

TUM Research and Commercial Cooperations

Basic Principles · Types of Agreement ·
Model Agreement Forms



Strong Research Networking

The founders of our university were inspired by a desire to: *“share the impetus and drive from science and research with the world of industry”* (Karl Max von Bauernfeind, 1868) ¹. Since then, the various faculties of what is now Technische Universität München (TUM) have made a major contribution to the technical advances we all enjoy today, often in cooperation with business enterprises. In many cases, major companies have grown from the seed of an innovative idea – the most notable example being Linde AG, founded by Prof. Carl von Linde. Cooperation between the worlds of business and academia can enrich the education experience, giving tomorrow’s professionals early insights into real-world problems and technology solutions.

Faced with increasingly complex scientific challenges, researchers today need to join forces to achieve results. Cooperation on a regional, national or European level is becoming more widespread, and industry stakeholders are usually involved in major collaborative projects.

The growing diversity of research formats, focus areas and financing models calls for greater structure and clarity. With over 1,000 cooperation agreements to manage every year, both large and small, TUM’s cooperation network can no longer be efficiently managed without some binding rules. No matter how important they are, research and industry engagements must not compromise the university’s overall budget. In fact, all collaborative initiatives should cover all direct and indirect costs incurred by the university – after all, we are an “entrepreneurial university”.

The current guidelines were drafted in close collaboration with TUM members with a lot of experience in research and industry. Although the general terms are clear, they do offer some flexibility.

Notable new guidelines include the standardization of contracts and how to handle intangible assets (IA), including intellectual property. Titles to intangible assets, for instance, may remain vested with the university or be transferred to a cooperation partner in return for advance payment of a 15-percent IA surcharge. The introduction of this clear and transparent rule has received a warm welcome from the large number of companies we consulted in this regard.

The following document and the accompanying contract templates apply to the whole university as of February 1, 2013.

On behalf of TUM:



Wolfgang A. Herrmann
President

¹ Speech at opening of Royal Bavarian Polytechnic of Munich on December 19, 1868

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1. Preamble

Technische Universität München (TUM) focuses on both knowledge-oriented basic research and applied research aimed at specific challenges. These two types of research are complementary, as they establish new knowledge, while simultaneously shaping the transfer of knowledge and technology into the commercial world and practical applications. By working within this sphere, TUM helps drive society's potential for innovation.

As an entrepreneurial university, TUM can consolidate its current strong position by broadening its financial basis beyond the state budget, by generating project-related returns from outcomes involving the commercial world. The financial terms of contract research agreements and cooperative ventures, in particular those involving businesses, must not be a burden on the university's general budget, and have to cover all direct and indirect costs incurred by the university. To exploit knowledge generated at the university for the benefit of the overall economy as efficiently as possible, agreements regarding cooperative ventures must pursue clear objectives for the handling of intellectual property (see *TUM IP Policy*⁹⁾). This is the only way the university can continue to develop its know-how for the benefit of students, scientists and commercial partners over the long-term, and ensure that its potential for technological innovation thrives in international competition.

At present, TUM draws up over 1,000 research agreements (not including Contracts for Work and Services) with third parties every year, across all areas of operations. That corresponds to a growth of 56 % for the period 2007– 2011 alone. Since the nature of such agreements varies widely, the university has now for the first time created formal categories for the different types of contracts and collaboration agreements. This will ensure that contractual relationships can be handled and managed efficiently and cost effectively. Binding rules and agreement forms have been standardized. The rules provide scope for flexibility and at the same time ensure loyalty to the university, which in turn creates favorable basic conditions for research (personnel, research facilities, general investment in facilities and operations).

In future the *TUM ForTe Office for Research and Innovation* will be the main contact point and central coordination office for all forms of cooperative research and commercial venture. This will help ensure that contractual negotiations with external research and commercial partners are oriented to TUM's strategic development goals, and will expedite the process of drawing up agreements.

The following Basic Principles enter into force on February 1, 2013. They apply to all agreements negotiated and drawn up after that date.

⁹⁾For information on TUM's IP Policy, please visit www.forte.tum.de/technologie-transfer/tum-patentpolitik

2. Basic Principles

The university's continued success in teaching, research and technology transfer is based on high standards of ethics and professionalism in research and commercial relationships. Transparent, clearly defined principles regarding the culture of cooperative ventures help ensure that outstanding scientists remain loyal to the university, and build confidence among parties involved in cooperative ventures with TUM.

The following **Basic Principles** apply to the drawing up of agreements regarding cooperative research and commercial ventures with third parties:

- *TUM is a public-law body and state entity represented by the President.* In consequence, contractual agreements with third parties relate to the university as a whole; individual members of the university cannot draw up agreements with third parties unless signing authority has been transferred.
- *TUM ForTe Office for Research and Innovation: The TUM ForTe* is the main contact point; based on ongoing interaction with the *TUM Legal Office / Research Collaboration*, TUM ForTe is the main coordinator for all contractual negotiations regarding cooperative research and commercial ventures.
- *TUM standard agreement forms:* As is customary in an international context, contractual negotiations are always conducted on the basis of standard agreement forms, which are oriented to *TUM best practices*. [Attachment I](#) provides an overview of the different types of agreement; [Attachments II – VII](#) are newly structured Research & Commercial Agreements: Contracts for Work and Services · Research & Development Agreements · Collaboration Agreements, Type 1 (no public funding) · Collaboration Agreements, Type 2 (public funding) · EU Consortium Agreements · Material Transfer Agreements · Non-Disclosure Agreements · Exploitation & License Agreements · Fundraising & Foundation Agreements. TUM standard agreement forms are available in English and can be downloaded from www.mytum.de.
- *Project results:* Agreements must not be structured such that they conflict with the unremunerated use of research outcomes and the associated intellectual property rights for TUM's and project participants' own scientific purposes in research and teaching.
- *Intangible assets (including intellectual property rights):* The university's intangible assets (IAs) include:
 - human capital (e.g. know-how and relationship networks) of the scientists involved, known and unknown copyrights, and the university's experience in knowledge management, and

- legally protectable work outcomes or developments, i.e. intellectual property rights (IPRs) relating to inventions, including for example computer-implementable inventions and the resulting patent applications (includes for example gene sequence listings), intellectual property rights amendment certificates and/or utility model applications, copyright-protected computer programs, aesthetic designs (registered, unregistered and copyright-protected designs), trademarks, semiconductor protection (mask work), and plant variety rights.

Intangible assets created by TUM employees are subject to *TUM's IP Policy*. In matters relating to IPRs associated with cooperative ventures with third parties, e.g. cooperative research ventures, TUM is a co-applicant (e.g. patent applications, applications for design and trademark protection). Heads of associated institutes of TUM are bound by the university's IP rules.

- *Project-related full costs based on market conditions*: Given the importance of operating according to commercial principles, project-related full costs are used as the basis for calculating costs and for TUM's internal cost allocation relating to third parties. Full costs are determined based on overhead costing, using the simplified calculation scheme for order calculations per EU Community guidelines. Market rates and appropriate conditions apply to all contractual goods and services which could equally be provided by the private sector. This applies in particular to negotiations regarding the transfer of ownership rights or rights of use relating to intangible assets.
- *Financial project management*: Revenues and expenses relating to a project involving a third party are always managed via an assigned fund at TUM. Under special circumstances it is permitted to maintain an account outside TUM, provided prior written permission has been obtained from the university administration (Chancellor).
- *Legal and ethical principles*: In order to fulfill TUM's moral mandate, the contents of agreements must be in accordance with statutory requirements and TUM's ethical guidelines (see *TUM Mission Statement*). When drawing up agreements, conflicts of interest must be avoided and must be rendered transparent at the start of contractual negotiations. Thus, for example, parallel cooperative ventures in the same field of research involving multiple contractual parties, or the use of unauthorized information or materials, are not permitted. Please refer to the *TUM Research Code of Conduct* dated January 1, 2013 ([Attachment VIII](#)). Foundation-related activities must be conducted in accordance with the *TUM Fundraising Code of Conduct* dated October 1, 2011 ([Attachment IX](#)).

Heads of associated institutes of TUM have to abide by the above mentioned basic principles.

3. Types of Agreement

Further to the above Basic Principles, [Attachment I](#) provides an overview of the various types of cooperative research and commercial ventures, which are described in greater detail below.

3.1 Contracts for Work and Services

A Contract for Work and Services covers the provision of scientific or technical services, which TUM performs for a third party using its own knowledge and infrastructure. Examples: measurement, testing, construction of crafts, software programming, gathering and data analysis, and in some cases provision of expertise. Remuneration is calculated based on full costs, using the simplified calculation scheme for orders following the EU Community guidelines, plus value-added tax. This remuneration is considered operating revenue but not third-party funds per TUM allocation methods.

A Contract for Work and Services

- defines an unambiguous, known goal (= the work to be performed), and often describes the implementation method. As a general rule, the scientist does not have to interpret the outcome/resulting data;
- reflects the client's interest in achieving the concretely agreed outcome/performance of the agreed work. TUM must deliver the goods/services (e.g. measurement results, software, report, expert opinion) on due time and in accordance with relevant property law and intellectual property law;
- as a general rule does not contain any provisions regarding protectable outcomes of work performed by TUM. TUM retains all intellectual property rights and know-how relating to the applied methods and any further development thereof;
- is based on the Contract for Work and Services standard agreement form (Attachment II). When using this standard agreement form as a basis, professors may sign independently on behalf of TUM.

3.2 Research & Development Agreements

Research & Development Agreements cover research projects (including subcontracts) between TUM scientists and third parties (e.g. commercial companies), in which the contracting party finances the project on a full cost basis (value-added tax payable). The contracting party sets limits on TUM's publication rights and/or general rights to the outcome. Remuneration on a full cost basis is calculated using the simplified calculation scheme for orders following the EU Community guidelines.

Revenues from Research & Development Agreements are considered third-party income according to the TUM allocation methods.

A Research & Development Agreement

- contains a formulated research program which is target-oriented but open in terms of outcomes. As a general rule, the scientist must interpret the outcomes/data. TUM is not obligated to deliver concrete project success, does not assume liability for the commercial applicability of the outcome, and does not assume liability for freedom from (third-party) intellectual property rights. As far as possible, TUM does not assume liability for research outcomes;
- equally reflects not only the scientist's and TUM's interest in publication, but also the contracting party's interest in achieving outcomes in line with planning and scheduling and on the basis of work performed with due diligence;
- covers financial compensation for non-IPR-related intangible assets (IA) and handling of existing and new IPRs. Alongside the use of TUM know-how there are two possible scenarios for IPRs:
 - (a) existing and/or created intangible assets remain the property of TUM; in this case, TUM offers the contracting party a binding, temporary option to acquire exclusive rights of use based on appropriate license fees at market rates; *or*
 - (b) TUM transfers its entitled and/or created IPR rights of use and ownership rights to the contracting party in return for advance payment of a 15 % IA surcharge upon the net contractual sum (+ statutory value-added tax). In this case, TUM receives a cost-free grant-back license for utilization of the intangible assets outside the contracting party's area of business. In all instances, TUM appears cost-free as co-applicant in applications for intellectual property rights.

The IA surcharge consists of:

- *an IA strategic flat fee (60 %):* this is paid into the TUM Know-how fund and is utilized for the strategic development of the use of know-how arising from IA and patent/licensing activities at TUM.
- *advance IPR remuneration (40 %), for the IPR Fund for the transfer of utilization and ownership rights (in particular involving existing / new invention remuneration obligations).* If patent rights are transferred to the contracting party, pursuant to § 42 of Germany's Employee Inventions Act [*ArbNErfG*] the inventor receives 30 % thereof and TUM 70 %. TUM makes its share available to the department / research group in charge of the project (ranked first in cost prioritization).

The IA surcharge is always applicable, regardless of whether inventions are made.

TUM ForTe submits an invoice for the IA surcharge at the start of the project, i.e. when the agreement is signed (after the department/research group has notified *TUM ForTe* of the net contractual amount). IPR remuneration to the inventor and department/research group is paid independently of when an invention is reported, after completion of the research project and as soon as the invention shares in question can be assigned.

- ensures unremunerated use of research outcomes and associated intellectual property rights for TUM's or project participants' own scientific purposes in research and teaching;
- is based on the *Research & Development Agreement* standard agreement form ([Attachment III](#)).

Examples:

- R&D project involving TUM and an industrial partner in the services sector: „Research into user safety and functional safety of electric vehicles“
- R&D project involving TUM and several industrial partners: „Development of a technologically innovative, highly dynamic sorting buffer system for fully automated loading of baggage into aircraft containers“

3.3 Collaboration Agreements, Type 1 (no public funding)

Collaboration Agreements, Type 1 cover joint research projects involving partners who make an equal contribution to project goals. The collaborators make equal contributions to the project, but as a general rule not in the form of payment.

A Collaboration Agreement, Type 1

- defines the parties' medium- to long-term objectives, which are open in terms of outcomes. Neither party is obligated to deliver a successful result;
- covers the parties' primary publication interests, including joint publication, and the unencumbered right to publish own research results;
- covers how to handle intangible assets (IPRs) created. Project results belong to the party whose employees created them on their own. Joint project results belong jointly to the parties involved; if commercial parties are involved and there is a joint invention, the various contributions of the invention must be carefully assessed. If necessary, rights of use to inventions may be granted at the end of the project in

return for appropriate market-oriented license fees. These must be negotiated and contractually agreed upon, and financial compensation in the university's favor must be paid if the parties have made unequal contributions;

- ensures that after the end of the project TUM can make further use of non-protectable project outcomes (know-how) for its own or for the project participants' scientific purposes in research and teaching. Justifiable interests in confidentiality must be defined;
- is based on the Collaboration Agreement, Type 1 standard agreement form ([Attachment IV](#)).

Examples:

- Project involving TUM and academic partners: „Establishment of a virtual center for neurode-generative illnesses“
- Project involving TUM and a registered association: „Establishment of a Bavarian Centre for Energy Research“

3.4 Collaboration Agreements, Type 2 (public funding)

Collaboration Agreements, Type 2 cover (a) cooperative ventures involving industrial and academic partners, where the projects receive public funding and (b) the rights to work outcomes and associated intangible assets, publication rights, and liability issues. As a general rule, financing for collaborative projects is provided by the funding provider (e.g. Federal Ministry of Education and Research, BMBF, Federal Ministry of Economics and Technology, BMWi, or Bavarian Research Foundation, BFS); revenues from these collaborative projects are considered third-party funds per TUM allocation methods.

A Collaboration Agreement, Type 2

- covers research programs which are open in terms of outcomes, and are based on the objectives defined in the support application / funding decision and individual parties' contributions; the parties are not obligated to deliver project success, but nonetheless must work to very high professional standards;
- covers fulfillment of obligations to the funding provider regarding utilization and publication;
- covers how to handle intangible assets (IPRs) created. Project results belong to the party whose employees created them on their own. Joint project results belong jointly to the parties involved; if commercial parties are involved and there is a joint

invention, the various contributions of the invention must be carefully assessed. If necessary, rights of use to inventions may be granted at the end of the project in return for appropriate market-oriented license fees. These must be negotiated and contractually agreed upon, and financial compensation in the university's favor must be paid if the parties have made unequal contributions; covers granting of any existing intellectual property rights necessary for the project, for the duration of the project for project-related purposes;

- covers granting of any existing intellectual property rights necessary for the project, for the duration of the project for project-related purposes;
- ensures unremunerated use of project outcomes and associated intellectual property rights for TUM's or project participants' own scientific purposes in research and instruction;
- is based on the Collaboration Agreement, Type 2 standard agreement form ([Attachment V](#)).

Examples:

- Project funded by the Bavarian Research Foundation involving academic partners and commercial partners: „Resource efficiency in foodstuff production and distribution“
- Project funded by the Federal Ministry of Education and Research involving industrial partners in cooperation with TUM: „Mass electromobility for the urban environment“

3.5 EU Consortium Agreements

EU Consortium Agreements cover the rights and obligations of academic and industrial partners when carrying out an EU collaborative project. Financing is provided by the EU as funding provider. Revenues from EU projects are considered third-party funds per TUM allocation methods.

An EU Consortium Agreement

- is complementary to the grant agreement drawn up between the European Commission and the project coordinator and covers details of the legal relations between the collaborating partners, e.g. existing intellectual property rights, rights to project outcomes, provisions regarding publication and liability;

- ensures unremunerated use of project outcomes for any of the partners' own internal purposes in research and teaching;
- covers the commercial use and granting of non-exclusive licenses to joint project outcomes (in the case of licensing to third parties, the other owners of the joint project outcomes must be duly notified in advance based on fair, reasonable and non-discriminatory principles), in return for appropriate remuneration;
- is based on the DESCAs model agreement¹⁰ for EU-funded collaborative projects involving European partners.

3.6 Material Transfer Agreements

As a general rule, *Material Transfer Agreements* cover unremunerated transfer of materials (e.g. biological materials such as bacteria strains or plasmids, chemical compounds or other material samples) to academic or industrial partners for purposes of research and/or testing. TUM may be either the donor or the recipient. If TUM is the donor, the transferred material cannot be used for commercial purposes unless TUM has been consulted and agreement has been reached; in such instances, TUM remains the 100 % owner of the transferred material. Use for commercial purposes must be covered by a follow-up agreement (including an agreement regarding remuneration).

If TUM is the donor, the standard agreement form (Attachment VI) should be used for *Material Transfer Agreements*. When the standard agreement form is used as the basis for drawing up a *Material Transfer Agreement* with a public entity (with university partners in particular), professors may sign independently on behalf of TUM. Agreements with industrial partners require prior approval from *TUM ForTe*.

3.7 Non-Disclosure Agreements

Non-Disclosure Agreements cover the exchange of confidential information with third parties (e.g. confidential know-how, unpublished patent applications), typically in preparation for a planned collaboration or commercialization of research outcomes. *Non-Disclosure Agreements* are valid for a specified period of time. If the owner of know-how publishes that know-how, there is no longer any obligation to maintain confidentiality.

Transfer or licensing of intangible assets (IPRs) as part of a *Non-Disclosure Agreement* is not permitted.

The standard agreement form (Attachment VII) must be used for *Non-Disclosure Agreements*. TUM professors may sign these agreements independently.

¹⁰ The DESCAs model agreement is available at www.desca-fp7.eu

3.8 Exploitation or License Agreements

These agreements are drawn up with a licensee or assignee, either by TUM as the owner of an intangible asset (reported invention, patent application, patent, software) or by Bayerische Patentallianz GmbH¹¹ or other marketing agency on behalf of TUM. They enable the licensee/assignee to have exclusive or non-exclusive use of the intangible assets in return for appropriate market-rate license fees, or to acquire them in return for payment. Exclusive rights of use may be limited to specific geographic regions and/or areas of application. Utilization covers also modification, further development, usage, marketing and transfer of the licensed item. In the case of licensing, TUM retains its (co-)ownership and its rights to the licensed protected assets and the right to unremunerated use thereof for its own scientific purposes in research and teaching.

Exploitation and License Agreements are subject to *TUM's IP Policy* and must include the following elements:

- the subject of the agreement, with information regarding accompanying IPRs (e.g. patent applications/patents, software) to be licensed; in particular, the general framework including the original challenge and the solutions which gave rise to the IPRs (free research, third-party project or co-operative project) and the individuals and/or contracting parties involved;
- the type of license agreement (exclusive, non-exclusive or cross-licensing);
- the contract territory involved (in the case of patents/patent applications);
- the concrete area of application (e.g. when licensing a technology in the field of power stations, it is important to specify, whether the license is granted for small or large scale power stations);
- detailed information about the nature and amount of the license fee (reference amount, initial sum, minimum license fee);
- information about payment of patent costs;
- limitation of liability;
- applicable law.

Beyond this, *Exploitation and License Agreements* should be structured individually based on the subject matter (e.g. device, method or pharmaceutical active ingredient).

¹¹Bayerische Patentallianz GmbH (www.baypat.de) is the central patent and marketing agency of the 28 Bavarian universities and universities of applied sciences.

3.9 Foundation Agreements

To enhance its entrepreneurial scope, TUM broadens its financial base via an extensive fundraising system (esp. foundation chairs, scholarships etc.) and via the TUM University Foundation (endowment principle). These two sources of funds are mutually complementary. They do not constitute a source of funds for contract research, but rather for non-profit direct or indirect support for research, teaching and young scientists. The main elements of the foundation approach are:

- Foundation chairs and foundation institutes, with agreed specialist areas of activity
- Payments to the TUM University Foundation
- Payments to TUM for the purposes of the Deutschlandstipendium (National Scholarship Program for students)

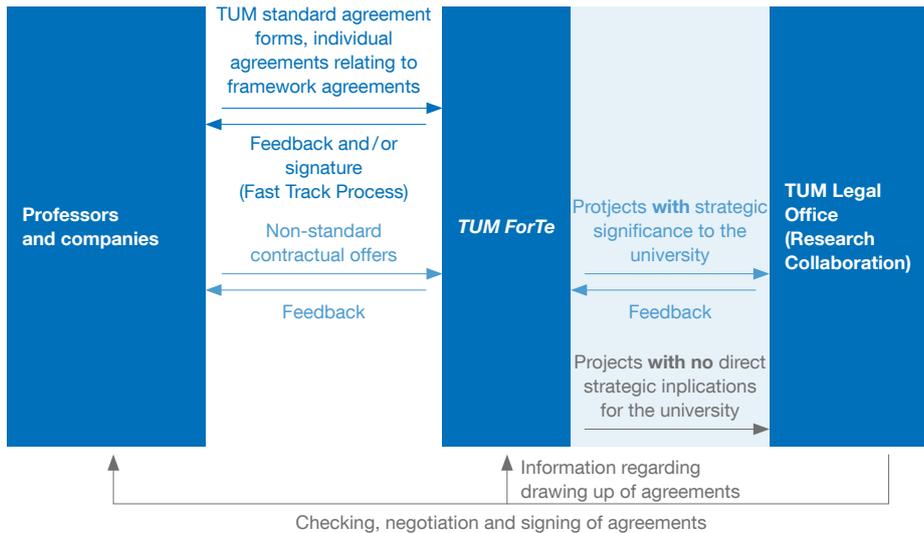
Foundation activities are subject to the *TUM Fundraising Code of Conduct* dated October 1, 2011 ([Attachment IX](#)). Fundraising Department is the main contact point when drawing up Foundation Agreements.

4. Procedures for Contractual Negotiations

To ensure that contractual negotiations with external research and commercial partners are in line with TUM's strategic development goals, and to enable agreements to be drawn up swiftly, *TUM ForTe* functions as the main contact point and central coordination office for all forms of research and commercial cooperation.

By using an unmodified standard agreement form ([Attachments II to VII](#)), the contracting parties sign agreements without having to conduct lengthy negotiations. As a general rule, agreements can be processed within 10 working days of *TUM ForTe* receiving them (*fast-track*).

If there are deviations from the TUM standard agreements, close scrutineering of the contents of the proposed project by *TUM ForTe* and in-depth evaluation of the resulting open legal issues by the *TUM Legal Office (Research Collaboration)* will be necessary. This can lead partially to lengthy contractual negotiations with the future project partner. In such cases, the *Senior Vice-President for Research & Innovation* first assesses the proposed project's strategic significance to the university. It is therefore important to involve *TUM ForTe* in the negotiations process at an early stage, as a general rule at least 4 weeks before the proposed project start, particularly when drawing up agreements for multilateral cooperation projects.



If the subject of research lies within one of TUM's strategic innovation fields, the *TUM Legal Office (Research Collaborations)* under the guidance of *TUM ForTe* will structure the legal aspects of the agreement so that the university's interests and obligations (exclusion of warranty, limitation of liability, publication rights, intangible assets, etc.) are appropriately reflected. This applies in particular to the unlimited use of work outcomes in research and teaching.

Agreements regarding projects with no direct strategic implications for the university are bilaterally negotiated by *TUM Legal Office (Research Collaboration)* and the contracting party, based on the above Basic Principles and Sections 3.1–3.8. *TUM ForTe* must be notified regarding the agreement before it is signed, and if necessary approval must be obtained from the *Senior Vice-President for Research & Innovation*.

Attachment I: Overview of Different Types of Agreement

Type of Agreement	Contents of Agreement	Result	Remuneration
Contracts for Work and Services	Scientific services for third-parties (e.g. measurement, testing, software)	Agreed work is performed in accordance with relevant property law and other applicable law	Full costs basis (operating revenue)
Research & Development Agreements	Fully financed research projects involving third parties, particularly commercial companies (contract research)	Target-oriented research program, open in terms of outcomes, no obligation to deliver concrete project success	Full costs basis (third-party funds)
Collaboration Agreements, Type 1 (no public funding)	Research projects involving collaborators who contribute equally to the project goals	Medium-/long-term research program, no obligation to deliver concrete project success	Usually no payment (third-party funds)
Collaboration Agreements, Type 2 (public funding)	Cooperation with industrial or academic partners as part of collaborative projects with public funding (e.g. Federal Ministry of Education and Research, Federal Ministry of Economics and Technology)	No obligation to deliver concrete project success, but nonetheless the partners must perform work to very high professional standards	From funding provider (third-party funds)
EU Consortium Agreements	Partners' rights and obligation when carrying out an EU cooperation project	No obligation to deliver concrete project success, but nonetheless the partners must perform work to very high professional standards	From funding provider (third-party funds)
Material Transfer Agreements	Unremunerated transfer of materials to third parties	Delivery of materials	None
Non-Disclosure Agreements	Exchange of confidential information with third parties	Giving or receiving of confidential information	None
Exploitation and License Agreements	Use or acquisition of TUM IPRs in return for payment	Transfer of rights of use or acquisition of IPRs	As appropriate, at market rates
Fundraising & Foundation Agreements	Provision of funding or material resources, with no consideration payable in return	Funding or material resources received, with no consideration payable in return	Full costs basis

Publication Rights	Confidentiality Requirements	Guarantee Exemption and Limits on Liability	Intellectual Property Rights
No	Full confidentiality for a specified period	Limits on liability	None, but know-how must be kept confidential
As appropriate	As appropriate, for a specified period	Both	IPRs remain in TUM's possession, or are transferred in return for payment of intangible assets surcharge
Unencumbered right to publish	As appropriate, for a specified period	Both	IPRs are held by the partner who created them
Unencumbered right to publish	As appropriate, for a specified period	Both	IPRs are held by the partner who created them; collaboration partners have a limited-time option to acquire or license the IPRs
As appropriate	As appropriate, for a specified period	Both	IPRs are assigned per the relevant provisions
Unencumbered right to publish if TUM is the donor; otherwise there are often constraints on publication	Full confidentiality for a specified period if TUM is the donor of the materials	Limits on liability if TUM is the donor of the materials	Materials remain the property of the donor
No	Full confidentiality for a specified period	Limits on liability	IPRs remain in TUM's possession
Unencumbered right to publish	As appropriate, for a specified period	Limits on liability and guarantee with regard to the licensed items	Per individual agreements
Unencumbered right to publish	No	Appropriate, customary limits on liability with regard to associated contractual obligations	Not applicable

Attachment II: TUM Model Contract for Work and Services

Contract for Work and Services

This Contract for Work or Services (“Contract”) is made

between

Company [...],
represented by [...],
full address [...]

– hereinafter referred to as “Client” –

and

Technische Universität München,
represented by its president,
80290 Munich, Germany

on behalf of the

Department of [...]
Professor [...]
full address [...]

– hereinafter referred to as “Contractor” –

§ 1 Subject-matter of the Contract

Contractor shall perform the following work and/or services (collectively, the “Services”) by *[date]*:
(full description of Services or reference to Appendix)

§ 2 Remuneration

(1) For the Services to be provided pursuant to § 1, Contractor shall receive a total fee in the amount of € *[...]* (in words *[...]* euros) plus the statutory VAT.

(2) Client shall pay the amount specified in (1) according to the following schedule:
€ *[...]* (in words *[...]* euros) plus the statutory VAT after signature of the Contract;

€ *[...]* (in words *[...]* euros) plus the statutory VAT *[...]*;

€ *[...]* (in words *[...]* euros) plus the statutory VAT *[...]*.

Payment shall be made by Client after receipt of Contractor’s invoice to an account to be designated by Contractor.

§ 3 Delivery Dates

Any delays in providing the Services that are beyond Contractor’s control will entitle Contractor to re-schedule the delivery dates.

§ 4 Retention of Title

Ownership in or title to the Services described in § 1 will not pass to Client until full payment has been received. Where ownership is extinguished prior to payment, for example due to combination, intermixture, amalgamation, etc. or unauthorized sale, it shall be replaced by the new or emerging right of ownership.

§ 5 Place of Performance, Risk

- (1) Place of performance will be Contractor's production facility.
- (2) The risk of accidental loss of or damage to the Services will, in accordance with section 640 of the German Civil Code (§ 640 BGB), pass to Client upon Client's acceptance of the Services at Contractor's production facility. Section 644 of the BGB shall apply.

§ 6 Liability, Period of Limitation

- (1) Contractor shall provide the Services with its customary care and diligence and in accordance with the current state of science and technology as known to Contractor.
- (2) Contractor shall be liable
 - for damage caused by intent and any negligence in the event of a breach of material contractual obligations. Liability shall be limited to the amount of the Contract; any liability for consequential damage and financial loss (e.g. lost profit) shall be excluded;
 - in all other cases only for damage caused by intent or gross negligence. Liability shall be limited to the amount of the Contract; any liability for consequential damage and financial loss (e.g. lost profit) shall be excluded.
- (3) If the Services described in § 1 are defective in material or workmanship or are otherwise not in conformity with the Contract requirements, Client may require Contractor to remedy or correct the lack of conformity as specified in sections 634 (1), 635 of the German Civil Code (§§ 634 Nr. 1, 635 BGB). Where this remedy or correction as specified in sections 651, 440, sentence 2, of the German Civil Code (§§ 651, 440 Satz 2 BGB) fails, Client will have the right to reduce the remuneration or rescind the Contract.
Requests for remedy or correction must be made within the statutory limitation period of twelve months. This shall be without prejudice to the provisions set out in sections 438 (1) No. 2 and 634 a (1) No. 2 of the BGB.
- (4) The limitation of liability and/or exemption from liability provided for in subsections (2) and (3) shall not apply to
 - claims under the Product Liability Act;
 - claims arising out of malicious conduct of a Party;
 - claims arising from liability for warranted characteristics;
 - damage from injury to life, body, or health.

§ 7 Applicable Law, Venue

This Contract shall be governed by the law of the Federal Republic of Germany exclusively, excluding the CISG. Venue shall be Munich.

§ 8 Entry into Force

This Contract shall take effect from the date of signature by the Parties.

§ 9 Miscellaneous

- (1) This contract is supplemented by the provisions of the German Civil Code, in particular sections 631 et seq. (BGB §§ 631 ff.).
- (2) Any changes, modifications or amendments to this Contract must be in writing. This shall also apply to a waiver of the written form requirement.
- (3) Should any provision of this Contract be or become invalid, this shall not affect the validity of the remaining provisions of the Contract.

_____, this _____

Signature (Client)

Munich, this _____

Signature (Contractor)

Attachment III: TUM Model Research & Development Agreement

Research and Development Agreement

This Research and Development Agreement (“Agreement”) is made

between

Company [...],
represented by [...],
full address [...]

– hereinafter referred to as “Client” ... –

and

Technische Universität München,
represented by its president,
Arcisstraße 21, 80333 Munich,

on behalf of the

Department of [...]
Professor [...]
full address [...]

– hereinafter referred to as “University” –

(each a “Party” or collectively the “Parties”)

Recitals

[optional]

§ 1 Project Description, Performance

(1) University will conduct research and development activities for Client (“R&D”).

Subject-matter of the Agreement shall be: _____

Specifically, University will perform the following R&D during the period from

_____ to _____ :

(detailed description of the questions / procedures, etc. or reference to Appendix).

(2) University agrees to involve only such employees, members and/or other persons in the performance of the R&D who have undertaken to comply with the confidentiality provisions of this Agreement.

(3) The R&D will be performed in close coordination with Client. Within eight (8) weeks of completion of the R&D, Client will receive a final report that conveys the results of the R&D in a comprehensible manner.

(4) University may award subcontracts only after prior written consent of Client; however, University will be responsible for ensuring that the obligations under this Agreement, including, but not limited to, the provisions contained in §§ 5 et seq., are fulfilled.

§ 2 Remuneration

(1) Client will pay to University the amount of € _____ (in words: _____ euros) plus the statutory VAT as remuneration for the performance of the R&D specified in § 1.

(2) The schedule for the payment specified in section (1) will be as follows:

[...] € (in words [...]) plus the statutory VAT after signature of the Agreement;

[...] € (in words [...]) plus the statutory VAT [...];

[...] € (in words [...]) plus the statutory VAT [...].

Payment shall be made upon receipt of invoice/in installments upon University's request to an account to be determined by University:

- (3) This shall not affect the remuneration provisions set forth in §§ 4 et seq.
- (4) University endeavors to make full use of the options provided under the *Bayerisches Besoldungsgesetz* [Bavarian public officials' salary act] and to reward the services of university professors with an adequate research allowance. Client hereby acknowledges that in compliance with the *Bayerisches Besoldungsgesetz* the professor responsible for the performance of the R&D under this Agreement may, upon application to the President and receipt of the net amount specified in section (1), be granted a research allowance of up to 10 % of the net amount specified in subsection (1), provided, however, that the sum of all research and/or teaching allowances granted to a professor shall not exceed his or her annual base salary for each calendar year.

§ 3 Confidentiality, Publications

- (1) Each Party shall treat the confidential information (including, but not limited to, know-how, documentation, project tasks, and business transactions) obtained from the disclosing Party on the occasion of and/or in connection with this Agreement and the R&D results ("Confidential Information") as confidential and shall neither disclose the Confidential Information to third parties nor use it for purposes other than the performance of this Agreement. Confidential Information means any information that is either clearly marked or identified as confidential, or should reasonably be considered as confidential due to its nature. This obligation of confidentiality will terminate after a period of three (3) years from termination of this Agreement.

- (2) The confidentiality obligations shall not apply, if and to the extent that the recipient establishes, as evidenced by documents, that the information communicated
- is or becomes generally known through no act or omission of the recipient; or
 - has been or will be lawfully received from a third party; or
 - was already known to the recipient or is developed independently of the R&D pursuant to § 1; or
 - is disclosed after the disclosing Party has waived compliance with the confidentiality obligations in writing; or
 - was duly disclosed under court or governmental order.
- (3) Client acknowledges the University's general obligation to publish the type, subject and results of any research and development activities carried out within University. Any publications during the term of the Agreement will be subject to prior agreement with Client. Client will have the right to refuse its consent to the publication until an application for intellectual property rights protection has been filed, but in no event for a period exceeding three (3) months from submission of the proposed publication. If the proposed publication contains confidential or proprietary information of Client, Client will have the right to demand that the confidential or proprietary information be deleted from the publication. Unless Client, within four weeks of receipt of the complete documentation of a proposed publication (original text), objects to such publication or demands that confidential or proprietary information be deleted, Client's consent shall be deemed given.
- (4) Where examination requirements (for *Diplom*, Bachelor's, Master's, doctoral degree, or *Habilitation* programs, etc.) are affected by the candidate's involvement in the R&D, Client shall, according to TUM policy, reasonably comply with the legal obligations and justified interests of said candidate.
- (5) The above provisions will supersede any prior confidentiality agreements/non-disclosure agreements entered into in connection with the subject matter pursuant to § 1, section (1).

§ 4 Background Intellectual Property, Third-party Intellectual Property Rights

- (1) Each Party will remain the owner of any knowledge (including, but not limited to, know-how, copyrights, computer programs, inventions, and any intellectual property rights applied for or granted for such inventions) gained or developed prior to the commencement of the R&D, or yet to be developed outside the parameters of the subject-matter of the Agreement pursuant to § 1, section (1) (collectively referred to as "Background Intellectual Property").

- (2) The Parties shall inform each other prior to the commencement of and continually throughout the R&D, to the best of their knowledge and belief, of (i) any Background Intellectual Property relating to the subject-matter, provided that this is necessary for the conduct of the R&D or the use of the results, and (ii) of any third-party rights in the Background Intellectual Property. Further, the Parties shall inform each other to the best of their knowledge and belief about any third-party intellectual property rights of which they are aware. In the event that any third-party intellectual property rights are asserted, University and Client will consult with each other on how to proceed.
- (3) To the extent that the Parties' Background Intellectual Property is necessary for the conduct of the R&D and there are no adverse third party rights, the Parties will grant each other a free and non-exclusive right of use limited to the term and purpose of the R&D; unless otherwise provided for, this right of use will not automatically entitle a Party to a continued use of these rights.
- (4) To the extent that the Parties' Background Intellectual Property is necessary for the use of the results and there are no adverse third-party rights, the Parties will grant each other the free option of entering into a license agreement subject to reasonable conditions. The term of the free option right will be limited to a period of six months after termination of the Agreement.

§ 5 Rights to R&D Results

- (1) The rights to the R&D results, except for results protectable under intellectual property laws in accordance with § 6 a or § 6 b and copyrighted results in accordance with section (2), will vest in Client upon receipt of full payment of the remuneration set out in § 2 (1), subject to the rights of University pursuant to § 8.
- (2) If the results, to the extent that University is entitled thereto, are protected by copyright, Client will have the non-exclusive, transferable, worldwide right in perpetuity to use such results, in the original or in changed form, in any and all forms of use (including without limitation the right to process, reproduce and/or commission the reproduction of said results), and to grant rights of use to third parties for any and all forms of use, subject to the rights of the University pursuant to § 8.

Variant A (§ 6a, § 7a) – Option to Acquire Exclusive License

*(Please delete non-applicable variant A or B – only **one** variant may be selected)*

§ 6 a Inventions, Intellectual Property Rights

- (1) University shall notify Client without delay of any invention(s) or inventive contribution(s) disclosed to University by its employees in connection with the R&D specified in § 1. To ensure this, Client will have the right to require that persons involved in the project sign the letter of commitment attached as [Appendix 1](#) to this Agreement. University shall assist Client in obtaining this document and shall only involve persons who have signed it. At Client's request, University will file an application for protection of such invention(s) in the name of University provided that Client has confirmed that request in writing within two months of receipt of the notification specified in sentence 1. In this case Client will bear the costs for application, maintenance and defense of the intellectual property right. In the event that Client, within the deadline specified in sentence 4 above, fails to make such request, or requests University not to apply for intellectual property rights protection, University may freely dispose of the invention(s) and act on the assumption that none of Client's employees will be able to nor will assert any claims under the German Employees' Invention Act.
- (2) For any inventions made jointly by University employees and Client's employees during the term of this Agreement in connection with the R&D according to § 1, the Parties, upon prior consultation, will jointly apply for intellectual property rights protection in the name of University and Client. The Parties shall inform each other of invention disclosures without delay, shall come to an agreement regarding the respective inventors' shares, and determine the outcome of their agreement in writing. These intellectual property rights will vest in the Parties jointly. Any costs incurred in connection with the application, maintenance and defense of the intellectual property rights shall be borne by Client. No later than three months prior to the expiration of the period for claiming priority, the Parties will come to an agreement and determine in which countries corresponding foreign applications for protection should be filed.
- (3) If a Party does not wish to file an application for protection for these inventions according to section (2), or does not wish to continue or maintain an intellectual property right applied for, that Party shall inform the other Party accordingly and offer the other Party a right of first refusal to acquire its share in the intellectual property right in return for payment. In case a Party wishes to acquire the intellectual property right in return for payment, this will require a separate agreement.

§ 7 a Use of Intellectual Property Rights

- (1) University will grant Client a free option to enter into an exclusive license agreement for the use of the inventions according to § 6 a (1), for which an application for intellectual property protection has been filed upon Client's request within the stipulated deadline pursuant to § 6 a (1), sentence 4, in return for a reasonable and market-standard payment. The rights of use will be governed by a license agreement yet to be entered into.
- (2) The term of the free option will be limited to six months after University has notified Client of the invention disclosure pursuant to § 6 a (1), sentence 1. Any renewal of the option will be subject to a fee. In the event that Client, within the deadline specified in sentence 1, fails to or does not wish to renew the option, Client will be released from the obligation to bear the costs pursuant to § 6 a (1) and University may freely dispose of the invention.
- (3) If Client, in the case of jointly filed applications for protection, wishes to use the rights commercially on an exclusive basis or grant licenses to third parties, this will require prior agreement between Client and University with regard to the payment of reasonable remuneration to University.

Variant B (§ 6b, § 7b) – Assignment of Rights

*(Please delete non-applicable variant A or B – only **one** variant may be selected)*

§ 6 b Rights to Inventions and Intellectual Property Rights

- (1) University shall notify Client without delay of any invention(s) or inventive contribution(s) disclosed to University by its employees in connection with the R&D specified in § 1.
In the case of joint inventions the Parties shall ensure that the joint inventors mutually determine each inventor's inventive share and declare it in the invention disclosure report with binding effect. To ensure equal opportunities, the joint inventors are required to provide University and Client with identical invention disclosure reports at the same time.
To ensure this, Client will have the right to require that persons involved in the project sign the letter of commitment attached as [Appendix 1](#) to this Agreement. University shall assist Client in obtaining this document and shall only involve persons who have signed it.

(2) Once Client, promptly after signing the Agreement, has paid a 15 % IA surcharge on the remuneration set out in § 2 (1) in the amount of € _____ (in words: _____ euros) plus the statutory VAT, the rights in and to inventions and inventive contributions pursuant to (1) will be assigned to Client upon full payment of the agreed-upon remuneration including the IA surcharge, subject to the rights set out in § 7 b (2) and (3) and § 8. University shall not release any (co-)inventors' rights in the inventions and/or inventive contributions pursuant to (1) to the inventors and shall assign University's rights in patent applications to Client.

§ 7 b Application for Intellectual Property Rights Protection, Use of Intellectual Property Rights

- (1) Client shall bear the costs for application, maintenance and defense of the intellectual property rights assigned to Client for as long as Client claims these rights. If Client requires any explanations or declarations from University in order to acquire these rights, University shall provide them upon request. University shall, upon request, obtain all documents and declarations that must be officially signed by the University's co-inventors in the course of the patent application process (for example, US assignment or PCT inventor declaration). Any costs incurred shall be borne by Client.
- (2) The first application for an intellectual property right giving rise to priority shall be made by Client and by University as joint applicants. University shall provide the necessary declarations and signatures to Client and to the registration office, if required. For University's inventors, University shall complete the designation of inventor form for submission to the Patent Office. Client will file the application and send copies to University. Client shall bear any costs incurred in the application for and prosecution and maintenance of the intellectual property right.

University's status as applicant is merely in the capacity as trustee for Client. As between the parties Client shall be exclusively entitled to the intellectual property right including the priority right. After publication of the application giving rise to a right of priority [as a rule, upon expiration of 18 months from the filing date (priority date)], University will consent to the assignment of the intellectual property right in question to Client and will provide the required declarations.

Any additional foreign applications will be filed by Client in Client's name and Client will decide, at its sole discretion, in which countries to file foreign applications. Client undertakes to keep University informed of any patent applications resulting from the above first application and any patents granted thereon.

(3) Client shall grant TUM an irrevocable, exclusive, royalty-free, worldwide and transferable license in perpetuity to use the intellectual property rights set out in § 7 b (1) outside of the Client's business domain. Client's business domain is

(4) If Client wishes to give up an intellectual property right, Client shall, in advance by registered mail, offer such right to TUM and, upon request, assign it to TUM free of charge.

(5) If TUM accepts the offer in writing by registered mail within 8 (eight) weeks from its delivery, the intellectual property right in question including all rights, obligations, and liabilities will be assigned to TUM as of the date of delivery of the offer. If TUM does not accept the offer within the stipulated deadline, Client will be entitled to give up the intellectual property right for a term of one year from the date of delivery of the offer.

§ 8 Rights of University

Notwithstanding the provisions contained in §§ 5 through § 7 a or 7 b, University and its employees involved in the R&D activities will retain in any event, for their own purposes in research and teaching, a non-exclusive, worldwide right of use in perpetuity to the results and rights set out in §§ 5 through 7 a or 7 b.

§ 9 Warranty, Liability

(1) University shall carry out the agreed-upon research activities with its customary diligence and according to the current state of science and technology as known to University. There will be no warranty; in particular there will be no warranty that the results of the Research and Development Agreement will be economically and technically usable and unencumbered by third-party intellectual property rights. To the extent that any conflicting third party intellectual property rights become known, University shall inform Client accordingly without delay.

(2) In the event of a breach of material contractual obligations (i.e. obligations the non-performance of which would make it impossible to duly perform the Agreement and the compliance with which can, as a rule, be relied upon by the other Party), the Parties, their statutory agents and persons employed to perform obligations on behalf of the Parties, shall be liable for damage caused by intent and any negli-

gence; however, in the event of slight negligence, liability shall be limited to the contract-typical, foreseeable damage.

- (3) In all other cases, the Parties, their statutory agents and persons employed to perform obligations on behalf of the Parties, 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 Agreement.
- (4) Any liability pursuant to section (3) for indirect and consequential damage shall be excluded in the event of gross negligence.
- (5) The limitation of liability and/or exemption from liability provided for in sections (2) through (4) shall neither apply in the event of injury to life, body, or health nor in the event of claims under the German Product Liability Act.

§ 10 Early Termination

Each Party is entitled to terminate this Agreement for cause, wholly or in part, in writing with immediate effect. In the event of early termination of the Research and Development Agreement no further R&D will be carried out by University from the time of termination. University will provide the results obtained thus far to Client. Client shall reimburse University for expenses incurred in connection with the R&D up until the date of early termination. Further, Client shall reimburse University beyond the date of early termination of the Research and Development Agreement, provided that University is not responsible for the termination, for those expenses to be incurred in fulfillment of legal obligations in conjunction with the Research and Development Agreement, unless University, in breach of duty, has failed to ensure that those legal obligations are terminated in time. In the event of early termination, the expenses to be reimbursed to University beyond the date of termination shall not exceed the total of the funds projected for the performance of the project pursuant to § 2, section (1).

§ 11 Written Form Requirement, Severability

Any alterations, modifications, amendments and collateral agreements must be in writing. This requirement may be waived only in writing. Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. To the extent possible under law and jurisdiction, any invalid provision shall be replaced by a valid provision which corresponds to the meaning and purpose of the invalid provision.

§ 12 Entry into Force, Term

This Agreement shall become effective upon signature by both Parties.

§ 13 Applicable Law, Venue

This Agreement shall be subject exclusively to the law of the Federal Republic of Germany without regard to its conflict of law provisions. Exclusive venue shall be Munich, Federal Republic of Germany.

_____, this _____

Signature (Client)

Munich, this _____

Signature (Contractor)

Appendix 1

Letter of Commitment

(Name of employee)

(Full address)

relating to the Research and Development Agreement between
Technische Universität München

Principal investigator Prof. _____

and _____

of _____

regarding the project _____

As principal investigator of/employee involved in the above-mentioned project, I have been made aware of the contractual obligations toward _____ under the above-referenced Agreement with regard to making available results (§ 6 a or § 6 b), their publication (§ 3 (3) and (4)), the ownership of and rights of use associated with these results (§ 7 a or § 7 b) and the secrecy of confidential information and results (§ 3 (1)).

To this end, I hereby rescind my right, where applicable, vis-à-vis _____ under § 42 (1) of the German Employees' Invention Act to disclose service inventions in the course of my research and teaching activities (positive right to publish) and my right under § 42 (2) of the German Employees' Invention Act to refuse the disclosure of inventions (negative right to publish). I shall comply with all contractual stipulations relating thereto and set out hereinabove.

Payment for inventions will be made by Technische Universität München in accordance with the statutory provisions of § 42 (4) of the German Employees' Invention Act from the revenues set out in § 7 a (1) and 3 (agreed remuneration) or § 6 b (2) (advance IPR remuneration of the IA surcharge) of the above-mentioned Agreement. Please indicate only one variant and cross out the variant that does not apply.

_____, this _____

Attachment IV: TUM Model Collaboration Agreement Type 1 (No Public Funding)

Collaboration Agreement

Company [...],
represented by [...],
full address [...]

– hereinafter referred to as [...] –

and

Technische Universität München,
represented by its president,
80290 Munich, Germany

on behalf of the

Department of [...]
Professor [...]
full address [...]

– hereinafter referred to as “TUM” –

(each a “Party” or collectively the “Parties”)

enter into the following agreement (“Agreement”) for research collaboration in the field of

[...].

Recitals

[optional]

§ 1 Subject matter of the Agreement

The subject matter of the Agreement will be [...].

§ 2 Conduct of the Collaboration

(1) The Parties shall provide qualified personnel as necessary to carry out the collaborative project ("Project").

Each party will appoint a principal investigator:

[...]: [Name]
[Title]
[Address]
[Phone]
[Fax]
[E-mail]

TUM: [Name]
[Title]
[Address]
[Phone]
[Fax]
[E-mail]

The principal investigators will be responsible for the proper conduct of the Project.

If a principal investigator leaves [...] / TUM or ceases to be principal investigator for other reasons during the term of the Agreement, an equally qualified employee may, after notification of the other Party, be appointed his or her successor. If this is not possible or the other Party does not approve of the appointed successor for justified reasons, the Agreement may be terminated early.

(2) The Parties will share any information that is necessary for the conduct of the Project.

- (3) The Parties will hold meetings at regular intervals to report on the progress of the Project and clarify any unresolved issues. Date, location, and participants will be mutually agreed by the principal investigators.
- (4) The Parties shall provide any resources necessary to conduct the Project.
- (5) Neither Party will have the right to act as agent of the other Party.
- (6) Any assignment of claims or rights under this Agreement will be excluded.
- (7) Any collaboration with third parties shall require the written consent of the other Party. The Parties must ensure that collaboration with third parties will not affect the rights and obligations under this Agreement.

§ 3 Obligations of the Parties

- (1) [...]
- (2) [TUM]

§ 4 Background Intellectual Property and Know-how, Third-party Intellectual Property Rights

- (1) Each Party will remain the owner of any inventions developed prior to the beginning of the Project, any intellectual property rights associated with the inventions that were applied for or granted, and of any know-how developed prior to the commencement of the Project.
- (2) The Parties shall inform each other prior to the commencement of and continually throughout the Project, to the best of their knowledge and belief, of (i) any Background Intellectual Property and know-how as set out in (1), provided that this is necessary for the conduct of the Project or the use of the results, and (ii) of any third-party rights that may limit a Party's use of the Background Intellectual Property and / or know-how.
- (3) To the extent that the Parties' Background Intellectual Property and know-how as set out in (1) is necessary for the conduct of the R&D and there are no adverse third party rights, the Parties will grant each other a royalty-free, non-exclusive, and non-transferable right of use limited to the term and purpose of the Project.
- (4) To the extent that the Parties' Background Intellectual Property and know-how as set out in (1) is necessary for the use of the results and there are no adverse

third-party rights, the Parties may grant each other the free option of entering into a license agreement subject to reasonable conditions.

- (5) The Parties will inform each other, to the best of their knowledge and belief, of any third-party intellectual property rights of which they are aware. To the extent that third-party intellectual property rights are necessary for the conduct of the Project or the use of results, the Parties will negotiate a separate agreement.

§ 5 Results

- (1) “Results” shall be any results including reports and documentation developed by the Parties in the course of the Project (for example, know-how, inventions, copyrighted results, soft-ware / software development).
- (2) Any Results developed solely by employees of one Party shall be the property of that Party.

Any Results developed by employees of both Parties jointly shall be the joint property of both Parties. In the case of joint inventions the Parties shall, within the deadline for release of inventions provided for in the German Employees’ Invention Act (ArbEG), come to an agreement on either the release of the invention or the filing of an application for intellectual property protection and the allocation of related costs as well as on the maintenance and defense of such intellectual property rights, and record their agreement in writing.

- (3) The Parties shall grant each other a royalty-free, non-exclusive, non-transferable right of use to the Results for the term and purpose of the Project and, except for Results capable of intellectual property protection, for their own purposes in research and teaching.
- (4) The Parties may grant each other more extensive rights of use subject to reasonable terms and conditions.

§ 6 Confidentiality

- (1) Each Party shall treat the confidential information (including, but not limited to, know-how, documentation, project tasks, and business transactions) obtained from the other Party in connection with this Agreement (“Confidential Information”) as confidential and shall neither disclose the Confidential Information to third parties nor use it for purposes other than the performance of this Agreement. Confidential Information means any information that is either clearly marked as

confidential or ought to be considered confidential from its nature. This obligation of confidentiality will expire two years from termination of the Agreement. The Parties shall ensure that employees and third parties involved in the Project respect the confidentiality obligations hereunder.

- (2) The confidentiality obligations shall not apply, if and to the extent that the recipient establishes, as evidenced by documents, that the information communicated
- is or becomes generally known through no act or omission of the recipient; or
 - has been or will be lawfully received from a third party; or
 - was already known to the recipient or is developed independently of the Project; or
 - is disclosed after the disclosing Party has waived compliance with the confidentiality obligations in writing; or
 - was duly disclosed under court or governmental order.

§ 7 Publications

- (1) Each Party may publish its own Results.
- (2) Any publications containing results of the other Party shall be agreed prior to publication. The other Party will not withhold its consent to the publication without good reason. Unless the other Party objects to the proposed publication (original text) within four weeks of receipt of the complete documentation, consent shall be deemed given.
- (3) [...] acknowledges TUM's general obligation to publish the type, subject, and results of research carried out at TUM. Where doctoral or Habilitation projects are affected by the Project, [...] shall reasonably comply with the doctoral or *Habilitation* candidates' legal obligations and justified interests.

§ 8 Liability

- (1) The Parties shall carry out the Project with their customary diligence and according to the current state of science and technology as known to them. There will be no warranty; in particular there will be no warranty that the Project results will be economically and technically usable and unencumbered by third-party intellectual property rights.
- (2) The Parties shall be liable to each other only for damage caused by intent or gross negligence; any liability for consequential damage and financial loss will be excluded. The limitation and / or exemption from liability will not apply in the event of injury to life, body, or health.

§ 9 Written Form Requirement

Any alterations, modifications, amendments and collateral agreements must be in writing. This requirement may be waived only in writing.

§ 10 Severability

Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. To the extent possible under law and jurisdiction, any invalid provision shall be replaced by a valid provision which corresponds to the meaning and purpose of the invalid provision.

§ 11 Entry into Force

This Agreement shall become effective upon signature by both Parties and shall terminate on [...].

§ 12 Applicable Law, Venue

This Agreement shall be subject exclusively to the law of the Federal Republic of Germany without regard to its conflict of law provisions. Exclusive venue shall be Munich, Federal Republic of Germany.

_____, this _____

(Signature [...])

Munich, this _____

(Signature TUM)

Attachment V: TUM Model Collaboration Agreement Type 2 (Public Funding)

Collaboration Agreement

Project coordinator [...]

and

Technische Universität München (TUM),
represented by its president,
Arcisstraße 21, 80333 Munich, Germany

on behalf of the
Department of [...]
Professor [...]
full address [...]

and

[Partner],
represented by,
full address [...]

and

[Partner],
represented by,
full address [...]

[Partner],
represented by,
full address [...]

– hereinafter each a “**Partner**” or collectively the “**Partners**” –

enter into the following Agreement for the conduct of the joint research project
Project name [...]

– hereinafter referred to as “**Joint Research Project**” –.

Recitals

Joint research projects are collaborative projects involving several research and / or industry partners that each perform specific tasks toward the completion of the Project. Each partner has filed a separate application for funding from the Bundesministerium für Bildung und Forschung (*BMBF*) [German Federal Ministry of Education and Research].

The project management agency for the Project will be:

The following terms and conditions apply to the collaboration under the Joint Research Project:

§ 1 Subject-matter of the Agreement

(1) Subject-matter of the Agreement shall be the collaboration under the Joint Research Project funded by the BMBF:

„Project title“ / Project no. / approved on

(2) Content and scope of the work to be completed by the Partners and the applicable schedule are set out in the project description and the overall work and time schedule as amended by the applicable BMBF grant approval letter (*Zuwendungsbescheid*). The Partners may determine amendments to this overall work and time schedule in meetings as set out in § 3(4); the coordinator will record any amendments in the minutes of the meeting and send copies thereof to all Partners.

§ 2 Performance of Work

(1) The Partners undertake to perform the coordinated tasks and work packages that are required for the conduct of the Joint Research Project in compliance with the applicable project description and the overall work and time schedule including the most recent updates.

(2) Each Partner shall be solely responsible to the BMBF for the performance of the research and development work undertaken by that Partner.

(3) Any decisions on the organization or content of the Project should be made by mutual agreement.

- (4) The Parties will share any information that is necessary for the conduct of the Joint Research Project and any results obtained from the Project.

§ 3 Project Coordination

- (1) The project coordinator (“Project Coordinator”) for the Joint Research Project will be (*Partner 1*); the principal investigator will be (*Name*).
- (2) The Project Coordinator’s task will include, but not be limited to, the scientific and schedule coordination of the Partners’ work. In the event of deviations from the overall work and time schedule the Project Coordinator shall inform the Partners and the project management agency as soon as possible and recommend actions to remediate any problems.
- (3) The Partners shall inform the Project Coordinator without delay of any events that may seriously endanger the successful completion of the entire or parts of the Joint Research Project for scientific, technical, economic, or factual reasons, including compliance with the time schedule. The Project Coordinator shall duly inform the Partners concerned and the project management agency.
- (4) The Project Coordinator or a person authorized by the Project Coordinator will (i) organize the meetings necessary for the performance of the overall work and time schedule (usually once every six months), (ii) send out invitations to these meetings including the agenda within a reasonable time period prior to the meetings, (iii) chair the meetings, and (iv) prepare and distribute the minutes. Representatives of all Partners will participate in these meetings.
- (5) Each Partner will identify a contact person responsible for the work undertaken by that Partner (address, phone number, fax number, and e-mail) (subproject leader). Any change in the subproject leader must be communicated to the Project Coordinator and all Partners without delay. The Partners will try to ensure staff continuity with regard to the subproject leaders.

The subproject leaders will be:

[...]

- (6) After scientific and technical review and summary evaluation of the reports submitted by the Partners, the Project Coordinator shall collect them and prepare reports on the overall Joint Research Project in compliance with the provisions of the grant approval letter. The Project Coordinator will send these reports to the

project management agency. In order to meet his or her responsibilities towards the project management agency, the Project Coordinator must obtain the reports from all Partners no later than four weeks prior to the date of submission to the project management agency, as specified in the grant approval letters.

§ 4 Rights to Project Results, Intellectual Property Rights

- (1) "Project Results" shall be any and all results, including reports and documentation, which the partners have developed in the course of their work under the Project (for example, know-how, inventions, copyrighted results, software).
- (2) Any Results developed by a Partner shall be the property of that Partner.
- (3) Subject to its obligations towards the BMBF, each Partner will have the right to apply for intellectual property protection in its own name and at its own cost, but will be obligated to inform the other partners of any applications made in connection with the Project.
- (4) Any Results developed by employees of several Partners jointly shall be the joint property of those Partners.
- (5) In the case of joint inventions the Partners shall, within the deadline for release of inventions provided for in the German Employees' Invention Act (ArbEG), come to an agreement on filing applications for intellectual property protection (including the determination of the lead party in each individual case), maintenance and defense of such intellectual property rights and the related costs, and record their agreement in writing; as a rule, the costs will be allocated in proportion to each Partner's inventive contribution. The Partners who have contributed to a joint invention will endeavor to ensure that written records are kept and each inventor's contribution is determined by mutual agreement and recorded in writing.
- (6) If a Partner is not interested in (i) filing an application for protection of the inventions developed under the Project, (ii) prosecuting an application, or (iii) maintaining an intellectual property right granted under the Project, that Partner, to the extent legally and factually possible, shall offer the other Partners the option to acquire its rights. The assignment of rights shall be governed by a separate agreement. The offer shall be made in time for the interested Partner to take any steps necessary to obtain intellectual property protection within the statutory time limits, in particular before the expiration of the one-year period for claiming priority. The option must be exercised within 12 weeks by way of a binding

written acceptance letter. The obligation to offer intellectual property rights to the other Partners will end 12 months from expiry of this Agreement. The Partner offering the rights shall assist in their assignment.

- (7) The provisions set out in § 4 (6) shall apply accordingly to inventive contributions and shares of intellectual property rights, in which case the offer pursuant to § 4 (6) must be made to those Partners that have contributed to the invention and/or intellectual property right.

§ 5 Rights of Use

- (1) Each Partner will have the right to use the Project Results developed by that Partner under the Joint Research Project without restriction; section 4 will remain unaffected.
- (2) The Partners shall grant one another a non-exclusive, non-transferable and royalty-free right of use, limited to the purpose and term of the Joint Research Project, to the Project Results as defined in § 4 (1) and to any project-related results existing prior to the commencement of the Joint Research Project (for example, know-how, inventions, copyrighted results, software) unless there are conflicting third-party agreements.
- (3) After termination of the Joint Research Project, the Partners may grant one another further rights of use to the Project Results, subject to market-standard terms and conditions. When determining the license fees for inventions, the rightholders should consider contributions of the Partners that are a necessary component, but not a required step of the invention. The commercial use of joint inventions and the granting of non-exclusive and exclusive rights of use to joint inventions shall be mutually agreed upon by the Partners involved, taking into account their respective inventive contributions. Where a Research Partner has contributed to a joint invention, the Partners involved will carefully assess any imbalanced contributions in terms of section § 3 (1) of the Community Framework For State Aid For Research and Development and Innovation, document the outcome, and make up for the imbalance by paying additional remuneration; this will require a separate agreement between the Partners involved. After completion of the Joint Research Project, each Partner shall have a non-exclusive, non-transferable, royalty-free right of use, excluding the right to grant sub-licenses, to all Project Results for its own purposes in research and teaching.

- (4) Each Partner acknowledges that any use of information and / or equipment in connection with the conduct of the Project does not give rise to a right of prior or continued use of information and / or equipment obtained from the other Partners.

§ 6 Costs

Each Partner shall bear its own costs and expenses incurred in the performance of this Agreement (using the BMBF grant).

§ 7 Collaboration, R&D Third Party Services

- (1) The Partners may commission third parties to perform work or services specified in the project description of the Joint Research Project. For this purpose the Partners shall enter into separate written agreements that must not conflict with this Collaboration Agreement.
- (2) Where a Partner commissions a third party to provide research and development services under the Joint Research Project, that Partner must ensure that the other Partners enjoy no less than the same rights to the third party's results they would enjoy had the commissioning Partner itself developed the results.
- (3) Prior to commissioning research and development services to third parties under the Joint Research Project, the Partners must inform the Project Coordinator in writing, who will in turn inform the other Partners.
- (4) A Partner that commissions a third party to provide research and development services under the Joint Research Project will be responsible therefor, in particular, the third party's compliance with the obligations set out in § 8.

§ 8 Confidentiality, Publications

- (1) The Partners shall keep the secrecy of obvious confidential information ("Information") disclosed to them by the other Partners under this Agreement for a term of two years from termination of this Agreement and shall not disclose this Information to third parties.

- (2) The confidentiality obligations of § 8 (1) shall not apply to information that, as evidenced by documentation,
- is generally known through publications, etc.; or
 - becomes generally known through no act or omission of the recipient; or
 - has been lawfully received by a Partner from a third party; or
 - was already known to the recipient prior to disclosure by another Partner; or
 - is the result of work performed by employees of the recipient who had no access to such information; or
 - must be disclosed under court or governmental order.
- (3) The Partners shall take all practical and reasonable steps to ensure that their employees comply with the confidentiality obligations set out hereinabove.
- (4) Each Partner may publish its own Project Results. All publications must acknowledge the Joint Research Project in an appropriate manner.
- (5) Any publications containing Confidential Information or Project Results of other Partners require the prior written approval of that Partner. The Project Coordinator must be informed accordingly. The Partners may not withhold their consent without good reason, but may request changes or deletions, if required. Unless a Partner, within four weeks from receipt of the complete documentation, objects to a proposed publication (original text) that Partner's consent shall be deemed given.

§ 9 Term of the Collaboration Agreement

- (1) Subject to the award of a BMBF grant, this Agreement shall come into full force and effect after signature by all Partners upon commencement of the term of the Joint Research Project as specified in the grant approval letters, and shall end upon expiry of each grant period unless terminated earlier or otherwise ended. Sections § 3 (6), § 4, § 5, § 8, § 10 and § 12 shall continue to apply beyond termination of the Agreement.
- (2) Each Partner may terminate this Agreement for cause. Good cause shall exist, in particular, in the following cases: (i) a significant reduction or modification of the grant; (ii) discontinuation or reduction of the funding of one or more Partners; (iii) withdrawal of a Partner; (iv) or if the results show that the goal of the Joint Research Project cannot be achieved. Notice of termination must be given in writing to the project management agency, the Project Coordinator and the Partners. The Partner giving notice of termination will submit a final report and, upon request, return any records, documentation, data media and objects obtained

from the other Partners. The withdrawal of one Partner will not affect the agreement between the remaining partners.

- (3) In the event of withdrawal of a Partner pursuant to § 9 (2)
 - that Partner's rights will be limited to those results provided by the other Partners up until receipt of the notice of termination;
 - the rights of use and access to project-related results and Project Results granted by that Partner to the other Partners under this Agreement will remain unaffected;
 - sections § 3 (6), §8, § 10 and § 12 of this Agreement shall continue to apply beyond termination of the Agreement.
- (4) In view of the consequences the withdrawal of a Partner may have on the overall Project, any withdrawal of a Partner must be coordinated with the BMBF.

§ 10 Warranty, Liability

- (1) The Partners shall carry out the work undertaken by them under the Joint Research Project properly, to the best of their knowledge, and according to the current state of science and technology. There will be no warranty; in particular, the Partners make no warranty that the Results developed by them under the Project will be unencumbered by third-party intellectual property rights or that specific Results will be achieved. However, as soon as a Partner becomes aware of such intellectual property rights, that Partner shall inform the other Partners.
- (2) In the event of a breach of material contractual obligations (i.e. obligations the non-performance of which would make it impossible to duly perform the Agreement and the compliance with which can, as a rule, be relied upon by the other Party), the Partners, their statutory agents and persons employed to perform obligations on behalf of the Partners, shall be liable for damage caused by intent and any negligence; however, in the event of slight negligence, liability shall be limited to the contract-typical, foreseeable damage.
- (3) In all other cases, the Partners, their statutory agents and persons employed to perform obligations on behalf of the Partners, 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 each Partner's grant.
- (4) Any liability pursuant to section §10 (3) for indirect and consequential damage shall be excluded in the event of gross negligence.

- (5) The limitation of liability and / or exemption from liability provided for in sections §10 (2) through §10 (4) shall neither apply in the event of injury to life, body, or health nor in the event of a manufacturing Partner's claims of under the German Product Liability Act.

§ 11 Accession of Additional Partners

In the event that additional companies or research institutions receive, after close coordination with the Project Coordinator, public grants in connection with the Joint Research Project, they will have the right, upon agreement with the other Partners, to accede the Agreement under the same terms and conditions, subject to an accession agreement to be entered into.

§ 12 Final Provisions

- (1) Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. Any invalid provision shall be replaced by a valid provision having retroactive effect which comes as close as possible to the meaning and purpose of the invalid provision.
- (2) No Partner will have the right to act as agent of the other Parties without their prior explicit consent.
- (3) Any alterations, modifications, amendments and collateral agreements must be in writing. This requirement may be waived only in writing.
- (4) This Agreement does not give rise to any corporate, partnership, or similar relationship.
- (5) The Partners will try to settle any disagreements arising out of this Agreement, including disagreements that may arise after termination of the Agreement, amicably. If this is not successful, first the project management agency, and then the BMBF will be requested to settle the disagreement.
- (6) The BMBF's rights will not be affected by this Agreement and shall prevail over this Agreement.
- (7) This Agreement shall be subject exclusively to the law of the Federal Republic of Germany without regard to its conflict of law provisions. Exclusive venue shall be Munich, Federal Republic of Germany.

§ 13 Signatures

Research institution/Company

_____, this _____
Place, date

Approved:

Chair/Institute

_____, this _____
Place, date

Attachment VI: TUM Model Material Transfer Agreement

Material Transfer Agreement

This Agreement is made between

*Company / University [...],
full address [...]*

– hereinafter referred to as *Recipient* –

for
*Name, Position [...],
full address [...]*

– hereinafter referred to as *Recipient Scientist* –

and

Technische Universität München (TUM),
represented by its president,
Arcisstr. 21
80333 Munich, Germany

– hereinafter referred to as *Provider* –

§ 1 Definitions:

- (1) *Provider*:
Organization providing the *Original Material*
- (2) *Recipient*:
Organization receiving the *Original Material*
- (3) *Recipient Scientist*:
Individual designated by *Recipient* as responsible for receiving and processing the *Material*
- (4) *Material: Original Material, Progeny, and Unmodified Derivatives*. *Unmodified Derivatives* includes, but is not limited to, cells obtained by cultivation and DNA obtained from DNA by replication in a host cell or by cloning of a fragment for subsequent replication in a host cell. The *Material* shall not include *Modifications* or other substances created by *Recipient* through the use of the *Material* which are not *Progeny* or *Unmodified Derivatives*. A description of the *Original Material* is attached as [Appendix 1](#) to this Agreement.
- (5) *Modifications*:
Substances created by *Recipient* which contain / incorporate the *Material*.
- (6) *Commercial Purposes*:
Sale, lease, license, or other transfer of the *Material* or *Modifications* to third parties. *Commercial Purposes* shall also include use of the *Material* to perform contract research, to screen compound libraries, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the *Material* or *Modifications* to third parties.

§ 2 Terms and Conditions for Transfer and Use of the Material:

- (1) The *Provider* retains ownership of the *Material* including *Material* contained or incorporated in the *Modifications*.
- (2) The *Recipient* retains ownership of:
 - (a) *Modifications* (except for *Material* contained or incorporated in the *Modifications* that is the property of *Provider*); and
 - (b) those substances created through the use of the *Material* or the *Modifications*, but which contain no *Material*. If either 2 (a) or 2 (b) results from the collaborative efforts of *Provider* and *Recipient*, there shall, as a rule, be joint ownership.

- (3) *Recipient* and *Provider* agree that the *Material*
- (a) is to be used solely for teaching and academic research purposes;
 - (b) will not be used in human subjects, in clinical trials or pre-clinical studies, or for diagnostic purposes involving human subjects without the written consent of *Provider*;
 - (c) is to be used only at the *Recipient* organization and only in the *Recipient Scientist's* laboratory under the direction of the *Recipient Scientist* or others working under his or her direct supervision; and
 - (d) will not be transferred to other persons within the *Recipient* organization without the prior written consent of *Provider*;
 - (e) will not be decompiled, analyzed, decomposed, reverse engineered, or chemically analyzed using chromatography or other techniques.
- (4) *Recipient* and *Recipient Scientist* agree to refer to *Provider* any request for the *Material* from any person or organization other than those working under the *Recipient Scientist's* direct supervision. It will be at *Provider's* discretion to transfer the *Material* to the requesting person or organization subject to a separate agreement.
- (5) *Recipient* agrees not to transfer the *Material* or the *Modifications* for commercial purposes without the prior written consent of *Provider*. *Recipient* acknowledges that any use for commercial purposes requires a separate agreement with *Provider* and that *Provider* has no obligation to enter into such agreement.
- (6) *Recipient* acknowledges that the *Material* is or may be the subject of a patent application or other application for intellectual property protection. Except as specified in this Agreement, no express or implied licenses or any other rights are provided to *Recipient* to use the *Material* under any patents, trademarks, industrial design rights, copyrights or any other intellectual property rights of *Provider*, including any altered forms of the *Material* made by *Provider*. In particular, no express or implied rights (for example, right of use beyond the termination of the Agreement) are provided to use the *Material* or the *Modifications* or any of *Provider's* intellectual property rights relating thereto for *Commercial Purposes*.
- (7) If *Recipient* intends to use the *Material* or *Modifications* for *Commercial Purposes*, *Recipient* agrees, prior to such use, to negotiate with *Provider* the terms and conditions of an agreement for *Commercial Use*. It is understood by *Recipient* that *Provider* shall have no obligation to enter into such agreement and that *Provider* may enter into exclusive or non-exclusive agreements for *Commercial Use* of the *Material* at any time, or sell or assign all or part of the rights in the *Material* to third parties provided that no pre-existing rights are infringed upon.

- (8) Any inventions developed by *Recipient*, *Recipient Scientist*, or persons as defined in 3 (c) above who are under *Recipient Scientist's* direct supervision, in the course of the work performed under this Agreement and using the *Material* shall be the property of *Recipient* or the inventors, who may file and prosecute applications for patent or other intellectual property protection for these inventions. *Recipient* undertakes to inform *Provider* of any applications, the subject of which are *Modifications* or methods for the manufacture and/or use of the *Material*.
- (9) Any *Material* delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. *Provider* makes no representations and extends no warranties of any kind, either express or implied, as to the merchantability or fitness for a particular purpose of the *Material* or *Modifications* nor that the *Material* will not infringe any patent, trademark, copyright or any other rights.
- (10) Except to the extent limited by applicable law, *Recipient* assumes all liability for damage which may arise from *Recipient's* acceptance, transport, storage, handling, use, or disposal of the *Material* or *Modifications*. *Provider* will not be liable to *Recipient* for any loss or claim incurred or made by *Recipient*, or incurred by or made against *Recipient* by a third party, arising from *Recipient's* acceptance, transport, storage, handling, use, or disposal of the *Material* or *Modifications*. *Recipient* shall fully indemnify *Provider* against any third party claims, including, but not limited to, claims under strict liability [section 823 of the German Civil Code (§823 BGB)] arising from the use of the *Materials* or *Modifications* including their acceptance, transport, storage, handling, use, or disposal by *Recipient*.
- (11) *Recipient* may publish any results from work performed under this Agreement using the *Material* or *Modifications* without limitation. *Provider* and the source of the *Material* must be acknowledged in all publications.
- (12) *Recipient* agrees to use the *Material* in compliance with all applicable laws, statutes, and regulations.
- (13) This Agreement will terminate after one year, or on the earliest of the following dates:
- (a) on completion of the *Recipient's* work with the *Material*; or
 - (b) on thirty days written notice by either party to the other.

After termination of the Agreement, *Recipient* shall, upon direction of *Provider*, return or destroy any remaining *Material* without delay; further, *Recipient* shall either destroy *Modifications* or remain bound by the terms of this Agreement as they apply to *Modifications*.

In the event that *Provider* terminates this Agreement under 13 (b) above other than for breach of this Agreement by *Recipient* or for cause such as an imminent health risk, *Provider* will defer, upon *Recipient's* request, the effective date of termination for a period of up to one year from the date specified in 13 (b), to permit *Recipient* to complete research in progress. Upon the effective date of termination or the deferred effective date of termination, *Recipient* will discontinue its use of the *Material* and will, upon direction of *Provider*, return or destroy any remaining *Material*; further, *Recipient* shall either destroy *Modifications* or remain bound by the terms of this Agreement as they apply to *Modifications*.

- (14) Sections 3, 6, 9, and 10 shall survive termination of the Agreement.
- (15) Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. Any invalid provision shall be replaced by a valid provision which comes as close as possible to the meaning and purpose of the invalid provision.
- (16) This Agreement sets forth the entire agreement of the parties with respect to the transfer and use of the *Material* and *Modifications* and supersedes any prior agreements. Any alterations, modifications, amendments and collateral agreements must be in writing and signed by all parties.
- (17) In the event of any disputes between the parties as to the performance or interpretation of this Agreement, both parties agree to seek a fair settlement. This Agreement shall be governed by the law of the Federal Republic of Germany; venue shall be Munich.
- (18) This Agreement shall become effective upon signature by all parties. The undersigned warrant that their organization is aware of the terms and conditions of this Agreement and accepts them without reservations, and that the undersigned and their organizations shall comply with this Agreement.

Provider:

TUM

Munich, this _____

Chair of _____

_____, this _____

Signature

Recipient:

Name

_____, this _____

Recipient Scientist

_____, this _____

Signature

Appendix

Material

1. Description
2. Fee for transfer of the *Material* (optional)

Attachment VII: TUM Model Non-Disclosure Agreement

Non-Disclosure Agreement

between

Technische Universität München
Arcisstraße 21, 80333 Munich, Germany

on behalf of
the Department of [...]
Professor. [...]
full address [...]

– hereinafter referred to as “TUM” –

and

Name [...]
full address [...]

– hereinafter referred to as “Company” –
(each a “Party” or collectively the “Parties”)

Recitals

The Parties intend to collaborate in the field of [..].

Prior to the commencement of the collaboration it may be necessary for the Parties to exchange certain proprietary information that should be kept confidential to protect the Parties' rights.

A Party disclosing confidential information reserves the right to file applications for intellectual property protection of such confidential information.

Now, therefore, the Parties hereto agree as follows:

§ 1 With regard to any and all information disclosed to the Parties directly or indirectly, either in writing, orally, or in any other way, for the purpose set out in the Recitals or of which the Parties otherwise became aware of, in particular technical or business information including, but not limited to documents, drawings, sketches, designs, plans, description, specifications, data, measurement results, calculations, samples, parts, films, digital storage media, expertise, techniques, knowledge, processes, know-how and unpublished applications for intellectual property protection that are either marked or identified as confidential, or should reasonably be considered as confidential due to their nature ("Information"), the Parties undertake

- to treat the Information as confidential;
- not to use the Information except for the purpose stated above and, in particular, neither to publish it, apply for intellectual property protection therefor nor use it commercially;
- not to disclose the Information nor make it otherwise available to third parties; third parties shall include affiliated companies pursuant to Section 15 of the German Stock Corporation Act (§ 15 AktG), licensees, or clients;
- to take all steps necessary to prevent unauthorized access to this Information;
- to give access to this Information only to employees whose work is related to the purpose set forth in the Recitals and who are obliged to observe the confidentiality requirements hereunder. The Parties shall ensure that this shall also apply if such employees leave TUM or *Company* during the term of the Agreement and the period stipulated in section 7.

§ 2 The confidentiality obligations under this Agreement shall not apply if and to the extent the recipient establishes, as evidenced by documents, that the information communicated

- was generally known prior to disclosure; or
- becomes generally known through no act or omission of the recipient; or

- was already known to the recipient prior to disclosure; or
- has been or will be lawfully received from a third party; or
- is developed independently by employees of the recipient who had no access to this Information; or
 - is disclosed after the disclosing Party has waived compliance with the confidentiality obligations in writing.

§ 3 No Party shall grant the other Party any rights, including, but not limited to, ownership rights, license, reproduction or reconstruction rights nor rights of use or other intellectual property or option rights to any Information disclosed under this Agreement.

§ 4 After termination of this Agreement the Parties shall, upon request, return any and all Information received and destroy any copies thereof.

§ 5 The Parties will not be liable for any Information disclosed under this Agreement.

§ 6 In order to protect the Information from unauthorized disclosure or use, the Parties undertake to treat the Information with the same degree of care as they would use to protect their own information, but in no event less than the usual care exercised in handling confidential matters. Liability for infringement of confidentiality obligations and any consequential damage resulting therefrom shall be limited to foreseeable damage.

The aforementioned limitation of liability shall not apply in the event of willful or malicious conduct.

§ 7 This Agreement shall become effective upon signature by both Parties and shall end [...] years from the date of the latest signature.

§ 8 Any dispute arising out of or relating to this Agreement shall be subject exclusively to the law of the Federal Republic of Germany without regard to the conflict of law provisions of international private law. Exclusive venue shall be Munich, Federal Republic of Germany.

§ 9 No collateral agreements have been made. Any alterations, modifications, or amendments must be in writing. This requirement may be waived only in writing.

§ 10 Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. To the extent possible under law and jurisdiction, any invalid provision shall be replaced by a valid provision which corresponds to the meaning and purpose of the invalid provision.

_____, this _____

Signature (Client)

_____, this _____

Signature (Contractor)

Attachment VIII: TUM Research Code of Conduct dated January 1, 2013

TUM Research Code of Conduct

TUM hereby issues the following principles and guidelines regarding the preparation and carrying out of research and commercial collaborative projects, which are binding upon all members of the University.

The University's continued success in instruction, research and technology transfer is based on high standards of ethics and professionalism in research and commercial relationships. Transparent, clearly defined principles regarding the culture of collaborative projects help ensure that outstanding scientists remain loyal to the University, and build confidence among parties involved in collaborative projects with TUM.

All members of the University involved in research work must adhere to the following principles:

1. Loyalty

Maintain loyalty towards the University, and take into account TUM's fundamental values and interests when performing research work. For further information, please see TUM Mission statement (http://portal.mytum.de/tum/leitbild/index_html).

2. Independence

Adhere closely to the rules regarding the combating of corruption and the Third Party Funding Guidelines of the Free State of Bavaria in their applicable version, and uphold the principles of freedom in science and research. Research and commercial cooperation must not conflict with the unremunerated use of research outcomes and the associated intellectual property rights for TUM's and project participants' own scientific purposes in research and instruction.

3. Competence

Apply expert knowledge and conduct research work conscientiously and to high scholarly standards.

4. Integrity

Act with integrity when applying for and carrying out research projects and when reporting on research outcomes, either in writing or orally. Deceptive or misleading conduct is against the principles of academic honor.

5. Respect

Treat research partners with respect and esteem, and interact with them in a reliable and trustworthy manner.

6. Criticism

View constructive criticism as a welcome and supportive part of scientific development.

7. Confidentiality

Keep confidential any information of which they become aware in the course of collaborative research and commercial projects. Such information should be used solely for the purpose of carrying research assignments in a conscientious manner.

8. Conflicts of Interest

Avoid situations which might give rise to conflicts of interest. If necessary, endeavor to resolve such situations by making appropriate assessments and avoiding action where appropriate. Cooperation with competing contractual parties in the same field of research and the use of unauthorized information or materials are to be avoided.

9. Contractual Agreements

Do not independently draw up contractual agreements with research and cooperation partners unless you have been assigned signing authority. Contractual agreements with third parties always relate to the university as a whole; as a public-law body and state entity, TUM is represented externally by the President; authority to act may be assigned by him.

10. Calculation of Project-related Costs

Given the importance of operating according to commercial principles, project-related full costs¹² must be used as the basis for calculating costs vis-à-vis third parties.

Market rates and appropriate conditions apply to all contractual goods and services which could equally be provided by the private sector. Price dumping relative to commercial or public-sector competitors is forbidden.

11. Transparency in Use of Funds

Ensure that research project funds are used effectively and appropriately. Depending on the agreement in question, provide cooperation partners and sponsors with regular updates concerning the progress of projects supported by them. A research project's revenues and financial obligations vis-à-vis third parties must always be managed via an assigned fund at TUM.

¹²⁾ Full costs are determined based on overhead costing, using the simplified calculation scheme for order calculations per EU Community guidelines.

12. Intangible Assets (IAs) including Intellectual Property Rights (IPRs)

Adhere to TUM's IP Policy¹³ when creating intangible assets¹⁴. When intellectual property rights are transferred to third parties (e.g. commercial cooperation), ensure that TUM is a co-applicant in patent and trademark applications. Take into account the interests of not only the University but also the members of the University involved.

13. Scientific Ethics

Only participate in research projects which accord with statutory requirements and TUM ethical guidelines (TUM Mission Statement). Take all necessary precautions to protect the safety and health of project participants. Do not conduct research work requiring a permit (e.g. human or animal studies) until approval has been granted by the relevant commission (e.g. ethics commission).

14. Equal Opportunity

Promote equal opportunity when choosing employees to participate in research projects. Avoid discrimination (e.g. based on gender, background, religion or age), and when choosing project participants apply the appropriate objectivity in considering all qualified individuals.

15. Conflict Resolution

Consult the University if there is a bilaterally irresolvable conflict with cooperation partners. In cases of doubt, notify the President, who must then fulfill his professional obligation to provide assistance in a reliable and trustworthy manner.

On behalf of TUM:



Wolfgang A. Herrmann
President

Munich, February 1, 2013

¹³ For information on TUM's Patents Policy, please visit:
www.forte.tum.de/technologietransfer/tum-patentpolitik

¹⁴ Legally protectable work outcomes or developments, e.g. inventions, computer programs, inventions, aesthetic designs, trademarks

Attachment IX: TUM Fundraising Code of Conduct dated October 1, 2011

TUM Fundraising Code of Conduct

TUM hereby issues the following principles and guidelines regarding fundraising and foundation activities, which are binding upon all members of the University and TUM sub-areas:

Principles

TUM broadens its financial base via an extensive fundraising system (foundation chairs, scholarships etc.) and via the TUM University Foundation (endowment principle). These two sources of third-party funds are mutually complementary. They do not constitute a source of funds for contract research, but rather for non-profit direct or indirect support for research, instruction and up-and-coming scientists.

The main elements of the foundation approach are:

- Foundation chairs and foundation institutes, with agreed specialist areas of activity¹⁵
- Payments to the TUM University Foundation
- Payments in support of the National Scholarship Program (support for students)

Based on the patron's wishes, funding may be paid to any of the following:

- TUM (which is a public university and public-law entity)
- TUM University Foundation (civil-law foundation with legal capacity)
- Karl Max von Bauernfeind-Verein e.V. (non-profit association for support of TUM).

All three entities have non-profit status, and thus are entitled to issue donation receipts for research and teaching. They administer received funds in accordance with written contractual agreements.

Intellectual property created as a result of foundation-financed activities of foundation chairs, foundation institutes and similar entities remains the property of TUM pursuant to statutory and tax law provisions, i.e. it cannot, even partially, be transferred to the entities' patrons (by contrast with contract research and sponsoring).

Basic guidelines are set forth below, and have been in place for a number of years. As they have proved effective as part of relationships built on trust between numerous patrons and TUM, they were incorporated into the TUM Code of Conduct by the TUM Board of Management as of October 1, 2011.

¹⁵ Examples: Peter Löscher Chair of Business Ethics; Susanne Klatten Endowed Chair for Empirical Educational Research; Else Kröner-Fresenius Centre for Nutritional Medicine; SGL Group Institute for Carbon Composites

1. Ethical Guidelines

Support for research and teaching and social and cultural projects at TUM is based on the following principles:

1. We uphold freedom in science and research. The University shall remain independent of commercial interests.
2. TUM's reputation and integrity as a public educational and research institution must be upheld.
3. Our patrons' justifiable wishes must be fully taken into account, e.g. how funded activities are to be oriented.
4. Patrons shall be treated with respect and esteem, and ongoing contact shall be maintained with them in a spirit of trust.
5. Patrons shall be updated regularly concerning projects for which they have provided funds. Donated funds shall be utilized in a transparent manner.
6. We hereby pledge to use the provided funds in an effective and appropriate fashion.
7. We adhere to regulations regarding combating corruption and concerning data protection. Information with which we have been entrusted will not be forwarded to third parties without prior permission from the parties involved.

2. Guidelines for Foundation Chairs and Foundation Institutes

1. Foundation chairs, foundation institutes and comparable entities must be adequately financed. Direct costs (personnel, investments, material resources, rental costs if applicable) are subject to a flat-fee overheads charge of 20 %. Due to TUM regulations there are no exceptions to this. In such matters TUM follows the provisions of the German Research Foundation (DFG).
2. All contractual negotiations shall be conducted by the President or his authorized fundraising representatives. Negotiations shall be opened if a concrete letter of intent concerning the purpose of the foundation, the period of the foundation

(as a general rule 10 years) and the financial details has been received. A draft agreement shall be submitted by TUM and negotiated with the patron.

3. Decisions regarding the setting up of foundation chairs, foundation institutes and comparable entities shall be made by TUM. Foundation chairs shall be set up, announced and filled in accordance with relevant statutory regulations.
4. The research and teaching conducted by foundation chairs and institutes shall be unencumbered and not subject to the influence of the patron. Furthermore, providing patronage does not mean that expectations can be imposed upon TUM concerning trading transactions or procurement activities. The patron shall not have any claim to utilization of research outcomes.
5. Agreements regarding provision of funds shall be drawn up in writing and notarized.
6. TUM guarantees that funds will be used for appropriate purposes, and is accountable to the patron for this.

3. TUM University Foundation Governance Guidelines

1. The TUM University Foundation is subject to governmental supervision by the district government of Upper Bavaria.
2. The foundation bodies shall ensure that the purposes of the foundation are upheld and that foundation assets are maintained. They shall ensure that foundation activities are transparent, and shall supply the general public with information as appropriate.
3. The individuals who sit on TUM University Foundation bodies are considered trustees of the formulated will of the donor. They perform their activities in an honorary capacity and are bound by the foundation's charter.
4. The members of the foundation bodies shall pursue non-profit interests when making decisions. They shall avoid possible conflicts of interest, and if necessary shall abstain from the decision-making process if their or close family members' private interests are involved.

5. The TUM University Foundation's Executive Board is the decision-making body, and shall conduct the foundation's ongoing business. The Advisory Board is the supervisory body, and shall provide support to and supervision of the Executive Board. Hence members of the Advisory Board cannot simultaneously be Executive Board members.
6. The efficacy of the foundation program shall be scrutinized regularly, particularly to ensure that the foundation's purpose is being fulfilled and that funds are being used efficiently.
7. Please refer also to the TUM University Foundation's Mission Statement.

On behalf of TUM:



Wolfgang A. Herrmann
President

Munich October 1, 2011