EUCAR Model Consortium Agreement FP7

EUCAR Model Consortium Agreement for the Seventh Framework Programme (Funding Scheme Collaborative Projects)

[Project Title]([Project Short Title])

Annotation: This Model Consortium Agreement is applicable for projects under the Seventh Framework Programme of the European Community - Funding Scheme Collaborative Projects; compare Decision No 1982/2006/EC, Annex I.
Relevant documents:

1. *Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013), OJ EU 2006 L 412/1*
2. *Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013), OJ EU 2006 L 391/1*
3. *Model Grant Agreement by the European Commission (final version April 10, 2007)*

Consortium Agreement

Ref No: _____

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Article 1: Introduction

1.1 This CONSORTIUM AGREEMENT is made on _____ (herein referred to as "EFFECTIVE DATE" by and among:

Annotation: insert date

_____

_____

_____

_____

Annotation: insert name of legal entity and principal place of business (i.e. town and country)

(hereinafter referred to as "the BENEFICIARIES")

1.2 The BENEFICIARIES prepared a proposal for the implementation of the PROJECT as defined in **Annex A (PROPOSAL)** and, if the European Community provides a GRANT AGREEMENT for the PROJECT that does not materially deviate from the PROPOSAL, shall accede to the GRANT AGREEMENT as a beneficiary and shall implement the PROJECT.

Annotation: compare Grant Agreement (final version April 10, 2007), Article 1.1

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

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

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

Article 2: Interpretation

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

ACCEDING PARTY	means any THIRD PARTY acceding to this CONSORTIUM AGREEMENT
ACCESS RIGHTS	means licenses and user rights in respect of FOREGROUND INFORMATION and BACKGROUND INFORMATION
ADMINISTRATIVE OBLIGATIONS	means the obligations of the BENEFICIARIES defined in Article 6
AFFILIATE	means any legal entity directly or indirectly owned or controlled by or owning or controlling or under the same ownership or control as any of the BENEFICIARIES, such ownership or control existing through the direct or indirect
-	ownership of more than 30 % of the nominal value of the issued equity share capital, or
-	ownership of more than 30 % of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or to the right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote, or
-	ownership of 30 % or more of the shares and the right to control management or operation of the company through contractual provisions
BACKGROUND INFORMATION	means information, whether or not they can be protected, which are not generated in the PROJECT; such results include rights related to copyright, design rights, patent rights, plant variety rights or similar forms of protection

Annotation: compare Regulation (EC) No 1906/2006, Article 2.4 and Article 2.5, which do not cover information generated during the implementation of the PROJECT

BENEFICIARY	means a signatory to this CONSORTIUM AGREEMENT and any ACCEDING PARTY
BUDGET	means the estimated cost of the PROJECT
COMMUNITY FINANCIAL CONTRIBUTION	means the Community financial contribution by the European Community under the GRANT AGREEMENT

CONSORTIUM AGREEMENT	means this consortium agreement
CO-ORDINATOR	has the meaning defined in Article 5.1
DELIVERABLES	means all reports, certificates, data and other information required to be provided to the European Community by the GRANT AGREEMENT
EFFECTIVE DATE	means the date of this CONSORTIUM AGREEMENT as defined in Article 1.1
EUCAR AGREEMENT	means the agreement dated 27th May 1994 between Adam Opel AG (now Adam Opel GmbH), Bayerische Motoren Werke AG, Daimler-Benz AG (now DaimlerChrysler AG), Fiat S.p.A., Ford Motor Company Limited, Peugeot S.A., Regie Nationale des Usines Renault S.A. (now Renault s.a.s.), Volkswagen AG and AB Volvo relating to the establishment of co-operative activities in research and development of products processes and systems in order to improve the competitiveness of the European automotive industry and to achieve benefits for its customers and consumers (European Council for Automotive R&D), as amended from time to time
EUCAR MEMBERS	means the contracting parties of the agreement dated 27th May 1994, namely Adam Opel AG (now Adam Opel GmbH), Bayerische Motoren Werke AG, Daimler-Benz AG (now DaimlerChrysler AG), Fiat S.p.A., Ford Motor Company Limited, Peugeot S.A., Regie Nationale des Usines Renault S.A. (now Renault s.a.s.), Volkswagen AG and AB Volvo and acceded Dr. Ing. h.c. F. Porsche AG and DAF Trucks N.V.
FAULT	means any wrongful act, omission, breach of applicable laws or failure to comply with the terms of this CONSORTIUM AGREEMENT
FORCE MAJEURE	means any act, event or condition beyond the reasonable control of a BENEFICIARY that was not reasonably foreseeable and is not avoidable under normal circumstances, including but not limited to acts of God, war, riot, acts of Governments or any political subdivision thereof, fires, floods, explosions, or other catastrophes, labour disturbances, freight embargoes or material shortages

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

Annotation: compare Regulation (EC) No 1906/2006, Article 2.4 and 2.5

GENERAL ASSEMBLY	has the meaning defined in Article 4.2.1
GRANT AGREEMENT	means the grant agreement between the European Community and the BENEFICIARIES

Annotation: see Regulation (EC) No 1906/2006, Article 18.2

LEGITIMATE INTERESTS	means a BENEFICIARY's interests of any kind, particularly a commercial interest, which may be claimed in the cases provided for in this CONSORTIUM AGREEMENT, if failure to take account of this interest would result in such BENEFICIARY's suffering disproportionately great harm
NEEDED FOR USE	means needed as necessary to enable the USE
PROJECT	means the project defined in Article 1.2
PROPOSAL	means the proposal referred to in Article 1.2
REPRESENTATIVE	means the one representative designated by each of the BENEFICIARIES in accordance with Article 4.1.1
STEERING COMMITTEE	has the meaning defined in Article 4.2.2
SUB-CONTRACT	means an agreement between one or more BENEFICIARIES and a THIRD PARTY, in order to carry out part of the work of the PROJECT
SUB-CONTRACTOR	means a THIRD PARTY which has entered into an agreement with one or more BENEFICIARIES, in order to carry out part of the work of the PROJECT
SUB-PROJECT COMMITTEE	the committees established in accordance with Article 4.3.2
SUB-PROJECT LEADER	the BENEFICIARIES as defined in Article 4.3.1

THIRD PARTY	means any person other than the BENEFICIARIES and AFFILIATES
USE	means the direct or indirect utilisation of FOREGROUND INFORMATION or BACKGROUND INFORMATION in research activities or for developing, creating, making (including have made) and marketing a product or process, or for developing, creating and providing a service, but not including the right to grant sub-licences
WRITTEN FORM	means (i) documents duly signed by an authorized representative and personally delivered or delivered by mail or (ii) electronic documents delivered with advanced electronic signatures which are based on a qualified certificate and which are created by a secure-signature-creation device.

Annotation: Compare Article 5.1 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ EC 1999 L 13/12.

Article 3: Purpose and Scope of the CONSORTIUM AGREEMENT

The CONSORTIUM AGREEMENT is intended to define more precisely the terms on which the BENEFICIARIES will co-operate within the scope of the GRANT AGREEMENT. Accordingly, the BENEFICIARIES agree amongst themselves to take all reasonable and necessary measures to ensure that the PROJECT is carried out in accordance with the terms and conditions of the GRANT AGREEMENT and the CONSORTIUM AGREEMENT.

Annotation: compare Regulation (EC) No 1906/2006, Article 18.1

Article 4: Organisation of the PROJECT

4.1 General Principles

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

4.1.2 The PROJECT is structured by SUB-PROJECTS, which may be publicly funded and which are structured by WORK PACKAGES.

4.1.3 General Principles for the GENERAL ASSEMBLY, the STEERING COMMITTEE, and the SUB-PROJECT COMMITTEES.

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

The GENERAL ASSEMBLY, the STEERING COMMITTEE, and the SUB-PROJECT COMMITTEES making a decision shall be obliged to allow the BENEFICIARIES concerned to invoke objections and shall take into account, and draw the appropriate conclusions from, any objection by any BENEFICIARY based on LEGITIMATE INTERESTS.

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

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

Subject to their LEGITIMATE INTERESTS the BENEFICIARIES agree to abide by all decisions of the GENERAL ASSEMBLY, the STEERING COMMITTEE, and the SUB-PROJECT COMMITTEE.

A BENEFICIARY who can show that its own work, time for performance, costs or liabilities, or intellectual property rights would be severely impacted or who can claim LEGITIMATE INTERESTS, may veto the relevant part of the decision of the GENERAL ASSEMBLY, the STEERING COMMITTEE, or the SUB-PROJECT COMMITTEES with no undue delay.

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

If there is any contradiction between the decisions taken by the GENERAL ASSEMBLY, the STEERING COMMITTEE, or the SUB-PROJECT COMMITTEES, the decision of the GENERAL ASSEMBLY shall prevail over the decisions taken by the STEERING COMMITTEE and the SUB-PROJECT COMMITTEES and the decisions of the STEERING COMMITTEE shall prevail over the decisions taken by the SUB-PROJECT COMMITTEES.

4.2 PROJECT Level

4.2.1 GENERAL ASSEMBLY

All BENEFICIARIES shall be members of the GENERAL ASSEMBLY. The CO-ORDINATOR shall chair all meetings of the GENERAL ASSEMBLY. The GENERAL ASSEMBLY shall have an annual meeting for reviewing and monitoring the progress of the PROJECT as well as identifying appropriate actions for the successful performance of the PROJECT.

The GENERAL ASSEMBLY shall be in charge of making decisions or proposals for decisions to be taken by the STEERING COMMITTEE, particularly decisions of major and strategic relevance.

4.2.2 STEERING COMMITTEE

The CO-ORDINATOR and the following BENEFICIARIES shall be members of the STEERING COMMITTEE: _____.

Annotation: insert
- name of legal entities
or
- "the SUB-PROJECT LEADERS"

The CO-ORDINATOR shall chair all meetings of the STEERING COMMITTEE. The CO-ORDINATOR shall convene meetings at least once every six months during the term of the CONSORTIUM AGREEMENT.

The STEERING COMMITTEE shall be in charge of supervising the progress of the PROJECT, taking decisions regarding the PROJECT, particularly decisions of major and strategic relevance.

Any decision taken by the STEERING COMMITTEE shall require the unanimous decision of all members.

4.3 SUB-PROJECTS Level

4.3.1 SUB-PROJECT COMMITTEES

All BENEFICIARIES participating in the respective SUB-PROJECT shall be members of the respective SUB-PROJECT COMMITTEE. The SUB-PROJECT LEADER shall chair all meetings of the SUB-PROJECT COMMITTEE.

The SUB-PROJECT COMMITTEE shall be in charge of managing the SUB-PROJECT within the PROJECT and consistent with the decisions taken by the GENERAL ASSEMBLY and the STEERING COMMITTEE.

The responsibilities of the SUB-PROJECT COMMITTEE shall include without limitation:-
- to supervise and provide day to day management of the activities of the respective BENEFICIARIES on the SUB-PROJECT,
- active planning and progress monitoring of the SUB-PROJECT.

4.3.2 SUB-PROJECT LEADERS

If not nominated in the PROPOSAL, each SUB-PROJECT COMMITTEE may elect a BENEFICIARY as a SUB-PROJECT LEADER.

The SUB-PROJECT LEADER shall
- submit the reports to the CO-ORDINATOR
- submit the DELIVERABLES to the CO-ORDINATOR
- submit information required to the CO-ORDINATOR

The SUB-PROJECT LEADER shall not be entitled to act or to make legally binding declarations on behalf of any other BENEFICIARIES.

Article 5: CO-ORDINATOR

5.1 _____ is the CO-ORDINATOR.

Annotation: insert name of legal entity, i.e. the name of one of the BENEFICIARIES

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

5.3 In addition to the obligations of the coordinator under the GRANT AGREEMENT, the CO-ORDINATOR shall be responsible for the following additional co-ordination responsibilities:
- interacting with the European Community and THIRD PARTIES about the PROJECT, including the submission of DELIVERABLES to the European Community;
- receiving, compiling, and distributing to the BENEFICIARIES' and other relevant recipients' documents, reports, statements of expenditure, minutes of meetings of the

GENERAL ASSEMBLY and of the STEERING COMMITTEE and other relevant information from the BENEFICIARIES.

5.4 All costs incurred by the CO-ORDINATOR in its performance of its co-ordination responsibilities (including costs incurred under any SUB-CONTRACT for the performance of such responsibilities) shall be borne by the CO-ORDINATOR as part of the CO-ORDINATORS's work in the PROJECT.

Article 6: ADMINISTRATIVE OBLIGATIONS of the BENEFICIARIES

6.1 Each of the BENEFICIARIES shall promptly supply to their respective SUB-PROJECT LEADERS, to the CO-ORDINATOR, to the STEERING COMMITTEE and to the European Community all such information, reports, documents and DELIVERABLES that are necessary in order to fulfil their obligations under the GRANT AGREEMENT and the CONSORTIUM AGREEMENT.

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

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

Annotation: compare Grant Agreement (final version April 10, 2007), Article II.2.3

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

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

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

(d) submit to the CO-ORDINATOR all information necessary for the records and financial accounts relevant for the financial contribution;

(e) make its communication to the European Community via the CO-ORDINATOR and to submit to the CO-ORDINATOR all information necessary to report to the European Community on the progress of the PROJECT;

Annotation: compare Regulation (EC) No 1906/2006, Article 25.1

(f) verify consistency of its reports with the PROJECT tasks before transmitting them to the CO-ORDINATOR;

Annotation: compare Grant Agreement (final version April 10, 2007), Article II.2.3

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

Annotation: compare Grant Agreement (final version April 10, 2007), Article II.21.1

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

6.5 Where a BENEFICIARY designates a SUB-CONTRACTOR, the BENEFICIARY shall ensure that the terms and conditions on which the SUB-CONTRACTOR is appointed are fully consistent with those of the CONSORTIUM AGREEMENT and the GRANT AGREEMENT.

The BENEFICIARY shall be responsible for the work to be performed by the SUB-CONTRACTOR.

Annotation: compare Grant Agreement (final version April 10, 2007), Article II.7.1

Article 7: DELIVERABLES

7.1 The BENEFICIARIES will use all reasonable endeavours to supply DELIVERABLES to the CO-ORDINATOR four weeks in advance of the date by which the DELIVERABLES are due for submission to the European Community.

7.2 The STEERING COMMITTEE shall specify the format and number of copies in which all drafts, reports, DELIVERABLES and other information required to be submitted by any of the BENEFICIARIES in accordance with the CONSORTIUM AGREEMENT will be submitted.

Article 8: BUDGET and COMMUNITY FINANCIAL CONTRIBUTION

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

Annotation: Grant Agreement (final version April 10, 2007), Article 5.2: provides: "Details of the Community financial contribution are contained in Annex I to this grant agreement which includes: - a table of the estimated breakdown of budget and Community financial contribution per activity to be carried out by each of the beneficiaries under the project. Beneficiaries are allowed to transfer budget between different activities and between themselves in so far as the work is carried out as foreseen in Annex I."

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

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

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

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

8.6 The CO-ORDINATOR shall transfer COMMUNITY FINANCIAL CONTRIBUTION received from the European Community to each of the other BENEFICIARIES without unjustified delay after the receipt of the COMMUNITY FINANCIAL CONTRIBUTION and relevant supporting information.

Annotation: compare Grant Agreement (final version April 10, 2007), Article II.2.3 a)

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

8.8 Amongst EUCAR MEMBERS that are BENEFICIARIES and their AFFILIATES, the CONSORTIUM AGREEMENT shall supersede any provision of the EUCAR AGREEMENT

relating to the implementation of this PROJECT; the cross-billing process of Article 20 of the EUCAR AGREEMENT shall not apply.

Article 9: Confidentiality

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

This undertaking shall not apply to any information that:-

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

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

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

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

Article 10: Ownership of FOREGROUND INFORMATION

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

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

10.3 The following BENEFICIARIES have entered into agreements under which ownership of the BENEFICIARY's FOREGROUND INFORMATION is assigned to one or more of their AFFILIATES. Those BENEFICIARIES warrant that such assignment does not prejudice the ACCESS RIGHTS of the other BENEFICIARIES to such FOREGROUND INFORMATION and that the AFFILIATE accepts all the obligations under the CONSORTIUM AGREEMENT arising from ownership of the FOREGROUND INFORMATION. The other BENEFICIARIES hereby consent to such assignment.

BENEFICIARY/Assignor	**BENEFICIARY's AFFILIATE/Assignee**
_____	_____

_____	_____
_____	_____
_____	_____

Annotation: if none of the BENEFICIARIES requests an entry into this list, Article 10.3 may be replaced with: "(void)"

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

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

Article 11: ACCESS RIGHTS

11.1 **ACCESS RIGHTS for the performance of the PROJECT**

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

11.2 **ACCESS RIGHTS for USE (among BENEFICIARIES in different SUB-PROJECTS)**

11.2.1 **FOREGROUND INFORMATION**. Each of the BENEFICIARIES hereby agrees to grant permanent, world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's FOREGROUND INFORMATION to the extent NEEDED FOR USE of FOREGROUND INFORMATION generated in the SUB-PROJECT they participate in

- on preferential conditions to the other BENEFICIARIES and their AFFILIATES

11.2.2 **BACKGROUND INFORMATION**. Subject to LEGITIMATE INTERESTS of the respective owner, each of the BENEFICIARIES hereby agrees to grant permanent, world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's BACKGROUND INFORMATION to the extent NEEDED FOR USE of FOREGROUND INFORMATION generated in the SUB-PROJECT they participate in

- on preferential conditions to the other BENEFICIARIES and their AFFILIATES

11.3 **ACCESS RIGHTS for USE (among the BENEFICIARIES of the same SUB-PROJECT)**

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

- royalty-free to the other BENEFICIARIES participating in the same SUB-PROJECT and their AFFILIATES
- on preferential conditions to any ACCEDING PARTY participating in the same SUB-PROJECT and its AFFILIATES with regard to FOREGROUND INFORMATION generated before the accession

11.3.2 **BACKGROUND INFORMATION**. Subject to LEGITIMATE INTERESTS of the respective owner, each of the BENEFICIARIES hereby agrees to grant permanent, world-wide, non-exclusive ACCESS RIGHTS in respect of the BENEFICIARY's BACKGROUND INFORMATION to the extent NEEDED FOR USE of FOREGROUND INFORMATION

- on preferential conditions to the other BENEFICIARIES participating in the same SUB-PROJECT and their AFFILIATES

11.4 Any request for ACCESS RIGHTS may be made without any time-limit. By signing the CONSORTIUM AGREEMENT, the BENEFICIARIES shall be deemed to have requested in WRITTEN FORM the grant of all ACCESS RIGHTS referred to above.

Annotation: regarding the first sentence, see Regulation (EC) No 1906/2006, Article 48.1; Grant Agreement (final version April 10, 2007), Article II.32.1, Article II.34.4

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

Annotation: see Regulation (EC) No 1906/2006, Article 48.5, Article 50.4; Grant Agreement (final version April 10, 2007), Article II.32.3

Article 12: Accession to this CONSORTIUM AGREEMENT

12.1 Any accession to this CONSORTIUM AGREEMENT shall require
- the conclusion of an accession agreement in WRITTEN FORM duly signed by all BENEFICIARIES and by the ACCEDING PARTY; the BENEFICIARIES may authorise the CO-ORDINATOR to sign the respective accession agreement on their behalf and
- the accession by the ACCEDING PARTY to the GRANT AGREEMENT.

Annotation: see Regulation (EC) No 1906/2006, Article 26.2

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

Annotation: see Regulation (EC) No 1906/2006, Article 19.1

Article 13: Liability in Contract

13.1 **General Principles**

This Article shall apply for any liability for damages based on contract, but not with regard to any liability based on tort or based on other statutory liability.

13.2 **Liability towards the BENEFICIARIES**

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

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

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

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

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

13.3 **Liability towards the European Community and THIRD PARTIES**

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

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

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

Article 14: FORCE MAJEURE

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

Article 15: Dissemination, Publicity and Press Releases

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

15.2 Without prejudice to any other obligations in this CONSORTIUM AGREEMENT, the BENEFICIARIES shall be entitled to disseminate and/or publish without prior notice to the other BENEFICIARIES the FOREGROUND INFORMATION they generated in the PROJECT.

Annotation: compare Grant Agreement (final version April 10, 2007), Article II.30.3

Article 16: Notices

Any notice to be given under this CONSORTIUM AGREEMENT shall be made in WRITTEN FORM to the following recipients or to such other address and recipient as a BENEFICIARY may designate in respect of that BENEFICIARY by notice in WRITTEN FORM to the other BENEFICIARIES:

- _____ nominates as contact for technical matters (project officer)
  Mr. _____, Dept. _____
  and as contact for administrative matters (financial officer)
  Mr. _____, Dept. _____
- _____ nominates as contact for technical matters (project officer)
  Mr. _____, Dept. _____
  and as contact for administrative matters (financial officer)
  Mr. _____, Dept. _____
- _____ nominates as contact for technical matters (project officer)
  Mr. _____, Dept. _____
  and as contact for administrative matters (financial officer)
  Mr. _____, Dept. _____
- _____ nominates as contact for technical matters (project officer)
  Mr. _____, Dept. _____
  and as contact for administrative matters (financial officer)
  Mr. _____, Dept. _____

Article 17: Amendments to the GRANT AGREEMENT and to this CONSORTIUM AGREEMENT

17.1 Any approval or request addressed to the European Community regarding the amendment or the termination of the GRANT AGREEMENT shall require the approval of all BENEFICIARIES in WRITTEN FORM, which shall not be unreasonably withheld.

Annotation: compare Grant Agreement (final version April 10, 2007), Article II.36.2

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

Article 18: Term and Termination of the CONSORTIUM AGREEMENT

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

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

(a) if the European Community provides a GRANT AGREEMENT for the PROJECT that materially deviates from the PROPOSAL, or
(b) if the GRANT AGREEMENT terminates, or
(c) if the participation of that BENEFICIARY in the GRANT AGREEMENT is terminated.

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

The BENEFICIARIES whose participation is terminated under (b), or (c) above shall be relieved from further implementing the PROJECT, but the Articles of the CONSORTIUM AGREEMENT on ADMINISTRATIVE OBLIGATIONS, Confidentiality, ACCESS RIGHTS,

Liability, and Publicity and Press Releases, Settlement of Disputes, and Applicable Law shall survive the termination, but shall - as far as they refer to FOREGROUND INFORMATION - apply on FOREGROUND INFORMATION only which has been generated before the termination.

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

Annotation: compare Grant Agreement (final version April 10, 2007), Article II.36.2

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

Annotation: compare Regulation (EC) No 1906/2006, Article 32.4

Article 19: Settlement of Disputes

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

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

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

Article 20: Applicable Law

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

Annotation: insert country
- where the CO-ORDINATOR has its principal place of business
or
- Belgium
(If you have an attorney in Belgium available, you should prefer the laws of Belgium, otherwise it might be preferable to choose the CO-ORDINATOR's principal place of business, who can then provide legal opinions on questions arising from this agreement.)

CONSORTIUM AGREEMENT Ref No: _____
Authorised Signature(s) of the BENEFICIARY:

BENEFICIARY: _____

Date(s)	**Authorised Representative(s)**	**Signature(s)**
_____	_____	_____
_____	_____	_____

CONSORTIUM AGREEMENT Ref No: _____
Authorised Signature(s) of the BENEFICIARY:

BENEFICIARY: _____

Date(s)	**Authorised Representative(s)**	**Signature(s)**
_____	_____	_____
_____	_____	_____

CONSORTIUM AGREEMENT Ref No: _____
Authorised Signature(s) of the BENEFICIARY:

BENEFICIARY: _____

Date(s)	**Authorised Representative(s)**	**Signature(s)**
_____	_____	_____
_____	_____	_____

CONSORTIUM AGREEMENT Ref No: _____
Authorised Signature(s) of the BENEFICIARY:

BENEFICIARY: _____

Date(s)	**Authorised Representative(s)**	**Signature(s)**
_____	_____	_____
_____	_____	_____