

PAM TRAINING **WORKSHOP COOPERATION AGREEMENT**

Bruxelles, October 6th, 2003

Examples of clauses for a Eureka Cooperation Agreement

- **Definitions**
- **Scope and duration**
- **Project management**
- **Financial conditions**
- **Development repartition**
- **Joining of additional parties**

- **Confidentiality**
- **Proprietary rights**
- **Exploitation**

- **Termination**
- **Liability**
- **Force majeure**
- **Settlement of disputes, language and applicable law**

DEFINITIONS

1. "Contracting parties" means the Parties signing this Cooperation Agreement.
2. "Coordinator" refers to XXX
3. "Project" means all the project as described in the work-plan referred to in Annex I to this Agreement
4. "Project deliverables" means the reports referred to in Annex 234 of this agreement as well as any element designated as such in Annex 1 to this Agreement.
5. "Cooperation agreement" or "agreement" mean this agreement including its annexes
6. "Change of control" means any change in the control exercised over a Party. Such control may result in particular from:
 - direct or indirect holding of a majority of the share capital of the Party or a majority of the voting rights of the latter's shareholders or associates,
 - or
 - direct or indirect holding in fact or in law of decision-making powers in the Party.
7. "Force majeure" means any unforeseeable and insuperable event affecting the carrying out of the project by one or more Parties
8. "Knowledge" means the results, including information, products, arising from this project, as well as copyright or rights attaching to the results following applications for, or the issue or registration of, patents, designs and models, plant varieties, additional certificates or other similar forms of protection
9. "Pre-existing know-how" means information, other than knowledge, held by the Parties prior to the conclusion of the agreement or acquired in parallel with it and necessary for carrying out the project, as well as copyright or rights attaching to such information following applications for, or the issue or registration of, patents, designs and models, plant varieties, additional certificates or other similar forms of protection.
10. "Access rights" means licenses and user rights in respect of knowledge or pre-existing know-how
11. "Use" means the direct or indirect use of knowledge in research activities or for exploitation purposes
12. "Exploitation" means the direct or indirect use of knowledge for creating and marketing a product or process or for creating and providing a service.

DEFINITION OF THE PARTNERSHIP

Scope

This Agreement governs the rights and obligations of the contracting parties with respect with the partnership to be carried out for the EUREKA project. This partnership concerns technical and commercial exploitation of the EUREKA project as defined in article 0.2.

Provisions may be added to this agreement to expand or clarify other aspects, provided that none of them contradicts any of the provisions of this Agreement.

The contracting parties agree to cooperate on the EUREKA project and to severally apply for a Eureka Label. **XXX** is the leading partner of the EUREKA project. **XXX** has initiated talks with **YYY** in order to set out a project named **EUREKA** whose goals are to develop a dynamic platform and to provide an integrated Service fully adapted to current zmn network and also capable of handling services for zkl. The overall aim of the Eureka project is to bring an innovative xyz platform: the main goal of this project is the development of xyz services on xyz devices supported by relevant technologies. It concerns service ergonomoy, (list of technologies)...

The partnership concerns the delivery of the "EUREKA **Platform**".

Definition of the platform:

The contracting parties shall carry out the work in accordance with the conditions set out in this Agreement.

Subject to cases of *force majeure*, the contracting parties shall use reasonable endeavours to achieve the results aimed at by the EUREKA project and shall carry it out jointly and severally.

Duration

1. The duration of the Eureka **Development Phase** development phase shall be 18 months from July 1515 to February 1517, which corresponds to a research and development phase.
2. This contract shall enter into force following its signature by all the contracting parties.
3. The following provisions shall continue to apply for two years from the end of the Project phase. This contract is tacitly renewable every two years subject to any limitations specified in this agreement provisions.

PROJECT MANAGEMENT

The highest consultative body of the Project Management is the Steering Committee. The Steering Committee, presided by the Project Director, is made up of the representatives of participating companies and plus an external expert on Project Management to be chosen by the Participants at the first meeting.

Steering Committee is responsible for :

- Overall strategy
- Control of overall budget
- Control of overall timing
- Quality Control
- Possible sanctions

The Steering Committee will meet four times over the duration of the Project. The Project Director can summon an extraordinary Steering Committee for specific purposes at any time, in which case he should specify the topics and proposed solutions for decisions.

The decision-making process, as well as particular membership of the Committee and delegation of rights and duties regarding executive management from Steering Committee to Project Director will be determined at the first meeting of the Steering Committee.

Project Manager for each participant will be appointed by every consortium member. Project Manager is responsible for the work performed by its Company, including the quality, and the timing.

Financial conditions

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 subsidies therefore. The description of the costs endured by each Party in connexion with the Project are described in Appendix 2.

Each Party hereto shall arrange for the financing of the research work assigned to it in accordance with the programme, including any costs resulting from the commissioning of its subcontractors, the prototypes and/or specimens to be provided.

Each of the parties shall bear its own expenses incurred in relation to the meetings of the steering committee and working group.

Development repartition

The Parties decide to develop in common the Eureka System.

The Eureka system being modular, it will be split on partitions and the development of each module will be allotted to one of the Parties, according to the following table.

Partition A:

| Characteristics/features | Company in charge | Remarks |
|--------------------------|-------------------|---------|
| Task A 1 | XXX | |
| Task A 2 | | YYY |
| | | YYY |
| | | YYY |
| | XXX | |
| | XXX | |

Partition B – *realisation **TO BE POSTPONED** to second phase of the project*

| Characteristics/features | Company in charge | Remarks |
|--------------------------|-------------------|---------|
| Task B 1 | XXX | |
| Task B 2 | | YYY |
| | | YYY |
| | XXX | |

This module repartition might be changed and be redistributed during the project development after common agreement of both Parties.

Once a module is developed and tested by the Party in charge, it will be sent to the other Party who will test it in order to qualify the module.

Once a module is qualified, it will be integrated as part of the Eureka system.

This integration and the working of the complete system will be tested by both Parties, at a test floor located at YYY office.

Both Parties will have permanent access and disposal of this test floor, during testing and non testing periods.

Once the integration tests are finished, the module and all corresponding documents shall be stored on the server mentioned within the Article 00.

JOINING OF ADDITIONAL PARTIES

The PARTIES can decide on proposition of the Steering Committee advise on the joining of additional PARTIES to this Agreement. The decision on such entry shall be taken unanimously by all PARTIES, and each such new member shall have to sign the present Agreement, on conditions to be agreed upon on a case-by-case basis.

CONFIDENTIALITY

0.1 Subject to the provisions of Article 10 hereafter, until this Agreement terminates and five years after its termination, the PARTIES hereto undertake to treat as confidential and not to disclose to any third party, all oral and/or written information and/or information contained in physical components which they gain access to or which they receive from other PARTIES within the framework of the EUREKA programme. This obligation shall not apply to any portion of such information which is,

a) already in the public domain, or

b) with respect to information received from other PARTIES, already known to the receiving PARTY at the date of receipt of the information as evidenced by documentary material in the possession of that PARTY or otherwise reasonably proved by that PARTY.

Such obligation of confidentiality and non-disclosure shall immediately cease at the time such information,

a) enters the public domain through non wrongful act of the PARTY, or

b) is lawfully received by the PARTY from a third PARTY that is neither a PARTY to the cooperation nor a subcontractor of a PARTY, or

c) is independently developed by the PARTY, or

d) is disclosed to a third party by the owning PARTY without an obligation of confidentiality I or

e) is authorised in writing by the owning PARTY.

0.2 The PARTIES will cause their employees, subcontractors, and any other third parties they disclose information to in accordance with this Agreement.

0.3 Disclosure of information necessary because of the engagement of subcontractors, or for the application for patents, or other industrial property protection and in order to be able to develop or to manufacture and to have manufactured industrial products incorporating certain work results of this cooperation shall not constitute a breach of this Article.

0.4 Any parent company or affiliated company as defined in Article 10.4 shall not be considered as third party provided such parent and/or affiliated company undertake to enter into obligations similar to the provisions of Articles 8 and 9.

0.5 The PARTIES agree to maintain in confidence any samples furnished by any of the other PARTIES under the programme.

0.6 Any technical report which includes the RESULTS that is required to be submitted to a public financing Authority shall be submitted on the conditions of confidentiality at least to the extent imposed by such Authority.

PROPRIETARY RIGHTS

0.1 In the performance of the development work and by applying the usual care in the field, XXX shall try to attain development results for the Prototypes which do not infringe proprietary rights owned by third parties. If a Party knows or becomes aware of proprietary rights owned by third parties opposed to the intended development result, it shall immediately inform the other Party. Such information shall include a recommendation how to proceed with the development work under observing the third party's proprietary right. If necessary, the Parties will decide in mutual agreement whether to apply for a license with such third party.

0.2 Each Party remains the owner of their proprietary rights owned by them at the time this Agreement becomes effective or which are developed aside from the development work under this Agreement.

0.3 Proprietary Rights achieved during the project-specific development work under this Agreement shall belong to the Party whose employee(s) made the invention or otherwise attained the proprietary right. The Party attaining such proprietary rights shall grant to the other Party, if requested, a royalty free, non-exclusive, non-transferable, world-wide, irrevocable and perpetual license to use such proprietary right for the business of such Party or business of companies of such Party's group. Companies of the group shall be deemed companies in which a Party directly or indirectly owns 50 % or more of the voting rights or companies which hold directly or indirectly 50 % or more of the voting rights in a Party (Related Companies).

0.4 Proprietary rights achieved during the project-specific development work under this Agreement in which employees of both Parties are involved will be filed as joint application(s) (Joint Proprietary Rights).

0.5 The ownership of such Joint Proprietary Rights will be with both Parties at equal shares if not otherwise agreed to by the Parties at the time of application. All cost for obtaining and maintaining the Joint Proprietary Rights will be borne by the Parties at equal shares. The subsequent applications in foreign countries will be decided on a case by case basis by the Parties. If a Party is not interested in applying for such a Joint Proprietary Right or only in particular countries or does not want to pursue an application or to maintain such Joint Proprietary Rights this Party shall immediately inform the other Party and offer on a free of charge basis said Joint Proprietary Right. Such an offer shall be made in due course enabling the other Party to undertake all measures necessary to safeguard the right, especially to claim priorities relating to the main application in case of applications to be submitted in foreign countries. The offering Party shall, however, have a royalty free, non-exclusive, non-transferable, world-wide, irrevocable and perpetual license to use such proprietary right for the business of such Party or such Party's Related Companies.

0.6 Licensing of Joint Proprietary Rights to third parties will be decided by the Parties by mutual agreement on a case by case basis.

EXPLOITATION AND DISSEMINATION OF RESULTS

After the completion of the Project, the owner of any intellectual property rights in the Results shall grant to the other Parties such licenses as may be requested for the use of the Results for any purpose subject to such compensation which shall be fair and reasonable having regard to all the circumstances, including the relative financial, technical and commercial contributions made by the Parties. Said compensation shall not be payable for a period exceeding (to be completed) years from the date of this Consortium Agreement or the expiry of any relevant intellectual property rights, whichever is the earlier.

In the event that the Parties fail to commercially exploit the Results within (to be completed) years from the completion of the Project, the owners of any intellectual property rights in the Results shall make such technology available for licensing to third parties, the benefits from such licensing being shared between the Parties to this Consortium Agreement on a basis which shall be fair and reasonable having regard to all the circumstances, including the relative financial, technical and commercial contributions made by the Parties to this Consortium Agreement.

Parties shall be entitled to use their Results for further research. Where this involves the use of information supplied or generated by other Parties, consent should not be unreasonably withheld.

TERMINATION

- 0.1 No Party shall be entitled to withdraw from this Consortium Agreement and/or participation in the Project unless:
 - (a) that Party has obtained the prior written consent of the other Parties (such consent not to be unreasonably withheld), to the withdrawal from, or termination of, the Agreement; or
 - (b) The Party does not get enough funding for its participation in the project

- 0.2 A Party shall not by withdrawal or termination be relieved from
 - (a) its responsibilities under this Consortium Agreement in respect of that part of that Party's work on the Project which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
 - (b) any of its obligations or liabilities arising out of such withdrawal or termination.

LIABILITY

One PARTY shall not be liable for the acts or omissions of another PARTY, purely on account of the fact that both PARTIES are cosignatories to this Agreement, and the second PARTY shall keep and save harmless the first PARTY from any and all claims, demands or actions that may arise out of, or by reason of, such act or omission.

FORCE MAJEURE

0.1 In case of frustration of this Agreement or if the fulfilment of substantial provisions of this Agreement is affected by Force Majeure, the PARTIES shall endeavour to adapt the Agreement to the new situation. In the event that the PARTIES do not agree upon such an adaptation within a period of three months, the Agreement shall, as far as such PARTY is concerned, be terminated without notice by the PARTY that cannot reasonably be expected to fulfil the Agreement.

0.2 No PARTY shall be liable for any failure to perform or any delay in performing any of its obligations under this Agreement if such failure or delay arises out of Force Majeure. The PARTY facing an event of Force Majeure shall promptly notify the other PARTIES and shall use its reasonable endeavours to remedy any default or delay occasioned thereby forthwith upon such event ceasing to apply.

0.3 Force Majeure shall mean any act, event or condition beyond the reasonable control of a PARTY that was not reasonably foreseeable at the time of execution of this Agreement and is not avoidable under normal circumstances, including but not limited to acts of God, war, riots, acts of Government or any state or political subdivision thereof, fires, floods, explosions of other catastrophes, labour disturbances, freight embargoes or material shortages.

SETTLEMENT OF DISPUTES

In case of dispute or difference between the Parties arising out of or in connection with this Consortium Agreement, the Parties shall first endeavour to settle it amicably.

All disputes or differences arising in connection with this Consortium Agreement which cannot be settled as provided for in the preceding Article 00.1 shall be finally settled by arbitration in Paris, France or such other place as the Parties may agree, under the rules of Conciliation and Arbitration of the International Chamber of Commerce 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.

If the Arbitrators are not appointed within thirty (30) days from the request for arbitration by a disputing Party either disputing Party may ask the International Chamber of Commerce for the appointment of the Arbitrators.

The award of Arbitrators will be final and binding upon the Parties concerned. The Arbitrator shall determine by whom and to whom the costs of arbitration shall be paid.

LANGUAGE

This Consortium Agreement 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 together with all reports, communications, correspondence and technical work between the Parties shall be in English.

APPLICABLE LAW

This Consortium Agreement shall be construed according to and governed by the French law.