# This is a model agreement – be sure to adjust to fit all partners.

# PROJECT AGREEMENT SIO Grafen

Concerning implementation of the Project “project title”, as part of the SIO Grafen Innovation Programme (SIP), reference number 2018-0XXXX, see the appended notifications of decision (Annex 1) and Project Description (Annex 2).

## Definitions

SIP = Strategic Innovation Programme

Vinnova = Sweden’s innovation agency. A government agency under the Ministry of Enterprise and Innovation

Formas = The Swedish Research Council for Environment, Agricultural Sciences and Spatial Planning

SME = Small and Medium-sized Enterprises

Party = A legal entity participating in the project referred to in Vinnova’s letter notifying its decision

## Clause 1 The Parties

In this Agreement, hereinafter the Project Agreement, the following Parties have agreed on implementation of the project as set out above, hereinafter the Project.

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| Party/Parties | Organisation registration number | Address |
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hereinafter *the Company/the Companies*,

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| Party/Parties | Organisation registration number | Address |
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hereinafter *the Institute* and

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| Party/Parties | Organisation registration number | Address |
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hereinafter *the University.*

## Clause 2 Background

Vinnova, the Swedish Energy Agency and Formas are jointly financing the investment in **the SIO Grafen Strategic Innovation Programme**, hereinafter **SIO Grafen**.

Through this Project Agreement, the Parties agree to implement the Project and settle the legal relationship between the Parties within the framework of the Project.

A copy of the signed Project Agreement shall be sent to Vinnova.

## Clause 3 The Project Description

The work involved in the Project shall be conducted in accordance with the Project Description.

The Project Description includes:

* specific definitions for the Project
* a commitment, objective or work programme with cost and time frames
* a distribution of tasks and responsibilities between the Parties
* a timetable comprising targets for individual stages (milestones).

## Clause 4 Project Coordinator

Within the Project, organisation is Project Coordinator and organisation is responsible for the Project’s administration as set out in Clause 7, as well as for periodic reporting and submitting the final report to Vinnova as set out in Vinnova’s General Terms and Conditions.

## Clause 5 Management and follow up

Management of the work undertaken as part of the Project as set out in the Project Description shall be the responsibility of the Project Manager. To support the Project Manager, a project group will be set up, hereinafter the Project Group, to be chaired by the Project Manager. Each Party will be represented by one person in the Project Group.

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If any of the Parties so requests, the Party Group may take a decision with binding effect. The Project Group is deemed to constitute a quorum if all Parties are present with at least one representative. From time to time, each Party is entitled to replace its designated member of the Project Group.

Decisions are adopted on the basis of a simple majority. Each person within the Project Group has one vote (but not more than one vote per Project Party).

A Party has a right of veto over any decision that is liable to impact on that Party’s financial situation, profit or loss, labour problems or similar matters. A Party cannot exercise its right of veto without due cause.

The Project Group is not entitled to decide on matters that affect a Party’s own activities or where a decision would amount to exercise of the powers of a public authority.

Follow-up of the Project shall be in accordance with the general terms and conditions of the financing organisation.

## Clause 6 Financing

The Project receives financial support from the Swedish state to the extent set out in the decision issued by Vinnova. The decision is administered by Vinnova.

The Project Description sets out the Parties’ financial commitment in the Project.

Vinnova’s funds may only be used in accordance with Vinnova’s decision and General Terms and Conditions.

## Clause 7 Costs and payments

The Parties that perform the work in the Project will be reimbursed their costs as set out in Vinnova’s General Terms and Conditions.

Reimbursement to the Parties (for costs actually incurred and in relation to achieved milestones) shall be in accordance with Vinnova’s decision.

The Project Manager is responsible for follow-up and reporting of the Project’s total costs. In this connection, the actual use of resources shall be reported as the sum of:

* payments for work undertaken by the Parties
* the financing amount for the Parties
* costs associated with the Project relating to administration and management, as set out in Clauses 4 and 5.

For the purpose of following up and reporting the Project, the Parties shall assist the Project Manager with data and documentation as outlined in Vinnova’s decision and General Terms and Conditions.

No final payment need be made until the final Project report, approved by the Project Group, has been submitted to the Project Coordinator.

## Clause 8 Obligations and responsibilities of the Parties

The Parties undertake to implement the Project to the best of their abilities in accordance with the Project Description. Where it lacks the requisite expertise or time for a given task, a Party is entitled to engage a third party, provided that Vinnova and the other Parties have given their written consent.

Where a third party (known as a subsidiary consultant) is engaged, the Party that has engaged the subsidiary consultant is responsible for the subsidiary consultant in the same way as for itself. Reimbursement for the engagement of a subsidiary consultant that exceeds the financing agreed in the Project Agreement shall be agreed separately when obtaining the written consent to engagement of the subsidiary consultant.

A Party shall not be responsible for submitted information being usable or free of third-party rights.

Nor shall a Party be liable for injury or damage, be it personal injury, moral prejudice, financial or other damage, resulting from another Party’s use of the information.

## Clause 9 Confidential Information

Circumstances may arise where the Parties provide each other with information of a Confidential nature. Information is only deemed Confidential Information where, if disclosed in writing, it is clearly marked “Confidential”, or, if disclosed verbally, it is clearly stated as being Confidential Information on the occasion of its disclosure and is then confirmed as being Confidential Information no later than fifteen (15) days after the date of its disclosure.
At a Party’s request, such information must be treated as confidential both during the term of this Agreement and for five (5) years thereafter. In performing the work and in processing information obtained, a Party thereby undertakes to take whatever measures are required to maintain confidentiality.

The confidentiality undertaking also means that a Party that has received Confidential Information may not divulge it to third parties not involved in the Project, unless it has a special agreement to do so.

Written information shall be considered Confidential if marked “Confidential”. Verbal information shall be deemed Confidential if this is confirmed at the time the information is provided. Electronic information (e.g. measurement data) shall be considered confidential if marked “confidential” or if this is confirmed at the time the information is provided. Confidential Information that has been handed over shall be returned to the other Party immediately this Agreement expires. Copies may however be retained, insofar as a Party is required to do this by law.

Information shall not be deemed Confidential in the following cases:

* On receipt by the receiving Party, it is or later becomes public knowledge or available to the public in a manner other than through a breach of this Project Agreement.
* On receipt by the receiving Party, it was already known to the other Party or was already in its possession.
* The receiving Party has obtained it from a third party that is not bound by a duty of confidentiality or other restrictions on divulging it.
* The receiving Party has itself produced the information independently of the Confidential Information belonging to the original Party.
* It is divulged or disclosed in accordance with a law, ordinance or court decision.

Each Party undertakes to ensure that only such employees have access to the Confidential Information as have a direct need to be acquainted with it for their work or the exercise of their duties (e.g. as file clerk, decision maker, lawyer, responsible administrative officer) as part of the Project.

Information that is Confidential may only be disclosed to a third party that needs the information for its work/assignments/activity within the Project. Furthermore, this shall be subject to the original Party having given its consent and being allowed the opportunity to enter into a separate confidentiality agreement with the third party in question.

Documents received by Vinnova, the University and other relevant authorities are governed by the principle of public access and the Public Access to Information and Secrecy Act. Any Confidential results from a research project do not need to be submitted to Vinnova but may be retained within the relevant research body. In these cases a project abstract without the Confidential results should be submitted instead.

An undertaking of an agency or authority under this Clause 9 only applies subject to compliance with the legislation governing the agency or authority.

## Clause 10 Publication

A research body that is a Party to this Agreement, as well as the participating researchers, are entitled to publish or otherwise make public project results to the extent and subject to the limitations set out below. Any restriction on making public the results under this Clause 10 may only prevail if the results or a part thereof are the Confidential Information of another Party as provided for in Clause 9, bearing in mind that a Party may demonstrate that premature publication in some other way would be to the evident detriment of that Party’s interests.

The Parties shall be afforded an opportunity to study the material and submit any patent application. This opportunity shall be offered in good time, at least two (2) months before the intended date of publication or other manner of making the results public. Receipt of the material shall be confirmed without delay by the receiving Party.

The Parties shall submit responses to the publication proposal no later than one (1) month before the intended date of publication. In the absence of a response, consent to publication shall be deemed given.

Where a Party that objects to publication on the grounds that the published work contains information that the Party in question wishes to patent, or that the published work contains Confidential Information belonging to that Party, the Parties shall discuss a possible solution, e.g. on the basis of deleting the Confidential Information and/or reworking the published work, or by submitting a patent application. Publication may not however be delayed for longer than three (3) months from the time indicated in the preceding paragraph, i.e. the deadline for submission of responses to the publication proposal. For the sake of clarity, the Agreement’s provisions governing Confidential Information in Clause 9 apply also in the case of publication.

In connection with the publication of Project Results, Parties and researchers who are involved in the production of these results must be named.

The Parties are agreed that, in accordance with the purpose of the Strategic Innovation Programme, they should allow research results to be distributed to other research bodies throughout Sweden. Distribution will be decided by the Project Group.

## Clause 11 Background Rights

At the start of the Project, each Party to the Agreement shall, to the best of its knowledge, set out its rights in respect of patents, designs, technical and commercial know-how, as well as any other intellectual property rights the Party brings to the Project. This also applies to rights of use that are at the free and unrestricted disposal of the Party. These rights are here designated Background Rights.

These rights are and remain the property of the relevant Party, but during the project period may be used by the Parties to this Project Agreement for implementation of the Project. Such use shall not incur any additional fee or charge. Their use for any purposes other than for the Project is not permitted.

The Parties shall set out these Background Rights in a list which is appended to the minutes of the Project Group’s meeting as provided for in Clause 5. A Party shall not be under any obligation to make information or rights available to another Party for the latter’s use under Clause 11, except as explicitly follows from the aforementioned list.

Participating Parties undertake that, on request from one of the other Parties, they will provide that Party after the project period with at least one individual licence, on reasonable terms, for the use of Background Rights to the extent that such a licence requires, in order that the Party shall be able to use the results of the Project in its own activities, determined in accordance with Clause 12.

The University and the Institute have a right to use the Background Rights of another Party insofar as this is necessary in order to use the Project Results for research and teaching in their own activities. This right shall be unlimited in time and free of charge. For the avoidance of misunderstanding, it should here be pointed out that Clause 9 on Confidential Information also applies to Background Rights.

A Party is nevertheless entitled to refuse such a licence if its use would be to the detriment of that Party, or if that Party does not have free disposal over the Background Right in question.

All technical information and documentation relating to Background Rights that has been handed over in connection with the Project shall be returned (subject to the proviso of a Party’s obligations to comply with a law, ordinance or court decision, or that a Party has a right to their continued use under Clause 11 on expiry of the Project Agreement) and may not be used thereafter.

The rights granted in this Clause to a Party apply also to participating researchers.

## Clause 12 Right to results

For the purposes of this Agreement, “Project Results” refers to all results from the work performed in the Project, including all intellectual property rights, such as inventions (patentable or not), patents, designs and know-how etc, that arise in connection with the Project.

Right of ownership to Project Results is due to the person or persons who is/are the originator of the results, in accordance with the following provisions.

The Parties are aware that the so-called “teacher exception” means that researchers employed by the University are due ownership of the Project Results in the stead of the University, and that the University is precluded from any possibility of owning the Project Results. The rights due to the University as a Party below, in terms of ownership, right of access to the Background Information of another Party and Project Results, right to publish etc., shall thereby also apply to an employee of the University in accordance with the “teacher exception”.

The obligations devolved upon the University in terms of obligations to make Background Information or Project Results available are devolved upon the University’s researchers, where applicable, through the agency of the University. The University undertakes to sign a so-called researcher agreement with the relevant researcher(s) to the extent required for the University to be able to meet its obligations under the Project Agreement.

“*Individual Project Results*” shall be Project Results that a Party has generated on its own or independently of the collaboration with another Party and which are due to the Party that developed the Results in question.

“*Common Project Results*” are Project Results that several Parties have generated in collaboration and which are due to the Parties jointly, in proportion to their respective inputs. As regards a Research Body, particular consideration shall be given to intellectual inputs.

For employees of *the Company* and *the Institute,* the provisions of the Act on the Right to Employees’ Inventions (1949:345) or, in applicable cases, of a collective agreement on the right to employees’ inventions apply, as well as whatever may have been agreed within an individual’s employment contract.

*The Companies* and *the Institute* are alone responsible for compensating their employees (or equivalent persons) for the invention.

For *the Institute* and employees of *the University*, the Parties have the option of acquiring the right to Project Results originating from *the Institute* or employees of *the University*. For this option, the principles and terms and conditions set out in Clause 13 apply.

An invention that is solely due to *the Companies* shall be the separate property of the Party mentioned. The Party is entitled to apply, in its own name and at own expense, for a patent or protection under some other form of intellectual property right to the extent the Party deems appropriate.

Unless specifically agreed otherwise, *the Companies* will obtain, on the basis of this Agreement, a single licence on reasonable terms, but with no right to grant a sub-licence. However, *the Companies* are entitled to use the Project Results free of charge in their own activities, as well as having items manufactured for their own non-commercial use. This will also apply if *the Companies* have foregone participation in the submission of a patent application or exercising their option under Clause 13.

For the purposes of this Agreement, “own activities” also include every development and production activity in other parts of *the Company*’s organisation (subsidiaries, associated companies etc.), as well as equivalent activity in other companies that act on behalf of *the Company*.

The provisions above governing patent protection shall apply accordingly to the protection of other intellectual property rights.

Regardless of whether the intellectual property rights to the Project Results belong to *the Companies*, *the Institute* and *the University* are entitled to use the Project Results for continued internal research and internal research teaching within *the Institute* and *the University*. In this case, internal research teaching comprises also degree dissertations. For the sake of clarity, a Party must however ensure that the provisions of the confidentiality clause contained in this Agreement are extended to these dissertations also. The Project Results may not however be disclosed to a third party unless written consent has been obtained from *the Companies*, except where such disclosure is required by Swedish law or a court decision.

## Clause 13 Option to acquire Project Results

*The Institute* and employees of *the University* have an obligation to inform the Project Manager without undue delay about Project Results. The information must be submitted in the form of a written report and include the main items in the results.

The Project Manager shall immediately communicate this information to the Parties, and these have an option to acquire the right, in full or in part, to the Project Results in question. This right must be exercised no later than six (6) months from the date the Project is completed and shall include the right to apply for a patent. Exercise of the option is invoked by the relevant Party sending written notification to the originator.

At the request of the Party, the originator must sign all necessary documents in connection with patent applications and provide the necessary assistance in preparing such documents. In each case, the originator may charge an appropriate fee.

Where a Party exercises its option to acquire the Project Results, the fee due to the originator shall be paid on the basis of appropriate terms agreed in advance. The amount shall not be lower than that provided for in the collective agreement mentioned in Clause 12 and whatever may have been agreed in the individual employee’s employment contract. When calculating a reasonable fee for the originator, particular consideration shall be given to the potential significance of the originator’s assignment in arriving at the results, as well as the originator’s salary and other employment benefits. Where an employee is employed by *the University*, the fee shall be appropriate and in line with market rates. If the Project Results contain a Background Right as provided for in Clause 11, the originator shall be entitled to an appropriate fee in accordance with a separate agreement.

A Party that has generated Project Results shall continue to have an unrestricted right to use the Project Results for its continuing research and training, including research undertaken with a third party, without being obliged to account for or pay any fee for such use. This shall apply even if the Project Results have been transferred as provided for in Clause 13.

## Clause 14 Term of the Agreement

This Project Agreement shall come into effect once signed by all Parties.
The Project Agreement shall run for the period specified in the Project Description. Once the Project Agreement reaches the end of its term, the rights and obligations set out in Clauses 9, 10, 11 and 12 shall nevertheless continue to apply.

## Clause 15 Documents pertaining to the Agreement

The following documents pertaining to the Agreement constitute the basis of the Project. In the event they contain mutually inconsistent information or provisions, they shall apply in the following order of precedence:

1. Annex 1. Vinnova’s Notifications of Decision
2. This Project Agreement
3. Annex 2. Project Description
4. Annex 3. Background Information (produced by the project).

Vinnova’s General Terms and Conditions take precedence over the Project Agreement.

## Clause 16 Premature termination

If a Party wishes to cease participation in the Project prior to completion, this Party shall notify the Project Group thereof, giving at least six (6) months’ notice in writing and outlining its reasons. An acceptable reason for ceasing participation shall be where one of the other Parties has committed a major breach or repeated breaches of its obligations under this Project Agreement and has undertaken no remedy within sixty (60) days of a written request to do so.

A Party that prematurely ceases participation in the Project shall ensure that the impact of its withdrawal on the continued participation of the other Parties in the Project is limited as far as possible. For the Party that has withdrawn, the rights and obligations of this Project Agreement, as set out in Clauses 9, 10, 11 and 12 concerning Confidentiality, Publication, Background Rights and Project Results, that prevailed at the time of withdrawal shall continue to apply.

Vinnova is at liberty to pronounce premature termination on the grounds mentioned in Clause 6. In such a case, or where there is generally a significant change in the conditions for Project implementation, the Parties may agree that this Project Agreement should be terminated. In such a case, *the Institute* and *the University* are entitled to receive reimbursement for the work performed and their verified necessary costs incurred in winding up the Project.

## Clause 17 Assignment

No Party is entitled to assign in full or in part its rights or obligations under this Project Agreement without the written consent of the other Parties.

## Clause 18 Amendments and additions

Amendments of or additions to this Project Agreement must be made in writing and signed by all Parties. Verbal arrangements have no validity.

## Clause 19 Disputes

Disputes on the interpretation or application of this Project Agreement and the resulting legal implications shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. Where the dispute relates to Clause 13 Option to acquire Project Results, *the Companies* shall bear the costs of the arbitration procedure and there shall be no mutual compensation of individual Parties’ costs. The seat of arbitration shall be Stockholm.

A Party’s total compensation liability to all other Parties jointly shall not exceed an amount equal to the budgeted costs in the Project of the Party liable to pay compensation, as set out in the Annex, or one (1) million Swedish kronor for a Party whose budgeted costs are less than one (1) million Swedish kronor.

For a breach of confidentiality, however, a higher compensation amount shall apply: a maximum of two (2) times the maximum budget of any of the Parties in the dispute, as set out in Annex 1. This higher compensation amount shall not however exceed eight (8) million Swedish kronor. No Party shall be liable to another for indirect damages, such as lost revenue, loss of production, costs incurred to no avail or other consequential damages.

The limitations permitted above shall not apply in the event of malicious intent or gross negligence.

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## Annex 1:

Vinnova’s Notification(s) of Decision

## Annex 2:

Project Description sent to Vinnova as part