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CONSORTIUM AGREEMENT FOR INTEGRATED PROJECTS IN THE FP 6

Version 4.0.7



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Gemeinschaft
Deutscher Forschungszentren e.V.



Bundesministerium
für Bildung
und Forschung



Deutsches Zentrum
für Luft- und Raumfahrt e.V.



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Wissenschaftsorganisationen



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References:

1. *Contract* (core-contract_en-031023.pdf), approved by the Commission on 23 October 2003. Decision C (2003)3834 dated 23.10.03
2. *Contract*, Annex I, Implementation Plan (Description of Work); (to be proposed and accepted by the Commission),
3. *Contract*, Annex II, General Conditions, (annex-ii-general-conditions_en.pdf) approved by the Commission on 23 October 2003, Decision C (2003)3834 dated 23.10.03
4. *Contract*, Annex III, Integrated Projects approved by the Commission on 23 October 2003, Decision C (2003)3834 dated 23.10.03
5. *Contract*, Annex IV - Form A - consent of contractors to accede to the *contract*, approved by the Commission on 23 October 2003, Decision C (2003)3834 dated 23.10.03
6. *Contract*, Annex V – Form B - accession of new legal entities to the *contract*, approved by the Commission on 23 October 2003, Decision C (2003)3834 dated 23.10.03
7. *Contract*, Annex VI – Form C - financial statement per instrument, approved by the *Commission* on 23 October 2003, Decision C(2003)3834 dated 23.10.03

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

BETWEEN

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

(2) <PARTY 2>

(3) <PARTY 3>

(4) <PARTY 4>

(5)

(6)

(7)

(8)

(9)

hereinafter, jointly or individually, referred to as "*Parties*" or "Party"

relating to the Project entitled

<NAME OF PROJECT>

in short

<give acronym -if any>

WHEREAS:

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

<NAMES OF PROGRAMME and INTEGRATED PROJECT >

to the *Commission* in

<COMPLETE AS PPROPRIATE.....>

as part of the Sixth Research and Technological Development Framework Programme which is retained for funding.

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

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Contract Definitions

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

1.2 Additional Definitions

“**Affiliate**” of a *Party* means:

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

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

- control of fifty (50) percent or more of the nominal value of the issued equity share capital of the entity or of fifty (50) percent or more of the equity's shares entitling the holders to vote for the election of directors or persons performing similar functions, or
- right by any other means to elect or appoint directors of the entity (or persons performing similar functions).

- (b) any other organisation specified in the agreed schedule to this *Consortium Agreement* to be an *Affiliate* of the *Party*, subject to consent of the other *Parties*, only to be withheld on the basis of legitimate interest.

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

“**Common Liability Reserve**” shall mean the fund contributed by the *Parties*, established in accordance with *Contract*, Annex II.18.

“**Compensating Party**” means a *Party*, other than the “Defaulting Party”, from whom the *Commission* claims reimbursement due to financial collective responsibility in accordance with *Contract*, Annex II.18.

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

“**Defaulting Party**” means a *Party* breaching its obligations of the *Contract* and/or of this *Consortium Agreement*.

“**Deliverables**” means reports, including progress reports and certified audit reports, as well as Hardware and Software referred to in the *Contract* and in this *Consortium Agreement* that have to be delivered to the *Co-ordinator* and/or the *Commission*.

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

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

"Joint Budget" is the binding internal agreement concerning the *Project* Budget and financial *Project* Shares of each *Party* for the whole duration of the *Project*. The *Project* Budget and the *Project* Shares are defined in *Contract*, Annex I and if appropriate detailed in Annex B of this *Consortium Agreement*.

"Panels" – optional – will support and advise the Project Co-ordinator and Co-ordination Committee on specific issues (IPR; Technology Transfer; Gender Aspects etc.)

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

"Project" means all the work referred to in Annex I of the *Contract*.

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

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

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

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

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

“Sub-project” means the Sub-projects as listed in connection with the work breakdown structure in *Contract*, Annex I and any sub-project created by decision of the General Assembly in accordance with the provisions of this *Consortium Agreement*.

1.3 Further Understandings

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

- (a) **"Indirect utilisation of Knowledge"** in the *Contract's* definition of *Use* includes, for and on behalf of the *Party* concerned, *Use* by having products and/or services developed, made and/or provided;
- (b) **"Fair and Non-discriminatory Conditions"** means fair market conditions.
- (c) **“Pre-existing Know-how”** means the Know-how accumulated and developed solely within the specific research group, research department, or research institute of each party directly involved in carrying out the *Project*.
- (d) The *Parties* who are **"Public Bodies"** in accordance with *Contract* Art. II.1, are listed in Annex E.

Section 2: Purpose, Nature and Duration of the Agreement

2.1 Purpose

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

2.2 Nature of the Agreement

Each *Party* shall act as an independent *Contractor* and not as the agent of any of the other *Parties*.

Nothing contained in this *Consortium Agreement* shall be construed as constituting or organising the sharing of profits or losses arising out of the efforts of any other *Party* hereunder.

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

2.3 Duration

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

Section 3: Project Organisation and Management Structure

3.1 General Structure

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

- (a) **General Assembly** as the ultimate decision-making body of the *Consortium*,
- (b) **Project Co-ordination Committee** as the supervisory body for the project execution which shall report and be accountable to the General Assembly under the conditions set forth in Section 5.3.
- (c) **Panels** can be established by the *Project Co-ordination Committee* to deal with specific issues or problems, e.g. Technical, Technology or Scientific Panel, Financial Panel, and Exploitation or Dissemination Panel.
- (d) **Project Co-ordinator** as the intermediary to the *Commission* is authorised to execute the project management, shall report and be accountable to the *Project Co-ordination Committee* (which shall in turn report and be accountable to the General Assembly) under the conditions set forth in Section 5.4.

(e) **Project Office**, if necessary, established by the *Project Co-ordinator* shall provide the necessary support for day-by-day project management for the *Project Co-ordination Committee* as well as reporting activities to the *Commission*.

3.2 The *Parties*' Representatives

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

The representatives to the General Assembly should be of senior management level. In addition to chairing the *General Assembly*, the *Co-ordinator's* representative should also chair the *Project Co-ordination Committee*, but can delegate this function for regular meetings.

3.3 European Commission Representative

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

Section 4: Responsibilities of each Party

4.1 General Responsibilities

Each *Party* hereby undertakes with respect to the other *Parties* to use all reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under the *Contract* and this *Consortium Agreement*, including in particular the submission to the *Commission* of the deliverables pursuant to the *Contract*, Article 7 and Annex II.7.

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

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

In particular, information and documents required by the *Contract*, Annex II.3 and 7 shall be submitted via the *Co-ordinator*.

4.3 Obligations of the *Parties* towards each other

(a) Each *Party* undertakes reasonable endeavours:

- to notify the *Co-ordinator* and each of the *Parties* promptly of any significant problem and delay likely to affect the success of the *Project*;
- to inform other *Parties* of relevant communications it receives from third parties in relation to the *Project*.

(b) Each *Party* shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies hereunder or under the *Contract* and promptly to correct any error therein of which it is notified. The recipient *Party* shall be entirely responsible for the use to which it puts such information and materials.

- (c) In addition to the obligations specified in the *Contract*, Annex II.3, each *Party* agrees not to use knowingly, as part of a deliverable or in the design of such deliverable or in any information supplied hereunder or under the *Contract*, any proprietary rights of a third party for which such *Party* has not acquired the right to grant licences and user rights to the other *Parties* in accordance with the *Contract*, unless all of the other *Parties* have accepted such use in writing, such acceptance not to be unreasonably withheld.

Section 5: Responsibilities and Authority

5.1 Establishment of the Implementation Plan

The *Project Co-ordinator* and the Project Co-ordination Committee shall be responsible for the development, extrapolation and harmonisation of the Implementation Plan in line with *Contract*, Annex I and shall propose specific procedures in decision making relating to these issues in accordance with the following principles. The *Project Co-ordinator* and the *Project Co-ordination Committee* have to inform to the *General Assembly* about any changed proposals for activities and any changed budget allocation to be confirmed and approved by the relevant decision-making body and/or the *Parties*.

- (i) The *Parties* in their Sub-Projects design a plan for the activities within their Sub-Projects for the following 18 months period. This plan will be submitted to the *Project Coordination Committee* for review.
- (ii) The *Project Coordination Committee* will evaluate such plans, check them for possibilities for sub-project interactions, and identify any cross-area topics.
- (iii) The *Project Coordination Committee* submits a proposal for the next Implementation Plan, which shall be distributed to all *Parties* at least two weeks before the *General Assembly* meeting.
- (iv) The *General Assembly* shall discuss the proposed annual Implementation Plan during its annual meeting, modifies or amends the Implementation Plan, if necessary, and accepts the final version.
- (v) On the basis of the accepted Implementation Plan, the budget will be allocated to the various *Sub-Projects*. (if any)

5.2 The General Assembly

5.2.1 Responsibility

The *General Assembly* shall consider the report of the *Project Co-ordination Committee*, receive and approve the accounts for the past (financial) year, approve the budget and Annual Implementation Plan.

5.2.2 Decisions

The *General Assembly* only decides on *Project* related matters relating to:

- the preparation and final approval of the annual *Implementation Plan* prior to the submission to the *Commission*,
- all budget-related matters,
- the acceptance of new parties as well as the exclusion of *Parties*,

- the structure and restructuring of the Sub-projects,
- the alteration of the *Consortium Agreement*, and
- the premature completion/ termination of the *Project*.

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

The Parties agree to adhere to these decisions subject to section 20 hereof.

5.2.3 General Assembly Meetings

5.2.3.1 Members

Each *Party* shall be entitled to send one voting representative to the *General Assembly*.

5.2.3.2 Preparation and Organisation of the Meetings

The Chairperson of the *Project Co-ordination Committee* shall provide an agenda to all the *Parties* not later than 21 days in advance of the relevant *General Assembly* meeting. The agenda must give full details and background to any proposed decision.

No decision may be made in relation to any matter not mentioned in the agenda unless agreed by unanimous consent of all the *Parties* present, or duly represented by proxy.

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

5.2.3.3 Ordinary Meetings

Ordinary meetings of the *General Assembly* shall be convened at least once a year.

5.2.3.4 Extraordinary Meetings

Extraordinary meetings of the *General Assembly* may be convened either by the Chairperson or at the request of a quarter (25 percent) of the Sub-projects or on request of one third ($\frac{1}{3}$) of the *Parties*.

5.2.3.5 Rules of Voting

Ordinary and extraordinary meetings of the *General Assembly* shall constitute a quorum if more than two third ($\frac{2}{3}$) of the *Parties* are present or duly represented by proxy.

In case quorum is not met, the *General Assembly* will be convened once again within no more than three (3) weeks from the previous meeting, and may validly deliberate even in the absence of quorum.

In extraordinary cases the *General Assembly* may take decisions through the chairperson of the *Project Co-ordination Committee* consulting with all members via teleconference and/or via email, phone, etc. These decisions must be ratified by an ordinary meeting and shall be made available to all *Parties*.

Decisions need a majority of 75 percent. Each *Party* has one vote.

A *Party* may issue its veto only in the case of decisions:

- (a) to accept a new party in the *Project* if a substantial threat to its commercial or strategic interests is likely to exist which cannot be resolved by any other measure,
- (b) which affect significantly its budget, liability or workload set down in *Contract*, Annex I.

5.2.3.6 Minutes of Meetings

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

5.2.3.7 Kick-off Meeting

The first meeting of the *General Assembly* (Kick-off Meeting of the *Project*) shall take place at the latest one month after start of the *Project*. The structure of the *Project* must be confirmed by the *General Assembly*.

5.3 Project Co-ordination Committee

5.3.1 Responsibilities

The *Project Co-ordination Committee* shall co-ordinate the *Project*. The *Project Co-ordination Committee* assumes overall responsibility for liaison between the *Parties* in relation to the *Project*, for analysing and approving the results, for proper administration of the *Project* and for implementation of the provisions contained in the *Consortium Agreement*.

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

- (a) supporting the *Co-ordinator* in fulfilling obligations towards the *Commission*,
- (b) ensuring that all work meets functional requirements,
- (c) providing *Project* management in relation to the activities of the Panels on technical, financial and/or exploitation/ dissemination issues, as applicable,
- (d) reviewing and proposing to the *General Assembly* budget transfers in accordance with the *Contract* and the annual Implementation Plan,
- (e) proposing changes in work sharing, budget and participants to the *General Assembly*,
- (f) deciding on the annual Implementation Plan for approval by the *General Assembly* prior to its submission to the *Commission*,
- (g) making proposals to the *Parties* (other than a *Defaulting Party*) to serve notices on a *Defaulting Party* in accordance with Sections 8.2 and 8.5.2 and to assign the *Defaulting Party's* tasks to specific entities,
- (h) agreeing on press releases and joint publications (without prejudice to Section 12) by the *Parties* with regard to the *Project*, and
- (i) agreeing (without prejudice to Section 12) on procedures and policies in accordance with the *Contract*, Annex II.34 for Dissemination of *Knowledge* from the *Project* which is not to be used by the *Parties*.

5.3.2 Decisions

All decisions of the *Project Co-ordination Committee* shall be taken by simple majority.

Any decision requiring a vote at a *Project Co-ordination Committee* meeting must be identified as such on the pre-meeting agenda, unless there is an unanimous agreement to vote on a decision at that meeting and three-quarters ($\frac{3}{4}$) of the members of the *Project Co-ordination Committee* are present or duly represented by proxy.

In the case of Section 5.3.1(g), the decision shall be taken unanimously by all of the non-*Defaulting Parties* that are members of the *Project Co-ordination Committee*.

5.3.3 Relation to the General Assembly

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

5.3.4 Panels

The *Project Co-ordination Committee* shall have the option to set up Panels to advise and support the *Project Co-ordination Committee* in the proper management and co-ordination of the *Project*. In case these panels cause extra expenses, the prior written unanimous consent of the *Parties* is required.

These Panels have an advisory role only.

5.3.5 Meetings

The *Project Co-ordination Committee* shall meet at least twice a year. The *Parties* may decide to hold only one meeting per year..

Extraordinary meetings may be called at any other time at the request of its chairperson or at the request of a quarter ($\frac{1}{4}$) of the *Parties*.

Meetings shall be convened by the chairperson with at least fifteen (15) calendar days prior notice including an agenda.

Ordinary and extraordinary meetings of the *Project Co-ordination Committee* shall constitute a quorum if more than two third ($\frac{2}{3}$) of the *Parties* are present or duly represented by proxy.

In case quorum is not met, the *Project Co-ordination Committee* will be convened once again within no more than three (3) weeks from the previous meeting, and may validly deliberate even in the absence of quorum.

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

5.3.6 Kick-off

Within seven (7) days after *the Kick-off Meeting*, if not earlier, the *Project Co-ordination Committee* shall convene. In case the composition of the *Project Co-ordination Committee* is not elaborated in *Contract Annex I*, the *General Assembly* shall decide on its constitution. The *Project Co-ordination Committee* shall be chaired by the *Co-ordinator's* representative. Each representative shall have a named deputy.

5.3.7 Minutes of Meetings

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

5.4 Co-ordinator

5.4.1 Responsibilities of the Co-ordinator

The *Co-ordinator* is the single point of contact between the *Commission* and the *Consortium*. In this function the *Co-ordinator* shall sign the *Contract* with the *Commission*. Pursuant to the *Contract*, the *Co-ordinator* is responsible for the following tasks and functions

- (a) overall management of the *Project* with the support of a *Project Team*, if necessary,
- (b) chairing the *Project Co-ordination Committee* and the General Assembly,
- (c) preparation of the meetings and decisions of the General Assembly and the *Project Co-ordination Committee*.
- (d) timely collection and, with the support of the *Project Co-ordination Committee*, preparation of statements, including financial audit certificates, from the *Parties* for transmission to the *Commission*,
- (e) timely collection of all hardware, software and data identified as deliverable items in the *Contract* or requested by the *Commission* for reviews and audits, including the results of the financial audits prepared by independent auditors, from the *Parties* for transmission to the *Commission*.

5.4.2 No power of Representation

The *Co-ordinator* shall not be entitled to act or to make legally binding declarations on behalf of any other *Party*.

5.4.3 Submitting Deliverables

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

5.4.4 Specific Authorisation of the Co-ordinator

- (a) To the extent that serious concerns regarding the financial soundness of one or several *Parties* exist, the *Co-ordinator* has the authority to require the appropriate letter of comfort to prove that the corresponding *Party* is able to fulfil the financial obligations with regard to the *Contract* and this *Consortium Agreement*.

Until this is provided, the *Co-ordinator* is entitled to refuse the disbursement of the financial contributions of the *Commission* to this *Party*.

- (b) Furthermore, the *Co-ordinator* has the right to retain any payment to a *Party* if
 - this *Party* is late in submitting or refuses to provide deliverables as defined in Section 4.3 of the *Consortium Agreement* and *Contract*, Annex II.7.
 - such *Party* has not yet spent the payment of the previous period.

Section 6: Costs - Payments

6.1 General Principles

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

The costs for each audit shall be reimbursed up to an amount of < € optional > of the *Co-ordinator's* management budget.

The financial contribution of the *Commission* will be distributed according to the *Contract* and/or this *Consortium Agreement* (Annex B). If a valid decision of the *General Assembly* to change the budget has been taken but has not yet been implemented into the manifestation of the *Project* budget in Annex B or the *Contract*, Annex I, the *Co-ordinator* has the right to nonetheless distribute payments following the budget allocation newly agreed via the *General Assembly's* decision.

6.2 Payments

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

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

Parties who spend less than their respective share of the Joint Budget will be funded only in respect of the actual amount spent. *Parties* who spend more than their respective share of the Joint Budget will be funded only up to their share.

Option:

The advance payments from the *Commission* shall be deposited into a separate account. The transfer to the individual *Party* will be made in half-yearly instalments. The first instalment will be transferred with minimum delay, but not later than thirty (30) calendar days from the receipt thereof from the *Commission*. The second and subsequent instalments will be released by the *Co-ordinator* depending on the approval of the *Project Co-ordination Committee* about completion of work and/or timely submission of *Project* deliverables.

Such separation shall be made in accordance with the *Contract*.

6.3 Common Liability Reserve (optional)

The Project Coordinating Committee shall decide if a Common Liability reserve shall be established.

In this case the *Co-ordinator* shall withhold five percent (5 %) of all advance payments made by the *Commission* as a Common Liability Reserve to cover the financial liabilities in accordance with *Contract*, Annex II.18 The reserve shall be released in part or as a whole to the *Parties* in accordance with Section 6.2 of the *Consortium Agreement* when the *General Assembly* has unanimously decided that there is no further need for

precaution with regard to financial risks, or when the Commission has accepted all deliverables and costs whichever is earlier.

Parties with the status of an international organisation, a *Public body* or a legal entity whose participation in the indirect action is guaranteed by a Member State or an associated State are free from the obligation to contribute to the Liability Reserve.

6.4 Financial planning and reporting data

- (1) The *Parties* shall deliver all relevant financial data including but not limited to the application of the budget use and received payments needed for financial planning, its execution and accountability towards the *Project* and towards the *Commission*, based upon their financial system as provided in the *Contract* and this *Consortium Agreement*.
- (2) The format of these data has to comply with the requirements of the *Commission* and any formats agreed upon by the *General Assembly*, within the boundaries given by the accorded financial system of the *Parties*.
- (3) Each *Party* shall be solely liable for its financial data. No other *Party*, including the *Co-ordinator* or their representatives acting within the scope of this *Consortium Agreement* may change these data without express written permission of the *Party* concerned.

Section 7: Confidentiality

7.1 Principles

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

- (a) disclosed to a *Party* in connection with the submission to the *Commission* of the proposal for this *Project* under the Sixth Framework Programme pending the signing of the *Contract*;
- (b) disclosed to a *Party* in connection with the *Project* after the signing of the *Contract*, but which
 - (i) is clearly marked "confidential";
 - (ii) if disclosed orally, was at the time of disclosure indicated to be "confidential" and within thirty (30) calendar days reduced to physical form and marked "confidential" by the discloser,
 - (iii) is obviously of a confidential nature, which means that, given the nature of the information disclosed and the circumstances of the disclosure, a reasonable person would believe such information disclosed to be the confidential information of the disclosing party (the failure of the disclosing party to provide a follow-up tangible form thereby not affecting the confidential nature of the information)

the terms of this Section shall apply.

7.2 Obligations

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

- (a) it will not during a period of five (5) years from the date of disclosure to the *Party* or during a period of three (3) years after the end of the *Project* – whichever occurs

later - use any such information for any purpose other than in accordance with the terms of the *Contract* and of this *Consortium Agreement*, and

- (b) it will during the period of five (5) years from the date of disclosure to the *Party* or during a period of three (3) years after the end of the Project – whichever occurs later - treat the same as (and use reasonable endeavours to procure that the same be kept) confidential and not disclose the same to any other third party without the prior written consent of such owner in each case; provided always that such agreement and undertaking shall not extend to any information which the receiving *Party* can show:
- (1) was at the time of disclosure to the *Party* published or otherwise generally available to the public, or
 - (2) has after disclosure to the *Party* been published or become generally available to the public otherwise than through any act or omission on the part of the receiving *Party*, or
 - (3) was already in the possession of the receiving *Party*, without any restrictions on disclosure, at the time of disclosure to the *Party*, or
 - (4) was rightfully acquired from others without any undertaking of confidentiality, or
 - (5) was developed independently of the work under the *Contract* by the receiving *Party*.

7.3 Communication of Information

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

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

7.4 Confidentiality towards third parties

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

Section 8: Liabilities

8.1 Liability of the *Parties* towards each other

As regards any claims or damages arising in connection with the preparation and performance of the Annual Implementation Plan as defined in Annex I to the *Contract*, the following liability provisions shall apply:

- (1) In respect of information or materials provided by one *Party* to another hereunder or under the *Contract*, the supplying *Party* shall be under no obligation or liability other than as stated in Section 4.3 (b) and no warranty condition or representation

of any kind is made, given or to be implied as to the sufficiency, accuracy or appropriateness for purpose of such information or materials, or, subject to Section 4.3 (c), the absence of any infringement of any proprietary rights of third parties by the use of such information and materials and the recipient *Party* shall in any case be entirely responsible for the use to which it puts such information and materials.

- (2) No *Party* shall be responsible to another *Party* for indirect or consequential loss or damages such as, but not limited to, loss of profit, loss of revenue or loss of *Contracts*.

8.2 Indemnification

8.2.1 Indemnification in the event of claims between the Parties, without *Commission* claims

Each *Party* shall indemnify each of the other Parties in respect of acts or omissions of itself and of its employees, agents and *Subcontractors* constituting a breach of any obligation under this *Consortium Agreement*, provided always that such indemnity shall not extend to claims for indirect or consequential loss or damages such as, but not limited to, loss of profit, revenue, contract or the like; the total limit of liability of that *Party* to all of the other Parties collectively in respect of any and all such claims shall not exceed twice that *Party's Project Share*.

The provisions of this section shall not be construed as limiting the Parties' liability with regard to any acts or omissions beyond the ones constituting a breach of any obligation under this *Consortium Agreement*, such as indemnity for damage to physical health of humans and/or to property.

8.2.2 Indemnification by the Defaulting *Party* in the event of claims from the *Commission*

In any case where the *Commission* claims reimbursement in accordance with the *Contract*, Annex II.18, from Parties other than the Defaulting Parties, the Compensating Parties shall be entitled to seek full indemnification by the Defaulting *Party*.

8.2.3 Indemnification from the Common Liability Reserve (optional, if Section 6.3 will be applied)

If and to the extent that the Defaulting *Party* is obviously not able or willing to fulfil its obligations under Section 8.2.1 the Compensating *Party* shall be indemnified with money from the Common Liability Reserve. However, with respect to the internal compensation the Parties accept that the respective Sub-project(s) to which the *Defaulting Party* is involved shall have the priority obligation to indemnify the Compensating *Party*. Therefore, at the first instance the amount withheld from these Parties being involved in the same Sub-project(s) of the *Defaulting Party* shall serve as Liability Reserve.

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

Public bodies are exempted from such obligations.

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

8.3 Liability towards Third Parties

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

8.4 Third Parties

- (a) Each *Party* shall be fully responsible for the performance of any part of its share of the *Project*, or other *Contract* obligations, in respect of which it enters into any contract with a third party (e.g. a *Subcontractor*) and shall ensure
 - (i) such contracts enable fulfilment of the *Contract*,
 - (ii) the other *Parties'* *Access-rights* are the same as would have been the case had the contracting *Party* performed its share of the *Project* and/or those obligations itself; and
 - (iii) the third party shall not have access to any other *Party's Knowledge* or *Pre- Existing Know-How* without that *Party's* prior written consent.
- (b) each *Party* shall inform the *Co-ordinator* in writing asking for a decision of the *General Assembly* Committee, if it intends to enter into a contract with a third party (giving the rationale therefore) if such an event has not been detailed in the *Contract*, Annex I and the contract is other than for less than ten (10) percent of its share of the *Project*.
- (c) each *Party* shall ensure that it can grant *Access-rights* and fulfil the obligations under the *Contract* notwithstanding any rights of its employees, or persons it engages to perform part of its share of the *Project*, in the *Knowledge* or *Pre-existing Know-how* they create after the *Project Commencement Date*.

8.5 Defaults and Remedies

8.5.1 Principles

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

8.5.2 Procedures and Consequences

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

nate this *Consortium Agreement* with respect to the *Defaulting Party* following a minimum of 30 calendar days prior to written notice by the *Co-ordinator*.

Such termination shall take place with respect to the *Defaulting Party* and the latter shall be deemed to have agreed to the termination of the *Contract* in respect of its participation therein under the general provisions of *Contract*, Annex II.15, as the other Parties and/or the *Commission* shall decide provided always that

- (a) any and all *Access-rights* granted to the *Defaulting Party* and its *Affiliates* by the other Parties as well as under the *Contract*, shall cease immediately; but any and all *Access-rights* granted by the *Defaulting Party* to the other Parties and their *Affiliates* shall remain in full force and effect;
- (b) the Work Package(s) of the *Defaulting Party* shall be assigned to one or several companies and/or entities which are chosen by the other Parties, are acceptable to *Commission* and who agreed to be bound by the terms of this *Consortium Agreement*.
The preference shall be granted to one or more of the remaining Parties.
- (c) the *Defaulting Party* shall:
 - (i) assume all reasonable direct costs increase (if any), resulting from the assignment referred to in (b) above in comparison with the costs of the Work Package of the *Defaulting Party* as specified in the *Contract*, Annex I and Annex B of this *Consortium Agreement*, and
 - (ii) be liable for any so resulting additional direct cost caused to the other Parties, up to a total amount which, together with any liability to the *Commission* under the *Contract*, Annex II.18, will not exceed twice that Party's *Project Share*.

Section 9: Force Majeure

Each Party will notify the other Parties in writing of any *Force Majeure* (Contract, Annex II.4) as soon as possible. The Parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such *Force Majeure* event is not overcome within 6 weeks after such notification, the transfer of tasks shall be carried out.

Section 10: Intellectual Property Rights

10.1 General Provisions

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

10.2 Protection of Knowledge

10.2.1 Joint Invention

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

The *Parties* concerned shall seek to agree amongst themselves arrangements for applying for, obtaining and/or maintaining such right on a case-by-case basis. As long as any such right is in force, each *Party* concerned shall be entitled to use and to license such right without the consent of the other *Parties*, provided that the *Party* concerned shall be informed in advance of any licensing to third parties. In case of licensing to third parties, appropriate financial compensation shall be given to the other *Parties* concerned.

10.2.2 Application for a Patent

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

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

Such assignment shall ensure that the *Access-rights* of all *Parties* will be unaffected. For the avoidance of doubt, the *Party* which assigned its rights shall have at least the same *Access-rights* as the non-involved *Parties*.

10.3 Exclusion of Access-rights to Pre-existing Know-how

In accordance with *Contract*, Annex II.35.1.d, each *Party* has the right to exclude its specific *Pre-existing know-how* from the other *Parties'* access to be listed in Annex E, as far as the restrictions are announced as described hereinafter before the signature of the *Contract* or before the effective joining of a new party or if acquired parallel with the *Project*.

In the event that a new *Party* is admitted to the *Project*, any other *Party* may exclude access to *Pre Existing Know-how* only to the newly admitted *Party*.

10.4 Access-rights

10.4.1 General Principles

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

Access-rights shall be granted in accordance with and subject to the *Contract*, Annex II.35. *Knowledge* and *Pre-existing Know-how* shall be used only for the purposes for which *Access- rights* to it have been granted and only for so long as is necessary for those purposes.

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

- In the case of *Access-rights* granted for the execution of the *Project*, carrying out the tasks assigned to the recipient *Party* under the Implementation Plan (as amended from time to time) would be impossible, significantly delayed, or require significant additional financial or human resources.

- In the case of *Access-rights* granted for *Use*, the *Use* of a defined and material element of the recipient *Party's* own *Knowledge* would be technically or legally impossible.

The burden of proof in relation to a claimed need for *Access-rights* shall be on the requesting *Party*. This *Party* shall provide such proof to the owning *Party* on a written request.

According to *Contract*, Annex II.35.1.a the *Parties* shall conclude a specific agreement for granting *Access-rights*.

The parties shall endeavour to reconcile any dispute concerning the *need* for *Access-rights* through the *Project Co-ordination Committee*

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

Any grant of *Access-rights* not covered by this Section shall be at the absolute discretion of the owning *Party* and subject to such terms and conditions as may be agreed between the owning and receiving *Parties*.

10.4.2 Access-rights for carrying out the Project

Access-rights to *Knowledge* and *Pre-existing Know-how* needed for the execution of the *Project* shall be granted on a royalty-free basis only upon written request specifying the scope and duration of their application. In case of *Pre-existing Know-how*, *Access-rights* shall be granted only after conclusion of a bilateral agreement between the *Parties* concerned.

10.4.3 Access-rights for Use

Subject to Section 10.4.1, *Access-rights* to *Knowledge* and *Pre-existing Know-how* both needed for *Use* of a *Party's* own *Knowledge* shall be granted upon bilateral agreement between the *Parties* concerned.

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

- (i) the access to *Pre-existing Know-how* is limited to the field of application being identified as pertaining to the objectives, content and goals of the *Project* and necessary for the *Use* of own *Knowledge* of the recipient *Party*.
- (ii) the access to *Knowledge* is limited to the field of application being identified as the objectives and goals of the *Project*.
- (iii) Access rights must be requested in writing within 24 months after the end of the *Project*.
- (iii) subject to (i) and (ii) access has to be granted within 6 months after written request by the potential user to the owning *Party*.

10.4.4 Access-rights for using Knowledge in subsequent Research Activities

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

As of the date set out in the *Contract*, Article 4, *Parties* are deemed to be granted, a right to use free of charge *Knowledge* from the *Project* for:

- (a) internal research;

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

10.4.5 Access-rights for Affiliates

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

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

10.4.6 Access-rights for Parties joining or leaving the Project

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

For *Parties* leaving the *Project* in accordance with the provisions of Section 8.5.2 hereof, the following will apply:

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

Termination of the *Contract* or this *Consortium Agreement* and/or cessation of licenses granted to the *Defaulting Party* in accordance with Section 8.5.2 shall not terminate any sublicenses granted or agreed upon to be granted or offered by the *Defaulting Party* in accordance with Sections 10.4.3 and 10.4.8.3 prior to the date on which such termination of this *Consortium Agreement* and/or cessation of licenses becomes effective, provided that the *Party* or *Parties* which generated the *Knowledge* or *Pre-existing Know-how* so sublicensed shall have the right to have an assignment of the *Defaulting Party's* rights under such sublicenses.

Any *Party* leaving voluntarily from the *Project* has access to *Knowledge* as this exists at the date its membership of the *Consortium* expires provided that the 24 month period to request *Access Rights* shall start on the date of leaving the *Project*.

The *Access Rights* granted to a *Party* eliminated by decision of the *General Assembly* shall terminate at the date of elimination without further notice

10.4.7 Access-rights for Third Parties

Notwithstanding the provisions of this Section the provisions as set out in *Contract*, Annex II.35, each *Party* may enter into a technical co-operation or licensing arrangement with a third party in respect of its own *Knowledge*, including, but not limited to, the carrying out of research on behalf of a third party, even if there are minor amounts of *Pre-existing Know-how* and *Knowledge* owned by another *Party*, unavoidably incorporated into or amalgamated with such own *Knowledge*. In such circumstances and upon request of the party entering into the co-operation or arrangement, the other *Party* shall grant non-exclusive rights to permit such co-operation or arrangement against terms and conditions to be agreed upon, provided that no *Legitimate Interest* of the other *Party* opposes the grant of such rights.

10.4.8 Specific Provisions for Access-rights to Software

In the case that Software is a relevant deliverable, Pre-existing Know-how or Knowledge, the special provisions in ANNEX F shall apply.

Section 11: Standards

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

The *Parties* agree that the *Contract*, Annex II.10.2 only refers to actions required by a *Party* in respect of its own information or information which is not subject to any obligation of confidence.

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

12.1 Publications of own Knowledge

For the avoidance of doubt, each *Party* shall have the right to publish or allow the publishing of data which constitutes such *Party's Knowledge*, *Pre-existing Know-how* or confidential information it owns in accordance with the *Contract*, Annex II.33.3.

12.2 Procedure

In addition to Annex II.33.3 each publication or communication related to the Project, whether written or oral, is required to have obtained the consent of the *Parties* concerned. To this end, a brief description and the subject of the proposed publication or communication shall be submitted to the *Project Coordination Committee*, a copy shall be provided to all *Parties*.

If none of the *Parties* objects to the publication within 30 days from the date of referral, consent shall be deemed to be given.

Any objection shall include,

- a) a request for modifications, specifically if information contained in the proposed publication or communication is likely to impair the industrial and commercial Use of *Knowledge*; or

- b) a request that the publication or communication shall be postponed if the information contained in the proposed publication or communication is the subject matter of intellectual property protection.

If a dispute regarding a publication cannot be settled amicably within 30 days month the *Project Coordination Committee* shall decide the issue. However, none of the *Parties* concerned may withhold its consent to publication or communication upon the expiry of a period of three (3) calendar months following the first submission of the proposed publication or communication.

It is understood that any publication or communication made pursuant to this Section is required to indicate the contribution made by each of the *Parties*.

12.3 Disclaimer and marking of confidential information provided to the *Commission*

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

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

12.4 Publication to qualify for a degree

Where a person carrying out work on the *Project* on behalf of a *Party* (the "Relevant *Party*") needs to include *Pre-existing Know-how* or *Knowledge* of another *Party* in a publication to qualify for a degree, this requires the written approval for the *Use* for publication from the appropriate *Party* owning such rights or affected by the *Use* for publication.

To ensure that the planned date of publication can be met the approval of the relevant *Parties* shall be sought at least three months before the latest date on which (pursuant to the qualification procedures) the contents of the planned publication can be altered.

Section 13: No Partnership or Agency

Nothing in this *Consortium Agreement* shall constitute or be deemed to constitute either a formal business organisation, or a legal entity, or a partnership or an agency between the *Parties*.

Section 14: Assignment

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

Such consent shall not be unreasonably withheld.

Section 15: Accession and Termination

15.1 Accession to the *Contract*

Accession to the *Contract* entails that the entering *Party* agrees to adhere to the *Contract* and this *Consortium Agreement* and the decisions of the bodies established under this *Consortium Agreement*. The accession to this *Consortium Agreement* shall be approved by signature to an agreement by the existing *Parties* and the new *Party* following the model in ANNEX D.

15.2 Rules for Termination

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

- (a) that *Party* has obtained the prior written consent of the other *Parties* (such consent not to be unreasonably withheld), and also of the *Commission*, to the withdrawal from, or termination of, the *Contract*; or
- (b) that *Party's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract*, Annex II.15; or
- (c) the *Contract* is terminated by the *Commission* for any reason whatsoever,

provided always that a *Party* shall not by withdrawal or termination be relieved from

- (a) its responsibilities under this *Consortium Agreement* or the *Contract* in respect of that part of that *Party's* work on the *Project* which has been carried out (or which should have been carried out) up to the date of withdrawal or termination; or
- (b) any of its obligations or liabilities arising out of such withdrawal or termination.

15.3 Termination by the *Commission*

If any *Party's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract*, Annex II.15, or a *Party* withdraws from the *Project*, then, without prejudice to any other rights of the other *Parties*, the provisions of Sections 4.3(c), 8.5.1, 8.5.2 (a) and (b) shall apply correspondingly.

15.4 Termination due to Bankruptcy or Liquidation

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

15.5 Continuance of Regulations

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

15.6 Continuance of Sublicenses

Termination of the *Consortium Agreement* and/or cessation of licences granted to the *Defaulting Party* in accordance with Section 8.5.2 shall not terminate any sublicenses granted or agreed to be granted or offered by the *Defaulting Party* in accordance with Section 10 prior to the date on which such termination of the *Consortium Agreement* and/or cessation of licences becomes effective, provided that the *Party* or *Parties* which generated the *Knowledge* or *Pre-existing Know-how* so sublicensed shall have the right to have an assignment of the *Defaulting Party's* rights under such sub-licenses.

Section 16: Settlement of Disputes

16.1 Arbitration

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

The award of the arbitration will be final and binding upon the parties concerned.

The Parties may instead elect to resolve by mediation a dispute or difference arising in connection with this *Consortium Agreement* which cannot be settled amicably.

Section 17: Language

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

Section 18: Notices

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

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

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

Section 19: Applicable Law

This *Consortium Agreement* shall be construed according to and governed by the law provided in the *Contract*, Article 12.

Section 20: Entire Agreement – Amendments / 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 mostly fulfils the purpose of the invalid or impracticable provision.

This *Consortium Agreement*, the *Contract* and - when such exist(s) - *Complementary Contract(s)*, constitute the entire agreement between the *Parties* in respect of the *Project*, and supersede all previous negotiations, commitments and writings concerning the *Project* including any memorandum of understanding between the *Parties* (whether or not with others) which relate to the *Project* or its proposal to the *Commission*.

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

Section 21: Accession to the Contract

All Parties declare that they have taken notice of all provisions of the *Contract* and its Annexes, which they have approved and have taken notice of all Sections of this *Consortium Agreement*.

Therefore, through signature of this *Consortium Agreement*, the parties are obliged to accede to the *Contract* by submission of their Forms A or B to the *Co-ordinator*.

Section 22: Counterparts

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

SIGNATURES

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

Authorised to sign on behalf of

<INSERT NAME OF CO-ORDINATOR>

Signature(s)
Name(s)
Title(s)

Authorised to sign on behalf of

<INSERT NAME OF PARTY ...>

Signatures
Name(s)
Title(s)

Consortium Agreement

**ANNEX A
Recipients for Notices**

Recipients for Notices in Accordance with Section 18 of this *Consortium Agreement*.

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

<Company >,

00000 City, Country,

Nominates as contact for technical matters:

Mr

Position Project Manager

Tel. +

Fax +

E-mail:

And as contact for administrative matters:

<Company >,

00000 City, Country,

Mr

Position

Tel. +

Fax +

E-mail:

<Company >,

00000 City, Country,

Mr

Position

Tel. +

Fax +

E-mail:

ANNEX B Budget and Project Shares

OPTION 1 [In case a detailed and sufficient budget allocation is contained in Contract, Annex I, this Annex B shall only contain the following sentence:] Budget and Project shares are detailed in Annex I of the Contract, which is an integral part of this Consortium Agreement and which herewith reference is made to.

**OPTION 2 [In case Contract, Annex I, does not contain a detailed budget allocation]
Budget**

<Company >

Personnel Costs

Materials

Total Costs

ANNEX C
Exclusion of Pre-existing Know-how
from Right to Access
(Annex II.35.1.d)

<Company>

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

<Company>

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

<Company>

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

<Company>

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

<Company>

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

Consortium Agreement

ANNEX D

Model Declaration and Acceptance of Accession to the Consortium Agreement

This AGREEMENT is made on... BETWEEN

(1)

(2)

...

and

[new Party]

relating to the *Project* entitled <...>

In reference to the provisions in the *Consortium Agreement* dated (...), the *Parties* have agreed to an amendment. All terms and conditions of the said *Consortium Agreement* shall remain in full force and effect, unless provided otherwise in this amendment. This amendment shall become an integral part of the *Consortium Agreement* and shall be appended to such as an annex. The *Parties* have agreed to the following:

(...) has been nominated additional partner to the *Project* consortium. (...) herewith declares to have taken notice of the *EC Contract* and the *Consortium Agreement* and to comply with all obligations therein. (...) will sign the relevant documents necessary for accession to the relevant *Project* contracts and will join the *Project* consortium as new *Party* (N°...)

1. Declaration of Accession of the new Party

[*name of Party (legal entity)*], represented for the purpose hereof by [*name and title of person written out in full (person legally authorised to act on behalf of the legal entity)*] acting as its legal authorised representative, hereby consents to become a *Party* to the *Consortium Agreement* [*identification of final version of the Consortium Agreement*] (*relating to Project [title]*) and accepts all the rights and obligations of a *Party*.

Name of Legal Entity [*name of Party*]

Name of legally authorised representative (*written out in full*)

Title of legally authorised representative

Signature of legally authorised representative

Date

2. Acceptance by the existing Parties

The existing *Parties* to the *Consortium Agreement* to the date of [*new Party*]'s entry as a new *Party* herewith agree to accept [*new Party*] as such.

(1) Name of Legal Entity [*name of Party*]

Name of legally authorised representative (*written out in full*)

Title of legally authorised representative

Signature of legally authorised representative

Date

(2) Name of Legal Entity [*name of Party*]

Name of legally authorised representative (*written out in full*)

Title of legally authorised representative

Signature of legally authorised representative

Date

Done in 2 copies, of which one shall be kept by the *Co-ordinator* and one by [*name of Party (legal entity)*]. Copies shall be provided to the other *Parties*.

ANNEX E
Partners qualified as Public Bodies

ANNEX F

Definitions relating to Software

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

“Limited Source Code Access” means

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

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

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

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

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

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

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

Specific Provisions for *Access-rights* to Software

1. General principles

For the avoidance of doubt, the general provisions for *Access-rights* provided for in Section 10.4.1 herein are applicable also to software.

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

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

2. *Access-rights* to Software for carrying out the *Project*

Access-rights to Software which is *Knowledge* or *Pre-existing Know-how*, needed for the execution of the *Project* shall be granted on the basis of royalty free Limited Source Code Access only upon written request, specifying the scope and duration of their application. In case of *Pre-existing Know-how*, *Access-rights* shall be granted only after conclusion of a bilateral agreement between the *Parties* concerned.

3. *Access-rights* to Software for Use

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

Access to Software which is *Knowledge* shall be granted on preferential conditions . Access to Software which is *Pre-existing Know-how* shall be granted on *Fair and Non-Discriminatory Conditions*. The granting of *Access-rights* shall be made conditional on the same principles as stated in Sections 10.4.1 and 10.4.5. - 10.4.7 and shall be applied accordingly.

However, each *Party* may decide to grant access rights to SOFTWARE Knowledge on a royalty free basis.

4. Software license and sub-licensing rights

(a) *Access-rights* to *Object Code* and/or Limited Source Code Access all granted in accordance with Sections 10.4.1 and 10.4.8.1 shall comprise the right:

- (i) to use *Object Code* and Limited Source Code Access in research, or to create and market a product or process, or to create and provide a service; and
- (ii) to make and have made an unlimited number of copies of *Object Code* and Limited Source Code Access; and
- (iii) to distribute, make available, market, sell and offer for sale; even by using services of a third party, such *Object Code* and Limited Source Code Access in connection with products or services of the *Party* having the *Access-rights*.

provided however that,

- (1) any product, process or service has been developed by the *Party* having the *Access-rights* in accordance with its rights to use *Object Code* and Limited Source Code Access for its own *Knowledge*; and
- (2) *Object Code* and Limited Source Code Access represent only a minor part of the overall product, process or service; and

- (3) *Object Code* and Limited Source Code Access cannot be separated from and/or have been amalgamated with such product, process or service.

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

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

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

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

5. Modifications of Software

Unless otherwise agreed, any change or modification on the software made by the receiving *Party* must be reported with a detailed description immediately to the owning *Party*. In the event a *Party* will not comply with this obligation, which is valid for *Pre-existing Know-how* as well as for *Knowledge*, Section 10.4.2.2 will be applied.
