said Participant’s obligations by it or on its behalf under this Consortium Umbrella Agreement, the Consortium Project Agreement or from its use of information, materials and/or intellectual property provided.
	2. Liability to other Participants. Subject to the limitations set out in Section 5.5 and Section 5.6 below, each Participant shall only be liable towards each of the other Participants for damages resulting from or arising out of (i) the gross negligence or wilful misconduct by the Participant (including its employees, agents or subcontractors); or (ii) the breach or default of the Participant (including its employees, agents or subcontractors) of its representations, warranties or other obligations under this Consortium Umbrella Agreement, except to the extent that such damages arise as a result of the gross negligence or wilful misconduct of the Participant claiming such damages (including its employees, agents or subcontractors).
	3. No indirect damages. No Participant shall be liable to any other Participant 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, regardless of whether such liability arises from a claim based in contract, warranty, tort or otherwise, provided such damage was not caused by a wilful act, gross negligence or by a breach of confidentiality.
	4. Limitation of liability. A Participant’s aggregate liability towards the other Participants collectively for direct damages (i.e. such damages other than set out in Section 5.5.) shall be limited to the Participant’s Program Share with a minimum of [amount] and a maximum of [amount] and provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Umbrella Agreement shall further not be construed to amend or limit any Participant’s statutory liability.

* 1. Force Majeure. No Participant shall be considered to be in breach of this Consortium Umbrella Agreement if such breach is caused by Force Majeure. Each Participant will promptly notify the Program Coordinator of any Force Majeure. If the consequences of Force Majeure for the Program are not overcome within 90 (ninety) calendar days after such notification, the Steering Committee may decide on transfer of tasks of the Participant concerned or to terminate the Participant’s participation in accordance with Section 3.4.

Article 6. **Program Management and Governance Structure**

* 1. Steering Committee. The Steering Committee is responsible for strategic management of the Program. The Steering Committee shall be incorporated on the Effective Date shall and consist of one representative from each Participant (hereinafter referred to as “**Member**”). Each Member of the Steering Committee shall be deemed to be duly authorised by the Participant it represents to deliberate, negotiate and decide on all matters listed in Section 6.5 of this Consortium Umbrella Agreement. The Program Coordinator shall act as the Chairperson in all meetings of the Steering Committee, unless decided otherwise by the Steering Committee.

The Participants agree to abide by all decisions of the Steering Committee. This does not prevent the Participants from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Article 12 of this Consortium Umbrella Agreement.

* 1. Operational procedures for the Steering Committee
		1. *Representation in meetings.* Any Member shall use its best efforts to be present or be represented at any meeting and may appoint a substitute or a proxy to attend and vote at any meeting. Each Member shall participate in a meeting in a cooperative manner.
		2. *Preparation and organisation of meetings*. The Chairperson shall convene ordinary meetings of the Steering Committee at least once every 6 (six) months and shall also convene extraordinary meetings at any time upon written request of any Member.
		3. *Notice of a meeting*. The Chairperson shall give notice in writing of a meeting including an agenda, to each Member as soon as possible and no later than 14 (fourteen) calendar days preceding an ordinary meeting and 7 (seven) calendar days preceding an extraordinary meeting.
		4. *Agenda*. Any agenda item requiring a decision by the Members must be identified as such on the agenda. Any Member may add an item to the original agenda by written notification to all of the other Members no later than 7 (seven) calendar days preceding the meeting. During a meeting of the Steering Committee the Members can unanimously agree to add a new item to the original agenda, provided that all Members are present or represented.
		5. *Decision outside the Meeting*. Any decision may also be taken without a meeting if the Chairperson circulates to all Members a written document which is then signed by the unanimity or the defined majority of Members.
		6. *Binding Decisions*. Decisions will only be binding once the relevant part of the minutes has been accepted according to Article 6.4 of this Consortium Umbrella Agreement.
	2. Decision-making by the Steering Committee
		1. *Voting rules and quorum.* Decisions shall be taken by a majority of the votes validly cast at a meeting where at least three-quarters of the Members are present or represented, provided that decisions on the entry of new Participants to the Consortium Umbrella Agreement are to be taken unanimously by the Members of the Steering Committee in meetings where all Members are present or represented subject to Section 6.3.3. below.
		2. *Votes.* Each Member or its representative shall have one vote. Defaulting Participants have no vote.
		3. *No voting right.* A Participant may not vote with regard to the decision relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Participant. A Participant requesting to leave the consortium may not vote to decisions relating thereto.
	3. Minutes of meetings
		1. *Minutes of meetings.* The Chairperson shall produce written minutes of each meeting which shall be the formal record of all decisions taken. The Chairperson shall send draft minutes to all Members within 14 (fourteen) calendar days of the meeting.
		2. *Corrections.* The minutes shall be considered as accepted if, within 14 (fourteen) calendar days from sending, no Member has objected in writing to the Chairperson with respect to the accuracy of the draft of the minutes.
		3. *Accepted Minutes.* The Chairperson shall send the accepted minutes to all the Members of the Steering Committee and to the Program Coordinator, who shall safeguard them. If requested, the Program Coordinator shall provide authenticated duplicates to Participants.
	4. Decisions of the Steering Committee. The Steering Committee shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. The following decisions shall be taken by the Steering Committee:
1. changes to the Program strategy;
2. changes to the Budget;
3. entry of a new Participant to the Program and approval of the settlement on the conditions of the accession of such a new Participant;
4. withdrawal of a Participant from the Program and the approval of the settlement on the conditions of the withdrawal;
5. declaration of a Participant to be a Defaulting Participant;
6. remedies to be performed by a Defaulting Participant;
7. termination of a Defaulting Participant’s participation in the Program and measures relating thereto;
8. change or replacement of the Program Coordinator;
9. appoint or change the Chairperson;
10. suspension of all or part of the Program;
11. termination of the Program and the Consortium Umbrella Agreement.
	1. Stichting LSH-TKI and Steering Committee. The Program Coordinator shall inform Stichting LSH- TKI on any decisions by the Steering Committee pursuant to Section 6.5 (a) to (b) and (e) to (g) and (i), within 1 (one) week after such decisions have become final following the procedure outlined in Section 6.4.
	2. Program Coordinator. The Program Coordinator coordinates and manages the Program and represents the Participants before Stichting LSH-TKI. Participants appoint [Participant] as Program Coordinator and authorize Mr/Mrs ……….. to carry out the tasks set forth under this Section 6.7 and Section 6.8.
	3. In particular, the Program Coordinator shall be responsible for:
12. preparing the meetings, proposing decisions and preparing the agenda of Steering Committee chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings;
13. monitoring compliance by the Participants with their obligations;
14. keeping the address list of Members and other contact persons updated and available;
15. collecting and reviewing information on the progress of the Program and submitting outline scientific reports and other deliverables (including financial statements and related certification), if required, to Stichting LSH-TKI and other Participants;
16. transmitting promptly documents and information connected with the Program;
17. administration of the Budget and fulfilling the financial tasks, all as described in Article 7;
18. providing, upon request, the Participants with official copies or originals of documents which are in the sole possession of the Program Coordinator when such copies or originals are necessary for the Participants to present claims.

The Program Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Participant.

* 1. Replacement of the Program Coordinator. If the Program Coordinator is changed or fails in its coordination tasks and the Steering Committee has decided to replace the Program Coordinator in accordance with Section 6.5, the Steering Committee shall inform Stichting LSH-TKI promptly in writing of the change or replacement of the Program Coordinator.

Article 7. **Financial provisions**

* 1. Contribution. The contribution in cash or in kind (other than the Background) provided by each Participant is set out in the Budget. The Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Participants.
	2. Obligations of the Program Coordinator. Participants acknowledge that any PPP Allowance by the Stichting LSH-TKI will be allocated to the Program Coordinator and the Program Coordinator shall distribute the PPP Allowance between the Participants, if applicable, as set out in the Budget. The Program Coordinator shall undertake to keep the PPP Allowance for the Program separated from its normal business accounts, its own assets and property. The Program Coordinator shall perform diligently its tasks in the proper administration and distribution of the Program Budget and in maintaining financial accounts. The Program Coordinator shall provide Stichting LSH-TKI each year with an overview of the actual payments made under this Agreement, including a copy of the relevant bank account transaction or an audit certificate prepared and certified by an independent auditor, before April 1 of the following year.
	3. Rights of the Program Coordinator. The Program Coordinator (or the Steering Committee in the event that no Program Coordinator is appointed or if the Program Coordinator is subject to a decision of the Steering Committee to replace the Program Coordinator, or to declare the Program Coordinator a Defaulting Participant ) is entitled to withhold any payments due to a Participant to be in substantial breach of its obligations under this Consortium Umbrella Agreement or the Consortium Project Agreement. The Program Coordinator is further entitled to recover any payments already paid to a Defaulting Participant. The Coordinator is equally entitled to withhold payments to a Participant when this is suggested by or agreed with the Stichting LSH-TKI.
	4. Share Budget. A Participant that spends less than its allocated share of the Budget will receive any payment only in accordance with its actual duly justified eligible costs only. In any case of a Participant having received excess payments, the Participant has to return the relevant amount to the Program Coordinator without undue delay.

A Participant that spends more than its allocated share of the Budget shall be responsible for the additional cost and will not receive an additional payments, unless expressly agreed otherwise between the Participants.

* 1. Accounting. Each Participant is solely responsible for the administration and accounting of the cost incurred with respect to the Program. In the event that an audit certificate is required, such certificate by an independent auditor shall be provided at the Participant’s own cost.

Article 8. **Intellectual Property**

* 1. Intellectual Property. Given the diversity of project activities executed in the Program, the provisions relating to Intellectual Property will be concluded on the level of the Consortium Project Agreements.

Article 9. **Non-disclosure of Confidential Information**

* 1. Non-disclosure of information. All information in whatever form or mode of communication, which is disclosed by a Participant (the “**Disclosing Participant**”) to any other Participant (the “**Receiving Participant**”) in connection with the Program during its implementation and (i) which has been explicitly marked as “confidential” at the time of disclosure, or (ii) when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 (fifteen) calendar days from oral disclosure at the latest as confidential information by the Disclosing Participant or (iii) when the confidential or proprietary character is or should reasonably have been known to the Receiving Participant is “**Confidential Information**”.

Notwithstanding the foregoing, Confidential Information of a Participant shall not include information that the other Participant can establish by written documentation:

* + 1. to have been publicly known prior to disclosure of such information by the Disclosing Participant to the Receiving Participant;
		2. to have become publicly known, without the fault of the Receiving Participant, subsequent to disclosure of such information by the Disclosing Participant to the Receiving Participant;
		3. to have been received by the Receiving Participant at any time from a source, other than the Disclosing Participant, rightfully having possession of and the right to disclose such information;
		4. to have been otherwise known by the Receiving Participant prior to disclosure of such information by the Disclosing Participant to the Receiving Participant; or
		5. to have been independently developed by employees and/or agents of the Receiving Participant, on its behalf, without access to or use of such information disclosed by the Disclosing Participant to the Receiving Participant.
	1. Non-disclosure. During the term of this Consortium Umbrella Agreement, and for a period of ten
1. years following the expiration or termination of this Consortium Umbrella Agreement, each Participant shall maintain in confidence all Confidential Information disclosed by the other Participants, and agrees:
	1. not to use the Confidential Information for any other purpose for which it was disclosed;
	2. not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Participant;
	3. to ensure that internal distribution of Confidential Information by a Receiving Participant shall take place on a strict need-to-know basis; and
	4. to return to the Disclosing Participant on demand all Confidential Information which has been supplied to or acquired by such Recipient including all copies thereof. If needed for the recording of on-going obligations, such Recipient may however keep a copy for archival purposes only.

Each Receiving Participant shall apply the same degree of care with regard to the Confidential Information disclosed under this Consortium Umbrella Agreement as with its own confidential and/or proprietary information, but in no case less than reasonable care.

* 1. Mandatory disclosure. If any Participant is required to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, nothing herein shall restrict the Receiving Participant from disclosing Confidential 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 (i) promptly notify the Disclosing Participant, and (ii) comply with the Disclosing Participant’s reasonable instructions to maximally protect the confidentiality of the information.
	2. Obligations Recipient. Notwithstanding Section 10.2 (c), Participants will have the right to disclose Confidential Information of another Participant to any of its Affiliates, provided that prior consent of the Disclosing Participant is obtained and such Affiliates are bound by confidentiality obligations not less stringent than the ones of the Consortium Umbrella Agreement. Each Receiving Participant shall further be responsible for the fulfilment of the above obligations on the part of its employees and its Affiliate employees and shall ensure that its employees remain so obliged, as far as legally possible, during and after the end of the Program and/or after the termination of employment.
	3. Unauthorized disclosure. Each Participant shall promptly advise the other Participant in writing of any unauthorized disclosure, misappropriation or misuse by any person of Confidential Information as soon as practicable after it becomes aware of such unauthorized disclosure, misappropriation or misuse.

Article 10. **Miscellaneous**

* 1. No representation, partnership or agency. The Participants shall not be entitled to act or to make legally binding declarations on behalf of any other Participant. Nothing in this Consortium Umbrella Agreement shall be deemed to constitute a joint venture, agency, partnership, an offer by, or creating any obligation of either Participant to enter into any form of agreement other than stated in this Consortium Umbrella Agreement or interest grouping or any other kind of formal business grouping or entity between the Participants.
	2. Assignment. Except as allowed under this Consortium Umbrella Agreement, no rights or obligations of the Participants arising from this Umbrella Agreement may be assigned or transferred, in whole or in part, to any third party without the other Participants’ prior formal approval.
	3. Amendment. Pursuant to the Consortium Project Agreement, any amendments or modifications of the text of this Consortium Umbrella Agreement approved by all Participants require the prior written approval of Stichting LSH-TKI if, and to the extent that the Consortium Project Agreement is still in effect. For the avoidance of doubt, any amendment of the Agreement without the prior written consent of Stichting LSH-TKI is null and void, if and to the extent that the Consortium Project Agreement is still in effect.

Article 11. **Governing Law and Dispute Resolution**

* 1. Governing law. This Agreement is governed by, and is to be construed exclusively in accordance with the laws of the Netherlands without regard to the conflict of law provisions thereof.
	2. Dispute resolution. In the event of any disputes arising out of or in connection with this Agreement, including disputes concerning the existence and validity thereof, the Participants shall first make reasonable efforts to settle the dispute between themselves. Any legal actions or proceedings arising out of this Agreement which cannot be settled by good faith efforts and shall be brought exclusively to the court of The Hague, the Netherlands.

**IN WITNESS WHEREOF**, the Participants hereto have signed this Umbrella Agreement in fold by their

authorized representatives.

On behalf of On behalf of

Date Date

Name Name

Position Position

On behalf of On behalf of

Date Date

Name Name

Position Position

Etc.

# Annex 1 – Accession document

ACCESSION of a new Participant to [name of the Program] Consortium Umbrella Agreement [and the Consortium Project Agreement], as signed on [date].

[Name of the new Participant, and details] hereby consents to become a Participant to the Consortium Umbrella Agreement [and the Consortium Project Agreement] identified above and accepts all the rights and obligations of a Participant starting [date].

[Name Program Coordinator] hereby certifies that the consortium has accepted in the meeting held on [date] the accession of [the name of the new Participant] to the consortium starting [date].

Stichting LSH-TKI hereby consents to [new Participant] becoming a Participant to the Consortium Umbrella Agreement and the Consortium Project Agreement starting [date]. The consent of Stichting LSH-TKI to the accession of the [new Participant] shall be subject to the prior approval of the modified Budget.

This Accession document has been done in 3 (three) originals to be duly signed by the undersigned authorised representatives.

**IN WITNESS WHEREOF**, this Accession document is signed by the [new Participant], [the Program Coordinator] and the Stichting LSH-TKI by their authorized representatives.

On behalf of On behalf of

Date Date

Name Name

Position Position

On behalf of On behalf of

Date Date

Name Name

Position Position

# Annex 2 – Consortium Project Agreement Template