

Consortium Agreement

PreCo

"Enhancing Innovation in Pre-Commercial Public Purchasing Processes"

Coordination and support action

Grant agreement no.: 248703

SEVENTH FRAMEWORK PROGRAMME

THEME [ICT-2009.9.3]

[General Accompanying Measures]

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon
REGULATION (EC) No 1906/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013) hereinafter referred to as Rules for Participation and the European Commission Grant Agreement, adopted on 10 April 2007, hereinafter referred to as the Grant Agreement or EC-GA and Annex II adopted on 10 April 2007, hereinafter referred to as Annex II of the EC-GA, and is made on 2009-12-29, hereinafter referred to as “Effective Date”

BETWEEN:

CULMINATUM INNOVATION OY LTD,
the Coordinator

ALFAMICRO-SISTEMAS DE COMPUTADORES, LDA,

AGENTURA PRO EVROPSKE PROJEKTY & MANAGEMENT SDRUZENI,

FUNDACION COMUNIDAD VALENCIANA-REGION EUROPEA,

SYDDANSK UNIVERSITET,

VYSOCINA KRAJ,

COPENHAGEN LIVING LAB APS,

AMSTERDAM INNOVATION MOTOR,

UNIONE REGIONALE DELLE CAMERE DI COMMERCIO INDUSTRIA ARTIGIANATO E
AGRICOLTURA DEL VENETO

AALTO-KORKEAKOULUSÄÄTIÖ

hereinafter, jointly or individually, referred to as “Parties” or “Party”

relating to the Project entitled

PreCo – Enhancing Innovation in Pre-Commercial Public Purchasing Processes

in short PreCo

hereinafter referred to as “Project”

WHEREAS:

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the European Commission as part of the Seventh Framework Programme of the European Community for Research, Technological Development and Demonstration Activities under the funding scheme of “Collaborative Project”.

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the EC-GA.

The Parties are aware that this Consortium Agreement is based upon the DESCAs model consortium agreement and that explanations to the DESCAs model are available at www.DESCA-FP7.eu.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1: DEFINITIONS

1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules for Participation or in the Grant Agreement including its Annexes without the need to replicate said terms herein.

1.2 Additional Definitions

“Consortium Plan”

Consortium Plan means the description of the work as defined in Annex 1 of the Grant Agreement and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the Steering Committee.

“Consortium Budget”

Consortium Budget means the allocation of all the resources in cash or in kind for the activities as defined in Annex I of the Grant Agreement and in the Consortium Plan thereafter.

“Defaulting Party”

Defaulting Party means a Party which the Steering Committee has identified to be in breach of this Consortium Agreement and/or the Grant Agreement as specified in Article 4.2 of this Consortium Agreement.

“Needed” means:

For the implementation of the Project:

Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be impossible, significantly delayed, or require significant additional financial or human resources.

For Use of own Foreground:

Access Rights are Needed if, without the grant of such Access Rights, the Use of own Foreground would be technically or legally impossible.

“Software”

Software means 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.

SECTION 2: PURPOSE

The purpose of this Consortium Agreement is to specify with respect to the Project the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management of the Project and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

SECTION 3: ENTRY INTO FORCE, DURATION AND TERMINATION

3.1 Entry into force

An entity becomes a Party to this Consortium Agreement upon signature of this Consortium Agreement by a duly authorised representative.

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement.

A new Party enters the Consortium upon signature of the accession document Attachment 3 by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

3.2 Duration and termination

This Consortium Agreement shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under the EC-GA and under this Consortium Agreement.

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement and Annex II of the (EC-GA Article II.37. and II.38.).

If the Commission does not award the EC-GA or terminates the EC-GA or a Party's participation in the EC-GA, this Consortium Agreement shall automatically terminate in respect of the affected Party/Parties, subject to the provisions surviving the expiration or termination under Art. 3.3 of this Consortium Agreement.

3.3 Survival of rights and obligations

The provisions relating to Access Rights and Confidentiality, for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes shall survive the expiration or termination of

this Consortium Agreement.

Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the Steering Committee and the leaving Party. This includes the obligation to provide all input, deliverables and documents for the period of its participation.

SECTION 4: RESPONSIBILITIES OF PARTIES

4.1 General principles

Each Party undertakes to take part in the efficient implementation of the Project, and to cooperate, perform and fulfil, promptly and on time, all of its obligations under the EC-GA and this Consortium Agreement as may be reasonably required from it and in a manner of good faith as prescribed by Belgian law.

Each Party undertakes to notify promptly, in accordance with the governance structure of the Project, any significant information, fact, problem or delay likely to affect the Project.

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks.

Each Party shall take reasonable measures to ensure the accuracy of any information or materials it supplies to the other Parties.

4.2 Breach

In the event a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement or the EC-GA (e.g.: a partner producing poor quality work), the Coordinator will give written notice to such Party requiring that such breach be remedied within 30 calendar days.

If such breach is substantial and is not remedied within that period or is not capable of remedy, the Steering Committee may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may include termination of its participation.

4.3 Involvement of third parties

A Party that enters into a subcontract or otherwise involves third parties (including but not limited to Affiliated Entities) in the Project remains solely responsible for carrying out its relevant part of the Project and for such third party's compliance with the provisions of this Consortium Agreement and of the EC-GA. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other Parties under this Consortium Agreement and the EC-GA.

SECTION 5: LIABILITY TOWARDS EACH OTHER

5.1 No warranties

In respect of any information or materials (incl. Foreground and Background) supplied by one Party to

another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliates) exercising its Access Rights.

5.2 Limitations of contractual liability

No Party shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act or by a breach of confidentiality.

A Party's aggregate liability towards the other Parties collectively shall be limited to twice the Party's share of the total costs of the Project as identified in Annex I of the EC-GA provided such damage was not caused by a wilful act or gross negligence.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's non-contractual liability.

5.3 Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Consortium Agreement or from its use of Foreground or Background.

5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if such breach is caused by Force Majeure. Each Party will notify the competent Consortium Bodies of any Force Majeure as soon as possible. If the consequences of Force Majeure for the Project are not overcome within 6 weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

SECTION 6: GOVERNANCE STRUCTURE

6.1 General structure

The Steering Committee is the decision-making body of the Consortium

The Coordinator is the legal entity acting as the intermediary between the Parties and the European Commission. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the EC-GA and this Consortium Agreement.

The Advisory Board assists the Steering Committee and the Coordinator.

6.2 Members

The Steering Committee shall consist of one representative of each Party (hereinafter referred to as “Member”).

Each Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Article 6.3.6 of this Consortium Agreement.

The Coordinator shall chair all meetings of the Steering Committee, unless decided otherwise by the Steering Committee.

The Parties agree to abide by all decisions of the Steering Committee.

This does not prevent the Parties from submitting a dispute for resolution in accordance with the provisions of settlement of disputes in Article 11.8 of this Consortium Agreement.

6.3 Operational procedures for the Steering Committee

6.3.1 Representation in meetings

Any Member:

- should be present or represented at any meeting;
- may appoint a substitute or a proxy to attend and vote at any meeting;
- and shall participate in a cooperative manner in the meetings.

6.3.2 Preparation and organisation of meetings

6.3.2.1 Convening meetings:

The chairperson shall convene ordinary meetings of the Steering Committee at least once every six months and shall also convene extraordinary meetings at any time upon written request of any Member.

6.3.2.2 Notice of a meeting:

The chairperson shall give notice in writing of a meeting to each Member as soon as possible and no later than 14 calendar days preceding an ordinary meeting and 7 calendar days preceding an extraordinary meeting.

6.3.2.3 Sending the agenda:

The chairperson shall send each Member a written original agenda no later than 14 calendar days preceding the meeting, or 7 calendar days before an extraordinary meeting.

6.3.2.4 Adding agenda items:

Any agenda item requiring a decision by the Members must be identified as such on the agenda.

Any Member may add an item to the original agenda by written notification to all of the other Members no later than 7 calendar days preceding the meeting.

6.3.2.5 During a meeting of the Steering Committee the Members present or represented can unanimously agree to add a new item to the original agenda.

6.3.2.6 Any decision may also be taken without a meeting if the chairperson circulates to all Members a written document which is then signed by the defined majority of Members (see Article 6.3.3 of this Consortium Agreement).

6.3.2.7 Meetings of the Steering Committee may also be held by teleconference or other telecommunication means.

6.3.2.8 Decisions will only be binding once the relevant part of the minutes has been accepted according to Article 6.3.5 of this Consortium Agreement.

6.3.3 Voting rules and quorum

6.3.3.1 The Steering Committee shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum).

6.3.3.2 Each Member shall have one vote.

6.3.3.3 Defaulting Parties may not vote.

6.3.3.4 Decisions shall be taken by a majority of two-thirds (2/3) of the votes.

6.3.4 Veto rights

6.3.4.1 A Member which can show that its own work, time for performance, costs, liabilities, intellectual property rights or other legitimate interests would be severely affected by a decision of the Steering Committee may exercise a veto with respect to the corresponding decision or relevant part of the decision.

6.3.4.2 When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting only.

6.3.4.3 When a decision has been taken on a new item added to the agenda before or during the meeting, a Member may veto such decision during the meeting and within 15 days after the draft minutes of the meeting are sent.

6.3.4.4 In case of exercise of veto, the Members shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all Members.

6.3.4.5 A Party may not veto decisions relating to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the Consortium or the consequences of them.

6.3.4.6 A Party requesting to leave the Consortium may not veto decisions relating thereto.

6.3.5 Minutes of meetings

6.3.5.1 The chairperson shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He shall send draft minutes to all Members within 10 calendar days of the meeting.

6.3.5.2 The minutes shall be considered as accepted if, within 15 calendar days from sending, no Member has objected in writing to the chairperson with respect to the accuracy of the draft of the minutes.

6.3.5.3 The chairperson shall send the accepted minutes to all the Members of the Steering Committee, and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3.6 Decisions of the Steering Committee

The Steering Committee shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein.

The following decisions shall be taken by the Steering Committee:

Content, finances and intellectual property rights

- Proposals for changes to Annex I of the EC-GA to be agreed by the European Commission
- Changes to the Consortium Plan (including the Consortium Budget)

Evolution of the Consortium

- Entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal
- Declaration of a Party to be a Defaulting Party
- Remedies to be performed by a Defaulting Party
- Termination of a Defaulting Party's participation in the Consortium and measures relating thereto

- Proposal to the European Commission for a change of the Coordinator
- Proposal to the European Commission for suspension of all or part of the Project
- Proposal to the European Commission for termination of the Project and the Consortium Agreement

Appointments

Agree on the Members of the Advisory Board, upon a proposal by the Coordinator.

In the case of abolished tasks as a result of a decision of the Steering Committee, Members shall rearrange the tasks of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

6.4 Coordinator

6.4.1 The Coordinator shall be the intermediary between the Parties and the European Commission and shall perform all tasks assigned to it as described in the EC-GA and in this Consortium Agreement.

6.4.2 In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations
- keeping the address list of Members and other contact persons updated and available
- collecting, reviewing and submitting information on the progress of the Project and reports and other deliverables (including financial statements and related certification) to the European Commission
- preparing the meetings, proposing decisions and preparing the agenda of Steering Committee meetings, chairing the meetings, preparing the minutes of the meetings and monitoring the implementation of decisions taken at meetings
- transmitting promptly documents and information connected with the Project,
- administering the Community financial contribution and fulfilling the financial tasks described in Article 7.3
- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

6.4.3 If the Coordinator fails in its coordination tasks, the Steering Committee may propose to the European Commission to change the Coordinator.

6.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party.

6.4.5 The Coordinator shall not enlarge its role beyond the tasks specified in this Consortium Agreement and in the EC-GA.

6.5 Advisory Board

PreCo – Enhancing Innovation in Pre-Commercial Public Purchasing Processes

Consortium Agreement, 2010-01-04

Advisory Board will raise the profile of the network and enable access to the latest data and knowledge on the field. Advisory Board will raise awareness of the network through their channels nationally and on European level.

Members:

Organisation	Name
Ministry of Employment and the Economy, Innovation Department, Finland	Petri Lehto
Manchester City Council, Manchester Digital Development Agency (MDDA), UK	Dave Carter
Vysocina Region, Czech Republic	Eva Janouskova
Treviso Tecnologia, Special Agency for Technological Innovation of the Chamber of Commerce of Treviso, Italy	Roberto Santolamazza
Danish Construction and Enterprise Authority, Denmark	Anders Thomsen

Meetings:

The Advisory Board will meet about 2 times during the project.

SECTION 7: FINANCIAL PROVISIONS

7.1 General Principles

7.1.1 Distribution of Financial Contribution

The Community financial contribution to the Project shall be distributed by the Coordinator according to:

- the Consortium Budget as included in the Annex I of the Grant Agreement
- the approval of reports by the European Commission, and

- the provisions of payment in Article 7.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan as defined in Annex I of the Grant Agreement “Description of Work”, any subsequent amendments to the Grant Agreement as signed by the Coordinator, and the guidance received from The European Commission.

7.1.2 Justifying Costs

In accordance with its own usual accounting and management principles and practices, each Party shall be solely responsible for justifying its costs with respect to the Project towards the European Commission. Neither the Coordinator nor any of the other Parties shall be in any way liable or responsible for such justification of costs towards the European Commission.

7.1.3 Funding Principles

A Party which spends less than its allocated share of the Budget will be funded in accordance with its actual duly justified eligible costs only.

A Party that spends more than its allocated share of the Budget will be funded only in respect of duly justified eligible costs up to an amount not exceeding that share.

7.1.4 Financial Consequences of the termination of the participation of a Party

A Party leaving the Consortium shall refund all payments it has received except the amount of contribution accepted by the European Commission or another contributor. Furthermore a Defaulting Party shall, within the limits specified in Article 5.2 of this Consortium Agreement, bear any additional costs occurring to the other Parties in order to perform its and their tasks.

7.2 Budgeting

The Budget shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

7.2.1 Budgeted costs eligible for 100% reimbursement

These costs shall have the following order of priority:

- (a) banking and transaction costs related to the handling of any financial resources made available for the Project by the Coordinator
- (b) a reasonable costs of Parties related to
 - the delivery of certificates on the financial statements according to the EC-GA
 - the delivery of the certificate on the methodology, if any, unless the cost of such certification has already been paid to the beneficiary under a previous EC-GA and the methodology has not changed (EC-GA Article II.4.4 and II.14.1)
 - costs related to calls for new Beneficiaries
- (c) costs related to updating this Agreement
- (d) management costs of the Coordinator and the Advisory Board
- (e) [costs related to the tasks of the Advisory Board]
- (f) intellectual property protection costs
- (g) costs for publications
- (h) costs for the tasks of chairpersons
- (i) any other costs eligible for 100% reimbursement

7.2.2 Budgeting of coordination costs

Costs of coordination of research which are not allowed as management cost according to Annex II of the EC-GA (EC-GA Article II.16.5) have to be budgeted separately.

7.3 Payments

7.3.1 Payments to Parties are the exclusive tasks of the Coordinator.

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts
- undertake to keep the Community financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.

7.3.2

The payment schedule, which contains the transfer of pre-financing and interim payments to Parties, will be handled according to the following :

- pre-financing, the amount of 192 386 €, received by the Coordinator, shall be distributed to the Beneficiaries in proportion of their share of the Consortium Budget in accordance with Annex I of the Grant Agreement
- budgeted costs for future work included in the Consortium Plan will be paid to Parties in separate instalments in conformity with the decisions of the Steering Committee, costs accepted by the Commission will be paid to the Party concerned, taking into account the amounts already paid for such reporting period.

SECTION 8: FOREGROUND

Regarding Foreground, EC-GA Article II.26. - Article II.29. shall apply with the following additions:

8.1 Joint ownership

OPTION 1:

Where no joint ownership agreement has yet been concluded:

- each of the joint owners shall be entitled to Use their jointly owned Foreground on a royalty-free basis, and without requiring the prior consent of the other joint owner(s), and
- each of the joint owners shall be entitled to grant non-exclusive licenses to third parties, without any right to sub-license, subject to the following conditions:
at least 45 days prior notice must be given to the other joint owner(s); and
fair and reasonable compensation must be provided to the other joint owner(s).

8.2 Transfer of Foreground

8.2.1 Each Party may transfer ownership of its own Foreground following the procedures of the EC-GA Article II 27.

8.2.2 It may identify specific third parties it intends to transfer the ownership of its Foreground to in Attachment (6) to this Consortium Agreement. The other Parties hereby waive their right to object to a transfer to listed third parties according to the EC-GA Article II.27.3.

8.2.3 The transferring Party shall, however, notify the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (6) after signature of this Agreement requires a decision of the General Assembly.

8.2.4 The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, a Party may be subject to confidentiality obligations which prevent it from giving the full 45 days prior notice for the transfer as foreseen in the EC-GA, Article II 27.2.

8.3 Dissemination

8.3.1 Publication

8.3.1.1 Dissemination activities including but not restricted to publications and presentations shall be governed by the procedure of Article II.30.3 of the EC-GA subject to the following provisions. Prior notice of any planned publication shall be made 45 days before the publication. Any objection to the planned publication shall be made in accordance with the GA in writing to the Coordinator and to any Party concerned within 30 days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

8.3.1.2 An objection is justified if

- (a) the objecting Party's legitimate academic or commercial interests are compromised by the publication; or
- (b) the protection of the objecting Party's Foreground or Background is adversely affected.

The objection has to include a precise request for necessary modifications.

8.3.1.3 If an objection has been raised the involved Parties shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate actions are performed following the discussion.

8.3.2 Publication of another Party's Foreground or Background

For the avoidance of doubt, a Party shall not publish Foreground or Background of another Party, even if such Foreground or Background is amalgamated with the Party's Foreground, without the other Party's prior written approval. For the avoidance of doubt, the mere absence of an objection according to 8.3.1 is not considered as an approval.

8.3.3 Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defence

of any dissertation or thesis for a degree which includes their Foreground or Background. However, confidentiality and publication clauses have to be respected.

8.3.4 Use of names, logos or trademarks

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

SECTION 9: ACCESS RIGHTS

9.1 Background covered

9.1.1 The Parties shall identify in the Attachment 1 the Background to which they are ready to grant Access Rights, subject to the provisions of this Consortium Agreement and the EC-GA. Such identification may be done by e.g.

- subject matter and possibly in addition by
- naming a specific department of a Party

9.1.2 The owning Party may add further Background to Attachment 1 during the Project by written notice. However, only the Steering Committee can permit a Party to withdraw any of its Background from Attachment 1.

9.1.3 The Parties agree that all Background not listed in Attachment 1 shall be explicitly excluded from Access Rights. The Parties agree, however, to negotiate in good faith additions to Attachment 1 if a Party asks them to do so and those are needed.

For the avoidance of doubt, the owner is under no obligation to agree to additions of his Background to Attachment 1.

9.1.4 In addition, if a Party wishes to list specific Background as excluded, it shall identify such Background in the Attachment 2.

The owning Party may withdraw any of its Background from Attachment 2 during the Project by written notice.

However, only the Steering Committee can permit a Party to add Background to Attachment 2.

9.2 General Principles

9.2.1 Each Party shall implement its tasks in accordance with the Consortium Plan and shall bear sole responsibility for ensuring that its acts within the Project do not knowingly infringe third party property rights.

9.2.2 As provided in the EC-GA Article II.32.3. Parties shall inform the Consortium as soon as possible of any limitation to the granting of Access Rights to Background or of any other restriction which might substantially affect the granting of Access Rights (e.g. the use of open source code software in the Project).

9.2.3 If the Steering Committee considers that the restrictions have such impact, which is not foreseen in

the Consortium Plan, it may decide to update the Consortium Plan accordingly.

9.2.4 Any Access Rights granted expressly exclude any rights to sublicense unless expressly stated otherwise.

Access Rights shall be free of any administrative transfer costs.

Access Rights are granted on a non-exclusive basis, if not otherwise agreed in writing by all the Parties according to the EC-GA Article II.32.7.

9.2.5 Foreground and Background shall be used only for the purposes for which Access Rights to it have been granted.

9.2.6 All requests for Access Rights shall be made in writing.

The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

9.2.7 The requesting Party must show that the Access Rights are Needed.

9.3 Access Rights for implementation

Access Rights to Foreground and Background Needed for the performance of the own work of a Party under the Project shall be granted on a royalty-free basis, unless otherwise agreed for Background in Attachment 1.

9.4 Access Rights for Use

9.4.1 Access Rights to Foreground if Needed for Use of a Party's own Foreground including for third-party research shall be granted on fair and reasonable conditions.

Access rights for internal research activities shall be granted on a royalty-free basis.

9.4.2 A request for Access Rights may be made up to twelve months after the end of the Project or, in the case of Art. 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

9.4.3 Access Rights to Background if Needed for Use of a Party's own Foreground shall be granted on fair and reasonable conditions.

9.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the EC-GA Article II.34.3.

Such Access Rights to Affiliated Entities shall be granted on fair and reasonable conditions and upon written bilateral agreement.

Affiliated Entities which obtain Access Rights in return grant Access Rights to all Parties and fulfil all confidentiality and other obligations accepted by the Parties under the EC-GA or this Consortium Agreement as if such Affiliated Entities were Parties.

Access Rights may be refused to Affiliate Entities if such granting is contrary to the legitimate interests of

the Party which owns the Background or the Foreground.

Access Rights granted to any Affiliated Entity are subject to the continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

9.6 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the EC-GA or this Consortium Agreement 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.

9.7 Access Rights for Parties entering or leaving the Consortium

9.7.1 New Parties entering the Consortium

All Foregrounds developed before the accession of the new Party shall be considered to be Background with regard to said new Party.

9.7.2 Parties leaving the Consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 Defaulting Party

Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of the Steering Committee to terminate its participation in the Consortium.

9.7.2.1.2 Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Foreground developed until the date of the termination of its participation.

It may request Access Rights within the period of time specified in Art. 9.4.2.

9.7.2.2 Access Rights to be granted by any leaving Party

Any Party leaving the Project shall continue to grant Access Rights pursuant to the EC-GA and this Consortium Agreement as if it had remained a Party for the whole duration of the Project.

9.8 Specific Provisions for Access Rights to Software

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software.

Parties' 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.

SECTION 10: NON-DISCLOSURE OF INFORMATION

10.1 All information in whatever form or mode of transmission, which is disclosed by a Party (the "Disclosing Party") to any other Party (the "Recipient") in connection with the Project during its

implementation and which has been explicitly marked as “confidential”, or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the EC-GA, for a period of 5 years after the end of the Project:

- (a) not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- (b) not to disclose Confidential Information to any third party without the prior written consent by the Disclosing Party;
- (c) to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- (d) to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. If needed for the recording of ongoing obligations, the Recipients may however request to keep a copy for archival purposes only.

10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of employment.

10.4 The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- (a) the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- (b) the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- (c) the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- (d) the disclosure or communication of the Confidential Information is foreseen by provisions of the EC-GA;
- (e) the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- (f) the Confidential Information was already known to the Recipient prior to disclosure.

10.5 The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

10.6 Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

10.7 If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it

shall, to the extent it is lawfully able to do so, prior to any such disclosure

(a) notify the Disclosing Party, and

(b) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

10.8 The confidentiality obligations under this Consortium Agreement and the EC-GA shall not prevent the communication of Confidential Information to the European Commission.

SECTION 11: MISCELLANEOUS

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and

Attachment 1 (Background included)

Attachment 2 (Background excluded)

Attachment 3 (Accession document)

Attachment 4 (Listed Affiliated Entities)

Attachment 5 (Initial list of Members and other contact persons)

Attachment 6 (List of Third Parties to which transfer of Foreground is possible without prior notice to other Parties)

In case the terms of this Consortium Agreement are in conflict with the terms of the EC-GA, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

11.2 No representation, partnership or agency

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator based on the initial list of Members and other contact persons in Attachment 5.

Formal notices:

If it is required in this Consortium Agreement (Article. 9.7.2.1.1 and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

Other communication:

Other communication between the Parties may also be effected by other means such as e-mail with acknowledgement of receipt, which fulfils the conditions of written form.

Any change of persons or contact details shall be notified immediately by the respective Party to the Coordinator. The address list shall be accessible to all concerned.

11.4 Assignment and amendments

No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval. Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Article 6.3.1.2 (LP)/ 6.3.6 (SP) require a separate agreement between all Parties.

11.5 Mandatory national law

Nothing in this Consortium Agreement shall be deemed to require a Party to breach any mandatory statutory law under which the Party is operating.

11.6 Language

This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

11.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium.

11.8 Settlement of disputes

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.

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

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

All disputes arising out of or in connection with this Consortium Agreement, which cannot be solved amicably, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties.

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

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief or to enforce an

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arbitration award in any applicable competent court of law.

SECTION 12: SIGNATURES

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorized representatives in the day and year first above written.