*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.

The Legal Service provides the following collaboration agreement templates:

* Simple template;
* *Collaboration Agreement with Grant References*: should be used if you wish to refer to the Grant Agreement/Grant Decision in the legal content of the Collaboration Agreement;
* *Collaboration Agreement with Data Transfer and Use Agreement (DTUA)*: should be used if personal data (even if coded or de-identified) will be transferred between the partners in the performance of the Project. The DTUA can also be drawn up in a separate contract.
* *Collaboration Agreement with Grant References and DTUA*: should be used if you wish to refer to the Grant Agreement/Grant Decision in the legal content of the Collaboration Agreement and if personal data (even if coded or de-identified) will be transferred between the partners in the performance of the Project **(this one)**.

All the templates are *available* on [the Legal Service website](https://www.unifr.ch/uni/fr/organisation/services-du-rectorat/service-juridique/contrats.html). Contact the [Legal Service](mailto:servicejuridique@unifr.ch) if you’re not sure which *Collaboration Agreement* template to use.

**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

Prof. Dr. Katharina Fromm, Rector

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 in the field of [field] (hereinafter the “**Field**”) as part of a project entitled “[project title]” (hereinafter the “**Project**”) as described in Schedule A hereto.

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

***Option 1*** *if funding was awarded to both Parties:* Whereas the Parties have been awarded funding by [Name of Funding Authority], the Funding Authority, to conduct the Project, and

***Option 2*** *if funding was awarded to UniFR:* Whereas UniFR has been awarded funding by [Name of Funding Authority], the Funding Authority, as part of its research program/ funding call “[call/program]” and

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 schedules. |
| **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. |
| **Funding Authority** | means the body awarding the grant for the Project. |
| **Grant Agreement** | means the agreement signed between the Funding Authority and UniFR [replace UniFR by “the Parties” as appropriate] for the performance of the Project or the Grant Decision issued by the Funding Authority |
| **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 Schedule 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 Schedule 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 Schedule 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 Schedule 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 and the Grant 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 and the Grant 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.
4. The Project is governed by the terms of this Agreement and the Grant Agreement. In case of discrepancy between this Agreement and the Grant Agreement, the terms of the Grant Agreement shall prevail.

**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 and the Grant 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**

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

***Option 1:*** *The funding is distributed between the Parties (directly from the Funding Authority or from one Party to the other)*

1. The Parties will be funded in accordance with the terms of the Grant Agreement for tasks carried out in their performance the Project.
2. Project finance provided by the Funding Authority shall be allocated and distributed between the Parties as follows: [insert as appropriate].
3. Nothing in this Agreement compels [Name of the Institution] to get financially involved to third parties for the purpose of performing this Project as outlined in Schedule A.
4. Each Party shall employ appropriate financial resources to finance its performance of the Work assigned to it.

***Option 2:*** *The funding is entirely allocated to one Party*

1. Project finance provided by the Funding Authority shall be entirely allocated to [Name of the Institution], particularly to cover [insert as appropriate] [e. g. the salary of the PhD student and the postdoctoral researcher hired by the Academic Partner]. [Name of the Institution] doesn’t receive any research funding to perform the Work assigned to it according to Schedule A.
2. No obligation, financial or other compensation shall be due between the Parties under this Agreement, unless expressly agreed herein.
3. Nothing in this Agreement compels [Name of the Institution] to get financially involved to third parties for the purpose of performing the Project as outlined in Schedule A.
4. 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 two options and delete the other one.*

***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 Schedule 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. Any copyrights of Parties’ employees and/or collaborators on publications are reserved.
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 Schedule 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”). Any copyrights of Parties’ employees and/or collaborators on publications are reserved.
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.

**Article 7**

**Publications**

*The 60-day submission period and 30-day response period may be shortened but are particularly appropriate when the project could lead to a patentable invention.*

1. In line with normal academic practice, the Parties, their employees and/or collaborators, 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 sixty (60) 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 thirty (30) days from receiving the proposed publication, failing which the Publishing Party shall be free to assume that the Reviewing Party has no objection to 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. Notification of the requirement for delay in publication must be received by the publishing Party within thirty (30) days from receiving the proposed publication, failing which the Publishing Party shall be free to assume that the Reviewing Party has no objection to the proposed publication.
6. 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 applicable.*

**Article 8**

**Personal Data**

1. **In General**. The Parties represent and warrant that the processing of any personal data under this Agreement complies with applicable data protection laws and regulations and, where applicable, ethical guidelines. Additionally, any necessary ethics approvals and informed consents will be obtained prior to the commencement of the Work.
2. **Data**. Access to, provision, exchange and use of personal data, including the metadata, between the Parties under the Project shall be carried out pursuant to the Data Transfer and Use Agreement (DTUA) in the form as specified in Schedule B, including its annexes.

**Article 9**

**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. to co-operate with each other and provide each other with all assistance necessary to ensure compliance with the terms of the Grant Agreement.
6. to notify the other Party promptly of any delay in performance of the Work assigned to it, or of any event that may impact the timely performance of the Project;
7. Each Party warrants that it is not party to any agreement or undertaking which would prevent it from fulfilling its obligations under this Agreement.
8. 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 10**

**Liabilities**

1. Without prejudice to the Sponsor’s liability pursuant to the Federal Human Research Act (HRA) and its ordinances, the Parties assume no liability for any damages, including but not limited to any indirect or consequential loss or similar damage (e.g. loss of profit, loss of revenue or loss of contracts) suffered in connection with the Agreement, provided such damage was not caused by a wilful intent, act of gross negligence or breach of the Confidentiality provisions under Article 5.

*Delete the first part of the sentence if the Project is not subject to the Human Research Act*

1. 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.
2. 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.
3. 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 11**

**Term and Termination**

***(1) and (2): Choose 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 and the Grant 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. 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.

***(3) Choose one of the two options* and delete the other one.**

**Option 1:**

1. No Party shall be entitled to withdraw from or to terminate this Agreement and/or its participation in the Project unless it has obtained the prior written consent of the Funding Authority and the other Party.

**Option 2:**

1. 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.
2. A Party shall not by withdrawal or termination be relieved from any of its obligations under this Agreement and the Grant Agreement, which are intended to survive such event, or from any of its obligations or liabilities arising out of such withdrawal or termination.
3. If one of the Parties does not fulfil the obligations for which it is responsible under this Agreement and the Grant 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 12**

**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 13**

**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 14**

**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.
3. **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 and the Funding Authority

*Delete “and the Funding Authority” if not necessary.*

1. **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.
2. **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".
3. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall together be deemed to constitute one and the same Agreement. Each Pary acknowledges that an original signature or a copy thereof, including a “portable document format” (PDF copy), or a signature generated by industry standard electronic signature software (e.g. DocuSign, SwitchSign), which is transmitted by email shall constitute an original signature for purposes of this Agreement and any amendments, and shall have the same legal force and effect as the exchange of original signatures.

--- *Signature page follows* ---

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

|  |  |
| --- | --- |
| **For UniFR**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Prof Dr. Katharina Fromm, Rector  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date)  Visa:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title], Project Leader  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date) | **For Academic Partner**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date)  Visa:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [Name, Title], Project Leader  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Place, Date) |

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

SCHEDULE B – DATA TRANSFER AND USE AGREEMENT (DTUA)

For the project "[ProjectName]"

This Schedule B reflects the agreement between the Parties regarding the terms governing the processing, security and sharing of personal data under the Collaboration Agreement, to which it forms an integral part.

By entering into the Collaboration Agreement, each Party providing personal data to another Party (the **Provider**) and each Party receiving such data (the **Recipient**, and together with the Provider, the **Parties**) automatically enter into the Data Transfer and Use Agreement formed pursuant to this Schedule B (**DTUA**) for as long as they are each a Party to the Collaboration Agreement.

**WHEREAS**

The Parties wish to conduct the Project, as set forth in Schedule A of the Collaboration Agreement, with the personal data made available by the Provider.

**I. Definitions**

Unless defined below, terms shall have the meaning described in the Collaboration Agreement. In case there is no definition in the Collaboration Agreement, the applicable law’s definitions shall apply.

For the purpose of this DTUA, the following terms, whether used in singular or plural form, shall have the following meaning:

1. **Coded Data** or **Data in a Coded Form**: means the Personal Data linked to a specific person via a code.
2. **Personal Data**: means any information relating to an identified or identifiable natural person, including the meta data, being transferred (or if not transferred, the given access to) under this DTUA, as set forth in **Annex I** of this DTUA.
3. **Data Subject**: means the natural person whose Personal Data is processed*.*
4. **Provider:** means a Party providing Personal Data to another Party for the purposes of this DTUA.
5. **Provider’s Project Leader:** means the Provider’s person who takes responsibility for the project as described in the Ordinance on Human Research (**HRO**).

*Delete the last part of the sentence if the Project is not subject to the Human Research Act.*

1. **Recipient:** means a Party receiving Personal Data from another Party for the purposes of this DTUA.
2. **Recipient’s Project Leader:** means the Recipient’s person who takes responsibility for the project as described in the HRO.

*Delete the last part of the sentence if the Project is not subject to the Human Research Act.*

**II. Data Provision**

1. **Form.** The Personal Data shall be provided to the Recipient by the Provider in a Coded Form and in a format to be agreed upon by the Parties as per **Annex I.** The Recipient shall not have the key.

*If Personal Data are not provided in a Coded Form, specify in which other form it is provided.* As a reminder, coded, pseudonymized or de-identified data is not considered as anonymous data under the Human Research Act.

1. **Provider’s Warranties about Personal Data Provision**. The Provider warrants that it is entitled to supply the Personal Data and that all necessary consents and/or authorizations for the transfer and/or use of the Personal Data to/by the Recipient have been obtained.
2. **No Provider’s Warranties about Personal Data.** It is expressly understood that the Provider does not warrant or guarantee that the Personal Data will be accurate, complete, or useful for any particular purpose.
3. **No Provider’s Warranties about Third Parties’ Intellectual Property Rights.** The Provider offers no warranty that the use of Personal Data and/or Confidential Information will not infringe or violate any patent or other proprietary rights of any third party.

**III. Data Processing**

1. **Purpose**. The Recipient and the Recipient’s Project Leader agree that the Personal Data:

(a) is to be used only for the academic purposes as described in the Project plan, as set forth in Schedule A of the Collaboration Agreement;

(b) may not itself be commercialized;

(c) shall not be transferred to or accessed by any third party, for any purposes whatsoever, without the prior written agreement of the Provider and without the informed consent from the Data Subjects to this transfer or access; and

(d) is only accessed according to the rules as further described in Annex I.

1. **Right of use.** The Data Subject retains her/his right to decide on the use of the Data provided. The Confidential Information provided is and remains the property of the Provider.
2. **Data Processing.** Each Party represents and warrants that any Personal Data required for use in the Project that are obtained, handled or used by it will be obtained, handled or used in accordance with all relevant laws and regulations, in particular data protection laws (and where applicable, human research acts and ethical guidelines) regarding their collection, use, and subsequent disposal and that any ethics committee approvals and, as the case may be, informed Data Subjects consents required for performing the Project will be obtained prior to the use in the Project.
3. **Security**. The Recipient shall process the Personal Data in a manner that ensures appropriate confidentiality, integrity, availability and resilience of the systems with regard to processing of the data. The Recipient must in particular ensure appropriate protection against unauthorized or unlawful Personal Data access or processing in any form (e.g., reading, copying, altering) and against accidental loss, destruction or damage, using appropriate technical or organizational measures. The effectiveness of such measures shall be regularly assessed, and corrective measures shall be immediately implemented in case of suspected data security breach.

The Recipient shall have in place procedures so that access to the Personal Data is only granted to identifiable persons who require it to conduct the specified research project. The Recipient shall adopt adequate organizational measures ensuring that any person authorized to access the Personal Data:

* is diligently and appropriately selected, instructed and supervised, in particular through the availability of adequate confidentiality and data protection guidelines, regular data protection and privacy trainings, documentation of all organizational measures;
* respects and maintains the confidentiality and security of the Personal Data;
* processes the Personal Data only on instructions from the Recipient’s Project Leader;
* does not combine the Personal Data with other data unless explicitly authorized by the competent ethics commission for the specific research project and to the extent necessary to conduct the specific research project. *Delete this bullet point if the Project is not subject to the Human Research Act.*

The Recipient agrees to immediately report to the Provider (i) any actual or suspected data protection breach, including a breach against applicable data protection regulation, data protection section of this DTUA, (ii) any actual or suspected impairment or inadequacy of the Recipient in fulfilling data protection section of this DTUA, and (iii) any application to receive or any actual access to data by an authority, unless such reporting is not admissible under statutory provisions.

The Recipient and the Recipient’s authorized users shall not (i) provide any output or Results of the Personal Data to any third party, except as expressly permitted in this DTUA; or (ii) sell, lease, sublicense, copy or provide the Personal Data to any third party, except as expressly permitted in this DTUA.

1. **No Re-Identification**. The Recipient shall not carry out any procedures with the Personal Data (linking, comparison, processing) with the intention to identify the Data Subject, unless requested by a Data Subject according to section III.7. below.
2. **Publication.** The results are only published in such a manner that the Data Subjects are not identifiable.
3. **Rights of the Data Subject.** The Provider shall secure the exercise of the Data Subject’s rights, including access rights, the right to rectification and erasure, and the right to object. The Parties shall respond to requests from the Data Subject within one month after having received the notification. Moreover, the Parties will provide any Data Subject with a copy or the content of this DTUA upon their request or if required by law. In case of a production request by a Data Subject, either Party may summarize any part of this DTUA (including its Annexes) to the extent necessary for confidentiality and data protection reasons.

*Note that those data subject rights are provided both by Swiss law and the GDPR.*

1. **Revocation of Consent**. In case of Data Subject’s total or partial revocation of consent, the Provider must inform the Recipient of this revocation without delay depending on the consent signed by the Data Subject and must provide the pseudo-identifier of the Data Subject that revoked access to his/her Personal Data. In such case, if applicable, the Recipient shall comply with Provider’s requests to anonymize their Data according to the Human Research Ordinance (HRO), unless one of the exceptions listed in Article 10 of the HRO applies. A written notification shall be sent to the Provider upon receipt and after completion of the request.

*Delete the last two sentences if the Project is not subject to the Human Research Act*

1. **Data Storage and Processing**. The Personal Data processing must be limited to the purpose pursued, provided that the Data Subject does not decide otherwise. The Personal Data should not be kept by the Recipient longer than necessary for the purpose of the Project or be anonymised as soon as the Project permits.

**IV. Compliance**

Each Party undertakes to comply at all times with all applicable Swiss laws, applicable international statutes, regulations and guidelines, especially all laws, statutes and regulations concerning human research and personal data protection, including any necessary regulatory approvals.

V. Miscellaneous

The provisions of Article 14 of the Collaboration Agreement shall apply *mutatis mutandis*.

**VI. Annexes**

**Annex I:** Transfer and Access Rules for Personal Data

**ANNEX I: TRANSFER AND ACCESS RULES FOR DATA**

**The following Personal Data shall be provided from Provider to Recipient:**

[to complete]

*Specify here the Pesonal Data used in the project and transferred /given access to a Partner. Specify which Party is the Provider and which party is the Recipient for each type of data. You can e.g. use this box.*

|  |  |
| --- | --- |
| Provider |  |
| Recipients |  |
| Categories of Personal Data |  |
| Categories of Data Subjects |  |
| Form of Personal Data | Coded  The source data, the consent forms and the key are stored by the Provider and not communicated to the Recipients |

**The following applicable transfer and access process for Personal Data shall be used:**

[to complete]

*Specify here:*

* *the measures of data protection transfer and access;*
* *the flow of data between Provider and Recipient;*
* *all processing operations which are essential to ensure traceability;*