**Cooperation Agreement**

**Preamble**

This Agreement establishes the cooperation between the project partners in the *ZIM* cooperation project, funded by the German Federal Ministry for Economic Affairs and Energy (BMWi). The successful implementation of this cooperation project requires a trusting collaboration and fair handling of the project results by the project partners. In this spirit,

the commercial enterprise

**[please insert contact information]**

-hereinafter referred to as “[…]”-

and

**Paderborn University**

**[please insert name of Chair / Institute / Department / Institution]**

**Warburger Strasse 100**

**33098 Paderborn, Germany**

- hereinafter referred to as “UPB”-

hereby conclude the following Agreement on the [project title with short description] cooperation project:

**1 Definitions**

(1) “Project Partner” refers to each of the individual partners in the cooperation project.

(2) The “Cooperation Project” refers to the overall [project title with short description] project undertaken jointly by the Project Partners, including the sub-projects.

(3) The “Project Manager” is the Project Partner coordinating the project.

(4) A “sub-project” is the part of the Cooperation Project that can be allocated to an individual Project Partner according to the summary description of the project.

(5) “R&D” refers to research and development, and/or research and development work.

(6) “Protection” refers to all forms of protection for R&D results through industrial property rights and copyrights.

(7) “Exploitation” refers to any usage of R&D results arising from the Cooperation Project and the related rights. In particular, exploitation includes follow-up R&D projects, any type of commercial exploitation (production, licensing, etc.), publications, etc.

**2 Subject of this Agreement**

(1) This Agreement establishes the legal relationship between the Project Partners in this Cooperation Project. The Agreement also includes provisions on the legal allocation of the project results as well as on protecting and exploiting the R&D results.

(2) The following annexes are part of this Agreement:

The project applications and all of their annexes

1. Each of these annexes is valid in the applicable version according to the BMWi funding approval notification.

**3 Joint objectives and definition of the overall project as well as sub-projects**

(1) The objective of this project is […]

The Cooperation Project consists of 2 sub-projects.

**Definition of sub-project** [company]: […]

**Definition of UPB sub-project:** […]

(2) The term of the project is defined as follows: project start DD-MM-YYYY and project end DD-MM-YYYY

**4 Development and working plan for the Project Partners**

The work packages planned in Annex 5 to the project applications are hereby acknowledged as binding.

**5 Project Manager**

(1) The Project Manager shall be […], Mr / Ms […].

(2) In particular, the Project Manager has the following responsibilities:

Technical coordination and management of the collaboration between the Project Partners, including in relation to the BMWi and its representatives, particularly:

* establishing that the Project Partners have access to the same level of information (including sharing interim and final reports, preparing and holding discussions on the current project status and its further development at least once per year),
* requesting reports on the sub-projects and preparing reports on the Cooperation Project for the BMWi to the required extent,
* Updating materials for the Cooperation Project (e.g. work plans).

(3) The Project Manager shall act independently in fulfilling his/her legal funding-related obligations, and in collaboration with the other Project Partners in all other respects.

(4) The Project Partners are obligated to actively support the Project Manager in performing these tasks. In particular, the Project Manager must be provided with all requested documents in a timely manner for the purpose of fulfilling his/her tasks, and the Project Partners shall attend all meetings arranged by the Project Manager. Furthermore, the Project Manager shall be informed immediately of any circumstances that could affect the successful execution of the Cooperation Project (e.g. significant deviations in the course of the project or its progression, impending insolvency on the part of one of the Project Partners).

(5) Correspondence addresses:

for the commercial enterprise

[contact information and name of the (Sub-) Project Manager]

and for Paderborn University

Paderborn University

[contact information and name of the (Sub-) Project Manager]

Each Project Partner shall immediately inform the other Project Partner in writing of any changes in this correspondence address.

(6) No Project Partner is entitled to legally represent the other Project Partner(s) without that Partner’s explicit written consent, or to submit legally binding declarations for the other Project Partner(s).

**6 Responsibility for sub-projects**

(1) Each Project Partner is responsible for its own sub-project.

(2) Each Project Partner agrees to carry out its project in accordance with the requirements and specifications for its sub-project and for the Cooperation Project.

(3) Each Project Partner shall secure financing for its sub-project according to the project-specific financing needs.

**7 Assigning R&D work to third parties**

Within the scope of the Cooperation Project, the Project Partners shall only assign R&D work to third parties by mutual agreement.

**8 Work results**

1. Research and development results arising within the scope of the Cooperation Project shall be designated as “work results”, regardless of their format and whether they are protectable. In particular, work results include inventions that are patentable or eligible for utility model protection, confidential know-how, and copyrightable results.
2. The Project Partners shall regularly report to one another on the work status of their tasks. The Project Partners shall inform one another in writing of any work results in the sense of Subsection (1), where this is needed to execute the Cooperation Project.
3. All work results shall belong to the Project Partner who achieved them. The Project Partners have the right to immediately apply for industrial property rights for their protectable inventions.
4. The Project Partners shall ensure that any work results (particularly protectable inventions) achieved by their employees while carrying out the Cooperation Project are transferred to them. In particular, they shall ensure that protectable inventions are claimed in due time in accordance with the regulations of the German Employee Inventions Act (*Arbeitnehmererfindungsgesetz*). If UPB employees are involved who are not subject to the German Employee Inventions Act, UPB shall ensure the transfer of work results by establishing corresponding agreements with these employees. In particular, such a transfer of rights must be ensured in the case of degree candidates, doctoral candidates and students who – in the absence of a separate employment contract – are not subject to the German Employee Inventions Act.
5. The Project Partners have a joint right to industrial property rights for joint protectable work results that involved employees of both Project Partners. The Project Partners shall consult with one another on the modalities of protection by means of industrial property rights and utilisation (applicant, costs, distribution of financial proceeds, etc.) on a case by case basis.
6. If one Project Partner waives the right to register or maintain an industrial property right or its share of an industrial property right, it shall offer to transfer said industrial property right and/or its share thereof to the other Project Partner at the latter’s expense; the details of this transfer shall be arranged by the Project Partners in a separate agreement for each individual case.
7. The current version of the German Employee Inventions Act shall apply. Each Project Partner shall be responsible for compensating its own inventors provided that a transfer does not take place.

**9 Granting rights for the purpose of executing the Cooperation Project and its sub-projects**

(1) The Project Partners hereby grant each other a non-exclusive, non-transferable, royalty-free right to use the work results arising during the course of the Cooperation Project, including inventions, for the purposes and duration of the Cooperation Project.

(2) For the purposes and duration of the Cooperation Project, the Project Partners shall grant each other a non-exclusive, non-transferable, royalty-free right to use the knowledge they contribute that is relevant to the Cooperation Project (all results achieved outside the Cooperation Project and contributed by one Partner to the cooperation), which the Project Partners may dispose of at the respective time of the granting. Regardless of any use within the scope of this Agreement, the respective industrial property rights and work results available to the Project Partners at the time the Agreement was concluded shall remain with the respective Project Partner. The Project Partners are not obligated to transfer their respective know-how to the other Project Partner.

**10 Exploitation**

(1) The commercial exploitation rights belong exclusively to [company]. UPB shall grant [company] the necessary rights of use for exploiting the work results, at market conditions to be agreed upon before the intended use. In every case, UPB shall retain a non-exclusive, non-transferrable right to use the work results for its own academic research and teaching purposes.

(2) If and to the extent that UPB’s previous industrial property rights are affected by [company] during the later exploitation of work results (and provided no third-party rights conflict with this), UPB shall grant [company] a non-exclusive license to these rights, at market conditions to be agreed upon for each individual case.

**11 Documentation obligation**

The Project Partners are obligated to appropriately document their contributions to the R&D results.

**12 Confidentiality**

(1) The Project Partners hereby agree to keep confidential from third parties all information that is marked as confidential, or is clearly subject to confidentiality, which is made jointly available to the Project Partners and to not utilise such information unless rights have been granted as specified in Section 10.

(2) This confidentiality obligation shall continue for the duration of the Cooperation Project and for five years after it ends.

(3) This confidentiality obligation does not apply to information that:

1. was demonstrably known to a Project Partner before this Agreement took effect,

2. one Project Partner demonstrably receives from third parties in a legal manner,

3. is generally known or becomes generally known without violating any of the obligations in this Agreement,

4. was demonstrably developed by one Project Partner within the scope of its own independent work,

5. must be disclosed if required by statutory and/or administrative regulations or court order.

(4) The Project Partners shall implement suitable methods to ensure that all employees, freelance employees and subcontractors they use to execute this Agreement comply with the aforementioned confidentiality obligation as well.

(5) The provisions of this Section 12 shall continue to apply for the period named in Section 12 (2) even after the fulfilment, termination or cancellation of the Agreement.

(6) Reporting obligations based on the BMWi/PT funding terms and conditions shall not be affected by the preceding provisions. Any confidential information shall be specifically indicated in these reports.

**13 Publications**

(1) Provided they comply with the confidentiality obligation specified in Section 12, the Project Partners are entitled to publish the results of their sub-projects and are obligated to do so after the end of the Cooperation Project in accordance with the terms and conditions of their funding. Publications that pertain to the other Project Partner’s sub-project or which contain confidential information belonging to the other Project Partner, particularly its work results, are only permitted with the written consent of the other Project Partner. Such consent may not be reasonably withheld and shall be considered granted if a response is not made within one month of announcing the intended publication, insofar as the announcement specifies that not responding will result in this consequence.

(2) Furthermore, [company] hereby grants UPB the right to publish and disseminate research results from this project in a non-discriminatory manner.

**14 Guarantee, Warranty and liability**

(1) The Project Partners shall perform the work tasks they have assumed within the scope of the Cooperation Project with the ordinary level of care and prudence customary to them, based on the state of the art and technology known to them. The Project Partners do not assume any further guarantee or warranty. In particular, they do not guarantee that the work results they develop in the course of this collaboration will be commercially exploitable and free from third-party rights. However, if a Project Partner learns of conflicting third-party rights, it shall inform the other Project Partners of this immediately.

(2) In case of breach of essential contractual duties or obligations, i.e. duties or obligations, the fulfilment of which allows for the due performance of this Agreement, the breach of which would endanger the purpose of this Agreement and the compliance with which the other Project Partner may constantly trust in, the Project Partners shall be liable towards each other for any case of intent and any kind of negligence. In cases of slight negligence, this liability shall be limited to the typical and foreseeable loss.

(3) In all remaining cases, the Project Partners’ liability is limited to intent and gross negligence.  In case of gross negligence, liability shall be limited to the typical and foreseeable loss.

(4) In case of gross negligence, the liability according to Subsection (3) above shall be excluded for consequential losses (e.g. loss of profit or other financial losses).

(5) The exclusions and limitations of liability mentioned above in Subsections (2) – (4) do not apply in the event of death, injury or damage to health as well as for claims under the German Product Liability Act (*Produkthaftungsgesetz*).

(6) The above-mentioned exclusions and limitations of liability also apply to the employees, legal representatives and agents of the Project Partners.

**15 Termination**

(1) Termination of this Agreement without cause or for convenience is hereby excluded. The right to extraordinary termination for good cause remains unaffected. Termination must be made in writing.

(2) In the event that one Project Partner withdraws from the Cooperation Project, that Partner’s rights shall be limited to the R&D results arising from its sub-project. Rights granted to the other Project Partner under Section 9 of this Agreement shall continue to apply until the end of the Cooperation Project, to the extent that this is not unreasonable. The other Project Partner’s obligations arising from this Cooperation Agreement vis-à-vis the leaving Partner shall end when the termination takes effect. Any rights established up to this point shall not be affected by the termination. The departing Cooperation Partner is not entitled to use information or results from other sub-projects or the Cooperation Project, nor to make these accessible to third parties.

**16 Legal grant-related obligations and invalidity**

(1) The legal grant-related obligations of the individual Project Partners vis-à-vis the BMWi shall not be affected by the content of this Agreement.

(2) If individual provisions of this Agreement should conflict with a higher-ranking law, particularly EU competition law or legal grant-related provisions specified by the BMWi and/or legal grant-related obligations on the part of a Project Partner, they shall be deemed invalid.

(3) If individual provisions of this Agreement are invalid or ineffective, this shall not affect the validity or effectiveness of the other provisions. The Project Partners must replace invalid provisions with valid provisions that appropriately reflect the intent and purpose of this Agreement. A corresponding obligation shall also apply in the event of a loophole, gap or omission in the provisions of this Agreement.

**17 Written form**

Any changes or additions to this Agreement must be made in writing. This also applies to any change to the written-form requirement itself.

**18 Arbitration proceedings**

(1) Any differences of opinion arising from this Agreement, including differences that do not arise until after the Agreement has ended, shall be amicably resolved by the Project Partners. If the Project Partners are unable to amicably resolve the difference of opinion, the BMWi shall be asked to bring about a consensus. If the differences of opinion cannot be resolved in this way either, the provision in Subsection 2 shall apply.

(2) All disputes arising in connection with the Cooperation Agreement that are not resolved in accordance with Sub-Section 2 shall be finally settled in accordance to the rules of arbitration of the German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e. V. / DIS), without recourse to the ordinary courts of law. The place of arbitration proceedings is Paderborn, Germany.

**19 Effective date**

This Agreement shall take effect when it is signed by all Project Partners involved in the Cooperation Project and upon the legally effective approval of the requested BMWi funding.

Paderborn, dated

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Simone Probst […]

*(Vice President for Operations, (R&D Representative)*

*Paderborn University)*

[City], dated

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[…]