

## COLLABORATION AGREEMENT

### THE UNDERSIGNED:

1. **Technische Universiteit Eindhoven**, a university under the laws of the Netherlands, having its registered seat in Eindhoven, the Netherlands, and registered with the trade register under file number 51278871, hereinafter referred to as "**TU/e**", in this matter duly represented by Mr. J. Hermus, in the capacity of managing director of the Department of Industrial Design, hereinafter referred to as "**Department**";
2. **[NAME]**, a [private company with limited liability/public limited liability company/foundation], having its registered seat in [PLACE], [COUNTRY], and registered with the trade register under file number [NUMBER], hereinafter referred to as "**Partner**", in this matter duly represented by [NAME];

Sub 1 and 2 hereinafter also to be referred to individually as "**Party**" and together as "**Parties**".

### WHEREAS:

- A. Partner wishes to investigate [brief and concise description of the research project, project needs to be described more in detail in Appendix I]<sup>1</sup>, hereinafter referred to as "**Research Project**" and further described in **Appendix I**;
- B. TU/e has the required expertise in the area of the Research Project;
- C. Partner wishes to make use of said expertise, which TU/e can make available by means of the execution of a research project by the Department;
- D. TU/e is a university in the sense of the Dutch Law on Higher Education and Scientific Research (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*) within which scientific education is offered and where scientific research is conducted. Scientific integrity is an important principle for TU/e. For further support thereof, the Executive Board of TU/e has declared to apply within TU/e the Netherlands Code of Conduct of Scientific Pursuit (VSNU, 2004, revised in 2012 and 2014, *Nederlandse Gedragscode Wetenschapsbeoefening*);
- E. the Research Project fits within the legal task of TU/e, which comprises among other things education and research as well as exploitation of knowledge;
- F. TU/e is prepared to collaborate with Partner and conduct the Research Project, on the conditions to be agreed upon in this collaboration agreement, hereinafter referred to as "**Agreement**";

### HAVE AGREED AS FOLLOWS:

#### Clause 1 Description and execution of the Research Project

- 1.1 The Research Project consists of a research project by the Department which is further described in Appendix I. The Department decides on the amount of students and staff members that shall work on the execution of the Research Project, unless the amount is already specified in Appendix I.

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<sup>1</sup> It is important to get this description as brief and concise as possible, as this description defines the scope of this agreement and thus the range of the collaboration between Partner and TU/e. A too broad description would lead to unfavourable liabilities and risks for TU/e.

- 1.2 The Department shall conduct the Research Project with care and according to generally accepted scientific standards.
- 1.3 The framework of the Research Project shall not be directed to a result wanted by Partner. Preferably, Partner, TU/e and the participating students and staff members of TU/e shall mutually formulate the (purpose of the) Research Project.
- 1.4 Rewards and other tokens of appreciation shall never depend on the result or interpretation of the Research Project.
- 1.5 Partner is obliged to provide all information (among which data) and/or materials (among which apparatus, samples, substances or goods) to TU/e that are necessary for TU/e to conduct the Research Project with care. In case Partner does not provide information and/or materials to TU/e in time, this can influence the start, duration or quality of the Research Project, which shall be for the risk and expense of Partner. In case insufficient or incorrect information has been provided by Partner, this shall be for the risk and expense of Partner. This provision is also applicable to Confidential Information as defined under clause 4 of this Agreement.
- 1.6 TU/e has the right to engage third parties in the Research Project, or to have conducted (parts of) the Research Project by third parties, following prior written consent from Partner. TU/e shall look after the appropriate knowledge and level of experience of such third parties.
- 1.7 [NAME] is appointed by TU/e as project leader and shall act as a contact person on behalf of TU/e with regard to the Research Project. On behalf of Partner, [NAME] shall act as a contact person with regard to the Research Project.

## **Clause 2 Term of the Agreement**

- 2.1 The Research Project shall be conducted in the period starting [DATE] and ending [DATE] or so much earlier as the Research Project has been completed in the way defined in Appendix I.
- 2.2 The duration of the Research Project can be exclusively extended by means of a written agreement between Parties.
- 2.3 This Agreement is entered into for a restricted term, that is for the term of the Research Project as described in clause 2.1, on the understanding that this Agreement shall expire as earlier as the Research Project under clause 2.1 has been completed and also the final report as mentioned in clause 3.2 has been finished and has been sent to Partner.
- 2.4 This clause 2.4 and the clauses 4, 5, 6, 7, 9 and 10 shall remain in full force and effect for an indefinite term after expiration or termination of this Agreement, with the exclusion of the confidentiality obligation of clause 4, which shall be in force until 2 years after termination or expiration of this Agreement.

## **Clause 3 Report and presentation of results**

- 3.1 During the execution of the Research Project, TU/e's project leader shall report to Partner concerning the progress of the Research Project, the results attained until that time and the planning of the activities to follow. The dates defined in Appendix I shall not be considered as terms of forfeiture.
- 3.2 Upon conclusion of the Research Project, TU/e shall provide Partner with a final report including a description of the execution of the Research Project, the research methods and materials used, as well as a statement and a description of the Research Project results. All results resulting from the Research Project, such as, but not limited to, data, reports, findings, advice, conclusions, sketches, models, prototypes, materials, or other material issues are hereinafter

jointly referred to as “**Research Project results**”. Furthermore, if students were participating in the Research Project and the participating students give a presentation, Partner shall be present at that presentation.

#### **Clause 4 Confidentiality**

- 4.1 In this clause 4 the term “**disclosing Party**” shall mean the Party that places Confidential Information at the disposal of the receiving Party. The term “**receiving Party**” shall mean the Party that receives Confidential Information from the disclosing Party. Confidential Information (hereinafter referred to as “**Confidential Information**”) includes, but shall not be limited to, all research methods, research data, Research Project results, designs, models, prototypes, materials, objects, intermediate reports, drawings and/or know-how resulting from and/or related to the Research Project. Confidential Information furthermore includes, but shall not be limited to, all data and information of whatever nature or form disclosed by the disclosing Party to the receiving Party in relation to the Research Project, to the extent these data and information have been supplied confidentially or are of a manifestly confidential nature.
- 4.2 During the term of this Agreement and for the duration of 2 years after expiration or termination of the Agreement, Parties are obliged towards each other to keep secret each other’s Confidential Information and they shall not use the Confidential Information in part or in whole for other purposes than for which it has been placed at disposal of the receiving Party. They shall not place the Confidential Information or part thereof at the disposal of third parties without the explicit prior written consent of the other Party.
- 4.3 The duty of confidentiality does not apply to information and data:
- a. that are publicly known, other than by fault of the receiving Party;
  - b. that have been released pursuant to a legal obligation or a court judgment that has become final and conclusive or was declared provisionally enforceable (*in kracht van gewijsde gegane dan wel uitvoerbaar bij voorraad verklaarde rechterlijke uitspraak*) or pursuant to an arbitral award that has become irrevocable or was declared provisionally enforceable;
  - c. in respect of which written dismissal by the disclosing Party of the duty of confidentiality has been granted.
- 4.4 Each Party shall take care that its employees, engaged in the Research Project, are aware of the confidentiality obligation of clause 4.2.
- 4.5 The confidentiality provisions as mentioned in this clause 4 shall never affect the right and the possibility of TU/e to publish scientifically, which right to publish is further specified in clause 6 of this Agreement.

#### **Clause 5 Intellectual property rights**

- 5.1 All intellectual property rights of a Party used in the Research Project remain the property of this Party and the other Party shall have no right to claim such intellectual property rights.
- 5.2 All intellectual property rights resulting from the Research Project rest and shall rest with TU/e. Within the area of the Research Project, TU/e provides Partner a non-exclusive, non-transferable licence to use the results of the Research Project for (non-)commercial purposes. The licence does not contain the right to sub-license. The licence to Partner is exclusively reserved for Partner during the period as stated in clause 2.1.<sup>2</sup>

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<sup>2</sup> TU/e offers its collaboration in this agreement against non-commercial conditions. Governmental (state aid) regulations therefore forbid TU/e to offer Partner more than a non-exclusive, non-transferable licence to use the results of the Research Project with exclusivity for Partner solely during the term of the Research Project. If Partner specifically requires any other arrangement, TU/e is required to use a different, custom made collaboration agreement against full commercial conditions.

- 5.3 TU/e has the right to use for itself and/or for third parties and/or have used by third parties:
- a. the knowledge and experience available at TU/e upon the execution of this Agreement;
  - b. the knowledge and experience gained by the execution of the Research Project outside the area of the Research Project;
  - c. arithmetic methods, programmes and experimental methods, resulting from the execution of the Research Project, in so far as the development thereof has no direct and exclusive relation with the purpose of the Research Project.
- 5.4 In so far as the execution of the Research Project results in patentable matter, TU/e has the right to file this matter for a patent in its own name and for its own expense.
- 5.5 TU/e and Partner shall inform each other immediately of:
- a. their presumption that patentable matter has been discovered (hereinafter to be referred to as "**Mention**");
  - b. the fact that a patent application is to be filed;
  - c. the content of said patent application.
- Furthermore, Parties shall provide each other all necessary co-operation in the filing of patent applications.
- 5.6 In the event TU/e does not wish to exercise its right as defined under clause 5.5, TU/e shall firstly offer the right to Partner, on terms and conditions to be agreed upon at a later stage. In the event that Partner is not interested, TU/e is entitled to offer the right to third parties.
- 5.7 In the event Partner applies its rights under clause 5.6, Partner shall offer TU/e a non-exclusive, non-transferable licence free of charge on the patent application and resulting patent on which basis TU/e is able to derive rights for its own use.
- 5.8 TU/e or Partner is free to withdraw a patent application or terminate an issued patent at any time. In the event a licence has been provided to Partner or to TU/e, said Party shall be offered the first possibility to transfer the patent application or patent to its own name, provided all further costs shall be for its own risk and expense. In that case Partner or TU/e shall acquire a non-exclusive, non-transferable licence for its own use for free.
- 5.9 During a period of six months, starting on the date of the Mention, Partner shall be offered the opportunity to exclusively negotiate with TU/e about the exploitation of the Research Project results by Partner under a non-exclusive licence on the Research Project results. In the event Partner pays half of the expenses for obtaining the intellectual property rights on the Research Project results, of which TU/e shall give notice in writing, then, during a period of twelve months starting on the date of the Mention, Partner shall be offered the opportunity to exclusively negotiate with TU/e an exclusive licence on the Research Project results. After expiration of said periods of six or twelve months, TU/e is free to negotiate with other parties than Partner about licence(s) on the Research Project results.
- 5.10 In the event the Research Project results have been reported in the form of a written document (for instance but not restricted thereto (intermediate) reports, drawings and models), the copyrights thereto shall belong to TU/e. Partner has the non-exclusive right to use said copyrights for its own purposes, on the understanding that TU/e in all cases retains the right to use the copyrights itself and to license the same, provided on other areas of application than for which the Research Project has been conducted and provided to a company not directly competing with Partner.
- 5.11 For the benefit of possible patent applications TU/e and Partner shall keep secret the corresponding Research Project results as long as necessary for the patent application.

## **Clause 6      Publication**

- 6.1 Without the prior written consent of TU/e, Partner shall not communicate about the approach of TU/e, its methods and the like, nor publish or make public in any other way and/or provide to third parties the final and/or intermediate reports, the reports and/or other results of the Research Project.
- 6.2 During the execution of the Research Project and the period as stated in clause 4.2, TU/e shall not publish or make public in any other way the Research Project results without the written permission of Partner. The permission shall not be withheld by Partner unreasonably.
- 6.3 Parties are obliged to refrain from using the name of the other Party in or in relation to the publication, if the other Party demands so in writing.
- 6.4 In the event Partner enters the public domain (among which publications, press releases and/or other communications) concerning the Research Project, the Research Project results, data or results thereof (among which resulting products or programmes), TU/e shall have the right with respect to the content to respond to the declarations in the form desired by TU/e. Notwithstanding the confidentiality obligations of TU/e, it shall have the right to publish scientific results irrespective of whether they are favourable or negative for Partner.
- 6.5 Publication in a scientific paper shall take place in consultation with Partner. TU/e however, shall have the final and binding decision about content, authors, form and place of the scientific publication. Partner shall be mentioned in publications and other forms of publishing unless Partner informs TU/e timely in writing of its rejection. TU/e shall inform Partner of the moment of publication and of the content it shall publish concerning Partner.

#### **Clause 7      Liability**

- 7.1 TU/e shall not be liable for (in)direct or consequential damages sustained by Partner and/or third parties from the execution of this Agreement or the Research Project by TU/e and/or by students engaged therein and/or (other) third parties, unless TU/e, more particularly its employees can be reproached with intentional or gross fault.
- 7.2 In the event, notwithstanding the provisions under clause 7.1, TU/e is liable (appearing from a final and binding judgement, not being a provisional relief) for damages not resulting from intentional or gross fault as stated under clause 7.1, then the liability of TU/e shall in all cases be restricted to direct damages to goods or people and this shall never comprise any possible (indirect) damages to business or any other consequential damages among which loss of income. Direct damages shall be considered damages resulting directly from or having a direct relation with the execution of the Research Project. TU/e shall at most be liable for the amount mentioned in clause 8.1 for which the Research Project is executed.
- 7.3 Partner shall be liable for damages suffered by TU/e and/or third parties which it has engaged (amongst which students) during the execution of the Research Project at the premises of Partner unless there is intentional or gross fault on the part of TU/e or its engaged third parties (amongst which students).
- 7.4 If Partner uses or applies any Research Project results or enables third parties to use or to have used and/or apply the same, Partner indemnifies TU/e from claims of itself and from claims of third parties because of damages.

#### **Clause 8      Payments [OPTIONAL]**

- 8.1 As a compensation for conducting the Research Project, Partner shall pay TU/e an amount of EUR [NUMBER] (exclusive of VAT) or a proportional part thereof in case of earlier termination of the Research Project to be determined by way of the lapsed period.

8.2 Partner is obliged to pay TU/e the invoice in euros within thirty (30) calendar days after the invoice date. If Partner exceeds this term of payment, Partner is considered to be in default, without previous notice of default being required.

**Clause 9 Miscellaneous**

9.1 Unless explicitly stipulated in this Agreement, none of the Parties are allowed to transfer or assign this Agreement and/or rights and/or obligations resulting from this Agreement to a third party in whole or in part, without the prior written consent of the other Party.

9.2 A failure by a Party to take action in the event of non-performance by the other Party regarding any provision of this Agreement shall not operate as a waiver of such right.

9.3 Amendments or additions to this Agreement are only possible and effective to the extent that these are laid down in writing in a document signed by all Parties.

9.4 In the event that one or more provisions of this Agreement turn out to be void or invalid, the remaining provisions shall remain effective. The Parties shall discuss the void or invalid provisions in order to agree upon an alternative arrangement that is valid and which as closely as possible corresponds with the contents of the provisions to be replaced.

9.5 Titles referred to in the head of the clauses in this Agreement are for convenience only and shall not influence the purport or the effect of this Agreement and they shall not be taken into account in the interpretation thereof.

9.6 The appendices hereto form an integral part of this Agreement.

**Clause 10 Applicable law and disputes**

10.1 This Agreement is governed exclusively by Dutch law.

10.2 All disputes that may arise in connection with this Agreement or any agreements resulting from this Agreement shall be submitted to the competent court of Oost-Brabant, the Netherlands.

**AGREED, DRAWN UP AND SIGNED IN TWOFOLD IN THE PLACES AND ON THE DATES AS MENTIONED BELOW**

**Technische Universiteit Eindhoven**

**[PARTNER]**

Mr. J. Hermus  
Managing Director  
Place:  
Date:

**[NAME]**  
**[FUNCTION]**  
Place:  
Date:

## Appendix I – Research Project

The Research Project is described in detail in this appendix. If possible, a Project Plan is attached. Hereinafter is mentioned at the minimum:

- Background
- Purpose
- Description of the Research Project – provide a realistic description of the situation related to the business activities of Partner including formulation of the problem and consider a starting-point for the Research Project
- Contribution counterpart – state which contribution Partner shall bring into the Research Project and which issues and/or materials it shall deliver
- Contribution TU/e – state which contribution TU/e shall bring into the Research Project with respect to issues and/or materials. Possibly refer expressly to what will not be brought in
- Performers – mention the names of the TU/e staff members and/or students that shall conduct the Research Project on behalf of TU/e and possibly mention the names of external companies or other parties involved which will conduct certain activities for TU/e
- Planning – state what the planning is for conducting the Research Project
- Costs – state which party shall pay for costs involved (such as hours spend, demo costs, travel costs, etc.)