

Standard Terms for TECH-ENG- HEALTH (FIK) (the 'Standard Terms')

These Standard Terms shall be applicable for public non-commercial research projects (FIK) conducted in collaboration between departments at AAU under the Technical Faculty of IT and Design (TECH), the Faculty of Engineering and Science (ENG) and the Faculty of Medicine (HEALTH) and only one external party.

1. Basis for the agreement

1.1 The content of the Research Project, the timetable and the economic terms shall be determined in a written agreement (the 'Collaborative Agreement') with accessory appendices.

1.2 In the event that the Research Project is based on a grant issued by a Third Party, and the grant conditions are mandatory for such a grant, these grant conditions shall be regarded as part of the contractual basis and take precedence over the Standard Terms.

2. Definitions

'Act on Inventions' shall mean Danish Act No.347 of 2 June 1999 on Inventions at Public Research Institutions, including later amendments.

'Act on Copyright' shall mean Danish Act No. 202 of 27 February 2010 on copyright, including later amendments.

'Agreement' shall mean the Collaborative Agreement with accessory appendices, including the Standard Terms read as one agreement.

'Background Information' shall mean technology, know-how, materials and information, including inventions, improvements, discoveries, Software, etc., whether patentable, registerable or protected by copyright or not, that are generated or controlled by the Parties before the beginning of the Research Project.

'Budget' shall mean the budget which is described in section 3 of the Collaborative Agreement.

'Collaborative Agreement' shall mean the collaborative agreement signed by the Parties.

'Company' shall mean the company identified in the introduction of the Collaborative Agreement.

'Confidential Information' shall mean information disclosed between the Parties as part of the Research Project and is clearly marked 'confidential', or if disclosed orally, is written down by the Controlling Party, marked 'confidential' and sent to the receiving Party within fourteen (14) days after the time of disclosure, together with information that is obviously of a confidential nature.

'Controlling Party' shall mean the Party that owns or controls the Confidential Information.

'Field of Use' shall mean the Company's field of business as specified in Appendix 4 to the Agreement. The Field of Use shall never include more fields of business than the Company can document when entering into the Agreement. In the event that the Company has not completed Appendix 4 when signing the Agreement, AAU can, at any time, complete the Field of Use on the basis of the Company's field of business at the time of signature.

'Foreground Information' shall mean technology, know-how, materials and information, including inventions, improvements, discoveries, Software, etc., whether patentable, registerable or protected by copyright or not, that are generated as part of the Research Project.

'Party and Parties' shall mean AAU and the Company individually and collectively.

'Patentable Foreground Information' shall mean Foreground Information that may be patented or registered as a utility

model in accordance with Danish legislation and thus for AAU falls within the scope of the Act on Inventions.

'Purpose' shall mean the purpose that is described in section 2.1 of the Collaborative Agreement.

'Research Project' shall mean the project that is described in section 2.2 of the Collaborative Agreement.

'Software' shall mean sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression, and which enjoys copyright protection in accordance with the Act on Copyright.

'Third Party' shall mean all legal and natural persons, except for the Parties. Third Party comprises e.g. authorities or companies that are affiliated with the Company.

'Aalborg University (AAU)' shall mean Aalborg University, VAT No. 29102384, P.O. Box 159, 9100 Aalborg, Denmark, with the department, the research group and the people participating in the Research Project on behalf of AAU, cf. the Collaborative Agreement.

3. Performance of the Research Project

3.1 The Research Project shall be performed in accordance with the Purpose. The Parties are obligated to promote the Research Project diligently. The Research Project, including the activities and the distribution thereof, the time schedule and the Budget cannot be changed without prior explicit written agreement between the Parties.

3.2 During the term of the Research Project, the Parties grant each other free access to use their respective Foreground Information for the purpose of completing the Project. The same applies to relevant Background Information to the extent that the Parties are at liberty to grant access rights to Background Information.

3.3 Each Party shall be responsible for ensuring that its performance of activities hereunder is in compliance with any local laws and regulations.

4. Budget, expenses, payments and financial reporting

4.1 Each Party covers the expenses that such Party may incur beyond the limits set in the Budget.

4.2 Payment of the financial contribution, including payments in accordance with the Budget, shall be made pursuant to invoice thirty (30) days after demand, unless the due date has already been set. Late payment is subject to default interest in accordance with the Danish Interest Rate Act (Act no. 459 of 13/05/2014 or later amended consolidation acts).

4.3 The Company is responsible for paying VAT, if its payment of financial contribution is subject to VAT.

4.4 In the event that the Research Project is based on a grant from a Third Party as referred to in section 1.2 of the Standard Terms, and it is stipulated in the grant conditions that financial reporting shall be submitted to the Third Party, such financial reporting shall be submitted in accordance with the guidelines below, unless otherwise is set forth in the grant conditions:

4.4.1 Each Party shall draw up accounts based on the expenses such Party has incurred in the Research Project and in accordance with the grant conditions. The accounts of AAU shall be signed by AAU's chief financial officer as the head of the institution's accounting division. In the event that the Company



is a public authority or institution that is subject to the Danish National Financial Guidelines, the Company's accounts shall be signed by the Company's head of the accounting division. In the event that the Company is not subject to the Danish National Financial Guidelines, the accounts shall be accompanied with an auditor's statement from a state authorised public accountant.

5. Specifically on PhD students

5.1 In the event that the Research Project involves a PhD student, the Research Project shall be performed in accordance with the Danish Ministerial Order on the PhD Programme at the Universities and Certain Higher Artistic Educational Institutions in force at the time in question (Ministerial Order No. 1039 of 27 August 2013 or later amended consolidation acts).

5.2 Enrolment of a PhD-student at AAU is subject to the condition that the candidate is found to have the required educational and academic qualifications, and that a pre-approval of the candidate has been issued by the PhD school.

6. Publication

6.1 The Parties shall enjoy the unrestricted right to publish their own Foreground Information for example in scientific works and journals and pursuant to the traditions of the area of research in question. Publication of the other Party's Foreground Information requires that Party's consent. Foreground Information jointly owned by the Parties can be published individually by any of the Parties notwithstanding that the other Party may not wish to participate in the publication.

6.2 The Parties may agree on a code of practice for publications in the Collaborative Agreement.

6.3 In the event that the Agreement involves PhD students the Company agrees and fully accepts that each PhD student is subject to an obligation to disseminate with regards to Foreground Information, and that the PhD thesis shall be subject to a public defence, cf. the Danish Ministerial Order on the PhD Programme at the Universities and Certain Higher Artistic Educational Institutions.

6.4 The Parties can decide that the defence be postponed if necessary for the protection of intellectual property rights. Postponement of a PhD student's defense beyond 3 months from the submission of the PhD thesis shall, however, require consent of the PhD student and AAU; cf. the Danish Ministerial Order on the PhD Programme at the Universities and Certain Higher Artistic Educational Institutions. If the PhD student's defence is postponed upon request of the Company, the Company shall pay the PhD student a reasonable documentable salary which the PhD Student could have earned during the period up to the date of the defence, provided the salary cost has not already been included in the Budget.

7. Publicity in relation to the Research Project

7.1 To the extent that AAU is obliged to publish information about the private financial contribution to AAU's research the Company accepts that the required information is published in accordance with the relevant legal framework.

7.2 The Company may not without the prior written consent of AAU either directly or indirectly refer to AAU or employees of AAU in connection with any marketing activities, or generally exploit the name of AAU.

8. Confidentiality

8.1 Confidential Information shall be kept confidential by the receiving Party, and may not be disclosed to any Third Party without the prior written consent of the Controlling Party. Each Party shall endeavour to keep to a minimum the amount of information that is disclosed to the other upon which restrictions are imposed.

8.2 Confidential Information does not comprise information, that:

- at the time of receipt was published or in any other way made available to the public,

- after the time of receipt has been published or made available to the public other than by neglect of this obligation of confidentiality,
- already at the time of receipt was in the rightful possession of the receiving Party without any restrictions,
- rightfully has been disclosed by a Third Party, or
- is generated by the receiving Party independently of the Research Project.

8.3 This obligation of confidentiality shall cease no later than three (3) years from the time of receipt.

8.4 The Parties fully accept that Confidential Information may be disclosed to a granting Third Party to the extent necessary. In addition, the Agreement does not prevent the receiving Party from disclosing Confidential Information to the extent that the receiving Party is required to do so according to statute, judicial order or binding legislation act. Confidential Information covered by this section 8.4 shall still be considered Confidential Information to the extent that it does not become public as a result hereof. The receiving Party shall as soon as possible notify the Controlling Party of disclosure in accordance with this section to enable the Controlling Party to protect its interest to the maximum feasible extent.

9. Rights and title to Background Information

9.1 All rights and title to Background Information shall remain with the Party that owns or controls such Background Information at the time of entering into this Agreement.

9.2 Background Information shall be made available for the performance of the Research Project on a free of charge, non-exclusive basis. If Background Information is not publicly available or its use is protected by law it may only be used in accordance with the Purpose of the Research Project, cf. section 3.2 of the Standard Terms.

9.3 To the extent that Background Information is considered Confidential Information, such Background Information shall be treated in accordance with section 8 of the Standard Terms.

9.4 In the event that Foreground Information is based either directly or indirectly on Background Information of the other Party, and such Foreground Information cannot be exploited without access to the other Party's Background Information, e.g. in the event that the Background Information constitutes an integrated part of such Foreground Information, the Parties shall negotiate in good faith to reach a license agreement for the necessary Background Information.

10. Rights and title to Foreground Information

10.1 Ownership

10.1.1 Rights and title to Foreground Information shall be vested solely in the Party who has generated such Foreground Information.

10.1.2 Rights and title to Foreground Information that has been generated jointly by the Parties shall be vested jointly in the Parties with shares equivalent to each Party's intellectual contribution.

10.2 Commercial exploitation of Patentable Foreground Information

10.2.1 The Parties are obliged to inform each other within a reasonable time if Patentable Foreground Information has been generated. The Company and AAU shall individually or together always report Patentable Foreground Information to the Technology Transfer Office at AAU at the following address: patent@adm.aau.dk.

10.2.2 In the event that AAU generates Patentable Foreground Information and chooses to apply for a patent or registration as a utility model, the Company shall be entitled to obtain a non-exclusive license to commercially exploit such Patentable Foreground Information within its Field of Use, on ordinary market terms.

10.2.3 In the event that AAU generates Patentable Foreground Information and chooses not to apply for a patent or registration as a utility model, the Company shall be offered



the option to obtain full ownership of such Patentable Foreground Information, on ordinary market terms.

10.2.4 In the event that the Parties generate Patentable Foreground Information jointly, the Company shall be offered the option to obtain full ownership of AAU's ideal share thereof, on ordinary market terms.

10.2.5 The Company shall notify AAU whether the Company wants to negotiate the terms for exploitation rights according to section 10.2.2-10.2.4, within one (1) month from the time the Company received notification that Patentable Foreground Information was generated. In setting the terms for the license or the assignment, a fair and reasonable consideration of the Company's contribution to the Research Project shall be made. If the Parties cannot reach an agreement on the price terms in section 10.2.3 and 10.2.4 within an additional two (2) months negotiation period, AAU shall be entitled to enter into negotiations with a Third Party on terms not more favorable to the Third Party than the terms offered to the Company.

10.3 Non-commercial use of Patentable Foreground Information

10.3.1 AAU reserves the right to use its own Patentable Foreground Information, including Patentable Foreground Information vested in the Parties jointly and Patentable Foreground Information assigned to the Company, for academic purposes, including for educational purposes as well as in connection with collaboration with a Third Party, provided, however, always that the Third Party shall never attain direct access to the Patentable Foreground Information belonging to the Company.

10.3.2 Furthermore AAU reserves the right to publish its own Patentable Foreground Information, including Patentable Foreground Information vested in the Parties jointly and Patentable Foreground Information that has been assigned to the Company in accordance with any agreed publication procedures and with respect for the obligation of confidentiality in section 8.

10.4 Software

10.4.1 The Parties are obliged to inform each other within a reasonable time if Software has been generated.

10.4.2 In the event that AAU generates Software as part of the Research Project, the Company shall be entitled to obtain a non-exclusive license to commercially exploit such Software within its Field of Use, on ordinary market terms. The Parties shall negotiate in further detail the terms and conditions of the license. The Company shall within one (1) month from the time the Company received notification that Software was generated notify AAU whether the Company wants to negotiate the terms of such license. In setting the terms and conditions for the license, a fair and reasonable consideration of the Company's contribution to the Research Project shall be made.

10.4.3 In the event that the Parties jointly generate Software, the Parties shall enter into an agreement concerning exploitation rights. The Parties shall agree on the terms within a period of six (6) months from the time Software was generated. If the Parties do not reach an agreement by the deadline, each Party shall be entitled to freely exploit the Software, commercially and non-commercially, provided that the non-exploiting Party is given fair and reasonable compensation. Notwithstanding the above, the Parties shall at any time be entitled to exploit jointly owned Software for non-commercial research and educational purposes.

10.5 Other exploitation rights

10.5.1 The Parties shall have a non-exclusive, perpetual, worldwide right to utilise, free of charge, any Foreground Information that cannot enjoy protection by the Danish Patent Act or other specific legislation on intellectual property rights for commercial and non-commercial purposes.

10.6 Reservations

10.6.1 Options and exploitations rights granted in section 10 are subject to the limitations set forth by mandatory law,

including but not limited to data protection regulation and export control regulation.

11. Partnership and restriction of competition

11.1 The Agreement does not in any way create a partnership, joint venture, agent relationship, relationship based on power of attorney or a legal person. The Parties cannot bring each other into contractual relations with a Third Party.

11.2 The Parties do not in any way assume restrictions as to competition towards each other.

12. Duration and termination

12.1 The Agreement shall enter into force by the Parties' signature to the Collaborative Agreement with effect from the beginning of the Research Project and shall expire when the Research Project expires as stated in section 4 of the Collaborative Agreement.

12.2 The Agreement may be terminated by both Parties at a three (3)-month notice to the end of a month. The validity of the termination is subject to the condition that it is submitted in writing and signed by an authorized person of the terminating Party, which for AAU applies to persons covered by section 18 of the Standard Terms. During the notice period, the terminating Party shall either loyally continue its contribution to the Research Project and activities hereunder or pay to the other Party in cash an amount corresponding to the Party's contribution in accordance with the Research Project. The Party who terminates the Agreement shall pay any additional expenses incurred by the other Party as a direct consequence of the termination and which the other Party has no possibility of preventing. The Parties have no other claims against each other as a result of the termination.

12.3 AAU shall be entitled to terminate the Agreement at a one (1)-month notice to the end of a month in the event that the employee(s) of AAU allocated to the Research Project, due to long-term illness or the like, become(s) unable to perform his/her/their tasks connected to the Research Project or in the event that his/her/their employment(s) terminate(s), no matter the reason. The right to terminate the Agreement is subject to the condition that AAU is not able to allocate other competent employees to the Research Project.

12.4 In the event that the Agreement involves a PhD student the Agreement may only be terminated by the Company if the Company pays the full amount in accordance with the Budget, cf. section 3 of the Collaborative Agreement. Where the Purpose of the Research Project solely concerns performance of a co-financed PhD study, the Agreement shall expire automatically if the study is finally cut short no matter the reason.

12.5 Notwithstanding the termination of the Agreement, the sections that explicitly given their content are expected to survive the termination of the Agreement shall remain in full force and effect, including but not limited to relevant parts of sections 6-18 of the Standard Terms. In the event that the Company terminates the Agreement or is in material breach thereof, the Company shall, however, lose any option to Foreground Information granted in accordance with section 10 of the Standard Terms.

13. Breach of Agreement

13.1 In the event that a Party breaches its obligations according to the Agreement, the Party in breach of its obligations is required to remedy such breach within thirty (30) calendar days from the date of receipt of written demand. If the breach is substantial and is not remedied within that period, or if the breach is not capable of being remedied within that period, the Agreement may be terminated with immediate effect.

13.2 Examples of a substantial material breach are overdue payment of financial contributions and the fact that the Company becomes subject to bankruptcy or insolvency, including making assignments for the benefit of creditors.



14. Liability

14.1 The Parties shall be liable in accordance with the ordinary rules of liability in Danish law. The Parties shall however not be held liable for any indirect losses, consequential damages, operating losses, lost earnings or other economic consequential losses, including claims of a Third Party, unless caused by an intentional act or omission, or by breach of the confidentiality obligations in section 8. Except in the case of gross negligence or intentional acts or omissions, a Party's collective liability shall in all respects be limited to an amount of DKK 500,000 per Party, cf. however section 14.3 of the Standard Terms.

14.2 In respect of any of the Research Project, no warranty or representation of any kind is made, given or implied.

Consequently, a Party shall not be liable in the event that:

- the Research Project does not lead to the expected or desired results, that the Foreground Information cannot be used or that the time schedule is exceeded,
- Foreground Information used by the other Party causes infringement of Third Party rights,
- Foreground Information in the form of Software is not based entirely or partly on open source Software.

14.3 AAU shall not assume any liability with regards to the Company's exploitation of Foreground Information solely or partly generated by AAU. Thus, AAU shall not be held liable in the event of product liability or infringement of the rights of any Third Party caused by the Company's commercial exploitation. Furthermore the Company shall indemnify AAU against any claims from a Third Party resulting from such exploitation. Such indemnity is not limited by the liability cap in section 14.1.

15. Force Majeure

15.1 None of the Parties are responsible for non-fulfilment of their obligations in accordance with this Agreement where fulfilment is prevented by extraordinary circumstances which the Party in question has no control over and which the Party neither could nor should properly have foreseen when signing the Agreement and neither should have avoided nor overcome. These extraordinary circumstances include for example changes to public regulation.

15.2 If the above-mentioned force majeure event lasts for more than sixty (60) days, the other Party is entitled to terminate the Agreement with immediate effect.

16. Transfer of the Agreement to a Third Party

16.1 Rights and obligations in accordance with this Agreement cannot be transferred to a Third Party without the written consent of the other Party.

16.2 AAU shall immediately be notified of any changes in the control of the Company. In the event that AAU assesses that it will be of ethical or moral concern to uphold the Agreement, AAU shall be entitled to terminate the Agreement with immediate effect. In the event of termination on such grounds the Parties shall have no claims against each other as a result of the termination.

17. Choice of Law and Venue

17.1 The Agreement shall be governed by Danish Law, however with the exception of international private law and rules concerning choice of law, to the extent that such rules would lead to the application of another country's law.

17.2 Any dispute between the Parties arising from this Agreement, including interpretation and application of the Agreement, that cannot be settled amicably by the Parties shall be tried by the Court of Aalborg as the court of first instance. Disputes concerning intellectual property rights may however in accordance with the rules in the Danish Administration of Justice Act be tried by the Maritime and Commercial High Court of Denmark.

18. Authority to sign

18.1 This Agreement shall only be valid if it is signed by a person authorized to legally bind AAU. Such authorized persons are Rector, Pro-rectors and Head of Grants & Contracts.