

Conditions governing participation in projects supported by the Agency for Innovation and Entrepreneurship through the earmarked project budget of Flanders' FOOD

PRELIMINARY NOTE

Flanders' FOOD vzw, established at B-1210 Brussels, Koning Albert II-laan 19, and registered under enterprise number 878.017.175, is a spearhead cluster and, pursuant to the Decree of the Flemish Government of 4 March 2016 regulating support for innovation clusters in Flanders, has entered into a support agreement entitled "**Spearhead Cluster Agrifood**", bearing number HBC.2016.0891.

This text sets out the arrangements and conditions applicable to each **Project** that is submitted via the earmarked project budget of Flanders' FOOD to the **Agency for Innovation and Entrepreneurship (VLAIO)** with a view to obtaining financial support under the VLAIO conditions. The companies and research organisations submitting a Project are required to accept the arrangements and conditions described below, at least for the duration of the Project generation, evaluation and, where approved, execution of the Project.

The purpose of this text is to establish arrangements to ensure that, taking into account the interests and requirements of the Project, the rights of Flanders' FOOD and of the Project Participants (being the participating companies and research organisations) are properly and adequately protected. Accordingly, it already sets out the main outlines and certain principles governing the submission of the Project and, subject to approval, its execution.

Flanders' FOOD pays particular attention to:

- (i) transparency;
- (ii) taking into account the nature of the Project, the role of Flanders' FOOD as a spearhead cluster and compliance with the VLAIO conditions, where necessary and possible;
- (iii) the protection of the information that the Project Participants will share with one another or that may arise in the course of the Project's execution; and
- (iv) the intellectual property rights that a Party to the Project or third parties may hold in relation to such information.

For ease of understanding and readability, a number of definitions are included at the end of the text.

It should be noted that certain conditions explained below will, in the context of the approval of the Project by VLAIO, be required to form part of a **Collaboration Agreement** and/or be included as conditions in the VLAIO support agreement.

SUBJECT OF THESE CONDITIONS

1. The conditions set out below apply to the entire lifecycle of the Project, including its preparation, discussion, assessment, development, submission, execution and the consequences of the Project, including the use and **valorisation** of the Project Results, as well as the resulting relationship between the Parties. As it is necessary to establish a uniform framework applicable to all Parties, these conditions shall, as a matter of course, prevail over any unilateral terms and conditions issued by

the Parties, unless the Parties expressly agree otherwise in writing in an ad hoc document or in the **Collaboration Agreement**. The Collaboration Agreement shall contain the final conditions governing participation in the Project and shall therefore, in the event of any conflict, prevail over these conditions, unless expressly provided otherwise in these conditions.

2. It is self-evident that where a Party involves other persons (its **Representatives**, its **Affiliated Parties** and their Representatives), these conditions shall also apply to such persons and that the relevant Party shall ensure compliance with these conditions by those persons. In addition to its own compliance with the General Conditions, each Party therefore undertakes to ensure that its Representatives, its Affiliated Parties and their Representatives act in accordance with these conditions and accepts responsibility for this towards the other Parties.

PRINCIPLES RELATING TO MEMBERSHIP OF FLANDERS' FOOD

1. For participation in Projects supported under the Decree on R&D-intensive business support, the Decree on business support for innovation, the COOCK Decree, the Decree on Agricultural Research, and the TETRA Decree (such as COOP, COOCK+, LA-TR, TETRA or ICON), companies are required to be members of Flanders' FOOD. Companies operating in the primary sector are not required to be members of Flanders' FOOD for LA trajectories. By way of exception, such membership is not required for participation in Projects carried out in cooperation with another cluster that actively contributes to Project generation, co-finances the Project and is jointly responsible for the execution and follow-up of the Project. In such cases, it suffices that the participating company is a member of one of the clusters involved. The membership fee payable to Flanders' FOOD is determined by Flanders' FOOD. Flanders' FOOD may amend this fee at any time for the future.
2. By becoming a member of Flanders' FOOD, the member declares that he/she endorses the mission and vision of Flanders' FOOD as set out in its articles of association, and in particular the objective of Flanders' FOOD to strive for a competitive, export-oriented food industry through innovation, research and knowledge dissemination, in the general interest of the spearhead cluster and its broader target group.

PRINCIPLES RELATING TO THE FINANCING OF PROJECTS

1. In principle, the Project Participants are fully responsible for their own expenses, including the fees and costs of their subcontractors and research partners. However, they may obtain a subsidy for these costs through a support agreement with VLAIO, in accordance with the VLAIO conditions. For a detailed explanation of the VLAIO conditions, reference is made to the VLAIO website: www.vlaio.be.
2. In particular, the following applies to **COOCK+**, **cSBO**, **TETRA** and **LA-TR** Projects:

- **COOCK+ Projects**

A COOCK+ Project may be financed up to 100% by VLAIO provided that the result obligation imposed by VLAIO is met. Failing this, a maximum of 50% of the Project must be financed from own resources. In that case, the Parties must bear at least 20% of the own costs (personnel time and operating costs), corresponding to the possible cooperation bonus. The remaining 30% may either be borne by the Parties themselves or be financed by the companies involved in the steering committee, in which case a project contribution is provided both for the own costs (personnel time and operating resources) of the clusters involved and for those of Parties from research organisations.

The companies and/or organisations involved in the steering committee are required to pay a project contribution to Flanders' FOOD for the additional financing of the Beneficiaries of the COOCK+ Project. In the event of a successful outcome of the Project, i.e. full (100%) financing or pro rata financing by VLAIO between 50% and 100%, the remaining project contributions shall be used to finance the overall co-financing risk of the spearhead cluster Flanders' FOOD. Additional arrangements must be made if the remaining project contributions are not intended exclusively to cover the overall co-financing risk of the spearhead cluster Flanders' FOOD.

- **cSBO Projects**

A cSBO Project is financed 100% by VLAIO. The mandatory annual contributions paid by companies that are members of the steering committee (EUR 250 per year for an SME and EUR 1,000 per year for a non-SME), as a sign of their commitment, accrue to Flanders' FOOD. These contributions constitute consideration for the fact that, in the context of such a Project, Flanders' FOOD does not require mandatory membership for companies joining the steering committee, that Flanders' FOOD carries the Project generation within the cluster activities, and that Flanders' FOOD reserves the relevant strategic basic research on its own project funds.

- **LA Trajectories**

An LA trajectory is financed 90% by VLAIO. The companies and/or organisations involved in the steering committee are required to pay a project contribution to Flanders' FOOD for the additional financing of the Beneficiaries.

- **TETRA Projects**

A TETRA Project is financed 92.5% by VLAIO. The companies and/or organisations involved in the steering committee are required to pay a project contribution to Flanders' FOOD for the additional financing of the Beneficiaries.

CONFIDENTIALITY PROTECTION

GENERAL PRINCIPLES

1. The Participants declare that they will handle **Confidential Information** with due care and that they will share with Flanders' FOOD only such Confidential Information as Flanders' FOOD requires for the preparation, discussion, assessment, development, submission and execution of the Project, and for the use and **valorisation** of the Project Results, where applicable in accordance with the Collaboration Agreement (the "**Purpose**"). At the same time, the Participants acknowledge that the Project is intended to serve the general interest of the spearhead cluster and its broader target group, and they agree to cooperate accordingly.
2. Each Receiving Party understands and acknowledges that such information is valuable and sensitive in nature to the Disclosing Party. The Parties therefore mutually undertake to keep the Confidential Information of the other Parties secret and confidential, to use it solely for the Purpose, and not to use it for any other purpose.
3. The Receiving Party shall not disclose the Confidential Information of another Party to third parties, shall keep it confidential at all times, and shall take measures that provide at least the same level of protection for Confidential Information as it applies to its own comparable confidential information (but in no event less than a reasonable degree of care). The Receiving Party is permitted to disclose Confidential Information to its Representatives, its Affiliated Parties and their Representatives, but only insofar as this is necessary for the Purpose. Prior to doing so, the Receiving Party shall impose on such persons a confidentiality obligation that ensures at least the same level of protection as that guaranteed under these conditions. The Receiving Party shall not reproduce the Confidential Information unless this is strictly necessary for the Purpose. Any deviation from the foregoing shall require the prior written consent of both the Receiving Party and the Disclosing Party.
4. Furthermore, in the spirit of good cooperation, each Party shall immediately inform the Disclosing Party if it becomes aware that its Confidential Information is being accessed, used, copied or disclosed without authorisation and shall, insofar as reasonably possible, use its best efforts to take measures to put an end to such unauthorised practices and to provide all reasonable assistance to the affected Disclosing Party.

PERMITTED USE OF CONFIDENTIAL INFORMATION OUTSIDE THE PURPOSE

The Receiving Party may nevertheless disclose the Confidential Information if it is obliged to do so under applicable laws or regulations, pursuant to a judicial or administrative procedure before a competent court, or by order of a governmental authority that is

legally entitled to require such disclosure. In such case, and to the extent legally permitted, the Party concerned shall:

- (i) prior to any disclosure, notify the Disclosing Party thereof and fully inform it of the existence and scope of such disclosure obligation, so as to allow the Disclosing Party to assess and, where appropriate, challenge the existence and scope of that obligation;
- (ii) cooperate with the Disclosing Party if the latter wishes to take protective or other measures in connection with such disclosure; and
- (iii) limit the disclosure to what is strictly required for that purpose and comply with the reasonable instructions of the Disclosing Party in order to limit the disclosure.

INFORMATION THAT IS NOT CONFIDENTIAL INFORMATION

Certain information shall be deemed not to constitute Confidential Information. This applies exclusively to information that the Receiving Party can demonstrate:

- (i) was lawfully known to it prior to disclosure in the context of the Project, without any restriction as to its disclosure or use; or
- (ii) is or becomes publicly known, other than as a result of a breach of a confidentiality obligation by it or by its Representatives, its Affiliated Parties or their Representatives, as referred to in these conditions or otherwise agreed; or
- (iii) was disclosed to it on a non-confidential basis by a third party who, at the time of disclosure, was entitled to do so; or
- (iv) was independently developed by it or by its Affiliated Parties or their Representatives, or on their behalf, without making use of the Confidential Information received in the context of the Project.

However, information shall not be deemed to fall within the above exceptions solely because:

- (i) it is included in more general information that has been published or otherwise made publicly available; or
- (ii) parts thereof have been published or otherwise made publicly available.

Only those specific parts of the information that have been published or otherwise made publicly available shall fall within the scope of the above exceptions.

PROTECTION OF BACKGROUND KNOWLEDGE AND PROJECT RESULTS AND VALORISATION OF PROJECT RESULTS

GENERAL PRINCIPLES

1. As noted above, these conditions apply unless the **Collaboration Agreement** provides otherwise. Consequently, the principles set out below regarding **Background Knowledge, Project Results** and the **valorisation of the Project Results** shall apply unless and for as long as the Collaboration Agreement does not stipulate otherwise. If a Participant ultimately does not join the project consortium, these conditions shall therefore continue to apply to that Participant.

2. Flanders' FOOD does not seek to claim any **Intellectual Property Rights** in the Background Knowledge, the Project Results or the valorisation of the Project Results, provided that Flanders' FOOD must at all times retain the ability to exercise or fulfil its tasks, rights and obligations in the context of the broad dissemination of the Project Results to the target audience, both in Flanders and in Europe. Any arrangements that may be made in this respect, without prejudice to and in addition to what is already provided for in these conditions, shall not affect ownership of, or the Intellectual Property Rights in, such knowledge and results, which shall remain vested in the Party (or third parties) to whom they belonged prior to acceptance of these conditions. These conditions are not intended to grant any Party, its Affiliated Parties or their Representatives any right or licence in respect of the Intellectual Property Rights of the other Parties, their Affiliated Parties or their Representatives. None of the Parties shall, by virtue of these conditions, be entitled to claim any Intellectual Property of another Party to which it had no entitlement prior to acceptance of these conditions.
3. The following paragraphs set out derogations from the above principles and grant certain rights to Parties in respect of the Intellectual Property of another Party. Such rights are, however, always limited to use within the framework of, and to the extent necessary for, the **Purpose**.

RIGHTS TO BACKGROUND KNOWLEDGE

1. These conditions have no effect whatsoever on the rights to the **Background Knowledge**. Such rights shall remain vested in the Contributing Party (which, where applicable, contributes them to the Project) or in its licensor(s). No rights of use are granted or deemed to be granted under these conditions, except for those expressly set out herein. Each Party shall acquire the rights to all improvements to its own Background Knowledge that are achieved in the course of the execution of the Project, unless such improvements are defined as Project Results.
2. Each Party shall have a non-exclusive and royalty-free right to use the Background Knowledge of the other Party or Parties, where necessary and solely for the execution of the Project. Where (part of) a Party's Background Knowledge is necessary to enable another Party to valorise its Project Results, the latter shall, insofar as it is legally entitled to do so, grant the former a non-exclusive right of use in respect of (that part of) the Background Knowledge on market-conform terms (against payment of royalties and/or a lump-sum fee) for the purpose of the valorisation of the Project Results. The Parties shall inform each other as soon as reasonably possible of any limitations on the availability of Background Knowledge of which they are aware that another Party may require for the purposes referred to in this paragraph.

RIGHTS TO THE PROJECT RESULTS

1. With regard to the protection and **valorisation** of the Project Results, the Parties shall at all times comply with the VLAIO Conditions and the **Collaboration Agreement**.
2. Project Results shall become the property of the Party that has generated the Project Results. These Project Results are hereinafter referred to as “**Exclusive Project Results**”.
3. Where several Parties have contributed to the creation of the Project Results, such Project Results, hereinafter referred to as “**Joint Project Results**”, shall be jointly owned by the Parties concerned, hereinafter referred to as the “**Co-owning Parties**”. The share of each Co-owning Party in the joint ownership shall be determined on the basis of their respective contribution to the creation of the Joint Project Results. Where it is not possible to determine such proportion, the Co-owning Parties shall each hold an equal share in the Joint Project Results. The Co-owning Parties shall make the necessary arrangements in this respect and, in particular, where the Joint Project Results are the subject of a (joint) patent application, prior to the filing of the patent application, in accordance with the Collaboration Agreement.
4. The Collaboration Agreement shall determine the procedure for identifying and classifying the Project Results as Exclusive Project Results or Joint Project Results.

PROTECTION OF PROJECT RESULTS

1. Each Party is free to use and **valorise** its Exclusive Project Results in its own name and at its own expense, provided that it complies with the procedures and conditions to be laid down in the **Collaboration Agreement**.
2. The use of Joint Project Results requires the consent of each **Co-owning Party**. All decisions relating to the filing and maintenance of patents concerning Joint Project Results shall be taken by mutual consultation and subject to written agreements between the Co-owning Parties, each of whom shall provide all necessary cooperation and complete all required formalities. The costs and revenues of the patent application shall be borne in proportion to each Party's share in the joint ownership, unless otherwise agreed. The procedures and conditions governing the use of the Joint Project Results shall be further detailed in the Collaboration Agreement.
3. Each Party may grant a licence to its Exclusive or Joint Project Results to the other Parties where such a licence is necessary to enable the **valorisation** of its Exclusive or Joint Project Results, unless such a licence would be incompatible with the legitimate interests of the first-mentioned Party. The Parties shall negotiate in good faith with a view to obtaining or granting such a licence, taking into account the VLAIO Conditions.

4. The Parties shall inform one another as soon as reasonably possible of any restrictions on the availability of Project Results of which they are aware that another Party may require for the purposes of the **exploitation or valorisation** of its Exclusive or Joint Project Results.

PUBLICATIONS AND CONTACTS WITH THIRD PARTIES

1. Where the VLAIO Conditions and the **Collaboration Agreement** may lay down further procedures and conditions regarding publications relating to the Project Results, the provisions set out below shall at all times remain applicable in order to enable Flanders' FOOD to fulfil its role as a spearhead cluster and its tasks relating to knowledge dissemination in the general interest.
2. The Participants undertake to include Flanders' FOOD as a partner or subcontractor for the knowledge dissemination component of the Project, and to appoint it for this role even if VLAIO were to decide that Flanders' FOOD is not an eligible partner or subcontractor. The remuneration of Flanders' FOOD for its role in knowledge dissemination shall, where applicable, be borne by the Participants using the funds and support allocated to them in the context of the Project. The provisions below shall therefore apply in the absence of any deviating provisions in the VLAIO Conditions or of other arrangements in this respect in the Collaboration Agreement, or for as long as such arrangements have not been made, and shall also prevail over any contrary provisions of the Collaboration Agreement.
3. The right of initiative for the dissemination of information rests exclusively with Flanders' FOOD, subject to compliance with the confidentiality obligations. The specific information relating to the Project that Flanders' FOOD may use vis-à-vis third parties, including both European companies and European research organisations, in the context of project generation shall be agreed at the appropriate time. The Participants may inform Flanders' FOOD which third parties should not be granted access to the relevant information and may submit to Flanders' FOOD proposed wording that Flanders' FOOD may use.

Furthermore, the Parties agree that Flanders' FOOD shall have the right to present all Projects originating from the spearhead cluster (i) to its Board of Directors and (ii) to publish limited information about the Project, inter alia in its newsletters, in order to comply with its obligations as a spearhead cluster and the associated task of knowledge dissemination. Such publications may include the title of the Project, the names of the Participants, a brief description of the Project and of the Project Results, and the budget per Participant, subject to the approval of the publications by the Participants. The Participants may also submit proposed wording to Flanders' FOOD for the description of the Project and the Project Results.

Flanders' FOOD shall act as the sole point of contact for VLAIO for the Project, both during the submission, evaluation and follow-up phases. The Participants shall not contact VLAIO without the prior consent of Flanders' FOOD and shall, in any event, provide Flanders' FOOD with a copy of any communication they send to

VLAIO. If VLAIO were to contact a Participant directly in relation to the Project, the Participants undertake to inform Flanders' FOOD thereof.

MINIMUM WARRANTIES OF THE PARTIES

1. In order to participate in a Project, a Party must warrant that it has been validly incorporated, possesses legal personality, and that the person entering into the commitment on its behalf has the authority to bind it. Each Party must also warrant that it is entitled to enter into commitments in the context of the Project, that it holds all permits, recognitions, concessions, authorisations or other (governmental) approvals required to participate in the Project and that it shall at all times duly comply with them, and that it is not and has not been a party to any agreement that could be incompatible with its participation in the Project. A Party must furthermore warrant that, insofar as it has or reasonably should have knowledge thereof, the activities it carries out in the context of the Project (of whatever nature), nor the use within the context of the Project of the Background Knowledge, materials or Project Results provided to the other Parties by it or by its Affiliated Parties or their Representatives, will infringe, whether contractually or non-contractually, any Intellectual Property Rights or other rights of third parties. Each Party also warrants that it is not and will not be a partner in a silent partnership in connection with the execution of the Project or with the Project Results.
2. Conversely, a Party gives no other express or implied warranties, including any warranty relating to the accuracy or completeness of the information it provides in the context of the Project, whether relating to its Background Knowledge, materials or Project Results provided by it, its Affiliated Parties or their Representatives.
3. The Disclosing Party (and its Affiliated Parties and their Representatives) shall not be liable for, and the Receiving Party shall indemnify and hold harmless the Disclosing Party (and its Affiliated Parties and their Representatives) against, any third-party claims arising from the use of the Confidential Information by the Receiving Party (its Affiliated Parties or their Representatives).

LIABILITY

1. In accordance with the generally applicable rules on liability, a Party shall be liable towards the other Party or Parties (and their Affiliated Parties and their Representatives) for all costs, damage, expenses and third-party claims resulting from faults committed by the first-mentioned Party, its Affiliated Parties or its Representatives, unless such costs, damage, expenses or claims are caused by the gross negligence or wilful misconduct of the latter Party. Payment of damages or the application of any other legal remedies shall not release the liable Party from its obligations under these Conditions.

2. As a breach of these Conditions may result in ongoing and irreparable damage that cannot be adequately compensated by financial damages, the Party that suffers or is at risk of suffering such damage shall be entitled, in order to prevent or limit that damage, to seek interim measures against the liable Party. Except in the event of a breach of the obligation referred to above in the third paragraph of the section “**Minimum Warranties of the Parties**”, a Party shall (i) not be liable for the use of, or reliance on, its Background Knowledge or the materials, Project Results or any information it has provided for the Purpose by the other Parties, and (ii) not be liable for indirect or consequential damage (including loss of profit, loss of income, data, business or other opportunities).
3. A Party cannot be held liable for damage arising from faults committed solely by another Party in the context of this Project.

DURATION, EXCLUSION AND ADMISSION AND WITHDRAWAL OF PARTICIPANTS

1. These Conditions shall remain applicable for the entire duration of the Project, both during the period preceding the date on which the **Collaboration Agreement** enters into force and up to the date (the “**End Date**”) on which, as the case may be, it is established that VLAIO support for the Project will not be obtained or the end date of the Collaboration Agreement. The provisions of these Conditions and the obligations arising therefrom relating to confidentiality shall, however, remain applicable for a period of five (5) years following the End Date, and the liability obligations of the Parties arising from a breach of the obligation referred to above in the third paragraph of the section “**Minimum Warranties of the Parties**” shall remain applicable for the entire duration of the protection of the relevant third-party rights.
2. If a Party fails to comply with its obligations and does not remedy such breach within sixty (60) calendar days following receipt of a written notice of default signed by at least half of the other Participants, it may, by decision of at least half of the other Participants and with the support of Flanders’ FOOD, be excluded from further participation in the Project. In such case, the remaining Parties shall consult to determine whether the Project can be continued with the remaining Parties.
3. Until acceptance of the VLAIO Conditions (i.e. up to the Project submission date), each Participant shall have the right to withdraw from the Project by sending a registered letter to the other Parties, subject to compliance with a notice period of one (1) month and without prejudice to the right of the other Parties to claim compensation for any damage suffered as a result of such withdrawal. New Participants may join the Project subject to the unanimous acceptance of the existing Participants and Flanders’ FOOD, and in accordance with the conditions thus determined.

RETURN OF CONFIDENTIAL INFORMATION

A Participant may not deny the other Parties access to, or use in accordance with the Conditions of, the Confidential Information it has already disclosed in the context of the **Purpose**, unless this occurs in the context of withdrawal as a Participant, or where it has been established that VLAIO support for the Project will not be obtained, or upon the end date of the **Collaboration Agreement**.

In such case, the other Parties (and their Affiliated Parties and their Representatives) shall, at the request of the withdrawing Participant, either return all copies of the Confidential Information disclosed by the withdrawing Participant, or destroy such Confidential Information and confirm this in writing to the withdrawing Participant. The withdrawing Participant (and its Affiliated Parties and their Representatives) shall return all copies of the Confidential Information it has received, or destroy such Confidential Information and confirm this in writing.

Such return or destruction shall not affect the obligations of the non-withdrawing Participants or of the withdrawing Participant arising under these Conditions.

NO OBLIGATION TO ENTER INTO FURTHER AGREEMENTS

These Conditions do not oblige a Party to enter into any further agreements in relation to the Project. However, following the signing of the **Support Agreement** by the Parties, the Parties shall be required by VLAIO to conclude a **Collaboration Agreement** in accordance with the VLAIO Conditions.

NON-EXCLUSIVITY

Each Party, its Affiliated Parties and their Representatives are free, without notifying the other Parties, to explore any other opportunities, including (but not limited to) negotiating or entering into agreements with a third party, provided that this is done in compliance with these Conditions or any other agreement entered into by the Parties.

MISCELLANEOUS

1. Unless such waiver has been expressly communicated in writing, a Party that fails to invoke or exercise a right shall not be deemed to have waived the exercise of that right in the future. Where a Party has waived its right to rely on a breach by another Party, such waiver shall not constitute a waiver of any other right, nor a waiver of the right to rely on that right in respect of another breach, even if both breaches are similar or identical.
2. If any provision of these Conditions is, in whole or in part, invalid or unenforceable or conflicts with a provision of applicable law, such provision shall be deemed not to form part of these Conditions, without affecting the validity or enforceability of

the remaining provisions. Where applicable, the invalid, unenforceable or conflicting provision shall be deemed to have been drafted in such form and with such content as is legally permissible and valid, and as closely as possible reflects the purpose intended by these Conditions.

3. None of the Parties may assign or transfer its rights or obligations in connection with the Project to a third party without the express prior consent of the other Party. Until such consent has been obtained, the transferring Party shall remain liable for all such obligations, without prejudice to any other rights or remedies available to the other Party.
4. Unless otherwise agreed, all costs relating to the negotiation, preparation and execution of the Project shall be borne by the Party that has incurred those costs.

APPLICABLE LAW AND DISPUTE RESOLUTION

These Conditions shall be governed by and construed in accordance with Belgian law. The Parties shall endeavour to settle any disputes relating to the Project amicably. Failing such amicable settlement, the dispute may be submitted by the most diligent Party to the competent courts of the judicial district of Brussels, which shall have exclusive jurisdiction.