**AGREEMENT ON INDUSTRIAL PhD PROJECT**

**(employment in a company)**

Between

Aalborg University

Department of …..

CVR no. 29102384

Postboks 159

9100 Aalborg

(Hereinafter referred to as ‘the Institution’)

and

[The company

CVR no.

Address]

(Hereinafter referred to as ‘the Company’)

(Separately, the Institution and the Company are also referred to as ‘the Party’ and jointly ‘the Parties’).

**1. Definition**

**Agreement:** This collaboration agreement on an Industrial PhD project with corresponding attachments.

**Background Knowledge:** The Company and the Institution’s unpublished knowledge in the form of know-how, unpublished inventions or other specialised unpublished knowledge that the Company and the Institution have made known to each other or made available for the completion of the Project.

**Industrial PhD Student:** The Industrial PhD Student [insert name and student number] who is completing the Project.

**IFD:** The Innovation Fund Denmark established by the Minister for Higher Education and Science pursuant to the Act on the Innovation Fund Denmark no. 306 as of 29 March 2014.

**Foreground Knowledge:** All knowledge generated during collaboration about the Project regardless of whether this knowledge was created by the Institution or the Company.

**Invention:** A new product that differs from what is known at the time the product was invented. In this Agreement, the word ‘Invention’ shall also cover products that may qualify for protection under the Danish Act on Utility Models.

**Project:** The PhD Project that forms the subject of this Agreement between the Institution, the Industrial PhD Student [insert name] and the Company, as described in Attachment 1.

**Field of Application:** The field defined by the Company and the Institution in Attachment 2 to this Agreement as the field in which the Company intends to make commercial use of the Foreground Knowledge generated by the Project.

**Equipment:** All materials, data, etc. both technical and non-technical, including appliances, machinery, material samples, test animals, reagents, etc.

**2. Background and purpose of the Agreement**

2.1 The purpose of the Agreement is to set out the legal relationship between the Company and the Institution in relation to the collaboration about the completion of the Project. The Industrial PhD Student’s education and attainment of the PhD degree shall be given priority over other considerations.

2.2 The Institution and the Company have each developed special expertise in [insert the subject area of the Project]. The Industrial PhD Student, the Institute and the Company have an interest in expanding their knowledge in [insert the subject area of the Project] through research, and the Company wishes to utilise the Foreground Knowledge resulting from the research in the Field of Application defined in Attachment 2.

2.3 On that basis, the Parties have a mutual interest in collaborating on the Project concerning [brief description of the Project].

2.4 The Institution and the Company shall plan the Industrial PhD Student’s complete PhD programme, and the Institution shall approve and award the PhD degree if the requirements for this have been met. The Industrial PhD education shall be completed in accordance with the rules for Industrial PhD Students as applicable from time to time, including the IFD’s Guidelines for the Industrial PhD Programme.

2.5. In case of discrepancy between the Agreement and the Guidelines for the Industrial PhD Programme, as applicable from time to time, the latter shall prevail.

**3. Employment at the Company**

3.1 The Industrial PhD Student is employed at the Company and shall comply with the Company’s rules for its employees, as applicable from time to time.

3.2 If an external third party from another company/institution is involved, the Company shall be responsible for entering into agreements with that party about responsibility, share of rights, etc, and claims by an external company or institution against the Company shall also not be the concern of the Institution.

3.3 When at the Institution, the Industrial PhD Student shall comply with the Institution’s Rules, including rules relating to security, and shall comply with the directions and instructions given by the supervisor or management of the Institute in question.

**4. Economics**

4.1 The Company shall pay the part of the costs for the Industrial PhD education not covered by IFD, cf. letter of commitment dated [xxx] from IFD, Attachment 3.

**5. Supervision**

5.1The Institution has appointed [insert name] as the Industrial PhD Student’s main supervisor. Based on a recommendation by the Company, the Institution has appointed [insert name] as the Company supervisor.

**6. Rights**

6.1 Each Party shall own the Foreground Knowledge created by the Party in question during the collaboration on the Project. The Company shall take over any rights associated with an Invention made by the Industrial PhD Student as part of the work to attain the PhD degree, provided the provisions of the Danish Act on Employee Inventions have been complied with. The copyright to e.g. a computer program developed by the Industrial PhD Student as part of the student’s work to acquire the PhD degree shall pass to the Company.

6.2 Inventions made entirely by the Institution’s supervisor in connection with the Project and based entirely on the ideas of the Institution’s supervisor shall be taken over by the Institution, provided the provisions of the Danish Act on Inventions at Public Research Institutions have been complied with.

6.3 Foreground Knowledge created jointly by the staff of the Parties shall be jointly owned by the Parties pro rata to their intellectual contribution to the developed Foreground Knowledge. If the respective contributions of the Parties cannot be documented, the Foreground Knowledge shall be owned by the Parties in equal shares. All forms of disposal of jointly owned Foreground Knowledge which has not been purchased by the Company, cf. Clause 7.4, shall require agreement between the Parties.

6.4 During the term of the Project, the Parties shall grant each other free access to the use of their Background and Foreground Knowledge to the extent it is necessary for the completion of the Project. This access right shall only apply to work related to the Project and shall not be used for commercial purposes or transferred to a third party.

**7. Transfer of rights**

7.1 The Parties shall have a non-exclusive right to utilise, free of charge, any Foreground Knowledge generated by the Project that cannot be protected by the Danish Patent Act or other specific legislation about intellectual property rights. Publishing of the other Party’s Foreground Knowledge shall require that Party’s consent, cf. Clause 12.1

7.2 The Company shall have a non-exclusive right within the Field of Application to make commercial and research use of the Institution’s Foreground Knowledge in the form of patentable Inventions or a share in patentable joint Inventions, including any computer programs that form part of an Invention or a share of a joint Invention. The Company shall pay a fee for such use, as indicated in Clause 9.1. The Company shall notify the Institution whether the Company wishes to make use of its non-exclusive right of use before expiry of the deadline indicated in Clause 8.1.

7.3 The Company shall be entitled to use computer programs that form part of the Foreground Knowledge created by the Institution as part of the Project, within the Field of Application and with due respect for the rights of third parties. The financial terms for this use shall be determined in accordance with Clause 9.3.

7.4 The Company shall be entitled, within the Field of Application, to purchase all rights to any of the Institution’s Foreground Knowledge that can be legally protected, including patentable Inventions and shares in patentable joint Inventions. The Company shall exercise its option to purchase subject to notice to the Institution as set out in Clause 8.1. The purchase price shall be determined in accordance with Clause 9.2.

7.5 If the Company does not make use of the right of purchase set out in Clause 7.4 to Inventions created by the Institution’s supervisor alone, the Institution shall be entitled to transfer the Foreground Knowledge in question to a third party.

7.6 If the Company does not make use of the right of purchase set out in Clause 7.4 to the Institution’s share of a joint Invention or other shared Foreground Knowledge, the transfer of rights to a third party shall require a joint decision by the Parties.

7.7 The Company shall decide whether to apply for patent protection for an Invention purchased by the Company pursuant to Clause 7.4. The Institution and the person(s) responsible for the Invention shall sign the documents necessary for the patent application. The Institution is willing to assist with the preparation of the patent application against payment in accordance with the Institution’s hourly rates for academic staff. The Company’s decision not to file a patent application, etc. shall not prevent the Institution from publishing the research results, cf. Clause 12.

7.8 The Company’s acquisition of rights pursuant to Clause 7.4 shall not prevent the Institution from using the Foreground Knowledge generated as part of the Project in the Institution’s further research and teaching after termination of the collaboration about the Project.

**8. Reporting of Inventions**

8.1 If the Industrial PhD Student’s supervisor, employed at the Institution, during the Project makes an Invention that is deemed patentable, the supervisor shall immediately inform the Parties accordingly. If the Company deems the Invention patentable, and provided the Invention falls within the scope of the Field of Application, the Company shall notify the Institution within 30 days upon receipt of the information on the Invention whether it wishes to make use of the non-exclusive right of use set out in Clause 7.2, cf. Clause 9.1, or wishes to purchase the Invention, cf. Clauses 7.4 and 9.2.

**9. Fee for transfer of rights**

9.1 The fee for the Company’s non-exclusive right to use the Institution’s Invention, cf. Clause 7.2, shall be determined by negotiation between the Parties. These negotiations shall commence no later than 14 days following notification by the Company as set out in Clause 8.1.

9.2 If the Company purchases an Invention made by the Institution, cf. Clause 7.3, the purchase price shall be determined by negotiation between the Parties. These negotiations shall commence no later than 14 days following notification by the Company as set out in Clause 8.1. If the Parties fail to reach an agreement on terms of payment within a period of 90 days from the day on which the negotiations shall commence, either Party may request that the terms be decided by an independent third party expert who shall be appointed jointly by the Parties or, in case they fail to reach an agreement, by the President of the Maritime and Commercial Court following a hearing of the Parties.

9.3 The fee for the Company’s use of computer programs that form part of the Foreground Knowledge created by the Institution as part of the Project, cf. Clause 7.3, shall be determined by negotiation between the Parties. These negotiations shall commence no later than 14 days following notification by the Company as set out in Clause 8.1. If the Parties fail to reach an agreement on terms of payment within a period of 90 days from the day on which the negotiations shall commence, either Party may request that the terms be decided by an independent third party expert who shall be appointed jointly by the Parties or in case they fail to reach an agreement, by the President of the Maritime and Commercial Court following a hearing of the Parties.

**10. Equipment**

10.1 Equipment made available by one Party to another Party for use in the Project, shall remain the property of the former Party and shall only be used by the latter Party in connection with the Project. The right of use shall lapse after expiry of the Agreement, and the Equipment shall be returned to the Party who made the Equipment available.

**11. Confidentiality**

11.1 Background Knowledge received by one Party from the other Party in connection with the Project shall only be used for the completion of the Project and shall not without the written consent of the other Party be passed on to individuals not taking part in the Project.

11.2 A Party’s obligation to treat Background Knowledge as confidential, cf. Clause 11.1, shall apply to all individuals who through employment or other association with the Party gain access to the other Party’s Background Knowledge. The duty of confidentiality shall, however, only apply to Background Knowledge that prior to disclosure is clearly marked ’confidential’, or if disclosed orally, is written down by the disclosing Party, marked ‘confidential’ and sent to the receiving Party within fourteen (14) days after the time of disclosure, together with Background Knowledge that is obviously of a confidential nature.

11.3 A Party’s duty of confidentiality as set out in Clauses 11.1 and 11.2 shall not apply to knowledge that:

* *at the time of acquisition was or later became publicly available and not as a result of a breach of the duty of confidentiality.*
* *was received without any restrictions regarding confidentiality from a third party that was entitled to pass on the knowledge in question.*
* *must be passed on to outside parties in accordance with an obligation stipulated by law, legal decision or other binding public document.*
* *a Party has developed independently of any participation in the Project.*

11.4 In the event of a dispute about the duty of confidentiality, the Party who wishes to invoke one of the provisions in Clause 11.3 shall have the burden of proof.

11.5 The duty of confidentiality shall terminate 3 years after completion of the Project.

**12. Publication and defence**

12.1 Each Party shall be entitled to publish own Foreground Knowledge. Foreground Knowledge jointly owned by the Parties can be published by one of the Parties if the other Party does not wish to take part in the publication and provided it does not hamper the completion of the Project and the Industrial PhD Student’s education and attainment of the PhD degree, cf. Clause 2.1.

12.2 If the Institution wishes to publish its Foreground Knowledge, the Institution shall notify the Company at least 14 days prior to the intended date of publication and forward the text and any additional material the Institution wishes to publish. Until 10 days after receipt of the notice, the Company can request that the publication be postponed by up to three months from the date of receipt, provided the Company proves that the postponement is important for the Company’s prospects of acquiring intellectual property rights protection of the knowledge the Institution wishes to publish. This provision cannot result in the postponement of the PhD thesis, cf. Clause 12.5.

12.3 Publication of knowledge shall always take place with due respect for the duty of confidentiality set out in Clause 11.

12.4 According to IFD’s Guidelines for the Industrial PhD Programme for Projects approved after 14 August 2014 the Industrial PhD Student is obliged to defend the PhD thesis in public. The Institution alone shall be entitled to determine when and where the publication and defence of the PhD thesis take place; however, the defence shall take place no later than three months after submission of the thesis.

12.5 The Institution can decide that the defence be postponed if necessary for the protection of intellectual property rights. Such a postponement of the Industrial PhD Student’s defence beyond 3 months from the submission of the PhD thesis shall, however, require the consent of the Industrial PhD Student.

**13. Duration and expiry**

13.1 The Agreement shall take effect when signed by the Parties and shall expire, except for any provisions in the Agreement that according to their content are intended to be in effect for longer, upon conclusion of the degree programme by public defence, regardless of the outcome of the defence. During that period, the Agreement shall be interminable. The Agreement shall, however, lapse automatically if the degree programme is interrupted, regardless of the reason for the interruption, or if the Industrial PhD Student’s employment with the Company is terminated for regardless of the reason. The Parties shall have no claim against each other in that regard.

**14. Nature of Agreement – non-competition clause**

14.1 This Agreement does not create a legal entity with the Parties as participants, and the Parties therefore cannot bind each other vis-à-vis a third party.

14.2 The Parties do not accept any other restrictions vis-à-vis each other, including restrictions of competition, than those expressly mentioned in the Agreement.

**15. Amendments to the Agreement**

15.1 Any amendments to the Agreement shall be in writing and be signed by both Parties.

**16. Notices**

16.1 Notices pursuant to Clause 8 shall be forwarded to:

 • The Institution: Forskningsinnovation, patent@adm.aau.dk

 • The Company: [name, address and e-mail address, if applicable]

16.2 Other notices regarding the Agreement shall be forwarded to:

 • The Institution: [name, address and e-mail address, if applicable]

 • The Company: [name, address and e-mail address, if applicable]

**17. Disputes**

17.1 All disputes between the Parties about the interpretation and implementation of this Agreement shall be settled in accordance with Danish law. Before taking any legal action, cf. Clauses 17.2 and 17.3, the Parties shall endeavour to settle the dispute amicably.

17.2 Either Party shall be entitled to request that a dispute about the interpretation and implementation of this Agreement be finally and conclusively settled 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.

17.3 The provision in Clause 17.2 shall not prevent a Party from making use of the provisions of the Danish Administration of Justice Act on injunction and/or other interlocutory remedies.

Signatures

For **AAU**1

Place, date:

Name:

Title: Head of Department

Name:

Title: Project Manager

Internal AAU: This agreement is subject to electronic approval in Workzone by the legal officer of the AAU, i.e., Head of Grants and Contracts, ref. Rector’s Scheme of Delegation to Deputies at AAU

For the Company

Place, date:

Name:

Title:

**Attachments:**

Attachment 1: Project description

Attachment 2: Field of application

Attachment 3: Grant from the Innovation Fund Denmark