IPR Agreement for CTI Project

between

**ETH Zurich (Eidgenössische Technische Hochschule Zürich)**

Raemistrasse 101, 8092 Zurich, Switzerland, represented by Prof. Dr. Thomas Hofmann, Institute for Machine Learning, Department of Computer Science, Universitätsstrasse 6, 8006 Zürich, hereinafter referred to as “**ETH Zurich**”

and

**1plusX AG**

Eichenstrasse 2, 8808 Pfäffikon, hereinafter referred to as “**Company**”,

ETH Zurich and Company individually hereinafter referred to as a “**Party**”, together as “**Parties**”,

concerning the project CTI-No. 18785.1 PFES-ES “Deep Networks as a Semantic Platform for Modeling User Behavior Data” (“**Project**”)

**Preamble**

The Parties will jointly conduct the Project with financial support from the Swiss Commission for Technology and Innovation (“**CTI**”).

The Project is described in detail in the proposal for the CTI (“**CTI Application**”). The main research partner is Prof. Hofmann of ETH Zurich and the main implementation partner is 1plusX AG.

The Parties will conclude with the CTI a contract (“**CTI Contract**”) which sets up the rights and obligation of the Parties with regard to the financial contribution of the CTI to the Project.

Therefore the Parties enter into the following agreement (“**Agreement**”).

1. Subject of the Agreement

The Parties will jointly conduct the Project. This Agreement governs the implementation of the Project in accordance with the goals, objectives and timeframe described in the CTI Application and sets up the rights and obligations of the Parties with regard to confidentiality, publication and intellectual property rights.

2. Project Organisation

2.1 The research to be conducted by the Parties and a timetable for the Project are set out in the CTI Application.

2.2 The Parties hereby designate the following persons as Project managers:

from ETH Zurich: Thomas Hofmann (thomas.hofmann@inf.ethz.ch)

from Company: Hastagiri Vanchinathan (hasta@1plusx.com)

All correspondence relating to this Agreement must be addressed to the Project managers. Legal questions and matters relating to intellectual property should also be addressed to: ETH transfer, Rämistrasse 101, CH-8092 Zurich, Tel +41 (0)44 632 23 82, Fax +41 (0)44 632 11 84, E-mail transfer@sl.ethz.ch.

Changes will be notified to the other Party in writing, for which email notification is sufficient.

2.3 The Parties will coordinate the performance of the Project and will support each other to the best of their abilities.

2.4 The Parties will provide each other with all documents, objects, technical aids, and resources required to carry out the Project.

2.5 Project meetings will take place as required. ETH Zurich will report to Company on the progress of the Project regularly. Company shall provide to ETH Zurich all documents and information required to comply with its obligations stated in the CTI Contract.

3. Remuneration

3.1 The compensation for the work provided under the Project is governed by the CTI Contract.

4. Rights to Project Results

4.1 All results including intellectual property rights generated in performance of the Project are hereinafter referred to as “**Project Results**”. Inventions and software that are part of the Project Results are hereinafter referred to as “**Project Inventions**” and “**Project Software**”, respectively.

4.2 Project Results generated by one Party solely and its share in jointly generated Project Results belong to such generating Party. Ownership in jointly generated Project Results is determined in accordance with the respective share that each Party has contributed to such Project Results. The Parties will inform each other about Project Results via reports according to Section 2.5 and via publication drafts according to Section 6. In addition, ETH Zurich will inform Company promptly in the event that ETH Zurich believes that a Project Invention has been made.

4.3 Subject to the provisions on confidentiality in Section 5 and on publications in Section 6 and with the exception of the rights in Project Inventions and Project Software shall be free to use the Project Results without reporting or being accountable to each other.

For tangible Project Results to be provided according to Appendix A (e.g. prototypes and reports), ownership is assigned to Company upon delivery. Company agrees and acknowledges that the prototypes are neither considered to be marketed nor intended to be transferred to third parties except to its Affiliates and suppliers.

Project Software and filed Project Inventions are governed by the following Sections 4.4-4.12.

Company Project Patents

4.4 Company shall notify ETH Zurich in writing of its interest in filing patent applications for Project Inventions solely owned by ETH Zurich or jointly owned by both Parties within three (3) months from the date such Project Invention was first disclosed to Company. In case of publications or disclosures at scientific conferences, the one (1) month period set forth in Section 6.3 is applicable instead (both “**Notice Period**”).

4.5 After giving notice to ETH Zurich within the Notice Period, Company shall have the right to file a patent application in the name of ETH Zurich for Project Inventions solely owned by ETH Zurich or in the joint names of the Parties for jointly owned Project Inventions (both “**Company Project Patents**”), provided the filing occurs within three (3) months from the date Company notified ETH Zurich of its interest according to Section 4.4. Company shall bear all costs related with filing, prosecution and maintenance of the Company Project Patents. Company shall discuss the application with ETH Zurich before filing and respect the interests of ETH Zurich with regard to wording and scope of the patent application as well as in the choice of the patent strategy. ETH Zurich will receive copies of all relevant correspondence by Company with external patent attorneys and patent offices concerning such patents.

During the deadlines pursuant to Sections 4.4 and 4.5, ETH Zurich agrees to treat the Project Inventions concerned as confidential.

4.6 For Company Project Patents that are solely owned by ETH Zurich, ETH Zurich herewith grants to Company a non-exclusive, royalty-free, fully paid-up and irrevocable license for use in the following field of application: user modeling, predictive analytics, advertisment, and content recommendation, e-commerce (“**Company Field**”).

For Company Project Patents that are jointly owned by the Parties, each Party is free to use and grant license in its own name for such Company Project Patents without compensating each other and without accounting and reporting to each other.

Until three (3) month after priority filing of a Company Project Patent, ETH Zurich grants to Company the right to negotiate the replacement of the non-exclusive, royalty-free license granted by ETH Zurich to Company for Company Project Patent with an exclusive, royalty-bearing license for applications in the Company Field, including the right to grant sublicenses (“**Option**”). Company shall exercise the Option by a written notice to ETH Zurich. Upon exercise of the Option, the Parties shall negotiate in good faith a license agreement under fair and reasonable terms and conditions. Should the Parties not conclude a license within six (6) months from the date of exercise of the Option, then Company shall retain the non-exclusive rights according to this Section 4.6.

ETH Project Patents

4.7 In the event that Company does not file a patent according to Section 4.6, ETH Zurich shall be free to patent such Project Invention in its own name, at its own costs and at its sole discretion.

If Company renounces to seek protection for Company Project Patents in any country, then Company shall timely inform ETH Zurich and give the latter the opportunity to file in its own name and at its own cost patent applications in the countries not covered by Company Project Patent.

Should Company decide to abandon a Company Project Patent in any country, Company shall offer to ETH Zurich the assignment for such Company Project Patent free of charge. Company shall inform ETH Zurich of such decision of abandonment at least two (2) months before the deadline for the performance of the formalities necessary for the maintenance of Company Project Patent.

In the event that ETH Zurich decides to file patent applications for such Project Inventions and/or maintain Company Project Patents, Company shall assign, at no cost for ETH Zurich, the respective rights in and to such Project Inventions and/or Company Project Patents to ETH Zurich upon ETH Zurich filing a patent application on such invention at its own costs or ETH Zurich deciding to maintain such Company Project Patents at its own costs (together “**ETH Project Patents**”). ETH Zurich is not obliged to maintain ETH Project Patents.

4.8 For ETH Project Patents according to Section 4.7, ETH Zurich hereby grants to Company a non-exclusive, royalty-free, fully paid-up license for any use in Company Field without the right to grant sub-licenses except to Affiliates of Company. For the purposes of this Agreement, "**Affiliates**" shall mean any legal entity which is controlled by, has control over or is under common control with Company whereby "**control**" shall mean the holding of more than fifty (50) percent of the capital stock or participating shares entitled to vote for the election of directors.

Project Software

4.9 ETH Zurich hereby grants to Company a non-exclusive, royalty-free, fully paid-up, worldwide license to copy, modify, adapt, translate, distribute, sell, display and run Project Software solely developed by ETH Zurich in Company Field with the right to grant sublicenses to its Affiliates and suppliers. For jointly developed Project Software, each Party is free to use and grant license in its own name for such Project Software without compensating each other and without accounting and reporting to each other.

4.10 ETH Zurich has the right to use all Project Results, protected or not, including jointly developed Project Software, for research and teaching purposes in any field, including for third-party funded research.

4.11 Until three (3) month after termination of the Agreement, ETH Zurich grants to Company the right to replace of the non-exclusive, royalty-free license for Project Software with an exclusive, royalty-bearing license, including the right to grant sublicenses (“**Option**”). Company shall exercise the Option by a written notice to ETH Zurich. The license fee for the exclusive license of Project Software shall be CHF 20’000.- excluding Swiss VAT if applicable (“**Lump Sum**”). The Lump Sum is due within thirty (30) days after exercising the Option and shall be paid by Company to an account nominated by ETH Zurich.

Research Purposes and Background IP

4.12 `The rights of the Parties to intellectual property rights that have been generated previously, after or outside of the Project (“**Background IP**”) shall not be affected by this Agreement.

5. Confidentiality

5.1 "**Confidential Information**" is to be understood as any information of a technical, scientific, financial, commercial, operational or other kind, which is labelled as confidential and exchanged in any form and to which access is given by the disclosing Party to the receiving Party. The receiving Party shall maintain secrecy with respect to Confidential Information of the disclosing Party. This obligation of confidentiality applies irrespective of whether access has been or is given to the Confidential Information in writing, orally, electronically, or in the form of samples, models, products or equipment. If Confidential Information is communicated in a non-written form, the disclosing Party must provide to the receiving Party within ten (10) days from disclosure a written reproduction of the information that needs to be treated as confidential. The obligation of confidentiality ends five (5) years after the termination of this Agreement.

5.2 The receiving Party undertakes not to use the Confidential Information of the disclosing Party for purposes other than the Project envisaged by this Agreement.

5.3 The Parties undertake to impose the same obligation of confidentiality on persons who are not employed by them (e.g. students, assistants, consultants), but have access to the Confidential Information.

5.4 Confidentiality obligations shall not apply for such information for which the receiving Party can prove that such information:

* was already in the public domain before it was disclosed by the disclosing Party or it is afterwards made public through no fault of the receiving Party;
* was disclosed to the receiving Party by a third party with authority to do so;
* was already known to the receiving Party before being disclosed by the disclosing Party;
* is free to be disclosed according to Section 6;
* was developed by the receiving Party independently of the disclosing Party’s Confidential Information.
* is required by law or a regulatory body to be disclosed, in which circumstances the receiving Party shall wherever practicable give reasonable advance notice of the intended disclosure to the other Party.

6. Scientific publications

6.1 The Parties agree that ETH Zurich shall be entitled to publish all Project Results, subject to Sections 6.2 and 6.3 below.

6.2 Prior to publication, ETH Zurich shall submit a substantive draft to Company for review. Company shall then have one (1) month to:

a) notify ETH Zurich of any objection concerning its Confidential Information. If an objection is raised, discussion shall be held without delay to determine acceptable modifications to resolve the issue and allow dissemination within three (3) months; and/or

b) request the postponement, for no more than three (3) months, in the event that before the planned disclosure patent applications concerning the Project Results have to be filed.

Failure to respond within the abovementioned one month period is considered as approval of the publication by Company.

6.3 In case of a planned disclosure at scientific conferences, ETH Zurich shall submit to Company a written summary of the intended disclosure and the provisions of Section 6.2 shall apply, whereby the time indicated under a) shall be reduced to one (1) month.

6.4 In the event that Company wants to publish Project Results, Company needs the prior written consent of ETH Zurich. Such consent shall not be unreasonably denied, however it shall be ensured that the interests of ETH Zurich are protected in respect of its own publications, PhD theses, diploma theses and the like, as well as protection of intellectual property rights.

7. No warranties

7.1 The Parties shall perform the Project to the best of their scientific knowledge exercising due care and taking into account the current state-of-the-art. They will endeavour to achieve the goals of the Project aimed for in Appendix A.

7.2 By its nature research involves the risk of unforeseen consequences. The Parties therefore do not guarantee that the intended goals and results of the Project will be reached. The Parties make no warranties, neither express nor implied, regarding the Project Results, including but not limited to warranties of originality, accuracy, non-infringement of third party rights, merchantability, completeness or fitness for a particular purpose. There is no duty to conduct searches with regard to registered intellectual property rights.

8. Limitation of liability

8.1 Subject to Section 9 and with the exception for personal injury and death, the Parties assume no liability for any damages, including but not limited to any indirect or consequential loss or similar damage (e.g. loss of profit, loss of revenue or loss of contracts inter alia due to a shutdown; other costs and expenses) suffered in connection with this Agreement, provided such damage was not caused by a wilful intent or act of gross negligence.

8.2 The limitations of liability in Section 8.1 shall also be applicable to all auxiliary persons (including but not limited to consultants and students), agents and subcontractors involved by the Parties, and to any kind of (Confidential) Information exchanged as well as to Background IP and all other deliverables supplied under this Agreement.

9. Indemnification for use of the Project Results

The Parties use the Project Results at their own risk. Notwithstanding Section 8, a Party using any of the Project Results shall, to the fullest extent permitted by the applicable law, defend, indemnify and hold the other Party harmless against third party claims (including but not limited to claims based on mandatory product liability law) which are based on the Party’s use of the Project Results.

10. Term and right of termination

10.1 This Agreement will enter into force once signed in full by the Parties and shall have effect from the date the CTI Contract enters into force. This Agreement will automatically terminate upon completion or termination of the Project, approximately on March 31, 2018. The provisions of Sections 4-9 and 11 shall continue to apply after the termination of the Agreement.

10.2 Before the date of termination, each Party may prematurely terminate this Agreement only in the event of a fundamental contractual breach by the other Party. Before premature termination, the Party that wants to initiate premature termination shall give the other Party thirty (30) days to remedy the breach.

10.3 In the event that CTI claims from ETH Zurich a reimbursement of funds paid according to the CTI Contract, Company shall reimburse to ETH Zurich any sums paid by it to CTI in respect of such claim to the extent that Company has caused or contributed to the claim. Furthermore, Company shall compensate ETH Zurich for all costs that were incurred until and will incur form such premature termination to the extent Company has caused or contributed to it. This includes salaries that, based on this Agreement, still have to be paid beyond the effective premature termination of this Agreement. In this respect, ETH Zurich shall not make unnecessary commitments for employment for this Project.

11. General Provisions

11.1 This Agreement governs the contractual relationship of the Parties in relation to the Project solely and exclusively. Any earlier agreements between the Parties governing the same subject matter are hereby terminated. Amendments and additions to this Agreement are only valid if made in writing and legally signed by all the Parties.

11.2 If individual provisions of this Agreement are invalid or the fulfilment thereof is impossible, the validity of the remaining parts of the Agreement will not be affected. The Parties undertake that in such cases they will, without delay, replace the invalid provision with a valid one whose content most closely replicates the original intention. The same shall apply in the event of any omission in the Agreement.

11.3 The Parties agree that general information concerning the nature of the Project such as the field of the research and the identity of the Parties can be made public.

11.4 The Parties do not, through this contractual relationship, acquire any rights from the other Party apart from those which are explicitly conferred by this Agreement. Nothing in this Agreement shall imply any partnership, agency or joint venture relationship between the Parties.

11.5 No Party shall be entitled to commit another Party to any obligation in connection with this Agreement, without the prior written consent of the other Party.

11.6 Rights and obligations from this Agreement may not be transferred to third parties without the written permission of the other Party. Such permission may not be unreasonably withheld.

11.7 In the event of an assignment of ownership of Project Results by one Party to a third party, the transferring Party shall inform the other Party accordingly and shall ensure that the rights of the other Party, especially the licenses granted to it under this Agreement, will not be affected by such transfer.

11.8 The Parties will provide each other promptly, to the extent possible, with any mutual assistance required to enable the Parties to exercise the rights which are conferred on them by this Agreement. In particular they will provide the signatures required to obtain rights in intellectual property.

11.9 This Agreement shall be construed and governed by the laws of Switzerland, without reference to its conflict of laws principles, and shall not be governed by the United Nations convention of International Contracts on the Sale of Goods (the Vienna Convention). Place of jurisdiction for any dispute arising from, or in connection with, this Agreement shall be exclusively the courts of the city of Zurich.

11.10 The CTI Application forms an integral part of this Agreement. In the case of deviations between the CTI Application and the main body of the Agreement, the main body of the Agreement shall prevail. The CTI Contract is attached for reference only and does not form a part of this Agreement.

Signed by the duly authorized representatives of the Parties:

**ETH Zurich** Zurich, dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Prof. Dr. Thomas Hofmann Prof. Dr. Detlef Günther

Vice President for Research and Corporate Relations

**Company** ………, dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Name and Function Name and Function

- Appendix A: CTI Application

- Appendix B: CTI Contract