

**CONSORTIUM AGREEMENT FOR A SMALL OR MEDIUM-  
SCALE FOCUSED RESEARCH PROJECT (STREP) UNDER  
THE EUROPEAN COMMUNITY FRAMEWORK 7 PROGRAM  
ENTITLED:  
“MOBIO: MOBILE BIOMETRY”**

**Amongst**

- (1) FONDATION DE L'INSTITUT DALLE MOLLE D'INTELLIGENCE ARTIFICIELLE PERCEPTIVE (IDIAP)**
- (2) UNIVERSITY OF MANCHESTER (UNIMAN)**
- (3) UNIVERSITY OF SURREY (UNIS)**
- (4) UNIVERSITY D'AVIGNON ET DES PAYS DE VAUCLUSE (UAPV)**
- (5) VYSOKE UCENI TECHNICKE V BRNE (BUT)**
- (6) UNIVERSITY OF OULU (UOULU)**
- (8) IDEARK (IDEA)**
- (9) EYE PMEDIA (EPM)**

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### This AGREEMENT is made BETWEEN

- (1) **FONDATION DE L'INSTITUT DALLE MOLLE D'INTELLIGENCE ARTIFICIELLE PERCEPTIVE (IDIAP)** a private foundation, established in Switzerland – Centre du Parc - Av. des Prés-Beudin 20, 1920 Martigny, Switzerland
- (2) **UNIVERSITY OF MANCHESTER (UNIMAN)** a national university established in United Kingdom – Oxford Road, M13 9PL Manchester
- (3) **UNIVERSITY OF SURREY (UNIS)** a national university established in United Kingdom – Stag Hill, GU2 7XH Guildford, United Kingdom
- (4) **UNIVERSITY D'AVIGNON ET DES PAYS DE VAUCLUSE (UAPV )** a public university, established in France – Rue Louis Pasteur 74, 84029 Avignon, France
- (5) **VYSOKÉ UČENÍ TECHNICKÉ V BRNĚ (BUT)** a public university with the status defined under the Czech university law 111/1998 Sb, having its principal office at Antonínská 1, 60190 Brno, Czech Republic
- (6) **UNIVERSITY OF OULU (UOULU)** a public university established in Finland – Pentti Kaiteran Katu 1, 90014 Oulu, Finland
- (8) **IDEARK (IDEA)** a private company, established in Switzerland – Centre du Parc - Av. des Prés-Beudin 20, 1920 Martigny, Switzerland
- (9) **EYEP MEDIA (EPM)** a private company, established in Switzerland – Baumettes 15, 1020 Renens, Switzerland

### WHEREAS:

- (A) The Parties to this Consortium Agreement have submitted a Proposal for a Project entitled **MIOBIO: Mobile Biometry** to the Commission in the Seventh Framework Programme, theme “**ICT-1-1.4**”, which proposal has been accepted by the Commission.
- (B) In accordance with Article I.4 of the Grant Agreement, the Parties wish to enter into this Consortium Agreement so as: (i) to specify or supplement, as between themselves, the provision of the Grant Agreement; and (ii) to lay down general rules related to the management of the project and their agreement with respect to certain matters including (but not limited to) access rights and liability.
- (C) The Parties have selected the “Fondation de l'Institut Dalle Molle d'Intelligence Artificielle Perceptive” (IDIAP) as the Coordinator of the Project

### THEREFORE IT IS AGREED AS FOLLOWS:

## 1 DEFINITIONS AND INTERPRETATION

### Grant Agreement Definitions

1.1 Words defined in the Grant Agreement have the same meaning in this Consortium Agreement.

### Additional Definitions and Interpretations

**Accession Date** means the date of the signature of the Declaration of Accession by a Party joining the Project in accordance with the provisions of the Grant Agreement and this CA.

An **Affiliate** of a Party means:

an Affiliated Entity of that Party as defined in the Grant Agreement, together with:

- (a) any legal entity directly or indirectly Controlling, Controlled by, or under common Control with that Party, for so long as such Control lasts; and
- (b) any other legal entity that is listed in Annex 1 to this CA as being an Affiliate of that Party, where such legal entity is:
  - (i) one in which that Party (or a legal entity qualifying as an Affiliate of that Party under (a) above) has a 50% equity share or is the single largest equity shareholder; or
  - (ii) under common Control with that Party, or a legal entity qualifying as an Affiliate of a Party under (a) above through government.

For the above purposes, "**Control**" of any entity shall exist through the direct or indirect:

- ownership of more than 50% of the nominal value of the issued share capital of the entity or of more than 50% of the issued share capital entitling the holders to vote for the election of directors or persons performing similar functions, or
- right by any other means to elect or appoint directors of the entity (or persons performing similar functions) who have a majority vote.

Common Control through government does not, in itself, create Affiliate status and any legal entity under common government Control must be specified in accordance with (b) above in order to qualify as an Affiliate.

**Allocated Work** means the research work and the related activities and services allocated to a Party in accordance with Annex I as such allocation may be adjusted from time to time in accordance with the Implementation Plan.

**Annex** means any annex attached to and incorporated into the Grant Agreement.

**API** or **Application Programming Interface** means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.

**Appendix** means any appendix annexed to, and which shall be deemed incorporated in, this Consortium Agreement.

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**Article** means the relevant numbered article within the Grant Agreement.

**Background** shall have the meaning given it in the Grant Agreement, namely, expressed in the terminology of this CA: "information which is held by Parties prior to their accession to the Grant Agreement, as well as copyrights or other IPRs pertaining to such information, the application for which has been filed before their accession to the Grant Agreement, and which is needed to carrying out the Project or for Using the Foreground".

**Budget** means the budget annexed to/included as part of the Proposal, being the financial basis on which the Commission has agreed to support the Project, and as such Budget may be adjusted by the Commission from time to time during the Project;

**Clause** means the relevant numbered clause of this Consortium Agreement;

**Commission** means the Commission of the European Communities, representing for the purpose of the Grant Agreement, the European Community.

**Community** means the European Community.

**Confidential Information** means the information to which the provisions of Clause 18 shall apply

**Consortium** means the collaborative research grouping in relation to the Project that is constituted by this CA.

**Consortium Agreement** or **CA** means this agreement and all of its Appendices, together with amendments validly agreed in writing amongst the Parties.

**Controlled Licence Terms** means terms in any licence that require that the use, copying, modification and/or distribution of Software or another copyright work ("**Work**") and/or of any copyright work that is a modified version of or is a derivative work of such Work (in each case, "**Derivative Work**") be subject, in whole or in part, to one or more of the following:

- (a) (where the Work or Derivative Work is Software) that the Source Code be made available as of right to any third party on request, whether royalty-free or not;
- (b) that permission to create modified versions or derivative works of the Work or Derivative Work be granted to any third party;
- (c) that a royalty-free license relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, terms in any licence that merely permit (but do not require any of) these things are not Controlled Licence Terms.

**Coordinator** means The Fondation de l'Institut Dalle Molle d'Intelligence Artificielle Perceptive (IDIAP), fully designed as a party to this Consortium Agreement, and for the purposes of this Consortium Agreement acting through its Representative, Dr. Sebastien Marcel.

**Declaration of Accession** means a declaration, in the style included as Form B, Annex V, of the Grant Agreement, which shall indicate and effect a Party's accession to the project.

**Defaulting Party** means a Party which has been determined as being in breach of any of its obligations under the Grant Agreement and/or this CA.

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**Effective Date** means the date of entering into force of the Grant Agreement.

**Force Majeure** means any one or more events beyond the control of the relevant Party which occur after the date of signing of this CA, were not reasonably foreseeable at the time of signing of this CA, and the effects of which are not capable of being overcome without unreasonable expense and/or unreasonable loss of time to the Party concerned. Events of Force Majeure shall include (without limitation) war, civil unrest, acts of government, natural disasters, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions, and general shortages of energy.

**Foreground** shall have the meaning given in the Grant Agreement, namely, expressed in the terminology of this CA: "the results, including information, whether or not they can be protected, which are generated by the Project. Such results include rights related to copyright; design rights; patent rights; plant variety rights; or similar forms of protection".

**Grant Agreement** or **GA**, means Grant Agreement No **214324** (including its Annexes and any amendments thereto) for the undertaking by the Parties of the Project.

**Held** or **held**: references in the Grant Agreement or this CA to Background or Sideground being "Held" or "held" by a Party mean that such party can legally grant, or require someone other than any of the other Parties to grant, Access Rights under and/or to such Background or Sideground without the consent of, and without being obliged to account to or make any payment to, any third party.

**Implementation Plan** means the annual plan agreed between the Parties with respect to work share and budget allocations under the Project, to be prepared annually and submitted to the Commission for evaluation and approval.

**Indirect Utilisation** as referred to in the Grant Agreement and this CA means that Access Rights for Use granted pursuant to this CA and the Grant Agreement shall include the right for a Party and its Affiliates to whom such Access Rights are granted to have a third party make, only for the account of and for the use, sale or other disposal by the Party and such Affiliates, products or services, provided that the substantial portion of the specifications of such products or services has been designed by or for such Party and such Affiliates.

**Intellectual Property Rights** or **IPR** means: patent, patent applications and other statutory rights in inventions; copyrights (including without limitation copyrights in Software); registered design rights, applications for registered design rights, unregistered design rights and other statutory rights in designs; and other similar or equivalent forms of statutory protection, wherever in the world arising or available; but excluding rights in Confidential Information or trade secrets.

**Joint Fund(s)** means payments made by the Commission to the Co-ordinator for the benefit of the Consortium and not directly allocated to any Party.

**Limited Source Code Access** means: (a) access to Object Code; or, where normal use of such Object Code requires an API, access to such Object Code and such API; or (b), if (a) is not available, access to Source Code.

**Management Team** means, collectively, the administrative team which may be appointed by the Coordinator, as referred to in Clause 11.

**needed** and **necessary** in the Grant Agreement, and **Needed** and **Necessary** in this CA, in respect of executing or carrying out the Project, and/or in respect of "Use of Foreground", mean technically essential and:

- (a) where IPRs are concerned, mean that those IPRs would be infringed absent the Access Rights granted under the Grant Agreement and this CA;



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- (b) where Confidential Information is concerned, only Confidential Information which has been disclosed during the Project will be considered as technically essential, except as otherwise agreed between the Parties; and
- (c) where Sideground is concerned, only such Sideground which is within the Scope defined in Annex 5 to this CA will qualify for consideration as Needed for Use of Foreground, and provided that the inclusion of a technology category as Sideground in such Annex does not of itself mean or imply that such technology category or any technology falling within that category is Needed for Use of Foreground.

**Notice of intention** means a notice of intention to publish. This notice will including a summary of the intended publication, its title and authors and will be posted on MOBIO's intranet publication notice board.

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

**Party** or **Parties** means a party or the parties identified as such in, and having signed, this CA or a subsequent Declaration of Accession.

**Project** means the **MOBIO: Mobile Biometry** project, as detailed in Appendix 1.

**Project Board** or **(PB)** means, collectively, the Representatives of the Parties as such PB is referred to in Clause 7.1 and as the rights and obligations of which are more particularly detailed in Clause 7. Where the context so requires, "Project Board" shall mean a meeting of the Project Board.

**Project Deliverable** means a deliverable required under the Grant Agreement and/or this CA (including, but not limited to, the reports and cost statements that have to be delivered to the Co-ordinator and/or the Commission).

**Project Share** means, for each Party, that Party's share of the total cost of the Project as initially set out in the Grant Agreement, unless otherwise agreed by all Parties.

**Proposal** means the proposal for the Project submitted by the Parties to the Commission. Proposal shall, as applicable, also mean any amendment to a Proposal submitted to the Commission by or on behalf of all the Parties.

**Sideground** means information other than Foreground developed or otherwise acquired by a Party after entering into the Grant Agreement, as well as copyright or other IPRs pertaining to such information.

**Software** means:

- (a) software programs, i.e., sequences of instructions to carry out a process in, or convertible into, a form executable by a computer and fixed in any tangible medium of expression and in any code form (including Source Code form);
- (b) software information, i.e., technical information used or, useful in, or relating to the design, development, use or maintenance of any version of a software program; and/or
- (c) software documentation, i.e., software information in documentary form.

For the avoidance of doubt, software may represent Background or Foreground.

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

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**Source Code Access** means access to Source Code as Necessary for a Party for execution of its part of the Project or for a Party's Use of Foreground.

**Subcontractor** means any third party engaged by a Party to carry out any of that Party's tasks in relation to the Project.

**Technical Annex** means the proposal for the Project submitted by the Parties to the Commission, and as adjusted following negotiation with the Commission

**Use** means the direct or indirect utilization of Foreground in research activities, or for developing, creating and marketing a product or process or for creating and providing a service;

**Work** shall have the meaning given it above in the definition of Controlled Licence Terms.

**Work Package** means each or any work package, each of which has been allocated a number, and the structure and responsibilities of which are more particularly detailed, in the Technical Annex; might also be referred as action line

**Work Package Manager** means each individual appointed to lead a Work Package.

### Further Understandings

The Parties have agreed on the following interpretations:

- (a) **"Indirect utilization of Foreground"** in the Grant Agreement's definition of use includes, for and on behalf of the Party concerned, use by having products and/or services developed, made and/or provided;
- (b) **"Fair and Non-discriminatory Conditions"** means fair market conditions.
- (c) **"Foreground"** means only such Foreground, which has been accumulated within and/or developed by the specific research group directly involved in carrying out the Project, and in fields directly related to the work, aims and objectives of the Project.

## 2 PURPOSE AND GENERAL PROVISIONS

- 2.1 The purpose of this Consortium Agreement is to facilitate the completion of the Project by the Parties in accordance with the provisions of the Grant Agreement, by supplementing the contractual provisions of the Grant Agreement to more specifically detail the rights and obligations of the Parties amongst each other in relation to, inter alia, the funding and performance of the Project, issues relating to intellectual property rights, and the liability and indemnification of the Parties amongst each other.
- 2.2 This Consortium Agreement is not intended, and nothing contained herein shall be deemed, to create any partnership, agency or joint venture amongst the Parties or any of the Parties, nor to establish any other legal entity constituted amongst any or all of the Parties.
- 2.3 Except as explicitly granted in this CA or in the Grant Agreement, no licence, immunity, or other right is granted or assigned under this CA or the Grant Agreement, either directly or indirectly, by implication, estoppel or otherwise, to any Party or any of its Affiliates with respect to any IPR of the other Parties or their Affiliates.
- 2.4 Any notice to be given under this Consortium Agreement shall be in writing to the following addresses and recipient stated in Annex 4 of this Consortium Agreement

## 3 VALIDITY AND ENTERING INTO FORCE

- 3.1 This Consortium Agreement shall be deemed to have been validly entered into between the Parties, and to be of legally binding effect, when it shall have been signed on behalf of each Party by the appropriate authorized signatory (ies).
- 3.2 The Coordinator shall enter into and sign the Grant Agreement with the Commission. The Grant Agreement shall come into force on the latter date of its signature and shall provide for the start date of the Project. The Coordinator shall promptly notify the Parties following entry into force of the Grant Agreement.
- 3.3 It is a condition of the Grant Agreement that, within **30** days of its entering into force as provided under Clause 3.2, each of the Parties shall have acceded to the Grant Agreement. Each Party confirms, by its execution of this Consortium Agreement, that such Party is wholly familiar with the requirements of the Grant Agreement in relation to the Project, and accordingly agrees that it intends, on receipt of intimation from the Coordinator of execution of the Grant Agreement as aforesaid, to execute a Declaration of Accession and return the same to the Coordinator within the said **30** day period, in good time to enable the Coordinator to timely forward all such Declaration of Accession to the Commission.
- 3.4 In the event that (i) the Proposal is not accepted by the Commission, (ii) that the Grant Agreement is not entered into between the Commission and the Coordinator as aforesaid, or (iii) that the Commission terminates the Grant Agreement as a result of the non-accession thereto of any Party in the manner aforesaid, this Consortium Agreement shall automatically become null and void and shall be deemed to have produced no effect or obligation on the part of any Party, with the exception of the confidentiality provisions contained in Clause 18, which provisions shall remain in full force and effect amongst all of the Parties in relation to all Confidential Information disclosed.
- 3.5 Where the Commission shall, as a result of the failure on the part of any Party to timely accede to the Grant Agreement, terminate the participation only of such Party

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under the Project, such Party shall, notwithstanding such termination, remain bound in accordance with the provisions of Clause 3.4.

### **4 ADDITIONAL PARTIES**

- 4.1 Where, during the continuance of the Project, in accordance with the procedures specified in the Grant Agreement, the Parties shall agree to admit additional party(ies) to the Consortium, each such additional party shall, as a condition of admission be required to accede to the Grant Agreement by completion of a Declaration of Accession.
- 4.2 Each such additional party shall, at the same time as its execution of a Declaration of Accession, confirm in writing its agreement to be bound by this Consortium Agreement to the whole extent that the terms and conditions hereof may relate to the participation of such party in the Project. For the avoidance of doubt, any reference to a "Party" in this Consortium Agreement shall be deemed to include any such additional party which shall have properly complied with the provisions of this Clause 4.
- 4.3 The provisions which relate to any Party, whose participation in the Project shall be terminated, through whatever means, are detailed in Clauses 24 to 26.

### **5 UNDERTAKING THE PROJECT**

- 5.1 Each Party shall take all appropriate measures to properly perform its obligations hereunder, promptly and in accordance with the expectations set out in the Proposal, and as specifically detailed in the Implementation Plan, both in relation to the completion of each such Party's Allocated Work, and in relation to all other undertakings and obligations which are contained in this Consortium Agreement.
- 5.2 Without limitation of the generality of Clause 5.1, each Party shall promptly, at the request of the Coordinator or as may be otherwise specified in this Consortium Agreement, provide or forward to the Coordinator all data, information or material which the Coordinator, pursuant to the provisions of this Consortium Agreement, or under the Grant Agreement, is required to ingather.
- 5.3 Each Party shall, in the performance of its Allocated Work, be solely responsible for its own organizational arrangements and work procedures, provided that its performance of such Allocated Work shall be consistent with such Party's obligations under the Grant Agreement and this Consortium Agreement.
- 5.4 For the avoidance of doubt, notwithstanding that this Consortium Agreement may not specify the same, any decision which may properly be taken by the Parties, or by any governing party or body, all pursuant to the provisions of this Consortium Agreement, and which shall as a consequence impose on a Party any obligation, shall be deemed to be an obligation contained in this Consortium Agreement and to which the provisions of this Consortium Agreement shall therefore apply.
- 5.5 Where the Proposal shall provide that a Party intends to sub-contract a share of its Allocated Work to a third party, such Party shall remain responsible for the implementation of such share and for the satisfaction of all obligations relative to such share arising under this Consortium Agreement and under the Grant Agreement. Other than to the extent so provided in the Proposal, or as may be otherwise expressly permitted either under the Grant Agreement or pursuant to any provision of this Consortium Agreement, no Party shall be entitled to sub-contract any part of its

Allocated Work to a third party.

- 5.6 Without prejudice to the applicability of the foregoing provisions of this Clause 5, the Parties remain collectively liable to the Commission for implementation of the Project, in accordance with Annex II of the Grant Agreement.

## 6 MANAGEMENT AND ADMINISTRATIVE STRUCTURES

- 6.1 In order to facilitate completion of the Project, the undernoted structure shall be put in place to govern the rights and obligations of the Parties amongst themselves. Specific rights and obligations in relation to each component part of such structure are more particularly detailed in Clauses 7 to 12.

6.1.1. **Project Board:** shall be comprised of collectively the Representatives of the parties, the coordinator and/or the program manager. It shall be the decision making body of the Consortium. It shall be responsible for supervising implementation of the Project and for reviewing scientific progress within the Project. It shall be responsible for the overall direction of the project

6.1.2. **Coordinator or Project Coordinator:** shall be the Party designed as such in Clause 1 The coordinator shall operate as the point of contact with the Commission. The coordinator shall have no authority to make any commitment by or on behalf of the Parties other than to the extent specifically stated in this Consortium Agreement or in the Grant Agreement, and shall be accountable to the Project Board.

6.1.3. **The Management team:** shall be comprised of the project coordinator, a part time program manager and any individual(s) appointed by the Coordinator for performance of Project administrative duties.

6.1.4. **Panels:** a Panel may be appointed by the Project Board to address a specific area under the Project. Any Panel so appointed shall be responsible, and report, to the Project Board.

6.1.5. **Work Packages:** shall be comprised of those individuals identified in Clause 8.2 and shall be responsible for the general management of their Work Package.

## 7 PROJECT BOARD

### Constitution

- 7.1 The Project Board shall be constituted by 1 Representative(s) per Party, each of whom shall be nominated by, and who shall represent, a Party.
- 7.2 Each Party shall, within thirty days of the execution of this Consortium Agreement, provide the Coordinator with the name and contact details of such Party's Representative, who shall thereafter be the point of contact for the Coordinator. Any Party may, by notice in writing to the Coordinator, at any time, nominate a temporary substitute Representative or a permanent replacement Representative.
- 7.3 Only those Representatives of whom the Coordinator shall have received notice in accordance with the provisions of Clause 7.2 shall be entitled to attend and participate in the business of any Project Board, or to vote thereat.

**Chairperson of the Project Board**

- 7.4 The Coordinator shall be the Chairperson of the Project Board, and shall serve as such for the duration of the Project unless he/she resigns such position, or in the event that the Representatives shall decide in Project Board that he/she should be replaced. In either such event, the Representatives shall appoint a replacement Chairperson. Any such decision made in Project Board for either the removal of an existing, or the appointment of a replacement, Chairperson shall be unanimous, excepting, in the case of removal of a Chairperson, the vote of the outgoing Chairperson.
- 7.5 Where, in any Project Board, there shall be an equality of votes, the Chairperson shall have a casting vote, as appropriate.
- 7.6 Where the Chairperson shall not attend a Project Board, the Representatives in attendance, (whether quorate or otherwise), may appoint, by majority decision, one of their number to stand in as Chairperson for the purposes of such meeting of the project Board only.

**Meetings of the Project Board**

- 7.7 For the purposes of convening the first Project Board, the Director shall, within thirty days of the last date of execution by the Parties of this Consortium Agreement, provide written notice of the date and venue for such Project Board together with an agenda therefore. Each Party shall ensure the attendance of its Representative at such first Project Board.
- 7.8 The Project Board shall meet no less frequently than once in every twelve month period and otherwise as a majority of the Parties may request by notice in writing to the Project Board Committee.
- 7.9 A meeting of the Project Board shall be properly convened by the Coordinator pursuant to the instruction of Project Board. He shall provide each Representative with no less than thirty days notice, in writing, of any meeting of the Project Board with which notice shall be included an agenda and full details of any resolution which is to be put to a vote of the Project Board.
- 7.10 Where, between the receipt of notice of a meeting of the Project Board and the date for such meeting, any Party wishes to have included as an agenda item any matter for the consideration and vote of the Parties, of which proper notice shall not have been given in the manner aforesaid, such Party shall notify the Coordinator, in writing, to this effect. The Coordinator shall, promptly on receipt of such notification, (provided that the same shall be received no less than 7 days in advance of such scheduled meeting), further intimate such additional item to each other Party. Where, in advance of the scheduled meeting of the Project Board one third in number of the Parties entitled to attend and vote at such meeting shall have advised the Project Board, in writing, that those Parties do not consent to such item being considered at short notice, that item shall not be deemed to have been timely intimated with the notice of Project Board.

**Quorum requirement for meetings of the Project Board**

- 7.11 In order for a Project Board to be validly convened, there shall be present no fewer than 75% of all Representatives.

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- 7.12 Where a Project Board shall be inquorate, the Chairperson shall reconvene the Parties at a date no later than three weeks from the date of the original meeting, and shall advise the Parties accordingly by notice in writing. Provided that there shall not be added to the agenda any resolution which is to be put to a vote of the project board (other than in the circumstances detailed in Clause 7.10 above), the Representatives in attendance, whether or not constituting a quorum, may resolve any matter of which proper notice of the requirement to vote thereon shall have been given, but that subject to the provision of Clauses 7.13 to 7.17.

### **Matters for Project Board consideration**

- 7.13 The Project Board shall consider and, where appropriate, vote in relation to the following:

- a) deciding upon admission of any additional party(ies) into the Consortium;
- b) deciding upon an annual Implementation Plan
- c) deciding upon the allocation of the Project's budget in accordance with the Grant Agreement, reviewing budget allocations;
- d) considering the service of notice on a Defaulting Party in accordance with Clause 24 hereof and deciding the reallocation of the Defaulting Party's tasks;
- e) making proposals to the Parties for the review and/or amendment of the terms of the Grant Agreement
- f) agreeing upon the proposal made by a Party for launching of competitive calls if required by the terms of Annex I and the accession to the Grant Agreement and this Consortium Agreement of new Contractors;
- g) approving the plan for using and disseminating the Foreground in accordance with the requirements stated in the Grant Agreement;
- h) approving the change and exchange of Work Packages between the Parties and propose respective amendments to the Proposal and accordingly the Grant Agreement in the event that such change or exchange shall have an impact which goes beyond the scope of the Project as detailed in the Proposal;
- i) approving proposals for nominations of Subcontractors by one or more of the Parties', which could have an affect on the Project as a whole.

- 7.14 The Project Board shall have overall responsibility for analyzing and approving the Project Deliverables, for proper administration of the Project and for implementation of the provisions contained in the Grant Agreement and in this Consortium Agreement. The Project Board's responsibilities shall include, without limitation to the foregoing generality the following:

- a) monitoring the progress of the Project;
- b) approving procedures and policies for dissemination of Foreground from the Project which is not to be used by the Parties
- c) approving adequate management procedures and standards for the project
- d) constitution of a Panel as the PB shall reasonably deem appropriate;
- e) approving the technical roadmaps with regard to the Project;
- f) approving measures in the framework of controls and audit procedures to ensure the effective day-to-day co-ordination and monitoring of the progress of the technical work affecting the Project as a whole;
- g) taking all necessary decisions with regard to the matters mentioned in this Clause without undue delay and for the best interest of the Project.

### **Voting at meetings of the Project Board**

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- 7.15 In relation to any resolution put to a Project Board, each Party shall be entitled to one vote only. Subject to the provisions of Clause 7.16 below, 75% majority in the Project Board is required to decide on any matter put to a vote of the Project board.
- 7.16 Notwithstanding the foregoing, where the Chairperson shall provide notice of any Project Board meeting, any Party may, by written notice to be provided to the Chairperson no later than 5 days in advance of such meeting, make a postal (or by e-mail) vote in relation to any matter which shall be the subject of a vote at such Project Board meeting

### **Minutes of Meetings of the Project Board**

- 7.15 Within thirty days after any properly convened Project Board the Chairperson shall prepare and forward to all of the Parties minutes of such Project Board. Where no Party shall have, by notice in writing addressed to the Chairperson, within seven working days of dispatch of such minutes as aforesaid, intimated that such minutes do not properly reflect the discussions and decisions of the relevant Project Board, such minutes shall be deemed to have been accepted. Where any Party shall have so intimated, the Chairperson shall have a further seven days within which to issue amended minutes, or to respond to such Party explaining his/her refusal to do so. In the event of continuing disagreement, the Chairperson's decision shall be final.

## **8 WORK PACKAGES**

### **Structure**

- 8.1 The Parties have approved the structure of the research which shall comprise the Project, which structure has been divided into a series of Work Packages in accordance with the Technical Annex. Each Work Package shall be undertaken by a different and changing combination of Parties at a given time, again as set out in the Technical Annex.
- 8.2 Each Work Package shall be led by the Work Package Manager, and its deputy, defined at the Kickoff meeting by the Project Board. In principle, each Work Package Manager shall occupy such position as long as the work package exists in the Project unless he/she resigns such position, or in the event that the Project Board decides, under exceptional circumstances, that he/she should be replaced.
- 8.3 The Parties which form or contribute to each Work Package shall meet no less than once in every six month period, (on such specific dates and at such venue as the Work Package Manager may determine), or otherwise as any member Party may, by written notice to the appropriate Work Package Manager, request.
- 8.4 Since meetings of Workpackages may need to be convened at short notice, although the relevant work package manager shall provide each of its members with as much written notice, (including agenda), as possible of any proposed meeting, the minimum required notice shall be seven days.
- 8.5 Each Party shall make every reasonable effort to attend any such meetings, at which such Parties shall discuss the progress of the relevant Work Package, the generation of Project Deliverables and any other issues or problems which may relate to the project or to the administration of the Project.

### **Minutes**



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- 8.6 Following any meeting of Parties within a Work package, the relevant Work package Manager shall circulate a draft report amongst those Parties summarizing the information exchanged and any recommendation proposed

### **Reports**

- 8.7 Each Work package Manager shall provide an updated report in advance of each meeting of the Project Board on the status of the relevant Work Package. Any such report may be provided electronically, but shall be given in person where the Project Board shall have requested that the Work Package Manager should attend a meeting.

## **9 COORDINATOR**

- 9.1 For the avoidance of doubt, any reference in this Consortium Agreement to any undertaking or responsibility of the Coordinator, or the obligation of any Party in relation to the Coordinator, shall where the context so requires, be interpreted so as to refer to IDIAP's Representative, or to such other individual(s) nominated by either Party to undertake its duties detailed in the Grant Agreement and in this Consortium Agreement.
- 9.2 The Coordinator, (hereafter, for the purposes of this Clause 9, IDIAP), may, by the provision of no less than six months written notice to each Party, resign from the position of Coordinator, where the Coordinator is able to provide appropriate evidence that due to circumstances outwits the reasonable control of the Coordinator it is or will be no longer reasonably able to perform the duties of Coordinator.
- 9.3 Where the Parties consider that the Coordinator shall not, to a material extent, have properly performed its obligations as coordinator under this Consortium Agreement, the Parties may elect that the Coordinator should be removed from this role. Any decision shall go for a vote in the Project Board.
- 9.4 Where, pursuant to any provision of this Clause the Parties shall require to appoint a new Coordinator, any such appointment shall be made by the Project Board.
- 9.5 The Commission shall, at all times during any resignation/removal or appointment process, as detailed above, be kept informed.

### **Role of the Coordinator**

- 9.6 The Coordinator is and shall be the single point of contact between the Parties and the Commission. Other than where expressly provided in this Consortium Agreement, any information, report or other correspondence which a Party, pursuant to the provisions of this Consortium Agreement or of the Grant Agreement, shall be required to communicate to the Commission, shall be provided to the Coordinator for onward transmission. The Coordinator shall forward any such correspondence promptly.
- 9.7 The Coordinator and its Management team will perform certain duties as part of the general management of the Consortium, which shall include:
- a) transmission of any documents and information connected with the Project between the Parties concerned;
  - b) administering the Community financial contribution and fulfilling the financial tasks described in Article 12
  - c) convening and administration of meetings of the Project Board, preparation and distribution of minutes and follow-up of its decisions taken by the Project Board;

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- d) management of the MOBIO project. Their responsibilities are among others: High level management of MOBIO on day-by-day basis, overseeing activities of the project manager (as defined in the technical annex), distribution of budget for funding, negotiating updates of the work-plan, budget and Consortium Agreement,
  - e) such other administrative and/or executive duties as should reasonably be in the contemplation of the parties as duties which will facilitate the proper administration of the Consortium.
- 9.8 The Coordinator and Management team shall not be entitled to make any representation or commitment on the part of the Parties or any of the Parties other than to the extent expressly authorized in the Grant Agreement or in this Consortium Agreement.
- 9.9 To the extent that serious concerns regarding the financial soundness of one or several Parties exist, the Coordinator has the authority to require an appropriate letter of comfort to substantiate that the corresponding Party is able to fulfill its financial obligations with regard to the Grant Agreement and this Consortium Agreement. Until this is provided, the Coordinator shall be entitled to refuse the disbursement of the Commission Contribution to such Party.
- 9.10 The Coordinator and its Management team have the right to withhold any payment if a Party is late in submitting or refuses to provide deliverables as required under the Grant Agreement and this Consortium Agreement.
- 9.11 If one or more of the Parties is late in submitting Project Deliverables, financial documents, or any other information or material required under the Grant Agreement or under this Consortium Agreement, the Coordinator may submit the other Parties' Project Deliverables to the Commission without the contribution of such first-mentioned Parties and pointing out these Parties delay to the Commission.

## **10 PANELS**

### **Constitution**

- 10.1 A Panel may be appointed by the Project Board to address any specific matter which shall arise in relation to implementation of the Project.
- 10.2 The Project Board shall determine as it sees fit who shall be members of any specific Panel. Such members may be, but need not be, Parties. Where any such member shall not be a Party, it shall be a prerequisite of membership that such member shall sign an undertaking of confidentiality in terms no less onerous than those contained in Clause 18.
- 10.3 The Project Board shall, in its appointment of a Panel, provide such Panel with a specific remit, and such Panel shall exist solely for the purpose of that specific remit.
- 10.4 Any Panel appointed as aforesaid will have an advisory role only and shall report to the Project Board. Once the Panel shall have provided a report in terms satisfactory to the Project Board, it shall be discontinued.
- 10.5 The Parties shall fully co-operate with any Panel and shall provide all such information as may be properly requested by the Panel pursuant to its remit. A Party may, in the event that any disclosure of information to a Panel would constitute a disclosure of Confidential Information, (as defined in Clause 18), either refuse to disclose such information where that Party reasonably believes that disclosure would be materially

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detrimental to its interests, or require that each member of the relevant Panel should acknowledge the nature of such information and agree, in writing, to maintain confidentiality in relation thereto.

### **11 MANAGEMENT TEAM**

- 11.1 The Coordinator shall appoint a Management Team to assist in administrative duties. Administration of the Management Team, including, without limitation, entering into contracts of employment with its members, as appropriate, and the scheduling of responsibilities within the Management Team, shall be the sole responsibility of the coordinator, and shall not be required to account to the Parties in relation to such administration, other than to the extent to which Eligible Costs may be incurred.
- 11.2 MOBIO's program manager will be part of the management team. He/she will report to the coordinator and the project board. He/she will be responsible of the daily administration of the project under the supervision of the Coordinator. His/her duties will be among others:
- a) coordinating action of various boards and committees
  - b) collecting documentation monitoring activities in work packages, preparing detailed list of deliverables and controlling relevant deadlines,
  - c) consolidating and distributing various scientific and administrative reports
  - d) distributing payment to the partners, controlling financial reports from individual partners and obtaining audit certificates from each participant.
  - e) coordinating internal and external communication, web and printed material
  - f) organizing MOBIO events
  - g) dealing with all legal and ethical issues and liaising with the EC offices
- 11.3 The Management Team shall be an administrative body only and shall have no strategic input to the Project.

### **12 PAYMENT TO PARTIES OF COMMISSION CONTRIBUTION**

- 12.1 Each Party shall be primarily responsible for its costs incurred in connection with its performance of its Allocated Work, and otherwise in implementation of its obligations under the Grant Agreement and this Consortium Agreement.
- 12.2 Each Party shall calculate its Eligible Costs for which Commission Contribution shall be claimed, in accordance only with that cost-reporting model selected by such Party and in terms of which the Budget shall have been prepared. In addition, each Party shall calculate such Eligible Costs in accordance with the provisions of the Grant Agreement.
- 12.3 The Budget shall be of indicative value only. The Parties agree that their respective entitlements to Commission Contribution shall depend on (a) the extent to which each Party shall be able to properly authenticate costs incurred, as Eligible Costs, and (b) the manner in which the Parties shall determine the Project should proceed and the consequent allocation of costs amongst them. Accordingly, notwithstanding any provision of the Budget, no Party shall be entitled to receive specific Commission Contribution other than in accordance with the Grant Agreement and this Consortium Agreement.
- 12.4 All Commission Contribution shall be payable by the Commission to the Coordinator,

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who shall hold all such monies in a dedicated bank account, separate from all other funds of, or controlled by, the Coordinator, solely for the purposes of this Consortium Agreement.

- 12.5 The Coordinator shall forward payments of Commission Contribution properly due to each Party under this Consortium Agreement, to each such Party's bank account in accordance with Clause 12.6.
- 12.6 Banking details of each Party are detailed in Appendix 3 or shall be provided to the Coordinator by each Party within 30 days of each such Party's signature of this Consortium Agreement. Any Commission Contribution properly due to a Party shall be remitted by banking transfer in accordance with such details, unless the Coordinator shall have received prior written notice from a Party's Representative advising of alternative details.
- 12.7 The Coordinator undertakes to transfer, in accordance with the Grant Agreement and the budget allocation decided by the Project Board, the appropriate sums received from the Commission and due to the respective parties with minimum delay, and not later than 30 days from their receipt. The coordinator will notify each party promptly of the date and amount transferred to its respective bank account and shall give the relevant references.
- 12.8 The coordinator may suspend payment to a Defaulting Party in the event of non-performance by that Party that reasonably justifies the suspension. Upon suspension the coordinator shall immediately inform the Project Board thereof, requesting the Project board to serve notice on the Defaulting Party within a period of 10 days after suspension. The Project Board shall decide, within a period of 30 days after the notice to the Defaulting Party has been served, on the measures to be taken in relation to the Defaulting Party.
- 12.9 A Party leaving the Consortium shall refund all advances paid to it except the amount of expended eligible costs accepted by the European Commission. Furthermore a Defaulting Party shall bear any additional costs occurring to the other Parties in order to perform its and their tasks. In the case unplanned costs or side effects costs would occur due to this recovery work, the other parties may require the default Party to pay some of them, up to a limit set to 10% of the refunding and based on evidences
- 12.10 Notwithstanding the foregoing provisions, where the Commission may, for whatever reason, suspend the Project, during the period of such suspension no cost or outlay incurred by any Party shall be considered an Eligible Cost, and no Party shall be entitled to recover any Commission Contribution in respect thereof, other than to the extent to which the Commission shall specifically permit. In such a case, the Parties may decide, by appropriate decision of the Project Board, to suspend their work during the term when the Commission suspends the Project.
- 12.11 Notwithstanding any above provision of this Clause 12, in any situation where the Project Board has concerns regarding the financial viability of a Party on whatever grounds, or where the Project Board shall consider that any Party has not properly performed its contractual obligations, (including, without limitation, performance of its Allocated Work), the Project Board shall have a duty to consider whether any full payment in advance will, or may be likely to, prejudice the financial liability of the other Parties under the Grant Agreement, and where it shall determine that there is or may be such a risk, shall instruct the Coordinator to pay the relevant Commission Contribution to the Party in question on such an installment basis as the Project Board may reasonably deem appropriate, or the Project Board may require performance by such Party of any other protective measure as the Project Board may reasonably deem appropriate.

## 13 COST REPORTING

- 13.1 It is a requirement of the Grant Agreement that reports, (which shall be in such a format, and shall contain all such information as shall be required by the Commission in accordance with the Grant Agreement and as more specifically detailed in Annex VI), shall be submitted to the Commission within 45 days of end of each such reporting period. Under the Grant Agreement it is the responsibility of the Coordinator to ingather and forward all such reports to the Commission. Under this Consortium Agreement, in any question amongst the Parties, such duty shall be the responsibility of IDIAP, which will ingather and forward all such reports to the Commission.
- 13.2 In order that the Coordinator shall be able respectively to collate and to forward all such reports to the Commission within the period specified in Clause 14.1, each Party shall forward all required reports to IDIAP within **30** days of the end of the relevant reporting period. Such reports shall be initially sent by email, (to the electronic address provided in Appendix 4, or to such other electronic address as the Coordinator may advise from time to time), reports must reach the Coordinator within the specified period.
- 13.3 For the avoidance of doubt, and without limitation of the provisions of the Grant Agreement, or of this Consortium Agreement, any report provided by a Party shall include;
- (a) an overview of the activities carried out by such Party during the immediately preceding reporting period;
  - (b) a description of Project deliverables and/or milestones achieved, or progress towards the same;
  - (c) detail of any problems or other issues relating to that Party's progress to date or which is anticipated;
  - (d) a justification of management activities undertaken by such Party, and the cost thereof;
  - (e) an updated Plan for Use and Dissemination of that Party's Foreground; and
  - (f) a completed Form C, in the format set out in Annex VI.
- 13.4 Any report submitted in accordance with the foregoing provisions shall be made available to each Party, but shall be treated by such Party as Confidential Information, (as defined in Clause 18).
- 13.5 Where a Party shall fail to submit all relevant information to the Coordinator within the specified period, as required in terms of the foregoing provisions, the Coordinator shall nevertheless send the incomplete reports to the Project Officer and shall endeavour to get the money released for the Parties who did send their documents in time. The Parties acknowledge this can not be guaranteed. Any consequent failure to justify a Party's Eligible Costs and therefore recover Commission Contribution shall not be the responsibility of the Coordinator and any such Party shall have no right of action against the Coordinator to recover such Eligible Costs.
- 13.6 Without prejudice to the foregoing provisions of this Clause 13, each Party undertakes to supply promptly to the Coordinator all such additional information or materials which the Coordinator shall reasonably request pursuant to the obligations of the Parties under the Grant Agreement.
- 13.7 Each Party shall use all reasonable endeavors to ensure that all information or materials provided hereunder to the Coordinator for the purposes aforesaid shall be accurate and complete, and shall not contain any errors or misleading information. Where a Party shall be advised that any such information or materials is incorrect or

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contains any error or is misleading in any way, such Party shall use all reasonable endeavors promptly to rectify the same, and shall keep the Coordinator advised on remedial measures taken and the progress thereof.

- 13.8 For the avoidance of doubt, the whole provisions of this Clause 13 shall apply in relation to any proportion of a Party's Allocated Work which such Party shall have properly, in accordance with the Grant Agreement and/or this Consortium Agreement, sub-contract to a third party, as if such Party had undertaken such proportion on its own account.

## **14 AUDIT REQUIREMENTS**

- 14.1 Each Party shall be obliged to provide an audit certificate in the manner detailed in the Grant Agreement within 30 days of the end of each reporting period referred to in Clause 13. Each Party shall, accordingly, have in place an appropriate procedure to enable any such audit certificate(s) to be prepared and made available to the Coordinator for onward transmission to the Commission in accordance with the requirements detailed in the Grant Agreement, for which purposes the provisions of Clauses 13.1, 13.2 and 13.5 shall apply to the delivery of such audit certificates in like manner to the delivery of periodic reports.
- 14.2 Notwithstanding that the cost of obtaining any such audit certificate shall be an Eligible Cost, each Party shall use all reasonable endeavors to minimize the same.
- 14.3 The foregoing requirements to provide audit certificates are without prejudice to the right of the Commission to audit any Party, on its own account but in accordance with the provisions of the Grant Agreement, at any time during the period of 5 years after the end of the Project.

## **15 RESPONSIBILITIES OF EACH PARTY**

### **General responsibilities**

- 15.1 Each Party undertakes to each other Party to use reasonable endeavors to perform and fulfill, promptly, actively and on time, all of its obligations under the Grant Agreement and this CA.
- 15.2 Each Party shall bear its own costs in connection with the making of the Proposal, the negotiation of the Grant Agreement and this CA, and the carrying out of the Project.

### **Responsibilities towards the Coordinator and the Project Board**

- 15.3 Each Party undertakes to use reasonable endeavours to supply promptly to the Co-ordinator all such information and documents as the Co-ordinator needs to fulfil obligations pursuant to this CA and the Grant Agreement. Each Party shall hold harmless and shall indemnify the Co-ordinator against all liability incurred by the Co-ordinator in the performance of its obligations, due to any failure by such Party in the execution of its obligations under this CA and the Grant Agreement.

### **Responsibilities towards each other**

- 15.4 Each Party undertakes to use reasonable endeavors:
- (a) to notify each of the other Parties promptly of any significant delay in its performance;
  - (b) to inform each of the other Parties of relevant communications it receives from

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- third parties in relation to the Project;
- (c) to comply with the applicable procedures and to use the applicable tools for the marking and handling of information exchanged between Parties in the performance of the Project as decided by the Project Board.
- 15.5 Each Party shall use reasonable endeavors to ensure the accuracy of any information or materials it supplies under this CA or the Grant Agreement and promptly to correct any error in such information or materials of which it is notified or of which it becomes aware.
- 15.6 In addition to the obligations specified in the Grant Agreement, and unless approved to the contrary by the Project Board or agreed to the contrary by the Parties (for example if the facts are stated in Annex I of the Grant Agreement), each Party agrees not knowingly to use, in the execution of the Project:
- (a) any Background excluded pursuant to the Grant Agreement, or
  - (b) any Background listed as excluded in Annex 5 to this CA
- where such use would result in such excluded Background being Needed for the Use of Foreground.
- 15.7 The following shall apply in relation to Subcontractors:
- Each Party shall be fully responsible for the supervision of its Subcontractors and shall enter into appropriate arrangements for such purpose with its Subcontractors. These arrangements shall as appropriate require that the obligations in this CA shall also apply to, and be fulfilled by, such Subcontractor.
- Each Party engaging a Subcontractor shall ensure that:
- (a) the subcontract does not impair fulfilment of the Grant Agreement and of this CA;
  - (b) the other Parties' rights in relation to such Party (including without limitation Access Rights) are the same as would have been the case had the contracting Party performed its share of the Project and/or those obligations itself;
  - (c) no such Subcontractor (except Affiliates of any Party in accordance with Clause 17 shall have access to any other Party's Foreground, Background or Sideground without that other Party's prior written consent; and
  - (d) each Subcontractor is bound by the non-disclosure provisions of Clause 18 below.
- 15.8 If this CA conflicts with Annex 1 of the Grant Agreement, unless the Parties agree otherwise, they shall cooperate in requesting the Commission to change such Annex of the Grant Agreement to accord with this CA.

## 16 INTELLECTUAL PROPERTY RIGHTS

### Ownership of Foreground: general principle

- 16.1 Foreground shall be owned by the Party who carried out the work generating the Foreground, or on whose behalf such work was carried out.

### Jointly generated Foreground

- 16.2 **For** the avoidance of doubt, the default provisions of Article II.26.2 of the Grant Agreement shall not apply. Instead, unless otherwise agreed in writing between the Contributors (as defined below), Clause 16.3 below shall apply. However, the Contributors shall in all cases be at liberty to agree in writing something different to Clause 16.3, so long as such different agreement does not prejudice the Access

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Rights or other rights of the other Parties.

16.3 Subject to any different agreement as referred to in Clause 16.2 above between the Contributors, the following shall apply:

- (a) If, in the course of carrying out work on the Project, Foreground is generated and 2 or more Parties (the "**Contributors**") (or their Affiliates or other persons working on their behalf) contributed to it, and if the contributions to or features of such Foreground form an indivisible part thereof, such that under applicable law it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining and/or owning the relevant patent protection or any other IPR protecting or available to protect such Foreground, the Contributors agree that, subject as expressly provided to the contrary in this Clause 16.3, all patents and other registered IPRs issued thereon, and any other IPRs protecting such Foreground, shall be jointly owned by the Contributors.
- (b) Except as explicitly provided otherwise in this Clause 16.3, each Contributor shall have the perpetual and irrevocable right, without territorial or other restriction, to Use the joint Foreground and resulting patents, patent applications and other IPRs protecting such Foreground, and to grant non-exclusive licences to third parties under the jointly owned Foreground and under any IPRs protecting such Foreground, without obtaining any consent from, paying compensation to, or otherwise accounting to any other Contributor.
- (c) Within a reasonable period following creation of any jointly owned Foreground, the Contributors shall enter into good faith discussions in order to agree on an appropriate course of action for filing applications for patent protection or other protection, including the decision as to which Contributor is to be entrusted with the preparation, filing and prosecution of such applications and in which countries or territories such applications are to be filed. Except for any priority applications, the filing of any applications for patents or other IPRs on joint Foreground shall require mutual agreement between the Contributors (but excluding any Contributors who choose pursuant to paragraph (d) below not to contribute to the cost of such application). All external costs related to applications for patent protection or other protection resulting from such applications and the fees for maintaining such protection shall be shared equally between the Contributors, subject to paragraph (d) below.
- (d) If and when a Contributor decides not to contribute, or not to continue its contribution, as the case may be, to the costs of application for or maintenance of patent or other IPR protection for the jointly owned Foreground, for one or more countries or territories, it shall be entitled not to contribute, or to discontinue its contribution, provided however that:
  - (i) it shall promptly notify the other Contributor(s) in writing of its decision;
  - (ii) it shall forthwith relinquish all its title to and interest in such jointly owned patents, patent applications or other registered IPRs protecting such Foreground for the countries or territories concerned to the other owner(s) who contribute or continue their contribution, as the case may be, to such costs in accordance with paragraph (c) above; and
  - (iii) it shall lose its rights under paragraph (b) above with respect to such jointly owned patents, patent applications or other registered IPRs for the countries or territories concerned as of the moment of notification, but subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up licence, without the right to grant sub-



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licences, for the lifetime of such jointly owned patents, patent applications or other registered IPRs for the countries or territories concerned in favour of, and for the Use by, the relinquishing Contributor and its Affiliates.

- (e) Each joint owner of patents or patent applications or other IPRs protecting such jointly owned Foreground shall have the right to bring an action for infringement of any such jointly owned IPRs only with the consent of the other owner(s). Such consent may only be withheld by another joint owner who demonstrates that the proposed infringement action would be prejudicial to its commercial interests.

### **Assigning ownership of Foreground**

16.4 Each Party may assign ownership of its own Foreground (including without limitation its share in Foreground that it owns jointly with another Party or Parties, and all rights and obligations attaching to it) [to any of its Affiliates,][to any assignee of the assignor's relevant business or a substantial part thereof,][or to another third party identified in Annex 5 to this CA], without prior notification to the other Parties.

However:

- (a) any such assignment shall be made subject to the Access Rights, the rights to obtain Access Rights and the right to disseminate Foreground that are granted to the other Parties and their Affiliates in the Grant Agreement and/or this CA. Therefore, each assignor shall ensure that such assignment does not prejudice such rights of the other Parties or their Affiliates. This may be done, for example, (i) by effecting such assignment subject to a licence back to the assigning Party that is sufficient for the assigning Party to grant to the other Parties and their Affiliates such Access Rights, or (ii) by the assigning Party obtaining from the assignee of the Foreground legally binding undertakings (that can be enforced by the other Parties and their Affiliates) to grant such Access Rights; and
- (b) the assignor shall pass on its obligations regarding the assigned Foreground to the assignee, including the obligation to pass them on to any subsequent assignee; and
- (c) if the assignment is made other than to a third party identified in Annex 5 to this CA or an Affiliate, the assigning Party shall, either before or within a reasonable period following assignment of any rights in any Foreground, notify the other Parties of the assignment, including details of the Foreground assigned and the identity and contact details of the assignee.

16.5 Each Party hereby waives any right to object to any assignment that is made in compliance with this Clause 16.4.

### **Employees' rights**

16.6 In addition to the obligations pursuant to the Grant Agreement, each Party shall, to the fullest extent it can lawfully do so, ensure that it can grant Access Rights and fulfil the obligations under the Grant Agreement and this CA notwithstanding any rights of its employees or Subcontractors in the Foreground or Background they create after the Effective Date.

## **17 ACCESS RIGHTS**

### **General principles relating to Access Rights**

17.1 All Access Rights needed for the execution of the Project and for Use are granted on a non-exclusive basis and are worldwide.

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- 17.1.1 The Parties have excluded specific Background and Sideground from obligation to grant Access Rights as specified in Annex 5, A5.2
- 17.2 Other than in exceptional circumstances, no transfer costs shall be charged for the granting of Access Rights.
- 17.3 Acting in good faith, when a Party believes that for carrying out the Project or Use of Foreground from the Project:
- (a) it might require Access Rights to another Party's Background, or
  - (b) another Party might need Access Rights to that Party's Background,
- it will promptly notify such other Party of the Background Needed, and in particular, where possible, it shall do so before submission of the Proposal to the Commission or entering into the Grant Agreement. Failure so to notify another Party shall not be a breach of this CA unless such failure is due to an action in bad faith.
- 17.4 Any Party choosing to rely on any deemed grant of Access Rights pursuant to this CA does so at his own risk as nothing in this CA prohibits a Party or any other party seeking by whatever means it chooses to enforce its IPRs or contract or other rights if such Party or other party considers such right is not subject to such deemed grant, for example because the exercise of Access Rights is not "Needed" or "Necessary" as the case may be.
- 17.5 The obligation to grant and the right to receive Access Rights other than those deemed granted under this CA, unless terminated earlier or agreed otherwise by the Parties, expires 2 years after the end of the Project. However, in the case of earlier termination the provisions of Clause 24 shall apply.

### **Access Rights for Affiliates**

- 17.6 Each Party hereby grants Access Rights to any Affiliate of any other Party as if such Affiliate was a Party, and subject to the condition that such Affiliate shall undertake to grant licenses and user rights, on terms identical to Access Rights, to its IPR Needed to Use Foreground, to all Parties and their Affiliates (subject to such Affiliates also having given such undertaking) and (without prejudice to the Parties' obligations to carry out the Project and to provide Project Deliverables) to fulfill all confidentiality and other obligations towards the Commission and the other Parties accepted by the Parties under the Grant Agreement or this CA as if such Affiliate was a Party. Access Rights granted to any Affiliate are subject to the continuation of the Access Rights of the Party of which it is an Affiliate, and shall automatically terminate upon termination of the Access Rights granted to such Party. Further, if an Affiliate fails in any material respect to comply with the undertaking given by it as above, and fails to rectify the non-compliance after being given a reasonable opportunity to do so, all Access Rights granted to it based upon that undertaking shall terminate.
- The procedure for the granting of Access Rights to the Parties as set out in Clause 17.10 shall also apply to Affiliates.

### **Affiliate granted rights and cessation status**

- 17.7 Upon any legal entity ceasing to be an Affiliate of a Party, any Access Rights granted to such entity shall lapse, provided however that the provisions of paragraphs (A) and (B) below will apply with respect to:
- (i) any Foreground, Sideground or Background to which such entity has been granted Access Rights pursuant to the Grant Agreement and this CA; and
  - (ii) any Party's Confidential Information that has been used by such entity in accordance with the provisions of the Grant Agreement and this CA,

and that, at the time of cessation of such entity's Affiliate status, has been:

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- incorporated into the products, processes or services of such entity ("**Products, Processes and Services**") or
  - amalgamated with such entity's own information.
- (A) With respect to such Confidential Information: such entity may continue to use the Confidential Information in its Products, Processes and Services in a manner in which the Confidential Information was being used prior to the time of cessation of such entity's Affiliate status.
- (B) With respect to such Background, Sideground and Foreground other than Confidential Information: at the request of such entity, the Parties shall grant non-exclusive licences to such entity under such Background, Sideground and Foreground for use in such entity's Products, Processes and Services on the same terms and conditions as those which applied to the terminated Access Rights that had been granted to such entity in accordance with the Grant Agreement and this CA, provided that no commercial interest of such Parties opposes the grant of such licences.

17.8 Upon any legal entity ceasing to be an Affiliate of a Party, the licences or user rights previously granted by such entity to any Party or its Affiliates under or in respect of Background, Sideground or Foreground shall continue in full force and effect.

### **Access Rights Needed for the execution of the Project**

17.9 Access Rights to Foreground, Background and Sideground Needed for the execution of the Project are hereby requested (in accordance with the requirements of the Grant Agreement), and shall be deemed granted, as of the date of the Grant Agreement entering into force, on a royalty-free basis to and by all Parties.

### **Access Rights for Use**

17.10 Any Access Rights for Use which are deemed granted, on a royalty-free basis shall be deemed granted for the lifetime of the relevant Foreground.

Access Rights to Foreground for Use are hereby requested (in accordance with the requirements of the Grant Agreement), and shall be deemed granted, as of the date of the Grant Agreement entering into force, on a royalty-free basis to and by all Parties.

Access Rights to Background and Sideground Needed for the Use of Foreground shall be granted on fair and reasonable conditions subject to the following:

- (a) The Party requiring the granting of such Access Rights (the Requesting Party) shall make a written request to the Party (the Granting Party) from which it requires the Access Rights.
- (b) The written request shall identify the Foreground concerned and shall provide reasons why Access Rights to such Background and/or Sideground are needed for the Use of such Foreground.
- (c) Any Access Rights shall only be granted upon the signature of a written agreement between the Granting Party and the Receiving Party and shall not be otherwise deemed granted.
- (d) Any Access Rights granted shall be limited to those strictly Needed for the Use of the relevant Foreground as such.

### **Inability to grant Access Rights due to third party rights**

17.11 When a Party is unable because of third party rights to grant Access Rights which it reasonably believes that another Party will require, it will promptly notify such other Party

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and in particular where possible shall do so before entering into the Grant Agreement.

### **Access Rights to third parties**

17.12 Subject to obligations in relation to Confidential Information, but notwithstanding anything else in the Grant Agreement or this CA, each Party may enter into a technical co-operation or licensing arrangement with a third party in respect of its own Foreground even if there are minor amounts of Foreground owned by another Party, or even of Background or Sideground (associated with that other Party's Foreground), unavoidably incorporated into or amalgamated with such own Foreground. In such circumstances, and upon request of the Party entering the co-operation or arrangement, the other Party shall grant non-exclusive rights to permit such co-operation or arrangement against terms and conditions to be agreed, provided such grant does not adversely affect a commercial interest of the other Party.

### **Special provisions concerning Access Rights to Software**

17.13 All of the provisions in the Grant Agreement and this CA concerning Access Rights apply to Software that is Background, Sideground or Foreground as they apply to any other Background, Sideground or Foreground, but in the case of inconsistency Clause 17.13 to 17.23 shall prevail.

17.14 Access Rights to Software do not include any right to require creation and delivery of Object Code or Source Code ported to any particular hardware platform or any right to require creation and delivery of any API or Software documentation in any particular form or detail, but only as the item is available from the Party granting the Access Rights. Transfer costs shall only be charged in exceptional circumstances.

17.15 Save as expressly otherwise provided in Clause 17.13 to 17.23, no Party shall be obliged to grant Access Rights to Source Code.  
All Access Rights to Software that is Foreground, whether for execution of the Project or for Use, shall be in the form of Source Code Access.

17.16 All Access Rights to Software that is Background, whether for execution of the Project or for Use, shall be in the form of Limited Source Code Access, save that no Party shall be obliged to grant for Use any Access Rights to Source Code that is Background and that is not listed in Annex 5 to this CA (which Annex is a list of Software that is Background or Sideground in respect of which the Parties are willing when granting Access Rights to grant access to Source Code for Use).

All Access Rights to Software that is Sideground, whether for execution of the Project or for Use, shall be in the form of Limited Source Code Access, save that no Party shall be obliged to grant for Use any Access Rights to Source Code that is Sideground and that has not been added to Annex 6 to this CA.

### **Software licence and sub-licensing rights**

17.17 Access Rights to Object Code and/or an API Needed for Use of Foreground shall, unless the granting and receiving Parties agree in writing to the contrary, comprise the worldwide right:

- (i) to use them in research, to use them to create/market any product/process, and to use them to create/provide any service;
- (ii) to distribute, make available, market, sell and offer for sale (including by using the services of a third party) such Object Code and/or API alone or as part of or in connection with any products or services of the Party having the Access Rights;

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- (iii) to grant to each end-user customer buying/using such products/services a perpetual, irrevocable, worldwide license:
  - to use such Object Code and/or API alone or as part of or in connection with any products/services of the Party having the Access Rights;
  - to use such Object Code and/or API to maintain such products/services; and
  - to use such Object Code and/or API to create for its own end-use interacting interoperable Software in accordance with the rights conferred by, and subject to the conditions of, Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC); and
- (iv) in the course of and for the purpose of exercising the rights described in (i) to (iii) above, to make and have made an unlimited number of copies of such Object Code and/or API.

Nothing in Clause 17.17 to 17.18 shall entitle any Party not to comply with Clause 17.20 to 17.23 and if there is any inconsistency between such Clauses and this Clause 17.17 this Clause 17.17 shall prevail.

17.18 Where a Party has access to Source Code for Use of Foreground, Access Rights to such Source Code shall, unless the granting and receiving Parties agree in writing to the contrary, comprise a worldwide right to copy, use and modify such Source Code as required to support the exercise of the Access Rights granted to such Party in respect of corresponding Object Code, but, unless the granting and receiving Parties agree in writing to the contrary, such Party shall not sub-licence such Source Code or make it available to any third party in whole or in part.

17.19 Each sub-licence granted according to the provisions of Clause 17.13 to 17.18 shall if practical be made by a traceable agreement specifying and protecting the proprietary rights of the Party granting the Access Rights.

### Open source Software

#### 17.20

- (i) The Parties acknowledge that the use within the Project of Software that is "open source" (as defined at <http://www.opensource.org/docs/definition.php>), and/or the release of Foreground upon licence terms associated with such Software, may have benefits for the conduct of the Project and promote the Use and dissemination of the resulting Foreground. However, they also recognise that certain of such licence terms (namely Controlled Licence Terms) may restrict the options that are available for Use and dissemination of the resulting Foreground, and accordingly they wish to regulate, in accordance with this Clause 17.20 the use of Controlled Licence Terms in relation to the Project and Use and dissemination of the results thereof.
- (ii) Without limiting the scope of this Clause 17.20, the Parties acknowledge that the use in the Project or introduction into the Project of Background, Sideground or other Work held by a Party pursuant to Controlled Licence Terms may impair or otherwise affect the other Parties' utilisation or Use of or Access Rights to Background, Sideground, Foreground or other Work. Each Party shall therefore abstain from using in the Project or introducing into the Project any Background, Sideground or other Work in a manner or upon terms that would or might result in a requirement that all or some of the Foreground, Sideground, Background or any other Work must, either generally or under certain circumstances, be licensed under Controlled Licence Terms, unless all Parties have unanimously approved in writing such use or introduction.

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- (iii) Following the signature of this CA, any Party that is seeking such approval shall provide the other Parties with a written request for approval ("Request") containing sufficient information, substantially in the format set out in Annex 5 hereto, to enable each of them to assess whether the introduction or use of the Background, Sideground, Foreground or other Work in question, upon the Controlled Licence Terms that are applicable to it, would or might result in any requirement referred to in paragraph (ii) above. Each Party shall inform the Co-ordinator in writing within 60 days from receipt of the Request whether or not it approves the use or introduction for which approval is requested in the Request. Any Party that fails to respond to a Request within the above period shall be notified by the Co-ordinator that it has a further 7 days to respond and in the absence of a response from such Party within such further period it shall be deemed to have approved the Request. As soon as possible after the lapse of such 60 day period (and any further periods as above), the Co-ordinator shall inform all Parties in writing whether or not such use or introduction has been unanimously approved. However, no approval of any Request shall constitute an agreement pursuant to paragraph (b) below that any Foreground may be sub-licensed on Controlled Licence Terms.
- (iv) The unanimous approvals as referred to in paragraph (iii) above and any approvals that have been agreed by all Parties before signing this CA shall be recorded and kept by the Co-ordinator and made available upon request.
- (v) Each Party shall comply with the terms of the approvals referred to in paragraph (iv) above (i.e. each approval only applies within the scope of the stated licence terms and expressly agreed use).
- (vi) Save in the case that such an approval necessarily results in such Access Rights being impaired or otherwise affected by Controlled Licence Terms, no Party shall at any time be obliged to accept Access Rights (whether for executing the Project or for Use, and whether to any Background, Sideground or Foreground) that are impaired or otherwise affected by, Controlled Licence Terms. Accordingly, save in the case just mentioned, each Party that is entitled to be granted Access Rights pursuant to the Grant Agreement and/or this CA shall be entitled to be granted such Access Rights on terms that are not Controlled Licence Terms and that are not impaired or otherwise affected by Controlled Licence Terms.

### 17.21

- (i) No Access Rights to any Background, Sideground or Foreground shall include the right to sub-licence that Background, Sideground or Foreground upon Controlled Licence Terms (and accordingly none of them shall be sub-licensed upon Controlled Licence Terms) unless expressly in writing so agreed by the Party granting the Access Rights, or save to the extent that such right is necessarily implied by the approval given in accordance with paragraph (a) (iii) above.
- (ii) This Paragraph (b) shall continue to apply without limit in time notwithstanding completion of the Project or any termination of this CA.

17.22 Paragraph (b) above shall not be interpreted as limiting the scope of Paragraph (a) above, nor shall paragraph (a) above be interpreted as limiting the scope of paragraph (b) above.

17.23 Nothing in Clause 17.20 to 17.22 shall limit the obligations of the Parties under Clause 19.

**Have made rights**

17.24 Access Rights include the right of "indirect utilisation" in accordance with the Grant Agreement and as such term is defined in this CA.

**Access Rights for Parties joining and leaving the Project**

17.25 The following shall apply in respect of Parties joining the Project:

- (a) Each Party joining the Project in accordance with the provisions of the Grant Agreement and this CA, after the date of the Grant Agreement entering into force, will be granted Access Rights, except as set out in paragraph (b) below, as provided for in Clause 17.1 to 17.24 above, effective as from the date of its signature of the Declaration of Accession.
- (b) In respect of Foreground arising from work carried out under the Project before its Accession Date, each such Party shall enjoy Access Rights for execution of the Project and for Use under the same conditions as the Access Rights to Background provided for in Clause 17.1 to 17.24 above.

17.26 For each Party in respect of whom this CA is terminated in accordance with the provisions of Clause 24 and 25, the following will apply:

- (a) Except in cases where the participation of a Defaulting Party is terminated, the Access Rights granted and the obligations to grant Access Rights pursuant to the Grant Agreement and this CA shall continue in full force and effect, provided that the Access Rights shall only be granted with respect to Foreground, Sideground and Background existing at the time of such termination.
- (b) Defaulting Parties are obliged to continue to grant Access Rights pursuant to the Grant Agreement and this CA in respect of Foreground, Sideground and Background existing at the time of such termination, but the Access Rights granted to the Defaulting Party pursuant to this CA and the Grant Agreement shall cease immediately upon termination of this CA or the Grant Agreement, whichever occurs first with respect to such Party.

17.27 Termination of this CA in respect of, and/or cessation of licences granted to, the Defaulting Party in accordance with Clause 17, 24 and 25 shall not terminate any sub-licence properly granted or agreed to be granted or offered by the Defaulting Party in accordance with Clause 17.17 to 17.19 or otherwise prior to the date on which such termination of this CA and/or cessation of licences becomes effective[, provided that any Party which owns the Foreground or Background so sublicensed shall have the right to have an assignment of the Defaulting Party's rights under such sub-licences].

## **18 CONFIDENTIALITY**

18.1 "Confidential Information" means any information which is of a confidential or commercially sensitive nature to a Party, where such information shall have been, or shall be, disclosed by any Party to another pursuant to this Consortium Agreement, where any such information shall, at the time of disclosure, have been marked as of such a confidential or commercially sensitive nature, or of which nature the recipient Party shall have been advised and which advice shall have been followed up with confirmation thereof in writing within ten days of such disclosure. For the avoidance of doubt Confidential Information shall include each Party's Background other than where the same shall be in the public domain.

18.2 The provisions of this Clause 18 shall apply to all disclosures made between the

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Parties in relation to the preparation of the Proposal and the negotiation of this Consortium Agreement notwithstanding that such disclosures shall have pre-dated the date hereof.

- 18.3 No Confidential Information disclosed by one Party ("Disclosing Party") to another Party ("Recipient Party") under this Consortium Agreement may be disclosed by the Recipient Party to any third party other than in those circumstances permitted below; provided that, in such permitted circumstances, it shall nevertheless be a condition of disclosure that such third party shall, as appropriate, be made aware of the confidential nature of the information disclosed and shall be bound to comply with confidentiality provisions no less onerous than those provided in this Consortium Agreement. The Recipient Party shall be responsible to the Disclosing Party for any disclosure by any such third party which shall be inconsistent with the terms of this Consortium Agreement. Permitted disclosure under this Clause shall be as follows:
- (a) to employees, agents, officers, directors, auditors, advisers, partners, consultants, licensees, sublicensees, students, or subcontractors of the Recipient Party requiring the Confidential Information for the purposes of this Consortium Agreement;
  - (b) if the Recipient Party is required to do so by law; or
  - (c) if the Recipient Party is required to do so in connection with legal proceedings relating to this Consortium Agreement. Any Party disclosing information under this Clause 18 must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the same.
- 18.4 No Confidential Information of the Disclosing Party may be used by the Recipient Party for any purpose other than the performance of the Recipient Party's obligations or the exercise of the Recipient Party's rights under this Consortium Agreement.
- 18.5 The provisions of this Clause 18 shall not apply to Confidential Information which:
- (a) is in or becomes part of the public domain through other means than through breach of this Consortium Agreement or an obligation of confidence owed to the Disclosing Party, or to the Recipient Party by a third party;
  - (b) the Recipient Party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Disclosing Party, (unless that Foreground arose from disclosure of information in breach of an obligation of confidence);
  - (c) the Recipient Party acquires from a source other than the Disclosing Party or any employees, agents, officers, directors, auditors, advisers, partners, consultants, licensees, sublicensees, or subcontractors of the Disclosing Party where that source is entitled to disclose the same; or
  - (d) is independently developed by any student, employee, agent, officer, director, auditor, adviser, partner, consultant, licensee, sublicensees or subcontractor of the Recipient Party who had no access to the Confidential Information and where the independent development can be proven.
- 18.6 The Recipient Party shall return to the Disclosing Party all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it pursuant to this Clause, whenever requested to do so by the Disclosing Party, other than to the extent that to do so would conflict with any other right or obligation included in this Consortium Agreement. Notwithstanding this Clause 18.6, each Party shall be entitled to retain one copy of the Confidential Information supplied to it to be used solely for its internal audit, archiving



or defense purposes.”

- 18.7 The provisions of this Clause 18 will survive the expiry or earlier termination (for whatever reason) of this Consortium Agreement, or the termination of the participation of a Party, or in the event that this Consortium Agreement should become null and void, for a period of five years from such expiry or termination.

## **19 PUBLICATIONS, AND CONTRIBUTION TO STANDARDS**

### **Publications**

- 19.1 For the avoidance of doubt, no Party shall have the right to publish or allow the publishing of any data which constitutes Foreground, Sideground, Background or Confidential Information of another Party, even where such data is amalgamated with such first Party's Foreground, Sideground, Background or other information, document or material. Any such publication without such other Party's written agreement justifies, in addition to any other available remedies, objection to the publication by the Party concerned in accordance with Grant Agreement Article II.30.
- 19.2 which such Party shall have generated under the Project, subject to the provision of notice of intention to publish which shall be intimated to the Commission and to each other Party, in accordance with the provisions of the Grant Agreement. Any such intimation shall be made to the Commission and to the other Parties through the Coordinator. In order that the Commission and each other Party shall have a period of 30 days within which to intimate that a copy of the proposed publication is required, the 30 day period referred to in the Grant Agreement shall be deemed to commence 5 days following intimation as aforesaid by the Party concerned to the Coordinator and shall be extended for an additional period of 5 days following its expiration. At expiration of such 5 day period the Party concerned may assume that there are no objections to publication.
- 19.3 Any information provided by the Coordinator to the Commission or to any Party pursuant to Clause 19.2 above shall be marked as confidential and shall be treated by each recipient Party as Confidential Information.
- 19.4 A Party may object to any publication proposed in accordance with Clause 19.2 aforesaid by notice in writing to the Coordinator, or directly to the Party concerned and copied to the Coordinator. The Coordinator shall promptly forward any notice so received to all other Parties. A Party may so object only where such proposed publication shall, or shall be reasonably likely to prejudice the protection of either the Foreground of the Party wishing to publish or the Foreground of the Party objecting, or where such publication shall disclose such latter Party's Confidential Information.
- 19.5 Where a Party objects to the publication of information pursuant to this Clause, the Parties concerned shall use all reasonable endeavors to overcome such opposition (for example by amendment to the planned publication or by postponing such publication). The opposing Party shall not unreasonably continue the opposition if appropriate actions have been taken. If a dispute regarding the publication of information cannot be settled amicably within 60 days of the notification, the dispute can be settled through the Project Board. However none of the Parties concerned may withhold its consent to aforementioned publication of information upon expiry of a period of 6 months following the first submission of the proposed publication of information.
- 19.6 For the avoidance of doubt, any right of a Party to publish information, whether consisting of or relating to Foreground, shall be exercisable provided that such

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publication shall not prejudice the protection of such Foreground.

- 19.7 For the avoidance of doubt it is stated that unless otherwise agreed between the Parties concerned no Party shall have the right to publish or allow the publication of information which includes Foreground of another Party, Background of another Party or Confidential Information of, (or relating to), another Party even where such information is amalgamated with such first such Party's Foreground, Background or other information, document or material. Any such use of another Party's information justifies objection to the proposed publication by the Party concerned in accordance with Clause 19.2 above.
- 19.8 By signing this Consortium Agreement all Parties recognize the need for publication related to the qualification for a degree and shall respect the obligations of academic Parties in this regard. This Clause 19 shall not prevent the submission, examination, publication and defense of any dissertation or thesis for a degree which includes incidental and minor elements of Foreground, Background or Confidential Information of another Party where the intention to make such dissertation or thesis has been notified to the other Parties in writing promptly as soon as such intention is foreseen.
- 19.9 Without prejudice to the foregoing provision, where any individual person carrying out work on the Project on behalf of a Party wishes to include Background or Foreground of another Party in a publication to qualify for a degree, approval for use shall be obtained from the appropriate Party owning such rights or affected by such use. To ensure that the planned date of such publication can be met the approval of the relevant Party shall not be unreasonably withheld and shall be given within 30 days of any such request therefore. Where a Party shall intimate that it does not so approve the proposed publication, such Party shall provide its reasons for doing so, (which shall be in terms of Clause 19.2 aforesaid), and shall not unreasonably withhold or delay its future consent where the individual concerned shall propose a means of resolving the issue, which may include altering the contents of the planned publication, or requiring that access to the proposed publication should be restricted, (for a maximum period of 6 months, in accordance with the standard practices of the academic Party concerned).
- 19.10 For the avoidance of doubt Clause 19 do not prevent the coordinator and the Parties to participate to press release and marketing communication of the project as long as it does not disclose detailed proprietary information on other parties.

### **Contributions to Standards**

- 19.11 Except as explicitly provided in Annex I of the Grant Agreement, or as otherwise stated in Annex 5 to this CA, no Party shall have any obligation pursuant to this CA to make any contribution for incorporation of its own Foreground in any European or other standard.
- 19.12 For the avoidance of doubt, no Party shall have the right to contribute to a standard or allow the contribution to a standard of any data which constitutes Foreground, Sideground, Background or Confidential Information of another Party, even where such data is amalgamated with such first Party's Foreground, Sideground, Background or other information, document or material. Any such contribution without such other Party's written agreement justifies, in addition to any other available remedies, objection to the contribution by the Party concerned in accordance with Grant Agreement Article II.30.3.

A copy of each proposed contribution of Foreground to a meeting of a standards organisation for the purpose of incorporation in a standard, shall be distributed to the Parties, by the Party proposing to submit the contribution, no later than **15** days prior to the date of the meeting ("Review Period").

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Any Party may submit a written objection, to such contribution to the Party proposing the standards contribution and to the IPCC, within a period of **15** days, ("Objection Period") after receipt of a copy of the proposed contribution on either or both of the following grounds: (i) that the objecting Party considers that the protection of the objecting Party's Foreground would be adversely affected by the proposed contribution; (ii) that the proposed contribution includes the Foreground, Background, Sideground or Confidential Information of the objecting Party. The proposed contribution shall not be made until the expiry of the above period of **15** days. Any objection accompanied by evidence indicating, prime facie that the objection is justifiable, is hereinafter referred to as a "Justifiable Objection". In the absence of any Justifiable Objection on either or both of the above grounds within the above mentioned period, it is deemed that the Parties agree to the proposed contribution. Following the end of the above mentioned period, the Board shall inform the Parties whether or not any objection has been received and whether such objection(s) is/are Justifiable Objections.

In the event that a Justifiable Objection is raised on either or both of the above defined grounds within the above period of **15** days, the Party proposing the publication and the Party objecting shall seek in good faith to agree a solution on a timely basis whereby the Justifiable Objection is resolved. No such standards contribution shall be made in respect of which any Justifiable Objection remains unresolved.

## **20 LIABILITY OF THE PARTIES**

### **Liability towards each other**

- 20.1 In respect of information or materials supplied by one Party to another hereunder or pursuant to the Contract, the supplier Party shall be under no obligation or liability other than as expressly stated herein and no warranty condition or representation of any kind is made, given or to be implied as to the sufficiency, accuracy or fitness for purpose of such information or materials, or the absence of any infringement of any proprietary rights of third parties by the use of such information and materials and the recipient Party shall in any case be entirely responsible for the use to which it puts such information and materials.
- 20.2 Where any Party shall enter into a sub-contract with a third party pursuant to which such third party shall undertake any part of such Party's Allocated Work, such Party shall remain responsible for the performance by such sub-contractor of such share of the Party's Allocated Work as if the same had been undertaken by the Party itself.
- 20.3 Each Party shall indemnify each other Party against all loss, damage or injury incurred by each such other Party to the extent that the same shall have arisen as a direct result of the negligent or willfully wrong act(s) or omission(s) of itself, its employees or its agents; provided always that the foregoing obligation to indemnify shall not extend to claims for indirect or consequential loss or damage, including but not limited to loss of profit, revenue or contracts, and provided that a Party's aggregate liability towards the other Parties collectively shall be limited to the Party's share of the total costs of the Project.

### **Liability towards third parties**

- 20.4 Subject to such other undertakings and warranties as are provided for in this CA and the Grant Agreement, each Party shall be solely liable for any loss, damage or injury to third parties resulting from the carrying out by it or on its behalf of its parts of the Project and/or from its Use of Foreground and/or Background.

**Liability for Subcontractors**

- 20.5 Each Party shall be fully liable for the performance of any part of its share of the Project, or other Grant Agreement obligation, in respect of which it enters into any contract with a Subcontractor.
- 20.6 Each Party engaging any Subcontractor shall be solely responsible for all obligations incurred in relation to that Subcontractor. The other Parties shall have no obligation whatsoever to any such Subcontractor, save to the extent that they separately agree any such obligation in writing.

**21 CLAIMS BETWEEN THE PARTIES**

- 21.1 The following provisions of this Clause 21, excluding and limiting liability, shall apply not only to the Parties, but also to those of their Affiliates which properly participate as Subcontractors in the Project, each of which is an intended beneficiary of this Clause 21.

**Liability: general**

- 21.2 Subject to the following provisions of this Clause 21, the general provisions of Belgian law governing liability (including both contractual and non-contractual liability) shall apply to any claim between the Parties for loss or damage caused by a Party, its employees, agents and Subcontractors and arising in connection with the Project.

**Excluded liabilities**

- 21.3 To the extent permissible under applicable law and except as otherwise provided specifically below in this Clause 21, in no event shall any Party be liable in connection with this CA or the Grant Agreement for any of the following, however caused or arising, on any theory of liability, and even if such Party was informed or aware of the possibility thereof:
- (a) loss of profits, revenue, income, interest, savings, shelf-space, production and business opportunities;
  - (b) lost contracts, goodwill, and anticipated savings;
  - (c) loss of or damage to reputation or to data;
  - (d) costs of recall of products; or
  - (e) any type of indirect, incidental, punitive, special or consequential loss or damage.

**Exceeding the scope of Access Rights**

- 21.4 For the avoidance of doubt, the exclusions and limitations stated in Clause 21.3 above shall not apply in respect of any activity involving the use of anything protected by the IPRs of any other Party or any Affiliate of any other Party, to the extent that such activity or use is not within the scope of the Access Rights granted by the Grant Agreement or this CA, or not in compliance with the associated terms and conditions.

**Exceptions**

- 21.5 The exclusions and limitations stated in Clause 21.3 shall not apply in the case of damage caused by a wilful act.

**22 FORCE MAJEURE**

- 22.1 Notwithstanding any provision on Force Majeure in the Grant Agreement, no failure in

## **FP7 Integrated Projects' Consortium Agreement**

the performance of this CA can be imputed or assumed to a Party, to the extent that such failure is due to Force Majeure.

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

## **23 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

- 23.1 Except as otherwise provided under this CA or the Grant Agreement, no Party shall, without the prior written consent of the other Parties, assign or otherwise transfer partially or totally any of its rights and obligations under this CA. Such consent shall not be unreasonably conditioned, withheld or delayed when such assignment or transfer is in favour of another Party or an Affiliate of the assigning Party or one of the other Parties. Any Party may require reasonable conditions for giving such consent to prevent such transfer from adversely affecting its or its Affiliates' Access Rights.

## **24 TERMINATION**

- 24.1 This Consortium Agreement shall terminate without the need for any action on the part of any Party where the Commission shall terminate the Project and/or the Grant Agreement. The Coordinator shall, on receipt of notice of termination from the Commission, forthwith provide each Party with written notice to such effect. For the avoidance of doubt, the effective date of termination in any such instance shall be the date 45 days from the date of the Coordinator's receipt of notice of termination of the Grant Agreement from the Commission, of which date the Coordinator shall advise the other Parties. This Consortium Agreement shall thereafter be deemed to have terminated of even date with termination of the Grant Agreement.
- 24.2 The Parties may together, by agreement reached in Project Board, request by notice in writing from the Coordinator that the Grant Agreement be terminated. In the event that the Commission does not, within 6 weeks of the date of any such request for termination submitted by the Coordinator on behalf of the Parties, agree in writing to termination, the Grant Agreement and this Consortium Agreement shall continue in full force and effect. In the event that the Commission shall agree to termination, within the said period, the Grant Agreement shall be terminated with effect from the date of such Commission approval and this Consortium Agreement shall be deemed to have been terminated of even date.
- 24.3 Any Party may request that its participation in the Project/Grant Agreement be terminated. Such Party shall provide the Coordinator with notice in writing to that effect specifying such Party's grounds for such request. In order that such request may be forwarded by the Coordinator to the Commission, and that the remaining Parties shall have the opportunity to consider such request, make representations to the Coordinator and, where appropriate, discuss such request amongst themselves and/or with the first stated Party, such notice in writing shall be received by the Coordinator no later than 90 days in advance of Project completion.
- 24.4 The Parties among themselves may, through vote in the Project Board, agree that the Commission should terminate the participation of a Party. At the same time as such agreement shall be reached, such Parties shall agree how they propose to reallocate the outstanding Allocated Work obligations of the Excluded Party. Where those Parties shall have so determined, the Coordinator shall promptly forward such request and proposal to the Commission.

## **FP7 Integrated Projects' Consortium Agreement**

- 24.5 In accordance with the provisions of the Grant Agreement the Commission shall have a period of 6 weeks from the date of any request for termination within which to agree, or decline, to terminate as provided for in Clause 24.3. The Grant Agreement shall be terminated with respect to the Excluded Party on the last day of such 6 week period where the Commission does not provide written notice to the effect that it will not accept the proposed termination, or on the date of written notice of acceptance, if earlier. In either event, the participation of the Excluded Party under this Consortium Agreement shall be deemed to have been terminated of even date. Where the Commission shall provide written notice refusing to accept termination as aforesaid, the participation of the Excluded Party shall not be deemed to have been terminated, and such Party shall remain bound by the whole terms and conditions of this Consortium Agreement.
- 24.6 Where the participation of any Party(s) under the Project and as a party to the Grant Agreement may be terminated by the Commission, pursuant to the Grant Agreement, the participation of such Contractor(s) under this Consortium Agreement shall be deemed to have been terminated of even date with such termination by the Commission.
- 24.7 Termination of this Consortium Agreement or of a Contractor's participation hereunder, pursuant to the foregoing provisions of this Clause 24, shall in each case be subject to the continuation in force of Clause 26.

## **25 TERMINATION FOR BREACH**

- 25.1 Where there has been a breach of any obligation under the Grant Agreement by a Party, (for the purposes of this Clause 25, "a Defaulting Party"), the Commission may;
- (a) require that the Parties make good such breach within a period of no longer than 30 days [of such request]; or
  - (b) immediately terminate the participation under the Grant Agreement of a Defaulting Party in the circumstances permitted in the Grant Agreement.
- 25.2 Where the Commission shall require that the Parties make good the relevant breach of obligation under the Grant Agreement, the Defaulting Party shall, in any question amongst the Parties, be primarily responsible for providing a solution acceptable to the Commission, notwithstanding the collective technical responsibility of all of the Parties for implementation of the Project. Such Defaulting Party shall use its best endeavors to promptly propose an effective and realistic solution, failing which, or in the event that the other Parties shall not agree with any such proposed solution, the other Parties shall determine, by agreement amongst themselves, how such breach may be remedied. Any recommendation made to the Commission on behalf of the Parties in such circumstances shall be binding on all Parties, including the Defaulting Party.
- 25.3 The Parties, (with the exclusion of the Defaulting Party), shall use their best endeavors to propose alternative arrangements for continuation of the Project, within the 30 day period notified by the Commission, failing which the Commission shall be entitled to terminate the Grant Agreement. For the avoidance of doubt in the event of termination by the Commission in such circumstances, no fault shall be attributed to any Party, (other than the Defaulting Party), in relation to such termination.
- 25.4 Where the General Management shall receive notice of termination of the participation of a Defaulting Party, from the Commission, the Coordinator shall promptly provide all other Parties with notice to that effect.

## **FP7 Integrated Projects' Consortium Agreement**

- 25.5 Where the Commission shall terminate the participation of a Defaulting Party as aforesaid, subject to the continuation in force of Clauses 25.6 and 26 that Defaulting Party's participation under, and as a party to, this Consortium Agreement shall be deemed to have been terminated.
- 25.6 Where the Commission shall have requested that the Parties should provide appropriate solutions to any breach of obligation under the Grant Agreement, notwithstanding that costs incurred by the Parties shall only be recoverable as Eligible Costs in the event that a solution acceptable to the Commission shall be found, the Parties, (including the Defaulting Party unless the Commission shall have terminated the participation of the defaulting Party with immediate effect), shall continue to undertake their respective Allocated Work in accordance with the Grant Agreement and this Consortium Agreement.

## **26 CONSEQUENCES OF TERMINATION**

- 26.1 In the event of termination, under Clause 25 of this Consortium Agreement or of the participation of one or more Parties under this Consortium Agreement, (in either case, for the purposes of this Clause 26, "termination"), all of the Parties, or those Parties affected by such termination, (each such Party, for the purposes of this Clause 26, "a departing Party"), shall be entitled to receive Commission Contribution only in relation to such Eligible Costs which were either incurred before termination, or are in respect of commitments entered into before termination, which commitments a departing Party is not able to avoid, and which are permissible under the terms of the Grant Agreement. For the avoidance of doubt, where the Commission shall refuse to accept any cost or commitment claimed by a departing Party, that departing Party shall have no right to recover the same from any (other) Party or from any Commission Contribution held or which may be received, unless the (other) Party(s) agree unanimously otherwise in Project Board.
- 26.2 A departing Party shall, notwithstanding termination as aforesaid, remain bound to provide to the Coordinator, for onward transmission to the Commission, within 40 days of such termination, those reports and deliverables which, under the Grant Agreement, such departing Party would have been obliged to deliver had such termination coincided with the end of a reporting period.
- 26.3 Where, as a result of any delay on the part of a departing Party in implementing the obligation included in Clause 26.2, (or any Party in the event that the Grant Agreement shall be terminated in its entirety), the Commission shall decide to withhold Commission Contribution, or to demand repayment of any Commission Contribution which has been paid, such departing Party (or any such Party), shall indemnify the other Parties in respect of any such amount, which in any case will not exceed its project share and shall, within 30 days of a written request therefore from the Coordinator, settle any such indebtedness. For the avoidance of doubt, such indemnification obligation shall survive such termination.
- 26.4 The following Clauses shall survive termination, whether of the participation of any Party in the Project and under this Consortium Agreement, or of the Grant Agreement and this Consortium Agreement: 15 to 25, and this Clause 26.

## **27 DISPUTE RESOLUTION**

- 27.1 All disputes or differences arising in connection with this Consortium Agreement which cannot be settled amicably shall be finally settled by arbitration in Brussels under the

## **FP7 Integrated Projects' Consortium Agreement**

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 parties concerned.

- 27.2 The Parties concerned may, rather than arbitrate under Clause 27.1, instead elect to resolve by mediation a dispute or difference arising in connection with this Consortium Agreement which cannot be settled amicably.

## **28 LANGUAGE AND HEADINGS**

- 28.1 This CA is drawn up in English, which language shall be used in all documents and notices prepared, and meetings conducted, pursuant to this CA or otherwise in connection herewith. Any translation shall be for convenience only and of no legal effect.
- 28.2 The various section and sub-section headings in this CA are included only reference purposes and shall have no legal effect.

## **29 NOTICES**

- 29.1 Any notice to be given under this Consortium Agreement shall be in writing and delivered to the relevant Party at the address and marked for the attention of a named recipient, all as more specifically detailed in Appendix 4, or as a Party shall under separate cover advise. A Party may, by notice in writing to the Coordinator, amend its contact details as included in Appendix 4, or as otherwise advised. Any such notice shall be deemed to have been served when personally delivered or, if transmitted by fax, electronic or digital transmission, at the time of such transmission, provided that such transmission is confirmed by receipt of a successful transmission report and thereafter confirmed by surface/air mail within three working days.

## **30 APPLICABLE LAW**

- 30.1 This CA shall be governed by Belgian law, in conformity with Article 9 of the Grant Agreement, and without regard to Belgian law rules of conflict of laws.
- 30.2 When acting under this CA, each Party will comply with all relevant laws and regulations applicable to its performance hereunder, including (without limitation) the export laws and regulations of the European Union and of other relevant States.

## **31 ENTIRE AGREEMENT - AMENDMENTS - SEVERABILITY**

- 31.1 This Consortium Agreement and the Grant Agreement constitute the entire agreement between the Parties in respect of the Project, and supersede all previous negotiations, commitments and writings.
- 31.2 Although the provisions of this Consortium Agreement have been drafted to reflect the provisions of the Grant Agreement as far as possible, in the event of any conflict between this Consortium Agreement and the Grant Agreement, (or any Annex), the Grant Agreement shall prevail.
- 31.3 Amendments or changes to this Consortium Agreement may be made only by written instrument signed by an authorized signatory of each of the Parties, other than where any such amendment shall relate solely to the contact details of a Party, or shall



## **FP7 Integrated Projects' Consortium Agreement**

otherwise be permitted under any provision hereof, in which event that Party's written notice in accordance with the provisions of this Consortium Agreement shall suffice.

## ANNEX 2

### Representatives of Parties

- (1) **FONDATION DE L'INSTITUT DALLE MOLLE D'INTELLIGENCE ARTIFICIELLE PERCEPTIVE (IDIAP)**  
– Dr. Sebastien Marcel
- (2) **UNIVERSITY OF MANCHESTER (UNIMAN)**  
– Prof. Timothy Cootes
- (3) **UNIVERSITY OF SURREY (UNIS)**  
– Mr. Keith Robson
- (4) **UNIVERSITE D'AVIGNON ET DES PAYS DE VAUCLUSE (UAPV)**  
– Pr. Jean-François Bonastre
- (5) **VYSOKE UCENI TECHNICKE V BRNE (BUT)**  
– Dr. Jan Cernocky
- (6) **UNIVERSITY OF OULU (UOULU)**  
– Dr. Lauri Lajunen
- (8) **IDEARK (IDEA)**  
– Dr. Frank Crittin
- (9) **EYE PMEDIA**  
– Johan Kovacs

## ANNEX 3

### Banking Details

**(1) FONDATION DE L'INSTITUT DALLE MOLLE D'INTELLIGENCE ARTIFICIELLE PERCEPTIVE (IDIAP)**

**Name of Bank:** Union Bank of Switzerland  
**Address:** Avenue de la Gare 2, 1920 Martigny  
**Account No:** 264-625974.64P  
**IBAN Code:** CH280026426462597464P

**(2) UNIVERSITY OF MANCHESTER (UNIMAN)**

**Name of Bank:** Barclays Bank Plc  
**Address:** 51 Mosley Street  
**Account No:** 20-55-34 60272663  
**IBAN Code:** GB05 BARC 2055 3460 2726 63  
**SWIFT Code:** BARC GB 22

**(3) UNIVERSITY OF SURREY (UNIS)**

**Name of Bank:** National Westminster Bank  
**Address:** University of Surrey Branch  
**Account No:** 06060129  
**IBAN Code:** GB80 NWBK 6072 0606 0601 29  
**SWIFT Code:** NWBKGB2L  
**Sort Code :** 60 09 50

**(4) UNIVERSITE D'AVIGNON ET DES PAYS DE VAUCLUSE (UAPV)**

**Name of Bank:** TRESOR PUBLIC AVIGNON  
**Address:** Cours jean Jaures Cedex 9  
**Account No:** 00001002336  
**IBAN Code:** FR 7610071840000000100233680  
**SWIFT Code:** BDFEFRPPXXX

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### (5) VYSOKE UCENI TECHNICKE V BRNE (BUT)

**Name of Bank:** Komerční banka, a.s. Brno  
**Address:** Namesti Svobody 1, CZ 631 31 Brno, Czech Republic  
**Account No:** 27-8684040287  
**IBAN Code:** CZ5701000000278684040287  
**SWIFT Code:** KOMBCZPP  
**Routing No :** 0100

### (6) UNIVERSITY OF OULU (UOULU)

**Name of Bank:** OKO Bank Finland  
**Address:** Teollisuuskatu 1 B, FI-00510 Helsinki  
**Account No:** 500001-20378046  
**IBAN Code:** FI0350000120378046  
**SWIFT Code:** OKOYFIHH

### (8) IDEARK (IDEA)

**Name of Bank:** Banque Cantonale du Valais  
**Address:** Av. de la Gare 20, 1920 Martigny  
**Account No:** H 0857.85.85  
**IBAN Code:** CH44 0076 5000 H085 7858 5  
**SWIFT Code:** BCVSCH2LXXX

### (9) EYEP MEDIA (EPM)

**Name of Bank:** Credit Suisse Lausanne  
**Address:** Rue du lion d'or 5-7, 1003 Lausanne  
**Account No:** 769066-62  
**IBAN Code:** CH8004835076906662000  
**SWIFT Code:** CRESCHZZ10A

## ANNEX 4

### Notice Details

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

**(1) FONDATION DE L'INSTITUT DALLE MOLLE D'INTELLIGENCE ARTIFICIELLE PERCEPTIVE (IDIAP)**

Dr. Sebastien Marcel  
Senior Researcher

Nancy-Lara Robyr  
Program Manager

Case Postale 592  
Av. des Pres-Beudins 20  
CH- 1920 Martigny  
Switzerland

Case Postale 592  
Av. des Pres-Beudins 20  
CH- 1920 Martigny  
Switzerland

email: [marcel@idiap.ch](mailto:marcel@idiap.ch)  
phone: +41-(0)27 721 77 27  
fax: +41-(0)27 721 77 12

email: [Nancy-Lara.Robyr@idiap.ch](mailto:Nancy-Lara.Robyr@idiap.ch)  
phone: +41-(0)27 721 77 18  
fax: +41-(0)27 721 77 12

**(2) UNIVERSITY OF MANCHESTER (UNIMAN)**

Prof. Timothy Cootes  
Professor of Computer Vision  
ISBE  
The University of Manchester  
Stopford Building  
Oxford Road  
Manchester M13 9PT  
England

Mr James Cleary  
Research Business Manager  
ISBE  
The University of Manchester  
Stopford Building  
Oxford Road  
Manchester M13 9PT  
England

Email: [t.cootes@manchester.ac.uk](mailto:t.cootes@manchester.ac.uk)  
Phone: +44 161 2755146  
Fax: +44 161 2755145

[james.cleary@manchester.ac.uk](mailto:james.cleary@manchester.ac.uk)  
phone: +44 161 2755156  
Fax: +44 161 2755145

**(3) UNIVERSITY OF SURREY (UNIS)**

For scientific matters :  
Prof. Josef Kittler  
Director, Centre for Vision, Speech  
& Signal Processing  
University of Surrey  
Guildford  
GU2 7XK

For administrative matters  
Mr. Keith Robson  
Director, Research  
& Enterprise Support  
University of Surrey  
Guildford  
GU2 7XK

Email: [J.Kittler@surrey.ac.uk](mailto:J.Kittler@surrey.ac.uk)  
Phone : +44 1483 689294  
Fax : +44 1483 686031

Email: [K.Robson@surrey.ac.uk](mailto:K.Robson@surrey.ac.uk)  
Phone : +44 1483 689065  
Fax : +44 1483 683791

**(4) UNIVERSITE D'AVIGNON ET DES PAYS DE VAUCLUSE (UAPV)**

Jean-François BONASTRE  
Senior Researcher

Tania ALTMAN  
Program Manager

339 chemin des Meinajaries  
84911 Avignon cedex 9  
France

339 chemin des Meinajaries  
84911 Avignon cedex 9  
France

email: [jean-francois.bonastre@univ-avignon.fr](mailto:jean-francois.bonastre@univ-avignon.fr)

email: [tania.altman@univ-avignon.fr](mailto:tania.altman@univ-avignon.fr)

phone: +33-(0)4 90 84 35 14

phone: +33-(0)4 90 84 35 70

fax: +33-(0)4 90 84 35 01

fax: +33-(0)4 90 84 35 01

**(5) VYSOKE UCENI TECHNICKE V BRNE (BUT)**

Dr. Jan Cernocky  
Associate professor

Sylva Otahalova  
Administrative coordinator

Fakulta informacnich technologii  
VUT v Brne  
CZ-61266 Brno  
Czech Republic

Fakulta informacnich technologii  
VUT v Brne  
CZ-61266 Brno  
Czech Republic

email: [cernocky@fit.vutbr.cz](mailto:cernocky@fit.vutbr.cz)

email: [otahala@fit.vutbr.cz](mailto:otahala@fit.vutbr.cz)

phone: +420 5 4114 1284

phone: +420 5 4114 1296

fax: +420 5 4114 1290

fax: +420 5 4114 1290

**(6) UNIVERSITY OF OULU (UOULU)**

Dr. Matti Pietikäinen  
Professor

Dr. Leila Risteli  
Director

Erkki Koiso-Kanttilan katu 3  
P.O.Box 4500  
FI-90014 Oulu  
Finland

Pentti Kaiteran katu 1  
P.O.Box 8000  
FI-90014 Oulu  
Finland

email: [mkp@ee.oulu.fi](mailto:mkp@ee.oulu.fi)

email: [leila.risteli@oulu.fi](mailto:leila.risteli@oulu.fi)

phone: +358-(0)8-5532782

phone: +358-(0)8-5533971

fax: +358-(0)8-5532612

fax: +358-(0)8-5533973

**(8) IDEARK (IDEA)**

Dr. Frank Crittin  
Director

Case Postale 592  
Av. des Pres-Beudins 20  
CH- 1920 Martigny  
Switzerland

email: [frank.crittin@ideark.ch](mailto:frank.crittin@ideark.ch)

phone: +41-(0)27 721 77 17

fax: +41-(0)27 721 77 12

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### (9) EYEP MEDIA (EPM)

Johan Kovacs  
VP Operations

Baumettes 15  
CH- 1020 Renens  
Switzerland

email: johan.kovacs@eyepmedia.com  
phone: +41 (0)21 632 6623  
fax: +41 (0)21 634 0888

Giorgio Zoia  
Senior Software Engineer, Ph.D.

Baumettes 15  
CH- 1020 Renens  
Switzerland

email:giorgio.zoia@eyepmedia.com  
phone: +41 (0)21 632 6638  
fax: +41 (0)21 634 0888

## ANNEX 5

### A5.1 Scope referred to in definition of Needed and Necessary in Clause 1

The purpose of defining such a list of technology is not to exclude some Sideground but to clarify and agree upon a reasonable scope of the Project to avoid any future misunderstanding about what is or is not intended to be Necessary. Therefore, it is important to limit such list to generic category of technologies, for example, semiconductor manufacturing technologies, microprocessors, compiler technologies, object oriented technology, basic operating system technology, basic network operating system technology, memory chip technology.

### A5.2 List of Background and Sideground that is excluded from obligations to grant Access Rights

	Partner	Exclusion of Background and Sideground IPRs from granting Access Rights
1.	IDIAP	<ul style="list-style-type: none"> <li>Multi-view Face Detector based on boosted cascade of Local Binary Patterns (LBP)</li> <li>Active Shape Model based on LBP</li> <li>Face recognition based on GMMs, 1D-HMMs, 2D-HMMs and static Bayesian Networks</li> <li>Face recognition system based on model adaptation of local LBP histograms</li> <li>Image preprocessing using LBP for face recognition</li> <li>All Background generated by IDIAP teams that are not involved in the MOBIO project.....</li> <li>All sideground is excluded</li> </ul>
2.	UNIMAN	<ul style="list-style-type: none"> <li>Active Shape Modelling code in internal libraries</li> <li>Active Appearance Modelling code in internal libraries</li> <li>Constrained Local Matching (a.k.a. TAAM) algorithms</li> <li>Any background software currently licensed to Genemation Ltd or Imorphics Ltd</li> <li>All background developed by The University by people not involved in the MOBIO project</li> <li>All sideground is excluded</li> </ul>
3.	UNIS	<ul style="list-style-type: none"> <li>Morphable 3D face model</li> <li>2D Face recognition based on 3D face model fitting</li> <li>Multiresolution multichannel LBP based face recognition</li> <li>3D face recognition</li> <li>Lips segmentation and tracking</li> <li>Quality dependent fusion of multimodal biometrics</li> <li>All background generated by CVSSP teams that are not involved in the MOBIO Project</li> <li>All sideground is excluded</li> </ul>
4.	UAPV	<ul style="list-style-type: none"> <li>Speeral's Software</li> <li>Unsupervised speaker model adaptation software</li> <li>Channel compensation (bayesian factor analysis) software</li> <li>All software linked to the French ANR BIOBIMO project</li> <li>All software linked to the FP6/IP Hartes project</li> <li>All Background generated by UAPV teams specially in informatics, that are not involved in the MOBIO project</li> <li>All sideground is excluded</li> </ul>



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5.	BUT	<ul style="list-style-type: none"> <li>• phoneme recognizer based on hierarchical structure of neural networks.</li> <li>• GMM-based system for speaker verification including channel compensation.</li> <li>• GMM-SVM-based system for speaker verification including channel compensation.</li> <li>• MLLR-SVM-based system for speaker verification including channel compensation.</li> <li>• implementation of phonotactic modeling</li> <li>• All Background generated by BUT teams especially in information technology, that are not involved in the MOBIO project</li> <li>• All sideground is excluded</li> </ul>
6.	UOULU	<ul style="list-style-type: none"> <li>• Multi-view face detector using AdaBoost and LBP features</li> <li>• Face recognition using LBP</li> <li>• Spatiotemporal face recognition from video using extended volume LBP features</li> <li>• Recognition of facial expressions and spoken phrases using spatiotemporal LBP descriptors</li> <li>• All background generated by UOULU teams that are not involved in the MOBIO project</li> <li>• All sideground is excluded</li> </ul>
7.	IDEA	<ul style="list-style-type: none"> <li>• All Background generated by IdeArk that are not involved in the MOBIO project</li> <li>• All sideground is excluded</li> </ul>
8.	EPM	<ul style="list-style-type: none"> <li>• The foundation &amp; Communicator products on the following platforms which will serve as baseline for the demonstrators <ul style="list-style-type: none"> <li>◦ .Windows 2000</li> <li>◦ Windows XP</li> <li>◦ Windows Vista</li> <li>◦ Windows Mobile</li> </ul> </li> <li>• Other versions which will be developed in the future on non windows platforms like Linux or Mac OS.</li> <li>• All Background generated by eyeP Media which is not involved in the MOBIO Project.</li> <li>• All sideground is excluded</li> </ul>

### **A5.3 Required contents of requests in relation to Software subject to Controlled License Terms approvals referred to in Clauses 17.13 to 17.24**

Each Request for Software subject to Controlled Licence Terms must include, as a minimum, the following:

- (i) the identity of the Software in question, including its version number;
- (ii) a copy of the terms and conditions, including the applicable Controlled Licence Terms, under which the Software is made available by the source identified in (iii) below;
- (iii) the identity and contact coordinates of the source of the Software;
- (iv) a description of what the Software does;
- (v) the technical reasons why use of the Software in the Project would contribute to achieving the goals of the Project;
- (vi) a list of any alternative Software that has been considered in lieu of the proposed

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Software;

- (vii) details of the reasons for which the proposing Party considers that using the proposed Software would contribute better to achieving the goals of the Project than any such alternative Software;
- (viii) a description of the use or uses to which the proposed Software would be put;
- (ix) a request to approve the use of the proposed Software in accordance with the description supplied in response to (viii) above; and
- (x) an acknowledgment from the proposing Party that, if the other Parties agree to approve the use of the proposed Software in accordance with the description supplied in response to (viii) above, such Software may only be used within the scope of such description.

### **A5.4 List of Software that is Background or Sideground in respect of which the Parties are willing when granting Access Rights to grant access to Source Code for Use, as referred to in Clauses 17.13 to 17.15**

	<b>Partner</b>	<b>LIST</b>
9.	IDIAP	<ul style="list-style-type: none"><li>• Software from the Torchvision library available online</li></ul>
10.	UNIMAN	<ul style="list-style-type: none"><li>• Software contributed by Manchester to the core of VXL (Sorceforge)</li><li>• Software contributed by Manchester to the packages within contrib/mul in VXL (Sorceforge)</li></ul>
11.	UNIS	<ul style="list-style-type: none"><li>• RAVL library of image processing algorithms</li></ul>
12.	UAPV	<ul style="list-style-type: none"><li>• Software from the ALIZE/MISTRAL librairie available online</li></ul>
13.	BUT	<ul style="list-style-type: none"><li>• STK speech processing toolkit</li><li>• Software for speaker identification including channel compensation.</li></ul>
14.	UOULU	<ul style="list-style-type: none"><li>• LBP implementation available online</li></ul>
15.	IDEA	<ul style="list-style-type: none"><li>• none</li></ul>
16.	EPM	<ul style="list-style-type: none"><li>• none</li></ul>

### **A5.5 Identified third parties to whom rights in Foreground may be assigned, as referred to in Clause 16.4**

Genemation Ltd,  
Liverpool Science Park,  
Innovation Centre,  
131 Mount Pleasant,  
Liverpool.  
L3 5TF

### **A5.6 Standards to which the Parties agree to contribute**

## FP7 Integrated Projects' Consortium Agreement

AS WITNESS the Parties have caused this Consortium Agreement, together with its Annexes 1 to 5 annexed hereto, to be duly signed by the undersigned authorized representatives as follows:

**Authorized to sign on behalf of : FONDATION DE L'INSTITUT DALLE MOLLE  
D'INTELLIGENCE ARTIFICIELLE (IDIAP)**

**Signature: ----- Signature: -----**

**Name:** Herve Bourlard

**Name:** Jean-Albert Ferrez

**Title:** Director

**Title:** Deputy Director

**Date:**

**Date:**

**Stamp**

**Authorized to sign on behalf of : UNIVERSITY OF MANCHESTER (UNIMAN)**

**Signature: -----**

**Name:** Dr Karen Shaw

**Title:** <<Partner, please fill in >>

**Date:** <<Partner, please fill in >>

**Stamp**

## FP7 Integrated Projects' Consortium Agreement

AS WITNESS the Parties have caused this Consortium Agreement, together with its Annexes 1 to 5 annexed hereto, to be duly signed by the undersigned authorized representatives as follows:

**Authorized to sign on behalf of : FONDATION DE L'INSTITUT DALLE MOLLE  
D'INTELLIGENCE ARTIFICIELLE (IDIAP)**

**Signature:** ----- **Signature:** -----

**Name:** Herve Bourlard

**Name:** Jean-Albert Ferrez

**Title:** Director

**Title:** Deputy Director

**Date:**

**Date:**

**Stamp**

**Authorized to sign on behalf of : UNIVERSITY OF SURREY (UNIS)**

**Signature:** -----

**Name:** Keith Robson

**Title:** Director, Research & Enterprise Support

**Date:** <<Partner, please fill in >>

**Stamp**

## FP7 Integrated Projects' Consortium Agreement

AS WITNESS the Parties have caused this Consortium Agreement, together with its Annexes 1 to 5 annexed hereto, to be duly signed by the undersigned authorized representatives as follows:

**Authorized to sign on behalf of : FONDATION DE L'INSTITUT DALLE MOLLE  
D'INTELLIGENCE ARTIFICIELLE (IDIAP)**

**Signature: ----- Signature: -----**

**Name:** Herve Bourlard

**Name:** Jean-Albert Ferrez

**Title:** Director

**Title:** Deputy Director

**Date:**

**Date:**

**Stamp**

**Authorized to sign on behalf of : UNIVERSITE D'AVIGNON ET DES PAYS DE  
VAUCLUSE (UAPV)**

**Signature: -----**

**Name:** ETHIS

**Title:** President

**Date:** <<Partner, please fill in >>

**Stamp**

## FP7 Integrated Projects' Consortium Agreement

AS WITNESS the Parties have caused this Consortium Agreement, together with its Annexes 1 to 5 annexed hereto, to be duly signed by the undersigned authorized representatives as follows:

**Authorized to sign on behalf of : FONDATION DE L'INSTITUT D'ALLE MOLLE D'INTELLIGENCE ARTIFICIELLE (IDIAP)**

**Signature:** ----- **Signature:** -----

**Name:** Herve Bourlard

**Name:** Jean-Albert Ferrez

**Title:** Director

**Title:** Deputy Director

**Date:**

**Date:**

**Stamp**

**Authorized to sign on behalf of : VYSOKÉ UČENÍ TECHNICKÉ V BRNĚ (BUT)**

**Signature:** -----

**Name:** Prof. Karel Rais

**Title:** Rector

**Date:** <<Partner, please fill in >>

**Stamp**

## FP7 Integrated Projects' Consortium Agreement

AS WITNESS the Parties have caused this Consortium Agreement, together with its Annexes 1 to 5 annexed hereto, to be duly signed by the undersigned authorized representatives as follows:

**Authorized to sign on behalf of : FONDATION DE L'INSTITUT D'ALLE MOLLE D'INTELLIGENCE ARTIFICIELLE (IDIAP)**

**Signature:** ----- **Signature:** -----

**Name:** Herve Bourlard

**Name:** Jean-Albert Ferrez

**Title:** Director

**Title:** Deputy Director

**Date:**

**Date:**

**Stamp**

**Authorized to sign on behalf of : UNIVERSITY OF UOULU (UOULU)**

**Signature:** ----- **Signature:** -----

**Name:** Lauri Lajunen

**Name:** Leila Risteli

**Title:** Rector

**Title:** Director

**Date:** <<Partner, please fill in >>

**Date:** <<Partner, please fill in >>

**Stamp**

## FP7 Integrated Projects' Consortium Agreement

AS WITNESS the Parties have caused this Consortium Agreement, together with its Annexes 1 to 5 annexed hereto, to be duly signed by the undersigned authorized representatives as follows:

**Authorized to sign on behalf of : FONDATION DE L'INSTITUT DALLE MOLLE  
D'INTELLIGENCE ARTIFICIELLE (IDIAP)**

**Signature:** ----- **Signature:** -----

**Name:** Herve Bourlard

**Name:** Jean-Albert Ferrez

**Title:** Director

**Title:** Deputy Director

**Date:**

**Date:**

**Stamp**

**Authorized to sign on behalf of : IDEARK (IDEA)**

**Signature:** -----

**Signature:** -----

**Name:** Frank Crittin

**Name:** Dumas Olivier

**Title:** Director

**Title:** President

**Date:** <<Partner, please fill in >>

**Date:** <<Partner, please fill in >>

**Stamp**



## FP7 Integrated Projects' Consortium Agreement

AS WITNESS the Parties have caused this Consortium Agreement, together with its Annexes 1 to 5 annexed hereto, to be duly signed by the undersigned authorized representatives as follows:

**Authorized to sign on behalf of : FONDATION DE L'INSTITUT DALLE MOLLE  
D'INTELLIGENCE ARTIFICIELLE (IDIAP)**

**Signature:** ----- **Signature:** -----

**Name:** Herve Bourlard

**Name:** Jean-Albert Ferrez

**Title:** Director

**Title:** Deputy Director

**Date:**

**Date:**

**Stamp**

**Authorized to sign on behalf of : EYE PMEDIA (EPM)**

**Signature:** ----- **Signature:** -----

**Name:** Jean-Pierre Baudouin

**Name:** Alain Sturzenegger

**Title:** CEO

**Title:** CTO

**Date:** <<Partner, please fill in >>

**Date:** <<Partner, please fill in >>

**Stamp**



**ANNEX 1**

**TECHNICAL ANNEX**