

**EU FP7 Project Green eMotion**

**Memorandum of Understanding**

by and between

**1. ENDESA S.A**

- in the following referred to as "**Green eMotion Demonstration Region Coordinator**"

and

**EMPRESA**

- in the following collectively referred to as "**GreeneMotion Demonstration Region Partner**" -

collectively referred to as "Party" or "Parties"



WHEREAS the objective of Project Green eMotion (the "Project"), a research project to be funded by the European Commission under the 7<sup>th</sup> Framework Program, is to create a framework for green electric mobility in the EU amongst others by connecting and synchronizing different national or regional projects to test the interoperability and scalability of the mobility framework at EU level under real life conditions.

WHEREAS the Project carried out by the Green eMotion Consortium (the "Green eMotion Consortium") of which the Green eMotion Demonstration Region Coordinator is a member will connect several ongoing regional and national electromobility initiatives (the "Demonstration Regions") leveraging on the results and compare the different technology approaches to ensure the best interoperable and consumer friendly solution prevail for the EU single market.

WHEREAS the participating Green eMotion Demonstration Region Partner are willing to support the Green eMotion Project in delivering specific valuable experience and data as well as demonstration opportunities to the Project.

WHEREAS the information received from the Demonstration Region Partners, e.g. their suggestions for technical requirements for the infrastructure development of the Green eMotion framework shall to the extent technically feasible be adequately taken into consideration in the research Project.

This Memorandum of Understanding confirms the following understanding of the mutual present intentions of the Green eMotion Demonstration Region Coordinator and the Green eMotion Demonstration Region Partners:

1. The participating Green eMotion Demonstration Region Partner hereby agree to support the long term development of a standardized electric mobility system in Europe as detailed in this Memorandum of Understanding. Therefore, the Green eMotion Demonstration Region Partner hereby confirms to supply data about regional projects (e.g LIVE initiative, Barcelona EV program...) relating to electric vehicles (the "Data") and to allow the Green eMotion Consortium to use such Data within the context of the Project. "Data" shall mean any information listed in Annex 1 which are owned by the GreeneMotion Demonstration Region Partner as well as copyrights or other intellectual property rights pertaining to such information. These Data will consist of information on core services such as the charging infrastructure, users, pricing and billing as well as information such as vehicle data, battery data and location data, as described in more detail in Annex 1, which may be amended from time to time to adapt it to changed information needs. For avoidance of doubt, the Parties agree that no personal data shall be provided under this Memorandum of Understanding.
2. The participating GreeneMotion Demonstration Region Partner are willing to cooperate in the Project's work by providing the above mentioned Data free of charge. The GreeneMotion Demonstration Region Partner are not legally obliged to provide such Data under this Memorandum of Understanding and shall only transfer such Data which can be disclosed by them without breach of any confidentiality obligations of the Demonstration Region Partners. With respect to Data provided by the Demonstration Region Partner, for the term of this Memorandum of Understanding, the participating GreeneMotion Demonstration Region Partner grant to the Green eMotion Consortium members and their Affiliates (as defined below) a limited, royalty-free, non-transferable, non-exclusive and non-perpetual license to use the Data for the purposes of the Project. This shall include, but is not limited to use the Data for the purposes of demonstration (also to third parties), test and evaluation, development and use of own Project results. For avoidance of doubt, nothing in this Memorandum of Understanding shall be deemed to assume or provide for the transfer of ownership of any intellectual property rights. All intellectual property rights including, without limitation, copyright in



any material provided hereunder, shall vest in and at all times remain vested in the originator of that intellectual property.

3. The participating Green eMotion Demonstration Region Partner hereby represents and warrants that

a) it is the owner of the Data, including all intellectual property rights there under, copyright, patent, trademark, trade secret and other applicable law, and that it has the right to authorize the use of the Data by the Green eMotion Consortium and Affiliates of its members; and

b) the execution of this Memorandum of Understanding by the Demonstration Region Partner does not conflict with any provision of any other agreement, court decision or administrative order binding upon it; and

c) any Data provided hereunder does not infringe any copyright, patent, trademark, trade secret, or other intellectual property right of any third party.

In no event arising from or connected with this Memorandum of Understanding or the information disclosed hereunder shall a party be liable to any of the other parties for any damages, including without limitation special, incidental or consequential damages, except (i) in cases of infringement of third party's intellectual property rights or (ii) where liability is mandatory in cases of willful wrongdoing or gross negligence.

4. The Parties commit to handle Confidential Information confidential and to the extent possible due to the nature of the Confidential Information anonymously "Confidential Information" includes all information, in any form, disclosed to a Party under this Memorandum of Understanding, which the disclosing Party: (i) clearly marks as "Confidential"; or (ii) if disclosed orally, at the time of disclosure the disclosing Party indicates it to be "confidential" and within thirty (30) calendar days reduces it to physical form and marks it as "Confidential". Confidential Information received hereunder

(a) shall be used exclusively for the purposes of the Project, unless otherwise expressly agreed to in writing by the disclosing Party;

(b) shall not be distributed, disclosed, or disseminated in any way or form by the receiving Party to anyone except its or the Green eMotion Consortium members own employees or employees of its consulting firms, who have a reasonable need to know Confidential Information and who must be adequately bound to confidentiality not less stringent than the obligations of this Memorandum of Understanding by their employment agreements or otherwise. At the same terms and conditions and in presence of the "need to know" basis, the receiving Party shall be allowed to disclose Confidential Information to its or the Green eMotion Consortium members Affiliates.

"Affiliate" shall mean each and all companies directly or indirectly owned or controlled by, or directly or indirectly owning or controlling, or under the common control with that Party, for as long as such control/ownership lasts. Ownership or control shall exist through the direct or indirect ownership of more than 50% of the nominal value of the issued equity share capital or of more than 50% of the shares entitling to vote for the election of directors or persons performing similar functions.

(c) shall be treated by the receiving Party with the same degree of care - but not less than a reasonable degree of care - to avoid disclosure to any third party as is used with respect to the receiving Party's own information of like importance which is to be kept confidential.

(d) shall remain the property of the disclosing Party.



5. The obligations set forth in section 4 shall not apply to any Confidential Information, when the receiving Party can evidence that the Confidential Information
- (a) at the time of disclosure is already in, or - without breach of this Memorandum of Understanding by the receiving Party or its Affiliates - becomes part of, the public domain; or
  - (b) was known to the receiving Party or its Affiliates without an obligation of confidentiality prior to the receipt from the disclosing Party, or is independently developed by the receiving Party or its Affiliates ; or
  - (c) is legally obtained by the receiving Party or its Affiliates from a third party without an obligation of confidentiality; or
  - (d) is approved for release by written agreement of the disclosing Party; or
  - (e) is required to be disclosed to comply with a judicial or official order or decree after all available legal remedies to maintain the Confidential Information in secret have been exhausted; provided that advance notice of such judicial action was timely given to the disclosing Party.

Each disclosing Party acknowledges that the receiving Party or its Affiliates may already possess or have developed products or services similar to or competitive with those of the disclosing Party. Without implying or granting any license under any patent and copyright of the disclosing Party, the receiving Party and its Affiliates shall not be in breach of their obligations under this Memorandum of Understanding in the event of any unintentional use of any idea, concept, know-how or technique contained in the disclosing Party's Confidential Information unintentionally retained in the unaided memories of any employee of the receiving Party and its Affiliates who has had legitimate access to the Confidential Information ("Residual Information").

The unavoidable and inherent disclosure of Residual Information by the use, distribution or marketing of any hardware or software product or service into which Residual Information has been incorporated, by the receiving Party or any of its Affiliates, shall not constitute a breach of the receiving Party's or its Affiliates' obligation of non-disclosure relating to such Confidential Information. Neither Party shall have any obligation to limit or restrict the assignment of any persons who had access to Confidential Information or to pay royalties for any work resulting from the use of Residuals.

6. It is understood that this Memorandum of Understanding does not subject the participating Green Emotion Demonstration Regions and the Green eMotion Demonstration Region Coordinator or the Green eMotion Consortium to any duties and liabilities apart from the mutual cooperation described in this Memorandum of Understanding.

This Memorandum of Understanding shall be effective as of 1. January 2011 and shall continue in force from the date of this Memorandum of Understanding, and shall terminate if and on the date that the Project terminates or expires. Each Party to this Memorandum of Understanding may withdraw from it with 30 days prior written notice.

Any licenses granted to a Party hereunder will survive termination until the Project terminates or expires and subject to any access rights necessary to comply with the funding terms of the European Commission.

The rights and obligations of the parties with regard to confidentiality shall, however, survive the termination of this Memorandum of Understanding for a period of three (3) years.

7. Each Party shall bear its own costs for particular agreements and any pre-investments for personnel or materials that may arise.



8. Nothing in this Memorandum of Understanding shall be taken to create any joint venture, partnership or other similar arrangement; the Parties shall at all time stand in relation to each other as independent contractors. No Party is or may hold itself out to any third party as being the agent of any of the others.
9. This text represents the complete and full agreement. No verbal side-agreements exist. Any changes to this Memorandum of Understanding need to be in writing. This also applies to the revocation of requirements for the written form.
10. If one or more of the provisions contained in this Memorandum of Understanding are found by the European Commission or a competent court or authority to be invalid, illegal, or unenforceable in any respect under any applicable law, including competition law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, provided that in such case the Parties oblige themselves to use all commercially reasonable efforts to achieve the purpose of the invalid provision by a new legally valid stipulation that causes the same (or substantially similar) economic benefit or burden.
11. This Memorandum of Understanding is made subject to and shall be interpreted under the laws of Belgium. Any differences or disputes arising from this Memorandum of Understanding or from agreements regarding its performance shall, if not settled by an amicable effort on the part of the parties, be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris. The language of the arbitration shall be English. The place of arbitration shall be Brussels, Belgium. The procedural law of this place shall apply where the Rules are silent.
12. Endesa informs that, in carrying on its business and in management of its relations, it relies on the principles contained in its own Code of Ethics, in the Zero Tolerance Plan as regards corruption and in the Organizational Model, it can be consulted in the corporate web page.

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Date

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Signature Green eMotion Demonstration Region Coordinator  
Sr. D. JOSÉ ARROJO DE LAMO  
ENDESA S.A

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature Green eMotion Demonstration Region Partner

**Poner la fecha**

**NOMBRE DE LA PERSONA  
NOMBRE DE LA EMPRESA**