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October 31<sup>st</sup> 2019, Linköping

# Main Agreement

for

## Biogas Research Center

### BRC

a Competence Center at Linköping University



Centrum för Biogasforskning  
ett kompetenscentrum vid Linköpings universitet

## TABLE OF CONTENT

1. BACKGROUND AND PURPOSE.....	5
2. DEFINITIONS.....	6
3. TASKS FOR BRC.....	7
4. THE PARTIES FINANCIAL OBLIGATIONS.....	7
5. RESPONSIBILITIES OF PARTIES.....	10
6. LIABILITY .....	12
7. FINANCIAL PROVISIONS .....	13
8. TRANSPARENCY AND AUDITING .....	14
9. BACKGROUND.....	14
10. FOREGROUND .....	15
11. SPECIAL ‘RESEARCH AREA’ AGREEMENTS.....	18
12. CONFIDENTIALITY.....	18
13. DISSEMINATION .....	19
14. NEW PARTIES .....	20
15. SCOPE.....	20
16. PREMATURE RESIGNATION .....	21
17. ASSIGNMENT AND AMENDMENTS.....	21
18. BREACH.....	21
19. SETTLEMENT OF DISPUTES.....	22
20. MISCELLANEOUS.....	22
ANNEX 1: THE GRANT FROM THE SWEDISH ENERGY AGENCY AND ITS CONDITIONS	
ANNEX 2: PROGRAM DESCRIPTION	
ANNEX 3: BRC PROCESS AND ORGANISATION	

## AGREEMENT

This Agreement has been agreed upon by:

- (1) Linköpings universitet (org. nr. 202100-3096), SE 581 83, Linköping;

; hereinafter referred to as "LiU"

- (2) Sveriges Lantbruksuniversitet (org. nr. 202100-2817)

; hereinafter referred to as "SLU"

; no 1-2 hereinafter jointly or individually referred to as "**Higher Educational Institution**" or, "**Higher Educational Institutions**",

- (3) Avfall Sverige AB (org. nr.556260-8553)
- (4) E.ON Biofor Sverige AB (org. nr. 556462-9821)
- (5) Gasum AB (org.nr. 556690-6839)
- (6) Linköpings kommun (org. nr. 212000-0449)
- (7) Norrköpings kommun (org. nr. 212000-0456)
- (8) Region Gotland (org. nr. 212000-0803)
- (9) Region Jönköpings län (org. nr. 232100-0057)
- (10) Region Östergötland (org.nr. 23 21 00-0040)
- (11) Tekniska verken i Linköping AB (org. nr. 556004-9727)

; no 3-11 hereinafter, jointly or individually, referred to as "**Partners**" or "**Partner**",

and

- (12) Biototal (org. nr. 556801-0325),
- (13) Borlänge Energi (org. nr. 556005-5385)
- (14) Econova (org. nr. 556530-9738)
- (15) Härnösand Energi och Miljö (HEMAB) org. nr. 556526-3745)
- (16) JES AB (org. nr. 556742-8890) / HZI Biogas Operations (org. nr. 556742-8890)
- (17) Lantbrukarnas Riksförbund (LRF) (org. nr. 702001-2642)
- (18) Nordvästra Skånes Renhållning AB (org. nr. 556217-4580)
- (19) Purac (org.nr. 556229-3125)
- (20) Region Kalmar län (org. nr. 232100-0073)
- (21) Rena Hav Sverige AB (org. nr. 559044-9129)
- (22) Scandinavian Biogas Fuels AB (org. nr. 556691-9196)

(23) Scania (org. nr. 556084-0976)

(24) Wärtsilä Sweden AB (org. nr. 556046-9552)

; no 12-24 hereinafter, jointly or individually, referred to as "**Members**" or "**Member**",

and,

(25) Swedish Energy Agency (org.nr. 202100-5000),

; hereinafter referred to as "**Swedish Energy Agency**".

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

All the above; Higher Educational Institutions, Partners, Members and the Swedish Energy Agency are hereinafter, jointly or individually, referred to as "**Parties**" or "**Party**".

**Whereas:**

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

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

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

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

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

**1. BACKGROUND AND PURPOSE**

- 1.1. The implementation of resource-efficient biogas solutions in new applications can benefit society by contributing to a more sustainable energy supply, improved environmental conditions, and good business opportunities. In order to facilitate such a development, the Parties have agreed to collaborate in BRC, a competence center financed by the Swedish Energy Agency, LiU, and the other Parties with roughly one-third each.
- 1.2. BRC is intended to be a long-term cooperation between the Parties with this Agreement stating the conditions for the third phase. The first and second phases have been finalized and the Consortium Agreement for the former two phases is fully replaced by this Agreement.
- 1.3. The main purpose of this Agreement is to specify, with respect to BRC, the relationship among the Parties for the four-year Phase 3, in particular regarding the organization of the work, the management of BRC, and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.
- 1.4. The conditions under which BRC operates are affected by the fact that it to a significant extent is financed by society, through the Swedish Energy Agency LiU, and SLU, all being Government authorities.
- 1.5. BRC has as its foremost priority to disseminate results through scientific publications. This is a direct consequence of the significant public funding, through the Swedish Energy Agency and LiU. In order to promote efficient use of the results, however, Parties with commercial interests shall be given the opportunity to protect and commercialize results.
- 1.6. A main strategy is to bring together individuals and groups from different fields, to create interaction on many levels - between industry, academia and society, between different perspectives, and between different disciplines and areas of expertise. It is furthermore the intention of the initial Parties to allow for new Parties to join BRC in order to further the development of BRC and to establish BRC as an internationally renowned competence within the field of biogas solutions
- 1.7. LiU will be the host university of BRC. The daily activities are led by a Center Manager. A Program Committee, a Program Council and an International Reference Group will support and assess the development of BRC.
- 1.8. Sveriges Lantbruksuniversitet (SLU) participates in BRC as an academic part.

## 2. DEFINITIONS

- 2.1. Words beginning with a capital letter shall have the meaning defined herein. Further definitions will be found in other parts of the Agreement where needed
- 2.2. **Access Rights**” shall mean licenses and user rights to Background and/or Foreground, and shall be deemed to include a right to use for affiliates under the same conditions.
- 2.3. **Background**” shall mean information which is held by the Parties prior to their accession to this Agreement or separate ‘Research Area’ s, as well as copyrights or other intellectual property rights pertaining to such information and which is Needed for carrying out the ‘Research Area’ .
- 2.4. **Center Manager**” shall mean the appointed individual with overall responsibility to supervise BRC and individual ‘Research Area’ s’ (Annex 3 describes the organization and process of BRC).
- 2.5. **Commercial Conditions**” shall mean fair and reasonable terms and remuneration on a level corresponding to the commercial value and customs usual in the relevant business segment.
- 2.6. **Confidential Information**” shall mean all information in whatever form or mode of transmission, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with a ‘Research Area’ or other discussions falling under the scope of this agreement and that:
- has been clearly identified as Confidential Information; or
  - if supplied verbally, was stated to be Confidential Information at the time of disclosure.
- 2.7. **Defaulting Party**” shall mean a Party which is identified to be in breach of this Agreement.
- 2.8. **Foreground**” shall mean all results, including information, whether or not they can be protected, which are generated in ‘Research Area’ s under BRC. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection.
- 2.9. **Higher Education Institutions**” shall mean Parties which are Higher Education Institutions as defined in the Swedish Higher Education Act (2010:2002) with the following in mind;
- Researchers at Higher Education Institutions function under the so-called Teachers Intellectual Property Rights (lärarundantaget) which means that Background and Foreground they create, by default, is owned by the individual researcher(s), and that they consequently shall decide on ownership issues. The Higher Education Institutions may accrue user rights as agreed upon in this Agreement, such usage rights shall however not limit any rights or remuneration individual researchers will be entitled to.
- 2.10. **Member**” shall mean the Parties defined as Members in the preamble.

- 2.11. **“Needed”** shall mean:
- For the implementation of the ‘Research Area’ :  
Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.
  - For Use of Foreground:  
Access Rights are Needed if, without the grant of such
  - Access Rights, the Use of own Foreground would be technically or legally impossible.
- 2.12. **“Partner”** shall mean the Parties defined as Partners in the preamble.
- 2.13. **“Program Committee”** shall mean the organizational structure Program Committee as defined in Annex 3 – BRC organization and process.
- 2.14. **“Program Council”** shall mean the organizational structure Program Council as defined in Annex 3 - BRC organization and process.
- 2.15. **‘Research Area’** shall mean the ‘Research Area’ defined according to specific research focus. Each ‘Research Area’ is conducted separately from each other; consequentially an Access Right under one ‘Research Area’ cannot be used in another ‘Research Area’.
- 2.16. **”‘Research Area’ Party”, ”‘Research Area’ Partner”, ”‘Research Area’ Member”**, or similar shall mean a Party, Partner, Member, Associate etc. working actively in a ‘Research Area’
- 2.17. **“Vice Chancellor”** shall mean the Vice Chancellor of LiU.

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

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

### **4. THE PARTIES FINANCIAL OBLIGATIONS**

- 4.1. Total Financial Commitment

The parties' overall financial commitments amount to a minimum of SEK 120 000 000, distributed over the fiscal years of 2018 (Dec) -2022 (Nov), each in the amount of SEK 30 000 000 (4 years).

The parties share no joint liability for funding.

#### 4.2. The Swedish Energy Agency

The Swedish Energy Agency undertakes to finance the activity with a maximum of SEK 40 000 000 in accordance with the Agency's decision (Annex 1) 2018-12-06, 2018-010740.

#### 4.3. Universities and Institutions of Higher Learning

Parties that are universities or institutions of higher learning undertake to jointly finance the activity with a minimum amount of SEK 43 300 000. However, this shall not mean that such a Party shall contribute to the other Party's activity.

The detailed distribution of the funding is shown in the table below (all amounts are excl. VAT).

<b>Academic part</b>	<b>Financial contribution</b>	<b>In-kind contribution</b>	<b>Total</b>
Linköping University	17 200 000	18 100 000	35 300 000
Swedish University of Agricultural studies	4 000 000	4 000 000	8 000 000
<b>Total academic part</b>	<b>21 200 000</b>	<b>22 100 000</b>	<b>43 300 000</b>

#### 4.4. Partners and members

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

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

4.7. Exceptionally, members can be allowed to contribute a minimum of 250 000 SEK per year with no requirement of Financial contribution. This requires an approval from all members of the Program Council.



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

4.9. At the time of signing the BRC Main Agreement, participating members and partners undertake to jointly finance BRC with at least SEK 76,700,000.

The detailed distribution of the funding is shown in the table below.

<b>Partners and members</b>	<b>Financial contribution</b>	<b>In-kind contribution</b>	<b>Total</b>
Energimyndigheten	40 000 000		40 000 000
Aktiebolaget Borlänge Energi	200 000	800 000	1 000 000
Avfall Sverige AB	800 000	800 000	1 600 000
Biototal AB	200 000	1 200 000	1 400 000
E.ON Biofor Sverige AB	200 000	800 000	1 000 000
Econova AB	200 000	800 000	1 000 000
Gasum AB	800 000	2 000 000	2 800 000
Härnösand Energi & Miljö AB (HEMAB)	200 000	800 000	1 000 000
JES AB / HZI Biogas Operations	200 000	800 000	1 000 000
Lantbrukarnas riksförbund	200 000	800 000	1 000 000
Linköpings kommun	800 000	200 000	1 000 000
Nordvästra Skånes Renhållnings Aktiebolag (NSR)	200 000	800 000	1 000 000
Norrköpings kommun	800 000	200 000	1 000 000
Purac	200 000	800 000	1 000 000
Region Gotland	800 000	800 000	1 600 000
Region Jönköping Län	800 000	800 000	1 600 000
Region Östergötland	800 000	800 000	1 600 000
Region Kalmar län	500 000	700 000	1 200 000
Rena Hav Sverige AB	0	1 000 000	1 000 000

Scandinavian Biogas Fuels AB	200 000	1 800 000	2 000 000
Scania CV	0	3 200 000	3 200 000
Tekniska verken i Linköping AB	2 000 000	2 800 000	4 800 000
Wärtsilä Puregas-Solutions AB	200 000	800 000	1 000 000
Övriga	1 100 000	1 800 000	2 900 000
	<b>51 400 000</b>	<b>25 300 000</b>	<b>76 700 000</b>

#### 4.10. Payment

Linköping University is a host institution of higher learning for the center, and shall receive and share resources, within the framework of its administrative commitment.

Payment to Linköping University from the Swedish Energy Agency is carried out in accordance with the agency's decision 2018-12-06, 2018-010740. The agency may decide to disburse funds before the dates specified in the decision. Payment from the Swedish Energy Agency is carried out without request.

Payment to Linköping University from Parties other than the Swedish Energy Agency shall be carried out in accordance with the following payment schedule.

Payment to Linköping University, from parties other than the Swedish Energy Agency, are made twice a year, after requisition from Linköping University. Requisition is sent from Linköping University to each party with 30 days of payment, in March and August each year, at 50% of the party's annual contribution to BRC.

The Center Manager may make decisions regarding the deferment of payments but may not render decisions regarding concessions or allowances.

Transfers from Linköping University to other universities and institutions of higher learning participating in the center shall be carried out on an annual basis, following reporting.

## 5. RESPONSIBILITIES OF PARTIES

- 5.1. Each Party undertakes to take part in the efficient implementation of the cooperation, and to cooperate, perform and fulfill, promptly and on time, all of its obligations as may be reasonably

required from it and in a manner of good faith, for avoidance of doubt this includes the commitments made in paragraph 6.

- 5.2. Each Party undertakes to notify the Center Manager promptly of any significant information, fact, problem or delay likely to affect a 'Research Area' within the scope of BRC and provide information reasonably required by BRC to carry out its tasks.
- 5.3. An extension of the timeframe of the commitments of the Swedish Energy Agency in this Agreement, e.g. due to 'Research Area' delays has to be approved by the Energy Agency after a written application. Reason for the need of an extension shall to be given in the application.
- 5.4. Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.
- 5.5. If a Party has Background which possibly will be Needed for use of foreseeable Foreground in a proposed 'Research Area' that Party has to notify the Center Manager immediately in order to allow for a termination of the proposed 'Research Area' or a discussion regarding licensing conditions. Failure to notify the Center Manager will allow other Parties Access Rights under the conditions of Article 9.3 in this agreement. The obligation to notify the Center Manager shall also be applicable to third party licenses that a Party holds, insofar as those licenses allow for sub-licensing or the Background they refer to has de facto been introduced into the research by the Party that holds it.
- 5.6. Where such notice is given, the Center Manager and the Party shall agree on how to proceed, for example by ensuring that the 'Research Area' is not continued or that licensing conditions are negotiated before the commencement of the 'Research Area'. For avoidance of doubt, this shall not be interpreted as an obligation for a Party to reveal the contents or nature of Background to any other Party. If the Center Manager agrees to receive the contents or nature of such Background it shall be deemed Confidential Information both with regards to third parties as well as to the other Parties.
- 5.7. A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in a 'Research Area' remains solely responsible for carrying out its relevant part of the 'Research Area' and for such third party's compliance with the provisions of this Agreement. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Agreement and shall bear the burden of proof to show that all reasonable care has been taken therefore.
- 5.8. The Parties respectively are responsible for the existence of contracts with employees, Subcontractors or any other third Party participating in the Project in a way that involves the fulfilment of the provisions of this Agreement, including IPR, Publication and Confidentiality

5.9. As the host university LiU is responsible for submitting reports required by the Swedish Energy Agency, all Parties shall however contribute with the accounting etc. needed to create the reports in due time.

## **6. LIABILITY**

### **6.1. No warranties**

6.1.1. Neither Party shall be responsible for the Project leading to expected results. In respect of any information or materials (incl. Foreground and Background) supplied by one Party to another, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Supplying Party should however act with due diligence and inform the recipient Party of any proprietary rights of third parties.

Therefore,

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

6.1.2. However, no Party shall supply information or materials to another Party knowing or reasonably suspecting that it would be an infringement of the proprietary or trade secret related rights of a third party. If that occurs,

- the disclaimer mentioned in section 6.1.1 shall not apply,
- unless it was or must have been clear to the Party which was supplied with the information or materials that it was subject to such proprietary rights; the burden of proof for this shall rest with the Party supplying the information or materials.

### **6.2. Limitations of contractual liability**

6.2.1. No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by willful misconduct or by a negligent breach of confidentiality.

6.2.2. A Party's maximum aggregate liability for breach(es) of this Agreement is limited to the sum the Party retrieves, using it best efforts, from its liability insurance. Apart from damages that are

reimbursed by such insurance, that Party shall not be liable towards the others. However, this limitation shall not apply in case damage is caused by willful misconduct or gross negligence.

If a certain Party has no liability insurance with a maximum return of at least MSEK 5, the following shall apply: That Party's aggregate liability towards the other Parties collectively shall be limited to the equivalent of the Party's total In Kind and Financial Contribution, provided such damage was not caused by willful misconduct or gross negligence.

6.2.3. The terms of this Agreement shall not be construed to amend or limit any Party's non-contractual liability.

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

6.3.1. Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Agreement or from its use of Foreground or Background (the latter however subject to 6.1.2).

### 6.4. **Force Majeure**

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

## 7. **FINANCIAL PROVISIONS**

### 7.1. **Delays**

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

### 7.2. **Terminating Parties**

7.2.1. A Party leaving BRC shall refund payments it has received, except the amount which LiU, after recommendations from the Program Committee, deems not shall be refunded. Furthermore, a Defaulting Party shall bear any additional costs occurring to the other Parties in order to perform its and their tasks.

### 7.3. **Responsibility**

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

#### 7.4. **Justifying Costs**

7.4.1. In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to individual 'Research Area' s'.

### 8. **TRANSPARENCY AND AUDITING**

#### 8.1. **Obligation to Disclose**

The Center Manager shall, if so requested by a Party, provide information about the Center's activities, if it is deemed possible without any risk of damage to another Party. If it is not deemed possible to disclose the requested information without risk of damage, the Party which requested the information shall be immediately informed of the same. What is stated in section 12.3 shall apply accordingly

#### 8.2. **Transparency in Accounting**

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

#### 8.3. **Auditing**

The Swedish Energy Agency has the right to appoint an auditor to conduct a review of the activities of Linköpings universitet, the activities of other universities and institutions of higher learning, and the activities of Stakeholders within or related to the center. The Other Parties have the right to jointly appoint an auditor to conduct a review of Linköpings universitet. In the instance of an audit, the Parties shall provide all materials necessary to its execution.

### 9. **BACKGROUND**

#### 9.1. **Background included**

9.1.1. Upon entering a 'Research Area' the 'Research Area' Parties agree to grant Access Rights to all Background under their control which is Needed for the implementation of the 'Research Area' and/or for the use of foreseeable Foreground of that 'Research Area'. It is the prerogative of Parties to refrain from entering specific 'Research Area'. If a Party has Background it does not want to divulge or grant Access Rights to, it shall refrain from entering 'Research Area' where

such Background may affect foreseeable Foreground. The Parties shall however notice the obligation to inform of Background which may block use of Foreground in Article 10.

9.1.2. 'Research Area' Parties shall, for each 'Research Area' separately and in writing, identify Background to which they shall grant Access Rights, subject to the provisions of this Agreement.

9.1.3. Parties outside of a 'Research Area' may grant Access Rights to all Background in a 'Research Area'.

9.1.4. The owning Party may add further Background to a 'Research Area' by written notice. However, only the Program Council can permit a Party to withdraw any of its Background and furthermore - only after approval from all Parties that are directly affected by the withdrawal.

## 9.2. **Background excluded**

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

## 9.3. **Access Rights**

9.3.1. Access Rights to Background Needed for the performance of the own work of a Party under the 'Research Area' shall be granted for the duration of the 'Research Area' on a royalty-free basis, unless otherwise agreed.

9.3.2. Access Rights to Background included in a 'Research Area' and Needed for use of Foreground shall be granted to all Partners and to 'Research Area' Members on Commercial Conditions. Parties which are Higher Education Institutions shall however be granted a royalty-free license, unlimited in time, to use Background Needed for use of Foreground in its own activities (non-exclusive license without a right to sub-license or license to a third party).

9.3.3. Any Access Rights granted exclude any rights to sublicense unless expressly stated otherwise.

## 9.4. **Responsibilities for Parties**

9.4.1. Parties shall inform the other Parties of any limitations to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software).

9.4.2. Background shall be used only for the purposes for which Access Rights to it have been granted.

# 10. **FOREGROUND**

## 10.1. **Notifications**

10.1.1. A Party/Parties generating significant Foreground shall give written notice to the Center Manager upon creation of such Foreground. The Center Manager shall inform any Party (/Parties) that have an option to acquire the Foreground or which accrues an Access Right to the Foreground

without undue delay, or, with regards to Access Rights - as soon as possible given consideration to an ongoing patenting process, however not later than 3 (three) months after the Foreground is created.

10.1.2. Partners and Members generating patentable Foreground shall, in order to facilitate the preparation of publications, to apply for patents, discuss transfers of ownership or licensing agreements, be given a deliberation-period of three (3) months from the time Foreground disclosed to the Center Manager, to decide whether a patent shall be filed or not. Subsequently 10.5.2 will be enforceable only if a patent application has not been filed within 3 (three) months from the day patentable Foreground was created (for Foreground created by researchers at a Higher Education Institution, see 10.4).

## 10.2. **Ownership**

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

## 10.3. **Joint Ownership**

10.3.1. Foreground generated by more than one Party shall have joint ownership, in relation to the contribution to the Foreground, and all joint owners shall agree on all protection measures and the division of related cost in advance.

10.3.2. If only one/some joint owners protects patentable Foreground, the other contributors shall only have Access Rights or licenses to such Foreground if otherwise agreed or stated in this Agreement, see for instance 10.5.3, and be remunerated with fair and reasonable compensation on Commercial Conditions given due consideration to any Access Rights accrued.

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

10.4.1. Parties shall be given an option to acquire Foreground from Higher Education Institution researchers in return for fair and reasonable remuneration under Commercial Conditions in the following order:

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

10.4.2. The formal procedure shall be:



1. the Party given an option to acquire shall inform the Center Manager and the owner(s) of an intention to acquire the Foreground, in writing, within twenty (20) days from the day they were informed of such Foreground
2. if an acquisition is not made within forty five (45) days from the day intent to acquire was given, any other Parties entitled (in the order given in 10.4.1) shall be given an option to acquire the Foreground
3. if no agreement is made within the stipulated time-limit(s) the researcher(s) has a right of disposal of the Foreground. Patentable Foreground 10.5.2 will however be enforceable if there has been no patent application filed within eight (8) months from the date the last forty five (45) day period in 2) expired.
4. if the researcher(s) makes an agreement with a third party regarding acquisition of the said Foreground within twelve (12) months from the last forty five (45) day period in 2) has expired, the conditions offered to the third party may not be more favorable than those that were offered to the Partners and Members. Should the conditions nevertheless be more favorable, the Partners and Members have a right to take over the Foreground on the same terms as were offered to the third party. A transfer to a University's holding company or a company in which a University's holding company holds an ownership interest shall not be considered as transfer to a third party.

10.4.3. For acquisitions under Article 10.4 the following shall apply:

- the acquisition shall be governed by a separate agreement and negotiated in good faith
- Higher Education Institutions shall always retain a royalty-free license, unlimited in time, to use that Foreground in its own activities and to publish (non-exclusive license without a right to sub-license or license to a third party)
- for avoidance of doubt, the Access Rights granted Parties in Article 10.4 shall always be assured, and valid from the day the Foreground was created

## 10.5. **Access rights**

- 10.5.1. Access Rights to Foreground Needed for the performance of the own work of a Party under the 'Research Area' shall be granted for the duration of the 'Research Area' on a royalty-free basis, unless otherwise agreed.
- 10.5.2. If patentable Foreground shall not be protected by patent(s) (in accordance with what is stated in Article 10.1 or 10.4) that specific Foreground shall be free to publish for all Parties, opportunity to publish shall be given to the 'Research Area' Parties generating the Foreground first, and shall

be accessible to the public domain to use, for free, without restrictions. Please note that the dissemination regime in section 13 applies in case the Foreground is potentially patentable.

- 10.5.3. 'Research Area' Partners and 'Research Area' Members shall be given a non-exclusive license to all Foreground of 'Research Area' Partners and 'Research Area' Members and 'in that specific 'Research Area' without a right to sub-license or license to a third party, against remuneration corresponding to their share of direct costs related to the patent protection or other direct costs related to industrial protection, otherwise without any remuneration. The same license shall be given 'Research Area' Partners and 'Research Area' Members upon request for Foreground of Higher Education Institutions for remuneration on market conditions.
- 10.5.4. Parties which are Higher Education Institutions shall be given a free license, unlimited in time, to use all Foreground in its own activities (non-exclusive license without a right to sub-license or license to a third party).

#### 10.6. **Transfer of Foreground**

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

### 11. **SPECIAL 'RESEARCH AREA' AGREEMENTS**

- 11.1. If all 'Research Area' Parties of a specific 'Research Area' wants to, a separate 'Research Area' Agreement may be agreed upon for the 'Research Area'. Any rights agreed upon in this Agreement affecting Parties outside of the 'Research Area' shall however not be affected. Between themselves the Parties may decide on a 'Research Area' Agreement which deviate from the default options of this Agreement as long as it follows what is specified in the Grant (Annex 1) and the Program Description (Annex 2)

### 12. **CONFIDENTIALITY**

- 12.1. The Recipient undertakes not to make use of Confidential Information for any purpose other than in accordance with this Agreement or to disclose Confidential Information to third parties without the prior written approval of the Party supplying the information.
- 12.2. These confidentiality and non-use obligations do not apply to information:
- that was public knowledge at the time of disclosure or subsequently becomes public knowledge by means other than breach of this Agreement;
  - that was already in the possession of the Recipient prior to its disclosure by the transferring party;

- that was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- that the receiving party duly became aware of independently of the transferring party;
- and/or that a Party is required to disclose under applicable law or regulation, or the order of a court of competent jurisdiction.

12.3. In matters regarding Parties who are Swedish authorities and municipalities the Public Access to Information and Secrecy Act (2009:400) shall apply. The Recipient shall be responsible for the fulfillment of the confidentiality and non-use obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible.

12.4. It is incumbent upon the recipient to take reasonable actions in order to ensure that Confidential Information is protected from unauthorized access. The recipient shall therefore apply at least the same level of prudence as when protecting its own Confidential Information.

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

### **13. DISSEMINATION**

13.1. As a result of the academic freedom, the importance of scientific qualifications at the University and the conditions of the Grant from the Swedish Energy Agency (Appendix 1) all Parties have the right to publish or otherwise publicly disclose Foreground in accordance with generally accepted international standards for publication of research results.

13.2. No later than thirty (30) days before such publication or public disclosure, the Party wishing to disclose Foreground shall supply a copy of the proposed publication to the owner of Foreground for examination. The owner is entitled, within the said period, to request that Confidential Information be excluded if a publication or public disclosure would impair a patenting process.

13.3. None of the Parties may withhold its consent to publication for more than ninety (90) days following the first submission of the proposed publication, and the Parties acknowledge that the main purpose of that time limit is to allow for the possibility to file patent applications.

13.4. The Swedish Energy Agency shall have a non-exclusive license to translate, duplicate, use and transfer copies of the reports the Parties are obliged to submit under §4 of Annex 1.

## **14. NEW PARTIES**

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

## **15. SCOPE**

### **15.1. Term of Agreement**

- 15.1.1. This Agreement shall enter into effect 2018-12-06 subject to the approval of the Swedish Energy Agency and upon signature of all Parties.
- 15.1.2. This Agreement shall terminate 2022-11-30 or the later date at which all commitments and the cooperation by and between the parties under this Agreement have been finalized. Any provision of this Agreement that, by its nature, is applicable to circumstances arising after the termination or expiry of this Agreement will survive such termination or expiry and remain in full force and effect.

### **15.2. No Representation, Partnership or Agency**

- 15.2.1. The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

- 15.2.2. Nothing in this Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

## **16. PREMATURE RESIGNATION**

- 16.1. All Parties may prematurely resign from this agreement giving six (6) months' notice of termination. It is incumbent upon the Party to fulfill its undertakings during the period of notice of termination; and the economic undertakings shall be fulfilled to the extent that they accrue during the termination period.
- 16.2. Any contributions In Kind which should have been fulfilled in part or in full prior to the resignation shall instead be fulfilled through payment of the equivalent value in cash, unless otherwise decided by Vice-Chancellor. Contributions In Kind that accrue for the time after the resignation, or which exceed the promised Contributions in Kind, shall not cause a reduction of the monetary contribution.
- 16.3. Any Party who prematurely resigns from the agreement shall retain all rights and licenses to Foreground which have arisen prior to the effective date of resignation.
- 16.4. BRC shall continue its operations with the remaining Parties notwithstanding the resignation of a Party from the agreement.

## **17. ASSIGNMENT AND AMENDMENTS**

- 17.1. No rights or obligations of the Parties arising from this Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.
- 17.2. Modifications or amendments to this Agreement or its Appendixes shall be unanimous between the Parties and require a separate agreement between all Parties. However, this prohibition shall not apply to assignments/transfers to an employee of a Higher Educational Institution or his/her company, provided that the employee is prevented from further assignment (directly or indirectly) to a direct competitor to any of the Parties.

## **18. BREACH**

- 18.1. In the event a Party or a Center Body identifies a breach by a Party of its obligations under this Agreement (e.g. a Party producing poor quality work), the Center Manager will give written notice to such Party requiring that the breach be remedied within 30 calendar days.
- 18.2. If such breach is substantial and is not remedied within that period or is not capable of remedy, the Program Council may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation. Such decision shall only be taken after consultation of all Parties directly affected by the breach, which usually shall be restricted to 'Research Area' Parties.

## **19. SETTLEMENT OF DISPUTES**

19.1. The parties agree that should a dispute arise about the interpretation or application of the Master Agreement, the Parties shall first seek to resolve it through negotiation, then through mediation (carried out in accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce.) Where applicable, the regulations of the Public Access to Information and Secrecy (2009:400) shall be regarded.

Any dispute that is not resolved through negotiation or mediation shall be conclusively settled by the ordinary courts.

Disputes that solely involve Parties that are state authorities are not settled by the courts; rather, it is the government that resolves them.

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

## **20. MISCELLANEOUS**

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

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

20.3. The Swedish Energy Agency has the right to cancel the Main Agreement with six (6) months' notice, without right of recourse, if there are no prospects of satisfactory results being produced within a reasonable time.

20.4. The Swedish Energy Agency (as well as Stakeholders and universities and institutions of higher learning other than the host institution of higher learning) has the right to terminate the Master Agreement with immediate effect, withhold funding, and/or demand repayment of funds already paid out, in whole or in part, together with a penalty interest rate (under the Interest Act (1975:635)), to be calculated from the date the funds were paid out

- If Linköpings Universitet does not comply with the reporting obligation,
- If incorrect, incomplete or misleading information provided by Linköpings universitet has led to the incorrect payment of funds, or
- If funds that have been paid out in full or in part have been used for costs other than the implementation of the activity referred to in the Program Description.

20.5. The Swedish Energy Agency has the right to cancel and alter its financial undertakings and demand repayment of Cash Contributions if the European Commission, by means of a decision

that has come into legal force or through the European Court of Justice, has determined that the financial support constitutes distorted competition through government subsidy in contradiction of Article 107 in the Consolidated version of the Treaty on the Functioning of the European Union).

- 20.6. The refund obligation for the Parties, in case of unlawful state aid, is regulated in the Act on the application of EU state aid rules (lag (2013:388) om tillämpning av Europeiska unionens statsstödsregler) and Regulation on the application of EU state aid rules (förordning (2013:470) om tillämpning av Europeiska unionens statsstödsregler).
- 20.7. It is recalled that the Swedish Energy Agency and Linköpings universitet may be obliged to recover funding that has already been paid out if the activities carried out within the center involve such illegal aid, which must be recovered pursuant to Section 2 of the Implementation Act (2013:388) of the European Union's state aid rules.
- 20.8. The Swedish Energy Agency has the right to cancel and alter future financial undertakings of the Agreement if the Swedish government decides to cancel or alter the Energy Agency's financial undertakings to BRC. The conditions for the winding up of the support will be established on a case-by-case basis.

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The main agreement is drawn up in two (2) original copies, of which the Swedish Energy Agency and Linköpings universitet have each obtained a copy. Other Parties have obtained an electronic copy.

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