

# **Project Co-operation Agreement**

**This Project Co-operation Agreement is entered into**

**BY AND BETWEEN**

**[Enter Names and addresses of Parties]**

**Project Co-operation Agreement With Access Rights Relating to the Projects  
(insert the acronyms of the co-operating projects)  
Draft 30 July 2008**

## **1 DEFINITIONS**

**Access Rights** means licences and user rights.

**Accession Date** means the date of the signature of the Declaration of Accession by Parties joining the Project Co-operation Agreement in accordance with the provisions of this Project Co-operation Agreement.

An **Affiliate** of a Party means:

- (a) any legal entity directly or indirectly Controlling, Controlled by, or under common Control with that Party, for so long as such Control lasts; and
- (b) any other legal entity that is listed in Annex 2 to this CA as being an Affiliate of that Party, where such legal entity is:
  - (i) one in which that Party (or a legal entity qualifying as an Affiliate of that Party under (a) above) has a 50% equity share or is the single largest equity shareholder; or
  - (ii) under common Control with that Party, or a legal entity qualifying as an Affiliate of a Party under (a) above through government.

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

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

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

**Background** means information which is held by Parties prior to their accession to the CA, as well as copyrights or other IPRs pertaining to such information, the application for which has been filed before their accession to the CA.

**Confidential Information** has the meaning given it in Section 4.3.1.1

**Consortium Agreement**, or **CA** means an agreement of participants in a Project concluded

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among themselves for its implementation.

**Co-operating Projects** means two or more Projects listed in Annex 1 all the parties to which are also Parties.

**Co-operation Topics** means the technical subject matter areas listed in Annex 3 upon which the Parties agree to perform Cross Project Tasks and share information.

**Co-ordination Team** means the body established in accordance with Section 3.1 of this Project Co-operation Agreement.

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

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

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

**Cross Project Foreground** means results, including information, whether or not they can be protected, which are generated in the performance of a Cross Project Task. Such results include rights related to copyright, design rights, patent rights, plant variety rights, or similar forms of protection.

**Cross Project Task** means joint research work tasks agreed and to be performed by two or more Parties in Co-operating Projects and identified in Annex 4.

**Cross Project Task Leader** means the Party proposed in accordance with Section 3.1.2.1 and approved by the Parties.

**Declaration of Accession** means a declaration in the form as provided in Schedule 1 to this Project Co-operation Agreement.

**Defaulting Party** means a Party which is in breach of any of its contractual obligations under this Project Cooperation Agreement.

**Disclosing Party** shall have the meaning given it in Section 4.3.1.1

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

**Foreground** means the results, including information, whether or not they can be protected, which are generated by respective Co-operating Projects in the execution of those Projects. Such results include rights related to copyright, design rights, patent rights, plant variety rights, or similar forms of protection.

**Granting Party** shall have the meaning given it in Section 4.2.4

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

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

**Needed and Necessary and needed and necessary** in this Project Cooperation Agreement, in respect of executing or carrying out the Cross Project Tasks, and/or in respect of "Use of Cross Project Foreground", means technically essential and:

- (a) where IPRs are concerned, mean that those IPRs would be infringed absent the Access Rights granted under this Agreement;
- (b) where Confidential Information is concerned, only Confidential Information which has been disclosed during the Project may be considered as technically essential, except as otherwise agreed between the Parties.

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

**Party** or **Parties** means means a party or the parties to this Project Co-operation Agreement. Only parties to the Co-operating Projects listed in Annex 1 can become Parties to this Project Cooperation Agreement. Such parties may be involved in joint research work for a Cross Project Task. Parties may join this Project Co-operation Agreement by signing a Declaration of Accession.

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**Project Co-operation Agreement** means this agreement.

**Project** means a Research and Technological Development activity undertaken by at least two parties by means of an instrument of the seventh framework programme or, for example Medea+, Beyond Medea+, Celtic, ITEA 2 and the like.

**Receiving Party** shall have the meaning given it in Section 4.3.1.1.

**Requesting Party** shall have the meaning given it in Section 4.2.4.

**Sideground** means information other than Foreground developed or otherwise acquired by a Party after entering into the CA, as well as copyright or other IPRs pertaining to such information and that is introduced into the Project by that Party for use in execution of the Project.

**Software** means a software program being 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.

**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.

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

**Subcontractor** means any third party engaged by a Party to carry out any of that Party's Cross Project Tasks.

**Use** means the direct or indirect utilisation in further research activities other than those covered by Cross Project Tasks, or for developing, creating and marketing a product or process, or for creating and providing a service

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

## **2 PURPOSE**

The purpose of this Project Co-operation Agreement is to define rights and obligations of the Parties relating to the exchange of information and the organisation and co-ordination of joint work in respect of the Co-operation Topics and to supplement the provisions of the respective CA's for the Co-operating Projects concerning Access Rights and to set out rights and obligations of the Parties supplementing but not conflicting with those of the CA's' for the Co-operating Projects. The Parties agree that only information falling within the Co-operation Topics may be exchanged and that all exchanged information in written form shall be marked as "Shared Information".

In case of any conflicts between the provisions of this Project Co-operation Agreement and

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those of the CA of any Co-operating Project the provisions of the respective CA will prevail.

### **3 GOVERNING BODIES, ROLES AND RESPONSIBILITIES**

#### **3.1 Co-ordination Team**

##### **3.1.1 Composition of the Co-ordination Team**

The Parties shall establish, within thirty (30) days after the Date of this Project Co-operation Agreement, the Co-ordination Team.

The Co-ordination Team shall be composed of the following members:

- (a) a representative of the Co-ordinator in each Co-operating Project
- (b) representatives of maximum [insert agreed number] additional Parties in each Co-operating Project (selected from those Parties with expected significant responsibilities or significant project shares involved in the cross-project work), designated by the Parties in common agreement upon proposal of the appropriate management body of the respective Co-operating Projects.

No Party shall be represented by more than one member in the Co-ordination Team.

After having informed the others in writing, each Party shall have the right to replace its representative and/or to appoint a proxy although it shall use all reasonable endeavours to maintain the continuity of its representation.

##### **3.1.2 Responsibilities of the Co-ordination Team**

The Co-ordination Team shall not be entitled to act or to make legally binding declarations on behalf of any Party.

The Co-ordination Team shall be responsible for the co-ordination of the information exchange between the Co-operating Projects. The Co-ordination Team shall be responsible for the co-ordination of the Cross Project Tasks. To that end, the Co-ordination Team shall be responsible for :

3.1.2.1 making proposals to the Parties for Cross Project Tasks falling within the Co-operation Topics and setting up working groups for such Cross Project Tasks. When a Cross Project Task is identified by the Co-ordination Team and approved by the Parties , the Co-ordination Team will propose:

- (a) The creation of a working group for a Cross Project Task, with a unique name in the context of the co-operation;

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- (b) The objective of the working group;
- (c) The milestones and deadlines for the Cross Project Task;
- (d) The Parties that will be requested to actively contribute to the Cross Project Task;
- (e) The Cross Project Task Leader who is responsible for the co-ordination of the working group for the Cross Project Task (communication between the Projects, alignment of the planning and the technical support needed for the delivery.);
- (f) The scope of information permitted to be shared between Co-operating Projects in the performance of Cross Project Tasks;
- (g) Rules for the labelling of specific information shared between Co-operating Projects in the performance of Cross Project Tasks, as “Shared Information”;
- (h) The allocation of costs for joint events and activities

The above proposed items will be formalised in minutes of the meeting of the Co-ordination Team. Such minutes will be distributed in writing by registered mail with acknowledgement of receipt to all Parties in each Co-operating Project. Such Parties will be deemed to have approved the minutes unless they object in writing within a period of 15 calendar days after having received such minutes of the meeting of the Co-ordination Team. By the approval/deemed approval of said minutes all concerned Parties in each Co-operating Project commit thereby to undertake the joint work for the Cross Project Task.

- (i) Additionally the Co-ordination Team will propose and be responsible for generating, updating and distributing to the Parties a schedule of proposed meetings of committees of standards organisations relevant for the potential submission of Cross Project Results as standards proposals . At the request of any Party, which is a member of a working group of a Cross Project Task, the Co-ordination team shall (i) generate and distribute to the Parties a schedule of proposed meetings, or (ii) if it has previously generated such a schedule, update and redistribute such schedule, by entering on the schedule, any meeting to which the Party wishes to submit any Cross Project Result as part of a standards proposal, provided that no meeting shall be added to such schedule unless the requesting Party informs the Co-ordination Team, in writing, of the date of the meeting at least three months in advance of the meeting.

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3.1.2.2 co-ordination of the technical work for the Cross Project Tasks;

3.1.2.3 contributing to the resolution of conflicts;

3.1.2.4 agreeing unanimously, with the exception of the representative of the Defaulting Party, upon proposals made by a Party that the Co-ordination Team should propose to the non-defaulting Parties, that they serve notices on a Defaulting Party in accordance with Section 6.3.2.2.

### **3.1.3 Deliberations in the Co-ordination Team**

3.1.3.1 The Co-ordination Team shall meet in principle at the request of one of its members, who shall, when formulating the request to organise a meeting, also propose an agenda.

3.1.3.2 Decisions of the Co-ordination Team shall be taken on a unanimous basis.

Minutes of the meetings of the Co-ordination Team shall be transmitted to the members within fifteen (15) calendar days after the date of the meeting. The minutes shall be considered as accepted by the other members if, within fifteen (15) calendar days from receipt, no member has objected in a traceable form to the other members. The minutes will also be communicated to the Parties.

3.1.3.3 any deliberations required or permitted to be taken by the Co-ordination Team may be taken in accordance with the above (i) in meetings via teleconference and/or via email; (ii) without a meeting with prior notice of at least seven (7) days.

### **3.1.4 Responsibilities towards the Co-ordination Team**

Each Party hereby undertakes to use reasonable endeavours to cooperate with the Co-ordination Team for the creation of the working groups for the Cross Project Tasks, to supply promptly to the members of the Co-ordination Team, as the case may be, all such information or documents as needed to fulfil obligations pursuant to this Project Co-operation Agreement.

For the avoidance of doubt, it is agreed that no party to any Co-operating Project :

- (i) may be obliged to accept tasks different from those allocated to it according to its respective Consortium Agreement;

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- (ii) may be obliged to abandon, or withdraw from tasks allocated to it according to its respective Consortium Agreement;
- (iii) may be obliged to participate in a Cross Project Task;
- (iv) may be obliged to accept modifications to its Cross Project Task obligations;
- (v) may be obliged to accept any of its own information being shared with another Co-operating Project and being labeled as "Shared Information" if said Party does not participate in a Cross Project Task.

## **4 IPR & ACCESS RIGHTS**

### **4.1 Intellectual Property Rights**

#### **4.1.1 Ownership of Cross Project Foreground: general principle**

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

#### **4.1.2 Jointly generated Cross Project Foreground**

4.1.2.1 Unless otherwise agreed in writing between the Contributors (as defined below), Section 4.1.2.2 below shall apply. However, the Contributors shall in all cases be at liberty to agree in writing something different to Section 4.1.2.2, so long as such different agreement does not prejudice the Access Rights or other rights of the other Parties.

#### **OPTION 1 FOR SECTION 4.1.2.2: CERTAIN RIGHTS ARE LOST BY A JOINT OWNER WHO DECIDES NOT TO CONTRIBUTE TO COSTS OF PATENTING ETC.**

4.1.2.2 Subject to any different agreement as referred to in Section 4.1.2.1 above between the Contributors, the following shall apply:

- (a) If the work generating particular Cross Project Foreground is carried out by or on behalf of more than one Party (each such Party being a "**Contributor**" and such Parties together being the "**Contributors**") and if the contributions to or features of such Cross Project Foreground form an indivisible part thereof, such that under applicable law it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining and/or owning a patent or any other IPR protecting or available to protect such Cross Project Foreground, the Contributors agree that, subject as expressly provided to the contrary in this Section 4.1.2.2, all patents and other registered IPRs issued thereon, and any other IPRs

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protecting such Cross Project Foreground, shall be jointly owned by the Contributors.

(b) Except as explicitly provided otherwise in this Section 4.1.2.2, each Contributor shall have the perpetual and irrevocable right, without territorial or other restriction, to Use the joint Cross Project Foreground and resulting patents, patent applications and other IPRs protecting such Foreground, and to grant non-exclusive licences [OPTIONAL WORDING : (with the right to grant sublicences and for the sublicensee to grant further sublicences)] to third parties under the jointly owned Cross Project Foreground and under any IPRs protecting such Cross Project Foreground, without obtaining any consent from, paying compensation to, or otherwise accounting to any other Contributor.

(c) Within a reasonable period following creation of any jointly owned Cross Project Foreground, the Contributors shall enter into good faith discussions in order to agree on an appropriate course of action for filing applications for patent protection or other protection, including the decision as to which Contributor is to be entrusted with the preparation, filing and prosecution of such applications and in which countries or territories such applications are to be filed. Except for any priority applications, the filing of any applications for patents or other IPRs on joint Cross Project Foreground shall require mutual agreement between the Contributors (but excluding any Contributors who choose pursuant to paragraph (d) below not to contribute to the cost of such application). All external costs related to applications for patent protection or other protection resulting from such applications and the fees for maintaining such protection shall be shared equally between the Contributors, subject to paragraph (d) below.

(d) If and when a Contributor decides not to contribute, or not to continue its contribution, as the case may be, to the costs of application for or maintenance of patent or other IPR protection for the jointly owned Cross Project Foreground, for one or more countries or territories, it shall be entitled not to contribute, or to discontinue its contribution, provided however that:

- (i) it shall promptly notify the other Contributor(s) in writing of its decision;
- (ii) it shall forthwith relinquish all its title to and interest in such jointly owned patents, patent applications or other registered IPRs protecting such Cross Project Foreground for the countries or territories concerned to the other owner(s) who contribute or continue their contribution, as the case may be, to such costs in accordance with paragraph (c) above; and
- (iii) it shall lose its rights under paragraph (b) above with respect to such jointly owned patents, patent applications or other registered IPRs for the countries or territories concerned as of the moment of notification, but subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up licence, without the right to grant sub-licences, for the lifetime of such jointly owned patents, patent applications or other registered IPRs for the countries or territories concerned in

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favour of, and for the Use by, the relinquishing Contributor and its Affiliates.

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

For the avoidance of doubt, joint ownership of an invention, design or work shall not affect the obligations arising under this Project Co-operation Agreement or the.

**END OF OPTION 1**

**OPTION 2 FOR SECTION 4.1.2.2: NO RIGHTS ARE LOST BY A JOINT OWNER WHO DECIDES NOT TO CONTRIBUTE TO COSTS OF PATENTING ETC.**

4.1.2.2 Subject to any different agreement between the Contributors as referred to in Section 4.1.2.1 above, the following shall apply:

- (a) If the work generating particular Cross Project Foreground is carried out by or on behalf of more than one Party (each such Party being a "**Contributor**" and such Parties together being the "**Contributors**"), and if the contributions to or features of such Cross Project Foreground form an indivisible part thereof, such that under applicable law it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining and/or owning a patent or any other IPR protecting or available to protect such Cross Project Foreground, the Contributors agree that all patents and other registered IPRs issued thereon, and any other IPRs protecting such Cross Project Foreground, shall be jointly owned by the Contributors. For the avoidance of doubt, this joint ownership shall continue to apply even if a Contributor does not wish to contribute, or ceases to contribute, to costs as referred to in paragraph (d) below.
- (b) Each Contributor shall have the perpetual and irrevocable right, without territorial or other restriction, to Use the joint Cross Project Foreground and resulting patents, patent applications and other IPRs protecting such Cross Project Foreground, and to grant non-exclusive licences [ OPTIONAL WORDING : (with the right to grant sublicences and for the sublicensee to grant further sublicences)] to third parties under the jointly owned Cross Project Foreground and under any IPRs protecting such Cross Project Foreground, without obtaining any consent from, paying compensation to, or otherwise

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accounting to any other Contributor. For the avoidance of doubt, this shall continue to apply even if a Contributor does not wish to contribute, or ceases to contribute, to costs as referred to in paragraph (d) below.

- (c) Within a reasonable period following creation of any jointly owned Cross Project Foreground, the Contributors shall enter into good faith discussions in order to agree on an appropriate course of action for filing applications for patent protection or other protection, including the decision as to which Contributor is to be entrusted with the preparation, filing and prosecution of such applications and in which countries or territories such applications are to be filed. Except for any priority applications, the filing of any applications for patents or other IPRs on joint Cross Project Foreground shall require mutual agreement between the Contributors (but excluding any Contributors who choose pursuant to paragraph (d) below not to contribute to the cost of such application). All external costs related to applications for patent protection or other protection resulting from such applications and the fees for maintaining such protection shall be shared equally between the Contributors, subject to paragraph (d) below.
- (d) If and when a joint owner decides not to contribute, or not to continue its contribution, as the case may be, to the costs of application for or maintenance of patent or other IPR protection for the jointly owned Cross Project Foreground, for one or more countries or territories, it shall be entitled not to contribute, or to discontinue its contribution, provided however that:
  - (i) it shall promptly notify the other Contributor(s) in writing of its decision;
  - (ii) the other Contributor(s) shall have the right to file such application at its (their) own expense and shall have full control over the prosecution and maintenance thereof even though title thereto and to any patents, patent applications or other registered IPRs issuing thereon shall remain jointly owned as aforesaid.
- (e) Each joint owner of patents or patent applications or other IPRs protecting such jointly owned Cross Project Foreground shall have the right to bring an action for infringement of any such jointly owned IPRs only with the consent of the other owner(s). Such consent may only be withheld by another joint owner who demonstrates that the proposed infringement action would be prejudicial to its commercial interests.

**END OF OPTION 2**

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4.1.3 Assigning ownership of Cross Project Foreground

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

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

4.1.3.2 Each Party hereby waives any right to object to any assignment that is made in compliance with this Section 4.1.3.

#### **4.1.4 Employees' Rights**

Each Party shall, to the fullest extent it can lawfully do so, ensure that it can grant Access Rights and fulfil the obligations under this Project Co-operation Agreement notwithstanding any rights of its employees or Subcontractors in the Cross Project Foreground or Sideground they create after the Effective Date.

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## **4.2 Access Rights**

### **4.2.1 General Principles relating to Access Rights**

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

4.2.1.2 Other than in exceptional circumstances, no transfer costs shall be charged for the granting of Access Rights.

4.2.1.3 Acting in good faith, when a Party believes that for carrying out the Project or Use of Foreground from the Project:

- (a) it might require Access Rights to another Party's Background, or
- (b) another Party might need Access Rights to that Party's Background,

it will promptly notify such other Party of the Background Needed, however, failure so to notify another Party shall not be a breach of this PCA unless such failure is due to an action in bad faith.

4.2.1.4 Any Party choosing to rely on any deemed grant of Access Rights pursuant to this PCA does so at his own risk as nothing in this PCA prohibits a Party or any other party seeking by whatever means it chooses to enforce its IPRs or contract or other rights if such Party or other party considers such right is not subject to such deemed grant, for example because the exercise of Access Rights is not "Needed" or "Necessary" as the case may be.

4.2.1.5 The obligation to grant and the right to receive Access Rights other than those deemed granted under this PCA, unless terminated earlier or agreed otherwise by the Parties, expires 2 years after the end of the Project.

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**4.2.2 Access Rights for Affiliates**

4.2.2.1 Each Party hereby grants Access Rights to any Affiliate of any other Party as if such Affiliate was a Party, and subject to the condition that such Affiliate shall undertake to grant licences and user rights, on terms identical to Access Rights, to its Background and Sideground Needed to Use Cross Project Foreground, to all Parties and their Affiliates (subject to such Affiliates also having given such undertaking) and (without prejudice to the Parties' obligations to carry out the relevant Project Co-operation Agreement) to fulfil all confidentiality and other obligations towards the other Parties accepted by the Parties under the CA or this Project Co-operation Agreement as if such Affiliate was a Party. Access Rights granted to any Affiliate are subject to the continuation of the Access Rights of the Party of which it is an Affiliate, and shall automatically terminate upon termination of the Access Rights granted to such Party. Further, if an Affiliate fails in any material respect to comply with the undertaking given by it as above, and fails to rectify the non-compliance after being given a reasonable opportunity to do so, all Access Rights granted to it based upon that undertaking shall terminate.

The procedure for the granting of Access Rights to the Parties as set out in Section 4.2.4 shall also apply to Affiliates.

**4.2.2.2 Cessation of Affiliate status**

(a) **Rights granted to Affiliates**

Upon any legal entity ceasing to be an Affiliate of a Party, any Access Rights granted to such entity shall lapse, provided however that the provisions of paragraphs (A) and (B) below will apply with respect to:

- (i) any Cross Project Foreground, Sideground or Background to which such entity has been granted Access Rights pursuant this Project Co-operation Agreement; and
- (ii) any Party's Confidential Information that has been used by such entity in accordance with the provisions of this Project Cooperation Agreement,

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

- incorporated into the products, processes or services of such entity ("**Products, Processes and Services**") or
  - amalgamated with such entity's own information.
- (A) With respect to such Confidential Information: such entity may continue to use the Confidential Information in its Products, Processes and Services in a manner in which the Confidential

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Information was being used prior to the time of cessation of such entity's Affiliate status.

- (B) With respect to such Background, Sideground and Cross Project Foreground other than Confidential Information: at the request of such entity, the Parties shall grant non-exclusive licences to such entity under such Background, Sideground and Cross Project Foreground for use in such entity's Products, Processes and Services on the same terms and conditions as those which applied to the terminated Access Rights that had been granted to such entity in accordance with this Project Cooperation Agreement, provided that no commercial interest of such Parties opposes the grant of such licences.

(b) **Rights granted by Affiliates**

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

#### **4.2.3 Access Rights Needed for the execution of Cross Project Tasks**

Access Rights to Foreground, Cross Project Foreground, Background and Sideground Needed for the execution of Cross Project Tasks shall be deemed granted on a royalty-free basis to and by all Parties .

#### **4.2.4 Access Rights for Use of Cross Project Foreground**

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

Access Rights to Cross Project Foreground Needed for the Use of Foreground in accordance with the CA applicable to respective Co-operating Projects shall be deemed granted to and by all Parties on a royalty free basis.

Access Rights to Background and Sideground Needed for the Use of Cross Project Foreground Needed for the Use of Foreground in accordance with the Grant Agreement and the CA applicable to respective Co-operating Projects shall be granted on fair and reasonable conditions subject to the following:

- (a) The Party requiring the granting of such Access Rights (the Requesting Party) shall make a written request to the Party (the Granting Party) from which it requires the Access Rights.

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

**4.2.5 Inability of granting Access Rights due to third parties' rights**

When a Party is unable because of third party rights to grant Access Rights which it reasonably believes that another Party will require, it will promptly notify such other Party and in particular where possible shall do so before entering into this Project Co-operation Agreement.

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

**4.2.6.1 General principles**

- (a) All of the provisions in this Project Co-operation Agreement concerning Access Rights apply to Software that is Background, Sideground or Cross Project Foreground as they apply to any other Background, Sideground or Cross Project Foreground, but in the case of inconsistency this Section 4.2.6 shall prevail.
- (b) Access Rights to Software do not include any right to require creation and delivery of Object Code or Source Code ported to any particular hardware platform or any right to require creation and delivery of any API or Software documentation in any particular form or detail, but only as the item is available from the Party granting the Access Rights. Transfer costs shall only be charged in exceptional circumstances.
- (c) Save as expressly otherwise provided in this Section 4.2.6, no Party shall be obliged to grant Access Rights to Source Code.

**OPTION 1**

All Access Rights to Software that is Cross Project Foreground, whether for execution of the Cross Project Tasks or for Use, shall be in

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the form of Source Code Access.

**END OF OPTION 1**

**OPTION 2**

All Access Rights to Software that is Cross Project Foreground, whether for execution of the Cross Project Tasks or for Use, shall be in the form of Limited Source Code Access.

**END OF OPTION 2**

All Access Rights to Software that is Background, whether for execution of the Cross Project Tasks or for Use, shall be in the form of Limited Source Code Access, save that no Party shall be obliged to grant for Use any Access Rights to Source Code that is Background and that is not listed in Annex 6 to this Project Co-operation Agreement (which Annex is a list of Software that is Background or Sideground in respect of which the Parties are willing when granting Access Rights to grant access to Source Code for Use).

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

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

- (a) Access Rights to Object Code and/or an API Needed for Use of Cross Project Foreground shall, unless the granting and receiving Parties agree in writing to the contrary, comprise the worldwide right:
  - (i) to use them in research, to use them to create/market any product/process, and to use them to create/provide any service;
  - (ii) to distribute, make available, market, sell and offer for sale (including by using the services of a third party) such Object Code and/or API alone or as part of or in connection with any products or services of the Party having the Access Rights;
  - (iii) to grant to each end-user customer buying/using such products/services a perpetual, irrevocable, worldwide licence:
    - to use such Object Code and/or API alone or as part of or in connection with any products/services of the Party having the Access Rights;

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- to use such Object Code and/or API to maintain such products/services; and
  - to use such Object Code and/or API to create for its own end-use interacting interoperable Software in accordance with the rights conferred by, and subject to the conditions of, Counsel Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC); and
- (iv) in the course of and for the purpose of exercising the rights described in (i) to (iii) above, to make and have made an unlimited number of copies of such Object Code and/or API.

Nothing in this Section 4.2.6.2 shall entitle any Party not to comply with Section 4.2.6.3 and if there is any inconsistency between such Section and this Section then such Section shall prevail.

- (b) Where a Party has access to Source Code for Use of Cross Project Foreground, Access Rights to such Source Code shall, unless the granting and receiving Parties agree in writing to the contrary, comprise a worldwide right to copy, use and modify such Source Code as required to support the exercise of the Access Rights granted to such Party in respect of corresponding Object Code, but, unless the granting and receiving Parties agree in writing to the contrary, such Party shall not sub-licence such Source Code or make it available to any third party in whole or in part.
- (c) Each sub-licence granted according to the provisions of this Section 4.2.6.2 shall if practical be made by a traceable agreement specifying and protecting the proprietary rights of the Party granting the Access Rights.

#### **4.2.6.3 Open Source Software**

- (a) (i) The Parties acknowledge that the use within the Cross Project Tasks of Software that is "open source" (as defined at <http://www.opensource.org/docs/definition.php>), and/or the release of Cross Project Foreground upon licence terms associated with such Software, may have benefits for the conduct of the Cross Project Tasks and promote the Use and dissemination of the resulting Cross Project Foreground. However, they also recognise that certain of such licence terms (namely Controlled Licence Terms) may restrict the options that are available for Use and dissemination of the resulting Cross Project Foreground, and accordingly they wish to regulate, in accordance with this Section 4.2.6.3 the use of Controlled Licence Terms in relation to the Cross Project Tasks and Use and dissemination of the results thereof.

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(ii) Without limiting the scope of this Section 4.2.6.3, the Parties acknowledge that the use in the Cross Project Tasks or introduction into the Project Co-operation of Background, Sideground or other Work held by a Party pursuant to Controlled Licence Terms may impair or otherwise affect the other Parties' utilisation or Use of or Access Rights to Background, Sideground, Cross Project Tasks or other Work. Each Party shall therefore abstain from introducing into the Cross Project Tasks any Background, Sideground or other Work in a manner or upon terms that would or might result in a requirement that all or some of the Cross Project Foreground, Sideground, Background or any other Work must, either generally or under certain circumstances, be licenced under Controlled Licence Terms, unless all Parties have unanimously approved in writing such use or introduction.

(iii) Following the signature of this Project Co-operation Agreement, any Party that is seeking such approval shall provide the other Parties with a written request for approval ("Request") containing sufficient information, substantially in the format set out in Annex 7 hereto, to enable each of them to assess whether the introduction or use of the Background, Sideground, Cross Project Foreground or other Work in question, upon the Controlled Licence Terms that are applicable to it, would or might result in any requirement referred to in paragraph (ii) above. Each Party shall inform the Co-ordination Team in writing within 60 days from receipt of the Request whether or not it approves the use or introduction for which approval is requested in the Request. Any Party that fails to respond to a Request within the above period shall be notified by the Co-ordination Team that it has a further 7 days to respond and in the absence of a response from such Party within such further period it shall be deemed to have approved the Request. As soon as possible after the lapse of such 60 day period (and any further periods as above), the Co-ordination Team shall inform all Parties in writing whether or not such use or introduction has been unanimously approved. However, no approval of any Request shall constitute an agreement pursuant to paragraph (b) below that any Cross Project Foreground may be sub-licensed on Controlled Licence Terms.

(iv) The unanimous approvals as referred to in paragraph (iii) above and any approvals that have been agreed by all Parties before signing this Project Co-operation Agreement shall be recorded and kept by the Co-ordinators of each Co-operating Project and made available upon request.

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(v) Each Party shall comply with the terms of the approvals referred to in paragraph (iv) above (i.e. each approval only applies within the scope of the stated licence terms and expressly agreed use).

(vi) Save in the case that such an approval necessarily results in such Access Rights being impaired or otherwise affected by Controlled Licence Terms, no Party shall at any time be obliged to accept Access Rights (whether for executing the Cross Project Tasks, or for Use, and whether to any Background, Sideground or Cross Project Foreground) that are impaired or otherwise affected by, Controlled Licence Terms. Accordingly, save in the case just mentioned, each Party that is entitled to be granted Access Rights pursuant to this Project Co-operation Agreement shall be entitled to be granted such Access Rights on terms that are not Controlled Licence Terms and that are not impaired or otherwise affected by Controlled Licence Terms.

(b) (i) No Access Rights to any Background, Sideground or Cross Project Foreground shall include the right to sub-licence that Background, Sideground or Cross Project Foreground upon Controlled Licence Terms (and accordingly none of them shall be sub-licensed upon Controlled Licence Terms) unless expressly in writing so agreed by the Party granting the Access Rights, or save to the extent that such right is necessarily implied by the approval given in accordance with paragraph (a) (iii) above.

(ii) This Paragraph (b) shall continue to apply without limit in time notwithstanding completion of the Project or any termination of this Project Co-operation Agreement.

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

(d) Nothing in this Section 4.2.6.3 shall limit the obligations of the Parties under Section 4.4. (Publication)

**4.2.7 Access Rights for Parties joining and leaving the Project Cooperation Agreement**

Parties joining the Project Co-operation Agreement shall grant and shall be granted the

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Access Rights effective as from the date of their signature of the Declaration of Accession of this Project Co-operation Agreement.

In respect of Cross Project Foreground arising from work carried out under the Project Co-operation Agreement before its Accession Date, each such Party shall enjoy Access Rights for execution of the Cross Project Tasks and for Use under the same conditions as the Access Rights to Background provided for in Sections 4.2.3 and 4.2.4 above.

In respect of Parties having terminated their participation in the Project Co-operation Agreement in accordance with the provisions of Section 6.3 hereof the following will apply:

With the exception of the cases where the participation of a Defaulting Party is terminated, the Access Rights granted and the obligations to grant Access Rights pursuant to the Project Co-operation Agreement shall continue to be in full force and effect. Such Access Rights shall apply only with respect to Use of Cross Project Foreground existing at the time of the Party terminating its participation in the Project Co-operation Agreement.

Defaulting Parties are obliged to continue to grant Access Rights pursuant to the Project Co-operation, but the Access Rights granted to the Defaulting Party pursuant to this Project Co-operation Agreement shall cease immediately upon termination of the participation of the Defaulting Party in the Project Co-operation Agreement.

Termination of this Project Co-operation Agreement in respect of, and/or cessation of licenses granted to, the Defaulting Party shall not terminate any sublicenses granted or agreed to be granted or offered by the Defaulting Party prior to the date on which such termination of the Project Co-operation Agreement and/or cessation of licenses becomes effective, provided that the Party or Parties which owns the information so sublicensed shall have the right to have an assignment of the Defaulting Party's rights under such sublicenses.

### **4.3 Confidentiality**

#### OPTION 1 FOR SECTION 4.3.1

##### 4.3.1 Definition and treatment of Confidential Information

4.3.1.1 Subject to Section 4.3.3, all information of whatever nature or form disclosed by a Party (the "Disclosing Party") to any other Party (the "Receiving Party") in connection with the Project after the Effective Date is "Confidential Information".

4.3.1.2 Each Receiving Party undertakes not to use Confidential Information for any purpose other than:  
in accordance with the terms of the GA and this CA; and

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for the purpose of perform obligations or as Necessary for exercising rights granted by or pursuant to either such agreement.

[OPTIONAL ADDITION TO SECTION 4.3.1.2:

Provided that the Receiving Party and its Affiliates do not disclose such Residual Information (as defined below) and, without implying or granting any licence under any patent and copyright of the Disclosing Party and its Affiliates, the Receiving Party and its Affiliates shall not be in breach of their obligations under this Section 4.3 in the event of any unintentional use, for any internal purpose, of any idea, concept, know-how or technique contained in the Disclosing Party's Confidential Information unintentionally retained in the unaided memories of any employee of the Receiving Party and its Affiliates who has had legitimate access to the Confidential Information ("Residual Information").]

4.3.1.3 Each Receiving Party undertakes to apply for the security of Confidential Information at least the same degree of care as it applies for the security of its own Confidential Information (but in any case shall apply not less than reasonable care) and, subject to Section 4.3.5, not to disclose Confidential Information to any third party, excluding Affiliates, without the prior written consent of the Disclosing Party.

[OPTIONAL ADDITION TO SECTION 4.3.1.3:

The unavoidable and inherent disclosure of Residual Information by the use, distribution or marketing of any hardware or software product or service into which Residual Information has been incorporated, by the Receiving Party or by any of its Affiliates, shall not constitute a breach of the Receiving Party's or its Affiliates' obligation of non-disclosure relating to such Confidential Information.]  
END OF OPTION 1 FOR SECTION 4.3.1

OPTION 2 FOR SECTION 4.3.1

#### 4.3.1 Definition and treatment of Confidential Information

4.3.1.1 Subject to Section 4.3.3, all information of whatever nature or form disclosed by a Party (the "Disclosing Party") to any other Party (the "Receiving Party") in connection with the Project after the Effective Date, and which:  
if disclosed in tangible form, was marked as confidential at the time of such disclosure; or  
if disclosed orally, was identified as confidential at the time of such disclosure and confirmed as confidential in writing within 30 days after disclosure;  
is "Confidential Information".

4.3.1.2 Each Receiving Party undertakes not to use Confidential Information for any purpose other than:  
in accordance with the terms of the GA and this CA; and  
for the purpose of performing obligations or as Necessary for exercising rights

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granted by or pursuant to either such agreement.

[OPTIONAL ADDITION TO SECTION 4.3.1.2:

Provided that the Receiving Party and its Affiliates do not disclose such Residual Information (as defined below) and, without implying or granting any licence under any patent and copyright of the Disclosing Party and its Affiliates, the Receiving Party and its Affiliates shall not be in breach of their obligations under this Section 4.3 in the event of any unintentional use, for any internal purpose, of any idea, concept, know-how or technique contained in the Disclosing Party's Confidential Information unintentionally retained in the unaided memories of any employee of the Receiving Party and its Affiliates who has had legitimate access to the Confidential Information ("Residual Information").]

4.3.1.3 Each Receiving Party undertakes to apply for the security of Confidential Information at least the same degree of care as it applies for the security of its own Confidential Information (but in any case shall apply not less than reasonable care) and, subject to Section 4.3.5, not to disclose Confidential Information to any third party, excluding Affiliates, without the prior written consent of the Disclosing Party.

[OPTIONAL ADDITION TO SECTION 4.3.1.3:

The unavoidable and inherent disclosure of Residual Information by the use, distribution or marketing of any hardware or software product or service into which Residual Information has been incorporated, by the Receiving Party or by any of its Affiliates, shall not constitute a breach of the Receiving Party's or its Affiliates' obligation of non-disclosure relating to such Confidential Information.]

END OF OPTION 2 FOR SECTION 4.3.1

#### **4.3.2 Confidentiality period**

For any Confidential Information, the period of confidentiality shall be 5 years from the Effective Date or 2 years after the termination of this Project Co-operation Agreement, whichever is the greater .

#### **4.3.3 Exceptions**

No information disclosed by any Disclosing Party shall be deemed to be (or to remain) Confidential Information for the purposes of this Agreement, to the extent that any Receiving Party can show that the information concerned:

- (a) was publicly available at the time of disclosure or has become publicly available by no wrongful act or omission on the part of the Receiving Party or any of its Affiliates;

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- (b) was in the possession of the Receiving Party or one of its Affiliates without confidentiality obligation at the time of disclosure;
- (c) was lawfully obtained by the Receiving Party or any of its Affiliates from a third party without an obligation of confidentiality; or
- (d) was developed by the Receiving Party or any of its Affiliates independently from the other Parties' Confidential Information.

For the sake of clarity, nothing in this Section 4.3.3 grants any right to any Affiliate of any Party to receive any Confidential Information, save pursuant to the provisions of Section 4.3.5.

**4.3.4 Disclosure of Confidential Information in compliance with a court order**

If any Party becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure: (i) notify the Disclosing Party; and (ii) comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

**4.3.5 Disclosure of Confidential Information to Affiliates and to other third parties**

4.3.5.1 For the avoidance of doubt, the confidentiality obligations under this Agreement shall not be interpreted so as to prevent the communication of any information:

- (a) subject to Section 4.3.5.2, to any Affiliate or to any other third party (including any other Party), insofar as strictly required for the proper carrying out of this Agreement; or
- (b) subject to Section 4.3.5.2, to any third party (including the public), insofar as strictly required for (i) technical reasons and (ii) permitted Use of Cross Project Results.

4.3.5.2 With respect to any permitted disclosure of any of the Confidential Information referred to in Section 4.3.5.1 above by a Receiving Party to a third party (including but not limited to its Affiliates and Subcontractors), the Receiving Party will: (i) ensure that appropriate arrangements are in place prior to any such disclosure, to protect the Confidential Information to a similar degree as provided in Section 4.3.1; and (ii) use reasonable endeavours to ensure compliance with such arrangements.

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#### **4.4 Publications, Press Releases and Contributions to Standards**

##### 4.4.1 Publications

No Party shall have the right to publish or allow the publishing of any data which constitutes Cross Project Foreground of another Party, even where such data is amalgamated with such first Party's Cross Project Foreground, Foreground, Sideground, Background or other information, document or material.

A copy of any proposed publication in connection with or relating to the Cross Project Foreground shall be sent to the Co-ordination Team and to the Parties at the earliest time possible. The Parties may object to the publication within [X] days after receipt of a copy of the proposed publication on any of the following grounds: (i) that they consider that the protection of the objecting Party's Cross Project Foreground would be adversely affected by the proposed publication, (ii) that the proposed publication includes the Confidential Information of the objecting Party, or (iii) the publication of such information would be contrary to the commercial interests of the objecting Party. The proposed publication shall not take place until the expiry of the above period of [X] days. In the absence of any objection within the above mentioned period, it is deemed that the Parties agree to the proposed publication. Following the end of the above mentioned period, the Co-ordination Team shall inform the Parties whether or not any objection has been received.

In the event that an objection is raised on any of the above defined grounds within the above period of [X] days, the Party proposing the publication and the Party objecting shall seek in good faith to agree a solution on a timely basis whereby such objection is resolved.

##### 4.4.2 Contributions to Standards

No Party shall have any obligation pursuant to this Project Co-operation Agreement to make any contribution to any European or other standard except as otherwise agreed in writing between the Parties.

No Party shall have the right to contribute to a standard or allow the contribution to a standard of any data which constitutes across Project Foreground, Foreground, Sideground, Background or Confidential Information of another Party, even where such data is amalgamated with such first Party's Foreground, Sideground, Background or other information, document or material.

A copy of each proposed contribution of Cross Project Foreground to a meeting of a standards organisation included in the schedule distributed by the Co-ordination Team in accordance with section 3.2.2.1 (h), (hereinafter referred to as a "Scheduled Meeting"), shall be distributed to the Parties, by the Party proposing to submit the contribution, no later than [Y] days prior to the date of the meeting ("Review Period").

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

In the event that a Justifiable Objection is raised on either of both of the above defined grounds within the above period of Z days, the Party proposing the contribution and the Party objecting shall seek in good faith to agree a solution on a timely basis whereby the Justifiable Objection is resolved.

For all other proposed contributions of Foreground for the purpose of incorporation in a standard, the above procedure of this Section 4.4.2 shall apply accordingly, except that the Review Period shall be [V] days and the Objection Period shall be [W] days.

## **5 LIABILITY AND INDEMNIFICATION**

### **Liability**

#### **Liability towards each other**

In respect of information or materials supplied by one Party to another under this Project Cooperation Agreement, the supplying Party shall be under no obligation or liability other than expressly stated in this Project Co-operation Agreement and no warranty condition or representation of any kind is made, given or to be implied against the supplying Party as to the sufficiency, accuracy or fitness for purpose of such information or materials, or, subject to the obligations expressly stated in this Project Co-operation Agreement, the absence of any infringement of any proprietary right (including, without limitation, IPR's, trade secret rights and rights over confidential information) of third parties by the use of such information and materials and the recipient Party shall in any case bear the entire risk of any consequences that may arise from the use to which it, or to which any person that it directly or indirectly permit or allows to use such information or materials, puts such information and materials.

Subject to the provisions of Section 5.2 below, no Party shall have any liability in respect of the infringement of any patent or other right of any third party resulting from any other Party

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(or any of its Affiliates) exercising any of the Access Rights granted under this Project Co-operation Agreement Agreement.

No Party makes any representation or warranty, other than as expressly stated in this Project Cooperation Agreement.

**Liability towards third parties**

Subject always to such other undertakings and warranties as are provided for in this Project Co-operation Agreement, each Party shall be solely liable for any loss, damage or injury to third parties resulting from its carrying out its parts of the joint work in the Cross Project working groups and from its Use of Cross Project Foreground and/or Foreground, Background and Sideground in relation with Cross Project Foreground.

**Liability for Subcontractors**

5.1.3.1 Each Party shall be fully liable for the performance of any part of its share of any obligation under this Project Co-operation Agreement, in respect of which it enters into any contract with a Subcontractor.

5.1.3.2 Each Party engaging any Subcontractor shall be solely responsible for all obligations incurred in relation to that Subcontractor. The other Parties shall have no obligation whatsoever to any such Subcontractor, save to the extent that they separately agree any such obligation in writing.

5.1.3.3 Notwithstanding the above the Parties agree not to use subcontractors for performing Cross Project Tasks without the written agreement of all Parties. Any Subcontractors so agreed shall be listed in Annex 8 together with the name of the Party engaging such Subcontractor and the Cross Project Tasks upon which the Subcontractor is permitted to work.

**Claims between the Parties**

The following provisions of this Section 5.2, excluding and limiting liability, shall apply not only to the Parties, but also to those of their Affiliates which properly participate as Subcontractors in the Cross-Project Tasks, each of which is an intended beneficiary of this Section 5.2.

**5.2.1 Liability: general**

Subject to the following provisions of this Section 5.2, the general provisions of Belgian law governing liability (including both contractual and non-contractual liability) shall apply to any claim between the Parties for loss or damage caused by a Party, its employees, agents and Subcontractors.

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**5.2.2 Excluded liabilities**

To the extent permissible under applicable law and except as otherwise provided specifically below in this Section 5.2, in no event shall any Party be liable in connection with this Project Cooperation Agreement for any of the following, however caused or arising, on any theory of liability, and even if such Party was informed or aware of the possibility thereof:

- (a) loss of profits, revenue, income, interest, savings, shelf-space, production and business opportunities;
- (b) lost contracts, goodwill, and anticipated savings;
- (c) loss of or damage to reputation or to data;
- (d) costs of recall of products; or
- (e) any type of indirect, incidental, punitive, special or consequential loss or damage.

**5.2.3 Financial limit on liability**

5.2.3.1 Subject to the provisions of Sections 5.2.4 and 5.2.5 below, the aggregate liability of each Party under the provisions of Section 5.2.1 to all of the other Parties collectively in respect of any and all such claims shall not exceed the sum of five hundred thousand euro (€500,000):

5.2.3.2 The financial limitation of liability specified in Section 5.2.3.1 shall be doubled in the case of any breach by a Party of its obligations under:

- (a) Section 4.3 (Confidentiality)
- (b) Section 4.1.3 (Assigning ownership of Foreground)

**5.2.4 Exceeding the scope of Access Rights**

For the avoidance of doubt, the exclusions and limitations stated in Sections 5.2.2 and 5.2.3 above shall not apply in respect of any activity involving the use of anything protected by the IPRs of any other Party or any Affiliate of any other Party, to the extent that such activity or use is not within the scope of the Access Rights granted by this Project Cooperation Agreement, or not in compliance with the associated terms and conditions.

**5.2.5 Other Exceptions**

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The exclusions and limitations stated in Sections 5.2.2 and 5.2.3 above shall not apply in respect of any:

- (a) fraud;
- (b) death, injury to natural persons or damage to real or immovable property caused by the negligence or wilful act of such Party, its directors, employees, agents and Subcontractors; or
- (c) wilful breach by a Party of any obligation accepted under this Project Cooperation Agreement.
- (d) otherwise in so far as mandatory applicable law overrides them.

### **5.3 Force Majeure**

Notwithstanding any provision on Force Majeure in the CA of any Co-operating Project, no failure in the performance of this Project Co-operation Agreement can be imputed or assumed to a Party, to the extent that such failure is due to Force Majeure.

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

## **6 MISCELLANEOUS**

### **6.1 No partnership, agency or implied licence; enforcement of Intellectual Property Rights**

#### **No partnership or agency**

Nothing in this Project Co-operation Agreement shall create a partnership or agency between the Parties or any of them.

#### **6.1.2 No implied licence**

Except as explicitly granted in this Project Co-operation Agreement, no licence, immunity, or other right is granted or assigned under this Agreement, either directly or indirectly, by implication, estoppel or otherwise, to any Party or any of its Affiliates with respect to any IPR of the other Parties or their Affiliates.

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**6.1.3 Enforcement of Intellectual Property Rights**

No Party shall have any obligation under this Project Co-operation Agreement to institute any action or suit against any third party for infringement of any IPR to which it has granted a licence hereunder or to defend any action or suit brought by any third party which challenges or concerns the validity of any such IPR. In addition, no Party to which any other Party has granted such an IPR licence under this Project Co-operation Agreement shall have any right to institute any action or suit against third parties for infringement of any such IPR.

**6.1.4 Assignment of employees**

Unless specifically agreed otherwise in writing, no provision in this PCA will limit any of the Parties' or their respective Affiliates' rights to assign and/or re-assign, in any way they may choose, those of their employees who participate in the Cross Project working groups.

**6.2 Assignment of rights and obligations**

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

**6.3 Term and Termination**

**6.3.1 Term**

This Project Co-operation Agreement shall be effective for all Parties from \_\_\_\_\_ (“Effective Date”).

However, this Project Co-operation Agreement shall come into force for Parties joining on the basis of a Declaration of Accession as from the Accession Date.

This Project Co-operation Agreement shall continue in full force and effect until terminated in accordance with this Section 6 or complete discharge of all obligations for carrying out the Co-operating Projects whichever is earlier.

**6.3.2 Termination by a Party**

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6.3.2.1 After signature of this Project Co-operation Agreement, no Party shall be entitled to withdraw from this Project Cooperation Agreement. This Project Cooperation Agreement shall automatically terminate with regard to a Party upon the termination of all Co-operating Projects to which such Party is a party under this Agreement.

In the event a Party is in default of any obligation under this Project Co-operation Agreement, which obligation is capable of being remedied, all rights of such Party under this Project Co-operation Agreement shall be suspended until such default is remedied.

6.3.2.2 Save in the case of Force Majeure, in the event of a substantial breach by a Party of its obligations under this Project Co-operation Agreement which breach is irremediable or is not remedied within one month of the date of receipt of written notice from the other Parties, acting jointly on the basis of a decision taken by the Project Co-ordination Team in accordance with Section 3.1.2.4, such notice requiring that the default be remedied, the other Parties may terminate this Project Co-operation Agreement with respect to the Defaulting Party concerned, upon not less than 14 days written notice to such Defaulting Party. Without prejudice to the provisions of Section 4, such termination shall become effective with respect to such Defaulting Party as of the date of expiration of such notice period.

### **6.3.3 Termination by a Co-operating Project**

This Project Co-operation Agreement may be terminated with respect to any Co-operating Project by the Co-ordinator, having been duly authorized by the Parties of that Project, giving prior written notice of such termination of two (2) month. This Project Co-operation Agreement shall automatically terminate with regard to a Co-operating Project upon the termination of all Co-operating Projects.

### **6.3.4 General Provisions relating to Termination**

6.3.4.1 The provisions of Sections 4, 5, 6.3.4, 6.4, 6.7 and 6.8 shall survive the expiration or termination of this Project Co-operation Agreement to the extent needed to enable the Parties to pursue the remedies and benefits provided for in those Sections.

6.3.4.2 For the avoidance of doubt, termination shall not affect any rights or obligations incurred prior to the date of the termination unless otherwise agreed in this Project Co-operation Agreement.

## **6.4 Settlement of Disputes**

### **OPTION 1 (ARBITRATION)**

6.4.1 All disputes or differences arising in connection with this Project Co-operation Agreement, including any dispute in which a Party alleges that

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another Party has abused its power, which cannot be settled amicably shall be finally settled by arbitration in Brussels under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators, or such lower number of arbitrators as the Parties concerned may agree upon in writing, to be appointed under the terms of those Rules. In any arbitration in which there are three arbitrators, the chairperson shall be of juridical education.

- 6.4.2 The award of the arbitration will be final and binding upon the Parties concerned.
- 6.4.3 The Parties concerned may elect to use mediation to assist in the amicable resolution of a dispute or difference arising in connection with this Project Co-operation Agreement.
- 6.4.4 Each Party shall be entitled to seek necessary and appropriate interim injunctive relief pending the outcome of the arbitration or any other temporary measures from the courts of competent jurisdiction to enjoin the other Party from taking certain actions which allegedly infringe the rights of the Party bringing such claim, provided that any proceedings and decisions as to the merits of the dispute, including permanent injunctions, are exclusively governed and resolved by arbitration in accordance with the first paragraph of this Section 6.4.

**END OF OPTION 1**

**OPTION 2 (APPROPRIATE NATIONAL COURT)**

- 6.4.1 All disputes or differences arising in connection with this Project Co-operation Agreement, including any dispute in which a Party alleges that another Party has abused its power, which cannot be settled amicably, shall be subject to the jurisdiction of the appropriate national court of the Party which would be the prospective defendant in any legal proceedings on the issue. Such national court shall have also jurisdiction in the event of a counterclaim made by the defendant in the legal action.
- 6.4.2 The Parties concerned may instead elect unanimously to seek to resolve by mediation any dispute or difference arising in connection with this Project Co-operation Agreement and which cannot be settled amicably by them.
- 6.4.3 Notwithstanding the foregoing, any Party shall be free to seek interim injunctive relief or any other temporary measures before any applicable competent court or tribunal, wherever located, in order to seek to prevent or restrain any (i) infringement of its or their IPRs and/or (ii) unauthorised disclosure of Confidential Information.

**END OF OPTION 2**

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**6.5 Language and headings**

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

**6.6 Notices**

Any notice to be given under this Project Co-operation Agreement shall be in writing to the addresses and recipients listed above or to such other address and recipient as a Party may designate in respect of itself by written notice to the others. Notices shall be deemed to have been served when personally delivered, or (if transmitted by telefax, electronic or digital transmission) when transmitted, provided that such transmission is confirmed by receipt of a successful transmission report and the notice is confirmed by mail.

Written communication by means of registered letter with acknowledgement of receipt, shall be used for notices provided for in Sections 6.3.

**6.7 Applicable Law**

6.7.1 This Project Co-operation Agreement shall be construed according to and governed by Belgian Law without regard to Belgian law rules of conflict of laws.

6.7.2 When acting under this CA, each Party will comply with all relevant laws and regulations applicable to its performance hereunder, including (without limitation) the export laws and regulations of the European Union and of other relevant States.

**6.8 Entire Agreement - Amendments - Severability**

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- 6.8.1. Subject to the provisions of Section 2, this Project Co-operation Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement, and supersedes all previous negotiations, commitments and writings concerning the joint activities of the Parties relating to the Project Cooperation Agreement.
- 6.8.2 All amendments or changes to this Project Co-operation Agreement shall be valid only if made in writing and signed by an authorised signatory of each of the Parties.
- 6.8.3 If one or more of the provisions contained in this Project Co-operation Agreement or any documents executed in connection herewith are found by the Commission or a competent court or authority to be invalid, illegal, or unenforceable in any respect under any applicable law, including competition law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, provided, that in such case the Parties oblige themselves to use all reasonable efforts to achieve the purpose of the invalid provision by a new legally valid stipulation that cause the same or similar (economic) benefit or burden.

**6.9 Counterparts**

This Project Co-operation Agreement shall be executed in \_\_\_\_\_ [include **twice** the number of Contractors] counterparts, all of which together shall constitute one and the same instrument. Every Party shall each initial and sign two counterparts.

The respective Co-ordinators of all Project(s) as detailed in Annex 1 have the obligation to send copies of all the signed counterparts to each Party within sixty (60) days of receipt of the signed counterparts.

AS WITNESS the *Parties* have caused this Project Co-operation Agreement to be duly signed by the undersigned authorised representatives.

Authorised to sign on behalf of **<INSERT NAME OF PARTY ...>**

Signature

Name  
**<INSERT NAME>**

Title  
**<INSERT TITLE>**

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Authorised to sign on behalf of **<INSERT NAME OF PARTY ...>**

Signature

Name  
**<INSERT NAME>**

Title  
**<INSERT TITLE>**

**Note: One signature block to be included for each Party**

# **ANNEX 1**

## **List of Co-operating Projects**

## **ANNEX 2**

### **List of Affiliates referred to in definition of Affiliate in Section 1.2**

## **Annex 3**

### **List of Co-operation Topics**

## **Annex 4**

### **List of Cross Project Tasks**

## **Annex 5**

**List of third parties approved under Section 4.1.3.1 for  
assignment of Cross Project Foreground**

## **Annex 6**

### **List of Background and Sideground Software available for Source Code Access for Use**

## **Annex 7**

**Form for submission for approval of use in Cross Project  
Tasks of software subject to Controlled Licence Terms**

## **Annex 8**

### **List of Subcontractors approved for work on Cross Project Tasks**