

Research and Development Agreement

between

Name

represented by

Address

- hereinafter referred to as the **Client**-

and the

State of Bavaria,
represented by the University of Bayreuth,
in turn represented by the President
95440 Bayreuth

for

Chair/ Institute

Professor

- hereinafter referred to as the **University** -

the following agreement is concluded:

Preamble

§ 1 Task definition and implementation

(1) The University shall carry out research and development work for the Client.

subject matter of the agreement:

In detail, the following tasks are to be carried out in the period _____ :

(2) The University undertakes to involve only those employees, members and other persons in the performance of the work who are bound to confidentiality in accordance with the provisions of this contract.

(3) The research and development work shall be carried out in close coordination with the Client. After completion of the work, the Client shall receive a final report within 8 (eight) weeks, which shall reflect the result of the work in a comprehensible manner.

(4) The University shall be entitled to award subcontracts with the prior written consent of the Client. In doing so, the University shall ensure that it is able to meet its obligations under this contract, in particular with regard to §§ 5ff.

§ 2 Remuneration regulation

(1) For the performance of the research and development work referred to in § 1, the Client shall pay remuneration in the amount of _____ (in words: _____ euros) plus statutory value added tax.

(2) The remuneration referred to in paragraph 1 shall be provided by the Client as follows:

_____ (in words _____ euros) plus the statutory value added tax after signing the contract,

_____ (in words _____ euros) plus the statutory value added tax at _____ ,

_____ (in words _____ euros) plus the statutory value added tax on the _____

Payment shall be made against invoice to an account to be designated by the University.

(3) The Client shall also reimburse the costs incurred (including board and lodging) for additional travel in connection with the present research and development project at the request or with the written consent of the Client upon presentation of a corresponding invoice by the University.

(4) For additional research and development work by the University not agreed in this contract, which is based on an express request by the Client, separate remuneration shall be paid by the Client.

(5) The remuneration regulations according to §§ 4ff. shall remain unaffected.

(6) The University shall endeavour to make use of the possibilities offered by Art. 57 of the Bavarian Salary Act and to reward the achievements of its professors by means of an appropriate research allowance. The Client hereby declares its consent that, subject to the conditions of Art. 57 Bavarian Salary Act, a research allowance amounting to _____ / _____ % of the remuneration sum pursuant to § 2 para 1 shall be granted to the executing professor from the above-mentioned project funds for the duration of the contract.

***The University of Bayreuth is not liable for inaccuracies or mistakes in this English translation.
In case of doubt, the German originals are to be used in a court of law.***

§ 3 Confidentiality, publications

(1) Each contracting party shall treat the confidential information (in particular knowledge, documents, tasks and business transactions) of the disclosing contracting party transmitted to it on the basis of this contract as confidential, shall not make it accessible to any third party and shall use it exclusively for the purpose of implementing this agreement. Confidential information is any information which is expressly marked as confidential or whose need for secrecy arises from the nature of the matter. These obligations shall end after a period of 3 (three) years from the termination of this contract.

(2) The confidentiality obligations shall not apply if and to the extent that the receiving party can demonstrate that the information concerned

- is generally known or becomes generally known through no fault of the receiving contracting party, or
- has been or is lawfully obtained from a third party, or
- already exists at the receiving contracting party or is being developed independently of the research and development work pursuant to § 1, or
- has been disclosed after the disclosing party waived the confidentiality obligation in writing, or
- has been properly disclosed pursuant to official or court order.

(3) The Client acknowledges the fundamental obligation of the University to publish the nature, subject and results of the research and development work carried out at the University. Publications during the term of this contract shall be agreed with the Client in advance. The Client shall be entitled to withhold its consent to publication until the filing of an application for an industrial property right, but for no longer than 3 (three) months from the submission of the planned publication. If the intended publication contains information of the Client which is subject to secrecy, the Client may demand the deletion of this part from the publication. If the Client does not object to a publication (original text) submitted to him within four weeks after receipt of the complete documents or if he does not request deletion of confidential information within this period, his consent shall be deemed granted.

(4) Insofar as examination procedures (in particular diploma, bachelor's, master's, doctoral, *Habilitation* processes) are affected by the work in the project, the contracting agency shall take due account of the legal obligations and legitimate interests of those involved in the examination process.

(5) The above provisions shall replace all non-disclosure agreements already concluded between the parties relating to the subject matter of the contract pursuant to § 1 para 1.

§ 4 Existing industrial property rights and industrial property rights of third parties

(1) The contracting parties shall each remain the owner of the knowledge, including the know-how, the copyrights, the computer programmes, the inventions made and the industrial property rights applied for or granted thereon (collectively referred to as the Existing Industrial Property Rights), created or arising by them prior to the commencement of or outside the territory of the subject matter of the contract pursuant to § 1 para 1.

(2) The contracting parties shall inform each other prior to commencement and on an ongoing basis to the best of their knowledge and belief about the presence of existing industrial property rights in the field of the subject matter of the contract, insofar as they are necessary for the performance of the work or for the use of the results of the work, and about third party rights to such existing industrial property rights. Furthermore, they shall inform themselves to the best of their knowledge and belief of any third-party property rights of which they are aware. In the event that third party

property rights become known, the University and the Client shall agree on the further course of action.

(3) Insofar as existing property rights of the contracting parties are necessary for the performance of the work and no third party rights conflict, the contracting parties shall grant each other a free and non-exclusive right of use limited to the duration and purpose of the work.

(4) Insofar as existing property rights of the contracting parties are required for the use of the work results and no third party rights conflict, the contracting parties shall grant each other an option to conclude a licence agreement at standard market conditions. The term of the free option shall be limited to six months after the end of the contract.

§ 5 Rights to the results of the work

(1) The results of the work, with the exception of results eligible for protection under intellectual property rights within the meaning of § 6 and with the exception of results protected by copyright within the meaning of § 2, shall pass to the Client upon full payment of the agreed remuneration pursuant to § 2 para 1, subject to the rights of the University pursuant to § 8.

(2) If the results, insofar as the University is entitled to them, are protected by copyrights, the Client shall be entitled to the non-exclusive right, transferable by the Client and unlimited in time and place, to use them in unchanged or changed form in any way it wishes (in particular to reproduce them, have them reproduced and process them) and to grant third parties rights of use for all types of use, subject to the rights of the University under § 8.

§ 6 Inventions, industrial property rights

(1) The University shall immediately notify the contracting authority of an invention reported to it or of an invention share reported to it by its employees within the scope of the research and development work pursuant to § 1.

At the request of the Client, the University shall claim the invention and transfer it to the Client, provided and to the extent that the Client has declared this request in writing to the University within two months of receipt of the notification pursuant to sentence 1. In this case, the Client shall bear the costs for application, maintenance and defence of the property right.

If, on the other hand, the Client does not make a declaration or makes a negative declaration within the period specified in sentence 2, the University may freely dispose of the invention.

(2) The contracting authority shall pay the University for the transfer of the rights referred to in subsection 1 a remuneration for each invention in the amount of _____ (in words _____ euros) plus the statutory value added tax in addition to the remuneration pursuant to § 2 para 1. Payment shall be due within one month after invoicing.

§ 7 Registration and use of property rights

(1) The Client shall be entitled to file applications for IP rights in its own name and for its own account and, in particular, to decide at its own discretion for which countries applications for IP rights are to be filed.

(2) Subject to the rights of the University under § 8, the Client shall be entitled to make unrestricted use of the IPR applications.

§ 8 Rights of the University / higher education institution

Notwithstanding the provisions in § 5 to § 7, the University and its employees concerned shall in any case retain a non-exclusive right of use, unlimited in time and place, to the results and rights pursuant to § 5 to § 7 for their own purposes in research and teaching.

§ 9 Warranty and liability

(1) The University shall carry out the agreed research work with its customary care and on the basis of the state of the art in science and technology known to it. No guarantee is given; in particular, there is no guarantee that the results of the research and development agreement will be economically and technically exploitable and free of third-party property rights. Insofar as conflicting property rights of third parties become known, the University shall inform the Client thereof without delay.

(2) The contracting parties, their legal representatives and vicarious agents shall be liable in the event of a breach of material contractual obligations, i.e. obligations which make the proper performance of the contract possible in the first place and on the observance of which the other contracting party may regularly rely, for intent and any negligence, but in the event of simple negligence limited to the foreseeable damage typical for the contract.

(3) In all other respects, the contracting parties, their legal representatives and vicarious agents shall be liable to each other only for damage caused by intent or gross negligence. In the event of gross negligence, liability shall be limited to the amount of the order sum.

(4) Liability pursuant to para 3 for indirect and consequential damages shall be excluded in the event of gross negligence.

(5) The above limitations or exclusions of liability in paragraphs 2 to 4 shall not apply in the event of injury to life, limb or health or in the event of claims under the Product Liability Act.

§ 10 Early termination

Each contracting party shall be entitled to terminate this contract for good cause with immediate effect - in whole or in part - in writing. In the event of early termination of the research and development contract, no further research and development work shall be carried out by the University from the time of termination. The University shall hand over the results available up to that point to the Client. The Client shall reimburse the University for any expenses already incurred up to the time of early termination. Furthermore, the Client shall reimburse the University for any expenses incurred in connection with the research and development contract and for the fulfilment of legal obligations beyond the point in time of the early termination of the research and development agreement, unless the University fails to ensure the timely termination of the legal obligations in breach of duty. The expenses to be reimbursed to the University in the event of premature termination may not exceed the total funds budgeted for the implementation of the project pursuant to § 2 para 1.

§ 11 Written form requirement, severability clause

Amendments and supplements as well as ancillary agreements must be made in writing. This formal requirement can only be waived in writing. Should any provision of this agreement be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall replace the invalid provision by a provision corresponding to its sense and purpose.

***The University of Bayreuth is not liable for inaccuracies or mistakes in this English translation.
In case of doubt, the German originals are to be used in a court of law.***

§ 12 Entry into force, term

This agreement shall enter into force upon signature by both parties and shall terminate on the date specified in § 1 para 1.

§ 13 Applicable law/court of jurisdiction

This contract shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the conflict of laws rules of private international law. The exclusive place of jurisdiction is Bayreuth.

Bayreuth, [date:] _____

[place:] _____ [date:] _____

University of Bayreuth
- Provost-

Provost's signature

Client's signature

Signature of the chair/ institute

Person responsible for the project:
