

PROJECT CO-OPERATION AGREEMENT (PCA)

relating to the Project

.....

under the EDA PROGRAM.

among:

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?

?

(hereinafter together referred to as "the Parties")

WHEREAS

1. In the framework of the EDA PROGRAM, the Parties have submitted a proposal for a Project entitled:

.....

- hereinafter referred to as "the Project" -;

2. The Project has been selected by the EDA Centrum, Steering Group and has obtained the EDA Label;
3. The Parties, who have acceded to or accepted the rules and regulations for EDA Projects laid down in the EDA General Rules wish to define in addition thereto certain of their rights and obligations inter se with respect to the carrying out of the Project.

NOW, THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

Article 1
DEFINITIONS

The definitions laid down in Article I of the EDA General Rules also apply to this PCA.

In addition the following definitions shall apply:

- 1.1 "Full Project Proposal" shall mean the work-plan of the Project as accepted by the EDA Centrum.
- 1.2 "Project Share" of a Party shall mean that Party's share of the total budgeted cost of the Project as shown in the Full Project Proposal.
- 1.3 "Subcontractor" shall mean a third party who by means of a contractual arrangement with a Party, carries out work for the Project at no cost to itself.
- 1.4 "Software Results" shall mean:
 - (a) software programs being sequences of instructions to carry out a process in, or convertible into a form executable by a computer and fixed in any tangible medium of expression and in any code form;
 - (b) software information being technical information used, or useful in, or relating to the design, development, use or maintenance of any version of a software program; and
 - (c) software documentation being software information in documentary form.
- 1.5.1)

Article 2
PURPOSE AND SCOPE OF THE CO-OPERATION

- 2.1 The Parties undertake to co-operate under the conditions of the EDA General Rules and this Agreement in order to achieve the goals of the Project.
- 2.2 The scope of the Project is defined in the Full Project Proposal. The Full Project Proposal forms an integral part of this Agreement by reference only.

1) Further Project specific definitions to be added if required

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- 2.3 The Parties agree and undertake to perform those parts of the work-program of the Project and to contribute such resources as are allocated to each of them in the Full Project Proposal.

Article 3
ORGANIZATION OF THE CO-OPERATION

- 3.1 The Parties shall appoint one of them as Co-ordinator, who shall assume overall responsibility for liaison between the Parties and the various bodies of the EDA Centrum such as but not limited to the Board (Aufsichtsrat), Steering Group (Steuerungsgremium) and Managing Directors (Vorstand).

- 3.2 The Parties shall establish, within thirty days after the date of this PCA a Project Co-ordination Committee (PCC) composed of one representative of each of them. Each representative shall have one vote. After having informed the others, each Party shall have the right to replace its representative and to appoint a proxy.

Each representative shall have a deputy.

- 3.3 The PCC shall be chaired by the Co-ordinator's representative.

The PCC shall meet at least quarterly in principle at the request of its Chairman or at any other time when necessary at the request of one of the Parties. Meetings shall be convened by the Chairman, with at least seven days prior notice, with an agenda.

Minutes of the meetings of the PCC shall be drafted by the Co-ordinator's representative and transmitted to the other Parties without delay.

The minutes shall be considered as accepted by the other respective Parties if, within fifteen (15) days from receipt, none of them has objected in writing to the Co-ordinator.

- 3.4 The PCC shall be in charge of:
- (a)
 - ? managing the Project
 - ? monitoring the balance of information exchange in respect of contributions and outputs
 - ? monitoring the mechanism of information exchange by e.g. experts meetings and workshops
 - ? exchange of reports, documents, software, test procedures, etc.
 - ? cross experiments

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- ? common use of services supplied by the Parties or third parties
 - ? stimulation and facilitation of the general information flow between the Parties.
- (b) reviewing and/or amending the Work-program of the Project where required, subject to approval by the EDA Centrum.
 - (c) laying down, and reviewing or amending, procedures for publications and press releases with regard to the Project; and
 - (d) making proposals to the Parties (other than a Defaulting Party) for the service of notices requiring remedy of breach and terminating this Agreement with respect to that Defaulting Party, all in accordance with Article 9.4.
- 3.5 Decisions regarding the items listed in 3.4 shall be taken as follows.
- (a) Decisions relating to items listed in Article 3.4 (a), shall be taken by the majority of the votes of the parties present or represented by proxy.
 - (b) Decisions in relation to the items listed in Article 3.4 (b) shall be taken by a majority of 75% of the total votes of the Parties, provided that any Party, the scope of whose work or the time for performance of it are thereby affected or whose costs or liabilities are thereby changed, may veto such decisions;
 - (c) Decisions in relation to the items listed in Article 3.4 (c) shall be taken unanimously by the Parties.
 - (d) Decisions in relation to the items listed in Article 3.4 (d) shall be taken unanimously by the Parties with the exception of the Defaulting Party.

Article 4

EXECUTION OF THE CO-OPERATION - SUBCONTRACTING

- 4.1 Each Party undertakes to use all reasonable endeavours:
- (i) to perform on time the tasks and work packages assigned to it in the Full Project Proposal and to make available rights and information on time to other Parties under the terms and conditions of Article 7;
 - (ii) to participate actively with the relevant other Party or Parties in the performance of, or to perform itself as the case may be, such organisational tasks as are assigned to it jointly or solely;
 - (iii) to promptly notify the Co-ordinator and each of the other Parties of any delay in performance in accordance with (i) and (ii) above;
- 4.2 Each Party hereby undertakes to promptly supply to the Co-ordinator and the PCC all such information or documents as the Co-ordinator and the PCC may require to fulfil their obligations as provided for in this PCA;

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- 4.3 If any Party proposes to employ a Subcontractor to carry out any part of that Party's work on the Project, such employment shall only be on terms enabling that Party to carry out its obligations under this Agreement. That Party shall not, without the prior written agreement of the other Parties, grant to the Subcontractor any rights to or under any Knowledge Information or Knowledge Patents of the other Parties.

Employment of a Subcontractor (other than an Affiliated Company) with a subcontract value exceeding 150.000,- EURO shall be subject to the prior approval of the other Parties, which approval however may only be withheld if a major business interest would oppose it.

Each Party shall be fully responsible for the performance of any part of the Project in respect of which it enters into a subcontract.

The Parties agree to the following Subcontractors:

(name of Subcontractor) for (name of Party),

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Article 5 **FINANCING**

- 5.1 Each Party shall bear its own costs in connection with the carrying out of the Project and will be solely responsible for its applications to obtain any subsidies therefor.
- 5.2 The Parties shall not unreasonably withhold their approval to share all reasonable specific cost incurred by the Project co-ordination activities of the Project Co-ordinator in accordance with the relative proportions of their Project Shares defined in Art. 1.2, when so requested by the Co-ordinator.

Article 6 **CONFIDENTIALITY / RESTRICTION IN USE**

In respect of technical, business, and any other information conveyed under this PCA from one Party to another Party the regulations of Article VI EDA General Rules shall apply accordingly. Third parties are all parties not being Contracting Parties to this PCA. However Affiliated Companies of the Contracting Parties and the Public Authorities ("the PAs") are not deemed as third parties, provided that these Affiliated Companies undertake to keep the same obligation as stipulated under this Article, and provided that such information provided to the PAs are marked as confidential.

Article 7
OWNERSHIP OF RESULTS AND INTELLECTUAL PROPERTY RIGHTS

7.1 With respect to the ownership of the results and the user rights and licences under intellectual property rights to be granted, the provisions of Article V EDA General Rules shall apply.

Option 1

With respect to Sect. 4.1.1 of these provisions the Parties agree that their contributions to the Project are deemed to be balanced.

or:

Option 2

With respect to Sect. 4.1.1 of these provisions the Parties agree that their contributions to the project are deemed to be balanced except for the parts

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where favourable conditions may be asked from the following Parties

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or:

Option 3

With respect to Sect. 4.1.1 of these provisions the Parties agree that their contributions to the project are not deemed to be balanced. Favourable conditions may be asked with the understanding that the individual Parties may agree on a deviating determination between them.

7.2 For the purpose of implementing the provisions of Article 7.1 of this Agreement in cases where the Knowledge Information is or incorporates or is intended to be or to incorporate a software technology, a software development or a software product, the Parties agree that:

- (1) Each Party may take appropriate actions to protect Software Results developed by such Party under the Project by such rights as are available under such Party's national legal system including without limitation copyright or any other similar statutory right, and to protect such Software Results to the extent reasonably possible as proprietary information.
- (2) Unless and save to the extent previously agreed in writing, the Parties will within one year from the starting date of the Project, or if not feasible within such time period at a later date to be determined by common agreement, determine unanimously the procedures and schedules for transferring the Software Results generated under the Project.

7.3 Notwithstanding any provision that may be to the contrary in this Agreement, the Parties agree that the user rights and licences described in Article VII EDA General Rules as amended shall be deemed to include:

- (a) the right for each Party and its Affiliated Companies to use (including without limitation the right to adapt, modify, convert, translate and copy) any Software Results of the Project. However, the source code included in the Software Results, when containing essential portions of Pre-existing Know-how Information, will not be released and no rights to use such source code of the Software Results are granted unless the Parties involved enter into a specific agreement for that purpose; and
- (b) the right for each Party and its Affiliated Companies to sublicense to any third party in the normal course of business the rights described in subparagraph (a) above, provided that each such sublicense shall be made by an agreement in writing or by any other legally equivalent method specifying the protective rights of the Party or Parties concerned, and protecting the confidential nature of the proprietary information made available to such third party.

Before sublicensing the source code or any relating design data, the previous written approval of the owner of the Software Results shall be obtained, except that such approval is not required to the extent that the source code or the relating design data is sublicensed solely for the third party's own adaptation, error correction, maintenance and/or support of the Software Results sublicensed to him.

7.4 If, in the course of carrying out work on the Project, employees and/or Subcontractors of more than one Party jointly make an invention, design or work, and if the features of such joint invention, design or work are such that it is not possible to separate them for the purpose of applying for or obtaining the relevant patent protection or other Intellectual property rights, the Parties concerned may jointly apply for the relevant patent or other intellectual property rights.

The arrangements for applying for and maintaining such patent or other intellectual property rights shall be agreed between the Parties concerned on a case-by-case basis. So long as any such patent or other intellectual property rights is in force, the Parties concerned shall be entitled to use and to license such patent or other intellectual property right without any financial compensation to or the consent of the other Parties concerned.

7.5 For the purpose of this Article 7 the expression Party(ies) is identical to Partner(s) and shall include Affiliated Companies, provided that such Affiliated Companies duly comply with any obligations in relation with licences, user rights and confidentiality arrangements agreed upon by the Party concerned.

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- 7.6. Upon cessation of the control of an Affiliated Company any licences or user rights granted to such Affiliated Company in respect of Knowledge or Pre-existing Know-how Patents or Information shall lapse, provided however that Knowledge Information which has been incorporated into the products or processes of such Affiliated Company or which has been amalgamated with such Affiliated Company's own information may continue to be used by such Affiliated Company.

In such event, at the request of such Affiliated Company, the Parties shall grant to it non-exclusive licences under their Knowledge Patents against terms and conditions to be agreed, provided that no major business interests of such Parties oppose the grant of such licences. Upon such cessation of control, licences or user rights granted by such Affiliated Company to any Party under or in respect of Knowledge or Pre-existing Know-how Patents or Information shall continue in full force and effect.

Article 8

WARRANTY / LIABILITY

- 8.1 In supplying any information or materials to any of the other Parties each Party undertakes to use all reasonable endeavours to ensure the accuracy thereof and (in the event of any error therein) promptly on being notified to correct the same, but the supplying Party shall be under no further obligation or liability in respect of the same, and no warranty condition or representation of any kind is made, given or to be implied in any case as to the sufficiency, accuracy of fitness for purpose of such information or materials, or the absence of any infringement of statutory monopoly or intellectual property rights of third parties by the use of such information and materials, and the recipient Party shall in any case be entirely responsible for the use to which it puts such information and materials.
- 8.2 Each Party shall indemnify each of the other Parties, within the limits set out in Article 9.4 c) of this PCA, in respect of the acts and omissions of itself and of its employees , agents and Subcontractors provided always that such indemnity shall not extend to claims for indirect or consequential loss or damages such as but not limited to loss of profit, revenue, contracts or the like.
- 8.3 Each Party shall be solely liable for any loss incurred by, or damage or injury to, third parties resulting from the implementation by such Party of the Project.

Article 9
DURATION - TERMINATION

- 9.1 This PCA shall enter into force after having been signed by all the Parties with retroactive effect as from and under the proviso for each of them that envisaged funding for the execution of the Project have been or will be granted.
- 9.2 This PCA expires automatically with the termination of the Project.
- 9.3 Any Party whose envisaged funding is not granted or stopped has the right to withdraw from the Project and from this PCA without any liability to the other Parties, provided that the provisions of the foregoing Article 7 with respect to the results achieved before the date of withdrawal and Article 9.4 a) hereinafter shall apply accordingly in the case of a withdrawing Party.
- 9.4 In the event of a substantial breach by a Party ("the Defaulting Party") of its obligations under this PCA which is irremediable or which is not remedied within sixty (60) days of written notice from the other Parties requiring that it be remedied and the other Parties jointly terminate this PCA with respect to the Defaulting Party by not less than one month's prior written notice after the expiry of the first 60 days notice, such termination shall take place with respect to the Defaulting Party and the Defaulting Party shall be deemed to have agreed to the termination of this PCA in respect of its participation therein provided always that:
- a) without prejudice to any other rights of the other Parties, the licences granted to the Defaulting Party by the other Parties under this PCA shall cease immediately but the licences so granted by the Defaulting Party to the other Parties shall remain in full force and effect;
 - b) the scope of the tasks of the Defaulting Party shall be assigned to one or several companies and/or entities which are chosen by the other Parties and which agree to be bound by the terms of this PCA, with preference being granted to one or more of the remaining Parties;
 - c) the Defaulting Party shall (i) assume all reasonable direct cost increase (if any) resulting from the assignment referred to in b) above in comparison with the costs of the tasks of the Defaulting Party and (ii) be liable for any so resulting additional direct cost incurred by the other Parties, up to a total amount which shall not exceed twice the Defaulting Party's Project Share, and any excess amount shall be shared between the Parties (including the Defaulting Party) pro rata to their Project Shares at the time of termination.

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- 9.5 In the event that after the entry into force of this Agreement any third party would acquire, directly or indirectly, the ownership or control of more than 50% of the voting shares of a Party of this Agreement, the other Parties may unanimously decide to terminate this PCA with respect to such Party, the provisions of the foregoing Article 9.4 being correspondingly applicable to such Party with the exception of Article 9.4 c).
Such decision must be taken within 60 days from the date such take-over has been made public. If the other Parties would not agree unanimously to such termination as aforesaid, any Party or Parties may withdraw from this Agreement without any liability to the other Parties within sixty days thereafter. In this case the provisions of Article 9.3 will apply correspondingly.
- 9.6. Termination of this Agreement and cessation of licenses granted to the Defaulting Party in accordance with Article 9 of this Agreement shall not terminate any sublicenses granted or agreed to be granted or offered by the Defaulting Party in accordance with its rights under Article 7.3 above prior to the date on which such termination of this Agreement and cessation of licences becomes effective, provided that the Party which generated the Software Results so sublicensed shall have the right to have an assignment of the Defaulting Party's rights under such sublicenses.
- 9.7 The provisions of Article 6, 7 and 8 shall survive the expiration or termination of this PCA.

Article 10
MISCELLANEOUS

- 10.1 It is understood that for each Party the implementation of this PCA shall not contravene the rules of the respective funding authority(ies) which will apply to said Party.
- 10.2 The rights and obligations arising from this Agreement shall not be assigned to third parties other than Affiliated Companies without the prior written approval of the other Parties.

Article 11
SETTLEMENT OF DISPUTES

- 11.1 In case of dispute or difference between two or among several Parties arising out of or in connection with this PCA, the Parties shall first endeavour to settle it amicably.
- 11.2 All disputes or differences arising in connection with this PCA which cannot be settled as provided for in the preceding Article 11.1 shall be

finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce in Paris by one or more arbitrators to be appointed under the terms of those Rules. In any arbitration in which there are three arbitrators, the Chairman shall be of juridical education.

- 11.3 The award of the Arbitrator will be final and binding upon the Parties concerned.

Article 12
LANGUAGE

This PCA is drawn up in English which language shall govern all documents, notices and meetings for its application and/or extension or in any other way relative thereto.

Article 13
NOTICES

Any notice to be given under this PCA shall be sent by mail, fax or E-mail and in the latter two cases confirmed by mail to the following addresses:

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or to such address and recipients as a Party may designate in respect of that Party by written notice to the others.

Article 14
APPLICABLE LAW

This PCA shall be construed according to and governed by the laws of Germany excluding its conflict of laws provisions .

Article 15
ENTIRE AGREEMENT - AMENDMENTS

- 15.1 Amendments or changes to this PCA shall be valid only if made in writing and signed by an authorized signatory of each of the Parties.
- 15.2 AS WITNESS the Parties have caused this PCA to be duly signed by the undersigned authorized representatives the day and year first above written.

Authorized to sign on behalf of:

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