# COLLABORATION AGREEMENT

THE UNDERSIGNED:

1.      , having its office at      ,      , in this matter duly represented by its       (position),       (name), hereinafter to be referred to as: “Party 1”.

and

2.      , having its office at      ,      , in this matter duly represented by its       (position),       (name), hereinafter to be referred to as: “Party 2”.

and

3. Wageningen UR Livestock Project, Edelhertweg 15, 8219 PH Lelystad, The Netherlands, institute within the legal entity Stichting Dienst Landbouwkundig Onderzoek, a foundation (stichting) incorporated under the laws of The Netherlands, with registered office at Wageningen, The Netherlands, in this matter duly represented by: Dr. M.C.Th. Scholten (managing director), hereinafter to be referred to as: “WLR”.

The foregoing entities are solely referred to as “Party” and collectively referred to as “Parties”.

WHEREAS:

- Parties wish to carry out Project on      ;

- WLR and more specific her division Dairy Campus has the opportunity to get a part of her costs/hours reimbursed by the Dairy Campus Innovation-program. The necessary financial means will be provided by the collaboration North Netherland (SNN). These costs will, if allocated, not be charged to the other Parties.

* Parties, for a contribution by the Dairy Campus Innovation-program, will have to submit a proposal which will be evaluated by an independent innovation-commission;

- Parties, when awarded by the Dairy Campus Innovations-program, wish to perform the Project under the terms of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

Clause 1. Definitions

Agreement:

The “Agreement” shall mean this collaboration agreement as well as any and all annexes and addenda.

Background:

“Background” shall mean all information (including intellectual property rights and applications thereto) which were, prior to the start of the Project, in the possession of the disclosing Party and/or generated by a Party outside the scope of the Project and which has been made available by a Party for the execution of the Project.

Project Plan:

The “Project Plan” is the schedule that sets forth the activities which will be performed with regard to the Project including the project budget (Annex 1).

Project:

The “Project” is the research to       carried out by the Parties on the basis of the Project Plan.

Results:

The “Results” are all (research) results as well as any material goods generated by performing the Project, to the extent as set forth in writing in the Report(s).

Joint Results:

Results which have been generated by Parties in equal and joint performance of the Project but which cannot be attributed to one of the Parties will be considered as jointly generated Results.

Co-ordinator:

The “Co-ordinator” is the Party who is authorised by the other Parties to perform the tasks as specified in article 3.

Report:

A “Report” is a written document, indicated as such, including the description of the performed (part of the) Project as well as Results, if any.

Confidential Information:

“Confidential Information” shall mean all Background and information which has been disclosed by the disclosing Party with respect to the Project in whatever format or by whatever means to the receiving Party and which has been identified as confidential by the disclosing Party or of which the other receiving Party reasonably knows that that information is confidential (such as, but not limited to, technical, commercial, financial and legal data/information). Confidential Information will also include Results that are (co-)owned by another Party in as far as not made legally public.

Clause 2. Purpose and execution of the Agreement

* 1. Parties shall, if the Project has been awarded by the Dairy Campus Innovation Program, jointly perform the Project as specified in the attached Project Plan (Annex 1), such against payment and in accordance with the stipulations of this agreement as specified hereafter.
  2. Parties will abide by the conditions set by the Dairy Campus Innovation Program as specified in its Innovation Rules.
  3. Each Party shall notify the other Parties of any occurrences noticed when perform the Project, which are in the opinion of that Party of importance to the other Parties.

Article 3. The organisation of the Project

1. By signing this agreement Parties agree that       will act as Co-ordinator and to perform all related tasks which are assigned to the Co-ordinator under the subsidy rules of the Dairy Campus Innovation Program, more specific but not limited to the tasks as specified in article 3.2.
   1. The Co-ordinator will be responsible for:

* applying to Dairy Campus Innovation Program for the subsidy of the Project;
* maintaining the communication and correspondence with Dairy Campus Innovation Program and SNN;
* administration, reporting and chairmanship of the meetings between the Parties;
* supervising the progress of the Project;
* collecting the documents which needs to be submitted by the Parties, such as Reports, invoices and cost statements, as well as the submission of this to SNN;
* the coordination of the Project;
* the submission of proposals to the Parties concerning (i) amendments and changes in the Project Plan and (ii) notification of a defaulting Party.
  1. The communication between the Parties and Dairy Campus Innovation Program and SNN will take place through the Co-ordinator.

Article 4. Costs

* 1. Parties declare their full and unconditional agreement with the financial arrangements as specified in the annexed Project budget. Parties will execute this agreement in accordance with the Project budget. All amount are exclusive of VAT.
  2. The other Parties will reimburse the costs of WLR which it has made in accordance with the Project Plan after deduction of the applicable financial contribution to the Project by the Dairy Campus Innovation Program. To this end WLR will invoice the Parties in accordance with the Project Plan.  
     WLR will invoice the other Parties the cash contribution in accordance with the following schedule: 25% of the contribution at the start of the Project, 50% halfway the performance of the Project and 25% after completion of the research.

The cash contribution of the partners will be divided between the partners as followed:

* 1. Invoices will be paid by the respective Party within 30 days.

Clause 5. Notices and Reporting

1. All correspondence, invoices and all Reports as required or authorised under this Agreement will be sent by the Parties to the addresses given below:

Attn.

Attn.

Dairy Campus

Attn.

P.O Box ……….

Article 6. The contribution of knowledge and the rights to Results

* 1. Parties will, on voluntary basis, exchange Background in the context of the Project. Background will remain the property of the Party which contributes it.
  2. Each Party will have the right to use the contributed Background of another Party in the performance of the Project. Parties are not entitled to use the contributed Background of another Party outside the Project.
  3. With respect to Results Parties

A The Party generating the Results is the exclusive owner of such Results and the respective intellectual property rights related thereto.

Parties are, for their own expense and risk, free to apply for patent protection with respect to their Results.  
  
If Parties generate specific Results jointly then they will jointly own such Results (joint owners). If a joint owner wishes to file for patent application regarding Joint Results such Party must inform the other joint owners of its intent.

B Each Party will be entitled, for the execution of the Project, use the Results of the other Parties. Parties are not entitled to us the Results of another Party outside the Project.

C The other Parties hereby receive from WLR an option to a license for (commercial) us or transfer of the ownership of the Results of which WLR is the (joint) owner (hereinafter “Option). The option has a term of 3 months after the completion of the Project.

D if an Option is executed, WLR will receive from the respective Party a market related compensation for the (commercial) use of these Results. When determining the market related compensation the contribution (financial and Background) of Parties to the development of the Results will be taken into account as well as possible joint ownership. If WLR and respective Parties do not reach an agreement on the conditions for the license/transfer within 3 months and if so requested by one or more involved Parties the NAI (Dutch Arbitration Institute) will be involved to give a binding advice. Costs of the NAI will be shared equally between the involved Parties.

E If an option is not executed or an agreement on the terms of the license/transfer is not reached within 6 (six) months after the completion of the Project then WLR will be free to publish the (jointly) owned Results.

F Optional and depends on the arrangements between parties.  
Joint owners of Results generated within a Project will not restrict the other joint owners in their use of such jointly owned Results. Joint owners will not, with the exception of the compensation of WLR for the exclusive use / transfer, owe the other joint owners any compensation for their use of the jointly owned Results. If a joint owner wishes to grant a (sub) license to a third party then all joint owners need to agree on the conditions related to such a (sub) license.

Article 7. Publication of the Results

7.1 Each Party will have the right to publish the Results of the Project. A draft of the proposed manuscript will be submitted to the other Parties at least 1 (one) month prior to the proposed submission for publication. If a Party finds it desirable that the publication is postponed it will notify the publishing Party within 30 (thirty) days after receiving the manuscript. The publication will be adjusted according to the wishes of the other Party or publication will be withheld for a maximum of 3 (three) months so that Parties can secure their interests.

In as far as applicable Parties will abide by the requirements of SNN regarding Publications/commu­nications.

7.2 WLR will not publish her Results during the Option period, during the negotiation period for a license/transfer, during the term of a license of a Party or when Results have been transferred to a Party. The above is applicable unless agreed upon otherwise with the Parties involved in the mentioned circumstances.

7.3 If a Project is awarded by the Dairy Campus Innovations Program an abstract will be published on the Dairy Campus website. After the Project has ended an abstract of the Results will be published by WLR.

7.4 In all external communication about the Project it will be mentioned that the Project has been made possible by the contribution of SNN. Preferably by with the logo of SNN and where possible with the text “This Project has been co-financed by the partnership North Nederland (SNN), Spatial Economic Program” or in Dutch “dit project wordt mede gefinancierd door the Samenwerkingsverband Noord-Nederland (SNN), Ruimtelijk Economisch Programma”.

Clause 8. Confidentiality

* 1. Parties agree that any and all received Confidential Information will be kept confidential and not to use it outside for any other purpose then the execution of this Agreement , nor to disclose it to third parties or make it public without the prior consent of the disclosing Party. These obligations will stay in effect for a period of 5 (five) years after the end of the Project. For Results that a (co-)owned by another Party the obligations will be effective for a period of 5 (five) years after the end of the Project unless these have been made public by a (co-)owner in accordance with the stipulations of this Agreement.
  2. The obligation to maintain confidentiality shall not apply to Confidential Information for which the receiving Party can prove that:

• was already in the public domain at the time it was supplied or, has become public thereafter through no fault on the part of the receiving party;

• was already in receiving party’s possession at the time it was supplied to it;

• was obtained from a third party not under any obligation of confidentiality and, to the best of recipient’s knowledge and belief, did not originate from the disclosing party;

• was independently obtained by client as a result of its own research, without use or reference to the Confidential Information received;

• must be disclosed pursuant to a statutory obligation or an order of a judicial institution, administrative body or governmental institution.

Clause 9. Duration and termination of the Agreement

* 1. This Agreement will come into effect when signed by all Parties and the expiry of the suspensive condition of article 17. Parties will further determine the start the Project if it was set before the date the suspensive condition expired. This Agreement will terminate at completion of the Project and the expiry of the terms as set in article 6, 7 and 8 or any stipulation in this Agreement which determines a longer term.
  2. If it is expected that timelines in the Project will be exceeded, except in case of an attributable default, Parties will consult each other in order to determine if there is an alternative timeline which is acceptable to Parties and which is feasible. If an alternative is not available or feasible then Parties are not liable for damages or subsidiary limited to the amount agreed upon by Parties.
  3. If one of the Parties fails to meet an obligation resulting from the Agreement, the Party concerned will, after having been given notice of default, have the possibility to meet the obligation within a reasonable term. If this is not fulfilled within the said term, the other Party(ies) is/are entitled to rescind this Agreement towards the defaulting Party, without observing a notice period, by means of registered mail, without prejudice to the right of compensation as specified in this Agreement unless the default is not attributable to the defaulting Party or the default does not, based on reasonable and objective standards, warrant termination. If this Agreement is rightfully terminated any and all account receivables of the other Parties towards the defaulting Party will be immediately due and payable.
  4. Without prejudice to the right of compensation of the other Parties (as specified in this Agreeemnt), the defaulting Party towards whom the Agreement is terminated, is obliged to payment of the additional costs reasonably to be made by the other Parties, due to take over of the tasks which were supposed to be performed by the defaulting Party. In as far as this is not exceeding a Party’s liability as specified in article 10 is not exceeded.
  5. Parties have the right to terminate this Agreement, by registered mail, with immediate effect:

a. in the event another Party is in state of bankruptcy or suspension of payment or a petition to that effect is filed by or against that Party;

b. in the event the business of another Party will be winded up or closed down;

c. in case of force majeure - as determined in clause 14 below - if the force majeure situation will last over ninety (90) days.

* 1. In the event that a Party is, due to clause 9.3 or 9.5, no longer a Party of the Agreement, that Party is obliged to give access and - if needed - licenses to the other Parties to its contributed Background and Results in so far that is needed to perform the Project and/or for the execution of article 6.

* 1. In the event of (premature) termination or rescission, the Parties will remain bound by the clauses 6, 7, 8, 10 and 16 of this Agreement, which are limited – if applicable – to the term as set forth in such clause. Furthermore, the articles of which it is in their nature to stay in effect will remain in effect.

Clause 10. Liability

* 1. The total liability of one Party to the other Parties combined is in any case limited to direct damages with a maximum of € 50,000.- (fifty thousand Euro).
  2. The above specified liability limitations will not be applicable if and insofar as damages are cause by the wilful act or gross negligence of a Party.

* 1. Parties shall in no case be liable, towards the other Parties, for any indirect, incidental or consequential damages (including without limitation, lost business or profits, loss of data or loss of use of equipment) nor for damages which are caused by the use of the Results.
  2. Claims for damages of a Party as specified in article 10 need to be made without delay and must be made within one year after termination/expiration of this Agreement. After the laps of said period the liability will expire.

Clause 11. Safeguard

11.1 Parties will safeguard each other against all claims of third parties, including but not limited to product liability, for damages of third parties that have arisen due to the use and/or application by these third parties or Parties of the Results as transferred by one Party to the other by virtue of or in connection with this Agreement.

##### Clause 12. Modifications

12.1 Modifications, changes and extensions to this Agreement are only binding after these have been agreed upon in writing between the Parties.

Clause 13. Assignment

13.1 The rights and obligations as determined in the Agreement may not be assigned by either Party without the prior written consent of the other Parties, which consent shall not be unreasonably with­held or delayed.

Clause 14. Force Majeure

14.1 In case of force majeure the concerning Party is entitled to suspend the obligations for the duration and extent of the force majeure, provided that the other Parties have been notified in writing of the force majeure. Force majeure situations will concern those situations which prevent the execution of the Project or the Agreement and which are not imputable to the concerning Party pursuant to law, Agreement or according to generally accepted standards and as a result will not be attributable to that Party.

Clause 15. Severability and order of precedence

15.1 The invalidity or unenforceability of any particular provision of this Agreement shall not affect any other provisions therein. The Agreement shall be construed as if such invalid or unen­forceable provision were omitted and said provision will be replaced by a provision as close as possible to said provision in terms of content, scope and consequences.

15.2 In the event of any conflicts between the contractual documents the Agreement prevails over the Project Plan, unless specifically stated otherwise. In the event of any conflicts between annexes that were agreed later on, then the later dated document prevails over the earlier dated document.

Clause 16. Governing law

* 1. This Agreement will be exclusively governed by Dutch law.

16.2 All disputes which may arise from the Agreementdu or from the execution of the Agreement will be submitted to the competent court in the Netherlands.

Clause 17. Suspense condition

17.1 This Agreement is entered into under the suspense condition of the financing by Dairy Campus Innovation Program.

IN WITNESS WHEREOF, the Parties hereto have by their represen­tative thereunder duly authorised caused this Agreement to be executed as of the date hereinafter written.

**Agreed and signed in**      **fold,**

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|  |  |
|  |  |
| Date: | Date: |
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|  |  |
| --- | --- |
|  | Stichting Dienst Landbouwkundig Onderzoek, Wageningen UR Livestock Project, |
|  |  |
| Date: | Date: |
|  | Dr. M.C.Th. Scholten |
|  | Managing Director |

**Annex 1: Application form including project plan and budget specification**