**Cooperation Agreement**

The following research institutions and industrial companies

**XXX**

XXX

**XXX**

XXX

- hereinafter: Partners -

have concluded the following agreement for the joint execution of the joint research project:

**XXX**

The parties intend to jointly conduct the joint research project funded by the Federal Ministry of Education and Research (BMBF). For this purpose each of the partners has submitted an application for its own funding. XXX undertakes the coordination of the project. XXX is the Project Management Agency for this project.

**1** **Subject of the contract**

 The subject of the contract is the regulation of cooperation within the joint research project

 **XXX**.

 The partners undertake to conduct the mutually-agreed tasks and subtasks. The nature and scope of the agreed cooperation arise from the project description and the funding agreements received by respective partners. The project description, insofar as it relates to the nature, scope and time schedule for the partners’ project work, is attached as Annex A and is an integral part of this contract.
Each partner is solely responsible for the execution of its work.

**2** **Term**

 The joint research project commences on XXX and ends when the awarding authority has accepted the joint final report, provided that the project has not been prematurely terminated or otherwise concluded.

**3** **Rights and obligations**

3.1 With respect to the subject of the contract the partners shall keep each other informed of the research results obtained and/or the progress of the work, and share interim and final reports.

3.2 The partners mutually grant each other a non-exclusive, non-transferable right of use, free of charge to inventions, which are discovered by one partner alone while implementing the joint research project, and to the respective intellectual property rights registered or awarded for the duration and implementation of the joint research project.

For any more extensive use each partner shall receive on request, which must be made in writing to the respective partner within one year of the termination of the project, a non-exclusive, non-transferable right of use at market conditions, to be agreed upon prior to any intended use. In assessing the market conditions, the contributions made as part of the cooperation and necessary for the invention of the partner in question must be taken into account. In comparison with conditions for parties not involved in the project the partner in question shall be granted a significant discount, which in specifically substantiated cases may also result in a major cancellation of the fee for rights of use.

Subsection 3.2 applies accordingly to know-how and copyrights, including software, which arise solely from each partner.

3.3 The partners in question shall come to an understanding on a case by case basis on the processing and treatment of inventions, which have arisen jointly by virtue of the execution of the joint research project (i.e. inventions, in which the employees of several partners have been involved and in which the shares in the inventions cannot be registered separately by individual partner under the law on intellectual property rights). The partners in question are entitled to use and to license such inventions and any intellectual property rights granted to them for their lifetime as their own, in the case of balanced contributions without any financial settlement. With respect to Subsections 2.1.1 and 2.2.2 of the Framework for State aid for research and development and innovation (Framework 2014) where contributions are unequal, the partners in question shall come to an understanding on a reasonable settlement to be paid where applicable taking into account their respective shares in the invention, the financial support provided and the commercial significance of the results. The rights of the remaining partners are regulated in accordance with Subsection 3.2.

Sentences 2 to 4 of Subsection 3.3 apply accordingly to copyrights created jointly by employees from more than one partner while implementing the joint research project (joint copyright).

3.4 On request the partners shall grant each other a non-exclusive, non- transferable right of use free of charge, for the term and implementation of the joint research project to the inventions and intellectual property rights existing in their organisation at the commencement of the contract (background knowledge), provided that they are entitled thereto and provided that it is necessary for the implementation of the joint research project. In particular, a right of use granted hereby does not entitle other partners to process or modify the invention and the intellectual property right.

 For any more extensive use each partner shall receive on request, which must be made in writing to the respective partner within one year of the termination of the project, a non-exclusive, non-transferable right to the background knowledge, restricted to the area of application of the contract at market conditions, insofar as this is necessary for the use of the work results of the partner making the request. A claim to the rights of use to background knowledge exists only to the extent that the rights of third parties do not conflict.

 Subsection 3.4 applies accordingly to knowledge and copyrights, including software, existing at the commencement of the contract

**4**  **Confidentiality**

4.1 The partners shall treat all information of a technical or economic nature declared to be of a sensitive nature, which is the property of another partner, in confidence during the term of the joint research project and for a period of 5 years subsequent to its termination and shall not make this information available to third parties without the written consent of the affected partner. This obligation shall cease to apply for information, which

 - was in the public domain prior to disclosure to the receiving partner or was publicly accessible, or

 - entered the public domain subsequent to the disclosure to the receiving partner or became generally accessible without the participation or fault of the latter, or

- of which the receiving partner was already aware at the time it received the information, or

 - is the same as that disclosed or made accessible to the receiving partner at some time by an entitled third party, or

 - has been developed by an employee of the receiving partner without knowledge of the information, or

 - must be disclosed if required by statutory and/or administrative regulations or court order.

4.2 The duty of confidentiality shall not prevent the partners from processing and publishing without discrimination the results of the research and development undertaken under this contract for their scientific purposes subsequent to agreement with the partner affected. Publications must be agreed between the partners in such a way that both confidential information and intellectual property rights are protected and also the right of the partners to publish is recognised in good time. Publications, which contain confidential information from another partner, require the prior, written agreement of the partner affected in each case. Unless the other partner objects to a publication submitted to it within four weeks of receipt of the documents in full, agreement is deemed to have been granted, provided that the submission includes a notice concerning the consequences of silence. The partners shall not object to publications without good cause. Good cause may in particular rely on the purpose of registering intellectual property rights. Good cause must be substantiated to the other partner.

**5 Liability**

5.1 The Project Partners shall perform the work tasks they have assumed within the scope of the Cooperation Project with the ordinary level of care and prudence customary to them, based on the state of the art and technology known to them. The Project Partners do not assume any further guarantee or warranty. In particular, they do not guarantee that the work results they develop in the course of this collaboration will be commercially exploitable and free from third-party rights. However, if a Project Partner learns of conflicting third-party rights, it shall inform the other Project Partners of this immediately.

5.2 In case of breach of essential contractual duties or obligations, i.e. duties or obligations, the fulfilment of which allows for the due performance of this contract, the breach of which would endanger the purpose of this contract and the compliance with which the other Project Partner may constantly trust in, the Project Partners shall be liable towards each other for any case of intent and any kind of negligence. In cases of slight negligence, this liability shall be limited to the typical and foreseeable loss.

5.3 In all remaining cases, the Project Partners’ liability is limited to intent and gross negligence.  In case of gross negligence, liability shall be limited to the typical and foreseeable loss.

5.4 In case of gross negligence, the liability according to Subsection 5.3 above shall be excluded for consequential losses (e.g. loss of profit or other financial losses).

5.5 The exclusions and limitations of liability mentioned above in Subsections (2) – (4) do not apply in the event of death, injury or damage to health as well as for claims under the German Product Liability Act.

5.6 The above-mentioned exclusions and limitations of liability also apply to the employees, legal representatives and agents of the Project Partners.

**6 Contact person, coordinator**

6.1 Each partner shall nominate a contact person for the implementation of the joint research project. The partners shall send their communications and declarations for the attention of the contact person.

6.2 The coordinator shall ensure that work is performed pursuant to the work and time schedule. If discrepancies from the joint work schedule arise, the coordinator shall draw this to the attention of the partners as early as possible and shall propose measures for overcoming these difficulties.

 The coordinator prepares the informal meetings necessary for the performance of the project, issues invitations to these meetings giving adequate notice, chairs the meetings and is responsible for the preparation and distribution of the minutes of the meeting.

 The coordinator receives the project documents required for forwarding to the funding agencies.

 Unless he/she has the prior written agreement of the partners, the coordinator is not entitled to issue statements on their behalf, which are binding in law, to conclude legally binding agreements or to accept payments for the other partners.

**7 Termination**

7.1 Each partner may terminate its participation in the joint research project for good cause by giving three months' notice. Good cause exists in particular, if continuing to work on the project becomes unreasonable for the partner or if funding has subsequently been substantially reduced. In the case of termination the funding agency must be notified of the resignation by the respective partner.

7.2 In the case of resignation by a partner

* the rights granted to the respective partner pursuant to Section 3 end, with the exception of the rights in accordance with Subsection 3.2 Section 2, Subsection 3.2 Section 3 in conjunction with Subsection 3.2 Section 2 and Subsection 3.3;
* the partner continues to be bound to the duty of confidentiality pursuant to Section 4;
* the rights of use and utilisation granted to the remaining project partners by the present contract remain unaffected;
* insofar as the continuance of the joint research project seems reasonable, the tasks to be fulfilled by the resigning partner can be undertaken by a new partner in agreement with the remaining partners.

 The obligations of the other partners pursuant to Subsection 3.2 Section 2, Subsection 3.2 Section 3 in conjunction with Subsection 3.2 Section 2, Subsection 3.3 and Sections 4 and 5 of this contract apply to the resigning partner only for the results of research and development, which have been achieved prior to the receipt of the notice of termination. The remaining rights of the resigning partner pursuant to Subsection 7.2 and the partner’s obligations pursuant to Sections 3 - 5 also apply subsequent to the resignation to all results of research and development and intellectual property rights, which the partner obtains by virtue of work undertaken or commenced as part of the joint research project.

7.3 In such case that the partners establish by mutual consent that the development target pursued by the joint research project cannot be achieved and therefore the basis for the present contract ceases to exist, the partners shall come to an understanding concerning the further course of action including the rights to research results arising to date and where applicable, shall conclude a separate agreement concerning these matters.

**8 Final provisions**

8.1 Amendments and additions to this contract must be identified as such and in order to be valid, they must be in writing. This shall apply also to the annulment of the requirement for the written form.

8.2 If work to be performed by one of the partners is performed by third parties, this partner must ensure that the results are made available to the other partners in accordance with the provisions of this contract.

8.3 This contract is subject to the funding of all the partners by the Federal Ministry of Education and Research (BMBF). Insofar as this contract contains no further regulations, the terms and conditions of the funding award additionally apply. The obligations of the partners and the rights of the funding agency arising from the respective funding agreements of the Federal Ministry of Education and Research (BMBF) including their collateral clauses and annexes as amended remain unaffected by this cooperation contract and in the event of a conflict take precedence over this cooperation contract.

8.4 None of the partners are entitled to represent another partner legally or to issue statements, which are binding in law, on behalf of other partners. The tax bodies, work groups and similar groups organised by the partners are similarly not legally entitled to represent individual partners or the partners as a whole or to issue statements, which are binding in law, unless this is expressly regulated in this contract.

8.5 The partners involved shall endeavour to settle amicably any possible differences of opinion arising from this contract, including those, which do not arise until its termination. If this is not successful, the Project Management Agency in the first instance and subsequently the Federal Ministry of Education and Research (BMBF) shall bring about an exchange of opinion. Solely for the case that it is impossible to resolve differences extra-judicially all disputes, which arise in connection with this contract or its validity, shall be finally settled in accordance with the rules of arbitration of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e. V. (DIS)) to the exclusion of the ordinary courts. Place of arbitration proceedings is the registered office of the defending party.

8.6 Should any provision in this contract be or become invalid, this shall not affect the validity of the remaining provisions of the contract. The partners are obligated to replace the invalid provision with a valid provision, which comes closest in law to the meaning and purpose of the invalid provision. The same shall apply in the event of a gap, loophole or omission.

**9** **Entry into force**

 This contract comes into force upon its signature from XXX.

Annex:

Paderborn, dated

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Simone Probst XXX

(Vice-President of Operations (Project manager / R & D Controller)

at Paderborn University)

[Place], dated

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