

## **CONSORTIUM AGREEMENT**

THIS CONSORTIUM AGREEMENT is based upon:

REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for the participation and dissemination in “Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)” (hereinafter referred to as “the Rules”), and the European Commission Multi-beneficiary General Model Grant Agreement and its Annexes, and is made on May 1, 2015, hereinafter referred to as the Effective Date.

### **BETWEEN:**

1. **NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK TNO**, the Coordinator, (Netherlands Organisation for applied scientific research TNO) a legal entity by public law (i.e. the TNO-wet) duly established by and existing under the laws of The Netherlands and having its registered seat at Schoemakerstraat 97, 2628 VK Delft, The Netherlands, hereinafter referred to as “TNO”, legally represented by Mr. L.J.J. Kusters, MSc, Managing Director, TNO, Theme Urbanisation, acting in full capacity on behalf of the Board of Management of TNO,

and

2. **FRAUNHOFER-GESELLSCHAFT ZUR FOERDERUNG DER ANGEWANDTEN FORSCHUNG E.V.**, a research organisation, duly organised and existing under the laws of Germany and having its registered seat at Hansastrasse 27 c, 80686 Munich, Germany, hereinafter referred to as “FRAUNHOFER”, legally represented by Rüdiger Dorner (Public- and EU-Projects) and Fabian Perpeet (Legal Affairs and Contracts), as legal entity for its Fraunhofer Institute for Intelligent Analysis and Information Systems IAIS, Schloss Birlinghoven, 53754 Sankt Augustin, Germany;

and

3. **FUNDACION TECNALIA RESEARCH & INNOVATION**, a private research organisation, duly organised and existing under the laws of Spain and having its registered seat at Parque tecnológico de Gipuzkoa, Paseo Mikeletegi 2, 20.009 Donostia – San Sebastián (Gipuzkoa) Spain, hereinafter referred to as “TECNALIA”, legally represented by Luis Pedrosa, Head of Energy and Environment Division;

and

4. **ICLEI EUROPEAN SECRETARIAT GMBH**, (ICLEI EUROPASEKRETARIAT GMBH), a non-for profit SME, duly organised and existing under the laws of Germany and having its registered seat at Leopoldring 3, D-79098 Freiburg, Germany, hereinafter referred to as “ICLEI”, legally represented by Wolfgang Teubner, Managing Director;

and

5. **ECOLE DES INGENIEURS DE LA VILLE DE PARIS**, a public academic and research organisation, duly organised and existing under the laws of France and having its registered seat at 80 Rue Rebeval, 75019 Paris, France, hereinafter referred to as “EIVP”, legally represented by Régis Vallee, Director of EIVP;

and

6. **ITTI SP ZOO**, an SME, duly organised and existing under the laws of Poland and having its registered seat at Rubież Street, 46 in Poznań, Poland hereinafter referred to as "ITTI", legally represented by Witold Hołubowicz, President of the Board;

and

7. **STICHTING NEDERLANDS NORMALISATIE-INSTITUUT**, a private foundation, duly organised and existing under the laws of The Netherlands and having its registered seat at Vlinderweg 6, 2623 AX, Delft, The Netherlands, hereinafter referred to as "NEN", legally represented by Piet-Hein Daverveldt, Managing Director;

and

8. **ARCADIS NEDERLAND BV**, a private limited liability company, duly organised and existing under the laws of The Netherlands and having its registered seat at Beaulieustraat 22, 6814DV, Arnhem, The Netherlands, hereinafter referred to as "ARCADIS", legally represented by P.A. Hendriks, Director Water;

and

9. **BC3 BASQUE CENTRE FOR CLIMATE CHANGE – KLIMA ALDAKETA IKERGAI**, a private non-profit research association, duly organised and existing under the laws of Spain and having its registered seat at Alda. Urquijo, 4-4th floor, 48008 Bilbao, Spain, hereinafter referred to as "BC3", legally represented by Prof. Anil Markandya, Scientific Director, and Ms. Nerea Ortiz, Operations Manager;

and

10. **THE UNIVERSITY OF MANCHESTER**, a public research organisation duly organised and existing under the laws of the United Kingdom and having its registered seat at Oxford road, M13 9PL, Manchester, United Kingdom, hereinafter referred to as "UNI MAN", legally represented by Dr Andrew Walsh, Director of Business Engagement and Research Support Services;

and

11. **UNIVERZITA KOMENSKÉHO V BRATISLAVE**, a public research organisation, duly organised and existing under the laws of Slovakia and having its registered seat at Šafárikovo námestie 6, 818 06 Bratislava, Slovakia, hereinafter referred to as "UNIBA", legally represented by prof. RNDr. Karol Mičieta, PhD., rector;

and

12. **SIEMENS AKTIENGESELLSCHAFT OESTERREICH**, a large company, duly organised and existing under the laws of Austria and having its registered seat at Siemensstrasse 90, 1210 Vienna, Austria, hereinafter referred to as "SIEMENS AT", legally represented by Mr Harald Loos, Head of Corporate Technology of Siemens CEE, and Mrs Gerhild Kircher, Head of Business Administration of Corporate Technology of Siemens CEE;

and

13. **SIEMENS AKTIENGESELLSCHAFT**, a large enterprise, duly organised and existing under the laws of Germany and having its registered seat at Berlin and CT NTF CTY, 80200 Munich, Germany, hereinafter referred to as "SIEMENS DE", legally represented by Mr. Hans-Reiner Leikard;

and

14. **UNIRESEARCH BV**, an SME, duly organised and existing under the laws of the Netherlands and having its registered seat at Elektronikaweg 16c, 2628 XG Delft, The Netherlands, hereinafter referred to as "UNR", legally represented by Mr. Eric Feenstra, Director;

and

15. **HLAVNE MESTO SLOVENSKEJ REPUBLIKY BRATISLAVA**, a public organisation, duly organised and existing under the laws of Slovakia and having its registered seat at Primacialne namestie 1, 814 99 Bratislava, Slovakia, hereinafter referred to as "CITY BRAT", legally represented by Mr. Ivo Nesrovnal, Mayor;

and

16. **AYUNTAMIENTO DE BILBAO**, Bilbao City Council, a legal administration, duly organised and existing under the laws of Spain and having its registered seat at Plaza Ernesto Ercoreca nº 12, Spain, hereinafter referred to as "CITY BIL", legally represented by Mr. Enrique Rincon Mayor as Assistant Director of Environment, acting in full capacity on behalf of the Bilbao City Council;

and

17. **OLDHAM METROPOLITAN BOROUGH COUNCIL**, a Public Authority, duly organised and existing under the laws of the United Kingdom and having its registered seat at Oldham Metropolitan Borough Council, Civic Centre, West Street, Oldham, OL1 1UJ, United Kingdom, hereinafter referred to as "OMBC", legally represented by Mr Dave Catherall, Principal Officer, External Funding, Commercial Service Directorate;

hereinafter also referred to as "Party", or jointly referred to as "Parties",

relating to the Action entitled

### **Climate Resilient Cities and Infrastructures**

in short

### **RESIN**

hereinafter referred to as "Project"

### **WHEREAS:**

The Parties, having considerable experience in the field concerned, have submitted a proposal for the Project to the Funding Authority as part of the Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020).

The Parties wish to specify or supplement binding commitments among themselves in addition to the provisions of the specific Grant Agreement to be signed by the Parties and the EC (hereinafter "Grant Agreement").

The Parties are aware that this Consortium Agreement is based upon the DESCA model consortium agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

## **Section 1: Definitions**

### 1.1 Definitions

Words beginning with a capital letter shall have the meaning defined either herein or in the Rules or in the Grant Agreement including its Annexes.

### 1.2 Additional Definitions

#### "Affiliated Entity"

An Affiliated Entity of a Party means any legal entity directly or indirectly Controlling, Controlled by, or under common Control with that Party, for so long as such Control lasts; and:

- ownership of more than 50% of the nominal value of the issued share capital of the Legal Entity, or
- ownership 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 legal entity (or persons performing similar functions) who have a majority vote.

For the above purposes, "Control" of any Legal Entity shall exist through the direct or indirect.

Common Control through government does not, in itself, create Affiliated Entity status.

#### "Consortium"

Consortium means all Parties in this Consortium Agreement as identified above, together with any new Parties which may join the Consortium in accordance with the provisions of Article 3.1.

#### "Consortium Plan"

Consortium Plan means the description of the Action and the related agreed budget as first defined in the Grant Agreement and which may be updated by the General Assembly.

#### "Defaulting Party"

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

#### "Exploits"/"Exploitation"

Exploits or Exploitation means using Results in further research activities other than those covered by the Project, or in developing, creating and marketing a product or process, or in creating and providing a service, or in standardisation activities.

#### "Fair and Reasonable conditions"

Fair and Reasonable conditions means appropriate conditions, including possible financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access, for example the actual or potential value of the results or background to which access is requested and/or the scope, duration or other characteristics of the Exploitation envisaged.

"Funding Authority"

Funding Authority means the body awarding the grant for the Project.

"Needed"

means:

For the implementation of the Project:

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

For Exploitation of own Results:

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

"Software"

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

## **Section 2: Purpose**

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

## **Section 3: Entry into force, duration and termination**

### **3.1 Entry into force**

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

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

A legal entity becomes a new Party to this Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator. Such accession shall have effect from the date identified in the accession document.

### **3.2 Duration and termination**

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

However, this Consortium Agreement or the participation of one or more Parties to it may be terminated in accordance with the terms of this Consortium Agreement.

If the Grant Agreement:

- is not signed by the Funding Authority or a Party, or
- is terminated, or
- if a Party's participation in the Grant Agreement is terminated,

this Consortium Agreement shall automatically terminate in respect of the affected Party/Partes, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.

### 3.3 Survival of rights and obligations

The provisions relating to Access Rights and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement.

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

## **Section 4: Responsibilities of Parties**

### 4.1 General principles

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

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

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

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

### 4.2 Breach

In the event that a responsible Consortium Body identifies a breach by a Party of its obligations under this Consortium Agreement and/or the Grant Agreement (e.g. improper implementation of the Project), the Coordinator or, if the Coordinator is in breach of its obligations, the Party appointed by the General Assembly, will give formal written notice to such Party requiring that such breach will be remedied within a period of thirty (30) calendar days.

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

#### 4.3 Involvement of third parties

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

For the avoidance of doubt; such third parties shall have no Access Rights to another Party's Background or Results unless prior explicitly agreed otherwise by the owning Party.

### **Section 5: Liability towards each other**

#### 5.1 No warranties

In respect of any information or materials (incl. Results and Background) supplied by one Party to another Party under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- a Party granting Access Rights shall not be liable vis-à-vis any of the other Parties in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights.

#### 5.2 Limitations of contractual liability

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

A Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the total costs of the Project as identified in Annex 2 of the Grant Agreement provided such damage was not caused by a wilful act or gross negligence or by a breach of confidentiality. In the latter two cases (gross negligence and a breach of confidentiality) a Party's aggregate liability towards the other Parties collectively shall be limited to twice the Party's share of the total costs of the Project as identified in Annex 2 of the Grant Agreement.

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

#### 5.3 Damage caused to third parties

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

#### 5.4 Force Majeure

No Party shall be considered to be in breach of this Consortium Agreement if it is prevented from fulfilling its obligations under this Consortium Agreement by Force Majeure.

Each Party will notify the competent Consortium Bodies of any Force Majeure without undue delay. If the consequences of Force Majeure for the Project are not overcome within six (6) weeks after such notification, the transfer of tasks - if any - shall be decided by the competent Consortium Bodies.

### Section 6: Governance structure

#### 6.1 General structure

The organisational structure of the Consortium shall comprise the following entities (hereinafter "Consortium Bodies"):

- General Assembly, as the ultimate decision-making body of the Consortium;
- Executive Board, as the supervisory body for the implementation of the Project which shall report to and be accountable to the General Assembly;
- Coordinator, as the legal entity acting as the intermediary between the Parties and the Funding Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

#### 6.2 General operational procedures for all Consortium Bodies

##### 6.2.1 Representation in meetings

Any Party which is a member of a Consortium Body (hereinafter referred to as "Member"):

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

##### 6.2.2 Preparation and organisation of meetings

###### 6.2.2.1 Convening meetings:

The chairperson of a Consortium Body shall convene meetings of that Consortium Body.

	Ordinary meeting	Extraordinary meeting
General Assembly	At least once a year	At any time upon written request of the Executive Board or one-third (1/3 <sup>rd</sup> ) of the Members of the General Assembly
Executive Board	At least quarterly	At any time upon written request of any Member of the Executive Board

###### 6.2.2.2 Notice of a meeting:

The chairperson of a Consortium Body shall give notice in writing of a meeting to each Member of that Consortium Body as soon as possible and no later than the minimum number of days preceding the meeting as indicated below.



	Ordinary meeting	Extraordinary meeting
General Assembly	Forty-five (45) calendar days	Fifteen (15) calendar days
Executive Board	Fourteen (14) calendar days	Seven (7) calendar days

6.2.2.3 Sending the agenda:

The chairperson of a Consortium Body shall prepare and send each Member of that Consortium Body a written (original) agenda no later than the minimum number of days preceding the meeting as indicated below.

General Assembly	Twenty-one (21) calendar days, Ten (10) calendar days for an extraordinary meeting
Executive Board	Seven (7) calendar days

6.2.2.4 Adding agenda items:

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

Any Member of a Consortium Body may add an item to the original agenda by written notification to all of the other Members of that Consortium Body up to the minimum number of days preceding the meeting as indicated below.

General Assembly	Fourteen (14) calendar days, Seven (7) calendar days for an extraordinary meeting
Executive Board	Two (2) calendar days

6.2.2.5 During a meeting the Members of a Consortium Body present or represented can unanimously agree to add a new item to the original agenda.

6.2.2.6 Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document which is then agreed by the defined majority (see Section 6.2.3.) of all Members of the Consortium Body. Such document shall include the deadline for responses.

6.2.2.7 Meetings of each Consortium Body may also be held by teleconference or other telecommunication means.

6.2.2.8 Decisions will only be binding once the relevant part of the minutes has been accepted according to Section 6.2.5.

6.2.3 Voting rules and quorum

6.2.3.1 Each Consortium Body shall not deliberate and decide validly unless three-quarters (3/4<sup>th</sup>) of its Members are present or represented (quorum).

If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within fifteen (15) calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide even if less than the quorum of Members are present or represented.

6.2.3.2 Each Member of a Consortium Body present or represented in the meeting shall have one vote. However, a Party can only have one (1) vote in any Consortium Body. Party 12 and Party 13 together are considered to be one (1) Party having voting rights.

6.2.3.3 Defaulting Parties may not vote.

6.2.3.4 Decisions shall be taken by a majority of three-quarters (3/4<sup>th</sup>) of the votes cast.

#### 6.2.4 Veto rights

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

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

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

6.2.4.4 In case of exercise of veto, the Members of the related Consortium Body shall make every effort to resolve the matter which occasioned the veto to the general satisfaction of all its Members.

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

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

#### 6.2.5 Minutes of meetings

6.2.5.1 The chairperson of a Consortium Body shall produce written minutes of each meeting which shall be the formal record of all decisions taken. He/She shall send the draft minutes to all Members within ten (10) calendar days of the meeting.

6.2.5.2 The minutes shall be considered as accepted if, within fifteen (15) calendar days from sending, no Member has sent an objection in writing to the chairperson with respect to the accuracy of the draft of the minutes.

6.2.5.3 The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them.

If requested the Coordinator shall provide authenticated duplicates to the Parties.

### 6.3 Specific operational procedures for the Consortium Bodies

#### 6.3.1 General Assembly

In addition to the rules described in Section 6.2, the following rules apply:

##### 6.3.1.1 Members

6.3.1.1.1 The General Assembly shall consist of one (1) representative of each Party (hereinafter General Assembly Member).

6.3.1.1.2 Each General Assembly Member shall be deemed to be duly authorised to deliberate, negotiate and decide on all matters listed in Section 6.3.1.2. of this Consortium Agreement.

6.3.1.1.3 The Coordinator shall chair all meetings of the General Assembly, unless decided otherwise in a meeting of the General Assembly.

6.3.1.1.4 The Parties agree to abide by all decisions of the General Assembly.

This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.8.

##### 6.3.1.2 Decisions

The General Assembly shall be free to act on its own initiative to formulate proposals and take decisions in accordance with the procedures set out herein. In addition, all proposals made by the Executive Board shall also be considered and decided upon by the General Assembly.

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights:

- proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority;
- changes to the Consortium Plan;
- modifications to Attachment 1 (Background Included);
- additions to Attachment 3 (List of third parties for simplified transfer according to Section 8.2.2).

Evolution of the Consortium:

- entry of a new Party to the Consortium and approval of the settlement on the conditions of the accession of such a new Party;
  - withdrawal of a Party from the Consortium and the Project and the approval of the settlement on the conditions of the withdrawal;
  - identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement;
  - declaration of a Party to be a Defaulting Party;
  - remedies to be performed by a Defaulting Party;
  - termination of a Defaulting Party's participation in the Consortium and measures relating thereto;
- and after a decision of the General Assembly related thereto:
- proposal to the Funding Authority for a change of the Coordinator;
  - proposal to the Funding Authority for suspension of all or part of the Project;
  - proposal to the Funding Authority for termination of the Project and this Consortium Agreement.

#### Appointments

On the basis of the Grant Agreement, the appointment if necessary of:

- Work Package Leaders and Executive Board Members;
- any other representative of a Party in the Executive Board.

#### 6.3.2 Executive Board

In addition to the rules in Section 6.2, the following rules shall apply:

##### 6.3.2.1 Members

The Executive Board shall consist of the Coordinator and the Work Package Leaders and, if deemed necessary for the efficient and effective implementation of the Project, any other representative of a Party, appointed by the General Assembly (hereinafter Executive Board Members).

The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise by a majority of two-thirds (2/3<sup>rd</sup>).

##### 6.3.2.2 Minutes of meetings

Minutes of Executive Board meetings, once accepted, shall be sent by the Coordinator to the General Assembly Members for information.

##### 6.3.2.3 Tasks

6.3.2.3.1 The Executive Board shall prepare the meetings, propose decisions and prepare the agenda of the General Assembly according to Section 6.3.1.2.

6.3.2.3.2 The Executive Board shall seek a consensus among the Parties.

6.3.2.3.3 The Executive Board shall be responsible for the proper execution and implementation of the decisions of the General Assembly.

6.3.2.3.4 The Executive Board shall monitor the effective and efficient implementation of the Project.

6.3.2.3.5 In addition, the Executive Board shall collect information at least every six (6) months on the progress of the Project, based on the regular Project reports, examine that information to assess the compliance of the Project with the Consortium Plan and, if necessary, propose modifications of the Consortium Plan to the General Assembly.

6.3.2.3.6 The Executive Board shall:

- support the Coordinator in preparing meetings with the Funding Authority and in preparing related data and deliverables;
- prepare the content and timing of press releases and joint Publications, see Article 8.3, by the Consortium or proposed by the Funding Authority in respect of the procedures of the Grant Agreement Article 29.

6.3.2.3.7 In the case of abolished tasks as a result of a decision of the General Assembly, the Executive Board shall advise the General Assembly on ways to rearrange tasks and budgets of the Parties concerned. Such rearrangement shall take into consideration the legitimate commitments taken prior to the decisions, which cannot be cancelled.

## 6.4 Coordinator

6.4.1 The Coordinator shall be the intermediary between the Parties and the Funding Authority and shall perform all tasks assigned to it as described in the Grant Agreement and in this Consortium Agreement.

6.4.2 In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations;
- keeping the address list of Members and other contact persons updated and available;
- collecting, reviewing to verify consistency and submitting reports, other deliverables (including financial statements and related certifications) and specific requested documents to the Funding Authority;
- transmitting documents and information connected with the Project to any of the Parties concerned;
- administering the financial contribution of the Funding Authority and fulfilling the financial tasks described in Section 7.3;
- providing, upon request, the Parties with official copies or originals of documents which are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

If one or more of the Parties is late in submission of any project deliverable, the Coordinator may nevertheless submit the other Parties' Project deliverables and all other documents required by the Grant Agreement to the Funding Authority in time.

6.4.3 If the Coordinator fails in its coordination tasks, the General Assembly may propose to the Funding Authority to change the Coordinator.

6.4.4 The Coordinator shall not be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium, unless explicitly stated otherwise in the Grant Agreement or this Consortium Agreement

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

## **Section 7: Financial provisions**

### 7.1 General Principles

#### 7.1.1 Distribution of Financial Contribution

The financial contribution of the Funding Authority to the Project shall be distributed by the Coordinator according to:

- the Consortium Plan;
- the approval of reports by the Funding Authority, and
- the provisions of payment in Section 7.3.

A Party shall be funded only for its tasks carried out in accordance with the Consortium Plan.

#### 7.1.2 Justifying Costs

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

#### 7.1.3 Funding Principles

A Party which spends less than its allocated share of the budget as set out in the Consortium Plan or – in case of reimbursement via unit costs - implements less units than foreseen in the Consortium Plan will be funded in accordance with its actual duly justified eligible costs only.

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

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

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

#### 7.2 Budgeting

The budget set out in the Consortium Plan shall be valued in accordance with the usual accounting and management principles and practices of the respective Parties.

#### 7.3 Payments

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

In particular, the Coordinator shall:

- notify the Party concerned promptly of the date and composition of the amount transferred to its bank account, giving the relevant references;
- perform diligently its tasks in the proper administration of any funds and in maintaining financial accounts.

With reference to Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Guarantee Fund and for the final payment have been deducted.

#### 7.3.2

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

- Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement.
- Costs accepted by the Funding Authority will be paid to the Party concerned.
- The Coordinator is entitled to withhold any payments due to a Party declared a Defaulting Party by the General Assembly in accordance with the rules as set out in this Consortium Agreement or the Grant Agreement.
- The Coordinator is entitled to recover any payments already paid to a Defaulting Party. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority in writing.

### **Section 8: Results**

#### 8.0 Ownership of Results

Results are owned by the Party that generates them or by the Party on behalf of which Results were generated.

## 8.1 Joint ownership

In accordance with the first paragraph of Article 26.2 of the Grant Agreement, two or more Parties shall own Results jointly if:

- a) they have jointly generated them; and
- b) it is not possible to:
  - i. establish the respective contribution of each Party, or
  - ii. separate them for the purpose of applying for, obtaining or maintaining their protection.

Instead of the user and licensing rights as set out in Article 26.2 of the Grant Agreement the following rules shall apply:

Unless otherwise agreed in a separate written joint ownership agreement:

- (a) each of the joint owners and its Affiliated Entities shall be entitled to use the jointly owned Results on a royalty-free basis, and without requiring the prior consent of any of the joint owner(s), and
- (b) each of the joint owners and its Affiliated Entities shall be entitled to grant non-exclusive licenses to third parties (without any right to sub-license), subject to the following conditions:
  - i. at least forty-five (45) days prior notice (including details to the scope of license to be granted) must be given to the other joint owner(s); and Fair and Reasonable compensation must be provided to the other joint owner(s) as a lump sum payment; the lump sum shall be mutually agreed before any license is granted.
- (c) Notwithstanding the rules set out in (a) and (b) a joint owner may grant non-exclusive licenses to third parties without prior notice and without any financial compensation in the following cases:
  - i. Licenses granted in cross-patent licensing agreements; or
  - ii. Licenses granted in connection with the transfer of all or a substantial part of the business activities whether by sale or merger, provided that the jointly owned Results were used – or preparations had been made for their later use – in these business activities prior to the date of transfer of the business.

The joint owners shall agree on all protection measures and the division of related cost in advance.

In the event that one of the joint owners of an Intellectual Property Right or an application for an Intellectual Property Right on a joint Result wishes to discontinue the payment of its share of the maintenance fees or other costs in any particular country or territory (the "Relinquishing Owner"), the Relinquishing Owner shall promptly notify the other joint owner(s) of its decision, and the other owner(s) may take over the payment of such share. The Relinquishing Owner shall forthwith relinquish to the other owner(s) who continues such payments, its right, title to and interest in such jointly owned Intellectual Property Right for the countries or territories concerned, subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up license, without the right to grant sub-licences, for implementation of the Project and for Exploitation, for the lifetime of the Intellectual Property Right in or for the countries or territories concerned in favour of, and for the use by, the Relinquishing Owner as well as such Relinquishing Owner's Affiliated Entities.

## 8.2 Transfer of Results

8.2.1 Each Party may transfer ownership of its own Results including without limitation its share in Results that it owns jointly with another Party or Parties and all rights and obligations attached to such Results) to any of its Affiliated Entities without notification to any other Party.

8.2.2 A Party may identify specific third parties it intends to transfer the ownership of its Results to in Attachment 3 to this Consortium Agreement. The other Parties hereby waive their right to prior notice and their right to object to a transfer to listed third parties according to the Grant Agreement Article 30.1.

8.2.3 The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer to identified third parties and shall ensure that the rights of the other Parties will not be affected by such transfer.

Any addition to Attachment 3 after signature of this Consortium Agreement requires a decision of the General Assembly.

8.2.4 The Parties recognize that in the framework of a merger or an acquisition of an important part of its assets, it may be impossible under applicable EU and national laws on mergers and acquisitions and under respective confidentiality obligations for a Party to give the full forty-five (45) calendar days, or any, prior notice for the transfer as foreseen in the Grant Agreement.

8.2.5 Each transferring Party shall ensure that such transfer does not prejudice such rights of the other Parties or their Affiliated Entities, and the transferring Party shall pass on its obligations regarding the transferred Results to the transferee, including the obligation to pass them on to any subsequent transferee. Upon request for granting Access Rights for any Results transferred pursuant to this Section 8.2 the transferring Party shall inform the requesting Party of the transfer and of the person of the transferee. The obligations under this Section 8.2 apply for as long as other Parties have - or may request - Access Rights to Results, as provided in Section 9 of this Consortium Agreement.

8.2.6 The obligations of this Section 8.2 apply only for as long as other Parties still have - or still may request - Access Rights to the Results.

### 8.3 Dissemination

#### 8.3.1 Dissemination of own Results

8.3.1.1 During the Project and for a period of one (1) year after the end of the Project, the dissemination of own Results by one or several Parties, including but not restricted to publications and presentations, hereinafter together referred to as "Publication", shall be governed by the procedure of Article 29.1 of the Grant Agreement subject to the following provisions:

- prior notice of any planned Publication shall be given to the other Parties at least forty-five (45) calendar days before the intended date of publication;
- any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within thirty (30) calendar days after receipt of the notice

If no objection is made within the time limit stated above, the Publication is deemed to be permitted.

8.3.1.2 An objection is justified if:

- (a) the protection of the objecting Party's Results or Background or Confidential Information would be adversely affected;
- (b) the objecting Party's legitimate interests in relation to the Results and/or Background would be significantly harmed.

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



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

The objecting Party can request a delay of the intended day of publication of not more than ninety (90) calendar days from the time it raises such an objection. After ninety (90) calendar days the Publication is permitted, provided that the Background and Confidential Information of the objecting Party have been removed from the Publication as indicated by the objecting Party.

#### 8.3.2 Dissemination of another Party's unpublished Results or Background

A Party shall not include in any dissemination activity another Party's Results and/or Background without obtaining the owning Party's prior written approval, unless they are already publicly available.

The mere absence of an objection in accordance with Section 8.3.1 of this Consortium Agreement is not considered as an approval to such dissemination activity.

#### 8.3.3 Cooperation obligations

The Parties undertake to cooperate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Results or Background subject to the confidentiality and publication provisions agreed in this Consortium Agreement.

#### 8.3.4 Use of names, logos or trademarks

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

#### 8.3.5 Standards/workshop agreement/technical report

- Copyright on a possible CEN workshop agreement (CWA) or ISO workshop agreement (IWA) as an outcome of the Project shall be owned exclusively by CEN (European Committee for Standardization) or ISO (International Organization for Standardization) and its member institutions, unless explicitly otherwise agreed and stated.
- Unless otherwise agreed it is not allowed without the prior written consent of NEN to multiply and/or disclose and/or fully or partially take over the standards (i.c. CWA/IWA) resulting from the project and its content in - but not limited to - a book, publication, catalog, website, advertising, computer, microfilm sheet or any other form of information carrier.

## **Section 9: Access Rights**

### 9.1 Background included

9.1.1 In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access Rights to specific Background are subject to legal restrictions or limits such as state-aid rules.

9.1.2 Any Party can propose to the General Assembly to modify its own Background in Attachment 1.

Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background. ("Unlisted Background"). Each Party agrees not to use, in the implementation of the Action, any Unlisted Background, if such use would result in such Unlisted Background being Needed by any other Party for implementation of the Action or Exploitation of Results. However, if a Party uses Unlisted

Background in a manner that such Unlisted Background becomes Needed by any other Party for the implementation of the Action or Exploitation of any Results, then such Listed Background shall be deemed removed from Attachment 1 and shall not be excluded from obligations to grant Access Rights in accordance with the Grant Agreement and this Consortium Agreement.

## 9.2 General Principles

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

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

9.2.3 Access Rights shall be free of any administrative transfer costs.

9.2.4 Access Rights are granted on a non-exclusive basis.

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

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

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

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

### 9.2.8 Have Made Rights

Any and all Access Rights for Exploitation granted pursuant to this Consortium Agreement include the right to have a third party make, only for the account of and for the use, sale and other disposal by the Party, products and/or services.

## 9.3 Access Rights for implementation

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

## 9.4 Access Rights for Exploitation

9.4.1 Access Rights to Results if Needed for Exploitation of a Party's own Results shall be granted on Fair and Reasonable conditions.

Access Rights to Results for non-commercial research (excluding research carried out for third parties) and educational activities when granted shall be granted on a royalty-free basis.

9.4.2 Access Rights to Background if Needed for Exploitation of a Party's own Results, including for research on behalf of a third party, shall be granted on Fair and Reasonable conditions.

9.4.3 A request for Access Rights may be made up to twelve (12) months after the end of the Project or, in the case of Section 9.7.2.1.2, after the termination of the requesting Party's participation in the Project.

For the avoidance of doubt : Fair and Reasonable conditions for Access Rights for Exploitation as set out in this Section 9.4 already include compensation for the sub-license right granted pursuant to Section 9.5.1.

## 9.5 Access Rights for Affiliated Entities

### 9.5.1 Sub-Licensing for Affiliated Entities

If a Party grants any Access Rights under this Consortium Agreement (for the purpose of this Section 9.5.1 called "Licensor") to another Party (for the purpose of this Section 9.5.1 called "Licensee"), the Licensor shall grant, or shall cause its Affiliated Entities owning any Background and/or Results to grant, to the Licensee a royalty-free and fully paid up sub-license right, on the respective Access Rights, solely and exclusively for the benefit of the Licensee's Affiliated Entities.

In sub-licensing any Access Rights to its Affiliated Entities, each Party shall ensure that its Affiliated Entities are bound by the relevant and applicable rights and obligations provided in this Consortium Agreement, including without limitation appropriate undertaking as to Confidentiality but excluding obligations to implement the Action and to provide Action deliverables.

Access Rights granted to any Affiliated Entity are subject to the conditions attached to the Party granting such sub-licence (if any) and subject to continuation of the Access Rights of the Party to which it is affiliated, and shall automatically terminate upon termination of the Access Rights granted to such Party.

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

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

### 9.5.2 Cessation of Control

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse, provided however that the provisions of paragraphs (A) and (B) below will apply with respect to:

(i) any Results, or Background to which such Legal Entity has been granted Access Rights pursuant to the Grant Agreement and this Consortium Agreement; and  
(ii) any Party's Confidential Information that has been used by such Legal Entity in accordance with the provisions of the Grant Agreement and this Consortium Agreement,  
and that, at the time of cessation of such Legal Entity's Affiliated Entities' status, has been:  
incorporated into the products, processes or services of such entity (hereinafter referred to as "Products, Processes and Services"); or  
amalgamated with such Legal Entity's own information.

(A) With respect to such Confidential Information: such Legal 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 Legal Entity's Affiliated Entity status.

(B) With respect to such Background, and Results other than Confidential Information: at the request of such Legal Entity, the Parties shall grant non-exclusive licenses to such Legal Entity under such Background, and Results for use in such Legal Entity's Products, Processes and Services on the same terms and conditions as the corresponding Access Rights granted in accordance with the Grant Agreement and this Consortium A to the Party of which such Legal Entity was an Affiliated Entity, provided that no commercial interest of such Parties opposes the grant of such licenses.

b) Rights granted by Affiliated Entities

Upon any Legal Entity ceasing to be an Affiliated Entity of a Party, the licenses or user rights previously granted by such Legal Entity to any Party and/or its Affiliated Entities under or in respect of Background, or Results shall continue in full force and effect.

#### 9.6 Additional Access Rights

For the avoidance of doubt any grant of Access Rights not covered by the Grant Agreement or this Consortium Agreement shall be at the absolute discretion of the owning Party and subject to such terms and conditions as may be agreed between the owning and receiving Parties.

#### 9.7 Access Rights for Parties entering or leaving the Consortium

##### 9.7.1 New Parties entering the Consortium

As regards Results developed before the accession of the new Party, the new Party will be granted Access Rights on the conditions applying for Access Rights to Background.

##### 9.7.2 Parties leaving the Consortium

###### 9.7.2.1 Access Rights granted to a leaving Party

###### 9.7.2.1.1 Defaulting Party

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

###### 9.7.2.1.2 Non-Defaulting Party

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

A non-Defaulting Party may request Access Rights within the period of time specified in Section 9.4.3.

###### 9.7.2.2 Access Rights to be granted by any leaving Party

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

#### 9.8 Specific provisions for Access Rights to Software

##### 9.8.1 Definitions relating to Software

###### "Application Programming Interface"

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.

###### "Controlled Licence Terms"

Controlled Licence Terms means terms in any licence that require that the use, copying, modification and/or distribution of Software or another work ("Work") and/or of any 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 or other formats preferred for modification 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 licence relating to the Work or Derivative Work be granted to any third party.

For the avoidance of doubt, any Software licence that merely permits (but does not require any of) the things mentioned in (a) to (c) is not a Controlled Licence (and so is an Uncontrolled Licence).

“Object Code”

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

“Software Documentation”

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

“Source Code”

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.

#### 9.8.2. General principles

For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 9 are applicable also to Software as far as not modified by this Section 9.8.

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

The intended introduction of Intellectual Property (including, but not limited to Software) under Controlled Licence Terms in the Project requires the approval of the General Assembly to implement such introduction into the Consortium Plan.

No Access Rights to any Background or Results related to Software shall include the right to sub-licence such Background or Results upon Controlled Licence Terms (and accordingly none of them shall be sub-licensed upon Controlled Licence Terms) unless agreed expressly in writing by the Party granting the Access Rights.

#### 9.8.3. Access to Software

Access Rights to Software which is Results shall comprise:

- Access to the Object Code; and,
- where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; and,
- if a Party can show that the execution of its tasks under the Project or the Exploitation of its own Results is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.

Background shall only be provided in Object Code unless otherwise agreed between the Parties concerned.

## 9.8.4. Software licence and sublicensing rights

### 9.8.4.1 Object Code

#### 9.8.4.1.1 Results - Rights of a Party

Where a Party has Access Rights to Object Code and/or API which is Results for Exploitation, such Access Rights shall, in addition to the Access Rights for Exploitation foreseen in Section 9.4, as far as Needed for the Exploitation of the Party's own Results, comprise the right:

- to make an unlimited number of copies of Object Code and API; and
  - to distribute, make available, market, sell and offer for sale such Object Code and API alone or as part of or in connection with products or services of the Party having the Access Rights;
- provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to exploit Object Code and API for its own Results.

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

#### 9.8.4.1.2 Results - Rights to grant sublicenses to end-users

In addition, Access Rights to Object Code shall, as far as Needed for the Exploitation of the Party's own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the extent as necessary for the normal use of the relevant product or service to use the Object Code alone or as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:

- to maintain such product/service;
- to create for its own end-use interacting interoperable software in accordance with the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

#### 9.8.4.1.3 Background

For the avoidance of doubt, where a Party has Access Rights to Object Code and/or API which is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

### 9.8.4.2 Source Code

#### 9.8.4.2.1 Results - Rights of a Party

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code which is Results for Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make or have made copies, to modify, to develop, to adapt Source Code for research, to create/market a product/process and to create/provide a service. Such rights on the Source Code, however, exclude the right to grant a sublicense to any third parties (other than Affiliated Entities).

If it is intended to use the services of a third party for the purposes of this Section 9.8.4.2.1, the Parties shall agree on the terms thereof, with due observance of the interests of the Party granting the Access Rights as set out in Section 9.2 of this Consortium Agreement.

#### 9.8.4.2.2 Results – Rights to grant sublicenses to end-users

In addition, Access Rights, as far as Needed for the Exploitation of the Party's own Results, shall comprise the right to sublicense such Source Code, but solely for purpose of adaptation, error correction, maintenance and/or support of the Software.

Further sublicensing of Source Code is explicitly excluded.

#### 9.8.4.2.3 Access Rights to Source Code which is Background

For the avoidance of doubt, where a Party has Access Rights to Source Code which is Background for Exploitation, Access Rights exclude the right to sublicense to any third parties (other than Affiliated Entities). Such sublicensing rights may, however, be negotiated between the Parties.

#### 9.8.5 Specific formalities

Each sublicense granted according to the provisions of Section 9.8.4 shall be made by a traceable agreement specifying and protecting the proprietary rights of the Party or Parties concerned.

### **Section 10: Non-disclosure of information**

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

10.2 The Recipients hereby undertake in addition and without prejudice to any commitment of non-disclosure under the Grant Agreement, for a period of four (4) years after the end of the Project:

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information to any third party (other than to its Affiliated Entities) without the prior written consent by the Disclosing Party, wherein the Recipient must ensure that an arrangement is in place prior to such disclosure that subjects Affiliated Entities to provisions at least as strict as provided in this Section 10;
- to ensure that internal distribution of Confidential Information by a Recipient and its Affiliated Entities shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party or to destroy on written demand of the Disclosing Party all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to delete all information stored in a machine readable form. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations.

10.3 The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees, Affiliated Entities or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Project and/or after the termination of the contractual relationship with the employee or third party.

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

- the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;

- the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- the Confidential Information was already known to the Recipient prior to disclosure without any obligation of confidence to the Disclosing Party; or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision Section 10.7 hereunder.

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

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

10.7 If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, that Party shall, to the extent it is lawfully able to do so, prior to any such disclosure:

- notify the Disclosing Party, and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the Confidential Information.

## **Section 11: Miscellaneous**

### 11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and:

- Attachment 1 (Background included);
- Attachment 2 (Accession document);
- Attachment 3 (List of third parties for simplified transfer according to Section 8.2.2).

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 Parties concerned shall be entitled to request that a valid and practicable provision be negotiated which fulfils the purpose of the original provision.

### 11.2 No representation, partnership or agency

Except as otherwise provided in Section 6.4.4, no Party shall be entitled to act or to make legally binding declarations on behalf of any other Party or of the Consortium. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.



### 11.3 Notices and other communication

Any notice to be given under this Consortium Agreement shall be in writing to the addresses and recipients as listed in the most current address list kept by the Coordinator.

#### *Formal notices:*

If it is required in this Consortium Agreement (Sections 4.2, 9.7.2.1.1, and 11.4) that a formal notice, consent or approval shall be given, such notice shall be signed by an authorised representative of a Party and shall either be served personally or sent by mail with recorded delivery or telefax with receipt acknowledgement.

#### *Other communication:*

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

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

### 11.4 Assignment and amendments

Except as set out in Section 8.2, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal written approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3.1.2 require a separate written agreement to be signed between all Parties.

### 11.5 Mandatory national law

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

### 11.6 Language

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

### 11.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions. Each Party shall comply with the export control law applicable to such Party.

### 11.8 Settlement of disputes

The Parties shall endeavour to settle their disputes amicably.

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Brussels unless otherwise agreed upon. The language to be used in the mediation shall be English unless otherwise agreed upon.

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within sixty (60) calendar days of the commencement of the mediation, it shall be submitted to the Courts of Brussels.

Nothing in this Consortium Agreement shall limit the Parties' right to seek injunctive relief in any applicable competent court.

### **Section 12: Signatures**

**AS WITNESS:**

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives of a Party and the Coordinator in separate signature pages (in two-fold). The Coordinator and the respective Party keep one signed original copy of the signature page and all Parties will receive a pdf-version of this Consortium Agreement and all signature pages.

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**FRAUNHOFER-GESELLSCHAFT ZUR FOERDERUNG DER ANGEWANDTEN FORSCHUNG E.V**

Signature(s):

Name(s):	Rüdiger Dorner	Fabian Perpeet
Title(s):	Public- and EU-Projects	Legal Affairs and Contracts

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**FUNDACION TECNALIA RESEARCH & INNOVATION (TECNALIA)**

Signature:

Name: Luis Pedrosa  
Title: Head of Energy and Environment Division

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**ICLEI EUROPEAN SECRETARIAT GMBH (ICLEI EUROPASEKRETARIAT GMBH)**

Signature:

Name: Wolfgang Teubner  
Title: Managing Director

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**ECOLE DES INGENIEURS DE LA VILLE DE PARIS (EIVP)**

Signature:

Name: Régis Vallee  
Title: Director of EIVP

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**ITTI SP ZOO**

Signature:

Name: Witold Hołubowicz  
Title: President of the Board

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**STICHTING NEDERLANDS NORMALISATIE-INSTITUUT (NEN)**

Signature:

Name: Dr. Piet-Daverveldt  
Title: Managing Director

Date:



**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**ARCADIS NEDERLAND BV**

Signature:

Name: P.A. Hendriks  
Title: Managing Director ARCADIS  
Theme: Delta's, Habours and Water engineering (Delta's, Havens en Waterbouw)

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**BC3 BASQUE CENTRE FOR CLIMATE CHANGE – KLIMA ALDAKETA IKERGAIA**

Signature(s):

Name(s):	Prof. Anil Markandya	Ms. Nerea Ortiz
Title(s):	Scientific Director	Operations Manager

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**THE UNIVERSITY OF MANCHESTER**

Signature:

Name: Dr Andrew Walsh  
Title: Director of Business Engagement and Research Support Services

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**UNIVERZITA KOMENSKEHO V BRATISLAVE (UNIBA)**

Signature:

Name: Prof. RNDr. Karol Mičieta, PhD.  
Title: Rector of Comenius University in Bratislava

Date: 18 May 2015

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**SIEMENS AKTIENGESELLSCHAFT OESTERREICH**

Signature:

Name: Harald Loos  
Title: Head of Corporate Technology of  
Siemens CEE

Date:

Signature:

Name: Gerhild Kircher  
Title: Head of Business Administration of  
Corporate Technology of Siemens  
CEE

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**SIEMENS AKTIENGESELLSCHAFT**

Signature:

Name: Hans-Reiner Leikard  
Title:

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**UNIRESEARCH BV**

Signature:

Name: E. Feenstra  
Title: Managing Director

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**HLAVNE MESTO SLOVENSKEJ REPUBLIKY BRATISLAVA**

Signature:

Name: Ivo Nesrovnal, JUDr., LL.M  
Title: Mayor

Date:



**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**AYUNTAMIENTO DE BILBAO**

Signature:

Name: Mr Enrique Rincón Mayor  
Title: Assistant Director of Environment

Date:

**NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK  
TNO**

Signature:

Name: L.J.J. Kusters, MSc  
Title: Managing Director TNO  
Theme Urbanisation

Date:

**OLDHAM METROPOLITAN BOROUGH COUNCIL (OMBC)**

Signature:

Name: Mr Dave Catheral  
Title: Principal Officer, External Funding  
Commercial Service Directorate

Date:

**Attachment 1: Background included**

According to the Grant Agreement (Article 24) Background is defined as “data, know-how or information (...) that is needed to implement the action or Exploit the results”. Because of this need, Access Rights have to be granted in principle, but parties must identify and agree amongst them on the Background for the Project. This is the purpose of this attachment.

**PARTY 1**

As to TNO, it is agreed between the Parties that, to the best of their knowledge,

The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
Adaptation asset management linking tool		
Effectiveness of adaptation measures as described in the CPC final report		

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 2**

As to FRAUNHOFER-GESELLSCHAFT ZUR FOERDERUNG DER ANGEWANDTEN FORSCHUNG E.V, it is agreed between the Parties that, to the best of their knowledge:

No data, know-how or information of FRAUNHOFER shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 3**

As to FUNDACION TECNALIA RESEARCH & INNOVATION, it is agreed between the Parties that, to the best of their knowledge;

No data, know-how or information of TECNALIA shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 4**

As to ICLEI EUROPEAN SECRETARIAT GMBH, it is agreed between the Parties that, to the best of their knowledge:

No data, know-how or information of ICLEI shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 5**

As to ECOLE DES INGENIEURS DE LA VILLE DE PARIS, it is agreed between the Parties that, to the best of their knowledge:

No data, know-how or information of EIVP shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 6**

As to ITTI SP ZOO, it is agreed between the Parties that, to the best of their knowledge:

No data, know-how or information of ITTI shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 7**

As to STICHTING NEDERLANDS NORMALISATIE–INSTITUUT (NEN), it is agreed between the Parties that, to the best of their knowledge:

The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
Due to general copyright of standards, for the purpose of the RESIN project only, relevant standards and deliverables of the RESIN project (i.c. CWA) are distributed to consortium		

parties only and if necessary, in digital format marked with 'for committee use only'. NEN holds the right to assess 'relevancy' and 'necessity'.		
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This represents the status at the time of signature of this Consortium Agreement.

**PARTY 8**

As to ARCADIS NEDERLAND BV, it is agreed between the Parties that, to the best of their knowledge;

The following Background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
Knowledge and expertise regarding Resilient Cities		
Urban climate adaptation; options, planning, strategies		
Specific market knowledge, demand side vulnerability assessments and urban resiliency		

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 9**

As to BC3 BASQUE CENTRE FOR CLIMATE CHANGE – KLIMA ALDAKETA IKERGAI, it is agreed between the Parties that, to the best of their knowledge:

No data, know-how or information of BC3 shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

**PARTY 10**

As to THE UNIVERSITY OF MANCHESTER, it is agreed between the Parties that, to the best of their knowledge;

No data, know-how or information of UNI MAN shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

#### **PARTY 11**

As to UNIVERZITA KOMENSKEHO V BRATISLAVE, it is agreed between the Parties that, to the best of their knowledge;

No data, know-how or information of UNIBA shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

#### **PARTY 12**

As to SIEMENS AKTIENGESELLSCHAFT OESTERREICH, it is agreed between the Parties that, to the best of their knowledge

No data, know-how or information of SIEMENS AT shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

#### **PARTY 13**

As to SIEMENS AKTIENGESELLSCHAFT, it is agreed between the Parties that, to the best of their knowledge:

No data, know-how or information of SIEMENS DE shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

During implementation of the Project Siemens will provide Access to the City Intelligence Platform to the other Parties. However, this Platform shall not be Needed for Exploitation of any other Party's Results since the Results do not depend on access to this Platform and can therefore be Exploited without it. The Parties will be able to Exploit their Result without Access to this Platform.

This represents the status at the time of signature of this Consortium Agreement.

#### **PARTY 14**

As to UNIRESEARCH BV, it is agreed between the Parties that, to the best of their knowledge

No data, know-how or information of UNR shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

#### **PARTY 15**

As to HLAVNE MESTO SLOVENSKEJ REPUBLIKY BRATISLAVA, it is agreed between the Parties that, to the best of their knowledge;

No data, know-how or information of CITY BRAT shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

#### **PARTY 16**

As to AYUNTAMIENTO DE BILBAO, it is agreed between the Parties that, to the best of their knowledge;

No data, know-how or information of CITY BIL shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

This represents the status at the time of signature of this Consortium Agreement.

#### **PARTY 17**

As to OLDHAM METROPOLITAN BOROUGH COUNCIL, it is agreed between the Parties that, to the best of their knowledge;

No data, know-how or information of OMBC shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

**Attachment 2: Accession document (template)**

ACCESSION

**of a new Party to**

**[Acronym of the Project] Consortium Agreement, version [..., YYYY-MM-DD]**

**[OFFICIAL NAME OF THE NEW PARTY AS IDENTIFIED IN THE Grant Agreement]**

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

**[OFFICIAL NAME OF THE COORDINATOR AS IDENTIFIED IN THE Grant Agreement]**

hereby certifies that the Consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the Consortium starting [date].

This Accession document has been done in 2 originals to be duly signed by the undersigned authorised representatives.

**[Date and Place]**

**[INSERT NAME OF THE NEW PARTY]**

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

**[Date and Place]**

**[INSERT NAME OF THE COORDINATOR]**

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



**Attachment 3: List of third parties for simplified transfer according to Section 8.2.2**

This represents the status at the time of signature of this Consortium Agreement: