

Open Innovation License

- Non-Commercial License Agreement

Trial License for review and evaluation 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 free, non-commercial review and evaluation licence period 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:	
	Small Entity: <i>- Legal Person, Non-Profit Organization, or Small Company with less than 500 employees, including affiliates.</i>	Set (x)
	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:
<hr style="width: 80%; margin-left: 0;"/> Name, title (legal representative)	<hr style="width: 80%; margin-left: 0;"/> Nina Schjoldager, Head of Grants & Contracts

Open Innovation License (OIL) Trial License for review and evaluation of technology (‘the Non-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 Non-Commercial License Agreement as set forth in Article 3.

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

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

‘Licensor’ shall mean Aalborg University.

‘Non-Commercial License Agreement’ shall mean this Non-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.

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

‘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.

2. Basis of Agreement

2.1 This Non-Commercial License Agreement including appendices constitutes the entire agreement between the Parties with regard to access to the Technology.

2.2 This Non-Commercial License Agreement shall be used for review of the Technology only, in accordance with the Purpose and the License terms as defined below.

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

3. Effective Date

This Non-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 Non-Commercial License Agreement is for Licensor to provide access for Licensee to the Technology for the purpose of review of the Technology and for evaluation of the commercial interest of the Licensee in the Technology ('Purpose').

5. Technology

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.

6. License

6.1 Subject to the terms and conditions of this Agreement, Licensor grants to the Licensee a non-exclusive, royalty-free, non-transferrable, license for non-commercial purposes relating to review of the Technology and for evaluation of the commercial interest of the Licensee in the Technology. The License is not limited in territory or field.

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, to sublicense the rights granted under the License or to have products made by a sub-contractor.

6.3 Nothing in this Non-Commercial License Agreement shall entitle the Licensee to take any other action under the Patents than explicitly permitted in this Non-Commercial License Agreement, and the Licensor is entitled to oppose any exploitation of the Patents falling outside the scope of the Agreement. No other rights in addition to the License are granted or implied under this Non-Commercial License Agreement.

7. Non-disclosure Obligation

7.1 Licensee (i) is only allowed to use information and material relating to the Technology disclosed by the Licensor hereunder (Confidential Information) in accordance with the Purpose and (ii) shall keep the Confidential Information confidential. The Licensee shall not under any circumstances – without written approval from the Licensor – disclose Confidential Information to any Third Party. 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 Non-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.

7.2 The confidentiality obligations shall remain in effect during the period in which this Non-Commercial License Agreement is in effect and hereafter for a period of 5 years.

7.3 Confidential Information does not comprise information and/or material, which:

- at the time of receipt was published or in any other way made available to the public,
- after the time of receipt has been published or made available to the public otherwise than through neglect of this obligation of confidentiality,
- already at the time of receipt was in the rightful possession of Licensee without any restrictions,
- rightfully has been disclosed by a Third Party, who is not bound by any obligation of confidentiality towards Licensee
- is developed by the employees of Licensee, subsequently and independently of the receipt of Confidential Information

7.4 Nothing in this Agreement preclude disclosing Confidential Information in the event that Licensee is bound to disclose Confidential Information due to public legal regulations, nevertheless so that Licensee is bound to inform Licensor in writing immediately, so that Licensor, to the widest extent possible, has the opportunity to protect its interests.

7.5 Licensee is bound to inform Licensor in writing immediately about any violation of this Agreement. All Confidential Information shall remain the property of Licensor. Upon request from Licensor, Licensee shall immediately cease the use granted in accordance with the Non-Commercial License Agreements and it shall return all the received Confidential Information, including all copies, transcripts and all other material, which is generated by Licensee and which might comprise Confidential Information. In the event that the Parties agree, Licensee may choose to destroy the Confidential Information instead. Nevertheless, Licensee shall be entitled, on its own account, to deposit a copy of the received Confidential Information to an external lawyer or a deposit institute in order to secure evidence of received Confidential Information provided that a deposit agreement is completed between the Parties and the external lawyer or deposit institute.

8. Commercial license

8.1 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.

8.2 Licensee may contact the Technology Transfer Office at AAU for further discussions and information on the Technology, e.g. with the purpose of exploring possibilities for research collaboration on the subject.

8.3 If Licensee upon review and evaluation of the Technology decides, that Licensee has commercial interest in the Technology, Licensee shall be entitled to obtain a non-exclusive license to the Technology for commercial purposes.

8.4 The terms for a non-exclusive commercial license are defined in the Commercial License Agreement relating to the Technology available on the university website on Open Innovation License. If Licensee desires a commercial license to the Technology, Licensee shall sign and return

to Licensor one copy of the Commercial License Agreement. The Commercial License Agreement shall become effective upon signature by the legal representative of the Licensor.

8.5 Issue of an exclusive license for commercial exploitation of the Technology is subject to the condition that Licensor is free to issue such exclusive license, including but not limited to, that Licensor is not bound by other license agreements (commercial or non-commercial) to the Technology under the Open Innovation License concept. If the Licensee desires an exclusive license for commercial exploitation of the Technology, Licensee may contact the Technology Transfer Office at Aalborg University and discuss the possibilities and the terms for such exclusive license.

9. Licensors use

9.1 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 exploitation and use of the Patents.

10. Representations and Warranties

10.1 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 Non-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.

10.2 Apart from Article 10.1 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.

10.3 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 Non-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.

11. Termination

11.1 The term of this Non-Commercial License Agreement shall commence upon the Effective Date and, unless terminated earlier than provided for in this Non-Commercial License Agreement, the Non-Commercial License Agreement shall (i) expire 10 months after the Priority Date, or if PCT

application has been filed, shall expire 6 months after the Effective Date or (ii) be replaced by a Commercial License Agreement, whichever comes first.

11.2 Either Party shall have the right to give written notice of termination of the Non-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.

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

11.4 Termination of this Non-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.

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

11.6 Upon termination of this Non-Commercial License Agreement for any reason, the provisions of this Non-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.

12. Liability

12.1 Except for the Licensor being required to indemnify the Licensee under Article 10.1, 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 Non-Commercial License Agreement.

12.2 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) are due to negligence or misconduct by the Licensee.

13. Assignment

13.1 Neither this Non-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 Non-Commercial License Agreement will be binding upon the permitted assignees of the Licensee.

13.2 The Non-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 Non-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.

14. Governing Law and Dispute Resolution

14.1 This Non-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.

14.2 Any disputes relating to this Non-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.