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| **PPI Agreement** Public Private Innovation Cooperation based on section 22 of the Danish Procurement Act |

[Date]

¦[Public PARTY]|

¦[Private party 1]

¦[Private party 2, if any]|

*This template agreement was updated by Horten Advokatpartnerselskab in August 2019. The changes include an option to agree on partial openness, including the handling of state aid and publication of foreground knowledge, processor agreement and exit clause in relation to complaints. In addition, we have made a few editorial changes, and the updated template agreement has been translated into English.*

*The original version of the template agreement was prepared by Rønne & Lundgren Advokatfirma in cooperation with a legal working group consisting of representatives from the University of Southern Denmark and the South Denmark Region. The agreement has been updated on a regular basis, inter alia, after the commencement of the new Danish Procurement Act on 1 January 2016, which implements the new EU procurement directive, which thus replaces the old directive on which the original agreement was based.*

*The original version of the template agreement is a modified version of the original PPI model agreements which OPI-Lab and Loving Lab Denmark were behind and which was prepared by Rønne & Lundgren Advokatfirma in cooperation with the law firm Poul Schmith and OPI-Lab’s legal working group. A consultation group consisting of the Danish Competition and Consumer Authority and the state subsidy secretariat of the Danish Ministry of Business and Growth have been involved and contributed to the process of drafting the original model agreements.*

*The model agreement may be downloaded on OPIguide.dk.*

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*[Note: When using and editing the template agreement, please note that the template has been structured with cross-references to appendix numbers and agreement clauses.]*

# Parties

Public party:
[NAME DEPARTMENT
ADDRESS
CVR no.: XX XX XX XX]

and

Private party 1:
[NAME
ADDRESS
CVR no.: XX XX XX XX]

and

Private party 2:
[NAME
ADDRESS
CVR no.: XX XX XX XX]

have entered into this PPI agreement with effect from [date – PPI project start date]).

# Definitions

## The *Agreement* is this PPI agreement with appendices.

## *Party* is [the public party], [private party 1] or [private party 2].

*Parties* are [the public party], [private party 1] and [private party 2].

*Private Party* is [private party 1] or [private party 2].

*Private Parties* are [private party 1] and [private party 2].

## The *PPI project* is the PPI project agreed between the Parties, as described in detail in Appendix 3.2 and in clauses 3 and 6.

## The *PPI project start date* is the date from which the agreement is effective, see clause 1.

## *Background knowledge* is intellectual property rights, know-how and non-published inventions to which a party either:

#### holds the rights at the start of the PPI project;

#### or

#### has generated alone and for his own account, but parallel with the PPI project. However, where such own generated knowledge is derived from foreground knowledge, see clause 2.6, it requires, partly, that the foreground knowledge has been published in accordance with clause 14 and the principle of transparency and equal treatment, see clause 3.6, 6.5 and 6.6, and, partly, that the knowledge generated during the PPI project is not disclosed to other Parties during the PPI project.

## *Foreground knowledge* is the common knowledge, including know-how, intellectual property rights and the project results generated by one of more parties jointly as part of the PPI project, or derives from foreground knowledge, see clause 2.5B, and the knowledge generated by one or more parties for public project funds.

A concept, a method, a model, an invention or the functionalities, operation and usage design of a prototype, which is the result of the needs and requirements jointly extracted, worded and - through tests, if required - qualified by the parties during the PPI project are considered foreground knowledge.

## [The *research agreement* is the agreement concluded between [the parties] with [research and knowledge institution], enclosed as appendix 3.10.]

## *Confidential information* is civil registration numbers and other personally identifiable information (including information about and pictures etc. of citizens participating in connection with the PPI project) and internal information about the [public party], which is exempt from access under the rules of the Danish Public Administration Act. Confidential information also includes all information marked as “confidential” or which may be considered confidential due to its nature and/or content. This does not include information which was already known to the public at the time of receipt without this being attributable to the recipient’s actions or which was lawfully given to the recipient by a third party.

## *Invention* is knowledge that may be protected by way of a patent or utility model.

## *Solution* is characterised as a new directly applicable IT programme, device or tool or a new directly applicable technical installation or procedure.

# BACKGROUND AND PURPOSE

## [Public party] wishes to establish public-private innovation cooperation with the private parties for the purpose of developing better solutions for own needs and achieving more knowledge about innovative solutions within [state the specific area within which knowledge and solutions are requested] (referred to below as the “PPI project”).

## The purpose of the PPI project is for [public party] together with the private parties to accumulate new knowledge about [state the specific subjects where there is a desire to obtain knowledge and whether it is also intended in the process “to develop and test new solutions on this basis” and, if so, on what]. The development targets of the project appear from clause 6 and appendix 3.2

## The purpose of the agreement is to describe the framework of the parties’ cooperation for the purpose of safeguarding the interests of each party in the best possible way. The protective considerations of the agreement thus embrace all parties and comprise for [public party] regulation of the authority and the framework for publication and state subsidies and for [private party 1] and [private party 2] regulation of rights, including publication, and the framework for avoiding disqualification in connection with [public party]'s subsequent tender procedure.

## The PPI project’s objectives, background, description of development paths/work packages and completion are specified in the project description in appendix 3.2, which also contains a time and activity schedule.

## The private parties shall provide the services stated in clause 9 as part of the participation in the PPI project.

## The agreement concerns “research and development” and is considered covered by section 22 of the Procurement Act as one or more of the following conditions apply:

#### The rights to the jointly created knowledge accrue not only to [the public party] as principal, see more details in clauses 12 and 14.

#### The participating private parties will not receive full remuneration for their services, see clause 8 and the budget in Appendix 8.1.

## The contribution to the PPI project which [the public party] adds to the PPI project by way of public resources and funds (direct and indirect expenses) is due to the [the public party’s] purpose of participating in the project as stated in clause 3.2. A fee is payable as per agreement, see clause 3.6B, to [private party 1] and [private party 2], as payment for services to be provided by the private parties.

## [The public party] carries out the PPI project with authority in [state relevant authority, for municipalities the ”local government mandate” or for regions the ”authority mandate” and ”Executive Order on the regions’ access to provide hospital services etc. to public authorities and private undertakings as well as the regions’ access to initiate cooperation with public authorities and private undertakings”, Executive Order no. 170 of 05/0/2017”].

## [The PPI project is supported with funds from [funding provider], and the parties are obligated to comply with the conditions for the funding as specified in the commitment from [the funding provider], which are enclosed as [Appendix 3.9].Those conditions, including any requirements for publication etc., take precedence over the provisions of the agreement.] [If the project is not supported by an external funding provider with own commitment conditions, this clause 3.9 may be left out.]

## [The Parties/Private Party 1/Private Party 2] have entered into a separate agreement with [research institution], which is enclosed as appendix 3.10, concerning its contribution to the PPI project and regulation of [the research institution’s] rights and publication of research results. [If the research institution is a party to this agreement, clauses 2, 3, 5.1, 7.2, 9, 10.2, 12 and 14 must be adapted accordingly]

# Project results

## **[ALTERNATIVE 1]** The project is carried out in complete openness about the common project results, see clauses 6.5, 12.2, 13.3 and 14, based on the intention to:

#### Ensure transparency and respect the principle of equal treatment, cf. good principles of public administration.

#### Eliminate that the private parties obtain advantages through the project participation which would result in their future disqualification in connection with future procurements by [public parties].

#### Prevent that illegal state aid advantages are given to the private parties in the project, including by way of exclusive valuable knowledge. [The public party] will assess regularly in the project period whether the individual private party obtains state aid advantages of [the public party’s] participation in and contribution to the PPI project, which exceed the value of the contributions which the individual private party adds to the PPI project. In that case, the private party is not obligated - to the extent [the public party is not otherwise compensated at the time of completion of the PPI project - to pay an amount equivalent to the advantage with interest to the relevant public authority without otherwise being able to make claims against [the public party].

#### The parties have defined in appendix 4.1 what is understood by “complete openness”).

## **[ALTERNATIVE 2]** The project is carried out in complete openness about the common project results, see clauses 6.5, 12.2, 13.3 and 14. [The public party] is responsible for ensuring on a regular basis that the cooperation between the parties does not imply that an advantage is given to [private party 1] and [private party 2] which may constitute illegal state aid.

## [The public party] shall ensure for this purpose that state aid accounts are kept, including a preliminary state aid accounts, see appendix 4.1, and final state aid account upon completion of the PPI project. Registration of aid that might be granted under the agreement must also be carried out by [the public party].

## If it appears that [private party 1] or [private party 2] has received illegal state aid under the agreement, the party in question shall repay with interest in accordance with the current national and EU rules on repayment of illegal state aid without making any claims against [the public party].

# Government requirements, including data processing

## The parties shall comply with current legislation and international, European and/or national standards and custom. [The public party] shall respect that [private party 1] or [private party 2] is a research or knowledge institution [if this is the case] which is subject to special statutes aimed at freedom of research and obligation to publish research and development results, including the University Act, the Research Patent Act and the like, see clause 14. The agreement regulates the relationship between [the public party] and [private party 1] or [private party 2], but not the individual research institution or scientist, see appendix 3.10.

## As a supplement to the agreement, see appendix 5.2, the parties have entered into a processor agreement concerning data processing in relation to the agreement, and which meets the requirements of the GDPR (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ).

# The PPI Project

## The PPI project is carried out in the period [date-date].

## The PPI project will be carried out in [state specific number - if only one development path, state which one] development paths which are described in detail below. [If requested, reference may be made only to the project description in appendix 3.2].

## Development paths[/work package] 1 concerning ”[state title of path]” are to clarify [state which specific knowledge/solutions are intended to be achieved/developed/tested, including which parts are to be optimised].

## Development paths[/work package] 2 concerning [as above].

### The overall effect targets intended to be achieved through exploitation of the knowledge and the possible new solutions in which the PPI project might result are [state any such intended qualitative and/or quantitative effects to create focus on the possibilities of achieving these during the project].

### It is also intended that any possible new solutions in which the PPI project might result in knowledge about as far as possible meet the following success criteria:

* [List criteria which prior to the project will typically be too general to meet requirements for functional tenders and transparency, but sufficient to further define the desired targets of the PPI project].

It is intended and expected that, concurrently with the accumulation of knowledge and clarification and test, if any, of possible solutions during the PPI project, development targets will be further defined and specified. At the end of the PPI project, it will be concluded and be specified in the description of the results achieved how the PPI project’s development targets have been achieved as far as possible by way of more knowledge, including new possible solutions.

## To the extent the PPI project is divided into phases, the parties shall immediately before each phase is commenced evaluate and plan in detail activities and tasks in the forthcoming phase. The parties shall make the determination based on experience from any previous phases and within the general framework of the time and activity schedule, see appendix 3.2.

## As part of each phase, an approval procedure will take place where [the public party] approves the services provided by [private party 1] and [private party 2]. If a service provided cannot be approved, [the public party] will give notice within [insert number] days. A new phase may not be initiated until [the public party] has finally approved the service provided.

## The parties agree to arrange the PPI project so that the project’s foreground knowledge may be derived, described and published as far as possible in a form which makes it possible for others than the parties to use the foreground knowledge, but see clauses 4.1 and 12.2, 13.3 and 14.

## The parties are obligated to ensure that the PPI project is as far as possible based on generally available materials and standards.

# Cooperation form

## The parties are independent parties in every respect. Neither party is empowered or otherwise entitled to create obligations for the other parties, unless there is a separate written agreement thereon. The agreement does not establish a joint venture, partnership, consortium or other association between the parties, and the parties are not liable for or responsible to each other except as explicitly provided in the agreement.

## The parties will set up a steering group consisting of [number] representative(s) appointed by each of the participating undertakings and [number] representatives appointed by [the public party]. The steering group is in charge of the overall management of the PPI project. The steering group appoints its own chairman.

## The steering group chairman will convene meetings when required, but at least every [state frequency], or when either party so requests. The meetings are convened with no less than two weeks’ notice. The agenda of the meeting must be stated in the notice.

## The chairman will prepare minutes of the meetings and forward them no later than one week after the meeting was held. If no objections are made against the content of the minutes within three weeks of receipt, the content, including any resolutions passed, will be considered approved by the parties.

## The steering group is quorate when all members are present or represented by proxy. The steering group’s resolutions require unanimity.

## The project management is undertaken by:[Name and contact information]

## In addition, the parties have each appointed the following project representative:

## [Public party]: [Name and contact information]

 [Private party 1]: [Name and contact information]

 [Private party 2]: [Name and contact information]

## The project manager shall implement the decisions made by the steering group and be in charge of the progress of the PPI project. The project manager reports to the steering group, see clause 6.3. The project manager handles the current coordination between the parties, prepares project plans and allocates tasks, as necessary.

## The project manager cannot obligate the parties or act in the parties’ name without consent from the steering group, see clause 7.5.

## Proposals from the project manager to change the PPI project and the budget must be submitted to the steering group for approval.

# Financial limit of the project

## The parties agree to comply with the budget enclosed as appendix 8.1, which contains the financial limit of the PPI project, including [the public party’s] fee for the services provided.

## Unless otherwise explicitly stated, all amounts in the agreement are exclusive of VAY and other expenses. If an amount is to be paid with VAT by either party for some reason, the parties shall increase the amount in question with the correspond VAT amount.

#  [Private party 1]'s and [private party 2]'s obligations

## [Private party 1] and [private party 2] are obligated to provide the services stipulated in the time and activity schedule described in appendix 3.2.

## [Private party 1] and [private party 2] undertake to provide the services and assistance specified in appendix 3.2 , to comply with the agreed phase amount, and to ensure that the services provided by the parties include all the matters and the advice which [public party] may rightly expect according to the PPI project.

## [The public party] is obligated to participate actively in the PPI project and provide the service described in clause 11, including by way of contributions.

## [Private party 1] and [private party 2] further warrant that they will maintain the capacity and knowledge required for the performance of the task throughout the period until completion of the PPI project, including by way of qualified employees.

## In case any doubt should arise during the PPI project as to the scope of an assignment, [private party 1] and [private party 2] are obligated to notify [the public party] immediately and seek to clarify the doubt.

## As part of the performance of the agreement, [private party 1] will make its background knowledge and the following equipment and facilities available to the PPI project. [Specification of equipment and facilities made available for the performance of the PPI project].

## As part of the performance of the agreement, [private party 2] will make its background knowledge and the following equipment and facilities available to the PPI project. [Specification of equipment and facilities made available for the performance of the PPI project].

# Employees

## The parties contribute with staff resources as described in the budget, see appendix 8.1.

## To perform the project, [private party 1] and [private party 2] have appointed the following key employees as per agreement with [the public party].

## [Name and contact information]

 [Name and contact information]

## The key employees may only be replaced with consent from [the public party], unless the replacement is due to the employee’s personal affairs, including termination of employment or similar circumstances.

##  In that case, [private party 1] or [private party 2] shall make a new employee available within [insert days/weeks]. A replacement may not impose additional costs on [the public party], and the new employee must possess at least similar qualifications.

Replacement of other employees should be avoided as far as possible in consideration of the continuity and quality of the project.

## The parties may attach additional employees to the PPI project, but must inform [the public party] in advance about name, education and experience for the employees in question.

#  [The public party’s] contribution

## [The public party] will pay [reduced] fee to [private party 1] and [private party 2] in accordance with the budget, see clause 8 and appendix 3.2. The invoice must be accompanied by a detailed time sheet for the individual employee with [private party 1] and [private party 2] with a specification of the time spent.

## Payment in accordance with the budget and the time and activity schedule, see appendix 3.2, requires that [private party 1] and [private party 2] document that the parties have performed all assignments which must have been performed at the time in question according to the time and activity schedule. If this is not the case, see clause 6.4, the payment of [private party 1’s] and [private party 2’s] fee will be postponed until the parties have documented that the assignments assumed in the time and activity schedule have been performed.

## Payment falls due 30 days after [the public party] has received an adequate invoice.

## [The public party] will also make its background knowledge and the following equipment and facilities available to the PPI project: [Specification of equipment and facilities made available for the performance of the PPI project].

# Rights

## Each party will keep its title to the intellectual property rights which are part of the party’s background knowledge.

## Throughout the term of the PPI project, the parties have a free, non-exclusive, non-transferable right to use the other parties’ background knowledge to the extent necessary for completing the PPI project.

## The parties shall ensure that third parties, including own employees, consultants and sub-suppliers, provide all relevant intellectual property rights to background knowledge available to the other parties so that the necessary background knowledge is made available to the PPI project free of charge.

## **[ALTERNATIVE 1]** The parties agree that the PPI project is completed in complete openness, see appendix 4.1, which means that generated foreground knowledge is made available to the public on a current basis. Consequently, the parties accept that it is not possible to protect the rights under the project’s foreground knowledge.

## To the extent it may not be possible by way of exception to describe generated foreground knowledge to make it available to the public as stated without involving parts of the private parties’ background knowledge, the parties agree to describe the required background knowledge for the purpose of publication, see clauses 12 and 14.

## **[ALTERNATIVE 2]** The parties agree that the PPI project is completed in complete openness about the project results, see appendix 4.1, which means that foreground knowledge generated in the PPI project may be protected. If an invention has been created which may be protected by a patent or a utility model, [private party 1] or [private party 2] is entitled to protect the patent or utility model.

## [Private party 1] and [private party 2] have an exclusive right of indefinite duration to use foreground knowledge commercially by cooperating with other players and by selling licences thereto. Settlement vis-à-vis [the public party] is entered in the state aid accounts, see clause 4.1. [Private party 1] and [private party 2] also have a non-exclusive right of indefinite right to use other foreground knowledge which the private party cannot protect and [the public party’s] background knowledge, to the extent the knowledge in question is necessary for for exploiting foreground knowledge.

## At request, the parties shall in the term of the PPI project give each other a free non-exclusive licence to use each other’s background knowledge and foreground knowledge which is necessary for performing the PPI project. The licence relates to the work in connection with the PPI project and conditional on the parties being free to grant such licence.

## [The public party] has a free, non-exclusive, right to use the foreground knowledge created in the PPI project, but see clause 13, and the part of [private party 1]'s and [private party 2]'s background knowledge, which is necessary in this respect. The right of use accrues [the public party] as a whole, including institutions and undertakings owned, administered or financed by [the public party] and entitles [the public party] to use foreground knowledge, including using the knowledge in connection with tender procedures.

# Matters relating to tenders

## The private parties shall assist [the public party] with a report on the PPI project’s development paths [work packages] and the PPI project’s current development of Technology Readiness Levels (TRL). [The public party] may be subject to a tender obligation when the PPI project has been completed.

## To the extent foreground knowledge forms the basis of subsequent tender procedures at [the public party], [the public party] shall seek to avoid as far as possible when planning and conducting such tender procedures that [private party 1] and [private party 2] are disqualified in relation to submitting tenders. [The public party] shall also take measures to seek to ensure that [private party 1’s] and [private party 2’s] contractual advantage, if any, as a consequence of participation in the PPI project is eliminated.

## **[ALTERNATIVE 1]** The parties have undertaken to conduct the PPI project in complete openness and regularly publish generated foreground knowledge, see clauses 12.2 and 14.3-14.4. This transparency ensures equal treatment by the public party as all knowledge generated in the project is accessible to other private undertakings.

## **[ALTERNATIVE 2]** [The public party] is entitled to make the necessary foreground and background knowledge available to tenderers, provided that [the public party] imposes an obligation on the potential tenderers to keep the knowledge confidential and to only use the knowledge when carrying out the tendered assignment. This applies whether or not an invention has been generated through the PPI project which the private party may protect by a patent or a utility model.

## The private parties may not in any way seek to affect the wording of the tender specifications of a subsequent tender procedure or otherwise seek to impact the planning of a tender procedure, including through specific (preferential) selections of methods, materials and standards, see also clauses 6.5 and 6.6.

# Publication and secrecy

## The parties shall keep secret confidential information and the other parties’ background knowledge. The obligation will also apply after the interruption or end of the PPI project and after a party’s withdrawal, if any, from the PPI project, but see 14.2. However, the parties may disclose that information to their advisers as necessary, provided that they ensure that the advisers undertake a similar duty of confidentiality.

## The parties’ duty of confidentiality in relation to clause 14.1 does not apply to knowledge which:

* at the time of acquisition was or later became accessible to the public without this being due to a disregard of the duty of confidentiality;
* has been received without any restrictions as to confidentiality from a third party who has been entitled to disclose the knowledge in question; or
* is to be given to third parties based on a statutory obligation, including the Public Administration Act, a legal decision or other binding public legal acts.

## The parties undertake to document all generated foreground knowledge in a form and in a format suitable for public dissemination. [The public party] will keep a log of generated foreground knowledge, including data, conclusions, knowledge about solutions, etc., during the PPI project.

## The parties will agree to which extent foreground knowledge is to be published and communicated. Unless otherwise agreed between the Parties in Appendix 4.1., [the public party] is entitled to publish and regularly update on [the public party’s] website [state the website, if required], generated foreground knowledge and the public party’s background knowledge which is estimated to be of interest to the public, including relevant undertakings.

## If information is exchanged in connection with the joint discussions, meetings and workshops which one or more parties consider confidential, see clause 2.7, the information must be marked as ”confidential” in the log.

## The parties are obligated to ensure that their respective employees are informed about and comply with the provisions on publication and confidentiality in clause 14.1.

# New parties

## None of the parties may allow other parties to join the PPI project without the other parties’ prior written consent, but see clause 17.9.

# Remedies for breach, including compensation

## In case of a defect or delay of a service for the performance of the PPI project, either of the parties may invoke the general rules of Danish law on breach, including on a proportionate reduction.

## [Private party 1] and [private party 2] shall of their own accord notify [the public party] and state the reason in case of a risk of a delay or of the agreement not otherwise being properly performed.

## [Private party 1] and [private party 2] shall remedy delays or defects without undue delay, including by inserting additional employees.

## The agreement may be terminated in case of a material breach and proper remedial action has not been taken under clause 16.3. A decision to terminate the agreement vis-à-vis a Party in breach requires consent from all the other Parties.

## The following matters are considered a material breach (not exhaustive):

* Material, repeated breach of [private party 1's] and [private party 2's] supply obligations, see clause 9.
* Material breach of [the public party’s] payment obligations, see clause 11.1.
* Material or repeated delays with regard to observance of the agreed time and activity schedule in Bilag 3.2.
* Violation of the provision on confidentiality, see clause 14.
* [Private party 1]'s or [private party 2]'s bankruptcy, or if the parties are administered in bankruptcy to the extent not prevented by the rules of the Bankruptcy Act.
* [The parties may insert additional matters that may be considered a material breach.]

## The parties undertake product liability that might be associated with their services to the project.

## The Parties are liable in damages under the general rules of Danish law. The liability in damages does not include losses in case of consequential damage such as production interruptions and other operating losses, loss of turnover/profit or other indirect damage. All damage and losses arising out of a party’s subsequent use of the project results are considered consequential damage which is not covered by the other parties’ liability in damages.

## A party is entitled to make recourse claims against another party under the general rules of Danish law, to the extent the party might be held liable for any damage caused by the other party’s employees, cooperation partners or products.

## Except for gross negligence or deliberate action, a party’s liability in damages is maximised to [insert amount].

## Each party is responsible for its own employees. The fact that an assignment is performed at another party will not affect this. [Private party 1] and [private party 2] are obligated to keep their own employees insured to the necessary extent. [The public party] is self-insured.]

# Termination of the agreement

## A party may discontinue its participation in the PPI project if the agreed budget cannot be observed, or if it is clear the common project target, see clauses 3.1-3.2, cannot be achieved. The party shall notify the other parties immediately stating the reason.

## [Public party] is entitled to terminate the agreement if [public party] no longer has authority to complete the PPI project. The termination is effective from the time when the authority ceases to exist.

## If the Complaints Board for Public Procurement or a court declares the agreement ineffective and orders [the public party] to terminate the agreement within a specific time limit, [the public party] is entitled to terminate the agreement wholly or partly in accordance with an order from the Complaints Board for Public Procurement or the court.

## If the order issued, see clause 17.3, contains further conditions or demands, [the public party] will be entitled to pursue these conditions or requirements in the termination vis-á-vis [private party 1] and [private party 2], provided that this is objectively justified, and in that case [private party 1] and [private party 2] must comply with those conditions.

## [The public party] is also entitled to terminate the agreement with three months’ notice if a complaint is filed with the Complaints Board for Public Procurement or the courts, which concerns [the public party’s] decision to enter into an agreement.

## If [private party 1] or [private party 2] at the time of signing of the agreement knew about the actual or legal circumstances causing the agreement to be declared ineffective, the parties shall equally share the costs of a complaint before the Complaints Board for Public Procurement and a subsequent legal action before the courts which might be imposed on [the public party], including attorney’s fees and other costs.

## In the situations mentioned in clauses 17.1. to 17.6, the parties may not make a claim for damages or other form of compensation against the party that discontinues its participation in the PPI project, a complaint is filed or the agreement is terminated as a consequence of the agreement being declared ineffective or an order for termination being issued.

## In case of termination of the agreement, see clause 16.4, due to a party’s material breach, the remaining parties may demand compensation of the costs of fulfilment of the obligations undertaken by them as part of the PPI project and which have been foreseeable to the party in breach. If the agreement is terminated due to [private party 1’s] or [private party 2’s] material breach, see clause 16.4, [the public party] is entitled to demand repayment of the amounts paid by [the public party] to the party in question within the phase in which the PPI project was at the time when the party in question discontinued its contribution to the PPI project.

## If the agreement is terminated due to [private party 1’s] or [private party 2’s] material breach, see clause 16.4, [the public party] and [the remaining private party] may decide to discontinue the PPI project or continue it based on a new budget and/or with new project participants. The parties continuing the PPI project are entitled to continue using the background knowledge, foreground knowledge and confidential information provided to the PPI project by the parties discontinuing their participation to the extent necessary for the continuance of the PPI project. The party vis-à-vis whom the agreement is terminated is obligated to contribute loyally to the agreement being continued with the remaining parties.

## The remaining parties may inform new project participants about any foreground knowledge already generated. The remaining parties may also, notwithstanding the duty of confidentiality, make background knowledge and confidential information provided to the PPI project available to new project participants, provided that they undertake the duties of confidentiality laid down in this agreement, see clause 14.

## In case of termination of the agreement, howsoever caused, the following provisions will continue to be effective [clause 4 on the openness and state aid of the PPI project, clause 5 on processing of personal data, clause 12 on rights, clause 13 on tender affairs, clause 14 on publication and confidentiality, clause 16 on breach and liability in damages and clause 18 on disputes].

# Disputes

## The Agreement is governed by the laws of Denmark, with the exception of the conflict of laws rules under Danish law.

## Any disputes between the parties arising out of the PPI project, the agreement or the parties’ cooperation thereon must be settled amicably by the parties. If an amicable solution cannot be reached, the dispute must be settled before the ordinary, competent courts in [the public party’s venue]. However, the parties are entitled to request that a dispute which has not already been brought before the courts be settled by arbitration before the Danish Institute of Arbitration in accordance with the rules of the Institute applicable at the time when the arbitration proceedings are brought.

## Clause 18.2 will not prevent a party from applying the rules of the Danish Administration of Justice Act on restraining injunctions and/or other preliminary remedies.

# Signatures

## The agreement is executed in [three] original counterparts, one to each party.

|  |  |  |
| --- | --- | --- |
|  [Place], [date]: |  |  |
| For [public party]: |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| [Name and title] |  |  |

|  |  |  |
| --- | --- | --- |
| [Place], [date]: |  | [Place], [date]: |
| For [private party 2]: |  | For [private party X]: |
|  |  |  |
|  |  |  |
|  |  |  |
| [Name and title] |  | [Name and title] |