**TECHNOLOGY & KNOWLEDGE TRANSFER ARRANGEMENT (TKTA)**

***«Project Name/Brand»***

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1. RECITALS
2. *This Technology & Knowledge Transfer Arrangement (“****Agreement****”) is concluded between the Members of the Team «TEAM A LOOP I/2021» established by the Team Project Contract. This Agreement is an integral part of the TPC Rules until the Team Project Contract is liquidated.*
3. *As Participants to the Programme, the Parties are eligible to join the Feasibility Study of the second Phase of the NTN Microtech Booster Open Innovation Programme, session I/2021, in accordance with its Terms of Service.*
4. *In course of the Feasibility Study, the Parties are determined to work as a Team to achieve the Project under the Team Project Contract, meaning that each and every Party:*
   1. *should share Contribution Data, thus any Party may disclose (“****Disclosing Party****”) Confidential Information to the other Parties (each a “****Receiving Party****”); and*
   2. *may rely on, and/or create Intellectual Property Rights as part of the Team.*
5. *In this context, this Agreement aims at clarifying any Contribution Data or IPR matters resulting from the collaborative work between the Parties, which may outlast the Parties’ participation in the Team or in the Programme.*
6. *In the spirit of an open innovation, Confidential Information and close-sourced IPR of all kinds should be minimised and, as much of the Project as is practical, should be developed openly.*
7. DEFINITION
8. See Definition List (Appendix D of the Team Project Contract)
9. PURPOSE
10. See Team Project Agreement, section 3, §4.
11. CONTRIBUTION DATA
    1. SHARING & ACCESS
12. Any Contribution Data, including Confidential Information, shared or generated by the Parties for the Project is made available to the Team and to the Operator (and the Aegis, if different) to the extent and for the duration required for achieving the Purpose.
13. Any Party may consult the Contribution Data made available to the Team using the Data Room or another equivalent digital space as agreed upon by the Team (cf. section 5.2 TPC).
14. Any Contribution Data released or disclosed by the Disclosing Party to the Team or to a specific Receiving Party as part of the Team is presumed to belong to such Disclosing Party.
15. In the absence of a unilateral, express notice to the contrary (e.g. with a label “private”), any Contribution Data disclosed by a Disclosing Party to a specific Receiving Party as part of the Team is deemed to be made available directly to the Team, instead of to the Receiving Party personally.
    1. DUTY TO CREDIT HUMAN CONTRIBUTIONS
16. Attribution. Any natural person who has distinctively contributed to generating Contribution Data of particular usefulness or relevance to the Project deserves appropriate name recognition for his or her work. If the natural person is part of a Party that is a legal entity, such Party may be mentioned next to this natural person’s name: e.g. « *(A) Jean TROUVETOU (Société générale d’inventivité GmbH)* »
17. In principle, the attribution is applied on the tangible Contribution Data in its released form; e.g. in a published document or the Project Report.
18. Attribution is entirely uncorrelated with any IPR transfer or assignment or any other form of ownership or exclusivity on the Contribution Data.
19. The natural person concerned may refuse of his or her own volition that his or her (real) name be credited.
    1. END OF THE FEASIBILITY STUDY
20. No later than at the liquidation of the Team Project Contract, each Party shall receive any and all Contribution Data, including Confidential Information, associated with the use or exploitation of all Foreground IPR intangible assets the respective Party is entitled to use and exploit, subject to the terms set out in this Agreement.
21. Other Confidential Information may only be retained as an archival copy for use in the event that a dispute arises under this Agreement or other TPC Rules; that being the case, no Party shall have the obligation to delete Confidential Information from any automated computer backup or disaster recovery system, but such copies shall remain subject to the confidentiality obligations set forth herein.
22. Secrets are, in any event, only accessible subject to requirements provided under section 7.2.2 below.
23. CONFIDENTIAL INFORMATION
    1. QUALIFICATION
24. 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 Party to the Team or another Party as part of the Team that:
25. is labelled as “confidential” (or “secret” if a Secret); or
26. 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).
27. Any Confidential Information merely disclosed *de visu* or *de auditu* shall be reduced by the Disclosing Party to a tangible form (e.g. email) within a reasonable time, then notified in such a form to the Receiving Party or to the Team with the label “confidential” (or “secret” if a Secret).
    1. DISQUALIFICATION
28. The Contribution Data is, howsoever labelled, not considered Confidential Information (or, for this matter, a Secret) provided that such Contribution Data: (a) is, or becomes, publicly available without a breach of this Agreement or other TPC Rules; (b) was lawfully known to the Team or to all Parties of the Team, at the time of the receipt thereof from the Disclosing Party; (c) is disclosed to the Team or a Party to the Team by a third party who can disclose it lawfully and without an obligation to keep it confidential; and/or (d) is independently developed by the Team or by all Parties of the Team, without the use of the Confidential Information.
29. In the same vein, the Contribution Data is, howsoever labelled, not considered Confidential Information (or, for this matter, a Secret) for a specific Party provided that such Contribution Data was lawfully known to this specific Party at the time of receipt thereof from the Disclosing Party.
30. The burden of proof that the Contribution Data is not considered Confidential Information lies with the Party claiming it.
    1. CONFIDENTIALITY COMMITMENTS
31. Commitments: The Team and each individual Party agree, with respect to Confidential Information received or made available through the Team:
32. to use such Confidential Information only as part of the Team and for the Purpose of the Project;
33. to treat such Confidential Information as strictly confidential;
34. not to disclose such Confidential Information to any unauthorised third parties; and
35. to confine the disclosure of such Confidential Information to employees, subject to confidentiality terms consistent with this Agreement, who have a need to know the Confidential Information for carrying out the Purpose of the Project;
36. Protective measures. As part of the confidentiality commitments, the Team and each individual Party shall take the following measures:
37. 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;
38. to notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of the Confidential Information;
39. to cooperate with the Disclosing Party in such event to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it; and
40. to assume observance and proper performance by its employees of the terms and conditions of this Agreement.
41. No Confidential Information shall be revealed in the published version of the Project Report or as part of the open-sourcing of the Foreground IPR, unless disposed otherwise.
42. BACKGROUND IPR
    1. Principle
43. Sole ownership. Each Party is, at all times, deemed the sole and exclusive owner of any and all right, title and interest in and to any and all IPR in its own Background IPR (cf. also §22, §45 TPC).
44. Access as part of the Project. Each Party’s Background IPR is made available in general to the Team to the strict extent and duration required by the Purpose of the Project. Any Background IPR of particular usefulness or relevance to the Project should be specifically made available in the Resource Pool.
45. Access beyond the Project. Only (proprietary) Background IPR specifically defined as a resource in the Resource Pool, or as part of an objective and/or a deliverable in the SOW, or upon the Background IPR owner’s unilateral notice, may be accessed by the other Parties, subject to the terms of this Agreement, after the Team Project Contract is liquidated.
    1. Post-project access to Background IPR due to technical dependency
46. Situation. Any Party who owns or has the right to use a Foreground IPR intangible asset (Foreground IPR owner or beneficiary) is considered to be “technically dependent” or in “technical dependency” from another Party’s (proprietary) Background IPR in the event that:
    1. such Foreground IPR intangible asset is legally independent from the Party’s Background IPR (*i.e.* not a Derivative work; otherwise, cf. section 7.2 below), but
    2. such Foreground IPR intangible asset was developed in the Project with the intent of being a practical or technical complement, addition or accessory to the Party’s Background IPR intangible assets.
47. Consequence. Once the Team Project Contract is dissolved, expired or terminated, the Party owning the Background IPR agrees to negotiate in good faith with each and every other technically dependant Party on bilateral or multilateral terms to provide them with a privileged access to such Background IPR, to the extent required to remove any own technical dependency in relation to the use of the Foreground IPR, provided that:
    1. the proprietary Background IPR concerned was in the Resource Pool, or made available upon unilateral notice of the Party owning such Background IPR;
    2. The Foreground IPR intangible asset(s) concerned was induced by, or arising from one or several objectives and/or deliverables provided under the SOW.
48. Exception. No access to the Background IPR is to be granted in the following cases:
    1. The other Party has no access to the Foreground IPR or cannot use and/or exploit it in any manner;
    2. The other Party’s individual merits and/or contributions are nil or notably marginal in the Project;
    3. The Foreground IPR has fallen astray from, or did not relate to any objective and/or deliverable under the SOW.
49. For post-project legal dependency on the Background IPR, section 7.2 is applicable.
    1. Unilateral declaration of libre-licensing
50. For the purpose of the Project, any owning Party is free, at any time, to place any specific intangible asset of its Background IPR (or proprietary Foreground IPR; cf. section 7.2) under a Libre licence of its choice. To this effect, the owning Party notifies its intent to the other Parties in an express, specific and documented manner (e.g. email); the Operator receives a copy of such notice.
51. §38 below is applicable by analogy.
52. FOREGROUND IPR
    1. LIBRE FOREGROUND IPR (as the rule)
       1. Ownership, assignment & transfer
53. Team’s ownership. Any and all Foreground IPR are assigned to the Team as the Foreground IPR owner, unless decided or disposed otherwise (e.g. §43 *et seq*. below).
54. Alternative options. Instead of Team’s ownership, the Team may decide to assign or to transfer the Foreground IPR:
    1. to another assignee (e.g. a specific Party or an entrusted third party), with such assignee’s agreement, and subject to the terms and conditions of this Agreement;
    2. to each their own: in such case, each contributing Party is the owner of the specific Foreground IPR intangible asset to the creation of which such Party has contributed; where no contributing Party can be singled out, the Foreground IPR intangible asset is co-owned by each contributing Party; where no contributing Parties can be singled out or distinguished, or upon the Parties’ unanimous decision, the Foreground IPR intangible asset is considered to be co-owned by all Parties to the Agreement; or
    3. pursuant to an *ad hoc* mode of distribution agreed upon by the Team.
55. Proprietary Foreground IPR. Section 7.2 is reserved.
56. Team’s inalienable right of use. Notwithstanding any of the above, regardless of any transfer, assignment or licensing application, any and all Foreground IPR are made available, as soon as they are created, as a general resource to the Team for achieving the Purpose pursuant to the Team Project Contract.
    * 1. Choice of licence
57. Libre licence. Each Foreground IPR intangible asset is placed under a Libre licence, unless provisions on proprietary Background IPR or Confidential Information are applicable.
58. Principle. Unless decided or provided otherwise, the Foreground IPR owner, unless delegated otherwise, is responsible for choosing the standardised or *ad hoc* Libre licence that applies to its Foreground IPR intangible assets, and gives notice of its choice to the other Parties; in case of co-ownership, the choice is made by majority vote. If the Foreground IPR is a Derivative work from an already libre-licenced intangible asset, the Foreground IPR owner must comply with its terms, in particular its copyleft or share-alike obligations.

Recommendation. While choosing the applicable Libre licence, options are suggested according to the following categories:

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| *Category of intangible assets* | *Suggested licences* |
| *Software* | *- Apache Licence 2.0*  *- LGPL v 3.0, GPL v3.0, AGPL v3.0[[1]](#footnote-1)*  *- EUPL v1.2[[2]](#footnote-2) (in any EU language)*  *- EPL v2.0[[3]](#footnote-3)*  *- Other:* [*https://choosealicence.com/*](https://choosealicense.com/) |
| *Hardware (technical design; patent materials or process; physical device, component or similar object; etc.)* | *- CERN-OHL-S, CERN-OHL-W, CERN-OHL-P[[4]](#footnote-4)*  *- Solderpad Licence v2.1[[5]](#footnote-5)* |
| *Documentation, text, image, etc.* | *- CC BY SA 4.0[[6]](#footnote-6)* |
| *Data, database* | *- OdbL v1.0[[7]](#footnote-7)* |
| *Registered patent or design* | *- ECL-2-0[[8]](#footnote-8)*  *- ad hoc (please ask the Operator)* |

1. Freedom of choice. Another licence, which is not part of the recommendation captioned above, may be chosen, provided that such licence falls within the definition of a Libre licence under the Definition List.
2. Embargo period. The Foreground IPR owner, unless delegated otherwise, may set an embargo period before the libre-licensing is released to, and applicable for the general public, provided that:
   1. Such Foreground IPR owner applies the BSL 1.1[[9]](#footnote-9) (or a later version) in an irrevocable manner, for a duration of no longer than 2 years before the “change date”;
   2. As much as is practical, all other Parties are subject to the same rights & obligations as the Foreground IPR owner acting as a licensor to the BSL 1.1.
3. Default rule & time limit. Should no licence choice be made and in the absence of share-alike or copyleft obligations (e.g. Section 5, GPLv3[[10]](#footnote-10)) , any Foreground IPR is *ipso iure* licenced, 30 days after the dissolution, expiry or termination of the Team Project Contract, according to the following categories:

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| *Category of intangible assets* | *Applicable licence* |
| *Software* | *- GPL v3.0 (If incompatible: - Apache 2.0)* |
| *Hardware* | *- CERN-OHL-S* |
| *Documentation, text, image, etc.* | *- CC BY SA 4.0* |

1. Legitimation. Each Party is entitled, on its own behalf, to legally claim and enforce applicable libre-licensing rights on any Foreground IPR against anyone, regardless of any owning Party’s consent. In doing so, such Party is solely liable for its claims, acts and omissions.
   * 1. Opening-sourcing on the Contributive Forge
2. Choice of Forge. Libre-licenced (or embargoed; cf. §38 above) Foreground IPR shall be uploaded and documented (open-sourced) on one or several Forges in an appropriate format, *i.e.* with any associated Contribution Data that permits and enables the exercise of all freedoms, rights & obligations under the corresponding Libre licence (or the BSL, as the case may be).
3. Permissions. Each Party should be granted individual access rights on the Forge as an administrator or any other high-ranked contributor status, unless decided otherwise by the Foreground IPR owner (or its delegate).
4. Default rule & time limit. Should no choice of Forge be made or followed by an appropriate open-sourcing, the Data Room shall serve as the default Forge, 60 days after the dissolution, expiry or termination of the Team Project Contract: any and all Contribution Data on the Data, whether or not Confidential Information, may thereby be made public.
   * 1. Delegation
5. As to the choice of licence (section 7.1.3 below) Subject to the terms and conditions of this Agreement, the Team (or each and every Party) may delegate the choice of licence to a specific governing body (e.g. the Board), to a specific Party (e.g. the Technical Clerk), or to an entrusted third party. In such case, the delegate is responsible for ensuring licensing consistency within the Project and may, for that purpose, replace or apply new Libre licences.
6. As to the open-sourcing on a Forge (section 7.1.4 below). The Team (or each and every Party) may delegate the choice of Forge and/or the responsibility of open-sourcing thereon to a specific governing body (e.g. the Board), to a specific Party (e.g. the Technical Clerk), or to an entrusted third party. In such case, the delegate is charged of selecting the most suitable Forge(s) for the Project and of duly open-sourcing the Foreground IPR thereon.
   1. PROPRIETARY FOREGROUND IPR (as the exception)
      1. Outside of the SOW targets
7. Rule. No Derivative work made out of a Party’s proprietary Background IPR shall be owned by someone else and/or libre-licensed without such Party’s notice of consent, in the event that:
   1. Such proprietary Background IPR was not defined as a resource and/or an objective or deliverable under the SOW or upon unilateral notice of the Party owning such Background IPR; and
   2. The Party owning the proprietary Background IPR would be impeded from properly using, or be forced to grant unconsented rights on its proprietary Background IPR.
8. Application. In such case, the Derivative work made out of a Party’s proprietary Background IPR is, by way of exception, assigned or transferred as proprietary Foreground IPR to the sole and exclusive ownership of the Party owning the Background IPR, unless such Party gives notice to the contrary.
   * 1. Within the SOW targets

Rule. In case a Derivative work made out of a Party’s proprietary Background IPR is defined as an objective and/or deliverable in the SOW (cf. section 6.1 TPC):

* 1. IPR on such Derivative work is, by way of exception, assigned or transferred as proprietary Foreground IPR to the Party owning the proprietary Background IPR, unless such Party has given notice to the contrary.
  2. Such Party agrees to negotiate in good faith with all other Parties on bilateral or multilateral terms to provide them, fairly and to the fullest extent possible, with access to such (proprietary) Foreground IPR or with equivalent economic advantages; §27 above is applicable as an alternative.
  3. [While negotiating, the Party owning the proprietary Foreground IPR is entitled to treat each other Party in a differentiated, respectively more or less extensible, manner based on individual merits and effective contributions to the collaborative work.]

1. Exception. No access to the Background IPR is to be granted in case that the other Party’s individual merits and/or contributions are nil or notably marginal to the Project.
2. WARRANTY & INDEMNIFICATION
3. Contribution Data:
   1. Any Contribution Data is provided "AS IS" and without any express or implied warranty as to its form and/or content.
   2. No Party shall provide Contribution Data that infringes upon or violates any third party’s IPR. The Disclosing Party is exonerated from making or maintaining Contribution Data available should such Party become aware that the Contribution Data infringes or violates any third party’s IPR. Conversely, the Team and each individual Party shall refrain from using the Contribution Data in any way; the Team or any individual Party shall fail to comply at its own risk and accounts.
4. Background IPR:
   1. Each Party has ownership of or sufficient rights on its respective Background IPR to enter into and to perform its obligation under this Agreement or assign/grant any right provided under this Agreement.
   2. Each Party’s Background IPR does not, to the best of knowledge, infringe or violate any third party’s IPR; there is no notice of any claim that Background IPR infringes or violates a third party’s IPR.
5. Foreground IPR:
   1. Unless specified elsewhere or stipulated otherwise, no Party warrants that the intangible assets of the Foreground IPR are original, properly owned or ownable, directly or indirectly commercialisable or suitable for any particular purpose.
   2. Unless specified elsewhere or stipulated otherwise, no Party shall be liable in case the intangible assets within the Foreground IPR reveal of no economic interest or relevance.
6. Collective trademark (cf. §1 TPC). Unless regulated otherwise, each Party is solely responsible for any loss, damage or injury caused to third parties resulting from its use of any Background IPR or Foreground IPR under the Team’s collective trademark, including in particular any liability resulting from the failure of any product or service placed on the market by that Party to meet applicable safety standards. Any Party that places, under the collective trademark, a product or service on the market that does not comply with safety standards shall indemnify the other Parties against any costs or liabilities in this respect.
7. Third Party Claim. Each Party shall indemnify, defend and hold harmless any other Party (including its officers, directors, employees, shareholders, affiliates, contractors, agents, representatives and successors) from and against any and all claims, losses, liabilities, damages, costs and expenses sought or otherwise claimed by a third party (including reasonable attorneys’ fees incurred) arising out of an allegation that the collaborative work, or any Contribution Data, Background IP and/or Foreground IP or any part thereof infringes or violates the Intellectual Property Rights of any third party.
8. Enforcement. Each Party acknowledges that in certain instances monetary damages may not be sufficient compensation for a breach of this Agreement. Accordingly, each Party is entitled to apply, exceptionally and to no further extent, for interim measures including *ex parte* to a competent local authority, in spite of any other choice of court.
9. Force majeure. No Party is liable for any failure or delay in performing an obligation under this Agreement that is due, to the extent beyond its reasonable control, to any of the following causes: accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalised lack of availability of raw materials or energy, acts of Almighty God…
10. Information. Each Party must provide sufficient information to the other Parties for them to exercise their rights and fulfil their obligations under this Agreement.
11. MISCELLANEOUS
12. Written form. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and may not be modified or supplemented unless upon the Team’s decision or otherwise agreed in writing.
13. Successors and Assigns. This Agreement may not be assigned by a Party without the prior written consent of the Team (or each and every other Party), whose consent or denial may not be unreasonably withheld or delayed. This Agreement and the obligations hereunder shall be binding upon the Parties’ successors including, but not limited to, an event of a merger or other form of reorganisation.
14. Governinglaw. This Agreement and any dispute or claim arising out of or in connection with it shall be governed by, construed and interpreted in accordance with the laws of Switzerland, excluding conflict of law provisions.
15. APPLICATION OF TPC RULES
16. This Agreement is an integral part of TPC Rules until the Team Project Contract is liquidated.
17. Once the Team Project Contract is liquidated, other TPC Rules remain applicable on an interpretative, subsidiary or suppletive basis, unless stipulated otherwise.
18. TERM
19. Term. This Agreement remains, in particular provisions relating to confidentiality commitments, effective for 5 years as of the day of the dissolution, termination or expiry of the Team Project Contract.

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| **Ratification by the Operator** |
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| Effective Date: 25 July 2021 |

1. GNU General Public Licence; cf. <https://choosealicense.com/licenses/> [↑](#footnote-ref-1)
2. European Union Public Licence; cf. <https://joinup.ec.europa.eu/collection/eupl/eupl-text-eupl-12> [↑](#footnote-ref-2)
3. Eclipse Public License: cf. <https://www.eclipse.org/legal/epl-2.0/> [↑](#footnote-ref-3)
4. CERN Open Hardware Licence; cf. <https://cern-ohl.web.cern.ch/home> [↑](#footnote-ref-4)
5. Solderpad Hardware License; cf. <http://solderpad.org/licenses/> [↑](#footnote-ref-5)
6. Creative Commons Attribution-ShareAlike 4.0 International; cf. <https://creativecommons.org/licenses/by-sa/4.0/> [↑](#footnote-ref-6)
7. Open Data Commons; cf[. https://opendatacommons.org/licenses/odbl/1-0/](file:///C:\Users\quent\OneDrive\Desktop\NTN%20MICROTECH\Legal_documents\FINAL\TEAM%20PROJECT\.%20https:\opendatacommons.org\licenses\odbl\1-0\) [↑](#footnote-ref-7)
8. Education Community License; cf. <https://opensource.org/licenses/ECL-2.0> [↑](#footnote-ref-8)
9. Business Source License 1.1; cf. <https://mariadb.com/bsl11/>; e.g. <https://github.com/Uniswap/uniswap-v3-core/blob/main/LICENSE> [↑](#footnote-ref-9)
10. <https://www.gnu.org/licenses/gpl-3.0.en.html> [↑](#footnote-ref-10)