

ACCESSORY AGREEMENT

between

partner/address

(hereafter referred to as "Xxx", if University of Basel "UNIBAS")

and

partner/address

(hereafter referred to as "YYY")

and

partner/address

(hereafter referred to as "INDUSTRYPARTNER")

whereby the participants to this Agreement are also hereinafter collectively referred to as "PARTIES", or individually as "PARTY".

PREAMBLE and DEFINITIONS

The University of Basel entered into a contract with the Kanton Aargau to establish and maintain a Center of Excellence of Nanoscience and Nanotechnology: the Swiss Nanoscience Institute (SNI), hereinafter referred to as SNI.

Under the lead of PROJECT LEADER (name, title, Xxx, YYY or INDUSTRYPARTNER), hereafter referred to as PROJECT LEADER, the PARTIES have submitted together a proposal (hereafter "PROJECT PROPOSAL") in the call for *Argovia-Projects*, which are collaborative projects between academia (University of Basel, Paul Scherrer Institute, Fachhochschule Nordwestschweiz) and industry. The project is entitled "**ACRONYM: _____(please add title)**", hereafter referred to as **ACRONYM-PROJECT**. The PARTIES' PROJECT PROPOSAL has been evaluated by a board of experts and was accepted for funding. The PARTIES have, together with the Swiss Nano Institute at the University of Basel signed a project agreement (hereafter "PROJECT AGREEMENT") dated of DD.MMMM.YYYY which establishes the **ACRONYM-PROJECT** and which is subject to the conclusion of this agreement related to the collaboration within the SNI-ARGOVIA framework (hereafter **ACCESSORY AGREEMENT**).

Therefore, PARTIES intend to carry out the **ACRONYM-PROJECT**. This **ACCESSORY AGREEMENT** applies to the co-operation between the PARTIES relating to the **ACRONYM-PROJECT**, as described in the PROJECT Proposal, attached hereto and being an integral part of this **ACCESSORY AGREEMENT** as well as the PROJECT AGREEMENT.

BACKGROUND TECHNOLOGY	means know-how, technology, scientific knowledge and intellectual property rights of a PARTY existing before entering into this Agreement brought into the ACRONYM-PROJECT.
PROJECT TECHNOLOGY	means PROJECT INVENTIONS as defined hereinafter and/or know-how and/or results, whether patentable or not, copyrightable or not, generated by either PARTY or jointly by the PARTIES in the course of the ACRONYM-PROJECT.
PROJECT INVENTION	means an invention conceived by either PARTY or jointly by the PARTIES and arising out of the ACRONYM-PROJECT. Such PROJECT INVENTIONS may include SOLE INVENTIONS and JOINT INVENTIONS as defined hereinafter.
SOLE INVENTION	means an invention conceived solely by one PARTY under this ACCESSORY AGREEMENT.
JOINT INVENTION	means a PROJECT INVENTION conceived by (i) at least one researcher of one PARTY actively involved in the ACRONYM-PROJECT and (ii) at least one researcher of any of the other PARTY involved in the ACRONYM-PROJECT under this ACCESSORY AGREEMENT together.
PROJECT PATENT RIGHTS	means all patent applications or patents arising from a PROJECT INVENTION, owned or controlled by either PARTY or jointly by the PARTIES, and which are filed during the Term of this ACCESSORY AGREEMENT.
FIELD	means any application and use of PROJECT TECHNOLOGY for _____.

Fields of PARTIES

INDUSTRYPARTNER is developing and commercializing _____
Xxx has expertise and know-how in _____

YYY has expertise and know-how in certain areas of _____

1. TERM of AGREEMENT

This AGREEMENT shall become effective as of xx.xx, 20xx and remain effective until termination of the PROJECT AGREEMENT of the ACRONYM-PROJECT including any potential extension of it.

2. PROJECT

The PARTIES undertake to accomplish the research work described in the PROJECT PROPOSAL, which is an integral part of this AGREEMENT and appended to this contract in Annex 1 specifying the milestones, financial contributions of each PARTY and the individual contribution/s of each PARTY for the achievement of the aim of the ACRONYM-PROJECT. The PARTIES will cooperatively develop PROJECT TECHNOLOGY and hereby agree to undertake all reasonable efforts at the same degree of diligence usually applied to own projects of similar importance.

3. STATEMENT of WORK

- (1) The **ACRONYM**-PROJECT will be managed by the PROJECT LEADER.
- (2) The PARTIES shall provide each other with all data, know-how, documentation, information to the extent necessary to accomplish the research work according to the PROJECT Proposal.
- (3) Each PARTY undertakes to grant the other PARTY the right to use its BACKGROUND TECHNOLOGY on a royalty free, non-exclusive basis, to the extent needed for carrying out the **ACRONYM**-PROJECT, without giving the other PARTY any right to use or make available such BACKGROUND TECHNOLOGY to third PARTIES or use for any other purpose. It is agreed and understood that the confidentiality obligations as stated in this AGREEMENT shall apply to any part of confidential information included in BACKGROUND TECHNOLOGY as well.
- (4) The PARTIES agree to have meetings for the discussion on cooperative activities in pursuing the **ACRONYM**-PROJECT, the exchange of research results, clarify procedures of patenting and discuss potential publications.
- (5) During the term of the **ACRONYM**-PROJECT, the PARTIES shall mutually agree upon the dates of such regular or separate meetings to be held at the place of business or offices of one of the PARTIES hereto.
- (6) INDUSTRYPARTNER shall provide Xxx and YYY with all data and information necessary to establish the scientific reports according to and necessary for activities within the Swiss Nanoscience Institute. In particular, INDUSTRYPARTNER shall state his/her own financial contribution (in-kind or cash) to the **ACRONYM**-PROJECT and comment on the economic effectiveness of this funding.
- (7) Modifications in which way specific topics are conducted and prioritized are in the authority of the PROJECT LEADER as long as the scope of the **ACRONYM**-PROJECT is maintained. The PROJECT LEADER is also empowered to shift budget item from one PARTY to the other, provided the total budget is respected. If this is the case, the PROJECT LEADER shall seek mutual agreement of the PARTIES. If this is not possible, the SNI Board has to settle the issue.
- (8) Any modification of the **ACRONYM**-PROJECT that change the original scope and / or the participation of the PARTIES need a written agreement from all PARTIES, as well as from the SNI Board. A new or amending contract shall then be concluded.

4. NEW INTELLECTUAL PROPERTY and PATENTS

- (1) During the research activities under the **ACRONYM**-PROJECT, the PARTIES expect to generate PROJECT TECHNOLOGY. The PARTIES hereto agree that PROJECTINVENTIONS made in the course of the **ACRONYM**-PROJECT constitute a special value distinct from the regular PROJECT TECHNOLOGY and therefore will have to be handled in particular.
- (2) The PARTIES shall inform each other without undue delay of any inventions generated under the **ACRONYM**-PROJECT and reported pursuant to Art. 332 of the Swiss Code of Obligations or comparable provisions. The PARTIES mutually undertake to keep the other PARTY'S invention secret until its publication.
- (3) PROJECT INVENTIONS developed solely by one PARTY are regarded as SOLE INVENTIONS and shall be owned solely by this PARTY.
- (4) JOINT INVENTIONS shall be jointly owned by the PARTIES having contributed to such JOINT INVENTION/S. For such JOINT INVENTIONS the PARTIES shall without delay agree upon the further course of action (filing, application, maintenance, defense, costs, use). Property rights for JOINT INVENTIONS shall be filed jointly in the name of the PARTIES involved in the invention.

The arrangements for applying for and maintaining of applications for a JOINT INVENTION shall be agreed between the concerned PARTIES on a case-by-case basis.

If either PARTY waives the filing and/or the maintenance of a property right or a share in the property right, such PARTY shall first offer its right or share thereof to the other PARTIES involved in the ACRONYM-PROJECT. For JOINT INVENTIONS, the offer shall first be made to the PARTIES involved in the JOINT INVENTION. At the latest eight weeks after receiving the transfer offer, the respective PARTY/IES shall declare any acceptance of the offer.

- (5) In the absence of common interest, the PARTY desiring protection may seek for such protection in its own name and at its own expense, own such PROJECT PATENT RIGHTS subject to applicable patent law and be responsible for covering all expenses related to filing, maintaining and prosecuting such PROJECT PATENT RIGHTS.
- (6) In any case the PARTIES shall render all assistance needed for any such patent filings in due time.
- (7) Any inventor engaged in an invention subject to applied protection will be named as inventor according to applicable patent law and considering their contribution to any PROJECT INVENTION. The responsibility for the correct naming lies with the respective employing PARTY.

5. BACKGROUND

- (1) Each PARTY shall be, and remain, the owner of his/her Background.
- (2) Each PARTY shall grant the other PARTIES a non-exclusive right of use of that Background free of charge and limited to the duration and the purpose of the ACRONYM-PROJECT to the extent such use is needed for the implementation of the ACRONYM-PROJECT and provided that there are no conflicting third PARTY rights.
- (3) The PROJECT LEADERS will to their best knowledge and belief keep themselves updated on the conflicting third PARTY rights within the meaning of this Article 5.

6. CONFIDENTIALITY

- (1) Each PARTY agrees to keep confidential all information belonging to the other PARTY and being disclosed in the course of the ACRONYM-PROJECT (hereinafter referred to as "Confidential Information"). Such Confidential Information shall be disclosed in writing or reduced to writing within sixty (30) days after oral disclosure and clearly labeled or declared in writing as confidential.
- (2) The obligations under Article 6.1 shall not apply to any information that:
 - was in the public domain or open to the public at the time it was transmitted to recipient, or
 - became public or open to the public for reasons other than an action or omission attributable to Recipient, or
 - was in Recipient's possession, without any limitation regarding its disclosure at the time it was transmitted to Recipient, provided that such prior possession is supported by a written evidence, or
 - was obtained by the Recipient from a third PARTY entitled to disclose it.
 - is required to be disclosed by law or by court order.

In this case, the other PARTY or PARTIES shall be informed immediately before disclosing.

7. PUBLICATION

- (1) It is understood by the INDUSTRYPARTNER that Xxx and Yyy are under a duty to publish any and all research results. As such, no obligation in this AGREEMENT may prevent publication. Publications may only be delayed for a limited period of time to allow intellectual property protection in the framework of Articles 4 to 6 of this AGREEMENT.
- (2) At least sixty (60) days prior to the publication of PROJECT TECHNOLOGY or parts thereof, the publishing PARTY agrees to submit a draft of such intended publication to the other PARTY/IES in writing for review. The other PARTY/IES will have thirty (30) working days from receipt for review of such publication and either to give approval in writing to or to raise any objection in writing against such publication. The publishing PARTY may continue with the publication procedure in case no objections on reasonable grounds are raised. In the event of an objection or in the event of disagreement between the PARTIES, the PARTIES shall discuss and agree on any modifications to resolve the issue and allow approval for dissemination within a reasonable period of time to be agreed on a case by case basis.
- (3) Publications in question shall not be postponed by either PARTY beyond a reasonable period of time agreed on a case-by-case basis. In any case no publication may be postponed for more than three (3) months.
- (4) The ACRONYM-PROJECT will in part be the topic of doctoral of habilitation theses at Xxx (and Yyy). Subject to this Article 7, the PARTIES agree that the general right to publication of Ph.D or Habilitation fellow or other research fellow according to the respective regulations of Xxx's may not be restricted otherwise.
- (5) Authorship on publications shall be handled according to good scientific practice (see e.g. the Rules of the Max Planck Society www.mpg.de/pdf/rulesScientificPract.pdf , November 24th 2000).
- (6) PROJECT TECHNOLOGY achieved jointly will be published jointly.
- (7) The PARTIES understand that any publication needs to acknowledge the financial support, e.g. by adding the following wording to the publication "Support by the *Swiss-Nanoscience Institute* (or in short: SNI) is gratefully acknowledged".
- (8) The text of any press release or other communication to be published by or in the media concerning the subject matter of this AGREEMENT or referring in any way to the relationship of the PARTIES shall require the prior written approval of the other PARTY/IES to this AGREEMENT before issue, which approval shall not be unreasonably withheld.

8. EXPLOITATION of PROJECT TECHNOLOGY

- (1) INDUSTRYPARTNER shall be granted a first right of negotiations regarding the non-exclusive use of Xxx (and Yyy) part/s of PROJECT TECHNOLOGY and/or PROJECT PATENT RIGHTS in the FIELD, this license being liable to certain payments, the details of which will be negotiated in good faith between the PARTIES in a separate agreement, according to reasonable and appropriate market conditions; each PARTY'S contribution to the respective PROJECT TECHNOLOGY shall be taken into consideration. INDUSTRYPARTNER shall, in any case, pay the costs and charges for any actions already undertaken and required in future to safeguard any PROJECT PATENT RIGHTS.
- (2) With respect to PROJECT INVENTIONS and PROJECT PATENT RIGHTS resulting there from, the right of first negotiations shall exist for a maximum period of one (1) year after receipt of notice of any PROJECT INVENTIONS. INDUSTRYPARTNER agrees to declare in writing within additional 30 days whether the right of first negotiations shall be exercised.

- (3) Xxx (and YYY) retain/s the non-exclusive, irrevocable right to use PROJECT TECHNOLOGY and/or PROJECT PATENT RIGHTS for its research and educational activities at no charge.
- (4) If Background is required for the commercialization of the PROJECT TECHNOLOGY, the commercializing PARTY shall be given a non-exclusive right of use according to market conditions, provided that there are no conflicting third PARTY rights. Details thereto shall be mutually agreed upon by the PARTIES concerned in a separate license agreement.

9. LIABILITY

- (1) The PARTIES shall carry out the work with care and observing recognized scientific standards. The PARTIES hereto are aware of the risk associated with research work. By virtue of the research nature of the work, the PARTIES do not warrant, and shall not be liable for, reaching or obtaining a certain result.
- (2) The PARTIES do not undertake that activities carried out under or pursuant to this AGREEMENT will lead to any particular result, nor is the success of such work guaranteed. The PARTIES shall perform the ACRONYM-PROJECT in accordance with the PROJECT Plan, the provisions of this AGREEMENT, all applicable legislation and regulations by applying best scientific knowledge as set under Article 2 and 3.
- (3) The PARTIES make no warranties to each other, either express or implied regarding merchantability or fitness for a particular purpose of the BACKGROUND TECHNOLOGY, the Confidential Information and the PROJECT TECHNOLOGY.
- (4) The PARTIES shall be liable to each other only in the event of willful misconduct or gross negligence for any damages suffered in connection with this AGREEMENT.
- (5) In the event that either PARTY decides to commercialize products and/or services based on PROJECT TECHNOLOGY and/or BACKGROUND TECHNOLOGY of the other PARTY/IES to the terms set forth in Art. 10 below, the particular PARTY (or particular PARTIES) shall bear the sole responsibility for the conception and product liability of such products or services as far as these are based on PROJECT TECHNOLOGY and/or BACKGROUND TECHNOLOGY and shall be liable towards third PARTIES in connection with any commercialization.

10. CORRESPONDENCE ADDRESSES

All correspondence between the PARTIES regarding this AGREEMENT should be directed to:

Name, title
Xxx (or YYY)
Email: _____

Name and Address of the Person in Charge of Legal Issues at the institution of the PROJECT LEADER

e.g. for UNIBAS:
Office of Technology Transfer
University of Basel
Schuetzenmattstr. 16
4003 Basel
Email: wtt@unibas.ch

11. SURVIVAL

The provisions of Articles 4 to 9 and obligations contained therein shall survive the TERM of this AGREEMENT and any prolongation agreement concluded for five (5) years after expiration of the ACRONYM-PROJECT or termination of this AGREEMENT whichever to occur later.

12. Entire Agreement

- (1) This AGREEMENT constitutes the entire understanding between the PARTIES with regard to the subject matter hereof. This AGREEMENT supersedes all prior agreements between the PARTIES, whether written or oral, relating to the subject matter hereof.
- (2) Any Appendix attached hereto forms an integral part of the AGREEMENT. In the case of any inconsistency between the Annex and this AGREEMENT, this AGREEMENT shall prevail.
- (3) No PARTY shall be entitled to commit the other PARTY to any obligation outside the scope of this AGREEMENT.

13. Severability

The invalidity or unenforceability of any term or provision of this AGREEMENT shall not affect the validity or enforceability on any other term or provision hereof. If any part of this AGREEMENT shall be found invalid or unenforceable for any reason, the remainder of this AGREEMENT shall be valid and enforceable as if such provision had not been included therein. A provision, which is legally possible and comes nearest to the intentions of the PARTIES, shall substitute such provision.

14. Applicable Law and Place of Jurisdiction

- (1) This AGREEMENT shall be governed by the laws of Switzerland.
- (2) The place of jurisdiction shall be the courts of Basel-City.

This AGREEMENT is executed in two (2) originals and duly signed by the authorized representatives of the PARTIES hereto, as printed below:

Partner 1

Place: _____

Date: _____

(Signature)

Name

(Signature)

Name

Partner 2

Place: -- _____

Date: _____

(Signature)

Name

(Signature)

Name

Partner 3

Place: -- _____

Date: _____

(Signature)

Name

(Signature)

Name

COMPANY

Place: _____

Date: _____

(Signature)

Name

(Signature)

Name

The PROJECT LEADER

Place: _____

Date: _____

(Signature)

Name

Enclosures:

PROJECT proposal contained in the NANO-ARGOVIA Application.