

# 6 Framework Programme for Research and Technological development

## CONSORTIUM AGREEMENT



# ***French Group of Public Research Organisations***

## **WARNING**

*This model consortium agreement is based on the draft model contract as shown on the model contract website of the European Commission on December 19 2002.*

*It has been drawn up by a working group of the main french public research bodies (CNRS, CEA, INRA, CNES, IRD, INRIA, ONERA, IFREMER, INSERM, INERIS).*

As a model, it is indicative, and a tool for negociation, and can not be used as such.

Provisions, in particular those on gouvernance, should be reviewed, revised and adapted to fit the regulation and the needs of each consortium on a case by case basis.

**MODEL CONSORTIUM AGREEMENT UNDER THE 6TH FRAMEWORK PROGRAM FOR  
RESEARCH AND TECHNOLOGICAL DEVELOPMENT, FOR INTEGRATED PROJECTS,  
STREPS AND NETWORKS OF EXCELLENCE**

## Model Consortium Agreement

### **The contractors**

\_\_\_\_\_  
hereinafter referred to as  
whose registered office is at \_\_\_\_\_  
represented by \_\_\_\_\_, duly authorised for the purposes hereof

\_\_\_\_\_  
hereinafter referred to as  
whose registered office is at \_\_\_\_\_  
represented by \_\_\_\_\_, duly authorised for the purposes hereof

\_\_\_\_\_  
hereinafter referred to as  
whose registered office is at \_\_\_\_\_  
represented by \_\_\_\_\_, duly authorised for the purposes hereof

**Hereinafter referred to individually or collectively as the “Contractor” or the “Contractors”**

## **Table of contents**

### **Preamble**

### **Preliminary article**

### **Article 1 : Definitions**

### **Article 2 : Purpose**

### **Article 3 : Scope of the project**

### **Article 4 : Organisational Structure**

#### 4.1 : Decision-Making and advisory bodies

##### 4.1.1 Governing Board

##### 4.1.2 Executive Committee

##### 4.1.3 Subproject Committees

##### 4.1.4 : Scientific Council

##### 4.1.5 : Intellectual Property Use and Dissemination Committee

#### 4.2 : Operational Bodies

##### 4.2.1 : Coordinator

Vis-à-vis the Commission

Vis-à-vis the other Contractors

##### 4.2.2 : Management Team

### **Article 5 : Contractors' obligations for the implementation of the EC Contract**

### **Article 6 : Change to the Consortium**

#### 6.1 : Inclusion

#### 6.2 : Withdrawal and exclusion

### **Article 7 : Consortium Resources**

#### 7.1 : Financial Means

##### 7.1.1 Budget

##### 7.1.2 Criteria for allocation of the Community's financial contribution

##### 7.1.3 Method of payment of the Community's financial contribution

##### 7.1.4 Management of Community's financial contribution

#### 7.2 : Material resources

##### 7.2.1 : Equipement

##### 7.2.2 : Real estate infrastructures

#### 7.3 : Human resources

### **Article 8 : Liability/insurance**

### **Article 9 : Intellectual property rights**

### **Article 10 : Miscellaneous provisions**

## **Preamble**

WHEREAS, in consideration of Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006), (OJEC L 232/1) and of Regulation (EC) No 2321/2002 (OJEC L355) of the European Parliament and of the Council of 16 December 2002 concerning the Rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth framework programme 2002-2006, the Contractors, having considerable experience in the field of the Project, [have submitted] intend to submit a Proposal for the Project to the Commission.

WHEREAS the Contractors have decided and agreed to execute and perform the Contract (as such term is defined in the above-mentioned Regulation) to be awarded by the Commission for the Project in the event the Commission accepts their Proposal.

WHEREAS the Contractors in accordance with the provisions of the Commission contractual rules, Annex II General Conditions - Part A, Article II.1, wish to specify or supplement, between themselves, the provisions of the anticipated Contract, with respect to the carrying out thereof.

WHEREAS the Contractors have agreed on a project called "*[name of project]*" to be carried out in the framework of the specific research and technological development programme "*[name of specific RTD programme]*".

*[Mention here the strategic reasons for the Contractors cooperation]*

## **NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS**

### **PRELIMINARY ARTICLE**

This Consortium Agreement is concluded subject to the condition that the Contract between the European Commission and the Contractors is signed.

Consequently, in the event of signature of the Contract with the European Commission, it will be appended to this Consortium Agreement, forming an integral part of it and, in particular, shall specify the length and details of the work and how carried out and financed.

Consequently, in the event that the Project *[name or acronym of the project]* is not accepted by the European Commission, this Consortium Agreement shall automatically become null and void in its entirety and shall be deemed to have produced no effect and obligation.

Consequently, in the event that the Contract with the European Commission is not signed by a Contractor this Consortium Agreement shall automatically become null and void in its entirety vis-à-vis this Contractor.

## **Article 1. Definitions**

### **1.1. General Definitions**

For sake of clarity, words used in this Consortium Agreement will have the same meaning as that defined in the second article of **Regulation (EC) No 2321/2002 (OJEC L355) of the European Parliament and of the Council of 16 December 2002** concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth framework programme 2002-2006 and the same definition and meaning as that contained in the Contract with the European Commission, including its Annex II General Conditions unless otherwise defined herein.

### **1.2. Additional Definitions**

“**Affiliate**” means any undertaking listed in **Annex 1** hereto and which :

- (i) is directly or indirectly owned or controlled by, or owns, controls or is under the same ownership or control as any of the Contractors; and
- (ii) is incorporated and resident in, and subject to the laws of, a Member State of the Community, or an Associated State or has an ultimate owning or controlling company so incorporated and resident.

Ownership or control exists through the direct or indirect :

- Ownership of more than 50% of the nominal value of the issued equity share capital, or
- Ownership of more than 50% of the shares entitling the holders either to vote for the election of directors or persons performing similar functions or to the right by any other means to elect or appoint directors, or persons performing similar functions, or
- Ownership of 50% or more of the shares and the right to control management or operation of the undertaking through contractual provisions.

Ownership or supervision by the same public body shall not, in itself, constitute a relationship as an Affiliate.

The undertakings listed in Annex 1 shall be deemed Affiliates only as long as the above defined ownership or control lasts.

It is also agreed by the Contractors that an undertaking shall no longer be deemed an Affiliate in case of a change in the ownership or control of the Contractor unless the Contractors mutually agree otherwise and subject also to the Commission having been provided with the details of the change, in accordance with the Commission contractual rules, Annex II General Conditions – Part A, Article II.8, 2(a) and having indicated in writing that the Commission does not intend to terminate the Contract in accordance with said Article.

Each Contractor shall update the list of its Affiliates in case of reorganisation which does not extend Access Rights previously granted, provided that all the criteria defined in this section are still met. Any other modification of Annex 1 shall require the prior approval of the Governing Board by unanimous vote.

“**Commission**” or “**EC**” means the Commission of the European Communities.

**"EC Contract"** means the Contract between the Coordinator, the Contractors and the Commission regarding the performance of the Project.

**"Knowledge"** means the results, including information, whether or not they can be protected, arising from this project, as well as copyrights or rights pertaining to such results following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

**"Pre-existing Know-How"** means the information which is held by Contractors prior to the conclusion of the EC Contract, or acquiring in parallel with it, as well as copyrights or rights pertaining to such information following applications for, or the issue of patents, designs, plant varieties, supplementary protection certificates or similar forms of protection.

**"Programme of Activities"** means the "Joint Programme of Activities" for the Network of Excellence or the "Implementation Plan of the integrated project" for the Integrated Project or specific targeted research programmes.

**"Project"** means the network of excellence, the integrated project or the specific targeted research project, called ■■■, with project reference ■■■. as set out in the Programme of Activities attached to this Consortium Agreement and to the EC Contract.

**"Project Deliverables"** means:

- the activity reports and the final report to the Commission where Network of excellence is concerned.
- the activity reports, financial plans and reports as well as the final report to the Commission, where Integrated Project is concerned.

**"Software"** means:

- (a) software programs, i.e., 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 and in any code form (including Source Code form);
- (b) software information, i.e., technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software program; and/or
- (c) software documentation, i.e., software information in documentary form.

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

**"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.

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

**"Subcontract"** means an agreement to provide services, supplies or goods concluded between a contractor and one or more Subcontractors for the specific needs of the project.

“Use” means the direct or indirect use of Knowledge for creating and marketing a product or process, or for creating and providing a service.

## **Article 2. Purpose**

The purpose of this Consortium Agreement is to specify the organisation of the work between the Contractors, to organise the management of the Project, to define the respective rights and obligations of the Contractors, including, but not limited to, their liability and indemnification, to supplement the provisions of the EC Contract concerning Access Rights and to set out rights and obligations of the Contractors supplementing but not conflicting with those of the EC Contract.

The Contractors agree to cooperate pursuant to the terms of this Consortium Agreement in order to execute and fulfil the EC Contract with the EC and perform the tasks designated in the Programme of Activities in Annex 2.

## **Article 3. Scope of the Project**

The scope of the Project is set out in the Programme of Activities and the performance of the Project shall be shared between the Contractors according to the allocation of tasks and according to the allocation of the Community’s contribution by the Governing Board.

## **Article 4. Organisational Structure**

### **4.1. Decision-making and advisory bodies**

#### **4.1.1. Governing Board**

##### **Composition of Governing Board:**

The Governing Board is composed of one (1) institutional representative appointed by each of the Contractors.

The head of the Executive Committee and the head of the Management Team shall attend Governing Board meetings in an advisory capacity.

Any expert or qualified person may be invited to attend meetings of the Governing Board in an advisory capacity.

##### **The Chairperson of the Governing Board :**

- is elected by unanimous decision of the representatives from among the members of the Governing Board for the term of this Consortium Agreement;
- sets the agenda for meetings of the Governing Board;
- chairs meetings of the Governing Board. In his/her absence, the Governing Board will appoint an acting chairperson;
- make sure that the Executive Committee implements the decisions taken by the Governing Board.

##### **Meetings :**

The Chairperson shall convene the Governing Board as often as the interests of the consortium

so require, and at least once a year.

The Chairperson shall also convene meetings at any time :

- upon written request of any Contractor in case of an emergency situation,
- upon request of the Executive Committee;
- upon request of 1/3 of the Contractors

The Chairperson shall give each of the Contractors at least thirty (30) calendar days written advance notice of such meetings or fifteen (15) calendar days notice in case of an emergency situation.

Any decision requiring a vote at a Governing Board meeting must be identified as such on the notice of meeting.

Should a Contractor suggest adding a discussion point/resolution to the proposed agenda, it shall give written notice thereof to all other Contractors at least seven (7) calendar days prior to the meeting date.

However, any decision of the Governing Board may be taken in accordance with the above (i) in meetings via teleconference (ii) without a vote, if a written consent, setting forth the decision so taken, is signed, even by electronic, by representatives of the Contractors having at least the minimum number of votes that would be necessary to take such decision.

The Chairperson of the Governing Board shall draft the minutes of each meeting, even those referred above, to formalise in writing all decisions taken and shall dispatch them to all Contractors within fifteen (15) calendar days of the concerned meeting.

The minutes shall be considered as accepted by the Contractors if, within fifteen (15) calendar days from receipt thereof, no Contractor present or represented at the said meeting has objected in writing to the Chairperson of the Governing Board, provided that objection shall be either on such formalisation or on a decision that was not part of the agenda and which was not accepted by all Contractors.

#### Quorum requirements:

The Governing Board may validly meet if 3/4ths of its members are present or represented. In case quorum is not met, the Governing Board will be convened once again within no more than three (3) weeks from this date, and may validly deliberate even in the absence of quorum.

All of the members of the Governing Board may grant a power of attorney to other members to represent them as their proxies, with a limit of one (1) proxy per member.

In case of written consultation, the letter of the Chairperson is required to specify the deadline for response imparted. Failure to respond within this deadline shall be deemed a non-vote for the application of the quorum and majority vote requirements.

#### Role:

The Governing Board is the Consortium's decision-making and arbitration body and shall decide, inter alia, on the following matters:

- political and strategic orientation of the Project;
- the Consortium's "Programme of Activities" ( attached in annex 2) and "Plan for Use and

Dissemination" (the first plan is attached in annex ...);

- the Consortium's budget and the financial allocation of the EU's contribution between the various activities on the one hand, and between the various Contractors on the other;
- annual validation of the realized expenditure in accordance to the budget;
- deciding upon a change in the list of Affiliates by unanimous vote minus that of the Contractor concerned;
- modifications to the "Programme of Activities", including, but not limited to, decisions to abandon a research programme or to reduce the budget allocated to it;
- the Governing Board may vote the inclusion of a new participant on a unanimous basis;
- the Governing Board may authorize, by unanimous vote minus that of the Contractor concerned, the withdrawal of a Contractor after the signature of the EC Contract, pursuant to the terms set forth in Article 6 : "Withdrawal of a Contractor";
- the Governing Board decides on the exclusion, by unanimous vote minus that of the Contractor concerned, of a Contractor pursuant to the terms set forth in Article 6 : "Exclusion of a Contractor";
- the Governing Board shall appoint the head of the Executive Committee, upon the proposal of the Coordinator, who may be removed at any time without prior notice ;
- the Governing Board shall appoint on a unanimous basis the members of the Scientific Council, and its chairperson;
- the Governing Board decides on the commitments proposed by the Executive Committee;
- the Governing Board is the arbitration body for all decisions of the Executive Committee. Thus, any Contractor may submit for arbitration by the Governing Board any decision by the Executive Committee it deems to be contrary to its interests;
- the Governing Board is the decision-making body for any issue concerning the proper operation of the Consortium;

The secretariat of the Governing Board shall be carried out by the Management Team.

#### Voting rules:

Each member of the Governing Board shall have one (1) vote.

Subject to the cases set forth above expressly requiring a unanimous vote, decisions by the Governing Board shall be taken upon a majority of 75% of the votes of the Contractors present or represented.

#### **4.1.2. Executive Committee**

##### Composition:

The Executive Committee is composed of the heads of the subprojects and of the head of the

Executive Committee. The head of the Management Team shall attend meetings in an advisory capacity.

- Network of Excellence composition: the Executive Committee is composed of the heads of the subprojects and of the head of the Executive Committee, who shall have a casting vote. The head of the Management Team shall attend meetings in an advisory capacity, as well as any other qualified person invited by the head of the Executive Committee.

#### Head of the Executive Committee:

The head of the Executive Committee is appointed by the Governing Board.

He shall set the agenda for meetings of the Executive Committee as well as chair them.

He shall also monitor the implementation by subproject committees of decisions taken by the Executive Committee.

In emergency situations the head of the Executive Committee is authorised to take any decision required by the circumstances, which must then be validated by the Executive Committee.

The head of Executive Committee makes sure that any member of the Scientific Council has signed a confidential agreement.

- Network of Excellence : the coordination of the Contractors' research activities is proposed by the head of the Executive Committee to the Governing Board. The head of Executive Committee shall be assisted by the Executive Committee in this aim.

#### Meetings:

The head of the Executive Committee convenes the Executive Committee as often as the interests of the Consortium so requires and at least four (4) times a year.

The head of the Executive Committee shall also convene meetings :

- upon written request of any Contractor in case of an emergency situation,
- upon request of any subproject Committee,
- upon request of 1/3 of the members of the Executive Committee.

The head of the Executive Committee shall give each committee member at least fourteen (14) calendar days written notice of such meetings or seven (7) calendar days notice in case of an emergency situation.

Any decision requiring a vote at an Executive Committee meeting is required to be identified as such on the notice of meeting.

Should a Contractor suggest adding a discussion point/resolution to the proposed agenda, it shall give written notice thereof to all other members of the Executive Committee at least seven (7) calendar days prior to the meeting date.

However, any decision of the Executive Committee may be taken in accordance with the above (i) in meetings via teleconference (ii) without a vote, if a written consent, setting forth the decision so taken, is signed, even by electronic, by the members of the Executive Committee having at least the minimum number of votes that would be necessary to take such decision.

The head of the Executive Committee shall draft the minutes of each meeting to formalise in writing all decisions taken and shall dispatch them to all the Executive Committee members within fifteen (15) calendar days of the concerned meeting.

The minutes shall be considered as accepted by the Contractors if, within fifteen (15) calendar days from receipt thereof, no Contractor presented or represented at the said meeting has objected in writing to the head of the Executive Committee, provided that objection shall be either on such formalisation or on a decision that was not part of the agenda and which was not accepted by all Contractors.

#### Quorum requirements:

The Executive Committee may validly meet if 3/4ths of its members are present or represented. In case quorum is not met, the Executive Committee will be convened once again within no more than fifteen (15) days from this date, and may validly deliberate even in the absence of quorum.

All of the members of the Executive Committee may grant a power of attorney to other members to represent them as their proxies, with a limit of one (1) proxy per member.

In case of written consultation, the letter of the Head of Executive Committee is required to specify the deadline for response imparted. Failure to respond within this deadline shall be deemed a non-vote for the application of the quorum and majority vote requirements.

#### Role:

The role of the Executive Committee shall be to:

- implement the scientific orientations decided on by the Governing Board;
- appoint the head of the Management Team from among the Contractors for the term of this Consortium, and remove him at any time without prior notice.

#### **Concerning the Programme of Activities:**

- prepare the Programme of Activities;
- make progress reports on the state of advancement of the Project to the Governing Board;
- establish the Project Deliverables for the Commission;
- propose the Project budget to the Governing Board as well as the allocation of funding between the Contractors.

#### **Concerning the entry of new Contractors:**

- implement the competitive selection procedure for new Contractors with the assistance of the Management Team.

#### **Concerning Intellectual Property :**

- decide on licencing projects pursuant to the terms of Article 9 “Intellectual Property Rights”;
- decide on terms and conditions of Access Rights to Pre-Existing Know-How not listed prior to the signature of the EC Contract;
- decide on terms and conditions of access to Knowledge and Pre-Existing Know-How by subsidiaries and affiliates not listed prior to the signature of the EC Contract;
- give instructions to the Management Team concerning the management of the network [“project” in Integrated project] knowledge portfolio upon consultation of the

- industrial property use and dissemination committee (IPUDC) (application for patent, extension, withdrawal, etc.);
- in collaboration with the IPUDC, ensure, the review and authorize contemplated publications and communications in connection with Knowledge issuing from the Project;
- in collaboration with the IPUDC, ensure, the review of Project Knowledge and take measures in connection with their industrial protection, defence and valorisation;
- decide on the acquisition of rights from third parties.

---

**Concerning Project monitoring:**

- make proposals to the Governing Board to suspend all or part of the Project or to terminate all or part of the EC Contract, or to request the Commission to terminate the participation of one or more Contractors;
- in case of default by a Contractor, review and prepare proposals for submission to the Governing Board, on measures to be taken against the Defaulting Contractor, including through a request to the Commission for an audit, and assignment of the Defaulting Contractor's tasks, a staggered payment of the financial part of this Contractor's contribution, and suggestions as to any new entity to replace the Defaulting Contractor;
- review and decide, in case of default by the Coordinator in the performance of its tasks as a coordinator, and prepare proposals for submission to the Governing Board, on measures to be taken and the possible appointment of a new Coordinator;
- concerning the use of reserves, make all decisions regarding their use and refer to the Governing Board;
- in case of a deadlock situation within a subproject committee, the head of this committee may refer to the Executive Committee for arbitration. Upon referral of a request for arbitration, the Executive Committee shall have two (2) weeks in which to make known its decision;
- approve the subcontracting in accordance with provisions of article 5.4 (vii);
- the Executive Committee shall more generally take any and all decisions required for the proper conduct of the Project.

The secretariat of the Executive Committee shall be carried out by the Management Team.

Voting rules:

Each member of the Executive Committee has one (1) vote and decisions shall be taken upon a simple majority of members present or represented.

**4.1.3. Subproject Committees**

Composition:

- subproject committees are composed of one (1) representative per Contractor participating in the relevant subproject. The head of the subproject committee is appointed by the members of the subproject committee.
- the head of the Executive Committee and the head of the Management Team may be

invited by the head of the subproject to participate in meetings of the subproject committee in an advisory capacity.

- |  |
|--|
| For Jointly Executed Research subprojects, a member of the IPUDC may also be invited to attend meetings in an advisory capacity. |
|--|

#### Meetings:

The head of the subproject shall convene meetings of the subproject management team at least four (4) times a year.

The head of the subproject shall also convene meetings :

- upon written request of any subproject members in case of an emergency situation,
- upon request of 1/3 of subproject members;

The head of the subproject shall give each of the members at least ten (10) calendar days written notice of such meetings or seven (7) calendar days notice in case of an emergency situation.

Any decision requiring a vote at the subproject committee meeting is required to be identified as such on the notice of meeting.

Should a member of the subproject suggest adding a discussion point/resolution to the proposed agenda, it shall given written notice thereof to all other members at least two (2) calendar days prior to the meeting date.

However, any decision of the subproject committee may be taken in accordance with the above (i) in meetings via teleconference, and/or (ii) without a vote, if a written consent, setting forth the decision so taken, is signed, even by electronic, by representatives of the subproject committee having at least the minimum number of votes that would be necessary to take such decision.

Subproject Committee members may grant a power of attorney to other members to represent them as their proxies.

The head of the subproject committee shall draft the minutes of each meeting to formalise in writing all decisions taken and shall dispatch them to all members of subproject committee within fifteen (15) calendar days of the concerned meeting.

The minutes shall be considered as accepted by the members of subproject committee if, within fifteen (15) calendar days from receipt thereof, none of them has objected in writing to the head of the subproject committee, provided that objection shall be either on such formalisation or on a decision that was not part of the agenda and which was not accepted by all of them.

#### Quorum and voting rules:

The subproject committee may validly meet if 3/4ths of its members are present or represented. In case quorum is not met, the subproject committee will be convened once again within no more than two (2) weeks from this date, and may validly deliberate even in the absence of quorum.

Decisions are adopted on a unanimous basis of its members present or represented. In case of a deadlock, the head of the subproject committee will submit the relevant decision to the

Executive Committee for arbitration. The Executive Committee has fifteen (15) days in which to make known its decision.

Role:

Vis-à-vis the Executive Committee:

- present progress reports on the state of advancement of the subproject;
- make proposals on programmes to be conducted and the arrangements for performance, the orientations of the subproject and of the Programme of Activities;
- make proposals on the allocation of subproject tasks, financial needs and allocation among the Contractors, the need to bring in new Contractors, need for subcontractors for the establishment and the fulfilment of the Programme of Activity;
- draft and validate Project Deliverables on the subproject to be submitted to the Commission;
- identify Contractors presenting financial or technical risks within a subproject and inform the Executive Committee;
- inform the Executive Committee of any other difficulty arising in connection with the conduct of the subproject.

Vis-à-vis subproject Contractors:

- ensure the scientific monitoring and coordination of the subproject and ensure its implementation;
  - determine the Work Packages and study phases and appoint a manager;
  - approve the subcontracting in accordance with provisions of article 5.4 (vii),
- 
- Network of Excellence : forward to IPUDC a copy of its activity reports;

#### **4.1.4 Scientific Council (SC)**

Composition:

The Scientific Council is composed of outside experts recognised for their expertise in the field of the Project, appointed by the Governing Board which will determine their number for the term of this Consortium Agreement. The Governing Board appoints the chairperson of the Scientific Council from among the members of this council on a unanimous basis.

Any expert or qualified person may be invited by the head of SC to attend meetings in advisory capacity.

The head of the Executive Committee and a member of IPUDC shall attend meetings in an advisory capacity.

The Scientific Council shall meet at least once a year.

Prior to the beginning of his activity, each member of the Scientific Council shall enter into a non disclosure agreement.

Role:

The Scientific Council is a scientific evaluation consultative body.

- it advises the Governing Board on Project orientations and the implementation by

**Network of Excellence of its mission to spread excellence in Europe;**

- it evaluates the Programme of Activities for the Project as well as the results obtained;
- it may be consulted by the Governing Board on any scientific issues;
- it may make any proposal or transmit any information it deems useful to the Governing Board.

For meeting organisation purposes, the Scientific Council shall be assisted by the head of the management team.

#### **4.1.5. Industrial Property Use and Dissemination Committee (IPUDC)**

##### Composition:

The IPUDC is composed of one (1) representative per Contractor. Two or more of the Contractors may, however, agree on the appointment of a single representative. The head of the IPUDC is appointed from amongst its members pursuant to a qualified majority of ---- %.

The IPUDC shall meet at least four (4) times a year.  
It will be convened either by the head of the IPUDC or upon the request of a representative addressed to the head of the IPUDC.

Any expert or qualified person may be invited by the head of IPUDC to attend meetings in advisory capacity.

The head of IPUDC shall draft the minutes of each meeting to formalise in writing all decision taken and shall dispatch them to all its members within fifteen (15) calendar days of the concerned meeting.

The minutes shall be considered as accepted by the IPUDC members if, within fifteen (15) calendar days from receipt thereof, none of them has objected in writing to the head of IPUDC.

##### Role :

The IPUDC will choose one person from among its members to attend meetings of the Scientific Councils on an advisory basis.

Upon the request of a head of a Jointly Executed Research subproject, a member of the IPUDC may attend subproject committee meetings.

The IPUDC is in charge of proposing to the Executive Committee the updating of the Pre-Existing Know-How list.

The IPUDC establishes and reviews the Plan for Use and Dissemination of the Project to be submitted to the Governing Board for approval.

The IPUDC identifies knowledge that could be the subject matter of protection, use or dissemination by decision of the Executive Committee, based on contemplated publications and activity reports issued by subproject committees.

It will assist the Executive Committee in the implementation of measures in connection with publications, the protection of Knowledge and their dissemination.

It will submit a proposal to the Executive Committee on the allocation of co-ownership shares over Knowledge obtained by several Contractors for decision by the Executive Committee.

At the request of the Executive Committee, it shall conduct freedom to operate studies, negotiate access rights and propose solutions to any issue in this connection.

The IPUDC shall submit an annual report to the Executive Committee and to the Governing Board.

It shall validate communication actions carried out in the name of the Consortium and, in case of any problem, refer it to the Executive Committee for arbitration.

#### Quorum and voting rules:

The IPUDC may validly meet if 3/4ths of its members are present or represented. In case quorum is not met, the IPUDC will be convened once again within no more than two (2) weeks from this date, and may validly deliberate even in the absence of quorum.

The IPUDC issues opinions and takes its decisions on the basis of a qualified majority of ---%

## **4.2. Operational Bodies**

### **4.2.1. Coordinator**

At the signature of the present Consortium Agreement, the position of Coordinator is entrusted to Contractor ..., until the term of the Consortium, with the following duties :

The Coordinator shall

#### - Vis-à-vis the Commission:

- Communicate all information in connection with the Project to the Commission.
- Receive the entire financial contribution from the Commission. The Coordinator will manage this contribution by allocating it to the Contractors pursuant to the “Programme of Activities” and the decisions taken by the appropriate bodies.
- prepare annual accounts such that it is possible, at any time, if requested by the Commission or by the Contractors, to inform them of the distribution of funds among the Contractors, specifically the amounts allocated and the dates of payment to each Contractor;
- ensure the signature, by all Contractors, of the EC Contract .

#### - Vis-à-vis the other Contractors:

- prepare for the Executive Committee the Project Deliverables based on the reports, the supporting documents and audit certificate to be provided to the Coordinator by the Contractors;
- address the Project Deliverables to the Commission, after prior validation by the Executive Committee;

Except in the Coordinator’s capacity as representative of the Contractors as defined in the EC Contract and for any mandate duly given by the Governing Board or by the Executive Committee, the Coordinator shall not be entitled to act or to make legally binding declarations on

behalf of any other Contractors.

In case of defaulting coordination, the Governing Board shall appoint a new coordinator from amongst contractors by an unanimous vote minus that of the defaulting contractor coordinator.

#### **4.2.2. Management Team**

##### Composition:

The head of the management team is designated by the Executive Committee on the basis of a simple majority vote.

*[ Or At the signature of the present consortium agreement, the head of the management team is entrusted to Contractor [REDACTED], until the term of the Consortium, with the following duties : ]*

The head of the management team reports to the head of the Executive Committee.

The head of the management team shall surround himself with all of the persons having the required skills based on Project needs and resources.

##### Role:

The management team has for its duties to:

- manage the administrative, legal, financial and other aspects of the Project;
- assist with Project steering (follow-up of planning schedule, issue reminders for task initiation or completion, etc.);
- assist the Coordinator in preparing Project Deliverables;
- assist the Executive Committee in implementing the competitive selection procedure for new Contractors.
- Carry out the secretariat of the Governing Board and of the Executive Committee.

#### **Article 5. Contractors' obligations for the implementation of the EC Contract**

**5.1.** The Contractors agree to participate in and collaborate on the Project and to refrain from any collaboration between themselves or with any third party likely to compete with the Project.

**5.2.** Without prejudice to any other obligations under this Consortium Agreement, the Contractors shall take all necessary measures to perform, fulfil, promptly and in due time all their obligations so that the Project is carried out in accordance with the terms and conditions of the EC Contract and this Consortium Agreement.

**5.3.** The Contractors shall provide the head of the Executive Committee, the Coordinator or the head of the subproject, as appropriate, with the deliverables, information and report as they require in order to perform their duties under this Consortium Agreement and under the EC Contract or as the Commission may request.

The Contractors shall advise the Coordinator and/or the head of the Executive Committee or the head of the concerned subproject of any request from the Commission.

Deliverables, information and reports shall include, inter alia, the supporting documents evidencing expenditures incurred by the Contractors for the purposes of the Project.

Each Contractor shall address to the Coordinator an audit certificate in accordance with the relevant article of the EC Contract no later than thirty (30) days after the expiry of each certification period.

For the proper management of the Project and of the Community contribution, the Contractors agree to submit to the Coordinator every six (6) months a cost statement of expenses incurred by each of them together with the supporting documents. The Coordinator has fifteen (15) days to validate them. Validation triggers, except in the case of opposition by him, the payment of the following advance to the Contractor.

#### **5.4. Each Contractor undertakes:**

- i. to promptly notify any delay in performance or any event that may impact the Project to the appropriate body;
- ii. to inform the appropriate body of relevant communications it receives from third parties in relation to the Project;
- iii. to ensure the accuracy of any information or materials it supplies to the other Contractors or under the EC Contract and to promptly correct any error therein of which it is notified. The recipient Contractor shall be responsible for the use to which it puts such information and materials;
- iv. not to use knowingly any proprietary rights of a third party for which he has not acquired the corresponding right of use and/or to grant licences;
- v. to act at all times in good faith and in a manner that reflects the good name, goodwill and reputation of the other Contractors and in accordance with good business ethics;
- vi. to participate in a cooperative manner to the meetings of the different bodies under this Consortium Agreement.
- vii. if recourse to a Subcontract is not provided for in the Programme of Activities, the Contractor shall obtain the prior approval of the subproject committee concerned for all subcontracts of an amount lower than 10% of the share of commission contribution it is entitled to receive to carry out its part in the concerned subproject and the prior approval of the Executive Committee for all subcontracts of an amount equal to or higher than 10% of the share of commission contribution it contribution it is entitled to receive to carry out its part in the concerned subproject .

## **Article 6. Change to the Consortium**

### **6.1. Inclusion of a new Contractor**

#### **6.1.1. Inclusion of new Contractors without any additional contribution from the Commission**

The Programme of Activities and the EC Contract determine the changes to the composition of the Consortium requiring a competitive selection procedure. In all other cases, without contrary decision of the Executive Committee, no competitive selection procedure shall apply.

The competitive selection procedure will be implemented by the Executive Committee with the support of the management team pursuant to the provisions of Annex III of the EC Contract.

### **6.1.2. Entry of new Contractors with an additional contribution from the Commission**

The Commission may increase the Community's financial contribution to the Project during the course of its conduct in view of extending it to cover new activities that could involve new Contractors.

The Commission does so through calls for additional proposals, which it publishes and whose publicity it ensures in accordance with the rules of participation. The Commission shall evaluate and select these proposals in agreement with the Consortium.

### **6.1.3. Conditions of participation in the Project by the new Contractors**

By joining the Project a new Contractor agrees to participate (through human, material and/or financial means) in the Programme of Activities and to pay the entrance fee, if any, determined by the Governing Board.

The entrance into the Consortium of a new Contractor becomes effective on the date it adheres to the EC Contract by the signature of form B and to the Consortium Agreement by the signature of an amendment.

#### Access Rights:

The new Contractor has access to the Pre-Existing Know-How of the other Contractors for the purposes of research, use or dissemination upon written request pursuant to the terms set forth in Article 9 "Intellectual property rights".

Nevertheless, any Contractor pursuant of the provisions of EC Regulation article 25.3 shall have the right to exclude some of its Pre-Existing know how from the new Contractor access rights.

The new Contractor has access to the Knowledge produced in the scope of the Project prior to its arrival for the purposes of research, use or dissemination at market conditions.

## **6.2. Withdrawal, exclusion of a Contractor**

### **6.2.1. Withdrawal of a Contractor**

Any Contractor may request to terminate its participation in the EC Contract and the Consortium Agreement, by giving three (3) months written notice of termination to the other Contractors, by means of registered mail with acknowledgement of receipt, indicating the reasons for termination.

The Governing Board may object to such termination by unanimous vote minus the vote of the withdrawing Contractor, indicating the reasons for objection, within a period of forty-five (45) days from receipt of notification.

If the Governing Board agrees, the Coordinator shall inform the Commission by means of

registered mail with acknowledgement of receipt in accordance of the provisions of the relevant provisions of the EC Contract. The Commission has forty-five (45) days from receipt in which to issue an objection.

Where the Consortium disagrees, the Coordinator shall submit to the Commission a request for assistance, in accordance with the relevant article of the EC Contract.

### **Consequences of withdrawal :**

- 1- The Contractor agrees to treat as confidential all confidential information, as defined in article 9 hereinafter, for a period of ten (10) years from the date of its withdrawal, and agrees not to apply for any patent or other proprietary right over any information it may have had knowledge of in connection with its participation in the Project.
- 2- Access Rights: any Contractor withdrawing from the Consortium :
  - loses Access Rights to Knowledge produced and Pre-Existing Know-How identified, after its withdrawal;
  - keeps Access Rights to Pre-Existing Know-How and to the Knowledge of the other Contractors (in the state existing on the date of withdrawal), provided that (i) it is required, for the use of the Knowledge of which it is the owner or co-owner and (ii) such Access Rights are requested at least within two years after its withdrawal;
  - keeps its entitlement to royalties generated by the use by the other co-owners or third parties of the Knowledge produced in the scope of the Project of which it is the owner or co-owner. Royalties will be calculated proportionally to its co-ownership share, or pursuant to the co-ownership agreement(s) or licence(s) concluded prior to its withdrawal;

The other Contractors keep, for the purposes of the research carried out in the scope of the Project, Access Rights pursuant to the terms set forth in Article 9 : “Intellectual property rights” to the Pre-Existing Know-How (in the state existing on the date of withdrawal) of the withdrawing Contractor and to the Knowledge produced by it in the scope of the Project pursuant to the terms set forth in Article 26 and 27 of the Regulation concerning the rules for participation.

A withdrawing Contractor shall return all equipments or materials provided by the other Contractors, or destroy them upon their written request.

### **4- Financial consequences for the withdrawing Contractors.**

The Contractor shall pay the following costs :

- the procedure fees to select a new Contractor(s) to carry out the Project; in an amount determined by the Governing Board.
- a financial compensation if the withdrawal impairs the conduct of the Project, in an amount determined by the Governing Board.

The Contractor is required to honour its financial commitments contracted prior to the effective date of its withdrawal;

The Contractor is required to refund all advances paid to it from the EC contribution except the amount spent for the performance of the Project, with appropriate justifications;

The Contractor is not reimbursed for any part of the reserves constituted for the Consortium.

5- Consequences on access to research infrastructures acquired with project co-financing: these shall be defined in the loan for use agreements and the co-ownership rules, if any.

6- The Contractor agrees to provide justifications in connection with the period during which it participated in the Project and any other element required to prepare the Project Deliverables, even after the date of its withdrawal.

7- The Contractors agree to make a special endeavour to pursue doctoral dissertations commenced in the scope of the Project under the best possible conditions.

8- The relevant consequences of the withdrawal of a Contractor are the same for its Affiliates.

### **6.2.2. Exclusion of a Contractor**

The exclusion of a Contractor may be decided by the Governing Board by unanimous vote minus the vote of the concerned Contractor and pursuant to the terms set forth in the EC Contract.

The exclusion of a Contractor has the same consequences as a withdrawal.

## **Article 7. Consortium Resources**

### **7.1. Financial means**

#### **7.1.1. Budget**

The budget comprises the resources and expenses of the Consortium. Resources comprise the financial contribution from the Community and the resources allocated by the Contractors.

The amount of the Community's financial contribution is set in the EC Contract and may be reviewed annually by the Commission.

The Contractors shall contribute to the Budget by providing the following :

- human resources (number of researchers by category and by network);
- material resources (equipment, infrastructures, etc.);
- financial contributions;
- know-how, ...

as described and valued in the budget. The first Budget is attached as annex ....

Provisional Expenses are set up in the budget in accordance with the Programme of Activities.

Reserves may be constituted for certain operations. These shall be identified in the budget.

[ or :

*Reserves, representing ...% of the Budget, are constituted for certain operations, which could not be identified in the annual budget. The reserves shall be identified in the Budget.]*

The Consortium's rolling forecasted budget is established annually for an 18-month period and linked to the detailed Programme of Activity for this same period (cf. first detailed programme of activities attached in annex 3). It shall be annually reviewed by the Governing Board, based on Project requirements.

### **7.1.2. Criteria for allocation of the Community's financial contribution**

---

For Network of Excellence :

The Governing Board decides on the allocation of the Community's contribution between the Contractors, proportionally to their respective resources dedicated to the Project , on the basis of the Programme of Activity.

---

For Integrated Projects :

Upon decision of the Governing Board, the Community's financial contribution is allocated by the Coordinator between the Contractors, based on the forecasted budget, proportionally to their respective contributions for research and/or demonstration and/or other activities as defined in the EC decision n° 1513/2002 at the respective rate of 50 %, 35 % and 100%.

The Executive Committee may decide on staggered payments of the contribution to a Contractor for justified reasons. No distribution of funds to Contractor may take place prior to the signature of the Consortium Agreement and of the EC Contract by the said Contractor.

### **7.1.3. Method of payment of the Community's financial contribution**

The Contractors agree that the first part ("Tranche 1") of the Community's financial contribution shall only be distributed in third to the Contractors as follows:

- The first third upon receipt of the advance payment from the Commission;
- The second third upon expiry of a period of six (6) months and against receipt by the Coordinator, through the subproject head, of relevant Project Deliverables as mutually defined per subproject by the Contractors in the Programme of Activities, for the purpose of checking the Project implementation progress;
- The last third upon receipt of last payment of Tranche 1 ("retention rate") from the Commission, against receipt by the Coordinator, through the subproject head, of the first year Project Deliverables for the Commission and following the Commission's approval of such Project Deliverables.

The Contractors agree that the subsequent parts or "tranches" of the Community's financial contribution shall only be distributed in half to the Contractors as follows:

- One half upon receipt of the advance payment from the Commission;
- One half upon receipt of last payment of the concerned subsequent part or tranche ("retention rate") from the Commission, against receipt by the Coordinator, through the subproject head, of the concerned year Project Deliverables for the Commission and following the Commission's approval of such Project Deliverables.

In case a Contractor has not provided the Coordinator with its Project Deliverables or has provided them late or provided non-compliant Project Deliverables, such Contractor shall not receive its concerned contribution allocation, until it remedies such non-delivery, late delivery or non-compliant delivery or unless the Executive Committee, decides otherwise. The Governing Board shall be kept informed under all circumstances and may decide on additional appropriate measures with respect to the concerned Contractor.

It is also agreed that no distribution of any advance payment from the Commission will be made for a subsequent part or “tranche” before the prior ones are fully paid.

#### **7.1.4. Management of Community’s financial contribution**

All financial management and accounting acts in connection with the Community’s contribution shall be made by the Coordinator in accordance with the applicable rules and in compliance with the rules defined by the Community in this field.

The Coordinator shall identify in its accounts the Community’s contribution to the Programme of Activities and provide all required justifications upon the release of the funds.

The Executive Committee may decide that a bank guarantee is required to be provided to the Coordinator by a Contractor, other than public bodies, international organisations or participants whose participation in the Project is guaranteed by a Member State or by an associated State.

Where permitted by law, the Coordinator will open a separate bank account to receive the Commission’s contribution and make payments to Contractors.

This bank account will be closed when all of the contributions have been remitted to the Contractors and in any event by no later than one (1) year after the termination of this Consortium Agreement.

### **7.2. Material resources**

The resources made available for the project are listed in annex 5.

#### **7.2.1. Equipment**

The Consortium does not own any assets.

Equipment belonging to a Contractor may be allocated for the purposes of the Consortium’s Programme of Activities and the other Contractors’ employees may have access thereto. A loan for use agreement shall be negotiated between the interested Contractors.

A list of this equipment held up to date is attached to the Consortium Agreement and specifies:

- the names and references of the equipment;
- the name of the owner,
- place of allocation;
- the purpose of their allocation , so as to be able to define in the programme, what Contractor will have access thereto.

The Contractor owner of the equipment will warrant its proper operation and compliance with safety and use standards pursuant to the laws of the country where the equipment is located.

For scientific equipment (other than lap-top P.C. computer equipment), the Contractor having responsibility for the place of allocation shall have custody thereof.

The Contractor having responsibility for the place of allocation shall organise access to the premises and to the equipment. Any maintenance costs for this equipment may be shared between the Contractors in the Consortium's budget, on the basis of the allocation criteria defined and validated by the competent technical committee.

### **7.2.2. Real estate infrastructures**

Buildings shall remain the property of the Contractors, who may make them available for use by the other Contractors pursuant to terms to be defined by a hosting agreement.

### **7.3. Human resources**

Mobility actions may be carried out on a case-by-case basis depending on the laws, regulations and status applicable to each Contractor.

The Contractors shall make the hiring of any persons required for the administration and the implementation of the Consortium's Programme of Activities their personal business, as well as their loaning out to Contractors.

In case of employee mobility within the Consortium, the employees of each Contractor shall retain the status they originally had, and their organisation of affiliation shall retain its duties as employer, and pay and manage this person pursuant to the applicable legislation and internal policies.

Each Contractor shall ensure the coverage of its employees in accordance with the legislation applicable to social security coverage, work-related accidents and occupational diseases and shall carry out all legal or regulatory requirements incumbent upon it.

Employees of a Contractor working, for the purposes of the fulfilment of the Consortium's Programme of Activities, out of the premises of another Contractor are required to comply with the internal policies as well as with all general or special rules of health and hygiene applicable on the premises of the host Contractor.

Each of the Contractors shall make the arrangements in connection with the hosting of third-party employees within the scope of the Project its personal business.

The host Contractor agrees to inform the employer of any risks to which its employees may be exposed on the host premises.

The employer of mobilised employees is required to be in a position to justify to the host Contractor the compliance of the status of all of its employees under labour and employment law rules or other rules applicable to them.

REX : A nominative list of researchers and doctoral students, which are taking part of the Network of Excellence at the date of the proposal is attached in annex ...

## **Article 8. Liability/Insurance**

### **8.1. General Principles**

The Contractors agree to assume all of the financial consequences of their liability in all cases

their liability is asserted on the basis of damage caused to one of them or to a third party in the scope of the performance of this Consortium Agreement.

The Contractors shall provide the Coordinator with a certificate of “civil liability” (responsabilité civile) insurance coverage, specifying the scope and the amount of the coverage they benefit from. A certificate of insurance coverage against injury (dommages) will also be required when one of the Contractors occupies the premises made available to it by one of the other Contractors.

If the Coordinator ascertains that the guarantees provided are insufficient, it may request the Contractor concerned to take out additional insurance coverage.

## **8.2. Exclusion of indirect damages**

No Contractor shall be responsible to another for indirect or consequential loss or damages such as but not limited to loss of profit, loss of revenue, or loss of contracts.

## **8.3. Liability towards the Commission**

Public bodies only assume, in accordance with the participation rules and the EC Contract, their own debts.

Notwithstanding any joint and several liability of the Contractors which may exist towards the Commission, each Contractor shall be liable towards the others for any losses or damages suffered by the Commission, as a consequence of any failure to perform all or part of its obligations under the EC Contract or under this Consortium Agreement.

Accordingly, should the Commission, in accordance with the provisions of the EC Contract, claim any reimbursement, indemnity or payment of damages from one or more Contractors, the Contractors agree that:

- i. each Contractor whose default has caused or contributed to cause such claim shall indemnify each of the other Contractors against such claim, provided always that the total and cumulative limit of liability of that Contractor towards all the other Contractors collectively, in respect of any and all such claims shall not exceed twice the amount of that Contractor’s Project Share (i.e. its part of the Community financial contribution as per the EC Contract). Any excess shall therefore be apportioned between all the Contractors including the Defaulting Contractor(s) proportionally to their Project Shares; and
- ii. in the event it is not possible to attribute the default to any Contractor under (i), the amount claimed by the Commission shall be apportioned between all the Contractors proportionally to their Project Shares.

## **8.4. Liability towards third parties**

Subject always to such other undertakings and warranties as are provided for in this Consortium Agreement and the EC Contract, each Contractor shall be solely liable for any loss, damage or injury to third parties resulting solely from the performance of its Work Package.

## **8.5. Liability for Subcontractors**

Each Contractor shall remain fully responsible for the performance of any part of its Work Package, or for the performance of its obligations under the EC Contract by any subcontractor, subject always to appointments of any subcontracts meeting with the approval of the Executive Committee.

Therefore said Contractor shall ensure that (i) such subcontract fully complies with the

requirements of the EC Contract; (ii) the other Contractors' Access Rights are fully preserved; and (iii) the third party shall have no access to any other Contractor's Knowledge or Pre-Existing Know-How without the latter's prior written consent.

## **Article 9. Intellectual Property Rights**

### **9.1. Confidentiality**

During the term of the Project and for a period of ten (10) years thereafter, the Contractors shall treat as confidential any information which is designated as proprietary by the disclosing Contractor by an appropriate stamp, legend or any other notice in writing, or when disclosed orally, has been identified as confidential at the time of disclosure and has been promptly (thirty (30) days at the latest) confirmed and designated in writing as confidential information by the disclosing Contractor.

Accordingly, each Contractor undertakes (in addition and without prejudice to any commitment under the EC Contract) that:

- i. the receiving Contractor shall not use any such information for any purpose other than in accordance with the terms of the EC Contract and this Consortium Agreement, and
- ii. the receiving Contractor shall not disclose any such confidential information to any third party except with the disclosing Contractor's prior written consent, and
- iii. such information shall neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorised in writing by the disclosing Contractor.

The Contractors shall contractually impose the same obligations on all of their employees who may have access to confidential information, to the maximum extent and for the maximum duration authorised by law, including upon the end or the termination of their employment.

The confidentiality obligation stipulated above does not extend to information for which the beneficiary party can prove:

- had a public nature prior to its communication by the other party or fell within the public domain after its communication by the other party but though not fault of its own;
- was already in its possession at the time of signature of the Consortium Agreement;
- it received from a third party without any breach of any secrecy obligation.

The Contractors shall contractually impose the same obligations on all of their employees who may have access to confidential information, to the maximum extent and for the maximum duration authorised by law, including upon the end or the termination of their employment.

The Contractors shall impose the same obligations on their Affiliates and subcontractors.

### **9.2. Publication**

#### **For Networks of Excellence :**

Before any publication or communication, whether written or oral, in connection with Knowledge, each researcher is required to obtain the consent of the Executive Committee and of the Commission. To this end, the researcher concerned is required to submit a written

text of the proposed publication or communication to the Executive Committee, with a copy to the IPUDC. The Executive Committee will inform the Commission of the proposed publication/communication and transmit the corresponding text to it, if so requested by the latter pursuant to the relevant Regulation. The Executive Committee will have one (1) calendar month from the date of referral by the researcher in which to make known its decision. Beyond this period, consent shall be deemed to have been given.

This decision may consist in :

- a) acceptance of the proposed publication/communication without any reservation; or
  - b) a request for modifications, specifically if certain pieces of information contained in the proposed publication are likely to impair the industrial and commercial use of Knowledge; or
  - c) request that the publication or communication be postponed if, in its opinion, real and serious reasons require this, especially if the information contained in the proposed publication or communication should be the subject matter of industrial property protection.
- All researchers are required to indicate their membership of the Network in all publications made by them.

#### **For Integrated Projects :**

Any proposed publication or communication by one of the parties, regardless of the media (including any plan or model), in connection with all or part of the Project and/of the Knowledge is required to be submitted for the prior written consent of the other Contractors and the Commission.

The other Contractors and the Commission shall have a period of one (1) calendar month from the date of receipt of the proposed publication or communication in which to make known their decision to the relevant Contractor. Beyond this period, this consent shall be deemed to have been given.

This decision may consist in :

- a) acceptance of the proposed publication/communication without any reservation; or
- b) a request for modifications, specifically if certain pieces of information contained in the proposed publication or communication are likely to impair the industrial and commercial use of Knowledge; or
- c) request that the publication or communication be postponed if, in its opinion, real and serious reasons require this, especially if the information contained in the proposed publication or communication should be the subject matter of industrial property protection.

However, none of the Contractors may withhold their consent to publication or communication upon the expiry of a period of eighteen (18) calendar months following the first submission of the proposed publication/communication, unless the information to be published/communicated is of an industrial or commercial strategic interest to the activities of one of the Contractors.

Failing a response by the other Contractors and by the Commission within this one (1) calendar month period referred to above, consent shall be deemed to have been given, it being understood that any publication or communication made pursuant to this Article is required to indicate the contribution made by each of the Contractors to the conduct of the research.

The terms of the above paragraph may not however defeat:

- either the obligation for each of the scientific heads of the Contractors and/or their assistants to produce their activity report to the research organisation to which they report; or
- the defence of the dissertation of researchers whose scientific activity is related to the purpose of this Agreement. This defence is organised whenever necessary so as to guarantee, while complying with applicable university rules, the confidentiality of certain results of research conducted under the scope of this Agreement.

Regarding dissertations, their content shall be communicated to Contractors whose Pre-Existing Know-How or Knowledge could be threatened by the disclosure in the dissemination no later than two (2) months prior to the date of the defence. These Contractors may request the removal of certain passages and/or require that the defence of the dissertation be closed to the public. They shall have one (1) month, outside of holiday periods, from their date of receipt of the dissertation in which to issue their written response.

The confidential nature of such dissertations shall be brought to the attention of each of the jury members.

### **9.3. General principles regarding Pre-Existing Know-How (PEKH)**

#### **9.3.1. Ownership**

Each Contractor is and remains the sole owner of its intellectual and industrial property rights over its PEKH. Unless expressly provided otherwise, trademarks are not part of PEKH.

#### **9.3.2. Identification of Pre-Existing Know-How**

##### **For Integrated Project :**

The Contractors have identified and listed in Annex 4 the Pre-Existing Know-How over which they may grant access rights for the Project.

The Contractors agree that all other Pre-Existing Know-How shall be considered as unnecessary for the implementation of the Project and/or excluded, provided however that the Contractors may update Annex 4 to extend the listed Pre-Existing Know-How developed between the date of submission of the Proposal and the date of award of the EC Contract.

##### **For NETWORK OF EXCELLENCE :**

The Contractors have identified and listed in Annex the PEKH explicitly excluded.

The Contractors agree to provide access to all Pre-Existing Know-How held by them that is required for the conduct of the Project, except for that listed in Annex, over which the participants are not free or do not wish to grant such rights.

### **9.4. General principles applicable to Knowledge**

#### **9.4.1. Ownership and protection of Knowledge**

Knowledge shall be the property of the Contractor generating it.

If, in the course of carrying out work on the Project, a joint invention, design or work is made (and one or more Contractors are contributors 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 in force the protection of the relevant intellectual property right, the Contractors concerned (the "Contributors") agree that to jointly apply to obtain and/or maintain the relevant rights and shall strive to set up amongst themselves appropriate agreements in order to do so.

These co-ownership agreements shall specify, inter alia, the applicable arrangements in case of the extension of rights as well as those applicable to the allocation and assumption of expenses in connection with the requested protection. The share of each of the Contributors to the development of the Knowledge shall be defined proportionally to the resources implemented by each, whether human, financial or intellectual.

So long as any such rights are in force, such Contributors shall be entitled to use and to licence such right on a non-exclusive basis with a financial compensation decided on a case-by-case basis in accordance with the agreements concluded with the prior consent of the other Contributors. This compensation will be due to academic Contractors who do not undertake commercial activities.

In case a Contractor ("Originator") decides in its sole discretion that it does not intend to seek adequate and effective protection over certain of its Knowledge issuing from the Project, then, the Originator shall inform in writing the other Contractors, through the Coordinator, and any Contractor interested in applying to obtain and maintain such protection shall advise the other Contractors through the Coordinator and in writing within one (1) month of receipt of relevant notice.

In case several Contractors are interested in so applying, they shall strive to set up amongst themselves and with the Originator appropriate agreements to this end.

Should no other Contractor show an interest in so applying, the Coordinator shall inform accordingly the Commission in accordance with Annex II General Conditions - Part B, Article II.16.

The foregoing shall be without prejudice to the Access Rights of all Contractors that will remain unaffected.

The agreement concluded between the Contractor and a subcontractor is required to prohibit the subcontractor from patenting the results obtained; all results belonging to the prime Contractor.

**For NETWORK OF EXCELLENCE : All measures concerning the protection of Knowledge issuing from the Project shall be taken by the Executive Committee, after consultation of the IPUDC pursuant to Article 4.**

#### **9.4.2. Use and dissemination**

If dissemination of Knowledge does not adversely affect its protection or use and subject to legitimate interests, the Contractors shall ensure further dissemination of their own Knowledge as provided under the EC Contract and this Consortium Agreement.

#### **9.5. Access rights**

### **9.5.1. General principles**

Each Contractor shall take appropriate measures to ensure that it can grant Access Rights and fulfil its obligations under the EC Contract and this Consortium Agreement notwithstanding any rights of its employees, or any person it assigns or engages to perform its own Work Package for the Project.

The Contractors agree that Access Rights are granted on a non-exclusive basis.

The Contractors also agree that, if not otherwise provided in this Consortium Agreement or granted by the owner of the Knowledge or Pre-Existing Know-How, Access Rights shall not include the right to grant sublicences.

The Contractors agree that when applied to Software Access Rights do not include access to source code. Access Rights to source code may be granted on request. Any such request may be rejected by the Contractor owner of the source code unless needed as described below.

The Contractors also agree that Access Rights to Software are granted exclusively on a domain defined before the commencement of the Project.

Needed Access Rights shall be granted upon request as described below and in accordance with the provisions of Annex II General Conditions - Part B, Article II-18.

Should a Contractor reasonably believe that, without Access Rights to another Contractor's Pre-Existing Know-How or Knowledge, the performance of its own Work Package for the Project or the Use of its own Knowledge resulting from the Project would be technically impossible or significantly delayed, such Contractor shall then promptly request in writing Access Rights from said other Contractor, identify the extent of the Access Rights and provide reasonable evidence of its needs.

### **9.5.2. Affiliates**

Upon request, each Contractor shall grant Access Rights to the Affiliates of the requesting Contractors identified in Annex 1, as if such Affiliates were parties hereto, provided all such Affiliates are bound by all confidentiality and other obligations of the Contractors under the EC Contract and under this Consortium Agreement, including but not limited to confidentiality undertakings as if such Affiliates were parties thereto.

A parent company, which is not a contractor for the purposes of the EC Contract with the Commission is not eligible to benefit from any Access Rights.

### **9.5.3. Access Rights for execution of the Project**

The Contractors agree that the Access Rights to the Pre-existing Know-How needed for carrying out their own work under the Project shall be granted on a royalty-free basis.

The Contractors agree that the Access Rights to the Knowledge needed for carrying out their own work under the Project shall be granted on a royalty-free basis, except for a new Contractor joining the Project, who shall have access to the Knowledge obtained prior to its joining the Project at market conditions.

### **9.5.4. Access Rights for Use of Knowledge**

The Contractors agree that the Access Rights to the Pre-Existing Know-How needed for Use of a

Contractor's own Knowledge shall be granted on fair and non-discriminatory conditions.

The Contractors agree that the Access Rights to the Knowledge needed for Use of another Contractor's own Knowledge shall be granted at preferential or market conditions.

Each Contractor (the "First Contractor") may enter into a technical cooperation or licencing arrangement with a third party in respect of any minor amount of Knowledge of another Contractor (the "Second Contractor") which have been unavoidably incorporated into or amalgamated with the First Contractor's own Knowledge.

In such circumstances and upon request of the First Contractor, the Second Contractor shall grant to the First Contractor non-exclusive licences over its Knowledge against terms and conditions to be agreed, provided that no legitimate interests of the Second Contractor oppose the grant of such licence.

### **9.6. Protection of acronym of the Project and filing of a domain name**

After having carried out all searches for prior rights that may be required, the Contractors may agree that the Coordinator or any other Contractor shall be in charge of proceeding, in its own name, with the filing of the acronym for the Project as well of a corresponding domain name. The Contractors shall agree on the extent of the protection sought.

The non-filing parties shall benefit from a non-exclusive licence to use this mark under financial terms corresponding to an amount no higher than that resulting from an equal share of the cost of filing, obtaining and maintaining the mark.

## **Article 10. Miscellaneous provisions**

### **10.1. Entire agreement**

This Consortium Agreement, the annexes, the EC contract, [the letter of intent (if such exists)] and - when such exist(s) - Complementary Contract(s), constitute the entire agreement between the Contractors in respect of the Project, and supersede all previous negotiations, commitments and documents concerning the Project including any memorandum of understanding between the Contractors (whether or not with others) which relate to the Project or its proposal to the European Commission.

The annexes to this Consortium Agreement, which form an integral part thereof are:

ANNEX 1 : List of Affiliates

ANNEX 2 : Description of Programme of Activities

ANNEX 3 : Detailed Joint Programme of Activities/Implementation Plan for the first 18 months

ANNEX 4 : List of and Pre-Existing Know-How brought to the project. ANNEX 4 : REX : List of excluded Pre-Existing Know-How

ANNEX 5 : List of Resources made available for the Project

ANNEX: Nominative list of researchers and doctoral students in the network of participants

ANNEX: Plan for Use and Dissemination

ANNEX: First budget of the proposed Allocation of Resources

### **10.2. Controlling provisions**

In case of inconsistency between the contractual provisions signed by the Contractors in connection with this Project, the provisions of the EC Contract shall prevail over those of this Consortium Agreement, which shall themselves prevail over any special contract or agreement

signed for its application.

### **10.3. Transfer or Assignment**

No Contractor shall, without the prior written consent of the Governing Board assign or otherwise transfer partially or totally any of its rights or obligations under this Consortium Agreement. Such consent shall not be unreasonably withheld when such assignment or transfer is made to the benefit of an Affiliate of that Contractor.

### **10.4. Entry into force – Term of the Consortium Agreement**

This Consortium Agreement shall enter into force once the following three conditions have been fulfilled:

1. The EC Contract with the Commission has been signed by the Coordinator;
2. All of the Contractors have adhered to the EC Contract;
3. All of the Contractors have signed this Consortium Agreement.

This Consortium Agreement shall expire on the expiry date of the Contract with the Commission.

For NETWORK OF EXCELLENCE : Six (6) months prior to its expiry, the Governing Board shall meet to envisage arrangements for the continuation of the network and to devise a financing plan of a nature to ensure its continued existence.
---

The Project will commence on the date of entry into force of this Consortium Agreement.

### **10.5. Language**

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

### **10.6. Applicable Law**

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

### **10.7. No partnership or agency**

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

### **10.8. Settlement of disputes**

All disputes or differences arising in connection with this Consortium Agreement which cannot be amicably settled within the Governing Board shall be finally settled through arbitration in Paris under the Rules of the International Chamber of Commerce (ICC). Arbitration shall be conducted in the English language. Three Arbitrators (3) shall be selected. Each Party shall select one (1) arbitrator. Each Contractor or party shall also notify the other Contractor or party/parties in writing of its selection and the two (2) arbitrators so chosen shall select the third arbitrator. If either Contractor or party fails to appoint an arbitrator within thirty (30) days after the Demand for Arbitration, then the International Chamber of Commerce shall make the selection. If the two arbitrators selected by the parties cannot agree on the third arbitrator within thirty (30) days from the date the last of the two has been selected, then the International Chamber of Commerce shall make the selection. In deciding matters, the arbitrators shall be bound by the terms and conditions of this Consortium Agreement, and they will decide "ex bono et aequo".

The arbitration award, if providing for damages, shall include interest from the date of any breach

or other violation of this Consortium Agreement.

The arbitration award shall be final and binding upon the Contractors or parties, not subject to appeal, and honoured by the Contractors or parties without having resort to any court; however, if the award is not carried out voluntarily and without delay, it shall be referred to and enforced by any court having jurisdiction over the subject matter or any of the parties or their assets.

Each Contractor or party bear its own expenses incurred in utilising arbitration and the fees for arbitration shall be borne equally between the Contractors or parties.

#### **10.9. Signature of special contracts**

Special contracts shall be concluded between the Contractors for any issue not covered by the provisions of this Consortium Agreement.

#### **10.10. Amendments**

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 Contractors.

#### **10.11. Assignment**

No Contractor shall, without the prior written consent of the Governing Board, carry out any partial or full assignment or transfer of its rights and obligations under this Consortium Agreement.

#### **10.12. Severability**

Should any provision of this Consortium Agreement prove to be invalid or incapable of fulfilment, or subsequently become invalid or incapable of fulfilment, whether in whole or in part, this shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Contractors shall be entitled to demand that a valid and practicable provision be negotiated which most nearly fulfils the purpose of the invalid or impracticable provision.

#### **10.13. General provisions relating to termination**

The provisions of this Consortium Agreement relating to liability, confidentiality, intellectual property rights and publications shall survive the term or termination of this Consortium Agreement for any reason whatsoever to the extent needed to enable the Contractors to pursue the rights and remedies provided for therein.

For the avoidance of doubt, termination or withdrawal shall not affect any rights or obligations incurred prior to the date of the termination.

**IN WITNESS WHEREOF**, the Contractors have executed this Consortium Agreement in ... original copies.

Authorised to sign on behalf of \_\_\_\_\_

By (signature):

Name (block letters):

Position:

Date:

Authorised to sign on behalf of \_\_\_\_\_

By (signature):

Name (block letters):

Position:

Date: