

## Terms of use for Fraunhofer Match

### 1. Contents and formation of contract

- 1.1. **Parties and object.** This contract governs the legal relationship between Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e. V., Hansastrasse 27 c, 80686 München, Germany – including its legally dependent institutes – (“Fraunhofer”) and the participating company (“corporate user”) regarding the free-of-charge provision of an online match-making platform intended for initiating collaboration on research and technology projects at [www.match.fraunhofer.de](http://www.match.fraunhofer.de) (“Fraunhofer Match”). Fraunhofer provides Fraunhofer Match solely for the purposes of the corporate user’s commercial or self-employed activities. Corporate users can also take the form of company founders. The contractual partner of Fraunhofer is the company specified during registration. The person undertaking the registration process (“personal user”) affirms that they are authorized to represent the corporate user accordingly.
- 1.2. **Formation of the contract.** To enable use of Fraunhofer Match, a user account must be created. Once the relevant registration form has been submitted, Fraunhofer will send an individual activation link to the email address specified during registration. Clicking the activation link completes the registration process and a contract pursuant to these terms of use is formed.
- 1.3. **General terms and conditions of the corporate user.** Any general terms and conditions of the corporate user that conflict with or deviate from these terms of use are excluded. This also applies in cases where the terms and conditions of the corporate user are not expressly rejected by Fraunhofer.

### 2. Fraunhofer Match

- 2.1. **Purpose and object.** Fraunhofer Match is an internet-based platform that is intended to make it easier for Fraunhofer, on the one hand, and external companies and organizations (“companies”), on the other, to make contact with one another concerning cooperation in research and technology projects. Companies can publish search requests for technologies on Fraunhofer Match. Fraunhofer can respond to the search requests of companies on Fraunhofer Match by submitting solution approaches. Search requests and contents submitted by companies are visible to all Fraunhofer users of Fraunhofer Match, i.e., all Fraunhofer institutes and Fraunhofer subsidiaries, per default. If desired, the personal user can restrict the visibility of their search requests and contents within Fraunhofer to a maximum of 350 coordinators, who can then forward the search requests and content to individual scientists in a targeted manner. Other companies registered on Fraunhofer Match as corporate users do not have access to search requests or contents submitted by other companies. By offering appropriate search and logic functions, Fraunhofer Match makes it easier to establish contact with one another for the purpose of entering into a possible collaboration. These terms of use do not impose any obligation on Fraunhofer or the company to publish requests or projects, or to enter into a collaboration.
- 2.2. **No conclusion of contracts.** Fraunhofer Match is intended to facilitate contact but has not been designed for the purpose of concluding or submitting binding offers for license, research or development contracts.

### 3. Usage authorization

- 3.1. **Right of use.** Fraunhofer makes Fraunhofer Match available for use by the corporate user via the internet. Fraunhofer Match is operated on servers at a data center owned by Fraunhofer. For the term of this contract, the corporate user is granted, free of charge, a non-exclusive, non-transferable and non-sublicensable right to access Fraunhofer Match via a browser and internet connection, and to use it for the purposes of making contacts at Fraunhofer. This includes the right to store program code (e.g., JavaScript, code of the bidder cockpit) on the corporate user’s computer temporarily (e.g., in the main

memory or browser cache) to the extent required for this and to execute it there. The rights of use granted do not include any rights to the source code.

#### **4. Availability**

- 4.1. **Availability.** As far as Fraunhofer Match is concerned, Fraunhofer endeavors to achieve a target availability of 99.0% per calendar month during operating hours. However, the corporate user is not entitled to any specific level of availability. The availability relates to the connection point of the router output at the data center used by Fraunhofer. Downtimes caused by force majeure (e.g., strikes, civil unrest, natural disasters, epidemics) are not included when calculating the level of availability achieved. Nor are restrictions that Fraunhofer imposes on Fraunhofer Match, where these can legitimately be classed as necessary by Fraunhofer for security reasons (e.g., denial-of-service attacks, a serious security vulnerability in a piece of third-party software that is being used and for which there is no patch available) in view of their having constituted reasonable precautions for ensuring the security of the platform.
- 4.2. **Operating hours.** The operating hours are 6:00 a.m. – 12:00 midnight on workdays. Maintenance work of up to 2 hours per week that is announced by Fraunhofer via email (e.g., installation of updates or upgrades) is not included in the operating hours. Fraunhofer shall endeavor to schedule maintenance work for times outside of the operating hours. Fraunhofer shall notify the corporate user of planned maintenance work in good time.
- 4.3. **Fault reporting.** The corporate user shall notify Fraunhofer immediately of any faults affecting Fraunhofer Match of which they have become aware (e.g., inaccessibility). Where possible, Fraunhofer shall notify the corporate user of known faults via Fraunhofer Match or, where necessary, via email.

#### **5. Obligations and duties of the corporate user**

- 5.1. **User accounts.** The personal user shall treat the user account access data as confidential and shall not disclose them to other persons. User accounts must be set up in the name of natural persons. Multiple persons are not permitted to share the same user account. If the personal user leaves the company specified in the profile, they are no longer entitled to use the user account. User accounts may only be transferred to other persons with the consent of Fraunhofer. In the event of a user account being misused or if misuse is suspected, the corporate user must inform Fraunhofer immediately. The use of automated programs (e.g., bots, screen scraping) to retrieve Fraunhofer Match content is not permitted.
- 5.2. **Accuracy of details.** The details in the profile must be entered accurately and updated in the event of any changes. This applies, in particular, to the details of the respective company. If a personal user leaves the company specified in the profile, the user account must be deleted, corrected or – with the consent of Fraunhofer – transferred to an authorized person.
- 5.3. **System requirements.** The corporate user's browser must allow JavaScript to be executed and cookies to be stored. The corporate user shall find out about the system requirements for Fraunhofer Match sufficiently far in advance.
- 5.4. **Internet connection.** The corporate user is responsible for establishing the internet connection to the Fraunhofer Match data center and shall bear the costs thereby incurred.
- 5.5. **Lawful use.** The corporate user shall use Fraunhofer Match only within the scope of the contractual and legal provisions and shall not infringe any rights of third parties (e.g., copyright, confidentiality obligations) during use. During use, the corporate user shall observe – in particular – the regulations on data protection, competition law and antitrust law, as well as copyright.
- 5.6. **Backup copies.** The corporate user has a duty to retain copies of the data they enter in Fraunhofer Match (e.g., project documents) and to make regular backup copies in the form of data exports (e.g.,

messages). If the corporate user breaches their obligation to perform proper data backup, the liability of Fraunhofer in the event of data losses will be restricted, in terms of the amount, to the level of loss or damage that the corporate user would have otherwise incurred had proper data backup been regularly performed.

## 6. Data protection

Information on how personal data are processed by Fraunhofer in the context of providing Fraunhofer Match can be accessed at <https://www.match.fraunhofer.de/datenschutz>.

## 7. Confidentiality

7.1. **Confidential information.** “Confidential information”, within the meaning of this section (section 7), means all information that is disclosed to the other contractual partner verbally, in writing, electronically or in any other way during the term of this agreement in the context of using Fraunhofer Match and is identified as confidential when this disclosure takes place. The term “information” includes but is not limited to documents, prototypes, software, samples, substances and any other materials. Confidential information includes, in particular, the content that is uploaded by the corporate user and by Fraunhofer, such as search requests, solution approaches and projects.

### 7.2. Obligation of confidentiality.

- a) The receiving contractual partner undertakes to maintain confidentiality with regard to confidential information of the disclosing contractual partner, only to use it for the purpose of exploring a collaboration via Fraunhofer Match and – where applicable – subsequently carrying out the collaboration (“disclosure purpose”) and to take all measures necessary to prevent it from being accessed by third parties.
- b) The receiving contractual partner is not permitted to share the received confidential information with third parties, in whole or in part, unless the prior consent of the disclosing contractual partner has been obtained in writing or by email. The internal sharing of confidential information is permitted only insofar as this is required for the disclosure purpose (need-to-know basis) and measures are in place to ensure that the confidential information is only shared with those employees on whom obligations comparable to the obligations contained in section 7.2 are or have – to the extent permissible by law – been imposed.
- c) The contractual partners undertake not to exploit received confidential information without the express written consent of the disclosing contractual partner and, in particular, not to register any intellectual property rights. This agreement does not grant any property, exploitation or usage rights to the confidential information, to the associated know-how or to any intellectual property rights that are registered or granted on the basis thereof. Provision of the confidential information does not grant the receiving contractual partner any rights based on prior use.
- d) The receiving contractual partner is not permitted to copy the received confidential information in whole or in part without the express written consent of the disclosing contractual partner, except where this is required for the disclosure purpose.
- e) All received confidential information, and any copies thereof produced, must, at the request of the disclosing contractual partner – which is to be submitted in writing no later than three (3) months after expiry of this agreement – be returned, or if agreed with the contractual partner, destroyed/deleted, within fourteen (14) days of this request.
- f) The obligation to return or destroy/delete the confidential information, as well the ban on producing copies, does not apply to routinely created backup copies of electronic data traffic,

nor to confidential information and copies thereof that the receiving contractual partner is required to retain under the applicable laws. However, these copies and any retained confidential information remain subject to the provisions of this agreement in all other respects.

- 7.3. **Period of validity.** The obligations described in section 7.2 continue to apply for five (5) years after the end of the term of this agreement, i.e., after participation on Fraunhofer Match.
- 7.4. **Exemptions.** The obligations described in section 7.2 do not apply in the following verifiable cases:
- a) If the confidential information was known to the receiving contractual partner before the disclosure
  - b) If the confidential information was in the public domain or generally accessible to the public before the disclosure, or if it entered the public domain or became generally accessible to the public after the disclosure without the receiving contractual partner having breached this agreement
  - c) If the confidential information corresponds to information that is disclosed or made accessible to the receiving contractual partner by a third party without an obligation of non-disclosure being imposed, except where the receiving contractual partner is knowingly aware that disclosure by the third party breaches an obligation of non-disclosure
  - d) If the confidential information was independently produced by an employee of the receiving contractual partner who had no knowledge of the shared confidential information

The publication of content on Fraunhofer Match does not constitute disclosure in the public domain.

- 7.5. **Official orders.** If disclosure of the confidential information is ordered by an authority or a court, the receiving contractual partner is authorized to make this disclosure to the extent requested by the order, provided that the receiving contractual partner immediately informs the disclosing contractual partner of said order to enable – to the extent permitted by law – exercise of their rights and provided that the scope of said disclosure is limited to the minimum required and that the confidential nature of the confidential information is indicated when making the disclosure. In all other respects, section 3 remains unaffected.

## 8. Claims for defects and liability

- 8.1. **Legal provisions.** Fraunhofer provides Fraunhofer Match free of charge. Provision of Fraunhofer Match is subject to the provisions on gratuitous loans, i.e., in particular, liability for defects on the part of Fraunhofer is limited to fraudulent concealment according to section 600 German Civil Code, liability according to section 599 German Civil Code is limited to intent and gross negligence, and the six-month limitation period according to section 606 German Civil Code applies.
- 8.2. **Workarounds.** A defect can also be remedied by Fraunhofer by providing information on how to remedy or circumvent the consequences of the defect (known as a workaround), provided that any impaired usage that remains as a result is reasonable for the corporate user.

## 9. Indemnity obligations

- 9.1. **Obligation to indemnify.** If third parties (including public bodies) assert claims or infringements against Fraunhofer based on the assertion that the corporate user has breached their contractual obligations, particularly by placing unlawful content on Fraunhofer Match or by using Fraunhofer Match in an unlawful manner, the following applies: The corporate user shall immediately indemnify Fraunhofer against said claims, offer Fraunhofer reasonable assistance in mounting a legal defense and indemnify Fraunhofer against the legal defense costs.

- 9.2. **Prerequisites for the obligation to indemnify.** The prerequisites for the obligation to indemnify according to section 9.1 are that Fraunhofer must inform the corporate user immediately in writing of any claims asserted, must not make any admissions or equivalent declarations and must enable the corporate user – where possible – to conduct all judicial and extrajudicial negotiations concerning the claims at the corporate user’s own expense.

## 10. Term and termination

- 10.1. **Term.** The contract governing the free-of-charge provision of Fraunhofer Match is concluded for an indefinite period and can be terminated by either party giving two weeks’ notice. The corporate user can address notice of termination to [plattform@match.fraunhofer.de](mailto:plattform@match.fraunhofer.de). The right to extraordinary termination remains unaffected.
- 10.2. **Form.** Notice of termination must be given in writing or in text form (e.g., email). The corporate user can also terminate the contract with immediate effect by deleting their profile.
- 10.3. **Data at the end of the contract.** At the end of the term of the contract, the corporate user no longer has access to the content they have published on Fraunhofer Match (e.g., requests), their messages and the data generated by Fraunhofer Match. It is the responsibility of the corporate user to export data before the end of the term of the contract and store it on their own facilities for further use. At the end of the contract, Fraunhofer is entitled to delete the data that have been stored on Fraunhofer Match by the corporate user, including published content. However, Fraunhofer may retain data for longer than this for its own audit trail purposes and to comply with legal retention obligations.

## 11. Reservation of the right to make changes

- 11.1. **Changes to the terms of use.** Fraunhofer has the right to alter these terms of use or supplement them with provisions to cover the use of any newly introduced additional or altered functions. The right to make changes applies, in particular, in the event of changes in the legal situation or case law rulings by the supreme court, or changes to the security and/or technical framework conditions. The corporate user is to be notified of the changes to and supplementation of the terms of use no later than eight weeks before they are due to come into force by sending an email to the corporate user’s specified email address. The corporate user will be deemed to have consented to the changes in the terms of use unless they object in text form within a period of six weeks, starting from the day after the notification of changes. In its notification of changes, Fraunhofer undertakes to draw special attention to the possibility of objecting, the deadline for objecting, the requirement for the text form and the significance or consequences of not objecting.
- 11.2. **Changes to Fraunhofer Match.** Fraunhofer reserves the right to change Fraunhofer Match or to provide alternative functionalities if the change or alternative is reasonable once the interests of Fraunhofer and the corporate user have been taken into account. Grounds for such changes may exist if the change is required to (i) make a necessary adjustment in line with a new legal situation or case law rulings, or to comply with judicial or official decisions relating to Fraunhofer, (ii) because of changes to technical framework conditions (new browser versions or technical standards) or (iii) to protect system security. Alongside this, Fraunhofer may make reasonable changes to Fraunhofer Match in the context of the platform’s further development (e.g., deactivation of old functions that have largely been replaced by new ones). In cases where providing an altered version of Fraunhofer Match or making a change to the functionalities of Fraunhofer Match will involve a major change to the workflows or impose major restrictions on the usability of data generated to date, Fraunhofer will notify the corporate user of this in text form in good time and certainly no later than four weeks before any such change takes effect.

## 12. Final provisions

- 12.1. **Obligations in electronic commerce.** Section 312i (1) points 1, 2 and 3, and section 312i (1) sentence 2 German Civil Code — which impose certain obligations on Fraunhofer in the context of e-commerce contracts — are hereby waived.
- 12.1. **Declarations and communications.** Fraunhofer is entitled to send all declarations and communications concerning the contractual relationship for provision of Fraunhofer Match to the email address specified by the corporate user during registration. The corporate user is required to check the inbox of this email account on a regular basis.
- 12.2. **Changes in text form.** Changes to these terms of use must be made in writing or text form. This also applies to any waiver of this requirement of form itself.
- 12.3. **Applicable law.** This contract and all disputes associated with it (both contractual and tortious) are exclusively subject to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 12.4. **Place of jurisdiction.** If the corporate user is classed as a merchant (Kaufmann), is a legal entity under public law or a special asset fund under public law, the exclusive place of jurisdiction is the one local to Fraunhofer. Fraunhofer remains entitled to take legal action at the corporate user's domicile.
- 12.5. **Severability.** Should individual provisions of this contract be or become invalid, the validity of the remaining provisions shall not thereby be affected. The provision that shall apply in place of the invalid provision is the one that the parties would – in view of the originally intended purpose – have honestly agreed from a commercial perspective. The same applies in the event of a gap in the contract.

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Effective as of June 2023