



MODELLO DI CONSORTIUM AGREEMENT NELL'AMBITO DEL VI PROGRAMMA QUADRO DI RST



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1. Introduzione

Le novità introdotte dal VI Programma Quadro hanno notevoli ripercussioni su tutta la gestione amministrativa dei progetti co-finanziati.

Il finanziamento di progetti di grandi dimensioni, la necessità di un coinvolgimento dei vertici politici degli enti proponenti, una più ampia autonomia contabile e gestionale dei contraenti, la semplificazione delle procedure di presentazione delle proposte e stipula dei contratti hanno come contrappeso maggiori responsabilità amministrative in capo ai proponenti.

E' proprio nell'ottica dell'accresciuta necessità di regolare in maniera chiara e precisa le responsabilità derivanti dal progetto, che deve considerarsi di particolare rilevanza la conclusione del "Consortium Agreement", strumento già utilizzato in precedenza ma che oggi assume una nuova centralità.

Riconoscendo ai partecipanti una maggiore autonomia nella gestione del progetto e nella disciplina tra di essi di diverse questioni quali ad esempio i diritti e le obbligazioni che riguardano la gestione e l'accesso alla proprietà intellettuale (IPR), nei limiti stabiliti dal Contratto con la Comunità, la Commissione ha reso obbligatoria la conclusione del Consortium Agreement prima della stipula del contratto, a meno che sia diversamente specificato nell'invito a presentare proposte.

2. Definizione

Secondo le Regole di partecipazione (Regolamento (CE)N.2321/2002 del Parlamento Europeo e del Consiglio del 16 dicembre 2002) il Consortium Agreement (CA) è "un accordo che i partecipanti ad un'azione indiretta concludono tra loro per l'attuazione di questa. Tale accordo non dovrà pregiudicare gli obblighi dei partecipanti, sia reciproci sia verso la Comunità, che derivano dalle Regole di partecipazione e dal Contratto. La Commissione Europea non è parte dell'accordo e non svolge alcun ruolo nella scelta, effettuata dalle parti, delle clausole ritenute appropriate alla natura e allo scopo della collaborazione e degli interessi considerati. Si limita a mettere a disposizione una checklist che fornisce indicazioni ai partecipanti nella stesura dell'accordo.

3. Momento della stipula del consortium agreement

Durante i Programmi Quadro precedenti, il CA veniva di solito concluso quando il progetto era già in corso e comunque dopo la firma del contratto. Nel VI PQ, come già detto, il CA diventa obbligatorio (per NOE ed IP) già prima della stipula del contratto. Sarebbe in effetti auspicabile che il consortium agreement fosse concluso già in fase di preparazione della proposta. Si suggerisce questa eventualità per due ordini di fattori:

- i partners si impegnerebbero a contribuire alla redazione della proposta e al rispetto dei termini,

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- il coordinatore si impegnerebbe a non modificare arbitrariamente parti sostanziali della proposta e a tenere informati i partners sulla corrispondenza con la Commissione.

Dato inoltre che la CE non richiede più l'apposizione della firma del legale rappresentante in originale ma solo moduli elettronici (modulo A2) con la sola indicazione del responsabile scientifico ("person in charge") del progetto, il CA preliminare costituirebbe una forma di impegno dei partner a portare avanti le attività del progetto se approvato e aggiungerebbe, in fase di valutazione, valore alla proposta (in particolare nelle NOE).

4. Disposizioni organizzative

Tale sezione contiene le disposizioni relative alla struttura gestionale del progetto. Deve essere pertanto redatta collegandola strettamente al progetto stesso, ai suoi caratteri distintivi, alla tipologia di strumento, alle dimensioni e alla struttura organizzativa che i partner hanno deciso di adottare. In generale non è opportuna una proliferazione di organi collegiali. E' necessaria la presenza di un organo che deliberi sulle questioni di carattere strategico e politico, nonché su quelle particolarmente delicate (sanzioni, risoluzioni, ...). Le attività esecutive e gestionali possono essere compiute, secondo le dimensioni del progetto, da organi unipersonali o collegiali. Nei progetti di minori dimensioni (come Strep e Misure Specifiche per le PMI) si potrà utilizzare un unico organo direttivo (steering board, management board).

In particolare, nel CA è necessario definire con particolare attenzione :

- scopo e responsabilità dei vari organi;
- regole organizzative (composizione, ecc.) e di funzionamento (incontri, decisioni, presidenza, ecc.);
- procedure di revisione del consortium agreement: modificazione delle regole tecniche e finanziarie, recesso di membri del consorzio o accettazione di nuovi partner.

5. Disposizioni Finanziarie

A differenza del passato, il contratto stipulato con la Commissione Europea contiene l'indicazione dell'importo totale del contributo comunitario ma non del piano finanziario con l'allocazione tra i partner. Diventa pertanto essenziale che il piano dettagliato delle voci di costo e delle percentuali di contributo comunitario per ciascun partner sia riportato nel CA.

Il CA deve inoltre contenere le procedure per la modifica di tale piano, le modalità di trasferimento del contributo dal coordinatore ai partner, eventualmente la previsione di un apposito fondo di riserva nel caso di inadempienza di uno o più partner.

6. Il modello di CA proposto e i suoi ambiti di applicabilità

Di seguito viene proposto:

1. un commento della check list della Commissione Europea (allegato A)
2. un modello di consortium agreement (allegato B)

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La check list evidenzia gli elementi la cui presenza è indispensabile in un CA:

- Informazioni generali
- Preambolo
- Oggetto: scopo, natura e durata
- Regole tecniche
- Disposizioni commerciali
 - *riservatezza*
 - *diritti di proprietà intellettuale*
 - *pubblicazioni e reports alla Commissione Europea*
- Disposizioni organizzative
 - *organi decisionale ed esecutivi*
- Disposizioni finanziarie
 - *piano finanziario e allocazione fra i partner*
 - *modalità di trasferimento dei pagamenti*
- Disposizioni legali
 - *responsabilità*
 - *inadempienze*
 - *dispute*

Il modello di CA proposto è stato concepito come strumento di supporto per la definizione delle regole interne al consorzio. Tale modello deve di volta in volta essere completato e modificato in relazione:

- alle caratteristiche del progetto e alle sue dimensioni;
- allo strumento utilizzato (NOE, IP, STREPS...), in relazione al quale il CA potrebbe richiedere un approfondimento o una semplificazione
- alle decisioni del consorzio in materia di struttura organizzativa.
- IPR, ecc.

Nella stesura si è tenuto conto delle indicazioni e dell'articolazione suggerite nella Check List, e si è tentato di predisporre un modello di base adattabile a tutti gli strumenti del VI PQ.

ALLEGATO A

Commento alla checklist fornita dalla Commissione Europea

Materia	Contenuti indicati dalla checklist	Commenti
Informazioni Generali <i>Informazioni generali sul partenariato</i>	Identificazione delle parti Lista dello staff Terzi che mettono a disposizione risorse	Specificare fin dall'inizio <ul style="list-style-type: none"> - il contratto di riferimento con la CE - la lista dei partners con l'indicazione del legale rappresentante e della sede legale La CE consiglia di indicare i nominativi di coloro che lavoreranno al progetto soprattutto per rafforzare l'obbligo di segretezza. Questa informazione, se la si considera opportuna, può essere posta in allegato. <p>E' opportuno accertarsi che i firmatari del CA abbiano la facoltà di impegnare l'istituzione di appartenenza (in base alla legge, allo statuto e alle altre norme interne, oppure in base a procure).</p>
Preambolo <i>Informazioni preliminari</i>	Ragioni della stipula dell'accordo	Contiene: <ul style="list-style-type: none"> - la narrativa delle attività svolte precedentemente alla stipula del contratto (presentazione della proposta, negoziazione..)
Oggetto <i>Attività e risultati</i>	Attività da compiere Risultati Inizio e durata dell'efficacia	L'oggetto del CA è la specificazione degli obblighi e dei diritti dei partecipanti sui contenuti del contratto con la CE. Occorre indicare la data di inizio e di conclusione del CA. Secondo quanto già detto nell'introduzione, è opportuno che il consortium agreement o almeno un suo preliminare entri in vigore già nella fase di redazione della proposta. <p>È bene all'inizio di questa parte fornire un chiarimento dei termini che saranno utilizzati evitando di dettagliare troppo in modo da lasciare una certa flessibilità. Si consiglia di usare le stesse definizioni già usate nella normativa applicabile e nel contratto con la CE.</p>
Regole tecniche <i>Disciplina del contributo di ogni parte al Progetto</i>	Contributo tecnico delle parti <ul style="list-style-type: none"> - Precisa definizione delle attività dei partner - Collegamenti tra le attività dei Partner 	Contiene un riferimento all'allegato tecnico relativo alla descrizione delle attività e del ruolo dei partners (Allegato I al contratto CE). Se si ritiene opportuno si possono specificare alcuni elementi di quanto già contenuto nell'allegato I. E' necessario fare attenzione che non siano in contrasto con quanto indicato nel contratto.

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<p>Regole tecniche <i>Disciplina del contributo di ogni parte al Progetto</i></p>	<p>Risorse tecniche messe a disposizioni - Risorse umane (numero di addetti e qualifica) - Attrezzatura - Informazioni (tipo, data, luogo, linguaggio) -</p>	
	<p>Programma di lavoro Programma dettagliato di lavoro</p> <p>Limiti di impegno tecnico Procedure di modifica I limiti di impegno delle risorse non dovrebbero essere basati su risultati, ma espressi in quantità di impegno</p>	
	<p>Procedure di modifica Procedure per modificare le regole tecniche.</p>	Per la disciplina delle procedure di modifica e delle conseguenze in caso di inadempimento si consiglia di fare riferimento alle regole organizzative.
	<p>Regole in caso di non- adempimento Conseguenze del mancato svolgimento delle attività</p>	Bisognerebbe chiarire che l'interesse moratorio previsto per il ritardato pagamento non è l'unica sanzione dell'inadempimento di un contraente. Tale inadempimento, infatti, può comportare anche il pagamento di penali a carico degli altri contraenti (per effetto della responsabilità collettiva).

<p>Regole organizzative <i>Disciplina degli strumenti decisionali</i></p>	<p>Organi direttivi (decisionali, amministrativi, tecnici, IPR, finanziari)</p>	<p>Una chiara definizione degli organi di governo, delle loro funzioni, composizione, funzionamento (meeting, quorum) permetterà una gestione agile.</p> <p>Si distingue tra organi decisionali (che prendono decisioni strategiche), gestionali, tecnici e consultivi. La presenza di tutti questi organi è facoltativa e dipende dalla dimensione e dalla tipologia dei progetti.</p> <p>Si potrebbe prevedere che le riunioni dei vari organi possano tenersi anche in via telematica, per renderne effettiva l'operatività.</p>
	<p>Coordinamento degli organi</p>	Qualora ci siano più organi, è opportuno introdurre strumenti di coordinamento. Per esempio il coordinamento potrebbe essere rappresentato dal coordinatore che fa parte di entrambi gli organi.
	<p>Modifiche dell'Agreement</p>	Occorre stabilire le regole per la modifica delle varie disposizioni del consortium agreement, come per esempio delle regole finanziarie, le regole tecniche...

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Regole finanziarie	Piano finanziario - Stima dettagliata dei costi - Allocazione del contributo CE - Finanziamenti di terzi - Budget - Modulistica	Bisogna porre particolare attenzione alla distribuzione del contributo tra i partner perché questo aspetto non è regolato nel contratto e pertanto non viene posto alcun vincolo all'coordinatore sulle tempistiche da rispettare nella distribuzione dei fondi ai partner. Si ritiene molto utile la previsione di una riserva di fondi, gestita dal coordinatore, da distribuire ai partner soltanto al termine del progetto. Si ritiene opportuno escludere dalla riserva gli enti pubblici che non hanno una responsabilità collettiva finanziaria.
	Pagamenti - Spese comuni - Modalità di pagamento - Termini - Divisa - Costi di pagamento - Tributi - Interessi - Identificazione dei costi di management	Si potrebbe precisare che le spese bancarie connesse al trasferimento dei pagamenti o al tasso di cambio saranno a carico della parte ricevente.
	Audit delle spese Modalità di rendicontazione e Controllo delle spese	E' opportuno fissare regole uniformi per la rendicontazione e la certificazione. Ciò è particolarmente utile nel Sesto Programma Quadro, che lascia una maggiore libertà in materia amministrativa, ma proprio per questo, maggiori possibilità di errori.
	Certificazione audit - Scelta delle modalità di - Certificazione	

Regole sulla proprietà intellettuale e industriale <i>Disciplina della segretezza e dei beni immateriali</i>	Segretezza Ambito di applicazione Limiti all'obbligo: - Informazioni già conosciute - Informazioni pubbliche - Informazioni di terzi Periodo dell'obbligo (di solito superiore alla durata del contratto)	Nel CA occorre disciplinare i diversi aspetti relativi alla proprietà intellettuale industriale sia delle conoscenze preesistenti (pre-existing know how) sia delle conoscenze prodotte dal progetto (knowledge). In particolare bisogna disciplinare gli aspetti indicati nella checklist e cioè: - Segretezza - Proprietà - Accesso - Protezione dei risultati - Sfruttamento - Diffusione e pubblicazione Nel disciplinare tali aspetti, bisogna tener conto delle regole del contratto con la CE e della normativa nazionale e comunitaria sulla proprietà intellettuale industriale.
	Proprietà dei risultati Proprietà comune Casi problematici Proprietà comune: bisogna stabilire le regole di esercizio della proprietà comune. Come: - Ripartizione territoriale - Ripartizione dei mercati - Disciplina delle licenze ai terzi	La checklist consiglia di dettare regole nelle ipotesi più problematiche, come quella in cui le conoscenze prodotte appartengano a più partner. Occorre, a tal proposito, stabilire delle regole di sfruttamento, come, per esempio, la ripartizione per territori.
	Accesso Regole per l'accesso: - Oggetto - Limitazioni - Corrispettivo	L'accesso è il diritto di godimento di un partner con riferimento alle conoscenze e alle conoscenze preesistenti, appartenenti ad un altro partner. Questo diritto è riconosciuto gratuitamente, ma può essere soggetto a limiti soprattutto nel caso di accesso per lo sfruttamento commerciale.

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<p>Regole sulla proprietà intellettuale e industriale <i>Disciplina della segretezza e dei beni immateriali</i></p>	<p>Protezione dei risultati - Diritti, obblighi, limitazioni (territoriali) - Diritti di opzione (first refusal right)</p>	<p>Bisogna stabilire chi protegge i risultati della ricerca. Ordinariamente l'obbligo di protezione spetta a chi è il proprietario delle conoscenze.</p>
	<p>Sfruttamento Nel caso di proprietà comune: 1) Sfruttamento separato: - Ripartizioni territoriali - Ripartizione dei mercati - Licenze a terzi 2) Sfruttamento congiunto: - Contractual joint venture - Corporate joint venture</p>	<p>Occorre stabilire regole per lo sfruttamento commerciale dei risultati, soprattutto nel caso di proprietà congiunta.</p>
	<p>Diffusione e pubblicazione Disciplina dell'obbligo di diffusione (V. Disciplina della protezione) per la durata del Progetto e per 2 anni dopo (Cfr. Annex II.17) Pubblicazione (cfr. Annex II.16 Obbligo di comunicazione)</p>	<p>Per quanto riguarda le pubblicazioni:</p> <ul style="list-style-type: none"> • si potrebbe ricordare che "La pubblicazione di informazioni inerenti il progetto (inclusi le attività seminariali e convegnistiche) devono specificare che il progetto è stato realizzato con il contributo finanziario della Commissione e che la Commissione non è responsabile per l'uso fatto da terzi delle informazioni inerenti il progetto. • Il divieto alla pubblicazione potrebbe essere esteso anche oltre la scadenza del contratto, qualora la disseminazione della conoscenza comporti effetti negativi sulla protezione della stessa (brevetto ancora attivo). • È fatta salva la possibilità per la Commissione di pubblicare la conoscenza derivante dal progetto qualora le parti non vi provvedano. <p>i comunicati stampa e le comunicazioni relative al progetto devono essere concordate tra le Parti, per tramite del coordinatore. Ogni parte è libera di pubblicare o permettere la pubblicazione di dati riguardanti la conoscenza in suo possesso, a condizione che ciò non leda la protezione della conoscenza. La Parte deve informare la Commissione e gli altri contraenti, dell'intenzione pubblicare i suoi dati e fornire agli stessi copia della documentazione qualora ne facciano richiesta. La Commissione e gli altri contraenti possono opporsi alla pubblicazione se ritengono che la loro conoscenza possa essere lesa.</p>
	<p>Sub licenze In generale il diritto d'accesso non consente sublicenze. Si possono concedere regolando: - Le condizioni - I limiti - Rispetto dei diritti di accesso</p>	<p>Occorre regolare le ipotesi in cui i partner concedono a terzi sublicenze del Knowledge e del Pre-existing Know-How. Tali regole devono tendere ad evitare che tali licenze pregiudichino i diritti di accesso dei partner.</p>
	<p>Pre-existing Know-How escluso dal contratto Identificazione al fine di: - Escludere l'accesso - Limitarlo - Imporre delle royalties</p>	<p>E' importante stabilire quali conoscenze preesistenti al progetto (Pre-existing Know-How) sono utilizzate nel progetto e quali sono escluse dall'accesso degli altri partner. Tale dichiarazione dei limiti va fatta, a norma del contratto con la CE, prima della stipula dello stesso. Altrimenti le limitazioni non possono essere opposte ai partner. Nella bozza di CA che si propone, si prevede un allegato che contiene la lista delle conoscenze preesistenti e degli eventuali limiti.</p>

<p>Regole “legali” <i>Disciplina di vari aspetti quali la fine del contratto, le sanzioni contrattuali, la legge applicabile e il giudice competente.</i></p>	<p>Forma legale</p>	<p>La checklist richiede che si indichi quale forma legale viene dato al CA. Di solito i partner, stipulando il CA, non creano un nuovo soggetto di diritto e svolgono l'attività del progetto rimanendo autonomi nei confronti della CE e dei terzi.</p> <p>E' comunque possibile che i partner, sia in fase di stipula del CA, sia successivamente, costituiscano un nuovo soggetto di diritto per svolgere in modo stabile l'attività (come una società di capitale, un GEIE, un consorzio, un'associazione, ecc.).</p>
	<p>Fine del contratto</p> <ul style="list-style-type: none"> - Data di inizio e fine del CA - Rinnovo - Recesso - Eccezioni nel caso di recesso - Termini per l'ingresso - Termination by Default - Termination by Hardship - Termination by Force Majeure 	<p>Nella checklist si consiglia di specificare la data di inizio e fine del vincolo contrattuale. Occorre inoltre disciplinare le diverse ipotesi di fine del contratto, quali il recesso (scioglimento volontario del CA) e la risoluzione (scioglimento del CA per inadempimento o causa di forza maggiore). Lo scioglimento può riguardare l'intero CA o può interessare uno o più partner.</p>
	<p>Sanzioni contrattuali</p> <ul style="list-style-type: none"> - Penalties - Liquidated damages - Guarantees 	<p>Il CA deve specificare quali sono le conseguenze dell'inadempimento dei partner nei rapporti reciproci. Tali conseguenze possono consistere nella risoluzione (v. sopra) e da sanzioni patrimoniali che, nella contrattualistica internazionale, prendono il nome di “penalty” o di “liquidated damages”. E' da prendere in considerazione l'ipotesi di richiedere garanzie di adempimento ai partner.</p>
	<p>Legge applicabile</p> <ul style="list-style-type: none"> - Legge nazionale - Codificazioni private 	<p>E' corretto precisare che il CA è regolato dal diritto UE e, per quanto non previsto, dal diritto nazionale indicato nel Contratto con la Commissione.</p> <p>Ciò premesso, è preferibile che la legge nazionale applicabile sia quella del Contratto con la Commissione (legge belga o lussemburghese).</p>
	<p>Giudice competente</p> <ul style="list-style-type: none"> - Giudice nazionale - Arbitro 	<p>Per dirimere le controversie occorre individuare o un giudice nazionale (meglio se un giudice della legge nazionale applicabile) o un arbitro.</p> <p>Nella bozza di CA si è scelto di indicare un arbitro, in modo da assicurare una più celere risoluzione delle controversie, anche se, probabilmente a costi maggiori.</p> <p>Nella bozza di CA si demanda, comunque, all'organo decisionale tutti i poteri per risolvere estragiudizialmente le controversie, fatto sempre salvo il diritto di ricorrere all'arbitro.</p>
	<p>Distacco personale</p> <ul style="list-style-type: none"> - Disciplina delle ipotesi di distacco 	<p>La checklist prevede che, nel caso in cui si verifichi il distacco del personale da un partner ad un altro, siano specificate le regole di detto distacco.</p>
	<p>Sottoscrizione del contratto</p> <p>Individuazione:</p> <ul style="list-style-type: none"> - dei rappresentanti - dei luoghi per le comunicazioni 	<p>Come già spiegato nel paragrafo “informazioni generali”, il CA deve essere sottoscritto da chi ha la rappresentanza negoziale dell'Ente. La checklist richiede che vengano forniti gli indirizzi (postali, telefax , e-mail) per le comunicazioni tra partner.</p>

<p>Regole “legali” <i>Disciplina di vari aspetti quali la fine del contratto, le sanzioni contrattuali, la legge applicabile e il giudice competente.</i></p>	<p>Final Clauses</p> <ul style="list-style-type: none"> - Entire agreeemnt - Severability - Counterparts - Assignment - Lingua - Allegati - Procedura di stipula 	<p>Il CA contiene diverse clausole che chiudono il testo e che sono spesso caratteristiche dei contratti internazionali, come, per esempio:</p> <ul style="list-style-type: none"> - <i>Entire agreement</i>: con questa clausola si afferma che il CA sostituisce tutti gli altri accordi fino a quel momento presi; - <i>Severability</i>: se una o più clausole sono invalide, comunque il CA rimane valido per quanto riguarda le restanti clausole; - <i>Counterparts</i>: si stabilisce il numero delle copie in cui è scritto il CA; - <i>Assignment</i>: si prevede il divieto se di cedere a terzi gli obblighi derivanti dal CA ; - <i>Lingua</i>: occorre stabilire la lingua utilizzata nei rapporti tra partner e nel CA; - <i>Allegati</i>: si elencano gli allegati al CA e si dichiara il loro valore prescrittivi; - <i>Procedura di stipula</i>: se la stipula del contratto non avviene nello stesso momento, si deve prevedere una procedura di stipula (per es.: le stesse copie vengono fatte circolare tra i partner, che vi appongono la firma in modo sequenziale; oppure ogni partner firma una lettera di adesione del CA, ecc.)
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ALLEGATO B

Consortium agreement for the project called

" _____ "

This consortium agreement ("Consortium Agreement") is made and entered into this ... day of ... month/ year by and between

having its registered office at _____, represented by [insert the name of legal representative or his proxy], VAT identification number,

hereinafter referred to as - " _____ "

and

having its registered office at _____

Hereinafter referred to as - " _____ "

having its registered office at _____

Hereinafter referred to as - " _____ "

having its registered office at _____

Hereinafter referred to as - " _____ "

Hereinafter referred to individually or collectively as the "Contractor(s)"

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PREAMBLE

WHEREAS, the Contractors, having considerable experience in the field of the Project, have submitted a Proposal for the Project to the Commission [or: "intend to submit a Proposal for the Project to the Commission"] in consideration of Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006), (OJEC L 232/1) and of Regulation (EC) No 2321/2002 (OJEC L355) of the European Parliament and of the Council of 30 December 2002 concerning the Rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth framework programme 2002-2006;

WHEREAS the Contractors have decided and agreed to execute and perform the Contract (as such term is defined in the above mentioned Regulation) to be awarded by the Commission for the Project in the event the Commission accepts their Proposal; [*this part should be changed if the Proposal has been already accepted by the European Commission*]

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

WHEREAS the Contractors have agreed on a project called "... " to be carried out in the framework of the specific research and technological development programme "...";
WHEREAS the Contractors considers that it is of their mutual benefit to co-operate on the strategic, scientific and technological objectives of the sub-mentioned Project

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

Title I: SUBJECT OF THE AGREEMENT

Section 1: Subject, purpose and nature of the Consortium Agreement

Art. 1.1 Definitions

For sake of clarity, words used in this Consortium Agreement shall have the same meaning as that defined in the second article of Regulation (EC) No 2321/2002 (OJEC L355) of the European Parliament and of the Council of 30 December 2002 concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community sixth framework programme 2002-2006 and the same definition and meaning as that contained in the Contract with the European Commission, including its Annex II General Conditions unless otherwise defined herein.

Art.1.2 Additional definitions

"Budget" is the budget in Annex B with the *Contractors' Project Shares* agreed upon by the *Consortium* for the execution of the *Project* and according to the total *EC contribution* defined in the *Contract*.

"Consortium" means all the *Contractors* participating in the *Project* covered by the *Contract*.

"Contract" means the Contract related to the *Project*

"Contractor" means a participant defined in the *EC Regulation on the rules for participation* as a legal entity contributing to an indirect action and having rights and obligations with regard to the Community under the terms of such Regulation or according to the *Contract*.

"Co-ordinator" means the *Contractor* identified in the *Contract* who, in addition to its obligations as a *Contractor*, is obliged, as institution, to carry out the specific co-ordination tasks provided for in the *Contract* on behalf of the *Contractors*.

"Commission" or "EC" means the Commission of the European Communities.

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"Consortium Agreement" or "Agreement" means this agreement including its Annexes

"Defaulting Contractor" means a *Contractor* breaching its obligations of the *Contract* or the *Consortium Agreement*.

"EC contribution" means the financial contribution of the Commission to the Consortium as defined in the *Contract*.

"Project" means the project, called ..., with project No. <insert project number> as set out in the Programme of Activities as defined in the *Contract* Annex A.

"Programme of Activities" means the Programme of Activities, as defined in the *Contract* Annex A.

"Project Share" means for each Contractors, that *Contractor's* share of the *Budget* of the *Project* as agreed by the *Consortium* in Annex B

"Project Deliverables" means the deliverables required under the Contract and this *Consortium Agreement* (including but not limited to the reports, cost statements and certified audit reports) that have to be delivered by the Contractors to the Co-ordinator and/or the Commission.

"Subproject" means a set of work packages requiring specific co-ordination for their performances.

Art. 1.3 Purpose of the Consortium Agreement

- a. The purpose of this *Agreement* is to specify the organisation of the work between the *Contractors*, to organise the management of the *Project*, to define the rights and obligations of the *Contractors*, including, but not limited to, their liability and indemnification, to supplement the provisions of the *Contract* concerning Access Rights and to set out rights and obligations of the *Contractors* supplementing but not conflicting with those of the *Contract*.
- b. The *Contractors* agree to co-operate pursuant to the terms of this *Agreement* in order to execute and fulfil the *Contract* with the *EC* and perform the tasks designated in the *Programme of Activities* in Annex A.
- c. The *Consortium Agreement* shall be regarded as connected to the *Contract*. In case of conflict between this *Consortium Agreement* or parts of it and the *Contract*, the latter shall prevail.

Section 2: Responsibility

Art. 2.1 Responsibility

- a. Each *Contractor* hereby undertakes with respect to other *Contractors* all reasonable endeavours to diligently perform and fulfil actively and on time, all of its obligations under the *Contract* and this *Consortium Agreement*
- b. Each *Contractor* undertakes reasonable endeavours:
 - to promptly prepare and provide the head of the (name of the executive body), the *Co-ordinator* or the head of the *Sub-Project*, as appropriate, with the deliverables, information and report as they require in order to perform their duties under this Consortium Agreement and under Contract or as the Commission may request;
 - to submit the *Co-ordinator* every six months a cost statement of expenses incurred together with the supporting documents;
 - to be individually responsible (including for financial matters) for the Work Packages under its responsibility;
 - to address to the *Co-ordinator* an audit certificate in accordance with the relevant article of the *Contract* no later than thirty days after the expiry of each certification period;
 - to notify the head of the *Subproject* promptly of any delay in performance or of any event that may impact the *Project*;
 - to inform the head of the *Subproject* of relevant communications it receives from third contractors in relation to the *Project*;
 - to ensure the accuracy of any information or materials it supplies to the other *Contractors* or under the *Contract* and to promptly correct any error therein of which it is notified. The recipient *Contractor* shall

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- be responsible for the use to which it puts such information and materials;
- not to use knowingly any proprietary rights of a third contractor for which such *Contractor* has not acquired the corresponding right of use and/or to grant licenses;
- to act at all times in good faith and in a manner that reflects the good name, goodwill and reputation of the other *Contractors* and in accordance with good business ethics;
- to participate in a co-operative manner to the meetings of the different bodies under this *Consortium Agreement* and not to exercise veto rights, which are absolute, inappropriately.

Title II: ORGANISATIONAL PROVISIONS

Section 3: Project Organisation and Management Structure

Art. 3.1 Management Structure

The Project organisation shall comprise the following:

- a. *Co-ordinator* is the intermediary to the *European Commission* and is authorised to execute the project management
- b. **(name of decisional body)** is the principal decision-making body of this *Project* and shall comprise all *Contractors*
- c. **(name of executive body)** means the project management decision-making body

3.1.1 Co-ordinator

The *Co-ordinator* shall be the intermediary between the *Contractors* and the *Commission* and shall perform all tasks assigned to it as described in the *Contract* and hereunder. The *Co-ordinator* is responsible for the overall management of the *Project*.

In particular, the *Co-ordinator* shall be responsible for:

Vis-à-vis the *Commission*:

- signing the *Contract* with the *European Commission* after authorisation by all the *Contractors* representing at least eighty percent (80%) of the *Project Shares*;
- receiving the entire financial contribution from the *Commission*. The *Co-ordinator* will manage this contribution by allocating it to the *Contractors* pursuant to the *Programme of Activities* and the decisions taken by the appropriate bodies;
- supervising the scientific, technical, financial and administrative progress of the *Project*, and keep informed the *Commission* of all the relevant information as specified in the *Contract*;
- co-ordinating the reporting to the *Commission* on the basis of the information gathered from the *Contractors*;
- submitting documentation to the *Commission*, including all reports, *Project Deliverables* and any other necessary information required;
- negotiating and agreeing with the *Commission*, any necessary revision and/or amendments to the *Contract*.

Vis-à-vis the other *Contractors*:

- organising the activities and chairing the meetings of **(name of the decisional/executive bodies)**;
- distributing documentation between the *Contractors*;
- acting as an intermediate between the *Contractors*;
- following up the *Project* expenses and monitoring the cost statements prepared and certified by the *Contractors*;
- transferring sums allocated among the *Contractors* as per their *Project Shares* according to the decisions of the **(name of decisional body)** and keeping related records identifying what portion of the payments made by the *Commission* has been allocated and/or paid to each *Contractor*;
- **(if applicable)** withholding sums to constitute the *Common Fund* and managing it according to the provisions of this *Agreement*.

Except in its capacity as the representative of the *Contractors* described in the *Contract*, the *Co-ordinator* shall not be entitled to act or to make legally binding declarations on behalf of any other *Contractor*.

3.1.2 ... **(name of decisional body)**

The **(name of decisional body)** shall consist of one representative of each *Contractor*. The *Co-ordinator* shall

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chair all meetings of the (name of decisional body). Each representative shall have one vote and may appoint a substitute to attend and vote at any meeting of the (name of decisional body).

The (name of decisional body) shall in particular be entitled for:

- deciding political and strategic orientation of the *Project*; its *Programme of Activities and Budget*;
- deciding upon major changes in the *Programme of Activities*;
- deciding upon the allocation of the *Budget* to the *Programme of Activities*, and reviewing and proposing to the *Contractors* budget transfers;
- deciding upon the rules for the management of the funds received from the Commission, including the transfer of the payment from the *Co-ordinator* to the *Contractors*, the designation of the *Common Fund* and its management;
- deciding upon the review and/or amendment of terms of this *Consortium Agreement*;
- deciding on the further commitments proposed by the (name of executive body);
- deciding to suspend all or part of the *Project* or to terminate all or part of the *Contract*, or to request the *Commission* to terminate the participation of one or more *Contractors*;
- in case of default of a *Contractor*, agreeing on actions to be taken against the *Defaulting Contractor* and, if appropriate, to agree upon a new entity to join the *Project* for that purpose;
- agreeing procedures and policies in accordance with the *Commission* contractual rules, Annex II General Conditions - Part B for the management of the *Knowledge*;
- settling any dispute arising from the *Project* implementation and specially on Access Rights issues;
- (if applicable) deciding upon the entering into the *Contract* and the *Consortium Agreement* of new *Contractors*;
- deciding on IPR and Publications matters.

All *Contractors* shall implement the decisions taken by the (name of decisional body). Refusal by a *Contractor* to implement a decision of the (name of decisional body) shall be dealt with as per the provisions on Dispute Settlement.

(If applicable) European Commission Representative

The *Commission* may participate as an observer at the meetings of (name of decisional body).

(If applicable) Panels

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

3.1.3 ... (name of executive body)

The (name of executive body) shall consist of the *Co-ordinator* and all the heads of the *SubProjects*.

Under the control of, and in compliance with the decisions of the (name of decisional body), the (name of executive body) shall be in charge of the operational management of the *Project*.

The (name of executive body) shall in particular be responsible for:

- implementing the political and strategic orientation decided by the (name of decisional body);
- updating the *Programme of Activities* and reviewing the *Project Deliverables*;
- supporting the *Co-ordinator* in fulfilling obligations towards the *Commission*,
- proposing to the (name of decisional body) rules for the management of the funds received from the *Commission*, including the transfer of *Project Shares*, the designation of the *Common Fund* and its management;
- reviewing budget transfers in accordance with the annual *Programme of Activities* and its budget;
- monitoring the implementation of the *Programme of Activities* and approving the *Project Deliverables*;
- deciding upon measures to ensure effective day-to-day *Project* co-ordination in the framework of controls and audit procedures;
- supporting the *Co-ordinator* in preparing meetings with the Commission and related data;
- agreeing on press releases and publications of the *Contractors* with regard to the *Project*, and agreeing on procedures and policies in accordance with the *Contract*;
- making proposal to the (name of decisional body) for the review and/or amendment of the terms of the *Contract* or to request the *Commission* to terminate the participation of one or more *Contractors*;
- reviewing and deciding in case of default of a *Contractor*, assignment of the *Defaulting Contractor's* tasks, and suggestion on any new entity to join the *Project* for that purpose;
- making proposals to the (name of decisional body) to suspend all or part of the *Project* or to terminate all or part of the *Contract*, or to request the *Commission* to terminate the participation of one or more *Contractors*;
- (if applicable) selecting and proposing to the (name of decisional body) possible new *Contractors* to en-

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ter into the Contract and the Consortium Agreement.

The *Contractors* agree to abide by all decisions of the (name of executive body).

Art. 3.2 Common rules for the bodies

The Procedure Common Rules applicable to the bodies are as follows:

a. Meetings

The chairman of the body shall convene meetings (*insert the schedule*) and shall also convene meetings at any time upon written request of any *Contractor* in the case of an emergency situation.

b. Preparation and Organisation of the Meetings

The chairman shall provide an agenda to the members of the body (and also a copy to the all *Contractors*, even if not members) not later than ten calendar days in advance of the relevant (name of decisional body) meeting. The agenda must give full details and background to any proposed decision.

Should a *Contractor* suggest adding a discussion/decision to the proposed agenda, it shall do so in writing to all other members at least seven calendar days prior to the meeting date.

The Chairman may decide, notifying it with the agenda, that the meeting shall be held by means of electronic mail, video conference, telephone conference or similar communication systems.

c. Rules of voting

Each representative shall have one vote and may appoint a substitute to attend and vote at any meeting.

Meetings of the bodies shall constitute a quorum if more than fifty (50) percent of the members are present or duly represented by proxy.

Decision shall not be taken validly unless a majority of two-thirds (2/3) of its members are present or represented.

In any case, decisions shall be taken by a majority of 75% of the votes of members present or represented, provided always that a *Contractor* may issue its veto only in the case of a decision to accept a new *Contractor* in the *Consortium* if a substantial threat to its commercial or strategic interests is likely to exist which cannot be resolved by any other measure.

d. Minutes

The Chairman shall draft the minutes of each meeting to formalise in writing all decisions taken and shall dispatch them to the members (and also a copy to the all *Contractors*, even if not members) within fifteen calendar days of the concerned meeting.

The minutes shall be considered as accepted by the members if, within fifteen calendar days from receipt thereof, nobody has objected in writing to the Chairman, provided that objection shall be either on such formalisation or on a decision that was not part of the agenda and which was not accepted by all members.

Title III: TECHNICAL PROVISIONS

a. Material resources

The *Consortium* does not own any assets.

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

A list of this equipment will be held up to date in Annex G to this *Consortium Agreement* and will specify:

The names and references of the equipment;

The name of the owner,

Place of allocation;

The purpose of their allocation, so as to be able to define in the programme, what *Contractor* will have access thereto.

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

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

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

petent technical committee.

b. Human resources

Mobility actions shall be promoted within the *Project*. These activities may be carried out on a case-by-case basis depending on the laws, regulations and status applicable to each *Contractor*.

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

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

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

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

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

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

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

(If applicable) A list of employees assigned to the *Project* shall be attached hereto and updated from time to time.

Title IV: FINANCIAL PROVISIONS

Section 4: Costs – Payment

Art. 4.1 General Principle

The *Budget* comprises the resources and the expenses agreed for each *Contractor* for the execution of the *Project* as defined in Annex B of this *Consortium Agreement*. Resources comprise the financial contribution from the EC and the resources allocated by the *Contractors*. The *Budget* excludes cost incurred until the entry into force of the *Contract* which will be borne by each *Contractor*.

The (name of the decisional body) shall decide on:

- the rules for the management of the funds received from the Commission, including the transfer of payment from the *Co-ordinator* to the *Contractors*, the designation of the *Common Fund* and its management;
- the changes in the *Budget* allocation.

If necessary, the (name of the decisional body) may decide on staggered payments of the contribution to a *Contractor* for justified reasons.

Art. 4.3 Transfer of payments

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

The *Co-ordinator* undertakes to transfer the appropriate sums to the respective *Contractors* with minimum delay, in accordance with the *Contract* and the modalities agreed by the (name of the decisional body).

The *Co-ordinator* will notify each other *Contractor* promptly of the date and amount transferred to its respective bank account and shall give the relevant references.

Art. 4.4 Management of EC contribution

The *Co-ordinator* shall manage *EC contribution*, respecting the rules approved by the (name of the decisional body) and shall provide periodically the (name of the decisional body) a report on its management.

Title V: COMMERCIAL PROVISIONS

Section 5: Confidentiality

Art. 5.1 : Confidentiality

All information, directly or indirectly disclosed to a *Contractor* in connection with the *Contract* or with this *Agreement* and labelled in accordance with the *Contract*, shall be treated by the receiving *Contractor* as confidential and shall not be disseminated without prior written consent of the disclosing *Contractor* or be used for any purpose other than the carrying out of the receiving *Contractor's* obligations under this *Agreement* or the *Contract*.

This restriction shall not extend to any information which:

- has been in the possession of the receiving *Contractor* prior to receipt from the disclosing *Contractor*;
- is or has been published or otherwise has become public knowledge, otherwise than through any act of omission on the part of the receiving *Contractor*;
- was rightfully acquired by the receiving *Contractor* from others without any undertaking of confidentiality imposed by the disclosing *Contractor*;
- was developed by the receiving *Contractor* independently of the work of the Project as evidence in writing;
- where applicable, is approved for release in writing by the (name of the decisional body);
- the receiving *Contractor* is specifically required to disclose pursuant to an order of a court of competent jurisdiction in order to fulfil the court order.

Confidential Information will be flagged according to the following:

- if the information is written, a "confidential" mark shall be put on each page, and the document concerned shall be communicated under a sealed envelope;
- if the information is spoken, the confidential parts will be flagged as such by the disclosing contractor. The disclosing *Contractor* and the receiving contractor shall record this exchange of information in a written form within the next thirty working days.

Each *Contractor* undertakes to establish suitable procedures for ensuring that confidential Information related to the *Project* is restricted to those of their employees, subcontractors and all other thirds, needing such information for the purpose of the duties assigned to them and that all such employees, subcontractors and all other thirds are themselves subject to suitable obligations of confidentiality.

Upon completion of the *Project* each *Contractor* shall return to the other *Contractors* any background information communicated by them for the purpose of the *Project*.

The above obligations shall apply for the period in which use of any Knowledge or Pre-existing know-how is to be made available after the end of the contract, following receipt of any confidential Information by a *Contractor*.

The obligation of confidentiality is deemed, also, in order to respect the Ethical Rules, in particular those relating to Privacy.

Section 6: Intellectual Property Rights

Art. 6.1 Ownership on Pre-existing Know-How

Each *Contractor* is and remains the sole owner of its intellectual and industrial property rights over its Pre-Existing Know How.

Art. 6.2 Identification of Pre-Existing Know How [if applicable]

The *Contractors* have identified and listed in Annex D the Pre-Existing Know-How over which they may grant access rights for the *Project* and the Pre-Existing Know-How explicitly excluded or affected by restrictions to the access.

The *Contractors* agree that all other Pre-Existing Know-How shall be considered as unnecessary for the implementation of the *Project* and/or excluded, provided however that the *Contractors* may update in Annex D to extend the listed Pre-Existing Know-How developed between the date of submission of the proposal and the date of award of the *Contract* or before the effective joining of a new contractor

In case a *Contractor* objects to exclusion from access to Pre-existing Know-how, the *Contractor* seeking to exclude access must petition the (name of decisional body) to decide whether the exclusion can take effect. Until a decision of the (name of decisional body) is taken, access to Pre-existing Know-how is regarded as denied.

Incorrect declarations made in bad faith may lead to the exclusion of the *Contractor* concerned.

Art. 6.3 Knowledge [if applicable]

The Knowledge arising from the *Project* could be (likely but not alone) as following:

1. ...;
2. ...;

3. ...;
4.

The Ownership of the Knowledge, arising from the *Project*, shall be attributed as follows:

1. ...;
2. ...;
3. ...;
4.

Art. 6.4 Access-rights

6.4.1 General Principles relating to Access-rights

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

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 it 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 *Contractor* under the *Programme of Activities* (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 *Contractor's* own Knowledge would be technically or legally impossible.

The burden of proof in relation to a claimed need for Access-rights shall be on the receiving *Contractor*. Where Access rights are deemed to have been granted, the receiving *Contractor* shall provide such proof to the granting *Contractor* within 30 days of receipt of a written request. Subject to the receiving *Contractor* acting in good faith, Access rights for execution of the *Project* shall remain in force pending the resolution of any dispute between the *Contractors* over the need for Access rights.

6.4.2 Access-rights for carrying out the project

Conditions for Access

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

Entitlement for Use for the Project

After conclusion of an agreement, the requesting *Contractor* is entitled to use the Pre-existing Know-how or Knowledge for performing the *Programme of Activities*.

6.4.3 Access-rights for Use

Conditions

Access-rights to Knowledge and Pre-existing Know-how both needed for Use shall be granted upon bilateral agreement between the *Contractors* concerned. Access rights to Knowledge shall be granted on a royalty-free basis; Access rights to Pre-existing Know-how shall be granted on Fair and Non-discriminatory Conditions. The granting of Access-rights shall be made conditional on to the following principles:

- (i) The access to Pre-existing Know-how is limited to the field of application being identified as pertaining to the objectives, content and goals of the project and necessary for the use of own Knowledge of the recipient *Contractor*.
- (ii) The royalty-free access to Knowledge is limited to the field of application being identified as the objectives and goals of the *Project*. Outside this identified area, access to Knowledge may be granted on market conditions only.
- (iii) subject to (i) and (ii) Access has to be granted within 6 months after written request by the potential user to the owning *Contractor*. In case Access is not being granted within the above-mentioned period, the (name of the decisional body) will decide this issue. (name of the decisional body) also decides on the appropriateness of possible license fees as well as on the conditions for granting Access.
- (iv) Access-rights exist in full scope until 2 years after *Project* completion or in case of prior termination of a certain *Contractor* after the time of leaving of such *Contractor*.

The involved *Contractors* may agree most favourable conditions.

Reimbursements

Any obligation regarding claims or rights of a third contractor, including especially rights of employees of the

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providing *Contractor*, resulting from the royalty-free *Access rights* granted by the providing *Contractor* must be reimbursed by the receiving *Contractor*.

Royalties due to Substantial Commercial Benefits

A *Contractor* which, having received royalty-free *Access rights* for Use of the Knowledge of another *Contractor*, and which over the period up to ten years after the end of the *Contract* has derived substantial commercial benefit from the exploitation of such *Access rights* shall, without prejudice to the rights and obligations of the *Contractors* concerned, notify such another *Contractor* as soon as possible. The involved *Contractors* shall agree a royalty and the other necessary dispositions.

Access rights for using Knowledge in subsequent Research Activities

Recognising the *Contractors'* obligations to act in good faith the *Contractors* agree that the *Access rights* for using Knowledge in subsequent research activities are to be for:

- i. in any case, research in the frame of a European Programme;
- ii. internal research;
- iii. third-contractor research, provided the third contractor does not have direct access to confidential Knowledge from the *Project* generated by other *Contractors*;

Art. 6.5 Decisions on IPR matters

The (name of the decisional body) shall take all decisions on the IPR, and, in particular, the (name of the decisional body) shall try a prior settlement of the disputes on the Ownership, Access Rights, Dissemination of IPR.

A member of the (name of the decisional body) who is associated with any of the *Contractors* in dispute shall not participate in its deliberations or vote on its decision. The power of decision may be delegated to a Panel convened for that purpose, the membership of which shall be determined by the (name of the decisional body) and shall be acceptable to all *Contractors* concerned.

Section 7: Publications and Press Releases

Art.7.1 Publications and Press Releases

If the (name of executive body) has agreed a *Project Deliverable* to be available to the public, any *Contractor* may publish information included in such *Project Deliverable* without any notifications to the other *Contractors* and without any other *Contractors'* consent.

For the avoidance of doubt, it is stated that no *Contractor* shall have the right to publish or allow the publishing of data which constitutes another *Contractor's* Knowledge, Pre-existing Know-how or confidential information, even where such data are amalgamated with such first *Contractor's* Knowledge, Pre-existing Know-how or other information, document or material. Any use of such other *Contractor's* data justifies, save for further remedies, objection to the publication by the *Contractor* concerned in accordance with the *Contract*. All the publications shall make reference to the *Project* title, the *Contractor* and to the funding institutions (wording to be defined at the first project team meeting).

This obligation shall remain applicable five years after the end of *this Consortium Agreement* and of the *Contract*.

The publishing *Contractors* must supply their planned publication to the other *Contractors*. Any opposition to the planned publication shall be made on justified grounds in accordance with this *Consortium Agreement* and the *Contract*.

When there is an opposition, the involved *Contractors* shall discuss how to overcome the justified grounds of the opposition by removal of any disclosure of copyright (for example software) owned by a non publishing *Contractor* and the opposing *Contractor* shall not unreasonably continue the opposition if actions are performed following the discussion.

The justified grounds of opposition are:

- for business reasons concerning the inclusion of the opposing *Contractor's* Knowledge or Pre-Existing Know-How.
- for protection reasons concerning Knowledge or Pre-Existing Know-How and if the publication of the material identified in opposition would adversely affect such protection.

However a delay to publication, for any reason, must be no longer than three months.

The (name of the decisional body) shall try a prior settlement of the disputes on the matters provided by this article.

Title VI: LEGAL PROVISIONS

Section 8: Duration, withdrawal and inclusion of a New Contractor

Art.8.1 Duration

This *Consortium Agreement* shall come into force as of the date of its signature by the *Contractors*, (if *applicable*: 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 or until complete discharge of all obligations for carrying out of the *Project* undertaken by the *Contractors* under the *Contract* and under this *Consortium Agreement*, whichever is earlier.

Art. 8.2 Suspension and termination

The (name of decisional body) may suspend or terminate the *Project* due to force majeure in accordance with the provisions of the *Contract*

Art.8.3 Withdrawal of a Contractor

Withdrawal

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

The (name of the decisional body) may object to such withdrawal by unanimous vote minus the vote of the withdrawing *Contractor*, indicating the reasons for objection, within a period of forty-five days from receipt of notification.

If the (name of the decisional body) agrees with the withdrawal, the *Co-ordinator* shall inform the *Commission* by means of registered mail with acknowledgement of receipt in accordance of the provisions of the relevant provisions of the *Contract*.

Where the (name of the decisional body) disagrees, the *Co-ordinator* shall submit to the *Commission* a request for assistance, in accordance with the relevant article of the *Contract*.

Consequences of withdrawal

The consequences of withdrawal shall be as follows:

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

The other *Contractors* keep, for the purposes of the research carried out in the scope of the *Project*, Access Rights, , to the *Pre-Existing Know-How* (in the state existing on the date of withdrawal) of the withdrawing *Contractor* and to the Knowledge produced by it in the scope of the *Project*, according to the terms defined by this *Consortium Agreement*. A withdrawing *Contractor* shall return all equipments or materials provided by the other *Contractors*, or destroy them upon their written request.
- c. Financial consequences for the withdrawing Contractors. The withdrawing *Contractor* shall pay the following costs:
 - the procedure fees to select a new *Contractor(s)* to carry out the *Project*; in an amount determined by the (name of the decisional body).
 - a financial compensation if the withdrawal impairs the conduct of the *Project*, in an amount determined by the (name of the decisional body).

The withdrawing *Contractor* is required to honour its financial commitments contracted prior to the effective date of its withdrawal and to refund the EC contribution received except the amount spent for the performance of the *Project*, with appropriate justifications.

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

(if applicable)

Art.8.4 Inclusion of a new Contractor

a. Inclusion of new Contractors without any additional contribution from the Commission

The *Programme of Activities* and the *Contract* determine the changes to the composition of the *Consortium* requiring a competitive selection procedure.

The competitive call procedure will be proposed by the (name of the executive body) to the (name of the decisional body). Upon approval of the (name of the decisional body) the *Co-ordinator* will be in charge of implementing the call according to the provisions of the *Contract*.

Evaluation will be made by the (name of the executive body) with the support of additional experts appointed by the *Co-ordinator* on behalf of the (name of the decisional body).

b. Entry of new Contractors with an additional contribution from the Commission

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

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

c. Terms of participation in the Project of the new Contractors

Participation in the *Project* of the new *Contractor* shall be submitted to a prior formal decision of the (name of the decisional body). By joining the *Project* a new *Contractor* agrees to participate (through human, material and/or financial means) in the *Programme of Activities* and to pay the entrance fee, if any, determined by the (name of the decisional body).

The entrance into the *Consortium* of a new *Contractor* becomes effective on the date it adheres to the *Contract* by the signature of form A and to the *Consortium Agreement* by the signature of it.

d. Access Rights

Adhering to the *Consortium Agreement*, the new *Contractor* shall indentificate his Pre-Existing Know-How and the Pre-Existing Know-How explicitly excluded or affected by restrictions to the access.

The new *Contractor* has access to the Pre-Existing Know-How of the other *Contractors* for the purposes of research, use or dissemination upon written request according to this *Consortium Agreement*.

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

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

Section 9: Liability, Termination, Common fund

Art. 9.1 Liability

Regarding liability matters, the *Contractors* shall abide by the conditions set forth in the *Contract*.

The *Contractors* agree to assume all of the financial consequences of their liability in all cases their liability is asserted on the basis of damage caused to one of them or to a third in the scope of the performance of this *Consortium Agreement*.

Each *Contractor* shall indemnify each of the other *Contractors* in respect of acts or omissions of itself and of its employees, agents and subcontractors.

Exclusion of indirect damages

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

Liability towards the Commission

Contractors being Public bodies shall only assume their own debts, in accordance with the participation rules and the *Contract*.

Claims by the *Commission* against such *Contractor* will be notified to this *Contractor* through the *Co-ordinator*. The *Contractor* shall immediately take all necessary steps within his competence to prevent or end a dispute.

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

Indemnification by the Defaulting Contractor

In any case where the *Commission* claims reimbursement in accordance with the collective responsibility of the *Contract* from a *Contractor* other than the *Defaulting Contractor*, the other *Contractors* shall be entitled to seek full indemnification by the *Defaulting Contractor*.

Save the determination of the all further indemnification, a *Contractor* in default of its obligations under the *Contract* and which default causes lawful withholding of payments by the *Commission* to other *Contractors*, shall pay to the other *Contractors* interest on the amount withheld at an annual rate equal to three (3) percentage point above the prime rate of interest on overdrafts charged according to the Euro Interbank Rate (EURIBOR) on the last working day before the *Commission* informed the other *Contractors* of such withholding or on the last working day before which the *Contractors* 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*.

Art. 9.2 Termination

In the event of a breach by a *Contractor* of its obligations under this *Consortium Agreement* or the *Contract* which is irremediable or which is not remedied within thirty calendar days of a written notice from the *Co-ordinator* according to the decision of the (name of the executive body), requiring that such breach be remedied, then the other *Contractors* in the (name of the decisional body) may jointly decide to terminate this *Consortium Agreement* with respect to the *Defaulting Contractor* following a minimum of thirty calendar days prior to written notice by the *Co-ordinator*.

Such termination shall take place with respect to the *Defaulting Contractor* 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*, as the other *Contractors* and/or the *Commission* shall decide provided always that:

- (a) any and all *Access rights* granted to the *Defaulting Contractor* by the other *Contractors* as well as under the *Contract*, shall cease immediately; but any and all *Access rights* granted by the *Defaulting Contractor* to the other *Contractors* shall remain in full force and effect;
- (b) the tasks of the *Defaulting Contractor*, shall be assigned according to the decision of the (name of the executive body). The preference shall be granted to one or more of the remaining *Contractors*.
- (c) the *Defaulting Contractor* shall:
 - assume all reasonable direct costs increase (if any), resulting from the assignment referred to in (b) above in comparison with the *Project shares* of the *Defaulting Contractor* as specified in the Annex B of this *Consortium Agreement*, and
 - be liable for any so resulting additional direct cost caused to the other *Contractors*.

The provisions above shall also apply in the events that:

- any *Contractor's* participation in the *Contract* is terminated by the *Commission* pursuant to the provisions of the *Contract*, then, without prejudice to any other rights of the other *Contractors*
- any *Contractor* enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors and the other *Contractors*, subject to approval by the *Commission*, decide to terminate the *Consortium Agreement* with respect to that *Contractor*, to take over the fulfilment of such *Contractor's* obligations and to receive subsequent payments under the *Contract* in respect thereof.

A *Contractor* is entitled to withdraw from the *Project* or to otherwise request the termination of its participation in the *Contract* having obtained firstly the prior written consent of the other *Contractors* in the (name of the decisional body) (such consent not to be unreasonably withheld), and secondly the consent of the *Commission*.

Art. 9.3 Common fund

By decision of the (name of the decisional body), a Common Fund may be established in order to secure indemnification to the *Commission* or to a third, in the case foreseen by this section

The (name of the decisional body) shall decide on the following matters:

- determining the amounts or percentage to be withheld from advance payments by the *Co-ordinator*;
- determining the modalities for its use;
- detailing the rules for management of the fund;
- detailing the conditions and/or time for the release of the reserves.

In case of use of Common fund, in order to indemnify the *Commission* or a third, the article 9.1 shall be applied to the *Defaulting Contractor*.

This provision will not be applied to public bodies, international organisations or participants whose participation in the *Project* is guaranteed by a Member State or by an associated State.

Section 10: Settlement of Disputes

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

Section 11: Final provisions

Art. 11.1 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.

Art. 11.2 Notices

Any notice to be given under this *Consortium Agreement* shall be in writing to the addresses and recipients as listed in Annex E. It shall be deemed to have been served when personally delivered, or, if transmitted by telefax, electronic or digital transmission when transmitted provided that such transmission is confirmed by receipt of a successful transmission report and confirmed by mail.

Art. 11.3 Applicable Law

This *Consortium Agreement* shall be governed by the *European Law* and, where non provided by the latter, according to the *Contract*.

Art. 11.4 Assignment

No *Contractor* shall, without the prior written consent of the other *Contractors*, partially or totally assign or otherwise transfer any of its rights and obligations under this *Consortium Agreement*. Such consent shall not be unreasonably withheld.

Art. 11.5 Entire Agreement - Amendments

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

Art. 11.6 Severability

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

Art. 11.7 Annexes and Conflicts

The Annexes to this *Consortium Agreement*, which are an integral part thereof are:

Annex A: Contract

Annex B: Budget

Annex C: List of the members of the management structure

Annex D: Pre Existing Know – How

Annex E: Recipients for Notices

Annex F: Bank Account

(if applicable) Annex G: List of material and human resources

In the event of conflict or inconsistency between any provision contained in the body of this *Consortium Agreement* and any provision contained in its Annexes, the provisions contained in this *Consortium Agreement* shall prevail.

In the event of conflict or inconsistency between any provision contained in this *Consortium Agreement* and the provisions of the *Contract*, the provisions of the *Contract* shall prevail.

SIGNATURES

In order to simplify the signing procedure each *Contractor* receives the signature page in 3 originals to be signed by acting as the *Co-ordinator*. Signature of this sheet means that every *Contractor* contracts

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with each of the other *Contractors* named under the *Contract* and is fully aware of the content of this *Consortium Agreement*.

The original of this *Consortium Agreement* with all signed sheets will be available for consultation at the *Co-ordinator* premises. Upon request to the *Co-ordinator* a certified copy will be made available to the *Contractor*.

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

Authorised to sign on behalf of

<INSERT NAME OF CO-ORDINATOR>

Signature

Name Title

Authorised to sign on behalf of

<INSERT NAME OF CONTRACTOR ...>

Signature

Name Title

Authorised to sign on behalf of