



**SMART EUREKA CLUSTER INTERNATIONAL
ASSOCIATION
FRAMEWORK AGREEMENT
OCTOBER 13TH, 2017**



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In San Sebastian, on the 13th of October, 2017.

ARE HERE PRESENT

MONDRAGON, AIRBUS, IK4, AFM, SWEREA, SVUM, IMR, GRUPO ANTOLIN and ROYO (hereinafter referred to jointly as the "PARTIES") by way of the representation they hold, mutually and reciprocally acknowledge their ability to take on the responsibilities derived from this FRAMEWORK AGREEMENT (hereinafter referred to as the "Agreement"), and

PREAMBLE

- I.** EUREKA is a publicly-funded, intergovernmental network, involving over 40 countries, aimed at the enhancement of European competitiveness by fostering innovation-driven entrepreneurship in Europe, between small and large industry, research institutes and universities.
- II.** One of the main EUREKA's instruments are the renowned EUREKA Clusters which are long-term and strategically significant initiatives that develop technologies of key importance for European competitiveness. Such Clusters catalyse the generation of innovative, industry-driven, near to the market and pre-competitive R&D projects in their respective domains.
- III.** At the EUREKA High Level Group that took place in Madrid (Spain) on 28th of June 2017, a new strategic initiative was undertaken, with the creation of the SMART "Cluster". SMART will be dedicated to promote research, development and innovation projects to generate innovative manufacturing products, processes and services based on advanced manufacturing technologies.
- IV.** The Parties to this FRAMEWORK AGREEMENT intend to set out a new EUREKA Cluster on grounds of advanced manufacturing.
- V.** Such EUREKA Cluster shall, among other things, promote and label various international collaborative research and development projects for them possibly to obtain financial support from their respective national funding agencies.

- VI.** The PARTIES agree that the most appropriate formula for setting up the referred Cluster is by means of incorporating an international not for profit association, which shall be denominated "SMART EUREKA Cluster International Association" (hereinafter referred to as the "Association"), which shall be ruled by the Spanish law (Ley Orgánica 2/2002 de 22 de marzo, reguladora del Derecho de Asociación)
- VII.** The purpose of this FRAMEWORK AGREEMENT is to govern the terms of collaboration (and any resulting rights and obligations) of any party willing to take part in SMART.
- VIII.** As a result, this FRAMEWORK AGREEMENT sets out the relationship between the members of the Association, the Technical Committee members and those participating on projects related with research and development strategic programs on advanced manufacturing, as well as the rules of functioning of the Association which shall be incorporated.

Taking all this into account, PARTIES acknowledge the existence of collaboration areas that benefit them, have decided to start joint actions, for which they deem convenient to sign the present **FRAMEWORK AGREEMENT**, in accordance with the terms established in the following:

STIPULATIONS

1. DEFINITIONS

For the purpose of this Agreement shall mean:

1) SMART

SMART is the EUREKA Cluster to support an strategic research and development program on advanced manufacturing, created to boost the competitiveness, growth and attractiveness of the European discrete manufacturing industries through the promotion of R&D&I in an open community of large industries, SMEs, RTOs, academia and user organizations.

2) SMART Research and Innovation Domains

The SMART interrelated advanced manufacturing research and innovation domains, further described in the SMART living technology roadmap, will initially include:

- Advanced Manufacturing Processes
- Intelligent and Adaptive Manufacturing Systems
- Digital, Virtual and Efficient Companies
- Person-Machine Collaboration
- Sustainable Manufacturing
- Customer-based manufacturing

3) SMART Participants

- Companies, Research Institutes/Universities and/or any other kind of entities related to the SMART Research and Innovation Domains, being the parties to this Agreement and to the Association, as well as entities that will accede the Framework Agreement and will become members of the Association by signing the Declaration of Accession (**Annex A**) (together the "Members").
- Companies, Research Institutes/Universities and/or any kind of entities related to the SMART Research and Innovation Domains, whose research and development project has received the SMART Label (then being referred to as a "SMART Project" and each participant being referred to as a "SMART Project' Participant" as defined below): To receive the SMART Label, they need to accept the SMART rules and regulations laid down in this SMART Framework Agreement and the Regulations approved by the Associations by signing a Declaration of Acceptance according to **Annex B**; and
- Natural persons, becoming members of the Technical Committee by signing the Declaration according to **Annex C**;

The term the "Parties" or a "Party" refer to the Parties or a Party to this FRAMEWORK AGREEMENT and member of the Association, being either current signatories of this Agreement or signatory of the Declaration of Accession of **Annex A** .

4) SMART Projects and SMART Projects' Participants

SMART is executed in form of various Projects submitted by Companies, Research Institutes/Universities and/or any kind of entities related to the SMART Research and Innovation Domains, being in this regard, independent one another, within one (or more) of the SMART Research and Innovation Domains.

A research and development project, as soon as labelled, can be denominated "SMART Project" and the participants to this SMART Project are then denominated "SMART Projects' Participants" whether or not they are Members.

5) SMART Label.

The SMART label is the confirmation that the Association recommends the project for public funding in agreement with the "funding perspectives" provided by the concerned Public Authorities.

2. SUPPORT TO SMART

Each Party shall collaborate with the other Parties with a view to furthering the goals of and, generally, promote SMART.

The Parties will also make their best efforts, in terms of notably networking, operational, communication and project management assistance, to support any Companies, Research Institutes/Universities and/or any kind of entities, that will submit a proposal for funding of a Project under SMART, in particular towards public authorities in charge of the EUREKA Program, within the bounds set forth by applicable European and national laws and regulations as well as any laws and regulations applying to a particular entity involved in a particular Project.

The Parties hereby enter into this Framework Agreement for the sole and limited purpose of establishing the basis and mechanisms for their collaboration with a view to supporting SMART and implementing its goals.

3. INCORPORATION OF THE ASSOCIATION AND GOVERNANCE RULES

3.1 Incorporation

With a view to furthering the abovementioned goals and generally, promote SMART, the Members shall incorporate an international not for profit association under Spanish Law, denominated "SMART EUREKA Cluster International Association", on which SMART shall base to develop the new strategic initiative.

The Association shall deal with all administrative and financial matters in respect of SMART.

The Association shall be established after the signing of the present Framework Agreement. For this purpose, Members shall take any necessary measures in order to expedite the incorporation of the Association.

The incorporation of the Association shall be in front of a public notary, in order to notarize the incorporation minute in a public deed.

3.2 Bylaws of the Association

The Members undertake to ascertain mutually acceptable bylaws of the Association. The bylaws of the Association shall be consistent with the provisions of this Framework Agreement and shall correspond to **Annex D** attached hereto.

Bylaws are written both in Spanish and English, being the Spanish version the only official version. In case of conflict between the Spanish version and the English version, the Spanish one shall prevail.

In case of conflict between the bylaws of the Association and this Framework Agreement, the stipulations of this Framework Agreement shall prevail between the Parties.

3.3 Registered office

The registered office of the Association shall be located at Paseo Mikeletegi nº 59, 20.009- Donostia-San Sebastián, Gipuzkoa] (Spain). The Board of the Association may establish other offices in Spain or abroad if deemed necessary or useful for the Association's operations, and may also be the competent body to transfer the registered office inside Spain.

3.4 The Association's Purpose

The Association shall pursue those not for profit purposes listed in the Bylaws, concretely:

- To promote, organise and coordinate R&D projects in advanced manufacturing areas and all related technologies.
- To provide assistance, through administrative support, to companies, research institutes and universities and any other entity related to advanced manufacturing, which has previously requested this support by signing the corresponding application, for a specific project whose purpose is to develop products, processes and/or innovative services in advanced manufacturing.
- To assist the partners and project participants so that they can contact the relevant public authorities to obtain their financial support.
- To extend the involvement and support of the EUREKA SMART Cluster, to as many EUREKA countries as possible.
- To analyse, evaluate and coordinate the financing of the projects related to advanced manufacturing that are presented.
- To monitor the progress of the projects presented.
- To collaborate and coordinate relationships between other non-partner entities involving public authorities.
- To measure the results and evaluate the overall impact of R&D programmes within the Association.

3.5 Association's structure

The Association has the following structure

- A General Assembly.
- A Board.
- A Technical Committee.
- Cluster Office
- SMART CLUSTER Public Authorities Board (PAB)

Notwithstanding the abovementioned bodies, the Association shall be entitled to set up other committees, commissions or bodies that it may consider necessary for the due fulfilment of its goals.

3.5.1 General Assembly

- **Composition and representation**

The General Assembly shall consist of all Members of the Association. Each Member shall be represented at the General Assembly Meeting by his representative. If the representative is prevented from attending the meeting, he may exceptionally, by issuing a proxy, appoint any director or officer of the member or another Member for representing them at the meeting. Such power of attorney shall be communicated to the Chairperson of the Board at least one week before the date scheduled for the meeting.

A Member cannot represent more than two other Members. The Board may invite other (third) parties as guests to attend the meetings of the General Assembly. These guests will not have voting right.

Each Member's voting right shall be established in proportion to the accrued amount of fees paid by each of them as Members of the Association, as it is detailed in the Bylaws.

- **General Assembly meetings**

A General Assembly Meeting known as the "Annual General Assembly Meeting" shall be held each year within six months following the close of the financial year of the Association at a place, date and time determined by the Board.

All General Assembly Meetings of the Association other than the Annual General Assembly Meeting shall be Extraordinary General Assembly Meetings, and shall be convened by the Board, the Chairperson or at the request of at least 1/3 of the Association Members.

The Board may establish any system that allows Members assistance by videoconference, teleconference or any other telematics means.

- **Tasks of the General Assembly**

The General Assembly shall have the powers listed in the Bylaws and, in

particular

- i. To appoint and dismiss the members of the Board.
- ii. To approve and amend the bylaws.
- iii. To consider, resolve and approve on the annual accounts of the preceding financial year.
- iv. To resolve on the winding –up of the Association and to appoint and dismiss one or more liquidators.

Its decisions shall be binding on all Members of the Association whether in attendance or not.

- **Decision making**

A General Assembly Meeting deliberates validly if at least one third (1/3) of the Members are present or represented. Should the above mentioned quorum not be fulfilled at a first meeting, a second meeting shall be convened which shall decide irrespective of the number of Members present or represented.

Resolutions of the General Assembly shall be adopted by a simple majority of the votes of the Members present or represented. Abstentions, blank and void votes shall not be taken into account for this purpose.

However the following resolutions shall require a special majority of 2/3 of the votes of the Members present or represented:

- Winding up of the Association.
- Amendment of the bylaws-
- Disposal of fixed assets.

3.5.2 Board of the Association

- **Composition of the Board**

The Board shall be composed of at least three (3) and no more than twenty five (25) members of SMART and which shall appoint among his members a Chairperson, a Vice-Chairperson and a Secretary. The General Assembly will confirm or adapt the number of Board members, taking into account the balance of participating countries, sectors and levels of activities in labelled SMART Projects. Being a member of the Association will be always required to be appointed as a member of the Board.

The Board members shall not be remunerated for the performance of their duties.

The Board shall elect a Chairperson, a Secretary and a Vice-Chairperson amongst its members by simple majority of votes. Initially, MONDRAGON and Mr. Eduardo Beltrán de Nanclares on its behalf, shall be appointed as Chairperson and AIRBUS and Silvia Lazcano Ureña on its behalf, shall be appointed as Vice-Chairperson.

The Chairperson shall be the authorized representative and spokesperson of the Association. The Chairperson shall arrange and chair the Board meetings. He or she shall have industrial background being recognized in governmental and industrial circles.

The term of office shall be 4 years with possible renewals. The Board shall be renewed by half every two years. In the initial Board, the Board members will have a mandate of 2 or 4 years so as to comply with the biannual renewals regime, according to the criteria approved for that purpose by the General Meeting by a majority of the votes.

A Member who has sent a representative to the Board can exchange its representative by informing the Board in writing.

- **Tasks of the Board**

The tasks of the Board shall be those listed at the Association's Bylaws and, in particular,

- Promotion of SMART.
- To validate economic and financial plan.
- To determine the Association's fees due for a given financial year.
- Negotiations with Member Countries or other Public Authorities.
- Setting guidelines for the Technical Committee (e.g. for Project selection and partner search).
- Transfer of the Registered office.
- Appointment of the Office Director.
- Approval of the Technical Committee's composition and appointment of Technical Committee members and its Coordinator.
- Approve the calls for Projects to be issued.
- Label the Projects to be awarded
- Budget allocation.

- Admission of new Members of the Association.
- Create permanent committees and ad-hoc bodies as required to promote the goals and activities of the Association and monitor actions and performance of these bodies.
- Convene General Assembly Meetings and report on its activities at General Assembly Meetings.
- Prepare the annual financial statements and activity report for the General Assembly.
- Proposal of new Board members to the General Assembly taking into account the balance of participating countries, fields and levels of activities in labelled SMART Projects
- Supervise and validate Cluster Office's activity.
- Suspension from their charge of those Board members that have not paid the annual fee.

However, the Board shall be competent in all those tasks not reserved for the General Assembly. Therefore, the Board, among its competences, may grant competences to the committees, commissions or bodies to be created according to this Framework agreement.

- **Board Meetings**

The Board shall perform its work in regular Board meetings, at least twice a year but also at any time upon written request made by a third of the Board members.

The Chairperson, or a third of the Board Members, shall give the Board members notice in writing of such meetings. This convening shall identify the subjects to be discussed and any decision requiring a vote.

If more than half of the Board members intend not to be present or not to be represented in the meeting, then the meeting shall be postponed.

Any decision required to be taken by the Board may be taken in meetings via any telematics means.

The minutes of each Board meeting shall be drafted by the Secretary, in order to formalize in writing all decisions taken and shall be dispatched to all Board members without delay.

The minutes shall be considered as accepted by the Board members if, within fifteen calendar-days from receipt thereof, none of them has objected in

writing (including e-mail) to the Secretary.

Board members will decide the precise rules of procedure of the Board.

- **Voting**

Each Board Member has one vote. All the decisions shall be taken by majority of the votes of the members present or represented by proxy. The Chairperson shall have casting vote.

- **Chairperson.**

After the first Chairperson's term of four years, the following Chairpersons shall be appointed by the Board by majority of votes.

Chairperson may invite third persons to the meetings, as long as more than half of the Board members do not oppose that invitation. The Office Director shall assist regularly to Board Meetings without voting rights.

3.5.3 Economic regime.

It is reminded that the anticipated costs of the Association shall be listed in a yearly budget subject to the approval of the Board, except for the start-up budget, which shall be approved unanimously by the Board members.

The costs of the Association shall be covered in the approved budget and borne as follows:

(A) By the following ASSOCIATION'S FEES:

- ✓ an **entrance fee** to be paid by all the Members according to the following criteria:
 - SMEs companies (following the definition given by EU Recommendation 2003/361): 2.000€
 - Medium capitalization companies (those companies with less than 2.000 employees in its corporate group, according to the definition of partner enterprise and linked enterprise given by EU Recommendation 2003/361): 4.000-€
 - Large companies (those companies that can't be consider as

SMEs or medium capitalization according to the previous definitions): 5.000-€

- Others (Universities/RTOs/Associations, etc.): 3.000-€

✓ By an **annual fee** to be paid by all the Board members according to the following criteria:

- SMEs companies (following the definition given by EU Recommendation 2003/361): 4.000€.
- Medium capitalization companies (those companies with less than 2.000 employees in its corporate group, according to the definition of partner enterprise and linked enterprise given by EU Recommendation 2003/361): 8.000-€
- Large companies (those companies that can't be consider as SMEs or medium capitalization according to the previous definitions): 10.000-€
- Others (Universities/RTOs/Associations, etc.): 6.000-€

Cluster Board, in case of discrepancy, will allocate the entering organisation in the above-mentioned categories.

The annual fees shall be paid every year by January 1st. Those appointed as Board members later than January 1st shall paid the proportional part.

Parties acknowledge that Members who have been involved in the setting up of the Association (Spanish organisations) have each paid **pre-fee** (see **Annex E**) in order to cover expenses in the process of setting up the Cluster. These pre-fee paid by the Members belonging to the Spanish organisations shall in no case be reimbursed but shall be compensated with the fees that may be due to the Association by those members.

(B) By a **PROJECT FEE**, paid by all funded SMART Projects' Participants.

This Project fee is determined by the Board and calculated as 1,5% of the participant's individual total project cost. The Board may at any time modify these calculations rules. If a Project is only partially funded, this

Project fee is only paid by the funded SMART Projects' Participants.

Furthermore, any expenses incurred in the performance of this Framework Agreement by SMART Participants shall be borne by them respectively unless set out otherwise.

3.5.4 Technical Committee

- **Composition**

It is intended that the Technical Committee shall consist of representatives of, a minimum of 8 members and a maximum of 20 members belonging to the Board Members and Association Members. All Technical Committee members are nominated by the Board along with a Coordinator of the Technical Committee.–Each Board member shall propose a member for the Technical Committee. Then, each of the appointed members shall sign the Declaration for members of the Technical Committee as set out in **Annex C**, to become members of the Technical Committee. The technical committee will be complemented by a selected panel of external experts, appointed by the Board, that will also be assigned to project evaluation and reviewing.

The Coordinator of the Technical Committee shall be named by the Board.

- **Tasks**

The SMART Technical Committee will study the coherence and consistency of the Projects with the SMART Research and Innovation Domains.

The Board may grant to the Technical Committee the following tasks:

- Technical evaluation and ranking of Project proposals and reports.
- Supervision of the Cluster Projects along their lifetime.
- Recommendation for Project selection based on technical grounds.
- Recommendation in strategic orientation to the project proposers
- Propose and maintain a list of experts.
- Provide rigor and credibility to SMART Projects' evaluation procedures.

- **Rules**

Eligible for membership are those representatives of the board members of the area of the respective SMART applications fields, technologies and processes as well as experts acting as advisors to the Technical Committee.

Membership should be kept to a practical minimum, depending on the requirements of the specific area of the Technical Committee. The number of members and the composition of the Technical Committee are subject to approval by the Board. The composition should take into account the balance of participating countries, fields and levels of activity.

The Technical Committee shall function according to the rules and regulations approved by the Board.

3.5.5 Cluster Office

An Office, will handle the administrative and legal organisation (such as convening of the Board, preparation of minutes of the meetings). Its power will be decided during a Board meeting by the Board by unanimous consent of all the members of the Board present or represented by proxy.

The Office team shall consist of an Office Director and a small team. The location and the Office team of the Cluster Office shall be located within an existing organisation. The Office team could have variable part time dedication according to cluster needs and evolution and could subcontract some activities.

The Board may grant to the Cluster Office the following tasks:

- Day to day cluster operations' management.
- Support the creation and development of cluster projects.
- Establish and monitor participation rules.
- Organise events and Cluster promotion activities (web, newsletter, info days, brokerage events, etc.).
- Analyses operational data and generate reports for the Board's members and for EUREKA's secretariat.
- Monitoring and management of relation with PAB for Project monitoring and funding.
- Coordinate with EUREKA's secretariat and other EUREKA Clusters

3.5.6 SMART Public Authorities Board (PAB)

The Board may decide to ask Public Authorities of the current Member Countries to create a PAB grouping representatives (one per country) of their respective funding authorities. The role of the PAB is to be the official interface with the Board in order to exchange on the realisation of SMART and

to discuss between the various countries concerned the perspectives of funding for each project which received or might receive the SMART label.

It will be the place also for all Public Authorities to harmonize their funding policies versus SMART CLUSTER and whenever possible to smooth the funding process for SMART Project Participants. This includes also the organization whenever possible of joint dedicated calls upon the Board recommendation

The Board may invite other countries that have no presence in SMART to join the PAB as guests.

4. ACCESSION OF FURTHER MEMBERS AND ACCEPTANCE OF PROJECT PARTICIPANTS.

Companies, Research Institutes/Universities and/or any kind of entities related to the SMART Research and Innovation Domains, having significant research and development activities in the field of SMART and wishing to collaborate with the Parties with a view to furthering the goals of and, generally to promote SMART, may become Members. They, will either:

- Become Members, after having applied for membership in writing to the Board and having being accepted, following the process described in the Bylaws, by signing the Declaration of Accession, as set out in **Annex A** (hereinafter referred to as "Becoming Members"),
- Become SMART Projects' Participants by signing the Declaration of Acceptance as set out in **Annex B** (if they have not signed already **Annex A**), and will be bound to pay the Project fee, as provided for in article 3.5.3 of the present Agreement;

5. PROJECTS AND PROPOSALS IN SMART

5.1. The research and development work within SMART shall be executed by SMART Projects' Participants in individual Projects as part of SMART. SMART Projects' Participants shall execute their work under their own responsibility and at their own costs and expenses.

5.2. Proposals for Projects shall be managed according to the "Project Management Process" regulation approved by the Association.

5.3. The funding of SMART Projects is not the responsibility of the Association, as it demands the decision of the respective Member Countries subsidisers.

5.4. Rules for governing the Project proposals submission and selection process shall be set-up and approved by the Board.

6. CONFIDENTIALITY/RESTRICTION IN USE

It is understood and agreed by the Parties, that all information received from other Parties pursuant to or in connection with the performance of this Framework Agreement shall be kept confidential towards the others until and after the duration of the Framework Agreement.

The Association shall not issue any press release or similar publicity about a SMART Project without the prior approval of the Board members.

Furthermore, it is understood and agreed by the Parties that each Board and Technical Committee member will sign the confidentiality Undertaking attached in **Annex F** and will each be bound by its terms and conditions, which have been agreed between the Parties.

7. CODE OF ETHICS AND GOOD CONDUCT / CONFLICT OF INTEREST

7.1. Each Party remains fully independent from the others and in this regard, has absolutely no obligation to provide access to any information (as described below) it holds.

7.2. Each Member or SMART Project' Participant undertakes not to use, any information which is owned or controlled by a SMART Participant in the same fields as, or fields related to, the SMART Project prior to its start. Furthermore, they undertake not to use any related patent applications, patents, registered designs, copyrights and other similar statutory rights, as well as applications for any such rights, owned or controlled by a SMART Participant in the same fields as, or fields related to, the SMART Project prior to its start.

7.3. Each Party or SMART Project' Participant undertakes not to use any information generated by any SMART Participant, or third party working for it,

in the performance of the SMART Project. Furthermore, they undertake not to use any related patents, registered designs, copyrights and other similar statutory rights, as well as applications for any such rights, resulting from the performance of the SMART Project.

7.4. In this regard, each Party or SMART Project' Participant shall retain ownership of its intellectual rights. This agreement imparts no rights between the Parties or SMART Project' Participants under any information and associated intellectual property rights of a Party or SMART Project' Participant, subject to any rights granted in the scope of a specific Project through a Project Co-operation Agreement (PCA), as detailed below.

7.5. In this regard, any access right to any other Party's information and associated intellectual property rights shall be negotiated in good faith between the interested "SMART Project' Participants" in the scope of a specific Project: these rights will then be fully put in place through a Project Co-operation Agreement (PCA) agreed and concluded between the SMART Project' Participants of the concerned SMART Project case by case. Furthermore, each SMART Project' Participant undertakes to negotiate any access right to its information and associated intellectual property rights, at conditions at least equivalent to the most favourable conditions negotiated with other partners and or co-contractors.

7.6. This agreement imparts absolutely no commercial exploitation right, including the sale, transfer or licensing of the intellectual property on any other Party's or SMART Project' Participants' information and associated intellectual property.

7.7. SMART's management and governance shall always be carried out in transparency and good conduct basis.

7.8. Each Party shall ensure that the abovementioned rules will be applied by the other Parties.

8. WARRANTY/LIABILITY

8.1. Each SMART Participant shall use the diligence and care, which they usually employ in their own business affairs, to ensure good performance of this Framework Agreement and accuracy of the information exchanged during the performance of this Framework Agreement. Furthermore, each SMART Projects Participant undertakes to use all reasonable endeavours to ensure

the accuracy of the information furnished when submitting a project proposal for labelling. Upon notification or discovery that a SMART Project Participant has submitted defective or incorrect information, it shall promptly correct and redeliver such information at its own expense.

8.2. Other than set forth in the foregoing paragraphs, no warranty, condition, representation of any kind is made, given or to be implied in any case as on the performance under this Agreement. In particular, the Parties do not give any warranty as on the sufficiency, accuracy or fitness for purpose of information or materials and a SMART Participant receiving information and materials, shall be entirely responsible for the use to which they are put.

8.3 The liability of the SMART Participant against each other is restricted to wilful acts, gross negligence and serious breach of the rules contained in this Framework Agreement and in the Regulations that may be approved.

8.4 In no event shall SMART Participants be liable for special, consequential or indirect damages, including but not limited to, loss of contract, loss or revenue or profit.

8.5 Each SMART Participant is solely liable for the acts, omissions and negligence of itself, its employees and agents and will hold the other SMART Participants harmless and will indemnify them from and against any claim by a third party resulting from such acts, omissions and negligence.

9. FORCE MAJEURE

No SMART Participant shall be liable for any failure to perform or any delay in performing any of its obligations under this Framework Agreement if such failure or delay arises out of Force Majeure. The SMART Participant relying on Force Majeure shall promptly notify the other SMART Participants and shall use its best endeavours to remedy any default or delay occasioned thereby forthwith upon such event ceasing to apply.

10. DURATION

This Framework Agreement takes effect as of 13th of October, 2017 and will terminate contemporaneously with the end of SMART or on 31st of December, 2028 (unless otherwise superseded in writing), whichever comes first.

The Parties are bound by the rights and obligations set forth hereunder for the entire duration of the Framework Agreement. However, a Party may withdraw by giving a notice in writing to the other Parties at least six months in advance. The withdrawing Party shall not be relieved from implementing the rules of this Framework Agreement on confidentiality, liability, publicity and press releases, settlement of disputes and applicable law shall survive the termination by five years.

Nevertheless, in case of participation to a SMART Project by the withdrawing Party, the rights and obligations of the SMART Projects' Participant under the SMART Project shall survive the termination of the Framework Agreement.

11. MISCELLANEOUS

This Agreement represents the entire agreement and understanding of the Parties and, consequently, supersedes and replaces any and all written or oral contracts between the Parties prior to the date hereof.

Any amendment and change to this Framework Agreement requires an amending agreement made in written form.

The Chairperson is duly authorized to make any certified copies of this Agreement in order to be provided to any acceding Members.

This Framework Agreement is governed by the laws of Spain.

The Parties shall endeavour amicably to settle any dispute arising in connection with this Framework Agreement. Any dispute that cannot be settled in that way shall be of the sole and exclusive jurisdiction of the courts of law of Donostia-San Sebastián (Spain).

This Agreement and the accessions thereto are concluded, respectively declared, in the English language. In any case of translation into other languages the English language shall prevail.

In the event that any provision/clause of this Agreement by whatever reason is or will be found to be legally unenforceable or in any case of a loophole in the Agreement that needs to be filled in, the enforcement of the Agreement shall not be affected. The legally unenforceable provision/clause or the loophole to be filled in shall be substituted by a provision/clause which within the legal possibilities is nearest to that what the parties would have intended

if they had known the in-enforceability or if they had envisaged the missing point in question.

IN WITNESS WHEREOF, the Parties sign their correspondent signing page in [*] copies, which are included hereinafter, on the date indicated in the heading.

LIST OF ANNEXES

This Agreement comprises 6 Annexes:

- Annex A: Declaration of Accession to the FRAMEWORK AGREEMENT.
- Annex B: Declaration of Acceptance for a "SMART Projects' Participant"
- Annex C: Declaration for members of the Technical Committee.
- Annex D: SMART's bylaws.
- Annex E: Pre-fees paid by Spanish members
- Annex F: SMART Confidentiality Undertaking

ANNEX A

SMART EUREKA Cluster International Association

Declaration of Accession to the Framework Agreement of the Association and Application Form.

Date:

To be addressed to the:

*SMART EUREKA Cluster International Association Board
Paseo Mikeletegi nº 59,
20.009 -Donostia-San Sebastian
Gipuzkoa (Spain)*

Applicant Organization Name:

Parent Organization:

Applicant full address:

Street:

Nr.:

Postal Code:

City:

Province (region)

Country:

Tel:

e.mail:

Website URL:

Chair Person Data:

Last Name:

First Name:

Function:

Title:

Direct Tel.:

e.mail:

Expertise (Máximum 400 words description of the organization expertise in Manufacturing Technologies)

The undersigned is a voluntary applicant to become a member of the SMART EUREKA Cluster International Association.

Therefore:

a) This applicant is an entity dedicated to [*describe activity*], which operates in [*territorial scope*] and fulfills all the requirements for becoming a member of the Association in accordance with article 22 of SMART EUREKA Cluster International Association's Bylaws, belonging to the below selected category [*please select one option*], having the indicated entrance fee:

SMEs companies (following the definition given by EU Recommendation 2003/361): 2.000€

Medium capitalization (those companies with less than 2.000 employees in its corporate group, according to the definition of related company given by EU Recommendation 2003/361): 4.000€

Large companies (those companies that can't be consider as SMEs or medium capitalization according to the previous definitions): 5.000-€

Others (Universities/RTOs/Associations, etc.): 3.000-€

b) The undersigned accepts and acknowledges all the rights and obligations applying to the members of SMART EUREKA Cluster International Association and formally requests the admittance as its member.

c) [*short name*] hereby declares, with effect from [*date*] his accession to the enclosed Framework Agreement, and accepts to be bound by its terms and conditions and the resolutions taken by the Association's Bodies (as defined in Article 3.5 of the Framework Agreement) before the date of accession.

Authorized to Signed on behalf of
[*short name*]

Date:

Name:

Title:

Signature:

Authorized to Signed on behalf of
SMART BOARD

Date:

Name:

Title:

Signature:

ANNEX B

Annex B to SMART Framework Agreement

Applicant full address:

Date:

Declaration of Acceptance for SMART Projects' Participants

To be addressed to the:

*SMART EUREKA Cluster International Association's Board
Board [ADDRESS]*

Subject: Proposal for a SMART Project/Acceptance of SMART rules

The undersigned is a voluntary applicant for a SMART Label for a SMART Project, and acknowledges that the SMART Label is optional; the applicant having at all times the possibility to submit his project through other channels.

The undersigned accepts and acknowledges all regulations, applying to the SMART Projects laid down in the SMART EUREKA Framework Agreement and in the Regulations, as being applicable to all SMART Projects. It is understood, that the undersigned will receive the relevant general information related to the execution of the SMART Program.

Authorized to Signed on behalf of
.....(short name).....

Date:

Name:

Title:

Signature:

ANNEX C

Annex C to SMART Framework Agreement

Applicant full address:

Date:

Declaration for members of the SMART Technical Committee

To be addressed to the:

SMART EUREKA Cluster International Association's Board
[ADDRESS]

The SMART Framework Agreement signed by the Associations members, copy enclosed herewith, makes possible the accession of new members to the Technical Committee, according to its Article IV.

The undersigned [*natural person full name*] - hereinafter referred to as [*short name*] being the representative of [*Company/Institute full name*] whose legal address is [*] declares with effect from [*] his membership to the SMART Technical Committee.

[*short name*] hereby accepts to be bound by the terms and conditions of the enclosed Frame Agreement as far as they apply to the Technical Committee members and the resolutions taken by the Association's Bodies before the date of the declaration.

Authorized to Signed on behalf of
.....(short name).....
Date:
Name:
Title:
Signature:

Authorized to Signed on behalf of
SMART BOARD
Date:
Name:
Title:
Signature:

ANNEX D

BYLAWS

SMART EUREKA Cluster International Association

[] 2017

BYLAWS

CHAPTER I GENERAL PROVISIONS

Article 1. Name.

With the name "***SMART EUREKA Cluster on Advanced Manufacturing***", an association of international scope is established under Organic Act 1/2002, of 22 March, regulator of the Association Law, and the complementary standards, with a legal status and full ability to act on a not-for-profit basis.

In all matters not provided in these Bylaws, Organic Act 1/2002, of 22 March, and the complementary development provisions shall apply.

Article 2. Duration

This Association is established for an indefinite period.

Article 3. Purpose

The Association has the following purposes, to be develop in the field of advanced manufacturing:

- a) To promote, organise and coordinate R&D projects in advanced manufacturing areas and all related technologies.
- b) To provide assistance, through administrative support, to companies, research institutes and universities and any other entity related to advanced manufacturing, which has previously requested this support by signing the corresponding application, for a specific project whose purpose is to develop products, processes and/or innovative services in advanced manufacturing.
- c) To assist the partners and project participants so that they can contact the relevant public authorities to obtain their financial support.
- d) To extend the involvement and support of the EUREKA SMART Cluster, to as many EUREKA countries as possible.

- e) To analyse, evaluate and coordinate the financing of the projects related to advanced manufacturing that are presented.
- f) To monitor the progress of the projects presented.
- g) To collaborate and coordinate relationships between other non-partner entities involving public authorities.
- h) To measure the results and evaluate the overall impact of R&D programmes within the Association.

Article 4. Activities.

In order to achieve these purposes, the following activities shall be carried out:

- a. To define the Industrial Vision Statement and the SMART Technology Roadmap, as well as its successive updates.
- b. Organisation, in coordination with the public funding authorities, of the call for projects.
- c. Promotion of participation in the call for projects through Information Conferences and identification of collaborators for the presentation of projects.
- d. Definition and implementation of project evaluation and monitoring criteria.
- e. Evaluation and awarding of the SMART Label (defined as is the confirmation that the Association recommends the project for public funding in agreement with the "funding perspectives" provided by the concerned Public Authorities) to projects that exceed the established evaluation criteria and monitor them on a periodic basis.
- f. Periodic submission of information to the EUREKA Secretariat on the indicators of effectiveness of the programme developed, as well as their impact.
- g. Any other activity necessary to fulfil the purposes of the Association.

Article 5. Registered office.

The Association establishes its registered office at Paseo Mikeletegi, 59, 20.009 – San Sebastián, Gipuzkoa, Spain.

The Association may open delegations anywhere in the national territory or abroad. The Board of Directors shall have the jurisdiction to agree on the creation, deletion, or transfer of delegations, and also to transfer the register office inside Spain.

Article 6. Territorial scope.

The territorial scope of action of the Association is international, focusing preferably on the territory covered by the countries attached to the EUREKA intergovernmental network, notwithstanding its ability to develop projects and activities that contribute to the founding purposes of the Association anywhere else in the world.

CHAPTER II

GENERAL ASSEMBLY

Article 7. Nature and composition.

The General Assembly shall be the supreme governing body of the Association and shall be composed of all partners.

Article 8. Meetings.

Meetings of the General Assembly shall take place on an ordinary and extraordinary basis. The Ordinary Meetings shall be held once a year within the six months following the close of the fiscal year. The Extraordinary Meetings shall be held when required by the circumstances, in the opinion of the Chairman, when agreed by the Board of Directors, or when proposed by a third part of the partners in writing.

The General Assembly shall hold its meetings at the location previously agreed by the Board of Directors.

Attendance at the General Assembly may be made either by being present at the location where the meeting is to be held, or, where applicable, at other locations established by the company, as indicated in the call, and by being connected to it by conference call means or other telematic means that allow the recognition and identification of the attendees and continued communication between them.

Any member that is unable to attend the Assembly may grant special powers in favour of another member, in order to represent them only in said that particular meeting of the Assembly. The granting of power should be communicated to the Chairman of the Board of Directors at least one week prior to the date of the Assembly meeting. One partner shall not be allowed to represent more than two partners.

The Board of Directors may invite third parties to attend the Assembly meeting. The guests shall not have the right to vote.

Article 9. Summons.

The summons of the General Meetings shall be made in writing and sent to each partner at the address provided for such purpose, including the place, day and time of the meeting, as well as the agenda with a concrete statement of the matters to be discussed. A minimum of fifteen days should be provided between the summons and the day established for the Meeting on first call. The date and time when of Meetings on second call shall also be recorded, and the term between both meetings shall not be less than one hour.

Article 10. Adoption of agreements and voting rights.

10.1. The General Meetings, both ordinary and extraordinary, shall be validly constituted on first call when they are attended by one third of the partners with voting rights and in the second call irrespective of the number of partners with voting rights.

The agreements shall be taken by a simple majority of the persons present or represented, when the affirmative votes exceed the negative ones, null, blank or abstention votes not being considered for this purpose.

A qualified majority of 2/3 of the persons present or represented shall be required for the adoption of the following agreements:

- a) Dissolution of the entity.
- b) Modification of the Bylaws.
- c) Disposal or alienation of property, plants, and equipment.

10.2. Each partner shall have at least one vote, corresponding to one vote for every one thousand euros (€1,000) of the accrued amount of fees paid, since the moment of admission as a partner (either as down payment or annual payment), as established in Article 32 of these Bylaws.

Article 11. Powers.

The General Assembly shall have the following powers:

- a) To approve the management of the Board of Directors.
- b) To examine and approve the annual accounts.
- c) To elect and dismiss members of the Board of Directors.
- d) To approve the dissolution of the Association.
- e) To modify the Bylaws.
- f) To dispose of or alienate assets.

CHAPTER III

BOARD OF DIRECTORS

Article 12. Composition, renewal and remuneration.

12.1. The Association shall be managed and represented by a Board of Directors composed of a number of members that shall not be less than 3 or more than 25, which shall be required to appoint a Chairman, a Vice-Chairman and a Secretary by a simple majority of the votes.

In order to be elected a member of the Board of Directors, the status of partner shall be required.

The General Assembly shall establish the specific number of members of the Board of Directors, based on the number of countries and sectors participating in SMART projects.

12.2. The members of the Board of Directors shall be elected for a period of four years, re-election being permitted. The Board of Directors shall be renewed every two years. The Assembly shall determine, by a majority vote, the members to be appointed for a period of two years, when this is necessary to comply with this statutory mandate.

12.3. All positions that make up the Board of Directors shall be exempt from remuneration. Members of the Board shall not transfer to the Association their travel expenses, meal allowances or other expenses incurred when attending meetings.

12.4. All partners who, as of 1 January of each year, are members of the Board of Directors, shall pay the annual fee, in accordance with the provisions of Article 32.

If one year after the payment of the annual fee has accrued to members of the Board of Directors who failed to pay the annual fee, the provisions of Article 24 of these Bylaws shall apply.

Article 13. Meetings and decision-making.

The Board of Directors shall meet as often as determined by the Chairman, as well as at the initiative or request of one third of its members.

The call for the meeting shall be sent, in writing, to all members of the Board of Directors, including the items on the agenda to be discussed and the identification of any decision that shall require a vote.

The Board shall be constituted when it has the attendance of half plus one of its members, and its agreements, to be valid, shall require a majority vote of the attending members. In case of a tie, the Chairman's vote shall be a casting vote.

Attendance be considered through conference call systems or other telematic means that allow the recognition and identification of attendees and the continued communication between them. Each Board member shall have one vote.

The Board of Directors shall approve its own rules of operation, always subject to the provisions of these Bylaws.

Persons who have been invited by the Chairman may attend, with voice but without vote, provided that half of the attending members are not opposed to said invitation.

Article 14. Powers.

The powers of the Board of Directors shall be extended, in a general manner, to all acts appropriate to the purposes of the Association, provided that they do not require, under these Bylaws, express authorisation of the General Assembly.

The following are the specific powers of the Board of Directors:

- a) To guide the social activities and carry out the economic and administrative management of the Association, agreeing to make the appropriate contracts and acts.
- b) To execute the agreements of the General Assembly.
- c) To propose to the General Assembly candidates for members of the Board of Directors while taking into account the countries and sectors that participate in SMART Projects.
- d) To formulate and submit to the approval of the General Assembly the balance sheets and annual accounts.

- e) To approve the Association's economic and financial plan.
- f) To deliberate on the admission of new partners.
- g) To appoint delegates for any particular activity of the Association.
- h) To appoint work commissions or sections deemed appropriate for the proper functioning of the Association.
- i) To appoint the Office Director.
- j) To update the amount of the fees to be paid by the partners.
- k) The transfer of the registered office inside Spain.
- l) Negotiations with partner countries (countries affiliated with the EUREKA SMART cluster) and other public authorities.
- m) To regulate the rules of operation of the Technical Committee.
- n) To approve the composition of the Technical Committee, as well as the appointment of its members and of the Coordinator.
- o) To establish the rules that regulate the presentation of Project proposals and the selection process.
- p) To grant the SMART Label to projects evaluated at the proposal of the Technical Committee.
- q) Any other power that is not the exclusive jurisdiction of the General Assembly, partners or other bodies of the Association, in accordance with the regulation thereof agreed by the Board of Directors.

Article 15. Chairman.

The Chairman shall have the following attributions: to legally represent the Association before all kinds of public or private organisations; to convene, preside and lift the sessions held by the General Assembly and the Board of Directors, as well as directing the deliberations of both; To order payments and provide authorisation by signing documents, minutes and correspondence; to take any urgent action that is required for the good performance of the Association or that is necessary or convenient in the development of its activities, notwithstanding the subsequent reporting to the Board of Directors.

Article 16. Vice-Chairman.

The Vice-Chairman shall replace the Chairman in their absence, if motivated by illness or any other cause, and shall have the same powers.

Article 17. Secretary.

The Secretary shall be in charge of directing the purely administrative work of the Association, issuing certifications, taking the legally established books of the Association and the file of partners, and guarding the entity's documenta-

tion, making communications as appointed by the Boards of Directors and other social agreements to be filed in the corresponding Registry Offices, as well as the fulfilment of the documentary obligations in the legally corresponding terms.

Article 18. Director of the Association.

The operation of the Association shall be headed by a Director of the Association, also referred to as the Director of the EUREKA SMART Cluster Office, whose appointment and, where applicable, dismissal shall be the responsibility of the Board of Directors, and who shall have the powers assigned by it, in the corresponding power of attorney.

Article 19. Members.

The Members shall have their own duties as members of the Board of Directors, as well as those arising from the delegations or work commissions entrusted to them by the Board.

Article 20. Regime of resignations and substitutions.

The partners resign by voluntary resignation communicated in writing to the Board of Directors and due to breach of the obligations entrusted to them. The vacancies that for these reasons occur shall be provisionally covered by the other partners until the final election by the General Meeting convened for the purpose.

They may also resign due to termination of the term of office. In this case, they shall continue to hold their positions until the acceptance of those who replace them takes place.

CHAPTER IV

TECHNICAL COMMITTEE

Article 21. Technical Committee.

The Technical Committee shall be composed of a Coordinator and experts of renowned prestige who have had and/or may have an active and outstanding participation for the achievement of the purposes of the Association, which are designated by the Board of Directors.

The main function of the Technical Committee is to advise the Board of Directors in the technical matters required.

CHAPTER IV

PARTNERS

Article 22. Requirements and procedure for admission.

22.1. The members of the Association may be natural persons and legal entities, public or private, who are interested in promoting the purposes of the Association, subject to the following requirements:

- a) Having sufficient experience or potential in the field of advanced manufacturing R&D and being able to provide human resources, materials and/or know-how to fulfil the purposes of the Association.
- b) Undertaking to collaborate in its development through their participation as partners of the Association.
- c) Being required to fulfil the obligations and duties arising from these Bylaws and the agreements of the different bodies of the Association.

In turn, partner legal entities shall require the agreement duly adopted by the relevant body in which they manifest their desire to establish or join an association, as well as the appointment of the persons acting on their behalf.

22.2. To be admitted as a partner, the applicant who meets the requirements established above shall submit to the Board of Directors the completed form to be provided for this purpose by the Association, and the Board of Directors shall adopt the agreement at the following meeting held, provided that it is possible to include the agreement in the items of the Agenda, in accordance with the existing procedure for the call.

The Board of Directors shall notify the applicant of the admission or rejection within fifteen (15) days following the date on which the agreement was adopted.

When the request is estimated, the applicant shall proceed within thirty (30) calendar days from the date of notification to pay the established fees and appoint a representative in case it is a legal entity. Once this process is completed, the applicant shall be admitted as a full member, and a written notification shall be submitted to the other members of the Association.

Article 23. Classes.

The Association shall include the following classes of associates:

- a) **Promoters or founders**, who shall be those who participate in the constitution of the Association. Members who have joined the Association before 30 June 2018 shall also acquire the status of promoters or founders.
- b) **Full Members**, which shall be those that join after the establishment of the Association, in accordance with the process of admission regulated in these Bylaws.
- c) **Honorary Members** shall include those who, due to their prestige or for having contributed in a relevant way to the dignity and development of the Association, who shall then become credible to such a distinction. The appointment of Honorary Members shall be the responsibility of the Board of Directors. Honorary members may not be members of the Board of Directors, but may attend the meeting, with voice but without vote, in their capacity as guests, if approved by said body.

Article 24. Resignation.

Members shall resign for any of the following causes:

- a) By voluntary resignation, communicated in writing to the Board of Directors, at least six months in advance.
- b) By failure to comply with the economic obligations or to meet economic responsibilities in a period of 1 year.

Dismissed partners shall not be entitled to any contribution or payment by the association.

Article 25. Rights.

The founding and full members shall have the following rights:

- a) To take part in all activities organised by the Association in the fulfilment of its purposes.
- b) To enjoy all the advantages and benefits that the Association can obtain.
- c) To participate in the Meetings with voice and vote.

- d) To be electors and eligible for the bodies of the Association.
- e) To receive information on the agreements adopted by the Association's bodies
- f) To submit suggestions to the members of the Board of Directors in order to ensure a better fulfilment of the purposes of the Association.

Article 26. Duties.

The founding and full members shall have the following duties:

- a) To comply with these Bylaws and the valid agreements of the Meetings and the Board of Directors.
- b) To pay the quotas to be fixed.
- c) To attend Meetings and other events to be organised.
- d) To perform, where applicable, the duties inherent in the position they occupy.
- e) To maintain confidentiality on information relating to the Association whose disclosure may harm the interests of the Association or its partners and participants.

Article 27. Rights and duties of the honorary members.

Honorary members shall have the same obligations as the founding and full members except those provided in sections b) and d) of the preceding article.

Similarly, they shall have the same rights except those listed in subparagraphs c) and d) of Article 25, being able to attend meetings without having voting rights.

CHAPTER V

ECONOMIC REGIME

Article 28. Economic regime of the Association.

The Association shall follow in its economic regime the following premises:

- a) It shall have a non-profit nature.
- b) Its income shall be entirely used for the purposes for which the Association is established.
- c) Its equity shall be independent of that of the persons and partner entities of the Association.
- d) It shall not issue shares or obligations, or distribute profits.
- e) Reserves may be established for specific purposes.
- f) In case of obtaining loans or credits, the subsidies of supra-state entities, the State, Autonomous Communities, Municipalities or other public or private entities shall never be used as collateral for such operations.
- g) In case of dissolution, the final equity shall be applied by the persons in charge of the settlement, at its discretion, as provided in Chapter VI of these Bylaws.

The persons and entities of the Association shall limit their economic responsibility to third parties for the contributions they must make to the Association. In no case shall they personally answer for the debts of the Association.

Article 29. Economic resources.

29.1. The economic resources provided for the development of the purposes and activities of the Association shall be as follows:

- a) The fees of the partners regulated in these statutes.

- b) The economic contributions to be made by the participants of the SMART projects that obtain public financing and that shall be calculated according to their budget.
- c) The subsidies, bequests or estate that may be received legally by the partners or third parties.
- d) Any other legal resource.

29.2. All funds of the Association shall be intended for the fulfilment of the purposes thereof.

29.3. The benefits obtained by the Association, deriving from the exercise of economic activities, including the provision of services, should be used exclusively for the fulfilment of its purposes. In no case shall they be shared between the partners or shall their free be transferred to natural persons or for-profit legal entities.

Article 30. Equity.

The Association shall not have an initial equity.

The Association enjoys full autonomy in terms of administration and provision of its own purposes and activities.

Article 31. Duration of the fiscal year.

The associative and economic period shall be annual and its closure shall take place on 31 December of each calendar year.

Article 32. Fees to be paid by the partners.

Initially, the partners must pay the following fees:

- a) **Entry fees:** The fee to be paid for acquisition of the membership status shall vary according to following categories:
 - o SMEs companies (following the definition given by EU Recommendation 2003/361): 2.000€
 - o Medium capitalization (those companies with less than 2.000 employees in its corporate group, according to the definition of partner enterprise and linked enterprise given by EU

Recommendation 2003/361): 4.000-€

- Large companies (those companies that can't be consider as SMEs or medium capitalization according to the previous definitions): 5.000-€
- Others (Universities/RTOs/Associations, etc.): 3.000-€

Cluster Board, in case of discrepancy, will allocate the entering organisation in the above-mentioned categories.

b) **Annual fee:** Any partner who is a member of the Board of Directors as of 1 January of each year, from the date of establishment of the Association, shall pay an annual fee whose amount shall also be fixed according to the characteristics of the partner. Specifically:

- SMEs companies (following the definition given by EU Recommendation 2003/361): 4.000€.
- Medium capitalization (those companies with less than 2.000 employees in its corporate group, according to the definition of partner enterprise and linked enterprise given by EU Recommendation 2003/361): 8.000-€
- Large companies (those companies that can't be consider as SMEs or medium capitalization according to the previous definitions): 10.000-€
- Others (Universities/RTOs/Associations, etc.): 6.000-€

Those appointed as Board members later than January 1st shall paid the proportional part.

Cluster Board, in case of discrepancy, will allocate the entering organisation in the above-mentioned categories.

CHAPTER VI

DISSOLUTION

Article 33. Dissolution.

The Association shall be dissolved voluntarily when agreed by the Extraordinary General Meeting convened for said purpose, in accordance with the provisions of Article 10 of these Bylaws.

Article 34. Liquidation and destination of the remainder.

In the event of dissolution, a liquidation committee shall be appointed. Once the debts have been settled, the liquid surplus, if any, shall be used for purposes that do not detract from the non-profit nature of the Association.

ANNEX E

Organization	Pre-fee
AERNNOVA AEROSPACE, SAU	10.000 €
AIRBUS Operations, S.L.	10.000 €
ASOCIACIÓN CENTRO EUROPEO DE EMPRESAS E INNOVACIÓN DE CARTAGENA	3.000 €
ASOCIACIÓN DE INVESTIGACIÓN METALÚRGICA DEL NOROESTE - AIMEN	3.000 €
Asociación Española de Fabricantes de Máquinas-herramienta, Accesorios, Componentes y Herramientas	15.000 €
ASOCIACIÓN IK4 RESEARCH ALLIANCE	3.000 €
BSH ELECTRODOMESTICOS ESPAÑA, S.A.	10.000 €
EQUIPOS NUCLEARES, S.A., S.M.E.	10.000 €
FUNDACIÓ DEL DISSENY TÈXTIL	3.000 €
Grupo Antolín Ingeniería S.A.	10.000 €
INGENIERÍA Y DISEÑO EUROPEO S.A.	10.000 €
INSTITUTO TECNOLÓGICO DE ARAGÓN	3.000 €
MONDRAGON CORPORACIÓN COOPERATIVA S.COOP	97.000 €
NAVANTIA S.A.	10.000 €
ROYO SPAIN S.L.	10.000 €
TRIMEK S.A.	2.000 €
Grupo Nicolás Correa Láser S.A.	2.000 €
TECNALIA RESEARCH & INNOVATION	3.000 €
RENISHAW IBÉRICA, S.A.U.	2.000 €

Pre-fees paid by Members involved in the Association's setting up:

ANNEX F

CONFIDENTIALITY UNDERTAKING

BETWEEN

SMART EUREKA CLUSTER International Association (hereinafter referred to as the Association), an association incorporate under the laws of Spain, with registered office at Paseo Mikeletegi nº 59, Donostia-San Sebastián (Gipuzkoa-Spain).

Represented by its Chairperson, Mr/Ms [*].

AND

Natural Person
Full name / Address

PREAMBLE

- A. Whereas an Eureka Cluster has been set up on advanced manufacturing, SMART EUREKA being a cluster in the frame of EUREKA.
- B. Whereas the Association has been implemented for performing the SMART EUREKA cluster on advanced manufacturing, the Association including a Board and a Technical Committee composed of representatives of the Board members and SMART EUREKA members.
- C. Whereas the Parties will, within the contemplated Association and as members of the Board and/or the Technical Committee, exchange confidential information or receive confidential information from third parties submitting proposals for R&D projects, the information being disclosed for the purpose of the evaluation and selection of the projects applying for the SMART Label (hereinafter referred to as the "Purpose"), and the Parties intend to define the conditions under which the Confidential Information shall be treated.

Confidential Information shall mean:

- any type of information, whether oral or written and whatever its form and medium that a Party or as the case may be third parties disclose(s), whether directly or indirectly, to another Party relating to the evaluation and selection of the projects applying for the SMART Label.
- any information relating to this Agreement.

Confidential Information may be disclosed in any form such as written, oral, on a magnetic support or by direct vision and need not be marked "confidential" by the Disclosing Party to fall within the coverage of this Agreement.

- D. Whereas the Parties are hereinafter referred to as the "Receiving Parties" or respectively the "Disclosing Parties" when they receive or respectively disclose certain Confidential Information as described in paragraph C above.

NOW, THEREFORE, EACH PARTY HERETO AGREES AS FOLLOWS

12. PROTECTION OF CONFIDENTIAL INFORMATION

1.1 Each Receiving party agrees:

- a. except in accordance with the Disclosing party's express written consent, not to disclose Confidential Information to any third person, not to allow, nor to facilitate the disclosure, publication or the diffusion of such Confidential Information, and not to use Confidential Information for any purpose other than the Purpose. The Term "third person" does not include any Affiliated Company of the Receiving party;
- b. that the Confidential Information will be received only by the members of the Board and the Technical Committee and any other person designated hereto by the Board,
- c. to disclose the Confidential Information exclusively to the members of the

Board and the Technical Committee and any other person designated by the Board who have a need to know the Confidential Information solely for the Purpose, and who are bound by the terms of this Agreement or are already bound by confidentiality obligations substantially similar to those set forth in this Agreement,

- d. to ensure that a standard of strict confidentiality is applied by it aimed at preventing any disclosure of such Confidential Information to unauthorized third persons, and to take all steps and procedures that are at least the equivalent of those utilized with respect to its own confidential information, but in no event less than reasonable care.
- e. not to make any copy or reproduction of the Confidential Information, except those that are strictly necessary to carry out the Purpose. Any and all copies made according to the aforementioned sentence shall be marked or designated "confidential".
- f. to return or destroy the Confidential Information received in any tangible form upon the first written request of the Disclosing Party and to retain no copies or reproductions in whatever form. The Receiving Party shall confirm that destruction to the Requesting Party in writing. Ownership in all documents and/or other physical records or materials exchanged pursuant to this Agreement shall remain with the Disclosing Party.

If the Receiving Party is required by law (pursuant to legal proceedings, subpoena, or other similar process) to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party in writing and cooperate with the Disclosing Party so the Disclosing Party may seek a protective order or other appropriate remedy.

It shall be at the discretion of the Disclosing Party as to which of its information may be disclosed under this Agreement.

13. EXCEPTIONS

Each Receiving party shall not be obliged to treat information as Confidential Information if such information:

- 2.1** was legally in its possession without any obligation of confidentiality, before disclosure by the Disclosing party;

2.2 was or falls into the public domain, other than by breach of this Undertaking;

2.3 is disclosed to the Receiving party without any restriction regarding confidentiality from a source not under the Disclosing party's control, and without any violation of confidentiality obligation under this Undertaking;

2.4 is independently developed by employees of the Receiving party who have not received the Confidential Information;

The Party invoking one of these exceptions shall have the burden of proving that such exception is acceptable.

The Receiving Party shall not be relieved of its obligations of confidentiality because any Confidential Information is embraced by more general information that falls within any one or more of the above mentioned exceptions, nor shall any combination of items of Confidential Information be deemed to be within the exceptions merely because individual items of information are within such exceptions.

14. LIABILITY; NO FURTHER OBLIGATION OR LICENSE

3.1 Neither Party makes any representation or warranty concerning the accuracy nor completeness of any information disclosed, directly or indirectly, and shall not be liable for any loss or damage arising from the use of Confidential Information by the other Party.

3.2 Disclosure of Confidential Information pursuant to this Undertaking in no case shall be construed as granting to the Receiving party, expressly or implicitly, any license, proprietary right, title or interest whatsoever with respect to the Confidential Information.

15. TRANSFER OF RIGHTS

Neither Party may assign any of its rights or delegate any of its obligations under this Agreement except with the prior written consent of the other Party.

16. DURATION

5.1 This Undertaking shall enter into force with effect as of ***[date of signature of this agreement]*** .

5.2 Notwithstanding termination or expiration of this Undertaking, the restrictions with respect to the use and disclosure of the Confidential Information set forth in Section 1 shall remain in force and shall be binding upon each Receiving party until five years after the date of its first disclosure to it by the relevant Disclosing party.

17. GOVERNING LAW AND COMPETENT JURISDICTION

THIS UNDERTAKING SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF SPAIN.

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

Any dispute that cannot be settled in that way shall be of the sole and exclusive jurisdiction of the courts of law of Donostia-San Sebastián (Spain).

THIS UNDERTAKING is concluded, respectively declared, in the English language. In any case of translation into other languages the English language shall prevail.

18. GENERAL PROVISIONS

7.1 This Undertaking constitutes the entire Undertaking of the Parties hereto with respect to the Confidential Information exchanged or received pursuant to the Purpose; it cancels and supersedes all prior or contemporaneous understandings and undertakings of the Party whether written or oral relating to the same matter.

7.2 This Undertaking shall not be amended nor modified, except by a written document signed by authorized representatives of the Parties.

7.3 This Agreement is binding upon the Parties and their successors and any permitted assigns.

7.4 If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

In witness hereof, the parties here to have executed this Agreement as of the Effective Date.

READ, UNDERSTOOD AND AGREED BY:

SMART EUREKA Name and title: Represented by _____	NaturalPerson Name and title: Represented by _____
Date: Signature:	Date: Signature: