



General Terms and Conditions (for INTERNAL USE only)

Definitions:

Agreement: these general terms and conditions together with every offer, agreement and accepted research project between UT's BMS Lab and the Partner.

Background: all information, techniques, know-how, software and materials (regardless of the form or medium in which they are disclosed or stored) as well as any IPR pertaining thereto, which is in the possession of a Party prior to commencement of the Research, or is generated by a Party before or outside the Research and which is necessary to carry out the Research and which a Party contributes to the Research.

Partner: the Partner for which UT's BMS Lab executes the Research.

Confidential Information: all information of whatever nature or in whatever form which is disclosed by a Party ("the Disclosing Party") to the other Party ("the Receiving Party") in connection with the Research, and which:


- a) if disclosed in tangible form, was marked as "confidential" at the time of such disclosure; or
- b) if disclosed orally, was stated to be confidential at the time of such disclosure and confirmed as "confidential" in writing and/or via email within thirty (30) calendar days upon disclosure.

IPR: intellectual property rights, including without limitation, patents and patent applications, copyrights, database rights, design rights, and any similar forms of statutory protection, arising or available anywhere in the world.

Part(y)(ies): a party or the parties to the Agreement.

Research: the research as approved by BMS Lab.

Article 1 Applicability of these terms and conditions



These general terms and conditions apply to every offer, agreement and accepted research project, between UT's BMS Lab (hereinafter: "BMS Lab") and the Partner, to which the BMS Lab has declared that these terms apply, in so far as the BMS Lab and Partner have not expressly diverged from these terms.

Article 2 Offers

Offers made by the BMS Lab remain valid for thirty (30) days, unless otherwise stated. The BMS Lab can only be held to these offers, if the BMS Lab confirms acceptance thereof by the Partner by written notice within fourteen (14) days upon the date of the relevant acceptance. The prices (if applicable) stated in the offer are ex VAT, unless otherwise stated.

Article 3 Execution of the Agreement

1. The BMS Lab shall carry out the Agreement and the Research to the best of its ability and insight and in accordance with the demands of good workmanship. The BMS Lab cannot guarantee that the expected results will be achieved and therefore the agreement will be a best effort obligation (“inspanningsverplichting”) and shall not constitute an obligation to perform or a guarantee commitment (“resultaatsverplichting”).
2. The BMS Lab has the right to have certain activities carried out by third parties, if and in so far as a proper execution of the Agreement and/or Research so requires.
3. The Partner will see to it that all information of which the BMS Lab indicates that it is necessary for the execution of the Agreement and/or Research or whereof the Partner in good faith can be expected to understand that it is necessary, will be provided to the BMS Lab on time. If the information necessary for the execution of the Agreement and/or Research is not provided to the BMS Lab on time, then the BMS Lab shall be entitled to suspend the execution of the Agreement and/or Research and/or to charge the extra cost, resulting from the delay, to the Partner in accordance with the usual rates.
4. The BMS Lab cannot be held liable for damages of whatever nature, which have arisen due to the fact that the BMS Lab has based itself on incorrect and/or incomplete data supplied by the Partner, unless the incorrectness or incompleteness should have been obvious to the BMS Lab.
5. If it has been agreed that the Agreement shall be executed in stages, then the BMS Lab can suspend execution of those parts that belong to a following stage until the Partner has approved of the results of the previous stage in writing.

Article 4 Term of the Agreement; time-limit of execution

A term agreed for the execution is not a deadline, unless otherwise expressly agreed in writing. When the time limit for the execution has been exceeded, the Partner should therefore give a written notice of default to the BMS Lab.

Article 5 Alteration of the Agreement

1. If during the course of the Agreement it appears necessary to alter or complement the activities to be carried out in order to ensure adequate performance, then parties will adapt the Agreement accordingly in writing, in due time and after mutual consultation.
2. If parties were to agree that the Agreement is changed or adapted, then the date the execution is completed may be influenced on that account. The BMS Lab shall inform Partner thereof as soon as possible.
3. If the alteration or adaptation of the Agreement were to have financial and/or qualitative consequences, then the BMS Lab will inform the Partner thereof beforehand. If a fixed fee has been agreed on, the BMS Lab will indicate to what extent the alteration or adaptation of the Agreement will result in an adaptation of the fee.
4. Contrary to the provisions in paragraph 3 of this section 5, the BMS Lab will not be able to charge additional costs if the alteration or adaptation results from circumstances that can be attributed to the BMS Lab.

Article 6 Background and licensing of software

1. This Agreement does not affect the ownership of any Background.
2. Each Party grants the other Party a royalty-free, non-exclusive license to use its Background only for the purpose of carrying out the Research, but for no other purpose. Neither Party may grant any sub-license to use the other Party's Background.
3. If the use of Background of the BMS Lab is needed for any third party for which the Partner executes certain research, the BMS Lab may grant, unless prohibited by an agreement in effect on or before the Effective Date, to any such third party a non-exclusive, non-transferable, non-sublicensable, world-wide, perpetual, irrevocable license under its Background under fair and reasonable conditions to be agreed upon in advance, in writing. A request for access rights pursuant to this Article 6.3, may be made up to twelve (12) months after the end of the Agreement.

Article 7 Confidentiality

1. Neither Party will, either during the Research or five (5) years after the termination and/or expiration of the Agreement, disclose to any third party, nor use for any purpose except carrying out the Research, any of the other Party's Confidential Information.

2. Neither Party will be in breach of any obligation to keep any Confidential Information confidential or not to disclose it to any third party to the extent that it:
 - 7.2.1 is part of the public domain without violation of this Agreement;
 - 7.2.2 is known and on record at the Receiving Party prior to disclosure by the Disclosing Party;
 - 7.2.3 is lawfully obtained by the Receiving Party from a third Party who is not bound by similar confidentiality obligations;
 - 7.2.4 is developed by the Receiving Party completely independently of any such disclosure by the Disclosing Party;
 - 7.2.5 is ascertainable from a commercially available product; or
 - 7.2.6 is disclosed pursuant to administrative or judicial action, provided that the Receiving Party shall use its best efforts to maintain the confidentiality of the Confidential Information.

Article 8 Premature termination, payment obligations

1. Partner may not terminate this Agreement prematurely, unless Article 8.2 applies. However, if Partner terminates this Agreement prematurely, Partner shall compensate the BMS Lab fully for all of its non-cancellable costs and commitments, including but not limited to the (fixed) fee (if applicable) agreed upon.
2. If a Party is in breach of any provision of the Agreement and (if it is capable of remedy) the breach has not been remedied within thirty (30) days after receipt of written notice specifying the breach and requiring its remedy, then the other party may (partially) terminate this Agreement with immediate effect by giving notice to the defaulting party. Such (partially) termination shall not affect the performance of obligations by the defaulting party or the rights of the other party which are due or exist before the date of (partially) termination.
3. If circumstances were to arise with regard to persons and/or materials of which the BMS Lab avails itself for the execution of the Agreement or is used to avail itself, and which are of such a nature that execution of the Agreement becomes impossible or so difficult and/or disproportionately expensive that observance of the Agreement can no longer be reasonably expected, then the BMS Lab is entitled to (partially) terminate the Agreement.

Article 9 Defects; terms of complaint

1. The Partner should validate the work delivered by the BMS Lab as soon as reasonably possible. Any complaints about the activities carried out should be reported by the Partner to the BMS Lab in writing, within ten (10) calendar days after discovery, but at the latest within sixty (60) calendar days after completion of the activities in question.

2. If a complaint is justified, the BMS Lab will carry out the activities as agreed, unless this has meanwhile become useless. If this is the case, the Partner should make it known in writing. If the carrying out of the agreed service is no longer possible or has lost its purpose, the BMS Lab can only be held liable within the limits of article 13 of these terms.
3. Even when the Partner lodges a complaint on time, his obligation to pay (if any) shall remain.
4. Any training will be provided at such times as may be mutually agreed upon in advance by the Parties. The BMS Lab shall have a best effort obligation to fix any bugs that might arise during Partner's use of any software (i.e. Background). The Partner shall ensure that a contact person is available for the BMS Lab.

Article 10 Fees

1. Paragraphs 2 and 6 of this Article 10 apply to those offers and agreements that mention a fixed fee or in which a fixed fee is agreed upon. If no agreement has been reached on a fixed fee, the paragraphs 3 up to and including 5 of this Section 10 shall apply. For the avoidance of doubt, this Article 10 shall not apply in those cases in which the BMS Lab has indicated that it will charge no fee whatsoever.
2. Parties may agree on a fixed fee when the Agreement is concluded. The fixed fee is exclusive of VAT.
3. If no agreement has been reached on a fixed fee, then the fee shall be determined on time-spent basis. The fee is then calculated according to the usual hour rates of the BMS Lab, current when the activities were carried out, unless a different hourly rate has been agreed on.
4. Possible cost assessments are exclusive of VAT.
5. For assignments with a duration of over sixty (60) calendar days the cost due shall be charged periodically.
6. If the BMS Lab and the Partner have agreed to a fixed fee then the BMS Lab shall nevertheless be entitled to raise this fee or those rates: the BMS Lab may pass on increases in the wages of its staff members, as well as cost of materials and travelling expenses. Such a raise can only be charged to the Partner if he has been informed thereof before the date of commencement.

Article 11 Payments

Any potential payments must be made within thirty (30) calendar days of receipt of the relevant invoice. The Partner shall pay the costs concerned by the method of payment to be specified by the BMS Lab.

Article 13 Liability

1. In respect of any information or materials (e.g. Background) supplied by a Party to the other Party under the Research, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties. Therefore, the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials and no Party granting access rights shall be liable in case of infringement of proprietary rights of a third party resulting from the other Party exercising its access rights.
2. Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Agreement or from its use of Results or Background.

Article 14 Force Majeure

1. Force majeure shall mean: circumstances which prevent fulfilment of the obligation and for which the BMS Lab can not be held responsible. These will include, if and in so far as these circumstances have made fulfilment of the obligation impossible or if they make it unreasonably difficult to do so: strikes in organisations other than the BMS Lab, wildcat strikes or political strikes in the organisation of the BMS Lab, a general lack of the necessary raw materials and other matters or services required for the realisation of the agreed performance; unforeseen delays at the suppliers or other third parties on which the BMS Lab depends and general transport problems.
2. During force majeure the obligations of the BMS Lab shall be suspended. If the period in which fulfilment of the obligations is impossible for the BMS Lab due to force majeure, lasts longer than sixty (60) calendar days, then each Party shall be entitled to terminate the Agreement without an obligation to pay damages in that case.
3. If the BMS Lab already has fulfilled part of its obligations when the force majeure arises, or if it can only partly meet its obligations, then the BMS Lab shall be entitled to invoice the part which has already been carried out or, as the case may be, the part which can be carried out. The Partner is obliged to settle this invoice as if it were a separate Agreement. However, this does not apply when that part, which has already been carried out or, as the case may be, can be carried out, does not have an independent value.

Article 15 Settling of disputes; applicable law

1. Any disputes between the Partner and the BMS Lab shall be settled through amicable discussions.
2. Any agreement between the BMS Lab and the Partner shall be governed by and construed in accordance with the laws of the Netherlands.