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CONSORTIUM AGREEMENT FOR INTEGRATED FP 6 PROJECTS



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This AGREEMENT is made on <DD-MM-YY>

BETWEEN

(1) <LEGAL NAME OF PARTY 1 = CO-ORDINATOR>

(2) <PARTY 2>

(2) <PARTY 3>

(4) <PARTY 4>

(5)

(6)

(7)

(8)

(9)

relating to the *Project* entitled

<NAME OF PROJECT> "

WHEREAS:

(A) The *Parties*, having considerable experience in the field concerned, have submitted a *Proposal* for a *Project* entitled

<NAMES OF PROGRAMME and INTEGRATED PROJECT > "

to the *Commission* in <COMPLETE AS APPROPRIATE>

part of the Sixth Research and Technological Development Framework Programme

(B) The *Parties* wish to specify or supplement, between themselves, the provisions of the *Contract*

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Contract Definitions

Words defined in the *Contract* or in the *Contract*, Annex II, Article 1 have the same meaning in this *Consortium Agreement* and appear in italics.

1.2 Additional Definitions

“Affiliate” of a *Party* means:

- (a) any legal entity – which deals with issues, provides services or products that constitute the goal(s), content, or part of the objectives of the *Project* - directly or indirectly controlling, controlled by, or under common control of a *Party*, for so long as such control lasts and provided that the said Affiliate or the ultimate controlling entity is incorporated and resident in, and subject to the law of, a Member State of the Community, or an *Associated State*.

Control of an entity shall exist through the direct or indirect:

- control of fifty (50) percent or more of the nominal value of the issued equity share capital of the entity or of fifty (50) percent or more of the equity's shares entitling the holders to vote for the election of directors or persons performing similar functions, or
 - right by any other means to elect or appoint directors of the entity (or persons performing similar functions).
- (b) any other organisation specified in the agreed schedule to this *Consortium Agreement* to be an *Affiliate* of the *Party*, subject to consent of the other Parties, only to be withheld on the basis of legitimate interest.

“Allocated Work” shall mean the research work and the related activities and services allocated to any of the *Parties* in accordance with *Contract* Annex I and the subsequent *Implementation Plan*.

“Application Programming Interface” means an interface or other means provided for by a Software *application*, component or library for the purpose of interfacing or interaction of other Software with such application, component or library including, but not limited to, data types and structures, constant and macro definitions, function and procedure definitions including their name, parameters, parameter count and parameter data type(s) and any data type of function results thereof, as set forth in header files, specifications and related documentation.

“Common Liability Reserve” shall mean the fund contributed by the Parties and established by in accordance with *Contract Annex II, Article 33* due to financial collective responsibility.

“Compensating Party” means a *Party*, other than the “Defaulting Party”, from whom the *Commission* claims reimbursement due to financial collective responsibility in accordance with *Contract Annex II, Article 33,2*.

“Contract” means the Contract No. **<insert project number>** (including its Annexes) for the undertaking by the *Parties* of the *Project*. *Contract* also means, as applicable, any Contract amendment.

“Defaulting Party” means a *Party* breaching its obligations of this *Consortium Agreement*.

“General Assembly” is the principal decision-making body of this *Project* and shall comprise all *Parties*.

“Implementation Plan” means the annual extrapolation and adjustment of the project plan with respect to work share, changes and budget allocations to be prepared annually for submission to and approval by the *European Commission* in accordance with the conditions of *Contract Annex II*.

“IPR Council” is the court of arbitration with power to decide in disputes between the *Parties* concerning Intellectual Property Rights.

“Joint Budget” is the budget agreed upon for each *Party* for the execution of the complete *Project* defined in *Contract Annex I* and detailed in Annex B of this *Consortium Agreement*.

“Limited Source Code Access” means

- (a) access to *Object Code*; and,
- (b) where normal use of such *Object Code* requires an *API*, access to *Object Code* and such *API*; and,
- (c) if neither (a) nor (b) is available, access to Source Code

“Object Code” means Software in machine-readable, compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other Software.

“Party” or **“Parties”** means a party or the parties to this *Consortium Agreement*.

“Project Co-ordination Committee” means the project management decision-making body established in accordance with Section 5.3.

“Project Deliverables” means reports, including progress reports and certified audit reports, as well as hardware and Software referred to in the Contract and in this

Consortium Agreement that have to be delivered to the Co-ordinator, Sub-project Co-ordinator(s), if any, and/or the Commission).

"Project Share" means for each *Party* that *Party's* share of the total cost of the *Project* as shown in the *Contract* and defined in Annex B (Joint Budget) of this *Consortium Agreement*.

"Proposal" means the proposal for the *Project* submitted by the *Parties* to the *European Commission*, including any amendments.

"Software" means software programmes being sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression.

For the avoidance of doubt, Software may be *Knowledge* or *Pre-existing Know-how*.

"Software Documentation" means software information, being technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software programme.

"Source Code" means Software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.

"Source Code Access" does not include any right to receive Source Code ported to a certain hardware platform, but only as available from the *Party* granting the Source Code Access.

"Steering Committee" the Sub-project decision-making body established in accordance with Section 5.5.

"Sub-project" means any Sub-project created by decision of the General Assembly in accordance with the provisions of this *Consortium Agreement*. These Sub-projects are listed in connection with the work breakdown structure in *Contract* Annex I.

"Sub-project Chairperson" means the *Party* who will carry out the co-ordination tasks and who represents the Sub-project in *the Project Co-ordination Committee*.

1.3 Further Understandings

In order to clarify certain ambiguities appearing in the provisions of the *Contract*, the *Parties* have agreed on the following interpretations:

- (a) **"Indirect utilisation of Knowledge"** in the *Contract's* definition of Use includes, for and on behalf of the *Party* concerned, use by having products and/or services developed, made and/or provided;
- (b) **"Fair and Non-discriminatory Conditions"** means fair market conditions.

Section 2: Purpose, Nature and Duration of the Agreement

2.1 Purpose

The purpose of this *Consortium Agreement* is to facilitate the fulfilment of the research work and related services and activities allocated to the *Parties* under the *Contract* (and as described in more detail in *Contract Annex I*) by setting forth the terms and conditions pursuant to which the *Parties* agreed to function and cooperate in the performance of their respective tasks under the *Contract*.

2.2 Nature of the Agreement

Nothing contained in this *Consortium Agreement* shall constitute or be deemed to constitute either a partnership or any formal business organisation or legal entity between the *Parties*. Each *Party* shall act as an independent contractor and not as the agent of any of the other *Parties*. Nothing contained in this *Consortium Agreement* shall be construed as constituting or organizing the sharing of profits or losses arising out of the efforts of any other *Party* hereunder.

Any participation as a *Party* in this *Project* requires the signature of the *Contract* and of this *Consortium Agreement*.

In case of conflict between this *Consortium Agreement* or parts of it and the *Contract*, the latter will have precedence.

2.3 Duration

This *Consortium Agreement* shall come into force as of the date of its signature by the *Parties*, but shall have retroactive effect from the date of the *Contract Signature* by the Co-ordinator and shall continue in full force and effect until terminated in accordance with Section 15 or until complete discharge of all obligations for carrying out of the *Project* undertaken by the *Parties* under the *Contract* and under this *Consortium Agreement*, whichever is earlier.

Section 3: Project Organisation and Management Structure

3.1 General Structure

The initial organisation structure of the Consortium shall comprise the following:

- (a) **General Assembly** as the ultimate decision-making body of the Consortium,
- (b) **Project Co-ordination Committee** as the supervisory body for the project execution which shall report and be accountable to the General Assembly under the conditions set forth in Section 5.3.
- (c) **Panels** can be established by the *Project Co-ordination Committee* to deal with specific issues or problems, e.g. Technical, Technology or Scientific Panel, Financial Panel, and Exploitation or Dissemination Panel.
- (d) **Steering Committees** as management groups for the Sub-projects. The elected chairpersons are the *Co-ordinators* of the Sub-projects and members of the *Project Co-ordination Committee*.
- (e) **Co-ordinator** is the intermediary to the *European Commission* is authorised to execute the project management, shall report and be accountable to the *Project Co-ordination Committee* (which shall in turn report and be accountable to the General Assembly) under the conditions set forth in Section 5.4.
- (f) **Project Office**, if necessary, established by the *Project Co-ordinator* shall provide the necessary support for day-by-day project management for the *Project Co-ordination Committee* as well as reporting activities to the *European Commission*.

3.2 The Party's Representatives

Each *Party* agrees to nominate representatives to the different decision-making bodies with due authorisation to discuss, negotiate and decide on actions proposed by the *Co-ordinator*, or to accept recommendations made by the bodies within the frame of its responsibilities.

The representatives to the General Assembly should be of senior management level with the authority to commit their organisation to the decisions of the General Assembly. The *Co-ordinator* shall appoint as the chairperson of the *General Assembly* a person of senior executive management level. In addition to chairing the *General Assembly*, the *Co-ordinator's* representative should also chair the *Project Co-ordination Committee* but can delegate this function for regular meetings.

3.3 European Commission Representative

The *European Commission* may participate as an observer at the meetings of the *Project Co-ordination Committee* and General Assembly.

Section 4: Responsibilities of each *Party*

4.1 General Responsibilities

Each *Party* hereby undertakes with respect to other *Parties* all reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under the *Contract* and this *Consortium Agreement*, including in particular the submission to the *Commission* of the deliverables pursuant to the *Contract* Articles 5.3 and 5.4 and Annex II, Article 10.

4.2 Responsibilities towards the Co-ordinator and the *Project Co-ordination Committee*

Each *Party* undertakes reasonable endeavours to supply promptly to the *Co-ordinator* via the Chairperson of the appropriate Steering Committee all such information or documents as the *Co-ordinator* and the *Project Co-ordination Committee* need to fulfil obligations pursuant to this *Consortium Agreement*, the *Contract* and upon request of the *European Commission*.

In particular, as required by the *Contract* Annex II, Article 2(2)c and Articles 3.1 through 3.3 shall be submitted via the *Co-ordinator*.

4.3 Obligations of the Parties towards each other

- (a) Each *Party* undertakes reasonable endeavours:
- to notify the *Co-ordinator* via the appropriate Sub-project chairperson each of the *Parties* promptly of any significant problem and delay likely to affect the success of the *Project*;
 - to inform other *Parties* of relevant communications it receives from third parties in relation to the *Project*.
- (b) Each *Party* shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies hereunder or under the *Contract* and promptly to correct any error therein of which it is notified. The recipient *Party* shall be entirely responsible for the use to which it puts such information and materials.
- (c) In addition to the obligations specified in the *Contract* Annex II, Article 20, each *Party* agrees not to use knowingly, as part of a deliverable or in the design of such deliverable or in any information supplied hereunder or under the *Contract*,

any proprietary rights of a third party for which such *Party* has not acquired the right to grant licences and user rights to the other *Parties* in accordance with the *Contract*, unless all of the other *Parties* have accepted such use in writing, such acceptance not to be unreasonably withheld.

Section 5: Authority and Obligations

5.1 The General Assembly

5.1.1 Responsibility

The decisions of the *General Assembly* are legally binding to all *Parties* in the *Project*-related matters described in Article 5.1.2.

In the remaining cases, the *Project Co-ordination Committee* has the authority to make decisions.

5.1.2 Decisions

The *General Assembly* decides on matters relating to:

- the preparation and final approval of the annual *Implementation Plan* prior to the submission to the *European Commission*,
- all budget-related matters,
- the acceptance of new parties as well as the exclusion of *Parties*,
- the structure and restructuring of the Sub-projects,
- the alteration of the *Consortium Agreement*,
- the premature completion/ termination of the *Project*, and
- the designation of the Trustees in accordance with Section 6.2 of this Consortium Agreement

5.2 General Assembly Meetings

5.2.1 Members

All *Parties* shall be entitled to send one voting representative to the *General Assembly*.

5.2.2 Preparation and Organisation of the Meetings

The Chairperson of the *Project Co-ordination Committee* shall provide an agenda to all the *Parties* not later than 21 days in advance of the relevant *General Assembly* meeting. The agenda must give full details and background to any proposed decision. No decision may be made in relation to any matter not mentioned in the agenda unless

agreed by unanimous consent of all the *Parties* present, or duly represented by proxy at a valid *General Assembly*.

The *General Assembly* shall be formally convened and chaired by the *Co-ordinator's* representative.

5.2.3 Ordinary Meetings

Ordinary meetings of the *General Assembly* shall be convened at least once a year, on which occasion the *General Assembly* shall consider the report of the *Project Co-ordination Committee*, receive and approve the accounts for the past (financial) year, approve the budget and *Implementation Plan* for the next (financial) year and decide on changes in work shares as well as acceptance of new parties or withdrawals or exclusion of parties.

5.2.4 Extraordinary Meetings

Extraordinary meetings of the *General Assembly* may be convened either by the Chairperson or at the request of a quarter (25 percent) of the Sub-projects or on request of the majority of the *Parties*.

5.2.5 Rules of Voting

Ordinary and extraordinary meetings of the *General Assembly* shall constitute a quorum if more than fifty (50) percent of the *Parties* are present or duly represented by proxy.

A double majority is required for all decisions mentioned above on the basis of the majority of the project shares and the majority of the *Parties*.

Project share votes will be allocated on the basis of one vote for each 50,000 Euro project share, but each Party will be allocated at least one vote.

Decisions relating to issues listed in Section 5.1.2 need a majority of seventy-five percent (75%) of the project share votes as well as two thirds (2/3) of all *Parties*.

A *Party* may issue its veto only in the case of a decision to accept a new party in the Consortium if a substantial threat to its commercial or strategic interests is likely to exist which cannot be resolved by any other measure.

5.2.6 Minutes of Meetings

Minutes of the meetings of the *General Assembly* shall be submitted to all *Parties* without delay. The minutes shall be considered as accepted by the *Parties* if, within fifteen (15) calendar days from receipt, no *Party* has objected in a traceable form to the *Co-ordinator*.

5.2.7 Kick-off Meeting

The first meeting of the General Assembly (Kick-off Meeting of the Project) will take place at the latest one month after the *Co-ordinator* has signed the *Contract*. The structure of the *Project* including the partition of the Sub-projects must be confirmed by the General Assembly. Subsequently at this meeting each Sub-project shall elect its chairperson who represents the Sub-project in the *Project Co-ordination Committee*.

5.3 Project Co-ordination Committee

5.3.1 Kick-off

Within seven (7) days after *the Kick-off Meeting*, the *Project Co-ordination Committee* shall convene. The *Project Co-ordination Committee* shall be chaired by the *Co-ordinator's* representative. The chairpersons of the Steering Committees are members of the *Project Co-ordination Committee*.

Each representative shall have a named deputy.

5.3.2 Relation to the General Assembly

Under the control of, and in compliance with the decisions of the General Assembly, the *Project Co-ordination Committee* shall co-ordinate the *Project*. The *Project Co-ordination Committee* assumes overall responsibility towards the *General Assembly* for liaison between the *Parties* for analysing and approving the results generated under *Steering Committees* and/or Panels.

5.3.3 Panels

The *Project Co-ordination Committee* shall have the right to set up Panels to advise and support it in the proper management and co-ordination of the *Project*. These Panels have an advisory role only.

5.3.4 Meetings

The *Project Co-ordination Committee* shall meet quarterly. Extraordinary meetings may be called at any other time at the request of its chairperson or by one (1) of the Sub-projects. Meetings shall be convened by the chairman with at least fifteen (15) calendar days` prior notice including an agenda.

5.3.5 Responsibilities

The *Project Co-ordination Committee* shall be responsible for:

- (a) supporting the *Co-ordinator* in fulfilling obligations towards the *European Commission*,
- (b) ensuring that all work meets functional requirements,
- (c) providing project management in relation to the activities of the Panels on technical, financial and/or exploitation/ dissemination issues, as applicable,
- (d) reviewing and proposing to the General Assembly budget transfers in accordance with the *Contract* and the annual Implementation Plan,
- (e) proposing changes in work sharing, budget and participants to the General Assembly,
- (f) deciding on the annual Implementation Plan for approval by the *General Assembly* prior to its submission to the *European Commission*,
- (g) making proposals to the *Parties* (other than a *Defaulting Party*) to serve notices on a *Defaulting Party* in accordance with Section 8.3 and to assign the *Defaulting Party's* tasks to specific entities,
- (h) agreeing on press releases and joint publications (without prejudice to Section 12) by the *Parties* with regard to the *Project*, and
- (j) agreeing (without prejudice to Section 12) on procedures and policies in accordance with the *Contract*, Article 10 for Dissemination of *Knowledge* from the *Project* which is not to be used by the *Parties*.

In the case of Section 5.3.5. (g), the decision shall be taken unanimously by all of the non-*Defaulting Parties*.

Any decision requiring a vote at a *Project Co-ordination Committee* meeting must be identified as such on the pre-meeting agenda, unless there is an unanimous agreement to vote on a decision at that meeting and three-quarters of the members of the *Steering Committee* are present or represented.

Minutes of the meetings shall be transmitted to the members of the *Project Co-ordination Committee* without delay. The minutes shall be considered as accepted, if within fifteen (15) calendar days from receipt no member has objected in a traceable form to the *Co-ordinator*.

The *Project Co-ordination Committee* may in extraordinary cases take decisions through its chairperson consulting with all members via teleconference and/or via email, phone etc. These decisions must be ratified by an ordinary meeting.

5.4 Co-ordinator

5.4.1 Rights and Obligations

The *Co-ordinator* is the single point of contact between the *European Commission* and the *Consortium*.

In this function the *Co-ordinator* shall

- (a) sign the *Contract* with the *European Commission* after authorisation by the *Parties* representing at least eighty percent (80%) of the Project Shares and who have signed the Contract form and *Consortium Agreement*,
- (b) collect from all *Parties* the cost and other statements for submission to the *European Commission*,
- (c) prepare, with the support of the members of the *Project Co-ordination Committee*, the reports and project documents required by the *European Commission*, and
- (d) ensure prompt delivery of all hardware, Software and data identified as deliverable items in the *Contract* or requested by the *European Commission* for reviews and audits, including the results of the financial audits prepared by independent auditors.

5.4.2 Responsibilities of the Co-ordinator

Pursuant to the *Contract*, the *Co-ordinator* is responsible for the following tasks and functions

- (a) overall management of the *Project* with the support of a Project Team, if necessary, and
- (b) chairing the *Project Co-ordination Committee* and the General Assembly, and
- (c) preparation of the meetings and decisions of the General Assembly and the *Project Co-ordination Committee*.

5.4.3 No power of representation

Except in its capacity as the representative of the *Parties* described in the *Contract*, Annex II, Article 2.1d), the *Co-ordinator* shall not be entitled to act or to make legally binding declarations on behalf of any other *Party*.

5.4.4 Submitting Deliverables

If one or more of the *Parties* is late in submitting of *Project* deliverables, the *Co-ordinator* may submit the other *Parties' Project* deliverables to the *European Commission*.

5.4.5 Specific Authorisation of the Co-ordinator

- (a) To the extent that serious concerns regarding the financial soundness of one or several *Parties* exist, the *Co-ordinator* has the authority to require the appropriate letter of comfort to prove that the corresponding *Party* is able to fulfil their financial obligations with regard to the *Contract* and this Agreement. Until this is provided, the *Co-ordinator* is entitled to refuse the disbursement of the financial contributions of the *European Commission* to this *Party*.
- (b) Furthermore, the *Co-ordinator* has the right to retain any payment if a *Party* is late in submitting or refuses to provide deliverables as defined in Section 4.3 of the *Consortium Agreement* and Contract Annex II, Article 10.
- (c) If one or more of the *Parties* is late in submitting of *Project* deliverables, the *Co-ordinator* may submit the other *Parties' Project* deliverables to the *European Commission*.

5.5 Steering Committees

5.5.1 Structure

To facilitate the organisation and management, the *Project* is structured in Sub-projects which together comprise the *Project*. This structure is approved by the General Assembly based on the work breakdown structure provided with the Work Plan in Annex I of the *Contract*.

The *Parties* shall establish a Steering Committee for each Sub-project, with one representative of each *Party* performing work under the appropriate Sub-project.

Each Steering Committee shall nominate a Chairperson to represent the Steering Committee in the *Project Co-ordination Committee* and to coordinate the work package work.

5.5.2 Responsibilities

Each Steering Committee and Panel shall be responsible for its own organisational arrangements, work procedures and time schedule, providing that such arrangements, work procedures and time schedule do not conflict with this *Consortium Agreement*, the *Implementation Plan*, or requests made by the *Co-ordinator*, the *Project Co-ordination Committee* or the *European Commission*.

Section 6: Costs - Payment

6.1 General Principle

Each *Party* shall bear its own costs incurred in connection with the performance of the *Contract* and this *Consortium Agreement*, carrying out of the *Project* work and implementation of the *Project*.

6.2 Common Liability Reserve

The *Co-ordinator* shall receive all payments made by the *European Commission*.

The *Co-ordinator* shall withhold five percent (5 %) of all advance payments made by the Commission as a Common Liability Reserve to cover the financial liabilities in accordance with *Contract* Annex II, Article 33. The reserve shall be released in part or as a whole to the Parties by the Trustees in accordance with Section 8.3.2 of the *Consortium Agreement* when the General Assembly has unanimously decided that there is no further need for precaution with regard to financial risks, or when the *European Commission* has accepted all deliverables and costs whichever is earlier.

Except for the part of the advance payments withheld for the Common Liability Reserve, the *Co-ordinator* will transfer, in accordance with the *Contract* and the budget allocation decided by the General Assembly, the appropriate sums to the respective *Parties* with minimum delay, but not later than thirty (30) calendar days from the receipt thereof from the *European Commission*. The *Co-ordinator* shall notify each *Party* promptly of the date and amount transferred to its respective bank account, as listed in Annex C, and shall give the relevant references.

The *Co-ordinator* undertakes to keep advance payments allocated by the *Contract*, Annex B of the *Consortium Agreement* or by budget allocation in accordance with a decision of the *General Assembly* to a Joint Budget, in a trust account separated from its normal business accounts and his own assets and property. Such separation shall

be made by means of, but not limited to, a notary public deposit or similar deposit provided for in the national laws and regulations of the country where the money is deposited in a trust account which means have been decided upon by the General Assembly.

The General Assembly shall designate two Parties, who shall act together with the Co-ordinator as the Trustees. Any disposition regarding the Joint Budget shall be made by at least two of the three Trustees together in accordance with this *Consortium Agreement* and /or any directions given by decision of the General Assembly.

Any costs incurred by the deposit of the Joint Budget shall, if not reimbursed as management costs by the Commission, be borne by the Parties in accordance with their Project Share. *The Co-ordinator* may withhold the deposit costs to be borne by a *Party* from the advance payment.

Section 7: Confidentiality

7.1 Principles

With respect to all information of whatever nature or form as is

- (a) disclosed to a *Party* in connection with the submission to the *Commission* of a proposal for a project under the Sixth Framework Programme pending the signing of the *Contract*;
- (b) disclosed to a *Party* in connection with the *Project* after the signing of the *Contract*, but which
 - (i) is clearly marked "confidential";
 - (ii) if disclosed orally, was at the time of disclosure indicated to be "confidential" and within thirty (30) calendar days reduced to physical form and marked "confidential" by the discloser; or
 - (iii) is obviously of a confidential nature.

7.2 Obligations

Each *Party* agrees that such information is communicated on a confidential basis and its disclosure may be prejudicial to the owner of the information, and undertakes that:

- (a) it will not during a period of five (5) years from the date of disclosure to the *Party* use any such information for any purpose other than in accordance with the terms of the *Contract* and of this *Consortium Agreement*; and
- (b) it will during the period of five (5) years treat the same as (and use reasonable endeavours to procure that the same be kept) confidential and not disclose the same to any other third party without the prior written consent of such owner in each case; provided always that:
 - (i) such agreement and undertaking shall not extend to any information which the receiving *Party* can show:
 - (1) was at the time of disclosure to the *Party* published or otherwise generally available to the public, or
 - (2) has after disclosure to the *Party* been published or become generally available to the public otherwise than through any act or omission on the part of the receiving *Party*, or
 - (3) was already in the possession of the receiving *Party*, without any restrictions on disclosure, at the time of disclosure to the *Party*, or

(4) was rightfully acquired from others without any undertaking of confidentiality, or

(5) was developed independently of the work under the *Contract* by the receiving *Party*.

7.3 Communication of Information

Each *Party* agrees that nothing shall prevent the communication of information

- (a) as is needed to be communicated to comply with applicable laws or regulations or with a court of administrative order provided that insofar as reasonably possible the complying *Party* shall have informed the owner of the information of such need and shall have complied with such owner's reasonable instructions designed to protect the confidentiality of such information;
- (b) subject to Section 7.2, to any *Affiliate* or to any other third party (including the Commission) insofar as needed for the proper carrying out of the *Contract* and/or this *Consortium Agreement*;
- (c) subject to Section 7.2, to any third party (including to the public) as strictly needed for technical reasons and insofar as needed for proper *Use* of *Knowledge* from the *Project*.

7.4 Confidentiality towards third parties

With respect to any permitted communication of any of the information referred to in Section 7.1 by the recipient *Party* to a third party (including but not limited to its *Affiliates*) such *Party* will use reasonable endeavours to procure due observance and performance by such third party of the undertakings referred to in Section 7.2, (a) and (b) and all relevant undertakings in the *Contract*.

Section 8: Liabilities

8.1 Liability of the Parties towards each other

In respect of information or materials provided by one *Party* to another hereunder or under the *Contract*, the supplier *Party* shall be under no obligation or liability other than as stated in Section 4.3 (b) and no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or appropriateness for purpose of such information or materials, or, subject to Section 4.3 (c), the absence of any infringement of any proprietary rights of third parties by the use of such information

and materials and the recipient *Party* shall in any case be entirely responsible for the use to which it puts such information and materials.

8.2 Indemnification in the event of claims between the Parties, without Commission claims

Each Party shall indemnify each of the other Parties in respect of acts or omissions of itself and of its employees, agents and subcontractors provided always that such indemnity shall not extend to claims for indirect or consequential loss or damages such as, but not limited to, loss of profit, revenue, contract or the like and provided that the total limit of liability of that Party to all of the other Parties collectively in respect of any and all such claims shall not exceed twice that *Party's Project Share* - any excess shall be apportioned between all the Parties pro rata to their Project Shares.

8.3 Indemnification in the event of claims from the Commission

8.3.1 Indemnification by the Defaulting Party

In any case where the Commission claims reimbursement in accordance with the *Contract Annex II, Article 33.2*, from *Parties* other than the Defaulting *Parties*, the Compensating *Parties* shall be entitled to seek full indemnification by the Defaulting *Party*.

8.3.2 Indemnification from the Common Liability Reserve

If and to the extent that the Defaulting *Party* is obviously not able or willing to fulfill its obligations under Section 8.3.1 the Compensating *Party* shall be indemnified with money from the Common Liability Reserve. However, with respect to the internal compensation the Parties accept that the respective Sub-project(s) to which the Defaulting Party is involved shall have the priority obligation to indemnify the Compensating Party. Therefore, at the first instance the amount withheld from these Parties being involved in the same Sub-project(s) of the Defaulting Party shall serve as Liability Reserve.

If and to the extent that such indemnification or the indemnification from the total amount of the Common Liability Reserves does not cover full indemnification, the Compensating *Party* shall be entitled to seek the remaining indemnification from the other Parties in accordance with their share of the Project budget, limited however to the amount received by such Party from the Commission, including the amount withheld for the Common Liability Reserve.

The Compensating Party benefiting from the Common Liability Reserve in accordance with this Section shall assign its claim against the Defaulting Party to the other *Parties*. As far as it is legally and economically reasonable, the *Consortium* represented by the *Co-ordinator* shall be entitled to seek indemnification from the Defaulting *Party*.

8.4 Liability towards Third Parties

Subject always to such other undertakings and warranties as are provided for in this *Consortium Agreement* and the *Contract*, each *Party* shall be solely liable for any loss, damage or injury to third parties resulting from the execution of its assigned tasks in the project and from its *Use of Knowledge* and/or *Pre-existing Know-how*.

8.5 Third Parties

- (a) each *Party* shall be fully responsible for the performance of any part of its share of the *Project*, or other *Contract* obligation, in respect of which it enters into any contract with a third party (e.g. a *Subcontractor*) and shall ensure
- (i) such contracts enable fulfilment of the *Contract*;
 - (ii) the other *Parties' Access rights* are the same as would have been the case had the contracting *Party* performed its share of the *Project* and/or those obligations itself; and
 - (iii) the third party shall not have access to any other *Party's Knowledge* or *Pre-Existing Know-How* without that *Party's* prior written consent.
- (b) each *Party* shall inform the *Co-ordinator* or Sub-project *Co-ordinator* in writing, as applicable, asking for a decision of the General Assembly or Sub-project Steering Committee, as applicable, if it intends to enter into a contract with a third party (giving the rationale therefore) if such an event has not been detailed in the *Contract Annex I* and the contract is other than for less than ten (10) percent of its share of the *Project*.
- (c) each *Party* hereby grants *Access rights* to all *Affiliates* of any other *Party* as if such *Affiliates* were *Parties*, provided all such *Affiliates* grant *Access rights* to all *Parties* (and their *Affiliates*) and (without prejudice to the *Parties'* obligations to carry out the *Project* and to provide *Project Deliverables*) fulfil all confidentiality and other obligations accepted by the *Parties* under the *Contract* or this *Consortium Agreement* as if such *Affiliates* were *Parties*.
- (d) each *Party* shall ensure that it can grant *Access rights* and fulfil the obligations under the *Contract* notwithstanding any rights of its employees, or persons it

engages to perform part of its share of the *Project*, in the *Knowledge* or *Pre-existing Know-how* they create after the Project Commencement Date.

8.6 Defaults and Remedies

8.6.1 Principles

A *Party* in default of its obligations under the *Contract* and which default causes lawful withholding of payments by the *Commission* to other *Parties*, shall pay to the other *Parties* interest on the amount withheld at an annual rate equal to one (1) percentage point above the prime rate of interest on overdrafts charged according to the Euro Interbank Rate (EURIBOR) on the last working day before the *Commission* informed the other *Parties* of such withholding or on the last working day before which the *Parties* or the *Co-ordinator* became aware of such withholding (whichever was earlier). Such interest shall accrue on a daily basis until the *Commission* has effectively transferred the withheld amount to the *Co-ordinator*.

8.6.2 Procedure and Consequences

In the event of a breach by a *Party* (Defaulting *Party*) of its obligations under this *Consortium Agreement* or the *Contract* which is irremediable or which is not remedied within thirty (30) calendar days of a written notice from the *Co-ordinator* according to the decision of either the Steering Committee of a Sub-project or the *Project Co-ordination Committee*, requiring that such breach be remedied, then the other *Parties* in the General Assembly may jointly decide to terminate this *Consortium Agreement* with respect to the Defaulting *Party* following a minimum of 30 calendar days prior to written notice by the *Co-ordinator*.

Such termination shall take place with respect to the Defaulting *Party* and the latter shall be deemed to have agreed to the termination of the *Contract* in respect of its participation therein under the general provisions of *Contract Annex II, Article 7*, as the other *Parties* and/or the *European Commission* shall decide provided always that

- (a) any and all *Access rights* granted to the Defaulting *Party* and its *Affiliates* by the other *Parties* as well as under the *Contract*, shall cease immediately; but any and all *Access rights* granted by the *Defaulting Party* to the other *Parties* and their *Affiliates* shall remain in full force and effect;
- (b) the Work Package of the Defaulting *Party*, shall be assigned to one or several companies and/or entities which are chosen by the other *Parties*, are acceptable to *European Commission* and who agreed to be bound by the

terms of this *Consortium Agreement*.

The preference shall be granted to one or more of the remaining Parties.

(c) the Defaulting Party shall:

- (i) assume all reasonable direct costs increase (if any), resulting from the assignment referred to in (b) above in comparison with the costs of the Work Package of the Defaulting Party as specified in the *Contract Annex I* and Annex B of this *Consortium Agreement*, and
- (ii) be liable for any so resulting additional direct cost caused to the other Parties, up to a total amount which, together with any liability to the *European Commission* under the *Contract Annex II*, Article 33, will not exceed the total Project Share.

Section 9: Force Majeure

Each *Party* will notify the other *Parties* in writing of any “Force Majeure” or *Force Majeure* as soon as possible. The *Parties* shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such *Force Majeure* event is not overcome within 6 weeks after such notification, the transfer of tasks shall be carried out.

Section 10: Intellectual Property Rights

10.1 General Provisions

The *Parties* agree to respect their individual *Intellectual Property Rights*.

10.2 Protection of Knowledge

10.2.1 Joint Invention

If, in the course of carrying out work on the *Project*, a joint invention, design or work is made - and more than one *Party* is contributor to it - and if the features of such joint invention design or work are such that it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining the relevant patent protection or any other *Intellectual Property Right*, the *Parties* concerned agree that they may jointly apply to obtain and/or maintain the relevant right together with any other parties.

The *Parties* concerned shall seek to agree amongst themselves arrangements for applying for, obtaining and/or maintaining such right on a case-by-case basis. So long

as any such right is in force, each *Party* concerned shall be entitled to use and to license such right without the, consent of the other *Parties*. In case of licensing to third parties, appropriate financial compensation shall be given to the other *Parties* concerned.

10.2.2 Application for a Patent

In respect of a country either specified by the *Commission* or agreed upon by the *Parties*, a *Party* shall notify the other *Parties* (via the *Co-ordinator*, if this is practical) if it does not intend to seek adequate and effective protection (as required by the *Contract*) of certain of its *Knowledge* from the *Project* or if that *Party* intends to waive such protection.

If another *Party* (or *Parties*) informs the notifying *Party* in writing within one calendar month of such notice that it wishes to obtain or maintain such protection, the notifying *Party* shall assign to such other *Party(ies)* all necessary rights which it owns.

Such assignment shall ensure that the *Access rights* of all *Parties* will be unaffected except that the *Parties* shall not enforce the resultant rights acquired pursuant to the assignment against the *Party* which assigned its rights, nor against such *Party's Affiliates* or licensees under the assigned rights. For the avoidance of doubt, the *Party* which assigned its rights shall have at least the same *Access rights* as the non-involved *Parties*.

In case of any disputes, the *Parties* may appeal the IPR Council according to Section 16.2.

10.3 Access-rights

10.3.1 Restrictions of Access-rights

In accordance with *Contract* Annex II, Article 19, each *Party* has the right to exclude specific *Pre-existing Know-how* from the other *Parties'* access, as far as the restrictions are announced as described hereinafter before the signature of the *Contract* or before the effective joining of a new party.

The procedure comprises the following steps:

- The *Co-ordinator* shall first be informed by the owning *Party* in writing about the type and scope of *Pre-existing Know-how* for which exclusion from access is requested or announced,

- The *Co-ordinator* will inform the other *Parties* about such requests or announcements.
- The exclusion from access to *Pre-existing Know-how* will become effective in accordance with Annex II, Article 19, subject to the written contradiction of the other *Parties* to be substantiated in accordance with Annex II, Article 19,
- In case a *Party* objects to exclusion from access to *Pre-existing Know-how*, the *Party* seeking to exclude access must petition the IPR-Council to decide whether the exclusion can take effect. Until a decision of the IPR Council is taken, access to *Pre-existing Know-how* is regarded as denied.
- In the event that a new *Party* is admitted to the *Project*, any other *Party* may exclude access to *Pre Existing Know-how* only to the newly admitted *Party*.
- the *Pre-existing Know-how* originally excluded from access or excluded at any later moment or any modification thereof will be listed in Annex D and become part of this *Consortium Agreement*.

10.3.2 General Principles relating to Access-rights

All *Access rights* granted in accordance with this Section are granted on a non-exclusive basis, expressly exclude any rights to sub-license and shall be made free of any transfer costs.

Access rights shall be granted in accordance with and subject to the *Contract Annex*, Article 19. *Knowledge* and *Pre-existing Know-how* shall be used only for the purposes for which *Access rights* to it have been granted and only for so long as is necessary for those purposes.

In relation to the granting of *Access rights* "needed" or "need" shall mean that, without the grant of such *Access rights*:

- in the case of *Access rights* granted for the execution of the *Project*, carrying out the tasks assigned to the recipient *Party* under the Execution Plan (as amended from time to time) would be impossible, significantly delayed, or require significant additional financial or human resources.
- in the case of *Access rights* granted for *Use*, the *Use* of a defined and material element of the recipient *Party's* own *Knowledge* would be technically or legally impossible.
- The burden of proof in relation to a claimed need for *Access-rights* shall be on the receiving *Party*. Where *Access rights* are deemed to have been granted, the receiving *Party* shall provide such proof to the granting *Party* within 30 days

of receipt of a written request. Subject to the receiving Party acting in good faith, *Access rights* for execution of the Project shall remain in force pending the resolution of any dispute between the Parties over the need for *Access rights*.

- Any grant of *Access rights* not covered by this Section shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.
- The parties shall endeavour to reconcile any dispute concerning the *need for Access-rights* through the *Project Co-ordination Committee*
- If no agreement can be reached, the matter shall be referred to the IPR-Council, whose membership shall comprise persons not involved in the project, and whose decision shall be final and binding on all Parties.

Should the *Project Co-ordination Committee* and/or the *IPR Council* have been already dissolved, the *Parties* concerned shall have recourse to the Settlement of Disputes procedures as provided for in Section 16 of this *Consortium Agreement*.

10.3.3 Access-rights for carrying out the Project

10.3.3.1 Conditions for Access

Access rights to Knowledge and Pre-existing Know-How needed for the execution of the *Project* shall be granted on a royalty-free basis only upon written request specifying the scope and duration of their application particularly with respect to *Pre-existing Know-how*.

10.3.3.2 Entitlement for Use for the Project

After conclusion of an agreement in accordance with Article 25, 1 and 2, of the *Rules for Participation*, the requesting party is entitled to use the *Pre-existing Know-how, Knowledge* or Software for performing the project work. If a *Party* applies *Pre-existing Know-how* of another *Party* without the grant of access, a penalty up to € 50,000 will be charged for the illegal utilisations. The IPR Council will decide on the amount of the penalty.

10.3.4 Access-rights for Use

10.3.4.1 Conditions

Subject to Section 10.3.2, *Access-rights to Knowledge and Pre-existing Know-how* both needed for *Use* shall be granted upon bilateral agreement between the *Parties*

concerned. *Access rights* to *Knowledge* shall be granted on a royalty-free basis, *Access rights* to *Pre-existing Know-how* shall be granted on Fair and Non-discriminatory Conditions. The granting of *Access-rights* shall be made conditional on to the following principles:

- (i) The access to *Pre-existing Know-how* is limited to the field of application being identified as pertaining to the objectives, content and goals of the project and necessary for the use of own *Knowledge* of the recipient Party.
- (ii) The royalty-free access to *Knowledge* is limited to the field of application being identified as the objectives and goals of the project. Outside this identified area, access to *Knowledge* may be granted on market conditions only.
- (iii) subject to (i) and (ii) access has to be granted within 6 months after written request by the potential user to the owning Party. In case access is not being granted within the above-mentioned period, the IPR Council will decide this issue.

The IPR Council also decides on the appropriateness of possible license fees as well as on the conditions for granting access.

- (iv) In accordance with *Contract Annex II, Article 19. 3*, *Access-rights* exist in full scope until 2 years after project completion or in case of prior termination of a certain Party after the time of leaving of such Party. For a further three years period, *Access-rights* are limited to *Knowledge* only, however to be granted between not prematurely leaving Parties and on favourable conditions only.

10.3.4.2 Reimbursements

Any obligation regarding to claims or rights of a third party, including especially rights of employees of the providing Party, resulting from the royalty-free *Access rights* granted by the providing Party must be reimbursed by the receiving Party.

10.3.4.3 Royalties due to Substantial Commercial Benefits

A Party which, having received royalty-free *Access rights* for Use of the *Knowledge* of another Party, and which over the period up to ten years after the end of the *Contract* has derived substantial commercial benefit from the exploitation of such *Access rights* shall, without prejudice to the rights and obligations of the Parties concerned, make a payment or payments to the granting Party reflecting the royalties that would have been payable had the grant of *Access rights* been on *Preferential Conditions*.

10.3.4.4 Access rights for using Knowledge in subsequent Research Activities

Recognising the *Parties'* obligations to act in good faith and in accordance with Section 7.2. b, the *Parties* agree that the *Access rights* for using *Knowledge* in subsequent research activities are to be as follows:

As of the date set out in the *Contract*, Article 2, *Parties* are deemed to be granted, a right to use free of charge *Knowledge* from the *Project* for:

- (a) internal research;
- (b) third-party research, provided the third party does not have direct access to confidential *Knowledge* from the *Project* generated by other *Parties* (as examples - producing research results which are available to the third party but which contain hermetically sealed *Knowledge* from the *Project*; using *Knowledge* from the *Project* for in-house testing or diagnosis purposes in doing research) joint publications.

10.3.4.5 Access-rights for Affiliates

Each *Party* hereby grants *Access rights* to all *Affiliates* of any other *Party* as if such *Affiliates* were *Parties* provided all such *Affiliates* grant *Access rights* to all *Parties* (and their *Affiliates*) and (without prejudice to the *Parties'* obligations to carry out the *Project* and to provide *Project Deliverables*) fulfill all confidentiality and other obligations accepted by the *Parties* under the *Contract* or this *Consortium Agreement* as if such *Affiliates* were *Parties*.

Upon cessation of the control of an *Affiliate*, any *Access rights* granted to such *Affiliate* in respect of *Knowledge* or *Pre-existing Know-how* shall lapse, provided however that information that is *Knowledge* which has been incorporated into the products, processes, software or services of such *Affiliate* or which has been amalgamated with such *Affiliate's* own information may continue to be used (in the manner it was then being used) by such *Affiliate*, if it is not practical to do otherwise. In such an event, at the request of such *Affiliate*, each requested *Party* shall grant to such *Affiliate* non-exclusive licences under that *Party's* intellectual property rights which are *Knowledge* against terms and conditions to be agreed, provided that no *Legitimate Interests* of such *Party* oppose the grant of such licences. Upon such cessation of control, *Access rights* granted by such *Affiliate* shall continue in full force and effect.

10.3.4.6 Access-rights for Parties joining or leaving the Project

Parties joining the Project after the date of the *Contract* will be granted the *Access rights* as from the date of their signature of the Declaration of Accession.

For Parties leaving the Project in accordance with the provisions of Section 8.6.2 hereof, the following will apply:

With the exception of the cases where the participation of a Defaulting Party is terminated, the *Access rights* granted and the obligations to grant *Access rights* pursuant to the Contract and this *Consortium Agreement* shall continue to be in full force and effect.

Defaulting Parties are obliged to continue to grant *Access rights* pursuant to the Contract and this *Consortium Agreement*, but the *Access rights* granted to the Defaulting Party pursuant to this *Consortium Agreement* shall cease immediately upon termination of the participation of the Defaulting Party in the Contract.

Termination of this *Consortium Agreement* and/or cessation of licenses granted to the Defaulting Party in accordance with Section 8.6.2 shall not terminate any sublicenses granted or agreed upon to be granted or offered by the Defaulting Party in accordance with Section 10.3.3 prior to the date on which such termination of this *Consortium Agreement* and/or cessation of licenses becomes effective, provided that the Party or Parties which generated the *Knowledge* or *Pre-existing Know-how* so sublicensed shall have the right to have an assignment of the Defaulting Party's rights under such sublicenses.

Any Party leaving voluntarily from the *Project* has access to *Knowledge* as this exists at the date of the membership expiration of the *Consortium*.

Any party eliminated by decision of the *General Assembly* does not have any access to *Knowledge*.

10.3.4.7 Access-rights for Third Parties

Notwithstanding the provisions of Section 10.3 of this *Consortium Agreement* and the provisions as set out in *Contract* Annex II.19.3, each *Party* may enter into a technical co-operation or licensing arrangement with a third party in respect of its own *Knowledge*, including, but not limited to, the carrying out of research on behalf of a third party, even if there are minor amounts of *Pre-existing Know-how* and *Knowledge* owned by another Party, unavoidably incorporated into or amalgamated with such own *Knowledge*. In such circumstances and upon request of the Party entering into the co-operation or arrangement, the other *Party* shall grant non-exclusive rights to permit

such co-operation or arrangement against terms and conditions to be agreed upon, provided that no *Legitimate Interest* of the other *Party* opposes the grant of such rights.

10.4 Specific Provisions for *Access-rights* to Software

10.4.1 General principles relating to *Access-rights* to Software

For the avoidance of doubt, the general provisions for *Access rights* provided for in Sections 10.3.2 herein are applicable also to Software.

Access-rights to Software do not comprise access to Source Code but only *Limited Source Code Access* as defined below. Access to Source Code will be granted subject to separate agreements only, to be concluded between the *Parties* concerned.

Access-rights to Software do not include any right to receive Source Code or *Object Code* ported to a certain hardware platform or any right to receive respective Software *Documentation* in any particular form or detail, but only as available from the *Party* granting the *Access-rights*.

10.4.2 *Access-rights* to Software for the execution of the *Project*

Access-rights to Software which is *Knowledge* or *Pre-existing Know-how*, needed for the execution of the *Project* shall be granted on the basis of royalty free *Limited Source Code Access* upon written request, specifying the scope and duration of their application particularly with respect to Software which is *Pre-existing Know-how*,

10.4.3 *Access-rights* to Software for Use

Software, which is *Knowledge* or *Pre-existing Know-how* needed for *Use* shall be granted on the basis of *Limited Source Code Access* upon a bilateral agreement between the *Parties* concerned.

Access to Software which is *Knowledge* shall be granted on a royalty free basis. Access to Software which is *Pre-existing Know-how* shall be granted on *Fair and Non-Discriminatory Conditions*. The granting of *Access-rights* shall be made conditional on the same principles as stated in Sections 10.3.4.1 and Article 10.3.4.3 through 10.3.4.7 and shall be applied accordingly.

10.4.4 Software license and sub-licensing rights

(a) *Access-rights* to *Object Code* and/or *Limited Source Code Access* all granted in accordance with Section 10.3.2 and 10.4.1 shall comprise the right:

- (i) to use *Object Code* and Limited Source Code Access in research, or to create and market a product or process, or to create and provide a service; and
 - (ii) to make and have made an unlimited number of copies of *Object Code* and Limited Source Code Access; and
 - (iii) to distribute, make available, market, sell and offer for sale; even by using services of a third party, such *Object Code* and Limited Source Code Access in connection with products or services of the *Party* having the *Access-rights*.
- provided however that,
- (1) any product, process or service has been developed by the *Party* having the *Access-rights* in accordance with its rights to use *Object Code* and Limited Source Code Access for its own *Knowledge*; and
 - (2) *Object Code* and Limited Source Code Access represent only a minor part of the overall product, process or service; and
 - (3) *Object Code* and Limited Source Code Access cannot be separated from and/or have been amalgamated with such product, process or service.

In addition, *Access-rights* to *Object Code* shall comprise the worldwide right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services a perpetual, irrevocable, worldwide license

- to use *Object Code* in connection with or integrated into, products and services of the *Party* having the *Access-rights* and, as technically essential,
- to maintain such product/service, and
- to create for its own end-use interacting interoperable Software in accordance with the Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC).

(b) Where a *Party* has been granted access to Source Code to *Knowledge* according to Section 10.4.1 herein, the Parties concerned may further agree that the *Access-rights* to such Source Code can comprise a worldwide license to use, to make and have made copies, to modify and have modified, develop and have developed, to adapt and have adapted Source Code for research, or to create and market a product or process, or to create and provide a service. In addition, *Access-rights* can comprise the worldwide right to sub-license such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.

(c) Each sublicense granted according to the provisions of this Section 10.4.2 shall when reasonably possible be made by a traceable agreement specifying and protecting the proprietary rights of the *Party* or *Parties* concerned unless otherwise agreed upon in a separate agreement.

10.4.5 Modifications of Software

Unless otherwise agreed, any change or modification on the Software made by the receiving *Party* must be reported with a detailed description immediately to the owning *Party*. In the event a *Party* will not comply with this obligation, which is valid for *Pre-existing Know-how* as well as for *Knowledge*, Section 10.3.3.2 will be applied.

Section 11: Standards

If one of the main explicit objectives of the *Project* is to contribute to the establishment of a particular European standard, the *Parties* hereby agree to make available to third parties, needed licences relating to *Knowledge* and *Pre-existing Know-how* in conformance with the rules of the standards body setting such standard, provided such third party similarly makes needed licences available under its intellectual property rights.

The *Parties* agree that the *Contract* Annex II, Article 13 (2) only refers to actions required by a *Party* in respect of its own information or information which is not subject to any obligation of confidence.

Section 12: Publications, Press Releases and Reports to the Commission

12.1 Publications

For the avoidance of doubt, it is stated that no *Party* shall have the right to publish or allow the publishing of data which constitutes another *Party's Knowledge*, *Pre-existing Know-how* or confidential information, even where such data are amalgamated with such first *Party's Knowledge*, *Pre-existing Know-how* or other information, document or material. Any use of such other *Party's* data justifies, save for further remedies, objection to the publication by the *Party* concerned in accordance with the *Contract* Annex II.15.

12.2 Disclaimer and marking of confidential information provided to the Commission

In addition to the *Contract*, Annex II, Article 12:

- (a) All information provided to the *Commission*, publications and press releases shall have a disclaimer saying "The information in this document is provided as is and no guarantee or warranty is given that the information is fit for any particular purpose. The user thereof uses the information at its sole risk and liability."
- (b) Confidential information provided to the *Commission* will be marked stating the information is confidential and may be used only for information purposes by Community Institutions to whom the *Commission* has supplied it.

12.3 Publication to qualify for a degree

Where a person carrying out work on the *Project* on behalf of a *Party* (the "Relevant *Party*") needs to include *Pre-existing Know-how* or *Knowledge* of another *Party* in a publication to qualify for a degree, approval for use shall be obtained from the appropriate *Party* owning such rights or affected by the use. To ensure that the planned date of publication can be met the approval of the relevant parties shall be sought at least three months before the latest date on which (pursuant to the qualification procedures) the contents of the planned publication can be altered.

However, except as stated below, no such publication will be made under the above procedure -

- (i) without a majority agreement of the *Parties* and
- (ii) provided no *Party* who would be adversely affected by the publication has vetoed such publication.

Notwithstanding the foregoing, such a publication can be made if the Relevant *Party* has as soon as reasonably possible (preferably before submission of the *Project* proposal to the *Commission*, but in any case prior to entering the *Contract* or the *Consortium Agreement* (whichever is the later)) notified in writing the other *Parties* of the intention to make such a publication.

12.4 Information provided to the European Commission

Confidential information provided to the *Commission* will be marked stating that the information is confidential and may be used only for information purposes by Community Institutions to whom the *Commission* has supplied it.

Section 13: No Partnership or Agency

Nothing in this *Consortium Agreement* shall create a partnership or agency between the *Parties* or any of them.

Section 14: Assignment

No *Party* shall, without the prior written consent of the other *Parties*, partially or totally assign or otherwise transfer any of its rights and obligations under this *Consortium Agreement*.

Such consent shall not be unreasonably withheld.

Section 15: Termination

15.1 Rules for Termination

No *Party* shall be entitled to withdraw from this *Consortium Agreement* and/or participation in the *Project* unless:

- (a) that *Party* has obtained the prior written consent of the other *Parties* (such consent not to be unreasonably withheld), and also of the *Commission*, to the withdrawal from, or termination of, the *Contract*; or
- (b) that *Party's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract*, Annex II, Article 7; or
- (c) the *Contract* is terminated by the *Commission* for any reason whatsoever, provided always that a *Party* shall not by withdrawal or termination be relieved from
 - (i) its responsibilities under this *Consortium Agreement* or the *Contract* in respect of that part of that *Party's* work on the *Project* which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
 - (ii) any of its obligations or liabilities arising out of such withdrawal or termination.

15.2 Termination by the European Commission

If any *Party's* participation in the *Contract* is terminated by the *European Commission* pursuant to the provisions of the *Contract*, Annex II, Article 7, or a *Party* withdraws from

the *Project*, then, without prejudice to any other rights of the other *Parties*, the provisions of Sections 4.3(c), 8.6.1, 8.6.2 (a) and (b) shall apply correspondingly.

15.3 Termination due to Bankruptcy or Liquidation

If any *Party* enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors, the other *Parties* shall, subject to approval by the *Commission*, be entitled to take over the fulfilment of such *Party's* obligations and to receive subsequent payments under the *Contract* in respect thereof. In such event all rights and obligations under the *Contract* and this *Consortium Agreement* shall in good faith be redistributed among the remaining *Parties* and the affected *Party* on the basis of the work performed by the affected *Party* prior to the occurrence of the above circumstance.

15.4 Continuance of Regulations

The provisions of Sections 1, 4.3.(c), 7, 8, 10, 11, 15 and 16 shall survive the expiration or termination of this *Consortium Agreement* to the extent needed to enable the *Parties* to pursue the remedies and benefits provided for in those Sections.

15.5 Continuance of Sublicenses

Termination of the *Consortium Agreement* and/or cessation of licences granted to the *Defaulting Party* in accordance with Section 8.6.2 shall not terminate any sublicenses granted or agreed to be granted or offered by the *Defaulting Party* in accordance with Section 10 prior to the date on which such termination of the *Consortium Agreement* and/or cessation of licences becomes effective, provided that the *Party* or *Parties* which generated the *Knowledge* or *Pre-existing Know-how* so sublicensed shall have the right to have an assignment of the *Defaulting Party's* rights under such sublicenses.

Section 16: Settlement of Disputes

16.1 Arbitration

All disputes or differences arising in connection with this *Consortium Agreement* which cannot be settled amicably shall be finally settled by arbitration in Brussels under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators to be appointed under the terms of those rules. In any arbitration in which there are three arbitrators, the chairman shall be of juridical education.

The award of the arbitration will be final and binding upon the *parties* concerned.
The *Parties* may instead elect to resolve by mediation a dispute or difference arising in connection with this *Consortium Agreement* which cannot be settled amicably.

16.2 IPR Council

In accordance to Section 10, the IPR Council can be appealed to by each Party for clarification of controversies or disputes. The decisions of the IPR Council are binding for all parties.

The IPR Council shall comprise three representatives who are not involved in the project and who are neither interconnected nor economically related in any manner with any of the *Parties*. As members are suggested, one representative of each of the European Patent Office, UNICE and/ as well as the IPR Helpdesk. The decisions of the IPR Council need the simple majority.

Section 17: Language

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

Section 18: Notices

Any notice to be given under this *Consortium Agreement* shall be in writing to the addresses and recipients as listed in Annex A in the form

< Name and Address of each *Party*, together with Fax Numbers, and Name/Position of Person(s) for whose attention Notices are to be addressed >

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

Section 19: Applicable Law

This *Consortium Agreement* shall be construed according to and governed by the law provided in the *Contract*, Article 5.

Section 20: Entire Agreement - Amendments

This *Consortium Agreement*, the *Contract* and - when such exist(s) - *Complementary Contract(s)*, constitute the entire agreement between the *Parties* in respect of the *Project*, and supersede all previous negotiations, commitments and writings concerning

the *Project* including any memorandum of understanding between the *Parties* (whether or not with others) which relate to the *Project* or its proposal to the *Commission*.

Amendments or changes to this *Consortium Agreement* shall be valid only if made in writing and signed by an authorised signatory of each of the *Parties*.

Section 21: Counterparts

This *Consortium Agreement* may be executed in any number of counterparts, each which shall be deemed an original, but all of which shall constitute one and the same instrument.

SIGNATURES

AS WITNESS the *Parties* have caused this *Consortium Agreement* to be duly signed by the undersigned authorised representatives the day and year first above written.

Authorised to sign on behalf of

<INSERT NAME OF CO-ORDINATOR>

Signature

Name

Title

Authorised to sign on behalf of

<INSERT NAME OF PARTY ...>

Signature

Name

Title

Consortium Agreement
ANNEX A
Recipients for Notices

Recipients for Notices in Accordance with Section 17 of this *Consortium Agreement*.

<INSERT NAME AND ADDRESS OF EACH *PARTY*, TOGETHER WITH FAX NUMBERS, AND NAME/POSITION OF PERSON FOR WHOSE ATTENTION NOTICES ARE TO BE ADDRESSED>

<Company >,

00000 City, Country,

Mr.

Position Project Manager

Tel. +

Fax +

e-mail:

<Company >,

00000 City, Country,

Mr.

Position

Tel. +

Fax +

e-mail:

<Company >,

00000 City, Country,

Mr.

Position

Tel. +

Fax +

e-mail:

Consortium Agreement
ANNEX B
Budget and Project Shares

Budget

<Company >,
Personnel Costs
Materials
Total Costs

<Company >,
Personnel Costs
Materials
Total Costs

<Company >,
Personnel Costs
Materials
Total Costs

Consortium Agreement
ANNEX C
Bank Accounts

<Co-ordinator>,
00000 City, Country,
Bank:
Address:
Bank Code Number:
Account Number:

<Company>,
00000 City, Country,
Bank:
Address:
Bank Code Number:
Account Number:

<Company>,
00000 City, Country,
Bank:
Address:
Bank Code Number:
Account Number:

<Company>,
00000 City, Country,
Bank:
Address:
Bank Code Number:
Account Number:

Consortium Agreement
ANNEX D
Exclusion of *Pre-existing Know-how* from Right to Access
(Annex II.16)

<Company>,
00000 City, Country,
Protected Know-how:
Patent No. or File No.:
Filed:

<Company>,
00000 City, Country,
Protected Know-how:
Patent No. or File No.:
Filed:

<Company>,
00000 City, Country,
Protected Know-how:
Patent No. or File No.:
Filed: