

Open Innovation License

- Commercial License Agreement for commercial exploitation of technology

Preamble

Aalborg University has in pursuit of its strategic initiatives developed the concept of Open Innovation License (OIL). The concept supports the university policy of seeking to successfully commercialize inventions developed by its research personnel, inventions which have been transferred to the university in accordance with the Danish Act no. 347 of 2 June 1999, as amended by Act no. 145 of 25 March 2002 on Inventions at Public Research Institutions (lov om opfindelser ved offentlige forskningsinstitutioner).

The concept of Open Innovation License seeks to enable easy access for review and evaluation of the university inventions based on predefined and easily accessible, ready to sign, terms of use, with the right to continue to a ready to sign commercial license, if the invention shows to be of commercial interest, during the term of this non-commercial license for review and evaluation.

In order to start your Commercial License Agreement for the technology below, please fill out the table below, sign and return to Aalborg University, accepting the terms of the Open Innovation License, defined in the pages following this table.

Technology Title: _____

This non-commercial license agreement is entered into by and between:

Licensor:	Aalborg University CVR. no. 29102384 Technology Transfer Office, Post Office Box 159, 9100 Aalborg, Denmark		
Licensee:	Select Entity type below:	Set (x)	License Fee, EUR per year
	Small Entity: <i>- Legal Person, Non-Profit Organization, or Small Company with less than 500 employees, including affiliates.</i>		
	Large Entity: <i>- Companies with 500 employees or more, including affiliates.</i>		
	Name of legal entity or person:		
	VAT. no./personal identification number:		
	Street Address, Postal code, city, state:		
	Country:		

Signatures:

For Licensee	For Licensor
Place / date:	Place / date:
_____	_____
Name, title (legal representative)	Nina Schjoldager, Head of Grants & Contracts

Open Innovation License (OIL) For commercial exploitation of technology (‘the Commercial License Agreement’)

1. Index of defined terms

‘Affiliate(s)’ shall mean any legal entity directly or indirectly controlling, controlled by, or under common control with the Licensee, for as long as such control lasts. By control is meant control of the entity through direct or indirect control of more than 50% of the nominal value of the issued equity share capital of the entity or more than 50% of the equity shares entitling the holders to vote for the election of directors or persons performing similar functions who have a majority vote, or right by any other means to elect or appoint directors of the entity or persons performing similar functions who have a majority vote.

‘Effective Date’ shall mean the date of entry into force of the Commercial License Agreement as set forth in Article 3.

‘License’ shall mean the right to use the Patents on the terms defined herein in accordance with the Purpose.

‘License Fee’ shall have the meaning ascribed hereto in Article 8.

‘Licensee’ shall mean the legal person or entity as defined in the introduction.

‘Licensor’ shall mean Aalborg University.

‘Commercial License Agreement’ shall mean this Commercial License Agreement including appendices.

‘Open Innovation License’ shall mean the concept as described in the Preamble.

‘Party and Parties’ shall mean Licensor and Licensee individually and collectively.

‘Patents’ shall mean the patents and/or patent applications referred to in the Technology Presentation (and in respect of Patent Cooperation Treaty applications, European Patent Convention applications or applications under similar administrative international conventions, patent applications in the listed or designated countries), together with any divisional, any patent issuing on any of said applications and any reissue or extension based upon any such patent.

‘Priority Date’ shall mean the filing date of the patent application for the Patents.

‘Products’ shall mean any product, the manufacture, use, offer for sale, sale, importation, lease, hire or other disposal of which would be covered by one or more Valid Claims.

‘Purpose’ shall mean the purpose as defined in Article 4.

‘Sub-contractor’ shall have the meaning ascribed thereto in Article 6.3 of the Commercial License Agreement.

‘Technology’ shall mean the technology claimed in the Patents.

'Technology Presentation' shall mean the short description of the Technology included as Appendix 1, which will be available on the university website for a period of time under the Open Innovation License concept.

'Third Party' shall mean all legal and natural persons, except for the Parties. Third Party comprises for example authorities and Affiliates.

'Valid Claim' shall mean (i) a claim of an issued, unexpired patent within the Patents or a claim being prosecuted in a pending application within the Patents (ii) which has not been disclaimed or held invalid by a decision beyond the right of review or otherwise has been finally found by a court of competent jurisdiction to be unenforceable.

2. Basis of Agreement

2.1 This Commercial License Agreement including appendices constitutes the entire agreement between the Parties with regard to access to the Technology and the Commercial License Agreement replaces any right or license given under the Non-Commercial License Agreement.

2.3 Upon receipt of one copy of this Commercial License Agreement signed by Licensee, Licensor shall sign and return a copy of the Commercial License Agreement together with a copy of the Patents, unless already received. The copy of the Patents constitute Confidential Information, unless already published through no fault of the Licensee.

3. Effective Date

This Commercial License Agreement is entered into upon signature by the legal representative of the Licensor ('Effective Date').

4. Purpose

4.1 The sole purpose of the Commercial License Agreement is for Licensor to provide access for Licensee to commercially exploit the Technology subject to the License terms and conditions as defined herein ('Purpose').

5. Technology and Patents

5.1 The technology shall mean the technology claimed in the Patents (the "Technology"). The Licensor is - to the best of Licensor's knowledge - the owner of the Patents. Licensor shall in any respect remain the full owner of the Patents.

5.2 The Licensor has sole control of the Patents, including sole control of maintenance etc. of the patents within the Patents. The Licensor in its sole discretion shall always be entitled to proceed with any submission or action, including the limitation of the scope of or the abandonment of any or all of the patent applications within the Patents, provided that the Licensor makes reasonable efforts to inform the Licensee as early as possible and to consider its comments, where suitable.

5.3 The Licensee may request that the Patents are extended to specific countries. Licensor shall to a reasonable extent seek to apply for such extension. The costs in connection with such extension of the Patents and maintenance thereof shall be borne by the Licensee. Any request for extension of the patents to a specific country may be given up until 24 months from the priority date of the Patents.

5.4 Nothing in this Commercial License Agreement shall be construed as a requirement that the Licensor file or prosecute any patent application or to maintain any patent. Before abandonment of any patent within the Patents, AAU must first give a 90 days' notice to the Licensee of such decision. Within this period, the Licensee may decide to take over the ownership of such specific patent within the Patents by written notification to Licensor's Technology Transfer Office. Such decision by Licensee to take over the

ownership to the specific patent within the Patents shall be received by the Licensor no later than 90 days after receipt of notice from the Licensor of Licensor's intent to abandon the specific patent within the Patents. In the event of more than one license-holder to the Technology, such license-holders will be offered the ownership to the patent within the Patents in joint ownership. Transfer of ownership to the specific patent within the Patent shall be free of compensation to Licensor, but subject to the condition that all costs relating to the protection and maintenance of the specific patent within Patents from the date of transfer and any transfer costs are borne by the Licensee(s).

6. License

6.1 Subject to the terms and conditions of this Agreement, Licensor grants to the Licensee a non-exclusive, non-transferrable, license for commercial exploitation of the Technology. The License is not limited in territory or field. The License becomes effective upon receipt of payment of the License Fee by Licensor.

6.2 The License does not include any right for Third Parties, including a right for the Licensee to grant any rights under this License to Affiliates. Licensee may not sublicense the rights granted under the License.

6.3 Notwithstanding the above, the Licensee is, however, entitled to have Products made by an identified and - by the Licensor - approved sub-contractor for supply solely to the Licensee (Sub-contractor). The Licensee shall withhold any right - implied or otherwise - for the Sub-contractor to exercise any other rights granted under this Commercial License Agreement. The Licensee will itself pay and be accountable to the Licensor for payment of the license fee under this Commercial License Agreement by reason of the operations by any such sub-contractor.

6.4 Nothing in this Commercial License Agreement shall entitle the Licensee to take any other action under the Patents than explicitly permitted in this Commercial License Agreement, and the Licensor is entitled to oppose any exploitation of the Patents falling outside the scope of the Commercial License Agreement. No other rights in addition to the License are granted or implied under this Commercial License Agreement. The Agreement does not comprise any obligation on the Licensor to provide the Licensee with access to any intellectual property rights (apart from the Patents according to the License), know-how, improvements and/or information, including without limitation instructions as to any operation of the Patents.

7. Obligations

7.1 For the remainder of the term of this Commercial License Agreement, the Licensee is by commercially reasonable endeavors expected to seek exploitation of the Patents in accordance with this Commercial License Agreement with the aim of promoting or procuring the distribution and sale of Products. This includes making Products and offering for sale, selling and otherwise transferring or disposing for value of the Products. Further the Licensee is expected to make available all necessary selling and manufacturing facilities to meet demands for Products.

7.2 It shall be the Licensee's full and sole responsibility to show appropriate care and to comply with applicable law in respect of its activities under the License. Consequently, by way of example, the Licensor has no responsibility for any filings, interactions with regulatory authorities, and the obtaining of any necessary regulatory approvals is of no concern to the Licensor.

7.3 If the Technology or any implementation thereof is subject to export controls (e.g. dual-use items (items of both civilian and military application), dangerous materials and substances) or other restrictions or sanctions, it is the responsibility of the Licensee to ensure that its use of the Technology comply with applicable EU, national and international law and that any special export authorisations are obtained.

7.4 The Licensee shall not in any way use directly or indirectly the name, logo or other marks of the Licensor or of any inventor of the Technology in any marketing, advertising, promotional or sales literature, without prior written consent obtained from the Licensor in each case.

8. License Fee

8.1 In consideration of the License, the Licensee shall pay the fixed license fee of a Large Entity or a Small Entity, as identified in the Preamble of the Agreement, for each license year (first license year is calculated as 12 months from the Effective Date) during the term of this Commercial License Agreement (License Fee). The License Fee payable under this Article 8.1 shall be paid in DKK within 30 days upon signature of the Commercial License Agreement. The License Fee is exclusive of value added tax. When making any payment under this Commercial License Agreement the Licensee shall also pay any value added tax payable.

8.2 The License Fee is not affected by the expiry or abandonment on a country-by-country basis of the Patents or of expiry or abandonment of any patent within the Patents. Except in case of default by the Licensor, termination of this Commercial License Agreement shall not result in a refund of License Fee already paid for such license year.

9. Non-disclosure Obligation

9.1 During the period until the patent application within the Patents is made public, the Licensee agree to maintain in the strictest confidence all information of a confidential nature exchanged in relation to the Patents, and the Licensee undertakes in accordance herewith not to divulge such information to any Third Parties or use any information for any purpose other than as foreseen in this Commercial License Agreement. Licensee is only allowed to disclose Confidential Information to its staff, to the extent that this is necessary in order to fulfill the Purpose and Licensee shall impose on such staff that they shall accept and abide the confidentiality obligations of the Commercial License Agreement. Licensee shall treat the Confidential Information with necessary care to secure non-disclosure, in accordance with the internal regulations and guidelines, and with the same degree of care which applies to Licensee's own confidential information, provided however that this care is concurrent with reasonable precautions.

9.2 Notwithstanding the above obligation on Confidentiality, the Licensor has the right to publish the content of any patent application within the Patents - to the extent that such publication is not going to be detrimental to such patent application.

10. Licensors use

10.1 The Licensor is not prevented from (i) any exploitation and use whatsoever of the Patents in connection with any research, development and educational activity irrespective of field or area, and from (ii) granting Third Parties the same right to non-exclusive exploitation and use of the Patents.

11. Infringements

11.1 The Licensee shall promptly inform the Licensor in writing of any alleged or threatened infringements of the Patents that comes to its knowledge and shall provide the Licensor with any available evidence of such alleged infringement.

11.2 The Licensee is entitled to take legal action against any alleged infringement in the name of the Licensee. The Licensor shall be kept fully informed about and shall receive copies of all documents etc. concerning any such legal action. The Licensor shall render reasonable assistance at the Licensee's request and cost. The Licensee is obliged to take into account any advice from the Licensor. The Licensee is not entitled to settle any claim brought under this Article 11 without

the Licensor's prior written consent. The Licensee shall bear all expenses in relation to legal actions according to this Article, including without limitation fees to the courts, authorities, patent agents and attorneys and monetary damages, irrespective of whether such actions are successful or not.

11.3 The Licensor has the right at any time to take over the prosecution of infringements mentioned in Article 11.2 in the name of the Licensor. The Licensor shall thereafter have the sole and exclusive right at its discretion and in its best interest to determine all matters relating to the enforcement of the Patents. That will include, without limitation, whether or not legal or administrative proceedings etc., should be brought, continued and/or settled, as well as their conduct. The exercise of this right does not have any impact on this Commercial License Agreement. The Licensor shall, however, bear the future costs related to the prosecution to the extent to which such prosecution is initiated or continued after the Licensor has exercised its right according to this Article 11.3. The Licensee shall cooperate fully with the Licensor at Licensor's expense.

11.4 In the event of any recovery of monetary damages from Third Parties in connection with proceedings in which the Licensee has borne all the costs or - in respect of proceedings in which the Licensor has taken over - the Licensor has borne a substantial part of all the costs, such recovery shall be allocated first to reimbursement of the pro rata share of the Parties' costs in relation to the litigation (including, for the purpose, a reasonable allocation of internal counsel and other expenses), and thereafter the remaining part of such recovery shall be shared equally between the Licensor and the Licensee.

12. Representations and Warranties

12.1 The Licensor represents and warrants

- (i) that it is duly organised and validly existing under the laws of Denmark and has full authority to enter into this Commercial License Agreement and to carry out the provisions hereof, and
- (ii) that - to the best of the Licensor's knowledge - the Licensor is the owner of the Patents.

12.2 Apart from Article 12.1 above, the Licensor does not provide any express or implied representations or warranties. By way of example, the Licensor does not represent or warrant (i) the validity, enforceability, merchantability and fitness of the Patents, or (ii) that the patent applications within the Patents will be granted, or (iii) that the Licensee will not need to obtain or license any other rights, including intellectual property rights from any Third Party or from the Licensor, in order to commercialize the Technology.

12.3 The Licensee warrants that it is a legal person or entity having its seat in a country which is not subject to international sanctions. Further Licensee warrants that it is not subject to bankruptcy or insolvency. Licensee understands and accepts that Licensor may refuse the License and its signature to the Commercial License Agreement, if Licensor finds its legitimate interests would be severely affected or if Licensor assesses that it will be of ethical or moral concern to give such License to the Licensee.

10.4 If the Technology or any implementation thereof is subject to export controls (e.g. dual-use items (items of both civilian and military application), dangerous materials and substances) or other restrictions or sanctions, it is the responsibility of the Licensee to ensure that its use of the Technology comply with applicable EU, national and international law and that any special export authorisations are obtained.

13. Termination

13.1 The term of this Commercial License Agreement shall commence upon the Effective Date. The Commercial License Agreement may be terminated by the Licensee with 90 days' written notice to the end of a license year to Licensor's Technology Transfer Office.

13.2 Either Party shall have the right to give written notice of termination of the Commercial License Agreement, if the other Party is in material breach of any of its obligations, representations or warranties hereunder, provided however, that the breaching Party has not remedied such breach within thirty (30) days after receipt of a written demand.

13.3 This Commercial License Agreement may immediately be terminated by the Licensor by written notice, but without prejudice to any rights of the Licensor under this Commercial License Agreement,

- (i) if the Licensee is subjected to receivership, bankruptcy, suspension of payments or insolvency, or make an assignment for the benefit of creditors, or goes out of business; or
- (ii) if the Licensee suffers a change of control.

13.4 This Commercial License Agreement and any rights and obligations herein shall automatically expire in the event that the Patents expire or the Patents are declared invalid. Further, if for any reason Licensor chooses to abandon the Patents collectively and entirely, the Commercial License Agreement shall expire on either the date of abandonment of the Patents or on the date of transfer of the Patents in accordance with the principles in Article 5.4, depending on the choice of Licensee. The Parties have no other claims against each other as a result of expiration of the Commercial License Agreement.

13.5 Termination of this Commercial License Agreement shall not release the Licensee from any liability incurred prior to the effective date of such termination and the Licensor may act to enforce the Licensee's obligations after any such termination.

13.6 Upon termination of this Commercial License Agreement for any reason, all rights granted to the Licensee hereunder shall revert to the Licensor for the benefit of the Licensor.

13.7 Upon termination of this Commercial License Agreement for any reason, the provisions of this Commercial License Agreement shall continue in force and effect to the extent necessary to effectuate any provisions which by its terms clearly shall continue beyond such termination.

14. Liability

14.1 Except for the Licensor being required to indemnify the Licensee under Article 12.1, the Licensor shall not be liable for any damages whatsoever, including any special, exemplary, consequential or punitive damages, whether in contract, warranty, tort, strict liability or otherwise. The Licensor shall under no circumstances be liable for indirect losses, such as but not limited to lost profits, lost earnings and Third Party losses arising directly or indirectly out of or in connection with this Commercial License Agreement.

14.2 The Licensee agrees to indemnify, hold harmless and defend the Licensor against any and all expenses, costs of defense (including without limitation attorneys' fee, witness fees, claims for damages, demands, actions, liabilities, judgments, fines and amounts paid in settlement) and any amounts the Licensor becomes legally obliged to pay because of any claim(s) against it, to the extent that such claim(s)

- (i) are due to negligence or misconduct by the Licensee.
- (ii) result from the Licensee's activities under this Commercial License Agreement (including but not limited to infringement of Third Party rights or the pursuit of an alleged infringer, including without limitation any cost directly linked with the defense by the Licensor of any counterclaim made by the alleged infringer), or
- (iii) arise out of the possession, manufacture, use, sale, administration etc. of Products by the Licensee (including but not limited to product liability).

15. Assignment

15.1 Neither this Commercial License Agreement nor any interest hereunder will be assignable in part or in whole by the Licensee without the prior written consent of the Licensor. This Commercial License Agreement will be binding upon the permitted assignees of the Licensee.

15.2 The Commercial License Agreement will continue in full force and effect in the event that the Licensor undergoes a change in ownership or restructuring or reorganization. The rights and obligations of the Parties under the Commercial License Agreement shall be unaffected as a result of such change in ownership or restructuring or reorganization and shall in respect of the Licensor succeed to the Licensor's legal successor-in-interest.

16. Governing Law and Dispute Resolution

16.1 This Commercial License Agreement shall be governed by, construed and enforced in accordance with the laws of Denmark, excluding, however, Danish choice of law rules to the extent that such rules would otherwise lead to the application of any other law than Danish law.

16.2 Any disputes relating to this Commercial License Agreement that cannot be resolved amicably by the Parties may be submitted to the Danish Maritime and Commercial Court (Sø- og Handelsretten) in Copenhagen with a right to appeal to the Danish Supreme Court (Højesteret) in accordance with and on the conditions stipulated in the Administration of Justice Act (Retsplejeloven) in force at the time in question.

17. Miscellaneous

17.1 The waiver by either Party of any breach by the other of any of the provisions of this Commercial License Agreement shall not be deemed to be a waiver of any subsequent or continuing breach of this Commercial License Agreement.

17.2 This Agreement represents the final and complete understanding between the Parties with respect to the subject matter hereof, superseding all prior agreements, understandings and discussions regarding said subject-matter.