*This box has to be deleted at the end.*

**Colour code:**

Grey background = To be completed

Green background = Guidance through the document, to be deleted at the end.

**Collaboration Agreement**

This Agreement (hereinafter referred to as **“Agreement”**) is entered by and between:

**Université de Fribourg**

Avenue Europe 20

1700 Fribourg

Switzerland

represented by

[Name and Title of signatories]

hereinafter referred to as

**“UniFR”**

and

[Name and Address Academic Partner]

represented by

[Name and Title of signatories]

hereinafter referred to as

**“Academic Partner”**,

whereby the parties to this Agreement are also hereinafter individually referred to as **“Party”** and collectively **“Parties”**.

**Preamble**

Whereas UniFR has developed significant expertise and background knowledge in [scientific domain], in particular in [project-specific expertise].

Whereas the Academic Partner has developed significant expertise and background knowledge in [scientific domain], in particular in [project-specific expertise].

Whereas UniFR through Prof. [name], of the [department or institute] and Academic Partner through Prof. [name], of the [department or institute] wish to collaborate in the field of [field] (hereinafter the “**Field**”) as part of a project entitled “[project title]” (hereinafter the “**Project**”) as described in Annex A hereto.

The Parties wish to set for their mutual understanding of the performance of their collaborative research, the publication of results, and their respective interests in any intellectual property arising from this collaboration.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained herein, and intending to be legally bound hereby, the Parties hereto agree to the following terms and conditions:

**Article 1**

**Definitions**

For the purpose of the present Agreement, the following terms shall have the stated meanings:

|  |  |
| --- | --- |
|  |  |
| **Agreement** | means this agreement and its annexes. |
| **Background IP** | means all inventions, software, know-how, data, materials, methodologies, procedures, processes, tools, equipment and any works in which Intellectual Property Rights subsist of either Party that are in existence or developed prior to the Effective Date or that are invented or developed outside the Project governed by this Agreement. |
| **Confidential Information** | means any information, including without limitation, scientific findings, test results, technical data, trade secrets, know-how, research plans, product plans, patent applications, techniques, processes, developments and other information, as well as any and all business or financial information exchanged or transferred between the Parties in connection with the Project, and which is marked as confidential at the time of its disclosure by the Party who discloses the Confidential Information (the "**Disclosing Party**") to the other Party (the “**Receiving Party**”). If Confidential Information is disclosed orally or visually, it shall be reduced to writing and clearly marked as confidential by Disclosing Party within ten (10) calendar days of disclosure. |
| **Foreground IP** | means any result, research findings, data, materials any invention, original works of authorship, software (including source code), know-how, methodologies, procedures, processes, tools, equipment, developments, improvements, and more generally any Intellectual Property Rights, conceived and developed as part of the Work performed under this Agreement from its Effective Date by either Party or, as the case may be, by subcontractors tasked with the performance of certain works in accordance with Article 3 hereinunder. |
| **Intellectual Property Rights or « IPR »** | means, without limitation, any patent, copyright (including copyright in software), trademark, design right, utility models, trade secrets and other rights in know-how, database right, any equivalent right in any part of the world, registrable or not, and any application for registration of any such rights capable of registration in any part of the world. |
| **Project** | means the collaborative research project as described in Annex A “Title of the document” [insert as appropriate: “Work Schedule”, “Funding Application”, “Description of Work” etc.]. |
| **Work** | means the development work to be performed under this Agreement from its Effective Date as set forth in Annex A “Title of the document” [insert as appropriate: “Work Schedule”, “Funding Application”, “Description of Work” etc.]. |

**Article 2**

**Statement of Work**

1. Each Party shall carry out the Work assigned to it according to Annex A in a professional and efficient manner, employing their best efforts. Each Party agrees to use all the scientific means, skills, useful resources and know-how in its possession to achieve the objectives and deadlines agreed between the Parties and outlined in Annex A hereto. The Parties shall perform the Work in compliance with all applicable laws, guidelines and/or standard operating procedures, and in compliance with the terms and conditions of this Agreement.
2. Each Party furthermore undertakes to entrust its assigned Work to an internal team with the appropriate level of expertise and experience and to choose skilled employees and/or collaborators to realize the obligations in a professional and timely manner and in accordance with the terms and conditions of this Agreement*.*
3. The Parties shall inform each other on a regular basis about their respective performance of Work, as well as of any problem that has arisen or may arise. The Parties shall convene regularly in order to report on the progress, to discuss the ongoing Work, results and the Foreground IP and to consider mitigate strategies for potential risks for the Project or possible adaptations of the Work plan.

**Article 3**

**Subcontracting**

1. Neither Party may subcontract or otherwise delegate all or any part of its obligations under this Agreement to a third party without the other Party’s explicit prior written consent.
2. In case a Party subcontracts all or any part of its assigned Work to a third party, said Party shall ensure that any potential subcontractor fully complies with the terms and conditions of this Agreement.
3. For avoidance of doubt, the subcontracting Party shall be fully responsible and will be held liable towards the other Party for all subcontracted Work and for the actions and/or omissions of its subcontractor(s) in respect of such subcontracted Work.

**Article 4**

**Project Finance**

1. No obligation, financial or other compensation shall be due between the Parties under this Agreement, unless expressly agreed herein.
2. Each Party shall employ appropriate financial resources to finance its performance of the Work assigned to it.

**Article 5**

**Confidentiality**

1. In the course of the performance of the Project, the Parties may disclose each other certain Confidential Information.
2. The Receiving Party agrees to use the Confidential Information solely for the purpose of performing Work under this Agreement and, in the absence of explicit prior written consent of the Disclosing Party, for no other purpose.
3. The Receiving Party shall apply the same degree of care with regard to the Confidential Information received from the Disclosing Party as with its own confidential and/or proprietary information, but in no case less than reasonable care.
4. The Receiving Party and its directors, officers, employees, collaborators, subcontractors or other persons who have a need to know the Confidential Information (the “**Representatives**”) shall hold the Confidential Information in strict confidence and shall not, without the Disclosing Party's explicit prior written consent, disclose or release the Confidential Information in whole or in part to either (i) persons within the Receiving Party not having a legitimate need to know, or (ii) persons outside the Receiving Party and/or any other third parties.
5. A Party’s Representatives must be required to act in compliance with the provisions of this Agreement before any disclosure or release is made to such Representative and the Receiving Party shall remain responsible for any breach of the confidentiality obligations by any of its Representatives.
6. The confidentiality obligations shall not apply if and to the extent that the Confidential Information:
7. was known to the Receiving Party prior to its receipt, provided that such information is not known to the Receiving Party to be subject to any confidentiality obligations;
8. is or becomes part of the public domain other than as a result of a disclosure by the Receiving Party or its Representatives,
9. is rightfully disclosed to the Receiving Party by a third party without restrictions, provided that the Receiving Party reasonably believes that such source is not bound by any confidentiality obligations;
10. is independently developed by the Receiving Party without access to the Confidential Information as the Receiving Party can demonstrate by means of written evidence; or
11. is required by law or regulatory authority to be disclosed.

The Receiving Party shall bear the burden of proof if it invokes any of these exceptions.

1. Upon the Disclosing Party’s written request the Receiving Party shall immediately return to the Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information.
2. The Receiving Party shall notify the Disclosing Party immediately upon discovery any unauthorized use or disclosure of the Confidential Information by the Receiving Party or its Representatives, or any other breach of this Agreement and will cooperate to help the Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use.
3. The confidentiality provisions shall remain in full force and effect during the term of this Agreement and for a 5 (five) year period starting from the termination of this Agreement, except for trade secrets, which have been clearly identified by the Disclosing Party, and which must be kept confidential at all times as long as such trade secrets are protected under applicable law.

**Article 6**

**Intellectual Property Rights**

*Choose between one of the three options and delete the other two.*

***Option 1:*** *each Party owns its results*

1. Each Party shall remain the owner of its respective Background IP.
2. Each Party agrees to disclose its relevant Background IP and allows the use of such relevant Background IP by the other Party on a royalty-free and non-exclusive basis, only to the extent that such disclosure and use is necessary for the purpose of performing this Project as outlined in Annex A.
3. Any prior contractual obligation, which may restrict or prevent the legitimate use of a Party’s Background IP for the purpose of performing this Project must be clearly identified to the other Party, which may subsequently decide to exclude such Background IP from the Project.
4. Access to the other Party’s Background IP for any other purpose than the performance of this Project is subject to separate written agreement between the Parties.
5. Foreground IP is owned by the Party that generates or obtains it.
6. Each Party shall be entitled to use, protect, and exploit its own Foreground IP as it sees fit, without requiring consent of the other Party.
7. *Delete this part § 7 if not necessary. If you keep it, choose one of the two options and delete the other one.*

***Option a:***Each Party shall be entitled to use the other Party’s Foreground IP for non-commercial research and teaching activities only. Neither Party may use the other Party’s Foreground IP in the context of third party collaborations without the explicit prior written consent of the other Party.

***Option b:*** Each Party shall be entitled to use the other Party’s Foreground IP for non-commercial research and teaching activities only. Neither Party may use the other Party’s Foreground IP in the context of collaboration with non-academic third parties without the explicit prior written consent of the other Party.

1. Joint ownership of Foreground IP is established if both Parties (the “**Joint Owners**”) generate results exercising common intellectual and technical effort.
2. In case of patent applications, ownership shall be based on the inventive contributions of the generating Parties’ employees.
3. In case joint ownership of protectable Foreground IP is established, the Joint Owners shall agree on all protection measures, division of related cost and commercial use and exploitation rights as part of a separate Joint Management Agreement.
4. The Joint Owners shall be entitled to use their jointly owned Foreground IP for non-commercial research and teaching activities on a royalty-free basis, and without requiring the prior consent of the other Joint Owners.

**Option 2**: all results jointly owned, (e.g. if due to the nature of the Project it is difficult or impossible to discern results of the Parties, as they are inherently linked)

1. Each Party shall remain the owner of its respective Background IP.
2. Each Party agrees to disclose its relevant Background IP and allows the use of such relevant Background IP by the other Party on a royalty-free and non-exclusive basis, only to the extent that such disclosure and use is necessary for the purpose of performing this Project as outlined in Annex A.
3. Any prior contractual obligation, which may restrict or prevent the legitimate use of a Party’s Background IP for the purpose of performing this Project must be clearly identified to the other Party, which may subsequently decide to exclude such Background IP from the Project
4. Access to the other Party’s Background IP for any other purpose than the performance of this Project is subject to separate written agreement between the Parties.
5. Any and all Foreground IP generated or obtained as a result of each Party’s individual, or the Parties’ joint performance of the Project shall be jointly owned by the Parties (the “Joint Owners”).
6. In case of patent applications, ownership shall be based on the inventive contributions of the generating Parties’ employees.
7. For jointly owned Foreground IP, the Joint Owners shall agree on all protection measures, division of related cost and commercial use and exploitation rights as part of a separate Joint Management Agreement.
8. The Joint Owners shall be entitled to use their jointly owned Foreground IP for non-commercial research and teaching activities on a royalty-free basis, and without requiring the prior consent of the other Joint Owners.
9. Unless otherwise agreed between the Joint Owners as part of the Joint Management Agreement:
10. each Joint Owner shall be entitled to exploit the jointly owned Foreground IP and to grant non-exclusive licenses to third parties, without any right to grant sub-licences;
11. a Joint Owner may grant an exclusive licence to Joint Foreground IP subject to the other Joint Owner’s prior written consent and subject to prior mutual agreement of a fair and reasonable compensation for the other Joint Owner.

**Option 3:** UniFR owns results, revenues from commercialisation are shared (e.g. if UniFR is the Party responsible for commercialisation of the results according to the Project proposal)

1. Each Party shall remain the owner of its respective Background IP.
2. Each Party agrees to disclose its relevant Background IP and allows the use of such relevant Background IP by the other Party on a royalty-free and non-exclusive basis, to the extent that such use is necessary for the purpose of the performing the Project and/or for the subsequent further use, including commercial exploitation of the Foreground IP through UniFR.
3. In case such Background IP is subject to prior contractual obligations, each Party must clearly identify such obligations to the other Party, which may decide subsequently to exclude such Background IP from the Project.
4. UniFR [insert as appropriate] [e.g.: shall be the Party responsible for the valorisation of the Foreground IP or is the leading Party of this collaboration, directing the Work under the Project, or other description of the arrangement]. In recognition of this, the Academic Partner hereby assigns to the fullest extent possible all and any of its rights in the results generated or obtained during the performance of the Project to UniFR, including all Intellectual Property Rights, title and interest in and to any Foreground IP created within the scope of the Project and acknowledges and agrees that such Foreground IP is the sole and exclusive property of UniFR.
5. The Academic Partner furthermore transfers to UniFR all exclusive rights of exploitation relating to the Foreground IP and expressly authorizes the creation of derivative works and improvements of Foreground IP, which may be modified accordingly.
6. The Academic Partner shall, at UniFR’s request and expense, execute any such documents and perform any such acts as UniFR may deem necessary in order to confirm all right, title and interest throughout the world, in and to any Foreground IP and any other Intellectual Property Right which has been transferred to UniFR by the Academic Partner. The Academic Partner shall furthermore assist UniFR in procuring, maintaining, enforcing and defending patents, copyrights and other Intellectual Property Rights and titles throughout the world on any such Foreground IP.
7. The Academic Partner agrees to maintain adequate and regularly updated written documentation in such format as may be specified by UniFR of any conception or development of any Foreground IP and all such written documentation will be available to and remain the sole property of UniFR.
8. In consideration of Academic Partner's contribution to the Foreground IP and the exclusive rights assigned to UniFR thereon, in the event of sale or licensing of Foreground IP by UniFR, UniFR hereby agrees to pay Academic Partner a percentage, corresponding to the percentage of inventive share by Academic Partner in the Foreground IP, of the revenues generated with such sale or licensing of Foreground IP. The decision to sell or license the Foreground IP shall be left to UniFR’s discretion.
9. The Academic Partner shall be entitled to use the Foreground IP for non-commercial research and teaching activities without commercial third-parties on a royalty-free basis, and without requiring the prior consent of UniFR.

**Article 7**

**Publications**

1. In line with normal academic practice, UniFR and/or the Academic Partner shall be permitted to publish results arising from the Project, subject to Article 5 (Confidentiality) and to the procedures laid down under this Article 7.
2. If a Party wishes to publish any results generated under the Project (the “**Publishing Party**”), it must submit a proposed publication, including, but not limited to, scientific publications, patent applications and non-confidential presentations, to the other Party (the “**Reviewing Party**”) for review at least thirty (30) days before submission for publication or before presentation at a conference, as the case may be.
3. The Parties may jointly publish results generated under the Project, in which case either Party is considered a Publishing Party and a Reviewing Party.
4. The Reviewing Party may require the deletion of Confidential Information or that Confidential Information is disguised to the satisfaction of the Reviewing Party within fifteen (15) days from receiving the proposed publication. If an objection is raised, the Parties shall promptly convene to decide on acceptable amendments to the proposed publication.
5. If the Reviewing Party wishes that a patent application should be filed on the results contained in the proposed publication, the Reviewing Party may require that the date of publication shall be postponed for a maximum of five (5) months from the date of first submission of the proposed publication to the Reviewing Party, in order to allow for the filing of a patent application in advance of publication.
6. Notification of the requirement for delay in publication must be received by the publishing Party within fifteen (15) days after submission of the proposed publication to the Reviewing Party, failing which the Publishing Party shall be free to assume that the Reviewing Party has no objection to the proposed publication.
7. Each Party agrees that any publication in a scientific/academic journal shall give due acknowledgement to the financial and/or intellectual contribution of employees, students and/or agents of the other Party in line with standard scientific practice and with the authorship guidelines of the Swiss Academies of Arts and Sciences, as updated from time to time.

*Delete the “authorship guidelines of the Swiss Academies of Arts and Sciences” if not necessary.*

**Article 8**

**Warranties**

1. Each Party undertakes:
2. not to use knowingly any proprietary rights of a third party for which such Party has not acquired the corresponding right of use and/or to grant licenses;
3. not to disclose to the other Party any information which to its knowledge is the secret, confidential or proprietary information of any third party;
4. to act at all times in good faith and in a manner that reflects the good name, goodwill and reputation of the other Party and in accordance with good business ethics;
5. Each Party warrants that it is not party to any agreement or undertaking which would prevent it from fulfilling its obligations under this Agreement.
6. Except as explicitly stated in this Agreement, the Parties make no warranties, either express or implied, including but not limited to warranties of novelty, patentability, accuracy, non-infringement, merchantability, fitness for a particular purpose of the Foreground IP generated in their performance of the Project.

**Article 9**

**Liabilities**

1. The Parties shall be liable towards each other in case of gross negligence, wilful misconduct or breach of the Confidentiality provisions under Article 5 only.
2. Each Party agrees to indemnify and hold the other Party harmless from and against any third-party claims, loss, expenses, cost (including reasonable attorney fees) relating to or resulting from its own gross negligence or wilful misconduct; or its breach of the Confidentiality provisions under Article 5.
3. Each Party shall be liable, in accordance with the applicable legal regulations, for any damage caused by itself or its staff to third parties as a result of the performance of this Agreement.
4. Neither Party shall be entitled to commit the other Party to any obligation in connection with this Agreement, without the prior written consent of the other Party.

**Article 10**

**Term and Termination**

**Choose between one of the two options and delete the other one*.***

**Option 1:**

1. This Agreement shall come into force as of the date of its last signature and shall thereafter continue in full force and effect until completion of the Project under this Agreement.
2. The obligations of any clause of this Agreement, which by their nature extend beyond its termination, shall remain in full force and effect until fulfilled.

**Option 2:**

1. This Agreement shall come into force retroactively as of [date] and shall thereafter continue in full force and effect until completion of the Project or at the termination of the Project for any reason.
2. Either Party may withdraw from or terminate this Agreement by giving six (6) months prior written notice to the other Party, unless a different notice period has been mutually agreed between the Parties in writing.
3. A Party shall not by withdrawal or termination be relieved from any of its obligations under this Agreement, which by their nature are intended to survive such event, or from any of its obligations or liabilities arising out of such withdrawal or termination.
4. If one of the Parties does not fulfil the obligations for which it is responsible under this Agreement, the other Party shall be entitled, by registered mail signed by their respective representatives, to call upon the defaulting Party to comply and shall fix a term of at least two (2) months to remedy such breach. If, at the expiration of this term, the defaulting Party has not fulfilled the above-mentioned obligations, the other Party will have the right to terminate this Agreement by giving one (1) month prior written notice.

**Article 11**

**Jurisdiction and applicable law**

1. This Agreement is subject to Swiss law without giving effect to any conflict of law rules.
2. In the event of a dispute, controversy or claim (the "**Dispute**"), arising out or in connection with this Agreement or any of its subsequent amendments, including any question regarding its existence, validity or termination, the Parties shall use their best endeavors to solve such Dispute amicably within a period of two (2) months.
3. In case the Parties cannot reach agreement within said two (2) months period, any such Dispute shall be submitted to the exclusive competence of the courts of Fribourg, Switzerland, unless otherwise agreed between the Parties.

**Article 12**

**Notices**

All notices with respect to this Agreement shall be sent to:

For **UniFR:**

*Prof. [name and contact details]*

For the **Academic Partner:**

Prof. [name and contact details]

**Article 13**

**Miscellaneous**

1. **Entire Agreement**. The present Agreement constitutes the entire understanding between the Parties and supersedes all other agreements, arrangements and understandings, written or oral, between the Parties.
2. **Amendments.** This Agreement may be modified only by written amendment signed by both Parties. Facsimile and electronically scanned signatures on the said amendment shall be binding on the Parties.

*Delete the last sentence if not necessary.*

1. **Assignment.** Neither Party shall assign or transfer any of its rights, duties or obligations under this Agreement or arising out of this Agreement to any third party, without the prior written consent of the other Party.
2. **Severability**: lf any provision of this Agreement, or the application thereof, shall, for any reason and to any extent, be held invalid, illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall not be affected thereby to the extent it can exist without the objectionable provision. The Parties further agree to replace such void or unenforceable provision by provision which will achieve, to the extent possible, the economic, business and other purposes of the void and unenforceable provision accordingly to the real intent of the Parties.
3. **Relationship between the Parties**. Neither Party is authorized or empowered to act as agent of the other Party for any purpose and shall not incur any debts or enter into any contract, warranty, or representation as to any matter on behalf of the other. Neither Party shall be bound by the acts or the conduct of the other Party. Nothing in this Agreement shall be deemed to create an agency, joint-venture or employer-employee relationship between the Parties. The Parties acknowledge explicitly that they do not form a "simple partnership" in the sense of art. 530ff of the "Code des obligations Suisse".
4. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which when executed and delivered will be deemed to be an original, but all of which taken together will constitute one and the same agreement. This Agreement will become effective when counterparts have been signed by each of the parties and delivered by facsimile or other means to each other Party. Facsimile and electronically scanned signatures on this Agreement shall be binding on the Parties.

*Delete the last sentence if not necessary.*

--- *Signature page follows* ---

The agreement is duly signed by the authorized representatives of the Parties hereto:

|  |  |
| --- | --- |
| **For UniFR**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Prof. [Name], Rector  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date) | **For Academic Partner**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date) |

**Annex A**: “Title of the document” [insert as appropriate: “Work Schedule”, “Funding Application”, “Description of Work” etc.].