

## **National Association For Technical Research**

### **Co-operation between research and industry**

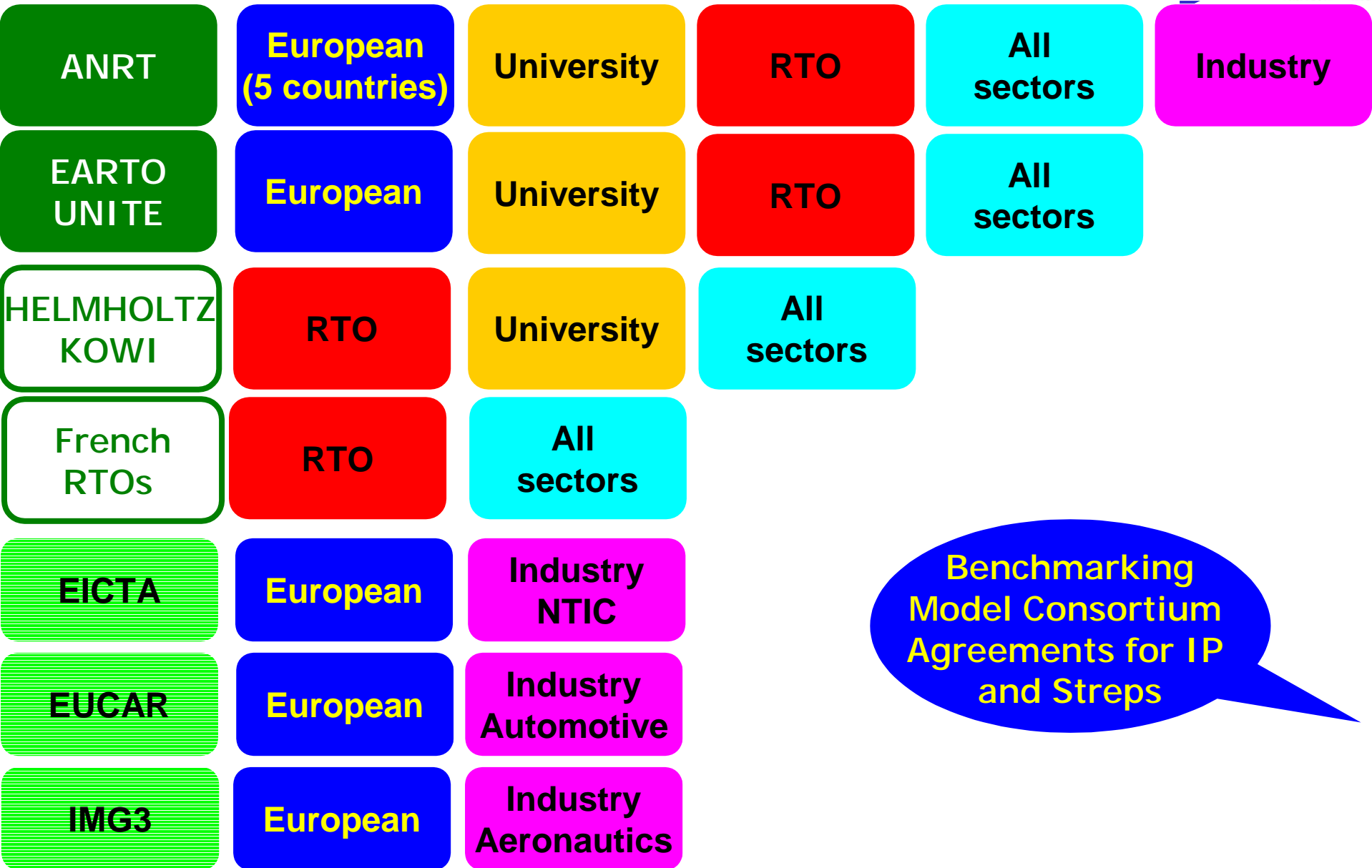
- ANRT is a non for profit organisation created in 1953.
  - ✓ Membership: Industries and Research organizations
- ANRT Europe is specialised in European Commission Research programs.
- Member of FP6 National contact point networks for LSH, NMP, Space and Aeronautics thematics, & SME.
- Monthly Newsletter, Seminars, Help line assistance, Partner search facility for SMEs.
- Involved in accompanying measures of FP5 – FP6 (ECARE).

*Chairman* : Jean-Francois Dehecq, CEO Sanofi-Synthelabo

*Head of Europe Department*: Alain Quévreux

# ACHIEVED CONSENSUS

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**Benchmarking Model Consortium Agreements for IP and Streps**

## Basic principles of ANRT model CA

- Openness and fairness between Participants.
- Information spreading process as well as alerting process.
- To get rid of unfair behaviours due to predominant position.
- To favour proximity cooperation: organized by sub-projects.
- To protect the efforts and investments of each participant.
- Choice of a model CA without any option : it is a framework which throw the nature of partnership into relief.

# Article 3: Proposal preparation, negotiations with the Commission signature of the contract



- The coordinator is responsible for submitting the proposal and negotiate with the Commission.
- Each « contractor » undertakes to support the coordinator.
- The proposal is legally binding the participants.
- The coordinator shall keep informed all the contractors concerned.
- The coordinator shall not, without the agreement of the contractors, accept or propose any deviation to the scope or conditions of their work package .
- The coordinator shall not sign the contract with the Commission unless and until other contractors have signed the Consortium agreement.

# Article 4

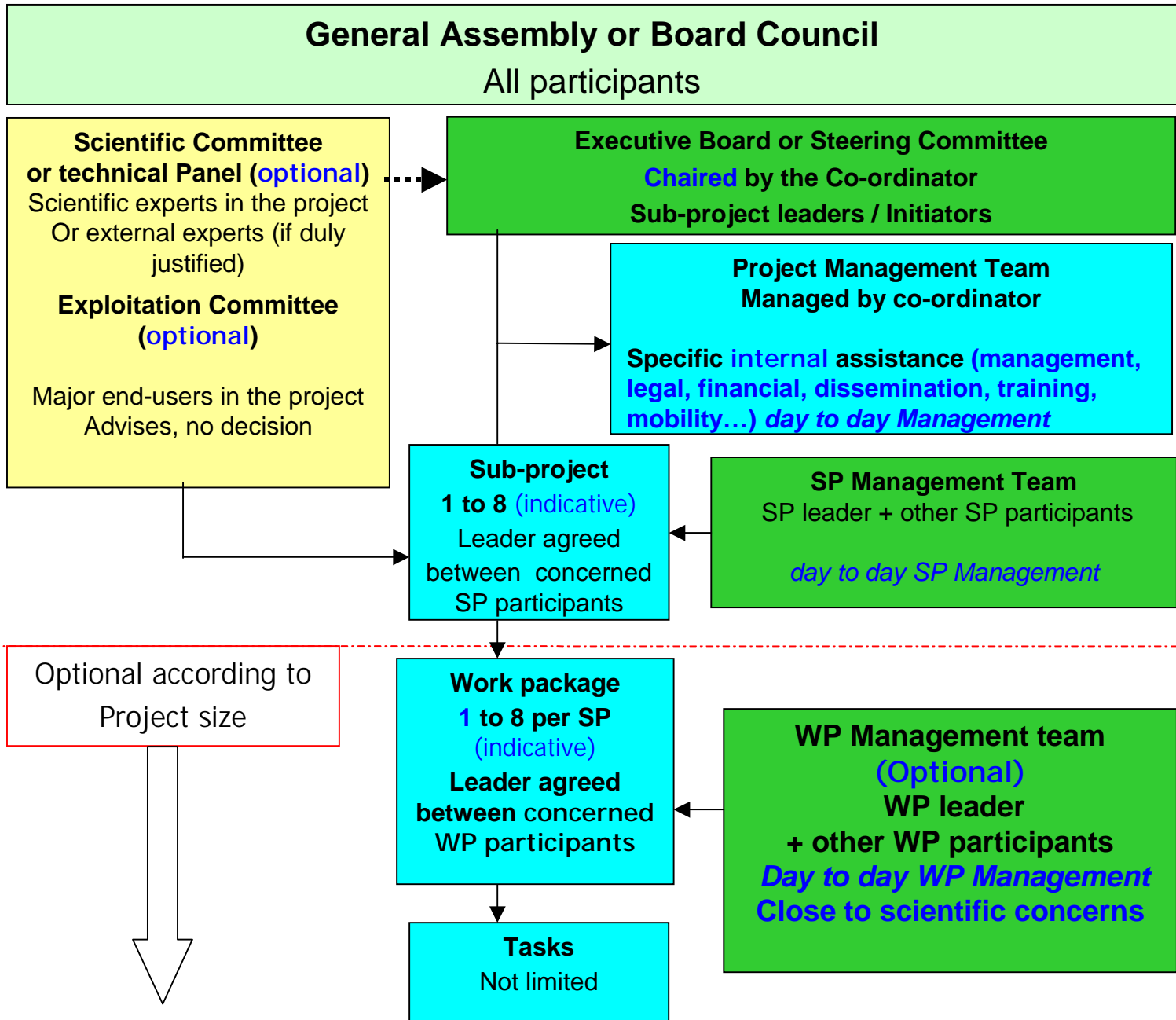
## Contractors' obligation for the implementation of the Contract

- Each contractor shall be pro-active and provide in due time to the coordinator and/or to the Sub-project leader, all informations and deliverables necessary to perform the project.
- Each contractor shall act in good faith, honestly :
  - To participate in a cooperative manner to the meetings.
  - Not exercise veto rights unappropriately.
  - Not to use knowledge without having acquired the corresponding rights.
  - To ensure the accuracy of any informations or materials he supplies to the others.

# Article 5

## Organisation of the project (1/7)

- Principle: The consortium must **remain manageable**.
- The « **golden number** » not to overtake for an efficient work is « **8 participants** » for deciding.
- That's why the project is organised:  
 Maximum **8 sub-projects** structured in maximum **8 workpackage** ,  
 composed of **tasks** shared among contractors.
- **Every modification in a WP shall be approved by the General Assembly. No participant can be involved in essential aspects without its consent.**
- **Any participant should have:**
  - Its legitimate interests safe guarded.
  - No modification of its tasks (except under the collective liability requirements)
  - No modification of the associated EC contribution without its prior agreement (except under the collective liability requirements and when it breaches the Contract and/or Consortium Agreement).



STREP

IP

### General Assembly/Board Council: major decisions & overall direction

- Chaired by the Coordinator
- 1 participant = 1 representative = 1 vote
- Decisions requiring a vote must be identified in advance on invitation.
- In particular responsible for:
  - Allocation of the budget to sub-projects / changes in Work package.
  - Modification of the list of affiliates having some access rights in the project.
  - Proposal for amendments of the contract or the consortium agreement.
  - Deciding to suspend or terminate all or part of the contract.
  - Default of a Participant (including the coordinator), action to be taken / nomination of a new coordinator.
  - Deciding upon the entering into the contract of new contractors.
  - Deciding upon withdrawal of the proposal.
- Majority of 75% of the votes [2/3 of the members represented] for ordinary decisions, or Unanimity for major decisions [all represented].
- Each participant may veto a decision if duly justified.
- Decisions are considered accepted according to a specific process.

- The coordinator is the only intermediary between Contractors and the Commission.
- The main tasks of the coordinator are :
  - Submit reports and other deliverables to the Commission.
  - Chair the General Assembly and the Executive Board.
  - Ensure the transmission of informations between participants and sub-project leaders.
  - Withhold advanced payments of the Commission and transfer sums allocated among contractors as per the budget agreed in the General Assembly.
  - **The coordinator shall neither be entitled to act or to make legally binding declarations on behalf of any other contractor, nor to enlarge its own role.**

# Article 5

## Organisation of the project (5/7)

- The Executive board:
  - Consist of the Coordinator and maximum 8 sub-project leaders.
  - **1 member = 1 vote.**
  - Same internal functioning rules as the General Assembly ones.
- Major decisions:
  - Making proposals to the **General Assembly** for :
    - **Allocation of the Project's budget** between the Work Packages.
    - **Amendment** of the terms of the Contract.
    - Suspend or **terminate all or part** of the project.
    - Action to be taken in case of **default of a Contractor** (coordinator included).
    - **Management of the funds** received from the Commission.
    - Select new contractors to enter, and additional expertise (Sub-contractors)
    - Agreeing press releases and **publications.**
    - **Supporting the coordinator** in preparing meetings.

# Article 5

## Organisation of the project (6/7)

- Project management team:

- If decided by the Coordinator.
- **Report** to the Coordinator.
- **Assist** the coordinator in its day-to-day tasks.

- Sub project :

The sub-project management team shall elect a Sub Project leader.

- Administration tasks, preparation of minutes, follow-up of the Sub Project Management Team decisions.
- Transmission of any document, and transfer of informations.
- Coordinating on a day-to-day basis the progress of the technical work under the sub-project.
- Reviewing deliverables at each agreed step under the project plan.
- Advice the coordinator of any delay in delivery or any major discrepancy

# Article 5

## Organisation of the project (7/7)



- Sub Project management Team :
  - 1 representative per participant involved in the Work Package of the sub project.
  - The sub project leader chairs the meetings.
  - 1 representative = 1 vote / shall not deliberate validly unless all members are present or represented.
  - Same internal functioning rules as the other levels.
- Responsible for :
  - **Deciding upon the allocation of the sub-project's budget for the sub-project** (in accordance of what has been approved in GA).
  - Making proposals to the Executive board for the entering into the contract of new contractors in the SP.
  - Alerting the Executive Board and the Coordinator in case of **delay** in the performance of the project and the transfer of deliverables.
  - Analysing and documenting default of a contractor and prepare action plan to the Executive Board.
  - Deciding upon the exchange of work packages between contractors in the Sub-project.

# Article 6

## Costs, budget and payments

- Each contractor shall bear all its own costs incurred in connexion with the performance of the project, including the remaining coordination costs which are not covered.
- The costs for management shall be separated between a management budget and a coordination budget (under control of the coordinator).
- Management budget is 100% covered by the Commission within the limit of 7% of the EC contribution to the project.
- Coordination costs may be charged to the relevant activity to which they correspond (eg: 50% for research ... as in the fifth FP).
- **➡** The remaining part of the budget will be borne by the contractor(s)
- The coordinator shall receive all payments made by the Commission and undertakes to transfer appropriate sums to the contractors as decided by the General Assembly (part/tranche system).
- The coordinator shall open an account separated from its normal business account, and shall be operated by multiple contractors.
- Payments shall be suspended in case of delay in deliverables.

# Article 7:

## Intellectual property rights



- Knowledge shall be the property of the Contractor generating it.
- In the event of joint ownership, participants shall agree among themselves.
- Mechanism allow other participants, in priority, to protect knowledge of another contractor who does not himself intend to do so .
- Any publication of knowledge require prior written approval of the owner of the knowledge.
- A copy of any planned publication shall be provided to the other contractors and to the Commission (30-day prior notice).
- Any participant may object to the publication if he shows that the protection of its own knowledge could be adversely affected (within fifteen calendar days).
- The contractors shall ensure further dissemination of their own knowledge after the end of the contract (subject to any legitimate interest).

	<b>Access rights to Pre-existing Know-how</b>	<b>Access Rights to knowledge</b>
<b>For carrying out the project</b>	<b>RF</b> Unless otherwise agreed before signing the contract	<b>RF</b>
<b>For Use (exploitation &amp; further research)</b>	<b>Market conditions</b> fair and non discriminatory Unless otherwise agreed before signing the contract	<b>Preferential conditions</b>  or <b>RF</b>

# System of Access Rights

Access rights to pre-existing know-how

Access rights to knowledge

<b>For carrying out the project</b>	If a participant needs them for carrying out its own work under the project	
	Royalty-free unless otherwise agreed before signing the contract	Royalty-free
<b>For use (exploitation + further research)</b>	If a participant needs them for using its own knowledge	
	Non-discriminatory conditions to be agreed	Royalty-free unless otherwise agreed before contract's signature
	Possibility of exclusion of specific pre-existing know-how before contract's signature (or before entry of a new participant)	



# Article 7:

## Intellectual property rights



- The contractors shall identify in annex D pre-existing know-how to which they may grant access rights.
- Access rights are granted on a non-exclusive basis.
- If not otherwise provided, the access rights shall not include the right to grant sub-licenses.
- No costs shall be charged for the granting of access rights (save as in exceptional circumstances).
- Any contractor shall notify to the others of any limitation of access right, in writing before submission of the proposal, of any limitation on access rights.
- In the event of technical cooperation with a third party, in respect of any minor amount of knowledge of another contractor which have been unavoidably incorporated into the first contractor's own knowledge, the second contractor shall grant non exclusive licenses on conditions to be agreed (subject to legitimate interests).

# Article 7: Intellectual property rights

- If a contractor need an access right to carry out its own work in the project or use its own knowledge arising from the project, such access right shall be granted above written request.
- Affiliates shall have the same access rights as the participants ones, in the same conditions.
- Specific rules relating to software.
- In the event a participant wants to contract with a manufacturer, the other contractors shall have a prior right to agree to undertake such manufacturing (on fair and reasonable terms and conditions).
- Each contractor retains all rights in any of its trade names. Any publication making reference to these names by other contractors must obtain prior written approval.

# Article 8

## Liabilities of the Contractors



- **Informations and materials** are transferred between participants without any implied warranty.
- **Contractors** are not responsible for indirect damages **which may occur between themselves.**
- **Joint and several liability of the contractors towards the Commission in case of damages suffered by the commission as a consequence of any failure to perform their obligations under the contract.**
  - **The defaulting contractor shall indemnify** each of the others contractors within the limit of twice the amount received from EC.
  - Any excess shall be apportioned between other participants pro rata to their project share.
  - If it's not possible to attribute the default to any party, the amount claimed by the Commission is apportioned between all contractors.
- **Each contractor is solely liable for damages to third parties resulting from the performance of its Work package.**
- Each contractor shall remain fully responsible for the performance **of its obligations by any subcontractor (appointed by the Executive board, and have no access right without prior written consent).**

# Article 9: Defaults, exclusion, withdraw of a Contractor

- In case of a breach by a contractor of its obligations, which is irremediable or not remedied within 60 days, the General Assembly may decide to exclude the defaulting party from the Consortium (30 days prior written notice).
  - Access rights granted shall cease immediately (also for its affiliates)
  - Access rights granted by the excluded party to the others shall remain in full force and effect.
  - Its WP is assigned to others entities chosen by the contractors and acceptable to the Commission, with a preference granted to remaining contractors.
  - **The excluded contractor shall assume all additional direct costs resulting from its exclusion and replacement (within the limit defined in article 8)**
- The Commission can terminate the Contract with one of the contractors without prejudice to any other rights of the other contractors (annex 2 of the contract), and in the event of bankruptcy or liquidation (with the consent of the Commission).
- A contractor is entitled to withdraw from the Project **with prior written consent of the others and of CE (can't be unreasonably withheld)**

# Article 10: Coming into force, duration, earlier termination

- The Consortium agreement comes into force **on the effective date.**
- **The consortium agreement remain into force until:**
  - The fulfillement or termination of the contract (awarded by the Commission).
  - **Earlier termination of the contract** in these casis :
    - The Commission awards the project to other parties.
    - 18 month from the date of coming into force, the project has not begun.
    - Cancellation of the project by the Commission.
    - Termination of the contract by the Commission..
    - In the event the Commission exclude a contractor and the others can not or don't want to pursue their co-operation taking over the excluded contractor's Work package.
    - Following a contractor's bankruptcy, other contractors decide to terminate the project (subject to approval by the Commission).
- **Article 11: Other consequences of term or termination of the project:**
  - Termination of the project or withdrawal shall not affect any rights or obligations incurred prior to the date of the termination.

# Article 12

## Confidentiality

- During the term of the project and for 5 years **thereafter, the contractors shall respect the confidentiality of any information indicated as being confidential.**
- **The rule of « prior written consent » shall be applied for any communication or duplication of confidential information / document.**
- **No confidentiality obligation shall apply to any such informations:**
  - Information has come (regularly) into the public domain
  - Information already known to the receiving contractor
  - Information received from a third contractor without restrictions or breach of the consortium agreement
  - Information has been published without violation of the CA
  - Information independently developed by employees of the receiving contractor who did not have access to the confidential information
  - Information not properly designated or confirmed as confidential
- **Contractors shall impose the same obligations on their employees**

## And also ...

Article 13: Force majeure

**Article 14:** The CA does not create a partnership or agency or any legal entity among the contractors.

**Article 15:** Notices

**Article 16:** Language: english

**Article 17:** Annexes

Annexe A : list of affiliates

Annexe B : project plan

Annexe C : allocation of ressources

Annexe D : pre-existing know-how

- In the event of conflict between the CA and its annexes, the CA shall prevail.

## And also ...

### **Article 18: Assignments and amendments**

Any amendment of the consortium agreement require the signature of all the contractors.

### **Article 19: Severability**

### **Article 20: Restrictions**

### **Article 21: Applicable law : belgium law**

### **Article 22: Disputes:**

- Arbitration of the international chamber of commerce
- Place of arbitration : Zurich

## For further informations

### Contrats :

[http://europa.eu.int/comm/research/fp6/working-groups/model-contract/index\\_en.html](http://europa.eu.int/comm/research/fp6/working-groups/model-contract/index_en.html)



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