

CONSORTIUM AGREEMENT

**A Software Architecture for Extreme-Scale Big-
Data Analytics in Fog Computing Ecosystems**

ELASTIC

H2020-ICT-2018-2020
(Information and Communication Technologies Call)

Version 04

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CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT is based upon REGULATION (EU) No 1290/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 laying down the rules for the participation and dissemination in “Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)” (hereinafter referred to as “Rules for Participation”), and the Grant Agreement n# 825473 and its Annexes, and is made on 01/12/2018, hereinafter referred to as the Effective Date.

BETWEEN:

1. BARCELONA SUPERCOMPUTING CENTER - CENTRO NACIONAL DE SUPERCOMPUTACION ES
2. IKERLAN S COOP ES
3. INSTITUTO SUPERIOR DE ENGENHARIA DO PORTO PT
4. INFORMATION CATALYST FOR ENTERPRISE LTD UK
- 4.1 INFORMATION CATALYST FOR ENTERPRISE ES
5. SIXSQ SARL CH
6. THALES SA FR
7. THALES ITALIA SPA IT
8. GESTIONE ED ESERIZIO DEL SISTEMA TRANVIARIO SPA IT
9. CITTA METROPOLITANA DI FIRENZE

hereinafter, jointly or individually, referred to as “Parties” or “Party”

relating to the Action entitled “A Software Architecture for Extreme-ScaLe Big-Data AnalyticS in Fog CompuTing ECosystems”

in short **ELASTIC**

hereinafter referred to as “Project”

WHEREAS:

for the Project to the Funding Authority as part of the Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020)

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

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

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1: Definitions

1.1 Definitions

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

1.2 Additional Definitions

“Consortium”

Consortium means the Parties which have signed or acceded to this Consortium Agreement and which remain participants in the Project.

“Consortium Body “

Consortium Body means any management body described in the Governance Structure section of this Consortium Agreement.

“Consortium Plan”

Consortium Plan means the description of the action and the related agreed budget as first defined in the ERA4CS Grant Agreement.

“Consortium Agreement”

means this document and its attachments, including any amendments thereto as well as any other document incorporated therein by reference, which are integral parts of this Consortium Agreement.

“Defaulting Party”

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

"Exploitation"

Exploitation means the direct or indirect utilisation of Results in further research activities other than those covered by the Project, or for developing, creating and marketing a product or process, or in creating and providing a service, or in standardisation activities.

"Funding Authority"

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

“Grant Agreement”

Agreement between the partners of the consortium and the European Commission

“Industrial Party” means a Party established under private law which has a legal personality and which is engaged in an economic activity. A legal entity is considered to be engaged in an ‘economic activity’, if it is involved in any form of trade or activity done for remuneration or pecuniary interest on the market. Thus, in general, any activity consisting in offering goods or services on a given market is an economic activity.”

“Task Leader”

A Party that has been allocated responsibility by the Consortium to coordinate a specific Task.

“Work Package Leader”

A Party that has been allocated responsibility by the Consortium to coordinate a Work Package composed of one or several tasks.

“Needed” means:

For the implementation of the Project:

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

For Exploitation of own Results:

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

“Commercial exploitation “

Commercial exploitation means

- (a) developing, creating or marketing a product or process;
- (b) creating and providing a service, or
- (c) using the results in standardisation activities.

“Non-commercial exploitation”

Non-commercial exploitation means to use the results for further research activities (outside the action).

"Results"

Results means any tangible or intangible output of the action, such as data, knowledge and information whatever their form or nature, whether or not they can be protected, which are generated in the action as well as any attached rights, including intellectual property rights.

“Software”

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

Section 2: Purpose

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

Section 3: Entry into force, duration and termination

3.1 Entry into force

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

This Consortium Agreement shall have effect from the Effective Date identified at the beginning of this Consortium Agreement and replaces any previous versions.

A new entity becomes a Party to the Consortium Agreement upon signature of the accession document (Attachment 2) by the new Party and the Coordinator, subject to the prior agreement of the General Assembly as further defined in article 6 hereafter. Such accession shall have effect from the date identified in the accession document.

3.2 Duration and termination

The duration of the action will be 36 months as December 1st 2018 (“starting date of the action”).

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

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

In the event that:

- the Grant Agreement is terminated, or
 - a Party's participation in the Grant Agreement is terminated,
- this Consortium Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or termination under Section 3.3 of this Consortium Agreement.

3.3 Survival of rights and obligations

The provisions relating to Access Rights, Ownership of Results, Dissemination and confidentiality, for the time period mentioned therein, as well as for liability, applicable law and settlement of disputes shall survive the expiration or termination of this Consortium Agreement. Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination, unless otherwise agreed between the General Assembly to be approved according to the agreed upon decision making procedures under this Agreement and the leaving Party. This includes the obligation to provide all input, deliverables, reports and documents for the period of its participation.

Section 4: Responsibility of Parties

4.1 General principles

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

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

Each Party shall promptly provide all information reasonably required by a Consortium Body or by the Coordinator to carry out its tasks and shall not knowingly provide any information, Background or Results which it is not entitled to so provide for the purposes of the Project.

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

A Party that is Work Package Leader shall:

- manage the whole Work Package in coordination with the different Task Leaders and ensure full coverage of the Work Package activities,
- assist the Parties in performing their respective activities in the Work Package,
- coordinate the Work Package activities with the other Work Package Leaders in order to develop a coherent working methodology and to avoid overlapping of work,
- provide the Coordinator with regular activity reports, collect the information from the different Task Leaders involved in the Work Package and meet the deadlines indicated in the Annex I to this Consortium Agreement,
- provide upon request financial data to the Funding Authority,
- submit to the Coordinator by 18 months a periodic technical report and by the project final report containing:

- An overview of the progress towards the objectives of the action, including milestones and other deliverables identified in the Annex I to this Consortium Agreement. This report must include explanations justifying the differences between work expected to be carried out in accordance with proposal and that actually carried out,
- Details on delays in the performance of the Project,

A Party that is Task Leader shall:

- manage the task in coordination with the Work Package Leader and ensure full coverage of the task activities,
- assist the Parties in performing their respective activities within the task,
- coordinate the task activities with the other Task Leaders and Work Package Leaders in order to develop a coherent working methodology and avoid overlapping of work,
- provide the Work Package Leader with regular activity reports and meet the deadlines indicated in the Consortium Plan,
- provide upon request financial data to the Funding Authority and/or the Coordinator.

The transfer of responsibility for Work Package and task leadership may be done by mutual consent of the Party leaving this responsibility and the Party taking in charge this responsibility. Transfer of Work Package or task responsibility shall be approved by the appropriate Consortium Body (as described in Section 6 on governance) upon proposal of the Coordinator. The Party taking the Work Package or task responsibility must prove to the Consortium its capacity to dedicate the human, financial and intellectual resources necessary to assume its new role. Re-allocation of responsibilities should be associated with re-allocation of the budget. Changes in the Work Package or task content and timeline could also be necessary. Such re-allocation and changes shall be approved by the appropriate Consortium Body (as described in Section 6 on governance) and by the Funding Authority.

4.2 Breach

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

If such breach is not remedied within that period or is not capable of remedy, the General Assembly may decide to declare the Party to be a Defaulting Party and to decide on the consequences thereof which may, in the event of substantial (or irremediable) breach, include termination of its participation in accordance with provisions of article 50.3 of the Grant Agreement or financial remedy in the limits of article 5 of this Consortium Agreement.

Notwithstanding any joint and several liability of the Party which may exist towards the Commission, each Party shall be liable towards the others for any claims by the Commission for losses or damages suffered by the Commission, as a consequence of any failure to perform the whole or part of its obligations under the Grant Agreement or under this Consortium Agreement.

4.3 Involvement of third parties

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

Section 5: Liability towards each other

5.1 No warranties

In respect of any information or materials (incl. Results and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties of which rights the supplier Party is not aware.

Therefore,

- subject as aforesaid the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and

- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliated Entities) exercising its Access Rights.

However, each Party shall promptly inform the other Party of any claims of third parties that come to its knowledge.

5.2 Limitations of contractual liability

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

For any remaining contractual liability, a Party's aggregate liability towards the other Parties collectively shall be limited to once the Party's share of the total costs of the Project as identified in Annex 2 of the Grant Agreement provided such damage was not caused by a wilful act, fraudulent acts or gross negligence, including the death or personal injury inflicted upon a natural person, or a breach of confidentiality.

The terms of this Consortium Agreement shall not be construed to amend or limit any Party's statutory liability. Moreover, the limitations of liability stated above shall not apply in the case of damage caused by a wilful act, gross negligence or injury or death of a person, or breach of obligations of confidentiality.

5.3 Damage caused to third parties

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

5.4 Force Majeure

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

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

Section 6: Governance structure

6.1 General Structure

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

Coordinator is the legal entity acting as the intermediary between the Parties and the Funding Authority. The Coordinator shall, in addition to its responsibilities as a Party, perform the tasks assigned to it as described in the Grant Agreement and this Consortium Agreement.

The Technical Manager (TM), named by the Coordinator, initially Dr. Eduardo Quiñones, has the overall responsibility for the project progress and guarantees that the scientific and technical objectives are met. The TM chairs both the Executive Board (EB) and IAB meetings (both described below). The TM defines high-level technical strategy and drives the team to

implement according to that strategy, as well as maintaining its relevance to the ICT program and its strategic objectives.

The TM works with the Work Package Leaders (WPL) to identify issues and propose suitable corrective actions (e.g., temporary resource reallocation, taskforce creation, etc.) that might require approval by the EB. The TM is also responsible for calling EB and IAB meetings and EC reviews as well as compiling and distributing minutes and actions. The TM is supported by the PM, collaborating closely to provide clear and accurate Periodic Reports.

The Project Manager (PM), named by the Coordinator, initially, Guadalupe Moreno from BSC, is responsible for the day-to-day execution of the project and will ensure the timely delivery of project objectives and deliverables by continuously monitoring how closely project progress is following the plan. To do so, the PM will monitor the Project Management Plan, which will detail the project organisation, responsibilities (nominal persons in the organization structure and persons responsible per WP, task and deliverable), arbitration, schedule, deliverables, quality control and risk management. The PM is also responsible for the administrative management of the project that includes the provisioning of Periodic Reports and Financial Statements to ensure a timely distribution of the budget to the beneficiaries according to the grant agreement.

Work Package Leaders (WPLs), a subset of the EB members, are responsible for the scientific and technical work of their respective WPs. This includes planning and control of all activities, and the collection of the contributions from other partners participating in the respective WPs for internal and external reports. Technical discussions and work will be led by WPL and inter WP issues solved by the EB. The role of WPL and task leader) will be to distribute the workload among the partners participating in the WP/task (including itself) and ensure a timely and qualitatively delivery

The Executive Board (EB) is the main day-to-day decision-making team and is formed by a delegate from each partner, who can be represented by another member of the same partner if explicitly appointed. The EB will be responsible for the overall direction of the project. The TM or a project member appointed by the TM will act as the chairperson. Each partner will have one vote. The vote of the chairperson decides in case of a tie. The EB will meet in person at least twice a year, in the same location as other project meetings, whenever possible, to save expenses and effort. It will perform monthly teleconference meetings in between the face-to-face meetings.

General Assembly as defined in 6.3.1, shall act as the ultimate decision-making body of the Consortium.

Industrial Advisory Board (IAB) composed of high profile key industrial people in the EU. Their contribution is to build a strong industrial focus in the project, not by bringing them in as full partners, but as advisors and observers of the project, as multipliers for result dissemination, exploitation, and for contributions and recommendations from other application domains, and model-driven and chip vendor experts.

6.2 General operational procedures for all Consortium Bodies

6.2.1 Representation in meetings

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

- Should be present or represented at any meeting;
- May appoint substitute or a proxy to attend and vote at any meeting;
- And shall participate in a cooperative manner in the meetings

6.2.2 Preparation and organisation of meetings

6.2.2.1 Convening meetings

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

	Ordinary meeting	Extraordinary meeting
General Assembly	At least once a year for a face-to-face meeting and more frequently via teleconference	At any time upon written request of the Executive Board or 1/3 of the Members of the General Assembly
Executive Board	At least twice a year for a face-to-face meeting and monthly via teleconference	At any time upon written request of any Member of the Executive Board

6.2.2.2 Notice of a meeting

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

	Ordinary meeting	Extraordinary meeting
General Assembly	45 calendar days	15 calendar days
Executive Board	14 calendar days	7 calendar days

6.2.2.3 Sending the agenda

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

General Assembly	21 calendar days, 10 calendar days for extraordinary meetings
Executive Board	7 calendar days

6.2.2.4 Adding agenda items

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

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

General Assembly	14 calendar days, 7 calendar days for extraordinary meetings
Executive Board	2 working days

6.2.2.5

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

6.2.2.6

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

6.2.2.7

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

6.2.2.8

Any decision may also be taken without a meeting if the Coordinator circulates to all Members of the Consortium Body a written document, which is then agreed by the defined majority (see Section 6.2.3) of all Members of the Consortium Body. Such document shall include the deadline for responses that must be maximum 15 calendar days.

Decisions taken without a meeting shall be considered as accepted if, within the period set out in article 6.2.4.4, no Member has sent an objection in writing to the chairperson. The decisions will be binding after the chairperson sends to all Members of the Consortium Body and to the Coordinator a written notification of this acceptance.

6.2.3 Voting rules and quorum

6.2.3.1

Each Consortium Body shall not deliberate and decide validly unless two-thirds (2/3) of its Members are present or represented (quorum). If the quorum is not reached, the chairperson of the Consortium Body shall convene another ordinary meeting within 15 calendar days. If in this meeting the quorum is not reached once more, the chairperson shall convene an extraordinary meeting which shall be entitled to decide if the quorum of Members are present or represented at least the 50%.

6.2.3.2

Each Party that is Member of a Consortium Body present or represented in the meeting shall have one vote.

6.2.3.3

A Party which the General Assembly has declared according to Section 4.2 to be a Defaulting Party may not vote.

6.2.3.4

Each Consortium Body shall strive to make decisions by consensus. If consensus cannot be achieved, decisions on proposals shall be taken by a majority of two-thirds (2/3) of the votes cast. As an exception, for decisions regarding the integration of a new party to the Project or regarding suspension or termination of the Project or part of it, for which the unanimity of the votes cast is required.

If it is not possible to obtain a majority of two-thirds, after 30 minutes a second ballot shall take place, and the decision shall be taken by simple majority. In case of a tie, the proposal will be considered as rejected.

6.2.4 Veto rights

6.2.4.1

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

6.2.4.2

When the decision is foreseen on the original agenda, a Member may veto such a decision during the meeting or within 15 calendar days following the receipt of the minutes of the meeting.

6.2.4.3

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

6.2.4.4

When a decision has been taken without a meeting, a Member may veto such decision within 15 calendar days after written notification by the chairperson of the outcome of the vote.

6.2.4.5

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

6.2.4.6

A Party may neither veto decisions relating to its identification to be in breach of its obligations nor to its identification as a Defaulting Party. The Defaulting Party may not veto decisions relating to its participation and termination in the consortium or the consequences of them.

6.2.4.7

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

6.2.5 Minutes of meetings**6.2.5.1**

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

6.2.5.2

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

6.2.5.3

The chairperson shall send the accepted minutes to all the Members of the Consortium Body and to the Coordinator, who shall safeguard them. If requested the Coordinator shall provide authenticated duplicates to Parties.

6.3 Specific operational procedures for the Consortium Bodies**6.3.1 General Assembly**

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

6.3.1.1 Members**6.3.1.1.1**

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

6.3.1.1.2

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

6.3.1.1.3

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

6.3.1.1.4

Without prejudice to their entitlement under Section 6.2.4, the Parties agree to abide by all decisions of the General Assembly. This does not prevent the Parties to submit a dispute to resolution in accordance with the provisions of Settlement of disputes in Section 11.8.

6.3.1.2 Decision

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

The following decisions shall be taken by the General Assembly:

Content, finances and intellectual property rights

- Proposals for changes to Annexes 1 and 2 of the Grant Agreement to be agreed by the Funding Authority
- Changes to the Consortium Plan
- Modifications to Attachment 1 (Background Included)
- Additions to Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2)
- Additions to Attachment 4 (Identified Affiliated Entities)

Evolution of the Consortium

- Entry of a new Party to the consortium and approval of the settlement on the conditions of the accession of such a new Party
- Withdrawal of a Party from the Consortium and the approval of the settlement on the conditions of the withdrawal
- Identification of a breach by a Party of its obligations under this Consortium Agreement or the Grant Agreement
- Declaration of a Party to be a Defaulting Party
- Remedies to be performed by a Defaulting Party
- Termination of a Defaulting Party's participation in the Consortium and measures relating thereto
- Proposal to the Funding Authority for a change of the Coordinator
- Proposal to the Funding Authority for suspension of all or part of the Project
- Proposal to the Funding Authority for termination of the Project and the Consortium Agreement

Appointments

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

- General Assembly, as ultimate decision body, will decide on the appointment, nomination and substitution of the members of the IAB.

6.3.2 Executive Board

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

6.3.2.1. Members

The Executive Board shall consist of the Coordinator and one representative from each partner.

The Coordinator shall chair all meetings of the Executive Board, unless decided otherwise by a majority.

6.3.2.2. Minutes of meetings

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

6.3.2.3. Tasks**6.3.2.3.1.**

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

6.3.2.3.2.

The Executive Board shall seek a consensus among the Parties.

6.3.2.3.3.

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

6.3.2.3.4.

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

6.3.2.3.5.

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

6.3.2.3.6.

The Executive Board shall:

- support the Coordinator in preparing meetings with the Funding Authority and in preparing related data and deliverables
- prepare the content and timing of press releases and joint publications by the consortium or proposed by the Funding Authority in respect of the procedures of the Grant Agreement Article 29 and in compliance with the provisions of this Agreement.

6.3.2.3.7.

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

6.4 Coordinator**6.4.1**

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

6.4.2

In particular, the Coordinator shall be responsible for:

- monitoring compliance by the Parties with their obligations
- keeping the address list of Members and other contact persons updated and available
- collecting, reviewing to verify consistency and submitting reports, other deliverables and specific requested documents to the Funding Authority

- transmitting documents and information connected with the Project to any other Parties concerned
- providing, upon request, the Parties with official copies or originals of documents that are in the sole possession of the Coordinator when such copies or originals are necessary for the Parties to present claims.

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

6.4.3

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

6.4.4

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

6.4.5

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

6.5 Industrial Advisory Board

The Industrial Advisory Board (IAB) consists of external experts, proposed by the EB and approved by the GA, who can provide guidance and support to the implementation of the project by means of advice to the Executive Board and the General Assembly. Advice and support of the IAB members, produced collectively or individually, can take the form of:

- Oral and written comments provided during project meetings upon invitation of the Coordinator and/or the Executive Board.
- Offers for supplementing the collected information and data with additional information and data.
- Recommendations and feedback to the Executive Board regarding the planning and implementation of the Tasks.

In order to meet obligations of confidentiality in accordance with Article 36 of the Grant Agreement, as supplemented by Section 10 of this Consortium Agreement, the Coordinator shall ensure that each IAB Member concludes a suitable non-disclosure agreement before receiving any Confidential Information or attending any Project meeting. The Parties agree that such agreement shall be substantially similar to the model agreement shown as Attachment 5.

During the project, IAB members may be proposed, if the Executive Board deems such highly beneficial for the projects. IAB members can propose to the General Assembly to be substituted by another expert, who – after acceptance by the General Assembly – should sign the non-disclosure agreement to have her or his IAB membership activated and the original IAB membership deactivated. The Coordinator will upkeep a list of IAB members who have submitted their signed non-disclosure agreement and will inform all Parties immediately on any changes in the IAB membership.

Section 7: Financial provisions

7.1 General Principles

7.1.1 Distribution of the EU Funding

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

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

7.1.2 Justifying Costs

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

7.1.4 Funding Principles

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

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

7.1.4.2. Return of excess payments; receipts

In any case of a Party having received excess payments, the Party has to return the relevant amount to the Coordinator without undue delay.

In case a Party earns any receipt that is deductible from the total funding as set out in the Consortium Plan, the deduction is only directed toward the Party earning such income. The other Parties' financial share of the budget shall not be affected by one Party's receipt. In case the relevant receipt is more than the allocated share of the Party as set out in the Consortium Plan, the Party shall reimburse the funding reduction suffered by other Parties.

7.1.4.3. Financial Consequences of the termination of the participation of a Party

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

7.2. Budgeting

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

7.3. Payments

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

In particular, the Coordinator shall:

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

- undertake to keep the Funding Authority's financial contribution to the Project separated from its normal business accounts, its own assets and property, except if the Coordinator is a Public Body or is not entitled to do so due to statutory legislation.
- With reference to Articles 21.2 and 21.3.2 of the Grant Agreement, no Party shall before the end of the Project receive more than its allocated share of the maximum grant amount from which the amounts retained by the Funding Authority for the Guarantee Fund and for the final payment have been deducted.

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

Funding of costs included in the Consortium Plan will be paid to Parties after receipt from the Funding Authority without undue delay and in conformity with the provisions of the Grant Agreement. Costs accepted by the Funding Authority will be paid to the Party concerned.

The Coordinator is entitled to withhold any payments due to a Party identified by a responsible Consortium Body to be in breach of its obligations under this Consortium Agreement or the Grant Agreement or to a Beneficiary which has not yet signed this Consortium Agreement.

The Coordinator is entitled to recover any payments already paid to a Defaulting Party. The Coordinator is equally entitled to withhold payments to a Party when this is suggested by or agreed with the Funding Authority

Section 8: Results

8.1 Ownership of Results

Results are owned by the Party that generates them, in accordance with Article 26 of the Grant Agreement.

Each Party warrants that it becomes the owner of Results generated by its employees, third parties, subcontractors etc. during the implementation of the activities related to the Project.

8.2 Joint ownership

Joint ownership is governed by Grant Agreement Article 26.2 with the following additions:

Unless otherwise agreed between the owners:

- each of the joint owners shall be entitled to use their jointly owned Results for further research and development activities on a royalty-free basis, and without requiring the prior consent of the other joint owner(s)
And
 - each of the joint owners shall be entitled to otherwise Exploit the jointly owned Results and to grant non-exclusive licences to third parties (without any right to sub-license).
- (a) at least 45 calendar days advance written notice; and
- (b) Fair and Reasonable compensation. As an exception and notwithstanding anything to the contrary, no compensation shall be due between industrial parties who are joint owners of joint Results. Moreover, no prior notice shall be given between industrial parties in case of direct exploitation of their joint Results.

8.3 Transfer of Results

8.3.1

Each Party may transfer ownership of its own Results (including its share in joint Results) following the procedures of the Grant Agreement Article 30 (30.1-2-3-4).

8.3.2

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

8.3.3

The transferring Party shall, however, at the time of the transfer, inform the other Parties of such transfer and shall ensure that the rights of the other Parties will not be affected by such transfer. Any addition to Attachment (3) after signature of this Agreement requires a decision of the General Assembly.

8.3.4

The Parties agree that in the framework of a merger or an acquisition of an important part of its assets, it may be legally impossible under applicable EU and national laws on mergers and acquisitions for a Party to give the full 45 calendar days prior notice for the transfer as foreseen in the Grant Agreement.

8.3.5

The obligations above apply only for as long as other Parties still have - or still may request - Access Rights to the Results.

8.4 Dissemination

8.4.1

For the avoidance of doubt, nothing in this Section 8.4 has impact on the confidentiality obligations set out in Section 10.

8.4.2 Dissemination of own Results

8.4.2.1

During the Project and for a period of 1 year after the end of the Project, the dissemination of own Results by one or several Parties including but not restricted to publications and presentations, shall be governed by the procedure of Article 29.1 of the Grant Agreement subject to the following provisions.

Prior notice of any planned publication shall be given to the other Parties at least 30 calendar days before the publication. Any objection to the planned publication shall be made in accordance with the Grant Agreement in writing to the Coordinator and to the Party or Parties proposing the dissemination within 20 calendar days after receipt of the notice. If no objection is made within the time limit stated above, the publication is permitted.

Nevertheless for social media publications and dissemination, WP leaders are authorised to consult the other Parties to establish a more fluid mechanism that must be approved by the General Assembly. Once approved by the General Assembly and the representatives of the Parties, such mechanism, if different from the rules defined herein, shall be implemented in

an amendment to this Consortium Agreement as further defined in article 11.4 and shall come into force at the date defined in such amendment.

8.4.2.2

An objection is justified if:

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

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

8.4.2.3

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

The objecting Party can request a publication delay of not more than 90 calendar days from the time it raises such an objection. After 90 calendar days the publication is permitted on the condition that any Confidential Information of the objecting Party is removed.

8.4.3

Dissemination of another Party's unpublished Results or Background.

A Party shall not include in any dissemination activity another Party's result or Background without obtaining the owning Party's prior written approval, unless they are already published.

8.4.4

Cooperation obligations.

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

8.4.5

Use of names, logos and trademarks

Except for general communication about the project nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

Section 9: Access Rights

9.1 Background included

9.1.1

In Attachment 1, the Parties have identified and agreed on the Background for the Project and have also, where relevant, informed each other that Access to specific Background is subject to legal restrictions or limits.

Anything not identified in Attachment 1 shall not be the object of Access Right obligations regarding Background.

9.1.2

Any Party may add further own Background to Attachment 1 during the Project by written notice to the other Parties. However, approval of the General Assembly is needed should a Party wish to modify or withdraw its Background in Attachment 1.

9.2 General Principles**9.2.1**

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

9.2.2

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

9.2.3

Access Rights shall be free of any administrative transfer costs.

9.2.4

Access Rights are granted on a non-exclusive, world-wide basis.

9.2.5

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

9.2.6

All requests for Access Rights shall be made in writing, unless otherwise agreed upon in this Consortium Agreement. The granting of Access Rights may be made conditional on the acceptance of specific conditions aimed at ensuring that these rights will be used only for the intended purpose and that appropriate confidentiality obligations are in place.

9.2.7

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

9.3 Access Rights for implementation

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

9.4 Access Rights for Exploitation**9.4.1**

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

Access Rights to Results if Needed for Exploitation in the form of internal research and demonstration are hereby requested and shall be deemed granted as of the date of the Grant Agreement entering into force to and by all Parties on a royalty-free basis.

9.4.2

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

9.4.3

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

9.5 Access Rights for Affiliated Entities

Affiliated Entities have Access Rights under the conditions of the Grant Agreement Articles 25.4 and 31.4, if they are identified in Attachment 4 (Identified Affiliated Entities) to this Consortium Agreement.

Such Access Rights must be requested directly by the Affiliated Entity from the Party that holds the Background or Results unless otherwise agreed upon in this Consortium Agreement. Alternatively, the Party granting the Access Rights may individually agree with the Party requesting the Access Rights to have the Access Rights include the right to sublicense to the latter's Affiliated Entities listed in Attachment 4. Access Rights to Affiliated Entities shall be granted on the same conditions as those defined in article 9, as if they were Parties to this Agreement.

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

Access Rights may be refused to Affiliated Entities if such granting is contrary to the legitimate interests of the Party which owns the Background or the Results.

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

Upon cessation of the status as an Affiliated Entity, any Access Rights granted to such former Affiliated Entity shall lapse.

Further arrangements with Affiliated Entities may be negotiated in separate agreements.

9.6 Additional Access Rights

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

9.7 Access Rights for Parties entering or leaving the Consortium**9.7.1 New Parties entering the Consortium**

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

9.7.2 Parties leaving the Consortium

9.7.2.1 Access Rights granted to a leaving Party

9.7.2.1.1 Defaulting Party

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

9.7.2.1.2 Non-defaulting Party

A non-defaulting Party leaving voluntarily and with the other Parties' consent shall have Access Rights to the Results developed until the date of the termination of its participation. It may request Access Rights within the period of time specified in Section 9.4.3. The time-limit for its right to request these Access Rights shall start on the date of the termination of its participation.

9.7.2.2 Access Rights to be granted by any leaving Party

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

9.8 Specific Provisions for Access Rights to Software

9.8.1. Definitions relating to Software

“Application Programming Interface” means the application programming interface materials and related documentation containing all data and information to allow skilled Software developers to create Software interfaces that interface or interact with other specified Software.

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

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

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

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

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

“Source Code” means software in human readable form normally used to make modifications to it including, but not limited to, comments and procedural code such as job control language and scripts to control compilation and installation.

9.8.2. General principles

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

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

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

9.8.3. Access to Software

Access Rights to Software that is Results shall comprise:

Access to the Object Code; and,

where normal use of such an Object Code requires an Application Programming Interface (hereafter API), Access to the Object Code and such an API; and,

if a Party can show that the execution of its tasks under the Project or the Exploitation of its own Results is technically or legally impossible without Access to the Source Code, Access to the Source Code to the extent necessary.

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

9.8.4. Software licence and sublicensing rights

9.8.4.1. Object Code

9.8.4.1.1. Results - Rights of a Party

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

to make an unlimited number of copies of Object Code and API; and

to distribute, make available, market, sell and offer for sale such Object Code and API as part of or in connection with products or services of the Party having the Access Rights;

provided however that any product, process or service has been developed by the Party having the Access Rights in accordance with its rights to exploit Object Code and API for its own Results.

If it is intended to use the services of a third party, other than a subcontractor or Affiliated Entity for the purposes of this Section 9.8.4.1.1, the Parties concerned shall agree on the terms thereof with due observance of the interests of the Party granting the Access Rights as set out in Section 9 of this Consortium Agreement.

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

In addition, Access Rights to Object Code shall, as far as Needed for the commercial Exploitation of the Party's own Results, comprise the right to grant in the normal course of the relevant trade to end-user customers buying/using the product/services, a sublicense to the

extent as necessary for the normal use of the relevant product or service to use the Object Code as part of or in connection with or integrated into products and services of the Party having the Access Rights and, as far as technically essential:

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

9.8.4.1.3. Background

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

9.8.4.2. Source Code

9.8.4.2.1. Results - Rights of a Party

Where, in accordance with Section 9.8.3, a Party has Access Rights to Source Code that is Results for commercial Exploitation, Access Rights to such Source Code, as far as Needed for the Exploitation of the Party's own Results, shall comprise a worldwide right to use, to make copies, to modify, to develop, to create/market a product/process and to create/provide a service.

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

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

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

Further sublicensing of Source Code is explicitly excluded.

9.8.4.2.3. Background

For the avoidance of doubt, where a Party has Access Rights to Source Code that is Background for Exploitation, Access Rights exclude the right to sublicense. Such sublicensing rights may, however, be negotiated between the Parties.

9.8.5. Specific formalities

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

Section 10: Non-disclosure of information

10.1

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

10.2

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

- not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipients including all copies thereof and to delete all information stored in a machine-readable form to the extent practically possible. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable mandatory laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as the duration of confidentiality defined herein.

10.3

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

10.4

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

- the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party;
- the Confidential Information was by written proof already known to the Recipient prior to disclosure, or
- the Recipient is required to disclose the Confidential Information in order to comply with applicable mandatory laws or regulations or with a court or administrative order, subject to the provisions of Section 10.7 hereunder.

10.5

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

10.6

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

10.7

If any Party becomes aware that it will be required, 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

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

Section 11: Miscellaneous

11.1 Attachments, inconsistencies and severability

This Consortium Agreement consists of this core text and

Attachment 1 (Background included)

Attachment 2 (Accession document)

Attachment 3 (List of Third Parties for simplified transfer according to Section 8.3.2)

Attachment 4 (Identified Affiliated Entities)

In case the terms of this Consortium Agreement are in conflict with the terms of the Grant Agreement, the terms of the latter shall prevail. In case of conflicts between the attachments and the core text of this Consortium Agreement, the latter shall prevail.

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

11.2 No representation, partnership or agency

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

11.3 Notices and other communication

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

Formal notices:

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

Other communication:

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

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

11.4 Assignment and amendments

Except as set out in Section 8.3, no rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement not explicitly listed in Section 6.3.1 require a separate written agreement to be signed between all Parties.

11.5 Mandatory national law

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

11.6 Language

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

11.7 Applicable law

This Consortium Agreement shall be construed in accordance with and governed by the laws of Belgium excluding its conflict of law provisions.

11.8 Settlement of disputes

The parties shall endeavour to settle their disputes amicably.

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

If, and to the extent that, any such dispute, controversy or claim has not been submitted to mediation, or settled pursuant to the mediation within 60 calendar days of the commencement of the mediation, the courts of Brussels shall have exclusive jurisdiction.

11.9 Big data value PPP cooperation charter

The Parties are expected to comply the big data value ppp cooperation charter, and all the EU related rules and regulations.

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

Section 12: Signatures

AS WITNESS:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Authorised to sign on behalf of

BARCELONA SUPERCOMPUTING CENTER – CENTRO NACIONAL DE SUPERCOMPUTACIÓN

Signature:

Name: Prof. Mateo Valero Cortés

Title: BSC-CNS Director

Date:

Stamp:

Authorised to sign on behalf of IKERLAN S COOP

Signature:

Name:

Title:

Date:

Stamp:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Authorised to sign on behalf of INSTITUTO SUPERIOR DE ENGENHARIA DO PORTO

Signature:

Name: Maria João Viamonte

Title: President

Date:

Stamp:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Authorised to sign on behalf of INFORMATION CATALYST FOR ENTERPRISE LTD

Signature:

Name:

Title:

Date:

Stamp:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Authorised to sign on behalf of SIXSQ SARL

Signature:

Name:

Title:

Date:

Stamp:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Authorised to sign on behalf of THALES SA

Signature:

Name:

Title:

Date:

Stamp:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Authorised to sign on behalf of THALES ITALIA SPA

Signature:

Name:

Title:

Date:

Stamp:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Authorised to sign on behalf of GESTIONE ED ESERIZIO DEL SISTEMA TRANVIARIO SPA

Signature:

Name:

Title:

Date:

Stamp:

The Parties have caused this Consortium Agreement to be duly signed by the undersigned authorised representatives in separate signature pages the day and year first above written.

Authorised to sign on behalf of CITTA METROPOLITANA DI FIRENZE

Signature:

Name:

Title:

Date:

Stamp:

Attachment 1 Background included

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

PARTY 1: Barcelona Supercomputing Center – Centro Nacional de Supercomputación (BSC)

As to Barcelona Supercomputing Center – Centro Nacional de Supercomputación, it is agreed between the Parties that, to the best of their knowledge, the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
<p>Background of BSC includes the published scientific work of the specific research group directly involved in the project (group of Prof. Quiñones), that is needed to implement the project and to obtain the agreed results.</p> <p>The following software and tools developed by BSC are included:</p> <p>COMPSs, OpenMP runtime, compiler scheduling and schedulability analysis technique.</p>	COMPSs License Apache v.2	COMPSs License Apache v.2

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

PARTY 2: IKERLAN S COOP

As to, it is agreed between the Parties that, to the best of their knowledge (*please choose*),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

IKERLAN KONNEKT®: software and services gathered under the trademark. Registered trademark Marca Nº.3.709.701 in Oficina Española de Patentes y Marcas	IKL can use it in the project and will make it available to other partners (except for sensitive particular details or cases protected for specific clients)	At fair and reasonable compensation (except for sensitive particular details or cases protected for specific clients)
Asset transparent data transport (TRANSQUARED). Software bundle for automating the deployment of fog/cloud platforms transparently to services. Software registered Sol PO TRANSQUARED SS-353-18	IKL can use it in the project and will make it available to other partners (except for sensitive particular details or cases protected for specific clients)	At fair and reasonable compensation (except for sensitive particular details or cases protected for specific clients)

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

PARTY 3: INSTITUTO SUPERIOR DE ENGENHARIA DO PORTO

As to, it is agreed between the Parties that, to the best of their knowledge, the following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
Experience and analyses methods for non-functional properties real-time and energy	None	None
Expertise in middleware for IoT	None	None

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

PARTY 4: INFORMATION CATALYST FOR ENTERPRISE LTD

As to, it is agreed between the Parties that, to the best of their knowledge (*please choose*),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
Any product, services and components from ICE which are valid for use in the	No provision of source code.	No provision of source code. Bilateral negotiated Agreements required for

project and formally stated in BOP minutes to be made available.		access and exploitation including fair and reasonable compensation.
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This represents the status at the time of signature of this Consortium Agreement.

PARTY 5: SIXSQ SARL

As to, it is agreed between the Parties that, to the best of their knowledge (*please choose*),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
SlipStream (Open Source)	The majority of the SlipStream software is and will continue to be released under the Apache 2 license (https://www.apache.org/licenses/LICENSE-2.0.html). Modifications to this code by other partners must be assigned to SixSq Sàrl in accordance with the SixSq Contributors Agreement before they can be incorporated into the code base.	Other ELASTIC partners may exploit the open source SlipStream code in accordance with the Apache 2 license, which allows royalty-free academic and commercial exploitation.
SlipStream (Enterprise Extensions)	Some elements of the SlipStream ecosystem are available only under a commercial license. Partners may be granted access to the source code of these extensions; this source code is considered confidential. Modifications to this code by other partners must be assigned to SixSq Sàrl in accordance with the SixSq Contributors Agreement before they can be incorporated into the code base.	During the project, access to the SlipStream Enterprise Extensions will be granted free to other ELASTIC partners. Exploitation of these extensions, including any modifications/additions coming from the project, are subject to the standard commercial SixSq license and fees.
NuvlaBox	The NuvlaBox Edge Computing Platform consists of a mix of open source and proprietary software. Access to the open source components is provided to ELASTIC partners according to the Apache 2 license. Access to the proprietary parts of the NuvlaBox Edge Computing Platform will be provided to other ELASTIC partners as necessary. The proprietary source code is considered confidential.	During the project, access to the NuvlaBox software will be granted free to other ELASTIC partners. NuvlaBox hardware may need to be purchased by the ELASTIC partners. Exploitation of the NuvlaBox software and hardware, including any modifications/additions

		coming from the project, are subject to the standard commercial SixSq license and fees.
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This represents the status at the time of signature of this Consortium Agreement.

PARTY6: THALES SA.

As to, it is agreed between the Parties that, to the best of their knowledge (*please choose*),

Option 2: No data, knowledge or information of THALES TRT shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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

PARTY7: THALES ITALIA SPA.

As to, it is agreed between the Parties that, to the best of their knowledge (*please choose*),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)
THALES Sensor Fusion Algorithm (SFA) and Next Generation Autonomous Positioning system (NGP).	No provision of source code. Access Rights to Background is only granted to the extent that it is Needed for implementation of the action. Access right to Background granted in accordance with third parties rights and relevant limitations if applicable.	No provision of source code. Access Rights to Background is only granted to the extent that said Background is not subject to terms and conditions in existing third party agreements that may prohibit grant of Access Rights in the Project. Access Rights to Background is granted at fair and reasonable terms to be agreed by the concerned parties.
THALES sensor fusion application for Obstacle Detection ADAS.	No provision of source code. Access Rights to Background is only granted to the extent that it is Needed for implementation of the action.	No provision of source code. Access Rights to Background is only granted to the extent that said Background is not subject to terms and conditions in existing third party agreements that may prohibit grant of Access Rights in the Project. Access Rights to Background is granted at fair and reasonable terms to be agreed by the concerned parties.
THALES supervision and control system for railway predictive maintenance application.	No provision of source code. Access Rights to Background is only granted to the extent that it is Needed for implementation of the action.	No provision of source code. Access Rights to Background is only granted to the extent that said Background is not subject to terms and conditions in existing third party agreements that may prohibit grant of Access Rights in the Project. Access Rights to Background is granted at fair and reasonable terms to

		be agreed by the concerned parties.
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This represents the status at the time of signature of this Consortium Agreement

PARTY 8: GESTIONE ED ESERIZIO DEL SISTEMA TRANVIARIO SPA.

As to, it is agreed between the Parties that, to the best of their knowledge (*please choose*),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

Option 2: No data, knowledge or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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

PARTY 9: CITTA METROPOLITANA DI FIRENZE.

As to, it is agreed between the Parties that, to the best of their knowledge (*please choose*),

Option 1: The following background is hereby identified and agreed upon for the Project. Specific limitations and/or conditions, shall be as mentioned hereunder:

Describe Background	Specific limitations and/or conditions for implementation (Article 25.2 Grant Agreement)	Specific limitations and/or conditions for Exploitation (Article 25.3 Grant Agreement)

Option 2: No data, knowledge or information of [NAME OF THE PARTY] shall be Needed by another Party for implementation of the Project (Article 25.2 Grant Agreement) or Exploitation of that other Party's Results (Article 25.3 Grant Agreement).

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

Attachment 2: Accession document

ACCESSION

of a new Party to

ELASTIC Consortium Agreement, version [..., YYYY-MM-DD]

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

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

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

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

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

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE COORDINATOR]

Signature(s)

Name(s)

Title(s)

Attachment 3: List of Third Parties for simplified transfer according to Section 8.3.2.

Information Catalyst SL:

Information Catalyst SL (ICE Spain)

Attachment 4: Identified Affiliated Entities

Thales TRT:

THALES GLOBAL SERVICES SAS, THALES SIX GTS SAS, THALES AVS FRANCE, THALES DMS FRANCE SAS, THALES LAS FRANCE, THALES ALENIA SPACE FRANCE, THALES ALENIA SPACE ITALY, THALES BELGIUM, THALES DEUTSCHLAND, THALES CANADA, THALES SERVICES, SYSGO, GERAC, THALES ESPANA, THALES ALENIA SPACE ESPANA, THALES DIGITAL FACTORY, THALES SESO, THALES NORWAY, THALES RESEARCH & TECHNOLOGY Ltd, THALES NEDERLAND, THALES PORTUGAL, THALES ELECTRONICS Limited, THALES ALENIA SPACE UK, THALES OPTRONICS, THALES UK, THALES ASIA PTE, THALES TRANSPORT & SECURITY Ltd, THALES TRANSPORTATION SYSTEMS B.V, THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED, THALES TRANSPORT & SECURITY INC.

Information Catalyst SL:

Information Catalyst SL (ICE Spain)

Attachment 5: Model Non-Disclosure Agreement for Industrial Advisory Board

Barcelona Supercomputing Center-Centro Nacional de Supercomputación ('BSC') and the organisations shown in the Attachment to this Agreement (the "Consortium") are participating in the project entitled ELASTIC (the "Project"), which is being funded by the European Union's. The Consortium welcomes you as a member of the Industrial Advisory Board("IAB"). Participation as a member of the IAC will involve you receiving, and/or participating in Project discussions/presentations concerning information produced and/or acquired by the Consortium members either as part of the Project ("Foreground") or before/outside the Project ("Background"). As the Consortium members have pre-existing obligations with respect to the confidentiality of such Foreground and Background, you will be required to keep confidential, as indicated below, any Foreground or Background that may be disclosed to you as a member of the IAB. In this agreement, any information disclosed to you relating to Foreground and/or Background shall be collectively referred to as "Confidential Information" and the Consortium member owning or holding rights to such Confidential Information, who shall be entitled to enforce the obligations contained herein, shall be referred to as the "Discloser". To avoid doubt, the Consortium has approved the use of this agreement.

By signing below, you agree to the following:

- a) to take all reasonable steps to ensure that all Confidential Information disclosed to you as a member of the IAB remains confidential during the Project and for a period of five (5) years after the end date of the Project;
- b) not to become involved in any commercial, manufacturing, scientific, literary or any other exploitation of the Confidential Information, whether alone or in conjunction with another party (by licence or otherwise), or use Confidential Information otherwise than for undertaking your duties as a member of the IAB without the written consent of the Discloser;
- c) not to disclose the Confidential Information either directly or indirectly to any third party without the written consent of the Discloser.

In addition, you and the Consortium agree that the above obligations of confidentiality and non-use shall not apply in the following circumstances:

- (i) when any such Confidential Information is public knowledge through previous publication, or when following disclosure to you as a member of the IAB, becomes general or public knowledge either through no fault of yourself or following further written agreement between you and the Discloser;
- (ii) when any such Confidential Information can be shown by yourself to have been in your possession prior to disclosure under this agreement, except when such Confidential Information was supplied by the staff, students or agents of the Discloser;
- (iii) when any such Confidential Information is received by yourself from a third party that you reasonably believe has no similar obligation of confidentiality to the Discloser;
- (iv) when you can reasonably demonstrate that any such information has been previously developed by yourself without reference to, or without prior benefit of, the Confidential

Information or was required to be disclosed in order to comply with applicable laws or statutory regulations or with a court or administrative order.

In consideration of the invitation to participate as a member of the IAB, I accept the conditions set out within this agreement.

Name of IAB Member

{insert here}

Normal Work Address of IAB Member

{insert line 1 here}

{insert line 2 here}

{insert line 3 here}

Signed

(by IAB Member)

Date

Name of Authorised signatory

{insert here}

Signed

(by Authorised Member of the ELASTIC Project on behalf of the Consortium as a whole)

Date