

TTW PROJECT AGREEMENT

Regarding the Partnership Programme: Digital phenotyping of plant-pathogen interactions

THE PARTIES:

1. NWO Domain Applied and Engineering Sciences, an organization existing and organized under the laws of the Netherlands, with registered office at Van Vollenhovenlaan 661, 3527 JP Utrecht, the Netherlands, hereinafter to be referred to as "TTW", in this matter duly represented by its Director Dr.ir. H.H. Nijhuis; and
2. Rijk Zwaan Breeding B.V., a company existing and organized under the laws of the Netherlands, with registered office at Burgemeester Crezéelaan 40, 2678 KX De Lier, the Netherlands, hereinafter to be referred to as "PARTNER", in this matter duly represented by B.M. Tax;
3. [Name], a research institute existing and organized under the laws of the Netherlands, with registered office at [address], hereinafter to be referred to as "Participant", in this matter duly represented by [name] [Please note If more than one Participant is involved the text needs to be adjusted in this respect],

All parties hereinafter together and individually to be referred as "Parties" respectively "Party".

WHEREAS:

- A. TTW funds excellent, application oriented technology research at Dutch universities and selected institutions with public funding and promotes the application of the results thereof.
- B. Rijk Zwaan, through its Affiliates (as defined hereinafter), is a breeding company, which focuses on the development and sales of high-quality seeds of vegetables and fruit crops for professional growers in food-producing horticulture.
- C. TTW and Rijk Zwaan have concluded a so-called 'Partnership Agreement', on the basis of which they invite Dutch universities and research institutes to submit project proposals in the field of Digital phenotyping of plant-pathogen interaction, with the intention to jointly fund the project proposals that are approved.
- D. The Participant has submitted the project proposal, titled: "[title]", attached as Annex 1 to this Agreement ("Project Proposal"). The Project Proposal has been approved by decision of [date].
- E. Performing the research activities, described in the Project Proposal, will hopefully lead to results, that can be used by the Rijk Zwaan group to develop new vegetable and fruit crop varieties that are more resistant to diseases.
- F. The Parties now wish to lay down in writing the terms and conditions for the execution of the Project Proposal.

HAVE AGREED AS FOLLOWS:

Article 1 – Definitions

As used in this Agreement the following terms, either in plural or in the single form, have the following meaning:

1. 'Agreement' shall mean this agreement, including all annexes and amendments hereto.
2. 'Affiliate' shall mean a company which Controls, is Controlled by or is under the same Control as Rijk Zwaan. '
3. 'APP Results' shall mean all inventions, know how, (biological)materials, methods, processes, products, programmes, algorithms, software, findings and discoveries generated by or on behalf of the Participant within the Project, and any intellectual property rights pertaining thereto.
4. 'Background' shall mean any and all (technical) know-how, information, data, algorithms and (biological) materials, provided by a Party to the other Parties within the scope of the Project, with the exception of the Results.
5. 'Control' shall mean (i) the direct or indirect ownership of more than fifty percent of the capital stock of a company, (ii) the power to exercise more than fifty per cent of the voting rights in a company, and/or (iii) the power to determine the policy of a company in a decisive way.
6. 'Project' shall mean the research project, titled: "[description]", as described in the Project Proposal.
7. 'Project Leader' shall mean an employee of the Participant with ultimate responsibility for the content and realization of the Project.
8. 'Results' shall mean the APP Results and the RZ Results.
9. 'RZ Results' shall mean all inventions, know hows, (biological)materials, methods, processes, products, programmes, algorithms, software, findings and discoveries generated by (an Affiliate of) Rijk Zwaan within the Project, and any intellectual property rights pertaining thereto.
10. 'User Committee' shall mean the user committee as described in Article 2.4. of this Agreement.

Article 2 – Conduct of the Project

1. The Participant shall conduct the Project in accordance with the Project Plan, and the applicable "General Conditions of TTW" as attached in Annex 2. To the best of its knowledge and ability and

taking into account the criteria and standards applicable to scientific and/or technological research. The Participant shall conduct the Project during the term of this Agreement.

2. For the performance of the Project, the Participant shall select and appoint personnel with appropriate qualifications. [name] is appointed as Project Leader. The Participant shall ensure that the Project Leader and the other employees that are involved in the Project comply with the obligations imposed on the Participant and its employees in this Agreement.
3. During the performance of the Project, the Participant will comply with all applicable legislation and will behave in an ethically acceptable manner as may be expected in scientific and/or technological research. The Participant shall inform TTW and Rijk Zwaan immediately if new information emerges which is relevant to (the conduct of) the Project or the utilization of the Results.
4. An User Committee will be formed, consisting of a maximum of two representatives of each Party. The Project Leader chairs the User Committee and a representative of TTW shall act as its secretary. The User Committee shall meet at least twice a year. During such meetings, the User Committee shall discuss the progress of the Project, on the basis of the written progress report, prepared by the Project Leader. The progress report shall be sent at least two weeks before the User Committee meeting to the User Committee members and shall contain amongst others a description of the Results obtained so far. The Project Leader shall use the format, as can be found at the information desk ('infobalie') on the website of TTW. The Parties may only invite representatives of other organizations to join the User Committee as advisory members, upon the prior written consent of all Parties, Such advisory member shall have no voting rights or decisive powers.

The provisions as described in the Dutch version of the General Conditions of TTW dated February 1st, 2017, shall be applicable. In case of any conflicts between the aforementioned document and this Agreement, this Agreement shall prevail. In particular, the following shall apply:

- Article 4 of the General Conditions of TTW shall not be applicable.
- Article 5 and 6 of the General Conditions of TTW shall not be applicable. Instead Article 5 of the Agreement applies.
- Article 7 and 8 of the General Conditions of TTW shall not be applicable. Instead Article 4 of the Agreement applies.

Article 3 – Funding and payment

The Participant is entitled to compensation of the expenses, incurred by the Participant in the execution of the Project. For the performance of the Project, TTW and Rijk Zwaan have budgeted an amount of € [amount]. The conditions on the basis of which the Participant can claim its expenses, are described in the document 'Funding and payment conditions', attached as Annex 2 to this Agreement.

Article 4 - Results

1. APP Results are owned jointly by TTW and the Participant.
2. The Participant shall ensure that both its employees as well as any involved third parties (taking into consideration Article 9.5. of this Agreement) who might be able to claim rights to the APP Results, transfer those rights to the Participant and TTW.
3. Rijk Zwaan shall have the worldwide, irrevocable, royalty-free right to use the APP Results for research and development (breeding) purposes, without the right to sublicense other than to its Affiliates. Rijk Zwaan and its Affiliates shall obtain the full and unencumbered ownership of their own results, generated by using the APP Results, including all (user) rights pertaining thereto.
4. During the term of this Agreement, the rights as described in paragraph 3 above shall be exclusive. After the Agreement has ended, the rights as described in paragraph 3 above shall be non-exclusive, unless Rijk Zwaan informs TTW and the Participant not later than one month after termination or expiration of this Agreement that Rijk Zwaan wishes to extend the period of exclusivity with regard to the aforementioned rights for the term to be negotiated ex. Article 4.5., for the purpose of further development of the Results or applying the Results during its own research and breeding activities on an exclusive basis.

Parties recognize that Results should come to the benefit of the society (whether by further development and application in research activities or by publication) and not be kept for defensive reasons. It is for that reason that Rijk Zwaan shall not extend the period of exclusivity unless it is applying (or has the intent to apply) the APP Results for its own research and development activities.

Rijk Zwaan recognizes the desire of the Participant and TTW to publish the APP Results in scientific journals and to present the APP Results during scientific meetings. Rijk Zwaan is therefore willing, even during the period of exclusivity, to deliberate with the Participant and TTW about the possibilities to file a patent and/or already publish some of the APP Results as mentioned in Article 5.7. The decision whether or not to already publish some of the APP Results during the period of exclusivity will be a joint decision of the Parties. Rijk Zwaan has the right to prevent publication during the period of exclusivity if the intended publication could have a negative effect on the exclusive user rights of Rijk Zwaan or on the filing of a patent application on the RZ Results.

5. In order for Rijk Zwaan to extend the period of exclusivity with regard to the rights as described in paragraph 4 above, Rijk Zwaan shall have to pay an amount of € [amount]. Payment of this amount shall extend the period of exclusivity each time with a period of six months. Upon receipt of the notification by Rijk Zwaan as meant in paragraph 4 above, TTW shall send Rijk Zwaan the first invoice for the aforementioned amount. Rijk Zwaan shall pay this invoice within 30 days of the receipt thereof.

For the following years, TTW shall send the invoice for the semi-annual amounts ultimately 45 days before the end of the period of exclusivity. Rijk Zwaan shall pay this invoice within 30 days of receipt thereof. If the invoice nevertheless remains unpaid after this payment term has expired and this continues to be the case, even after a reminder from TTW with an additional payment term of 14 days, the period of exclusivity ends immediately thereafter.

6. During the (extended) period of exclusivity, TTW and the Participant shall not grant any (user) rights with regard to the APP Results to a third party.
7. After the (extended) period of exclusivity has ended TTW and the Participant shall furthermore be entitled to grant (user) rights with regard to the APP Results to third parties. The Participant authorizes TTW to enter into arrangements with third parties, on its own behalf and on behalf of the Participant, with respect to the granting of non-exclusive rights of use to the APP Results subject to the condition that the third party pays a generally accepted market price for the (user) rights with regard to the use of the APP Results.
8. The Project Leader shall inform TTW and Rijk Zwaan immediately if APP Results are generated which are eligible for protection by a patent. The Project Leader shall then complete an invention disclosure form, the format for which can be found on the website of TTW. Based on said invention disclosure form, the Parties shall individually decide whether they support the possible filing of a patent. In case of a positive decision, the Parties shall agree on the details for the patent application procedure. The patent application shall be filed on behalf of TTW and the Participant.
9. The costs related to the patent application as specified in paragraph 8 above shall be borne equally by the Participant and the licensee(s), with retrospective effect (the Participant and one licensee at year X, at year X+1 the Participant and three licensees: the costs will be split in four, as of year X). The patent application will be evaluated by Parties (costs, commercialization, opportunities).

As long as the user right of Rijk Zwaan, as mentioned in Article 4.3., are exclusive, Rijk Zwaan will pay all costs involved with the filing of the patent, and restitutes all costs paid by TTW and/or the Participant in relation to the patent application. Once the period of exclusivity has ended, the division of costs as described in the paragraph above shall apply, as of the moment that the exclusivity has ended.

10. Rijk Zwaan obtains a worldwide royalty free license on any patent on the APP Results in order to be able to exercise the rights described under paragraph 3 of this Article. The application of a patent shall not affect the rights of Rijk Zwaan and its Affiliates, as described in paragraph 3 above, as long as Rijk Zwaan pays its share in the patent costs. However, if a patent application has been filed despite the advice of Rijk Zwaan not to do so, Rijk Zwaan shall be under no obligation to pay a compensation for the patent costs. The rights of Rijk Zwaan and its Affiliates, as described in paragraph 3 above, shall at the same time not be affected by such a patent (application).

11. During the (extended) period of exclusivity, as specified in paragraph 5 above, TTW and the Participant shall, in addition to paragraph 6 above, not grant any licenses under the patent (application) as meant in paragraph 10 above to third parties.
12. The RZ Results and all (user)rights pertaining thereto shall be owned solely and exclusively by Rijk Zwaan. These rights include amongst others the right to transfer the RZ Results to Affiliates or third parties and to apply or have a Affiliate apply for any patent rights on the RZ Results. TTW and the Participants shall be entitled to use the RZ Results only for the execution of the Project and for no other purposes.
13. Each Party will be solely responsible for the prosecution of its own patent rights generated under this Agreement before any intellectual property authority, to bring an action against (a) third part(y)(ies) for infringement of its own patent rights generated under this Agreement or to defend its own patent rights against any invalidity or unenforceability claims. In no event can a Party be obliged to pursue court proceedings in relation to any patent rights and/or Results generated under this Agreement.

Article 5 – Confidentiality and publication

Confidentiality

1. Each Party undertakes to observe the Background of another Party as well as the Results, in whatever form, as to be information of a confidential nature, unless expressly agreed otherwise in this Agreement. Unless expressly agreed otherwise in this Agreement each Party undertakes to hold the Background of another Party as well as the Results, both during the term of this Agreement as well as for an indefinite period of time thereafter, in strictest confidence and agrees not to disclose or allow the disclosure of the Background of another Party or the Results to any third party, or to make the Background of another Party, the Results, or any part thereof, publicly available. A Party shall treat the Background of another Party as well as the Results with the same degree of care that it applies to its own confidential information (but in any case not less than reasonable care).
2. Each Party undertakes to use the Background of another Party solely for performance of the Project, and not for any other purpose. Each Party shall furthermore undertake to use the Results only in accordance with the terms of this Agreement.
3. The aforementioned obligations and prohibitions are not applicable to the Background, the Results, or any part thereof:
 - a. which was already in the public domain prior to the start of the Project, or which has become part of the public domain thereafter, other than through any unlawful act or negligence of the Party intending to disclose or use the Background or Results; or
 - b. of which the Party, intending to disclose or use the Background or Results, will be able to demonstrate that the Background was, respectively the Results were already in its

- possession at the time of disclosure by the disclosing Party, or in case of the Results at the time the Results were generated; or
- c. of which the Party, intending to disclose or use the Background or Results, will be able to demonstrate that the Background was, respectively the Results were disclosed by a third party, which third party was entitled to such disclosure; or
 - d. of which the Party, intending to disclose or use the Background or Results, will be able to demonstrate that the Background was, respectively the Results were developed independently by said Party, without reliance on the Background disclosed by the disclosing Party, respectively the Results received as part of the Project; or
 - e. which is required to be disclosed by law or by order of the court provided that the Party required to disclose the Background or the Results first provides the disclosing Party, respectively the other Parties with notice of such requirements and of its intent to disclose the Background, respectively the Results; or
 - f. to which disclosure or use the disclosing Party has, or in case of the Results, the other Parties have given its previous written permission, either in this Agreement or otherwise, provided however, with regard to the use that such use is not prohibited due to any intellectual property rights belonging to another Party.
4. The Participant, being the Party who has generated the APP Results, shall not be entitled to make an appeal to the paragraph 3.d above, as an exception to the confidentiality obligation with regards to the APP Results.
 5. Each Party is entitled to give its employees and the employees of its Affiliates access to the Background of another Party as well as the Results, as far as such is necessary for them to fulfil their tasks under this Agreement. Each Party will ensure that its employees and the employees of its Affiliates will hold the Background of another Party as well as the Results in strictest confidence and use the Background of another Party as well as the Results in accordance with the provisions of this Agreement.
 6. The confidentiality obligations and limitations on use as described in paragraph 1 through 5 above shall not apply to Rijk Zwaan with regard to the RZ Results, meaning that Rijk Zwaan shall not be obliged to treat the RZ Results as confidential. Rijk Zwaan may use the RZ Results freely.

Publication procedure

1. The Participant shall be entitled to publish the APP Results, however with due observance of the provisions in this paragraph as well as Article 4.4. above. The Project Leader shall submit a proposed publication to the Project Committee at least sixty days before its intended disclosure. Upon receipt of a proposed publication, the Project Committee shall convene as soon as possible to discuss possible objections to the publication. A reason for objection could be the fact that the publication contains i) information that can or will be used in a future patent or patent application or ii) confidential Background of a Party or (iii) contains RZ Results. As soon as possible after the review by the Project Committee, the secretary of the Project Committee shall inform the Participant whether there are any objections to the publication. If no objections have been raised, the Participant may disclose the publication.

2. Invention

Participant and TTW agree to give good faith consideration to any comments or suggestions which are offered by Rijk Zwaan within the time limits set forth in this paragraph. In addition, at Rijk Zwaan's request. Participant and TTW shall delay any proposed publication disclosing inventions, ideas, or other intellectual property for which Rijk Zwaan intends to obtain patent protection, until such time that Rijk Zwaan will need in order to properly submit a patent application. This period will depend on the nature of the invention, whether additional data need to be obtained and the season during which such can be done. However, Rijk Zwaan shall limit any such delay to a maximum period of nine (9) months.

Know how

In the event, Rijk Zwaan wishes to preserve APP Results as confidential to use the APP Results during its own research and development activities on an exclusive basis, publication will be delayed during the term of exclusivity as meant in Article 4.4. juncto 4.5. Nevertheless, Parties will meet and/or correspond to discuss the possibilities of modification of the intended publication in such a way that the interests of all Parties are met (confidentiality/exclusivity versus publication).

3. If the publication or presentation of Results and/or other details of the Project would necessitate the simultaneous disclosure of confidential Background of Rijk Zwaan, Participant and TTW shall provide Rijk Zwaan with a written request for permission to disclose said information. The confidential Background of Rijk Zwaan shall not be disclosed unless Rijk Zwaan has given its prior written permission thereto.
4. The Participant shall ensure that every scientific publication contains a declaration to indicate that the APP Results were achieved with financial support from TTW. The text shall be provided by TTW. Where possible, the publications, including scientific posters and prototypes, should also contain the TTW logo. The Participant shall furthermore consult with Rijk Zwaan whether Rijk Zwaan wants its support to the Project to be mentioned as well in the publication.
5. For the purposes of reporting to the government and the society, TTW may publish non-enabling summaries of the Project following consultation with the Project Leader. TTW shall ensure that such summaries shall not affect the possibility of applying for patent rights with regard to the Results or disclose any Background or RZ Results.

Article 6 – Liability and warranties

1. Each Party is responsible for its own actions and omissions under this Agreement.
2. Rijk Zwaan agrees to indemnify and hold harmless TTW and the Participant for any claims and damages arising out of the execution of this Agreement but only in proportion to and to the extent

such claims or damages are caused by or result from the negligent acts or omissions or intentional misconduct of Rijk Zwaan.

3. The Participant agrees to indemnify and hold harmless TTW and Rijk Zwaan for any claims and damages arising out of the execution of this Agreement but only in proportion to and to the extent such claims or damages are caused by or result from the negligent acts or omissions or intentional misconduct of the Participant.
4. Notwithstanding Article 2.1. above, the Participant makes no representation and extends no warranty of any kind, either express or implied, with regard to the effectiveness, merchantability or fitness for a particular purpose of the APP Results. The same applies for Rijk Zwaan with regard to the RZ Results.

Article 7 – Term and termination

1. This Agreement shall enter into force on [date] and shall remain in full force and effect for a period of [number] years.
2. After this Agreement has ended, the Articles 4., 5., 6., 7.2., 8. and 9. shall remain in full force and effect.
3. With regard to a Party:
 - i. has not, not timely or not properly fulfilled its essential obligations under the Agreement and, after having been summoned thereto in writing, is still in default by not having properly fulfilled its concerning obligations within a reasonable term mentioned in the summons, without prejudice to the right of the other Party to claim the losses it has suffered as a result of the default and/or termination of the Agreement;
 - ii. In respect of which a suspension of payment is granted, bankruptcy is granted, an administration order is filed, a receiver is appointed in respect of its assets or a general assignment for the benefit of creditors is made; or
 - iii. that goes into liquidation or that permanently discontinues its business,

the other Parties together can terminate this Agreement with immediate effect, without judicial intervention or any further summons being required, by giving notice by registered post with return receipt. The other Parties shall discuss if they wish to continue the Agreement and on what conditions. Should the participation of the Participant be terminated and the other Parties decide that they nevertheless want to continue the Project, the Participant will, at the request of TTW and Rijk Zwaan, cooperate to the best of its ability in transferring the Project to the selected new research institute.

4. TTW and Rijk Zwaan shall furthermore be jointly entitled to terminate the Agreement prematurely, without judicial intervention or any further summons being required, by giving notice by registered post with return receipt,

- i. if a negative decision has been given on a continuation application (as mentioned in the General Conditions); or
- ii. if the Project Leader is no longer employed by the Participant.

In the latter case, the Participant will, at the request of TTW and Rijk Zwaan, cooperate to the best of its ability in transferring the Project to the selected new research institute.

5. When the participation of a Party has been terminated as meant in paragraph 3 or 4 above, paragraph 2 above shall apply, with the understanding that said Party shall not acquire any rights with regard to the Results, generated after the termination of its participation.

Article 8 - Governing law and jurisdiction

1. This Agreement shall be governed by the laws of The Netherlands.
2. If any dispute should arise between any of the Parties, such Parties shall use reasonable effort to settle such dispute before pursuing any remedy they may have at law.
3. Any dispute, resulting from this Agreement, or further agreements resulting there from which do not stipulate otherwise, which has not been solved by the Parties in accordance with the previous provision, shall be submitted to the competent court of law in Utrecht, the Netherlands.

Article 9 - Miscellaneous

1. None of the Parties shall be entitled to transfer, by means of assignment, sale or otherwise, or to encumber any and all of the rights granted under and obligations deriving from this Agreement, either in whole or in part, to a third party without the prior written consent of the other Parties.
2. Unless explicitly agreed otherwise in writing, none of the Parties is entitled to act or make legally binding declarations on behalf of any of the other Parties. Nothing in this Agreement shall be deemed to constitute a joint venture, agency or any other kind of formal business grouping or entity between the Parties.
3. Any amendments or additions made to the Agreement shall only be valid and binding between the Parties if made in writing and executed by all Parties.
4. This Agreement contains 2 Annexes which form an integral part of this Agreement:
Annex 1 Project Proposal "[title]"
Annex 2 General Conditions TTW

This Agreement will be considered as a specific condition as mentioned in the Dutch version of the General Conditions of TTW dated February 1st, 2016. In case of any conflicts between these General Conditions and this Agreement, this Agreement shall prevail. In particular, the following shall apply:

- Article 2.6. of the General Conditions shall not apply.
 - Article 4.1. of the General Conditions shall not apply. Instead Article 2.4. of the agreement applies.
 - Part 3 of the General Conditions shall not apply. Instead Article 4 and 5 of the agreement are applicable.
 - Article 15 of the General Conditions shall not be applicable. Instead Article 7.3. and 7.4. of the Agreement shall be applicable.
5. The Participant shall not be entitled to have (part of) the Project carried out by a third party, without the prior written consent of the other Parties. Nor shall the Participant use (plant)materials or information from a third party, of which it knows or should reasonably know that such use could limit the rights of the other Parties as described in this Agreement, unless the Participant has obtained prior written approval thereto from the other Parties.
 6. The Participant shall inform the other Parties immediately if there are indications during the term of this Agreement that the Results are covered by a patent or patent application of the Participant or a third party.
 7. In the event that during the course of this Agreement the Parties agree to use (biological) material from Rijk Zwaan, Rijk Zwaan is entitled to ask for the signing of a material transfer agreement prior to the exchange of said material, which material transfer agreement has to be in accordance with this Agreement.
 8. None of the Parties grants any rights and/or licenses to the other Parties, either explicit or implicit, nor waives any of its existing rights, unless explicitly mentioned in this Agreement.

As agreed upon and signed in [number]fold,

NWO Domain Applied and Engineering Sciences

Utrecht,

.....
Dr. Ir. H.H. Nijhuis,
Director

Rijk Zwaan Breeding B.V.

De Lier,

.....
B.M. Tax

[Name]

[Place],

.....
[name],
[Title]