



XXXXXXXXXXXXXXXXXX

Consortium Agreement

Partner 1: XXXX

Partner 2: XXXX

Partner 3: XXXX

Partner 4:

INDIA-SPAIN PROJECT

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Partners

The following Partners take part in the Agreement:

- **PARTNER 1**

XXXXXXXXX Leader of the project, it was established in 1986 and its main activities focus on Its products are always designed in accordance with international standards.

XXXXXXXXX shall be called hereinafter XXXXXXXX.

Natural scope of activities:

- **PARTNER 2**

XXXXXXXXXX Established in and part of XXXXXXXX, XXXXXXXX is

XXXXXX shall be called hereinafter XXXXXXXX.

Natural scope of activities: developing and fastening technology

- **PARTNER 3**

- **PARTNER 4**

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Preamble

The Governments of Spain and India have established a common framework for supporting collaborative R&TD projects that is the Program 'India & Spain Innovating Bilateral Industrial Technology Cooperation Program' (ISIP)

In the scope of ISIP, the Research and Development Project, called XXXXXXXX, has been presented, to the Spanish and India ISIP authorities (CDTI and DBT, respectively).

The XXXXXXXXXXXXXXXXXXXX project is defined in the annex 1 according to the definition written in the ISIP Project Form.

The Partners commit themselves to this Consortium Agreement. The Partners have agreed on the following points:

- A- Definitions
- B- Cooperation
- C- Implementation of the project
- D- Confidentiality and industrial property rights
- E- Industrial exploitation and commercialization of the Final Product
- F- General dispositions

Section A: Definitions

- Final Product: Product resulting from the exploitation of the Project results.
- Prototype: Product made within the framework of the Project which tests in working conditions the viability of the technical concepts used in the Final Product.
- Project: All the studies, works and tests that the Partners shall undertake and carry out:
 - On the basis of the choices definitively made by the Project Managerial Board.
 - On the basis of the planning whose main aspects and deadlines are defined in the annex hereafter.
- Partners: Participants in the Project endowed with the necessary scope.
- Prior knowledge: All knowledge or information related to the process and the technical means, whatever the nature and/or the support, which each Partner is owner and/or which he has free disposal during the Agreement enforcement, and that he shall use for the execution of the studies, works or tests in the scope of the Project.
- Prior rights: All rights or patent title rights and/or copyrights (particularly about softwares) protecting all Prior Knowledge or only a part of it.
- New knowledge: All knowledge or information related to the new processes and technical means, whatever the nature and/or the support, resulting from the execution of the Project.
- New rights: All rights or patent title rights and/or copyright (particularly about softwares) protecting all the New Knowledge or only a part of them.
- Subcontractor: Third party participating in the project under the responsibility of one of the Partners after the approval of the others.
- National financing: Financial aid granted to one of the Partners by a National Support Organization within the framework of the Project.

Section B: Cooperation

Article.1. Purpose and scope of the Agreement

The scope of this Agreement is to set out the rules, terms and principles according to which each Partner shall commit himself on the following points:

1.1. Cooperation

Each Partner commits himself to cooperate actively with the others Partners for the implementation of the XXXXXXXXXXXXXXXXXXXX Project in conformity with the clauses defined hereafter.

1.2. Confidentiality

Each Partner commits himself to respect the confidentiality of the informations relating to the Prior and New Knowledge belonging to the other Partners, and to use these informations within the limits of the Agreement.

1.3. Property

Each Partner commits himself to respect the contractual obligations stipulated below, especially about intellectual and industrial property and exploitation rights.

Article.2. Nature of relations between Partners

The Partners of this Agreement having neither “affectio societatis” nor other common intention except cooperating contractually in the implementation of the Project within the limits of the Agreement clauses; it is impossible that this one could be interpreted as a creation of a *de facto* society between the Partners, an economic interest group, or any other legal entity.

Each Partner commits himself to do anything possible to prevent any action in this way and especially, except opposite clauses of this Agreement, to intervain in the Project execution vis-à-vis a Third Party only in his own name, only for his own account and under his own responsibility.

Section C. Implementation of the project

Article.3. Consortium Leader

It is agreed that **XXXXXX** shall be appointed as the Leader of the Consortium Project by the other Partners.

The Leader shall assume the overall responsibility for the coordination between Partners and for the liaison with the administrative authorities.

Moreover, the Leader shall be in charge of:

- The chairmanship of the Project Managerial Board (preparation, administration, follow up of its decisions and report of the meetings),
- The supervision of the progress according to the time schedule set up by common agreement of the Partners,
- The transmission of all the documents, relating to the Project, to the Partners as soon as the Project Managerial Board approves them.

The Leader shall be in charge of coordinating and leading everyday the Project defined by the Project Managerial Board and to make sure that the decisions taken by this same Project Managerial Board are carried out.

Article.4. Project Managerial Board

4.1. Setting up

The Partners agree to set up, within thirty (30) days after the approval of the PROJECT, a Project Managerial Board dedicated to manage the R&D phase of the Project. Participants of the Project Managerial Board are Partners involved in the performance of R&D tasks: **XXXXXXXXXXXXXXXXXXXX**.

The Project Managerial Board definition and its related prerogatives detailed in entire Article 4, are applicable only for the development phase up to completion of Final Product.

4.2. Project Managerial Board missions

The missions of the Project Managerial Board shall be to take all useful decision for the Project to progress efficiently, to attend to its execution and among others:

4.2.1. Project

to define and decide definitively on the technical and financial programme of the collaboration, subject of annexes 1, 2 and 3.

4.2.2. Sharing out the Project tasks

to decide on the sharing out of the tasks and responsibilities relating to the Project in all the technical and financial aspects, subject of annexes 2 and 3.

4.2.3. Technical decisions

To rule on the technical decisions in relation with the definition and development of the Final Product.

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4.2.4. Replacement or eviction of a Partner

to decide to evict and eventually to replace one of the Partners in case of grave default or weakness of this Partner, as specified in the article 5.

4.2.5. Admission of a new Partner

to examine the application of a new Partner introduced by one or several Partners and to deliberate on his admission.

4.2.6. Others

to settle, as far as possible amicably and with the matter to preserve the interests of each Partner, the possible disputes between Partners.

4.3. Composition

The Project Managerial Board shall be made up of one member from each Party, each one having a voting right.

4.3.1. Representation

Each member of the Project Managerial Board shall have the right to replace his representative or to appoint a proxy by another member.

4.3.2. Assistance

Each present or represented member of the Project Managerial Board can be assisted, in an advisory capacity, by so many experts he will need and who will commit themselves (in writing) to respect the confidentiality rules as specified in the article 8.

4.4. Chairmanship

The chairmanship of the Project shall be attributed to **XXXXXX** for all the duration of the Project.

The present chairman of the Project Managerial Board shall organize the meetings of this last mentioned Board whose secretary shall be ensured by the Leader.

4.5. Ordinary and extraordinary meetings

The Project Managerial Board shall meet periodically, at least twice a year, on the basis of an agenda to be agreed on.

Moreover, if necessary, the Project Managerial Board can meet outside the planned dates, at the Chairman request or at the request of one of the Partners.

Each member shall receive by fax, mail or email the notification of the Project Managerial Board meeting, as well as its agenda, at least fifteen (15) days before the meeting date.

4.6. Decisions

The Project Managerial Board deliberations are only valid if all of its members are present or represented. Its decisions will be only definitive if they are taken by unanimity for each case above mentioned (Project Managerial Board missions). In the case of article 4.2.4., the failing Partner will be excluded from the vote.

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4.7. MINUTES

Minutes shall be provided by the Leader within fifteen (15) days after the meeting. All the decisions taken during the meeting shall be written down in this report.

Article.5. Partners responsibility

5.1. Toward the Leader

Each Partner commits himself to fulfil his obligations as they are specified in the Agreement and to inform the Project Managerial Board of all the requests of his respective national **ISIP** Authorities.

5.2. Responsibility in case of default, breach or withdrawal

5.2.1. Measures taken by the Project Managerial Board in case of serious default or breach

In the event that one of the Partners would default or breach any obligation of this Agreement for any reason, and that such default or breach is not remedied within forty five (45) days after the sending by the Project Managerial Board of a recorded delivery with acknowledgement of receipt, this Board may decide his withdrawal and, if required, may substitute him by any Partner or Third Party.

The licenses granted to the defaulting partner by the other partners shall cease immediately, but the licenses granted by the defaulting partner to the other partners shall remain in full force and effect, provided that such default has been finally settled, as the case may be in accordance with article 18 of the present Agreement.

5.2.2. Condition to a Partner withdrawal

If one of the Partners decides, for any reason, to stop cooperating in the Project execution, he shall inform the Project Managerial Board within a period of maximum two (2) months in order that his replacement by another Partner or by a third Party will not compromise the Project execution.

5.2.3. Necessity for the Partner who withdraws to obtain an exploitation license for the Third Party chosen to ensure his substitution.

In any case, the concerned Partner who withdraws will have to cede back to the remaining Partners or the third party chosen to ensure his substitution the license, that he would have acquired earlier, for the exploitation of the New Knowledge and New Rights, and he will also have to cede back to the remaining Partner or the third party chosen to ensure his substitution all the technical files needed for the exploitation of the New Knowledge.

Subject to article 5.2.1 alinea 2 dispositions, this license shall be free for its application to the Project execution. But, in case of commercial exploitation, it shall be the subject of an agreement between the Partners specifying the conditions of that exploitation.

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5.3. Responsibility in case of accident

5.3.1. Employees

Each Partner goes on assuming toward his employees all the civil, social and fiscal obligations. Moreover he exercises all the management prerogatives.

He ensures the civil responsibility relating to his employees actions, it being understood that these ones shall conform to the discipline and safety rules of the society they work in.

5.3.2 Material

The common material and softwares, available or purchased, remain the possession of the Partner which has supplied or purchased them. The owner shall be liable for the maintenance and the insurance.

5.4. Subcontract

Each Partner is entirely responsible for the results of his share of the Project which he may have subcontracted to a Third Party.

Article.6. Commitment of the Partners vis-à-vis the Project

The Partners agree on sharing out the Project into phases and tasks -subject of Annex 2.1. They agree on the durations, the content and the specified assignments.

The Partners commit themselves to respect the content of the works to realize, and the Project specified in Annex 2.2, for their respective tasks.

Article.7. Budget of the project: expenses/ Partner

7.1. Commitment of the Partners vis-à-vis the forward-looking estimation

The Partners agree to consider the forward-looking estimation, specified in Annex 3 hereafter, as the amount of the financial obligations to which they commit themselves concerning the Project phases.

7.2. Commitment of each partner vis-à-vis the government financing concerning his part of the Project

Each Partner shall see to the financing of his part of the Project and also to all dialogue with the other Partners from the same country as him, needed to make participating the concerned national Organizations of that country in the financing of his part of the budget within the framework of the Program **ISIP**.

The financial commitments specified hereabove shall take effect only if the National Organizations of each concerned country participating in the Program **ISIP** give their support.

7.3. Common expenses

The common expenses shall be established during the Project Managerial Board meetings. Each partner shall solely bear Its own expenses.

Section D. Confidentiality and industrial property Rights

Article.8. Confidentiality

8.1. Confidentiality within the Project

8.1.1. Partners commitment

Within the limits specified under article 8.1.3, any Information disclosed under the present agreement shall be treated as confidential and shall only be used for the purpose of implementing the Project.

Each Partner commits himself not to divulge by any mean to a Third Party any information that he would be informed of, as specified in the article 5 (responsibilities, rights, obligations linked with the Project) and not to use them with other means that the ones planned in this Agreement without the prior written agreement of the Partner who has communicated them.

The Partners commit themselves:

- not to publish or communicate these confidential informations to a Third party.
Third Party means any natural or legal person, different from the institutional representatives of the **ISIP** Program or other entities participating in it, including the subsidiary companies of the Partners.
- to see that these informations are revealed to the employees in the strict extent of their interventions.
- not to reveal that the Partners have started discussions relating to the development of the production and the commercialization of a new product or process or of a product or process with new performances, except with the prior agreement of the other Partners.
- not to make copies of the communicated informations except in case of absolute necessity for the implementation of the present dispositions.
- to include , especially in the employment contracts and training periods agreements, clauses informing and subjecting the employees and/or trainees to the confidentiality rules mentioned here above.

In case of non respect of the confidentiality clauses and especially in case of disclosure of technical informations the Partners have the right to ask for damages for the undergone prejudices.

8.1.2. Measures to guarantee confidentiality

Each Partner will be intitled to take all necessary or useful measure toward his own employees, subcontractors and/or suppliers in order to prevent the disclosure or misuse of these informations.

8.1.3. Limits

The obligation of confidentiality will begin on the date of disclosure and it will last for five (5) years after the Project completion.

The obligation of confidentiality herein provided shall not be applied to the informations to which the receiving Partner can demonstrate that:

- the information was already publicly known at the time of its disclosure hereunder or it has become thereafter publicly known by other means than an act or a negligence of the receiving Partner or,
- the information was already known by the receiving Partner at a said time as a result of its own reseach, development or other activities or,

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- that it has been obtained at any time by the receiving Partner from other sources without restrictions in respect of disclosure or use.

Besides, the subcontractor that must be involved by each Partner In order to perform for their Project tasks, shall have the capacity to receive and transmit a confidential information.

8.1.4. Publications and press releases

Procedures for publication and press releases related to the Project shall be established within the Project Managerial Board.

Publications and press releases projects shall not obstruct any partners' application for Intellectual Protection.

8.2. Informations exchanges

8.2.1. Periodicity

In the course of the Project, the Partners may have, in respect of the provisions hereabove, to disclose some of their proprietary informations to each other or to the respective subcontractors who will use these informations as far as it will be necessary to carry out the Project, as well as keeping them informed of the study progress, work and test incumbent on him specifically in the scope of the Project.

8.2.2. Process exchange

If possible, the informations transmitted by the Partners shall be written down, dated, signed and enclosed with a stock-taking on Prior and New Rights as complete as possible.

Article.9. Industrial property

Each Partner undertakes to respect the contractual obligations specified hereafter, especially about industrial and intellectual property, and exploitation rights.

9.1. Prior Knowledge and Prior Rights

Prior Knowledge and Prior Rights shall remain the sole property of the Partner to whom they belong and will be only used by the other Partners, within the framework of the Project incumbent to these Partners.

9.2. New knowledge and New Rights

Every New Rights which would be issued from the New Knowledge will be the exclusive property of the Partner who claims the authorship of New Knowledge. The authorship of the claimed New Knowledge or New Right will be examined by the Project Managerial Board according to R&D project tasks performed and skills required for its performance (annex 2.2). Then the Partner concerned will be allowed to claim freely and/or defend, in his own name, at his expenses, in any country, the New Rights corresponding.

Respecting their natural scope of activity (as defined in "Partners" section), partners may freely apply for patents. Any new patent cannot supersede this agreement realization.

9.3. New Knowledge and New Rights Exploitation

Subject to Third Party Rights and/or limitations which would result from the agreements to intervene between the Partners and the governments Authorities on which **ISIP** Program depends, the Partners agree on section E of the Agreement about the industrial exploitation and commercialization of the New Knowledge and New Rights resulting from the Project.

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When the use of all or a part of this New Knowledge and/or New Rights will be essential for the Partners for the industrial work out of the Final Product the said holder shall not be allowed to refuse the Partners the right to use them, within the framework of conditions set up in the section E.

In case of persistent disagreement with the Partner owner of New Rights and/or New Knowledge concerned, the conditions will be set by resort to arbitration, on request of one of the Partners.

9.4. Relation with a Third Party

9.4.1. Transmission or cession conditions to a Third Party of New Knowledge and New Rights

Subject to article 9.2. dispositions, no Partner shall give up or transfer to a Third Party all or part of New Knowledge and New Rights resulting from the implementation of the Project to the exploitation of a product except with the prior written agreement of the other Partners who shall not refuse it without a serious and justified motive.

9.4.2. Subcontracting conditions to a Third Party for a part of the Project

Each Partner shall, after having informed in writing the Project Managerial Board, subcontract to a Third Party a part of his tasks subject to the Third Party agreement of the respect of the confidential obligations specified in the article 8 and not exploit themselves the New Knowledge and New Rights resulting from their participation in the Project.

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Section E. Industrial exploitation and commercialization of the Final Product

Article.10. Industrial exploitation and commercialization of the Final Product

Here are main principles for the exploitation of the results of the ~~XXXXXXXXXXXXXXXXXX~~ Project:

During the development of the project, two partners will sign an exploitation agreement of the project's results. This document will explain the exploitation activities that each partner could develop individually and the exploitation activities that both partners could collaborate in.

Section F. General dispositions

Article.11. Implementation, duration

11.1. Conditions and date of implementation

This Agreement shall enter into force as soon as it will be signed by all the Partners and will be effective and will last for the time period required for the completion of the Project and defined In the article 12.3.

11.2. Conditions and delays of denunciation of the Agreement

If, during the eight (8) months following the signature of the Agreement, the commitment of the Government Authorities concerned for the attribution of aids and subsidies has not been obtained each Partner shall have the right to denounce without notice this Agreement, subject to that denunciation be notified to the other Partners by a registred letter with acknowledgement of receipt.

11.3. Duration of the Agreement

The Agreement duration shall be the same as the one of the Project estimated to thirty(30) months and ten (10) years of commercial exploitation, that is to say twelve years (12) and six (6) months from its implementation date, except in case of anticipated cancellation or extension of time decided by the Project Managerial Board on a common agreement.

However, the obligations contracted by the Partners about industrial property (article 9) and the New Knowledge exploitation (article 9.3) will remain for all the length of the concerned rights or during the (10) ten years following the Agreement cessation date.

Article.12. Language

English

Article.13. Law application

The present Agreement shall be construed and interpreted according to the Spanish Law.

Article.14. Disputes

The Partners shall try to settle amicably any dispute resulting from the interpretation and the execution of the Agreement (according to article 4.2.6.).

For lack of an amicable settlement, within a 2 months period, any dispute resulting from the Agreement shall be presented to one or several arbitrators chosen on a common agreement.

If the Partners cannot agree on the subject, the dispute shall be carried before the concerned Spanish Authorities.

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Article.15. Entire agreement

The Agreement and the Annexes hereafter, which are part of it, represent the whole of the conventions to which the Partners subscribe, in relation with their cooperation as regards the Product.

They cancel all prior documents and declarations concerning the same subject.

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Co-signatures

- **XXXXXXXX**
 - Having its principal place of business
XXXXXXXX

 - Represented by Mr, General Manager
 - Signature:
 - Stamp:
 - Date :
 - Place:

- **XXXXXXXX**
 - Having its principal place of business
XXXXXXXX

 - Represented by Mr, General Manager
 - Signature:
 - Stamp:
 - Date :
 - Place:

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Annex 1: Description of the Project and of the Product

Annex 2: R&D Project and tasks

Annex 2.1. : Planning

Annex 2.2. : Tasks division

Annex 3 : Budget

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GENERAL GUIDELINES ON INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights (IPR) & Commercialization Plan from the Project

The IPR agreement shall include the following:

The partner/s to a project from the INDIA and the partner/s to the project from SPAIN (each the "Party" and collectively the "Parties") will ensure appropriate protection of Intellectual Property Rights generated from cooperation pursuant to MOU, consistent with their respective laws, rules and regulations and multilateral agreements to which both Parties are party to.

Each Party is and shall remain owner of its **Background IP**. For the purpose of these guidelines "Background IP" shall mean (a) the intellectual property rights of a Party that is owned or controlled by that Party prior to the execution of the cooperation agreement, or (b) created by a Party outside the scope of the MOU or without use or reliance on the confidential information or intellectual property rights of the other Party, as evidenced by written records.

Access rights to background IP of one Party may be granted to the other Party only to the extent necessary for the execution and during term of the joint project.

Ownership and rights to **Foreground IP** will be agreed upon by the Parties mutually. For the purpose of these guidelines, "Foreground IP" shall mean any invention conceived and reduced to practice, or know-how generated, solely by employees, agents, or independent contractors of a Party as a result of performing the activities under the cooperation agreement.

The IPR agreement should expressly reflect the contribution of each Party in the creation of the Foreground IP.

Joint IP rights will be applicable only when both Parties have an inventive contribution to Foreground IP. The Parties shall not assign any rights and obligations arising out of the joint IPR generated to inventions/activities carried out under the MOU to any third Party without consent of the other Party, unless such joint IPR is in a different field than the field of the other Party and as further elaborated in the relevant cooperation agreement.

Commercialization:

In case of Joint IP under this MOU both INDIAN and SPANISH parties will apply as co-applicants, subject to any respective field of use agreed upon, if applicable, for the protection of intellectual property rights subject to joint rights of both the Parties in accordance with the terms and conditions of the cooperation agreement.

The Partner Country and Indian Parties shall agree in advance on the IP rights and on the ownership, management and commercialization strategy of the product or process prior to the creation of any Foreground IP.

The jointly developed IPR must have technological innovation value. Subject to terms and conditions aforementioned, Both Parties shall possess intellectual property rights to the technology, developed under the Joint IPR, in accordance with the principals of these guidelines.

The relationship between the Parties must be clearly defined, including ownership of intellectual property rights for the technology proposed to be developed and commercialized. Therefore, partners must sign a formal company-company business agreement prior to the start of the Project to address issues relating to IP ownership, license rights, manufacturing rights, marketing responsibilities, ownership of technology, benefits to each Applicant during commercialization, as well as repayment to Government, if applicable.

The Parties shall declare that to the best of their knowledge and belief, that the use of the Background IP or Foreground IP in connection with the cooperation agreement does not infringe any third party's valid patent right/intellectual Property rights. The validation and verification in context of the project, is to be carried out with much sensitivity and precaution by Parties to avoid all kinds of infringements rights. The Parties will be jointly responsible for the Joint IP and solely responsible on Background IP

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and/or Foreground IP for any kind of legal implications emanating from infringement by them, and as set forth in the cooperation agreement.

The Party/Parties from SPAIN will sign a separate agreement with the SPANISH Funding Ministry/Agency, CDTI and while the Party/Parties from India will sign a separate agreement with DBT.

Confidential Information:

Subject to the respective applicable laws, regulations, rules, procedures, mechanisms programs or applicable in each state or of the Parties, as applicable or determined by the CDTI or DBT:

All information and documents to be exchanged pursuant to the Memorandum of Understanding will be kept confidential by the Parties and will be used subject to such terms as each Party may specify. The Parties will not use the information for purposes other than that specified without the prior written consent of the other Party. The Parties shall set forth the exact terms and conditions for the protection of confidential Information under the cooperation agreement.

All Confidential Information shall remain the exclusive property of the disclosing Party. The Parties agree that this agreement and the disclosure of the Confidential Information do not grant or imply any license, interest or right to the Recipient in respect to any intellectual property right of the other Party. Unpublished information, whether oral, in writing or otherwise, discovered or conceived by the scientists or technicians and exchanged under the provisions of this MOU will not be transmitted to a third party, unless otherwise agreed in writing by the Parties.