

ARTEMIS JU Projects' Consortium Agreement – APCA

Part I

This AGREEMENT is made on <DD-MMM-20YY>

BETWEEN

- (1) <PARTY 1 = Co-ordinator>
- (2) <PARTY 2>
- (3) <PARTY 3>
- (4) <PARTY 4>
- (5) <PARTY 5>
- (6) <PARTY 6>
- (7) <PARTY 7>
- (8) <PARTY 8>

etc.

Hereinafter referred to as the "Parties".

relating to the Project entitled **[NAME OF PROJECT]**.

WHEREAS:

- (A) The Parties, having considerable experience in the field concerned, [have submitted/ intend to submit] a Proposal for a Project entitled **[NAME OF PROJECT]** to the ARTEMIS Joint Undertaking.
- (B) The Parties wish to enter into this ARTEMIS Project Consortium Agreement so as to:
 - (i) specify or supplement, as between themselves, the provisions of the model Grant Agreement attached in Annex 8. The terms and conditions of the model Grant Agreement are deemed to bind the Parties to this agreement and are deemed to be replaced by the actual Grant Agreement when this is concluded. This agreement is subject to the compliance with the conditions of the final Grant Agreement. If the terms and conditions of this agreement are in conflict with the terms and conditions of the final Grant Agreement, the Parties shall negotiate in good faith appropriate amendments to this agreement and the Parties shall have the right to terminate this agreement absent agreement on appropriate amendments, as specified in 6.3.1; and
 - (ii) to lay down general rules related to the management of the Project and their agreements with respect to certain matters including (but not limited to) access rights to intellectual property and liability.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. This ARTEMIS JU Project Consortium Agreement consists of Part I and Part II, and shall come into force as specified in section 6.3.1 of Part II.
2. The Co-ordinator for the Project is **[insert the name of the Co-ordinator]**.
3. The General Assembly shall meet at least **[enter number]** a year.
4. For the purposes of Part II Section 3.3.1.1 (b):
 - (a) the minimum number of Board members (excluding the Co-ordinator's representative) is **[enter number]**; and
 - (b) the maximum number of Board members (excluding the Co-ordinator's representative) is **[enter number]**.
5. The minimum Project Share percentage referred to in the final paragraph of Part II Section 3.3.1.1 is **[enter the required minimum percentage]** %.
6. Pursuant to section 6.6.1 of Part II, any notice to be given under this ARTEMIS JU Project Consortium Agreement shall be in writing to the following addresses and recipients:

<NOTE: SEPARATELY FOR EACH PARTY, INSERT THE NAME AND ADDRESS OF THE PARTY, TOGETHER WITH FAX NUMBERS AND EMAIL ADDRESSES, AND NAME / POSITION OF THE PERSON FOR WHOSE ATTENTION NOTICES ARE TO BE ADDRESSED, BELOW, IN THE FOLLOWING FORMAT >

- (1) Party's Registered Name:
Party's Postal Address:
Name and position title of identified recipient:
Fax Number: +xx yyy zzzzzzzz
e-mail address: (e.g.) xxx.yyy@zzz.com

- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)

or, to such other address and recipient as the Party may designate in respect of itself, in accordance with the provisions of Part II section 6.6.1.

TEMPLATE

Part II

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TEMPLATE

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions and interpretations

Accession Date means the date of the signature of the Declaration of Accession by a Party joining the Project in accordance with the provisions of the GA and this APCA.

An **Affiliate** of a Party means any corporation or other legal entity that directly or indirectly Controls, is Controlled by, or is under common Control with, such Party but only with respect to the period said Control continues.

For the above purposes, "**Control**" shall mean the power, whether or not normally exercised, to direct the management and affairs of another corporation or other legal entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. In the case of a corporation, the direct or indirect ownership of more than fifty per cent (50%) of its outstanding share capital shall in any case be deemed to confer control.

Application Programming Interface or **API** 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.

Background means Background Information and Background IPR. In respect of this Project, a Party may list its Background of which it expects that Access Rights have to be granted in accordance with the terms and conditions of this APCA in Annex 3A. Such list however shall be for information purpose only and shall not be interpreted or construed as limitation of Access Rights to be granted to Background in accordance with this APCA.

Background IPR means any IPRs, other than Foreground IPRs:

- (a) which are owned or controlled by a Party on the Effective Date, or
- (b) in respect of which ownership or control is acquired by a Party during the term of this APCA as a result of activities outside the framework of this APCA as defined in this APCA.

Background Information means any Information, other than Foreground Information:

- (a) which is owned or controlled by a Party on the Effective Date, or
- (b) in respect of which ownership or control is acquired by a Party during the term of this APCA as a result of activities outside the framework of this APCA as defined in this APCA.

Board means the group of individuals established in accordance with Section 3.3.1.

Community means the European Community.

Confidential Information has the meaning given it in Section 4.3.1.1

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

ARTEMIS JU Project Consortium Agreement or APCA, means this 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.

Declaration of Accession means a declaration, in the form provided for in Annex 2A to this APCA, signed by a Party in order to join the Project.

Defaulting Party means a Party which has been determined as being in breach of any of its obligations under this APCA, in accordance with Section 6.3.4.1.

Effective Date means the date of entering into force of this APCA. This APCA will enter into force upon signage of this APCA by all Parties mentioned in APCA Part I.

Force Majeure means any unforeseeable and exceptional event affecting the fulfilment of any obligation under this grant agreement by the parties, which is beyond their control and cannot be overcome despite their reasonable endeavours. Any default of a product or service or delays in making them available for the purpose of this APCA or the GA and affecting such performance, including, for instance, anomalies in the functioning or performance of such product or service, labour disputes, strikes or financial difficulties do not constitute *force majeure*.

Foreground means Foreground Information and Foreground IPRs.

Foreground IPR shall mean any IPRs that are generated as a result of the activities conducted within the framework of the Project as specified in this APCA.

Foreground Information shall mean any Information that is generated as a result of the activities conducted within the framework of the Project concerned as specified in this APCA.

Grant Agreement or **GA** means the written agreement with the JU for the carrying out of the Project, including any amendment to such written agreement that may from time to time be in force. Some Parties to this APCA may also have concluded a National Grant Agreement. The definition "Grant Agreement" in this APCA, however does not include any grant agreements with national funding authorities (hereinafter "National Grant Agreements"). The Party, having concluded such a National Grant Agreement, itself is responsible for obliging to the provisions of that National Grant Agreement.

General Assembly means the group of individuals established in accordance with Section 3.2.1.

Intellectual Property Rights or **IPR** means any intellectual property rights, including, but not limited to,

patents, utility models and utility certificates, industrial design rights, copyrights, trade secrets, database rights, topographies of semiconductor products' rights, as well as any registrations, applications, divisions, continuations, re-examinations, renewals or reissues of any of the foregoing, excluding trademarks, trade names and Confidential Information.

JU means the ARTEMIS Joint Undertaking, established by Council Regulation (EC) No 74/2008 on the establishment of the "ARTEMIS Joint Undertaking" to implement a Joint Technology Initiative in Embedded Computing Systems.

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 respect of executing or carrying out the Project, and/or in respect of "Use of Foreground", mean technically essential and, where IPRs are concerned, mean that those IPRs would be infringed absent the Access Rights granted under this APCA.

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

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

Project Deliverable means a deliverable required under this APCA (including, but not limited to, the (technical) reports, and cost statements that have to be delivered to the Co-ordinator and/or the JU).

Project means the [INSERT ACRONYM OF THE PROJECT] project.

Project Share means, for each Party, that Party's share of the total eligible cost of all Participants in the Project, unless otherwise agreed by all Parties.

Proposal means the proposal for the Project [submitted / intended to be submitted] by the Parties to the JU. Proposal shall, as applicable, also mean any amendment to a Proposal submitted to the JU, by or on behalf of all the Parties.

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 Project or for a Party's Use of Foreground.

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

Voting by means of electronic communication means that anyone allowed to cast a vote, can exercise this voting right by means of electronic communication when this is announced in accordance with this Agreement. In this respect it is required that the voter can be identified through the means of electronic communication, can observe the meetings discourse, can cast his vote by means of electronic communication and can participate in the discussion. If, in accordance with the above, it has been decided that those allowed to vote may cast their votes by means of electronic communication, votes cast preceding the meeting by means of electronic communication, yet no longer than fourteen days before that meeting, shall be equated with votes cast at the time of the meeting.

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

2 PURPOSE AND GENERAL PROVISIONS

The purpose of this APCA is to:

- (a) specify the organisation of the Project-related work between the Parties;
- (b) organise the management of the Project;

- (c) define rights and obligations of the Parties, including, but not limited to, their liability and indemnification;
- (d) provide provisions concerning Access Rights; and
- (e) set out other rights and obligations of the Parties.

3 GOVERNING BODIES, ROLES AND RESPONSIBILITIES

3.1 Co-ordinator

The Parties are represented towards the Joint Undertaking by the Co-ordinator, who shall be the intermediary for any communication between the Joint Undertaking and any Party regarding non-financial/technical issues as described in this Agreement.

3.1.1 Responsibilities of the Co-ordinator

3.1.1.1 The Co-ordinator shall have the following functions:

- (a) to monitor that the Parties comply with their obligations under the GA and this APCA;
- (b) to verify whether the Parties identified in the GA complete the necessary formalities for accession to the GA in accordance with the GA;
- (c) to be the intermediary for efficient and correct communication between the Parties and the JU on the progress of the Project;
- (d) administration, preparation of minutes and provision of the chairperson of the General Assembly and the Board, and follow-up of their decisions;
- (e) on request, transmission of any documents and information connected with the Project between the Parties concerned;
- (f) maintaining details of approvals given in relation to material that is subject to Controlled Licence Terms (Section 4.2.7.3); and
- (g) reviewing the reports to the JU to verify consistency with the Project tasks before transmitting them to the JU.

The Co-ordinator shall have no other functions unless otherwise agreed upon.

3.1.1.2 Except for its capacity as representative of the Parties described in the GA, the Co-ordinator is not entitled to act or to make legally binding declarations or commitments on behalf of any other Party and the Co-ordinator shall not be held responsible by

the Parties for any breach of its obligations under the APCA resulting from any such breach by any other Party.

- 3.1.1.3 If one or more of the Parties is late in submission of any Project Deliverable, the Co-ordinator shall nevertheless submit the other Parties' Project Deliverables to the JU in time. The Co-ordinator shall send out a reminder to the Party or Parties being late in the submission of Project Deliverables but such reminder shall not affect the obligations and responsibilities of such Party or Parties.
- 3.1.1.4 The Co-ordinator may, after having obtained the approval of the Board and the General Assembly, appoint a technical Project manager being an employee of the Co-ordinator or of any of its Affiliates, or of any other Party, to assist the Co-ordinator in the execution of its duties, such as but not limited to monitoring of tasks as allocated, Project Deliverables tracking, and monitoring against the plan for Project Deliverables. The technical expert shall report to the Co-ordinator, but not have any decision-making power of its own.

3.2 General Assembly

3.2.1 Composition and responsibilities of the General Assembly

- 3.2.1.1 Within 30 days after signature of this APCA, the Parties shall establish the General Assembly composed of one duly authorised representative of each of them, whose name and contact details have to be communicated in writing to the chairperson of the Board.

After having informed the chairperson of the Board in writing, each Party shall have the right to replace its representative and/or to appoint a proxy, although it shall use reasonable endeavours to maintain the continuity of its representation. The chairperson of the Board will inform the other Parties of any such replacement of a representative and/or appointment of a proxy.

Each representative shall have a deputy.

- 3.2.1.2 The General Assembly shall be responsible for the overall direction of the Project, and specifically for:
 - (a) deciding within a period of 30 days after having received any proposal made by the Board that the General Assembly should propose to the Parties (other than the Defaulting Party) to serve notice on a Defaulting Party in accordance with Section 6.3.4.1 and deciding to assign the Defaulting Party's tasks to specific entity or entities (preferably chosen from the remaining Parties);

- (b) deciding upon any proposal made by the Board for the entering into the GA and this APCA of new Parties for participation in the Project;
- (c) [**OPTION:** deciding upon any change and exchange of work packages between the Parties and proposing corresponding amendments to the GA;]
- (d) giving approval pursuant to Section 3.4.3.3 and, where necessary, indicating any conditions associated with such approval;
- (e) deciding upon procedures and tools for the marking and handling of information exchanged between Parties in the performance of the Project;
- (f) deciding upon proposals from the Board to propose to the Parties that they enter into a Project Co-operation Agreement with the parties of another project; and
- (g) deciding upon proposals from the Board for the plan for using and disseminating Foreground.

3.2.2 Decision making in the General Assembly

- 3.2.2.1 The General Assembly shall be chaired by the Co-ordinator's representative.

The General Assembly shall normally meet at the frequency defined in Part I at the request of its chairperson or at any other time when necessary at the request of one of the Parties. Meetings shall be convened by the chairperson with at least 15 days' prior written notice. This notice shall be accompanied by an agenda, proposed by the chairperson. The agenda shall be deemed to be accepted unless one or more of the Parties notifies the chairperson and the other Parties in writing of additional points to the agenda, at the latest 2 working days before the meeting date. The Co-ordinator may decide, when convening a meeting, that those allowed to voted may cast their vote by means of electronic communication. Minutes of the General Assembly meetings shall be transmitted to the Parties by the Co-ordinator within 30 days after the meeting date. The minutes shall be considered as accepted by the other Parties if, within 15 days from receipt, no Party has objected in writing to the chairperson.

- 3.2.2.2 Any decision requiring a vote at a General Assembly meeting must be identified as such on the agenda, unless there is

unanimous agreement to vote on a decision at that meeting and all Parties are present or represented.

- 3.2.2.3 Any decision required or permitted to be taken by the General Assembly may be taken in accordance with the following:
- (a) in a physical meeting, a meeting via teleconference or by means of electronic communication; or
 - (b) without a meeting but with prior notice of at least 7 days, and without a vote, provided that, in such case:
 - (i) a consent in writing, setting forth the decision taken, is signed by the representatives of the Parties with not less than the minimum number of votes necessary to take such decision at a meeting at which all Parties entitled to vote on such decision were represented and were voting, and
 - (ii) the consent has been delivered for signature to all Parties' representatives.
- 3.2.2.4 The General Assembly shall not deliberate and decide validly unless at least two-thirds (2/3) of its members are present or represented ("quorum"). Where decisions are to be taken unanimously, all Parties must be represented at the meeting.
- In voting, each Party shall have a number of votes equal to the percentage (rounded down in whole numbers) that its Project Share bears to the total cost of the Project.
- 3.2.2.5 In the case of Section 3.2.1.2 (a), the decision shall be taken by 75% of the votes of the non-Defaulting Parties present or represented by proxy at a quorum meeting.

3.3 Board

3.3.1 Composition and responsibilities of the Board

- 3.3.1.1 The composition of the Board for the Project shall reflect the Parties' respective Project Shares in the Project. The Parties shall use reasonable endeavours to maintain their representation in the Board.

The Board shall consist of the following members:

- (a) - the representative of the Co-ordinator; and
- (b) a number of representatives of other Parties, within the limits specified in Part I.

Only Parties with a Project Share equal to or greater than the share specified in Part I shall be entitled to determine the number of Board members within the limits specified in Part I, and to appoint the members of the Board.

- 3.3.1.2 Any Board member may resign by delivering written notice to the chairperson of the Board. Such resignation shall be effective upon receipt of the resignation, unless otherwise indicated.

Any Board member having resigned shall however hold office and continue with the fulfilment of his tasks until a successor has been appointed.

- 3.3.1.3 The Board shall be responsible for:

- (a) making proposals to the General Assembly for: allocating the Project's budget in accordance with the GA; reviewing and proposing budget reallocations to the Parties;
- (b) within 10 days after having been informed by the Co-ordinator thereof, making proposals to the General Assembly that the General Assembly should, within a period of 30 days, propose to the Parties (other than the Defaulting Party) to serve notice on a Defaulting Party in accordance with Section 6.3.4.1 and that the General Assembly decide to assign the Defaulting Party's tasks to specific entity(ies) (preferably chosen from the remaining Parties);
- (c) without prejudice to Section 4, proposing to the General Assembly the plan for using and disseminating the Foreground;
- (d) deciding upon press releases and (without prejudice to Section 4.4) joint publications by the Parties with regard to the Project;
- (e) deciding upon the technical roadmaps with regard to the Project;
- (f) deciding upon any proposed designation of a third party in charge of part of the management of the Project;
- (g) deciding upon measures in the framework of controls and audit procedures to ensure the effective day-to-day co-ordination and monitoring of the progress of the technical work affecting the Project as a whole;
- (h) management of the Project;
- (i) proposing to the General Assembly procedures and tools for the marking and handling of information exchanged between Parties in the performance of the Project; and

- (j) evaluating opportunities for co-operation with other projects and proposing to the General Assembly that it proposes to the Parties that they enter into a Project Co-operation Agreement.
- (k) generating, updating and distributing to the Parties, a schedule of proposed meetings of committees of standards organisations relevant for the potential submission of Foreground as standards proposals. At the request of any Party, the Board shall (i) generate and distribute to the Parties, a schedule of proposed meetings, or (ii) update and re-distribute, a schedule already generated by the Board, by entering on the schedule, any meeting to which the Party wishes to submit any Foreground as part of a standards proposal, provided the Party informs the Board, in writing, of the date of the meeting at least three months in advance.

3.3.2 Decision making in the Board

3.3.2.1 The Board shall be chaired by the Co-ordinator's representative.

The Board shall meet at least four times per year at the request of its chairperson or at any other time when deemed necessary, at the request of one of the Board members. Meetings shall be convened by the chairperson with at least 15 days' prior written notice, accompanied by an agenda proposed by the chairperson. The agenda shall be deemed accepted unless one of the Board members notifies the chairperson and the other Board members in writing of additional points to the agenda, at the latest 2 working days before the meeting date. The Co-ordinator may decide, when convening a meeting, that those allowed to vote may cast their vote by means of electronic communication.

Minutes of the meetings of the Board shall be transmitted to the Board members within 30 days after the meeting date. The minutes shall be considered as accepted if, within 15 days from receipt, no Board member has objected in writing to the chairperson.

The chairperson of the Board shall transmit the agenda and the minutes of the Board meetings to the Parties. The minutes shall be transmitted within 60 days after the date of the meeting.

3.3.2.2 Any decision requiring a vote at a Board meeting must be identified as such on the agenda, unless there is unanimous agreement to vote on a decision at that meeting and all Board members are present or represented.

3.3.2.3 Any decision required or permitted to be taken by the Board may be taken in accordance with the following:

- (a) in a physical meeting, a meeting via teleconference or by means of electronic communication; or
- (b) without a meeting with prior notice of at least 7 days and without a vote, provided that, in such case, (i) a consent in writing, setting forth the decision so taken, is signed by the Board members having not less than the minimum number of votes that would be necessary to take such decision at a meeting at which all Board members entitled to vote on such decision attended and were voting, and (ii) the consent has been delivered for signature to all Board members.

3.3.2.4 The Board shall not deliberate and decide validly unless a majority of two-thirds (2/3) of its members are present or represented ("quorum"). Where decisions are to be taken unanimously, all Board members must be present or represented at the meeting. Without prejudice to the provisions of Section 3.3.1.1, each Board member shall have one vote.

3.3.2.5 In the case of Section 3.3.1.3 (b) the decision shall be taken unanimously by all of the Board members who are representatives of non-Defaulting Parties.

3.4 Responsibilities of each Party

3.4.1 General responsibilities

3.4.1.1 Each Party undertakes to each other Party to use reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under the GA and this APCA.

3.4.1.2 Each Party shall bear its own costs in connection with the making of the Proposal, the negotiation this APCA, and the carrying out of the Project.

3.4.2 Responsibilities towards the Co-ordinator, the Board and the General Assembly

Each Party undertakes to use reasonable endeavours to supply promptly to the Co-ordinator all such information and documents as the Co-ordinator (if appropriate, acting on behalf of the Board or the General Assembly) needs to fulfil obligations pursuant to this APCA. Each Party shall hold harmless and shall indemnify the Co-ordinator against all liability incurred by the Co-ordinator in the performance of its obligations, due to any failure which can

be solely ascribed to that Party in the execution of its obligations under this APCA.

3.4.3 Responsibilities towards each other

3.4.3.1 Each Party undertakes to use reasonable endeavours:

- (a) to notify each of the other Parties promptly of any significant delay in its performance;
- (b) to inform each of the other Parties of relevant communications it receives from third parties in relation to the Project;
- (c) to comply with the applicable procedures and to use the applicable tools for the marking and handling of information exchanged between Parties in the performance of the Project as decided by the General Assembly.

3.4.3.2 Each Party shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies under this APCA and promptly to correct any error in such information or materials of which it is notified or of which it becomes aware.

3.4.3.3 In addition to the obligations specified in the GA, and unless approved to the contrary by the General Assembly or agreed to the contrary by the Parties, each Party agrees not knowingly to use, in the execution of the Project:

- (a) any Background excluded pursuant to the GA, or
- (b) any Background listed as excluded in Annex 3B to this APCA

where such use would result in such excluded Background being Needed for the Use of Foreground.

3.4.3.4 The following shall apply in relation to Subcontractors:

- (a) Each Party shall be fully responsible for the supervision of its Subcontractors and shall enter into appropriate arrangements for such purpose with its Subcontractors. Such arrangements shall as appropriate require that the obligations in this APCA shall also apply to, and be fulfilled by, such Subcontractor.
- (b) Each Party engaging a Subcontractor shall ensure that:
 - (i) except in the case of subcontracting to Affiliates, the Co-ordinator is promptly informed of the name of such Subcontractor and the subcontracted tasks;

- (ii) the subcontract does not impair fulfilment of this APCA;
- (iii) the other Parties' rights in relation to such Party (including without limitation Access Rights) are the same as would have been the case had the contracting Party performed its share of the Project and/or those obligations itself;
- (iv) no such Subcontractor (except Affiliates of any Party in accordance with Section 4.2.2) shall have access to any other Party's Foreground or Background without that other Party's prior written consent; and
- (v) each Subcontractor is bound by the non-disclosure provisions of Section 4.3 below.

4 IPR AND ACCESS RIGHTS

4.1 Intellectual Property Rights

4.1.1 Ownership of Foreground: general principle

Foreground shall be owned by the Party who carried out the work generating the Foreground, or on whose behalf such work was carried out. The Foreground is to the free and unrestricted disposal of the generating Party.

4.1.2 Jointly generated Foreground

If, in the course of carrying out work on the Project, Foreground is generated and 2 or more Parties (the "**Contributors**") (or their Affiliates or other persons working on their behalf) contributed to it, and if the contributions to or features of such Foreground form an indivisible part thereof, such that under applicable law it is not possible to separate them for the purpose of applying for, obtaining and/or maintaining and/or owning the relevant patent protection or any other IPR protecting or available to protect such Foreground, the Contributors agree that, subject as expressly provided to the contrary in this Section 4.1.2.2, all patents and other registered IPRs issued thereon, and any other IPRs protecting such Foreground, shall be jointly owned by the Contributors. The Parties concerned may jointly apply for the relevant patent or other property rights. The arrangements for applying for and maintaining such patent or other property rights shall be agreed between the Parties concerned on a case-by-case basis. Subject to any other agreement between the Parties concerned, and so long as any such patent or other property rights is in force, the Parties concerned shall be entitled to use and to license such patent or other property right without any financial compensation to or the consent of the other Parties concerned.

4.1.3 Assigning ownership of Foreground

4.1.3.1 Each Party may assign ownership of its own Foreground (including without limitation its share in Foreground that it owns jointly with another Party or Parties, and all rights and obligations attaching to it) to any of its Affiliates, to any assignee of the assignor's relevant business or a substantial part thereof, or to another third party identified in Annex 7 to this APCA, without prior notification to the other Parties.

However:

- (a) any such assignment shall be made subject to the Access Rights, the rights to obtain Access Rights and the right to disseminate Foreground that are granted to the other Parties and their Affiliates in this APCA. Therefore, each assignor shall ensure that such assignment does not prejudice such rights of the other Parties or their Affiliates. This may be done, for example, (i) by effecting such assignment subject to a licence back to the assigning Party that is sufficient for the assigning Party to grant to the other Parties and their Affiliates such Access Rights, or (ii) by the assigning Party obtaining from the assignee of the Foreground legally binding undertakings (that can be enforced by the other Parties and their Affiliates) to grant such Access Rights; and
- (b) the assignor shall pass on its obligations regarding the assigned Foreground to the assignee, including the obligation to pass them on to any subsequent assignee; and
- (c) if the assignment is made other than to a third party identified in Annex 7 to this APCA or an Affiliate, the assigning Party shall, either before or within a reasonable period following assignment of any rights in any Foreground, notify the other Parties of the assignment, including details of the Foreground assigned and the identity and contact details of the assignee.

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 APCA notwithstanding any rights of its employees or Subcontractors in the Foreground they create.

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, non-transferable 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, and in particular, where possible, it shall do so before submission of the Proposal to the JU or entering into the GA. Failure so to notify another Party shall not be a breach of this APCA 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 APCA does so at his own risk as nothing in this APCA prohibits a Party or any other party seeking by whatever means it chooses to enforce its IPR's, contracts 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 APCA, unless terminated earlier or agreed otherwise by the Parties, expires 2 years after the end of the Project.

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 IPR Needed to Use Foreground, to all Parties and their Affiliates (subject to such Affiliates also having given such undertaking) and (without prejudice to the Parties' obligations to carry out the Project and to provide Project Deliverables) to fulfil all confidentiality and other obligations towards the JU and the other Parties accepted by the Parties under the GA or this APCA 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 with respect to Foreground or Background to which such entity has been granted Access Rights pursuant to Article 4.2.2 and that has been incorporated at the time of cessation of the Associated Company status of such entity into the products or processes of such entity ("Existing Products and Processes") or that has been amalgamated with such entity's own information at such time, the following will apply:

- (i) with respect to Background Information and Foreground Information that is not Confidential Information according to the terms and conditions of this APCA: such Background and Foreground Information may be used without restrictions
- (ii) with respect to Background Information and Foreground Information that is Confidential Information according to the terms and conditions of this APCA: such Background Information and Foreground Information may be continued to be used by such entity in such Existing Products and Processes ;
- (iii) with respect to Background IPR and Foreground IPR, at the request of such entity, the Parties shall grant to it non-exclusive licences under such Background IPR and Foreground IPR for use in the field of Existing Products and Processes against terms and conditions substantially similar to the conditions that applied to the terminated Access Rights that had been granted to such entity pursuant to 4.2.2, provided that no major business interests of such Parties oppose the grant of such Access Rights.

(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 or Foreground shall continue in full force and effect.

4.2.3 Access Rights Needed for the execution of the Project

Access Rights to Foreground and Background Needed, and not excluded in Annex IV, for the execution of the Project are hereby requested and shall be deemed granted, as of the Effective Date, on a royalty-free basis to and by all Parties.

4.2.4 Access Rights for Use

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

Access Rights to Foreground for Use are hereby requested and shall be deemed granted, as of the Effective Date, on a royalty-free basis to and by all Parties.

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

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

4.2.5 Inability to grant Access Rights due to third party 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 the GA.

4.2.6 Access Rights to third parties

Subject to obligations in relation to Confidential Information, but notwithstanding anything else in this APCA, each Party may enter into a technical co-operation or licensing arrangement with a third party in respect of its own Foreground even if there are minor amounts of Foreground owned by another Party, or even of Background, unavoidably incorporated into or amalgamated with such own Foreground. In such circumstances, and upon request of the Party entering the co-operation or arrangement, the other

Party shall grant non-exclusive rights to permit such co-operation or arrangement against terms and conditions to be agreed, provided such grant does not adversely affect a commercial interest of the other Party.

4.2.7 Special provisions concerning Access Rights to Software

4.2.7.1 General principles

- (a) All of the provisions in the GA and this APCA concerning Access Rights apply to Software that is Background or Foreground as they apply to any other Background or Foreground, but in the case of inconsistency this Section 4.2.7 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 4.2.7, no Party shall be obliged to grant Access Rights to Source Code.

OPTION 1

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

END OF OPTION 1

OPTION 2

All Access Rights to Software that is Foreground, whether for execution of the Project 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 Project or for Use, shall be in the form of Limited Source Code Access, save that no Party shall be obliged to grant for Use any Access Rights to Source Code that is Background and that is not listed in Annex 4 to this APCA (which Annex is a list of Software that is Background in respect of which the Parties are willing when granting Access Rights to grant access to Source Code for Use).

4.2.7.2 Software licence and sublicensing rights

- (a) Access Rights to Object Code and/or an API Needed for Use of Foreground shall, unless the granting and receiving Parties agree in writing to the contrary, comprise the worldwide right:
- (i) to use them in research, to use them to create/market any product/process, and to use them to create/provide any service;
 - (ii) to distribute, make available, market, sell and offer for sale (including by using the services of a third party) such Object Code and/or API alone or as part of or in connection with any products or services of the Party having the Access Rights;
 - (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;
 - to use such Object Code and/or API to maintain such products/services; and
 - to use such Object Code and/or API to create for its own end-use interacting interoperable Software in accordance with the rights conferred by, and subject to the conditions of, Council Directive of 14 May 1991 on the legal protection of computer programs (91/250/EEC); and
 - (iv) in the course of and for the purpose of exercising the rights described in (i) to (iii) above, to make and have made an unlimited number of copies of such Object Code and/or API.

Nothing in this Section 4.2.7.2 shall entitle any Party not to comply with Section 4.2.7.3 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 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 sublicense such Source Code or make it available to any third party in whole or in part.

- (c) Each sublicense granted according to the provisions of this Section 4.2.7.2 shall if practical be made by a traceable agreement specifying and protecting the proprietary rights of the Party granting the Access Rights.

4.2.7.3 Open source Software

- (a)
 - (i) The Parties agree that the use within the Project of Software that is "open source" (as defined at <http://www.opensource.org/docs/definition.php>), and/or the release of Foreground upon licence terms associated with such Software, may have benefits for the conduct of the Project and promote the Use and dissemination of the resulting Foreground. However, they also recognise that certain of such licence terms (namely Controlled Licence Terms) may restrict the options that are available for Use and dissemination of the resulting Foreground, and accordingly they wish to regulate, in accordance with this Section 4.2.7.3 the use of Controlled Licence Terms in relation to the Project and Use and dissemination of the results thereof.
 - (ii) Without limiting the scope of this Section 4.2.7.3, the Parties acknowledge that Background held by a Party pursuant to Controlled Licence Terms may impair or otherwise affect
 - (1) the other Parties' Access Rights to that Background and/or;
 - (2) the Parties's Use of or Access Rights to any Foreground which is wholly or in part based on that Background.

Therefore, each Party agrees that Background or other Works as listed in Annex 5A to this APCA may be used or introduced in the Project in a manner or upon terms as specified by the applicable specific Controlled License Terms and the agreed use in Annex 5A to this APCA.

- (iii) Any Party that intends to use or to introduce into the Project any Background or other Work in a manner or upon terms that would or might result in a requirement that all or some of the Foreground be licensed under Controlled License Terms (the "Introducing Participant") in addition to the Background and Works listed in Annex

5, shall provide the other Parties (the "Other Participants") with a written request for approval ("Request"). This Request shall clearly identify and list such Background or other Work and shall contain sufficient information regarding the Background or other Work in question, the Controlled License Terms that are applicable to it and the intended use of such Background or Works, substantially in the format set out in Annex 5B hereto, to enable each of Other Participants to assess the impairments and other effects the Controlled License Terms may have on Access Rights to such Background and on the Use of or Access Rights to any Foreground that is wholly or in part based on such Background or other Work. Such Background or Works may only be introduced or used in the applicable Project in accordance with the intended use as described in aforesaid notification after expiration of a period of sixty (60) days from receipt of aforesaid Request by all Other Participants, provided however that no written objections have been raised by Other Participants having a Legitimate Interest within said period. The Co-ordinator shall inform all Parties in writing whether or not such objections have been raised. If no such objections have been raised, the Co-ordinator shall add the applicable Background and/or Works and applicable specific Controlled License Terms to Annex 5A.

"Legitimate Interest" shall include within limitation any impairment of or other negative effect caused by the introduction or use in the Project of such Background or Works on

- (1) Background or Foreground of the relevant Other Participant or any of its Associated Companies, or
 - (2) Access Rights to or Use of all or some of the Foreground.
- (iv) Each Party shall comply with the terms regarding the use and introduction of aforesaid Background or Works set forth in Annex 5B. However the provisions of this Section 4.2.7.3. (a) (vi) shall not constitute an agreement pursuant to Section 4.2.7.3 (b) (i).
- (b)
- (i) No Access Rights to any Background or Foreground shall include the right to sublicense that Background or Foreground upon Controlled Licence Terms (and accordingly none of them shall be sublicensed upon Controlled Licence Terms) unless expressly in writing so

agreed by the Party granting the Access Rights, or save to the extent such right is necessarily implied by the approval given in accordance with paragraph (a) (iv) above.

- (ii) This Paragraph (b) shall continue to apply without limit in time notwithstanding completion of the Project or any termination of this APCA.
- (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 4.2.7.3 shall limit the obligations of the Parties under Section 4.4.

4.2.8 Have made rights

Access Rights for Use include the "have made rights".

4.2.9 Access Rights for Parties joining and leaving the Project

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

- (a) Each Party joining the Project in accordance with the provisions of this APCA, after the Effective Date, will be granted Access Rights, except as set out in paragraph (b) below, as provided for in Section 4.2.1 to 4.2.7 above, effective as from the date of its Declaration of Accession has been signed by both the acceding Party and the Co-ordinator.
- (b) In respect of Foreground arising from work carried out under the Project before its Accession Date, each such Party shall enjoy Access Rights for execution of the Project and for Use under the same conditions as the Access Rights to Background provided for in Sections 4.2.1 to 4.2.7 above.

4.2.9.2 For each Party in respect of whom this APCA is terminated in accordance with the provisions of Section 6.3, the following will apply:

- (a) Except in cases where the participation of a Defaulting Party is terminated, the Access Rights granted and the obligations to grant Access Rights pursuant to this APCA shall continue in full force and effect, provided that the Access Rights shall only be granted with respect to Foreground and Background existing at the time of such termination.

(b) Defaulting Parties are obliged to continue to grant Access Rights pursuant to this APCA in respect of Foreground and Background existing at the time of such termination, but the Access Rights granted to the Defaulting Party pursuant to this APCA shall cease immediately upon termination of this APCA.

4.2.9.3 Termination of this APCA in respect of, and/or cessation of licences granted to, the Defaulting Party in accordance with Sections 4.2.8.2 and/or 6.3 shall not terminate any sublicense properly granted or agreed to be granted or offered by the Defaulting Party in accordance with Section 4.2.7.2 or otherwise prior to the date on which such termination of this APCA and/or cessation of licences becomes effective[, provided that any Party which owns the Foreground or Background so sublicensed shall have the right to have an assignment of the Defaulting Party's rights under such sublicenses].

4.3 Confidentiality

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:

- (a) that is identified as confidential in relation to the execution of the Project; or
- (b) whose disclosure could damage the interests of the Disclosing Party or of its Affiliates;

in projects is "**Confidential Information**".

4.3.1.2 Each Receiving Party undertakes not to use Confidential Information for any purpose other than:

- (a) in accordance with the terms of this APCA; and
- (b) for the purpose of performing obligations or as Necessary for exercising rights granted by or pursuant to either such agreement.

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.

4.3.2 Confidentiality period

For any Confidential Information, the period of confidentiality shall be 5 years from the date on which such Confidential Information was disclosed.

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 APCA, 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;
- (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 and to the JU

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.

For the avoidance of doubt, the confidentiality obligations under this APCA shall not prevent the communication of Confidential Information to the JU insofar as strictly needed for the proper execution of this APCA.

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 and this APCA 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 APCA; 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 Foreground.

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.

4.4 Publications, press releases and reports to the JU

4.4.1 Publications

For the avoidance of doubt, no Party shall have the right to publish or allow the publishing of any data which constitutes Foreground, Background or Confidential Information of another Party, even where such data is amalgamated with such first Party's Foreground, Background or other information, document or material.

A copy of any proposed publication in connection with or relating to the Project shall be sent to the Co-ordinator and by the Co-ordinator to the Parties at the earliest time possible. Any of the Parties may object to the publication within 30 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 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 30 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-ordinator 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 30 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

Except as explicitly provided in Annex 8 to this APCA, no Party shall have any obligation pursuant to this APCA to make any contribution for incorporation of its own Foreground in any European or other standard.

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

A copy of each proposed contribution of Foreground to a meeting of a standards organisation included in the schedule distributed by the Board in accordance with section 3.3.1.3 (k), (hereinafter referred to as a "Scheduled Meeting"), for the purpose of incorporation in a standard, shall be distributed to the Parties, by the Party proposing to submit the contribution, no later than [X] days prior to the date of the meeting ("Review Period").

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

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

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 [W] days and the Objection Period shall be [Z] days.

4.4.3 Disclaimer and marking of Confidential Information provided to the JU

- (a) all information provided to the JU, publications and press releases shall have a disclaimer saying: "The information in this document is provided "as is", and no guarantee or warranty is given that the information is fit for any particular purpose. The user uses the information at its sole risk and liability."; and
- (b) Confidential Information provided to the JU will be marked, stating the information is confidential and may be used only for information purposes by European Community Institutions to whom the JU has supplied it.

5 LIABILITY

5.1 Introductory

5.1.1 Liability towards each other

In respect of information or materials supplied by one Party to another under this APCA, the supplying Party shall be under no obligation or liability (other than as expressly stated in this APCA), and no warranty condition or representation of any kind is made by, given by 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 APCA, the absence of any infringement of any proprietary right (including, without limitation, IPRs, trade secret rights and right 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 permits or allows to use such information or materials, puts such information and materials.

Subject to the provisions of Section 5.2.5 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 (or any of its Affiliates) exercising any of the Access Rights granted under this APCA.

No Party makes any representation or warranty, express or implied, other than as expressly stated in this APCA.

5.1.2 Liability towards third parties

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

5.1.3 Liability for Subcontractors

5.1.3.1 Each Party shall be fully liable for the performance of any part of its share of the Project, 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.

5.2 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 Project, 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 and arising in connection with the Project.

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 APCA 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 greater of:

- (a) twice that Party's Project Share, or
- (b) 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), or
- (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 APCA, or not in compliance with the associated terms and conditions.

5.2.5 Exceptions

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 APCA.

5.3 Force Majeure

No failure in the performance of this APCA 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

6.1.1 No partnership or agency

Nothing in this APCA 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 APCA, no licence, immunity, or other right is granted or assigned under this APCA, 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.

6.1.3 Enforcement of Intellectual Property Rights

No Party shall have any obligation under this APCA 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 APCA 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 APCA 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 Project.

6.2 Assignment of rights and obligations

Except as otherwise provided under this APCA, 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 APCA. 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

Subject to full signature, including signature of the Declaration of Accession and signature of the Declaration of Acceptance to the Artemisia Supplementary Agreement for all Parties which are not party to the Artemisia Supplementary Agreement, this APCA shall be deemed to come or to have come into force as from the Effective Date.

This APCA shall continue in full force and effect until the earlier of (a) its termination in accordance with this Section 6.3, or (b) the complete discharge of all obligations undertaken by the Parties under this APCA.

This APCA is subject to the compliance with the conditions of the final Grant Agreement. If the terms and conditions of this APCA are in conflict with the final terms and conditions of the GA, the Parties shall negotiate in good faith appropriate amendments to this APCA and the Parties shall have the right to terminate this APCA absent agreement on appropriate amendments.

6.3.2 Termination before signature of the GA by the Co-ordinator

6.3.2.1 At the request of any Party, the Parties may terminate a Party from this APCA with immediate effect by giving written notice to such party if:

- (a) such Party's membership of ARTEMISIA terminates or is terminated for whatever reason and such Party does not enter into a Declaration of Acceptance;
- (b) a Party is in material breach of any of its obligations under this APCA and has not remedied such breach, if capable of being remedied, within thirty (30) days after having received a written notice by one or more other Party/Parties or the CO-ordinator in which it is requested to remedy such breach.

6.3.3 Termination after signature of the GA by the Co-ordinator

6.3.3.1 Subject to Section 6.3.4, no Party may withdraw from this APCA unless the JU terminates: (a) the GA; or (b) that Party's participation in the GA. In either such case this APCA shall automatically terminate in respect of such Party.

6.3.3.2 A Party shall not by any withdrawal or termination be relieved from:

- (a) any of its responsibilities under this APCA in respect of that part of its work on the Project which has been carried out (or which should have been carried out) up to the date of the withdrawal or termination; or
- (b) without prejudice to the provisions of Section 5, any of its obligations or liabilities arising out of such withdrawal or termination.

6.3.4 Termination in respect of a Defaulting Party etc.

6.3.4.1 Save in the case of Force Majeure, in the event of a substantial breach by a Party of its obligations under this APCA 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, or from the Co-ordinator, acting on the basis of a decision taken by the General Assembly in accordance with Section 3.2.2, such notice requiring that the default be remedied, the other Parties or the Co-ordinator (as the case may be) may terminate this APCA 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.

6.3.4.2 If any Party's participation in the GA is terminated by the JU pursuant to the provisions of the GA, or if any Party withdraws from the Project, then, without prejudice to any other rights of

the other Parties, the provisions of Section 4 shall apply correspondingly.

6.3.5 General provisions relating to termination

6.3.5.1 The provisions of Sections 4, 5, 6.1, 6.2, 6.3, 6.4, 6.5, 6.7 and 6.8 shall survive the expiration or termination of this APCA to the extent needed to enable the Parties to pursue the remedies and benefits provided for in those Sections.

6.3.5.2 For the avoidance of doubt, termination or withdrawal shall not affect any right or obligation incurred prior to the date of the termination or withdrawal, unless otherwise provided in this APCA.

6.4 Parties which are not parties to the ARTEMISIA Supplementary Agreement

6.4.1 All Parties which are not party to the Artemisia Supplementary Agreement, must sign the Declaration of Acceptance to the Artemisia Supplementary Agreement next to the Declaration of Accession to this APCA, when becoming a Party to this APCA.

6.5 Parties having concluded a National Grant Agreement

6.5.1 A Party, having concluded a National Grant Agreement, itself is responsible for obliging to the provisions of that National Grant Agreement. The definition of "Grant Agreement" in this APCA, namely does not include any grant agreements with national funding authorities.

6.6 Settlement of disputes

OPTION 1 (ARBITRATION)

6.6.1 All disputes or differences arising in connection with this APCA, (other than disputes relating to the infringement and/or validity of IPR), including any dispute in which a Party alleges that another Party has abused its power, which cannot be settled amicably shall be finally settled by arbitration in Brussels, Belgium 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. The arbitration shall be conducted in English.

- 6.6.2 The award of the arbitration will be final and binding upon the Parties concerned.
- 6.6.3 The Parties concerned may elect to use mediation to assist in the amicable resolution of a dispute or difference arising in connection with this APCA.
- 6.6.4 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)

- 6.6.1 All disputes or differences directly arising in connection with this APCA, (other than disputes relating to the infringement and/or validity of IPR), 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 competent court in Brussels, Belgium. Such court shall also have jurisdiction in the event of a counterclaim made by the defendant in the legal action.
- 6.6.2 The Parties concerned may instead elect unanimously to seek to resolve by mediation any dispute or difference arising in connection with this APCA and which cannot be settled amicably by them.
- 6.6.3 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

6.7 Language and headings

- 6.7.1 This APCA is drawn up in English, which language shall be used in all documents and notices prepared, and meetings conducted, pursuant to this APCA or otherwise in connection herewith. Any translation shall be for convenience only and of no legal effect.

6.7.2 The various section and sub-section headings in this APCA are included for reference purposes only and shall have no legal effect.

6.8 Notices

6.8.1 Any notice to be given under this APCA shall be in writing to the addresses and recipients listed in APCA Part I 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.

6.8.2 Written communication by means of registered letter, with acknowledgement of receipt, shall be used for notices and communications provided for in or pursuant to Sections 3.2.2.3, 3.3.2.3, 6.2, 6.3.2, 6.3.3, 6.3.4, 6.3.5 and 6.8.2.

6.9 Applicable law

6.9.1 This APCA shall be construed according to and governed by Belgian law and without regard to Belgian law rules of conflict of laws.

6.9.2 When acting under this APCA, 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.

6.10 Entire agreement - amendments - severability

6.10.1 This APCA constitutes the entire agreement between the Parties in respect of the Project, and supersede all previous negotiations, commitments and writings concerning the Project, including any prior memorandum of understanding or letter of intent between the Parties (whether or not with others) which relate to the Project or to the Proposal to be submitted to the JU.

6.10.2 Amendments or changes to this APCA shall be valid only if made in writing and signed by an authorised representative of each of the Parties.

6.10.3 If one or more of the provisions contained in this APCA or any documents executed in connection herewith are found by the JU 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 commercially reasonable efforts to achieve the purpose of the invalid provision by a new legally valid stipulation that causes the same (or substantially similar) economic benefit or burden.

6.11 Counterparts

This APCA shall be executed in [] [**INCLUDE TWICE THE NUMBER OF PARTIES**] counterparts, all of which together shall constitute one and the same instrument. The Co-ordinator and every Party shall each initial and sign 2 counterparts.

The Co-ordinator has an obligation to send copies of all the signed counterparts to each Party within 60 days of receipt of the signed counterparts.

AS WITNESS the Parties have caused this ARTEMIS JU Project Consortium Agreement to be duly signed by their undersigned authorised representatives, the day and year first above written.

Authorised to sign on behalf of <INSERT NAME OF COORDINATOR>

Signature: _____

Name
<INSERT NAME>

Title
<INSERT TITLE>

Date of signature
<INSERT DATE>

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

Signature: _____

Name
<INSERT NAME>

Title
<INSERT TITLE>

Date of signature
<INSERT DATE>

etc.

TEMPLATE

ANNEX 1 – LIST OF AFFILIATES

Party name	List of Affiliates	Affiliate's contact details

TEMPLATE

ANNEX 2A – DECLARATION OF ACCESSION

[name of Party (legal entity)], represented for the purpose hereof by **[name and title of person written out in full (this person must be legally authorised to act on behalf of the legal entity)]** acting as its legal authorised representative, hereby consents to become a Party to this APCA **[identification of final version of the APCA]** (relating to Project **[title]**) and accepts all the rights and obligations of a Party.

[name of Party (legal entity)], shall be considered a Party to this APCA **[identification of final version of the APCA]** relating to Project **[title]** as of the date on which this Declaration of Accession has been signed by both **[name of Party (legal entity)]** and the Co-ordinator.

Done in 2 copies, of which one shall be kept by the Co-ordinator and one by **[name of Party (legal entity)]**.

Acceding Party

Name: **[name of new Party]**
Name of representative: **[name of representative]**
Title: **[title of representative]**

Signature:
Date:

Project Co-ordinator

Name: **[name of Co-ordinator]**
Name of representative: **[name of representative]**
Title: **[title of representative]**

Signature:
Date:

Annex 2B – Declaration of Acceptance

(Applicant full address):

.....
.....
.....
.....

Date:

Declaration of Acceptance

To be addressed to the ARTEMISIA
f.a.o. the Steering Board
[address]

Dear Sirs, Madams,

In respect of the below-mentioned project (the "Project"), we hereby declare to you, also for the benefit of the other participants in the Project, that we accept and agree to pay you amounts equal to 1.5% of our and our Associated Companies' (as defined below) Total Costs (as defined below) incurred in the execution of the Project in a financial year of the Artemis Joint Undertaking (the "JU") during every financial year of existence of the JU.

In addition we agree to report in writing to the association under Dutch law, Artemisia:

- (a) within three (3) months after the end of any financial year of the JU during which we participated in the Project, our and our Associated Companies' Total Costs in the Project.
- (b) before October 1 of each financial year of the JU, a reasonable forecast of our and our Associated Companies' Total Costs in the Project.

Furthermore, we agree to pay an advance in respect of the annual amounts payable as set out above, as may be set by Artemisia on the basis of a reasonable estimation of Artemisia of the amounts to be due by us in respect of a relevant financial year, in which estimation Artemisia shall take into account our reasonable forecast of Total Costs as referred to under (b) above for the relevant financial year.

Artemisia may determine that such advance shall be payable in instalments and Artemisia shall determine the dates on which such advance, or instalments, as the case may be, is/are due and payable. As soon as reasonably possible after the lapse of each financial year Artemisia shall compute the difference between the actual amount payable due by us and the advances paid us in respect of such financial year and inform us in writing of any such difference.

If the advances paid by us in respect of a financial year are less than the actual amount that is due, we shall pay such difference to Artemisia within 60 days of receipt of such notification. If the advances paid by us in respect of the relevant financial year are more than the actual amount

that is due, Artemisia shall pay such difference to us, respectively, within 60 days of dispatch of such notification.

Further the purpose of this document the following terms starting with a capital shall have the meaning as set fort below:

“Associated Company” shall mean any corporation or other legal entity that directly or indirectly Controls us, is Controlled by us, or is under common Control with us, but only with respect to the period said Control continues.

“Control” shall mean the power, whether or not normally exercised, to direct the management and affairs of another corporation or other legal entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. In the case of a corporation, the direct or indirect ownership of more than fifty per cent (50%) of its outstanding share capital shall in any case be deemed to confer control.

“Project” shall mean: [Include name and description of JU Project]

“Total Costs” shall mean our total costs and expenses incurred in the Project for executing the Project to the extent funding by the JU provided to us is based on such costs and expenses.

[name of the entity making this declaration]

.....
Name:
Function:
Place of Business:
Date:

ANNEX 3A – LIST OF BACKGROUND OF WHICH A PARTY EXPECTS THAT ACCESS RIGHTS HAVE TO BE GRANTED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS APCA

Party name	List of Background

TEMPLATE

ANNEX 3B – LIST OF BACKGROUND THAT IS EXCLUDED FROM OBLIGATIONS TO GRANT ACCESS RIGHTS

Party name	Excluded Background

TEMPLATE

ANNEX 4 – LIST OF SOFTWARE THAT IS BACKGROUND IN RESPECT OF WHICH THE PARTIES ARE WILLING, WHEN GRANTING ACCESS RIGHTS, TO GRANT ACCESS TO SOURCE CODE FOR USE, AS REFERRED TO IN SECTION 4.2.7.1

Party name	Software (name + version)	Software (description)

TEMPLATE

ANNEX 5A – LIST OF BACKGROUND OR OTHER WORKS THAT MAY BE USED OR INTRODUCED IN THE PROJECT IN A MANNER OR UPON TERMS AS SPECIFIED BY THE APPLICABLE SPECIFIC CONTROLLED LICENSE TERMS AND FOR THE AGREED USE AS SPECIFIED IN THIS ANNEX

TEMPLATE

ANNEX 5B – REQUIRED CONTENTS OF REQUESTS IN RELATION TO SOFTWARE SUBJECT TO CONTROLLED LICENCE TERMS APPROVALS, REFERRED TO IN SECTION 4.2.7.3

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

- (i) the name/identity of the Software in question, including the version number;
- (ii) a copy of the terms and conditions, including the applicable Controlled Licence Terms, under which the Software is made available by the source identified in (iii) below;
- (iii) the identity and contact coordinates of the source of the Software;
- (iv) a description of what the Software does;
- (v) the technical reasons why Use of the Software in the Project would contribute to achieving the goals of the Project;
- (vi) a list of any alternative Software that has been considered in lieu of the proposed Software;
- (vii) details of the reasons for which the proposing Party considers that using the proposed Software would contribute better to achieving the goals of the Project than any alternative Software as mentioned in response to (vi) above;
- (viii) a description of the Use or Uses to which the proposed Software would be put;
- (ix) a request to approve the Use of the proposed Software in accordance with the description supplied in response to (viii) above; and
- (x) an acknowledgment from the proposing Party that, if the other Parties agree to approve the Use of the proposed Software in accordance with the description supplied in response to (viii) above, such Software may only be Used within the scope of such description.

ANNEX 6 – IDENTIFIED THIRD PARTIES TO WHOM RIGHTS IN FOREGROUND
MAY BE ASSIGNED

Name	Address	Zipcode	City	Country	Website

TEMPLATE

ANNEX 7 – STANDARDS TO WHICH THE PARTIES AGREE TO CONTRIBUTE, AS REFERRED TO IN SECTION 4.4.2

Party	Obligation pursuant to this APCA to make any contribution for incorporation of its own Foreground in any European or other standard

TEMPLATE

TEMPLATE