**Agreement to DIZH funded Innovation Project/Structure**

between

**Institution X**
Institute/Department of\_\_\_\_\_\_
Address

**(Hereinafter referred to as X)**

and

**Institution Y**Institute/Department of\_\_\_\_\_\_
Address

**(Hereinafter referred to as Y)**

and

**Company**Address

**(Hereinafter referred to as COMPANY)**

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

1. Collaborative Research

The Parties agree to conduct collaborative research in a project/structure supported by the "Digitalisierungsinitiative der Zürcher Hochschulen" (DIZH) titled “\_\_\_\_\_\_\_\_\_\_\_\_\_” as described in the respective grant application (“Proposal”) and attached hereto as Annex A.

2. DIZH Funding

The financial contribution of DIZH amounts to CHF \_\_\_\_\_\_\_\_ and is received and managed by X and Y as followed:

X: CHF \_\_\_\_\_;

Y: CHF \_\_\_\_\_

**3. COMPANY Contribution**

COMPANY will contribute to the project/structure as described in the DIZH grant application. COMPANY shall carry out the project/structure diligently within the mutually agreed scope, observing recognized industrial research standards.

4. X and Y Contributions

X and Y will contribute to the project/structure as described in the DIZH Grant Application. X and Y shall carry out the project/structure diligently within the mutually agreed scope, observing recognized scientific standards.

In the case of a contribution of means and goods, their value will be considered after classification mutually accepted by the Parties.

5. Period of Performance

Research under this Agreement will be performed during the period foreseen in the DIZH grant application.

Each Party shall immediately inform the other Parties if it cannot adhere to the timelines or milestones, and the Parties will agree in good faith how such a delay shall be dealt with time and cost-wise.

6. Representatives

Notifications about the performance and work within the project/structure must be in writing and are to be addressed to the designated Representatives.

COMPANY's Representative is (incl. email address and telephone number) \_\_\_\_\_\_\_.

X's principal Representative is \_\_\_\_\_\_\_.

Y's principal Representative is \_\_\_\_\_\_\_.

In case of change of a Party’s Representative, the Parties shall inform each other immediately in writing.

7. Collaboration between the Parties

During the performance of the project/structure, the Parties shall collaborate closely and exchange information on a regular and timely basis. The Parties shall grant each other's representatives reasonable access to the laboratories where the Project is carried out, as well as reasonable access to all related documents.

8. Reporting

During the performance of the project/structure, the Parties will regularly report to each other on the progress of the project/structure and will supply each other in due time with all technical reports, information, documents data and/or materials (together Documents and Materials) required and pertaining to the project/structure. The Parties will jointly prepare the necessary reports for DIZH. Any Documents and Materials remain the property of the Party owning the Documents and Materials and the receiving Party shall keep them confidential and return such Documents and Materials upon the termination of this Agreement if not agreed otherwise.

9. Publicity

COMPANY agrees that it shall not use the name of X and Y in any advertising or publicity material or make any form of representation or statement in relation to the project/structure conducted under the terms of this Agreement which would constitute an expressed or implied endorsement by X and Y of any commercial product or service. Anything to the contrary notwithstanding, the Parties shall have the right to publicize the fact that the Parties have entered into this Agreement and the general nature of the Project. In any such statement, the relationship of the Parties shall be accurately and appropriately described.

10. Confidentiality

Each Party agrees that all information they provide to each other, directly or indirectly, during the term of this Agreement that is identified in writing as "Confidential," or, if disclosed orally, is reduced to writing and identified as "Confidential" within thirty (30) days of the original disclosure (“Confidential Information”), is the proprietary and valuable property of the disclosing Party. Such Confidential Information may include, without limitation, trade secrets, intellectual property, technical specifications and information, development plans, marketing strategies, customer information, and pricing information.

Except as otherwise provided or permitted herein, each Party agrees that it will take all reasonable steps to ensure and preserve the confidentiality of the other's Confidential Information and not disclose or use the other’s Confidential Information without the prior consent of the owner.

The duty of confidentiality means that the receiving Party must treat or store the received Confidential Information with the necessary care, and in respect of this Confidential Information:

1. may only pass it on to those employees who need the Confidential Information to carry out their tasks within the scope of the Project and who are obliged on account of their contract of employment to adhere to the duty of confidentiality;
2. may not use it outside of its area of control and may not, without the written agreement of the disclosing Party, either publicize or pass it on to third parties in any other way and
3. may not use it in its own research, development, or production and may not use it for the benefit of third parties.

Upon termination of this Agreement and upon written request, unless otherwise specified herein, each Party will return all copies of the other's Confidential Information. Each Party’s obligations under this Section 10 will survive for a period of five (5) years any expiration or termination of this Agreement.

## The obligations under this Section 10 shall not apply to any Confidential Information that:

### was in the public domain or open to the public at the time it was transmitted to the receiving Party;

### became public or open to the public for reasons other than an action or omission attributable to the receiving Party;

### was in the receiving Party's possession, without any limitation regarding its disclosure at the time it was transmitted to the receiving Party;

### was obtained by the receiving Party from a third party without obligation of confidentiality; or

### is required to be disclosed by law or by court order. In this case, the other Party shall be informed immediately before disclosing.

11. Publication

11.1 The basic objective of research activities at X and Y is the generation of new knowledge and its expeditious dissemination for the public’s benefit. COMPANY will provide all reasonable cooperation with X and Y in meeting this objective.

11.2 As a matter of basic academic policy, X and Y retain the right at their discretion to jointly publish freely any results of the Project. COMPANY employees will be considered as co-authors in accordance with usual scientific standards. At least 30 days prior to submission for publication, Principal Representatives of X and Y agree to provide COMPANY’s Representative with a draft of the manuscript or a summary of a planned oral presentation and any documentation related to the intended disclosure. COMPANY shall keep all such information confidential. COMPANY may review the manuscript:

(i) to ascertain whether COMPANY’s Confidential Information would be disclosed by the publication; for clarity, no data, research results, or methods developed by X and Y under the Project shall be considered COMPANY’s Confidential Information;

(ii) to identify any potentially patentable invention so that appropriate steps may be taken to protect such invention in accordance with Section 12. COMPANY will provide comments, if any, within thirty (30) days of receipt of the manuscript.

11.3 COMPANY may raise objections only within these thirty (30) working days after receipt of the manuscript. Objections against publication may only be in respect of confidentiality as outlined in paragraph 11.2. If no objections are raised within this period, the COMPANY’s agreement to publication shall be assumed.

11.4 If objections are raised, the Parties shall make every effort to find a mutually acceptable solution by implementing appropriate text amendments within twenty (20) working days of the objection being raised. After these twenty (20) working days have passed, the publication may go ahead provided that the reasoned objections have been considered.

11.5 If disclosure will result in a loss of COMPANY’s Confidential Information, COMPANY may require that X and Y modify the disclosure to avoid such disclosure, but the parties will use their best efforts to provide scientifically meaningful equivalent information in such disclosure.

11.6 If disclosure will result in a loss of patent rights, COMPANY may require that X and Y shall delay submission, but not longer than three (3) months from the date of the delivery of the manuscript to COMPANY for examination in order that patent applications may be filed in accordance with Section 12.

12. Intellectual Property and Rights of Use

12.1 Definitions

"Background IP": any and all intellectual property in the possession of or controlled by either Party and developed prior to the Effective Date or developed independently of the Project during and after this Agreement.

“Foreground IP”: means any intellectual property conceived, developed and/or reduced to practice in the performance of the Project, no matter whether individually or jointly developed by the Parties.

“Non-protected Project Results”: all Project results that are neither intellectual property (IP) by legal definition (such as plans, non-patented physical materials etc.) or do not form part of an application for industrial property rights within three (3) months of the end of the Project.

"Field of Use": COMPANY's Field of Use for the purposes of this Agreement shall be defined as: [description of field of use]

12.2 Ownership and Rights of Use of Background IP

All Background IP shall remain the sole and undivided property of the Party which owns the Background IP. To the extent needed and as far as legally possible, the Parties herewith grant to each other a free, non-exclusive license to use the other Party's Background IP solely for the performance of their tasks within the Project.

12.3 Inventorship

The inventorship of inventions conceived and first reduced to practice in the performance of the Project (hereinafter referred to as “Inventions”) shall be determined according to patent law.

12.4 Ownership and Rights of Use of Foreground IP

Foreground IP shall independently of inventorship, and registration of its patent protection be jointly owned by all Parties. All rights in technology (such as software) created in the performance of the Project for which patent protection is not sought (“Technology”) shall as will be jointly owned by the Parties.

12.5 Protection of Foreground IP and Commercial use of Patent Rights

The Parties will agree on a case-by-case basis on the preparation and prosecution of patent rights on Foreground IP ("Patent Rights").

COMPANY shall be granted, (i) from the date of first filing of Patent Rights, and (ii) upon receipt of a written description or copy of Technology, a six (6) month period to negotiate the terms of an exclusive license to X's and Y's share in Patent Rights and Technology in the Field of Use and X and Y agree to negotiate these license terms in good faith. COMPANY agrees not to start commercialization of Patent Rights and Technology before such exclusive license is executed.

12.6 Terms for exclusive rights of Use (“licenses”) for Patent Rights:

Any exclusive license of Patent Rights granted by X and Y to COMPANY shall provide for

(1) COMPANY to exercise commercially reasonable efforts to introduce products utilizing Patent Rights into public use as rapidly as practicable and as customary in the trade;

(2) a reasonable royalty rate and other fees usual and customary in the trade, taking into consideration the relative contribution of the Parties to the Patent Rights and the Project;

(3) termination in the event COMPANY has not introduced licensed products based on Patent Rights into public use, or is not actively seeking to do so, within a reasonable time period;

(4) X and/or Y to retain a non‑exclusive license for non-commercial research and teaching purposes and for collaboration projects with third parties.

12.7 X and Y agree that they will share any income received from COMPANY for licenses on Foreground IP and Patent Rights as follows: Y: \_\_\_%, X: \_\_\_%.

12.8 Ownership and Rights of Use of Non-protected Project Results**:**

Non-protected Project Results may be used freely by the Parties independently of each other and outside the Project.

Project Results that do not form part of a validated industrial property right anymore at a later point in time (e.g., because of withdrawal, abandonment, non-assignation, or defeasance of an industrial property right) can be used freely by the Parties independently of each other from the time of expiration of such industrial property right.

The provisions in respect of confidentiality and publication in accordance with paragraphs 10 and 11 apply accordingly

13. Liability/Warranties

13.1 Each Party warrants that it will perform its tasks in accordance with this Agreement, and with applicable supranational, national, and local laws and regulations and the current state of the art; furthermore, neither of the Parties gives any warranties concerning the accuracy and completeness of the information disclosed and of objects transferred or concerning the non-existence of rights of third parties. However, each Party guarantees to all other Parties that third parties’ rights are fully respected as well as all third parties’ rights of use needed for performing each Party’s tasks in accordance with this Agreement are adequately licensed from its owners.

13.2 The Parties shall have no liability to each other for any claims, demands, losses, costs, or damages suffered by one of the other Parties or purchasers or users of such products, or any other party, which may result from personal injury, death, or property damage related to the manufacture, use, or sale of such products.

13.3 In the event that COMPANY decides to commercialize products and/or services based on the results of the Project, COMPANY shall bear the sole responsibility for the conception, use, and commercialization of such products or services and shall be liable toward third parties in connection with this conception, use or commercialization. COMPANY agrees to indemnify and defend the other Parties against any such claim from third parties brought against X and/or Y and to maintain the adequate insurance coverage required pursuant to this section.

13.4 COMPANY guarantees that each Party

14. Effective Date, Term and Termination

14.1 This Agreement shall come into force upon legally binding execution by all Parties of this Agreement (“Effective Date”). This Agreement shall expire upon termination of the Project unless extended or sooner terminated in accordance with the provisions of this section.

14.2 If COMPANY fails to meet any of its obligations under this Agreement and shall fail to remedy these failures within sixty (60) days after receipt of written notice thereof, X and Y shall have the option of terminating this Agreement upon written notice thereof and may terminate any licenses or options granted to COMPANY. In the event X and/or Y fail to meet its obligations under this Agreement and shall fail to remedy these failures within sixty (60) days after receipt of written notice thereof, COMPANY shall have the option of terminating this Agreement upon written notice.

14.3 This Agreement shall automatically terminate in the event of filing by COMPANY of a petition of bankruptcy or insolvency or both, or in the event of an adjudication that COMPANY is bankrupt or insolvent or both, or upon filing by COMPANY of any petition or pleading asking reorganization, readjustment or rearrangement of its business under any law relating to bankruptcy or insolvency, or prior to the appointment of a receiver for all or substantially all of the property of COMPANY or prior to the making of any assignment for the benefit of creditors or prior to the institution of any proceedings for the liquidation or winding-up of COMPANY’s business or for the termination of its corporate charter, and any rights granted by X and/or Y to COMPANY under this Agreement shall be revoked with immediate effect and vest in X and/or Y.

15. Other Provisions

15.1 Amendments: No change, modification, extension, termination, or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the Parties hereto.

15.2 Independent Contractor: For the purposes of this Agreement and the research performed hereunder, each Party shall be, and shall be deemed to be, an independent contractor and not an agent or employee of another Party. No Party shall have authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on one of the other Parties, except as may be explicitly provided for herein or authorized by the concerned Party in writing.

15.3 Severability: Should any individual provision of this Agreement be or become totally or partially ineffective or invalid, or should there be an omission in this Agreement, the effectiveness, respectively the validity of the remaining provisions shall not be affected thereby. An ineffective, respectively, the invalid provision shall be replaced by the interpretation of this Agreement which comes nearest to the meaning and the envisaged purpose of the ineffective respectively, invalid provision. The same applies in the case of a contractual gap.

15.4 No rights: Unless expressly provided in this Agreement, the Parties grant each other no rights under any patents, patent applications, trade secrets, or other proprietary rights.

15.5 Assignment: This Agreement shall not be assignable by either Party without the prior written consent of the other Parties. Any and all assignments not made in accordance with this section shall be void.

15.6 Notices: Any notice of legal or scientific relevance or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by registered mail or equivalent documentable delivery to the following addresses of either Party:

If to X:

\_\_\_\_\_

In case of intellectual property or other legal aspects with copy to:

\_\_\_\_\_\_

If to Y:

\_\_\_\_\_\_

In case of intellectual property or other legal aspects with copy to:

\_\_\_\_\_\_

If to COMPANY:

\_\_\_\_\_\_\_\_\_

or to such other addresses as shall hereafter have been furnished by written notice to the other Parties.

15.7 Annexes: Annex A shall be a complete art of this Agreement. In case of conflicts between the terms and regulations of this Agreement and the terms and regulations of its Annexes the terms and regulations of this Agreement shall prevail.

15.8 Survivorship: The provisions of Sections 9, 10, 11, 12, 13, and 16 survive any expiration or termination of this Agreement, but the provisions of Section 10 only for a period of 5 (five) years thereafter.

16. Place of Jurisdiction/Governing Law

This Agreement shall be governed exclusively by the laws of Switzerland, without reference to its conflict of laws principles; the exclusive place of jurisdiction shall be Zurich (Switzerland).

\* \* \* \* \* \* \*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or Representatives.

**For Institution \_\_\_\_\_\_ (X)**

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

  *(Signature)*

By: \_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

  *(Signature)*

**For Institution\_\_\_\_\_\_ (Y)**

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

  *(Signature)*

By: \_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

  *(Signature)*

**For \_\_\_\_\_\_\_\_\_\_\_\_ (COMPANY)**

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

  *(Signature)*

By: \_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

  *(Signature)*

Annex A: Approved version of DIZH Grant Application