

Introductory remarks:

The following suggestion for a contract is intended as **guidance** on which legal issues need to be considered and negotiated with the client besides agreeing on specific project aims and tasks.

If you have questions or need further information please contact Division III/3 (Legal Matters Relating to Research and Knowledge Transfer), <https://www.uni-passau.de/en/research/research-services/contract-research/>.

Research and Development Agreement

between

the University of Passau

represented by the university's president, Professor Ulrich Bartosch

Innstraße 41, 94032 Passau

- Project management: *Name*
- hereinafter referred to as **University** –

and

.....(**Name of Client**).....

represented by

.....(**address**).....

Project management: *Name*

- hereinafter referred to as the **Client** -

Section 1

Project and implementation

- (1) The University conducts research and development work on behalf of the Client. The project name is

.....(*Project name*).....

The work will be conducted at (*name*) of faculty or institute. The work will be conducted under the scientific direction of Professor (*name*).

The project begins on (*dd month yyyy*) and should be completed by (*dd month yyyy*).

The following tasks are to be performed:

(*Exact specification of the issue or procedures etc., or reference to annex*)

.....
.....
.....
.....

- (2) If the work cannot be completed within the planned time schedule, the University of Passau will in any case notify the Client immediately, stating the reasons. In this case, the University of Passau and the Client will agree on the further proceedings and put their agreement in writing.
- (3) The research and development work will be conducted in collaboration with the Client. The Client makes all project-related information and all insights gained (for example publications, relevant documentation from other project partners) that they receive within the duration of the project available to the University. The University will report on progress upon request by the Client.
- (4) The University of Passau may subcontract parts of the project work if the Client gives advance consent in writing. The University of Passau undertakes to enter into an agreement with the subcontractor enabling it to fulfil its obligations from this contract, especially with regard to sections 4 et seqq.

Section 2

Remuneration

- (1) The Client contributes to the funding of the above-mentioned research and development project; their share of the funding amounts to EUR (*amount [net]*) (in words: *amount in words*); the remuneration is subject to the applicable statutory VAT (Mehrwertsteuer).
- (2) The specified amount will be paid as follows:

..... EUR upon signing the contract

..... EUR by (*dd month yyyy*)

..... EUR by (*dd month yyyy*)

All amounts are additionally subject to statutory VAT (Mehrwertsteuer – currently 19 %).

Payments will be effected after a separate drawdown effected by the university.

- (3) Besides the funding contribution pursuant to Subsection 1, additional travel expenses that are incurred in connection with the research and development project will only be reimbursed if agreed in advance.
- (4) Additional compensation will be charged for any additional research and development work not agreed in this contract but performed by the University upon express request of the Client.
- (5) The provisions for inventions and property rights pursuant to Sections 5 et seqq. remain unaffected by Subsection 1.

Section 3

Confidentiality

- (1) The University of Passau will treat as confidential any knowledge, documents, tasks and business transactions belonging to the Client of which it and its employees become aware because of this contract, will not make them accessible to any third party and will use them exclusively for the purpose of implementing this contract. Confidential information shall be information which is expressly marked as confidential. The Parties will treat as confidential in the same way any work results of employees of the other contracting party which are marked as confidential and of which they become aware in the course of joint research and development work. These obligations will end after a period of two years from the termination of the research and development project. The Parties ensure that the employees and students involved in the performance of the research and development work observe the confidentiality described above.
- (2) These non-disclosure obligations shall not apply if and to the extent that the relevant information
 - is common knowledge,
 - becomes common knowledge through no fault of the respective Party,
 - has been or is lawfully obtained from a third party,
 - is already available to the respective Party,
 - is developed independently of the research and development activities pursuant to Section 1 or
 - has been duly disclosed on the basis of an official or court order.
- (3) The Client acknowledges the fundamental obligation of the University and the employees involved in the research and development project to publish in scientific journals the nature, sub-

ject matter and results of the research and development work performed. Publications during the term of the research and development project will be coordinated with the Client in advance. These coordination efforts aim to avoid negative impacts on doctoral and other final theses, for example. The Client will not refuse consent to publication without good cause. If the Client does not object in writing within 2 weeks after receipt of the complete documents of a publication submitted to them (original text), their consent shall be deemed granted.

- (4) Insofar as examination procedures (in particular procedures for German Diplom degrees or Bachelor's, Master's, doctoral, or habilitation procedures) are affected by the work in the project, the Client will take appropriate account of the legal obligations and legitimate interests of those involved in the examination procedure.

Section 4

Previous Rights (Altrechte) and third-party property rights

- (1) The Parties each remain the owner of the knowledge, including know-how, author's rights (Urheberrechte), computer programs, inventions made and industrial property rights applied for or granted thereon, created by them or arising prior to the commencement of the contract or outside the area of the subject matter of the contract pursuant to Section 1 (1); these are collectively referred to as "Previous Rights" (Altrechte).
- (2) The Parties shall inform each other prior to commencement and on an ongoing basis to the best of their knowledge and belief about the existence of Previous Rights (Altrechte) in the field of the subject matter of the contract, insofar as they are necessary for the performance of the work or for the use of the results of the work, as well as of third party rights to such Previous Rights (Altrechte). Furthermore, they shall inform each other to the best of their knowledge and belief of any third-party property rights of which they are aware. In the event that third-party industrial property rights become known, the University of Passau and the Client will agree on the further course of action.
- (3) Insofar as Previous Rights (Altrechte) of the Parties are necessary for the performance of the work and no rights of third parties conflict therewith, the Parties grant each other a free and non-exclusive right of use limited to the duration and purpose of the work, which shall not become a right of further use unless otherwise agreed.
- (4) Insofar as Previous Rights (Altrechte) of the contracting parties are required for the use of the work results and no third party rights conflict, the Parties grant each other an option to conclude a licence agreement on reasonable terms. The term of the option is limited to six months after the end of the contract.

Section 5

Rights to research results

- (1) The results of the research and development work, with the exception of the results that can be protected by industrial property rights, will be made available to the Client in accordance with the contractual agreement once all agreed payments have been effected.

- (2) The Client is granted a non-exclusive, royalty-free right of use to those research and development results and know-how emerging from the implementation of the research and development contract that are protected by author's rights (Urheberrecht). The granting of an exclusive right of use for the intended purpose requires a separate agreement.

As an alternative to the preceding Subsection 2, the following Subsections 2 and 3 should be used insofar as an exclusive right of use is already to be granted upon conclusion of the contract:

- (2) If the results, insofar as the University is entitled to them, are protected by non-registrable rights, such as author's rights (Urheberrechte), the Client shall be entitled, subject to the provision in Subsection 3, to the exclusive right, transferable by the Client alone, unlimited in time and place, to use them in their original or an amended form in any way they wish for all types of use (in particular to reproduce them, to have them reproduced and to process them) and to grant third parties rights of use – alone and at their own discretion – for all types of use. The right to acknowledgement of authorship of employees in the research and development result shall remain unaffected.
- (3) Notwithstanding Subsections 1 and 2, the University and its affected employees retain a non-exclusive right to use arising rights and results for their own purposes in research and teaching; this right is not limited in time or to any particular location. With regard to publications, Section 3 shall apply.

Section 6

Arising registrable industrial property rights

- (1) Insofar as results – of whatever kind – within the scope of the research and development work to be performed are capable of being protected by industrial property rights, the Client is entitled to apply for industrial property rights for these in their own name at their own expense in Germany and abroad, to pursue these further and also to drop them at any time. The University will notify the Client without delay of reported work results that are capable of being protected by property rights (inventions) and will provide all necessary information. The University must, upon request, claim all rights to reported inventions made by their employees in connection with their work on the contract, by declaring their claim towards the inventor and must transfer these rights to the Client without delay. The Client must make the request in time, so that the University can observe the deadlines stipulated in the Arbeitnehmererfindungsgesetz (act on employee inventions – ArbNErfG). The legally required remuneration for employee inventions must be paid by the Client; the amount is calculated jointly by the Parties. If the Client does not wish to apply for industrial property rights for a particular result, the University has the right to apply for industrial property rights for this result in their own name and at their own expense.
- (2) Reported inventions that are made jointly by employees of the University and employees of the Client during the term of this contract in the area of the research and development work pursuant to Section 1 must be claimed from their employees by the Parties; these industrial property rights must always be registered jointly by the University and the Client. The Parties will in-

form each other immediately of any such application and agree on the respective shares in the invention and put the result of this agreement in writing. The Parties to the contract are jointly entitled to such industrial property rights. The cost is born jointly by the Parties in accordance with their share in the invention. The Parties will agree on countries for which they wish to apply for corresponding property rights abroad at the latest three months before the end of the period of priority.

- (3) If the University does not wish to apply for industrial property rights to inventions pursuant to Subsection 2, they will inform the Client accordingly; further details will be regulated in a separate agreement.

If the property right (e.g. a patent) is intended to stay with the University, the following subsections could be used instead for Section 7:

- (1) Reported inventions made by employees of the University during the course of this contact in the area of the research and development work pursuant to Section 1 are used by the University without limitation and property rights are claimed in the name of the University; the Client must be informed of this without undue delay. The University has the exclusive entitlement to these industrial property rights. The University bears the cost of acquiring such property rights.
- (2) Reported inventions that are made jointly by employees of the University and employees of the Client during the term of this contract in the area of the research and development work pursuant to Section 1 must be claimed from their employees by the Parties; these industrial property rights must always be registered jointly by the University and the Client. The Parties will inform each other immediately of any such application and agree on the respective shares in the invention and put the result of this agreement as well as any other agreements in writing. The Parties to the contract are jointly entitled to such industrial property rights. The cost is born jointly by the Parties in accordance with their share in the invention. The Parties will agree on countries for which they wish to apply for corresponding property rights abroad at the latest three months before the end of the period of priority.
- (3) If the University does not wish to apply for industrial property rights to inventions pursuant to Subsection 1 or 2, they will inform the Client accordingly; further details will be regulated in a separate agreement.

Section 7

Use of the industrial property rights (delete if the first version of Section 1 applies)

- (1) The University grants the Client the option of concluding a licence agreement concerning the intellectual property rights emerging from the research. This licence agreement will regulate the respective usage rights.
- (2) The term of the option is limited to three months after conclusion of the research. The option may be extended for a fee.

- (3) To use this option, the Client must notify the University in writing using registered post.
- (4) If the Client wishes to use the jointly registered property rights commercially, the University will be remunerated for this use appropriately in accordance with their share in the invention.

Section 8

Liability, guarantee

- (1) The University will carry out the agreed research and development work with their customary care and on the basis of the state of the art in science and technology known to them. Within 12 months after the jointly recorded documentation of the handover of the intended essential results, the Client may demand retrospective fulfilment (Nacherfüllung – rectification of defects or new production) insofar as it turns out that the result of the research and development work does not comply with the requirements specified in Section 1. There are no further guarantee rights, in particular, there is no guarantee that the results of the research and development project will be commercially exploitable and free of third-party property rights. Insofar as conflicting property rights become known, the University will inform the Client of these without delay.
- (2) The liability of the Parties to the contract, their legal representatives and agents for claims for indemnity, violation of contract or misdemeanour is limited to damages caused by wilful misconduct or gross negligence. In the event of damage caused by gross negligence, liability will be limited to the value of the contract; liability for consequential damage (e.g. loss of profit, financial loss) is excluded. Liability according to the Product Liability Act (ProdHaftG) remains unaffected.
- (3) The limitations and exclusions of liability pursuant to Subsection 2 do not apply to damage resulting from injury to life, limb or health. In the event of any other culpable breach of essential contractual obligations (cardinal obligations), liability is limited to foreseeable damage that might typically occur. Cardinal obligations are those obligations which make the proper fulfilment of the contract possible in the first place and on which the client has relied and also had the right to rely and whose culpable non-fulfilment jeopardises the achievement of the purpose of the contract.

Section 9

Early termination

- (1) Each Party is entitled to terminate this contract – in whole or in part – with immediate effect for good cause in writing.
- (2) In the event of early termination of the research and development project, no further research and development work will be carried out by the University of Passau from the time of termination onwards. The University of Passau will submit all documents that are available at this point to the Client.
- (3) The Client shall reimburse the University of Passau beyond the time of the early termination of the research and development project for those expenses still incurred in view of the research

and development project and for the fulfilment of legal obligations, unless the University fails to ensure the timely termination of the legal obligations in breach of duty. Expenses to be reimbursed to the University of Passau in the event of early termination beyond the date of termination shall not exceed the total funds budgeted for carrying out the research and development project.

Section 10

Amendments, invalidity

- (1) This contract may only be amended by a written agreement that is signed by both Parties. This also applies to amendments of Section 10 (1).
- (2) Should any provisions of this agreement be or become void, the other provisions remain valid. The Parties are obligated, within the scope of what is reasonable and in good faith, to replace the invalid provision with a permissible provision that is equivalent to it in terms of economic success, provided that this does not result in any significant change to the content of the contract.

Section 11

Effective date

This agreement enters into force upon signature by both parties on (*dd month yyyy*).

Section 12

Place of jurisdiction, applicable law

- (1) The place of jurisdiction is Passau.
- (2) This contract is subject to the laws of the Federal Republic of Germany to the exclusion of the conflict of laws provisions of international private law.

Enclosures:

Description of the project

Previous Rights (Altrechte)

Passau,

.....,

UNIVERSITY OF PASSAU

CLIENT

University president

Representative

Prof. Dr. Ulrich Bartosch

Name

Project management

Project management

Prof. Dr. *Name*

Name