**Consortium Agreement**

between

**XXXX** **(company of the idea owner)**

on the one part, hereinafter referred to as “XXX”

and

**<Name of organization/Partner>**

<Address>

<Postcode, Town>

and

**<Name of organization/Partner>**

<Address>

<Postcode, Town>

on the other part, hereinafter referred to, both individually and jointly, as “**Partner**”

concerning the NTN Microtech feasibility study project

**XXXX**

hereinafter referred to as “**the Project**”

1. **Background**

The partners constitute a team selected by the NTN Microtech Booster program for a collaborative project. The partners work in the fields of XXX.

Project description

Xxxx

Within the framework of its activity and its resources in equipment and personnel, it engages in research projects in this field.

The parties are interested in an exchange of know-how as well as in the realization of a 6 months feasibility study project in the field of control automation

1. **Subject Matter of Agreement**

The rights and obligations of the contracting parties within the scope of feasibility study NTN Microtech Booster, funded by the Innosuisse (hereinafter referred to as the "**Innosuisse**") arise from:

- NTN Microtech Booster program rules on <date>.

- the grant contract that the parties have entered into or have yet to enter into with NTN Microtech Booster;

- this Consortium Agreement contract.

The parties to this Agreement do not obtain any rights from the other parties to this Agreement, except as expressly transferred or conferred in this Agreement.

1. **Project Managers / Contact Persons**

The parties appoint the following person as project manager; the other party shall be notified in writing of any changes in personnel:

On behalf of XXX (company of the idea owner):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Organization | Title | Last name, first name | Address | Telephone:  E-mail |
|  |  |  |  |  |

On behalf of the Partner(s):

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Organization | Title | Last name, first name | Address | Telephone: | E-mail |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

1. **Correspondence**

All correspondence must be addressed to the project manager.

1. **Project Organization**

XXX (Project Manager) is responsible for overall feasibility study project management.

1. **Representation to Third Parties**

The parties are not entitled to perform legal acts on behalf of the other party or on behalf of the contracting parties, without the prior written permission (authorisation) from the other party or parties.

1. **Deadlines**

The parties undertake to meet the deadlines set by the NTN Microtech Booster Program to the best of their abilities. The deadlines may be reasonably extended, subject to consultation with the NTN Microtech Booster, if obstacles arise that are beyond the control of the parties.

1. **Fulfilment of the Agreement**

The rights and obligations for fulfilment of the Agreement are defined in this Agreement or described in the NTN Program Rules. They may not be transferred to third parties without the prior written consent of the parties.

The Partner acknowledge(s) that fulfilment of the Agreement does not imply any guarantee whatsoever that the research objectives will be achieved or that the research products will be functional. The contract shall be deemed to be fulfilled as soon as the final report is delivered within the agreed framework.

1. **Warranty and Liability**

XXX (company of the project manager) shall be liable for the provided scientific standard and diligence in the execution of the assigned tasks. XXX (company of the project manager) shall guarantee the professional evaluation of the results. Except as set forth herein, XXX (company of the project manager) shall not assume any warranty of title or warranty of quality. As between each other, the parties shall only be liable for gross negligence or wilful misconduct.

Any and all liability and warranty related to the use of research results or products is excluded. There shall be no liability for products or processes which result from the research.

1. **Information Requirement**

The parties shall inform each other in a timely manner of particular pre-requisites as well as to statutory, administrative and other regulations at the destination, insofar as they are relevant for carrying out this Agreement. The parties shall inform each other in a timely manner of any hindrances which might jeopardize the performance of the Agreement or lead to unreasonable outcomes.

1. **Project Meetings and Reporting**

Project meetings shall be held <as required/define interval>. Independent thereof, the parties shall report to one another <on a regular basis/define interval> on the status of the Project.

1. **Exchange of Information, Documents, Objects and Auxiliary Material**

The parties shall mutually provide each other in a timely manner the necessary information for carrying out a project. They shall make available to one another the necessary documents, objects and resources, in good time and in a suitable condition for the intended purpose, or shall hand these over for the duration of the work. These objects and documents shall be made available on loan and shall remain the property of the party providing them. Upon completion of the project, unless otherwise agreed, all such items shall be returned in their entirety, respectively, in the case of electronic documents, deleted in their entirety, except for automatically created electronic copies for archiving and backup. All items shall be returned, except for anything which must be archived for regulatory reasons (while ensuring confidentiality).

1. **Assistance**

The parties shall provide one another promptly with a reasonable level of assistance as necessary to enable them to exercise the rights they acquire or are granted as a result of this Agreement. In particular, they shall supply the signatures necessary for obtaining or for applying/registering for rights to intellectual property. The parties shall also assist one another in defending claims from third parties to intellectual property rights in connection with this Project. Expenses incurred by the assisting party in this case must generally be borne by the party seeking assistance, unless the parties concerned agree otherwise in advance.

1. **Reporting**

The XXX (company of the project manager) shall report regularly, pursuant to the NTN Microtech Booster guidelines. The XXX (company of the project manager) archives records and reports and stores them for 5 years.

1. **Remuneration / Composition of Project Costs**

The financial contribution from the NTN Microtech Booster in the amount of CHF XXX is provided to XXX (company of the project manager) and is managed by XXX (company of the project manager). XXX (company of the project manager) guarantees the Partner the right to inspect the books and receipts relating to the funding of this Project.

The partner(s) have committed to pay a variable financial contribution ranging from 1000 CHF to 2500 CHF according to the NTN Microtech Booster contract.

1. **Payment Terms**

All further project costs, if applicable, which are not covered by the payments specified in Art. 15, shall be financed by the parties themselves, unless other arrangements have been agreed in writing.

The Partner shall transfer the total amount/instalment amounts specified in Art. 15 within 30 days of invoicing by the NTN Microtech Booster, such transfer to be made to an account to be designated by the NTN Microtech Booster.

1. **Intellectual Property Rights**

**Background IPR**” means any and all Intellectual Property Rights of a Member (or its Affiliates) developed or reduced to practice solely by such Member (or its Affiliates) outside of the Programme and that did not categorically derive from another Participant’s Contribution Data without such Participant’s consent.

“**Derivative IPR**” are a special category of Foreground IPR in that it is applicable to Results which are derived from, and the result of altering or improving someone else’s Background IPR (e.g. derivate works under copyright law, improvement inventions under patent law); the Foreground IPR on such Results are legally dependent (or concurrent) on pre-existing Background IPR; hence, qualified as “Derivative IPR”.

“**Foreground IPR**” means Intellectual Property Rights attached to the results.

No transfer, no assignment of Background IPR. The Members acknowledge that each Member owns and will retain any and all rights, title and interest in its own Background IPR. Ownership on the Derivative IPR from a Member’s proprietary Background IPR rests with that Member.

Foreground IPR.

Access. Each Member shall be entitled to use and exploit the results of the feasibility study Project, except items subject to Derivative IPR, insofar as such Member complies with its obligations under the Team Rules

Ownership. During the course of the Project, Foreground IPR are respectively owned by the Member that has developed its corresponding Results. Where several Members have developed the Results together, the corresponding Foreground IPR are co-owned by these Members. Where neither a Member nor a group of Members can be singled out for having developed the Results, the Results are jointly owned by all Members. As the case may be, the concerned Members agree to set the rules of their joint ownership in a separate agreement.

**18. Patents**

No patents will be filed as part of the NTN feasibility study

1. **Publication**

Project Results from NTN Microtech Booster Projects shall be made publicly available as a matter of principle, i.e., with appropriate protection of any protectable interests (e.g. business or manufacturing secrets), as a general rule by publication by the XXX (company of the project manager) concerned with the Project.

The parties agree that XXX (company of the project manager) is entitled to publish all project results.

Prior to publication, XXX (company of the project manager) will submit a substantial draft to the partner for review. The partner then has one (1) month to:

(a) notify XXX (company of the project manager) of any objections regarding its confidential information. If an objection is raised, a discussion must take place immediately to determine acceptable changes to resolve the issue and allow for dissemination within three (3) months; and/or

b) request a postponement of no more than three (3) months in the event that patent applications relating to the project results are required to be filed prior to the planned disclosure.

The absence of a reply within the above-mentioned period of one (1) month shall be deemed to be an acceptance of the publication by the Partner.

In the case of a planned publication at scientific conferences, XXX (company of the project manager) will submit a written summary of the intended publication to the partner and the above-mentioned conditions will apply, with the deadline indicated under a) being reduced to one (1) month.

In the event that the partner wishes to publish project results, it requires the prior written consent of XXX (company of the project manager). This consent may not be unreasonably withheld, but it must be ensured that XXX (company of the project manager 's interests with regard to its own publications, dissertations, master's theses, bachelor's theses and the like, as well as the protection of intellectual property, are safeguarded.

The Project Results shall in principle remain confidential (see Art. 20, below) up to the date of publication in accordance with this Article. As a rule, reports shall be published in their entirety. The publication of extracts is subject to approval from the relevant project partner.

1. **Announcement of Cooperation**

The parties agree that general information relating to the nature of the cooperation (area covered by the cooperation, identity of the parties) may be made public.

1. **Confidentiality**

**Confidentiality:** Confidential Information refers to any non-public Contribution Data, in any form, of a commercial, scientific, technical, operational or strategic nature or of other proprietary essence (including Secrets) disclosed by any Member to one or several Members in the pursuit of the Project under the Team Rules and that:

(a) is labelled as “confidential” (or “secret” if also a Secret; defined as any set of Contribution Data or Results which is protected or protectable in any form as a secret by law (e.g. manufacturing, business or trade secrets), and in rightful holdership of one or several Members. Under the Team Rules, Secrets are deemed both Confidential Information and IPR items, consequently:); or

(b) is known or should be known as confidential by a reasonable person, should the Contribution Data merely be disclosed *de visu*(visually) or *de auditu*(orally).

**Itemisation & labelling:** In the spirit of open innovation, openness is the rule, secrecy the exception; Confidential information should therefore be itemised, labelled and subject to restrictive interpretation:

Confidential Information must be itemised, stored in the Data Room and labelled as “confidential” (or “secret” if applicable) in a specific, recognisable and tangible manner; such as in the file or folder name (e.g. CONFIDENTIAL\_pyrotechnic-device.pdf).

In case where Confidential Information is merely disclosed *de visu*(visually) or *de auditu*(orally), the disclosing Member shall promptly reduce it to a tangible form (e.g. email, record) with a “confidential” label (or “secret” if also a Secret), then upload it in the Data Room for all other Members to take notice thereof.

**Commitments:** With respect to Confidential Information, each Member agrees: (a) to use such Confidential Information only as part of and for the Project; (b) not to disclose such Confidential Information to any unauthorised third parties; (c) to take reasonable steps – organisational, technical or of any other nature – to protect the Confidential Information in a way as protective as if the Confidential Information were its own; (d) to notify the disclosing Member promptly upon discovery or probably cause of any unauthorized use or disclosure of the Confidential Information; and (e) to restrict the disclosure of such Confidential Information to employees, subject to confidentiality terms consistent with the Team Rules, who have a need to know the Confidential Information in connection to the Team Rules.

1. **Term / Contractual Period**

The Agreement shall enter into force on being completely signed by all contracting parties and shall end following completion of the **Feasibility Study on the XXX (date)**. The provisions of this Agreement which remain effective beyond the termination thereof, in particular those relating to warranty and liability (Art. 9), intellectual property rights (Art.17) and secrecy (Art. 20) shall continue to apply even following termination or expiration of this Agreement.

1. **Termination**

As a rule, this Agreement shall not be terminated during the Project phase.

If one of the parties fails to fulfil essential obligations, it may be reminded in writing that it must comply with its obligations and must restore the contractual status within a reasonable time limit. If this deadline is not met, this Agreement may be terminated in consultation with the NTN Microtech Booster at the end of a month and subject to a notice period of one month.

If premature termination of the Project due to breach of contract by one or several Partner(s) leads to a recovery of contributions on the part of the NTN Microtech Booster, then as between each other the Partner(s) shall be liable therefore to the extent of their fault.

1. **Amendments and Additions**

Amendments and additions to this Agreement shall be made in writing and require the legally binding signature of all contracting parties.

1. **Severability**

If individual provisions of this Agreement are ineffective or impracticable, or become ineffective or impracticable following execution of this Agreement, the effectiveness of the other parts of this Agreement shall not be impaired as a result. The contracting parties undertake in this case to promptly replace the applicable provision with a permissible and effective agreement, the content of which most matches the original intention as closely as possible. The same shall apply to any contractual omission.

1. **Applicable Law and Jurisdiction**

This Agreement is governed by Swiss law (without giving effect to the principles of conflict of laws and excluding the Vienna Convention on the International Sale of Goods). Bern is the exclusive venue of jurisdiction. The parties shall endeavour to settle amicably any disputes that may arise in the course of this Agreement.

1. **Signature**

This Agreement shall be produced in <number> copies and signed by the authorised representatives of the parties specified below.

|  |  |
| --- | --- |
| *<Place, date>* |  |
|  |  |
| *<Name of the authorized representative>*  *<Name of organization>* |  |
|  |  |
| *<Place, date>* | *<Place, date>* |
|  |  |
| *<Name of authorized representative>* | *<Name of project manager>* |
| XXX (company of the project manager)  <Name of department/Director’s Office> | XXX (company of the project manager)  <Name of department/Director’s Office> |
|  |  |