



## DELIVERABLE D1.1

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7. Agrupación Mármol Innovación Asociación (AMI)
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#### VERSION CONTROL

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V4.0	10-09-2013	CEINNMAT	ALL PARTNERS	CEINNMAT

Table 1. Reviews

# **STEP CONSORTIUM AGREEMENT**

for the implementation of the project under CIP-EIP-Eco-Innovation-2012

## **STONE TECHNOLOGY FOR ECO- EFFICIENT PRODUCTION**

(Ref No: ECO/12/333123/STEP)

Version 4, 2013-09-10

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## **Article 1. Introduction.**

**1.1.-** This **CONSORTIUM AGREEMENT** is made on date 01/08/2013, herein referred to as "EFFECTIVE DATE"

by and among:

1. Comercializadora Española de Innovaciones y Materiales, S.L. (CEINNMAT)

- the COORDINATOR –

2. Asociación de Investigación de las Industrias de la Construcción (AIDICO)

3. Universitat Politècnica de València (UPVLC)

4. Laskaridis Marble (LASMAR)

5. National Technical University of Athens (NTUA)

6. QMC Tecnología Química, S.L. (QMC)

7. Agrupación Mármol Innovación Asociación (AMI)

8. Técnicas Reunidas, S.A. (TR)

- hereinafter referred to as "the BENEFICIARIES" -

relating to the Project entitled

Stone Technology for Eco-efficient Production

in short

### **STEP**

hereinafter referred to as "PROJECT".

### **WHEREAS:**

**1.2.-** The BENEFICIARIES wish to define in more detail their rights and obligations towards each other in relation to the GRANT AGREEMENT and have agreed that the following additional terms and conditions shall apply to their performance of the GRANT AGREEMENT.

**1.3.-** Where a stipulation in the CONSORTIUM AGREEMENT complements or modifies any stipulation in the GRANT AGREEMENT in a way that is not allowed under the GRANT AGREEMENT, the stipulation in the GRANT AGREEMENT shall prevail.

**1.4.-** The BENEFICIARIES warrant that they are not aware of any LEGITIMATE INTERESTS that restrict, prevent or otherwise interfere with the grant of ACCESS RIGHTS as set forth in the CONSORTIUM AGREEMENT.

## **Article 2. Interpretation.**

In this CONSORTIUM AGREEMENT, the following expressions shall have the following meanings except where the context clearly indicates otherwise:

**ACCEDING PARTY** means any **THIRD PARTY** acceding to this **CONSORTIUM AGREEMENT**

**ACCESS RIGHTS** means licenses and user rights in respect of **FOREGROUND INFORMATION** and **BACKGROUND INFORMATION**

**ADMINISTRATIVE OBLIGATIONS** means the obligations of the **BENEFICIARIES** defined in Article 6

**AFFILIATE** means any legal entity directly or indirectly owned or controlled by or owning or controlling or under the same ownership or control as any of the **BENEFICIARIES**, such ownership or control existing through the direct or indirect ownership of more than 30 % of the nominal value of the issued equity share capital, or ownership of more than 30 % of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or to the right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote, or ownership of 30 % or more of the shares and the right to control management or operation of the company through contractual provisions.

**BACKGROUND INFORMATION** means information, whether or not they can be protected, which are not generated in the **PROJECT**; such results include rights related to copyright, design rights, patent rights, plant variety rights or similar forms of protection.

**BENEFICIARY** means a signatory to this **CONSORTIUM AGREEMENT** and any **ACCEDING PARTY**

**BUDGET** means the estimated cost of the **PROJECT**

**COMMUNITY FINANCIAL CONTRIBUTION** means the Community financial contribution by the **EACI** under the **GRANT AGREEMENT**

**CONSORTIUM AGREEMENT** means this consortium agreement

**CONSORTIUM PLAN** means the description of the work and the related agreed Consortium Budget, including the payment schedule, as updated and approved by the **GENERAL ASSEMBLY**,

**CONSORTIUM BUDGET** means the allocation of all the resources in cash or in kind for the activities as defined in Annex I (Description of the Action) of the **GRANT AGREEMENT** and in the **CONSORTIUM AGREEMENT** thereafter.

**COORDINATOR** has the meaning defined in Article 5.1

**DEFAULTING PARTY** means a **BENEFICIARY** which the **GENERAL ASSEMBLY** has identified to be in breach of this **CONSORTIUM AGREEMENT** and/or the **GRANT AGREEMENT** as specified in Article 6.6 of this **CONSORTIUM AGREEMENT**.

**DELIVERABLES** means all reports, certificates, data and other information required to be provided to the **EACI** by the **GRANT AGREEMENT**

**EACI** means Executive Agency for Competitiveness and Innovation of the European Commission

**EFFECTIVE DATE** means the date of this CONSORTIUM AGREEMENT as defined in Article 1.1

**FAULT** means any wrongful act, omission, breach of applicable laws or failure to comply with the terms of this CONSORTIUM AGREEMENT

**FORCE MAJEURE** means any act, event or condition beyond the reasonable control of a BENEFICIARY that was not reasonably foreseeable and is not avoidable under normal circumstances, including but not limited to acts of God, war, riot, acts of Governments or any political subdivision thereof, fires, floods, explosions, or other catastrophes labour disturbances, freight embargoes or material shortages.

**FOREGROUND INFORMATION** means the results, including information, whether or not they can be protected, which are generated in the PROJECT; such results include rights related to copyright, design rights, patent rights, plant variety rights or similar forms of protection.

**GENERAL ASSEMBLY** has the meaning defined in Article 4.2.1

**GRANT AGREEMENT** means the grant agreement between the EACI and the BENEFICIARIES

**LEGITIMATE INTERESTS** means a BENEFICIARY's interests of any kind, particularly a commercial interest, which may be claimed in the cases provided for in this CONSORTIUM AGREEMENT, if failure to take account of this interest would result in such BENEFICIARY's suffering disproportionately great harm

**NEEDED FOR USE** means needed as necessary to enable the USE

**PROJECT** means the project defined in Article 1.2

**PROPOSAL** means the proposal referred to in Article 1.2

**REPRESENTATIVE** means the one representative designated by each of the BENEFICIARIES in accordance with Article 4.1.1

**SUB-CONTRACT** means an agreement between one or more BENEFICIARIES and a THIRD PARTY, in order to carry out part of the work of the PROJECT

**SUB-CONTRACTOR** means a THIRD PARTY which has entered into an agreement with one or more BENEFICIARIES, in order to carry out part of the work of the PROJECT

**WORK PACKAGE LEADER** means the BENEFICIARIES as defined in Article 4.3.1

**THIRD PARTY** means any person other than the BENEFICIARIES and AFFILIATES

**USE** means the direct or indirect utilisation of FOREGROUND INFORMATION or BACKGROUND INFORMATION in research activities or for developing, creating, making (including have made) and marketing a product or process, or for developing, creating and providing a service, but not including the right to grant sub-licences

**WRITTEN FORM** means (i) documents duly signed by an authorized representative and personally delivered or delivered by mail or (ii) electronic documents delivered with

advanced electronic signatures which are based on a qualified certificate and which are created by a secure signature creation device.

### **Article 3. Purpose and Scope of the Consortium Agreement.**

The CONSORTIUM AGREEMENT is intended to define more precisely the terms on which the BENEFICIARIES will co-operate within the scope of the GRANT AGREEMENT, in particular concerning the organisation of the work between the BENEFICIARIES, the management of the PROJECT and the rights and obligations of the BENEFICIARIES concerning inter alia liability, ACCESS RIGHTS and disputed resolution. Accordingly, the BENEFICIARIES agree amongst themselves to take all reasonable and necessary measures to ensure that the PROJECT is carried out in accordance with the terms and conditions of the GRANT AGREEMENT and the CONSORTIUM AGREEMENT.

### **Article 4. Organisation of the Project.**

#### **4.1.- General Principles**

4.1.1.- Each BENEFICIARY shall designate a person as a representative (herein referred to as "REPRESENTATIVE").

4.1.2.- The PROJECT is structured by WORK PACKAGES, described in Annex I of the GRANT AGREEMENT.

4.1.3.- General Principles for the GENERAL ASSEMBLY and the WORK PACKAGES LEADERS.

The COORDINATOR shall convene all meetings and shall give each of the members at least fourteen days notice of such meetings. Such invitation should set an agenda including the items to be discussed and the decisions proposed to make. The members shall be represented by their REPRESENTATIVES. Each member may appoint a substitute for its REPRESENTATIVE to attend and vote at any meeting. The COORDINATOR shall convene meetings on the request of a third of the members.

The GENERAL ASSEMBLY and the WORK PACKAGE LEADERS making a decision shall be obliged to allow the BENEFICIARIES concerned to invoke objections and shall take into account, and draw the appropriate conclusions from, any objection by any BENEFICIARY based on LEGITIMATE INTERESTS.

If a consensus cannot be reached, the matter shall be resolved by a vote of the BENEFICIARIES. Each BENEFICIARY shall have one vote.

The adoption of a decision shall require the favourable vote of two thirds of the BENEFICIARIES (whether present or not) unless an unanimous decision is required under this CONSORTIUM AGREEMENT.

Subject to their LEGITIMATE INTERESTS, the BENEFICIARIES agree to abide by all decisions of the GENERAL ASSEMBLY and the WORK PACKAGE LEADERS.

A BENEFICIARY who can show that its own work, time for performance, costs or liabilities, or intellectual property rights would be severely impacted or who can claim LEGITIMATE



INTERESTS, may veto the relevant part of the decision of the GENERAL ASSEMBLY or the WORK PACKAGE LEADERS with no undue delay.

Each of the BENEFICIARIES shall have the right to refuse to undertake any kind of work without its consent that is outside the scope of the work assigned to him or the cost of performance of which would exceed the BUDGET identified for that BENEFICIARY.

If there is any contradiction between the decisions taken by the GENERAL ASSEMBLY or the WORK PACKAGE LEADERS, the decisions of the GENERAL ASSEMBLY shall prevail over the decisions taken by WORK PACKAGE LEADERS.

#### **4.2.- Governance structure**

The organisational structure of the CONSORTIUM shall comprise the following Consortium Bodies:

- GENERAL ASSEMBLY as the ultimate decision-making body of the CONSORTIUM
- The COORDINATOR is the legal entity acting as the intermediary between the BENEFICIARIES and the EACI. The COORDINATOR shall, in addition to its responsibilities as a BENEFICIARY, perform the tasks assigned to it as described in the GRANT AGREEMENT and this CONSORTIUM AGREEMENT.

##### 4.2.1.- General Assembly

All BENEFICIARIES shall be members of the GENERAL ASSEMBLY, consisting of one representative of each BENEFICIARY. The COORDINATOR shall chair all meetings of the GENERAL ASSEMBLY. The GENERAL ASSEMBLY shall have an annual meeting for reviewing and monitoring the progress of the PROJECT as well as identifying appropriate actions for the successful performance of the PROJECT.

#### **4.3.- Work Package Level**

##### 4.3.1.- Work Packages Leaders

The WORK PACKAGE LEADER shall:

- submit the reports to the COORDINATOR
- submit the DELIVERABLES to the COORDINATOR
- submit information required to the COORDINATOR

The WORK PACKAGE LEADERS shall not be entitled to act or to make legally binding declarations on behalf of any other BENEFICIARIES.

#### **4.4.- Entry into force, duration and termination**

##### 4.4.1.- Entry into force

A party becomes BENEFICIARY to this CONSORTIUM AGREEMENT upon signature of this CONSORTIUM AGREEMENT by a duly authorised representative.

This CONSORTIUM AGREEMENT shall have effect from the EFFECTIVE DATE identified at the beginning of this CONSORTIUM AGREEMENT.

A new party enters the CONSORTIUM according with Article 12.

#### 4.4.2.- Duration and termination

This CONSORTIUM AGREEMENT shall continue in full force and effect until complete fulfilment of all obligations undertaken by the BENEFICIARIES under the GRANT AGREEMENT and under this CONSORTIUM AGREEMENT.

### **Article 5. Coordinator.**

**5.1.-** CEINNMAT is the COORDINATOR of the PROJECT.

**5.2.-** The COORDINATOR shall represent the PROJECT towards the EACI and other THIRD PARTIES, but shall not be entitled to act or to make legally binding declarations on behalf of any other BENEFICIARIES.

**5.3.-** In addition to the obligations of the COORDINATOR under the GRANT AGREEMENT, the COORDINATOR shall be responsible for the following additional co-ordination responsibilities:

- interacting with the EACI and THIRD PARTIES about the PROJECT, including the submission of DELIVERABLES to the EACI.
- receiving, compiling, and distributing to the BENEFICIARIES' and other relevant recipients' documents, reports, statements of expenditure, minutes of meetings of the GENERAL ASSEMBLY and other relevant information from the BENEFICIARIES.
- receiving the COMMUNITY FINANCIAL CONTRIBUTION and to distribute it to the BENEFICIARIES in accordance with the GRANT AGREEMENT and this CONSORTIUM AGREEMENT.

### **Article 6. Administrative Obligations of the Beneficiaries.**

**6.1.-** Each of the BENEFICIARIES shall promptly supply to their respective WORK PACKAGES LEADERS, to the COORDINATOR and to the EACI all such information, reports, documents and DELIVERABLES that are necessary in order to fulfil their obligations under the GRANT AGREEMENT and the CONSORTIUM AGREEMENT.

**6.2.-** The BENEFICIARIES shall support the COORDINATOR in fulfilling the obligations of the COORDINATOR under the GRANT AGREEMENT and under this CONSORTIUM AGREEMENT. In particular, the BENEFICIARIES shall

(a) comply with their obligations under the GRANT AGREEMENT;

(b) give immediate notice to the COORDINATOR about any awareness about non compliance of any BENEFICIARY in the PROJECT with its obligations under the GRANT AGREEMENT;

(c) make sure that they complete the necessary formalities for accession to the GRANT AGREEMENT;

(d) check the compliance of any receipt of financial contribution with the provisions of the CONSORTIUM AGREEMENT and the GRANT AGREEMENT and give immediate notice to the COORDINATOR about any awareness about non-compliance;

(e) submit to the COORDINATOR all information necessary for the records and financial accounts relevant for the financial contribution;

(f) make its communication to the EACI via the COORDINATOR and to submit to the COORDINATOR all information necessary to report to the EACI on the progress of the PROJECT;

(g) verify consistency of its reports with the PROJECT tasks before transmitting them to the COORDINATOR;

**6.3.-** Where an amount, paid by the EACI to the COORDINATOR in its capacity of recipient of all payments, is to be recovered under the terms of the GRANT AGREEMENT, the final recipient of the amount due will repay to the EACI the sum in question with no undue delay.

**6.4.-** Each BENEFCIARY shall inform all other BENEFCIARIES about any relevant change in persons, addresses, telephone, fax numbers and e-mail addresses and other relevant means of communication as soon as possible.

**6.5.-** Where a BENEFCIARY designates a SUB-CONTRACTOR, the BENEFCIARY shall ensure that the terms and conditions on which the SUB-CONTRACTOR is appointed are fully consistent with those of the CONSORTIUM AGREEMENT and the GRANT AGREEMENT. The BENEFCIARY shall be responsible for the work to be performed by the SUB-CONTRACTOR.

#### **6.6.- Breach**

In the event the GENERAL ASSEMBLY identifies a breach by a BENEFCIARY of its obligations under this CONSORTIUM AGREEMENT or the GRANT AGREEMENT (e.g.: a BENEFCIARY producing poor quality of work), the COORDINATOR or the BENEFCIARY appointed by the GENERAL ASSEMBLY if the COORDINATOR is in breach of its obligations under this CONSORTIUM AGREEMENT or the GRANT AGREEMENT will give notice to such BENEFCIARY requiring that such breach be remedied within 30 calendar days.

If such breach is substantial and it is not remedied within that period or is not capable of remedy, the GENERAL ASSEMBLY may decide to declare the BENEFCIARY to be a DEFAULTING PARTY and to decide on the consequences thereof which may include the termination of its participation.

#### **6.7.- Involvement of third parties**

A Party that enters into a SUB-CONTRACT or otherwise involves third parties (including but not limited to AFFILIATES) in the PROJECT remains solely responsible for carrying out its relevant part of the PROJECT and for such third party's compliance with provisions of this CONSORTIUM AGREEMENT and of the GRANT AGREEMENT. It has to ensure that the involvement of third parties does not affect the rights and obligations of the other BENEFCIARIES under this CONSORTIUM AGREEMENT and the GRANT AGREEMENT.

## **6.8.- Export laws and regulations**

Notwithstanding anything to the contrary contained in this CONSORTIUM AGREEMENT it is understood that the supply, export, transfer of goods, technologies, software, results, services and information under this CONSORTIUM AGREEMENT may be subjected to import or export laws and regulations or any other governmental authorization.

The BENEFICIARIES do not warrant that if any import or export license or any other governmental authorization is required for the fulfilment of any of its contractual obligations, such license or authorization shall be issued or extended or shall be issued or extended in due time.

The BENEFICIARIES shall not be obliged to supply, export or transfer goods, technologies, software, results, services and information or to perform other contractual obligations of this CONSORTIUM AGREEMENT if such apply would violate applicable import or export control laws or regulations of the Member States of the European Union, the United States of America or other country.

In any such case, the BENEFICIARIES shall make every effort to resolve the matter in a way such that a violation can be avoided. If this is not possible, each BENEFICIARY concerned shall be entitled to terminate its participation in this CONSORTIUM AGREEMENT with immediate effect. Compensations claims shall be excluded in case of any restriction resulting from import or export laws and regulations and/or any delay of the granting or extension of the import or export license or any other governmental authorization.

## **Article 7. Deliverables.**

**7.1.-** The BENEFICIARIES will use all reasonable endeavours to supply DELIVERABLES to the COORDINATOR two weeks in advance of the date by which the DELIVERABLES are due for submission to the EACI.

## **Article 8. Budget and Community Financial Contribution.**

**8.1.-** The BUDGET and COMMUNITY FINANCIAL CONTRIBUTION is allocated according to the GRANT AGREEMENT.

**8.2.-** BENEFICIARIES who spend less than their respective share in the BUDGET will be funded only in respect of the actual amount spent. BENEFICIARIES who spend more than their respective share in the BUDGET will be funded only up to the COMMUNITY FINANCIAL CONTRIBUTION as allocated under this CONSORTIUM AGREEMENT.

**8.3.-** Any costs incurred by the COORDINATOR in connection with the transfer of payments from the EACI to the COORDINATOR shall be divided between the BENEFICIARIES in proportion to their respective share in the COMMUNITY FINANCIAL CONTRIBUTION.

**8.4.-** Any costs incurred by the COORDINATOR in connection with the transfer of payments to any of the BENEFICIARIES will be charged to the BENEFICIARY concerned.

**8.5.-** Each BENEFICIARY shall specify to the COORDINATOR an account to which the COMMUNITY FINANCIAL CONTRIBUTION shall be transferred.

**8.6.-** The COORDINATOR shall transfer COMMUNITY FINANCIAL CONTRIBUTION received from the EACI to each of the other BENEFICIARIES without unjustified delay after the receipt of the COMMUNITY FINANCIAL CONTRIBUTION and relevant supporting information. The payments will follow the indications given in the GRANT AGREEMENT.

In particular, the COORDINATOR shall:

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

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

Funding of costs included in the CONSORTIUM PLAN will be paid to the BENEFICIARIES after receipt from the EACI without undue delay and in conformity with the provisions of Annex II of the GRANT AGREEMENT, and according to the following schedule:

- **30%** pre-payment of the total requested COMMUNITY FINANCIAL CONTRIBUTION by each BENEFICIARY.
- **30%** additional pre-payment of the total COMMUNITY FINANCIAL CONTRIBUTION, after 16 months of the project and conditioned to the submission of the interim report in Month 16.
- **40%** payment upon completion of the action, when the EACI transference takes place. The coordinator will transfer full amount received by the EACI to the BENEFICIARIES.

Costs accepted by the EACI will be paid to the BENEFICIARY concerned, taking into account the amounts already paid for the reporting period concerned:

- The interim payment shall be conditioned to the fulfilment of an interim technical implementation report together with the interim financial statements, on a 16 month basis. A BENEFICIARY shall declare its costs using a template provided by the COORDINATOR, who shall verify the eligibility and correctness of costs declared, as well as the consistency with the activities carried out by the BENEFICIARY concerned.
- In case the COORDINATOR identifies incoherence between the costs declared and the activities actually performed by a BENEFICIARY, the COORDINATOR shall request the BENEFICIARY concerned to provide a detailed description of the results obtained within the PROJECT so far. In such case the COORDINATOR is entitled to

retain the internal payment to a BENEFICIARY until the afore-mentioned description is provided by the BENEFICIARY.

- Each interim payment shall be calculated on the basis of the eligible costs declared by a BENEFICIARY for the reporting period concerned. Payments must be done only over eligible cost declared.
- Payments will be executed within 30 days after the COORDINATOR approval of the BENEFICIARY's costs declared, and when applicable, only whether the EACI approves the reports on the 16 month financial cost statements.
- The COORDINATOR will not distribute to BENEFICIARIES more funds than received from the EACI for each BENEFICIARY.
- The final payment shall be calculated on the basis of the eligible costs claimed by each BENEFICIARY. The BENEFICIARY shall receive the total requested contribution not yet provided by former payments and accepted by the EACI.

**8.7.-** Each of the BENEFICIARIES shall bear all its own costs incurred in connection with the PROJECT and shall receive the COMMUNITY FINANCIAL CONTRIBUTION as allocated to it provided proper performance of the PROJECT.

**8.8.-** Financial consequences of the termination of the participation of a BENEFICIARY

A BENEFICIARY leaving the CONSORTIUM shall refund all payments it has received except the amount of contribution accepted by the EACI or another contributor. Furthermore, a DEFAULTING PARTY shall, within the limits specified in Article 13.2.2 of this CONSORTIUM AGREEMENT, bear any reasonable and justifiable additional costs occurring to the other BENEFICIARIES in order to perform its and their tasks.

## **Article 9. Confidentiality.**

Each of the BENEFICIARIES undertakes to use a reasonable degree of care not to disclose to any THIRD PARTY - except as expressly permitted by the CONSORTIUM AGREEMENT or the GRANT AGREEMENT or by an order of a judicial or governmental authority - any technical or business information which, during the course of the preparation of the proposal for, or in the course of the performance of, the PROJECT, it received, gained access to or otherwise obtained from any of the other BENEFICIARIES.

This undertaking shall not apply to any information that:

- the receiving BENEFICIARY can prove is already known to it;
- is published or otherwise generally available to the public at the time of the communication or becomes published or so available after such communication through no wrongful act of the receiving BENEFICIARY;
- corresponds to information that is subsequently communicated to the receiving BENEFICIARY from a THIRD PARTY without any relevant obligation of non disclosure;
- was developed independently of the work under the GRANT AGREEMENT by the receiving BENEFICIARY or any of its AFFILIATES;

- is necessarily divulged to enable by the exercise of any licence in accordance with the CONSORTIUM AGREEMENT or the GRANT AGREEMENT.

This undertaking shall not apply with respect to disclosures by the receiving BENEFICIARY to its AFFILIATES as long as the AFFILIATES are subject to similar non-disclosure obligations.

All information in whatever form or mode of transmission, which is disclosed by a BENEFICIARY (the “Disclosing Party”) to any other BENEFICIARY (the “Recipient”) in connection with the PROJECT during its implementation and which has been explicitly marked as “confidential”, or when disclosed orally, has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”.

The BENEFICIARIES providing confidential information shall remain the vested holders of such information.

This undertaking shall apply for a period of five (5) years from the completion or termination of this PROJECT (whichever is the earlier).

## **Article 10. Foreground Information.**

**10.1.-** FOREGROUND INFORMATION shall be owned by the BENEFICIARY or BENEFICIARIES who carried out the work generating the FOREGROUND INFORMATION, or on whose behalf such work was carried out.

**10.2.-** Where FOREGROUND INFORMATION is generated from work carried out jointly by two or more BENEFICIARIES, those BENEFICIARIES shall jointly own equal undivided shares in that FOREGROUND INFORMATION, and shall be free to exercise all ACCESS RIGHTS (and the right to grant non-exclusive sub-licences) in respect of that FOREGROUND INFORMATION independently of any other BENEFICIARY with whom such FOREGROUND INFORMATION is jointly owned, without payment of compensation to any other such BENEFICIARY.

**10.3.-** Save as provided above, if any of the BENEFICIARIES wishes to assign any FOREGROUND INFORMATION to a THIRD PARTY it shall promptly notify the other BENEFICIARIES of the THIRD PARTY and the terms and conditions upon which it proposes to make the assignment, but shall not make such an assignment without the prior consent of the other BENEFICIARIES, which shall not be unreasonably withheld.

**10.4.-** BENEFICIARIES may in their own discretion and at their own expense make applications for patent or similar form of protection in territories of their own choice and shall supply details of each such application to the other BENEFICIARIES within five months of the date of the application.

## **Article 11. Access Rights.**

### **11.1.- ACCESS RIGHTS for the performance of the PROJECT**

Each of the BENEFICIARIES hereby agrees to grant to each of the other BENEFICIARIES royalty-free, non-exclusive ACCESS RIGHTS in respect of their FOREGROUND INFORMATION and, subject to LEGITIMATE INTERESTS of the respective owner and the GRANT AGREEMENT, BACKGROUND INFORMATION to the extent needed for the performance of the PROJECT.

### **11.2.- ACCESS RIGHTS for USE (among BENEFICIARIES in different WORK PACKAGES).**

#### **11.2.1.- Foreground information**

Each of the BENEFICIARIES hereby agrees to grant permanent, world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's FOREGROUND INFORMATION to the extent NEEDED FOR USE of FOREGROUND INFORMATION generated in the WORK PACKAGE they participate in to the other BENEFICIARIES and their AFFILIATES.

#### **11.2.2.- Background information.**

Subject to LEGITIMATE INTERESTS of the respective owner, each of the BENEFICIARIES hereby agrees to grant permanent, worldwide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's BACKGROUND INFORMATION to the extent NEEDED FOR USE of FOREGROUND INFORMATION generated in the WORK PACKAGE they participate in to the other BENEFICIARIES and their AFFILIATES

### **11.3.- ACCESS RIGHTS for USE (among the BENEFICIARIES of the same WORK PACKAGE).**

#### **11.3.1.- Foreground information**

Each of the BENEFICIARIES hereby agrees to grant permanent, world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's FOREGROUND INFORMATION on the following terms

- royalty-free (private entities) to the other BENEFICIARIES participating in the same WORK PACKAGE and their AFFILIATES
- state aid-free (public entities) to the other BENEFICIARIES participating in the same WORK PACKAGE

#### **11.3.2.- Background information.**

Subject to LEGITIMATE INTERESTS of the respective owner, each of the BENEFICIARIES hereby agrees to grant permanent, worldwide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's BACKGROUND INFORMATION to the extent NEEDED FOR USE of FOREGROUND INFORMATION to the other BENEFICIARIES participating in the same WORK PACKAGE and their AFFILIATES



**11.4.-** Any request for ACCESS RIGHTS may be made up to twelve months after the end of the PROJECT or, in the case of Art. 17.2, after the termination of the requesting BENEFICIARY's participation in the PROJECT. By signing the CONSORTIUM AGREEMENT, the BENEFICIARIES shall be deemed to have requested in WRITTEN FORM the grant of all ACCESS RIGHTS referred to above.

**11.5.-** The BENEFICIARIES shall inform each other as soon as possible of any limitation to the granting of ACCESS RIGHTS to BACKGROUND INFORMATION, or of any other restriction which might substantially affect the granting of ACCESS RIGHTS.

## **Article 12. Accession to this Consortium Agreement.**

**12.1.-** Any accession to this CONSORTIUM AGREEMENT shall require:

- the conclusion of an accession agreement in WRITTEN FORM duly signed by all BENEFICIARIES and by the ACCEDING PARTY; the BENEFICIARIES may authorise the COORDINATOR to sign the respective accession agreement on their behalf and
- the accession by the ACCEDING PARTY to the GRANT AGREEMENT.

**12.2.-** The ACCEDING PARTY shall take the obligations and shall have the rights, as if it were a BENEFICIARY from the EFFECTIVE DATE.

## **Article 13. Liability in Contract.**

**13.1.-** General Principles

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**13.2.-** Liability towards the BENEFICIARIES

**13.2.1.-** Liability. Each BENEFICIARY undertakes to use all reasonable endeavours to ensure the accuracy of its performance of the PROJECT and of the information furnished to other BENEFICIARIES in connection with such performance.

Upon notification or discovery that it has submitted defective or incorrect information to another BENEFICIARY at any time during the performance of the PROJECT, a BENEFICIARY shall promptly correct and redeliver such information at its own expense.

Other than as set forth in the foregoing paragraphs, no warranty, condition or representation of any kind is made, given or to be implied in any case as on the sufficiency accuracy or fitness for purpose of information or materials or the absence of any infringement of statutory monopoly or intellectual property rights of THIRD PARTIES by the USE of such information and materials, and a BENEFICIARY receiving information and materials, shall be entirely responsible for the USE to which they are put.

**13.2.2.-** Limitations of Liability. Except in the case of wilful misconduct or gross negligence, a BENEFICIARY shall not be liable to other BENEFICIARIES for indirect or consequential loss or damages such as but not limited to loss of profit, loss of revenue, or loss of contracts.

Except in the case of wilful misconduct, each BENEFCIARY's total and cumulative limit of liability resulting from any FAULT towards all the other BENEFCIARIES collectively, in respect of any and all claims regarding any FAULT, shall not exceed once the amount of that BENEFCIARY's share in the COMMUNITY FINANCIAL CONTRIBUTION as defined at the time of the occurring of the FAULT.

### **13.3.- Liability towards the EACI and THIRD PARTIES**

13.3.1.- Notwithstanding the foregoing, each BENEFCIARY agrees to indemnify the COORDINATOR, in case of any action, complaint or proceeding brought by the EACI against the COORDINATOR as result of damage caused, either by any act or omission committed by the BENEFCIARY in performing its ADMINISTRATIVE OBLIGATIONS.

13.3.2.- Should the EACI, in accordance with the provisions of the GRANT AGREEMENT, or any THIRD PARTY, under the laws applicable, make a claim for specific performance or any reimbursement, indemnity or payment of damages from one or more BENEFCIARIES, the BENEFCIARIES who perform such BENEFCIARY's work or pay the reimbursement, indemnity or payment shall be entitled to receive from any BENEFCIARY a contribution to their additional cost or payment to the extent such BENEFCIARY's FAULT caused such claim.

13.3.3.- In the event it is not possible to attribute the FAULT to any BENEFCIARY, the amount claimed by the EACI or the THIRD PARTY shall be apportioned among all the BENEFCIARIES in proportion to their respective share in the COMMUNITY FINANCIAL CONTRIBUTION as defined at the time of the implementation of the work or the payment to the EACI.

## **Article 14. Force Majeure.**

No BENEFCIARY shall be liable for any failure to perform or any delay in performing any of its obligations under the CONSORTIUM AGREEMENT if such failure or delay arises out of FORCE MAJEURE. The BENEFCIARY relying on FORCE MAJEURE shall promptly notify the other BENEFCIARIES and shall use its best endeavours to remedy any default or delay occasioned thereby forthwith upon such event ceasing to apply.

Notwithstanding the foregoing, a Beneficiary may not invoke Force Majeure as an excuse or reason to delay the payment of any sum under this CONSORTIUM AGREEMENT.

## **Article 15: Dissemination, Publicity and Press Releases**

15.1.- The BENEFCIARIES shall not issue any press release or similar publicity about the PROJECT without the prior approval of the GENERAL ASSEMBLY, which shall not be unreasonably withheld or delayed longer than two weeks after receipt by the GENERAL ASSEMBLY.

15.2.- Without prejudice to any other obligations in this CONSORTIUM AGREEMENT, the BENEFCIARIES shall be entitled to disseminate and/or publish, with prior permission of the rest of BENEFCIARIES, the FOREGROUND INFORMATION they generated in the PROJECT.

## **Article 16. Amendments to the Grant Agreement and to this Consortium Agreement.**

**16.1.-** Any approval or request addressed to the EACI regarding the amendment or the termination of the GRANT AGREEMENT shall require the approval of all BENEFICIARIES in WRITTEN FORM, which shall not be unreasonably withheld.

**16.2.-** All amendments and changes to this CONSORTIUM AGREEMENT require an amending agreement made in WRITTEN FORM.

## **Article 17: Term and Termination of the Consortium Agreement**

**17.1.-** The CONSORTIUM AGREEMENT and the participation of any BENEFICIARY in the PROJECT is effective retroactively from the EFFECTIVE DATE.

**17.2.-** A BENEFICIARY shall be entitled to terminate its participation in the CONSORTIUM AGREEMENT and in the PROJECT with no undue delay by notice in WRITTEN FORM delivered to the other BENEFICIARIES,

(a) if the EACI provides a GRANT AGREEMENT for the PROJECT that materially deviates from the PROPOSAL, or

(b) if the GRANT AGREEMENT terminates, or

(c) if the participation of that BENEFICIARY in the GRANT AGREEMENT is terminated.

The BENEFICIARIES whose participation is terminated under (a) above shall be relieved from implementing the PROJECT and from any other obligation under the CONSORTIUM AGREEMENT with the exception of the Articles of the CONSORTIUM AGREEMENT on Confidentiality, Liability, Settlement of Disputes, and Applicable Law which shall survive the termination.

The BENEFICIARIES whose participation is terminated under (b), or (c) above shall be relieved from further implementing the PROJECT, but the Articles of the CONSORTIUM AGREEMENT on ADMINISTRATIVE OBLIGATIONS, Confidentiality, ACCESS RIGHTS, Liability, and Publicity and Press Releases, Settlement of Disputes, and Applicable Law shall survive the termination, but shall - as far as they refer to FOREGROUND INFORMATION - apply on FOREGROUND INFORMATION only which has been generated before the termination.

**17.3.-** Any approval or request addressed to the EACI regarding the termination of any BENEFICIARY's participation in the GRANT AGREEMENT and in the PROJECT shall require the approval of all BENEFICIARIES, with the exception of the BENEFICIARY whose participation is intended to be terminated, in WRITTEN FORM, which shall not be unreasonably withheld.

**17.4.-** The termination of the participation of a BENEFICIARY shall in no way affect the obligation of that BENEFICIARY to grant ACCESS RIGHTS to the remaining BENEFICIARIES.

## **Article 18. Settlement of Disputes.**

In case of dispute or difference between the BENEFICIARIES arising out or in connection with this CONSORTIUM AGREEMENT, the BENEFICIARIES shall first endeavour to settle it amicably.

All disputes which cannot be settled in this way in a period of 30 days shall be finally settled by arbitration. The Arbitration Board shall convene in Brussels under the Rules of Arbitration of the International Chamber of Commerce and shall comprise one or more arbitrators to be appointed under the terms of these Rules. In any arbitration in which there are three arbitrators, the Chairman shall be of legal education. The language to be used in the arbitral proceedings shall be English.

The award of the Arbitrator will be final and binding upon all BENEFICIARIES concerned.

Notwithstanding the foregoing, in case of one of the BENEFICIARIES in dispute is an entity ruled by Public Law whose statutes and regulation forbid making use of arbitral procedures, the dispute will be settled by a competent court, which shall have jurisdiction in the event of a counterclaim made by the defendant in the legal action.

The BENEFICIARIES agree that in case of a court dispute, they abide and shall be subject to the jurisdiction of the competent court of justice in Brussels.

## **Article 19: Applicable Law**

The CONSORTIUM AGREEMENT shall be construed according to and governed by the laws of BELGIUM.

## **Article 20: Miscellaneous**

### **20.1.- Inconsistencies and severability**

In case the terms of this CONSORTIUM AGREEMENT are in conflict with the terms of the GRANT AGREEMENT, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this CONSORTIUM AGREEMENT, the latter shall prevail.

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

### **20.2.- No representation, partnership or agency**

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

### **20.3.- Notices and communication**

Any notice to be given under this CONSORTIUM AGREEMENT shall be in writing to the addresses and recipients as listed in the most current address list kept by the COORDINATOR.

#### Formal notices:

If it is required in this CONSORTIUM AGREEMENT that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of the BENEFICIARY and shall either be served personally or sent by email with recorded delivery or telefax with recipient acknowledgement,

#### Other communications:

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

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

### **20.4.- Mandatory national law**

Nothing in this CONSORTIUM AGREEMENT shall be deemed to require a BENEFICIARY to breach any mandatory statutory law under which the BENEFICIARY is operating.

### **20.5.- Language**

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